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William I. Miller
University of Michigan Law School, wimiller@umich.edu

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Beating Up on Women and Old Men and Other Enormities: A Social Historical Inquiry into Literary Sources

by William Ian Miller*

As will become quickly evident to the reader, my interests in the intersections of law and literature are practical, not theoretical. I try to use literary sources to write social history. I am thus not especially interested in what literature as literature can tell us about law, or what literary criticism can tell us about the interpretation of legal texts. I am above all interested in content, in who did what to whom and why; in other words, it is brute "fact" that attracts me.¹

The Icelandic sagas, besides being one of the most impressive literatures existing in any language, preserve detailed accounts of feud and legal action, and describe with intelligence and care the general techniques and strategies of dispute processing. They also contain, incidental to the narrative, information about values and law, marriage and death, householding arrangements and the systems of exchange, naming patterns, and so on, for those who care to coax such information from the texts.

For a student of medieval Icelandic law and society, literary sources are not a luxury consulted only to brighten the tedium of plea roles and char-

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* Professor of Law, University of Michigan. Yale University (Ph.D., 1975) (J.D., 1980).

Earlier versions of this Article were given as talks at Berkeley and at the International Medieval Society in Kalamazoo. I have normalized Icelandic words in the usual manner: thorn appears as th, eth as d; ligatured ae, oe, appear unligatured; hooked o appears as o; and accents have been dispensed with. Citations to the sagas are to convenient English translations when they exist. Thanks are due to Kathleen Koehler.

¹ I have enclosed "fact" with those intrusive quotation marks as a gesture to the fact that literature is usually fiction and that the facts I am talking about are those things which attain the status of fact in the narrative, which in turn may or may not have been fact in the so-called real world.

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ters. The literary sources are a necessity, for they have the most important characteristic a source must have: they exist. For in Iceland there are no plea roles, no court records, and charters are virtually nonexistent. Even archaeology, the refuge of the truly desperate historian, helps little in Iceland. The turf houses of Iceland left even fewer traces than the wattle and thatch hovels of continental peasants, and the Icelandic climate and acid soils were hard on bones. And the continued occupation of the same farms for one thousand years has made for some very disturbed sites and some very depressed archaeologists. Even middens and coprolite, the bread and butter of modern social archaeology, are proving unreliable. What we have are sagas and laws, and each can be used with the other as a way of checking on the plausibility of each type of source.

The use of literary sources for social history, especially when they constitute the bulk of written artifact for the culture in question, has never really troubled historians all that much. Thus, we have not been denied biblical history, the history of the Franks, or that of Homeric Greece because of excessive fastidiousness with the quality of the available sources. One makes do with what one has. But Icelandic historians have been an exception. Some forty years ago it dawned on certain influential Icelandic scholars that the family sagas were works of fiction. To anyone except those raised in a nineteenth century romanticism, which held the sagas to be God-given truth, this would not have been an especially surprising revelation. The problem was that the family sagas were written some two to three centuries after the events they purported to describe. The family sagas, these scholars said, could rarely tell us anything about the saga age (950-1050) and, if they contended anything at all worth the historian's attention, it concerned the thirteenth century, the time in which they were written. I have no great disagreement with this, but to the Icelandic school, history was primarily political and biographical. Social history never really interested adherents of the school, and with very few exceptions, the scholars did not write it even for the thirteenth century. The Icelandic scholars evidently did not see that fictionalizing dialogue and

3. Coprolite is fossil excrement. Id. at 248.
4. See, e.g., S. Nordal, Hrafnkatla (1940).
5. “Family saga” is the name given to those sagas written in the thirteenth century that purport to describe events that took place in the tenth and eleventh centuries. They are distinguished from the contemporary sagas, also called STURLUNGA SAGA, which describe events very roughly contemporaneous with their composition. Recent work has shown that STURLUNGA SAGA is subject to much the same fictionalizing processes that inform the family sagas.
creating characters *ex nihilo* does not mean that the society described in the narrative was also created from nothing more than the author's arbitrary flights of fancy. And while they proved that certain characters never existed and certain incidents never occurred, they never proved, or even attempted to prove, that social mechanisms such as feud and the systems of exchange, the givens of the narrative, and the world of the story, were no more than a lie. A new Icelandic scholarly romanticism replaced the old one, and it actively preferred to see the family sagas as fiction rather than truth; it turned their ancestors, in one fell swoop, from cagey, brawling farmers into geniuses, rescuing them from the drudgery of merely copying oral traditions to the artistry of inventing them. In short, Icelandic scholars went from believing everything in the sagas to believing nothing in them at all.\(^7\)

