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Women in the *Sachsenspiegel*: Gender and Asymmetrical Dependencies

1 Introduction

In the development of the key concept of ‘strong asymmetrical dependency’¹ lies the intention of going beyond the dichotomy between the Enlightenment idea of ‘liberty’, as a fundamental freedom of humankind, and its supposed opposite of ‘slavery’ that epitomises a multitude of unmatched and unjust power relations. The concept of ‘strong asymmetrical dependency’ offers the possibility of including a continuum of coercive dependencies,² which can be observed in specific scenarios, such as debt bondage, convict labour, servitude, domestic work, etc. The concept can, however, also be specifically associated with particular groups or sectors of society. Gender, for instance, tends to be associated with structures that include inherent asymmetrical dependency constructs.

This paper discusses the concept of women’s legal capacity during the later Middle Ages, thereby highlighting it as an inherent asymmetrical dependency construct, with particular reference to the customary law in the *Sachsenspiegel Landrecht*. The aim is to enhance our understanding of asymmetrical dependencies linked to gender during a historical period when society, hierarchies and power were conceived and structured very differently from the modern and post-modern periods. In that respect, the paper illustrates why theories of gender should go beyond the usual conceptualisations rooted in modern society and also include medieval studies.

Structured into six parts, the paper initially focuses on a discussion about how to define asymmetrical dependencies. The second part examines how gender can be relevant in tipping the balance of mutual dependence towards an imbalance of power generating asymmetrical dependencies; it also presents the gender construction adopted here. According to Rudolf Stichweh, control over resources, action and experiences are the three main areas in which exercise of power and dominance can generate asymmetries. Each area of control is discussed in the three following sections and in relation to

1 <https://www.dependency.uni-bonn.de/en/research> [accessed 21.09.2022].

2 David Eltis and Stanley L. Engerman, “Dependence, Servility and Coerced Labor in Time and Space,” in *The Cambridge World History of Slavery*, vol. 3, AD 1420–AD 1804, ed. David Eltis and Stanley L. Engerman (Cambridge: Cambridge University Press, 2011): 3.

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the customary law provisions of the *Sachsenspiegel Landrecht*. The conclusions are summarised in the last part.

2 Defining Asymmetrical Dependencies

In his lecture at the opening conference of the Bonn Center for Dependency and Slavery Studies in October 2019, Rudolf Stichweh³ noted that, so far, established theories of asymmetrical dependencies are still in the making, though the subject has been discussed extensively in academic literature across many fields.⁴ Stichweh suggests that strong asymmetrical dependencies or relations are not accidental errors of human history; rather, they form a constitutive building block of all human social systems and must be recognised as such. With the advent of modern society comes a value preference for equality and symmetrical social relations within society's dependence structure, favouring mutual dependencies over power imbalances.

Dependence, as the core concept at issue here, is defined by Kuhn as: "A is dependent on B to the extent that communicational, transactional or organisational relations between the two are advantageous to A."⁵ Social relations usually entail ties of mutual dependence between the interacting parties. Emerson translated the power-dependence relation into equations.⁶ The power (P) of A over B is equal to, and based upon, the dependence (D) of B upon A:

$$P_{ab} = D_{ba}$$

Recognising the reciprocity of social relations, the power–dependence relation should actually be expressed as a pair of equations:

$$P_{ab} = D_{ba}$$

$$P_{ba} = D_{ab}$$

³ Rudolf Stichweh, "How Do Divided Societies Come About? Persistent Inequalities, Pervasive Asymmetrical Dependencies, and Sociocultural Polarization as Divisive Forces in Contemporary Society," *Global Perspectives* 2, no. 1 (2021): 1–9.

⁴ For example, Richard M. Emerson, "Power-Dependence Relations," *American Sociological Review* 27, no. 1 (1962): 31–41; James S. Coleman, *Foundations of Social Theory* (Cambridge, MA: Belknap Press, 1990); Marcel Mauss, *Essai sur le don* (Paris: Presses Universitaires de France, 1923/24); Albert O. Hirschman, *Exit, Voice, and Loyalty: Responses to Decline in Forms, Organizations, and States* (Cambridge, MA: Harvard University Press, 1970).

⁵ Alfred Kuhn, *The Logic of Social Systems* (San Francisco: Jossey Bass, 1974): 490.

⁶ Emerson, "Power-Dependence Relations": 33–34. Emerson considered what appear to be simplified equations of complex relations in the hopes that they would apply to a wide range of social situations.

Inherent in reciprocity is the notion of interdependence, which is a basic building block of society, whether on a local or global level. Mutual dependence can potentially be symmetrical, and Emerson represents it as follows:

$$\begin{array}{ccc} P_{ab} & = & D_{ba} \\ | & & | \\ P_{ba} & = & D_{ab} \end{array}$$

Stichweh contends that the genesis of asymmetrical dependencies and relations can be found where power imbalances upset the equilibrium of mutual dependence, represented by Emerson as follows:

$$\begin{array}{ccc} P_{ab} & = & D_{ba} \\ \Upsilon & & \Upsilon \\ P_{ba} & = & D_{ab} \end{array}$$

These two aspects should not be seen as mutually exclusive but as possibly embedded in the same relation, which may be based on mutual dependence, while power imbalances arise in some of its aspects.

According to Stichweh, there are three main areas in which the exercise of control in the sense of power and dominance can generate asymmetries. First of all, the unequal distribution of resources (property, usage) and the control to maintain this inequality leads to power imbalances. While this is often the main point in the literature on dependency, the control of resources tends to lead to social inequality but does not *per se* give rise to asymmetrical dependencies as understood by the work of the BCDSS. Secondly, Coleman⁷ distinguishes control of actions from control over resources, and Stichweh argues that control of actions is probably the most important type of control in the context of asymmetrical relations even though it is rarely discussed as such in theories on dependencies. Legitimising control of actions are forms of asymmetrical control over actions. The third area of control is that of experience in the sense of control over a person's perception of the world. This lies at the heart of many aspects of social control attempting to create a uniform worldview, particularly in totalitarian societies.⁸

⁷ Coleman, *Foundations of Social Theory*.

⁸ Niklas Luhman has theorised the distinction between experience and action; see Niklas Luhman, *Soziale Systeme. Grundriss einer allgemeinen Theorie*, 2nd ed. (Frankfurt am Main: Suhrkamp, 1988): 124.

3 Asymmetrical Dependencies and Gender in Late Medieval Times

Starting from the premises in the basic theory of asymmetrical dependencies discussed above, this section examines how gender can be relevant in tipping the balance of mutual dependence towards an imbalance of power, generating asymmetrical dependencies. However, in the first instance, it is important to point out that the gender terminology and concepts adopted in this paper align with the gender construction in the legal or customary law sources used for this study. Therefore, a fundamentally binary construction of gender and the relevant *discriptios* found in those texts were followed. This is not to be understood as endorsing essentialism but aims to establish working uses in order to avoid misunderstandings, rather than to claim generally and prescriptively how definitions and concepts should be understood. A 2020 study of the Norman *Coutumier*⁹ has shown that multiple ‘femininities’ can be found in these types of texts, but these usually relate to family relationships and marital/sexual status, rather than to anything that may reveal the socio-political power of action and influence or to non-binary constructs.

