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**English women at law: Actions in the King's Courts of Justice,
1194-1222**

Orr, Patricia Ruth McClain, Ph.D.

Rice University, 1989

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ENGLISH WOMEN AT LAW
ACTIONS IN THE KING'S COURTS OF JUSTICE, 1194-1222

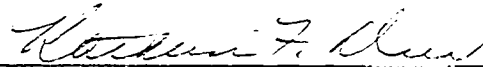
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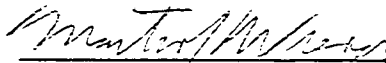
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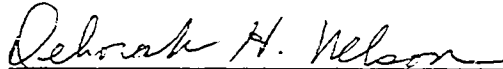
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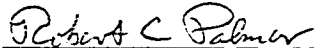
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ABSTRACT

ENGLISH WOMEN AT LAW ACTIONS IN THE ENGLISH ROYAL COURTS OF JUSTICE 1194-1215

by

Patricia Ruth McClain Orr

Women in the medieval English law courts have too often been regarded as passive objects of legal restrictions. Their true position in the courts is best revealed by their own actions as seen in the plea rolls, the records of proceedings in the royal courts. A study of only one form of legal action gives a limited view of women's prospects; this study explores both civil and criminal actions in order to determine the true extent both of the restrictions on women and the accomplishments they were able to make.

In the civil law, actions of right highlight the additional restrictions placed on women by the distinctive patterns of sharing by which women held land, as well as the pervasive interest of males in women's landholding. The widow's actions of dower, however, strongly favored her by removing some of the defendant's advantages of delay and choice of proof; the result was that widows won over seventy per cent of the cases they brought to a conclusion. Even here, however, there was a small but growing male presence.

In the criminal law, women who complained of rape, though they fared most poorly of all women at law, were only slightly worse off than were male victims of wounding, the only other non-fatal crime against the person, and were active in restoring any loss to their marriageability the

rape might have caused. Women who brought other criminal charges, on the other hand, found the court so sympathetic that it overrode its own stated principles to aid them.

Though more subject to more restrictions than has been realized, women were capable of more activity on their own behalf than has previously been imagined. There were women who overcame all the obstacles the law could place in their way; in some areas women were favored by the court in unexpected ways; and throughout the courts women were using the system to win from it more than, on the face of things, the system was ever prepared to grant them.

Acknowledgements

My profound and deepest thanks go to Terry, who is indispensable to all my efforts, and to Sean, Shannon, and Beth for their loving support and their sound advice to a sometimes bewildered parent; no words can do you justice.

My deepest gratitude goes also to my parents, Dorothy B. and Robert W. McClain, as well as to Estelle Orr and to Kathy, Mike and Caroleigh, Bryan and Tena, and Mark and Janet for their love and high expectations.

The scholarship, ability, and graciousness of Professor Katherine F. Drew have set the highest possible example and I am very fortunate to have studied under her, and under scholars such as Professors Martin J. Wiener, Jane Chance, and John B. Boles, whose talent and unstinting concern are equally an inspiration to their students. I am grateful to Professor Deborah H. Nelson for her aid, and to Professor Robert C. Palmer for generously sharing his enthusiasm and knowledge.

Dean James, Ann Bradley, and Barbara Jonte are the staunch and valued friends on whom I rely even more heavily than they know and without whom the world would be a drearier place; I thank you for all you have done. I also would like to thank the Rev'd Jeffry H. Walker, the Rev'd James T. Tucker, and the Rev'd David B. Tarbet, to whom I have often turned, and the Rev'd Michael Fox, who encouraged me long ago.

Finally, I rejoice in the memory of Maude, Pearl, and Myrtle and in the presence of Dorothy, Faye, and Doris, and all the women who taught me by their example that life's restrictions are a spur to its accomplishments.

Abbreviations Used

Please see bibliography for citations in full.

BEDF: a Roll of the Justices in Eyre at Bedford, 1202

Bracton: Bracton on the Laws and Customs of England

CRR: Curia Regis Rolls

ELAR: Earliest Lincolnshire Assize Rolls

ENAR: Earliest Northamptonshire Assize Rolls

Flower, Introduction: Flower, C. T., Introduction to the Curia Regis Rolls, 1199-1230 A. D.

Glanvill: The Treatise on the Laws and Customs of England Commonly Known as Glanvill

Milsom, Foundations: S. F. C. Milsom, The Historical Foundations of the Common Law

P&M: Pollock, Sir Frederick and Maitland, Frederick William, The History of the English Law before the Time of Edward I

PKJ: Pleas before the King and his Justices

RJE-GWS: Rolls of the Justices in Eyre...for Gloucestershire, Warwickshire, and Staffordshire

RJLW: Rolls of the Justices in Eyre...for Lincolnshire and Worcestershire

RCR: Rotuli Curiae Regis

3RRI: Three Rolls of the King's Court in the Reign of Richard I

YK 3H3: Rolls of the Justices in Eyre... for Yorkshire in the Third Year of Henry III 1218-19

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Introduction

At the turn of the thirteenth century Alice Clements went to law. Like many Englishwomen of her time she claimed to have been grievously wronged, in her case by the appropriation of her inheritance by an unscrupulous guardian, and she elected to sue for a remedy in the king's courts of justice. She was joined by women with a wide variety of complaints. Marjory daughter of John of Turgirtorp sued because she had been raped; Rose, widow of David le Toering claimed small parcels of land against fourteen persons; and Lucia de Morestowe had been robbed while entertaining a client in a field.¹ The legal system placed severe restrictions on women but does not seem to have discouraged them; between the years of 1194 and 1222, the period encompassed in this study, thousands of women and their heirs streamed into court to make their complaints and answer the complaints of others. A close study of the cases involving women shows that while the restrictions on them were more confining than has previously been realized, their own activity kept those restrictions from being the sole determinant of their success in court. Women who flouted the restrictions sometimes found themselves enjoying the perhaps unexpected favor of the court, and those who labored under the most severe restrictions were capable of emerging with either a clear victory or something they considered to be of

sufficient value to justify the expense and trouble of their actions at law.

The sources which are the basis of this study are the plea rolls, so called because they are the parchment rolls on which are contained the records of cases, or pleas, heard in the king's courts, that survive from the years between 1194 and 1222, the first generation of English legal records, between the earliest of the surviving records and the close of the first great eyre of the reign of Henry III.² These earliest rolls have in themselves a special claim on our attention. As Maitland remarked:

The earliest plea rolls...are--this need hardly be said--of supreme interest to anyone who has a liking for the history of our law; they are the oldest official, and therefore, thoroughly trustworthy, accounts which we have of what was done by the English courts of justice.³

His remark, which concerns the rolls from the year 1194, is equally appropriate to those of the years following.

Not only do the rolls of those years give us a look at a very early stage in the formation of the law, but they encompass a time of considerable legal development. The courts were completing the job of assimilating the legal innovations of Henry II, and newer remedies such as the writs of entry were coming into use. The use of the ordeal as a trial of guilt or innocence ended in 1215 when the Fourth Lateran Council under Innocent III forbade the clerical participation that gave the ordeal its validity; the courts, already experimenting with use of the jury,

tentatively turned to it to fill the gap the ordeal had left. In the same year Magna Carta was forced on King John by his barons. Feudal arrangements were still very much in evidence, but England was being transformed by the growth of a money economy, and the King's administration was growing in size and complexity. The legal theory of the period was defined by the legal treatise called by the name of Glan-⁴vill its beginning and by the treatise called Bracton⁵ soon after its end. Each of these developments was, as we shall see, to have an effect on the legal standing of women.

The plea rolls present a unique opportunity. Every plea between litigants or presentment by the jurors was supposed to have its corresponding entry in the rolls; this wealth of factual record makes the rolls an unequalled source of information concerning actions taken in the courts. Women of varied economic and social standing appear in large numbers as they do in no other source, and in no other source can the justice meted out to them be so clearly seen.

The earliest plea rolls pose some difficulties as a historical source. Most serious of these is the loss and damage they have suffered over the centuries: they were neglected, they were carelessly stored, they were even eaten by rats.⁶ Only a handful of rolls survive from the reign of Richard and many have perished from John's and even Henry's reign; those that have survived are sometimes

fragmentary or have become torn or faded over the centuries. The surviving rolls heavily favor litigation from the eastern counties and the legal opinion of certain revered justices, in particular Simon of Patishall and Martin of Patishall:⁷ this selective survival precludes any possibility of the use of scientific sampling, a technique⁸ that has been fruitfully used on later plea rolls. These difficulties are increased by the substantial number of extremely terse entries, which sometimes reflect the rolls' function as a financial record of moneys owed the king for amercements and murder fines and the like rather than their⁹ function as a record of judicial proceedings.

Nevertheless, these rolls repay close scrutiny. Even in the earliest rolls, where these considerations weigh most heavily, there is material enough to give a good idea of the justice being dispensed. There are some cases from every area of England, and there is an abundance of full and detailed entries that shed light on the regrettably brief ones. The disparities grow less pronounced as time goes on; by 1222 the geographical disparity comes close to disappearing, a considerably larger proportion of the rolls survives, and the entries become much fuller and more consistently concerned with the doing of justice.¹⁰ The legal opinion of highly esteemed justices such as Simon of Patishall is of interest in itself because it was a part of the current of legal thinking that would lead to Bracton, espe-

cially in those rolls marked by the jurist who compiled the collection of cases known as Bracton's Note Book.¹¹ There are, moreover, examples enough of other justices' thinking, such as that of Stephen of Seagrave, for example, to provide needed contrast.

Though these rolls do not easily yield results to the technique of scientific sampling, they respond well to a more comprehensive approach, that of reading as large a number as possible of the surviving pleas concerning women for the wide variety of information they contain. With this approach it is possible to illuminate large numbers of brief and relatively uninformative entries with the insights provided by more detailed ones that might otherwise have been missed, and to follow cases of interest through all their appearances in the rolls. Even the brief entries, when taken in the aggregate, have much to tell; they suggest much about the judicial trends of the time.

The plea rolls are not the only source for the study of the judicial system of the turn of the thirteenth century; the period's two major legal treatises in particular are indispensable for the information they give about the law. The treatise that was formerly attributed to Rannulf de Glanvill, usually called Glanvill after him, was in all probability completed shortly before 1189 and describes the law as viewed at that time by a jurist experienced in the ways of the king's courts. His purpose was to explain the

workings of the law and, further, to move toward a theory of the law by discerning its inherent principles. Another jurist scrutinized the rolls for the year 1218 and later for significant cases that might serve as raw material for the treatise that was formerly attributed to Henry de Bracton. Completed near the middle of the thirteenth century, this treatise, called Bracton, carried further the Glanvill author's attempt to wed contemporary practice to legal¹² theory.

Both treatises have much to tell about the judicial system at the turn of the thirteenth century, and each draws heavily on the courts' written records, Glanvill on the writs and Bracton on the plea rolls. But their very concern for theory caused each author to abstract and simplify his picture of the practice of the courts, and the author of Bracton in particular did not always distinguish between the law as it was and the law as he thought it ought to be. To be sure of actual practice in the courts it is necessary to rely most heavily on the records of those courts, the plea rolls.

The legal system that produced the plea rolls and the legal treatises was in the process of defining itself. According to thirteenth century legal theory the king was¹³ the source of justice, and his personal court of justice, the curia regis, which produced the plea rolls, was the highest court in the land. This court had by the turn of

the thirteenth century developed three major divisions: the bench at Westminster, the itinerant justices on eyre in the counties, and the court coram rege, held in the presence of the king.¹⁴

The bench, as it is called in the rolls, was a permanent court that sat at Westminster, generally transacting "common pleas," the everyday business of the courts, which included civil pleas that did not concern the king's own property or interests, a certain number of criminal appeals, or pleas of the crown, and routine business such as postponements of ongoing pleas. The itinerant justices took royal justice out into the counties, to the dismay of the inhabitants there, who had some reason to dread these judicial journeys, called eyres. The purpose of the eyres was to make sure that the king's interests in property, escheats, wardships, and the like were not being infringed upon, and to keep better order in the realm by making royal justice more accessible in areas far from London. They were to take place on a regular basis, eventually by custom every seven years, though variations in itinerary or, as in the last years of John's reign, the disruptions of war could bring about longer intervals. The king's subjects feared the justices' searching inquiries about the monarch's rights and their relentless imposition of financial penalties,¹⁵ called amercements, but took advantage of the eyres' accessibility to bring in their complaints in large num-

bers; the eyre rolls contain more than their share of criminal appeals and litigation of people below the upper ranks of society.

The third division of the curia regis was the court coram rege, literally "in the king's presence," which was with the king whenever he was in England, whether he resided at Westminster or travelled about the kingdom. The king, if not presiding himself over the sittings of this court, was at least near at hand for ready consultation if needed, because this court heard pleas which directly concerned the king's interests, pleas between his chief tenants, and those postponed from other courts because of their difficulty or the importance of the persons involved. These divisions of jurisdiction were not hard and fast, however. The king, on his journeys about the country, might hear the pleas of his most humble free subjects.

The men who served as justices in the curia regis were an able group, drawn there by the importance of this very lucrative part of the king's administration. At this early stage the body of justices, like the court system itself, was in the process of defining itself, and men were only beginning to specialize in judicial activity. Most were curiales, trusted servants of the king who served him in several capacities, as sheriffs or in the Exchequer, for example, as well as on the bench. These men received no formal education in jurisprudence, rather they learned by

experience, whether in their own feudal courts, as sheriffs presiding over the county courts, in the judicial activities of the Exchequer, by sitting in the curia regis itself under the guidance of others more experienced than themselves, or by some combination of these activities. As specialization increased, justices' clerks learned the law as they recorded the progress of pleas in the courts and rose to become justices in their turn, as appears to have been the case with Martin of Patishall, a clerk during this period who rose to become one of the most respected justices of his time.

Whether curialis or clerk, none was born to the highest ranks of the nobility; most were of the lower knightly class or, at most, younger sons of the nobility. All had their way to make and advanced themselves by their service to the king, receiving in return, in a day before the payment of salaries, such rewards as the king had to offer, usually grants of land or the opportunity to benefit from royal rights in such feudal incidents as wardships, escheated lands, or marriages of minor heirs.

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The fluid state of the judicial system, already seen in the evolving divisions of the curia regis and in the composition of the judiciary, is reflected in other aspects of the courts as well. There was no regularized appellate jurisdiction in the modern sense, either among court's three divisions, or from the county and hundred courts presided

over by the sheriff and his officials, or from the feudal courts held by lords for their own tenants. A litigant who had suffered injustice could, however, initiate procedures for such things as attain of a jury or for removal of his suit to a different and higher court, possibly, if persistent enough, being heard by the king himself.¹⁷

In this fluid system money was usually required and always very useful, to pay for the writs that initiated an action, for amercements he incurred, or for offerings to the court to have a special jury to answer some question that had arisen in the course of pleading, or even for a speedy judgment. These courts were not, however, for the rich alone. Even the very poor, provided they were of free status, could and did bring civil pleas or criminal appeals into the courts; having pledged by their faith to sue, they would receive their hearing.

A litigant in the curia regis began his or her suit by choosing an appropriate action, or form of legal proceeding. Glanvill had divided the actions available in the courts into civil and criminal pleas. The civil actions comprise the overwhelming majority of pleas in the rolls; if their dominance is a trustworthy indication, the English were obsessed with the acquisition, holding, and defense of their land. A litigant seeking land might choose to pursue an action of right, which was lengthy, might end in the violence of a judicial duel, and, once settled, could not be

reopened on the same set of facts. If circumstances warranted, he or she might choose from an array of speedier and less perilous actions that came into being to supplement the action of right in the time just before and during the period of the earliest plea rolls, the possessory actions and the writs of entry, which turned on a question put to a jury especially constituted for the occasion.

There also were actions for the recovery of a debt or of chattels unjustly detained by one's lord. One class of actions pertained only to women; these were actions of dower, or the right of a widow to the use of a portion of her late husband's lands during the remainder of her lifetime. If no existing legal action offered redress for the litigant's particular difficulty, it was possible to bring a plaint, a complaint made directly to the king as source of justice, that set out the precise circumstances of the wrong that had been done, as, for example, when a judgment in the king's court had not been carried out and the lands were still being detained from the claimant. The choice of action was the responsibility of the plaintiff, and a wrong choice was costly; if the action chosen did not fit the particulars of the case, the result was an amercement for a false claim and time lost in finding and bringing the correct one.

Each of these actions was open to use by women, but not with the same freedom with which they were used by men, in

part because women spent much of their lives as the ward of someone, usually of a male. As a minor a woman was in the hands of her father or her guardian. In theory the guardian was to arrange a marriage for her, usually before she came of age; the marriage was to provide for her economic future while winning as much advantage as possible, in alliance or in monetary payment, to the person who arranged it. Thus she was to slip from the wardship extended over a minor to that extended over a wife.

The status of a married woman has been aptly described by Maitland as a profitable wardship held by her husband.¹⁹ Once she was married her lands were completely under her husband's control, and legally she could do nothing without his consent and participation. She could not sue or be sued without him. If she made a purchase or a sale without his participation or consent, it would not hold up in court.²⁰ On her husband's death, if he predeceased her, she could not inherit from him, though she was entitled to her dower, the part of his lands set aside for her sustenance. She could receive gifts, but they, like her other properties, were controlled by her husband; indeed the most common gift to a woman, the maritagium or marriage-gift, was said in the legal language of the time to have been given to her husband with her in marriage, even though it would revert to her after his death.

Her husband, on the other hand, had a free hand with

her holdings. If he sued someone or was sued concerning her lands her name had to appear on the writ and he had to produce her or her legally appointed attorney in court, but he need not consult her in his conduct of the suit. He could alienate her lands by sale, gift, or grant without her consent, he could mortgage them, lease them out, or find a renter for them. His arrangements would endure at least throughout his lifetime, and beyond if she did not survive him and challenge his arrangements in court. By law she could not contradict him, though her consent might be asked if the person to whom the lands were to be alienated hoped by this means to enable the agreement to remain in effect after the husband had died.²¹ Only after his death could she begin to recover her lands with the aid of one of the earliest of the writs of entry.²²

The fullest legal potestas was enjoyed by women who were of age but not married, who thus were without guardians and could act for themselves. Since women who came to full age without any arrangement being made for their marriage have been thought of as having been rare, the woman in the strongest legal position would appear to have been the widow. She could enter into her own inheritance and maritagium, if any, and manage them herself, or she could grant them away in return for an income or in whatever way she wished and her agreements would be binding. She could also go about recovering her lands if they had been

alienated. She could make purchases that would be upheld as legal and she could sue and be sued in her own person in court. Even she, however, was subject to some constraints. Her marriage was in the hand of her feudal lord, and, though she might pay him to avoid an unwanted union and in theory she was allowed to choose her own husband provided that she got her lord's consent, there was a strong likelihood that she would again find herself in a marriage not of her²³ choosing.

Whether married or not a woman was not supposed to have any part in the workings of the court. Women could and did serve as attorneys, in a time when attorneys were as likely as not to be friends or family members of the persons they represented, and women might be called upon in a capacity very like that of a juror if there was a question of a false pregnancy. Otherwise they were to appear in court only as²⁴ litigants, and then only under restricted conditions.

The prosecution of criminal offenses was still, to modern eyes, in a primitive state of development. Certain offenses, such as homicide, mayhem, rape, robbery, theft, and treason, had come to be considered infractions of the king's peace, the protection and good order he extended to his free subjects, and thus offenses against his interests. Thus actions concerning these offenses were grouped among the crown pleas, along with such matters as encroachments on the king's lands and reports about the minor heirs, widows,

and escheated manors that were "in the hand of" the king.

Prosecution was not yet the sole responsibility of the state, however; there was a strong feeling that private individuals must take a part in bringing the injuries done to them to the attention of the court. This was done by bringing an appeal, or personal accusation, against the person alleged to have committed the offense. The appellor, or accuser, had to be a person who had been directly affected by the crime, the victim in cases of robbery, rape, and most cases of wounding. In cases of homicide and in those cases of wounding in which the wounds were so serious that the victim could not make his own appeal, a spouse or member of the immediate family of the victim, or a man bound to the victim by the ties of homage, could bring charges.

These private appeals were supplemented by the process of presentment, established or regularized by Henry II in the Assize of Clarendon in 1166.²⁵ In this process a jury of lawful men, the presentment jury, would report to the justices all notorious instances of homicide, robbery, theft, or the reception of robbers or such in their bailiwick. They also were responsible for reporting the names of any who were of bad reputation or who had been repeatedly suspected of committing such crimes.

The means of trial also were primitive. Men who brought an appeal might have to back it up by fighting a duel with the accused. Trial by ordeal of iron or water was

available until its abolition in 1215 for cases in which the appellor could not fight, as was the case if the appellor was maimed, or over the age of sixty, or a woman; and trial by ordeal of water was prescribed for those accused by the presentment jury until the same year. Accused persons who fled rather than face trial were considered to have waived trial and were to be outlawed. Even before 1215 an early form of trial by jury was evolving,²⁶ and justices were to turn more to juries after that year in order to fill the gap left by the loss of the ordeal, but with some caution, especially when a defendant refused to submit to trial by this means.²⁷

Women were even more severely restricted in criminal appeals than they were in civil actions. As in the civil actions a married woman could not bring an appeal without the presence and consent of her husband, and she was severely restricted in the kinds of appeals she could bring. According to the legal treatises a woman could bring only two appeals: she could complain of the death of her husband if he was killed in her presence, or of the rape or injury of her own person.²⁸ If she had suffered robbery, arson or the death of a parent, sibling, son, daughter, or some other relative, her complaint was not in strictest theory to be heard in court unless the misdeed had affected some male who can bring the complaint in his own right; a husband, for example, could bring a complaint about a robbery committed

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against his wife.

As criminals women receive almost no attention in the treatises. Glanvill discusses criminal offenses as if they were committed only by men; the treatise called Bracton says little more. It raises the question of the responsibility incurred by a husband whose wife commits a crime and offers the answer that neither spouse is guilty of an offense committed by the other unless he or she has consented, and it considers the penalty to be assessed against a woman who flees for a crime and avers that she cannot be outlawed because she is not in a tithing, rather she is to be waived, that is, to be treated like an abandoned thing, a piece of property with no owner or protector.

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The view of women's standing in court derived from the treatises can be validated or exposed as incorrect only by reference to their activity in the rolls; the object of this study is to present women's actions in a broad enough framework to give a full picture of their restrictions and the opportunities, sometimes unexpected, that the courts allowed them. We will trace their activity in both civil actions and criminal appeals, and in both these areas of the law we will look at both an action or appeal designed specifically for women's use and one or more that were open to all litigants or even forbidden to women. Thus we can evaluate and if necessary modify the view the treatises' authors had of women at law.

The impression is strong that in the eyes of the authors of the treatises the courts and the law were essentially a male preserve. Even landholding itself was supposed to pertain principally to men; women who held land generally had inherited it in default of a male heir or been given it out of someone's generosity. Women were to be under the protection of a parent, guardian, or husband who would manage their lands and speak for them in court; they could speak for themselves only if they had no such protector or if they had been raped or seen their husbands slain. Why, then, did so many women find it worth their while to come into the courts? Litigation was time consuming and could be expensive, yet its rewards must have been commensurate to justify the effort and outlay. We must turn to the rolls and to the actions of women like Alice Clement to find the answer.

Notes

1

Alice Clement: CRR ii 81; Marjory daughter of John of Turgirtorp Yk 3H3 946; Rose widow of David le Loering CRR vii 295; Lucia de Morestowe PKJ II 399.

2

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SECTION 1
THE CIVIL ACTIONS

Chapter 1 The Actions of Right

When Alice Clement brought her complaint into the king's court she used an action of right, the most prolonged and arduous of the civil actions but one much used because of its permanency; a settlement, once reached, was final and could not be reopened between the two parties. The action makes a good beginning point for the study of women's activity in the courts because it concerns the basic question of right in land and best addresses fundamental questions of women's rights in land and status in the courts. Women probably found it the most restrictive of all the actions since it was the action in which they had the most difficulty in bringing to the attention of the court the special circumstances by which they held land. But it was nevertheless a useful action, and those who claimed by women's right used it extensively; there are over 1300 entries in these rolls that concern women's rights in land.

Women's rights in land were a sanctioned anomaly; anomalous in the system of inheritance from male ancestor to male heir, but sanctioned because of a complex of masculine interests in which personal and economic concerns were inextricably mixed and that produced a male constituency for women's right in land. Most men no doubt cared for the welfare of their female relatives and wanted to establish them in an advantageous marriage, as well as desiring the

alliance that such a marriage would bring to the family. Men received their wives and their wives' lands and had a strong interest in making sure they brought under their control all the lands to which their wives were entitled. There was an interest in women's rights in land on the part of men who gave the women and men who received them. But a woman's rights in land were always inseparable from the woman herself, and came into the woman's own use if she were widowed or if she remained single; probably there were more than a few women who managed their lands even though they were married. The assigning of rights to women was no mere formality, and active women did much in the courts, against all obstacles, to obtain and further their own rights in land. On the other hand it was part of the anomalous nature of their landholding that they held their lands in patterns of sharing that imposed more severe restrictions on women's legal activity than is generally recognized.

Women, like men, received land by inheritance and by¹ gift, but, unlike men, they found special conditions attached to their inheritance of land and the form of gift they usually received. Women's inheritance itself was an anomaly that occurred only in default of a male heir in the direct line. A daughter, for example, could inherit only if she had no brothers or if her brothers had died without heirs. The land women inherited they held in parage, that is, sisters parted their inheritance equally among them-

selves; a woman could hold her land alone only if she was without sisters as well as without brothers.² The effect of parage was twofold. Equal division among sisters meant that, even though there was no father or brother to provide for them, each sister would receive the wherewithal to enter into marriage or the life of the convent, still assumed to be their most reliable means of support. But a woman who held land in parage could never act alone in court; if she sued or was sued she had to secure the presence and consent of all her sisters.

Land women received as a gift also was intended to be shared; the most common gift to women was the maritagium, or marriage-gift, a form of gift so common that Glanvill without preamble began his discussion of gifts of land with a description of it. The maritagium would not go directly to the woman; rather it was spoken of as being given to the husband along with the bride. In whatever way a woman acquired her right, once she married her husband would hold and manage all her land all his lifetime. The wife would have the land herself only if she survived him and if he had not alienated it, as he could do regardless of her wishes if he chose, and left her with a legal battle to recover it. These patterns of sharing in women's landholding meant that women were seldom free to act in court on their own, and left women particularly vulnerable to impositions by others; the greed of a sister or her spouse, or the will of a hus-

³
band.

The conventional picture of women's status in the courts, if any exists, ⁴ contains contradictory elements; women's land rights are usually discussed as if they were for the benefit of women alone, ⁵ but these same discussions, by focusing on the restrictions placed on women by their legal dependance on fathers, guardians, and husbands, leave an impression that women as the passive object of those restrictions. In the recorded actions of right women come to life and their actions, observed in detail, provide a more well-rounded picture.

Activity in the action of right was not confined to women of highest social status; women who brought these actions were from all ranks of landholding society, from noblewomen such as Alice countess of Augo who defended her right to the castle and vill of Tykenhull (Tickhill in Yorkshire) against the challenge brought by Robert de Veteri Ponte for himself and his wife Idonea, to those whose suit concerned three or four acres. The size of a plot of land does not always indicate the status of the litigants when high and low alike avidly sought landholdings of every size; Isabelle countess of Oxford, for example, included in her suit a holding of only 3 1/2 acres, and one complicated and hard-fought plea concerned a house, given by a mother to her son, to be held for ten pennies a year from the earl of Leicester. But when Queniva and her sisters Agnes and Alice

waged a duel against another sister, Katherine, for three acres of land and the land's appurtenances amounting to three twenty-five-foot square patches of land, we are in the presence of people to whom this amount of land was of consequence. Humphrey son of Henry and Alice his wife were truly poor; they lost their suit against Alice's sisters because Alice had already recieved her portion of their father's inheritance, some three acres; Humphrey's amercement was forgiven because of his poverty. The very poor are relatively rare, however, with most holdings being at least a half or a whole virgate, about thirty acres and comparable to the standard holding of a villein of substance, and a good measure of larger holdings.⁶

Having initiated an action of right, whether by precipe quod reddat in the royal court or breve de recto tenendo directed to the lord's court which could be removed to the royal court by a writ pone, the complainant had to support the claim by offering suit, men prepared to swear the claim is just, or by offering battle.⁷ Battle probably posed little difficulty for women because of the universal practice of offering battle by a champion. The champion usually was supposed to be the free man of the litigant, a man whose homage the litigant had taken, and had to swear that he had witnessed the seizin of the litigant, or, if the claim was based on long-ago seizin, that the champion's father had seen it and on his deathbed had ordered the champion to

defend it in court if necessary. Maitland remarks that the oaths of champions were notoriously false and that professional fighters were "shamelessly employed," and gives the names of three men who had "witnessed" the seizin of a suspiciously large number of litigants. A person who did not wish to hire a professional fighter might secure a relative, neighbor, or friend to do the job.⁸

Women were as able to send a champion into the field as men, provided they had the means; no claims failed because the challenge of battle could not be made or met. Women of more comparatively exalted status such as the Abbess of St Edward's, Avise de Normanville, and a certain Maud Trussell who was defending her right to a knight's fee, offered battle by "her free man." Others could be resourceful in arranging for a champion. The concord that ended the suit between Odierna de Luserne and Hugh Malet, in which duel had been waged, specified that half the land was to go to Hugh and that the other half was to go to Odierna for her lifetime, then to Hamo Passelew, Odierna's champion, with Odierna's daughter, whom Hamo had married, and to the couple's heirs.⁹

On the whole, defendants preferred to avoid battle; most suits were concluded in some other way. Some defendants, those with well-known facts on their side might choose to put themselves on the grand assize. Glanvill praised the grand assize because it allowed litigants to

"preserve the rights which they have in any free tenement, while avoiding the doubtful outcome of battle," and put the question of right to a jury of knights who would state the facts as they knew or could ascertain them about which of the opponents had the greater right in the land in question. Women defendants had even greater reason to value this assize because it allowed them to state the special facts, gift or default of male heirs or the like, that brought their land to them and to call on a jury to declare the truth of their statement. Exceptions offered women another opportunity to state facts that aided their defense or negated their opponents' claim and even offered assistance to women plaintiffs; once a defendant had offered an exception the plaintiff could produce charters or state facts not readily included in the count and could even ask for a jury, supposedly the preserve of the defendant, to decide the question raised by the exception. Technically this special jury could not be summoned without the defendant's consent, but once a question of substance was raised it usually was¹⁰ pursued.

Large numbers of suits never came to the conclusion appointed to any of these modes of defense. The parties to the suit could and did come to an agreement, often a compromise of some sort, at any time in these proceedings, no matter how far the plea had progressed. Peter de Cotes and the Abbess of St. Edwards did not rest their confidence in

the duel they had waged; they came to an agreement on the field of battle. In 1195 Rose the daughter of Robert and Simon de Bures came to an agreement about the land for which she had sued him just as the jurors of the grand assize were beginning to speak. Rose was to keep two-thirds of the land and the chief messuage, or house site, and the rest of the land was to remain to Simon and his heirs to hold from Rose and her heirs forever.¹¹

The agreement was called a final concord, and usually one or both of the parties to the suit would have to pay a standard fee to the justices for the privilege to be concorded, as reaching such an agreement was called. The terms of the concord were recorded on a cirograph, a sheet of parchment on which the agreement was entered in duplicate, or, after 1195, in triplicate, with the word cirographum inscribed between the entries. A zig-zag cut was then made through the word cirographum, rendering three documents of identical content, one for each party and one to be kept with the permanent records in the treasury. The documents' authenticity could be instantly established by matching their cut edges. Settlement of the action of right, whether by battle, jury, or concord, was final; the suit could never be reopened by the defeated party or that party's heirs.¹²

For a suit to come to any conclusion was relatively rare; delay was by far the defendants' preferred strategy. Battle or the grand assize might mean a loss and a concord

meant at least a compromise; with sufficient delay a plaintiff might give up or, in an age when life was precarious, die, leaving the defendant in possession of the land. Failing that, the plaintiff might reach exhaustion and agree to a concord on less favorable terms.

Delays were integral to the action of right, and even the most routine consumed months or even years. The defendant was allowed three summonses before appearing in court, and then either party had access to a series of essoins, or excuses for non-attendance. The last of the series, the essoin malo lecti for bed sickness, was itself good for a delay of a year and a day. The defendant who had several landholdings in a particular vill could ask for a view, ostensibly to ascertain which of his tenements was being claimed. Then, if appropriate, the defendant could vouch a warrantor, who had a shorter but effective series of delays, and could vouch a warrantor in turn. If battle was waged, the champions had their own series of essoins.

Other delays were available; there were specific terms for pilgrimage, crusade, and service overseas, and a term for service in England set by the will of the king, who could also exempt people from appearing in court if they had merely paid him to avoid going into his service. Possibly the longest delay was for the defendant who was a minor; the action of right was postponed until the minor came of age. The court itself might lose a writ or change the court's

meeting day without warning, and in one case both parties had writs from King John and the justices had to find out which was to be honored. The grand assize eliminated many of the delays built into the older action of right, but even it had to be postponed time and time again for default of the jurors.

Exceptions, reasons advanced by the defendant why this particular writ should not be answered, also caused delays. Rose Fecche, who claimed one virgate of land against Ralph de Auvers, had to prove that the elder brother Ralph spoke of in his exception was a bastard and so not entitled to the land; the plea was halted until the ecclesiastical court could declare on the matter. Even a default could be turned to the advantage of the defendant; defaulting defendants were penalized by having their land and its revenues taken into the hand of the king, but many defaults were excused and the lands returned with no financial loss. The most unusual reason for delay was that given by William Clement of Cambrigeshire who said that he had been excommunicated and had been directed by the Bishop of Lincoln to seek
¹⁴
 absolution in Rome without delay.

Imaginative defendants found ways to compound the effect of ordinary delays by vouching a warrantor who was on pilgrimage or who was a minor and could not plead until of age, or by arranging in advance to grant the land to a third party, perhaps a relative, put their land in the hands of

another person after the writ of right had been obtained and the summons made; whether they had done so or not a delay was occasioned. Alan son of Thomas said that his mother, whose name was left blank in the roll, held the land in dower and had held it before Alice de Lenna brought her writ; Alice insisted that if the thirteen-and-a-half acres in question had been assigned to his mother in dower it had been assigned after the writ was brought. A jury was to be¹⁵ summoned to settle the question.