I do not want to continue in this vein. My views on the usefulness of the family sagas for social historical inquiry are clear.\(^8\) The real task is to admit the problems of the sources and cultivate sensibilities that will let us know when the sagas can tell us something and when they cannot. Let me proceed by way of example. I will begin with a close reading of a passage that is highly artful and hyperliterary because it is consciously, though subtly, symbolic. What I am after here is information about the norms governing violence toward old men, about which the passage has some useful information despite its fiction. The passage is a brief episode in *Njal's Saga*.\(^9\) The background for the incident is as follows.

Unn is married to Hrut, a popular and able man. Hrut, for reasons that need not occupy us, is unable to consummate the marriage, much to Unn's irritation and frustration. With some shifty counsel from her father, Mord Fiddle, Unn declares herself divorced and returns home. At the next Althing,\(^10\) Mord sues Hrut for the recovery of Unn's dowery to-

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9. *Njal's Saga* ch. 8, at 53-55 (M. Magnusson & H. Palsson trans. 1960). I have cited the sagas by chapter and page to facilitate location of the relevant passages for readers who wish to check the original or use other editions or translations, since all editions maintain the same chapter divisions and chapters are mercifully short.

10. The "things" were meetings attended by free farmers at which business was discussed and lawsuits tried. There were local "things" that met in the spring and a "thing" for all Iceland, the "Althing," that met at midsummer and at which those actions were tried in
gether with Hrut’s contribution to her endowment. Hrut responds aggres-
sively to what he perceives to be an aggressive lawsuit. He accuses Mord
of pressing the claim with greed and aggression, rather than with decency
and fairness. Hrut challenges Mord to a duel, which, although not strictly
a proper legal defense, was an accepted mode of dispute resolution none-
theless. Mord does not reply; his friends advise him to back down, since
Hrut’s martial skills make the outcome certain. Mord announces he will
not fight; there is a shout of derision, and he gains nothing but the great-
est dishonor. 11

First, I need to dispose of a few legal matters. Mord Fiddle was intro-
duced in the very first sentence of the saga as “a very experienced law-
yer,” 12 so that only those judgments in which he participated were
thought to be correct. In short, he was the best lawyer around. But if this
were so, should he not have anticipated that a challenge to a duel was
possible, and should he not have taken care to have planned for it? Antic-
ipating and preparing for the challenge would not have been all that hard
to do. The assignment of the prosecution or defense of claims was a regu-
lar feature of Icelandic law. Old Mord simply could have transferred his
claim to someone more Hrut’s equal in combat. This saga writer, we
know, is quite careful to show off the legal skills of those men he de-
scribes as skilled in law. It is not the saga writer who blunders here, but
Mord, not by a mistake of law, but by a serious mistake of judgment.

We know that Mord at this time was an old man; it is Unn who informs
us of this some thirteen chapters later. 13 My hunch is that Mord was rely-
ing on Hrut’s sense of propriety not to dishonor himself by challenging an
old man to a duel. This conclusion is not unambivalently confirmed by
the saga. No one present thought Hrut disgraced himself by challenging
old Mord; on the contrary, they all jeered Mord. But there are other rea-
sons to explain the community’s reaction to Mord’s refusal to agree to
duel.