The primarily binary construct of thirteenth- and fourteenth-century customary law texts, such as the *Sachsenspiegel*,¹⁰ forms part of the hegemonic divisions that govern the relevant societies. The procreation imperative is the basis for marriage and the distinction between legitimate and illegitimate children for the purposes of inheritance.¹¹ In turn, this is a key element of territorial controls, ownership within families, and feudal organisation of the land-owning classes and their vassals.¹² Binary and heterosexual constructs are concrete historical realities, “a set of social institutions and practices defined and regulated by patriarchal kinship systems, by both civil and religious law, and by strenuously enforced mores and deeply entrenched values and taboos.”¹³ In the Rhymed Preface of the *Sachsenspiegel*, a reference to the book’s title reflects, so to speak, binary gender divisions:

9 Caroline Laske, *Medieval Women in the Très Ancien Coutumier de Normandie. Textual Representation of Asymmetrical Dependencies*, Joseph C. Miller Memorial Lecture Series 3 (Berlin: EB-Verlag, 2020).

10 The *Sachsenspiegel* (original title: *Sassen Speyghel* or *Sassenspegel*), attributed to Eike von Repgow (c. 1180–1235), was compiled after 1220 in eastern Saxony. Whether he was the sole author is still a moot point. It comprises the regional customary laws, the so-called *Landrecht* (SSp. Ldr) often divided into books I–III, and the feudal laws affecting the gentry, the so-called *Lehnrecht* (SSp. Lnr), sometimes cited as book IV. See www.sachsenspiegel-online.de, also <https://www.wdl.org/en/item/11620/> [both accessed 21.09.2022].

11 Madeline H. Caviness and Charles G. Nelson, *Women and Jews in the Sachsenspiegel Picture-Books* (Turnhout: Brepols, 2018): 140.

12 Caviness and Nelson, *Women and Jews in the Sachsenspiegel Picture-Books*: 172.

13 Marilyn Frye, “Virgin Women,” in *Feminist Frameworks: Alternative Theoretical Accounts of the Relations between Women and Men*, ed. Alison M. Jaggar, and Paula S. Rothenberg (New York: McGraw-Hill, 1993): 493.

“Spegel der Sassen”

Scal dit buk sin genant,
went Sassen recht is hir an bekant,
Alse an eneme spegele de vrouwen
er antlite scowen.¹⁴

The symbolism of the mirror has different associations for men than it has for women. The law book is described as a mirror that reflects the familiar and in which Saxons see their laws and customs, with which they identify as Saxons. For a woman, the mirror reflects just her own image, which arguably refers to her vanity rather than to more high-minded matters such as Saxon laws. It also emphasises that the law book is addressed to men; it may deal with women at times, but they were not really in a position to speak for themselves, and doing so could have long-term consequences (see *Calefurnia*, discussed below). In this way, the binary opposition is compounded with male dominance inherent in the hegemonic structure. To that extent, the *Sachsenspiegel* and other customary law books codify and maintain this ‘otherness’ and the unequal rights inherent in its construction and in asymmetrical dependencies.

In the discussion of how gender relates to the imbalance of power generating asymmetrical dependencies during the late Middle Ages, we approach the topic with particular references to the lack of legal capacity which are, in the eyes of the law and in society, quintessential markers of asymmetrical dependencies relevant not only to the Middle Ages but throughout history. Legal capacity is to be understood in the sense of the German concept of *Rechtsfähigkeit*, which in the Middle Ages depended on elements such as birth and social status. It is a prerequisite for the neighbouring legal capacity to act in the sense of the German *Handlungs-* or *Geschäftsfähigkeit*. Married women frequently represented the family unit and were engaged in public business, either on their own behalf and in their own name or on behalf of absent spouses (knightly duties, crusades, etc.).¹⁵ Following Stichweh’s definition of asymmetrical dependencies, legal capacity is relevant to control of both resources and actions, and, to a certain extent, also to control of experiences.

In the medieval era, legal capacity (*Rechtsfähigkeit*) depended on birth, family status, age and gender. In the *Sachsenspiegel*, we find references to the *rechtlos*, translated by Dobozy as, for instance, “diminished legal capacity”, “without legal rights”

14 “The Mirror of the Saxons/ Shall this book be called/ because with it the Saxon laws will come to be known/ like a mirror in which women can see their countenance”. The printed edition used for this study is the Middle German version edited by Karl August Eckhardt, *Sachsenspiegel Landrecht* (Göttingen: Musterschmidt, 1933/1955) and *Sachsenspiegel Lehnrecht* (Göttingen: Musterschmidt, 1933/1956). English passages cited are the author’s translations, unless otherwise specified.

15 Martha C. Howell, *The Marriage Exchange: Property, Social Place, and Gender in Cities of the Low Countries, 1300–1550* (Chicago: University of Chicago Press, 1998); Shennan Hutton, *Women and Economic Activities in Ghent* (New York: Palgrave Macmillan, 2011); Ellen E. Kittell, “Testaments of Two Cities: A Comparative Analysis of the Wills of Medieval Genoa and Douai,” *European Review of History* 5, no. 1 (1998): 47–82.

and “losing legal rights and privileges”.¹⁶ The potential for the legal capacity to inherit begins at birth but is restricted to legitimate children and, in case of birth to a widow, it must be confirmed by two women as eyewitnesses and four men as earwitnesses.¹⁷ Legal capacity does not necessarily end with death,¹⁸ and a number of provisions relate to coming of age, each with their level of legal capacity and need for a guardian. The lack/loss of legal capacity occurs in a number of scenarios: paid champions, minstrels, illegitimate children, convicted robbers and thieves, etc.¹⁹ The impaired are also excluded.²⁰ Because in the *Sachsenspiegel*, married women are particularly subject to male guardianship, many provisions related to legal capacity apply only to men/male children.²¹ Restrictions imposed on women by all-pervasive guardianship limit their legal capacity to act in the sense of *Handlungs- or Geschäftsfähigkeit*.

The question of legal capacity is particularly poignant in relation to holding land, disposing of property, running a business, appearing in a court of law, etc. As suggested above, legal and customary law texts reflect a binary conception of gender, yet the narrative told of women is not only less substantial due to considerably lower textual presence but also contextually poorer and much less varied in terms of roles (*descriptios*) represented. Women were categorised according to criteria specific to them, and the resulting categories and subcategories were governed by specific laws, rules and restrictions, some with no equivalent for men. This might be in terms of their socio-economic categories: nuns, laywomen, noble ladies, (wealthy) bourgeois, (poor) countrywomen, maidservants, whores, etc. (e.g. separate chapters for each in manuals for preachers²²) or according to their marital status: maidens, married women, widows, etc. (e.g. separate chapters for each in manuals for conduct²³); or according to various familial, biological, sexual phases: virgin, beloved, bride, newly-married, pregnant; or according to faults and sins specifically attributed to women. References to women predominantly relate to their family situation or marital status but rarely to anything that may reveal socio-political or legal power of action and influence or professional activities.²⁴ In other words, in legal and customary law (and other) sources, the continuum of definition is found within the binary category rather than across categories.

16 *The Saxon Mirror. A Sachsenspiegel of the Fourteenth Century*, trans. Maria Dobozy (Philadelphia: University of Pennsylvania Press, 1999): 80.

