

'SHE HATH NO REMEDY BY THE COMMON LAW': ENGLISH WOMEN
AND THE MEDIEVAL COURT OF CHANCERY

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CHAPTER I

INTRODUCTION AND HISTORIOGRAPHY

The court of Chancery served an important role in the medieval English legal system. As a court outside common law, the court of Chancery allowed individuals an outlet for grievances that could not be heard in the common law court system because of the latter court's inflexibility and corruptibility. The court of Chancery's lack of a formal structure and regulations allowed it to serve a function in society that common law courts could not. Specifically, the Chancery's sympathy towards the weak and oppressed offered women the opportunity to defend their rights more effectively than was possible in the more rigidly structured common law courts. Because women made frequent use of the court of Chancery, the petitions that women presented to the court offer historians documentary evidence regarding women's status in English medieval society as well as indicating the determination of women to actively pursue the defense of their rights through the court. While women held legal and economic rights, they were more limited in their actions than men. Despite the fact that women were able to manage property, run businesses, enter into contracts, and act in courts of law, they were still limited in their actions as a result of their being women and not men. Women's ability to act in the public sphere as daughters, wives, and widows challenged the traditional gender

structure, which caused men to oppose their public actions. Despite these challenges, women were able to use the court of Chancery to actively defend their rights

This thesis undertakes an examination of English women's petitions to the court of Chancery in the late Middle Ages, primarily the fifteenth century. The petitions demonstrate the vigorous attempts of these women to pursue their legal rights through a court of law. Not only does an analysis of Chancery petitions highlight the problems women faced in pursuing justice in the common law courts but such an analysis also examines an alternative process through which women could actively attempt to defend their rights. These petitions also reveal, often in graphic detail, aspects of the lives of medieval English women, especially in the areas of property management, marriage, inheritance, dower, and gender relations. While the format of the petitions will be discussed in more depth later in this chapter, it is important to note that the flexibility of the court meant that petitions to the court were more informal than sources from common law courts. Thus, these petitions are important because they allow the voices of the women to speak in a court of law. Although professional lawyers wrote the petitions, the informality of the court permits the women's voice to be heard. Using these petitions to the court of Chancery, this thesis argues that women's ability to appeal to the Chancery meant that they could act publicly to defend their rights from challenges, even when these challenges came from male opponents.

Historiographical Overview

Barbara Hanawalt traces major trends in the study of medieval women in her essay, "Golden Ages for the History of Medieval English Women." Hanawalt argues that

not much was written about medieval women until the late nineteenth century. She attributes this to two major problems: the disinterest in medieval history during the Renaissance and Enlightenment periods and male-dominated history written during the early nineteenth century. The medieval sources these historians included, such as government documents and other manuscript sources, rarely featured women, and as a result, the historians did not focus on women or their role in history. Hanawalt argues that these trends in medieval historiography began to change as the 1860s women's rights movement generated interest in women's history. An increased awareness of social problems at this time also caused increased interest in social history. While most social histories focused on men, both Alice Clark and Thomas Wright wrote social histories of medieval women. Wright attempted to focus purely on the social history of medieval women without being influenced by the women's rights movement. He states that "I am not aware that any writer has previously attempted, otherwise than very briefly, to give a picture of women's life in a feudal castle, yet it is that which has contributed probably more than anything else to the formation of her character in modern society."¹

During the late nineteenth century, the theory of progress dominated the field of history. This theory argued that history was a progression of events that led to a better world. "Golden Age" historians, however, challenged this theory. These historians argued that women had more rights, particularly economic rights, during the medieval period than the time periods that followed. While the main focus of historians during the late nineteenth century was on the status of women in society, they also began to focus on

¹ Quoted in Barbara A. Hanawalt, "Golden Ages for the History of Medieval English Women," in *Women in Medieval History and Historiography*, ed. Susan Mosher Stuard (Philadelphia: University of Pennsylvania Press, 1987), 5.

religious women and women's education. After the world wars, however, the historiography of the medieval period shifted its focus to political history. Women were not included in this history because of the belief that women were not involved in the public sphere. This development along with the achievement of voting rights for women in the 1920s caused a decreased interest in women's history since women's rights were no longer in the forefront of the public's attention. Hanawalt, however, draws a parallel between the 1860s and the 1960s. In both time periods, popular attention to women and social issues produced an interest in social history and the history of women. In the 1960s, there was a new interest in the ordinary, working class people or "history from the bottom up." Since the 1960s, the historiography of the medieval period has been focused on a social history that includes women.

In "Legal History and the Medieval Englishwoman' Revisited," Janet Senderowitz Loengard examines medieval historians' use of legal sources in studying women. Loengard argues that a modern comprehensive history of women and medieval English law has not been written. While in the nineteenth and early twentieth centuries there was interest in medieval women's legal rights, these histories were largely inadequate because of their excessively broad scope. In addition, the political circumstances of the time, such as the 1860s social movement described by Hanawalt, heavily influenced these historians.

Loengard also argues that early twentieth-century historians used sources that "give information about what the law should be or what it is in theory, but they do not

speak to practice.”² Loengard calls this history, which focuses on the application of laws to women, institutional history. Most legal sources, however, are difficult to use because of problems with language and the overwhelming amount of documentary sources. For this reason, medieval historians, who are interested in women's history, often do not concentrate on women and the legal system. According to Loengard, another problem is that “the view of law and the medieval Englishwoman is fragmented.”³ Legal histories about women have focused on specific areas, such as property rights, rather than a total history of women and medieval law. Recently, social historians, such as Hanawalt, have used legal sources to understand more about medieval women’s lives.

Helen Jewell in her introduction to *Women in Medieval England* argues that women are nonexistent in most legal records since women were not heads of households. Thus, women have typically been left out of medieval histories. Jewell asserts that there should not, however, be a separate history that focuses solely on women any more than there should be histories that focus solely on men since gender ideologies are developed through the interaction of men and women. According to Jewell, women’s history has been dominated by two approaches: legal and socioeconomic. Similar to Hanawalt, Jewell connects the developments in women’s social history to current events. Until World War II, historians rarely focused on career women and often wrote women’s histories as family histories. Concurrent with changes in the 1960s, medieval historiography began to change. Jewell argues that increases in the number of divorces and open sexuality as a result of the use of contraceptives caused the family structure to

² Janet Senderowitz Loengard, “Legal History and the Medieval Englishwoman,” in *Medieval Women and the Sources of Medieval History*, ed. Joel T. Rosenthal (Athens: University of Georgia Press, 1990), 211.

³ Loengard, “Legal History and the Medieval Englishwoman,” 214.

fall apart and opened the door for a wider variety in the topics of study for medieval historians because they were no longer restricted to writing women's history as family history.

Jewell asserts that this opening up of medieval research was also made possible through the use of a greater variety of sources. Until the nineteenth century, historians primarily used Latin sources such as chronicles, charters, and legal treatises to study the medieval period. Since, in most of these sources, women were not prominent, they were not the main focus of these histories. Except for court records, other traditional sources from the medieval period rarely feature women. According to Jewell, this is mostly a result of the lack of education for women and the expectation that women should be passive rather than active in matters outside the house. This explanation, however, is clearly too simple as Jewell herself points out. While married and single women had few rights under common law, they were active outside the house in matters such as trade and the courts. As a result, women *can* be found in a variety of medieval records. Although women appeared in court cases, Jewell argues that records from medieval courts have been “sampled” rather than “examined” by historians because of the enormous number of cases available for historical research.⁴

Ruth Kittel supports this argument in “Women under the Law in Medieval England, 1066-1485.” Kittel quotes the medieval legist, Bracton, as stating that women “ought to attend to nothing except the care of her house and the rearing and education of her children.” In other words, “a woman’s proper place was in the home” implying that a

⁴ Helen Jewell, *Women in Medieval England* (Manchester: Manchester University Press, 1996), 9.

record of women's activities would appear in few medieval sources.⁵ Kittel, however, argues that they “did venture beyond the home” and were able to have a legal voice through the courts.⁶ There were three main types of courts in medieval England: ecclesiastical, manorial, and royal. The primary jurisdiction of the ecclesiastical courts was limited to religious matters and marriage issues. Manorial courts were concerned with issues involving both marriage and land at the local level. Royal courts were divided into common law courts and courts of equity such as the court of Chancery. Instead of focusing on the Chancery, however, Kittel, similar to previous historians, concentrates on the other courts.

Golden Age

A major debate in the historiography of medieval English women has concerned the issue of a medieval ‘Golden Age’. Proponents suggest that after the Black Death the decrease in population allowed women to enter the workforce in larger numbers and earn higher wages. This increase in employment opportunities allowed them to have a greater public role and by extension economic and legal rights than they would in later periods. The later decline in women’s rights impacted the histories written about medieval women since historians have superimposed modern views on medieval culture. In “Medieval Women, Modern Women,” Judith Bennett argues that there has been a gap between the historical studies of the medieval and early-modern period. She attempts to fill this gap and in so doing challenges the belief in the Golden Age of women. Bennett examines

⁵ Ruth Kittel, “Women under the Law in Medieval England, 1066-1485,” in *The Women of England from Anglo-Saxon Times to the Present*, ed. Barbara Kanner (Connecticut: Archon Books, 1979), 124.

⁶ Kittel, “Women under the Law in Medieval England,” 124-125.

English women's productive work to argue that women's low status in society continued from the fourteenth to the eighteenth century. Women's work was not equal to man's work as their labor in the household was secondary and less skilled, and the husband clearly dominated the family economy.

In addition, marriage restricted women's rights since they were *femmes couvertes* (married women) and not represented in common law. Bennett also argues that widows were actually in a worse position than married women since many of them could not recover their inheritance. Not only did the inequality of the family economy continue from the fourteenth to the eighteenth century but also the nature of women's work remained relatively unchanged. Women's work was characterized by low skilled jobs with low wages. Since women were never full members of guilds during the medieval period, there was not a decline in the relationship of women to guilds. While there were shifts in women's work during the medieval period, these shifts were small and usually short lived. Bennett asserts that instead of a decline, there was a continuity of women's work and rights from the medieval period into the early-modern period.⁷

Bennett's concentration on women's work excludes many aspects of medieval women's lives. In contrast to the limited opportunities women had regarding their employment, they did enjoy certain legal rights. In "The 'Golden Age' of Women in Medieval London," Caroline M. Barron demonstrates that women held specific legal and economic rights. While the husband and the wife technically became one person (the husband) under common law, the wife had some control over her inheritance. In

⁷ Judith M. Bennett, "Medieval Women, Modern Women: Across the Great Divide," in *Culture and History: 1350-1600*, ed David Aers (Detroit: Wayne State University Press, 1992), 147-165.

addition, married women in London could trade as *femmes soles* (single women) separate from their husbands, which gave women economic independence. Widows clearly had a right to a portion of their husband's land through a dower (often a third of their husband's property after he died). In London, widows could even become freewomen and were often expected to continue their husband's business. According to Barron, "the picture of the lifestyle of women in medieval London is quite a rosy one; their range of options and prospects differed only slightly from those of the men."⁸ Despite not holding political positions, medieval women had certain economic and legal rights, which Barron argues declined in the sixteenth century as economic opportunities for women began to erode.

More recently Sandy Bardsley has proposed that a study of wages in late medieval England reveals that "English women experienced the post-plague period as more grey than golden."⁹ Bardsley asserts that male to female wage ratios are incompatible because men and women often performed different jobs. While men were often employed in the more skilled, higher paid jobs, women's work was often less skilled and therefore lower paid. Through an examination of harvest wages in the East Riding of Yorkshire, Bardsley argues that there are a variety of reasons why a person would be paid less, including age and ability. Thus, women were "paid at about the same rate as that of other members of the 'second-rate' work-force" which included women, boys, old men, and the disabled. Bardsley concludes that the "nature of waged work"

⁸ Caroline Barron, "The Golden Age of Women in Medieval London," in *Medieval Women in Southern England*, ed Keithand Bate (Reading: University of Reading, 1989), 47.

⁹ Sandy Bardsley, "Women's Work Reconsidered: Gender and Wage Differentiation in Late Medieval England," *Past & Present*, no. 165 (November 1999): 5.

remained the same after the Black Death.¹⁰ Since the nature of women's work remained unchanged, their position in medieval society also remained the same.

Women's legal rights: Overview

In order to understand this debate on the 'Golden Age' of women's rights, one must understand what rights women in England had during the medieval period. In one of the first major works on the laws of England, *The History of English Law*, Pollock and Maitland argue that the position of women can be summed up with the statement that "private law with few exceptions puts women on a par with men; public law gives a woman no rights."¹¹ In private law, women were for the most part equal to men in terms of inheritance, wardship, and land ownership. Women could also enter into contracts and use the court system. They were excluded, however, from public law because women did not have any public functions.¹² Maitland's work was first published in 1895 and for the most part excluded women from consideration in legal history.

Recently, the legal rights of medieval English women have received more attention. According to J.H. Baker, the argument that married women had fewer rights than single women (*femmes soles*) since "the very being or legal existence of women is suspended during the marriage, or at least is incorporated and consolidated into that of the husband" was a "legal fiction."¹³ Baker attributes this fiction to the belief in the inferiority of women during the medieval period. Under common law, women's rights

¹⁰ Sandy Bardsley, "Women's Work Reconsidered," 23, 25.

¹¹ Sir Frederick Pollock and Frederic William Maitland, *The History of English Law*, 2nd ed. (Cambridge: Cambridge University Press, 1898), 1:482.

¹² Pollock and Maitland, *The History of English Law*, 482-5.

¹³ J.H. Baker, *An Introduction to English Legal History*, 4th ed. (London: Butterworths, 1979), 395.

were restricted. A married woman could not own her own property or be active in the common law court system without her husband or *baron*. Once married, a woman lost all right to any property she might have owned as *femme sole*. In equity, however, husband and wife were two separate people. The court of Chancery enabled wives to have independent ownership through trusts set up for the wife's 'sole and separate use'. While a woman could not contract because she did not technically own separate property, she could contract as an agent using another person's property, and women could inherit property despite a natural preference to male heirs.

There were definitely limitations to women's rights during the medieval period. Shulamith Shahar in *The Fourth Estate* disputes the claim that "by law, a woman had no share whatsoever in the government of the kingdom and of the society." Shahar argues that this assessment, based on texts such as Glanville's legal work, reflects the assumptions of the author rather than the actual practice of the law or society's views on women. While Shahar concludes that "reality generally matched the law," there were exceptions.¹⁴ Despite laws against women appearing in courts, there are examples of women appearing as witnesses or oath-helpers. Single women could appear in courts, and married women had the right to sue with the support of her husband.

In *Daughters, Wives, and Widows after the Black Death*, Mavis Mate argues that English women's legal rights increased after the Black Death as women were able to acquire more land as a result of the high mortality rate. Despite the fact more women were able to inherit land in the absence of male heirs, few women actually gained

¹⁴ Shulamith Shahar, *The Fourth Estate: A History of Women in the Middle Ages* (London: Methuen, 1983), 11-12.

independence through their inheritance. Most women were already married when they received their inheritance, or they had to share their inheritance with other family members. As a *femme couverte*, her husband would control her inheritance. In other words, “despite the undoubted increase in female inheritance, there is no evidence that this led to any transformation in women’s status.”¹⁵ Widows’ rights varied depending on the customary law of the region, which meant there was many different ways wives could inherit after their husband died. Overall, Mate argues that despite the lack of legislative shifts in women’s legal rights, there were changes in the rights of women such as the *de facto* freedom of villeins and the increasing ability of women to inherit property from their fathers or husbands.¹⁶

Women and the Court System

As these historians have established, medieval women held a complex status under common law, and this ambiguity extended to the court system. Christine de Pizan was a revolutionary woman writer during the early fifteenth century, whose family was closely connected to the French court of Charles V. Many of her works were widely read, and *The Book of the City of the Ladies* even circulated in England.¹⁷ In this work, Pizan argues that men, who were stronger and able to speak more boldly, were better equipped for different offices than women. Specifically, men were better able to be involved in the legal process while “women could never accomplish” the forcefulness required to practice law. However, Pizan argues that

¹⁵ Mavis E. Mate, *Daughters, Wives and Widows after the Black Death: 1350-1535* (Suffolk: The Boydell Press, 1998), 81.

¹⁶ Mate, *Daughters, Wives and Widows after the Black Death*, 76-93.

¹⁷ Earl Jeffrey Richards, introduction to *Book of the City of Ladies*, by Christine de Pizan (New York: Persea Books, 1982), xix.

if anyone maintained that women do not possess enough understanding to learn the laws, the opposite is obvious from the proof afforded by experience, which is manifest and has been manifested in many women...who have been very great philosophers and have mastered fields far more complicated, subtle, and lofty than written laws and man-made institutions.¹⁸

Pizan asserts that while medieval women did not belong as judges or officers of the court, they did have the ability to understand the legal system and courts.

Historians have come to recognize that medieval women not only had the ability to understand the legal system but that they frequently used medieval courts to defend their rights and to seek justice.¹⁹ In "'[S]he will...protect and defend her rights boldly by law and reason'," Emma Hawkes uses records from Westminster courts to prove that women both understood and utilized the court system. Medieval women used the court of Chancery more often than common law courts. Hawkes states that women were "uncommon litigants in common law courts" since they made up only five percent of the litigants between 1479 and 1520. In the court of Chancery, however, women made up fifteen percent of the total litigants between 1461 and 1515.²⁰ The Chancery was favored by women because as a court of equity, it showed favor to the "dispossessed and the weak."²¹ Women often emphasized their weaknesses in their petitions in order to gain favor with the court despite the fact that they rarely petitioned the Chancery without the assistance of a professional lawyer.

¹⁸ Christine de Pizan, *The Book of the City of Ladies*, 31-2.

¹⁹ This knowledge of the court system included the use of lawyers. By the late medieval period, professional lawyers were well established in England, and most people (men or women, religious or lay, rich or poor) pursuing a case in the court system would need a lawyer. The use of the courts and professional lawyers extended to religious women. This topic will be explored in depth in Elizabeth Makowski's forthcoming work.

²⁰ Emma Hawkes, "[S]he will...protect and defend her rights boldly by law and reason": Women's Knowledge of Common Law and Equity Courts in Late-Medieval England," in *Medieval Women and the Law* ed. N. James Menuge (Suffolk: The Boydell Press, 2000), 150-1.

²¹ Hawkes, "[S]he will...protect and defend her rights boldly by law and reason," 152-3.

While women used common law courts less often than men, their cases were similar as both were primarily concerned with property claims. Women were more likely to be involved in property claims than any other type of litigation. Hawkes asserts that this was a result of women's "weak legal standing which would have discouraged all but the most necessary litigation." Since women's rights were restricted in other areas of the law, the main focus of these women would be on retaining their right to property. This supports Baker's "legal fiction" concept. Despite the arguments of previous historians, based solely on prescriptive legal texts, that married women were legally dead, these women had rights through the court system. This is proven by evidence from the royal courts, especially the court of Chancery.

In her introduction to *Wife and Widow in Medieval England*, Sue Sheridan Walker supports the understanding that women in medieval England understood the legal system despite not being officials in the courts. Walker argues that "while women were neither judges, jurors, nor lawyers, they participated in the pervasive legal culture as plaintiffs, defendants, and warrantors."²² As property owners, women had a public role which involved dealing with people that lived on the land or running the business that the land supported. In their actions as landholders and business owners, women naturally developed the need to use the court system to protect their land or business. Through this position in the public, women acquired knowledge of the court system and used the courts to protect their property.

²² Sue Sheridan Walker, introduction to *Wife and Widow in Medieval England* (Ann Arbor: University of Michigan Press, 1993), 6.

The Court of Chancery: An Overview

In his introduction to *Select Cases in Chancery*, William Paley Baildon provides an in-depth explanation of the court of Chancery. Baildon describes four main aspects of a Chancery proceeding: the petition, the problem the petition presents to the court, the accusation against a particular person, and the request for a remedy. The petition or bill follows a typical pattern, which will be discussed more fully later in this thesis. The problem the plaintiff presents in the petition must be outside the “administrative powers of the Chancellor,” that is the problem could not be solved through a writ in a common law court.²³ Thus all petitions to the court of Chancery result from inadequacies in the common law court system. The final aspect of the proceeding is the remedy the plaintiff requests. Whether the requested remedy was granted is often unknown since few of the court’s decisions were recorded during the medieval period.²⁴

According to Baildon, the court of Chancery developed because the common law courts were “frequently unable to do justice to suitors.” Baildon describes two reasons for this: the “inelasticity” of the common law courts and the situation of the petitioners.²⁵ The first reason simply points to the inability of the rigid common law courts to adapt to different situations, and hence, the development of equity in which the court of Chancery would examine each case individually in order to determine the outcome. The second reason covers a variety of situations in which the court of Chancery presented an

²³ W. Paley Baildon, ed., introduction to *Select Cases in Chancery, A.D. 1364 to 1471* (London: B. Quaritch, 1896), xiii.

²⁴ While a search through various legal records can reveal the justice dispensed after the petitions and thus reveal the Chancellor's answer to the petition, this research is outside the scope and resources of this paper.

²⁵ Baildon, introduction to *Select Cases in Chancery*, xxi.

advantage for the petitioner. Baildon contributes most of these to the position of the defendant. If the defendant played an important role in the distribution of justice from the common law courts or was powerful enough in the county to prevent this distribution, then an appeal to the court of Chancery would be the plaintiff's only option. While the jurisdiction of the court of Chancery often overlapped that of common law, there were cases that were rejected by Chancery because they were under the jurisdiction of common law courts.