It is in this context that we must consider the delays caused by purparty, or parage, the system by which an inheritance was divided equally among sisters. A deeply-held concern that all persons who had an interest in lands under dispute should be present caused the courts to require that if one sister sued the rest should be present to be parties to the suit, at least if the defendant called the courts' attention to the existence of other sisters. The courts were not willing to take the word of the plaintiff or plaintiffs that an absent sister need not be consulted. When Hawis de Walton sought against William Aguilin and his wife Sarra, who seems to have been Hawis's sister, her portion of their inheritance from a common ancestor, she stated that a third sister, named Emma, had already received her portion by a concord made in the king's court. But William and Sarra denied that Emma had ever sued them about the inheritance, so the court directed that the plea be postponed and that

Hawis might have a writ to summon the heirs of the apparently deceased Emma to appear along with her. When William de Taitlinton, Clementia his wife, and Sibyl his wife's sister sued Roger de Leyburn for the manor of Berwick, Roger claimed that the plaintiffs had a living sister and that there were two daughters of a deceased sister who should be parties to the suit. Regardless of the plaintiffs' claim that the others had had their share of the inheritance, the case had to be postponed while all were summoned.¹⁶

The process of gathering all the parties to a suit, sisters and their heirs alike, could be complicated. Two sisters named Maud and Alice produced the son of a deceased third sister, but he proved to be a villein and unable to sue; because he had two sisters who still had not been summoned and the case could not proceed without them. Some plaintiffs were hampered by their own confusion; four sisters brought a fifth sister with them whom they had not named in their writ; the writ failed. The plaintiffs' credibility might be questioned. In 1205 Herbert Chamberlain, suing as the attorney of his wife Maud, said that he could not produce Maud's sister because the sister had become a nun. John Wahull, the defendant, said the sister was a minor and he did not believe that she had become a nun; the justices ruled that Herbert should return at a later date with sufficient suit that his sister-in-law had indeed taken holy orders.¹⁷

Some sisters were able to avoid excessive delays by their own competence. Christiana and Amabil daughters of Emma of Hertford refuted all the detailed and circumstantial assertions the defendent, Peter de Berkerol, made about putative heirs of their female relatives; Peter had to abandon this line of defense and vouch a warrantor. Sometimes even the justices were made aware of the unfairness that sometimes resulted from their scrupulosity, but it is unclear that they were able to formulate an answer to the problem. The attorney of Elias de Beauchamp and his wife Constance, unable to produce Constance's sister Isabelle de Bolebec, protested that Elias and Constance should not lose their right if Isabelle did not wish to sue; the justices postponed the case to a later date for judgment. The extra delays imposed on women by parage were a burden to all women who held in that way, and may have proved an insuperable
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obstacle for Elias and Constance.

Women's extra vulnerability to delay did not necessarily deter them from using the action of right, and the first activity we see them engage in, early in the plea or at any time in its course, is that of exercising the option of either suing their own plea or attorning someone, putting an attorney in their place. There was as yet no legal training for attorneys in the modern sense. There were men whose knowledge and experience in legal matters qualified them to serve as professional pleaders, and who were attorned in

these rolls, and some litigants seem to have entrusted their legal business to their bailiffs or stewards. A great many others, however, seem to have attorned a relative or
 19
 friend.

Those married women who chose to be represented by attorneys quite often attorned their husbands and retired to leave the plea in their hands. Or they might appoint an attorney of their own, sometimes a son or other relative but usually someone with no obvious relationship to them, to appear with their husbands or their husbands' attorneys. Perhaps this was for the purpose of providing another legal point of view. Large numbers of married women appeared in person alongside their husbands, no doubt taking an interest in the proceedings; one wife so offended the justice's clerk that he named the couple "Herbert of St Quentin and Sire Agnes his virago" in his roll. The court had lost the couple's writ and thus delayed still further their claim in the complicated series of suits about the estate of Anselm de Stuteville, so perhaps Agnes's irritation was justi-
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 fied.

Many single women chose to have an attorney represent them in the court. Some relied on a relative; for example, a woman might attorn her father or brother or her reeve or steward, or a widow might attorn her son. In most cases, however, there is no discoverable relationship between the women and their attorneys; perhaps women litigants were

relying on distant relatives or on neighbors, and doubtless on occasion they were represented by professional pleaders.

Women who elected to use an attorney were sometimes disappointed in the results they achieved. The attorney of Margaret daughter of Philip of Stapleton, for example, sued against a man who did not hold the land she sought, and the attorney of Maud daughter of Malger offered no proof to support Maud's claim. Florence the daughter of Richard Murdac, whose attorney had won her case, had to sue the attorney himself before he came and rendered to her the lands he had won in her behalf; she elected to conduct her plea against him without an attorney. Most women seem to have been better served, however, as was Emma de Peri, whose attorney adroitly disposed of her opponent William Basset's delaying tactics and offer of battle to bring to the court's attention facts in favor of Emma's claim, facts on which she could win her plea but which would have been obscured by the normal operation of the action of right.²¹

Many women decided, as had Florence when she took her former attorney to court, that they were best off suing or defending their pleas themselves. In doing so they show themselves to be, like all human beings, capable of both fallibility and strength. Some were fallible indeed. Levi-va daughter of Ailwin, in claiming 80 acres against the prior of Westacre in Norfolk, tried to deceive the court by claiming to have held the land directly of the king; she

soon had to admit that in fact an ancestor of hers had held of some less exalted person. Leviva's poverty, for which the court forgave her amercement, may have prompted her exaggerated claim. Idonea the widow of Hugh Pirramus was the victim of her lack of knowledge about her relatives. She had to withdraw her claim against her niece and her niece's husband for 10 virgates of land that Idonea had said was her inheritance from her brother when she found out that Avice was her brother's child and heir; Idonea explained that she had not been certain that Avice was her brother's daughter. Others, however, like the sisters Christiana and Amabil who did not allow their suit to be stopped by false claims of absent coheirs, were more than able to hold their own in the suits they undertook to initiate or defend.²²

Whatever her level of skill, a married woman could expect difficulties over and above those imposed on her by parage, but she also could reap some benefits and even find scope for her own activity. A married woman by necessity relinquished control of her lands to her husband. The effects of this relinquishment affected every area of her life; one of its immediate effects on her for the purposes of litigation was that she, even more than the co-heiress, could not sue or be sued alone. Though the husband alone dealt with legal matters concerning his lands, both husband and wife had to be present in person or by attorney when the wife's lands were the subject of legal action. Thus inde-

pendant legal activity was prohibited to the married woman. Perhaps there were women who were able to evade this prohibition, but if so they did it by concealing their marital status from the court, and so their activity cannot be recognized as such in the rolls. This is our loss because such women, if they existed, were likely to have been of remarkable character and well worth our attention. As it is, the evidence in the rolls illustrates only the pervasive²³ effect on women of their husbands' dominant legal status.

One immediate effect in the courts was that the lawsuits of married women who attempted to appear without their husbands could not proceed once their marital status had come to the attention of the court. At best these lawsuits would be delayed, at worst they were lost by the default of the husband. This was true in one case even though the woman involved categorically denied that she had a husband. William Brito apparently was trying to delay the suit Avice widow of William Biset brought against him for two virgates of land she claimed as her right and maritagium; he first sought a view, then he defaulted so that the land was taken into the hand of the king; after he had appeared and reclaimed the land he said that Avice had a husband and that the suit should not proceed in the husband's absence. Avice replied that her husband had died; the plea was postponed to a later date for judgment and for Avice to prove that her²⁴ husband had died.

The outlook was worse for a woman who was known to have a husband. In an unusually obscure plea from the time of Richard I Helewis de Foxcot apparently felt she had to take energetic measures, first denying that she had a husband and then removing her suit from her lord's court to the county court and then to the curia regis, to get her plea heard even though her husband was weak and feeble and could not appear in court. Her concern was justified; Margaret the wife of David de Pecesleia, defending against a suit by her sister Alice and Alice's husband, lost by default because David did not appear with her.

Another woman avoided a similar outcome only with the help of the king. Hawis the wife of Nicholas de Winestre claimed that her husband would not come and defend her inheritance against the suit of Henry de Deneston because Henry had bribed Nicholas to stay away and she feared she would be disinherited by fraud. She asked the justices if she might put herself on the grand assize, but they seem to have been reluctant to decide; they gave both parties a later date to come and hear judgment. At the next hearing they appeared before King John, and Henry offered forty shillings to have his judgment against Hawis. She repeated her predicament for the king's ears and made her own offering of forty shillings for the privilege of having the grand assize in spite of her husband's absence. John, moved by pity and by counsel as the scribe tells us, probably the

counsel of his justices, accepted Hawis's oblation and directed that the assize be held. Hawis then attorned her son²⁶ William to continue the plea.

Not every challenge concerning the absence of a husband was successful. Peter de Pelton, who had objected to the appearance of Maud de Aubervill as her husband's attorney, quickly dropped this and other exceptions he had raised and resorted to another more effective excuse for delay, a claim that he was not in fact in possession of the land. In another case the unexpected appearance of a man claiming to be the husband of a litigant caused no discernable inconvenience in one case. When Maud de Cadamo put herself on the grand assize in the action of right brought against her by Peter de Nereford, it was said in court that Maud's husband had died and Maud herself acknowledged this. But then John de Traxton appeared and said he was her husband. The justices, who had already heard testimony by Maud and others that her husband had died, seem to have doubted John's claim; he was to be allowed to appear on the date of the assize, but it was by no means to be postponed for his²⁷ sake.

The court was otherwise quite scrupulous about the claim of an absent husband, however; the absence of the name of Henry de Geldeford, whose wife Isabelle was suing for her lands against three defendants, from a writ that was a part of the process of removing the suit from the county court to

the curia regis caused the justices to insist on rechecking²⁸
all the circumstances of the case before it could proceed.

A wife had to be a party to any legal action about her lands; we have, however, no recorded actions of right in which a wife's lands were lost because of her failure to appear in person or by attorney. The courts' care in the case of the wife was to see that she was present, in person and not by attorney, at any final concord made concerning her lands. The reason that her presence was necessary is specified in the rolls; an agreement made without her presence and consent could not stand against litigation brought later after the death of her husband. The court was not interested in hearing a wife's opinions; it needed her presence in order that the agreement reached might be an²⁹
enduring one.

The existence of the writ of entry cui in vita, an action by which a widow could sue for the return of lands of hers that her husband had disposed of during his lifetime while she could not contradict him, posed a dilemma; how were agreements concerning a wife's lands to be made that she could not call into question later? One effective solution would have been to allow the wife free latitude to withhold her consent when she did not wish her lands to be alienated, thus making her consent, when granted, demonstrably genuine. This solution was, however, beyond the ken of the time. Instead, the rule was becoming established that

if she was present in court and consented to the fine and chirograph, that chirograph would bar her from recovering her lands after her husband's death by bringing an action of entry cui in vita.³⁰

Once a wife had been called into court to consent to a final concord made by her husband, what did a refusal to consent gain her? These rolls give no answer; they contain no case in which a woman refused her consent. We might wonder if a woman could passively resist the agreement by avoiding coming into the court at all; again there is no case in these rolls in which a final concord had to be postponed because a wife did not appear on her appointed day to give her consent. Negative evidence from a time when much of the record is lost must be carefully handled, but it can safely be said that such a refusal must at best have been very rare.

In a very cautiously worded statement Maitland seems to regard a wife's presence in court at the making of the fine as a "proof of her free action," or at least to suggest that the court so regarded it. He cites two examples in which women refused their consent to a fine; the one nearest the time under consideration here, heard in 1230, deserves close study in order to determine the effectiveness of the wife's objection. It was not an action of right but an action of warranty of charter in which a man and his wife were summoned to confirm a previous sale of one-half of a mill that

had been part of the wife's inheritance. The wife declared that she did not want the cirograph to be made, apparently on the grounds of nonpayment of some moneys owed. She did not recover the half of a mill however; it remained in the hands of the purchaser, a prioress and convent.

The only result of the wife's objection was that her husband guaranteed to the nuns that if after his death his wife refused to uphold the agreement lands of his own would be made available to compensate them for any loss they might suffer. From this example it would appear that if a wife was bold enough to voice her objection she gained nothing immediate; she did not, for example, keep the agreement from being made and carried out. Her only gain was to keep alive the possibility that, in the event that she survived her husband, she could attempt to recover her alienated lands by a writ of entry cui in vita.³¹

Husbands and wives did not always disagree; indeed, when they were defendants, there was considerable opportunity for man and wife to cooperate against their mutual opponents. Lady Stenton remarked that "when two or more persons were jointly tenants in a plea, whether of right or possession, the course of justice was so much the more slow," because of the increased opportunity to exploit delays. Husbands and wives took full advantage of the delays available to them. If a plaintiff sued a husband alone for the wife's land, for example, the husband might cause a delay by

vouching the wife to warrant. Then the couple would go on to other delaying tactics. A certain David had thus vouched his wife Margaret to warrant; on the day she was supposed to appear she essoined herself for bedsickness. On the subsequent day assigned to her she appeared without her husband and essoined him for yet another delay. The courts finally limited married couples to only one essoin of bedsickness between them in any one plea in order to make the proceedings a little less dilatory.³²

Most husbands who came into the curia regis were there not to alienate their wives' lands but to recover lands that had previously been alienated and which they claimed as their wives' right. It must have been a good investment for a man who was trying to rise or to consolidate his position in the world to marry an heiress and then enhance her holdings through the courts. King John's notorious adherant Fawkes de Breaute while in his ascendancy vigorously pursued a number of lawsuits for lands and rights of his wife Margaret, daughter and heiress of Alice de Curcy. John's illegitimate son Richard sued several persons for his wife Rose's inheritance. A certain Peter de Malo Lacu was thoroughgoing in the multiple suits he brought to recover the barony in Yorkshire that he claimed as the right of his wife Isabelle; one of his suits was for only twelve and a half acres.³³

Men from less exalted levels of society were equally

active in attempting to regain lands their wives or their wives' ancestors had lost in a variety of ways. Hugh de Polsted sought against Walter de Grant the inheritance Hugh said his wife should have received from her mother Ascelina de Candos; the land had been Ascelina's maritagium, but while Ascelina lay dying Walter had taken it by force. Robert Cusin brought a writ of right for twenty acres of his wife Hawis's land that her previous husband had recovered for her in court but that then had been lost to her because the late husband's son, Hawis's stepson, had taken it over as if it were a part of the lands he inherited at his father's death.³⁴

In their eagerness some men overreached any reasonable claim. Benedict de Haversham may have made an honest mistake when he claimed for his wife Basilia one-fifth of an inheritance that was supposed to be divided six ways among Basilia and her five sisters, but Warin Cokerel was on shaky ground when he claimed a rent as a maritagium from the father of his wife Maud when neither Maud nor her father had ever had seisin of the rent. Gilbert son of Reinfrid clearly went too far when he sued Adam de Brunefeld, Benedict de Clifton and Christiana de Lamploch for the lands that were the right of his wife Helewise; his case failed when the defendants pointed out that Helewise had died.³⁵

Enterprising and active, these men did their utmost to enlarge their holdings by winning the lands and other rights

they claimed for their wives or alternatively to defend those rights against the suit of others. There are myriad cases in which they are discernably the interested parties, appearing for their wives as well as themselves because their wives had attorned them or appearing alongside their wives' attorneys. In these cases the extent of the wife's involvement cannot be discerned, whether all was left in the husband's hands or the wife played some part behind the scenes.

Even an absent wife whose involvement was minimal or nonexistent, however, gained some advantage, even if only temporary; the right that was claimed or defended was hers and, if she had no legal say in what her husband did with the land he had won, yet her right had been established and was recorded as hers on the rolls. Probably there were cases in which the lands would not have been won without the husband's participation; Hawis's stepson was able to keep her lands until Robert Cusin challenged him in court. Geoffrey Lutrel was strikingly successful in behalf of both Frethesant his wife and her sister Isabelle. As a result of his legal actions six persons came into court and restored to Geoffrey, Frethesant, and Isabelle the women's inheritance from their father William Painel. Once he had established the women's right Geoffrey made a settlement common enough in the rolls; he allowed some of the defendants to hold part of the land they had given up, in one case for a

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life term, in return for its rent and service.

Women, as the rolls record, often were present with their husbands in actions to secure or defend their rights in land. The extent of their actual involvement can usually only be conjectured, but if the scribe applied the epithets "Sire Agnes" and "virago" to the wife of Herbert de St. Quentin because of her irritation over a delay caused by a lost writ, as C. T. Flower surmises, she certainly must have been taking an active interest in her part of the litigation over the Stuteville estate.

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Sometimes a wife was empowered to act for her husband and herself. Joan the wife of John de Crioill argued their suit against Peter de Goldinton for her maritagium which she claimed had been given to her by the charter of his father and mother. When Peter claimed it was his own mother's maritagium and that his mother's right had descended to him, she answered that she also would put herself on the grand assize, but that if he could not warrant the land to her he was obligated by his father's and mother's charter to give her escambium for it. The plea was adjourned and John decided he would do best to attorn his wife to represent him in subsequent proceedings.

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Sometimes a couple would make mutual attornments; a husband would attorn his wife if he could not be present in court and she would attorn him in case she could not be there. Many cases in which husbands attorned their wives

seem to have concerned the wives' own interests, their inheritance or maritagium, for example, but it is by no means clear that this was always the case. Occasionally a mother would represent her son; presumably this was to protect the son's rights. And when the Prioress of Stodlee represented William son of Henry in his plea of right against Robert son of Payne it is clear that William's rights were the ones in question.³⁹

The number of women attorned is not large compared to that of men who served as attorneys, but it is by no means insignificant, and the attornment of women is a remarkable aspect of women's activity in the courts. Attornment offered a married woman a rare autonomy in the court; she could appear alone and any arrangements she made would be binding. And attornment was an affirmation of women's ability, an assertion that the skill and interest of these particular women was superior to that of the available men.

Large numbers of suits concerning women's rights in land concerned not the women themselves but their heirs, to whom the women's rights in land had passed, heirs who were likely as not to be male. Such suits as often or not contests between one male and another, one or both claiming by descent from a woman. Their suits were likely to be even more complicated than those of the women themselves because the special details of the women's landholding had been

obscured by the passage of one or two generations. Thomas de Ardern, for example, sued against John de Braceberi for a knight's fee that he said should have descended to him in the direct male line from his great-grandfather Turkil; Thomas supported his claim by offer of battle. John said he wanted to put himself on the grand assize and put the question of who had the greater right to a jury, but Thomas apparently disliked this idea; he protested that the grand assize did not lie because they both were descended from the same Turkil. If the court had accepted Thomas's objection and considered only the descent from Turkil John would have lost his land, because John was descended from Turkil's second wife and Thomas, as the descendent of a son of Turkil's first wife, could claim descent by primogeniture. John then had to enter into his explanation. Turkil had not been seized of the land as his own right, the land had been the right of Turkil's second wife and John was holding as that wife's heir. John again put himself on the grand
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 assize; this time it was allowed to proceed.

Heirs of women who had held in purparty suffered more from delays than had the women themselves because there were more and more widely scattered heirs to gather; thus a defendant was often prepared to give facts about the plaintiff's absent relatives and coheirs in the hope of delaying or stopping the suit. In a case that was deemed worthy of inclusion in Bracton's Note Book, Vitalis Engaine sought

half of a one-and-a-half-carucate holding from William Cantilupe the Younger. Unfortunately for Vitalis his writ spoke of another plaintiff, Roger de Gernet. Because Roger was not present and Vitalis and Roger were descended from sisters, Roger was to be summoned to be asked if he wished to sue. It was worse to ignore possible coheirs in the writ; another suit was stopped and the plaintiff was amerced because he had not mentioned the son of his mother's sister⁴¹ in his writ.

Conversely, of course, defendants who were descended from sisters who held in purparty could use the available delays to their own ends; in a case from the year 1220, also marked for inclusion in the Note Book, John Mautravers used this delay along with others to postpone indefinitely the suit Ralph de Pinkenn'brought against him. John refused to answer the writ Ralph had brought without his cousin and coheir, Richard de Heriet, the son of his mother's sister. The suit was delayed so that Richard could be summoned, but the entry ends with the information that John had died leaving an underage heir so the case could not proceed. In 1221, however, Ralph brought his plea again, with John apparently there to respond. Again he said he could not plead without Richard; Richard's attorney was there and said that Richard had left on a pilgrimage which he had arranged before the summons. Ralph disputed this, but the case was again postponed, this time because of the army, and it was

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to be reopened in time of peace if Ralph wished.

Even more complications were possible, for the donee and her heirs alike, if the land had been given to her in maritagium. Heirs of the donor very often tried to retake the land that had thus been alienated, probably hoping their ancestor's seizin would support their claim. Sometimes they tried to use the writ of right for their purpose. William Tresgoz sued Maud de Colevill for half a knight's fee as his inheritance from his father Geoffrey; Maud answered that Geoffrey had given it to Maud's mother, who was Geoffrey's sister, in maritagium and Maud had inherited it from her. The question was to be decided by the grand assize. Even if the land given in maritagium had been purchased especially for the purpose the heirs of the donor might attempt to regain it. Richard son of John de Maneston claimed that Richard de Ykewold and Sibella his wife had wrongfully appropriated land that had been his father's and that his mother had held in custody for Richard after his father's death. But the defendants had a charter to prove that John de Maneston, who was Sibella's father as well, had purchased the land and given it to Sibella and her husband in free maritagium. Richard's mother had been in possession of the land, but only because the couple had rented it back to her until the purchase price had been paid. Again the question

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was to go to the grand assize.

Others used more direct methods. Almaric de Nuers had

expropriated the land his grandfather had given to Ralph son of Nigel and Almaric's aunt Avice; the land was restored to Ivo de Diva, Ralph's and Avice's son, by the verdict of the grand assize. The confusion of circumstances could go back for more than one generation; one case turned on whether the plaintiff's and defendant's mutual grandmother had held one carucate of land as her maritagium or if it had been the land of her first husband. Maritagium was not the only gift of land that donor's heirs wished to reclaim; a gift to a younger son, for example, was the object of a writ of right brought by the donor's son. But since a gift in maritagium was one of the chief ways in which women received right in land, the impulse of donors' heirs to try to retrieve land alienated by their ancestors had its deepest effect on women.

Complications multiplied in suits between heirs of women who had held in maritagium, sometimes confusing even the putative heir. One lawsuit between two men was to be decided on the question of which of two husbands of the plaintiff's and defendant's mutual female ancestor had been the recipient of her maritagium. In another suit, also between two men, the defendant said that his grandfather Ralph son of Gerald had given the carucate in dispute to Ralph's daughter Mabel, the defendant's mother, in maritagium. The plaintiff said that Ralph had actually given the land to his, the plaintiff's, grandmother Alice, who had

given it in turn as a maritagium to her daughter Clarice, the plaintiff's mother. The plaintiff was confused about whether Alice was Ralph's niece or his cousin, but the grand assize was to be held anyway. The escheat of a maritagium on the death of a woman who had left no heirs of her body caused even more complications; in one case the feudal lord of the land, the heir of a man who had granted the land to the donor, and the man to whom the king had given the donor's lands all pressed their claims.⁴⁵ Women who were heirs of women faced added complications as they dealt with any problems arising from purparty and from coverture, the husband's control over their affairs.

The special difficulties women faced in court placed special demands on their abilities, and the best test of women's ability is in the actions of women, apparently unmarried, who conducted their cases in court, whether themselves, by attorney, or as the attorneys of others. In addition to the problems the law placed on them, those of holding in purparty they probably faced cultural difficulties as well. Some women, unused to the courts and to managing their affairs, may have been easily intimidated or willing to settle for less than knowledgeable negotiation would have gotten them. And as we shall see there were some whose individual circumstances, into which they had been placed by the actions of others, created obstacles which it took their concentrated energy to overcome. As they met

their difficulties women displayed abilities that ranged from the barely competent to the heroic.

Some seem to demonstrate inexperience with the judicial system; they agreed quickly to settlements at terms less favorable than men were getting in similar situations. Maud de Diva, who had sued her tenant Robert de Audenby by writ of right for the customs and services he owed her, namely the rent of one-half mark a year for which he was seven years in arrears, quickly settled with him in return for his acknowledgement that he owed her the service and his payment of twenty shillings, an amount equivalent to less than three years' rent. A woman defendant, on the other hand, held out for no such discount; Denise de Berkeley, when sued by William Walerand for the four marks rent per year for which she was six years in arrears, agreed to pay the full amount
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over the next four years.

Aubrey Marmiun had to be stopped by the king's justices because her willingness to make concessions might affect the interests of the king himself. Audrey first denied that she owed Ralph de Penebrig the service of one knight from her manor of Weston, then reversed herself and not only agreed to pay the service to him but also that after her death half of the land, including the chief mesuage and the advowson of its church, would revert to Ralph and his heirs, leaving only half to Aubrey's own heirs. At this point the king's justices stopped the proceedings.

They could not prevent Aubrey from bargaining away her own rights, but she had previously held the manor directly from the king, and she could not bargain away the service she owed to the king without his license.⁴⁷

Not every agreement made by a woman was to her disadvantage, nor was every suit that was quickly concluded; for example Elias son of Geoffrey came at once and rendered to Maud of Wilton and Sarra her sister the half carrucate they claimed, provided only that he be allowed to harvest the crop he had sown on the land. But agreements such as those made by Aubrey, Denise, and Maud de Diva, arrived at after very little or no pleading in court and at terms that seem disadvantageous to the women involved, indicate that some women were indeed timid and easily overawed.⁴⁸

On the other hand, women found many ways to win their cases. Some simply stood by and profited from their opponents' mistakes. Geoffrey the goldsmith left out such crucial facts as the name of the uncle through whom he claimed three hides of land against Ediva de Basing and the name of the king in whose reign the uncle was supposed to have held the land. Bernard Grim's champion did not offer to prove Bernard's right in the eight messuages (house sites) Bernard was claiming against Lucy de Kokefeld, but rather, in the words of the plea roll, "in all things he said nothing." Both women were to hold their lands in peace without further challenge from those particular men. Patience paid off for

Isolda de Pagrave; she persisted in her suit while Walter Grut, her opponent, had a view of the land, vouched a warrantor, and then essoined, and finally won by default when Walter's warrantor did not appear and Walter himself could⁴⁹ think of no more reasons for delay.

Other women won their cases by their own competence. Alice widow of Robert of Gillingham's knowledge of the land law won her case; she defended her custody of her late husband's lands and heir against a suit brought by her husband's lord by pointing out that the land was held in socage. Thus the custody did not belong to the lord as it would in military tenure; Alice had a charter to prove her claim. The lord lost the suit because he could not contradict all this. Muriel de Farlesthorne conducted a rather technical argument against the abbot of Louth Park in Lincolnshire that caused the justices to postpone the plea and the abbot to seek an agreement. Alienor the mother of Thomas quickly disposed of her son's claim against her by pointing out that the amount he claimed in his narration was⁵⁰ much larger than the amount mentioned in the writ.

Single women were at times called upon to display their competence by serving as the attorneys of others. Sometimes, if several sisters were conducting a plea for their common inheritance, they would select one or two of their number to act for them, as when Sarra and Elena the daughters of Robert of Stodham attorned their sisters Marjory and

Alice to pursue their plea against the prior of Dunstaple and two other persons in Bedfordshire. It was Marjory who concluded a curious agreement with the prior in which he was to render to the sisters the eleven acres they sought along with another eleven acres as soon as they rendered to him a tenement of seventeen acres which they held but had leased to another party for a term of years. A sister might be attorned in this way even if one or more of the sisters had husbands who might have acted in their behalf, as when Felicia de Pising represented her sister Emma and Emma's husband Walter Sherrev and her other sisters Christiana and Juliana in their suit for twenty acres in Kent.⁵¹

The action of right brought by Alice Clement about the loss of her land, a loss which came about in a way that could happen only to a woman, demonstrates the extremes of the obstacles a woman could face and the activity that women were capable of in their own behalf. Alice's opponent had entrenched his position while she was a child and passed his suit on to his son so that Alice, in a suit itself a generation long, faced two generations of opponents, father and son. Her opponents, moreover, were men of influence, made few if any mistakes, and had on their side the power of the church.

Alice's misfortunes began in her childhood when, after the death of her father William Clement, she, her elder sister Christiana, and their lands in Oxfordshire, were

placed in the guardianship of a certain Avenel Pincerna. Avenel apparently had dynastic ambitions; he married Christiana and when Alice was five years old he and Christiana placed Alice in a convent. Alice said he did this so she would become a nun and that by this "civil death," as the law of the time regarded the taking of holy orders, her lands would revert to Christiana and remain under Avenel's control. When Alice came of age she left the convent in circumstances that would become a matter of dispute, married, and at some point, probably after she was widowed, entered upon the long-drawn-out process of trying to regain her land.⁵²

We first meet Alice in 1201 when, after Christiana's death, Alice was in the process of suing Avenel Pincerna, who had already had an essoin for bed sickness and had received permission to come into court. Between that time and 1206 there were several delays, including, in one very confused entry, a possible default by Alice, and later Avenel's vouching to warrant his son Jordan, apparently of age and as heir of Christiana technically in possession of the land. These were followed by a concord, but it must have proven unsatisfactory because the suit was resumed and the two were given a day in court to hear their judgment by order of Geoffrey fitz Peter the justiciar.⁵³

In 1207 the first surviving record of the arguments in the case appears. It seems that the justices first heard a

record of the plea as it had proceeded early in 1205, a term for which there is no roll extant. In that year Avenel and Jordan had answered Alice's claim by saying they should not answer her about any tenement because she had been a nun for fifteen years and then had abandoned her habit and been excommunicated. As proof they claimed to have several documents: a letter from three papal judges delegate attesting that she had been excommunicated, confirmations of the excommunication from Popes Clement and Celestine, and testimony from the convent of Ankerwick in Buckinghamshire that she had been a nun there.

Copies of the documents are enrolled with material from a later term; they include no letter from Clement but there is one from Celestine. Celestine's letter, in brief, says that by the complaint of Avenel, a knight, Celestine understands that the woman Alice has wearied the ecclesiastical justices with her letters charging that Avenel had put her in the convent to gain her inheritance. The letter goes on to say that because Alice herself had contumaciously stayed away from proceedings convened to investigate Avenel's complaint, she was to be declared a runaway nun.

Other documents included the testimony of the Prioress of Ankerwick, who insisted that Alice had taken her vows when she was of age, and letters from the diocese of Lincoln and from Hubert Walter the Archbishop of Canterbury which pronounced her excommunication.

Even if the prioress's story had been true, it would hardly be surprising if a young woman who had made such vows upon coming of age when she had known no life but that of the convent had later changed her mind. Alice, however, admitted to no such vows. She had, she said, been put in the convent when she was five years of age, and after three years with the nuns she asked to be made a nun sicut edocta fuit, as she had been instructed. When she came of age, she said, she left the convent without making further vows.

Alice had documents of her own, letters from other judges delegate saying that she had been of such an age as she had said and that they absolved her from her vows by the authority of Pope Innocent, and a confirmation by Innocent himself of her later marriage to Alan de Wodecot. The clerk records that after the record of the events of 1205 was completed, Alice brought a writ from King John directing the justices to put the plea in his court to be heard in his presence at her request. The writ itself, the original and not a copy, has been sewn into the roll between two membranes; it is dated November 14 and the record of the previous arguments in the plea had apparently been made as a
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return to it.

In the worst stroke of luck recorded in the rolls, Alice's plea did not come to be heard until the Easter term of the next year, 1208. In November of 1207 John had been keeping up the appearance that he might be willing to nego-

tiate with the pope over the appointment of Stephen Langton as Archbishop of Canterbury, but by March of 1208 all possibility of negotiation had broken down and Innocent had put England under interdict. When Alice's case came up three weeks after Easter, probably before the justiciar Geoffrey fitz Peter, Innocent's support seems to have been fatal to her suit. Jordan's documents were enumerated in the entry of the plea and enrolled in full in the roll for this term; Alice's were brushed aside with the brusque statement that she was a professed nun and an excommunicate, that ipsa non ostendit sufficienter quod absoluta esset, "she did not show sufficiently that she had been absolved," and that Jordan might withdraw because "she is not such as should be⁵⁶ heard."

The sweeping dismissal of Alice's plea might have seemed the final blow to her case, but Alice had met with reversals before and did not succumb to this one. She engaged in other actions; if challenged as an excommunicate she vouched the judges who had absolved her. She concorded an action of right with Hamo de Bidun, who acknowledged the lands to be her right and received them back as a grant in return for the payment of an annual rent.

Alice's chance came six years after the dismissal of her case; in 1214, after Innocent and John had been reconciled and John had become a papal vassal, she again sued Jordan, who apparently began a new series of essoins. Alice

was not yet through her run of bad luck; war intervened and other circumstances may have as well, for we do not see Alice again until late in 1219, when she waited out more of Jordan's essoins and disposed of his attempt to litigate about the land in ecclesiastical court. In the course of the latter proceedings the court even lost her writ, but a witness came forward to say he had seen her give it to the sheriff and the case was allowed to go on. Perhaps Alice's luck was about to change. Finally, late in 1220, the two parties had reached a final concord and had been given a day⁵⁷ in court to take their chirograph.

Depending on the truth of Jordan's claim to have a document from Clement III, Alice had been trying to claim her lands for more than twenty and perhaps almost thirty years; it may be wondered what she had gained. S. F. C. Milsom who mentions her in passing, remarks that "she might have had a better life without it," without the suit that occupied so many years. Her motivation was unlikely to have been need. If her marriage was a conventional one she had to have some wherewithal to bring it about; certainly there is no evidence that her husband was one of those who married a woman in order to regain her lands since he is never mentioned as having taken a part in any of her suits. The marriage may also have left Alice with a portion in dower. She was not entirely without money and influence. She could afford to carry on her legal activities over a long span of

years against formidable opponents who were able to exert considerable influence of their own, and she was even able to secure a writ from the king.

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The desire to correct the injustice done to her and the wish to recover lands rightfully hers were more likely motives. Her story was probably true, as her tenacity, the lack of any denial from the opposing party that she was placed in the convent as a young child, and the evidence from two other cases that heiresses could be so treated attest. Her avoidance of the church court may well have arisen from a conviction that the judgment there was foreordained to go against her; there is evidence that suits in the church courts in England and even in the papal curia could be swayed by bribery and that forged documents were to be had in Rome for a price. Alice's opportunity may have come with Innocent's actively reformist papacy. The lands themselves, a knight's fee in one vill and one and a half hides in another, though not a great estate would also have been a considerable incentive and were probably part of

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Alice's concern.

Whatever her motives, she achieved much. Her activity in the king's court continually called attention to the means by which Avenel had gained a part of his wealth, and her eventual settlement undermined Avenel's purpose by returning some part of Alice's land for her to pass on to her own sons Robert and Reginald. In any event her actions

leave proof on the rolls for modern readers that a too-ready assumption that women were passive in accepting what the legal system dealt to them is far from correct.

It would be an oversimplification, in spite of the experience of Alice Clement and others in the rolls, to see women's activity in the courts as invariably involving a confrontation between men's superior rights and women's disadvantages. Certainly women had to sue men and, like Alice, they often won part or all of what they sought. Another Alice had to stop her brother Robert's suit against Reginald de Gay with a claim that the two men were making a collusive agreement in the curia regis concerning land which she was claiming against Reginald in county court; she was given a writ to the sheriff to tell the justices which lands she claimed. Mathania widow of Werreis had to sue her brother Fulco before she regained her maritagium. Agnes widow of Ernald de Torlee apparently took the lead in her sons' suit for their father's land; once she proved her marriage to be legitimate so she could receive her dower her sons, unnamed in the entry, were immediately awarded their inheritance.⁶⁰

Women also had to fend off suits brought against them by men. Richard de Walda sued his sister Alice de Havering for one and a half virgates of land; she responded that the land was her maritagium given to her late husband by Richard's and her father. Richard said the land was all that

his father had and asked for a judgment whether their father could grant away all of Richard's inheritance, but Alice said the father had died seized of other land as of fee and inheritance. A jury was to be called to declare its⁶¹ knowledge of the situation.