17 SSp. Ldr. I: 33.

18 SSp. Ldr. I: 64; II: 31 §3; III: 10 §§1, 2.

19 SSp. Ldr. I: 38 §1.

20 SSp. Ldr. I: 4.

21 See for example SSp. Ldr. I: 45.

22 See for example: *De Eruditione Praedicatorum* by Dominique Humbert de Romans (thirteenth century).

23 See for example: *Livre de Manières* by Etienne Fourgères (1168–1178). A printed edition edited by F. Talbert can be found on <https://archive.org/details/LeLivreDesManieres> [accessed 08.11.2022].

24 Laske, *Medieval Women in the Très Ancien Coutumier de Normandie. Textual Representation of Asymmetrical Dependencies*: 9–10, 48–54.

The scenarios of control of power and dominance theorised by Stichweh as generating asymmetrical dependencies can be identified in relation to women's lack of legal status, legal capacity or legal competence during the late Middle Ages. Within the judicial system, procedures, rules and (customary) laws, women were frequently classified in a specific category. Legal capacity was less curtailed through blanket bans but took the form of specific restrictions, varying from region to region. In this paper, particular references are made to the *Sachsenspiegel Landrecht*. However, reference is also made to illustrated manuscripts, in which pictures are of similar prominence to the text. Manuwald coined the phrase “*zweisprachige Ausgabe*”²⁵ rather than illustrated book,²⁶ and that applied very appropriately to the four extant picture books.²⁷ Starting from the premises that these manuscripts are akin to bilingual editions, reference is thus made to visual discourse as expressed in the pictures.

4 Control over Resources

As far as control over resources is concerned, the common scenario during the Middle Ages is that men commonly had control, to the detriment of ‘non-men’, mainly women or children but especially married women. Marriage went hand in hand with particularly weak legal capacity, the status of wife putting a woman under her husband's ‘guardianship’, a legal principle known as *feme covert*.²⁸ The matrimonial guardianship ended with divorce or the husband's death.²⁹ In the case of divorce, guardianship reverted to the woman's family, while widows remained under guardianship of the deceased husband's family.

²⁵ “Bilingual recension.”

²⁶ Henrike Manuwald, “Die Große Bilderhandschrift des Willehalm: Kommentierter Text oder ‘zweisprachige’ Ausgabe?” in *Übertragungen: Formen und Konzepte von Reproduktion in Mittelalter und früher Neuzeit*, ed. Britta Bußmann, Albrecht Hausmann, Annelie Kreft and Cornelia Logemann, Trends in Medieval Philology (Berlin/New York: De Gruyter, 2005): 377–94.

²⁷ These manuscripts are commonly named after the towns where they are preserved: Heidelberg (H) 1294–1304, patronage unknown (<http://digi.ub.uni-heidelberg.de/diglit/cpg164>); Oldenburg (O) 1336, made in Rastede Abbey for John III, Duke of Oldenburg (<http://digital.lb-oldenburg.de/urn/urn:nbn:de:gbv:45:1-3571>); Dresden (D) 1347–1363, made probably in Meissen for Margrave Friedrich III (<http://digital.slub-dresden.de/werkansicht/dlf/6439/1>); Wolfenbüttel (W) 1348–62/71, made probably near Meissen for Heinrich Burgrave of Leisnig (<https://www.sachsenspiegel-online.de/cms/> [all accessed 21.09.2022]).

²⁸ See for example: Frederick Pollock and Frederic William Maitland, *The History of English Law before the Time of Edward I* (Cambridge: Cambridge University Press, 1968), vol. 2, bk. 2, ch. 7, §2: 406; Philippe de Beaumanoir, *Coutumes de Beauvaisis* (Paris: Alphonse Picard et Fils, 1899), Tome II, at §1054; Ellen E. Kittell, “Guardianship over Women in Medieval Flanders: A Reappraisal,” *Journal of Social History* 31, no. 4 (1998): 899, 902–3.

²⁹ SSp.Ldr. III: 45§3.

Women's property rights, particularly for immovable property, diminished on marriage, including property she brought into the marriage although the exact manner in which property was handled in a marriage differed among various European regions. In accordance with the Roman law tradition, a dowry to be provided by the bride could be found alongside the customary tradition that the husband paid bride-money, particularly in so-called lesser marriages. Subject to regional diversities, immovable property and income from assets would normally be considered as jointly shared for the marriage's duration. The husband was vested with great power over the entire mass of property, usually with the limitation only that he could not alienate his wife's property without her consent. This might amount to the assets she brought into the marriage, those she inherited during the marriage or the dower promised by her husband. The concept of 'community of goods' between spouses appeared in many European regions, but what was included in the common stock differed: the whole property independent of its acquisition before or during marriage or just what was added during the marriage, should it include movables as well as immovables, etc. While the general tradition usually excluded women from inheriting land on the basis that land was the family's property and should not be lost by women marrying into another family, exceptions to strict adherence to such rules occurred, mainly driven by specific considerations such as the absence of a male heir in a feudal context. Fiefs were usually governed by feudal law and (more or less strict) primogeniture rules and were thus excluded from such customs and arrangements.³⁰

The implementation of twelfth- and thirteenth-century customary laws should not be considered rigidly prescriptive legal rules and laws, structured into a coherent system, as we understand the nature of law today. To some extent, customs written down in texts such as the *Sachsenspiegel* or the *Très Ancien Coutumier de Normandie* were considered by their authors as sufficiently important to fix them in writing. However, they do not necessarily reflect the extent of adherence to the rules in practice. Nor can one conclude that the absence of a customary rule in the written texts meant that the rules were not important or did not exist. Similarly, if a custom were not included in the customary law text, this did not mean it did not exist or was not followed. Some such customs were so established that authors of customary law texts did not find it necessary to include them.

In general, resources in the form of land holding and assets, including the income these generated, were under men's control, and, when women were legal owners, the power of management and exploitation was vested in their menfolk on their behalf. The *Sachsenspiegel*, like other thirteenth- and fourteenth-century customary law texts reinforced the heterosexual imperative and binary construct of society's hegemonic

³⁰ For example, in the Duchy of Bourgogne, women succeeded to fiefs on two occasions in the tenth century, in the County of Marche and of Carcassonne twice during the eleventh century and, of course, in Aquitaine in 1137, when Eleanor became Duchess of Aquitaine in her own right, adding the Duchy to the Anglo-Norman territories on her marriage to King Henry II of England.

divisions. That context was particularly poignant in women's all-pervasive guardianship running throughout the law book. Guardianship interfered with women's control over resources as well as over the possibility to act.³¹

Like children and minors, women were subject to general guardianship provisions set forth in the *Sachsenspiegel*, that is, SSp. Ldr. I, 41–45. From these, men were released in prescribed stages,³² while women became subject to guardianship provisions based on their gender, and a male family member was assigned as the guardian.³³ On marriage, such guardianship transferred to the husband:

De man is ok vormunde sines wives, to hant also se eme getruwet is. Dat wif is ok des mannes notinne, to hant also se in sin bedde trit . . .³⁴

Al ne si en man sime wive nicht evenbordich he is doch er vormunde unde se is sin genotinne, unde trit in sin recht, swen se in sin bedde geit³⁵

Swen en man wif nimt, so nimt he in sine were al er gut to rechter vormuntschap³⁶

In the last provision cited above, the suggestion that the husband took into his possession the wife's property in lawful guardianship implied that, akin to the Roman law *possessio*, use, enjoyment and management of property was vested with the husband, while the actual property remained with the wife. Yet, due to the strict guardianship principle, the wife had no *de facto* control of her property.