A petitioner would use a bill or a petition to initiate the procedure of the court of Chancery. These petitions were in French until the reign of Henry V when the petitions transitioned to English. The structure and form of the petition, however, varies little throughout the medieval period. The petition usually requested either the arrest or appearance of the defendant. When the defendant appeared before the court, he would respond to the allegations brought against him by the plaintiff. The answer of the defendant, however, was not regularly recorded until the fifteenth century.²⁶ This process of petitioning and responding illustrates the way the Chancery functioned. While in common law courts, the plaintiff and defendant often presented documents to prove their case, the court of Chancery, as a court of equity, determined cases based on testimony. As a result, those who petitioned to the court of Chancery often did not have documentary proof of their claim and relied on the conscience of the court to determine their dispute.

In *An Introduction to English Legal History*, J.H. Baker discusses the origins and development of the court of Chancery. The Chancery began as the Anglo-Saxon

²⁶ Baildon, Introduction to *Select Cases in Chancery*, xxviii.

scriptorium in which writs and charters were written and sealed and remained primarily an administrative structure throughout the medieval and even into the modern period.

While the chancellor was often a religious official, either a bishop or an archbishop, the Chancery was staffed by clerks, who assisted the chancellor, kept the rolls, and wrote out the writs.

The Chancery served two judicial functions: the Latin side and the English side. The Latin side encompassed the administrative functions of Chancery through the issuing of writs and keeping of records (both in Latin). Through these administrative functions, the English side (the jurisdiction of the chancellor in bills of complaint) developed. In the fourteenth century, many bills of complaint against common law courts were addressed and submitted to the king. These cases soon became too numerous for the king and eventually became the responsibility of the chancellor. Under Richard II, the Chancery began to grant specific responses instead of simply referring the case elsewhere. These decisions naturally developed from the chancellor's ability to issue writs since a "plaintiff applying for an original writ was in a sense making a petition in Chancery." During the fifteenth century, the chancellor began to issue decisions in his own name as the court became independent from the king's council. The chancellors, however, were not acting outside of English law. Instead, Baker argues that they "came not to destroy the law, but to fulfill it."²⁷ The Chancery developed to restore justice, which could be subverted through the injustices and inflexibility of the common law system.

²⁷ Baker, *An Introduction to English Legal History*, 102.

The procedures of the early court of Chancery are hard to determine since few records were kept. They were informal and usually operated verbally with no written records. As a result, the primary language of the court was English. Since the court or officials commissioned by the court issued a decision based on testimony, the court could sit anywhere. This allowed for justice to be provided quickly and inexpensively. This quick response and affordability, along with the principle of equity, made the court more appealing to the poor and oppressed, especially women. The popularity of the court increased during the fifteenth and sixteenth centuries and even threatened the common law courts. This would later cause conflict between the court of Chancery and the common law courts.²⁸

The Petitions

Timothy Haskett defines the chancery petition as an “instrument by means of which a person who believes that he has no common law remedy, or that an existing remedy is ineffective, asks the chancellor of England to provide redress.”²⁹ In his article, Haskett attempts to demonstrate how the court of Chancery can be understood through these petitions. He divides the chancery bill into eleven sections in which the petitioner presents a clear, forceful case before the chancellor. These eleven sections can be placed into three main categories: the opening, the description of the case, and the prayer to the Chancellor. In the opening of the petition, the petitioner addresses the Chancellor. This *address* is followed by the description of the case through the *incipit* in which the

²⁸ Baker, *An Introduction to English Legal History*, 99-105.

²⁹ Timothy Haskett, “The Presentation of Cases in Medieval Chancery Bills,” in *Legal History in the Making*, eds. W.M. Gordon and T.D. Ferguson (London: The Hambledon Press, 1991), 11-21.

petitioner requests the attention of the Chancellor, the *recital* of what should have happened, the *problem* that prompted the petition, and the *conclusion* that presents the problems the petitioner now suffers and the redress the petitioner desires. The petition ends in a prayer to the Chancellor, which includes a *supplication* or second address to the Chancellor, a plea for *consideration* of the case, a request for *process* or subpoena to require the respondent's appearance before the court, a request for the *examination* of the respondent, a *remedy* to the problem, and an *explicit*. Through these parts of the petition, Haskett argues that one can understand the way petitioners approached the Chancery and how the Chancery functioned.

Despite this pattern, the petitions were written in English and reflected the petitioner's voice since the petition is "derived from the viewpoint of the petitioner himself."³⁰ Haskett examines situations where a petitioner or group of petitioners presented more than one petition for the same case in order to determine the way petitioners manipulated this format in order to achieve their desired outcome. Through this analysis, Haskett argues that correctness and form was important to the court of Chancery despite its informalities. Although the court was informal, an incorrect petition could cause the case to fail. These patterns are illustrated in the petitions as certain words or phrases are repeated such as the point that the petitioner had no 'recourse in common law.' Petitioners also emphasize their weaknesses in order to gain court favor. These formalities indicate that the court of Chancery had a structure. The petitioners used Chancery lawyers to write their petitions because these lawyers would know how the court functioned and how to construct a petition to the court. The role of the lawyer and

³⁰ Haskett, "The Presentation of Cases in Medieval Chancery Bills," 12.

the structure of Chancery, however, should not be over emphasized since Chancery petitions are different than other legal sources. Through these petitions, the petitioner's side of the story was told in their own voice. This aspect of the petitions allows the historian to understand aspects of medieval life and culture that cannot be revealed through other sources.

Historiography of the Court of Chancery

Timothy Haskett's article, "The Medieval English Court of Chancery," outlines the historiography of the court of Chancery and proposes new directions in the study of the court. Haskett argues that the court has not been fully studied because of the numerous records of the court and the fact that previous research has focused too much on the jurisprudence, administration, and other developments in the court instead of the individual cases. While almost every major work on the legal and administrative history of England mentions the Chancery since it was an important institution in the governance of England, few of these studies actually examine individual cases or discuss the nature of these cases.

Historians have debated the origins and development of the court of Chancery. While some historians such as T.F.T. Plucknett and Francis Palgrave argue that the judicial functions of the chancellor emerged from his role on the king's council, other historians such as Baildon argue that the origins of these functions are hard to determine. Baildon asserts that the development of equity and the court's judicial functions happened at the same time and that the "Chancellor as judge was created by equity rather than

equity by the Chancellor.”³¹ This would mean that the court originated as a response to a need for equity instead of from the chancellor’s position in the council. According to Baildon, the chancellor had fully developed his judicial functions by the mid-fourteenth century. Hasket, however, argues that there are fundamental problems with this dating since the development of the court was an evolutionary process. Baker attributes the development of the judicial roles of the chancellor to the role of the king’s council in dealing with bills of complaint. While traditionally historians have maintained the connection between the Council and the development of the court of Chancery, Haskett argues that Baker’s statement that the court was used to fulfill the law suggests a need for a new consideration of the jurisprudence of the court of Chancery. As discussed earlier, Baker argues that the court of Chancery developed as a result of problems with the common law courts, but instead of being bounded by common law procedures, the court of Chancery was a court of conscience.

One of the first to write about the jurisprudence of the court of Chancery was W.S. Holdsworth in the early twentieth century. Holdsworth asserts that the position of the chancellor as keeper of the Great Seal “puts him at the head of the English legal system and makes him the legal centre of the constitution.”³² Through his control over the Great Seal and the issuing of writs, the Chancellor was important to the English legal system from which the English side of the court of Chancery developed. Holdsworth argues that the concept of equity in the Chancery began with the Statute of Westminster II, which allowed the chancellor to slightly alter the writs in order to meet specific needs.

³¹ Baildon, Introduction to *Select Cases in the Court of Chancery*, xix.

³² William Searle Holdsworth, *A History of English Law*, 7th ed. (London: Methuen, 1972), 1:192; 396.

The issuing of writs, however, remained part of the chancellor's connection to common law (the Latin side of Chancery) instead of equity (English side), which was connected to the king's council. The chancellor was able to develop equitable jurisprudence because he was keeper of the Great Seal, thus connected to the administration of the law, a leading member of the king's council, and head of a "well organized and efficient department of state."³³ Holdsworth asserts that common law and the equitable jurisdiction of Chancery would not be separated until the sixteenth century as the Tudor government sought to clarify jurisdictions.

While Holdsworth argues that equity developed from a need for it and the chancellor's connection to the king's council, Haskett cites several historians who attribute the development of equity to other causes. J.B. Post emphasizes the administrative aspect of Chancery and argues that Chancery was valuable because of its ability to enforce decisions through its administrative functions. Many historians, however, have disputed this continuity of functions and connect the development of equity to new ideas. These historians have debated the source of these ideas. Maitland argues that the ecclesiastical courts influenced the development of the jurisprudence of the court of Chancery since the procedures of the court resembled the procedures of the ecclesiastical courts more than common law courts. Chancellors also did not borrow much from Roman law despite the fact that some chancellors such as John Kemp and John Stafford were Oxford doctors of civil law. While Maitland does not deny that the chancellors may have had knowledge of Roman law, he argues that they rarely used this knowledge in their decisions. Haskett, however, argues that because of the background of

³³ Holdsworth, *A History of English Law*, 1:400.

the chancellors in both civil and canon law, their principles of equity were not entirely new and the development of the court of Chancery was influenced by both ecclesiastical and common law courts.³⁴ This suggests both continuity and an infusion of new ideas.

Historians have also debated the functions of the court of Chancery and the development of these functions, especially equity. In “The History of the Equitable Jurisdiction of Chancery before 1460,” Margaret Avery surveyed petitions to the court of Chancery from Essex and Kent in order to prove that there was an increase in equity cases and a decrease in petitions to common law courts because of problems with the common law system. Avery argues that it “seems reasonable to assume if numerous petitioners are found requesting the same remedy, that it was one commonly granted by the chancellor.”³⁵ According to Avery, the development of equity was caused by the administrative problems of the common law system including: inflexibility, outside influences, lack of protection, and corruptibility.

Nicholas Pronay, however, argues that Avery’s research was too limited to support her conclusions. Through an examination of records from a broader time period, Pronay argues that Chancery’s equitable jurisdiction was not consolidated until after 1461. He also asserts that Avery’s research was too limited to account for the different reasons people petitioned the court of Chancery since she only focused on two rural areas, which were different from urban areas such as London that were dominated by merchants. While Pronay argues that many cases were presented verbally, he fails to see

³⁴ Timothy Haskett, “The Medieval English Court of Chancery,” *Law and History Review* 14, no. 2 (Autumn, 1996): 260.

³⁵ Margaret Avery, “The History of the Equitable Jurisdiction of Chancery before 1460,” *Bulletin of the Institute of Historical Research* XLII, no. 106 (Nov 1969): 129.

that these cases undermine his own argument about changes in the development of the court.

In a more recent article, “The Early History of the Court of Chancery: A Comparative Study,” P. Tucker disputes both Avery and Pronay’s conclusions. Tucker argues that it is impossible to obtain a full picture of the development of the court of Chancery since many of the cases, especially early cases, were presented verbally without any written records. The increase of cases in the court of Chancery by either 1460 or after 1461 can be attributed to a rise in written cases as opposed to oral. Tucker also argues that the oral complaints were most likely of a different nature than written complaints since those who presented orally were more likely to be poorer petitioners, who would not be involved in feoffments or uses.³⁶ As a result, the fact that the majority of recorded cases involved feoffments might simply be because such cases comprised the greatest number of written petitions.

In addition, Tucker argues that there is “no evidence that medieval Chancery or any other English ‘court of equity’ had developed a firm set of equitable principles.”³⁷ Instead, Tucker asserts that the Chancery was guided in the beginning by common sense without any set principles. The court developed the concept of equity *post facto* in the mid-fifteenth century in conjunction with the development of legal training. In his discussion of English law and the Renaissance, Baker provides two definitions of the

³⁶ Feoffments allowed people to grant property to an outside party, who would be responsible for setting up an estate after the person's death. Feoffments were regularly used as a dower, which would provide for the wife after her husband's death. This process and the cases involving it will be discussed more in-depth in later chapters.

³⁷ P. Tucker, “The Early History of the Court of Chancery” *The English Historical Review* 115, no. 463 (September, 2000): 795.

medieval concept of equity. First, equity was the "spirit" of the law and was governed by "reason." Second, equity was the standard by which written law was interpreted. St. German's *Doctor and Student* illustrates the differences between the medieval concept of equity and the early modern concept. In the sixteenth century, equity came to be equated with conscience based on reason instead of the church's concept of right and wrong. Recently, however, historians such as J.L. Barton have disputed the connection between St. German's thesis and actual practice as canon law continued to influence the court of Chancery.³⁸

Also to be considered were administrative changes to the court by the sixteenth century as the personal shifted from noblemen to clerics and, eventually, men with primarily legal training. This change coincided with an increase in record keeping as the testimony of defendants and witnesses began to be recorded with consistency. Haskett contends that changes in the court of Chancery differentiated the medieval from the Tudor court, so any conclusions regarding the medieval court based on the Tudor court are useless. Regarding the medieval court, Haskett asserts there has been little research into the early records. In 1991, *The Early Court of Chancery in England Project (ECCE)* was established in response to the need for a detailed study of these records that have been kept in the National Archives. The ECCE Project has not focused on the development of equity, but instead, it has examined the many different issues of late medieval life that the records present.³⁹ Haskett, for instance, concentrates on two main

³⁸ Haskett, "The Medieval English Court of Chancery," 269.

³⁹ Despite Haskett's reference to the ECCE Project, I have been unable to find any information about it or its current activities.

issues: the demography of the petitioners and the main issues presented by these petitioners.

Through a quantitative study of the demography of the petitioners, Haskett discovers that thirteen percent of the principles were women and that the percentage of female petitioners increased during the fifteenth century.⁴⁰ The majority of these petitions initiated by women involved disputes over inheritance as women were attempting to defend their position as heirs, and widows constitute a large portion of these women. Haskett concludes that the court of Chancery was primarily concerned with offenses against conscience. He does not, however, examine specific petitions, and his article is simply an introductory study into the petitions themselves. While Haskett begins to examine the who and why instead of simply examining trends in the development of the court, more research into the petitions is needed in order to fully understand who used the court of Chancery and why.

Court Cases as Sources

Historians have examined a variety of courts in order to understand both the exceptional and the common place in medieval English culture. The focus of these historians, however, has been on courts other than the court of Chancery. In "Women in the Medieval English Countryside," Bennett uses court cases from a manorial court in Bridgstock to provide insight on the lives of medieval English women before the Black Death. Bennett hopes that eventually her research in Bridgstock will be compared to other localities in an attempt to form a more complete picture of medieval English

⁴⁰ Haskett, "The Medieval English Court of Chancery," 286.

women.⁴¹ Loengard uses common law court cases to explain why widows had to use the court system to protect their dower right. She argues that the widow's right to a portion of the property through her dower right interrupted the feudal system and hence, widows often had to appear in court to protect their right. While she uses specific common law cases, evidence from the Magna Carta, and other documentation, she does not include the court of Chancery.⁴²

The focus of the historiography of women and the medieval English court system has generally been on either common law or ecclesiastical courts instead of the court of Chancery. Kittel dismisses the importance of the court of Chancery since the decisions of these cases were not recorded until 1534. She argues that historians should instead focus on common law court records, which are more complete. According to Kittel, "many aspects of the lives of medieval women will always remain hidden" since women tended to remain close to home. While she observes women sometimes acting in courts as plaintiffs and even as attorneys, Kittel argues that by the end of the thirteenth century, the legal profession was predominantly male and "the common law courts [had] become increasingly the arena of men."⁴³ By overlooking the court of Chancery, however, Kittel dismisses an important way women were able to participate in law. Women could and frequently did act as plaintiffs in the court, and instead of women's participation decreasing after the thirteenth century, women used the court in even greater numbers in the fifteenth and sixteenth centuries. By examining the Chancery records that exist,

⁴¹ Judith Bennett, *Women in the Medieval English Countryside: Gender & Household in Brigstock before the Plague* (New York: Oxford University Press, 1987), 16.

⁴² Janet Senderowitz Loengard, "Rationabilis Dos: Magna Carta and the Widow's 'Fair Share' in the Earlier Thirteenth Century," in *Wife and Widow in Medieval England*, ed. Sue Sheridan Walker (Ann Arbor: The University of Michigan Press, 1993), 59-80.

⁴³ Kittel, "Women under the Law in Medieval England," 131.

historians can develop a better understanding of how medieval women were able to protect their rights.

Recently historians have begun to examine specific cases from the court of Chancery. Since there are thousands of petitions to the court of Chancery in the National Archives, none of these studies have been able to take into account all the petitions or all aspects of medieval culture that these petitions present. In “The Elizabethan Chancery and women’s rights,” Maria Cioni argues that the court of Chancery was important to women because of the protection the court offered them. Cioni states that the “recognition by the Elizabethan Chancery that women should be accorded some regularized course of action and rights indicates, therefore, that social attitudes toward women were changing.”⁴⁴ Cioni argues that these changing attitudes toward women originated in the Elizabethan period. While not denying that female petitioners to the court and their rights in the court increased during the Elizabethan period, my research demonstrates that women frequently petitioned court of Chancery during the medieval period. In fact, the frequency with which women petitioned the court indicates that such action was both an acceptable and useful means for women to defend their rights and property long before the Elizabethan period.

Cordelia Beattie examines petitions to the medieval court of Chancery in her analysis of single women. Beattie argues that as single women, they did not have the financial or legal support of married women or men. As a result, single women would use their position as *femme sole* to gain sympathy in the court since the court of Chancery

⁴⁴ Maria L. Cioni, “The Elizabethan Chancery and women’s rights,” in *Tudor Rule and Revolution: Essays for G.R. Elton from his American Friends*, ed. Guth and McKenna (Cambridge: Cambridge University Press, 1982), 159.

was a court of conscience and was theoretically sympathetic to the poor and needy. In particular, Beattie examines the petition of Alice Smyth, who desired to move her case to the court of Chancery because she was a ‘pore widowe.’ Beattie’s focus, however, is on single women and not women in the court of Chancery so her analysis of their use of the court is brief.⁴⁵

Beattie examines the court of Chancery in more depth in her essay, “Single Women, Work, and Family.” In this essay, Beattie analyzes the petition of Thomas Wynde and his wife, Jane, against Margaret Clerk. Thomas, however, was not a principal in the case, and Beattie focuses on the dispute between the two women in which Jane argued that Margaret owed her compensation for services she provided. Beattie asserts that the outcome of the case was not important because the information in the petition and the answer to the petition reveals aspects of these women’s lives. Since the documents are not beyond belief, “they allow one to move beyond the alleged truths of the dispute itself on to broader cultural attitudes.”⁴⁶ Jane used the court of Chancery instead of a common law court because she has no documentary proof of the breach of trust committed by Margaret. This is often the case in petitions to the court of Chancery. The main purpose of Beattie’s essay is to “suggest one of the ways in which social and cultural historians might use chancery records.”⁴⁷ Since historians have only recently begun to critically examine petitions to the court of Chancery, there is no established methodology for examining these petitions. Through this essay, Beattie proposes a

⁴⁵ Cordelia Beattie, *Medieval Single Women: The Politics of Social Classification in Late Medieval England* (Oxford: Oxford University Press, 2007), 29-30.

⁴⁶ Cordelia Beattie, “Single Women, Work, and Family: The Chancery Dispute of Jane Wynde and Margaret Clerk,” in *Voices from the Bench: the Narrative of Lesser Folk in Medieval Trials*, ed. Michael Goodich (New York: Palgrave Macmillan, 2006), 178.

⁴⁷ Beattie, “Single Women, Work, and Family,” 193.

method of examination in which the petition is examined in-depth for what it reveals about medieval society. In this thesis, I will follow Beattie's method of examining court cases to analyze women's social, economic, and legal rights.

Sara Butler examines several cases from the court of Chancery in her analysis of marital disputes during the fifteenth and early sixteenth centuries. She supports Beattie's argument that despite the absence of the court's decisions, petitions to the court of Chancery can still provide important information to medieval historians. According to Butler, the court of Chancery had developed into an important and "even more powerful option in the resolution of domestic disputes" than common law courts by the late fifteenth century. Butler argues that women used the Chancery more than common law courts because they "felt most comfortable in the legal setting of the court of Chancery."⁴⁸ In their petitions, women often appealed to the notions of chivalry, which could present problems for historians studying the petitions since women could have used fiction or exaggeration to gain sympathy. Despite this degree of fiction, these petitions provide insight into women using the court system through the court of Chancery.

Marjorie McIntosh also uses petitions to the court of Chancery in her study of the status of *femmes soles* in medieval England. While her thesis will be discussed in my chapter on wives, her work is important here in the way she presents petitions to the court of Chancery. Although her focus is the London Mayor's and Sheriffs' courts and not the Chancery, McIntosh does use petitions to the court of Chancery in her argument,

⁴⁸ Sara Butler, "The Law as a Weapon in Marital Disputes: Evidence from the Late Medieval Court of Chancery, 1424-1529," *Journal of British Studies* 43 (July 2004): 291-2.

supporting the notion that these petitions can be used for what they reveal about medieval women.⁴⁹

In conclusion, historians support the notion that women used and even favored the court of Chancery. While the decision of the court to female petitioners is often unknown, the number of women that used the court supports the notion that women must have found at least some recourse in the court of Chancery since they continued to use the court in significant numbers. There were a number of reasons why women used the court of Chancery. As a court of equity or conscience, the court of Chancery was better able to defend the rights of the poor and defenseless than the common law courts. The Chancery was also able to both award damages and enforce verbal contracts. For these reasons women were more likely to find that the court would view their petitions favorably and accept evidence that would not be admissible in common law courts. This thesis will examine petitions from daughters, wives, and widows in an attempt to understand how women used the court of Chancery to defend their legal rights when the common law courts failed to offer this protection.