There were several occasions in which men brought writs of right against dowagers, one because he claimed the widow held too much dower and that her late husband had been an outlaw. Others may have been doing so as a formality to reach the person from whom the widow was holding dower and against whom the suit would have to proceed, and still others seem to have been suing for lands the widows were holding, alone or with their spouses, in their own right. Some men may have regretted the suits they brought. Simon de Roffa and Waldef son of Waldef paid one hundred shillings to have their action of right against Alice de Rumelly brought from county court to the curia regis; after a brief delay her attorney got the case dismissed because of flaws in the⁶² men's writ.

Women, however, were quite likely to sue or be sued by other women. In some cases women are seen to act as would any feudal landholder. Mabel de la Grave sued Hawis de St. Quentin for two and a half hides of land as her right by inheritance from her father; each named her champion and a duel was waged. Of possible interest to those who study the service by which land was held is the series of suits Emma

Belet brought against her recalcitrant tenant Eda or Ada de Thorp in which the services Emma claimed were fully enumerated.⁶³

In other cases the special conditions of women's landholding are more clearly evident. Avice de Tikenhal sued Ysabel de Ber' for her maritagium; an inquest was to have informed the justices about what land was due to Avice and what was not. Tenure by parage caused problems among sisters. Maud and Margery daughters of Ascelina sued their sister Wimarc for their reasonable share of a messuage as their inheritance from their mother, and in another case Emma, Christiana, and Maud daughters of William had to come into court to settle their dispute with their sister Sarra over their inheritance from William. No such special concerns seem to underlie other suits, such as that in which Edusa and Alice daughters of John Penc sued Petronilla widow of Reginald Pancevout for a virgate they claimed as their right, and that in which Rose Pecche sued Denise de Auvers for a virgate as her inheritance from her father.⁶⁴

Some cases brought by women blur the distinction between strictly masculine and strictly feminine legal interests because the women who brought them used the special disabilities of women's right in land against their male opponents. Cecilia daughter of Hervey sued Thomas the Chaplain for her inheritance. Cecilia and Thomas were cousins, but Cecilia was the child of a brother and Thomas the child

of a sister; so by the principle that a brother should take precedence over a sister and the principle of inheritance in the direct line of descent Cecilia should have had the land. Thomas could not deny these principles; rather he tried to delay the plea by claiming that Cecilia was married and that her father had never been seized, but a jury was to be convened despite his best efforts. When Isabelle daughter of Uhtred claimed land against Uhtred son of Alice she claimed by her father's seisin; Uhtred had to explain that the land had belonged to Wlvan his grandmother, that Isabelle's father had been Wlvan's second husband and only thus had had seizin of the land. Again a jury had to be called to ascertain the truth.

65

The distinctiveness of women's rights in land could thus be blurred as women claimed by the right of male ancestors and men by that of female ancestors, and women who held land probably perceived themselves as part of the general population of landholders rather than as somehow set apart. We see them going about their business in the rolls. Margaret de Munford had arranged to hold one hide of land for a half mark a year and did homage for it to a father and then to his son. Sibella grandmother of Philip may have come by her land more aggressively; the Abbot of Westminster, arguing against Philip, said Sibella had intruded herself into six and a half hides of land in wartime and the jurors did not know how she had gained entry.

66

The nature of women's landholding, however, was that of a sanctioned anomaly in a male-dominated world that imposed on women unique restrictions and patterns of sharing, and it may well be asked what was the nature of her right. By the turn of the thirteenth century right in land encompassed the right to pass it on by inheritance. Usually regarded as the right of the heir to claim his or her inheritance, the heritability of land also tells much about the nature of the right enjoyed by the person from whom land is inherited; it must be a firm right if it is to support a descendant's claim. The plaintiff's standard form of statement of right in court expresses this idea: "Walter de Ripperia seeks...as his right, wherein Ada his grandmother was seized as of fee and right and in demesne...." Ada must have a sure right if Walter or any other descendant is to base his or her right on it.

S. F. C. Milsom held an entirely different view of the relationship between a woman's right and the heritability of her right, suggesting that a woman's function in landholding in passing on her inheritance actually undercut her own right to hold her lands. "Perhaps hereditas was hers to transmit rather than to enjoy for herself," he speculated. He advanced the examples of Maud wife of Reginald de Crevequer, whose inheritance was held by her husband, then by her son, and finally by the issue of another of her sons, one upon the death of another, while Maud still

lived, and the example of Beatrice de Say, whose inheritance from her nephew did not go to her, but was given by King Richard first to one of her sons and then to the issue of another. "Issue" is the word Milsom chose to use in both these examples, and its use obscures the fact that in each case the "issue" were daughters, and that the final holder of each of the baronies was a woman. Cecily de Crevequer and her husband Walter held Maud's barony and for some years after Walter's death Cecily held it alone, fending off a legal challenge by her cousin Alexander de Crevequer. The Mandeville barony that had bypassed Beatrice de Say ended in the hands of her granddaughter, another Beatrice, or rather in the hands of the younger Beatrice's husband Geoffrey fitz Peter the powerful justiciar.

There may be no principle to be discerned here other than that powerful men had to come to grips with the anomalies and opportunities of women's landholding. From the perspective of established landholding families, including those of the feudal aristocracy, female landholding was diffusive, since the women's lands went out of the control. To rectify the situation the heir might try to recover the land by legal proceedings or by force, bearing in mind that the women's lands have been used to make useful marital alliances for his family, try to recoup his fortunes by making an alliance of his own with a landed heiress or dowager. Such alliances, of great importance to established

families, were even more so to men who were rising in the world and looking to establish families of their own.

Women's rights in land thus had a twofold male constituency whose interest it was to maintain those rights in spite of the solvent effect women's landholding had on the holdings of established families. One group, as we have seen, was that of the women's male heirs, who based their own claims on those of a mother, grandmother, aunt, or the like. The other was that of husbands, present or prospective, who hoped to make or repair their own fortunes by marrying a woman with lands and, if necessary, pursuing in court the lands to which she had claim but did not possess.

Of the two groups the second was probably the more influential, and of those the greatest influence was probably wielded by the rising men, especially those occupied in the king's administration courts who adjudicated claims and oversaw the drafting and issuing of writs that initiated legal actions. They needed wives for themselves to make their own fortunes and for their subordinates as rewards for previous service and to forge ties of patronage to encourage future service. They above all would concur with Milsom's speculative view of women as transmitters of right in land; the women's lands were prizes these men wished to gain for themselves. One of Milsom's examples is instructive here; the Mandeville barony that bypassed the original Beatrice de Say was an important part of the rise of the ambitious

and powerful Geoffrey fitz Peter. His interest in women's inheritance is obvious.⁷⁰ If Lady Stenton's conjecture that a very early writ cui in vita was not only drafted for but tailored to fit the case of a powerful administrator who was trying to recover the lands his wife's previous husband had alienated,⁷¹ the part powerful men played in the maintenance and expansion of women's rights in land is clear.

Again, however, we receive an impression of the passivity of these women in the securing and enjoyment of their lands. This impression need not be taken as the true state of affairs; women themselves received benefit from men's activity in vying for their lands. The most passive women had the aid of their husbands in securing and maintaining their lands, and if these husbands then dispersed the lands, subsequent husbands might regain them by means of a cui in vita. But as we have seen, many married women were active along with their husbands in suing for their rights, some even acting in their husbands' place as their attorneys. And the unexpected beneficiaries of the interest in women's lands were a group of single women, some of whom we have seen in actions of right, who were enjoying their lands on their own.

By the turn of the thirteenth century there seems to have been some recognition that a woman might remain unmarried for a time after coming of age; Glanvill in his discussion of heiresses who hold in parage speaks of the responsi-

bilities of younger sisters or their husbands to render service to the elder sister or her husband (*italics mine*), for example, as if the possibility of one or more heiresses being unmarried was by no means remote. An unmarried woman without inheritance would have to be provided for; Ralph V. Turner notices that Roger son of Reinfrid offered King Richard ten marks for custody of an heir so he could grant the profitable custody to his daughter Bonanata, apparently providing for a daughter who had not married. And though the coronation charter of Henry I speaks only of refraining from marrying widows without their consent, Magna Carta envisages the possibility that widows may have preferred not to marry at all, as their payments to the king for the privilege of not marrying would seem to attest.⁷²

Other women accepted marriage as the normal state of life, but it can be seen in a case from the reign of Richard I that they might take an unexpected part in the process. After Simon de Turri came into the court and rendered the inheritance of two women named Maud and Felicia to the women's attorney, one Thomas de Ho, Thomas himself gave the women one-half mark for the privilege of arranging their marriages. Maud and Felicia, though they put their future in the hands of another, were to enjoy the payment usually reserved for a lord or a guardian.⁷³

The recorded actions of right bear the imprint both of the prevalence of marriage as the normal status of women and

of the opportunity for some women to remain single. The majority of the women concerned in actions of right were married, but a sizable number were single and acting autonomously. Many no doubt were widows, but others, such as unmarried sisters who sued together for their inheritance, apparently had not, or perhaps not yet, entered into matrimony. These women apparently felt equal to the task of managing their lands and legal affairs themselves.

The transition from performance of service to payment of money in return for land that was making scutage an acceptable alternative to the sending of armed knights leaves its imprint on the rolls in the number of money rents that are owed or that are to be paid and even in the designation of some plots of land, such as the librate, by the amount of money that was owed from them each year. Though no doubt many women were equal to the task of maintaining knights and sending them at need or directing workmen to render labor services, the acceptance of scutage and money rents probably made it easier for women to hold and manage land. And the law, whatever its masculine interest, helped them to safeguard their rights in their lands. Milsom's example of the Crevequer inheritance is an excellent case in point; Cecily de Crevequer, who at first served to transmit the land to her husband, after his death took her lands over and managed them herself, using the court to maintain her right against her cousin Alexander.

When studied in their detail the recorded actions of right reveal that, paradoxically, women's position in the courts was both better and worse than has previously been perceived. On the one hand, the circumstances of a woman's landholding restricted her even more than might be expected. A married woman's inability to act in court without her husband did not just hamper her activities; it might mean that his default could cost her her lands unless she took some extraordinary action, even in one case enlisting the aid of the king. Her husband could make final concords about her land if he chose; the court's apparent concession to her interests, its care to secure her consent, was not for the purpose of hearing her opinion but to attempt to safeguard that concord against a later action by writ of entry. Her consent was not expected to be withheld and was not on these rolls. If she did withhold her consent she did not halt the making of the concord; it was made over her objection but she retained the possibility of recovery by writ of entry in the event that she survived her husband.

Unless she was an only child she inherited in the company of other sisters; the need to have them present at any legal action added to the delay of a delay-plagued action. Moreover her interests were not exclusively her own. In the usual course of things they would be appropriated by her husband and passed on to her heirs who, by the principle of primogeniture, were more than likely to be

male. In the not unlikely event that a woman married twice in her lifetime and then passed on her lands to a son and a grandson, the rights of one woman became the immediate concern of four men. Women's right in land, then, touched much of the population and might almost be spoken of as the right of women, their husbands, and their heirs.

On the other hand, women were not overwhelmed by the restrictions that hampered them and the men into whose hands their rights were given. Even at its most bleak the situation had its mitigating factors; in the short term a husband's activity might recover lands that had been beyond the wife's reach, and in the broader view a strong masculine interest in women's lands helped to create a climate of opinion in favor of upholding women's rights in land. Husbands and wives often appeared in court together and the clerk recorded the argument as if both were speaking; perhaps indeed they were collaborating on their suit or defense. And in some cases the wife obviously has taken the lead because she has been attorned by her husband and is representing both their interests in court. An unexpected contingent of women was enjoying the benefit of laws that guarded women's right.

The activity of these women shows that any impression of passivity derived from the restrictions the age placed on women is misleading. The detailed information provided by the recorded actions of right shows that it is necessary to

revise our understanding of women's rights in land to accommodate an unexpected paradox. These rights were hardly for women alone; spouses and heirs who were interested in women's rights in land outnumbered the women themselves and probably were part of the reason why those rights were preserved. But those rights were available for women who could act, and women could act, and act effectively in their own behalf. Their achievement was commendable in itself, and when measured against the obstacles they faced, it is striking. Now we must turn and examine the standing of women in an action designed specifically for one of their pressing needs, the action of dower.

Notes

1
Women, like men, could purchase land, but the rolls give little specific information on the matter.

2

See text at notes 62 and 63 below.

3

P&M ii 274-78; Glanvill VII 1, pp. 69-74; Bracton II 190-200.

4

Maitland has said, "No text-writer, no statute, ever makes any general statement as to the position of women. This is treated as obvious..." P&M i 482. Certainly there is no succinct statement of women's position in the courts; the picture I have described can be drawn from the way in which women are discussed in Bracton, for example II 190-200 and Glanvill, VII. 3 76.

5

The notable exception is S. F. C. Milsom; see text at note 58 below.

6

CRR IX 212-13; CRR X 322; CRR VI 290-92; CRR VI 84; CRR VIII 349.

7

For the action of right see Glanvill I-6-III, pp. 5-42; Bracton ff. 327b-336b, pp 47-70; Maitland's discussion of pleading and proof contains much that applies to the action of right, P&M ii 548-622.

8

P & M ii 605-06; Glanvill ibid.; Bracton ibid.; P&M ibid.; C. T. Flower notes that the duel, though under John frequently waged, was seldom fought, except in criminal appeals, especially those brought by approvers, suspects who accused and fought several of their former associates in order to win their own freedom, Introduction, p.113.

9

P&M ii 633, CRR IX 64; ELAR 1127 Lady Stenton calls this an action of entry (intro. p. lxxi) but the offer of battle on both sides and the lack of recourse to a jury indicates that the action is one of right, though the situation probably could have been addressed by the action of entry cui in vita; CRR II 6; CRR I 185.

10

See note 7 above.

11

CRR IX 64; RCR I 198-99.

12

P&M ii 97-100.

13

Bracton IV pp.71-146, 191-244; PKJ I 151-170;RCR I

395--96.

14

ENAR xxviii, CRR VIII 338-39; CRR VI 254; CRR VI 282-83; CRR VI 176; CRR I 326; CRR IV 304; RCR II 5.

15

CRR VII 304-05; CRR V 293.

16

3RRI 30-31; RJE-GWS 1001.

17

CRR V 294; CRR IX 37-38; CRR III 295-96.

18

CRR IV 44; CRR VI 354-55.

19

ENAR xxvii; PKJ 3, xxxvi-xl; Flower, Introduction pp. 405-07; Turner, Judiciary pp. 152-153.

20CRR II 174, 3RRI 30-31; CRR III 353.

21

22-23, 26. CRR VI 39, CRR V 76, CRR VI 394. CRR I 349. RCR I

22

CRR IX 301, CRR IV 260

23

P&M ii 399-436.

24

CRR X 245

25

3RRI 36-37; RCR I 28-29.

26

CRR I 153. At a later date the jurors were selected for the assize, but after that there are no more entries in the rolls concerning the plea. Presumably further procedure would have been routine; the jurors' answer about whether Hawis had greater right in the land would have decided the case regardless of Nicholas's absence, CRR I 382.

27

3RRI 31-32; CRR X 32.

28

CRR VII 255.

29

See for example CRR VI 348 and CRR X 184 in which the principle is enunciated that the wives, whose husbands had been serving as their attorneys, must be summoned if the agreement is to stand. In CRR VIII 127 a wife and other heirs of the land must all be summoned for the concord to be good.

30

P&M ii 405-14.

31

P&M ii 413. The example examined here is BNB 419.

32

PKJ I p. 23; P&M ii 408, later on says Maitland, he

would plead in abatement of the writ; RCRI 7.

33

CRR IX 339-40; CRR VII 25-26; CRR VII 209.

34

CRR IV 80-81; CRR IX 120.

35

CRR V 49; CRR VIII 168-69; CRR VII 36.

36

PKJ III 922, 923, 1022, 1024, 1026.

37

CRR III 323; Flower, Introduction, pp. 6-7.

38

CRR I 163.

39

ELAR 1260 seems to be a case of a mother representing a son; RCR II 10; a husband attorns his wife when sued for her inheritance in 3RRI 30-31

40

In circumstances rendered unclear by scribal cancellations, John also offered a considerable sum, apparently twenty marks and a palfrey, to have the knights for the assize selected from two counties because the knight's fee lay in both. In later entries John defaulted once and then essoined himself; the case then drops out of the records. CRR V 241-42, 308, 314.

41

Vitalis's writ also had spoken of one and a half carucates, thus including Roger's part with his own; one of William's objections to the suit was that the writ did not specify how the land was to be divided. If Roger did not wish to sue, Vitalis was to be allowed to sue for his part, CRR X 101-02, 109.

42

John had an agreement made in the time of Henry II that if either party was challenged the other would be present so they could defend by common counsel, CRR IX 132, CRR X 17-18.

43

CRR V 137; CRR IV 104.

44

CRR I 75; CRR VI 213-14.

45

CRR III 120; CRR III 76-77; CRR VI 140-41.

46

CRR IX 300, CRR VII 264.

47

CRR VII 2-3.

48

CRR V 220.

49

CRR III 184, CRR I 71, CRR VIII 329.

50

Some credit may be due to Maud's son Eudo, whom she had attorned at an earlier stage in the plea, but that may have been an attornment made in case she had to be elsewhere on the day of the plea, a reason given for many attornments on the rolls. CRR VI 318, ELAR 226, 227, 1180, 1265, CRR II 173.

51

CRR VIII 255, CRR IX 105; CRR VIII 349.

52

CRR V 79-80

53

CRR II 81; CRR III 41, 178, 334-35; CRR IV 80, 135, 252, 318.

54

CRR V 79-80; 123.

55

CRR V 79-80

56

CRR V 171, 183-86.

57

CRR V 162, 280, 293; CRR VII 108-09, 180, 246; CRR VIII 173, 184; CRR IX 222, 241, 381-82, 385.

58

Milsom, "Inheritance," p. 80; Avenel and his son Jordan seem to have had a position that, while not prominent, allowed them to exercise considerable influence. Avenel was able to carry on extensive preemptive litigation in the ecclesiastical courts, having had recourse to Rome on two occasions, if the documents Jordan later presented were genuine, as well as to local ecclesiastical officials and to the Archbishop of Canterbury. The men were able to sustain several years of litigation against Alice in the curia regis, and had experience or legal advice that helped them exploit the ways to evade Alice's suit that the legal system offered. They were clearly not of the highest social ranks, but were likely to have been fairly well connected. Two of the surnames used for them, Pincerna and Butiller, mean "butler;" Avenel was apparently in a position of trust in the household of some person more powerful than he, who may also have been exerting influence in the men's behalf, and Jordan may have succeeded his father in the post. Avenel may well have purchased the wardship of the Clement heiresses to aid his own rise in the world and to help him found a family in imitation of the people he served.

59

In 1199 Walter de Grancurt brought a plaint, RCR II 126-27. against Hugh de Polsted' guardian of Walter's two neices, Hawis and Juliana. Walter complained that Hugh, in spite of his promise not to marry Juliana to anyone without the consent of Walter and of Walter's eldest son, had "unjustly" made her a nun while she was still a minor so that her portion of the inheritance she shared with her sister

would go to Hawis, whom Hugh had married. Hugh said she had voluntarily become a nun. The case was postponed for later judgment. A celebrated case of the year 1220, CRR IX 65, translated in full by Flower (Introduction pp. 5-7) turned on conflicting claims about whether Maud daughter of Geoffrey de Berneville had been abducted by John de Merston or whether John had married Maud at her urging and rescued her as she was being taken to Sopwell Abbey to be made a nun. Maud's guardian had intended that she and her elder sister Alice be married to his two sons; Alice's marriage had taken place, but the younger son had preferred to take an opportunity that arose to take holy orders and receive a living as a clerk. If Maud became a nun, her lands would stay within the family. The case was to be postponed so the earl of Winchester could be summoned to declare if he had really given Maud's wardship to her alleged guardian, and John, who was adjudged to have married Maud "without warrant," was to find pledges that he would "stand to right," or answer in court for his behavior if anyone wished to bring charges against him; CRR VII 183-86; Turner, Judiciary pp. 287-98; CRR V 162, 280, 293; CRR VII 109, CRR IX 222.

60

CRR II 257-58; CRR I 352; CRR II 69.

61

CRR VI 201.

62

ELAR 512; CRR IV 165; CRR IV 210; CRR VI 200, 266.

63

CRR I 232; CRR VI 43-44, 64, 95, 157, 207.

64

CRR II 77; ENAR 496; CRR II 94-95; CRR VI 133; CRR IV 68, 145.

65

CRR I 349; CRR V 102.

66

CRR II 206-07; CRR VI 296.

67

CRR V 142-43.

68

Milsom "Inheritance by Women" p.64; Milsom cites CRR II 218, 223-24, ELAR lxxx-lxxxii.

69

See text at note 59-61 above.

70

Turner Judiciary pp. 112-113.

71

PKJ IV p. 19.

72

Glanvill VII 3, p. 76; Turner, *ibid.* p. 61; Stubbs, *ibid.*; Holt, *ibid.* c. 8, p. 319.

73

et pro eis maritandis Thomas eis dedit dimidiam mar-

cam, CRR I 56.

74

See F. D. A. Harvey, "The English Inflation of 1180-1220," Past and Present 61 (November, 1973) pp. 3-30; Harvey points out that in large estates at least the twelfth-century practice of leasing land to farmers gave way to the employment of bailiffs who worked the land and rendered payment to the lord. Whichever practice obtained at any given time the payment was in money, with payments in produce becoming progressively more uncommon over the twelfth century; thus the lord--or lady--was freed both from actual farming operations and the awkwardness of income in the form of produce. The rolls record that quite small plots of land were held by lease, so the practice of leasing land at a rent was probably seen on small estates as well.

Chapter II

Dower

Actions of dower, unique among civil actions because they were designed exclusively for use by women, have until recently been treated by modern historians as a special study well outside the mainstream of the common law. Maitland's thoughtful discussion in his History occupies only eight pages of his section about husbands and wives;¹ and there is a touch of condescension in J. D. G. Hall's remark that "litigious widows occupied much of the time of the royal court."² No full-scale study of the subject exists in English; the most extensive discussion of dower rights is that of F. Jouon des Longrais, written in French.³ S. F. C. Milsom has remedied this in part by considering dower writs and pleas in his treatment of actions of right,⁴ and Janet Loengard has responded to growing interest in women's legal concerns with a thorough exposition of dower law.⁵ Still, in most minds, dower is understood to pertain only to a subgroup of a subgroup, that is, only to women, and among women only to widows.

To medieval jurists and litigants dower rights were of more central importance, as the extent and quality of the jurists' writings and the sheer volume of cases attests. The author of Glanvill devoted one of his fourteen books to dower, a book which Hall describes as one of the "discussions that lift the treatise from the level of clarity and

competence to that of originality and distinction." ⁶ The author of the treatise called Bracton wrote two discussions of dower whose combined page length, in the most recent edition, ⁷ is seventy pages. Other jurists not known to us demonstrated their interest by devising a unique writ to suit dower's special needs and still others did so by welcoming the large number of dower cases into their courts. Dower engaged the jurists' intellectual interest because it opposed an undeniable claim of right against the usually firm claims of the direct heir, the purchaser or grantee of the lands, and even the lord of the fee. It offered the legal system the pecuniary advantage of a large volume of litigation with attendant amercements, fees for writs, and the like, and it is worth investigating to see if some jurists might even have had a stake in the law of dower themselves.

Dower actions are of particular interest because they concern rights in land that pertain to widows, and thus are not only specifically women's rights but also the rights of those women who had the best potential for controlling their won lives. Two sets of assumptions seem to govern perceptions of medieval widows. On the one hand widows who had secured their holdings had the best opportunity of all medieval women, especially if they did not remarry, to manage their own holdings and order their lives. On the other hand widows were particularly vulnerable; as women

claiming land in the man's world of medieval landholding they were in some peril of having their claims passed over, especially if there were circumstances such as a subsequent subinfeudation of the land or the death of a husband before he entered into his inheritance to complicate or obscure the widows' rights. Actions of dower catch medieval women at the moment of hazard and opportunity in which they attempted to establish their claim of right in land, and the court records show how women fared in an action that, as the only civil action designed specifically for women, provided them with the greatest latitude that medieval courts allowed, but reveals as well the limitations that, even in this action, were placed upon them.

Before discussing the law of dower, it is best to examine what the term "dower" means in English law. As we have seen it is not the same thing as "dowry," the gift to a bride by her family or other interested parties when she married; this sort of gift was called maritagium and a
 8
 separate body of law evolved around it. Under English common law a wife could not inherit land from her husband; the estate the husband had inherited or accumulated was to be passed on to his heir, ideally an elder son. The husband could, however, provide for his wife by setting aside a portion of his land for her use after his death, with the provision that when she died the dower land would automatically revert to the heir and the estate would remain intact.

The husband might endow his wife by naming specific lands at their wedding ceremony that she could have for her use after his death. Dower so specified is called "nominated" dower, and, though a widow could expect no more than the lands her husband had named, by law she was entitled to no less. This endowment was thought of as a gift on the part of the husband, but, paradoxically, dower was so important that his obligation to bestow this gift on his wife was an immutable one. Perhaps fortunately for his wife, if the husband failed to specify dower, his heir was legally obligated to provide for the widow by granting to her a certain portion of her late husband's lands; at the time we are concerned with this portion was to be as much as but no more than one-third of those lands.⁹

There must have been innumerable occasions on which dower lands passed peaceably to a widow upon the death of her husband, and the rolls afford glimpses of widows holding their dower untroubled.¹⁰ But inevitably there were times when the transfer of land to the widow did not go smoothly, and so two legal remedies were provided for her. Both were actions of right. If the widow had received part but not all of her dower she could have a royal writ, a breve de recto tenendo, to the court of her feudal lord directing that court to hear her claim and do her justice. If she had received none of her dower she could obtain a writ praecipe called unde nihil habet, "wherein she has nothing," by which

she could call the tenant or tenants of the land she sought¹¹
to come into the king's courts and answer her demands.

The writ unde nihil habet had several features that demonstrated the legal system's concern for the widow's uniquely vulnerable position; it met her need for both speed of execution and permanency of tenure. It had all the permanency of a writ of right in land: once the widow had established her claim by this action, her right was normally guaranteed against any further proceedings in any court. If challenged she had only to cite the decision in her favor. This in itself was a mark of special favor to the widow; hers was the only writ of right applicable to a tenure for life. All other writs of right concerning land were for heritable rights; the widow's right was of course not heritable but reverted to her husband's heir after her death.

Moreover the unde nihil habet was uniquely favorable to the plaintiff because it restricted the advantages usually enjoyed by the defendant in the action of right. One such advantage was that of the defendant's opportunities for delay. The action of right was subject to interminable delays; the law preferred to proceed carefully when a defendant in peaceful seizin was in danger of losing land in a way that precluded subsequent challenge in court. Thus there were ample opportunities for delay of the suit, and in the end the choice of proof was with the defendant, who decided whether to do battle or rely on the grand assize.

But, because the widow's tenure of her land was to be for her life only and her need was great, many of the means of delay were eliminated from the unde nihil habet. The year-long essoin for serious illness, the essoin malo lecti, was not permitted; a defendant who claimed such an illness had to appoint someone to defend the case in his or her behalf. Other essions were severely restricted. In addition the justices seem to have been inclined to look upon a great many absences as being in contempt of court, thus often bringing the case rather quickly to the point at which the land was taken into the custody of the king's officials and its revenues reserved for the winner of the suit. At this point delay ceased to work in favor of the defendant, who had either to act or to give up his claim because with further defaults the land in custody would be awarded to the widow.

Actions of dower also did away with another of the defendant's advantages, the choice of modes of proof, by doing away with both battle and the grand assize. Glanvill mentions them as a possibility in dower actions, but two generations later Bracton rejected them both. In the rolls studied here the grand assize was never resorted to, and one litigant who offered battle, in this case a plaintiff, was severely castigated by the justices.¹² Once the widow had stated her claim and produced sufficient suit, reliable persons who were willing to swear that she had been endowed

as she claimed, the defendant who could not produce suit of his own that she had not been thus endowed might have to render the dower to her forthwith.¹³ The writ unde nihil habet gave the widow the advantages of a writ of right in the finality of its conclusion, while eliminating those aspects of the writ of right, the delays and the defendant's choice of proof, that might have been most troublesome to her.

Even with such advantages the way of a plaintiff through the royal courts was a difficult one, and several ways remained to defendants to prolong a suit or to end it in their favor. If there was any uncertainty whatsoever about just which lands were being claimed, the defendant could ask for a view and thus necessitate at least one more hearing at which the result of a viewing of the land by knowledgeable men of the neighborhood would be announced. A defendant who was not the heir himself might vouch a warrantor, who usually would have to be summoned and was to be allowed at least fifteen days in which to prepare a defense and come into court; sometimes, as in other writs of right,¹⁴ one warrantor might vouch another. A daring defendant might default and allow the land to be taken into the custody of the royal officials, counting on his or her ability to explain the absence to the court's satisfaction, regain the land, and go on with the suit as before.¹⁵

Defendants with some knowledge of the law of dower

could throw the onus of producing a warrantor onto the widow herself; by law they had no obligation to answer her claim unless her warrantor, the heir of her late husband, came into court and validated her claim. Indeed, the authors of both Glanvill and Bracton believed that no one being impleaded for dower need answer the widow without her warrantor unless he wished to do so. For some widows the task of bringing the warrantor into court was an easy one; the warrantor, who was sometimes the widow's own son, came without delay and warranted his mother's right to her dower. Other plaintiffs had to ask the aid of the court to summon a reluctant or uncaring warrantor to appear.¹⁶ Though as we shall see the warrantor, once brought into court, might dispute the claim of either the widow or the defendant, in a textbook case the final warrantor called by both sides would be the selfsame heir of the widow's late husband, who would render to the widow the lands due her from the tenement under dispute and provide the defendant with escambium, that is, lands of equal value, from among his other landholdings.¹⁶ In any event, the vouching of a warrantor was both a necessity and a reliable source of delay for many defendants.

Some defendants challenged the accuracy of the widow's writ itself. If she had made some error in her writ, perhaps by claiming land that the defendant did not hold or by claiming more land in her narration, her verbal statement

before the court, than she had in her writ, the writ was quashed. The widow would have to bring another and more accurate writ before she could be heard in court. This was a serious though not a fatal setback, and probably discouraged¹⁷ some widows from proceeding with their cases.

Another way for the defendant to delay the suit or even to win it outright was to plead an exception, to deny the validity of some part of the widow's claim. The defendant might allege that the widow's late husband had never held the land on which she based her claim. He might contend that she already had some of her dower, in which case she was not entitled to use the writ unde nihil habet but must take her claim to the lord's court by breve de recte tenendo, or he might state that she had received all of her dower and had declared before witnesses that her claims had been satisfied and thus could not legally claim dower in any court. A defendant who raised these or other objections took the burden of proof upon himself; perhaps he would bring suit prepared to swear in his behalf, or, especially if the widow denied his claims, he might ask to have a jury to declare the truth of the matter, a privilege for which he would have to expect to pay. The widow then could choose the way to answer the exception; she might agree to the summoning of a jury, or in some cases ask for a jury herself, or offer to produce suit of her own to swear that her claims and not her opponent's were just. If either side was able to provide

conclusive proof that side of course won the case, but in cases in which proof was missing or doubtful the question might go to a jury. Whichever of these challenges was made, however, a delay always ensued while the proper procedures¹⁸ were attended to.

If the defendant chose to challenge the validity of the marriage the suit came to a halt and the burden of proof fell upon the widow. The ecclesiastical courts alone could rule on whether a marriage was valid, so the case was put without day, as the records phrase it, and the widow was given a writ to the bishop or his officials directing them to inquire into the truth of the matter and report back forthwith. Only when the ecclesiastical court's ruling was in hand could the widow return and reopen her suit, if¹⁹ indeed the ruling had been in her favor. According to Bracton the widow was equally responsible for proving the death of her husband if the defendant objected that she could not lawfully have dower because her husband was still alive. This could be a difficult task if her husband had died in some remote spot while on pilgrimage or in other obscure circumstances; she would have to find and produce suit, witnesses to her husband's death or perhaps to his²⁰ entry into a monastery, regarded as a civil death. The widow's responsibility in these matters was perhaps to her advantage. These were serious matters that required proof, and hers were probably the hands to which she would prefer

to entrust the carrying out of such a vitally important commission.

The widow was given an action and a writ that, no doubt because her position was perceived as a particularly vulnerable one, gave her some advantages but still did not insulate her from all of the ordinary delays and frustrations of court procedure or permit her to win if salient facts were against her. In order to see what widows were able to achieve with this action we must follow them into court and see what befell them there.

In the turbulent generation between 1194 and 1222, encompassing as it did campaigns on the continent, the barons' rebellion at home, and two crusades to the Holy Land, widows flocked into the royal courts to claim the lands they thought were due them. There are 2,122 entries in these records concerning actions of dower; this number can be taken as representing roughly the number of appearances widows made in court to seek their dower. Unlike actions of right, dower pleas lend themselves to a numerical analysis of their outcomes because they are almost always readily identifiable in the rolls; the clerks, who very often used the general term "a plea of land" to designate actions of right, mort d'ancestor, and the like, were very conscientious about identifying dower cases as such. Thus, though these cases do not constitute a scientific sample, their survival in large numbers and in readily identifiable

form renders them valuable in revealing tendencies in the courts' dealing with widows in the first generation of legal records.

A simple accounting of the outcome of each entry, however, will not produce the necessary information; dower cases are made complicated for the historian by the same circumstances that made them complicated for the widows who brought them. One complication was the necessity in many cases of claiming against multiple defendants in a single court appearance. Widows who sued for lands that had been sold, subinfeudated, or otherwise parceled out often claimed against two or more tenants at one hearing, so the number of individual claims was even larger; in their 2,122 appearances widows made 2,971 claims for parcels of land. The claims made at one appearance might yield varying results. Cecilia the widow of Osbert de Frismareis, for example, had her writ quashed against one defendant because he did not hold the land she claimed against him, found she would have to make another appearance against a second defendant who refused to answer her without her warrantor, and won by default against a third.²¹ Each of these outcomes, and thus each of the claims the widow made, must be accounted for separately and given its own due weight.

On the other hand, a widow might have to appear several times through successive delays of her case against one or more individuals, so that neither the number of entries nor

the number of times dower claims were heard in court gives a true idea of how many widows were bringing dower claims. The number of widows is very difficult to determine because, though most resolved their claims in one or perhaps two appearances in court, others had to pursue their cases through several appearances in the records, with the attendant vagaries of scribes who spelled names now one way and now another and who even recorded a single person under different appellations. It is relatively simple to determine that the Agnes widow of William of one entry in the rolls is the same person as an Agnes widow of William of Braham found later in the rolls because in each entry she claims the same parcel of land against the same defendant, one Hugo of Braham. A similar test reveals that a certain Emma was identified at various times as Emma de Wilton, Emma widow of John of Wilton, and Emma widow of John, that Agatha de la Kersimere is also called Agnes, and that Reinild widow of Nigel de Wakefield is later called Remilda. Agnes la Bele, who appears at first to be named for her beauty,²² proves to be the widow of John le Bele. Others are more difficult and time-consuming. One prominent widow who made eighteen appearances in 1214 was called both Sibella de Ver and Sibella widow of Walter de Vere; she reappeared in 1218 and 1219 to make nineteen appearances in the rolls as the wife of Nicholas de Chavincurt.²³ The multiple appearances of other widows may be undetectable; we may suspect but

cannot demonstrate that Soleina widow of Rannulf de Burgo is also called simply Soleina the widow elsewhere in the rolls, even though both Soleinas were from Cambridge.²⁴ As nearly as can be determined, however, there are just under 1500 widows, some 1475, who made the 2,122 appearances to assert their 2,971 claims.