On marriage, properties of husband and wife were combined into a unit limited in time to the marriage's duration. In theory, each part remained earmarked as belonging to the spouse who brought it into the marriage and as remaining with the relevant family in the case of death or dissolution of the marriage.³⁷ Within the unit of combined property, its components remained distinguishable as belonging to the husband or wife, but that distinction was not made in the properties' management or exploitation.

Although women remained under some sort of guardianship, provisions governing their specific life stages varied, but the strictest related to married women. In a society structured on a system of affiliation, marriage played an important structural

31 The aim of this section is not to discuss in detail all provisions relating to women holding immovables (real property) or movables (chattels). See Mariella Rummel, *Die rechtliche Stellung der Frau im Sachsenspiegel-Landrecht* (Frankfurt am Main: Peter Lang, 1987); this work also includes a comprehensive bibliography.

32 SSp. Ldr. I: 42§1.

33 Mainly SSp. Ldr. I: 23§2, 31§2, 41, 42§2, 43, 44, 45, 46, 47, 63§1; III: 45§3; also Lnr. 56/2.

34 SSp. Ldr. III: 45§3: "A man is the guardian of his wife, as soon as she is entrusted to him. The wife is also the husband's peer, as soon as she enters his bed".

35 SSp. Ldr. I: 45§1: "When a man is not of equal birth to his wife, he is nevertheless her guardian and she is his peer and enters his legal status when she goes into his bed".

36 SSp. Ldr. I: 31§2: "When a man takes a woman as wife, he takes into his possession all her property in lawful guardianship".

37 SSp. Ldr. I: 31§§ 1, 2.

role because it regulated patriarchal kinship and the structure of property rights. In that arrangement, women became the connecting element between families, therefore requiring married women's stricter guardianship. A typical example of this is SSp. Ldr. I, 45§2, which stipulated that a woman could not alienate or sell her property/land, nor transfer land held in life estate without her husband's consent. Girls or unmarried women, on the other hand, could sell their land without their guardian's permission, unless he was heir to it. The rationale was that the husband had a right of possession in his wife's property, whereas the guardian usually did not. However, this does not mean that an unmarried woman could fully manage her property because the provisions in Ssp. Ldr. I, 46 excluded all women from a court of law.³⁸ Therefore, despite unmarried women having some legal leeway over their property (resources), they did not necessarily have the freedom to act upon this legal capacity (see the section below on control of action).

While according to the procedural provisions, all women were denied the legal capacity to speak or act (*spreket oder dut*) in judicial proceedings – although they, rather than their guardians, still had to swear the oath – unmarried women and widows could bring a complaint against a guardian in the case of misappropriation of allodial or feudal land or life estate.³⁹ Although the woman would be assigned another guardian by the court, this gave her (together with SSp. Ldr. I, 45§2) some, albeit very limited, possibility of intervening and controlling her affairs relating to property and ownership. Importantly, however, this represents very restricted legal capacity rather than anything resembling full capacity. Even this, however, was denied to married women: all three provisions specifically use the terms *maget* (girl), *ungemannede wif* (unmarried woman) and *wedewe* (widow) rather than *wif* (wife) or *vrowen* (women). The logic was that a married woman could not bring an action in court against her guardian because that would position her husband as representing the accuser and being the accused. Unlike the unmarried woman and widow, the wife, with her property in her husband's rightful possession and lawful guardianship, could not initiate legal action against her husband's misappropriation of that property. Therefore, she had no control over such resources.

For women, property inheritance was also restricted. By the time the *Sachsenspiegel* was compiled, the principle of the order of succession was well established, although a multitude of possibilities existed. Eike von Repgow set forth his vision in SSp. Ldr. I, 3§3 by using an analogy of the human body, the head representing the man and wife legally joined in marriage. The general consensus was that women were excluded from the rules of inheritance or at least that these were severely

³⁸ SSp. Ldr. I: 46: *Maget unde wif moten vormunde hebben an iewelker klage, dorch dat men se nicht vertugen ne mach, des se vor gerichte spreket oder dut.*

³⁹ SSp.Ldr. I: 41.

restricted with regard to the possibilities of women's inheritance.⁴⁰ Kroeschell argued that under early Germanic customs, brothers and sisters had equal standing in inheritance, but he conceded that women's position was overshadowed and thus restricted by the fact that they were placed under male guardianship.⁴¹ The *Sachsenspiegel* gave priority to sons before daughters and to brothers before sisters although that did not generally extend to male over female heirs. Interestingly, SSp. Ldr. I, 17§1 did not distinguish between men and women when an inheritance went to more distant relatives. However, as a penalty for some ancestral transgression by Swabian women, Saxon women married to Swabians were excluded from inheritance altogether.⁴²

As previously mentioned, spouses' property was combined into a unit upon marriage but only during their lifetime. On either spouse's death, the marriage ceased, and real property no longer represented a unit; the wife's contribution was returned to her family,⁴³ and the husband's to his. Chattels were also divided, including the wife's morning gift (*morgengave*) and dowry (*gerade*),⁴⁴ and the remaining chattels came to the husband. On the husband's death, the widow had to share the remaining food supplies with the heir(s) of the deceased's estate. If the chattels she received included military equipment (sword), a riding horse (including saddle) and field gear (army bed, pillow, linen, washbasins, towels, etc.), these had to be handed over to the heirs.⁴⁵ Women always had a right to the dowry of their mothers or other female relatives, the only prerequisite being that the inheritance came from a female.⁴⁶ Unmarried daughters had priority over married ones who had already received their dowry, but they had to share that inheritance in equal proportions with any brothers who were lay-priests.⁴⁷

Although women's all-pervasive guardianship prevented them from managing their resources and from holding public office or powers of government, the *Sachsenspiegel Lehnrecht*⁴⁸ contains rules relating to feudal land/property held by women, implying the possibility of exercising powers of governance inherent in the fief. For our modern perception of laws, this may appear a contradictory situation, and it must be stressed that very few women found themselves in such a position. The *Lehnrecht*

40 See, for example, Jacob Grimm, *Deutsche Rechtsalterthümer*, vol. 1 (Göttingen: Dieterichs, 1899/1974): 562; Karl von Amira, and Karl August Eckhardt, *Germanisches Recht / Rechtsdenkmäler*, vol. 2 (Berlin: de Gruyter, 1967): 69.

41 Karl Kroeschell, "Söhne und Töchter im germanischen Erbrecht," in *Studien zu den germanischen Volksrechten, Gedächtnisschrift für Wilhelm Ebel*, ed. Götz Landwehr (Frankfurt am Main/Bern: Peter Lang, 1982): 89.

42 SSp. Ldr. I: 17§2.

43 This is not specifically stipulated but can be deduced from SSp. Ldr. I: 31.

44 SSp. Ldr. I: 24.

45 SSp. Ldr. I: 22§4; SSp. Ldr.: 38§5.

46 SSp. Ldr. I: 27§1; SSp. Ldr. III: 15§4.

47 SSp. Ldr. I: 5§3.

48 *Sachsenspiegel Lehnrecht*, ed. Karl August Eckhardt (Göttingen: Musterschmidt, 1933/1956).

states at its beginning that women are excluded from feudal law,⁴⁹ yet two paragraphs further, we find the possibility that a woman may be invested with a fief. Provisions in SSp. Lnr. 2, 56, 75 list rights related to a woman's fief and how it should be managed. She could hold a fief for her lifetime and beyond the death of the lord. She could not, however, bequeath it to her heirs. But elsewhere there is a warning that a woman's fief could be cancelled in several ways.⁵⁰ Notably, she needed a guardian to represent her, for example, for the fief's renewal following the lord's death. Although she had the right to renew the fief, she could not represent herself because she had no military shield.