A more detailed study of the court of Chancery and medieval women is clearly needed. While historians have begun examining women's lives and even using court cases to do this, there has been no full-scale analysis of women and the court of Chancery. Since women were able to act more freely in the court of Chancery than in the common law courts, women's petitions to the court reveal important aspects of their lives. Although women clearly did not have the "rosy" life described by Barron because their

⁴⁹ Marjorie K. McIntosh, "The Benefits and Drawbacks of *Femme Sole* Status in England, 1300-1630," *Journal of British Studies* 44 (July 2005): 410.

right to hold property, run businesses, and enter into contracts was often challenged. They, however, were able to petition the court of Chancery to regain their economic and legal rights. In addition, the court of Chancery was able to provide equity for women who could not find justice in the common law courts.

Through an examination of petitions to the court of Chancery, this thesis will demonstrate the complexity of the lives of medieval women as daughters, wives, and widows and argue that while women could act in public as landholders and heads of households, men often challenged their actions. Despite the fact that common law often provided recourse for women through the court system, this system frequently failed to restore their rights, and women petitioned the court of Chancery to find justice. The fact that women repeatedly petitioned the court of Chancery would seem to indicate that at least a few women were successful. Whether or not these women found justice in the Chancery, however, is beyond the scope and resources of this paper. Instead, this thesis will focus on the voices of the individual female petitioners and their rights and limitations. The importance of these petitions lies not in whether or not the women won their cases but in what the petitions reveal about English women's lives during the late medieval period. In the face of male opposition, a number of women were willing to use the court of Chancery to actively defend their social, legal, and economic rights.

CHAPTER II

DAUGHTERS

Medieval English society, influenced by the writings of Jerome, Ambrose, and Augustine, accepted the hierarchy of virgin-widow-spouse, which characterized women as "those who never have done, those who have stopped, and those who do."¹ Under common law, women were placed into similar categories based on their relationship to a male protector— daughter of, wife of, or widow of. Common law, however, was less concerned with daughters than either of these other categories. According to Barbara Hanawalt, women were limited from the time of their birth simply because they were born female.² Although historians have attempted to demonstrate the superior opportunities and rights women held during the medieval period compared to later historical eras, the simple fact that a child was born female limited her actions. Girls were educated differently than boys, and medieval scholarship viewed women as children, who were never able to fully mature. Hanawalt points out that girls and boys had almost equal treatment under common law; however, girls were able to inherit only in the absence of a legitimate male heir, a practice that emphasized “female inferiority.” While Hanawalt argues that society’s view of girls made them unequal to boys, the

¹ Beattie, *Medieval Single Women*, 15.

² Barbara Hanawalt, *The Wealth of Wives: Women, law, and economy in late medieval London* (New York: Oxford University Press, 2007), 14.

limited sources on inheritance and infanticide make it difficult to prove this inequality. Despite its view of women, English society protected women and their inheritance because of the bloodline.³

Christine de Pizan reflects society's view of girls in *The City of Ladies*. Pizan states that when fathers hear of the birth of a daughter they are "upset and grumble because their wives did not give birth to sons." Worse, the "silly wives" are unhappy that their husbands are upset. Pizan, through Rectitude, argues that this response is a result of "simplemindedness and ignorance" as the parents fear that their daughter will be foolish and naïve. Pizan argues that parents should be happy when they have daughters because instead of being irresponsible and wishing for their parent's death in order to receive an inheritance, daughters would be more willing to care for their parents. While a son "wanders through the world in every direction," the daughter will be "calmer and stay closer to home."⁴

Judith Bennett proposes that after childhood, both daughters and sons enjoyed a period of independence before they married. While boys and girls would be divided into separate spheres for education based on their gender, during adolescence they had similar experiences as they "slowly accrued separate economic resources, developed broader ranges of friends and acquaintances, and assumed the legal obligations of adult villagers."⁵ While women's social network would be smaller and closer to the family than men's, women still enjoyed a period of independence that allowed them to closely

³ Hanawalt, *The Wealth of Wives*, 27, 34.

⁴ *The Writings of Christine de Pizan*, ed. Charity Cannon Willard (New York: Persea Books, 1994), 189-191.

⁵ Bennett, *Women in the Medieval English Countryside*, 71.

parallel the experiences of men. This period of independence for women, however, would end with marriage. The following petitions to the court of Chancery relate to the daughter's transition from adolescent to adult and the issues she faced during this time, including: inheritance, marriage, and employment.

Inheritance

S.J. Payling argues that the late medieval period represented the “last in which there still prevailed a powerful regard for the rights of daughters as heiresses.”⁶ While marriage was often not a requirement for inheritance, most women were married before they received their inheritance. Her marriage and the heirs that would presumably accompany that marriage would ensure that the property remained within the family. Although the use of the property often went to her husband for the length of his life, a wife would retain lineal descent (the property would pass to her next of kin in the absence of a heir). Thus, the property remained the wife's despite her husband's control. Hanawalt argues that “women experienced the same problems as men in defending their inherited real estate, but the right of women to inherit was never questioned.”⁷ Although a number of women faced problems inheriting their property, opposition to their inheritance was not based on whether or not they, as women, had the right or ability to inherit. Instead, the following petitions to the court of Chancery illustrate that women had to defend their inheritance from males, who professed a different claim to the property. In other words, her ability to inherit property was not questioned; instead, the dispute involved her right to inherit a particular piece of property.

⁶ S.J. Payling, “The Economics of Marriage in Late Medieval England: The Marriage of Heiresses,” *The Economic History Review* 54, no. 3 (August 2001): 414.

⁷ Hanawalt, *The Wealth of Wives*, 53-55.

Lady Elizabeth Murreys, a widow, petitioned the court of Chancery to recover the property that her father, John Sawyer, had left to her after Humphrey Monmouth seized it.⁸ According to the petition, for a "longe tyme greate sute, strife, and variaunce hathe bene dependenge in this honerable courte" between Elizabeth, along with her first husband, John Clifford, and Humphrey.⁹ Instead of receiving swift justice, Elizabeth had pursued her case for a number of years as she was twice widowed at the time of this petition. Humphrey claimed rights to the property "by reason of an indenture of bargayne and sale" from John Sawyer. Elizabeth, however, argued that this deed of sale was not the deed to her father's property. Elizabeth and her first husband pursued the case in Common Pleas and before Thomas Audley, at the time Chancellor of England. Thomas Audley ruled that Humphrey and his heirs should retain control of the property until a better title could be produced by Elizabeth and in turn, Humphrey should pay Elizabeth 200 marks for the title.

After the decision Humphrey began the process of selling the land to Sir William Denham but died before the process could be completed. Sir William, however, "entred unto the saide lands and tooke the profites, and yet therof taketh, as thoughe the possession theof had bene lawfullye...conveyed to hym." Before his death, Humphrey had made Sir William and Margery Abbot, his wife, executors of his estate. Elizabeth petitioned the court of Chancery to have either Sir William or Margery return the property to her or pay the amount that had been awarded by the court. Under common

⁸ *Calendars of the Proceedings in Chancery, in the reign of Queen Elizabeth* (London: Eyre and Spottiswoode for the Record Commissioners, 1827-32), 1:cxxxii.

⁹ Quotes from published sources were rendered as they were printed with the exception of modernized capitalization. Quotes from unpublished sources were transcribed according to the style guide published in *A Cambridgeshire Lieutenancy Letterbook, 1595-1605*, ed. E.J. Bourgeois II (Cambridge: Cambridgeshire Records Society, 1997), vii.

law, daughters had the right to inherit their father's property in the absence of a male heir, and thus, Elizabeth's right of inheritance went unquestioned. Instead, this petition involved a dispute over what comprised John's property. Elizabeth petitioned the court of Chancery not to gain her right to inherit but to regain property that she believed should be a part of her inheritance.

Katherine Bell and her husband, John, who was a soldier in Calais, petitioned the court of Chancery to recover Katherine's inheritance, which had been alienated from her.¹⁰ Before he died, William atte Wode, her father, had rented a messuage to Simond Stelhard for the term of seven years during which Simond was to pay William rent yearly.¹¹ The executors of William's estate, however, removed Simond from the property after two years for failing to pay rent. After his removal, the property was alienated to several different people until it finally came into possession of Piers Savage, who occupied the property without having paid for it. While Baker argues that alienation ("the transfer of the ownership of land from one owner to another") could be compatible with the right of inheritance, this was "not without conceptual difficulty." Although the ability to alienate land was essential to a land-based economy, this right often interfered with rights ascribed by common law. In the end, since "*solus Deus facit haeredem*" and not men, the property was rightfully Katherine's and not Piers' despite the alienation.¹² Although Katherine and John often requested the property from Piers, he refused to the "perpetual disherison" of Katherine. They petition the court of Chancery to recover

¹⁰ *Calendars of the Proceedings in Chancery*, 1:xiv-xv.

¹¹ A messuage was land that was occupied by tenants, which meant the owner of the land would receive profits through rent.

¹² Baker, *An Introduction to English Legal History*, 223-224.

Katherine's inheritance because they were too poor and John was too sick to pursue the case in a common law court.

Katherine later filed a second petition to the court of Chancery against Harry Rawe after the death of her husband. A record of the investigation resulting from this petition was documented in the court.¹³ According to the proceedings, Robert Rawe, Harry's brother, had pretended to be the executor of William's estate even though there "weren none; for William deyed without eny testament, or eny wylle iwreten." As was stated in the previous petition, Robert forced Simond Stelard off the land, and the property was alienated to various people until Piers Savage came to possess it. At the time, Katherine had been living in Calais with her husband. When she returned to Rochester, the "folk of Rouchester counseylyd her for to sewe for that place; for Pyers Savage helde hit with strengh and force and unlawfully." Following their advice, Katherine petitioned the Chancery two different times but was unable to achieve a favorable ruling because there was a lack of evidence, both written and verbal. Katherine worked to obtain a letter of record from various officials to prove her right to the property, and the Lord of Rochester, who was investigating the case for the court of Chancery, ordered her to bring the letter before him and a council. The men of Rochester, however, refused to go with her to testify on her behalf because they feared Harry Rowe and his position in the town.

When Katherine went, alone, to the Lord of Rochester, she found her adversaries there attempting to convince the lord to not allow her to testify before him. These men also went throughout town, telling the men that "Katheryne nys but a begger; for she

¹³ *Calendars of the Proceedings in Chancery*, 1:xxxvi-xxxviii.

schalle non recover in this matre dowerye ne heritage" because Harry is "welle beloved among lordis." As a result of his influence and position, when the Lord of Rochester examined the case, Harry Rawe and his men were able to produce men willing to testify on their behalf. Katherine, however, "was there all alone" while they "delyveryd my lord the evidencis that weren contrivyd." Therefore, Katherine was not able to regain her inheritance as a result of Harry's influence. This is a common theme in Chancery petitions. Since the leading men of the county were also the Justices of the Peace and other officials, their influence was connected to the justice system. When plaintiffs failed to receive justice in the common law courts as a result of this influence, they often petitioned the court of Chancery.

Agnes Bale lost her inheritance through the scheming of Nicholas Marchall, ironmonger of London.¹⁴ After her father's death, Thomas Haunsard, Agnes's uncle, became her guardian until her marriage to Robert Bale. In this role, Thomas was granted money, jewels, and property from various family members that he was to deliver to Agnes at the time of her marriage. In the petition, Agnes itemized a long list of money, goods, and property that should be delivered to her as part of her inheritance. First, as part of the marriage contract, Thomas promised Agnes and Robert £100 at the time of their marriage. Thomas and Sir Henry Haunsard, Thomas's brother, also promised to pay for all "expensis and costis as well of arraymentis of your seide besechers as of all other thyngis to be don atte seide mariage." Second, William Haunsard, also Agnes's uncle, enfeoffed Thomas and Sir Henry certain property to the use of John Haunsard, Agnes's

¹⁴ Baildon, *Select Cases in Chancery*, 143-150.

father, and his heirs.¹⁵ Therefore, while Thomas and Sir Henry held the property in their names, Agnes's father and his heirs were to receive the profits and use of the property. Although Thomas and Sir Henry sold a portion of this property, Thomas kept the profits from this sale for Agnes.

Third, John and Ellen, Agnes's parents, entrusted Thomas with 100 marks, jewels, and other household items that were valued at £40. This was to be divided between Agnes and her sister, Joan, when they came of age and married. Joan, however, died at the age of twelve, unmarried, which meant Agnes should have received all of the inheritance. Fourth, Thomas Oswaldkirke enfeoffed property to Agnes's uncles. After this feoffment, all of Agnes's uncles died except for Thomas Haunsard, who held the property for Agnes. During the time Thomas held the property (over sixteen years), he collected rents at nine marks a year, which totaled 144 marks at the time of his death. At his death, Thomas left the property "feble and ruinous" because his poor health prevented him from maintaining the property.

Three days after her marriage, Thomas gave Agnes 100 marks in partial payment of the amount owed to her but kept £342 13s. 4d., goods, and jewels until his death. Agnes and Robert allowed Thomas to keep the money and goods because he was "aged and continued many yeres feble" with no other relatives except Agnes. Since they trusted Thomas, Agnes and Robert did not obtain any written documentation. Nicholas Marchall

¹⁵ Since common law did not permit wills of land, a person would "grant the land to the group of friends on trust to re-grant it after his death to such beneficiary as he should name." Thus, the feoffee (the person entrusted with the property) would be trusted to set up an estate of the property after the feoffor's death to a person or persons named by the feoffor. Feoffment cases are frequent in the court of Chancery because they were not enforceable in common law courts. Baker, *An Introduction to English Legal History*, 211-212.

took advantage of Thomas's situation and estranged Robert and Agnes intending to “defraude” them of their goods. After Thomas’s death, both Nicholas and John Childe pretended to be executors of his will, and Nicholas was able to take all of Thomas’s goods and disinherit Agnes. In answer to her petition, Agnes was awarded 388 marks, which was about 100 marks less than she had requested. The bill does not explain this deduction, but Agnes was able to recover the majority of the amount she had petitioned for.

Clearly, Agnes was to receive the majority of the family inheritance, and it is possible that she could have been the sole heir for the family. In his answer to Agnes's accusations, Nicolas simply denied Agnes's claim because he probably did not have a bloodline claim to the inheritance. If Agnes was the sole heir, this demonstrates the importance of the bloodline since Agnes as a female was entrusted with the entire extended family inheritance.

Another way daughters could be disinherited was through feoffments. Margaret and her husband, Thomas Cotys, petitioned the court of Chancery when Simon Joy sold the property that was to be Margaret’s inheritance.¹⁶ Before his death, Margaret’s father, Bartholomew Coo, enfeoffed Simon Joy and another man with five acres of land and a message with the “entent that they shuld perfourme his last will,” which stated that Margaret should inherit the property. Since it was against common law to will property, people often used feoffments as a way to make sure the intended person received the property. Although the property would be under the name of the feoffee, this feoffee was trusted to set up an estate for the intended heir after the feoffor's death. As the feoffee,

¹⁶ *Calendars of the Proceedings in Chancery*, 2:lxvii-lxix.

Simon was entrusted with the evidences of the property, which meant Margaret had no written documentation to prove her case in a common law court. Although, Margaret and her husband had often requested the property, Simon refused. Thus, Margaret petitioned the Chancery to recover her inheritance.

Simon answered Margaret's petition arguing that Bartholomew had entrusted him with three acres of land that Bartholomew told him to transfer to Margaret, his wife. After Bartholomew died, Simon followed Bartholomew's will and set up an estate for Margaret. In her will, Margaret stated that Simon should sell the three acres and give the profits from the sale to charity for her soul and her friends' souls. After Margaret's death, Simon sold the property to James Bullen and William Hoppes and delivered the evidences of this property to these men. Simon claimed that he never received evidence of the land that Margaret, Bartholomew's daughter, mentioned in her petition. In later replies, Margaret maintained that Simon should set up an estate for her as the rightful heir to Bartholomew while Simon argued that he did not hold the evidence to the property Margaret claimed. Although common law allowed Margaret to inherit her father's property in the absence of a male heir, the lack of written documentation meant that she was unable to prove ownership of the property in a common law court. Thus, Margaret petitioned the court of Chancery to recover her inheritance.

In their petition to the court of Chancery, Richard Sackville and his wife, Margery, attempted to recover Margery's inheritance, which was taken from her through force.¹⁷ During the reign of Edward III, Hugh Cumba owned property in Devonshire. He granted the land to John Shepham but retained the right to 26s. yearly for rent. From

¹⁷ *Calendars of the Proceedings in Chancery*, 2:xviii.

John the property passed through several people before John Gervays made an estate to Richard Mouthecomb. John, Margery's father, inherited the property from Richard. The right to collect rent from the property passed to Hugh's heirs and eventually a distant relative, Henry Fortescue, late justice of Ireland. Although Richard and Margery paid rent, Henry along with several other men "yn the manere of were arraied wrongefully putte oute" Richard and Margery and their tenants. Richard and Margery pursued their case through a common law court, but when the judge was ready to rule in their favor, Henry intervened. Through fraud, Henry was able to invent a judgment and make this verdict official. According to the false judgment, Richard and Margery should have paid him 20s. the previous Easter. Although Richard and Margery stated they knew nothing about this fee, Richard was forced to pay Henry 140 marks as a result of an "untrewe and disceivable entre yn the rolle of a clerke."

In addition, Henry with his brother and several Irishmen came to Richard's house while Richard, his wife, her mother, and children were in bed and "breke thaire dores and cofres with horrible governance, crying, and shotte, and come to his bedde and toke hym with oute warrnt...and caste owte the saide children all naked." They took Richard to prison until they could obtain a warrant from the Justice of the Peace and then sued a writ of *capias* against Richard in order to bring him to London because he had refused to grant the property to Henry. Richard and Margery petitioned the court of Chancery to recover Margery's inheritance because they could not sue in a common law court as a result of "proverte and imprisonment." Henry's influence and actions in the court system also demonstrates that receiving a favorable judgment in the common law court system would have been difficult for Richard and Margery.

Elizabeth Fry petitioned the court to recover her father's property for herself and her sister.¹⁸ According to the petition, John Okyngden, Elizabeth's father, enfeoffed Thomas Onsty, Thomas Hever, and John Michell with three gardens, 46 acres of land, and various appurtenances before his death. After John and his wife, Johanne's, deaths the property was to descend to Elizabeth and her sister Alice. Both John and Johanne's will stated that the feoffees should set up an estate for Elizabeth and Alice after their death, and Johanne, after John's death, said "by her mouth" many times that this was her intention. After their parents' deaths, however, Thomas Onsty refused to set up an estate even though the other two feoffees "are and atte all tymes have ben redy to do in their part of the premysses."

Thomas, however, argued that there were two other daughters, who had a claim to the inheritance. These two daughters, Isabel and Milicent, were not mentioned in the bill, and this omission meant that the bill was invalid. Thomas also stated that since the petition had been filed, Alice had argued that the last testament of her father left all the inheritance to her and that the property should not be divided between herself and Elizabeth. Because of these disputes between the sisters, Thomas refused to set up an estate for either of the heirs until the court ruled. Common law clearly stated that in the absence of an eligible male heir, the property was to be divided equally between the daughters. While Alice stated that her father's testament named her as the sole heir, the fact that she petitioned the court of Chancery instead of a common law court probably meant that she had no written documentation of this testament.

¹⁸ *Calendars of the Proceedings in Chancery*, 2:lxxiv-lxxv.

Elizabeth Mors also used the intent of her father's will to argue her right to the property against the conventions of common law.¹⁹ According to the petition, in his last will Walter Feld, Elizabeth's father, stated that after his death, Thomas Coke was to set up an estate for Thomas Mors (her husband), Elizabeth, and their heirs. Coke, however, refused to set up this estate. In his response, Coke argued that Walter's last will stated that after his and his wife's death, Coke should set up an estate for John and William Feld, Walter's sons. After Elizabeth, Walter's wife's, death, Coke followed Walter's will and set up an estate for John and William.

Male heirs were clearly preferable to female. Baker argues that while sons were the preferable heirs because "male superiority was ordained by God" and they were "more reasonable and capable of managing affairs than women," daughters were not excluded from inheriting property.²⁰ Thus, common law favored John and William as heirs over their sister. While Elizabeth was not excluded from inheriting because she was female, Walter's choice of his daughter over his sons was unusual. In their replication, however, Thomas and Elizabeth Mors argued that Walter's will stated that they should receive the property because they had provided Walter with "mete, drynke, and cloth" for seven years before he died. Thus, the property was to be payment for their caretaking. This case was certainly an exception since the property should have gone to the sons, particularly the oldest male heir, but Thomas and Elizabeth argued that as a result of extraordinary circumstances, Walter had decided to leave his property to his daughter instead of his sons. This demonstrates that although male heirs were the norm, women could have a claim to an inheritance even if they had brothers. Both Elizabeth Mors and

¹⁹ *Calendars of the Proceedings in Chancery*, 2:lxxv-lxxvi.

²⁰ Baker, *An Introduction to English Legal History*, 227.

Elizabeth Fry's cases illustrate that while under common law there were clear inheritance customs, testaments did not always follow these customs. This means that reality did not always follow the law and that daughters had the right to inherit even if there was an eligible male heir.