Mord had already offended community norms in at least two ways. The
first was to have taken his claim to law in the first place. This was just
the kind of claim the community expected to be settled by negotiation or
some kind of arbitrated settlement. The author takes care to record the
community view in a brief notice before Mord had formally initiated the
lawsuit: “Everyone expected that [Hrut] and Mord would discuss their
differences, but this did not happen.” 14 Also to be considered in this light

which no decision could be reached at the local level or in which the litigants belonged to
different local “things.” See Miller, Avoiding Legal Judgment, supra note 8, at 97-98.
11. NÍAL’S SAGA, supra note 9, ch. 1, at 53-55.
12. Id. ch. 1, at 39.
13. Id. ch. 21, at 75.
14. Id. ch. 8, at 53.
is Hrut's intimation that he would have paid over Unn's share if the claim had been made in a more amicable fashion: "You are pressing this claim . . . with greed and aggression rather than decency and fairness, and for that reason I intend to resist it."

The other reason community reaction was hostile to Mord was that the lawsuit could not be published formally for prosecution without at the same time making public reference to Hrut's impotence. A sexual defamation of a popular man was not likely to be well received by the public or the offended defendant. An accusation of unmanliness was not the kind of thing that an honorable man could forgive and forget in Viking society. And, as even the most casual reader of the sagas knows, avenging sexual insults trumped almost all competing norms. Any male even marginally associated with the insult was fair game. Hrut was responding to what was in effect a *nid* in a fashion that surprised no one and in a way most felt was justified.

Yet we know that there were those who felt otherwise, and the saga gives us more than enough information to discover the competing norms. Unn's view, expressed sometime later, was that Hrut pleaded more with brute force than with law and "my father was an old man then." And then the saga writer forces Hrut to endure the same humiliation he visited upon Mord when a young Gunnar, a kinsman of Unn's who, at her bidding, forces Hrut to back down from a challenge to a duel. The balancing of accounts, the meting out of justice both poetic and pragmatic, suggests that Hrut's moral position in the dispute with Mord was not unambivalently pure. It should be noted, however, that Hrut lost no face.

15. *Id.* ch. 8, at 54.

16. Although it was Hrut's fault that the marriage with Unn was not consummated, it was not exactly because of his inability to get an erection. The saga says that he became so enlarged that consummation was impossible. *Id.* ch. 7, at 52.

17. A *nid* was a formal insult, often in verse, but it could also be graphic, as when an effigy of the insulted person was carved in wood. The substance of the insult invariably questioned the manhood of the insultee, most often by suggesting that he played the passive role in homosexual couplings. A classic example of the carved *nid*, or *tree-nid*, is found in *Bjarnar saga Hitdoelakappa*, in *BORGFIRDINGA SOGUR* 154-55 (S. Nordal & G. Jonsson eds. 1938):

A certain thing was found on Thord's boundary line which was considered not too friendly; there were two men, one had a blue hat on his head. They stood bent over and one was standing behind the other. It was thought to be an unpleasant encounter, and people said that neither of the figures who stood there had it so good, but the one who stood in front had it worse.


18. *Njal's Saga*, supra note 9, ch. 21, at 75.

19. *Id.* ch. 24, at 81.
when he declined to accept Gunnar’s invitation. There was no jeering at
the Althing as there was when Mord backed down. The reasons for this
lack of derision confirm the reasons I offered for why Mord was greeted
with scorn. Hrut is not the moving party offending others by pursuing a
dubious and insulting claim with aggression. Nothing in Hrut’s action
provokes derision because he did not seek the quarrel; it is Gunnar who
came looking for him. No one faults Hrut for prudently avoiding certain
death.

But in the same chapter in which Hrut humiliates Mord, the saga
writer subtly sketches the moral complications of Hrut’s challenging an
old man. On the way home from the Althing, Hrut and his brother Hos-
kuld take lodging at a farm. Hrut and Hoskuld were seated on a bench
and two little boys and a little girl were playing on the floor in front of
them, talking away. 20

One of the boys said, “I’ll be Mord and divorce you from your wife on
the grounds that you couldn’t have intercourse with her.” 21

The other boy replied: “Then I’ll be Hrut and invalidate your dowry-
claim if you don’t dare fight me.” They repeated this several times, and
the household burst out laughing. Hoskuld was furious, and hit the boy
who was calling himself Mord with a stick. It struck him on the face and
drew blood.