Women's control of property resources had not only a link with marriage but also with sex. Sexual activity outside marriage, whether forced (rape, abduction) or consensual (adultery) raised concerns about controlling property. Dunn has shown that in thirteenth- and fourteenth-century England, "the Westminster Statutes and the legislation of 1382 that contributed to chronological patterns of ravishment prosecutions had as much to do with protecting property as protecting women [. . .] although we should not infer that the authorities felt no sympathy for rape victims [. . .]." ⁵¹ Dunn conducted a detailed study of legal provisions relating to rape, abduction, and elopement, how these were, at times, conflated in a continuum under the umbrella of *raptus* or *rapuit et abduxit* and did not necessarily include sexual violence because in some cases abduction was consensual. Dunn's analysis showed that whether a woman was a willing participant or not was irrelevant in light of the consequences of losing a marriageable daughter, a wife, or worse, a wife's landed property. "The laws, therefore, do not consider the emotional or personal consequences for the woman, and have no need to distinguish between rape and abduction because they focus on familial consequences rather than the individual female perspective."⁵² In other words, control over resources also implied control over women's bodies and sexuality because they could, in turn, be linked to (landed) property essential to the family patrimony. From that perspective, women were also seen as 'property' that needed to be controlled so as to retain control of other property resources.

5 Control of Action

Second in the exercise of control to generate asymmetries is control of action. A common restriction imposed on women, whether expressed or implied in canon law, customary law or legal treatises, was exclusion from exercise of governance and public

49 [. . .] *wif* [. . .] *de scolē lenrechtes darven*. SSp. Lnr.: 2§1.

50 SSp. Ldr. III: 75§1.

51 Caroline Dunn, *Stolen Women in Medieval England: Rape, Abduction, and Adultery, 1100–1500* (Cambridge: Cambridge University Press, 2013): 193.

52 Dunn, *Stolen Women in Medieval England: Rape, Abduction, and Adultery, 1100–1500*: 42.

office at any level. Women could not participate in institutions of government, public office, manorial courts, municipal institutions, royal councils, representative assemblies, etc. They could not hold political office, serve as military commanders, judges, lawyers, etc. The result of this type of restriction was twofold. On the one hand, women were excluded from the exercise of governance and public/political office. They could not be seen as actively raising their voices to partake in decision-making or any form of governance. This also meant that their interests as individuals or within groups were not represented, and their actions in public life were therefore severely curtailed. On the other hand, such restrictions also meant that in certain scenarios they could not act or represent themselves and, consequently, that they had to rely on others – their menfolk – to do so on their behalf. This control of women's possible action created situations of asymmetrical dependency *par excellence*.

Before exploring specific provisions in the *Sachsenspiegel*, we must remember that these texts do not necessarily reflect women's actual contributions and activities in managing family property, business or trade. In practice and in particular, when women inherited fiefs involving powers of governance due to the lack of a male heir, they may have been able to partake in feudal assemblies of lords alongside other vassals, head feudal assemblies of their own vassals, and discuss or legislate political and economic issues. Moreover, women could exercise some limited power of governance and of management of property or businesses, even if only on a temporary basis, while their menfolk were away on crusades, tied up with feudal duties or fighting wars.⁵³ In fact, married women frequently represented the family unit and were engaged in public and commercial business, either on their own behalf and in their own name or on behalf of absent spouses.⁵⁴ An evaluation of their real contribution and influence in the management of the family unit would require a comprehensive analysis of a variety of legal, administrative and private records.

Legal capacity (*Rechtsfähigkeit*) is a prerequisite to the capacity to act (*Handlungs- or Geschäftsfähigkeit*). The former was severely restricted for women by gender,

53 Katherine J. Lewis, "Women, Testamentary Discourse and Life-Writing in Later Medieval England," in *Medieval Women and the Law*, ed. Noël James Menuge (Woodbridge: Boydell Press, 2000): 57–75; Victoria Thompson, "Women, Power and Protection in Tenth- and Eleventh-Century England," in *Medieval Women and the Law*, ed. Noël James Menuge (Woodbridge: Boydell Press, 2000): 1–17; Kittell, "Guardianship over Women in Medieval Flanders: A Reappraisal: 897–930; Pauline Stafford, "Women and the Norman Conquest," *Transactions of the Royal Historical Society* 4 (1994): 221–49; Pauline Stafford, "Women in Domesday," *Reading Medieval Studies* 15 (1989): 75–94; Eleanor Searle, "Women and the Legitimation of Succession at the Norman Conquest," *Proceedings of the Battle Conference on Anglo-Norman Studies* 3 (1980): 159–70; John, Gilissen, "Le statut de la femme dans l'ancien droit belge," in *La femme, Recueils de la Société Jean Bodin pour l'histoire comparative des institutions* (Brussels: Les Editions de la Librairie Encyclopédique, 1958): 255–321.

54 Howell, *The Marriage Exchange: Property, Social Place, and Gender in Cities of the Low Countries, 1300–1550*; Hutton, *Women and Economic Activities in Ghent*; Kittell, "Testaments of Two Cities: A Comparative Analysis of the Wills of Medieval Genoa and Douai": 47–82.

particularly in property and inheritance law; the latter was curtailed by the guardianship imposed on women. As discussed above, a wife's property was absorbed into guardianship by the husband,⁵⁵ and she could neither alienate her property/land, nor transfer land held in life estate without her husband's consent. Whether she actually had a say in transactions of alienation may be inferred from the phrase *dorch dat he mit er in den weren sit* (because he shares the right of possession with her). If they shared the right of possession, it could be argued they shared the right to manage the possession. But that possibility was cancelled by the provisions of guardianship.⁵⁶ While a married woman's legal capacity to manage her property was curtailed in at least two provisions (SSp. Ldr. I, 31 & 45§2), no equivalent restrictions were imposed on men. In addition, through the guardianship provision, the husband was given full capacity to manage his wife's possessions, the only condition being that he must consider any interests her heirs might have in her real property (chattels were not submitted to that condition). When the husband alienated his wife's property to the detriment of her heirs, it gave them, not her, a right of action against the husband. If the heirs' legal action was successful, the wife did not recuperate the property but lost it to said heirs.⁵⁷ A wife's legal incapacity to act can further be inferred from SSp. Ldr. I, 52§4. When, during illness, a husband gave away or pledged his property, his wife could not contradict him even if the transaction(s) were disadvantageous. This also meant she could not be held responsible.

Unmarried women could alienate their property/land and transfer land held in life estate without their guardian's permission,⁵⁸ but they were *de facto* prevented from fully managing their property because they were excluded from acting in a court of law.⁵⁹ In other words, they had the legal capacity to act, but their actions' legal effectiveness was not guaranteed over time because they had to rely on a guardian to enforce these actions in a court of law.