Margery and her husband, Walter Brown, petitioned the court of Chancery in order to recover Margery's inheritance that her uncle, Edmund Basset, had wrongfully taken.²¹ According to the petition, the crown had been in possession of Margery's wardship after her father's death because she was not of age to inherit the property. The King, however, profited from her property for over six years after she came of age. Instead of Margery recovering the property, Edmund came to possess it as a result of a delay in the execution of a decision from the King's Bench. Margery and Walter petitioned the court of Chancery to recover Margery's inheritance because Walter "hath nothing whereon to live and maintain his wife and his six young children." According to Baker, inheritance was determined according to a "parentelic calculus," which meant that direct lineal descendants were preferred over collateral relatives because of the bloodline.²² Thus, a daughter would always be preferred over a collateral male relative such as a cousin or uncle. This meant that although Edmund was a male relative, common law preferred Margery as the heir because her children would continue the bloodline. Despite this common law view, Margery was denied her inheritance because of problems with the common law court system.

²¹ Baildon, *Select Cases in Chancery*, 74-75.

²² Baker, *An Introduction to English Legal History*, 226.

In their attempt to recover Joan's inheritance, Joan and her husband, Robert Armburgh, petitioned the court of Chancery several times. Since her parents, Geoffrey and Ellen Brokhole, did not have any sons, their property was to be divided between their daughters, Joan and Margery. As executor of her husband's estate, Ellen had reasserted this in her last testament. Shortly after Ellen's death, Margery's son also died. Without her son, Margery no longer had any heirs and at her death her portion of the inheritance should have belonged to Joan. The inquisition post mortem for John Sumpter, the son of John and Margery, in 1426, however, confirmed Christine and Ellen as John's heirs and verified their ages as fifteen and fourteen respectively.²³ These ages meant that Christine and Ellen were old enough to inherit the property without a wardship.

Joan and Robert, however, dispute this claim. In an anonymous account of the case, Christine and Ellen are said to be bastard daughters of John. According to the account, "John holde diuers women by side his wyf which is openly knowen." In fact, Christine and Ellen were not John's only bastard children. The account stated that "a child that is got[en] in suche maner women schuld be called *filius populi*...and may clayme no manne to theyre fader."²⁴ Since they were not legitimate children, they should have no claim to the property. According to Baker, common law required that "the bastard had the same legal rights as any other free man, with the single exception that he could not be heir to his parents."²⁵ Joan asserted her claim to half of the Brokholes inheritance (from her father's ancestors) arguing that John and Margery had two daughters, Christine and Ellen, but that these daughters died when they were eight years

²³ *The Armburgh Papers: The Brokholes Inheritance in Warwickshire, Hertfordshire, and Essex, c. 1417-c.1453*, ed. Christine Carpenter (Suffolk: Boydell Press, 1998), 88-89.

²⁴ *The Armburgh Papers*, 61.

²⁵ Baker, *An Introduction to English Legal History*, 400.

old. In order to retain the inheritance, John "toke 2 bastarde doughters of his owne and put hem oute to his frendys in to the contre and made the contre beleve that thei were the same that he had by his wyfe."²⁶ Through John's scheming, Joan was denied her inheritance, which was worth 40£ a year.

Thomas Bernard, Christine's husband, and James Bellers, Ellen's husband, were able to use the court system to their advantage since both had connections with officials in the court of Chancery and in the common law court system. In a letter written by Robert Armburgh, he argues that they lost their case in the assize of 1432 as a result of Bernard and Bellers's connections. Robert was given "no manere warnyng therinne, art lauful no unlauful" as a result of their connections.²⁷ In response to this action, Robert and Joan petitioned the court of Chancery.²⁸ According to the petition, Joan was not only denied warning, but when she went to the sheriff, the rolls clerk, and had her attorney search the rolls, there was no record of an action against her. As a result, her adversaries "have recovered this lande of your supplicant, and cast her in £40 damagez, notwithstanding that your supplicant wer nat in possession of the lande, ne toke never profit thereof." Since Joan had no knowledge of the action taken against her in a common law court, she was unable to dispute this action and the property was award to John's bastard daughters, which meant Joan would be unable to realize the profits from the property. In addition, Ralph Bellers, Ellen's father-in-law, had questioned her right to any part of the inheritance from her mother.

²⁶ *The Armburgh Papers*, 193.

²⁷ *The Armburgh Papers*, 140.

²⁸ *Calendars of the Proceedings in Chancery*, 2:xiv.

This petition to the court of Chancery was unsuccessful because of the Sumpter heirs' connections to the court. Thomas Bernard was a "squyer of the chauncellers," and James Bellers was the son of Ralph Bellers, who was a prominent member of society.²⁹ In a letter from Robert Armburgh to Ellen, Lady Ferrers, Robert states that Ralph was "dwellyng with the chancellor and marchal of his houshold."³⁰ These connections, however, did not prevent Robert and Joan from petitioning the court of Chancery once again. After the death of James Bellers and Ellen's remarriage, there was a property dispute between Ralph Bellers and Ellen. When Ellen filed a petition in the court of Chancery against Ralph Bellers to recover the property, Joan took advantage of this dispute to file her own petition.³¹ In this petition, Joan called for an examination of Ellen: "where sche was born and in what place sche was cristenyd and who weren her godfader and godmoders and what was her cristen name" along with other details of her family.³² In fact, Joan argued that Ellen was not her name and that she was not of age at the time she inherited the property. Once again, her opponents' connections in the court caused the chancellor to rule in their favor, and Joan was denied her inheritance.

As a result of their attempts to regain Joan's inheritance through the court system, Joan and Robert spent a considerable amount of money in legal fees. These expenses along with their inability to collect rent because of the disputes over their property caused them to become impoverished. Robert wrote several letters to his brother, William Armburgh, requesting money for legal fees. In one letter to William, Robert requested a loan to assist with his legal fees and his daughter's wedding. Robert stated that he was

²⁹ *The Armburgh Papers*, 92.

³⁰ *The Armburgh Papers*, 115.

³¹ Christine Carpenter, introduction to *The Armburgh Papers*, 29.

³² *The Armburgh Papers*, 88.

"grevously vexed at the comune lawe be myn aduersaries." As a result of these vexations, Robert was forced to borrow a large amount of money and requested money from his brother in order to avoid embarrassment when he was unable to repay the loans.³³

Robert also wrote numerous letters to his tenants requesting rent. In one letter, Robert stated that he had not been paid rent for three quarters of the year on land that he held by the "right of [his] wyfe" because of problems keeping the peace.³⁴ Robert exchanged several letters with William Harpour and Richard Barbour, both of whom were tenants on property that was under dispute. These letters illustrate not only Robert's need for money but also the problems he faced collecting rent as a result of the unresolved inheritance dispute. In a letter dated September 15, 1432, Robert asserted once again that William and Richard owed him rent despite the fact that his adversaries had won the rights to the property in court. Robert argued that although they "haven recouered of us the londe by assise stolen oute ayenst us unlauffully with oute eny warnyng," they did not have the title to the property, which meant "schall he resceiue no profites of the londe."³⁵ Instead, Robert should receive payment for the property because he rightfully held the title.

In another letter from roughly the same time, Robert reminds William and Richard that they had promised him the day they took the farm to "kepe my aduersariez oute of the grounde and that thei shuld nat be so hardy to come there on and ful trewely

³³ *The Armburgh Papers*, 102-103.

³⁴ *The Armburgh Papers*, 152-3.

³⁵ *The Armburgh Papers*, 132.

my ferme shuld be payd."³⁶ Once again Robert demands that William and Richard pay him rent instead of the Sumpter heirs. William and Richard were certainly under pressure from the Sumpter heirs to make payments to them. In his letter to Lady Ferrers, Robert stated that since William and Richard had refused to pay rent, Ralph Bellers had taken legal action against them in order to "compellyn hem to paye hys sone."³⁷ The dispute not only resulted in high legal fees but also lost rent for the Armburghs. In the end, Robert and Joan lost their case as a final concord was reached on February 9, 1436, which awarded half of the inheritance to Ellen and James Bellers.³⁸ This concord would be upheld despite continued protests, and after her death, Joan's inheritance would also belong to the Sumpter heirs.

As a result of the actions of the Sumpter heirs taken against Robert and Joan, Joan was denied her inheritance, unable to receive profits from the property, and became improvised attempting to pursue her case in the court system. While historians often refer to the court of Chancery as a court for the poor and weak, these letters illustrate that the pursuit of a case in the court of Chancery could be an expensive affair and that socioeconomic positions were important. Christine Carpenter, however, argues that the actions taken by the Sumpter heirs should not be seen as corruption. Instead this case demonstrates the "inseparability of private power and private influence from the official public processes," and she argues that "this was not seen normally as a form of 'corruption' but accepted as part of the way the body politic functioned."³⁹ As prominent men in society, Barnard and Bellers were simply using the resources they had available to

³⁶ *The Armburgh Papers*, 136.

³⁷ *The Armburgh Papers*, 115.

³⁸ *The Armburgh Papers*, 188.

³⁹ Carpenter, introduction to *The Armburgh Papers*, 40.

win their case. Robert Armbugh, however, was a man on the rise with few societal connections. This meant that he was at a disadvantage in the pursuit of his wife's case even in the court of Chancery.

Daughters not only could receive inheritance from their fathers but also their mothers. Since a woman's property became the property of her husband at the time of her marriage, most mothers entrusted property to daughters only after their husbands' deaths. While the amount of control married women were able to exert over their property certainly depended on their husbands, Mate argues that some women would "transfer part of their inheritance to their daughters" using their husbands' approval.⁴⁰

Catherine Flykke and her husband, John, petitioned the court of Chancery to recover Catherine's inheritance that her mother, Alice Bell, had entrusted to her.⁴¹ Sir Thomas Sutton and Sir James Cay, who were both priests, were enfeoffed with forty acres of land to the use of Alice Bell and her heirs. In other words, although Thomas and James held the property, Alice and her heirs had the right to the profits and use of the property. These men, however, enfeoffed the property to Thomas and Alice Banyard in trust, which meant they were to follow Alice Bell's will at the time of her death. Since the property was held in trust instead of on condition, Alice could wait to name her heir.⁴² At the time of her death, Alice stated that John and Catherine were to receive the property after they paid her executors £20. Although John and Catherine were ready to pay the fee and receive Catherine's inheritance, Thomas refused to set up an estate for the couple.

⁴⁰ Mate, *Daughters, Wives and Widows after the Black Death*, 79.

⁴¹ *Calendars of the Proceedings in Chancery*, 1:cxv.

⁴² While the heir of the property had to be named at the time of the feoffment when the feoffment was held under condition, a feoffment held in trust did not require the immediate naming of an heir. Baker, *An Introduction to English Legal History*, 211.

Thomas answered the petition stating that he had not set up an estate because the property was under dispute. According to Thomas, Richard Bell had claimed that Alice had willed the property to him and that it was rightfully his. His answer does not state Richard's relation to Alice. If he was a son, under common law, his claim to the property would have been stronger than as a collateral heir. As previous petitions illustrate, however, testaments did not always follow common law custom, and Alice could have had a legitimate claim even if Richard was a lineal heir.

Margaret and Henry Salveyn petitioned the court of Chancery to recover the right to control the inheritance Margaret's mother, Maud Danby, had left her.⁴³ As a widow, Maud made Margaret and William Holbek of York co-executors of her estate. At her death, William Thorp still owed Maud a sum of money for woolen clothing he had previously bought from her. When Holbek and Margaret took action against Thorp to recover the debt, however, Holbek and Thorp made an agreement, which forgave Thorp's debt and blocked Margaret from any further action in the common law court system regarding her mother's property. Margaret petitioned the court of Chancery to recover her right to perform her mother's last testament as executor.

These petitions to the court of Chancery illustrate the fact that daughters did have the right to inherit property. While many daughters had difficulty recovering their inheritance, this was not necessarily because they did not have the ability to inherit. Instead, daughters often faced male opposition to their inheritance rights based on the threat this presents to gender relations. Many men saw women's ability to inherit as a weakness that they could exploit in order to gain property. These women, however, were

⁴³ National Archives, C1/28/390.

able to actively defend their right to inherit through the court of Chancery. It is also evident that inheritance customs were complex and did not necessarily follow common law. Although common law favored male heirs, these petitions reveal a wide variety of heirs that were able to claim the right to inherit, including daughters.

Wardship

The possibility that a daughter would inherit made the wardship of daughters particularly valuable. While both male and female wardships could be profitable because of their inheritance and the profits that the holder of the wardship would realize during the ward's nonage, female wardships were especially profitable because of their marriage potential. According to Baker, "guardians received into ward not only the heir's land but also the heir's body." This gave the guardian not only profit from the land, but also the right to find a suitable marriage partner.⁴⁴ By marrying the ward to a member of the family, her inheritance would be incorporated into the family's wealth. Her marriage could also be sold at a high price to a man hoping to use her socioeconomic position to move up in society. The wealth associated with these wardships meant that common law had to be concerned with the abuses of wardships. According to Hanawalt, the marriage of an orphan in the city of London required the permission of the mayor and aldermen in order to insure that the child was not forced to marry below his or her social rank.⁴⁵ As the following petitions to the court of Chancery illustrate, this wealth and control over a wardship was a valuable asset.

⁴⁴ Baker, *An Introduction to English Legal History*, 206.

⁴⁵ Hanawalt, *The Wealth of Wives*, 24-25.

Joan, the widow of Stephen White, petitioned the court of Chancery after the wardship of her daughter had been stolen.⁴⁶ Before he died, Stephen enfeoffed several men with property in Cranbrook. These men were to ensure that the profits of this property went to Joan until Katherine, their daughter, came of age. Thus, "by virtue of which [Stephen's] will the said suppliant had the wardship of the said Katherine and the profits of the said lands and tenements." Thomas White, one of the feoffees, however, "wrongfully took the said Katherine out of the possession of the said suppliant." Thomas not only physically took Katherine, but he also took control over her wardship and the profits from the land. Joan petitioned the court of Chancery to recover the rights to this wardship and the profits associated with it.

John Weston also petitioned the court of Chancery to regain his possession of a wardship.⁴⁷ The mayor of London, Robert Chicheley, granted John the wardship of Thomas Cosyn, which went with several tenements in London. While Thomas was under the wardship of John, he became engaged to Maud, John's daughter. Thus, the inheritance would remain within John's family. Joan, Thomas's mother, however, removed Thomas from John's governance with the assistance of John Fox. Joan and John kept Thomas in Greenwich where he was "detained against his will" because they desired to "marry the said infant [Thomas] to another woman at the will of the said Joan and John Fox for to have gain by the same marriage." In this way, Joan and John stood to profit from the marriage of Thomas instead of John Weston. The main dispute of this case was the right to control Thomas's marriage and thus, his inheritance.

⁴⁶ Baildon, *Select Cases in Chancery*, 95.

⁴⁷ *Calendars of the Proceedings in Chancery*, 1:xv.

Marriage

The prospect of profit from the marriage of a daughter was an important part of the marriage contract. While this contract will be discussed in more detail in the next chapter, it is important to note here the significance that the marriage of a daughter had for the family. Although most couples married within their own socioeconomic class, the marriage of a daughter to a wealthy family was viewed as a way to improve one's social standing. Marriage was clearly important to the economic structure of both families.⁴⁸

Thomas Appleton petitioned the court of Chancery to recover a marriage fee from William Aleyn, who had taken his right to marry his daughter.⁴⁹ William along with his father and various other men came to Thomas's house "with force and armes on horsbak in maner of werre, riot, and rowte" and "in maner of rebellion and insurrection ayens the dygnyte of our soveraigne Lord the Kynge." William took from Thomas's house his daughter and heir, Anne, who was twelve years old. William then "ravisshid be force vileynously" Anne and married her "ayens the wille of here seid fadir." Thomas argued that by marrying Anne against his will, William had taken the 200 marks he would have received if he had been able to marry Anne to a prominent member of society. William, however, did not have any land in England or even a promise of an inheritance.

Since William was a clerk in the counting-house of the King, he was able to use his connections to prevent Thomas from bringing an action against him in the common law courts. He was also able to put Thomas in "fere of his lyf and compellid him untrewly be oppression to make a feffement of all his londis." In this way, William was

⁴⁸ Hanawalt, *The Wealth of Wives*, 70.

⁴⁹ *Calendars of the Proceedings in Chancery*, 1:xxxix-xxxii.

able to take control of all the profits from Thomas's property. Thomas petitioned the court of Chancery to recover his property and the profits that he had lost the past two and half years during which time William had control of his property. Through the marriage of his daughter, William was able to rob Thomas of an important method of gaining socioeconomic standing in the community and eventually the right to his property.

William Saxmendham presents a similar case.⁵⁰ William petitioned the court of Chancery after his right to marry his daughter was denied in order to recover property lost in the marriage. Thomas Wyther convinced Agnes, William's daughter, to contract to marry him against the will of her father. Thereby, they "defiled the will of your besecher her fader." After their marriage, William demanded that Thomas present in writing evidence to testify to his identity. Thomas, however, produced a forged testimony stating that he was "good and virtuous and single." Once this evidence was produced, Thomas and Agnes "were wedded and after had a child." After the child's birth, however, Thomas's first wife from Saint Albans appeared demonstrating that Thomas had been "untrue" in his statement that he was single. In order to retain his control over the property gained from his marriage to Agnes, Thomas convinced John Nunny and another to petition the courts for the goods and property. Through several actions in the court, John and others were able to take William's property and force William and Agnes from Hartfordshire. Thus, William petitioned the court of Chancery to recover his property. In these cases, the marriage of a daughter, allowed both these men to take control of her father's property. Clearly, the marriage of a daughter,

⁵⁰ National Archives, C1/40/94.

especially if this daughter represented the family's sole heir, was important in retaining control of the property.

Work and the Single Woman

While their options were limited, single women were able to enter the work place. Although many of these women worked only to earn a dowry and would work a variety of tasks to support the household once married, some women remained single and supported themselves through various trades. These trades included: domestic work, brewing, or textiles.⁵¹ Hanawalt argues that although "women's work was essential for the medieval economy in both the rural and urban areas," they were not well paid.⁵² Despite the fact that women consistently earned less than men, medieval women were able to support themselves without the aid of husbands. The following petitions examine the two most common professions of single women: domestic service and textiles.

Once employed in domestic service, the head of the household assumed the role as the woman's authority figure replacing her father or husband. Female domestic servants tended to be young and mobile and few remained with any one employer for a long period of time.⁵³ The lack of sources as a result of their mobility and socioeconomic position means that little is known about the experiences of these women. While most appear to be well cared for, female servants received little or no pay outside lodging, food, and necessities.⁵⁴

⁵¹ Jennifer C. Ward, *Women in England in the Middle Ages* (London: Hambledon Continuum, 2006), 82.

⁵² Hanawalt, *The Wealth of Wives*, 160.

⁵³ Ward, *Women in England in the Middle Ages*, 82-83.

⁵⁴ Mate, *Daughters, Wives and Widows after the Black Death*, 46.

Roger and Alice Benyngton's petition to the court of Chancery reveals little about the daily life of their servant, Margaret Elyngham, but the petition does demonstrate the economics involved in employing a domestic servant.⁵⁵ The Benyngtons hired Margaret on July 7, 1429, and she was to serve them for four years. The petition does not specifically state what or how much Margaret was to be paid, but it does prove that the Benyngtons and Margaret had a contract that held Margaret for four years. According to Hanawalt, service contracts usually last for a year and were made between the master/mistress and the servant.⁵⁶ Thus, Margaret's contract was much longer than the norm.

Margaret's father, John Elyngham, however, disputed this contract. John argued that the Benyngtons had "stolen and done away the forsaide Margaret." Although John and his wife knew where Margaret was and had visited her and requested that she return home with them, Margaret had refused and continued in the service of the Benyngtons. Since the contract was between the Benyngtons and Margaret, not her father, the choice to enter into domestic service was Margaret's. During this time period, the general depopulation meant that domestic servants were in high demand, and Hanawalt cites a case of a seven-year-old girl being forced into domestic service against the will of her mother.⁵⁷ There was no indication of Margaret's age in the petition despite the importance of this in determining the validity of her contract. Clearly, Margaret exhibited a considerable amount of independence in entering into this contract without the consent of her father.

⁵⁵ *Calendars of the Proceedings in Chancery*, 2:xi.

⁵⁶ Hanawalt, *The Wealth of Wives*, 188.

⁵⁷ Hanawalt, *The Wealth of Wives*, 188, 190.

Since Margaret refused to return home, John went to the mayor of London, William Estfeld. William ordered Margaret to appear before him so that he could determine the matter, but when Margaret appeared at White Chapel, John "lay in a wayte for hir....and there he toke the saide Margaret into his service." When the Benyngtons attempted to regain their servant through the mayor, John petitioned the court of Chancery. The bases of this case concerns the economic contract presumably made between the Benyngtons and Margaret. While the Benyngtons desired Margaret to fulfill her portion of the contract, her father prevented this from occurring.

On the other end of the socioeconomic spectrum there were silkwomen. According to Hanawalt, "the silkwomen of London enjoyed the most independence and wealth in their trades of all women." Even though the women did not form a formal guild in England, they represented a strong network of women.⁵⁸ Since silkwomen had to be trained, most were from a higher socioeconomic status than other women who worked. Also, unlike domestic servants, silkwomen were more stable and frequently remained in the field for the majority of their lives whether married or single.⁵⁹ Joan Woulbarowe's petition to the court of Chancery provides insight into the relationship between an apprentice and her mistress in the industry.⁶⁰ According to the petition, six or seven years earlier Joan's mistress, Katherine Dore, had ordered her to deliver silk to various women. After Joan made these deliveries, Katherine accused her of not paying for the silk and forced Joan to remain in her service for a certain period.

⁵⁸ Hanawalt, *The Wealth of Wives*, 177.

⁵⁹ Hanawalt, *The Wealth of Wives*, 180.

⁶⁰ National Archives, C1/27/482.