“Get outside,” said Hoskuld, “and don’t try to ridicule us.”

“Come over here to me,” said Hrut. The boy did so. Hrut drew a gold
ring from his finger and gave it to him. “Go away now,” he said, “and
never provoke anyone again.”

The boy went away, saying, “I shall always remember your noble-
mindedness.” Hrut was highly praised for this. 22

This little episode can tell us something, obviously, about the violence
children could look forward to. But, in remarkably efficient fashion, the
episode also tells us just as much about violence to old people. When the
saga writer decided to produce the play within the play, he had the choice
of having either Hoskuld or Hrut strike a child. He also had the choice of
having the child struck be either the boy playing Hrut or the boy playing
Mord, or even, for that matter, the little girl. The symbolic choices of the
author should already be reasonably clear, but I will color in the outlines.
The scene shows Hrut settling, making amends to a surrogate Mord. The
surrogate is like the real Mord in several ways: both Mords make foolish
errors of judgment, both are beaten for it, and—here is my point—both
are inappropriate targets for warrior-age men. The author just as easily

20. Id. ch. 8, at 55.
21. The Icelandic expression was considerably more vulgar than the translation implies.
22. NJAL’S SAGA, supra note 9, ch. 8, at 55.
could have had the actors be servants rather than children; in fact, it is
the servants and other household members who laugh at the children's
performance. The servants, too, could have been struck, but then the
symbolism regarding the appropriateness of targets would have been lost.
The author constructed the scene to allow Hrut the chance to make
amends to a Mord, even if not the real one, to show that he, at least, is
not so unambivalently certain of his rectitude. In the admonishment Hrut
gives to the little boy, "never provoke anyone again," we hear advice that
was equally serviceable to the real Mord. The scene is a triumph of unob-
trusive saga symbolism, subtle and utterly natural. It reveals without in-
terior monologue and without authorial omniscience Hrut's qualms about
challenging an old man to a duel.

Let me place this scene in the context of other information the sagas
have to offer about violence to old people. The exact age of characters is
hard to determine in the family sagas, sometimes less so in Sturlunga saga,23
but even there the birthdates of only the most prominent charac-
ters are ascertainable. The family sagas compound the difficulty by often
being internally inconsistent in chronology. The sagas in general take no
great interest in age unless the fact of age somehow makes a deed
sagaworthy.24 The best age determination we get in most cases is a loose
one obtained by a rough assignment of a character to a generational co-
hort. Then, too, the bleak prospect of mortality rates helped to make old
people such a low percentage of the population that as a matter of
probability they were less likely to appear in saga and law simply because
there were so few of them.

Still, we do find instances when people are accorded special treatment
because of their age, or at least instances in which their age is invoked as
a reason why they should be accorded special treatment. Two old men
thought their old age and ill health made them immune from attack and
for that reason they did not bother to flee from some men intent on har-
raying in the district. They misjudged the character of Hjalti the bishop's
son who had their legs chopped off. The saga notes that people spoke ill
of the deed.25 On a cheerier note, in Njal's Saga, old men are lifted off

23. See supra note 5.
24. For instance, the same Hrut appearing in another saga kills a man who was trying to
raid some horses from his nephew. In the saga's words: "Hrut was eighty years of age when
he killed Eldgrim, and his prestige was greatly enhanced by it." LAXDAELA SAGA ch. 37, at
posthumous praise; Arni was in his seventies. ISLENDINGA SAGA, in 1 STURLUNGA SAGA ch. 138,
at 434 (J. Johannesson, M. Finnbogason & K. Eldjarn eds. 1946). At the lower end of the
age scale, the twelve-year-old Gizur's skillful pleading of a lawsuit merits a notation of his
age. Id. ch. 39, at 283.
25. THORDAR SAGA KAKALA, in 2 STURLUNGA SAGA, ch. 15, at 32-33 (J. Johannesson, M.
Finnbogason & K. Eldjarn eds. 1946).
their horses and carried to seats of honor as signs of deference. In another source, a certain Broddi claims his advanced age prevents him from joining a group mustering for combat, although another character claims that Broddi was more able than many young men. Some normative statements about treatment of the elderly follow directly upon a breach of the norm. After Flosi calls Njal "Old Beardless" before the assembled multitude at the Althing, Skarphedinn admonishes him ominously: "It is wrong to mock him in his old age, and no real man has ever done that before." And when an old, ill-tempered trouble-maker received a minor wound in a scuffle at a horsefight, he adopted a tone of outrage: "I don’t know how things would have gone had I been younger, but to strike a sixty year old man in the head and to have the other ride away without his head in bandages . . . ."