As far as the capacity to act within the judicial process is concerned, women were usually excluded from the judicial system. In the *Sachsenspiegel*, a blanket restriction is set out barring girls and women from starting 'any kind of' legal action (*iewelker klage*) in a court of law unless they were represented by a legal guardian because what they said or did (*spreket oder dut*) before a court of law could not be held against them.⁶⁰ However, a woman was expected to swear an oath herself even though her legal guardian would "swear security for her and accept and execute it."⁶¹ In general and whatever her role in legal proceedings, whether she wanted to bring an action or

⁵⁵ SSp. Ldr. I: 31§2.

⁵⁶ Mainly SSp. Ldr. I: 23§2, 31§2, 41, 42§2, 43, 44, 45, 46, 47, 63§1; III: 45§3; also Lhr. 56/2.

⁵⁷ SSp. Ldr. I: 52§§ 1, 2, 3.

⁵⁸ SSp. Ldr. I: 45§2.

⁵⁹ SSp. Ldr. I: 46.

⁶⁰ SSp. Ldr. 46.

⁶¹ SSp. Ldr. 47/1 (Dobozoy translation).

speak as a defendant, a woman's own voice could not be heard without her guardian's representation. In other words, she could not act independently before a court of law.

Denying women the legal right to plead or to bring an action in court was underlined by references to Calefurnia's ancestral transgression: she supposedly forfeited that right for generations of women because in a fit of rage, she complained to the emperor that her request could not proceed without a guardian.⁶² A similar reference was made to an ancestral transgression by Swabian women: it penalised Saxon women married to Swabians by excluding them from all inheritance.⁶³ The mention of Calefurnia's action as justification for denying women a direct voice in a court of law has its origin in Roman law,⁶⁴ although the fact that Eike von Repgow transformed the name from Carfania to Calefurnia may well indicate that he had only second-hand knowledge of the text. The role of this 'Eve of legal discourse'⁶⁵ is discussed further in the following section in relation to intervisuality between the law text and the pictorial representation. Significantly, inequalities ascribed to women on the basis of their gender were also presented as self-inflicted through unforgiveable past transgressions; the parallel with original sin and all that implies is never far away.

The married woman was further restricted in her power to act: she could not file legal action against her guardian because her husband, filing such a claim on behalf of his wife, would bring an action against himself. Although the *Sachsenspiegel* does not specifically address this scenario, on the one hand, it can be inferred from reading the blanket ban of women in court together with the provision that prescribed husbands' guardianship over wives, on the other. The text provided for two exceptions. In cases of rape and other crimes, when the perpetrator was caught red-handed and when the legal guardian was not immediately available, a judge could assign a guardian to the woman in question.⁶⁶ Similarly, if a guardian took the property of a girl or widow (i.e. not a married woman), the court became her guardian when she initiated legal action.⁶⁷

Besides restrictions imposed by guardianship on a woman's capacity to file legal actions in relation to her property, she was also barred from serving as a judge or as

62 SSp. Ldr. II: 63§1. On research about who Calefurnia was, see B.H.D. Hermesdorf, "Op zoek naar Calefurnia," *Tijdschrift voor Rechtsgeschiedenis* 29, no. 2 (1961): 306–12.

63 SSp. Ldr. I: 17§2.

64 *Corpus iuris civilis*, Ulpianus (Book VI), Dig. III.1.1.5 (Ulp.): "On the ground of sex, he [the Praetor] forbids women to appear for others, and the reason for this prohibition is to prevent them from interfering in the cases of others, contrary to what is becoming the modesty of their sex, and in order that women may not perform duties which belong to men. The origin of this restriction was derived from the case of a certain Carfania, an extremely shameless woman, whose effrontery and annoyance of the magistrate gave rise to this Edict."

65 Caviness and Nelson, *Women and Jews in the Sachsenspiegel Picture-Books*: 59.

66 SSp. Ldr. I: 43.

67 SSp. Ldr. I: 44.

an advocate for herself or for her children/family.⁶⁸ Nor could she serve as a juror, as *de sicum saunc de homme ne peut, ne deit, estre tryé par femmes*.⁶⁹ Women's testimonies were generally not admissible in court. However, in certain matters relating specifically to women and in which a man could not give evidence effectively, the court recognised the testimony of women appointed by the court for that specific purpose. This would be in cases dealing with a separation from the husband, rape, infanticide, etc. Although a relatively rare occurrence, women could also be found among witnesses of charters.⁷⁰

A slightly more pro-active legal capacity existed for a woman as a victim of rape.⁷¹ While some customary law texts set forth punishments for a convicted rapist (e.g. blinding, castrations, flogging and hanging),⁷² they do not indicate actual practice. In reality, punishments often came down to a monetary fine, or the court even pardoned the rapist if he agreed to marry the woman in question.⁷³ Similarly, provisions for rape offer a glimpse of legal possibilities open to victims of rape, but only a study of court records would reveal how they were implemented. Strikingly, the language in some customary rape provisions represented women in more active roles. In the *Très Ancien Coutumier de Normandie*, a girl/maiden taken by force (*de prandre fame a force*) should shout if she could (*elle crit se elle puet*), seek justice and be examined for injuries by women witnesses on behalf of the legal process.⁷⁴ Thus the woman should sound a hue and cry, and it is suggested the perpetrator should be caught red-handed. Women alleging rape appeared in that chapter's first paragraph as a subject,

68 See, for example, Philippe de Beaumanoir, *Coutumes de Beauvaisis* (Paris: Alphonse Picard et Fils, 1899), Tome II: §1287.

69 Britton (Oxford: Clarendon Press, 1865), vol. 1, bk. 1, ch. 32: 207: the blood of a man shall not be tried by a woman.

70 Frederick Pollock and Frederic William Maitland, *The History of English Law before the Time of Edward I* (Cambridge: Cambridge University Press, 1968), vol. 1, bk. 2, ch. 2, §11: 484–85.

71 Rape in the Middle Ages should not be understood in modern terms of sexual agency. It was governed by notions of possession and chastity, following the increasing importance of church law. Kümper has shown that by the thirteenth century, the legal definition of rape throughout Europe had shifted from a previous concept that focused on abduction without consent of a parent or guardian towards one based on lack of consent by the victim: Hiram Kümper, "Did Medieval Canon Marriage Law Invent our Modern Notion of Rape? Revisiting the Idea of Consent before and after 1200," in *Law and Marriage in Medieval and Early Modern Times: Proceedings of the Eighth Carlsberg Academy Conference on Medieval Legal History 2011*, ed. Per Andersen (Copenhagen: Portland, 2012): 127–38.

72 For example: de Beaumanoir, *Coutumes de Beauvaisis*, Tome I: §824, 429.

73 Frederick Pollock and Frederic William Maitland, *The History of English Law before the Time of Edward I* (Cambridge: Cambridge University Press, 1968), vol. 2, bk. 2, ch. 8, §2: 490–91.

74 *Coutumiers de Normandie*, ed. E.J. Tardif, 2 tomes, 3 volumes, tome I, 2^e partie, *Le Très Ancien Coutumier de Normandie*, texte français et normand (Rouen/Paris: Lestringant/Picard, 1903), Chapitre L; in particular Chapitre L, 1, 37 "[. . .] elle doit aler a la premiere justice le duc que elle porra trover, e la justice fera veoir la meschine e sa bleceure par preude[s] fames e leaus, qui sachent quenoitre se elle a esté prise a force."

rather than an object, associated with processes in the form of direct and active verbs. However, she had to prove her allegation and remained entirely dependent on a man if the complaint went to trial by combat.