Immediately after Joan's time of service to Katherine had ended, however, Katherine had her arrested stating that Joan owed her for the silk that she had delivered. In addition, Katherine argued that Joan's term of service was not over and that Joan needed to pay for the remainder of her term. Katherine argued that Joan owed her £7 for the silk, £6 for the year of service still owed, and 12*s.* 3*d.* for other costs. Joan, however, argued that Katherine had already received £16 from the women for the silk and wages and that she had already completed her term of service. Joan petitioned the court of Chancery to be released from this debt that she argued she did not owe. In both these petitions, single women entered into contracts of service, which allowed them to earn a living and, in Joan's case, learn a valuable trade. While Joan could marry, her training as a silkwoman provided her with a useful skill, which would allow her to remain single and support herself.

Conclusion

These petitions to the court of Chancery clearly illustrate that daughters in medieval England were active in the court system through the court of Chancery. Although daughters were ensured some rights through common law, males often challenged these rights. In the face of these challenges, daughters actively used the court of Chancery to defend their rights. While daughters had the common law right to inherit property and were even preferred if there was no direct male heir, they often had to protect this right to their inheritance from relatives, executors, feoffees, and others. The fact that daughters faced some of the same problems as sons in attempting to secure their inheritance and that they were able to use the court system to protect their rights demonstrates that daughters and sons were viewed similarly under common law. While

marriage was not a requirement for daughters to receive their inheritance, in all of the above cases the women were married before they pursued their case in the court of Chancery. This indicates that daughters were more likely to use the court system with the help of a male protector despite the fact that later in their life, especially during widowhood, women frequently used the court of Chancery without the support of a husband. The recourse the Chancery offered women allowed them to defend their right to inheritance in the face of male opposition. From these petitions, it is clear that women had the right to inherit property and that while common law had clear guidelines on inheritance, testaments could be quite varied and complex, even allowing daughters to inherit over direct male heirs.

As a result of this possibility of inheritance, the wardship of a daughter could be quite valuable. Obtaining the right to a female wardship, meant control over her marriage partner. Since a woman's property became her husband's at the time of her marriage, this control over her marriage meant control over her property. While guardians, frequently males, were meant to insure an equitable marriage partner for their ward, wealthy daughters presented a means for a family to move up in society during a time when there were few opportunities for upward mobility. This also meant that the ability to marry a daughter was important to the family. As these cases illustrate, a daughter served an important function in the family through her marriage possibilities. While families might have preferred male heirs, daughters could be valuable because of their ability to inherit.

Not all women choose to marry. Their ability to enter the work force meant that women could remain single and support themselves. While women's options were more limited than men's and they were paid significantly less than men, women did have

another option besides marriage. As these petitions illustrate, when they entered the work force, women often formed contracts with their employers. Margaret's contract against the will of her father illustrates that women's fathers or guardians did not have to be involved in the contract and that women had the right to form these contracts on their own. While domestic servants and silkwomen would have two completely different experiences, both entered into economic contracts for their services.

As daughters, women were important because of their ability to inherit property. While this ability did not always mean that they were able to inherit as a result of male challenges to their position as heiresses, it is clear that women had this right. Women also had the right to enter into contracts that would allow them to work and support themselves independently of their families, including their fathers. Most women, however, only worked to earn money for a dowry and would eventually marry. Through marriage, women were able to acquire protection for themselves and their property. At this time, a woman would cease being the daughter of and become the wife of. This would be an important transition in her life as her rights and duties would dramatically change.

CHAPTER III

WIVES

While common law clearly defined the rights of married women or *femmes couvertes* in medieval England, there was a difference between law and practice. Once married, the law saw the husband and wife as one person, the husband (except in criminal cases).¹ Thus, the wife could not own property, enter into contracts, or sue in a court of law without her husband. J.H. Baker, however, states that this was a “legal fiction” as reality rarely followed the law.² There were exceptions to these laws as a wife could conduct business in her husband’s absence and could appear in courts for various reasons.³ Judith Bennett argues that once married, women lost the social, economic, and legal rights they had held when single, but that they would regain these rights once widowed.⁴

Clearly, married women were more limited in their legal, economic, and social actions than widows or even never married women. In the social structure of virgin-widow-spouse, married women would be at the bottom of the moral social hierarchy despite the expectation that most women would marry. Although Christine de Pizan

¹ Baker, *An Introduction to English Legal History*, 395-398.

² Baker, *An Introduction to English Legal History*, 395.

³ Ward, *Women in England in the Middle Ages*, 38.

⁴ Bennett, *Women in the Medieval English Countryside*, 139.

cautioned women that not all marriages were happy, she still encouraged them to marry. Pizan warns women that “men are masters over their wives, and not the wives mistresses over their husbands, who would never allow their wives to have such authority” and while there were happy marriages in which the man loves his wife, other wives were not as lucky.⁵ She, however, instructs women to remain with their husbands no matter what type of men they were because “sometimes it is not the best thing for a creature to be independent.”⁶ Thus, Pizan was arguing that marriage, even a bad one, was preferable to being single. Although medieval moralists and society praised virginity, Pizan argues that marriage was good for women on a practical level. Although married women lost economic and legal rights under common law, they were able to overcome these limitations. Petitions to the court of Chancery demonstrate that wives held an ambiguous legal and economic position as they could manage property, conduct business, and act in the court system without their husbands.

Marriage Contracts

While couples often married for love, there was still an economic contract between the two families that impacted both the families and the community. According to Barbara Hanawalt, “marriage was both a contractual agreement and an emotional investment.” The economic contract, which created the “new economic unit,” was twofold as it involved both a dowry and a dower.⁷ A dowry or *maritagium* could be granted to either the wife and husband jointly or simply to the wife or the husband individually. This eventually developed into the marriage portion, which was a monetary

⁵ *The Writings of Christine de Pizan*, 194.

⁶ *The Writings of Christine de Pizan*, 206.

⁷ Hanawalt, *The Wealth of Wives*, 69-70, 78.

payment from the bride's family to the groom's.⁸ As petitions to the court of Chancery demonstrate, these contracts were both varied and complex. Clearly, money was important to a marriage contract, and when this contract was not upheld, the couple would often be unable to establish their own 'economic unit.'

An example of a failed economic contract can be seen in William Cokayn's petition to the court of Chancery.⁹ William argues that a "communication of marriage" was made between himself and Amy, the daughter of Thomas Hurst of Ashwell. The contract of marriage stated that upon their marriage, William was to set up a joint estate of lands and tenements worth 40s. yearly, and Thomas was to give William and Amy several estates worth over 45s. a year. By establishing the property as a joint estate, it would be the possession of both the husband and the wife and would pass to the wife if the husband died first. A jointure served a purpose similar to a dower and was often used instead of a feoffment.¹⁰ This jointure would have satisfied the dower portion of the economic contract formed through the marriage of William and Amy. In return for the marriage and jointure, Thomas, Amy's father, was to give the couple a messuage worth 20s. a year and 30 acres of land worth 25s. a year. This represents the dowry portion of the economic contract and would have allowed William and Amy to set up their own economic unit.

While William states that he "hath well and truly performed almaner of thynges abouesayd touchyng his partie," Thomas failed to set up the estate. As a result of this

⁸ Conor McCarthy, *Marriage in Medieval England: Law, Literature, and Practice* (Suffolk: The Boydell Press, 2004), 55-57.

⁹ Baildon, *Select Cases in Chancery*, 141.

¹⁰ Baker, *An Introduction to English Legal History*, 230.

breach in contract, William petitioned the court for a writ of *dedimus potestatem*, which would allow the case to be tried through a commission.¹¹ William states that this writ was necessary because Thomas was “visited with suche sikenes that he may not travayle.” This could possibly be the reason William was petitioning the court of Chancery instead of a common law court. Baker explains that the flexibility of the Chancery allowed it to deliver “swift and inexpensive justice for the poor and oppressed.” Instead of following set procedures, the court of Chancery had flexibility of movement that allowed the court to deal with special circumstances.¹² A writ was issued to John Leek and Walter Tayllard granting them the right to investigate the case. On the back of the petition, an endorsement states that upon their investigation, John and Walter discovered that the petition William submitted to the court was “true and just.” Although Amy had died, which explains why she was not involved in the petition, there was a surviving heir and Thomas was required to set up the promised estate for William and his heir.

Another example of a broken marriage contract is the petition of John Hamelton, esquire, and his wife, Elizabeth, against the father of Elizabeth’s first husband.¹³ In 1454, Elizabeth’s father, Thomas (Lord Clyfford), and Sir William Plompton agreed that Elizabeth and William, the son, were to be married. Thomas presented £300 to William Plompton, which was given to his father before the marriage. The petition states that the marriage took place because of the “grete labour” of Sir William, which suggests that Sir William favored the marriage and probably saw it as an advantage to himself and his son

¹¹ Baker, *An Introduction to English Legal History*, 88.

¹² Baker, *An Introduction to English Legal History*, 88.

¹³ National Archives, C1/31/330.

because of the large dowry that Thomas provided William. After the marriage, Sir William was to set up an estate for William and Elizabeth and their heirs.

Once the marriage occurred, however, Thomas, Elizabeth's father died, and Sir William never established the estate. The petition does not explain why Sir William refused to set up the estate, but sometime after the marriage, William, the son, died. The petition does not state how long after the marriage William died or how long Elizabeth was a widow after his death. As the petition was submitted sometime between 1465-71 or 1480-83, however, the time frame of these events could be anywhere from 11 to 29 years. Since Sir William broke the marriage contract, Elizabeth and her second husband petitioned the court of Chancery for the estate that had been promised to Elizabeth upon her first marriage.

John Playstowe, a London fletcher, petitioned the court of Chancery when Elizabeth King failed to fulfill her portion of the marriage contract.¹⁴ According to the petition, Elizabeth had promised John a sum of money if he would marry her cousin, Margret King. Since John trusted Elizabeth to "perform her seid promise," he married Margret without a written contract. While Elizabeth paid a portion of the promised sum, she refused to pay the remainder. Since he had not obtained a written contract, John could not pursue his case at common law and thus, had to petition the court of Chancery. The petition does not provide any background information about Elizabeth or Margret. Since John contracted his marriage with Elizabeth and not Margret's father, Margret's father was probably dead and Elizabeth controlled Margret's wardship. The petition does

¹⁴ National Archives, C1/59/36. According to the *Oxford English Dictionary*, a fletcher is "one who makes or deals in arrows."

not state Elizabeth's marital status, but she was a woman acting with legal authority since she was able to hold a wardship and arrange and enter into a marriage contract for her cousin.

While many couples married for love, these petitions indicate that economics played an important role in the marriage contract. In several of these petitions, finances were the main factor in the marriage. The petitions also demonstrate that economic contracts were not simply based on a dowry from the bride's family to the groom's but could include a variety of economic agreements. Clearly, the main purpose of the marriage contract was to help the newly wedded couple to become an economically independent unit through either property or money, and the failure to fulfill the contract would impact the couple's ability to support themselves independently from their families.

Adultery

Not all couples were faithful to the marriage contract. While adultery was primarily under the jurisdiction of the church, there were circumstances where it became the matter of English common law. R.H. Helmholz argues that this often happened with bastardy litigation because no matter the “ideological problems...jurisdiction over land was always at its center.”¹⁵ The following petitions illustrate the complexity of the issue. While the fact that the Roman Catholic Church viewed adultery as a sin made it the jurisdiction of ecclesiastical courts, the economic and legal consequences of the action were the jurisdiction of secular courts. Since marriage was viewed as a contract,

¹⁵ R.H. Helmholz, *Canon Law and the Law of England* (London: The Hambledon Press, 1987), 188.

primarily based on economics, adultery would be viewed as a break in this contract with economic consequences.

Elizabeth Montagu submitted a petition to the court of Chancery against her husband, who had committed adultery.¹⁶ Elizabeth stated that Thomas, her husband, and Margaret had been in a well-known relationship for a “*long temps ad continus.*” Elizabeth petitioned the court after Thomas had taken Margaret to Stratford atts Bowe and continued the adultery there, an indication that Thomas and Margaret were living together despite the fact that Thomas was already married. This resulted in the “*destruction du dits suppliant*” since Elizabeth no longer had the support of her husband. While Thomas’s affair with Margaret was clearly a sin, or church issue, the fact that he left his wife without the economic means to support herself was a matter for the court of Chancery.

In his petition to the court of Chancery, John Meverell, a priest, argued that Robert Saunson openly engaged in adultery.¹⁷ Since Robert, “not dredying ony shame nor sentence of the churche,” refused to repent, John obtained a writ of *excommunicato capiendo* against him. Robert, however, continually refused to repent of his crime and fled to London where he obtained an office. Although John travelled to London in order to press charges against him, Robert was able to obtain an action of trespass against John. As long as the case was only concerned with Robert’s adultery, it was under the jurisdiction of the ecclesiastical courts, but once Robert acted in a common law court, the matter became a concern of the secular court system. John petitioned the court of

¹⁶ National Archives, C1/4/116.

¹⁷ *Calendars of the Proceedings in Chancery*, 1:cv.

Chancery to have Robert answer to both the charges of adultery and the wrongful action of trespass. Robert's wife was not mentioned in the petition, and there is no indication of whether she moved to London with him or her involvement in the proceedings, but she would have been impacted by Robert's actions and his move to London.

Even the rumor of adultery could be damaging. Alison Walssh and Elizabeth Tracy argue in their petition to the court of Chancery that Sir Geoffrey Metyer was a “man of grete misrule and a grete sower of discorde” between men and their wives.¹⁸ Alison and Elizabeth charge that Sir Geoffrey was using certain language about wedded men and wedded women that indicated they were involved in double adultery. The petition does not name any couple in particular, but Alison and Elizabeth were both married. They first petitioned the officials at Dorset, but Sir Geoffrey threatened the women and the officials so that they were all in “fere of ther life.” The threats and force Sir Geoffrey used against the women and the officials made this case a matter for a secular court. Since Alison and Elizabeth could not pursue their case through the officials at Dorset, they petitioned the court of Chancery to have Sir Geoffrey appear before the court and answer to the charges. There is no indication that adultery was actually being committed, but the slanderous language was enough for Alison and Elizabeth to petition the court. Noticeably absent from the petition are these women's husbands. While Alison was the wife of Richard Walssh and Elizabeth was the wife of John Tracy, there was no further mention of the husbands. These women brought the petition before the court without the obvious aid of their husbands. This could be because adultery was a

¹⁸ National Archives, C1/28/479.

much more serious offense for women than men, and the charge that these women had committed adultery impacted their social standing.

John Westowe petitioned the court of Chancery in response to the scheming of Richard Rede to make it appear that John and Katherine, Richard's wife, were engaged in adultery.¹⁹ Richard presented Ellene Faux with a gown as payment for her services as a "bawde" to bring together Katherine and John.²⁰ Richard then openly announced this throughout town and proceeded to place bets on whether his wife, as a "strumpet," would "assente and suffre the seid John Westowe to lye by here." Richard also paid a priest 20£ to testify before a judge that John and Katherine had committed adultery so that Richard could recover a penalty from John. The petition does not reveal whether or not Katherine was actually the "strumpet" Richard claimed she was, but John petitioned the court of Chancery in order to clear his name of any wrong doing. John probably petitioned the court of Chancery instead of an ecclesiastical court because Richard was attempting to recover a fine from John in the common law courts. This made the issue secular rather than moral. These petitions illustrate that while adultery was a serious offence against the church, the breaking of the marriage contract or even the accusation of a break in the marriage contract had economic and political consequences that made adultery a secular crime.

Property Management

Mavis Mate argues that "as a married woman – a *femme couverte* – under the legal authority of her husband, her land and its legal responsibilities would be taken over

¹⁹ *Calendars of the Proceedings in Chancery*, 1:xxii.

²⁰ According to the *Oxford English Dictionary*, a bawde is "one employed in pandering to sexual debauchery."

and managed by him.” Thus, according to common law, married heiresses would not have control over their inheritance. While married women could influence decisions over the property and in some cases will their land to their daughters, their husbands had to approve all decisions.²¹ There are, however, examples of a woman actively managing property “as though she were a single woman (*come femme soule*)” despite being married. While in London a married woman had the ability to act as a *femme sole*, Cordelia Beattie argues that women could also claim the status of *sole* in petitions to the court of Chancery in order to gain sympathy from the court.²² Marjorie McIntosh, however, argues that remaining *femme couverte* present more benefits to married women because they could manage businesses independently of their husbands while retaining the protection their husbands offered. In fact, McIntosh argues that few married women actually claimed the status of *femmes soles*.²³ Whether as *femmes soles* or *femmes couvertes*, some wives certainly maintained control over their property.

This is illustrated in the petition of Juliana, wife of Thomas Walker.²⁴ In the petition, Juliana claims that while she was single, she came into possession of lands and tenements in Tamworth as a result of the nonage of John, the heir of Thomas de Bernes. According to the petition, Juliana was John’s “next friend, to wit, mother of the said John.” Here the term *friend* means a kinswoman, and Juliana was probably the closest relative to John on his mother’s side. As a result of this relationship and since John was not old enough to inherit the property, Juliana received his wardship and with it control of the property until John came of age. Thomas Archer, however, “with the strong hand

²¹ Mate, *Daughters, Wives, and Widows after the Black Death*, 77-79.

²² Beattie, *Medieval Single Women*, 28.

²³ Marjorie K. McIntosh, "The Benefits and Drawbacks of Femme Sole Status," 412.

²⁴ Baildon, *Select Cases in Chancery*, 52.

against the said Juliana” invaded her property and cut and carried away her corn and wheat, which was worth £20. Archer, with many men and weapons, also stole a bull and a cow and assaulted one of her servants, Thomas Arnald. In total, the damages came to £40.

In a second petition to the court of Chancery, Thomas and Juliana Walker argued that Thomas Archer had also menaced one of their tenants, John Notehurst. The property had been leased to John for ten years and yielded a profit of seven marks a year to the Walkers. As a result of Archer’s invasion, however, John was no longer able to occupy the property and the Walkers had been unable to find a replacement tenant. Thus, Archer not only cost them damages to the property but also future revenue from rents. Archer also fished in their water, either a river or pond, and stole a number of fish. In the first petition, Juliana states that she was single when she received the property through a wardship. While this might be true, Juliana also might be claiming this in order to gain the court’s sympathy. What is clear is that the events in the first and second petition occurred while Juliana was married. Archer took Juliana’s grain and wheat on the Monday after the feast of the Nativity and he took fish from her property on the Friday next before the feast of the Nativity of the same year. This means that the property was clearly under Juliana’s control and management after her marriage.

John Goold’s petition to the court of Chancery describes the control his wife, Agnes, maintained over her property during their marriage. John Goold petitioned the court after the death of his wife to recover land Agnes had stated that he should receive.²⁵ According to the petition, Agnes had made John Petit a feoffee of 72 acres of land and

²⁵ *Calendars of the Proceedings in Chancery*, 2:xxxviii-xl.

eight acres of meadow before she married Goold.²⁶ Agnes could have either inherited this property or received it through her dower. In either case, she was a *femme sole* managing her own property at the time of the feoffment. According to the petition, Petit was instructed to set up an estate for Goold and his heirs at the time of his wife's death.

After Agnes's death, Petit retained the property but was always ready to return it upon Goold's request. Goold stated that he allowed Petit to keep the property "in his hand" because he trusted him to eventually return it. Thirteen years later, Petit died still in possession of the property. During this time, Petit allowed Goold to receive profits from the property, which is probably why he had not requested it. After Petit's death, the feoffment passed to his sons, William and John Petit. At this time, Goold requested the property returned to him because he was no longer receiving the profits. William and John, however, refused to set up an estate for Goold against the will of Agnes. Goold petitioned the court of Chancery in order to recover the property and fulfill Agnes's will. John probably had to petition the court of Chancery instead of a common law court because he did not have Agnes's written will, if one had ever existed. This appears to be an informal agreement made between Agnes and Petit. Agnes, however, had been the clear owner of the property, and even her husband used her intent in his argument for rightful possession of the property. This case resembles the feoffments husbands often set up in order to support their wives after their death. Since it was against common law to will land, husbands would set up feoffments that were to benefit their wives after their

²⁶ As noted earlier, a feoffee is "a trustee invested with a freehold estate in land" (*OED*). This means that although the property was in John's name, Agnes had trusted him to follow her will in regards to the property.

death. In this case, however, the roles are reversed as the wife intended to support her husband after her death.

In his answer to the petition, William Petit states that Agnes had enfeoffed the property to his father before her marriage to John Phylpot. After their marriage, Agnes stated that William's father or his heirs should set up an estate for Phylpot and their heirs. Phylpot and Agnes had a son, William Phylpot, before John died and Agnes married Goold. William Petit states that at his father's death, the property was divided between himself and his brother and that he offered his share of the property as an estate to William Phylpot, who was the rightful heir of the property according to Agnes's will.

In his rejoinder, Goold states that John Petit, the son, was "ready and always hath been since the death of his father" to set up an estate for Goold with his portion of the property according to Agnes's will. Goold also states that from Agnes's death until the elder Petit's death, he had been receiving profits from the land. This suggests that Petit viewed him as the rightful recipient of the profits. This dispute over the intentions of Agnes's will demonstrates that Agnes not only had indirect control over her property while married to both John Phylpot and John Goold but also that she had control over who was to have the property after her death. Despite the fact that there was probably no written will, both parties were concerned with Agnes's intentions. Thus, Agnes was a married woman who was able to control and will the use of her own property.

Work and the Married Woman

Married women were not only able to control and maintain their own property, but Bennett argues that wives were also an integral part of the household economy.