In examining the widows' appearances in court the relative swiftness, at least as compared with other actions of right, of the action the legal system had given them becomes readily apparent. A speedy resolution of her claim was critical to a widow if her sustenance depended on its outcome, and so the majority of the cases were settled in one appearance. None was on the rolls for more than a few years, even if prolonged by the disruptions of war.²⁵ However burdensome the delays, no widow was ever called upon to display anything like the endurance Alice Clement needed for her generation-long litigation for her inheritance. A comparatively rapid settlement is not necessarily the same thing as a favorable one, however, and an examination of the claims they made shows that the widows met with varying fortunes in their suits.

Because widows frequently pressed two or more claims in one court appearance, claims that were likely to meet with different results, a count of the entries of these court appearances and their outcomes is not possible. A more useful approach is to scrutinize the bulk of the 2,971 claims

themselves, noting their outcomes, trying to discern why they ended as they did, and seeing if any pattern emerges.

The most likely immediate prospect for a widow who presented a claim of dower, in spite of the streamlining the action had undergone, was that it would be delayed, sometimes indefinitely. Usually the delay was a procedural one, a request for a view of the land by a jury of lawful men of the neighborhood or perhaps the vouching of a warrantor or a demand that the widow's own warrantor be produced.²⁶ Time had to be allowed for the view to be made or the warrantor summoned; even if the warrantor was present in the court he might insist on his summons time, perhaps for the sake of the delay or alternatively to prepare himself by learning the true extent of his obligations or by marshalling his arguments against the warranty.²⁷ An exception almost always brought on a delay while the respective parties assembled their suit, the persons who were to swear in their favor, or, more usually, while a jury was called together to state the known facts of the matter. Occasionally the justices themselves ruled that there should be a delay, sometimes because the case presented especially knotty problems or involved very prominent people and they needed time for thought or consultation; sometimes they postponed the case for no discernable reason. In a few cases a hitch in the judicial system itself caused the postponement; a view had not been made, a jury had been made up entirely of

paupers and another had to be summoned, or the jurors themselves had defaulted. In any such case the justices assigned a day for the parties to return after a specific length of time, fifteen days to summon a warrantor and as much as a month for other purposes, then continue the suit.²⁸ In these rolls there were 1302 claims, 43.8 per cent of the total, that were postponed but were to be heard again at some specified day.

Certain circumstances could cause a case to be "put without day," that is, postponed indefinitely; usually with some or even a good possibility that they could be reopened. As we have seen, a challenge to the validity of the widow's marriage halted her case while she went to the ecclesiastical court, which alone was considered competent to rule on the question, for confirmation that the marriage had taken place. Bracton devotes a fair amount of space to this procedure because of its intrinsic interest, but the challenge itself was a relatively rare occurrence, found in only 23, or 0.8 per cent, of the claims.²⁹ The death of the defendant, which occurred in only four claims, a negligible 0.1 per cent, certainly removed the unfortunate person from the scope of the courts, and a new claim had to be brought against his or her heir. A few more claims had to be put aside while defendants were in the service of the king on the continent or in Ireland or wherever events dictated. One woman was told that her case had been put without day be-

cause it did not please King John that it should be heard. And Brian de Insula caused more than his share of consternation by leaving on pilgrimage to Jerusalem just before three widows brought their claims against him.³⁰ Seventeen claims, 0.6 per cent, were postponed for these reasons, a tiny proportion of the total but frustrating for the women involved.

More prevalent, and more damaging to the widow's claim, was the setback a plaintiff received when her writ was quashed because it contained some error or there was a variance between its allegations and those the widow made orally in court or the like.³¹ In theory the widow could resume her suit by bringing a new writ against the correct person or stating the correct amount of land or whatever, though the expense and effort involved may have been beyond the reach of many, and if errors in the writ reflected confusion on the widow's part about the particulars of her claim, framing an accurate writ may have been quite difficult. There were 142 claims that ended, at least temporarily, because they were quashed, a large number but still only 4.8 per cent of the total. Altogether only 177 claims, roughly 6 per cent, were postponed indefinitely or were quashed and had to be begun again.

A few other plaintiffs, twenty-seven or 0.9 per cent, chose to withdraw from their suits after they had begun to prosecute them. Their motives are as opaque as those of the

women who failed to prosecute, and probably most did not intend to resume their suits, but it is notable that one woman withdrew from her writ by the license of the justices because it was in error. Her action kept her writ from being quashed and perhaps smoothed her way toward bringing a new writ.

Some women not only recovered nothing but seriously prejudiced all chance of ever winning a favorable judgment for themselves. In a small percentage of claims the women did not come into court and prosecute their suit when it came before the justices; the rolls do not tell us and we cannot now discover why they did so. Perhaps a few achieved a satisfactory settlement in some other way; others may have given up on getting a settlement of any kind, still others may have failed to appear in court for reasons that the courts would not have countenanced as reasonable excuses for non-appearance. One unfortunate woman put her trust in the wrong attorney; he mistook the day and, when he finally appeared, the case had already been lost by default. In another case the widow was determined not to appear. A person claiming to be her essoiner, her representative to explain and excuse her absence, said that she was at her house in Suffolk and unable to attend. But other testimony said she was in London. Two knights sent by the justices found her there, but she for some unexplained reason refused to come to the court. The self-appointed essoiner was sent

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to jail. Of the 2197 claims 84, 2.8 per cent, were dismissed for default of prosecution and would have been difficult to reopen.

The claims of another group of widows ended in such a way that the widow received nothing and there was no possibility that the case could be opened again. Sixteen claims, roughly 0.5 per cent, were ended because the plaintiff had died; her claim was not heritable and therefore her suit was closed. Sixty-one claims were lost outright because they were proven to be false. One woman was proven never to have been married to the man she claimed as husband. There was a legal wife still living; it was she who was entitled to the dower. In another case it was proved that the deceased husband had never held the land in question, therefore the widow could not hold dower there. Those sixty-one claims were thus irretrievably lost. This number, only 2.1 per cent of the total is surprisingly small; it amounts, for example, to just over a third of the number of cases that were quashed and a much smaller fraction of those that were postponed to a subsequent day. It is augmented slightly by a small number of claims, nine or about 0.3 per cent, in which the widows for reasons not given came into court and publicly and irrevocably remitted their claims to their opponents. They may have received some consideration in return for their action, but if so it does not appear on the rolls and they clearly had renounced their claims without hope of

opening them again. In all 170 claims, only 5.7 per cent, were concluded in favor of the defendant, whether by the plaintiff's failure to prosecute, or by her death, by a decision in the defendant's favor, or by the plaintiff's own ³⁴quitclaim given with, apparently, nothing in return.

Other defendants were less successful. A surprisingly large number failed to appear in court or make any excuse for not doing so. They were considered to have defaulted, and the land in question was then put under the supervision of the king's officials, or, as the rolls put it, "taken into the hand of the king," and its produce and revenues were reserved for the winner of the dispute. A subsequent date was given for such a defendant to produce a reasonable explanation for the absence, such as not having received the summons; if he or she did not do so the widow won the land by default.

It was fairly easy to redeem the land by making such an excuse and producing suit to support it, and there are some defendants who seem to have used a default as part of a ³⁵calculated series of delays. Others were unable to recover from the setback, and some whose case was not strong may have been unwilling to trouble themselves to appear; thus, as we shall see several widows were allowed to win by default. In any case, in almost one-fifth of the claims, 522 or 17.6 per cent, the land under dispute was taken into the hand of the king.

There were several ways in which a widow could win at least a partial settlement or very often the full extent of her claim. The simplest was for the defendant, who in these cases was usually the heir, to come into court, admit the widow's claim, and render to her the lands due her. Sometimes these cases were collusive in that there was no antagonism involved. Rather each party seems to have desired that the transaction be made with as much publicity as possible, on the part of the widow so that she might secure her holding against all future claims, and on the heir's part so that the terms of her tenure would be apparent to all and he might be more sure of the eventual reversion of the land. At other times the defendant may have awaited a claim in court so he could be sure of the terms on which the dower was to be awarded; Robert de Waleford, for example, stipulated that the autumn's harvest, which he no doubt had sowed and tended, would remain to him.³⁶ Other defendants may have needed the prodding of a court summons before they fulfilled their obligations. For whatever reason, they came and rendered dower to the widow, and most were willing to give her the full amount she claimed.³⁷ A fairly sizable number of claims, 228 or 7.7 per cent, were settled in this way.

In other cases the widow did not press to the completion of her suit in court; instead she announced that she had received a satisfactory dower and released her opponent

from the suit, or, more frequently, reached a settlement or concord with the permission of the justices. The terms of these settlements are not always clear. Sometimes the widow may have been taking what she could get, at other times she may have preferred a rent or lump sum rather than lands, or she may simply have preferred to have the cirograph, the written record of a final concord made in royal court, in her possession in case of further litigation about her land. That this was a good idea is seen in one case in which a widow sued a defeated defendant for not "keeping to the cirograph," or not upholding his part of the bargain.

Some widows may have accepted a concord if their case was weak; we may suspect this was the case when Isabelle widow of Richard de Haselberge accepted an agreement with the two men she sued against even though the jury that was to declare the facts of the case had already been assem-

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bled. Other widows had to make concessions to get their dower. Maud widow of Ralph de Tivell the younger paid the defendant, the father of her late husband, five marks to have the manor she claimed against him; he was to retain certain rents, but agreed to return Maud's charters to her if he could find them. The lord of Walter de Tiwe's fee withheld dower from Walter's widow Emma until she agreed to release Walter's minor son and heir to him. These concessions were hardly exorbitant, and the custody of the minor heir was probably the lord's right in any case.

Still other widows got their full dower by concord, and one got more; Alice de Marines was granted all that she had claimed, and in addition the defendant agreed to pay damages³⁹ for the time he had kept it from her. A concord gained the widow at least some and at best all of what she claimed, and 269, or 9.1 per cent, of the claims were settled in that way.

Some widows won their cases outright in spite of all that the defendants could do to delay or challenge their claims. Those who won most easily won by default, but even they sometimes had to persevere over a series of delays and challenges until the defendant abandoned the case.⁴⁰ Others faced more severe tests and overcame them. Dereina widow of Robert Brito brought claims against five different defendants; one of them gave her what she asked, one allowed her to win by default, and the other three pleaded a variety of delays and defenses. After several delays she won⁴¹ against all three of them. There were 187 claims that widows won outright, 6.3 per cent of the total, and in each of these the widow was awarded the full extent of her claim.

Of the handful of claims not yet discussed, two ended without any clear advantage to either party. Margaret Passelew, for example, was to hold herself to the dower land she already had until her opponent, who was suing the monks at Woburn Abbey for the land she claimed, had won it if he could. The record of another eleven claims had suffered

enough damage that their outcomes were illegible, and fully sixty-six claims are from cases that are unfinished in the rolls, sometimes because no decision was rendered, or sometimes because the scribe in his hurry left them partially recorded and never returned to finish them. One entry breaks off just as the scribe was recording the defendant's entry into court to take action; all we have is "Roger comes and...."⁴² However tantalizing they may be, these seventy-nine claims, 2.7 per cent of the total, give no definitive result suitable for computation.

In sum, there were a good many ways to delay an action of dower; correspondingly, delay was the usual result of a widow's claim, whether it was a procedural delay for which a later day in court would be given, a discouraging delay to replace, if possible, a quashed writ, or a more hopeful one because the plaintiff had defaulted. As Table 2:1 shows, more than two-thirds of dower claims were delayed rather than settled forthwith, even though the action had been constructed to be less dilatory than other actions of right.

There were, leaving aside the eighty claims of indeterminate outcome, 882 claims that were brought to a conclusion in these rolls. Of these 197 ended in a way that was in some sense favorable to the defendant, whether because the plaintiff did not prosecute, or withdrew, though perhaps to sue again, or remitted her claim, or lost her case, or even because she died and her claim died with her. On the other

TABLE 2:1

Dower Suits Delayed

<u>Reason for Delay</u>	<u>Number</u>	<u>Percentage</u>
Day Given	1302	43.8
Without Day	17	0.6
Defendant Died	4	0.1
Quashed	142	4.8
Verify Marriage	23	0.8
Land Taken in Hand of King for Default	522	17.6
Total	2010	67.7%

TABLE 2:2

Outcomes: Cases Concluded

<u>Defendant's Benefit</u>	<u>Number</u>	<u>% of Total</u>
Not Prosecuted	84	2.8
Remitted	9	0.3
Plaintiff Withdrew	27	0.9
Plaintiff Died	16	0.5
Plaintiff Lost	61	2.1
Total	197	6.6%
<u>Plaintiff's Benefit</u>		
Defendant Rendered	228	7.7
Concord	269	9.1
Plaintiff Won	187	6.3
Total	685	23.1%

Note that the seventy-nine claims that were of indeterminant outcome, some 2.7 per cent of the total, are not included in these tables.

hand, 685 claims were settled in a way that gained the plaintiff at least part of her claim.

Overall, widows won 23.1 per cent of the claims they brought into court, but lost only 6.6 per cent. To throw these figures into even sharper contrast, of the 882 claims brought to completion in the court, the widows lost only 197, or 22.3 per cent, and won 77.7 per cent. Even this does not tell the full story, occasionally multiple initial pleas were resolved in one case when the warrantor of all the defendants was brought into court. From these figures it appears that, in the widow's time of great vulnerability when she tried to obtain dower that had been denied her, she could approach the court with qualified optimism. Her greatest enemy was delay, which occurred in more than two out of three of the times she stated a claim in court; even so she was favored over those who brought other writs of right, in which delays were expected and inevitable. If she could avoid postponements or persevere beyond them she had an excellent chance to win her case, doing so more than three-fourths of the time. The only action of right designed especially for use by women served women relatively well.

It would be a mistake, however, to assume that dower rights were purely a woman's concern. Even though the writ unde nihil habet was intended to aid widows reasonably soon after their bereavement, 469, or 15.8%, of the 2971 dower claims were placed by women and their husbands, second or

subsequent husbands of course, taken before suing for dower or in some cases while the suit was in process. By law a husband's name must be included in any action his wife brings into court, but the records show that husbands often took the initiative in pressing their wives claims. Perhaps they were trying to revive claims that had not been acted upon before the marriage, thus expanding their wives' holdings to the fullest possible extent.

One wife cannot have been pleased by her husband's efforts; he defaulted on each of the four suits he had brought in her name. Other men were much more vigorous. Sibilla de Vere made nineteen appearances in 1213 and 1214, one of them against seventeen defendants, but was not able to conclude any of her suits, perhaps because war halted court proceedings soon afterwards. By 1218 Sibella had married, and in that year and 1219 her husband Nicholas de Chavincurt made twenty court appearances, winning most of Sibella's claims in a grand final confrontation between himself and his opponents, an abbot, a bishop, and a minor heir who was in the bishop's custody. Another husband sued for his wife's dower and concorded with his opponent in spite of a settlement made by a previous husband.⁴³

The extreme of husbandly interest in dower was that of John Rugelun, who brought an imposter to court hoping to pass her off as his wife Alice. The ruse was discovered, the writ was quashed, John was to be jailed, and the court

ruled that Alice could not claim her dower again while John was alive.⁴⁴ Even after remarriage, however, some widows remained active in their dower claims. Agnes wife of Robert and Hawis de Steinton seem to have appeared in court without their husbands, perhaps as their husbands' attorneys in the matter; otherwise it is likely that they, like Euticia widow of Gervase, would have been told to return with their husbands⁴⁵ in order to sue.

Remarriage had little effect on the way the court viewed a woman's claim for dower. At first glance widows with husbands seem to have had a small advantage; they won 24.3 per cent of the claims they brought as compared with 23.1 per cent for widows as a whole and 22.8 per cent for widows who had remained single. Paradoxically, however, widows with husbands were also more likely to suffer losses; they lost 7.5 per cent of their claims, as did only 6.6 percent of all widows and 6.5 per cent of widows who had not remarried, as table 2:3 shows.

The reason for the apparent incongruity is that claimants with husbands were somewhat more likely to conclude the claims they made than were those who remained unmarried; remarried widows concluded roughly 32 per cent of their claims, those who had not remarried concluded only 29 per cent. The claimants without husbands were, however, slightly more likely to win the claims they were able to conclude, 77.9 per cent as opposed to 76.5 per cent. The

TABLE 2:3
PERCENTAGE OF CLAIMS WON AND LOST

All Widows			Widows Who Remarried			Widows Who Did Not Remarry		
<u>All Claims:</u>								
Total Claims:	2971		Total Claims:	469		Total Claims:	2502	
Won:	685	23.1%	Won:	114	24.3%	Won:	570	22.8%
Lost:	197	6.6%	Lost:	35	7.5%	Lost:	134	5.4%
<u>Cases Brought to a Conclusion:</u>								
Total Claims:	882		Total Claims:	149		Total Claims:	733	
Won:	685	77.7%	Won:	114	76.5%	Won:	570	77.9%
Lost:	197	22.3%	Lost:	35	23.5%	Lost:	162	22.1%

differences are slight, however, and balance out neatly. The clearest inference of the figures is that the courts put no obstacles in the way of a widow who, though she may not have received any of her dower, had reached the relative economic security of marriage, nor did they care to obstruct a husband's attempts to obtain his wife's dower.

More striking is each group's high probability of winning those dower claims they brought to the point of judgment. Over the generation recorded in these rolls, however, that probability began to drop. The time between 1194 and 1222 falls conveniently into two periods: the time from 1194 to the turmoil and cessation of judicial activity at the end of the reign of John, and the early years of Henry III when England was under the rule of regents. In the former period there were 449 claims of dower brought to a conclusion; of these 382, or 85 per cent, ended in a way that favored the claimants, and only 67, or 15 per cent, were concluded to the defendant's advantage. In the latter period, however, out of 433 concluded claims, claimants could count themselves successful in only 303, or 70 per cent, while losing 130, or 30 per cent. A success rate of seventy per cent is a very attractive one, at least in the eyes of claimants, but represents a significant decline from the even more favorable rate of a few years before.

There is no obvious reason for the decline in percentage of successful claims. A simultaneous rise is observable

in the percentage of claims brought by widows who had remarried, from 208 or 12.5 per cent of the total early claims to 269 or 20.6 per cent of the ones from the later period, but is probably coincidental. As Table 3:3 shows, a widow's remarriage had only slight effect on the success of her claim. Another possibility is that of an evolution in the rules governing dower actions and a new strictness on the part of the justices in the way the rules were applied. The court's treatment of widows who already had part of their dower gives some indication that this may be the case.

Given that the unde hihil habet, the writ for a widow who has received none of her dower, is the only means to initiate an action of dower in the king's court, the occurrence of several instances in the rolls from Henry's reign in which claims were quashed because the claimants already had some dower is no surprise. What is surprising, however, is that there is only one such instance in rolls from the early period, that in fact there are cases in which widows clearly have some dower and yet their pleas are not quashed. In the two examples that follow, the plea proceeded even though it was conceded by both parties that the widow already had some of her dower; the defendant based his objections not on her possession of part of her dower, but on the soundness of her right to the balance she claimed.

In one of these examples, Lucia the widow of Elias de Eston sued Alexander Pining for the third part of a carru-

cate; Alexander objected that she had not been endowed with that land but only of the land she already holds and offered a half mark to have the verdict of a jury on the matter. Lucia answered that she did not hold all that land in dower but only a third part; the rest, she said, she held by the will and consent of the lord of the fee. Each party acknowledged that she was already holding some land as dower; the question was whether or not she had been endowed with more. The plea was not quashed, rather a jury was to be summoned.

In the other example, Rose widow of David de Loering met a similar objection and request for a jury by saying the land she sought was owed to her because her late husband's father had endowed her with it and then it had come to her husband by inheritance. The entry, an unfinished one, gives no information about the outcome of the case, but clearly it was not quashed upon Rose's admission that she was in possession of part of her dower. In other such pleas the defendants followed their allegation that the widow already held dower, even her full dower, by promising that if she did not have all the land she was owed they would supply the rest; she might respond by promising to return any surplus, especially if there was to be a jury to settle the claim.⁴⁷

Some of the widows may have been entitled to sue for part of their dower in the royal court; others, such as Juliana widow of Robert the Simple probably were not.⁴⁸

Some may have brought their pleas up from lower courts; Glanvill speaks of removing a writ of right of dower by pone from the warrantor's court to the county court and at last, with the permission of the king or his justices, to the ⁴⁹curia regis. Bracton does not mention this, and these may be a last few examples of the practice.

It is curious that all these claims were heard in the latter years of John's reign, between 1209 and 1215; either the disappearance of numbers of rolls from previous years caused the loss of earlier examples, or, perhaps, there was a relaxing of the rules concerning dower writs under John. The possibility of a lenient court is supported by two actions, one from 1206 and the other from 1209, in which the claimants sued for dower they claimed to have had after their husbands' death but which was subsequently taken away from them. Neither is phrased as a plaint, that all-purpose direct complaint to the king that could serve when no available action fit the case. Technically the widows should have used other actions, debt in one case because the widow was ⁵⁰really seeking arrears of monetary service due. Nevertheless, their actions proceeded.

There are a few cases after 1215 that proceeded even though the widow admittedly had some of her dower. Maud de Curtenay, claiming a carrucate as an appurtenance to dower she already had, gave the justices pause by saying the king had seized her of her dower and was given a later day in

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 court. Others went on to make concords with their opponents. There seems to have been some uncertainty about what the phrase unde nihil habet, "whence she has nothing," meant; did it mean that the widow had no dower from her husband's entire holding, or tenement, or from a specific tenement in a vill? Two defendants seem to have been unsure of their ground. In one case the defendant raised the objection that the widow had dower in the same tenement and
 52
 then decided to concord with her. Another claim was concorded when the plaintiff and defendant agreed that her dower should be measured and any necessary adjustments
 53
 made.

In other cases the rule was more surely applied. These were cases in which the defendants objected, first, that the writ spoke of a tenement wherein she had no dower, and second, that, contrary to her statement, she had some of her dower already. On her admission that this was true her writ was quashed. Two defendants were cautious enough to stipulate that the land she held was in the same place or in the
 54
 same tenement and vill as the land she sought. Their caution seems to have been unnecessary. The objection that Alice widow of Nicolas already had dower from her husband's lands, i. e. his whole tenement, was enough to quash her writ, and Bracton later specifically stated that a widow's argument that the dower she held was not in the same parti-
 55
 cular tenement in a particular vill was of no effect.

Juliana widow of Alan made no defense to the allegation that she had some dower; she simply acknowledged it and her writ⁵⁶ was quashed.

Although one successful challenge to an unde nihil habet brought by a widow who already had some of her dower⁵⁷ occurred before 1215, most defendants before that date objected that a widow had some of her dower and that furthermore there was some reason why she was not entitled to the portion she sought. All other such challenges to the unde nihil habet appeared after 1215, as defendants learned that the courts would support them if they could make the dual objection that a claimant's writ said she had nothing whereas indeed she had dower, if only a part. We thus are left with a mystery; why did the favored form of defense change?

The rolls do not indicate what writ was being used; perhaps plaintiffs in the early period were bringing claims they had initiated in their warrantors' courts by writ of right of dower into the curia regis by tolt and then pone, and defendants were making the response appropriate to that writ. If so, the practice seems to have ceased after 1215.

Alternatively, it may be that all the widows in question were bringing writs unde nihil habet. Some, as mentioned above, were no doubt entitled to do so, if the king for some reason was their warrantor. It is unlikely, however, that all but one were so entitled before 1215, and

that women who should not have done so suddenly began to bring suits by means of the unde nihil habet after that date. It seems entirely possible that women were trying to take advantage of the relative speed of the unde nihil habet even when they had some dower, and that the justices were lenient toward them--especially after the interdict when the judicial system suffered the loss of some of its experienced justices--only to become more strict later.

After 1215 the courts would have had a reason for greater caution. Magna Carta of 1215 had declared in its Capitulary 34 that the writ precipe, the writ commanding that a plea be heard in the curia regis regardless of where it might normally be held, was not to be issued in such a way as to cause a free man to lose his court, and Richardson and Sayles assert that use of the precipe stopped after⁵⁸ 1215. It is unlikely that Unde nihil habet though it was⁵⁹ drafted in the form of a precipe, was included in the ban, but Magna Carta's expressed concern for feudal courts may have brought about a tightening of the conditions of the writ's use, or even perhaps have caused a cessation of the use of the writ pone in dower pleas if its use was declining already.

A third, if remote, possibility exists: that in the years before 1215 a few widows who had secured part of their dower went to the king or the chancery for writs precipe to ease their way in securing the rest. Certainly some of the

women concerned, such as Felicia widow of Philip de Beauchamp, Maud de Cameys who married into the Anesty family, and the Countess of Warwick, were of high status.⁶⁰ In contrast, the women whose writs unde nihil habet were quashed after 1215 were sometimes described as being poor, though, since one of them already held the third part of two parts of a vill, poverty may be a relative term.⁶¹ If such writs had existed, Magna Carta would have ended them as well. In any case, dower claims by widows who had part of their dower, received with some favor before 1215, were likely to be quashed after that year, and this tendency no doubt contributed to the widows' declining success rate.

The technicalities of dower law created other special problems, though none were as troublesome as the limitations on women in actions of right. If a husband died before coming into his inheritance, his widow was in an anomalous position in regard to her dower. If it was denied her, she had to prove that the person in seisin on the day she was married, usually her father-in-law, had consented to her husband's endowing her with part of the land. Relatives who gave their consent in order to secure an advantageous match might repent when the husband's early death turned the advantage into a liability; each year several women can be found claiming dower against fathers-in-law or brothers-in-law who thought they could put the land to better use or who, like the author of Glanvill, were uncertain whether

such a grant should be honored.

Some defendants in such cases raised the exception, appropriate in other dower claims but by this time irrelevant in these, that the husband had not been seized on the day he married her or ever after. This defense seldom interested the court, which preferred to get to the heart of the matter and find out whether consent to the endowment had been given or not. If consent had not been given or could not be proved there was no recovery of dower, as we see in the case of Alexandra widow of Reginald Burdun. A jury called in to declare what had happened at her marriage said that negotiations about the marriage had broken down because Alexandra's father hedged about a young ox worth four shillings that he was to give the young couple. He eventually gave it, but Reginald's father was not pacified; asked how his son was to marry Alexandra, i. e. what provision would be made for her, he made only a surly and indeterminate reply. His answer did not constitute a grant of dower so Alexandra lost her claim against her father-in-

law. But if consent to the endowment had been publicly made and recorded in a charter or in the memories of witnesses the grant of dower would stand.

The necessity that the plaintiff produce her warrantor, unique to dower, caused little trouble on a daily basis. The author of Glanvill considered it a potential problem because he was uncertain how or whether the warrantor could

lawfully be constrained to come to court,⁶⁴ but the only warrantors who posed a problem in the rolls were those who were unavailable because they were overseas and their whereabouts unknown. According to Bracton the claimant must await his return and neither the defendant nor the defendant's warrantor need answer her until that time.⁶⁵ The justices seem to have been less inclined to abide by this principle. They directed that the warrantor of Denise widow of Lucas de Greneford, who was unavailable because he was overseas, was to be inquired for; if he could not be brought to court she was to have quod habere debet, what she ought to have. The practical meaning of the phrase is obscure, but it can be taken to convey the unease of the court.

Dower, stereotypically an action for women alone designed to aid them against landholders who are usually discussed as if they were invariably male, does not really divide the sexes so neatly. As we have seen, widows remarried and their husbands appeared as dower claimants against the widows' late husbands' estates. Claimants sued fairly regularly against women defendants, some of whom were widows themselves, either already holding dower in the land that was claimed or holding by right their inheritance or maritagium.⁶⁶ The responses of women defendants were as varied as those of male defendants; Isabelle daughter of Hugh, when summoned, rendered the land immediately, saying she always

had offered the claimant a third part and still did, but Alice de Beauvoir used a series of delays to avoid answering Muriel widow of Hugo Blund.⁶⁷ Women were warrantors for plaintiffs and defendants alike; Richard de Fardinston vouched to warrant his mother, from whom he rented his land at term from year to year.⁶⁸ Women defendants who held in purparty, the division of land among heiresses that complicated women's actions of right, made difficulties for widows suing for their dower. Margaret widow of William de Merst, for example, had to sue against eight sisters, and the claim of Alice widow of Richard de Solaris was put in jeopardy because her warrantors were her husband's two sisters, one of whom lived out of reach overseas.⁶⁹ Women were active in every aspect of dower claims. Sometimes their interests clashed with those of other women whom they sued or who sued against them, and sometimes their interests coincided with those of men who were their spouses or warrantors or for whom women served as warrantors.

The large volume of dower claims shows the value women placed on the action in which the worst hazard was delay and losses were relatively few compared to the gains that could be made. The action gave women scope. The poorest were not too intimidated to bring their claims, and often gained by them. Not all claimants were fortunate; the court was unable to avoid doing an apparent injustice to Maud widow of William Strubbi. She argued that her late husband's outlaw-

ry, which disqualified her from receiving dower, had been done unjustly by the will of King John and not for any act of his own. But her opponent had John's charter affirming the outlawry and its consequences and, because the outlawry was valid in law, Maud's claim was defeated.⁷⁰ The experience of two women whose ill-founded claims were defeated but who were given land by generous defendants, however, goes far to balance this.⁷¹ Women accomplished more than their own benefit; when Hawis widow of Thomas son of Richard sued Richard de Brocton for her dower, he not only came and rendered it to her but acknowledged her son's inheritance as well.⁷²

As we have seen, men who married widows were a small but growing minority among dower claimants; and male interest, or perhaps concern for the widow, is demonstrated by Ralph son of Gleu who so thoroughly assumed the conduct of his mother Eda's suit that we know his full name but not hers.⁷³ Women were quite capable of handling their affairs in court, however, either themselves or by attorney. Eighty-four per cent of these claims were brought by women acting on their own; and the activity of a Nicholas de Chavincurt, who pursued the claims of his wife Sibilla de Vere, was matched by that of Juliana de Wadlington and Maria de Talewurth, each of whom pursued multiple claims, as well as by Sibella herself before war halted her efforts. The courts welcomed the large volume of dower pleas and their

attendant revenues, the great jurists devoted time and thought to dower law, and the writ the courts provided was the most streamlined of the writs of right. The interest that men, women, and the courts all had in dower gave it more importance to the the early thirteenth-century legal system than modern accounts convey.

Notes

¹ Sir Frederick Pollock and F. W. Maitland, The History of English Law before the Time of Edward I, 2nd ed. (Cambridge: Cambridge University Press, 1968), pp. 420-27.

² G. D. C. Hall, ed., The Treatise on the Laws and Customs of the Realm of England, Commonly Called Glanvill (London: Thomas Nelson, 1965), p. 184.

³ F. Jouon des Longrais, La conception anglaise de la saisine (Paris, 1924), pp. 315-441.

⁴ See, for example, S. F. C. Milsom, Historical Foundations of the Common Law, 2nd ed., (Toronto: Butterworth's, 1981), pp. 124-27, and The Legal Framework of English Feudalism (Cambridge: Cambridge University Press, 1976), pp. 72-73.

⁵ For a thorough exposition of the law of dower arising from the recent interest in women's legal concerns see Janet Senderowitz Loengard, "'Of the Gift of her Husband': English Dower and its Consequences in the Year 1200" in Women of the Medieval World: Essays in Honor of John H. Mundy, Julius Kirshner and Suzanne F. Wemple, eds. (Oxford: Basil Blackwell, 1985) pp. 214-55.

⁶ Hall, Glanvill, p. xxvii.

⁷ Bracton on the Laws and Customs of England, Samuel E. Thorne, ed. 4 vols. (Cambridge, Mass.: The Belknap Press of Harvard University Press, 1968, xxxx), vol. i, pp. 265-80, vol iii, pp. 357-412.

⁸ Chapter I, text at note 3; Bracton ii 266-67.

⁹ Glanvill vi: 1, pp. 58-59; Bracton i pp. 265-68; P&M ii 420-21; Loengard, p. 220.

¹⁰ See CRR IV 188; CRR VII 101, 272; CRR VIII 361 inter alia.

¹¹ Glanvill vi 5-15, pp. 61-66; Bracton i p. 276, iii pp. 357-58.

¹² Glanvill vi 11, pp. 64-65, Bracton pp. iii pp. 357, 401.

¹³ Bracton iii pp. 278-79.

- 14
RJLW Glanvill vi 8-10, pp. 62-63; Bracton iii pp. 359-60;
629; CRR X 9, 57, 160.
- 15
PKJ II 977.
- 16
RJLW 701.
- 17
P&M ii 605.
- 18
Bracton iii pp. 370-98; RJLW 629.
- 19
Bracton iii pp. 372-75.
- 20
Bracton iii pp. 370-71.
- 21
CRR VI 313-14.
- 22
CRR VII 27, 173-74; CRR VI 3, 15, 36; CRR VI 147,
196-97; CRR VII 8, 21, 28, 101.
- 23
CRR VII 5-6, 8, 18-19, 31, 34, 45, 88-89, 114, 125,
130, 131, 152, 160, 185-16, 244, 249, 250, 267, 310; RJLW
510, 523-29, 531-32, 581, 590, 618-20, 648, 701, 705, 912.
- 24
CRR VIII 61-62, 136, 349.
- 25
See for example Maria or Margaret widow of Adam de
Talewurthe, CRR VI 2-3, CRR VII 269-70, CRR IX 82, 343; Rose
wife of Thomas de Erdinton, CRR IV 68, 129, CRR VIII 178,
218, 322-23; Katrina widow of Simon de Plesingho, CRR VIII
273-74, 386; CRR IX 281-83, CRR X 11.
- 26
See text at note 15.
- 27
CRR IX 294.
- 28
CRR II 64; CRR IV 290-91; CRR X 196-97
- 29
Bracton III 372-75.
- 30
CRR V 72; CRR IX 276; CRR X 228-29; YK 3H3 174, 208.
- 31
See text at note 17.
- 32
RJE GWS 1506.
- 33
RJE GWS 1423; CRR VIII 27.
- 34
Bracton iii 382-88; CRR X 11, 272; RJLW 382-88.
- 35
CRR VI 342, CRRX 160.

36

CRR VII 188.

37

See, for example, CRR VI 276 for a defendant who rendered in full and was amerced besides; on the other hand see CRR IX 310 for the only defendant who obviously rendered less than the widow claimed; sued for the third part of nine virgates, he rendered two specific ones. She declared herself satisfied with the settlement and the court was content to accept her decision.

38

CRR X 317.

39

CRR 8 340; CRR X 142-3, 154.

40

CRR X 160.