Provisions in the *Sachsenspiegel* tell a similar story.⁷⁵ The woman had to attract attention by raising a hue and cry to catch the perpetrator red-handed. The victim was bound to prove the allegation.⁷⁶ She also needed a guardian to represent her in a court of law, and he could be assigned by a judge if her guardian was not immediately available.⁷⁷ In this instance, and like the Norman *Coutumier* provisions, we also observe women as subjects in the clause (*de not vor gerichte klaget, de scolten klagen mit geruchte*), while most of the remaining text did not represent women as acting subjects.⁷⁸ In the pictorial representation (see Figure 1, last reg. below), however, the rape victim was depicted as passive.

Customary law provisions were not necessarily comprehensive reflections of women's actual legal capacity, but the overarching guardianship imposed, particularly on married women, a systemic structure to legitimise asymmetrical controls over her actions. The discussion above reveals some limited room for manoeuvre, but the extent of control women had in everyday life, especially during their menfolk's absence is not reflected in these customary law provisions. Instead, laws were more concerned with fixing in written form the customs generally accepted over time by the community at large. That women needed a guardian to act on their behalf, and hence controlled their actions, was such a custom. However, the extent of space for manoeuvre within that custom can be fully evaluated only by studying other sources, such as court records and/or administrative (business) records.

6 Control of Experiences

Along with control of resources and of actions as markers for asymmetrical dependencies, control of experience is just as important despite differing in nature. In many respects, medieval western societies were based on systemic, ascriptive inequalities by virtue of birth, of belonging to a particular estate, of gender or category of persons, etc. Generalised, dominant discourse explicitly taught inequality and reminded people of their station in life, thus forging people's experience. Customary law texts, the written form of what was grounded in oral traditions,⁷⁹ reflected and reinforced systemic

⁷⁵ SSp. Ldr. I: 43; II: 13§5; II: 64§1; III: 1§1; III: 45§11; III: 46§1.

⁷⁶ SSp. Ldr. II: 64§1.

⁷⁷ SSp. Ldr. I: 43.

⁷⁸ The main exception is the instruction for her to hand over her deceased husband's property and possessions.

⁷⁹ Marco Mostert and Paul Barnwell, eds., *Medieval Legal Process. Physical, Spoken and Written Performances in the Middle Ages* (Turnhout: Brepols, 2011).



Figure 1: SSp. Ldr. II, 62–64 in H 10v, Heidelberg library digital archive, <https://digi.ub.uni-heidelberg.de/diglit/cpg164/0034/image.info>.

inequalities intrinsic to medieval society. Because these texts were often compiled during (geo)political turmoil, it appeared essential to fix in writing a communal memory of customs that was in danger of annihilation. To that extent, the written text had

a performative function.⁸⁰ As the basic fabric of these medieval societies, systemic inequalities were an essential part of what needed to be remembered and upheld.⁸¹ In the *Sachsenspiegel*, ideological and political discourse was occasionally strengthened through references to higher authorities (and implied validation): a link was made with the Holy Spirit as Eike von Rebekow's divine inspiration,⁸² followed by the often cited phrase that God is law itself.⁸³ Images reinforced the message that Eike was not just inspired by the Holy Spirit,⁸⁴ but also validated by secular rulers⁸⁵ and that his book had divine authority.⁸⁶

In addition to the *Sachsenspiegel* as a customary law text, images in the four extant picture manuscripts represented the underlying discourse and the attitudes, biases and values held by the male landed classes. These manuscripts were all produced later⁸⁷ than Eike's work and can therefore not be attributed to his direct influence; indeed, we have no evidence of what any picture manuscript contemporary with Eike might have looked like. But the fact that from 70 to 150 years later such richly decorated manuscripts were still being commissioned and produced is a good indication that the text remained authoritative.

The pictures in these manuscripts were juxtaposed and arranged in a way that gave similar prominence to the text and the pictures. In this way, the book's ideological content was also driven home by intervisuality with a visual discourse, the pictures being "in dialogue with the text rather than as literal illustrations of it and capable of inflecting as well as reflecting its reception in the time and place of their iteration."⁸⁸ In the pictures, legal meanings were encoded in gestures and

⁸⁰ For example, the texts that made up the *Très Ancien Coutumier de Normandie* were compiled just before and following the French king's invasion and control of Normandy (beginning of thirteenth century).

⁸¹ Heiner Lück, *Der Sachsenspiegel. Das berühmteste deutsche Rechtsbuch des Mittelalters* (Darmstadt: Wissenschaftliche Buchgesellschaft, 2017): 32.

⁸² See Oldenburg manuscript, folio 6r, reg.1 (<https://digital.lb-oldenburg.de/ssp/nav/classification/137692>), showing Eike with his book, the Holy Spirit and the ducal arms of Oldenburg (secular power).

⁸³ SSp. Prologus: *Des hiligen geistes minne, diu sterke mine sinne*, [. . .] *Got is selve recht*. See Wolfenbüttel manuscript folio 85r, reg.1 (<https://www.sachsenspiegel-online.de/cms/>), showing the law book having divine authority, despite being under attack by critics.

⁸⁴ See Oldenburg manuscript, folio 6r, reg.1 (<https://digital.lb-oldenburg.de/ssp/nav/classification/137692>), showing Eike with his book, the Holy Spirit and the ducal arms of Oldenburg (secular power).

⁸⁵ See Wolfenbüttel manuscript folio 9v, reg.1 (<https://www.sachsenspiegel-online.de/cms/>), showing Eike, the Holy Spirit and the approbation of the Emperors Constantine and Charlemagne.

⁸⁶ See Wolfenbüttel manuscript folio 85r, reg.1 (<https://www.sachsenspiegel-online.de/cms/>), showing the law book having divine authority, despite being under attack by critics.

⁸⁷ These manuscripts are commonly named after the towns where they are preserved: Heidelberg (H) 1294–1304, Dresden (D) 1295–1363, Oldenburg (O) 1336, Wolfenbüttel (W) 1348–62/71; see also footnote 27.

⁸⁸ Caviness and Nelson, *Women and Jews in the Sachsenspiegel Picture-Books*: 43.

body language.⁸⁹ Control of women's experience in relation to asymmetrical dependencies can be observed in some of the visual discourse of the four picture manuscripts.

A particularly interesting example concerns Calefurnia's misbehaviour: she addressed the emperor directly and furiously, thus supposedly providing justification for denying women a direct voice in a court of law. The textual references are discussed above, but what is of interest here is how the visual discourse mirrored the text.⁹⁰ For the discussion, we refer to the Heidelberg manuscript, reproduced below.