While married women often assisted their husbands in their businesses or even ran the business while their husbands were away, wives also contributed to the household through economic endeavors of their own.²⁷ Ale brewing was a common business endeavor of married women, and in fact, women dominated the business. Bennett states that ale was a basic part of the medieval diet, and thus, households needed a large, continuous supply. This means that women were involved in a fairly large business. While wives often did not participate in the business on a continuous basis, this was an important way they could contribute to the household economy.²⁸

Thomas Botiller's petition to the court of Chancery illustrates the ale-brewing business activities of his wife.²⁹ According to Thomas, Isabel, the wife of Simon, often came to his and his wife's house for ale. At the time of her death, Isabel was indebted to Thomas's wife for a large quantity of ale. From this petition, it is clear that Thomas's wife conducted her business from the home, and Isabel was one of her regular customers. After Isabel's death, Thomas requested that Simon pay his wife's debt, but Simon refused. Instead, he filed an action of trespass against Thomas in London. As a result of this action, Thomas was unable to recover the debt. Since Simon was able to successfully use a common law court against Thomas, the only option left to him was to petition the court of Chancery for payment of the debt owed to his wife.

Throughout the petition, Thomas's wife was not mentioned by name despite the fact that she was clearly in charge of the business. This was unusual since the wife was

²⁷ Bennett, *Women in the Medieval English Countryside*, 115.

²⁸ Bennett, *Ale, Beer and Brewsters in England: Women's Work in a Changing World, 1300-1600* (New York: Oxford University Press, 1996), 19.

²⁹ National Archives, C1/27/398.

often named even if she was not involved in the case. Thomas's wife, however, was clearly in charge of the business since Isabel dealt with her when acquiring her ale, not Thomas. Mate argues that the husband's public role in society made him the natural person to bring suit for the wife. Therefore, while the wife was responsible for the brewing and business, the husband was often the one who petitioned the court.³⁰ Despite the numerous examples of women bring suit before the Chancery with or without their husbands, Thomas might have been simply following normal procedure by bringing suit for his wife. In fact, Bennett states that the work of married women was "profoundly submerged into the communal household economy."³¹ While married women clearly managed businesses, their work was still within the home, and the husband would be the reasonable choice to represent the wife in court.

Legal Activity

Married women, however, could and did appear in the court of Chancery without their husbands. While marriage was regarded as making the husband and wife one legal person (that of the husband), their use of the court of Chancery as sole agents reflects married women's ability to be active in the legal system.³² This reinforces Hanawalt's argument that most husbands and wives had a more equitable business relationship than is reflected in common law. Husbands often named their wives executors or co-executors of their wills and wives were expected to manage their husbands' businesses while they

³⁰ Mate, *Daughters, Wives, and Widows after the Black Death*, 59.

³¹ Bennett, *Women in the Medieval English Countryside*, 115.

³² The development of professional attorneys in the thirteenth century meant that by the late Middle Ages, professional attorneys were necessary in virtually all civil cases. While married women could act without their husbands, they would have rarely acted in the court without an attorney. Baker, *An Introduction to English Legal History*, 133.

were away.³³ A wife's ability to act in a court of law was another natural extension of her more "masculine" role.

Joan, the wife of John Scaldewell, petitioned the court of Chancery because Richard Stomesworth had hired six servants to wait by the highway between the market place of Northampton and Bricklesworth in order to attack and kill her husband.³⁴ The men "feloniously waylaid, beat, and wounded" her husband "almost to death" and also robbed him of 20s. At the time the petition was submitted to the court, John was "in despair for his life" and Richard was supporting the men he had hired to kill him. While Richard and his servants had been "indicted by divers Inquests," they continued to ride in a "warlike manner against the peace." As a result of Richard's threatening behavior, Joan was afraid to bring her case before a common law court. Richard openly boasted that if he had killed John and six neighbors, he could have a "charter of pardon in spite of his enemies." This demonstrates that Richard at least believed that he had considerable influence over the legal system of the county. Joan apparently agreed with this belief that Richard was powerful enough to prevent justice from occurring through the common law courts since she petitioned the court of Chancery.

Joan petitioned the court in order to obtain a writ to move the case against Richard to the King's Bench because of his actions. Joan might have requested this writ because she believed that Richard's influence in the county would prevent the court the case had originally begun in from ruling in her favor. Joan also requested that Richard

³³ Hanawalt, *The Wealth of Wives*, 120-123.

³⁴ *Calendars of the Proceedings in Chancery*, 1:v-vi.

appear before the Chancery to give a “surety of the peace” to her and her husband and their servants.

Alice Willebye, the wife of Robert Willebye of Norwich, also petitioned the court of Chancery in her husband’s absence.³⁵ Robert was a merchant, who traveled to Bruges on business. The petition does not list the specific type of goods Robert was bringing to Flanders, but it does state that Robert traveled to Flanders shortly before the siege of Calais in 1347, which marked the beginning of the Hundred Years War. While Robert was in Bruges, the Duke of Boulogne had him arrested and his goods seized. The Duke might have arrested Robert because of the rising tensions leading up to the Hundred Years War, but a history of trade tensions between Flanders and England seems more likely. In *Medieval Flanders*, David Nicholas describes the unbalanced trade between England and Flanders that eventually lead to a large-scale confiscation of goods in 1371. Wool was one of the chief products exported from England to Flanders. Although English cloth was prohibited during this time period, smuggling was widespread.³⁶ As Norwich was an important producer of wool, it is reasonable that Robert was bringing wool to Flanders and that these trade tensions played a part in his arrest.

The Duke set Robert’s ransom at £200. Robert Large, a high ranking noble of London, promised Alice that the next time he was issued a license from the king to travel to Flanders, he would pay the ransom and bring Robert home. Thomas Veyle of Norwich, however, took action against Alice, as her husband’s executrix, of £20. Thomas was also a merchant from Norwich, which implies a prior history between him

³⁵ *Calendars of the Proceedings in Chancery*, 2:xvi-xvii.

³⁶ David Nicholas, *Medieval Flanders* (London: Longman, 1992), 288-91.

and Alice's husband. Through this action in a common law court, Alice's position as executrix of her husband's goods and business was challenged. While Robert was away, Alice was in charge of the household and Robert's business at home. This placed her, as a married woman, in a traditionally male role. Thomas's action against Alice prevented her from sending Robert Large to ransom her husband. Thus, Alice petitioned the court of Chancery to have the court issue a writ allowing the Bishop of Norwich to investigate the case and to order the sheriffs of Norwich to not proceed on the action Thomas had submitted against her.

Agnes presents a similar petition to the court of Chancery.³⁷ Agnes's husband, William, was a merchant who traveled to Flanders. According to the petition, William stayed in the town of Sluis, less than twenty miles from Bruges, and sold goods to the people in that town. When it came time for the people to pay for the merchandise, they, through "false scheming and conspiracy," refused payment and had William arrested. Trade tensions between Flanders and England, in particular as a result of the smuggling of English cloth into Flanders, had resulted in the seizure of English merchandise in Sluis in 1403.³⁸ As the petition was directed to the Bishop of Exeter, Agnes must have petitioned the court sometime between 1396-1399 or 1401-1403. This means William was arrested not long before the seizure of English goods in 1403, and these trade tensions were probably one of the main reasons for his arrest.

William was arrested, placed in a prison in the Castle of Sluis, and held there for a ransom of 200 francs and 12*d.* a day for his expenses. At the same time, two men from

³⁷ Baildon, *Select Cases in Chancery*, 58.

³⁸ Nicholas, *Medieval Flanders*, 322.

Sluis had been arrested in Portsmouth, and Agnes petitioned the court of Chancery in order to have the court command the bailiffs of Portsmouth to continue to hold these men until her husband was released in a prisoner exchange. The petition does not provide background on these two men or why they were arrested. Agnes probably did not have the funds to pay the ransom and saw these men as a way to free her husband. On the petition, there is an order for a writ to bring Henrik and Paul, the two men being held in Portsmouth, before the court in Westminster to discover the reason for their imprisonment. It is clear, however, that Agnes was managing her husband's business and household in his absence. Both Alice Willebye and Agnes's petitions to the court illustrate the need these women as executrix had for the court system to protect their right to manage their husbands' businesses.

Ellen, the wife of Robert Lee, petitioned the court of Chancery without her husband even though he was capable of petitioning.³⁹ Ellen along with Maude Lee, Elizabeth Lee, and Johanne Lee sued several writs of subpoena against Raynold Sondes and Robert Norton, who had prevented these women from executing John Lee's last testament. As feoffees, Raynold and Robert, had been entrusted with certain property during John's lifetime that they were supposed to grant to John's heirs upon his death but failed to do so. The Bishop of Lincoln, who was chancellor at the time, gave a judgment in favor of Ellen and the other women. While this judgment was officially recorded in the court, for three terms the note was held up in the court through "sinister meanes and labor" and to the "grete hurt and undoing" of the girls.⁴⁰ While the family relationships

³⁹ *Calendars of the Proceedings in Chancery*, 1:cxviii.

⁴⁰ There is no record of this petition to the court in the National Archives. This does not mean, however, that there was no petition or judgment as the petition could have been damaged or lost.

are not fully explained, the petition does state that Ellen was the girls' aunt, indicating that Robert was probably Ellen's brother-in-law. Since the petition often refers to the girls as "maydens," they were unmarried and likely younger than Ellen, and she had become a guardian for the girls.

Thus, Ellen went to Alton, in Hampshire, in order to resolve the case for her nieces, but Lord Matravers, "of extreme and pure malice" had Ellen arrested through a writ of *Capias*. Lord Matravers was able to bring an action of trespass against Ellen in the King's Bench and had her imprisoned in the King's jail in Winchester. The petition does not explain who Lord Matravers was or why he was involved in the case, but since he was assisting Raynold and Robert, he was probably one of their social connections who had influence in the court system. Since the common law court system had wrongfully been used against her, Ellen petitioned the court of Chancery once again. This petition, however, demonstrates that there were problems with the court of Chancery. While in response to her first petition, the chancellor had ruled in her favor, the decision was never carried out. This appears to be more than a clerical error as Ellen states that the decision was never sent out because of "sinister means and labor." Although this points to corruption within the court of Chancery, Ellen also had problems with common law courts. Either she had never lost faith in the court of Chancery or she saw the court as her only option because she petitioned it again.

In her petition, Ellen states that she was still in prison and likely to continue to be in prison in "great pain and misery, unto her utter undoing in this world" if the court was unable to assist her. Thus, Ellen petitioned the court of Chancery in order to have the sheriff and the keeper of the jail bring her before the court to explain the wrongdoing

against her. Throughout this petition, there is little mention of Ellen's husband.

According to the first line of the petition Ellen was married to Robert Lee, but she acted without him in pursuing her nieces' case and in petitioning the court of Chancery. Robert did not travel to Alton to pursue the case nor did he come to his wife's rescue when she was imprisoned. Although Robert could have been traveling, Ellen was clearly a married woman acting in the court system without her husband.

While Ellen's petition to the court of Chancery demonstrates that married women were active in the court system without their husbands, Alice petitioned the court of Chancery when she was made to appear in court without her husband, claiming that this was against the law.⁴¹ In the petition, Alice states that John Catebery had taken an action of debt of £19 10*d.* against her and her husband before the Mayor of Canterbury. As a result of this action, Alice was arrested and the mayor forced her to answer not only for the £19 10*d.*, but also for £10 in damages without her husband being present. Alice asserts that this was "contrie to the lawse of this land to make a woman that hath a husbond to answere as a woman sole." This demonstrates Alice's legal knowledge and her ability to use this knowledge to her advantage. Since the action of debt against Alice had been placed in a common law court and Alice was petitioning against the Mayor of Canterbury, she was unable to find justice in the common law court system and had to petition the court of Chancery. Alice petitioned the court in order to have the mayor appear before the Chancery and explain her arrest. Despite the fact Alice petitioned the court because she had been forced to appear in court without her husband, her husband is not mentioned in the petition. While Alice was described as the "wife of Hugh Tansey,"

⁴¹ National Archives, C1/32/344.

indicating that she was not widowed or remarried at the time of the petition, Alice was named as the sole petitioner. Thus, Alice was acting in the court of Chancery without her husband, confirming that women viewed the court of Chancery differently than common law courts. These petitions clearly reveal that married women were able to act freely in the court of Chancery without their husbands, but in common law courts, they were much more restricted than single women.

Conclusion

Married women clearly held an ambiguous status in medieval English society. While common law did not separate a wife from her husband, which meant that she was unable to manage property, enter into contracts, or act in a common law court without the aid of her husband, these petitions to the court of Chancery illustrate that married women were able to expand these rights. Women could manage property and act in the court system without their husbands. Despite their rights, married women were clearly more limited than widows or never married women. These women usually acted independently when their husband was absent or unable to act. Since women were expected to run their husband's business when he was absent and husbands often named their wives executors or co-executors of their estates in their wills, their use of the court system was necessary. This along with married women's actions in these court of Chancery petitions demonstrates that marriage could be more of a partnership than the common law portrays. A woman would have to know her husband's business and estate in order to manage it in his absence.

Once married, a woman's life dramatically changed. Not only would she no longer be referred to as the daughter of and become the wife of but her rights would also significantly change. This transition in a woman's life was marked by her marriage contract. This contract was designed to both provide for the couple as they set up their own economic unit and to provide for the wife after her husband's death. As these petitions illustrate, this economic contract was an important part of the marriage, and when this contract was not upheld, the couple's ability to set up their own economic unit would be affected. Since marriage was based on an economic contract, a break in this contract had economic consequences. If a husband left his wife for another woman, his wife would no longer be able to rely on his economic support. Thus, adultery was a serious offence not only against the church but also against common law.

Married women clearly had more rights than was defined by common law. They could manage property, run businesses, and act in the court system without their husbands. These petitions, however, illustrate that these rights were a natural extension of her position as wife. Women often managed property and ran their husbands' businesses in his absence. Their economic endeavors, such as ale brewing, was conducted in the home and connected to the household economy. Their actions in the court of Chancery demonstrate that married women were able to act more freely in the Chancery than in the common law courts, which allowed married women a legal recourse to actions taken against them and a voice in the public sphere. Despite these legal and economic rights, married women were more limited than single women. After the death of her husband, a woman's life once again dramatically changed as she was no longer the wife of and became the widow of. Not only did her title change but also her rights.

CHAPTER IV

WIDOWS

At the time of her husband's death, a woman's rights and responsibilities dramatically changed. Since she no longer had the protection of a male authority figure, a widow needed expanded rights to support herself. Mavis Mate states “widowhood is frequently described as the most powerful phase of a woman’s life-cycle, since at that time she acquired full legal autonomy.”¹ Historians, however, have debated the validity of this statement. Widows certainly had more rights than other English women during the medieval period, but there were also exceptions to this rule. Not only could married or single women obtain the same rights as widows, but widows could also lose these rights. Although widows were guaranteed certain rights, such as the right to inherit and manage property, some women had to petition the court of Chancery in order to protect these rights.

In “Widows in the Medieval English Countryside,” Judith Bennett argues that while English widows had certain legal and economic rights, these rights were restricted. According to Bennett, no widow was “truly liberated.”² Although widows could be more

¹ Mavis E. Mate, *Daughters, Wives and Widows after the Black Death*, 82.

² Judith M. Bennett, “Widows in the Medieval English Countryside,” in *Upon My Husband’s Death: Widows in Literature and Histories of Medieval Europe*, ed. Louise Mirrer (Ann Arbor: The University of Michigan Press), 69.

involved in the public sphere than other English women, not all widows were willing or able to take up this public role. Even those who actively participated in public led lives that were “more complex and varied” than a simplistic assertion of autonomy.³ The experiences of widows varied according to their socioeconomic standing, locale, and age. Wealthier widows were more likely to be publicly active since poorer widows would have to struggle for their basic livelihood. All widows, however, were women with some public authority, which caused them to “fit awkwardly into the social hierarchy of the medieval world.” Despite being “female heads of households” and “acquiring public attributes of men,” widows, being female, could not for this reason act with the same authority as their male counterparts. Bennett asserts that “widows, although certainly not liberated, were nevertheless the most publicly active of all women in the medieval countryside.”⁴

While many widows inherited property, ran businesses, and were heads of households without having to appear in court, others were not so lucky. This was the case with Christine de Pizan. Pizan wrote about her status as a widow in her *Autobiographical Vision*. At the age of twenty-five, Pizan’s husband died and she was left with the problem of supporting three children and managing a large household. Pizan was in a better position than most widows because of her socioeconomic status, but she described her plight as having to “take the helm of the captainless ship in midstorm.”⁵ She did not know the state of her former husband’s affairs since wives were not expected to know these things, and as was the “common lot of widows,” Pizan had to go to court to

³ Bennett, “Widows in the Medieval English Countryside,” 73.

⁴ Bennett, “Widows in the Medieval English Countryside,” 77, 103.

⁵ *The Writings of Christine de Pizan*, 9-10.

protect her right to her husband's property. Pizan's experiences in the court system led her to caution widows and instruct them to "take on the heart of a man."⁶ Although Pizan was writing about her position in medieval France, not medieval England, some of these same problems apply to medieval English women.

While widows had more rights than other English women, these rights were often infringed upon. As a result, widows had to use the court system to protect their rights and property. In "The Widow's 'Mite,'" Barbara Hanawalt states that the need to protect a widow's "mite," or provisions made for the widow (often her dower), was a recurring theme in medieval literature. The writ of the right of dower was established in order to provide recourse for widows in the common law system, but there were many problems with these courts: the process often took several months and few cases were followed through to completion.⁷ While their case was pending in court, these women were without means to support themselves. Thus, despite the fact that husbands were required to provide for their wives after their deaths based on the dower agreement made at the time of their marriage, widows often faced opposition from men, who saw their position as weak. In response, many widows turned to the court of Chancery to actively protect their rights and property. While dower was the most frequent type of petition made by widows to the court of Chancery, widows brought many different problems before the court.

⁶ *The Writings of Christine de Pizan*, 221.

⁷ Barbara A. Hanawalt, "The Widow's Mite: Provisions for Medieval London Widows," in *Upon My Husband's Death: Widows in Literature and Histories of Medieval Europe*, ed. Louise Mirrer (Ann Arbor: The University Michigan Press, 1992), 21-28.

Right to Dower

Although widows had the right to acquire a dower, many were forced to petition the court of Chancery to recover it, which illustrates problems with the common law system. Baker defines dower as a “gift from husband to wife on the day they were married, at the church door that could take effect on the husband’s death if he predeceased his wife.”⁸ Specific lands were appropriated for the wife’s dower at the time of the marriage as insurance for the wife’s future security. A widow had a reasonable right to one-third of her husband’s property, and by the fourteenth century, one-third was established under common law. Despite this common law right to dower and recourse to recovering the dower through a writ in the common law courts, widows often used the court of Chancery to recover their dower. According to Timothy Haskett, widows constituted anywhere from 34.2 to 44.9 percent of all female principals to the court of Chancery.⁹ Since a large percentage of these widows were petitioning for their dower, this indicates a difference between law and practice as many widows had to go to court to obtain or protect their third prescribed to them by law.

The petition of Margaret, widow of the merchant John Withe, demonstrates one of the ways a widow could be prevented from receiving her dower.¹⁰ This petition is structured differently than most petitions to the court of Chancery. Instead of being in a letter format addressed to the Chancellor of England, Margaret's petition is a list of grievances against William Mullesworth. There is no way to know for certain why this petition was constructed differently. One possibility is that a lawyer, who was unfamiliar

⁸ Baker, *An Introduction to English Legal History*, 228.

⁹ Haskett, “The Medieval English Court of Chancery,” 289-90.

¹⁰ *Calendars of the Proceedings in Chancery*, 2:xxxvii-xxxviii.

with how to write Chancery petitions, wrote the petition. While there were specific lawyers trained for the court of Chancery, there were no formal guidelines on how to present a petition to the court. Other common aspects of Chancery petitions are present, however, such as the emphasis on the weak position of the petitioner.

According to the petition, John had stated in his will, and many other times, that Margaret “shuld have the principalte and hole governaunce and disposicion of his executrice and none other.” Thus, Margaret was made the sole executor of John’s estate. John suggested two men, who could help Margaret in managing the estate, Thomas Spicer and Thomas Welles, but she did not have to rely on or accept their assistance. Therefore, Margaret was to be in complete control of his property. This was not completely unusual since in the absence of an eligible heir, the property would often go to the wife, and she would be expected to manage the property as either an executor or co-executor. William Mullesworth was responsible for writing John’s last will. Instead of writing out the entire will, however, William left parts of the will blank until John’s death. After John’s death, William filled in the will to make himself co-executor of John’s estate and to give himself and his wife goods that were supposed to go to Margaret. Thus, William prevented Margaret from fulfilling John’s intended will to her “grete hevynesse, harmee, and damages.” Since William had altered the original will, Margaret had no written documentation of John’s original intentions. This meant she had no evidence for a common law court.

Once the altered will was made known to Margaret, William assured her that he had made himself co-executor in order to help her. William swore that “he wolde nothing attempte nor do, but onely aftir the wille and entente of the same Margarete.”

Since Margaret was an “unlerved woman, withoute counsaile, not knowyng the doutes in lawe,” she allowed the will to be validated in court. This meant that common law courts would recognize the altered document as John’s last will over Margaret’s testimony. Once the document was validated in court, William took both Margaret’s goods and the goods of her former husband and refused to give them back. This caused the “utter destruccion” of Margaret since she had no way to fulfill her husband’s will. With the loss of her goods, Margaret also had no means by which to support herself and was “put to povtee and grete damage.” John had given Margaret specific instructions that she was to use his lands to support herself during her lifetime and that the property should be sold at the time of her death. Since William had withheld the evidences of the property, Margaret was unable to manage or sell the property. Margaret petitioned the court of Chancery in order to regain control of her goods and property. She had no remedy in the common law courts because they would recognize the false document William had constructed.