But the saga world displays an ambivalence toward old age reminiscent of our own. Being old was also cause for scorn. When the old Egil stumbles and falls, the serving women laugh and mock him. A January-May marriage provoked the abduction of the beautiful young wife. Even the saga writer makes light of the situation by turning it into farce: "Hall said that an old man should not befoul such a good looking woman any longer, so he took her and the man’s horse, too. The horse was named Mani and was the best of all horses." The laws, in fact, purport to legislate against this kind of marriage, at least to the extent of disabling the issue of such a marriage from inheriting. A man of eighty years must have the consent of his heirs in order to have hereditary issue; he is also disabled from selling land or giving in excess of a certain amount.

There is a sense, too, that old age was often an attribute of people said to be sorcerors and witches. It appears that much hostility against oldness took the form of hostility to witchcraft. A strange old man in the late Finnboga saga (fourteenth century), who was said not always to be of one shape, is tormented incessantly by the neighborhood kids. The old man finally kills his tormentors, justifiably to my mind, and suffers an

26. Njal’s Saga, supra note 9, ch. 118, at 243, ch. 147, at 327.
28. Njal’s Saga, supra note 9, ch. 123, at 255.
29. Gudmundar saga dyra, in 1 Sturlunga saga ch. 12, at 183 (J. Johannesson, M. Finnbogason & K. Eldjarn eds. 1946); see also Thordar saga kakala, in 2 Sturlunga saga ch. 15, at 32 (J. Johannesson, M. Finnbogason & K. Eldjarn eds. 1946).
32. la Gragas 224, 246 (V. Finsen ed. 1852).
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ignominious end. But this slot is occupied mostly by old women. Consider the following incident: Helgi Droplaugarson and his men arrive at the farm of a certain woman who is described as old and ugly. Helgi wanted to ask her for news, but one of his men heaves a snowball at her, hitting her in the face. She, quite rightfully, curses them. Helgi, to his credit, is much put off by his companion’s behavior. He refers specifically to norms against striking women. Old age merited no comment, although it is hard to believe that the woman’s age was not the chief inducement for the snowball. It should be said that the curse was not without its effect.

Neither sagas nor laws give us a very good idea of the age at which parents retired, handing over their farms to the next generation. We know that authority was often shared when sons grew up and fathers grew older, but we do not know when authority was formally handed over. Perhaps the figure of eighty from the laws is not meant to be taken precisely, but to mean any age at which a man was deemed old, either admitting it himself or having the admission thrust upon him, usually, I presume, by his sons. Some men maintained active political and martial lives well into their sixties. There is thus no special opprobrium that attaches to the killers, say, of Sighvat Sturluson, who died in battle at age sixty-seven, or even to his brother Snorri, who died cowering in his cell at age sixty-two. These men were still legitimate targets of violence because they claimed no status as a function of old age and hence were not old.

Does not all this evidence cut against my interpretation of the passage in Njal’s Saga? The evidence surely does not allow me the luxury of a Q.E.D., but neither does it compel a disconfirmation of the interpretation. We discovered norms against beating up on the old, and we found these norms, like most norms, were never sufficient to channel all behavior in accordance with them. Nor is our contrary evidence quite on point. Killing Sighvat, who appears armed and willing to defend, is surely different from challenging him to a duel.