41

RJE LW 496-99, 551, 591, 629.

42

CRR III 40.

43

RJLW 463, 468, 475, 650, 1500.

44

CRR VI 269-70. and *ibid.* note 23.G

45

PKJ3, 353, CRR VI 142, CRR VI 173.

46

CRR VI 313, and see CRR VII 15, 93.

47

CRR VII 221-22; see also CRR VII 316, 331.

48

CRR VII 15.

49

GLANVILL vi 7-8, pp. 62-63.

50CRR IV 134, CRR VI 104-05.

51

CRR VII 93, CRR IX 71-72, Maud's opponent had said she was in the fealty of the king of France and should not be heard in English courts;

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CRR VIII 200.

53

YK 3H3 1116.

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CRR IX 181; CRR X 245.

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CRR X 210; Bracton iii pp. 396-97; and see CRR VIII 104.

56

YK 3H3 169.

57CRR VII 98-99.

58 J. C. Holt, Magna Carta (Cambridge: Cambridge University Press, 1965) p. p.327; Select Cases of Procedure Without Writ under Henry III, H. G. Richardson and G. O. Sayles, eds. (Selden Society vol. 60 for 1941) pp. xxiii-xxiv.

59

Hall, Glanvill, p. 183.

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CRR VII 95, 316, 331.

61

CRR VIII 104, CRR IX 231, CRR X 210,

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Glanvill vi 17, p. 68.

63

CRR IX 60.

64

Glanvill vi 10, 63-64.

65

Bracton iii p. 361.

66

See CRR VII 16, 90, 101, 126-27, 175-76, CRR VIII 361, CRR IX 315, 357 inter alia.

67

CRR VII 28; YK 3H3 171, 283, 296.

68

CRR IV 179-80; and see CRR IV 244; CRR VI 80, 233.

69

CRR IV 244; CRR IX 315.

70

RJLW 478.

71

CRR IX 329-30; RJLW 223.

72

CRR VI 393.

73

YK 3H3 93.

- 4 -

SECTION 2
THE CRIMINAL APPEALS

Preface to Part 2
Background to the Criminal Appeals

Women's activity in the criminal appeals can be understood only in the context of the criminal law of the time, in particular the court's inefficiency in adjudicating criminal cases. The violent side of thirteenth-century life was the most difficult for the court to address; in case after case real injury and loss went unredressed. The number of crimes that went unpunished brought Maitland as close as he ever came to an intemperate remark when he said, "the amount of hanging that was done was contemptible."¹ The judicial system was in a very early stage in the transition from private to state responsibility for the prosecution of crime, and the means to apprehend, hold, and try the accused were primitive. If the context in which women's criminal appeals were tried is to be understood, it is necessary to leave modern ideas of criminal prosecution behind and look at a system without the advantages of a police force or a penal system and which was only beginning to evolve the means to weigh testimony and arrive at a verdict.

In the absence of a police force the task of apprehending accused persons and holding them for trial fell to the sheriff and his officials, who were also responsible for running the county courts and for many other administrative duties. Only rarely did the accused await trial in prison.

Most were released to their tithing or frankpledge, a group of neighbors who would be responsible for producing them in court. Others were given into the custody of the lord within whose mainpast or protection they had placed themselves or to attachers, private individuals who had agreed to produce them for trial. Any such custodians whose charges did not appear in court were subject to a monetary penalty for their failure.

Those who were brought into court might be faced with an equally primitive means of trial. Battle was a possible mode of proof for crimes that had been brought by appeal, the complaint of a private individual. The ordeal of water or hot iron was available for the trial of accusations brought by presentment or by appellors such as women, the maimed, and the elderly who could not fight, but it was not unreservedly trusted. Its use was dying out before Lateran IV in 1215 deprived it of the clerical participation that had been its claim to validity as a reflection of God's² judgment; after 1215 the ordeal disappears entirely from the rolls. The jury, though already used to pronounce on guilt or innocence before 1215, had not developed sufficiently to fill the gap.

Procedures so primitive inspired relatively little attention on the part of the great jurists. The author of Glanvill devoted only a small fraction of his book and very little of his interest to pleas of the crown, and Bracton

gives less space to all the criminal actions together than it does to the assize of novel disseisin alone.³ The legal innovations of the twelfth century were to begin a revolution in the civil law, but the rationalization of criminal law proceeded much more slowly in spite of royal adoption of the presentment jury, the gradual development of the trial jury, and the institution of the office of coronor. These innovations, in particular the growing reliance on juries, were a reaction to deep judicial mistrust of the older procedures available at two critical points in criminal proceedings, namely the process of accusation and the mode of trial or proof.

The bringing of accusations was in large part the responsibility of the injured party himself or herself. These appellors, as they are called, may have suffered genuine injury to their persons, loss of property, or the death of someone near to them and thus in all justice have required redress. On the other hand, it was possible that they were making their appeals because of a grudge or in order to complicate a dispute over land or for some other personal reason and that they were using the criminal law to further their own ends.⁴ Proof was difficult because the commission of crimes, except in the case of open fights that lead to injury or death, tends to be furtive, with the truth of matters sometimes known only to the perpetrators and, as was thought, to God. Thus it was appropriate to force an

accusor to demonstrate the seriousness of his accusation by undertaking the risk of battle, or to leave judgment in the hands of the Almighty, at least until 1215, by sending the accused to the ordeal.

With the institution of the presentment jury, whether by Henry II in the Assize of Clarendon in 1166 or by exper-⁵iment even earlier, accusation was no longer entirely a private affair but became in part the concern of those responsible for public order. Known robbers, murderers, thieves, and the receivers of such were to be identified by the declaration on oath of juries of lawful men, twelve from each hundred and four from each township, so that they could be bound over for trial by the ordeal of water. This may have been as much as anything a measure against open lawlessness, depending as it did on the knowledge of the community as a whole, and was not without a sharp eye toward the king's revenue, as capitulary number five with its direc-⁶tions concerning the chattels of convicts attests.

Even with presentment, however, there was a need for private appeals for specific offenses and there are thousands of such appeals on the rolls; in fact many presentments in the king's court were of appeals that had been made⁷ previously in the county court or elsewhere. From the presentment jury and no doubt from the juries in use in the grand assize and the petty assizes the practice grew of using a jury to declare on the question of guilt or inno-

cence in criminal cases.⁸ Use of such a jury is specified only in the weighing of exceptions, objections brought by the appellee, or accused, against the validity of the appeal, in particular the objection odio at atia,⁹ which alleged that the appeal was made because of hate and spite rather than for just cause. A jury of neighbors could readily report on open enmity between the two parties and whether or not they had seen any indications that an actual crime had been committed. Not long after 1200 the verdict of the jury called to declare on the validity of this exception was already being referred to as a determination of whether or not the defendant was guilty; appellees began to ask that it be declared whether they were guilty or appealed for hate and spite or to ask for a jury to state whether they were,¹⁰ as was said, culpabilis nec ne, "guilty or not."

Juries could also be conveniently used for other purposes; Glanvill speaks of "many inquests" to determine whether a suspect named by the presentment jury was under grave enough suspicion to be sent to the ordeal.¹¹ This promising beginning received impetus after the elimination of the ordeal, when juries came to be consulted about whether an appellee who had fled should be outlawed or, as happened in a few cases, allowed to return to the community. Juries also declared whether an appeal that had been correctly sued should proceed to battle, and, as we have seen, whether the accused was indeed guilty of the offense.¹²

Justices were cautious about placing their entire reliance on the jury, however, and particularly about enforcing the use of a jury on an unwilling defendant.¹³ Juries of neighbors were not immune to bias; they might be vulnerable to intimidation; and they were not likely to be as conversant with the facts in a criminal appeal as they might be in a civil case in which the question at issue was something as open and obvious as peaceful seizin or even the circumstances that surrounded a claim of right. The maturation of a true trial jury was still some three centuries away.

In this interim period criminal appeals retained considerable similarity to civil pleas,¹⁴ though with features that were unique to criminal appeals alone. The appellor, like the litigant in a civil plea, was responsible for bringing the offense to the attention of the court, but was also required to show evidence of the soundness of the appeal, such as, for example, testimony that a wounded person had shown recent wounds to the sheriff or his representatives and made complaint promptly to the coroners or to the county court. Like the civil litigant the appellor was liable for an amercement if the suit was not prosecuted, but could also be put in jail, perhaps because there were no pledges to pay the amercement or because the false accusation had put the defendant in danger of life or limb. A fair number of appeals actually grew out of land disputes,

the stuff of civil pleas. A distraint of chattels, permissible if done by the judgment of a court, might be described by an irate distrainee as a robbery; an ejection might get out of hand and turn violent; or a dispute over custody or the marriage of an heiress might end in an appeal of abduction.¹⁵

Criminal appeals, like civil pleas, could end in an agreement or concord. The courts permitted such agreements and, as we shall see, in a few cases seem to have encouraged them.¹⁶ Perhaps the justices saw concords as a realistic way of maintaining public order. The defendant who had to pay a certain amount to the king for the privilege of making a concord as well as an amount to the victim might think twice about committing the same offence, and the appellor who had caused the other's wrongdoing to be admitted in open court and received a payment in compensation could claim to have achieved some satisfaction. Sometimes the terms of the agreement are spelled out in the rolls; we know that William Sprakelin and his wife were to receive five marks from the eight men and two married couples who had beaten and wounded them even though William's claim that they had also robbed him was false.¹⁷

In other pleas we are told only that the parties came and put themselves in mercy, that is, agreed to pay an amercement, for a license to concord, as Walter son of Robert and Walter son of Humphrey did. We are not told what

amount the two Walters were amerced, but some amercements were large enough to serve as penalties in themselves. When Osbert de Lindsey appealed Adam de Stikenay of tearing down his house, wounding and robbing him, and ejecting him and a niece from yet another house in which the body of Osbert's recently deceased mother was lying, the men's concord cost the defendant Alan six marks, the equivalent of four pounds sterling, and Osbert was amerced one pound. These heavy penalties indicate the justices' strong disapproval of what was probably a dispute over land that escalated into violence. At other times we are told only that the appellor and appellee have put themselves in mercy; having done so they may drop their suit. Their agreement to end the suit may well indicate that they have reached a concord. The concord itself does not come into the records, but the payment that would make a concord possible does.

Nominally the courts required that concords be made with their permission, "by license of the justices." Glanvill had said that appellor and appellee "cannot in any way be reconciled" without such permission, and the king's court acted forcefully to negate one private agreement that had become part of the fabric of the lives of the two families involved.

The presentment in the case must have seemed identical to dozens of others; Christina the wife of Godfrey de Sutton had appealed several members of the prominent Basset family

of Gloucestershire of the slaying of her husband, and then had failed to prosecute her appeal. But when Robert Basset, the defendant, came and put himself on the jury the facts of the case emerged. The jurors and the coroners and all the rest of the county attested that after Christina had sued twice in county court the parties had worked out a compact by which Robert's son had married the slain man's daughter and Robert had given the newlyweds a virgate of land to secure the peace between the families. The jurors said they knew well that Robert was guilty and the jurors of the four nearest townships agreed with them; Robert was adjudged to have been convicted and was sentenced to be hanged. The slain man's son was one of the jurors and had abetted the jurors' previous concealment of the appeal; he and Christina, his mother, made fine for their amercement for forty shillings, the equivalent of two pounds sterling.²⁰

The justices reacted to other secret concords less dramatically but with evident displeasure. In some pleas it is recorded that the parties to the secret agreements were to be arrested, presumably to be held until they had made fine, that is, until the amount they were to pay had been worked out and pledges had been found to guarantee payment. In one plea the justices ordered no arrests but declared the secret agreement void because it had been concluded in time of war "and by compulsion of war" and nothing done in time of war could stand in peacetime; they directed that the

defendant, who had gone to Jerusalem, be outlawed.²¹

Private agreements ran counter to the growing involve-²²ment of the king's courts in the keeping of the peace but were probably hard to discourage. It was often a long time between the bringing of an appeal and its being heard. The eyres, where most criminal appeals were tried, usually came into the counties at irregular intervals; the longest period elapsed between the visitation of 1208-09 and the post-war eyres that began in 1218 and did not complete their circuit until 1222.²³ In the interim much could happen. It is evident, for example, that one appeal of homicide and arson heard in Gloucestershire took at least six years to be concluded. It obviously had begun before the abolition of the ordeal in 1215 because one of the appellees had been compelled to purge himself by the ordeal of water; by the time the appeal came before the justices in 1221 the appel-²⁴lor and the man whose house had been burned had died.

Parties to an appeal must often have found mutual advantage in a private settlement; the appellor received an assured payment without awaiting the uncertainty of a trial and the defendant knew that charges would be dropped and moreover, if the agreement remained secret, would avoid the amercement for permission to concord. Thus despite official discouragement people made private agreements. Some such agreements came to the attention of the courts but many others must have escaped their notice, concealed behind a

brief entry that records that Robert or Maud brought an appeal for an injury but then did not prosecute.

This rude system of criminal justice, unsatisfactory as it was, left much to the accuser and accused. The accused, if clearly guilty or very fearful, could flee and risk outlawry, trusting in his ability to make a life elsewhere, or perhaps flee to a church, confess the crime, and abjure the realm, that is, swear to leave England and never return. Women did both; if they fled they were called not outlaws but waifs, a term also applied to things that no one claims, and were considered to have been abandoned by society and
 25
 without protector.

If more confident, the accused could deny all and stand trial, whether by battle, ordeal, or jury. If unsure, or perhaps unwilling to undergo the expense and trouble of a trial, the defendant could persuade the appellor to enter into an agreement, in court or out. Appellors could drop the suit, or prosecute it to the point of outlawry if the defendant had fled or in hopes of a favorable verdict against a defendant present in court, or accept a concord if offered and get some tangible benefit for his or her pains.

Women are seen, though in smaller numbers than men, as both appellors and perpetrators of crimes; as such they were active in exercising the options available to them. To some the court extended more than their share of sympathy and concern. To others, who brought appeals of violence that

happened to women alone, the court was less attentive, but even they could use its procedures to gain some redress for their wrongs, as we shall see as we turn to appeals of rape.

Notes

1
P&M ii 521.

2
P&M 529-30, 592.

3
G. D. G. Hall, editor of Glanvill, remarks that the subject of criminal appeals is "first on the list of subjects to be analyzed but comes last in the book, takes only one-thirtieth of the work, is disappointing, and the author does not sound interested," pp.xxi-xxii, Book XIV, pp. 171-77; Lady Stenton concurs by calling Glanvill's last book a "meagre account of criminal procedure," PKJ I 25; Bracton pp. 329-437.

4
YK 3H3 669; CRR X 331-32; CRR IX 244-46; CRR V 232.

5
P&M ii 519-21; Naomi D. Hurnard, "The Jury of Presentment and the Assize of Clarendon," EHR 56 (1941) 374-401.

6
Stubbs, Select Charters pp. 170-171.

7
For example: "The Jurors say that Godard de Goutestorp appealed Roger Bissop of the king's peace and robbery and of chattels robbed and showed bones and wounds in county court and does not prosecute...", PKJ II 1.

8
Milsom, Foundations, pp. 410-11.

9
Bracton 140-41b, pp. 346, 394-98; P&M ii 611-20; ENAR xxvi.

10
See, for example, CRR V 180, VI 98, 137-39, 183, 213 from the years 1208-1212; YK 3H3 xlvi. Roger D. Groot, in "The Jury of Presentment Before 1215," The American Journal of Legal History 24 (1982) 1-24, points out that these early verdicts are unlike modern ones in that they are used to determine "which accused persons were sent to the ordeal and the ultimate disposition of persons who successfully completed the ordeal" (p.1). Thus the verdicts given before 1215 were medial rather than final (pp. 2, 21-22), though "substantial finality" inhered in verdicts we might loosely classify as "guilty" because they affected the abjuration of those who had successfully completed the ordeal. Groot is much more cautious in attributing finality to verdicts we might classify as "not guilty," and he notes a homicide case in which two accused persons were sent to the ordeal despite the verdict of the hundred jury that it did not suspect them because the kinghts of the shire knew they had sold goods belonging to the victim (p. 22; he also cites a case in

which the hundred jury's guilty verdict was overruled by the men of the villis and the suspect was released under pledges). In almost every case in which an accused person was not suspected by the jurors, however, the accused was freed, and so these verdicts were being according an ad hoc finality that was to be the basis of their greatest usefulness after the abolition of the ordeal, a time when the jury's guilty verdict left the court with a dilemma if the accused had not acquiesced in the putting of the question to the jury, as we see in the cases of Henry le Cupere and Maud wife of Richard Butler, Chapter IV, text at notes 3, 68.

11

Glanvill xiv, 1, p. 171.

12

See for example RJE-GWS 919; PCG 87, 257, 320.

13

On hesitancy to use the jury when the defendant refused it see P&M ii 650-51; Milsom, Foundations, p. 411; for evidence, on the other hand, that juries, whatever the pressures on them, could be very conscientious see D. M. Stenton, YK 3H3, xlv.

14

P&M ii 572-3; Milsom, Foundations, 271.

15

See for example ELAR 612; CRR IX 65.

16

See text at note 61 infra.

17

PKJ II 408.

18

PKJ II 408; ELAR 612; ELAR 988.

19

Glanvill xiv 1, p. 172.

20

PCG 101.

21

YK 3H3 923, 953.

22

Maitland calls the agreement in the Basset case "a peace (pax) made in the old fashion" and goes on to say that "it was too late in the day for this sort of thing; a murder is not a mere wrong." PCG p. 143.

23

Crook records visitations of the general eyre in 1194-95, 1198-99, 1201-03, 1208-09, and 1218-22, Records of the General Eyre pp.56-78.

24

PCG 383.

25

Bracton ii pp. 353-54.

Chapter III
Appeals of Rape: Less than Justice

Thirteenth century English justice, ill equipped to deal with crime of any kind, was at its worst in appeals of rape. If the number of hangings for homicide was, as Maitland termed it, contemptible,¹ the rate of punishment for rape was even worse. In these rolls there was no occasion on which the penalty prescribed for rape was ever carried out; at most offenders were assessed a moderate monetary penalty or, if they had fled, were outlawed. Since the penalty was the savage one of castration and blinding, the failure to exact it says much for the humane element in medieval justice. But the absence of any other severe penalty and the low rate of punishment in this crime in which appellors were invariably women and defendants always men raises two questions: whether there was bias in the courts against the legal concerns of women, and what purpose there could be in bringing a rape appeal if the prescribed punishment was never carried out.

A better test for bias than looking at rape appeals alone is to compare them to appeals for another crime comparable to rape, if such a crime can be found, in which appellors are predominantly male. Wounding, the only non-fatal crime against the person other than rape and often the subject of men's appeals, corresponds more closely to appeals of rape than does any other crime and makes the best

grounds for comparison. A study of wounding appeals reveals that women were not alone in facing difficulty in getting redress for a crime of violence against themselves.

Women's purpose in bringing appeals of rape that were never to be severely punished is more difficult to determine, especially since, as we shall see, women declined to prosecute most of the appeals they brought. But an answer is suggested by the women's own behavior in the appeals in which the result was in their favor rather than that of the defendant. A close study of these appeals shows that if women could not expect abstract justice in the form of strict punishment for serious injury they at least were able to use their appeals to get something of practical value that enabled them to put the past behind them and get on with their lives.

It was into a court where the means of trial were unreliable, conviction and punishment infrequent, and settlement by concord a relatively attractive option that women brought their appeals of rape. Rape cases were invariably brought by appeal; unlike homicide or robbery rape was not a subject of presentment, and the one tentative approach we have to a presentment for rape, the jurors' report of a rumor in 1195, was not acted upon.² In accordance with the belief that an appeal should be brought by the injured party, it was the woman herself who appealed her alleged assailant.³ The previous connection with forcible abduction

which Maitland had pointed out, an offense against the kin because lands and properties might be involved, had been severed.⁴ According to the treatises any woman could bring an appeal for rape, whether she was married, single, or widowed, though according to Bracton the severest penalty was reserved for the convicted assailant whose victim had been a virgin.⁵

The steps of the appeal, called the suit, had to be very carefully made if the appeal was not to be quashed when it came before the justices. The appellor first had to prove that a crime had been committed by finding witnesses to the condition in which she had been left after the attack. An example of the action expected of her is given by Glanvill:

A woman who suffers in this way must go, soon after the deed is done, to the nearest vill and there show to trustworthy men the injury done to her, and any effusion of blood there may be and any tearing of her clothes.⁶

She was then to show the same evidence to the reeve of the hundred and to repeat her claim at the next county court. The exposure of injuries of so private a nature may have posed a hardship for women; Eileen Power has presented evidence that even in an age that put little value on privacy women felt considerable hesitancy about exposing their bodies to men.⁷ But the demonstration was of the same sort that was expected of a man who made an appeal of wounding

and for the same purpose, to prove that the crime had indeed taken place, and no exceptions were to be made for the sake of any putative feminine modesty.

The requirements for making an appeal show that by this time rape was considered to be a crime of violence directed against the woman, and the penalty prescribed, when enunciated, was equally violent. Glanvill is unintelligibly vague about the punishment for rape, but seems to consider it to be similar to the punishment of the other criminal offenses he discusses.⁸ Bracton, looking back to the time of William the Conqueror, set out the savage punishment, at least in the rape of virgins, of castration and blinding. He does not specify the punishment to be exacted for the rape of women other than virgins, but insists that whether the victim is a married woman, widow, concubine, or prostitute the penalty should be severe.⁹

Most women did not persevere to the point at which punishment could be assessed. The large majority of women who brought rape appeals did not prosecute them; there are 194 appeals of rape in these rolls, and of these 130, or 67 per cent, were not prosecuted. Another two women, or one per cent, withdrew from their pleas after beginning them in court.

The rolls give no reasons for these numerous defaults of prosecution; the records of cases in which the appellor defaulted are often frustratingly brief. An entry that is

an example of many on the rolls reads, "Yvette daughter of Robert appealed William son of Alan of rape and did not prosecute; let her be arrested."¹⁰ Like any appellor who did not sue the appeal and who had no pledges to prosecute, she would be held in prison until she made fine, that is, paid a sum of money for the failure to prosecute. This information, sufficient for the purposes of the court, leaves the women's motives a matter for conjecture.

It is likely that some of the appeals were false and were abandoned for that reason, but such a large proportion of unprosecuted appeals cannot be explained on the grounds of falsity alone. In some cases probably suit had been incorrectly made. Failure to sue correctly could be fatal¹¹ to the appeal, and could occur for a variety of reasons. Lady Stenton suggests that in the highly formal appeals process it was easy for any appellor to make "some technical fault;" women, who were much less likely than men to have attended the courts on a regular basis, were less familiar with its procedure and so perhaps more likely to make mistakes.¹²

Other considerations may have kept women from pursuing their appeals. It is not possible to tell if pregnancy played a part in the failure to prosecute. Later writers expressed a notion that pregnancy signified consent, grounded in the belief that a woman, like a man, could play¹³ her part in conception only if she gave her consent; the

rolls and the treatises are silent on this point. It is quite possible, however, that any women who had felt distaste for revealing their injuries to local officials and who had skipped that essential step may have felt it was not worth their while to appear in court. Perhaps, in the absence of severe punishment, there was a feeling that the court itself would not be sympathetic.

For whatever reason, among the majority of women who brought appeals, there was a strong disinclination to sue them to a conclusion in the courts. There is a striking example of this reluctance in the case of Elena le Escaude. She had failed to prosecute her appeal of rape against a certain Robert, and in answer to the justices' inquiry came before them and withdrew herself from her appeal because, as she said, she appealed him only because the constable had forced her to do so.¹⁴

The women's reluctance should not be taken for a reflection of the trifling nature of the offense. The assaults that occurred were violent ones that left physical traces on the women involved, and no doubt left their mark on the psyche as well. Even these laconic records give accounts of the force and violence women suffered; the veracity of the women's complaints was attested by the jurors or by the courts' subsequent actions. Christiana daughter of William son of Norman was dragged from the road on which she was walking and raped. Jurors or court offi-

cials attested that Malot Crape was raped and seen bleeding, that Sibba daughter of William had been beaten and raped, and that the assailant of Aubrey daughter of another William not only raped but bound and shamefully treated her. Some assailants had the aid of accomplices. Alice de Grendon said that Ralph de Beauchamp took her into his house and raped her, and then used three armed men to take her to another of his houses and hold her there for three days. The court took her allegation seriously; it ordered that Ralph's lands be taken into the hand of the king and that he be distrained to come into court and answer her. Stephen Hoker took Lucia sister of William Ballard into his booth and raped her and kept her there all night, and when she cried out his family members came and put a lock on the door¹⁵ to keep her from raising the hue and cry. Several women were imprisoned as well as raped. One was held for eight¹⁶ days; perhaps the purpose was to impede the victim's ability to make her appeal correctly and thus invalidate her suit, as Stephen Hoker's kin seem to have been trying to do.

Regardless of the violence of the attacks, the punishments assessed were relatively light. If a severe punishment is a deterrent to crime, the deterrent value of the punishment for rape was low; no defendant who was present in court was made to do more than make fine, pay a sum of money so he could go free. Some appellees who did not appear in court either had been or were to be outlawed for their

crime. The imposition of outlawry was not a light matter; at worst the outlaw could be taken and hanged, and at the least he lost any property he had in the area and had to take up residence far enough away to avoid capture. It was considerably lighter than the worst penalty for rape, however, and may have been an attractive alternative for a fearful defendant.

Most defendants appeared in court, however, and of those who did so the majority found that their accuser had not pursued her appeal; of the 194 appeals of rape in the rolls fully 139 were not sued to a conclusion by the appellant. In most of the cases, 130, the women did not appear to prosecute their suits. In two cases the women withdrew before their suits were completed, and seven pleas could not proceed because of the death of one or the other of the parties.

Failure of prosecution, however, did not necessarily mean that the case was at an end. In eight cases the defendants themselves came into court and, without asking for a jury to declare on their case or admitting guilt, made fine with the court to be free of the charges. In 34 cases, three in which the appellant had died and thirty-one in which she withdrew or did not sue, the court itself continued the case. In the vast majority of the cases, 28 of them, jurors declared they did not suspect the defendants, thus for all practical purposes acquitting them. In six cases, however,

including two in which the plaintiffs appeared but withdrew from their suits, the jurors said they suspected the defendants. Defendants who were present made fine for a half mark or a mark, and those who had not appeared were to be arrested.

Of the pleas that were prosecuted nineteen came to no conclusion, usually because they were postponed to await another step in the process, for example to assemble a jury, or as in the case of Ralph Beauchamp, to constrain a defendant to come into court. In one case the defendant had fled but the justices took no action other than to amerce the tithing group that was supposed to produce him.

Women lost twelve cases outright when the judgment of the court went against them, and in two cases defendants were acquitted even though they had fled. In the remaining cases women could be said to have made some gain; in twelve cases their opponents had fled and were outlawed, and in nine cases they made concords under the purview of the court. In six cases the jurors said the defendants were guilty, even though the woman had not prosecuted. There was no case in which a woman prosecuted her case against a defendant who was present in court until a punishment was assessed. A breakdown of these results can be seen in Table 3:1.

Table 3:2 shows a further breakdown of these figures into groups according to the nature of the results of the

appeals, from which a clearer picture of the outcome a woman could expect emerges. Note the high percentage of unprosecuted cases: 71.6 per cent of the cases were dropped, either because of lack of prosecution or because one or the other of the parties had died. Women could expect to sue their cases to some sort of favorable conclusion in only twenty-one or 10.8 per cent of the cases, and in no case did a woman sue her case to the point that her opponent was convicted and a punishment was assessed. We also note, however, that defendants were acquitted in only fourteen or 7.2 per cent of the cases, so in the thirty-five cases that were brought to a conclusion, as Table 3:3 shows, appellors had a reasonable chance for success.

Women who achieved this measure of success had vigorously pursued their suits, missing few if any of the steps involved; their cases sometimes elicited sympathy from the justices. Yvette daughter of Rannulf appealed William of Winceby of rape and that he had imprisoned her for two days. William denied the charge, but testimony was all in Yvette's favor. The jurors and Andrew, the keeper of the pleas of the crown to whom she had come as soon as she was freed, attested that she was bloody and had been shamefully treated, and the whole wapentake testified that she had come to the next meeting of its court and made her appeal. William relented; he and Yvette put themselves in the king's mercy for a license to concord. William had to pay an

TABLE 3:1

<u>Outcome</u>	<u># of Cases</u>	<u>Percentage</u>
Not prosecuted	130	67.0%
Withdrew	2	1.0
One party died	7	3.6
No conclusion	19	9.8
Fled: tithing amerced	1	0.5
Appellor Lost	12	6.2
Fled but acquitted	2	1.0
Outlawed	12	6.2
Concorded	9	4.6
Prosecuted till punishment imposed	0	0.0
Total	<u>194</u>	<u>99.9%</u>

Table 3:2

<u>Cases Not Sued</u>		
	# of cases	Percentage
Not Prosecuted	130	67.0%
Withdrew	2	1.0
One Party Died	7	3.6
Total	<u>138</u>	<u>71.6%</u>
<u>Cases in Progress</u>		
	19	9.8%
<u>Tithing Amerced</u>		
	1	0.5%
<u>Acquittals</u>		
Appellor Lost	12	6.2%
Fled but Acquitted	3	1.0
Total	<u>15</u>	<u>7.2%</u>
<u>Some Gain Made by Plaintiff</u>		
Outlawed	12	6.2%
Concorded	9	4.6
Total	<u>21</u>	<u>10.8%</u>

Table 3:3

<u>Cases Sued to a</u> <u>Conclusion</u>	<u># of Cases</u>	<u>Percentage</u>
Acquittals	14	40%
Some Gain Made	21	60%
Total	<u>35</u>	<u>100%</u>

amercement, but the court showed its sympathy for Yvette by
17
pardoning hers.

Prompt and vigorous suit also helped women who had been held captive for a time after the assault if they went to the authorities as soon as they were released. Leviva daughter of Siwat was raped and held prisoner for eight days. After she got away from the house she went to the serjeant and made her complaint and later sued at both the wapentake and the county courts; she concorded with the defendent for one-half mark, the equivalent of just under seven shillings. Stephen Hocket, whose family had helped him keep Lucia sister of William Ballard in his booth all night, claimed that Lucia was lying and that she had been his mistress for a year before she had made her appeal, but the serjeant attested that she had been seen bleeding. The justices showed their opinion of Stephen's behavior by amercing him five marks for the concord he made with Lucia; the
18
terms of this concord will be discussed later.

If some appeals called forth sympathy, others failed, and some were met with disbelief. Failure to prosecute may have predisposed the justices to disbelief, at least in the early years of the period, or at any rate provided grounds for dropping proceedings, as in one case in which no further steps were taken even though the jurors said that the defendant had fled immediately after the crime. The justices had apparently first ordered that he be outlawed, but then

decided that because the appellor had not prosecuted they
¹⁹
 could do nothing.

Failure to make adequate suit, that is, to go to the process of raising the hue and cry, showing evidence of the assault to the proper officials, declaring the offense in the local courts, or in some way making it public knowledge that the attack had occurred, seriously weakened an appeal; so did changing the language of the appeal. Juliana de Clive committed both errors. She first said that Robert son of Nicholas had raped her; later she said only that he had lain with her by force. Moreover she had not made suit. The appeal failed when the jurors, who had reported the lack of suit, gave it as their belief that Robert was not guilty.
²⁰
 At other times no reason for disbelief is apparent. David de Westbiria fled to a church for sanctuary for a rape, but when the appellor, a minor, came to sue her appeal testimony was given that he had not raped her. The appeal
²¹
 went no further.

Other appeals failed because of a strong presumption that they were the result of a grudge on the part of the appellor and not of an actual offense. Some had apparently been brought by discarded mistresses. Agnes Tredgold appealed William de Smithfield of having raped, beaten, and robbed her. William denied this, saying that she had been his mistress, and gave one-half mark for an inquest and to have his judgment. The jurors said she was his succuba, or

paramour, before and after the alleged offense and that she was making the appeal because he had become affianced to
22
someone else.

Marjorie daughter of Albric lost her appeal when the jurors said that Reginald son of Amfrid had "had her for a long time and for two years in her father's house" and that no hue and cry had been raised. In another case the jurors said that Aldusa de Eton had appealed Simon son of Alan because, after she had been his mistress for a year, he had
23
married another.

These women and others like them may have suffered very real wrongs, wrongs that a breach of promise suit might have rectified, but according to the ideas of the time it was extremely unlikely that they had been raped. The existence of the long-term relationship itself seems to have been thought of as conclusive evidence that no rape had occurred; the jurors' mention of Marjorie's omission of the hue and cry seems to be a confirming circumstance, not a hint of any idea that a rape could occur within such a relationship.

It was equally the jurors' opinion that Maud daughter of Henry de Spermour appealed Henry son of Eullar of Shelfhull out of malice. Maud's father had been at the scene of a homicide and had fled. The defendant had later found the fugitive in a wood in the company of Maud, her sister, and some fifteen sheep of uncertain provenance and had raised the hue and cry, forcing Maud's father to flee again. Maud

herself was arrested and held until pledges were found to guarantee her good behavior. The jurors thought that these events, and not a genuine offense of rape, were the basis of Maud's appeal.²⁴

The basis of other appeals is more difficult to determine. Aleis widow of Elias Clerk appealed Baldwin Druell that he came to her house at night with accomplices, lay with her and wounded and bloodied her, and then abducted her daughter by force. Aleis declared she had made proper suit, showing wounds to both the sheriff and the lord chancellor. Baldwin denied all this and said he had solemnly married the daughter with Aleis's consent. Unfortunately this is one of the cases that, though the opponents were given a further day in court, were not concluded in these rolls, so we cannot tell if events were as Aleis described them or if, on the other hand, it was a case of a custody battle that became violent.²⁵

Women's experience in the courts when they brought appeals of rape becomes clearer when compared with appeals of wounding, the action most nearly analogous to rape and one brought by large numbers of men. Wounding will be treated here as encompassing mayhem, because the two appeals differ in degree rather than substance, with maiming being a wounding that permanently incapacitates the victim; moreover, the two are not always easy to distinguish from each other as recorded in the rolls.

Wounding and rape were linked by both Glanvill and Bracton, each of which says that a woman may appeal for rape just as she may appeal for any injury to herself,²⁶ and the offenses share several characteristics. To begin with neither offense was fatal. If a wounding caused the death of the victim, the case immediately became one of homicide and lesser charges were not considered, as is illustrated by the case of Robert son of Roger, who still lay with the wounds given him by a man who had later fled. The case was to be postponed to a later coming of the justices, presumably to see whether Robert would live or die.²⁷

Neither wounding nor rape was at that time a felony, and neither was normally brought by presentment; it was the responsibility of the injured person to make an appeal and follow it up in court. In each the appellor was required to show evidence of the offense to responsible men of the community if the appeal was to succeed. In each, as it happens, a large proportion of cases was not prosecuted--although the rate of failure to prosecute in appeals of wounding was nothing like that in appeals of rape--and in both the prescribed penalty or penalties were much harsher than any that the rolls record as actually having been imposed.²⁸

Whatever their similarities, there was no exact correspondence between the prosecution of appeals of rape and wounding. There were a great many more appeals of wounding

than of rape; there are 366 cases of wounding in these rolls, including appeals of mayhem, as compared with only 194 appeals of rape. It is quite likely that appeals of rape in the thirteenth century were underreported;²⁹ alternatively appeals of wounding may have been overreported. The appeal of wounding seems to have been a convenient vehicle for settling old grudges or of continuing in court disputes or even fights that had ended unsatisfactorily³⁰ elsewhere.