The medieval conception of women as sedentary and typically associated with phlegm, the cold and moist humour, predisposed them to become angry slowly but violently.⁹¹ In that case, guardianship was necessary to control them rather than to protect them.⁹² This was encoded in the pictorial representation of Calefurnia. According to Karl von Amira's study of hand (arm) gestures in the *Sachsenspiegel*, Calefurnia's finger points⁹³ at the emperor: the dispute is *with* him rather than a referral *before* him. The emperor's hand also points at Calefurnia: this indicates her disrespectful behaviour, an element further emphasised by a kind of brush protruding from her behind, as though she were exposing her private parts to him.⁹⁴ This implication was recounted in some versions of the *Schwabenspiegel*, compiled half a century after the *Sachsenspiegel*, but about two decades before the Heidelberg manuscript.⁹⁵

Here, intertextuality and intervisuality embody a powerful message. A woman audacious enough to address the emperor directly, without representation by her guardian, had to bear the consequences of being excluded from a court of law, not only for herself but also for generations of women to follow. Calefurnia's act was not only contrary to customary law but further sullied by reference to her private parts. The textual provision did not invoke this circumstance, which was added later in the pictorial representation.

⁸⁹ Karl von Amira, *Die Handgebärden in den Bilderhandschriften des Sachsenspiegels*, 1909; <https://digi.ub.uni-heidelberg.de/diglit/amira1905> [accessed 21.09.2022].

⁹⁰ Downloaded from: Charles G. Nelson and Madeline H. Caviness, eds., *Women's Bodies, Women's Property, Limited Ownership under the Law. German Customary Law Books Illustrated in the Fourteenth Century*, 1999, <http://dca.lib.tufts.edu/features/law/index.html> [accessed 21.09.2022].

⁹¹ Joan Cadden, *Meanings of Sex Difference in the Middle Ages. Medicine, Science and Culture* (Cambridge: Cambridge University Press, 2003): 183–86.

⁹² Sarah Westphal, "Bad Girls in the Middle Ages: Gender, Law, and German Literature," *Essays in Medieval Studies* 19, no. 1 (2002): 106.

⁹³ Karl von Amira, *Die Handgebärden in den Bilderhandschriften des Sachsenspiegels*: 264 gesture 5a and b.

⁹⁴ Karl von Amira, *Die Handgebärden in den Bilderhandschriften des Sachsenspiegels*: 206, 264 gesture 5b.

⁹⁵ Walter Koschorreck, *Der Sachsenspiegel in Bildern aus der Heidelberger Bilderhandschrift: Ausgewählt und Erläutert von Walter Koschorreck* (Frankfurt am Main: Insel Verlag, 1976): 80.

A further intervisual element of Calefurnia's protruding brush lies in its similarity to an animal tail. In the text, the passage about Calefurnia was preceded by seemingly unrelated provisions on keeping and controlling animals, such as dogs, wolves, deer, bears or monkeys, and on damages for which a keeper was liable if such animals caused any harm.⁹⁶ In the scan from the Heidelberg manuscript (Figure 1), the pictorial narrative can be clearly followed from the dangerous animals mentioned in the text attacking a person (at the top of the page) through to Calefurnia with her bushy tail. A further association is made with the scruffy rape victim at the very bottom of the pictures, related to the rape provision of SSp. Ldr. II, 64, 1.

Systemic inequalities by virtue of factors such as birth, of belonging to a particular estate, of gender or category of persons were perpetuated by *Sachsenspiegel's* legal text. But experience was further forged and controlled by the generalised and dominant discourse that explicitly taught inequality and reminded people of their station in life. This was embedded in the visual discourse by juxtaposing dangerous animals in need of control and Calefurnia's transgression with what looks like a bushy tail. This exemplifies how asymmetrical dependency was generated by control of action – women cannot act without a guardian – and control of experience – transgression of the guardian principle had grave long-term consequences, and women represented in action were visually linked to dangerous animals that needed to be controlled.

7 Conclusions

Customary law texts, such as the *Sachsenspiegel*, fixed in writing usages that a community had accepted over time. Yet, the extent to which the written provisions corresponded to actual behaviours should not be overestimated during a period when legal pluralism meant that the coexistence of more than one source and body of laws was a reality not considered unusual. Nevertheless, such texts well reflect a community's values and also its biases. Customary law was essential in maintaining the heterosexual gender construct, including marriage and the procreation imperative that were key to questions of ownership, inheritance and the feudal organisation of the land-owning classes and their vassals. Baudrillard described the masculine–feminine structure as being “pegged to the grandiose cultural models whose function it is to separate the sexes in order to establish the absolute privilege of one over the other.”⁹⁷ The hegemonic structures during the Middle Ages needed to be maintained to stabilise ownership and feudal arrangements. Systemic inequalities were forged and controlled by the generalised and dominant discourse that reminded people of alterity

⁹⁶ SSp. Ldr. II: 62.

⁹⁷ Jean Baudrillard, *For a Critique of the Political Economy of the Sign*, trans. Charles Levin (St. Louis: Telos Press, 1981): 90.

and of their particular position within that construct. Medieval customary law texts, like the *Sachsenspiegel*, take us “to the heart of alterity because [. . .] their main function is to codify and maintain unequal rights within society.”⁹⁸

Asymmetrical dependencies were part and parcel of the hegemonic structure of medieval societies, incidentally not just in relation to gender. Following Stichweh’s explanations of how to define asymmetrical dependencies and what areas need to be controlled to generate such dependencies, we have discussed how the control of resources, of actions and of experience in relation to women were set forth in the *Sachsenspiegel*.

Control of resources was key in a system where affiliation and marriage played an important structural part in regulating the patriarchal kinship and property rights. The husband was vested with very great powers over the entire mass of property, usually with the limitation only that he could not alienate his wife’s property without her consent. Women represented the connecting element between families, and to keep family property intact, customary law text stipulated that women could not alienate or sell their property/land, nor transfer land held in life estate without their husbands’ consent. To the extent that marriage was a key element in the possession and management of resources, this also implied control over women’s bodies and sexuality. From that perspective, women were akin to ‘property’ that needed to be controlled so as to maintain also the control of family property. The key legal mechanism in this context was the imposition of an all-pervasive guardianship, particularly over married women, that made it impossible for them to act independently.

Guardianship was also pivotal in control of actions because it restricted women’s ability to act on their own behalf. They were usually excluded from direct intervention in the judicial process and in the *Sachsenspiegel*, a blanket restriction barred girls and women from initiating ‘any kind of’ legal action in a court of law, unless they were represented by a legal guardian because what they said or did before a court of law could not be held against them. Furthermore, women were also excluded from exercise of governance and public office at any level. They could not participate in institutions of government, public office, manorial courts, municipal institutions, royal councils, representative assemblies, nor serve as military commanders, judges, lawyers, or even as witnesses in a legal action. All this meant they could not actively raise their voices to partake in public life, in decision-making or any form of governance, nor could they represent their interests as individuals or within groups.

The control over experience is particularly relevant in the *Sachsenspiegel* in relation to the intervisuality and intertextuality, that is, to the juxtaposition of text and pictures in four extant picture manuscripts. Experiences of ascriptive inequalities, systemic by virtue of birth, of belonging to a particular estate, gender or category of persons, were further forged and controlled by generalised, dominant discourse that

98 Caviness and Nelson, *Women and Jews in the Sachsenspiegel Picture-Books*: 182.

explicitly taught inequality and reminded people of their station in life. The pictorial narrative not only mirrors but reinforces that discourse.

Application of customary law may be less strictly prescriptive and more conditioned by the ultimate outcome of application or non-application of rules, customs and laws. To that extent, written provisions did not necessarily reflect actual behaviours. The narrative of the everyday reality of women's legal capacity needs to be cross-checked by research in court records and administrative sources.

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