Let me turn now to a trendier topic: violence to women. Some of the norms are fairly easy to establish, but as before, never quite as unambiguously as one would like. Women, like small children, were not proper vengeance targets in the feud, although one gets the feeling that this was less out of concern for women than for men’s honor. Thus, a certain Thorgils refuses to plunder a farm from which the men had fled: “There is no

renown when only women are at home." But this cuts several ways. The farm happens to belong to Thorgils' kinswoman with whose husband Thorgils has been at odds. It may be that it was not so much that only women were at the farm which forestalled the raid, but that one of them happened to be the second cousin of the would-be raider.

Thorgils' statement, "There is no renown when only women are at home," also suggests that had men been present there would have been no great aversion to putting a few women at risk. Women did, in fact, get hurt when men went at it. Some were simply in the wrong place at the wrong time, as when old Ysja lost her breasts and her life to the indiscriminating hacking of the men from Vatnsfjord. And although attackers who set fire to the farms of their enemies usually gave women and children passage from the flames, there were times when they did not. Some women were more active in combat and did not hesitate to intervene to separate the men either by physically restraining them or by blunting their weapons by throwing clothing over them. This very basic form of peacemaking could be dangerous business. It cost Aud her hand in Eyrbyggja saga.

There is more than enough evidence in the response to these actions to suggest that these acts violated a norm. Thus Aud's hand is avenged with immediate ferocity; old Ysja's death is the subject of verses shaming the attackers; and I do not think that anyone familiar with the literature would deny that the vengeances taken for the burning of Njal and at Flugumyr owe some of their uncompromising thoroughness to the fact that women, and in Njal's Saga a child and an old man, perished in the flames.

One haunting little scene tells us with typical saga restraint that it was the men, not the women, who were meant to die in raids. Kolbeinn the Young was in the midst of a brutal advance into the Westfjords in which he cringed at neither killing nor maiming. At Reykjaholar, the people stood outside in the dense fog and quarrelled over whether the faint noise in the distance was the sound of approaching livestock or men: "To those who were fated to die it seemed that it was livestock, but the women said it was a troop of men coming." The women were right; it was Kolbeinn

38. Thorgils saga skarda, supra note 27, ch. 69, at 213.
39. Thorgils, by the way, explicitly said that his kinswoman should have the benefit of her kinship. Id.
40. Id.
41. Islendinga saga, supra note 24, ch. 71, at 328.
44. Njal's Saga, supra note 9, ch. 129, at 267.
45. Thordar saga kakala, supra note 29, ch. 24, at 47.
and his men. But it is the metonym, fated to die, signifying men, and then the balancing of those fated to die, the men, against the women who (evidently) were not fated to die, that tells us that women could expect to survive Kolbeinn's raid. This norm is also confirmed by the fact that women never appear in the comprehensive casualty lists at several points in *Sturlunga saga*. These lists are unlikely to have been skewed by the underreporting of women casualties since, as we have already seen in the case of old Ysja, the killing of women was not unnewsworthy.

But does that mean they were not raped? This subject is pretty hard to get at. The sagas are much more reticent about rape than, say, killing or raiding. Rapists, according to the Icelandic sources, lived mostly in Norway and Sweden and were berserks besides. Still, there are some clues. *Ljosvetninga saga* gives us the example of three brothers who seem to make a practice of rape, but in that case it is not quite clear that what is going on is always without the woman's consent. Less ambiguous is the chieftain Gudmund Dyri's threat "to put a certain Thorunn in bed with every buffoon," apparently for having aided Gudmund's enemy. Only the intervention of another chieftain saved her from gang rape. In another source, Hallfred forces his ex-mistress to sleep with him, though she is now married to another, and tells the eleven men accompanying him that they also can do as they please, to which the saga adds: "There were several milking pens there and it is said that each of them had a woman for the night."