Lucy Hulkere’s petition to the court presents another example of the use of fraud to take a widow’s dower.¹¹ Henry Alcote and his mother, Elizabeth, were successfully able to take the dower Lucy’s husband had left her on his deathbed through “collusion and fykil counsel.” Henry and Elizabeth pretended to be notaries in order to obtain access to her husband’s will and replace it with false documents. Lucy attempted to regain her property (the manors of Gildenburton and Manthorpe and goods worth £100) through the King’s Bench but was unsuccessful because the false documentation

¹¹ *Calendars of the Proceedings in Chancery*, 2:xv-xvi.

produced by the Alcotes “voide and exclude” her genuine documents. Since she had no valid written documentation, the court of Chancery was the only recourse for Lucy.

According to Lucy, Henry Alcote was a dangerous man. Henry and a known, but unnamed, thief, who had since been hung in France, attempted to murder her. Lucy describes the incident in detail in order to emphasize her weakness before the court. According to Lucy, Henry and the thief took her into the garden at Gildenburton and forced her to lie down on the ground. They then placed a board upon her body and began to place “grete stones” on the board. A lady, who was walking in the garden, heard Lucy’s “pitouse” cries and saved her from the men. This process of pressing someone under stones had a legal tradition in medieval England. Known as *peine forte et dure*, it was used during the Middle Ages and into the eighteenth century to force prisoners to make a plea in common law.¹² Sir Thomas Smith describes the process in *De republica anglorum* in the seventeenth century:

If he will not aunswere, or not aunswere directly, guiltie or not guiltie, after he hath beene once or twice so interrogated, he is judged mute, that is dumme by contumacie, and his condemnation is to be pressed to death, which is one of the cruellst deathes that may be: he is layd upon a table, and an other uppon him, and so much weight of stones or lead laide uppon that table, while as his bodie be crushed, and his life by that violence taken from him. This death some strong and stout hearted man doth choose, for being not condemned of felonie, his bloud is not corrupted, his lands nor goods confiscate to the Prince.¹³

The petition is unclear as to what Henry was attempting to accomplish through this process. Since *peine forte et dure* usually toke several days to complete, he was clearly attempting to achieve something beyond murder.

¹² Baker, *An Introduction to English Legal History*, 416.

¹³ Thomas Smith, *De Republica Anglorum* (Amsterdam: Theatrum Orbis Terrarum, 1970), 78.

Another reason why some widows had to petition for their dower was because of the conflict between their right to a dower and the feudal system. Janet Loengard argues that the widow's dower was actually a "theoretical anomaly in a system of landholding based on primogeniture." Instead of the first-born male heir inheriting all the property upon his father's death, the property was divided in order to meet the needs of the widow. While the Magna Carta improved conditions for widows attempting to obtain their dower, sons continued to interfere with the process.¹⁴ Joan's petition in the mid-fifteenth century demonstrates the tensions between a widow and her son.¹⁵ Joan petitioned the court of Chancery to recover her dower that her son, John Lyngen, had taken through force. Ralph Lyngen, Joan's first husband, had made Joan and John co-executors of his will. After Ralph died, in the presence of their friends including John Barre and Thomas Bromewyche, Joan and John decided that Joan should have all of her late husband's goods except for the goods that were on the manors of Ailemistre and Lyngen on the condition that she paid her husband's debts. Joan states that she followed the agreement and paid John's debts, which amounted to £40, and occupied the property that was hers.

John, however, did not uphold their agreement. Instead, John, "not dredying God the kyng nor his lawes," and a group of forty "misruled psones," who were "arrayed in mane [manner] of werre [war]," invaded the manor of Sutton, where Joan was living, on September 6, 1453. John, a "cruell and eville disposed child, contrarie to Gods lawe and nature," took his mother and her servants and kept them in ward, and when Joan tried to escape, John "in violence and ungodly wise" used force to prevent her from escaping.

¹⁴ Loengard, "*Rationabilis Dos*: Magna Carta and the Widow's 'Fair Share'," 60.

¹⁵ *Calendars of the Proceedings in Chancery*, 1:xlviiii-xlx.

While John had his mother imprisoned, his men went to her property and carried off what goods they could and then used various weapons to destroy the property.

Before his death, Ralph had feoffed Sutton manor to John Barre with the instructions that at the time of his death, John should set the manor up as a trust for Joan for her lifetime. As mentioned before, because of a law prohibiting a will of property, a man would often grant the land to friends on the condition that they would set up an estate for his wife after his death.¹⁶ In this way, the husband was able to provide for his wife after his death and fulfill his portion of the marriage contract, the dower. According to the petition, Joan was able to obtain her estate through “grete cost and laboure,” which indicates that she had to sue for the property in either a common law court or the court of Chancery.

Once Joan was in control of the property, she made improvements to the property and increased her holdings. Not only did John’s men destroy all of this, but John also seized the manor of Kenchestre, which Joan and Ralph had acquired from John Vynter and William Pavers. The details of this gift are not explained in the petition, but the manor was probably enfeoffed to Joan and Ralph. Thus, Joan was unable to take possession of any property or goods her late husband had intended for her. Joan petitioned the court of Chancery in order to bring John before the court to answer for his “riotes misrule ungoodely and unlawfull demenyng” and to allow “lawe faithe and conscience” to proceed in allowing her to regain control of her property.

¹⁶ Baker, *An Introduction to English Legal History*, 210-11.

In his response to Joan's petition, John listed his defenses against Joan's accusations. As to the agreement between John and Joan about Ralph's property, John argues that he agreed that Joan should have the property on the condition that she would find "men of sufficient lyvelode within the common lawe" to clear John's name of his father's debts. Thus, Joan would have the full responsibility of repaying Ralph's debts. In addition, Joan was to ensure John of his inheritance. John argued that at the time this agreement was reached he was "not lettered" (could not read) and that this was the version of the agreement that was read to him. Since Joan did not assure John that he was not responsible for his father's debts nor did she assure him of his inheritance, John felt he had the right to take all of his father's goods that were in his mother's possession. It was his responsibility as co-executor to make sure the will was followed. Since Joan was not following his father's will, "hit was lawfull for him" to take the goods. John argued that Joan, along with her current husband, Thomas Fitz Harry, and others, had already taken the goods back. According to his response, Joan and Thomas were now in possession of his father's goods and they were profiting from these goods to the "grete pill [pillage] of their soules."

John also argued that the case should be presented before a common law court instead of the court of Chancery. While John denied ever imprisoning or doing anything that would "displesire" his mother except to request assurance of his inheritance, he argued that this matter falls under the jurisdiction of the common law courts through a writ of trespass or false imprisonment. As to the charge that he was not allowing Joan onto his father's property, John asserted that this should be tried in a common law court by a writ of dower and "not in this courte." John stated that he "hath bee redy seth the

dethe of his said fader to delyv to his said moder hir dower of alle the londes and tenements that he is seised of, that she is dowable of” if only she would assure him of his inheritance. Clearly, John wanted the case moved to a common law court because he felt he had a better chance of success there than in the court of Chancery. As discussed earlier, Hanawalt points to many reasons why a widow would have problems securing her dower through the common law courts. A contested dower could be difficult to prove and would be a long process.¹⁷ This petition demonstrates the tensions between a widow’s attempt to recover dower and a son’s attempt to secure his inheritance. The main concern John raised against his mother was not her right to dower but that she had not assured him of his inheritance, which was one of the major problems with the widow’s dower of one third.

Despite its interference with the feudal system, a widow’s dower was important to her survival since it provided for her after her husband’s death. According to Loengard, a widow’s dower represented her “insurance policy” since a widow could use the property acquired from her dower to collect rents or conduct business that would result in money by which the widow could support herself.¹⁸ Despite being remarried, Ellen’s petition to the court of Chancery illustrates her need for a dower.¹⁹ While her first husband, Richard Meredyk, was alive, John Hewe and David Kemp siesed in fee or enfeoffed his estate. They set up a freehold estate for Richard and Ellen that they could use and profit from during their lifetime. In his will, Richard made Ellen sole executor of his estate and stated that after Ellen died, John and David should sell the land and give the profits to

¹⁷ Hanawalt, “The Widow’s Mite,” 21-28.

¹⁸ Loengard, “*Rationabilis Dos*: Magna Carta and the Widow’s ‘Fair Share’,” 60.

¹⁹ *Calendars of the Proceedings in Chancery*, 2:xliv-xlv.

charity for the “hele [help] of his soule and of the soles of Urie and Isabell their wyfes, and of the soule of the seid Elyn than his wife.” Leaving a monetary gift to charity for either one’s own soul or the soul of others was not uncommon in medieval England. In the presence of “credible persons of levying,” Richard declared specific uses for this money: a portion was to be given to a priest at the Church of Saint Martin in the Field to be used according to his discretion, some to the marriage dowry of five poor maidens, and the rest to mending the lane behind the “mewes” or stables. After Richard’s death, but while Ellen was alive, John and David sold the estate “countary to the said will” for much less than its value. Ellen argued that this violated Richard's testament since she was still alive and would be unable to use this property to support herself.

In their response, John and David argued that Ellen and her current husband, John Lyon, had no reason to submit a petition against them. They stated that the meaning and intent of Richard’s will was unclear as to when the estate should be sold. Since they were older and would probably die before Ellen, they would be unable to carry out Richard’s will that they sell the property and give the money to charity. In order to carry out the will, they had to sell the property before Ellen’s death. John and David argued that they disposed of the profits according to Richard’s will. John Lyon submitted a replication to the response of John and David. According to John, the property should not have been sold before Ellen’s death, but since it was, Ellen and John should have control of the profits of the sale. Thus, they should be the ones that ensure that Richard’s will was carried out. The main point of dispute between Ellen and John and David was not if the money should go to charity but when it should do so. This is probably because Ellen and John Lyon depended on the estate to support themselves. Even if the estate was not their

only source of income, selling the estate before Ellen's death meant that Ellen and John Lyon would not realize income from the property during their lifetime. This dispute illustrates how important dower was to a widow's livelihood during her life even after she remarried.

Remarriage

Many medieval widows, for various reasons, chose to remarry. The process of remarriage and their status after remarriage could present widows with problems that caused them to petition the court of Chancery. In "Fifteenth-Century Widows and Widowhood," Joel Rosenthal argues that at least half of the widows in England remarried. These widows, however, had an ambiguous role in society since they were both wife and widow. While remarried widows were once again under the control of a husband, they were also able to retain control of their dower.²⁰ Some women were even able to maintain control of this dower separate from the control or management of their new husbands. The petition of Elizabeth, widow of John Clere and John Rothenhale, demonstrates this ambiguous status of remarried widows in her petition to the court of Chancery.²¹ The father of Elizabeth's first husband, William Clere, enfeoffed his land and tenements to several men, including Richard Wychyngham. When these men were enfeoffed with the land, they agreed to set up an estate for William's wife, Dionisia, after his death. After Dionisia's death, the feoffees were to set up an estate for John Clere,

²⁰ Joel T. Rosenthal, "Fifteenth-Century Widows and Widowhood: Bereavement, Reintegration, and Life Choices," in *Wife and Widows in Medieval England*, ed. Sue Sheridan Walker (Ann Arbor: The University of Michigan Press, 1993), 36-38.

²¹ *Calendars of the Proceedings in Chancery*, 2:iii-v.

William's son, and his heirs. The feoffees set up the estate for Dionisia, but after the death of Dionisia, the estate reverted back to the heirs of the former feoffees.

After John's death, these feoffees were to set up an estate for Elizabeth and her sons. Believing that the land was rightfully hers, Elizabeth "occupied and managed the said manors" for her sons since the lands could not "descend" to them. This was probably because the boys were not old enough to inherit the property. Not only did Elizabeth manage the property for her sons while she was *sole*, but she also managed the property after she remarried. While she was married to her second husband, John Rothenhale, she was able to "maintain the said Robert Clere and Edmond [her sons] in food and clothing and all their necessaries, and paid several of the just debts of the said John Clere." Thus, Elizabeth's management of her former husband's property continued into her second marriage. During their marriage, John Rothenhale was often in Normandy, in the "service of our lord the King," most likely in a military capacity. Although Elizabeth was remarried, her husband was often absent, which demonstrates that she was able to manage the estate without his assistance. Once John Rothenhale died, however, Nichol, the heir of Richard Wychyngham, refused to set up an estate for Elizabeth and her sons and "hindered the said Elizabeth in the occupation and management" of her first husband's property. He also "so disturbed and menaced the tenants and farmers of the same manors that they dare not occupy their farms and tenures, nor pay or do to the said Elizabeth their dues." Thus, Elizabeth was no longer able to profit from the estate and petitioned the court of Chancery in order to have Nichol appear before the court because she had "no remedy by the common law."

Elizabeth's petition also demonstrates one reason widows choose to remarry— for their protection. As long as John, her second husband, was alive, Elizabeth was able to run her estate without interruption, but after John's death, Elizabeth was unable to maintain her management of the estate. While widows had certain rights under common law, such as the right to manage their former husband's estate, this right was not always guaranteed. Another reason widows choose to remarry was because of the pressures placed on them by family, neighbors, and suitors. Medieval moralists expressed concern over the preservation of the widow's chastity. Following the teachings of St. Paul and St. Jerome, many moralists believed that "women's sexual appetites were voracious, particularly if they had already known sexual intercourse."²² Wealthy widows, in particular, were under pressure to remarry since many men saw marriage to them as a way to move up in society. While Rosenthal argues that widows would likely remarry within their socioeconomic level, Hanawalt states that the "pursuit of well-situated widows was very competitive."²³

Margret Appilgarth of York was one of these wealthy widows.²⁴ In her petition to the court of Chancery, Margret stated that Thomas Sergeatson "sought upon hir to have hir to wyfe." Marriage, however, was not the only thing Thomas sought from Margret. He also desired to "have of hir ctaine [certain] golde to the some of xxxvj. Li [£36]." Thomas stated that he would use this gold for the costs of their marriage and to invest in merchandise in order to increase his profit as "hir husbände." Margret "havying ful byleve and trust in his trouthe [truth] and langage" gave him the gold without first

²² Hanawalt, *The Wealth of Wives*, 105.

²³ Rosenthal, "Fifteenth-Century Widows and Widowhood," 38; Hanawalt, *The Wealth of Wives*, 109.

²⁴ *Calendars of the Proceedings in Chancery*, 1:xli.

obtaining a marriage contract. Once she had given Thomas the money, he took “to wyfe an other woman” and was unwilling to return the £36 to the “grete deceit, hurt, and uttre undooying” of Margret. Since Margret had trusted Thomas, she had not obtained a marriage contract or written proof of her monetary “gift.” This lack of written proof meant that she “no remedy hath by the comone lawe,” which is why she sought redress in the court of Chancery.

Margaret Grimsby of Strasbourg (in what is today France) presents a similar case.²⁵ Reginald Cobham, esquire, married Margaret in Strasbourg under the pretence that “he had no other wife” and that he was the son of the Lord of Cobham and would soon receive a large inheritance in England. Margaret packed up her goods worth £200 and moved to a town in Essex. A month after being married, Reginald took all of Margaret’s goods and left stating he had “another wife at home.” Margaret petitioned the court of Chancery to have Reginald appear before the court to answer to these charges so that she may have her goods returned to her. This case does not specifically state Margaret’s status. She was a *femme sole*, but there is no indication as to whether she had been previously married. The lack of a father or other male protector and the freedom with which Margaret was able to move and manage her goods indicates that Margaret was likely a widow, who had been taken advantage of because of her status as a wealthy widow.

²⁵ Baildon, ed., *Select Cases in Chancery*, 62-63.

Property Management

Whether as a *femme sole* or remarried, after their husbands' death, many widows managed their estates. As managers and heads of households, widows had to protect their property from various encroachments. In order to do this, they often had to turn to the court of Chancery because they were unable to find recourse in common law courts. According to Bennett, the "breadth of their [widow's] public actions as householders, as landholders, and as villagers clearly surpassed the more limited...options of wives and adolescent daughters." Under common law, widows were not only permitted to manage property but they were expected to continue their former husbands' businesses. Thus, common law provided the resources for widows to manage property as *femmes soles*.²⁶ In practice, however, widows often lost their property and were even physically threatened to prevent their management of the property. While some widows could find recourse in common law courts, others found that the court of Chancery presented their only chance of survival.

The petition of Margery Freeman demonstrates how a leading man of the county could take advantage of a widow's position to gain her property through manipulation of the common law court system.²⁷ According to Margery, Geoffrey Poutrell, a gentleman, "disseid and wrongfully putte oute your saide besecher" that is Geoffrey not only took away Margery's property and means to support herself, but he also forced her off the property. Margery does not provide any background on the case to explain why or how Geoffrey was able to take possession of the property, but the fact that Margery's name is

²⁶ Bennett, "Widows in the Medieval English Countryside," 77-78.

²⁷ *Calendars of the Proceedings in Chancery*, 1:xliv.

the only name that appears on the petition indicates that she was a widow independently managing her estate. While Margery does not address how she acquired the property, the probable source would be from the dower she received after her husband's death.

Margery stated that she attempted by "long labor and grete coste" to pursue her case in the King's Court in the assize of Leicestershire. While Margery was able to recover the property in the King's Court, Geoffrey, in an effort to impoverish and discredit her so that she could not maintain possession of the property, made several accusations against her to the notable persons of the county, including the Earl of Stafford and Lord Cromwell. Geoffrey not only made up lies about Margery, but he also argued that she should become their bondwoman or female servant. This "gretely vexed and trowbelid [troubled]" Margery because Geoffrey's allegations made it impossible for her to actually regain the property. Even though she had won her suit in the King's Court, the decision of the court had to be carried out by the leading gentlemen of the county. Geoffrey's assaults on Margery's character, however, influenced these men to not enforce the decision of the court making it impossible for Margery to regain the land and challenging her right to the property. Thus, Margery petitioned the court of Chancery to have Geoffrey appear before the court to answer to these charges. Margery petitioned the court of Chancery since she had already pursued her case in the common law courts and had not found a remedy because of Geoffrey's connections to the county elite. This illustrates one of the major problems with the common law courts. The common law court and its enforcement procedures were under the control of the leading gentlemen of the county, who could be the other party of a suit or influenced by the other party.

Christine, widow of Edmund FitzLucas of Bury (St. Edmunds), petitioned the court because her property was taken through force.²⁸ A group of men, including: John Bret, John Copping, Adam Hoo, John Boteler, William Hosteler, and others, used “force and arms” to remove Christine from her property and take her goods and chattels, which were worth £20. These men also threatened Christine “of life and limb” so that she was afraid to approach her house or even live in the county. Similar to Margery, Christine does not provide background to her case, but she was probably managing property that she had received from her dower. There is also no explanation as to why these men used so much force against a single widow, but by emphasizing their strength in numbers and arms, Christine was able to emphasize her own weakness. This was a common theme in petitions to the court of Chancery since the court was seen as sympathetic to the weak. Christine submitted her petition in order to have the court issue a writ to force the “evildoers” to appear before them. According to Christine, the court of Chancery was her only option because she “can never have any remedy against the said trespassers because she has nothing wherewith to sue the common law against them.” This could mean that Christine had nothing to prove her ownership of the property or that the influence of these men made it impossible for her to prove ownership in a common law court. In common law, if there was no proof of ownership or recent dispossession, the property went to the person who possessed it. This meant that Christine had to rely on equity to prove her case. Most likely the strength and number of these men meant they were well connected in the locality and could influence the decision of the local men.

²⁸ Baildon, *Select Cases in Chancery*, 76-77.

Katherine, the current wife of John Byngeley of Kingston on Hull and widow of Thomas Swyflete, actually lost control of her property in the King's Court.²⁹ While Katherine was *femme sole* after the death of her first husband, "by her writing" she enfeoffed Robert Surmy of Coldon two messuages (land that is meant for a domicile or occupied by tenants), which means he would receive rent from these properties. Katherine did this with the "full and entire trust" of Robert. In exchange for the profits he would acquire from this feoffment, Robert was to manage this property according to the wishes of Katherine. Katherine does not explain why she decided to enfeoff Robert instead of managing the property herself, but this action demonstrates the control a widow had over her dower property. Katherine was able to enter into a legal agreement over the property that would be recognized under common law, an example of a widow legally acting as a landholder while she was *femme sole*.

This arrangement was interrupted when Simon Grimsby, who wanted Katherine's property, entered a writ of formedon between William del Kerre, who had since died, and against Robert over Katherine's property.³⁰ Simon, through "subtle scheming and fraud" and "gifts and fair promises," convinced the court to order Robert to appear before them. Robert appeared in court to disavow his attorney, William Waghen, but the court refused to recognize him. Thus, the property went by default to William del Kerre, who in turn enfeoffed the property to Simon. Through his fraudulent use of the common law courts, Simon was able to disinherit both Katherine and her son from her first marriage, Thomas Swynflete. In this case, not only was Katherine unable to find recourse in the common

²⁹ Baildon, *Select Cases in Chancery*, 93-95.

³⁰ A writ of formedon is a writ that is used to begin a case in the common law courts to recover property that one is entitled to own.

law court system, but as a result of the corruptibility of the system, the court actually worked against her. Thus, Katherine, her current husband, John Byngeley, and her son, Thomas, petitioned the court of Chancery to have Simon appear before the court to answer to the charges brought against him in an attempt to regain their inheritance.

Isabel, widow of Thomas Burgh of the county of Cornwall, was able to manage a large estate as a *femme sole*.³¹ Isabel managed a manor with tenants, who would have paid her rent, and several officers, who would have worked on the manor under her. According to the petition, Isabel had been “always peaceably seised and her bailiffs there doing their offices, and also her beasts peaceably working in the same manor.” Thus, Isabel was able to effectively manage a large manor as a landlord and head of household. She acted within her rights as a widow to manage her former husband’s estate even though this would mean that she was acting in a traditionally male role.