Plaintiffs in cases of wounding were much more likely to prosecute their appeals. Of the 366 wounding appeals, 99 or 27 per cent were not prosecuted by the plaintiff, as compared to the 67 per cent which were not prosecuted in appeals of rape. More plaintiffs in appeals of wounding withdrew after having begun their suits: 31 or 8.5 per cent as opposed to only one per cent in appeals of rape. Exactly the same percentage in each, 3.6 per cent, did not proceed because of the death of one of the parties. Wounding appeals were much more subject to delay within these rolls than were appeals of rape; there were 119 cases, or 32.5 per cent, that were postponed for some reason, to await judgment, for example, or to bring defendants into court, or to consult a jury, or that were claimed for the ecclesiastical courts because the defendant was a clerk, as compared with only 9.8 per cent in cases of rape.

In cases that were sued to a conclusion, appellors of

wounding saw the defendant acquitted in a greater proportion of their appeals than did appellors of rape: 37, or 10.1 per cent, as opposed to 6.2 per cent in appeals of rape. And only sixteen wounding cases ended with the outlawing of a defendant who had fled; along with one case in which the defendant fled to a church and abjured the realm this makes 4.6 percent of the cases. In rape appeals, by contrast, 6.2 per cent of the defendants were outlawed.

On the whole however, appellors of wounding, who brought a higher percentage of their appeals than did appellors of rape, also had a larger proportion of cases end in their favor. They were more effective than appellors of rape in settling cases by concord; 41 of them, or 11.2 per cent did so, as did only 4.6 per cent of appellors of rape. Eight appellors of wounding were able to do something no appellant of rape did, that is, prosecute their cases to a conclusion in which the defendant was declared guilty and punishment was imposed. When one case in which the defendant came and made fine for his crime is added to these, we see that ten, or 2.5 per cent, can be said to have won their appeals. And there were no cases of wounding in which a defendant who had fled was acquitted, as had occurred in two of the appeals of rape.

Table 3:4 shows how appellors of wounding fared in comparison with appellors of rape. These figures show that, though appellors of wounding abandoned a large proportion of

Table 3:4

Outcome	Wounding	Rape
<u>Cases Not Sued</u>		
Not prosecuted	27.0%	67.0%
Withdrew	8.5	1.0
One Party Died	3.6	3.6
Total	<u>39.1%</u>	<u>71.6%</u>
<u>Cases Not Completed:</u>		
<u>Procedural Reasons</u>	32.5%	9.8%
<u>Tithing Amerced</u>	0.0%	0.5%
<u>Acquittals</u>		
Appellor Lost	10.1%	6.2%
Fled but Acquitted	0.0	1.0
Total	<u>10.1%</u>	<u>7.2%</u>
<u>Some Gain by Plaintiff</u>		
Outlawed	4.6%	6.2%
Concorded	11.2	4.6
Total	<u>15.8%</u>	<u>10.8%</u>
<u>Guilty:</u>		
<u>Punishment Assessed</u>	2.5%	0.0%
	<u>100.0%</u>	<u>99.9%</u>

their suits, they were much more eager to sue their cases to a conclusion than were appellors of wounding. Appellors of wounding were more likely than appellors of rape to come into court and withdraw from their suits or release the defendants from the accusation; 8.5 per cent did so as opposed to only one per cent of appellors of rape. Still, the proportion of rape appeals that were not continued because the appellant did not come to court or withdrew from the suit or because one or the other of the parties had died is strikingly high, more than seven out of ten as compared with just under four out of ten in appeals of wounding.

Appellors of wounding needed patience, however, because nearly one-third of their appeals, 32.5 per cent, were not concluded within these rolls, more than three times the 9.7 per cent of rape appeals for which we have no recorded conclusion. One probable reason is the justices' practice of dealing expeditiously with appeals of rape. There was seldom a delay for a jury, for example; if a defendant requested one the justices seem to have turned to the jurors at hand, perhaps to the presentment jury.

Appeals of wounding were more subject to delay. Battle, and before 1215 the ordeal, were used to decide cases of wounding, and there was always a delay between the ordering of battle or the ordeal and their being carried out. Further delay was caused by the larger numbers of persons involved in incidents of wounding; a single fight might

produce several appeals. Often one case, perhaps the first to be brought or the one concerning the most serious wound, would be decided first and the others would be postponed; if the case to be decided was to go to the ordeal or to a jury,³¹ for example, the others would have to await its outcome.

Even without such obvious reasons for postponement the justices seem to have been inclined to temporize; they might postpone a case without giving any reason whatever.³² Appeals of wounding usually resulted from fights or assaults that either created hard feelings between the parties or grew out of long-standing disputes or enmities. The potential for disruption to the community or communities involved was such that the justices may have preferred to give time for tempers to cool and hope that the parties could reach reconciliation in a concord.

Such a judicial policy would also account for the large proportion of concords reached in cases of wounding; 11.2 per cent of wounding appeals ended in an agreement; only 4.6 per cent of rape cases did so. Appellors of wounding were slightly more likely than appellors of rape to see the defendant acquitted; 10.1 per cent of wounding cases ended in acquittal as against 7.2 per cent of cases of rape. And there is a higher percentage of outlawry in rape cases than in appeals of wounding; perhaps the men accused of rape were more likely to be transients, as was the wandering merchant who assaulted Agnes niece of John and fled to Ireland, and

as were, on a different level, two emissaries of the Emperor Otto who were parties to a case arising from their assault³³ of a certain woman named Wimarc in London.

Nevertheless, appellors of wounding were also more likely to make some gain from their appeals than were appellors of rape. This was in part because appellors of wounding more often pursued their cases, but even if only those appeals that were sued to a conclusion are considered, the appellant of wounding had a slightly better chance for a favorable outcome than did the appellant of rape, as is seen in Table 3:5.

Even with the higher percentage of appellors of wounding who were able to make concords and those who sued their case to conviction, the margin of plaintiffs who won favorable outcomes in cases of wounding as opposed to those in cases of rape is far from overwhelming. Some 64.4 per cent of cases of wounding ended favorably for the plaintiff, as compared with 60 per cent of the cases of rape, and when we go behind the statistics to the events as described in the cases we see that appellors of wounding had to face hazards that appellors of rape never saw.

The judicial duel posed problems for both appellors of wounding and appellors of rape. There has been some speculation that women's inability to fight the duel had an adverse effect on their bringing of criminal appeals; "A woman, unlike a man, never had to risk her life in prosecu-

Table 3:5

<u>Outcome</u>	<u>Wounding</u>		<u>Rape</u>	
	<u>#</u>	<u>Cases</u>	<u>#</u>	<u>Cases</u>
Acquittals	37	35.6%	14	40.0%
In Plaintiff's Favor:				
Defendant Outlawed	17	16.3	12	34.3
Concorded	41	39.4	9	25.7
Guilty: Punishment Assessed	10	8.7	0	0.0
Total: Plaintiff's Favor	68	64.4%	21	60.0%

ting a charge of felony."³⁴ The chief effect of this inability was the restriction of the appeals that a woman could bring, but it also may have contributed to skepticism of even those appeals which were within women's province. An appeal which put a defendant at risk without a corresponding risk to the appellant may not have met with the legal system's fullest confidence.

Appellors of wounding were confronted with the opposite problem: the necessity of fighting again the persons who had wounded them in the first place. The opportunity to use the legal system to continue the fight may have been attractive to some appellors, but few wanted to put themselves to the danger of a duel. Duels were adjudged in only eight appeals³⁵ of wounding and actually fought in only two. The justices' caution is in part the reason for the scarcity of duels; in six of these cases the justices decided that there should be a duel only after it was attested that the appellant had indeed been seriously wounded. In another case there was to be a duel even though the appellant had shown only "a little wound."³⁶ Once his duel had been awarded to him, however, the appellant chose to withdraw and put himself in mercy; perhaps the justices had expected him to repent of what was, in the context of the time, a trivial appeal. In most cases nothing more is recorded in these rolls after the judgment that battle lay between the opposing parties except perhaps that a day had been given them on which they were to

come armed.

Of the two duels which were fought the appellor was victorious in one, the appellee in the other. One appeal was the result of a civil action in land that led to violence when the defendant, who had essoined for bed sickness, was found to be up and about and working in his fields. Richard son of John said that Geoffrey of Shireford had come to his sickbed where he lay after he had been given an essoin of bedsickness in a civil plea and had beaten and wounded him, and then had wounded his wife Emma when she raised the hue and cry. Geoffrey, Richard's opponent in the civil plea, denied all this. He said that he had come to Richard's fields. found Richard plowing instead of lying on his sickbed. and tried to capture him, but the men of the prior of Coventry took Richard away. Geoffrey tried to explain Emma's wound away by saying that when she raised the hue and cry someone pushed her down on a rock. But because Richard had made suit properly a duel was waged; when it was fought Geoffrey was the victor and was acquitted. Richard was arrested, probably until he made fine for the accusation his loss of the duel had "proven" false.³⁷

The other case was a more straightforward case of wounding. George of Nitheweie, who accused Thomas son of Estmar of mayhem, had to fight Thomas after it was decided that George's wound in the arm had not in fact maimed him. Thomas had denied George's accusation and put himself on a

jury of the neighborhood, but all factors in the case appeared to be in the accuser's favor: the wound had been shown, suit had been reasonably made, and the jurors said they knew Thomas was guilty. The duel was waged and fought, and George was victorious. The record says that Thomas, the vanquished defendant, was blinded and mutilated.³⁸ The ferocity of the punishment, unique in these rolls, probably reflects the certainty on the part of all concerned of the guilt of the accused, but the accuser had had to risk himself in the duel and win his battle before judgment was rendered in his favor.

A few men who brought appeals of wounding and mayhem had to face a hazard no appellant of rape never faced in these rolls: the open hostility of the judges. The justices sometimes seem to have been apathetic toward or even skeptical of appeals of rape, as for example when two defendants were not outlawed even though they had fled after the crimes, and suspicious of cases in which suit had not been made.³⁹ A few appellors of wounding, however, were subjected to open antipathy from the bench regardless of their well-founded suits and the injury that had obviously been done to them. Astinus de Wispington appealed Simon de Edlington of tearing out one of his eyes and thus maiming him, and Astinus had made sufficient suit. The justices, hearing all this, adjudged that there be an ordeal, but they directed that Simon, the defendant, be allowed to choose

which of them was to carry the hot iron. Simon naturally chose that Astinus should carry it. Not surprisingly the two men later came before the justices and put themselves in mercy, a reasonably good sign that they had reached an⁴⁰ agreement.

The justices gave the same choice of who was to carry the hot iron to defendants in two other cases in the same eyre; one was an appeal of mayhem, and the other was an appeal of wounding in which the defendant was over the age to fight the duel, that is, over the age of 60. In each case the plaintiff withdrew; one paid three marks for the privilege.⁴¹ The chief of the justices of this eyre was the much-admired Simon de Patishall, so it is unlikely that the judgments were mistakes arising from judicial inexperience.⁴² If there is a common thread it is animosity toward appellors who put defendants to the ordeal, even though their injuries were severe ones. Perhaps the justices suspected that old enmities lay behind the appeals and preferred to force an agreement rather than allow further injury, even that attendant on the judicial ordeal, itself falling into disfavor by that time.

In yet another case of mayhem in the same eyre an appellor was treated summarily in spite of the grievous injuries he had suffered. Thomas son of Lefwin appealed Alan the reaper of attacking him on the road, carrying him off to Alan's house, breaking his arm, robbing him of his

cap and his knife, and holding him while Alan's wife Emma cut off one of his testicles and Ralph Pilate cut off the other. Once Alan had returned him to the road Thomas raised the hue and cry and made his suit. The king's serjeant went to Alan's house and found the knife and the testicles as Thomas had said, but he found no sign of the cap and moreover the county court attested that never before had Thomas mentioned a broken bone in his arm. The appeal was quashed, apparently not before Alan had offered the court two marks to have his judgment.

The two marks aside, the reason for Thomas's loss was probably the variance in the appeal. A variance alone could be fatal to an appeal, and in addition Thomas's claim to have been maimed, had it been believed, would have enabled him to avoid the duel and have Alan sent to the ordeal, an alternative to which the justices were already demonstrating their distaste. Privately the justices no doubt believed, as did Lady Stenton, that the attack was in retaliation for an attack on a woman of Alan's family. In sum they preferred to leave matters as they stood, and Thomas was
⁴³
 amerced for his false claim. No appellor of rape seems to have been treated quite so shabbily.

Still, the prospect for women who brought appeals of rape was poor in comparison with that in appeals of wounding especially in view of the large percentage, more than two thirds, who declined to prosecute their appeals. The low

rate of prosecution cannot but raise the question of why so many appeals were brought only to be dropped. It would appear that women expected little benefit from continuing their suits; if so, it must be wondered why they brought them in the first place. The bringing of an appeal was no light matter; it involved the finding of pledges that the appeal would be prosecuted or, in the case of impecunious plaintiffs, the swearing of a personal oath to sue. If the plaintiff did not prosecute she and her pledges, if any, were amerced, and if she had no pledges and no money the justices would direct that she be arrested and jailed for her default. That women did bring appeals of rape into the courts, even if they later defaulted on those appeals, argues that they hoped for some benefit worth the risk of amercement or imprisonment.

An indication of the nature of such a benefit can be found in the cases that were sued to what might be regarded by the plaintiff as a successful conclusion. As we have seen, except in those cases in which the defendant had fled and was consequently outlawed, the conclusion was in every case a concord rather than a conviction.⁴⁴ Seldom are we told the terms of these agreements, but those of which we are told are suggestive. Some women concorded for a payment of money. Leviva daughter of Siwat, who said that Simon son of Agnes had raped her and held her in her house for eight days and then kept possession of her chattels, agreed to

settle with Simon for one half mark which he was to pay her
⁴⁵ on the next Sunday. Sibba daughter of William, who had
 been raped and beaten until she was bloody, accepted the
 larger sum of twenty shillings from her assailant William
 son of Hugh of Bolton. The court tried to facilitate this
 agreement by forgiving William's amercement, and the sheriff
 undertook to see to it that the money was delivered to
⁴⁶ her.

In the other cases whose terms are revealed in these
 rolls the settlement was one uncongenial to modern thinking;
 the attacker married his victim. Stephen Hoker, whom Lucia
 sister of William Ballard had accused of raping her and,
 with the connivance of his relatives, confining her in his
 booth all night, paid five marks for a concord by which he
⁴⁷ was to become her husband. Malot Cawe, who as the jurors
 attested had been raped and seen bleeding, ended her appeal
 by marrying her attacker, as did Marjory daughter of Henry
⁴⁸ the smith. This solution to the appeal, unsatisfactory as
 it is by modern standards, may have made good economic sense
 to the women concerned.

In a time when, although women who could afford it
⁴⁹ might remain single or marry for love if they so desired,
 marriage was the most likely source of a woman's livelihood,
 a guarantee of that livelihood may have appealed to women
 who had been assaulted and who may have feared that their
 prospects of marrying had been harmed by the assault. There

is some evidence that such fears were not groundless. Medieval English society was by no means rigid in requiring that women be continent before they married; Agnes de Weston, for example, lived with one man until he died, apparently out of wedlock, and then married his brother, and Mabel de Acton, who had a son by a priest, later married and had another son.⁵⁰ These cases, the only such mentioned in the rolls, seem to be exceptional, however.

The case of Isabelle daughter of Robert of Shukeburgh⁵¹ and may more accurately reflect contemporary views. Isabelle was carried off during "King Stephen's war" (guerra regis Stephani) by an itinerant knight named Warin who had previously sought her in marriage without success; Warin kept her for several years and had a son by her while supporting himself by robbery. During the reign of Henry II Warin was captured and put in the pillory, where he died. Isabelle then returned home to her father, who received her, as the rolls say, because she had gone with Warin against her will. Soon she was courted by a man named William, whom she married, bringing with her a maritagium of four virgates of land. By him she had another son.⁵¹ Two points can be gleaned from this account: one is that Isabelle's unwillingness was considered worthy of mention as a condition of her return to her father's house, from which she was married, and the other is that marriage to her was made financially attractive not only by the maritagium but by her standing as

her father's only heir.

Isabelle had been raped in every sense of the word. She had been carried off, one common meaning of the word raptus, and the capture had been followed by sexual relations; all of this, by all accounts, had been against Isabelle's will. If the experience of Agnes, Mabel, and Isabelle are kept in mind, in the context of the assumption that marriage was the normal state and livelihood most women, the actions of appellors of rape becomes more comprehensible. The histories of Agnes and Mabel show that lack of virginity was not an insuperable obstacle to marriage, and Isabelle's case is an example of the effectiveness of both a perception of the woman's unwillingness and her economic standing in smoothing her entry into marriage. Indeed, Agnes and Mabel themselves both had land that might have played a part in their attractiveness as marriage partners. If vengeance for the violence they claimed to have suffered was beyond their reach, women could work toward a very practical goal, the restoration of any damage to their marriageability the assault might have caused.

The concords openly arrived at in court are the most obvious example of the achievement of such a practical goal. The terms of five such concords are given in the rolls; ⁵¹ in three out of those five the assailant married his victim, thus guaranteeing her the relative economic stability of marriage in the most direct way possible. The two women who

agreed to a payment of money, in one case a half mark and in another twenty shillings, may have preferred to maintain their independence. One may have already been in possession of a house and chattels.⁵²

A woman who accepted a monetary settlement, even a small one, could have found it useful as a sort of maritagium provided by the attacker. The purchasing power of money in the early thirteenth century is difficult to define with precision, but from these rolls it appears that half a mark would buy a cow or roughly a dozen sheep, and that twenty shillings would go much further; twenty shillings is the value given to ten and a half loads of oats, one load of winter wheat, and an ox in one case, and to the lease for four years of two virgates of land and five houses worth five marks along with assorted chattels in another.⁵³ Such an amount may have done much to aid the marriage of a poor woman or even a woman in moderate circumstances.

The practicality of these settlements throws a different light on the failure of any rape appeal to go to the punishment phase when both assailant and accuser were present, rather, that when the jury had declared the guilt of the defendant, the parties involved reached an agreement.⁵⁴ It is possible to view the offense of rape not only as a crime of violence but as a sort of property loss in which the "property" that is lost is an intangible one, the marriageability of the woman concerned. Women may well have

preferred, if the occasion arose, to allow their assailants to do something toward making amends for that loss.

The courts may have concurred in such a view; they certainly were willing to allow the making of concords. It is possible that there was even some prejudice against a married woman who brought an appeal of rape, though the number of cases is too small and their circumstances too ambiguous to allow any conclusions. Of the four cases in which women who were married, perhaps after the commission of the crime, brought appeals of rape, none ended in a way that was favorable to the appellant. Two were not prosecuted, and in one of these the jurors declared that the defendant was not suspected of the crime.⁵⁵

Of the other two cases one resulted in an acquittal and the other was one of the two cases in which a defendant who had fled for the crime was nevertheless not outlawed. Each of these two cases was complicated by other deficiencies in the appellant's case. In one the appellant changed the words of her appeal from "raped by force" to "lay with by force," thus creating a variance; she also had not made proper suit and her husband, whose existence she had not mentioned to the court, had not appeared in court to sue with her.⁵⁶ The jurors declared the defendant not guilty. In the other case the scribe seems to be listing reasons why nothing can be done: the appellant has a husband, and the defendant, who was a wandering merchant and did not live in

Bristol where the offense occurred, has fled into Ireland.
⁵⁷
 and is not suspected by the jurors. We are not told
 whether or not the husband was present in court.

That three out of four appeals brought by married women ended in acquittal is striking; it is regrettable that there is no case that more clearly expresses the court's attitude toward a married appellant of rape. At any rate those women who brought their cases to a successful conclusion seem to have had no objection to accepting a settlement that either guaranteed a marriage for them or possibly aided them in securing one for themselves, and the court seems to have viewed such an outcome as appropriate, possibly even frowning on an appeal brought by a woman who was already married.

The much larger proportion of women who brought appeals only to let them lapse poses a more difficult question; did these women get some benefit that was worth the effort and the possibility of imprisonment or was their appeal a mere futile gesture? If there was no benefit to be gained, why were the appeals brought at all? The rolls provide a partial answer; five of the women who did not prosecute are known to have made secret concords with the defendant before their cases came up in court. No doubt the assailants were motivated to offer the agreement by the bringing of the suit.

Making a concord without the permission of the justices could be expensive; the plaintiff was amerced or arrested

and the defendant was amerced as well. One defendant was forgiven his amercement because he was poor and another was merely placed under pledges, but the plaintiff in another case was assessed twenty shillings and in yet another the defendant was to pay a mark, the equivalent of just over thirteen shillings. In the remaining case a third party who had made peace between accuser and accused was to be amerced.⁵⁸ It may be that many other such agreements were made, with greater care taken to keep them from the knowledge of the court.⁵⁹

In only one case do we know the terms of the agreement. The jurors attested that Marjory daughter of John of Turgitorp had married Walter son of Simon whom she had accused of rape; it was she who was assessed a penalty of twenty shillings. Her choice, like that of others, had been to assure herself of a marriage, even though it was to the man who had assaulted her.

It need not be assumed that practical considerations alone went toward the making of such a marriage. The feelings of the women involved do not come down to us, but perhaps the assailant had, after the offense, gone to some lengths to ingratiate himself to her. This was the case in a startling modern parallel to Marjorie's settlement. In December of 1986 Natalia Estefania Benites and Ramon Vargas, the man who only a month before had raped her, threatened her, and left her in a field, were married by the judge who

was to have presided over Vargas's trial, with the prosecutor and defense attorney as their witnesses. The couple had been dating for about three months before the assault, and after Vargas was arrested and imprisoned he had begun calling Natalia on the telephone; his phone calls persuaded her first to cease being angry with him and finally to accept his proposal of marriage.

The charges against Vargas were dismissed. The judge, in the same spirit as the justices who pardoned the amercement of Yvette daughter of Rannulf when she concorded her suit against William of Smithfield, declined to ask for the twenty-five dollar fee usually charged for the performing of a marriage ceremony. Though shocked at this unusual outcome to a rape case, all who were present at the ceremony were said to have enjoyed themselves; perhaps a similar spirit of reconciliation and optimism attended thirteenth century
60
concorde of marriage.

The large majority of appellors of rape who did not prosecute leave no record of why they abandoned their appeals, but even they may have received some benefit beyond the opportunity to air their grievances. The appeal was the beginning of a process of bettering their lot. Isabelle daughter of Robert of Shukeburgh' was known to have been taken against her will, and other women may have found that the publication of their own unwillingness, even if they could not or for some reason did not wish to continue their

suit, helped them to counteract the uncertainty of rumor, spread abroad their own account of events, and ease their return to normal life. Some, like Marjory, may have secured concords without a further appearance in court; others may simply have gone back to their usual way of life. The abandoning of an appeal was not necessarily the sign of a defeat; the bringing of the appeal alone may have accomplished much.

Like other plaintiffs, women who brought appeals of rape were affected by the conditions that surrounded the loss of the ordeal as a means of trial in 1215. The ordeal itself meant little in appeals of rape; it was not used in any rape appeal in these rolls, nor did Glanvill give any indication that it should be. But the increasing use of the jury and the growing inclination for the legal system to take a hand in pursuing appeals that formerly had been left to appellors alone left its imprint on the prosecution of appeals of rape, an imprint that can be discerned by comparing those cases heard before 1215 with those that were brought after that date. The cases split fairly evenly, with ninety-four having been brought before 1215 and one hundred after. The rate of failure to prosecute remained surprisingly constant, given the prolonged suspension of judicial activity before 1218; sixty-two, or 66 per cent, of rape appeals were not prosecuted before 1215, compared with sixty-eight, that is, 68 per cent, after that year.

Women who sued their cases to a conclusion, however, found that their prospects for success changed dramatically for the worse. Before 1215 eight defendants were outlawed and seven agreed to settlement in open court; thus in fifteen cases, or 16 per cent, plaintiffs could be said to have brought their cases to a successful conclusion. In only four out of the ninety-four was the defendant acquitted, meaning that women lost, so to speak, only 4.3 per cent of their cases. Or, to present the figures in another way, out of the nineteen cases that were brought to a conclusion, women were successful in fifteen, nearly four-fifths of the total.

After 1215, however, only four out of one hundred defendants were outlawed, and only two came to an agreement in open court; women made some gain in only 6 per cent of the appeals they brought. By contrast there were acquittals in eight, or 8 per cent, of the appeals that were sued to a conclusion; women who persisted in their appeals after 1215 were more likely than not to see the defendant acquitted. Unless women suddenly began to accuse a much larger proportion of innocent men, an unlikely proposition, the difference had to do with the increasing reliance on the jury.

In the years between 1194 and 1202 juries had a small role in appeals of rape. In one case jurors attested that Yvette daughter of Rannulf had been seen bloody and shamefully treated, and in another they said that Agnes Tredgold

had been the succuba or paramour of William de Smithfield; otherwise they only attested to the innocence of a mother whose son had come to her house after he had committed a rape, or that a third party had arranged the concord between opposing parties, or they were to be summoned for an inquest whose result does not appear in the rolls, or they presented testimony which damage to the roll has left illegible. If a plaintiff did not sue her case it invariably lapsed because of the failure to prosecute; it was not considered necessary⁶¹ that a jury be consulted.

The year 1208, seven years before the abolition of the ordeal, marks a turning point in the adjudication of cases that had not been prosecuted by the appellor, and the cases from that year deserve to be studied in detail. Of the fourteen cases recorded from that year eleven were not prosecuted. In nine out of those eleven cases it is clear that the appeal did not lapse as it usually would have in previous years; rather further steps were taken.

In two of the cases the defendant was adjudged to be without day, that is, he was not to be given a day on which⁶² to appear in court again to face that particular charge. Though being allowed to go without day was probably not the equivalent of an acquittal, in which the defendant was adjudged to be quietus or "quit" of the charges, the practical effect was the same. These terse entries give no reason for the court's decision, nor is any given for the action of

defendants in two other unprosecuted cases who appeared and gave money to the justices, a half mark in one case and a mark in the other; the entries merely record that the plaintiff did not appear and the defendant came and rendered⁶³ payment.

The other five entries are remarkable in that the defendants themselves elected to carry on the case. Four entries record that the plaintiff did not appear but that the defendant in each case offered the king a half mark to have his judgment anyway; in each case the ruling was that⁶⁴ the defendant go without day. In the remaining case, even though the plaintiff, Aubrey daughter of William, was not present, testimony was heard that she had been bound and shamefully treated. The defendant, William son of Roger de Belebi, gave the sizable sum of twenty shillings to have a judgment; like the others he was allowed to go without⁶⁶ day.

There is no indication why in 1208 it became important to follow even an unprosecuted case to its conclusion. The preliminary impression is that defendants themselves were taking the initiative in seeking a judgment that would clear them of the charge; perhaps defendants, previously content to go their way when a suit was not prosecuted, suddenly became very conscientious about having their names cleared. It is more likely that the initiative came from the court at some point in the proceedings before the case came before

the justices and began to be recorded in the rolls. There may have been an increasing strictness in the court's attitude toward men accused of rape. Though the judgments were uniformly in favor of the defendants, each of whom was granted something very like an acquittal, the amounts they paid to have the court pass judgment in their cases, a half mark to twenty shillings, were strikingly similar to those tendered as settlements in final concords.

By 1218 when appeals of rape again appear on the rolls the court was clearly taking the initiative in continuing a considerable portion of rape appeals that were allowed to lapse. The use of the jury was cautiously expanding, and it was to the jury that justices were likely to turn when a woman did not follow up her appeal of rape. In thirty-one of the sixty-seven cases that were not prosecuted by the appellor between the years 1218 and 1222, the court asked the jury, probably the presentment jury since there is no indication that a special jury was empanelled, whether or not its members suspected the defendant. This was also done in three cases in which the appellor had died, making thirty-four cases in all. As a general rule the jury not suspect the defendant. In twenty-eight of the cases they acquitted him by declaring that they did not suspect him or that they did not believe him to be guilty;⁶⁶ in only four⁶⁷ did they suspect him or believe him to be guilty. Generally a conviction was followed by an order for the defen-

dant's arrest; it is recorded that one defendant quickly⁶⁸
made fine for a half mark.

Jurors also contributed to four of the remaining cases by reporting that a concord had been made between the two⁶⁹
parties, and other two cases in which further steps were taken did not involve the jurors at all. In one the justices were told that the offense had been committed in another wapentake and decided to ask if the plaintiff had sued there, and in the other the defendant simply came as some had in 1208 and made fine for a half mark without⁷⁰
awaiting a verdict.

Usually the justices followed up a plea that the plaintiff had allowed to lapse only when the defendant was present; if he was absent the justices, if they took any action, might content themselves with amercing his pledges, the men who had sworn to produce him in court.⁷¹ Even so, two of the five convictions above were rendered against absent defendants; perhaps their offenses were particularly notorious or flagrant ones.

The courts also used the jury, sometimes at the request of an appellor who pleaded an exception of odio et atia, to assist in the judgment of a case when the appellor prosecuted her suit. The results for the plaintiff were only marginally better than those we saw in suits that were not prosecuted. Sixteen cases were prosecuted to a conclusion in the years after 1215; of those only six ended in favor of

the plaintiff, whether by concord or outlawry of the defendant, but ten ended in acquittals. These results are diametrically opposed to those of the early years of the period, during which cases that were sued to a conclusion had gone lopsidedly in favor of the plaintiff, with fifteen ending in the plaintiff's favor and only four acquittals, as Table 3:7 shows.

The reason for this reversal is not immediately apparent; again, however, as seen in the cases that were not prosecuted above, the jury plays a large and perhaps crucial part. In the sixteen cases sued to a conclusion in the later years the jurors were consulted on thirteen occasions; in nine out of the thirteen they declared the defendant not guilty, even in two cases in which the defendant had fled for the crime. There were several reasons why the tenth case never went to the jury: it was an attempted rape instead of an accomplished deed; a third party had tried to make amends between the two; and the appellor had later taken a husband. Even though it was only the prompt action of the men of the vill in answer to the appellor's screams that stopped the act from being completed, the offense was not considered to be a rape.

On the other hand the jurors' opinion supported the plaintiff in four of the six cases that ended in the plaintiff's favor. Three of these were against defendants who had fled and who were to be outlawed. In one of these the

Table 3:6

<u>Outcomes:</u>	<u>Acquittals</u>	<u>Convictions</u>
Cases Not Prosecuted	25	6
Appellor Died	3	0
Totals	<u>28</u>	<u>6</u>
<u>Percentage of Total:</u>	<u>Total</u>	<u>Percentage of Total</u>
Acquittals	28	82.4%
Convictions	6	17.4
Totals	<u>34</u>	<u>100.0%</u>

Table 3:7
Cases Prosecuted to a Conclusion

<u>Outcomes:</u>	<u># Cases</u>	<u>Percentage</u>
Early Years:		
Acquittals	4	21.1%
Favor of Plaintiff		
Concords 7		
Outlawry 8	15	78.9
Totals	<u>19</u>	<u>100.0%</u>
Late Years:		
Acquittals	10	62.5%
Favor of Plaintiff		
Concords 2		
Outlawry 4	6	37.5
	<u>16</u>	<u>100.0%</u>

jurors' support was lukewarm; the appellor was to sue until the defendant was outlawed because "they better believed him to be guilty than not."⁷² The remaining case was the only one in which the verdict went against a defendant who was present in court. The defendant denied the charges but the jurors declared that he was guilty and that suit had been reasonably made; he concurred to marry her.

There are other examples in the rolls of persons who fled for a crime but were not believed to be guilty, and the jurors did not declare against them in every case. But, in the later period when they were being frequently consulted, they disbelieved a great many more appeals of rape than they believed. Their disbelief had a decided effect on women's chances of bringing a rape appeal to a favorable conclusion, and affected the disposition of cases which the appellor did not prosecute. The full extent of the jurors' influence can be seen by comparing the results of all the rape appeals in which the jury declared an opinion in the years after 1215, as is done in Table 3:8 below.

There were only three cases that were concluded without recourse to a jury, and two of these, an outlawry and a concord, went in favor of the plaintiff, a ratio that corresponds to the sixty-forty split for all cases sued to a conclusion seen in Table 3:3 above. Further research is needed to determine what effect the growing use of the jury had on appeals for offenses in which the appellors were

Table 3:8

Appeals Decided by Recourse to Jury

<u>Outcomes:</u>		<u># of Cases</u>	<u>Percentage</u>
Acquittals:			
Not prosecuted or appellor died	28		
Sued to a Con- clusion	10	38	76%
Plaintiff's Favor:			
Not prosecuted	6		
Sued to a con- clusion	6	12	24
Totals		<u>50</u>	<u>100%</u>

predominantly male, but the effect on appeals of rape was largely in the defendant's favor.

One change in women's prospects for a favorable outcome, perhaps but not demonstrably the effect of the increasing use of the jury, was a drop in the number of concords arrived at openly in court. As is shown in Table 3:7 above, there were seven such concords arrived at before 1215, but the number drops to only two after that year, even though there were more appeals of rape brought after 1215 than before, 100 as opposed to 94. The jurors' tendency to give acquittals may have cleared some men who otherwise might have found it expedient to concord with the appellors, and perhaps the courts were growing less receptive to concords as a settlement of criminal appeals.

Women may have compensated for the decline in judgments favorable to them by making more private concords after 1215 than they had been making before that date. Only one secret concord was brought to the attention of the justices before 1215, but in the period after that year four such concords were said to have been made. Caution is necessary in evaluating this information; the numbers are too small to yield conclusions and do not necessarily represent the true figures in an activity that the parties concerned probably did not wish to have brought to the court's attention. Moreover, the numbers may reflect an increase in reporting of such concords as the jury came to be used more frequently in

cases that were not prosecuted. But it is also possible that the figures represent a real rise in private concords made outside the court. Whatever the reason, it is clear that after 1500 women were making more concords outside the court than in it, that they considered their own negotiations were of more value to them than those they could conduct in the court.

Castration and blinding as a punishment for rape has been conspicuous by its absence in this study, as it is in the rolls, but may have more to do with the behavior of juries, appellors, and defendants than the lack of such punishments in the rolls would indicate. That no such punishment was ever assessed in this time does not mean that it was a foregone conclusion that none ever would. or that it was not at least spoken of in rolls that are lost to us, and the possibility that it might be inflicted may have lurked in the minds of all concerned. Jurors might have hesitated to convict acquaintances who on the whole had led orderly lives, even if guilty, unless the offense was a particularly violent one or was accompanied by another offense such as a robbery. If so the effect on defendants would have been twofold. Most may have felt it worth their while to come into court, deny all charges, and rely on the clemency of their neighbors, but some, especially if their offense had been a flagrant one, may have felt they would do better to avoid appearing in court by persuading the appel-

lor to come to a private agreement and drop her formal suit in the curia regis.