One cannot help but suspect that one of the reasons Thorgils may have been so unwilling to find renown in raiding a farm defended only by women was that this would make him complicit in the rape of his kinswoman. There is certainly an ominous inference to be drawn from Thord Kakali's instructions to his men to spare women and churches as they set out to raid in the west. The sources are quite clear that church sanctuary was violated frequently, and we should probably assume, unfortunately, that women were too. Arguments from silence are fraught with danger. We have little way of knowing whether rape was so common as to merit little comment, or so infrequent that there was nothing to comment

47. *Ljosvetninga saga* ch. 1, at 4 (B. Sigfusson ed. 1940).
49. *Hallfredar saga*, in *Vatnsdoela saga*, ch. 9, at 181 (E. Sveinsson ed. 1939). In another case, two men hostile to a certain householder visited his farm while he was away and slept (apparently) with his wife and daughter. The encounter with the wife was in all probability nonconsensual, although the daughter may have been involved with the man she appears to have slept with. *Thorgils Saga ok; Haftida*, in 1 *Sturlunga saga* ch. 6, at 18 (J. Johannesson, M. Finnbogason & K. Eldjarn eds. 1946).
50. See supra text accompanying note 38.
about.

The laws do not help us much in these matters. That rape is punished by outlawry tells us nothing about its prevalence or, for that matter, what end the apprehended rapist could expect. Certain provisions in the laws do evince a callousness for the pains of women. A woman could be tortured to convince her to be less reticent about revealing the father of her child.\(^\text{52}\) And should she need to go to the ordeal of iron to prove her paternity claim, the bishop had the right to compel her to undergo the ordeal as often as needed until a clear answer was received.\(^\text{53}\) There are no similar provisions for men.

The prevalence and degree of domestic violence is even harder to ascertain. How should we interpret the saga's best-known abused wife?\(^\text{54}\) Hallgerd, we know, does not like being hit by her husbands. Are we to see the existence of a powerful norm against wife beating in the fact that the three men who slapped her all die for it, either directly or indirectly? Hallgerd, we might guess, has some justification, but she lacks proportion. A more measured response is given by Gudrun Osvifrsdaughter who, when slapped by her husband, simply divorces him.\(^\text{55}\) The laws provided that a spouse might divorce if the one injures or wounds the other.\(^\text{56}\) No assumption, one notes, was made regarding the sex of beater or beaten. Consider the consequences of the following pillow fight:

Bardi wanted to sleep but his wife Aud wanted to wake him. She took a little pillow and threw it at his face as a joke. He threw it back and thus it continued. But one time he let his hand follow along with the pillow. She got angry, grabbed a stone and threw it at him. The next day after drink Bardi stood up, named witnesses and declared himself divorced from Aud saying he would not tolerate her overbearing behavior.\(^\text{57}\)

There is in Hallgerd's history another detail that is relevant to our discussion, namely, her foster father Thjostolf's social function.\(^\text{58}\) It was he, by the way, who killed Hallgerd's first two husbands after they had slapped her. He was a member of Hallgerd's father's household, so whatever his particular fostering responsibilities were, they did not involve supporting his charge. The saga is quite clear, however, about one of Thjostolf's jobs: he was to protect Hallgerd. He was a bodyguard. Before her marriage he kept rapists and seducers at bay, and after her

\(^\text{52}\) lb GRAGAS, supra note 32, at 58.
\(^\text{53}\) Id. at 216.
\(^\text{54}\) NJAL'S SAGA, supra note 9, ch. 11, at 59, ch. 16, at 69, ch. 47, at 121.
\(^\text{55}\) LAXDAELA SAGA, supra note 24, ch. 34, at 125.
\(^\text{56}\) lb GRAGAS, supra note 32, at 40.
\(^\text{57}\) Heidarviga saga, in BORGFIRDINGA SOGUR, supra note 17, ch. 43, at 327.
\(^\text{58}\) NJAL'S SAGA, supra note 9, ch. 9, at 56, ch. 11, at 59, ch. 17, at 70-71.
marriage he accompanied her to make sure that her husband or her hus-
band's kin did not abuse her.