Despite the fact that Isabel was acting within common law, she was powerless to prevent Roger Trewenard’s disruption of her management. Roger, along with many other men, “in warlike manner” attacked the tenants and bailiffs on Isabel’s manor. Isabel stated that Roger continued to come “from day to day” with these men to harass the people living on the manor and prevent the daily operations. Roger also took thirty oxen, twenty cows and bullocks, and a large number of other beasts. Since Roger had taken most of her livestock, Isabel was unable to work her land and thus could not profit from her manor. Roger continued to harass Isabel and her workers so that no one could ride on the King’s highway or he would forcibly take away the horse. Since she could not sue in the common law courts because of Roger’s position in the county, Isabel petitioned the

³¹ Baildon, *Select Cases in Chancery*, 124-125.

court of Chancery. Isabel's petition indicates that Roger must either have been one of the leading men of the county, who would have control over common law decisions, or that he had the ability to influence one of these men. While Isabel was able to manage a large manor as a *femme sole*, without the court of Chancery, she was powerless against Roger's attacks.

While Katherine Bee's petition to the court of Chancery was not as concerned with regaining land as it was with regaining her goods, this case demonstrates the ability of a wealthy widow to remain single and manage her estate. After the death of her husband, William Bee, Katharine went to live with William's cousin, Robert Bee.³² Katharine argued that she had to use "great labour, stirring, and enticing" to convince Robert to allow her to live in his house. In exchange, Katharine paid Robert weekly for both her board and her servant's board. Katharine stated that Robert agreed to this arrangement because she was a "sole woman and greatly aged" at the time. Thus, it was unlikely that Katharine would remarry, and she probably saw Robert as a protector. Robert also agreed to "safe-guard" her goods, which are listed in the petition, and he was to dispose of these goods according to her will after her death. Since that time, Katharine often asked for the return of various goods, but Robert has refused. Robert instead used these goods for his own benefit to the "utter undoing of your said poor petitioner." Katharine petitioned the court of Chancery in an attempt to have Robert appear before the court so that she could regain control of these goods.

³² A.R. Myers, ed., *English Historical Documents, 1327-1485* (New York: Oxford University Press, 1969), 493-496.

The list of goods that Robert refused to return includes several expensive items: a silver chafing dish, diamonds, rubies, sapphires, several different articles of clothing made from expensive cloth, various household goods, and “one old plain towel.” All these goods total more than £40, which meant Katharine was a wealthy widow who led a comfortable life. Along with these goods, Katharine also gave Robert “various copies of court rolls of lands and messuages” that were under her control. Katharine’s emphasis, however, was on her goods rather than the property. The expense of the goods indicates that Katharine’s husband was wealthy. Thus, her dower would have been quite large, and Robert would have been making a considerable profit from his control of it. These circumstances also suggest that Robert had control of the evidence of Katharine’s landholdings, and thus, her only acceptable evidence against him in common law courts.

In Robert’s answer to Katharine’s petition, Robert stated that the year before Katharine had become very ill and that he and his household had nursed her back to health at their own expense. During this time, Robert had taken Katharine from her house in St. Mildred’s parish to his house in St. John’s parish. All her chattels were moved with her, and Robert provided for her food. Although Robert had stated earlier in his response that Katharine was made “speechless” by her illness, he later stated that during her illness she promised to pay him 4*d* a day for her lodging. Robert asserted that he has yet to receive any payment. Since she had no available money, Katharine ordered Robert to sell several of her items. From these items, including several diamonds and other stones, Robert was able to gain 20*s*, but Katharine only gave him 6*s* 8*d* of this profit. While Robert and his wife were away twelve days before visiting the Duke of Clarence, Katharine removed all of her chattels from his house. Robert stated that while

Katharine wanted to entrust her property to him, he refused and that she was in possession of all of her property except for the goods she had asked him to sell.

Katharine responded to these accusations by stating that Robert's testimony was untrue. Before she had become sick, she had helped Robert for a "considerable time." When Robert was "but a simple waterman at the Temple," Katharine had bought him a boat with all the necessary equipment, which had cost her £4. Although Robert had promised to repay her for this assistance, Katharine had not received any payment. In addition, she had loaned him money on several occasions and had lent Robert some of her goods to assist him in becoming a yeoman under a sergeant and eventually a sergeant himself. Katharine had spent 60s to help Robert advance his career, and Robert has yet to repay any of these loans. Katharine demanded "lawful restitution of her goods." This background indicates that Katharine's husband had been dead for some time since Katharine instead of her husband assisted Robert in the advancement of his career. In response to Katharine's allegations, Robert stated that her replication is untrue and that the case should be tried in common law courts.

This petition is unique in that the decision of the chancellor was recorded on the back of the petition. The chancellor ruled in Katharine's favor, which reinforces the argument that the court of Chancery was known as being more favorable to widows. This case also provides insight into how the court of Chancery functioned. All the testimony was read before the "lord king in the chancery," and afterwards a "good discussion took place leading to full understanding." Thus, in the court of Chancery, the testimony was examined according to the rules of equity. From this discussion, the court

decided that Katharine had entrusted Robert with her goods and that Robert should return all of the goods Katharine had entrusted to him.

The petition of Alianore presents a different aspect of a widow's attempt to manage her property.³³ Before his death, Alianore's father, Thomas Thowe, had made a loan to Richard Brakynburgh. In his last will, Thowe stated that his wife, Elizabeth, his sons, Thomas and Richard, and his daughters, Alianore and Agnas, were to be executors of his will. After Brakynburgh's repayment of the debt, £40 was to go to Alianore and Agnas for their marriage and the rest was to go to charity (specifically to the maintenance of a bridge) for Thowe's soul. Once Thowe died and the debt was supposed to be paid, the executors asked Brakynburgh on multiple occasions for the payment of the debt, but Brakynburgh refused to pay. Elizabeth's second husband, William Addams, sued Brakynburgh in the Court of Common Pleas for the payment of the debt. William, however, died before the case was complete. In addition to William's death, Richard, one of the executors, went "out of his mind" and Agnas entered the abbey of the Minoreesses Aldgate and became a professional nun, which meant that she could no longer act as an executor.³⁴

Elizabeth decided that she no longer wanted to pursue the case because she was "not willing to suffer more for it." Elizabeth had also decided to remarry, which presented problems for the common law court. Because her name would change, the case, begun in her previous name, would be dropped, and Elizabeth would have to

³³ National Archives, C1/168/41. See Appendix A for the transcript of the case.

³⁴ The petition states that Agnas entered the abbey under the Abbess Alice Fitz Lewes, which means she would have entered the abbey after 1501 (the year Alice became Abbess). Therefore, the case can be dated to 1504-1515.

purchase a new writ under her new name in order to pursue her case. Thus, Brakynburgh was able to avoid payment of the debt because of the inflexibility of the court. The common law courts presented many challenges to widows attempting to execute their husbands' wills. While some widows were able to carry out the testator's will without the help of the court system, others were unable to do so even within the common law system. Thowe's daughter, Alianore, the only willing or capable executor remaining, petitioned the court of Chancery for the payment of the debt because she could no longer pursue the case in a common law court.

While most widows, who petitioned the Chancery, were in need of assistance, it is not beyond reason that some of these widows would try to use their situation to their advantage as was the case with Ellen.³⁵ In his petition to the court of Chancery, Richard Walker argued that Ellen had made a false inheritance claim and was able to use the common law court system to her advantage. According to Richard, Ellen's first husband, John Halstede, had constructed a forged deed, which stated that all of his father's property and goods in New Salisbury should go to John after his father's death. Once his father, William Halstede, discovered that his son had "untrewly made and forged the seid dede," he ordered John to cancel the deed. John, however, did not do this, and on his death, John made Ellen the executor of his will. After John's death, William made one William Lightfote his executor and stated that all of his property should go to diverse persons of whom Lightfote was instructed.

After William Halstede died, Lightfote began to execute his will. One of the recipients of William Halstede's property was Richard Walker, who Ellen and her second

³⁵ *Calendars of the Proceedings in Chancery*, 2:xxx-xxxi.

husband, John William, sued in the common law court in the town of Southampton, with a writ of trespass. Ellen claimed that the property rightfully belonged to her as a result of the forged deed and that Richard had taken away her property. Richard was arrested and put into prison even though the property was not in the jurisdiction of the town of Southampton. Richard could not find redress in the common law court system and petitioned the court of Chancery to have Ellen and John to appear before the court. Richard argued that Ellen was able to use the common law court and forged deed to her advantage to gain property that was not rightfully hers.

In John William's response to Richard's charges, John argued that while he should not have to answer to the charges and that the case should be dismissed, for the "declaraction of the truth," John stated that William Holstede had deeded all of his land to his son, John Halstede, which passed to his wife, Ellen, after his death. After John's death, Ellen sued in the town of Southampton against Richard for attempting to take away part of her dower, and she won her case before a jury of twelve men. John, of course, would gain from Ellen's ownership of the property, which could be motivation for his answer. This does not necessarily mean that Richard's charges of a forged deed are correct, however, since he would also benefit from the possession of the property. Richard could have been using the court of Chancery in an attempt to take property that was rightfully Ellen's. This case demonstrates that the petitions of these widows could be false or exaggerated in an attempt to use the court system to gain more than what was rightfully theirs. Ellen's use of the common law court system, however, indicates that widows had knowledge of the legal system and the means to hire competent, professional

lawyers. This use of the legal system was an important part of a widow's management of her estates and goods.

Conclusion

The petitions to the court of Chancery I have discussed demonstrate many different aspects of a widow's life: her right to dower, her ability to manage estates and conduct business, and her capable use of the court system. Widows occupied an ambiguous role in society since they were able to act as men in ways that many wives and never married women could not. Thus, as widows, women could be more publically active than at any other period of their life. Widows could act outside the home as they conducted business, managed estates, and entered legal agreements with the same rights and acumen as men. Their position as widows, however, encouraged prominent and influential men, who saw their position as weak, to interrupt their management of their property and take possession of the property through force or fraud. Thus, many widows turned to the court of Chancery to find recourse for these actions taken against them.

Widows clearly had the right to one third of their husbands' property, and as these petitions illustrate, the husband often granted his wife more than this one third. While the need to provide for widows was an important theme in medieval society, this right could be denied because of fraud, feoffments, and disputes with sons. Although feoffments allowed the husband to will his wife property and thus insure her security, these feoffments often placed widows in precarious positions as they had to rely on the good faith of the feoffee to set up an estate for them at the time of their husband's death. In addition, the actual right of a widow to receive a dower challenged the medieval ideas of

primogenitor and feudalism. These challenges meant that although widows had a right to a dower, they were not always successful in achieving this right. This also indicates the complex gender issues widows faced in attempting to gain their dower. Although her right to a dower was given to the wife from her husband at the time of their marriage, there was no way for the husband to protect this right from the encroachment of other men, who viewed the position of widows as weak. In other words, men were required to provide for their wives but at the same time, were powerless to ensure her protection from other men. In the face of male opposition, however, widows were able to actively petition the court of Chancery in an attempt to defend their right to a dower.

For various reasons, widows often choose to remarry. Depending on their socioeconomic position this could be for protection or security or as a result of societal pressures. Whether they remarried or remained single, widows maintained management of their former husbands' property. These petitions illustrate that widows could be entrusted with the management of large estates. As landholders and heads of households, these widows were placed in the same public position as men. In this position, widows would need to act in the same public role as men, which meant they needed to be able to enter into contracts and act in the court system in order to protect their property. While widows had the right to act with the same acumen as men, those who saw their position as weak because they were women often challenged this right.

CONCLUSION

Whether or not medieval women experienced a Golden Age after the Black Death, it is clear from the petitions I have discussed demonstrate that women had a complex status in medieval English society. Instead of focusing on economic opportunities, this thesis has examined women's social and legal rights after the Black Death. In their actions as daughters of, wives of, and widows of, women were able to act outside the confines of the roles ascribed to them by common law. Although the women I have discussed faced problems protecting and managing their property, these petitions demonstrate that they were able to act in the public sphere in a way that mirrored men's public actions. In fact, most of their difficulties were extensions of their actions in typically male roles, such as landholders or heads of households. A larger study of the court of Chancery would demonstrate that men and women faced many of the same problems recovering and managing property. This reveals some of the underlying gender issues in petitions to the Chancery. Since women had some of the same common law rights as men and were facing some of the same problems, they were placed in a similar position as men, which challenged male superior status in medieval society. In response to this challenge, many males presented opposition to women attempting to act in public through acquiring their inheritance, managing property, running businesses, or receiving their dower. Women, however, had recourse to this male opposition through their ability to actively petition the court of Chancery.

Women's ability to act more freely in the court of Chancery and the almost universal usage of lawyers meant that in the late Middle Ages, English women were able to be active in the court system and by extension the public sphere. While this period may not be "golden" because of the inequality women often faced as a result of their gender, their ability to act in the public sphere meant that the period was not "grey" (as Sandy Bardsley described the period) either. Instead, these petitions to the court of Chancery demonstrate that women had social and legal rights after the Black Death and that they were determined to exercise them- in most cases against men. In an era where males dominated the court system and the government's enforcement apparatus, women's ability to file petitions in the court of Chancery allowed them to act in the public sphere in the same capacity as men and defend their legal rights from challenges of male opponents.

At each stage of their life, women were able to act in the court system and manage property outside the rights ascribed to them by common law. As daughters, women were able to inherit property and were even favored over collateral males. Their right to inherit, however, was connected to the daughter's ability to continue the family bloodline, which a collateral male would be unable to do. This ability to inherit not only made the power to control the choice of marriage partners for these heiresses important but also provided these women with the ability to own property. Although her inheritance would become her husband's property at the time of her marriage, her ability to inherit demonstrated that women served an important function in the continuation of the family estate.

As wives, women were not only able but were expected to assist their husbands in their businesses. Thus, women often acted as heads of households and landowners in their husbands' absence. As executors of their husbands' estates, women had to act outside their role ascribed by common law in order to conduct business. Acting in this capacity, their position was often challenged and wives had to depend on the court of Chancery to protect their right to act as their husbands' executors. Wives were also fundamental to the household economy not only through assisting in their husbands' businesses but also through their own businesses. Although their work was centered in the household, wives served a vital function in the household economy, which proves that many marriages were an economic partnership between the husband and the wife.

As widows, women had the most legal and economic rights since they were landholders and heads of household. Their right to a one third dower meant that widows would own and manage property. It was not uncommon, however, for widows to receive more than one third or, in the absence of an eligible heir, the entire estate. Unlike daughters, whose inheritance was controlled by their husbands at the time of their marriage, widows maintained control of their property even if they choose to remarry. Since widows were heads of households, they needed the right to actively manage their estate through the ability to enter into contracts and use the legal system.

Although medieval women had these rights, either legally or customarily, their public roles were often challenged because many saw their position as weak. Even though women had some of the same economic and legal rights as men, such as the ability to inherit property, manage estates, enter into contracts, and act in the court system, their position as women made them different from men. In fact, their ability and

right to act similarly to men, especially as widows, presented a challenge to traditional male authority. By acting in a public role, women crossed traditional gender lines, which threatened male-female relationships. Thus, women's roles as daughters, wives, and widows, caused many men to try to reassert their authority by challenging their public position. In the face of these challenges, women were able to use the court of Chancery to defend their rights.

Women used the court of Chancery more often than common law courts. As several of the petitions to the court of Chancery illustrate, women were able to act more freely in the Chancery than in common law courts. This was because the court of Chancery was seen as sympathetic to the weak and the court lacked defined structure that would have excluded women. In addition, women were often unable to find justice in common law courts because of the inflexibility of the court and the influence of prominent men in the justice system. Since common law courts only considered written evidence, women, who were unable to produce documentation of property ownership, often petitioned the court of Chancery, which ruled according to equity. In addition, women had fewer social connections than men, which meant that the men they were petitioning against often had connections that would allow them to influence the common law decision. These social connections, or the lack there of, were not only important in the common law court system but also the court of Chancery.

While contemporaries and historians have often referred to the court of Chancery as a court for the poor, weak, and oppressed, these petitions to the court of Chancery illustrate that many of these women were anything but poor. The characterization of poor, oppressed petitioners probably developed from the fact that the petitioners to the

court portrayed themselves as poor and weak in order to gain favor from the Chancellor. A careful examination of the petitions, however, illustrates that the majority of petitioners were not members of the lower segment of the social structure. Several of the women in my study were petitioning for money, goods, and property worth a significant amount in an era and country where few people owned land. These petitioners would have incurred several expenses since the majority hired lawyers to assist them in writing their petition and pursuing their case. Several of the women had already attempted to pursue their case in a common law court, which would have required them to purchase a writ.

Some historians have argued that there were differences between the written and verbal petitions to the court, which makes a wide scale study of the court of Chancery impossible. Although verbal petitioners could have been in a lower socioeconomic position, in the late medieval period, most would still need a lawyer to argue their case and their lack of social connections would be important to the outcome of the case. In particular, the case of Joan Armbourgh illustrates that a woman's socioeconomic position was important to counter her opponents' influences on the court. Although Joan and her husband had the means to hire a lawyer, their lack of social connections meant that they were unable to successfully petition the court while their opponents were able to use their position in society to receive favorable decisions. During the medieval period, social connections were a major part of the legal structure, and even in the court of Chancery, a person would need these connections and funds in order to successfully petition the court.

Despite these problems with the court system, petitions to the court of Chancery provide insight into the lives of medieval English women. As daughters, wives, and widows, women were able to have a public role through their ability to obtain and

manage property, run businesses, and act independently from male protectors. As a result of this ability women were placed in a similar legal position as men, thus challenging the male dominated society and governmental structure. Because of problems with the common law courts, which allowed powerful local males to prevent justice, women relied on the court of Chancery to recover their rights. Thus, the court of Chancery presented women with a way to actively participate in the public sphere and to defend their rights to do so.

APPENDIX A

Transcription of Alianore's petition.

To the reverent Fader in god the archbishop of Caunturbury and Chaunceller of England.

Humbly besechith your gode lordship your coutynuall Orators William Togode and Alianore his wife that wher as one Thomas Thowe esquier late dissesid fader unto the seid Alianore of greate confidence and love that he hadd in one Richard Brakynburgh clerk, the seyde Thomas lent unto the seyde Richard in his greate necessite *C li.* sterlyng for the which *C li.* the seyde Thomas made [a technical term for an agreement] with one Sir Thomas Cole knyght leytyge all his landes and tenementes that he had in the countie of Kent [unreadable] plegg to the seyde Sir Thomas for the seid *C li.* takyng of the seyde Richard Brakynburgh for the suertie of the payment of the foreseid *C li.* only an obligation of *C li.* and afterward the seyde Thomas Thowe made one Elizabeth then beyng his wyf, Thomas and Richard, his sonnes, Agnes and the said Alianore, his doughteres, his executors and willed by his seyde testment that the debte of the seyde *C li.* recovered shuld be disposed in [terms] folowyng, that is to saye, his seid 2 doughteres to have therof to their mariage *xl li.* and the remainent therof to be disposid in werkys of cherite for the soule of the seyde Thomas Thowe and after the same Thomas dyed, after

whos deth and after the daye of payement of the seyde obligation expired the seyde executors have often tymes required the seyde Richard to paye to them the seyde C *li.* which to do the seyde Richard hath utterlye refused and yet doth, and your pore beseheres in the name of all the seyde executors and in the name of one William Adams, late husband of the seyde Elizabeth, sued an action of dette ayenest the seyde Richard affore the Kyng's juges of the comon place [common pleas] at Westmynster, proces therof contened at their greate charge unto the tyme the seyde Richard was outelawed and he beyng so outelawed, the seyde William Adams died, by whose deth the seyde Richard [Brkynburgh] hath aboyded all the seyde proces of the seyde action and also graciouse lord sythyns that suyte abated, the seyde Richard, one of the seyde executors, ys [fell] oute of hys mynd and the seyde Agnes another of the seyde executors is professid a nunne under the abbeysaunce of one Alice Fizzlewes, abbes of the Mynoresse withoute Allgate of London and hath willed the seyde xl *li.* unto remayne to the use of your seyde besecheres, and that natt withstondyng, they can have none action by the comyn lawe ayenest the seyde Richard [Brakynburgh] but in the name of all the seyde executors which 2 of them for the [reasons] affore rehersed [madness and monastic profession] be unable to sue any action, and the seyde Elizabeth consideryng that she is to take no profite of the seyde duyte she is nott willyng to sywe more for it but disposeth her to marie ageyn which shall cause any suite comensid in her name to abate. Wherefore your por Orators be withoute remedie and the seyde wille unperfourmed and all the seyde executors, consideryng that the seyde testator lieth buried in the hospitall of Newarke in Strode in the seyde countie which also had a singler gode will in his life to the worke and mayteunce the brigge of Ronchester, they wold dispose the seyde lx *li.* residue of the seyde C *li.* if it myght be recovered in the

makyng of the said Brigge of Ronchester in performaunce of the last will of the seid Thomas Thowe or in other dedis of charite as shalle thought to your lordship resonable. Pleasith it therefore your gode and graciouse lordship the premysses tenderly considered to graunt a writt of sub pena to be directid to the seyde Richard Brakynburgh, commaundyng hym by the same to apper affore the King in his chauncere at a certeyen day and under a certeyn payn by your lordship to be lymeted ther to answer unto the premisses as right and conscience shall requere in this behalfe and your por orators shall [continually] pray for the prosperite of your graciouse lordship.

a pleg de ps John Lambard, de London, yeoman

Richard Crue, de, laborer

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