For women who did not thirst for vengeance the prospect of a concord, private or arrived at in court, was probably an attractive one. Vengeance, however satisfying to some, was of little practical use, but a half mark could serve as a maritagium for a woman of humble status, and a marriage would solve at once the problem of future marriageability. The sums men paid, whether to the appellant or to the court, were hardly ruinous, but they represented a reasonable capital investment and might have served as a reminder not to commit the offense again, especially if the man had been in some anxiety that the most extreme punishment, however rarely administered, might be assessed in his case.

In the years after 1200 two trends are discernible; one, apparent by 1208⁷, is a growing inclination on the part of the court to carry on as the state's responsibility appeals of rape that the plaintiffs had dropped, and the other, visible in 1218 and the years following, is to depend on a declaration from the jury for that purpose. The state's involvement would seem to be a benefit to appellors of rape because the obligation to prosecute no longer rested solely on them, and indeed the proceedings of 1208, when defendants were paying the same fee for a near-acquittal that they paid for a settlement or were assessed when found guilty, has the appearance of a toughening of the state's

attitude against defendants in rape appeals.

This recourse to the jury, though the best prospect for the future because it encompassed some form of trial, had mixed effects on women's prospects in appeals of rape. Some defendants were convicted who would not have been in the earlier years of the period, but the chance for a favorable outcome for the plaintiff declined so steeply that it is probable that some injustice was done.

In the course of this discussion we have viewed the prosecution of appeals of rape from several perspectives. At first glance the record is a sorry one, with the great majority of appeals never prosecuted by the plaintiffs, and with a pitifully small number of cases in which the outcome was in the plaintiffs' favor. Even granting that some unknown proportion of these appeals were false, it is probable that a considerable number of guilty men were going unpunished by the courts.

The picture was not entirely a dark one, however. A comparison of appeals of rape with appeals of wounding shows that, though appeals of wounding were much more likely to be prosecuted, appellors of rape and appellors of wounding who prosecuted their cases had similar rates of success, 60 per cent as compared with 64 per cent,⁷³ and appellors of rape never faced the open hostility that justices showed against a few male appellors of wounding.

Moreover, women can be seen to have been working to

repair the damage the assault had done to their lives in a very practical way, sometimes in open court and sometimes behind the scenes in private settlements, by contracting a marriage or by winning an amount of money that would help them to secure a marriage or even to live more comfortably on their own. They were making concords outside the courts, and some families who wanted the attacker to suffer corporal punishment may have taken matters into their own hands, as two cases, one of castration and one of blinding, suggest. Rough justice was once meted out by city officials. Segwin and Marcman, citizens of Cologne and messengers for the Emperor Otto, complained to the court that officials of London had thrown them into jail with thieves and refused to release them until they had paid three marks; testimony in the case showed that the two men were appealed of the rape of a woman named Wimarc who had raised the hue against them and made proper suit. The officials were no doubt taking advantage of an opportunity to practice a little extortion; in the course of doing so they made these emissaries quite

74

literally pay for their crime.

Usually, however, the outcome of any case was in the hands of the justices, the juries, and the women themselves. An interest in abstract justice, in the form of assiduously investigating cases and punishing the guilty to the full extent of the law, is not to be found in these rolls, though the courts' tendency after 1208 to take up appeals that

plaintiffs had allowed to lapse may show a growing concern with the suppression of the offense of rape. Even the uninforced corporal punishment that was in theory the penalty of rape may well have been an unseen factor in bringing about the inclination to enter into a settlement that we have seen on the part of defendants in rape appeals. But the chief benefit women derived from bringing appeals of rape was the direct outcome of their own actions; by proclaiming and making public their own unwillingness and by bringing about agreements that brought them a financial settlement or even marriage, they did much to mend the damage done to them, secure their own future, put the past behind them, and get on with their lives.

Notes

1

P&M ii pp. 521, 557; Milson, Foundations p. 403.

2

3RRI 96; Rape became an indictable offense with the Statute of Westminster II in 1285, Barbara A. Hanawalt, "Women before the Law: Females as Felons and Prey in Fourteenth-Century England," Women and the Law: a Social Historical Perspective, vol. I, Women and the Criminal Law, ed. D. Kelly Weisberg (Cambridge, Mass.: Schenkman Publishing Co., Inc., 1982) p. 181.

3

There is one case in which the parents, mother and father both, seem to have brought an appeal of the rape of their daughter; they appeared in court but the daughter failed to sue. The appellee was present and denied the charge. The justices allowed the question to go to the jurors, who said that the daughter had been raped and suit had been correctly made but the appellee was not guilty of the crime, PCG 482. There is no other example in which the appeal was brought by any person other than the woman concerned.

4

P&M ii 490.

5

For Bracton's discussion of the crime of rape see pp. 414-415.

6

Glanvill XIV 6, p. 175.

7

The medical treatise written for women by Trotula, "Dame Trot of nursery lore," was translated into English, the language literate women were most likely to be able to read so that, according to the translator's preface, "every woman lettered read it to other unlettered (women) and help them and counsel them in their maladies withouten showing their disease to man..." And a woman doctor in Paris, prosecuted in 1322, defended her right to practice by pointing to her many successful cures and by arguing that women doctors were needed because many women were ashamed to reveal infirmities to a man and had often died rather than do so. Eileen Power, Medieval Women, M. M. Postan, ed., (Cambridge: Cambridge Univ. Press, 1975) pp. 86-88.

8

Glanvill XIV 6, p. 176.

9

Bracton ii pp. 414-15, P&M ii 490.

10

ELAR 771.

11

See for example CRR I 33, PCG 76.

12

ELAR p. lxviii; Some of the women, however, might have had help from knowledgeable men in their family.

13

Ruth Kittel, "Rape in Thirteenth-Century England: a Study of the Common-Law Courts," in Women and the Law: A Social Historical Perspective, D. Kelly Weisberg, ed., vol. 2, Property, Family, and the Legal Profession, pp. 104-05.

14

CRR VII 98; the justices may have been skeptical; they freed Elena only after she agreed to make fine for a half mark.

15

PKJ II 337; PKJ IV 3424, 3491; RCR II 82, PKJ II 395.

16

ELAR 916.

17

ELAR 590.

18

ELAR 916; PKJ II 395.

19

PCG 341; another woman's appeal apparently failed on the grounds of lack of suit alone, CRR I 33.

20

PCG 76.

21

PCG 127.

22

ELAR 909.

23

RJE-GWS 966; YK 3H3 669.

24

RJE-GWS 751.

25

CRR VII 335.

26

Glanvill XIV 6, p. 176; Bracton f. 147b, p.419.

27

RJE-GWS 939.

28

For the penalties for wounding and mayhem see P&M ii 488-89. In theory both capital and corporal punishments could be imposed for these offenses; in practice Maitland found no examples of the death penalty and mentions only one case in which an offender was punished by mutilation, though the mutilation was savage. See text at note 38, this chapter.

29

Hanawalt, "Females," pp. 183-84.

30

See text at notes 35-40 this chapter.

- 31 CRR I 39, 5 appeals; PKJ II 289-91, 3 appeals--two
await the concord being reach in the third.
- 32 PKJ IV 3444-48.
- 33 PCG 484; CRR VI 54, and see text at note 73.
- 34 Kittel, "Rape," p. 101.
- 35 ELAR 638, 693; ENAR 98; RJE-GWS; PCG 87, 434; YK 3H3
579, 911.
- 36 ELAR 638.
- 37 RJE-GWS 919.
- 38 PCG 87; the nature of the mutilation is obscure and
Maitland himself does not attempt to clarify it, but cites a
miracle story from the same eyre about a defeated champion
who was blinded and mutilated but miraculously healed by St.
Wulfstan, to whose service the man then dedicated himself.
Maitland suggests that "it may be that these horrible sen-
tences were not always very punctually obeyed;" PCG p. 142.
- 39 PCG 127, 301.
- 40 ELAR 595.
- 41 ELAR 843, 851.
- 42 ELAR p. xx.
- 43 ELAR 773, 773a, 773b; p. lix.
- 44 See Table 3:2.
- 45 ELAR 916, and see text at notes 16 and 19.
- 46 PKJ IV 3491, and see text at note 15.
- 47 PKJ II 395, and see text at notes 15 and 19.
- 48 PKJ II 337, and see text at note 15; YK 3H3 959.
- 49 See Chapter I, text at notes 72 and 73.
- 50 CRR IX 237-38; RJE-GWS 1125; Hanawalt, writing about
the fourteenth century, thought that virginity before mar-
riage was more the concern of moralists than of prospective
husbands and quotes a case in which a woman slept with three
men and married the last two; the final one became her legal

husband. Barbara A. Hanawalt, The Ties that Bound: Peasant Families in Medieval England (New York, Oxford: Oxford University Press, 1986) pp. 195-96.

51

RJE-GWS 390; these facts emerged in the course of a suit between the grandson of the robber knight, who had somehow come into possession of the whole four virgates although his father, the son of Isabelle and Warin, had been granted only one-half virgate for his use, and the son of Isabelle's legal husband. They were concorded, with the grandson of the robber knight retaining only the half virgate his father had been allotted and giving up the rest for five marks; both were considered to be too poor to pay for the license to concord.

52

See text at notes 45 and 46.

53

CRR X 73-74; ELAR 702, 802; PKJ I p. 19.

54

See text at notes 47 and 48.

55

YK 3H3 848, 935.

56

PCG 76.

57

PCG 484, and see table 3:2.

58

ELAR 826; RJE-GWS 902; YK 3H3 649, 946, 1044.

59

Lady Stenton suggests such a possibility; ELAR p. lvi.

60

"°Love' ends state's case in rape trial," Houston Chronicle, December 10, 1986. For Yvette see text at note 40.

61

ELAR 590, 826, 909; ENAR 42, 38.

62

PKJ IV 3459, 3463.

63

PKJ IV 3406, 3437.

64

PKJ IV 3475, 3476, 3477, 3490.

65

PKJ IV 3424.

66

See for example, PCG 155; RJE-L&W 1074; RJE-GWS 759; YK 3H3 545, 689, 803.

67

YK 3H3 594, 688, 763, 955.

68

YK 3H3 955.

69

RJE-GWS 902; YK 3H3 649, 946, 1044.

70

RJE-GWS 826; YK 3H3 614.

71

See for example YK 3H3 984, 985, 988, 991, and 996, in which the court showed no interest in the defendants, who had not been attached; see also YK 3H3 768 and 1019 in which the defendant's attacher, or plcdge, was amerced.

72

RJE-GWS 858.

73

See Table 5.

74

CRR VI 54.

Chapter IV
Other Criminal Appeals
The Options for Women

If the medieval English legal system's response to women was judged by its rate of conviction in rape cases alone, it would appear to react very poorly to women's concerns. However, we have seen that even in appeals of rape there were redeeming factors despite the lack of convictions. Women were using rape appeals to reorder their lives in a way that conviction statistics do not reveal, and comparison with appeals of wounding showed that judicial skepticism and lack of responsiveness extended also to men who brought appeals of nonfatal violence to the person. Briefly stated, women's experience bringing appeals of rape, however frustrating, was akin to that of men who brought appeals of wounding, and women could act to improve their circumstances in a situation in which they have previously been perceived as being almost entirely passive.

Such a statement does not, however, fully answer the question of the court's perception of women qua women in the criminal appeals. A further comparison, one that contrasts appeals of rape with other appeals in which women were involved, helps to clarify the picture. It shows that the court could be suspicious of women in the particularly touchy area of the slaying of a husband, a crime that was viewed as being akin to treason. In other matters the court adopted an attitude toward women as women that might almost

be described as protective by allowing women latitude they were not allowed by the strictest principles of law, even while the justices were stating those principles themselves.

Glanvill and Bracton concurred that a woman was allowed¹ to bring an appeal for the death of her husband, and the women who did so found that the court was disposed to take their claims seriously, and to give them particularly sympathetic treatment. One way the court demonstrated its interest was by allowing cases to proceed in spite of serious technical deficiencies in the bereaved women's appeals. Osanna de Hunteworth did not prosecute her appeal but the justices did not consider the matter ended; they ordered the jury to declare whether they suspected the two men she accused and of what reputation they were. The appeal of Denise widow of Anthony was quashed because she did not say she had witnessed the crime herself, a necessity in any appeal of homicide, but the justices went on to determine that the jurors and all the men at the county court suspected the defendant. He was to undergo the ordeal of² water. In 1201 and 1202 when these cases were heard the court only very seldom took such strenuous measures to continue a criminal case brought by appeal once the appeal which was its basis had been quashed.

In a case from 1221, Gunilda widow of Roger the Franklin also did not see the men who killed her husband because the night was dark and they beat her so badly that she could

not see. But she suspected Henry le Cupere, a longtime enemy of Roger's. Henry, already before the justices on a charge of theft, refused to put himself on the verdict of the jurors. The justices asked anyway, however, and the coroners, the twelve jurors, and the men of the four nearest villis unanimously said he was guilty of the death and of the theft of horses and other things. This was 1219 and there was no ordeal to which to send Henry, so he made fine for 60 shillings, about five marks or three pounds sterling, and found sixteen pledges, one to guarantee that he would pay the money and fifteen that he would appear if summoned to answer charges brought by anyone else about these incidents.³

When a widow made her appeal correctly it produced surprisingly uniform results; the accused were outlawed because of their flight, sent to the ordeal, or, despite their denials, declared guilty by the jurors.⁴ Two women were shown to have brought false appeals; the jurors said each of their husbands had died of natural causes, and though one had been beaten by the defendant, the death had not occurred until a year after the beating.⁵ These were the only acquittals, and the behavior of justices in overriding obstacles to these appeals and of jurors in upholding accusations show how seriously the court took them.

In another such appeal brought by the widow Swanild made about the death of her husband Hugh the justices took

the unusual step of trying to keep a defendant from evading the judgment of the royal court by claiming to be in holy orders. Roger the Clerk, whom Swanild had appealed, said he was a subdeacon ordained by the Archbishop of Canterbury. The justices refused to release him for trial in the church court even though Master Alan, an official of the Bishop of Bath, was there to support his claim; they insisted he must have letters confirming his ordination from the archbishop himself.⁶

The king himself may have taken an interest in these cases; he asked that one such appeal be put before him, and he was to be consulted about another in which two women⁷ appealed the same man for their husbands' deaths.

Even in such favorable circumstances a few women hesitated. As in other appeals, some did not prosecute and the defendant was allowed to go free, once because the jurors⁸ did not believe him guilty. Emma widow of Reginald Clerk hesitated because of fear. She did not make her appeal for three days while her husband lay dying or for some time after the husband's death; finally the serjeant of the wapentake came to ask her if she appealed anyone. She said she did not dare to make an appeal, but privately she named the five men she thought had done it. They were to be⁹ prosecuted.

On the other hand, when Agnes widow of Gamel stepped aside and allowed Richard, her husband's brother, to appeal

against her husband's slayer in a case in which a duel was later waged, she did so only in order to bring an appeal against another man who had given him an equally lethal blow. There is no inference that Richard's appeal would have been favored because he could fight the duel; one wonders if the court was favorable enough toward these appeals that the two could use a strategy whereby Agnes¹⁰ appealed the stronger fighter.

The appeal of wounding was tacitly allowed to women, and women appellors of wounding were on the whole more gently treated by the courts than male appellors were, and had a better chance of bringing a successful appeal than did appellors of rape. There are only thirty-nine cases in which they appear in any capacity; in twenty of these cases women were alleged to have been wounded. This relatively small number, about one tenth of appeals of rape, shows that women had less to fear from this form of violence than they did from the violence of rape. Still women who were wounded could suffer greatly. The jurors said that Gunilda who had appealed Gilbert de Hamet of wounding had been beaten and shamefully trampled. It was attested by other jurors that Bela widow of Roger had been beaten and wounded by four men, and in another case the jurors confirmed that Edith of St. Teath had been so badly beaten by Robert son of Wastey that sixteen bones, as the record puts it, had been extracted¹¹ from her head.

In five of these twenty cases a husband and wife had both been wounded and the husband pursued the appeal for both, as Richard son of John did when he claimed that he and his wife Emma had been wounded by Geoffrey of Shireford. Richard lost his duel, as we saw,¹² and another case was lost by the appellors because no wounds were shown. In one case the appellors died before the appeal came before the court,¹³ and in two cases concords were reached.

The remaining fifteen appeals were of wounding allegedly suffered by a woman alone. In a few cases a man in the family, usually a husband but in one case a son, sued the appeal, but in the majority of cases the woman sued for herself. The treatises are ambiguous about the acceptability of a woman's bringing her own appeal of wounding. Each treatise states unequivocally that a woman has no appeal other than the slaying of her husband or the rape of her person. Bracton, however, seems to go about justifying a woman's appeal of rape by saying that she may appeal for rape just as she may for any injury done to her body, and Glanvill refers to the section on rape as a discussion of injury to a woman.¹⁴

These passages hint at a general principle that women may appeal for any injury to their bodies, with rape being one possible injury. If such a principle existed it appears nowhere else; rape is the only form of injury to a woman that the authors discuss. We can surmise the existence of

such a principle, or perhaps of an undeclared judicial tolerance of women's appeals of wounding, only from these statements and from the negative evidence that no appeal of wounding in these rolls was quashed or even objected to on the grounds that it was brought by a woman. In six of the appeals the appellor had a husband;¹⁵ his presence, as in all legal actions brought by a married woman, was considered to be necessary if the appeal was to proceed. One husband indeed waged a duel in his wife's appeal, though he later reached a concord. We are not told what circumstances brought about a wounding of the wife but left the husband unwounded; in fact we are not told why any of these women suffered the wounds they did.

Women who brought appeals of wounding seem to have enjoyed some measure of judicial sympathy. The number of cases, fifteen, is too small to support any firm conclusions, but the tendency they demonstrate is an interesting one; overall, women appellors of wounding were more successful than appellors of rape, and none ever faced the hostility that a handful of male appellors of wounding felt. For one thing, women appellors of wounding were more likely to sue their appeals than were appellors of rape. Six women, two-fifths of the appellors, did not or could not sue their cases to a conclusion: two did not prosecute, three withdrew after the appeal had begun, and one appeal ended because the defendant had died.¹⁶ Even so, this is a smaller proportion

than the 71.6 per cent of rape cases that ended similarly.¹⁷
Two more cases were not concluded in these rolls.

Three appeals, one-fifth of the total, were lost. One was quashed because the jurors thought that a son's appeal about his mother's broken arm was made maliciously, and another because, though one official said he had seen the recent bloody wounds that a man said had been given to his wife, no one else had seen any such wounds. The official who gave the suspicious testimony was to be arrested. Yet another case was lost because the defendants brought it to the court's attention that the plaintiff's husband did not take part in her appeal; in wounding as in any other legal action a husband's refusal to participate could be fatal to his wife's suit.¹⁸ The rolls give no hint whether he was absent because of lack of interest, or intimidation, or had exacted his own revenge, or because he had made a concord. This is a very high proportion of losses, but it is notable that the losses occurred only in cases in which men were involved, a son and a husband who appear to have made exaggerated claims and a husband who, for whatever reason, did not lend his support to his wife's appeal.

Two cases were concorded, in both of which, as mentioned above, the plaintiffs had husbands who concerned themselves in the appeal.¹⁹ The remaining two appeals were won by the appellors; as we have seen, the jurors confirmed the charges made by Gunilda and by Edith of St. Teath. The

men who wounded them were to make fine with the king for one-half mark, and Gunilda's assailant had to pay one-half mark to her as well.²⁰ Percentages mean little when cases are so few, but the two cases that were sued to a conviction are in striking contrast to the outcome of appeals of rape, in which no cases were brought by the appellor to such a conclusion.

Women were capable of perpetrating violence just as men were, and in twelve of these cases women were appealed of wounding in some capacity. In most of the cases women made up part of a group of assailants. In one case the sister and mother of an assailant were included among the accessories to his crime. One woman was appealed of commanding her men to injure the male plaintiff, and another plaintiff, who said that he was the man of Agnes de Amundvill, charged that she was deforcing him from his land, that is, detaining it from him unjustly, and that her men had wounded him.²¹

Even when women were principal assailants they usually acted in a group that included men. Sometimes they were part of a family group; Ascelina de Watervill was appealed along with her two sons in a case that did not reach a conclusion in these rolls. Defendants in other appeals included a parson and his wife and their man, a husband, wife, and son, and a woman and her son.²² In one case two women and three men were appealed; the husband of one of the women, who was not involved in the incident himself, came to

appear with his wife in her defense and was one of the parties to the concord that concluded the suit.²³ The groups could be sizable; the defendants in one case were two brothers, three millers, and a wife and a man of one of the millers, and as we have seen one man appealed ten men and two of their wives of his wounds.²⁴

Attacks by women could be ferocious; Emma wife of Alan the reaper took a prominent part in the castration of Thomas son of Lefwin, and in the only case in which a woman was accused of acting alone Hugo son of Elwin appealed Alicia daughter of Richard of tearing out his eyes.²⁵ Elwin withdrew from his appeal so we will never know whether the jurors confirmed his accusation or not. However violent the crimes of which the women were accused, there was no occasion on which any woman who had been appealed of wounding was made to pay any penalty for the crime she was alleged to have committed. Three of these cases ended in concords in which the women defendants presumably took part and paid their share, but the rest of the cases were not prosecuted, or not concluded in the rolls, or, in the case of Thomas son of Lefwin, lost by the plaintiff.

In several cases of wounding women appeared in order to initiate an appeal for someone else. If a wounded person was prevented by the seriousness of the wounds from promptly making an appeal the law permitted a near relative or other connection, a father or wife for example, to begin the

process; the victim would continue the appeal when sufficiently recovered.²⁶ One woman, Agnes wife of Hemer, appealed a man for a wound given her son. She did not prosecute the appeal and apparently her son did not choose to do so either. The defendant appeared but was not suspected and so was acquitted. The defendant's own appeal against Agnes's son was quashed, even though the son was suspected by the jurors, because the appeal made no allegation of felony.²⁷ Perhaps this was a case in which emotions ran high for a time but subsided before the appeal came to trial.²⁸

One of the cases in which a wife began her husband's appeal was settled by concord in open court,²⁹ but the rest lapsed either for failure to prosecute on the part of husband or wife or both or because the husband later withdrew from the appeal. Astinus de Wispington, whose opponent elected that Astinus, the plaintiff, be the one to undergo the ordeal of iron, withdrew for reasons that are abundantly clear;³⁰ in other cases the reasons for failure to prosecute are not discernible. Some may have been intimidated or lost interest; others may have made private settlements, as in the case of William son of Asce, whose assailants admitted they had made fine with him for three marks.³¹

One case of wounding seems to present a woman in an unexpected capacity, that of prospective champion. Pagan son of Hamo complained that John the brother of William son of Geoffrey from whom Pagan had won a lawsuit for land had

assaulted and maimed him, and offered to prove this as a maimed man, scilicet per matrem suam, by his mother, who offered in her turn to prove Pagan's claim. Pagan's intention in offering to prove the charges by his mother is obscure; the criminal law did not allow resort to attorneys, much less to champions, but the formula Pagan uses is that by which a champion is introduced in actions of right. The defendant did not appear, but the justices took the charge seriously; they directed that the defendant be sought and, if found, arrested. William son of Geoffrey, his wife Filomay, Alice the mother of John and William, and others appealed as accessories denied the charge. The outcome of this curious case is not recorded.

32

The appeals of wounding involving women, scanty though they are, give an indication of what women could expect in the criminal action most nearly analagous to that of rape. Their prospects seem to have varied according to the role they played in the appeal. Women who brought appeals in place of their wounded husbands, or in one case a son, seldom saw those appeals prosecuted; out of eleven such appeals only two were prosecuted, but of these two both ended in agreement. As defendants women so seldom acted on their own that the records yield no firm conclusions other than that their relative physical weakness probably kept women from making a significant contribution to this aspect of the violence of their time.

It is remarkable, however, that in the two cases in which women were accused of inflicting terrible injuries on men they not only went free but never were even called upon to account for their actions in court, Emma wife of Alan because the accusation that she aided in castrating Thomas son of Lefwin was dismissed on a technicality, and Alice daughter of Richard because the appeal of blinding was not prosecuted against her.

As plaintiffs women were reasonably likely to pursue their appeals; five of the fifteen, or one-third, either did not prosecute or chose to withdraw, and one more case ended because the defendant had died and was beyond the reach of the courts. Of the seven that were brought to a conclusion three were lost, but four ended with the appellant gaining something for her trouble, a concord in two cases and a conviction in two others. There were only nine cases of wounding in these rolls in which the plaintiff sued to the point of attaining the conviction of the defendant; it is notable that two of the nine were brought by women, a proportion higher than that of their participation in wounding appeals as a whole. Women who brought appeals of wounding had a reasonable hope of a favorable outcome.

Women's appeals for other crimes should have had no place in the courts, but some women were hardy enough to bring them. and, though the justices strongly enunciated the principle that a woman could bring an appeal only for rape

of her person or the death of her husband,³³ they were almost always willing to hear those that came before them. Women brought appeals of homicide for their nearest family members, often brothers, but also fathers, sons, and daughters. These appeals show the circumstances under which the justices would consider these appeals, technically illegal though they were.

If the defendant did not appear to answer the charge, the woman's appeal proceeded; the court never challenged a woman's appeal against an absent defendant for the sake of principle. A defendant who fled was considered to have raised a strong presumption of his guilt and was outlawed, just as in any other appeal, and one defendant who escaped from custody was considered to have convicted himself by his³⁴ action and was to be treated as a convict if found.

The appeal of Alice widow of Geoffrey Maureward presented more problems. Alice appealed Richard de Almere, his sons Benedict and William, and five other men for the death of her son Ivo. The father and one son were clerks and were claimed by the ecclesiastical courts, but the appeal proceeded smoothly against the five men who fled and were outlawed. The difficulties arose, paradoxically, because William, the other son, and one of the five outlaws had been arrested; there probably was some puzzlement about how to try them. Orders that they be brought into court were begun³⁵ but left unfinished, indicating the justices' ambivalence.

The justices showed more confidence in two appeals that proceeded in the presence of the defendants. Eva de Babington appealed a man of the death of her son and of wounding her in the breast. The wounding appeal was permissible but the homicide appeal was not, nevertheless no distinction was made. The jurors, asked, reported that the man was of bad reputation and had stolen sheep and fled to church and escaped, and had fled and hidden himself after the death. Eva wife of Walter de Motcumba accused three men of coming to her house at night, maiming her husband and child, and killing a serving woman. The twelve knights of the jury suspected the accused of this, as did the juries of the four vills. In each case the defendants were directed to purge
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themselves by ordeal of water.

In several appeals judgment went in favor of the defendant. Two appeals that were not prosecuted were dropped, though in one case the justices had taken the further step
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of making sure the jurors did not suspect the accused. In another case Edith de Motton, a serving woman, accused two men of beating the man she served and killing his wife. One man had died in jail, and because she could not be sure that the other was one of the malefactors who had come in the night and done this and the jurors did not suspect him of this misdeed or any other, he was to be released to
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pledges.

Two other appeals were clearly false; in one the jurors

said the son of the appellor had not been slain but had died of illness, and in the other the brother about whose death the appeal had been brought was alive and the defendant produced him. The appellor, who had been summoned to appear at the defendant's request, denied she had made the ap-
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 peal.

In another appeal the defendant, Christina de Sut Tuffenham, imprisoned because Gunilla mother of Thomas had appealed her of Thomas's death, was released on what looks like a technicality. Christina's husband was said to be a beggar and it was not known whether he was alive or dead, so she was released to pledges; again, however, this was not until the jury declared she was not suspected. On the other hand, in a case in which the appellor had died the defendant was not released; he was to be put under pledges until the
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 justices returned to his county.

None of the defendants in the cases above challenged the appeal on the basis of its being brought by a woman, and in one case in which the defendant did so it is not clear that the challenge stopped the appeal. Maud daughter of Godfrey appealed Adam de Tid of having sent Richard the outlaw to kill her father because as Richard stabbed Godfrey she heard him say, "Take this for Adam de Tid," and because William de Tid, Adam's brother, was with Richard at the slaying. Adam challenged the appeal as having been brought by a woman, but the justices' reaction to the challenge is

not given; the entry is unfinished, as are two others involving male appellors that arose out of the same incident.⁴¹

The justices themselves raised the principle of the proper limit of women's appeals in three cases, and the result was that the appeals were quashed. In one case they simply stated the principle and quashed the woman's appeal, noting also that she had a husband who did not sue. In two other cases, however, the court itself may already have violated the principle the justices were stating. Juliana de Holeworth and Edelina mother of Peter appealed William Pech of ordering his sons Roger, Henry, and Hugo to kill their own sons. The justices declared that the women had no appeal against William because non potest appellum facere nisi de morte viri sui vel de rapo sibi facto, "she cannot make an appeal save of the death of her husband or of rape done to herself."⁴²

The justices could hardly have expressed themselves more clearly, but on closer examination the principle is not so firm as the statement suggests. It was William's sons, not William himself, who had actually committed the homicide. Two of them had already been outlawed for the crime; if the outlawry was done by the women's suit it would be consistent with similar appeals above.⁴³ The third defendant was a clerk whose case would have to be heard in the ecclesiastical court.

Moreover William was accused not of homicide but of precept, that is, of ordering the homicide be done, a crime in which conviction was less likely than in homicide. It was also pointed out that Juliana had a husband who had not appeared. The justices may have felt that by going beyond the actual perpetrators to the man who may or may not have incited them the women had gone too far, and have pronounced the principle as a resounding warning; in any case they may have felt that it was time for the incident to be closed.

Certainly the principle was never stated in women's appeals of robbery, which exhibit on the women's part a fair rate of success as well as a businesslike sense of how best to make an appeal that could escape challenge. Two women co-opted men to serve as their appellors or coappellors. Agnes de Torlee's appeal against Richard le Frere was brought by her vassal Walter de Dorton, who could do this because he claimed he also had been robbed. Richard challenged Agnes by claiming that she ordered her man to appeal in order to obstruct a civil suit about the inheritance of Ernold de Torlee, but not on the grounds that she was a woman. In another case, Alice widow of Harold appealed together with Robert her son against eight men; the case was to go to an inquest of knights who had no allegiance to either side, with both sides paying handsomely that it be by
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oath.

Margaret de Lageham did not have to make an appeal; the

robbery of her house was the subject of a presentment which, given in careful detail, demonstrates the skills the thirteenth century brought on occasion to the apprehension of malefactors. The thieves were tracked to the house of Maud de Hexsted among circumstances incriminating enough that two men were being kept in jail and, though Maud was released, her lands were taken into the hand of the king until the case was settled.⁴⁵

Two women shunned appeals altogether and brought complaints; these all-purpose direct complaints to the king as ultimate source of justice could be adjudged at the discretion of the monarch or his justices and so were free of the restrictions imposed on the more formal actions. The plaint of Katrina de Hundlaneside was to be heard with the civil pleas because it also concerned her land and the disputed custody of an heir. The other plaint, which concerned the alleged beating, robbery, and imprisonment of Gunnilda wife of Osbert de Luton, was settled by concord. It is notable not only because it allowed a woman to dispense with the appeal's restrictions but because Gunnilda's husband Osbert does not appear in the case in any capacity; not he but another, perhaps her lord, released her from imprisonment, and Osbert was not even present to sue with her, a circumstance which in most cases would have proved fatal to an appeal.⁴⁶

One woman successfully brought an appeal in spite of

the defendant's objection that he should not answer the appeal of a woman. Christina widow of John Clerk accused Robert son of Hugh of coming at night with his force of men and carrying off her chattels and also her son, whom Robert then married to his own daughter without Christina's consent, and of finally ejecting Christina from her house. This actually was the outcome of a dispute over land and the custody of an heir. Robert, who had had to be constrained to come and answer the charge, responded with a barrage of defenses: he denied everything; he challenged Christina's appeal as that of a woman; he said he was a clerk and parson of a church; and he gave a different account of events in which the son of Christina's late husband had arranged the marriage with Christina's consent. The justices did not quash the appeal, however, and in the end Robert chose to rely on none of these, but made a concord with Christina in which he made peace by giving her her dower along with lands which her late husband had given her before their marriage and some chattels due her.⁴⁷

Lucia de Morestowe also was successful in her appeal although she was of considerably lower social status than Christina if the items she said were taken from her are any indication. She appealed Robert de Scaccis, Rolland de Killio, and Peter de Lankarf of robbery: she said they had taken twenty shillings, four pence, and a cloak worth a half mark. The jurors said they did not rob her. Rather she was

a prostitute and was entertaining a customer in a field, but some boys taunted her, apparently until she ran away, and she left her cloak behind her. The same boys, the defendants, then took the cloak and pledged it for two gallons of wine. It was adjudged that the one defendant who was present was to render her three pence for the wine, no doubt⁴⁸ the sum for which she could redeem the abstracted cloak.

All these appeals, whether allowed to women by the strictest principles of law or not, received at least their fair share of attention from the court. The scribes recorded them in reasonably full detail, and the justices gave them in most cases a sympathetic hearing. Appeals of the death of a husband were given the most favorable reception, with the justices proceeding in spite of impediments such as failure to prosecute or a quashed appeal. In appeals not strictly allowed to women the justices' sympathy was demonstrated at least in part by allowing the cases to proceed at all.

Women used some ingenuity to get their complaints heard, using plaintiffs or getting men to participate in their appeals, but even those who brought appeals on their own saw them proceeded on as long as they brought them against the immediate offender, even if, as in the case of Christina widow of John Clerk, the defendant challenged the appeal as⁴⁹ that brought by a woman. Two of the appeals that were quashed were not against the immediate offenders; the

slayers had already been outlawed, probably by the suit of
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the women the justices were reproving.

The women who brought these appeals were probably in very special circumstances that had caused them to be on their own in a time when marriage was considered the best and safest haven for a woman, and the justices responded to their situation by exercising their own discretion rather than applying strict legal principle in every case. Women who brought appeals of the death of their husbands were on their own as a direct result of the crime for which they were appealing, and perhaps because of this and because they were bringing unquestionably legal appeals the justices treated them with special consideration.

The loss of a father, brother, or son might well have had the same effect of leaving the woman without a legally recognized protector, and the justices were for the most part willing to listen to these appeals however irregular they were in strictest law. Women who brought appeals of robbery might have been established longer in the world as independent entities; they sometimes used methods other than their own appeal to be heard in court, but the justices also seem to have taken their situation into account.

The justices were ready to wink at the rules in order to see justice done, not only to the well-off lady whose lands and custody rights had been appropriated, but to the prostitute deprived of her cloak, a source of warmth and

means of livelihood, as well. If they did turn to the rule about women's appeals it was as likely as not that their patience had been tried because the slayers had already been outlawed and the appellors had turned to the man who they thought had ordered the slaying. The contrast with appeals of rape, with their laconic entries, lack of prosecution, and limited possibility of conviction, is striking.

The justices took these appeals by women seriously, whether they were permitted in strictest law or not, and expected others, even the appellors, to do so. It is probably no coincidence that the Basset case was begun by an appeal for the death of a husband. The widow declined to prosecute, but when it emerged that she had settled the case by intermarriage with the Basset clan, the court declared all agreements void and administered one of the few hangings in the rolls.