There were two situations in which girls were most likely to need pro-
tection from their husbands and in-laws: when the marriage was made for
money or when it was arranged as part of a settlement of a feud. In one
case the in-laws view the girl as a symbol of their impoverishment, and in
the other they see her as one of the enemy, as much hostage as wife. I
assume fathers loved their daughters even though the demands of family
politics and feud meant that some daughters had to be married off
against their wills. One sign of paternal affection was to see that a daugh-
ter had someone, a foster father or kinsman, to protect her in her new
location. Thjostolf's problem is that he delights in his responsibilities a
bit too excessively. In this he bears a striking resemblance to his ward.9

But there was one way to kill a woman, feel virtuous about it, and en-
hance your reputation at the same time: make her out to be a witch first.
One of the functions of witchcraft accusations was to legitimize the killing
of women. Although the laws provide that women were liable and punish-
able in the same way as men for all punishable offenses, the sagas show
very few women as defendants and no successful outlawry actions against
them.60 In nonwitchcraft cases, the liability for a woman's delicts is borne
by males—her husband or her kinsmen. Not so with witchcraft. But
witchcraft accusation is a complex topic with multiple functions and mo-
tive, so let me wind this discussion up in an anticlimactic fashion.

I have tried to demonstrate that sociological questions can be directed
at the sagas and that the partial answers they yield are not so silly as to
warrant rejection. The bulk of saga literature, coupled with the laws and
leavened with a sense of the range of possibility by recourse to compara-
tive data largely drawn from ethnographic materials of preindustrial cul-
tures,61 paints a reasonably coherent picture of Icelandic law and society,
even if the paint is at times a bit thin. One would be hard pressed, in fact,
to find a source that has more information density than the sagas, but
this may be less a function of the sagas being literature than of their
being sagas. The sagas are remarkable for their commitment to the pres-
entation of local issues, to a realistic portrayal of them, to an honesty and
intelligence of vision that found in the world in which the authors and
their ancestors lived, a world worth writing and thinking about in a clear-
headed and witty fashion. A society lucky enough to be without kings and
hereditary nobility and with only a weakly institutionalized church was a

59. See also Islendinga saga, supra note 24, ch. 170, at 484; Sturlu saga, supra note 31,
ch. 20, at 89.
60. See Dreams, supra note 8.
61. Although I do not use comparative materials in this Article they can be found in the
works cited in note 8, supra.
society that could write about itself in a largely nonexploitive ideological fashion. 62

Even if we had plea roles and charters, the sagas would still be of great value to the historian in a way that inscrutable court records and self-serving legal documents often are not. In the sagas, the saga writers present the disputes in the full circumstance of their social settings, the litigants have social relations, and we can discern their strategies. Knowledge of this sort, even if it appears in a genre technically "fictional," is still the fiction of a person with practical knowledge and first-hand experience of the culture he was writing about, similar in this respect to the audience for which he was writing. Because of the sagas, we are able to reconstruct the law in action and the daily life of a twelfth and thirteenth century Icelander much better than, for instance, that of a middling inhabitant of pre-Conquest England, blessed as it is with charters, chronicles, and Domesday book. Even so, a conclusion like this is a rather small claim for the virtues of coupling the study of law and legal institutions with literary texts. But a virtue is a virtue and it has the merit of being put forward in good faith. For surely, when push comes to shove, or as my Vikings would have it, when the ax meets the skull, the real value literature has in legal studies is the value it has anywhere, a great part of which has to be nothing more than the delight its greater vision elicits in the reader, and the hope, often a fond one, that the reader's vision will become more discerning for the effort of reading.

62. This is not to suggest that the sagas are incapable of representing the claims of certain emerging factions and classes. But in Iceland social rank was less rigid and less clearly marked than on the continent. Some sagas evidence a fairly clear prochieftain or big man bias. Others, however, are equally partisan to the middling farmers. In either case the biases are fairly subtle. In one respect though, the sagas are ideological. But it is the ideology of establishing an Icelandic ethnicity in opposition to the political pretensions and encroachments of Norway at the time they were written. See Hastrup, Defining a Society: The Icelandic Free State Between Two Worlds, 56 Scandinavian Stud. 235 (1984).