Women have historically had a low participation in
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 crime, and here they only occasionally appear in the rolls as alleged offenders, just enough to show that they took their part in the violence of the time. As presumptive criminals women showed considerable stability; most were accused of crimes that took place in their own home or community. When the wife of Richard killed the wife of Elias Foster and fled with her husband she may have been involved in a neighborhood dispute; it is certain that Melisant wife of Ivo de Clifford set fire to the house of

Basilia daughter of Gilbert, thus burning Basilia's house and two others, because of old enmity between them. Agnes de Fonte and Alex her son were suspected of killing a merchant who was lodging in their house.⁵²

A few led a more vagabond life; some were not in the locality long enough for their names to become known. Nobody knew the names of two mulieres nebulatrices, "worthless women," who were arrested for a horrible crime, the strangulation, castration, and mutilation of an unknown man. Two other women, also unknown, had been killed some years before this incident; the man who had fled for their death was pardoned by King John because of testimony that the women were thieves. Hawis the robber, on the other hand, had gained notoriety in her neighborhood. She had attracted a group of men who wandered with her, one of whom, John Barate, went with them because he was in love with her. But the group killed two men in a wood, and John Barate died in prison. Hawis cleared herself by ordeal of having taken⁵³ part in the deaths.

Some women operated alone to commit their crimes; two of them cut their losses and abjured the realm rather than stand trial.⁵⁴ Most, like Hawis, were accused along with one or more confederates. Alienor de Baiocis was appealed of having ordered her son and daughter-in-law to kill a man⁵⁵ at their house. Usually women were accused along with their husbands or brothers, although two serving women were

suspected along with their employers. The jurors' presentment in a case of reception of men suspected of killing a hospitaler mentioned a serving woman before it mentioned the chaplain she served; perhaps, as the one who ran the household, she took the lead in admitting them. Ascelina de Watervill was appealed along with her sons; her name comes first and their surnames were not given; perhaps it was assumed they were doing her bidding.

Guilt by association may be too strong a term, but the courts looked closely at persons connected with a crime to be sure their connection was an innocent one. Maud mother of Isabelle, who broke up a fight between her daughter and another woman who later died, was to appear in court along with her daughter, and persons who were first to find the bodies of the slain were routinely expected to be in court when the homicide was presented.

The close association of husband and wife was enough to call the innocence of one spouse into question if the other had committed a crime. A husband's legal guardianship of his wife carried with it legal accountability for her actions; no doubt this is the reason Richard elected to flee with his wife after she killed Elias Foster's wife. When Melisant committed arson her husband Ivo was not personally implicated because he was in court at the time, but he had to make fine in order to avoid being arrested and had to find pledges that he would produce Melisant in court to face

charges if he could find her. William himself was the first suspect in the death of the merchant who entered his house and was never again seen alive; when the jurors' report implicated his wife he still had to find pledges in order to
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 avoid imprisonment.

A wife, on the other hand, fell under suspicion if circumstances such as her presence at the scene of the crime
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 or possible possession of stolen goods warranted. Some were not detained for long; Edith wife of Alexander, arrested with him for theft, was released because she had no stolen goods in her possession, even though Alexander was
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 defeated in the duel and hanged. Others were guilty according to the ideas of the time and were punished accordingly. Roger Palmer fled for the burning of the house of Adam de Ashdon; Roger's wife had fled with him, and she was to be waived, the term for women's outlawry, at the appeal of Adam's mother. Her waiving was routine, the consequence of her flight, but we may wonder if flight in this case was because of guilt or of lack of a protector other than her
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 husband.

The cases of two other women show less overt evidence of guilt to merit the court's measures against them. Jane widow of Ernald de Essewurth, summoned to court along with other defendants, was arrested and had to make fine because her husband, before his death, had killed her lover. This was done even though the jurors did not name her among the

guilty and, in fact, said that she was more displeased than pleased by her lover's death. Perhaps she was held partly responsible because the slaying was her husband's response to her infidelity.⁶²

Alice, the wife of William Blake, confessed that she was with her husband when he killed three men; William was hanged, and Alice was sentenced to death by burning. Alice tried to save herself from this horrible death by turning approver, that is, by appealing confederates and proving them guilty so as to have her own sentence lightened. Alice's ingenuity is remarkable; the word "approver" means roughly "one who makes proof," and the ordained method of proving accusations against cohorts was battle, which a woman could not undertake. She appealed three people, one woman, of homicide, and one man of receiving her husband and herself. He asked for a jury to declare whether he was of good or bad repute concerning the crime, as an appellee of generally good reputation could do; the case then drops from the rolls. She is the only female approver in these records and it is unfortunate that we do not know what became of her.⁶³

Women may have had reason to welcome the loss of the ordeal; it was the court's custom, adhered to in these rolls, to prescribe the ordeal of iron for women while allowing men to go to the less painful ordeal of water. In a case of burglary, for example, the court sent Maud sister

of Robert de Frokemere to the ordeal of iron and her brother and other male defendants to that of water. The court was more even-handed in a homicide appeal against Walter son of William Wither and his sister Maud in which both were to go to the ordeal of iron, but ran true to form with Giliena, appealed of sorcery, who cleared herself by ordeal of iron, while a man presented for the slaying of his wife did the same by ordeal of water.

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The form of capital punishment prescribed for women was also more painful than that for men; as in the case of William Blake and his wife Alice, men were to be hanged, but women were to be executed by burning. The mercy of justices who thought this inhumane looks strange to modern eyes; Agnes daughter of Richard de Lenn' was to lose an ear because the pallium she stole was of little value, and a certain Alice was to have her eyes torn out because the court took pity on her. Agnes sister of William de Caldecot was not considered worthy of such pity; she was to be burned because she had been convicted of taking part in the wounding of a man and the killing of two women, though because she was pregnant the sentence was not to be inflicted out until after her baby was born.

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It would be hasty to conclude, however, that the death sentences were actually carried out. Both were to be postponed; perhaps after some time had passed the court could quietly make other arrangements.

No woman in these rolls was sentenced for the killing of her husband; one was arrested but escaped before her trial and, though this convicted her in the eyes of the law, it also made her unavailable for sentencing. Perhaps this was her object; the killing of a husband, like the killing of a feudal lord, was treason as well as homicide, and the courts were severe with those who were even suspected of having to do with their husband's deaths. Marjory widow of Hugh Dobin did not kill her husband but was suspected of hiring the men who did because the couple had often quarreled over her adulteries, and because before he was killed she had removed all the chattels from their house. She was to undergo the ordeal of iron, but must have been successful because later in the rolls she is seen peacefully seeking her dower.

The court was prone to suspect a wife of complicity in her husband's death. Lucia widow of Faverel had to explain why she was not sleeping with her husband when he was killed by malefactors; her explanation that she was tending a sick child exonerated her. Another woman fell under momentary suspicion merely because she had dropped her suit against her husband's slayers. The court apparently drew the line, however, when jurors told a story worthy of an operatic plot about how the wife of Simon de Segrey used secret signals and a trusted servant carrying a gold ring to admit her lover to the house to kill her husband; the supposed lover

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was tried for the death but the wife was not.

The justices did not believe Maud widow of Richard Butler when she appealed Richard's servant of bringing a gang of men to kill him, but they were helpless to act. Maud had dropped her appeal after a token effort, and the jurors knew that the marriage was a tumultuous one. Richard had sometimes beaten Maud severely, whereupon her father and other relations would come and threaten him. The jurors thought Maud's uncle by marriage and some other men had killed Simon with Maud's connivance, and a panel of jurors from a nearby vill also suspected her. By 1221 when the case was heard the ordeal was no longer in use, and Maud had refused to put herself on the jury, which had testified at the justices' initiative. The history of spousal abuse did not win any special consideration for Maud, but the uncertainties of trial after the abandoning of the ordeal may have aided her; the court adjourned her case to Westminster⁶⁸ and there is no further record of it.

As in civil pleas, women sometimes faced other women as plaintiff and defendant in criminal appeals. A certain Galiena went to the ordeal of iron because she had been appealed by Agnes wife of Otto the Merchant, and Aileva de Rellenton appealed Ripeloça de Deuordan of killing her daughter Margaret by hitting her in the head with a rock. Sibella de Euercai fled to a church for sanctuary and abjured the realm after she killed Sibella de Batton. Women

were not above unjustly accusing other women. Maud de Rames appealed Marjory wife of Ralph Kelloc of imprisonment and a beating that caused her to miscarry. But Marjory pointed out that Maud had appealed her husband Ralph ten years ago⁶⁹ of the same crime, and the appeal was quashed.

The word "appeal" itself takes on new meaning in these criminal appeals by women, not in its modern sense of a legal action that reopens a case in a higher court, but in its older and broader meaning, to call upon for aid. In a literal sense "appeal" means to call upon an alleged offender to answer in court for offenses done, but these women were calling upon the court as well; they were calling on it as an entity stronger than themselves to aid them in situations in which their own strength could not be sufficient. The criminal actions other than rape gave them the opportunity to avail themselves of the legal system's strength as well as giving them options they might not be suspected to have had. They could bring appeals of the death of a husband and receive the court's sympathetic attention; if the circumstances warranted they could bring appeals not allowed to them and be reasonably certain they would be acted on.

The distinction between the legally allowable appeal of the death of a husband and those purportedly forbidden to women was not between response and no response but, in most cases, in the extent of the response the courts were willing to give. In appeals of death of a husband the justices were

ready to go beyond usual legal procedure to ensure that an appeal was continued; in the other appeals studied here the justices had gone a great distance in merely letting the appeal proceed and expended little effort to remove other obstacles. For Swanild, whose husband had been slain, the justices required written proof that the defendant was a clerk, but two supposed clerks were allowed to depart without remark in the appeal by Alice widow of Geoffrey for the death of her son.⁷⁰

It was the jurors, not the justices, who made the difference between lawful appeals by Denise widow of Anthony and Gunnilda widow of Roger Franklin for the deaths of their husbands and the technically unlawful one of Edith de Molson for the death of the mistress of the house where she served. The justices allowed all three to proceed to the jury even though none of the women had seen the defendant commit the crime. The jurors acquitted the defendant in Edith's appeal; in the other cases one defendant was to go to the ordeal and the other, whose appeal was brought after 1215, paid a substantial fine rather than face the verdict of the jury, which he seems to have assumed would convict him. Perhaps jurors gave more weight to the testimony of a wife than the testimony of a serving woman.⁷¹

In all these appeals the responsiveness of the court increased the options for appellors. In the appeal of rape, lawful for a woman to bring, options were limited to the

choice of whether to appeal or not and beyond that whether to continue to prosecute an appeal once begun; effective appellors chose among these in order to get some aid for their future life. In the appeals studied here, whether technically permitted or not, knowledge that the appeal would be acted on made the option to prosecute a worthwhile one to pursue. Also, in property crimes, a woman had some options about how to pursue her complaint: whether to use a perfectly lawful plaint, or to chance her luck on an appeal, knowing that in almost every case the appeal would be allowed to proceed.

The situation of women as defendants was a less favorable one. They were allotted a more painful ordeal and there is evidence that women were sent to it, though men of high birth might undergo the ordeal of iron as well. In capital crimes they were assessed a far more barbaric form of punishment, that of burning, which we have seen assessed in these rolls, but perhaps it was assessed and then not carried out. Maud widow of Richard Butler, who was suspected of having arranged her husband's slaying, was held over for further trial, but William Pech, accused of ordering the death of two women's sons, was allowed to go free when their appeals were quashed. But comparison of Maud's case with that of Henry le Cupere makes the court seem less one-sided. Henry refused to put himself on the jury and had to make fine at once for a large amount; Maud refused to put herself on the

jury but paid nothing and was given a postponement, perhaps because in actual fact she had been neither appealed nor presented.

In the criminal appeals other than rape we have seen women in something very like a favored position. As defendants some faced the pain of death by burning and, before 1215, of the ordeal of iron, but they were few, and the punishment of death by burning may never actually have been carried out. As appellors they received the sympathy of the court which allowed appeals to proceed when they should not have and, as we have seen in appeals of wounding, allowed them a favorable outcome in a higher proportion of their appeals than male appellors were able to win. In these actions women were given relatively broad latitude to act, latitude which they used to get results, as much in appeals labeled as forbidden to them as in those they were by law allowed to bring.

Notes

- 1 Glanvill xiv 3, 6 p. 175; Bracton ii 353, 419.
- 2 PKJ II 265, 266, 745.
- 3 PCG 414.
- 4 PKJ II 11, 309, 620, 747; PKJ IV 3442, 3478; CRR VI 351, 351 (two cases on page).
- 5 PKJ 3457; PCG 343; two other cases were to go to a jury to determine whether the appeals made therein were false, RCR II 265-66; CRR V 50.
- 6 PKJ II 740.
- 7 CRR IV 187, 225; apparently a son of one of the women who had accused the brothers had been drowned with a stone tied to his neck, CRR V 234.
- 8 PRS 24 231, 251; PKJ II 108, 298, 747; CRR V 303.
- 9 CRR VI 341-42.
- 10 CRR VI 9.
- 11 PKJ II 323, 382; CRR VI 270.
- 12 RJE-GWS 919.
- 13 ELAR 988, 1005; PCG 261; PKJ II 386, in which the woman concerned made a separate appeal from those made by her husband against two of his assailants, but all three appeals concerned the same incident and were concluded by the same concord.
- 14 Glanvill XIV 3, p. 174; Bracton f. 125, II. 353.
- 15 ELAR 532, 629, 638, 649; ENAR 8, 70.
- 16 ENAR 8; PKJ II 26, 301, 310; CRR VI 270; RJE-GWS 967.
- 17 ELAR 649, 629.
- 18 PKJ II 39; RCR II 97; ENAR 70.
- 19 ELAR 532, 638.
- 20 PKJ II 323, 382; and see text at note 11.

- 21 PCR II 272-73; CRR II 207; CRR IV 285.
- 22 CRR V 180,209; ENAR 15; PKJ II 39, 338.
- 23 ELAR 988.
- 24 PKJ II 348, 408.
- 25 Chapter III, text at note 43; ELAR 732.
- 26 ELAR 710, 747, 595; ENAR 15; PKJ II 408; PKJ IV 3494;
YK 3H3 747; RJE-GWS 935, 844.
- 27 YK 3H3 584, 585.
- 28 Lady Stenton surmised that this may often have hap-
pened in appeals of wounding; ELAR p. xxiv.
- 29 PKJ II 408.
- 30 See Chapter III, text at note 40.
- 31 RJE-GWS 923.
- 32 CRR II 207.
- 33 PKJ II 730, 731.
- 34 PKJ 686; CRR V 268.
- 35 PKJ II 738.
- 36 PKJ II 734, 742.
- 37 PKJ 755; CRR VIII 299.
- 38 PKJ II 735.
- 39 CRR VI 52; PCG 482.
- 40 CRR VII 26-27; PKJ II 750.
- 41 RCR I 57, 58.
- 42 PKJ 730, 735.
- 43 See text at notes 22 and 23.
- 44 CRR I 347-48; CRR VI 237.
- 45 CRR VI 23-24.

46 CRR IV 295-96; PCG 260.

47 CRR VII 187-88.

48 PKJ II 399.

49 See text at note 47.

50 See text accompanying notes 40, 42, 43.

51 Barbara A. Hanawalt, "Females as Felons and Prey in Fourteenth-Century England," in Women and the Law: A Social Historical Perspective, Vol. I, Women and the Criminal Law, p.165-67, has a good review of perspectives on women's criminality since the late middle ages.

52 PCG 213, 244, 490.

53 PKJ II 43, PCG 362, 446.

54 PKJ II 49, 50, 51; CRR VIII 279.

55 All the defendants argued that a previous inquest had exculpated them, but the court noted that a friend of Alienora's, the serjeant of the wapentake, had the victim's cap in his possession, CRR VIII 381-83.

56 PRS xxiv, 238; RCR I 163; CRR II 50, PKJ II 322; CRR IV 103; PCG 218 inter alia.

57 PCG 270;

58 See text at note 52.

59 See Bracton ii pp. 428-29 for a wife's criminal liability.

60 The only goods mentioned were horses, which would hardly have fitted into her storeroom or chest for valuables, two places where Bracton says the finding of stolen goods would implicate the wife, CRR IX 155; Bracton, ii pp. 428-29.

61 PKJ III 687.

62 CRR VIII 273, 276; PCG 289.

63 CRR I 108; PKJ II 359, 732; PKJ IV 3441.

64 CRR I 108; PKJ 359, 732; PKJ 241. Walter may have been sent to the ordeal of iron because of status; Glanvill

says hot iron was for freemen and water for villeins and, though it is doubtful that all men sent to the ordeal of water were villeins, status by birth may still have been a determinant, xiv 1, p. 173

65

RCR I 204; CRR IX 7-8; The only occasion in these rolls in which a woman was hanged it was not done by sentence of the justices; the men of the hundred of Godalming had to find pledges because they had hanged Elena widow of Edwin for stealing some pigs; CRR X 153.

66

CRR V 64-65; CRR VI 132, 184, 248, 318, 338, 342, 375.

67

PCG 254, 379

68

PCG 11.

69

CRR I 108; CRR II 295; PKJ II 43, 44, 336, 359, 732; and see PKJ II 733.

70

See text at notes 6 and 35.

71

See text at notes 2, 3, and 38.

Women at Law
The Elements of Justice

Between 1194 and 1200 women streamed into the curia regis for purposes as varied as the women themselves: Alice Clement for the inheritance that she said had been withheld from her, Lucia de Morestowe to punish the boys who humiliated her and stole her cloak, and Aldusa de Eton for revenge because her lover had married someone else.¹ The highest purpose of a legal system is to do justice, to find the truth and then make an adequate response. Taken case by case, it is often difficult to tell whether or not justice was done for any particular woman; entries are too often laconic, the facts at this distance too obscure. In their aggregate, however, the cases tell much about the court's response to women's concerns, its willingness and ability to hear their complaints and act on them.

The record of the curia regis in its treatment of all its litigants, male and female, is probably no worse than that of many other legal systems but it had its own areas of weakness and of growing strength. It had its greatest difficulty bringing those accused of crime to judgment, but was rapidly increasing its capability to decide civil cases. Its effect on women was an exaggeration of its effect on litigants in general. It was near impotence in its handling of rape, the crime that affected women alone; on the other hand its reforms in the civil law were even more helpful to

those pursuing or defending women's rights in land than to the body of litigants as a whole. Paradoxically, however, even when women were most at a disadvantage they were capable of emerging from the court with a vital need met, and when at their greatest advantage their interests can be seen to be bound up to some extent with those of men.

Hedged about by the patterns of sharing unique to their landholding, women faced extra difficulties in the action of right, as we have seen, because their pleas could not continue except with the presence and consent of other parties, their husbands, their sisters, their sisters' spouses, and their sisters' heirs. Probably few had to gather all the parties mentioned above, but most would need the participation of at least a husband or a sister or both if their suit were to proceed; thus the delays that plagued all litigants in the action of right and exhausted some were intensified for women litigants.

Modernizing the action of right by the addition of the grand assize, beneficial to all litigants, was even more beneficial to women because it eliminated some delay and allowed cases to be decided on the basis of fact. Because women's landholding never occurred in the obvious feudal pattern of descent from male ancestor to male heir, it was to women's advantage for the details of maritagium or default of male heirs to be explained. The grand assize was thus of great benefit to a woman defendant, always provided

the facts were on her side, but of less to plaintiffs, who in ordinary procedure could not ask for it. The grand assize made the action of right more amenable to women's use and points to the way that other modernizations were, probably quite unintentionally, to ease women's legal actions.

Though not the subject of this study, a brief look at newer actions derived from the grand assize, some coming into existence during the period of these rolls, indicates that their procedures were particularly beneficial to women who had a rightful claim because they allowed plaintiff and defendant alike to get a verdict on local knowledge of facts they brought to the court's attention. Mort d'ancestor allowed plaintiffs to bring the specific question, "was my ancestor seized on the day he (or she) died, and am I the nearest heir," a great help for a daughter to bring against a father's brother who had simply taken over the land as nearest male heir. On the other hand some women defendants, for whom a question about seizin of an ancestor might ignore conditions of seizin, the question might be rephrased, to wit, "did Robert's ancestor die seized as of fee or as of the maritagium of his wife Ermegarde, the defendant?"² The assize of novel disseisin came the closest of the actions to treating men and women on an equal footing because complicated questions of right and inheritance did not come into its purview.³ And it was the invention of the writ of entry cui in vita that provided a remedy the writ of right could

not easily give, one for the woman whose deceased husband had alienated her lands.

The action of right, with all its limitations, throws into high relief the qualities of character women needed to get results in the court. They needed legal knowledge if they were to overcome the difficulties and delays of which they were given more than their share, even if only enough knowledge to enable them to select the best attorney. They needed the intelligence and flexibility to use their knowledge to the best advantage. Above all, they needed the resilience and tenacity to continue even when a rightful claim seemed lost. They perhaps needed these characteristics more than male defendants. Many women were probably less experienced in the law because of their limited ability to participate in the working of the courts. Other disadvantages could be as unpredictable as being put in a convent by a greedy guardian.

Actions of dower, on the other hand, were marked by the favor shown to women defendants who were presumed to have been placed in a particularly vulnerable situation by the death of their husband and the withholding of all of their dower. The action, whether brought by unde nihil habet or writ of right to the lord's court, permitted fewer delays than other writs of right. It also placed a larger burden on the defendant who had no recourse to battle or the grand assize and so had the choice of offering proof of his own,

raising an exception to her suit, or rendering her the land. It would hardly be an exaggeration to say that it was assumed that widows were entitled to their dower unless the defendant could reasonably show otherwise.

These relatively favorable conditions are reflected in the results of the pleas; very few plaintiffs failed to prosecute, and of the cases that were concluded widows made some gain in a remarkable proportion, more than three-fourths of them.⁴ At their point of great vulnerability widows could look for some aid from the court, which at one point can be seen to have been bending the rules for them and allowing them to sue for dower in the king's court even when they possessed some part of the dower already and should have sued in their warrantor's court.⁵

There were indications that the widows' situation was undergoing a change. Males participated as husbands even in dower actions, and their rate of participation was on the rise; they appeared in about thirteen per cent of the cases before 1215 and twenty-one per cent after.⁶ The percentage of cases that the widows brought to a favorable conclusion was dropping; it went from eighty-five per cent before 1215 to seventy per cent after that year.⁷ Though a rate of seventy per cent is still very high, the fifteen per cent drop is a significant one. The marital state of a widow⁸ does not seem to have affected the outcome of her suit, the drop seems to have been occurring over all the cases, and

may have to do with an increasing judicial strictness after 1215 that manifests itself in the quashing of pleas brought by women who already had their dower. This attention to principle may have weakened women's position in actions of dower, but their position was still strong.

Women who brought appeals of rape found the court at its least responsive, and their failure to prosecute in large numbers, more than two-thirds of the appeals brought, may have been in part an expression of their lack of confidence in the justice they could expect, though repugnance at displaying the physical evidence of their injuries and even intimidation may have played a part. Women made some gain in the majority of cases they sued to a conclusion, sixty per cent, but these were a small proportion of the total, and no woman ever prosecuted her case to the point of a conviction.⁹

When a complainant of rape was served it was by a court whose viewpoint was colored by the property law it was rapidly developing,¹⁰ and when it dealt with appeals of rape the court was best prepared to redress a loss that was in some sense analogous to a property loss, the damage to marriageability that a woman might have suffered as a consequence of the rape. There are subtle suggestions that, although the husband was his wife's lord and guardian, the law viewed him in some respects as being in her possession. Bracton speaks of the wife as claiming her husband in

court, and a wife could appear in court to claim her husband's testicles if he had been sentenced to castration,¹¹ thus negating the punishment. If he was slain she could bring an appeal against his slayer, one of the two appeals¹² that in legal theory she was allowed to bring. This is not because she was a near relative; according to legal principle, if not in practice, she could not appeal even for the death of her son, though the father and brothers could.

The reason that Glanvill gives, that she may appeal because the two are one flesh, is unconvincing because when a husband is wounded his wife is not allowed to appeal unless, as we have seen, he is too badly injured to do so himself. Bracton tells why she may not: defendi uxores a viris, non viros a uxoribus, dignum est, "it is fitting that wives be protected by husbands, not husbands by wives."¹³ Bracton's reasoning suggests why the wife is given an interest at law in the death of her husband. He has provided her with protection and an establishment; if he is killed she has suffered injury and loss and may sue accordingly. A woman who was raped suffered a similar loss; she might be denied the protection of a husband. The court was content if the loss was restored to her in the form of a marriage or a payment that might facilitate a marriage.

The situation did not improve with the coming of the jury after 1215. Jurors declared a few defendants guilty even though the woman had not prosecuted her appeal, but

they acquitted most of the men brought before them. Once juries became the norm the number of concords arrived at in court dropped; perhaps defendants could be more confident of a favorable verdict.¹⁴

The records are silent on whether there was bias on the part of a male court in dealing with a crime in which victims were exclusively female and the accused were exclusively male. Perhaps there was; women who complain of rape have always faced skepticism. But the records of appeals of wounding show that, if a low rate of conviction denotes skepticism, the justices' skepticism extended to male appellors of wounding and turned to hostility against men whose appeals would have forced their opponents to the ordeal.¹⁵ Moreover the few women who brought appeals of wounding were more successful than either group; they won more than half the cases they brought to a conclusion, and, though their appeals were only 4.1 per cent of all wounding appeals, they won two, or twenty per cent, of the convictions.¹⁶

Women who brought appeals other than rape found the court at its most responsive, more willing to examine cases in detail and even hearing cases that by its own stated principle it could not entertain. For women who brought appeals of the death of their husbands the courts overlooked deficiencies that might have quashed the appeals such as failure on the part of the appellors to prosecute and inability to assert they had seen the accused commit the crime.¹⁷

For other women it ignored the principle that forbade women any appeal other than rape or the death of their husbands and heard appeals of the death of brothers, fathers, and daughters as well as appeals of robbery of the women themselves, in one case not halting the appeal even though the defendant objected to having to answer to a woman for such a¹⁸ matter.

When the justices quashed two appeals by stating the principle they seemed to be acting as much from asperity as from a concern for law. The men who had committed the homicide and who were within the purview of the court had already been outlawed; this appeal had been brought against a man who might have ordered them to commit the crime, and¹⁹ may have seemed to the justices to go too far. The principle itself may have been known well enough to discourage most appeals the justices would have considered frivolous. In the appeals that did come before the court the justices were willing to use their discretion and extend legal protection to women who appear to have had no male who could take up their appeals for them.

The allocation of judicial response among the various actions does not seem to have had much to do with the status of the women who brought them. At first glance the opposite may seem the case; appeals of rape with their poor record of convictions attracted plaintiffs of fairly low economic and social status. One woman may have had a household of her

own which the rapist had taken over, but others seem to have been of more humble status. Admittedly status is difficult to determine in the rolls, but in appeals of rape there are no exalted names and no titles, though one Beaumont is named²⁰ as a defendant.

It may be that women of lower status were more vulnerable to rape and women of the upper ranks more vulnerable to abduction than to rape, since the lands of wealthier women would be part of their attraction. Or perhaps their rape, when it occurred, was punished outside the courts. It may well be that such revenge was being exacted at a lower level of society when Emma wife of Alan the Reaper helped castrate Thomas son of Lefwin, or when Alicia daughter of Richard was²¹ accused of tearing out the eyes of Hugh son of Elwin. At any rate the women who brought rape appeals seem to have been those who could make use of the moderate sum of a half mark or of a marriage that would establish them in life. Probably they were the daughters of the lower burgesses and small landholders, knowledgeable enough to bring their cases to the court but not of high standing.

Women who brought actions of right, on the other hand, seem to have been of the highest status overall, but the action they used confined them to a course of delays and anxieties, and judicial discretion was not often exercised in their favor. As in appeals of rape, status is difficult to ascertain, especially when countesses sued for tiny par-

cels of land, but there are numerous litigants with great names and several with titles,²² and while there are many cases in which small landholdings seem to be of vital importance, there are none which suggest desperate poverty.

Actions of dower, in which women plaintiffs had an enviable success rate, seem to have encompassed the broadest spectrum of economic status, from a few titled ladies to a few who were described as pauperissima,²³ an extremely poor woman. with a wide range in between. Some of the criminal appeals other than rape were brought by women of substance, but the consideration justices showed the women also extended to a prostitute whose concern was a cloak that had been hocked for three pence.²⁴ Overall status of litigants, then, would not seem to have been a determinant of judicial response to an action. Nor, apparently, was legality of the appeal; justices were more attentive to women bringing appeals forbidden to them than to appeals of rape.

The court's response to women cannot be described by any simple formula. The justices did not respond so much to women qua women as to the situations they perceived women to be in and sometimes to the individual women themselves. In criminal actions, the court extended little help to rape victims. Perhaps this is a parallel with wounding in that, unlike victims of robbery who may be thought of as doing all they can to guard their possessions, victims of personal violence might be suspected of somehow bringing their mis-

fortune on themselves. Male victims of wounding often were injured in fights into which they had freely entered; women may have been regarded, whether reasonably or not, as having freely entered into situations that later did them harm.

In any case, the courts did little for appellors of rape other than to give them a forum in which to publicize their version of an incident that might have damaged their marriageability or perhaps to gain a settlement to help them order their future lives. The contrast with the court's behavior toward other appeals women brought, even those women were forbidden to bring, is striking. The legal system imposed very painful forms of ordeal and capital punishment on women, but, though women are seen to undergo the ordeal of iron, it is not clear that they were subjected in these rolls to death by burning.

The court's attitude toward women, if any, might be characterized as an expectation that women would spend most of their lives under the protection of men. This protection would impose certain limitations on women which in general the court would enforce, but in the absence or default of those who ordinarily would function as protectors the court itself would see that justice was done. An easy answer, and one that might be partially correct, is that the courts could be sympathetic to a woman whose plight appealed to paternalistic instincts but not to one whose charge of rape challenged paternalism by complaining of a crime that

only a male could commit. Thus the court had a special interest in widows, bereft of husband, whose warrantors had defaulted on their responsibility to provide dower; the legal system itself protected them by providing an action²⁵ that considerably eased their suit for dower.

This same protection extended to women whose lives had been disrupted by the slaying of their husbands. The court did not stop to ask if the slain man had a father, brother, vassal, or lord who could better bring the appeal and back it up with the offer of battle; the justices heard the bereaved wife's appeal without question unless, as in one case, they simply wanted to know her preference as to who was to sue, or as in another, they thought she herself was in part responsible for the deed. The protection was also extended to another group of women who, though they had not suffered the recent loss of a husband, were on their own and had to bring their appeals of the death of a relative or robbery themselves.

The position offered by marriage was still the way of life marked out for most women, however, at least for some part of their lives. This obvious fact has an implication that that has been overlooked in speaking of women's landholding, which is that men were inextricably linked with women's rights in land, and that women's rights were to some extent those of men.

Men's most pervasive involvement was as husbands.

Most women could expect to be married one or more times in their lives, which meant that, given the standing of land as chief source of wealth, there would be one or more men calculating on receiving her land along with her hand in marriage and possibly suing for lands owed to her once the marriage had taken place. This extent of involvement alone would guarantee a male constituency heavily in favor of women's land rights.

Women would also be likely to have male heirs, sometimes sons, but nephews, brothers, if the holding was a *maritagium* or other gift, grandsons, and of course more remote descendants. These men, too, would have a vested interest in the correct assignment of lands held in purparty, maritagia, and other aspects of women's rights in land. Between those who had custody of women's lands by marriage and those who inherited from women, men with direct interest in women's rights in land must have made up a large part of the male population.

Beyond these overtly interested men stands a less visible group whose interest in women's land rights must nevertheless be taken into account. This was a group of men who hoped to rise in social and economic standing and to form a coterie of other men dependant on him to solidify his position. One convenient way to rise in economic standing was to make a marriage alliance with a wealthy heiress; alliances with heiresses of more moderate fortunes were an

appropriate reward for dependants. A widow of suitable endowment was a lesser but still worthy prize; one man paid²⁶ a hefty sum to be allowed to marry such a woman.

Such men made up a substantial part of the growing royal administration, including the legal system and those whose thinking framed the laws. There is no reason to impute open bias to them; many considerations of administration, politics, and the balance of powerful interests weighed on them. But there is also no reason to think that their own interest did not dispose them, at least unconsciously, to a favorable view of women's right in land. The effect of such a favorable disposition would not be felt in actions of right because their development was complete. It would be felt in actions such as the petty assizes and writs of entry which were still being evolved and whose usage was being modified in the hands of the justices. The effect of the petty assizes on women's legal interests needs more careful evaluation than can be given here, but overall they were beneficial, and the writs of entry more so; the cui in vita that gave women a way to recover lands their husbands had alienated was one of the very early writs of entry. Even actions of dower, though not changed in substance, became more favorable to the widow; the third portion of a late husband's lands that was the most a widow was allowed in these rolls evolved to become in later years the minimum²⁷ that could be allotted to her.

In an age that expected women to marry and in which men counted on the use of lands of women they married, it may be wondered whether women could live outside the married state and if those who did could function effectively. Aristocratic widows who could command considerable resources have been the only visible examples of women who could do so. Nicola de Hay, for example, a widow and of advanced age, successfully defended Lincoln Castle against the French in 1216, and Isolda Biset after several marriages and bereavements had amassed extensive landholdings, including dower²⁸ from her husbands, and spent her life managing them.

The rolls give evidence that women at lower levels of landholding society were making a life on their own. Since lawsuits and appeals are about the trouble that comes into people's lives, we find these women dealing with problems that arose while they were going about their normal business.

Two women who appear to have been keeping hostelries came to the court's attention because men lodging at their houses committed crimes. At the house of Edith de Oxendone a man from overseas was killed by his associate; the associate fled and two other men who were staying at the house were arrested, but the jurors did not suspect Edith. A man who lodged one night at the house of Edelina de Ludelawe got up in the night and took goods he found there; the men of²⁹ the village pursued him and he was killed.

The women had the confidence of their communities, as the jurors' statement and the village's pursuit of the thief attest, so it is unlikely they were knowingly receiving felons. The presence of several men, including foreigners, at one house and the one night's lodging given unknowingly to a thief at the other suggest, on the other hand, that the women were not just giving house room to a friend; they were probably earning some part of their sustenance by giving lodging to travelers. That two women without husbands gave house room to strangers caused no remark in the rolls; perhaps the practice was fairly common and only the disturbances were remarkable.

That women brewed and sold ale is well known; They seem also to have sold it for consumption in their houses. A dispute that arose at an ale, a convivial gathering, at the house of Maud de Haselcote ended in the killing of one man³⁰ and the flight of four others. Like Edith de Oxendone, Maud was unlikely to have been entertaining friends, and there is no suggestion that she had any part in the crime or that there was anything unusual about such a gathering in her house even though, as with Edith and Edelina, there is no mention of a husband to conduct the enterprise.

As Doris M. Stenton remarked, women do not serve as³¹ royal justices, but as landholders they had their courts, and the duties of some women made them a part of the king's justice. That women paid suit to the curia regis--that is,

were required to attend the court and assist in its proceedings--cannot be established in these rolls, though they were to do so in the hundred courts later in the thirteenth

³² century. There were, however, at least two who were in charge of a frankpledge. When Robert de Kime fled for the death of a man he was in the frankpledge of Hawis de Kime, and Marjory de Tid held the frankpledge in a vill where a woman was found dead for whom Englishry had not been presented.
³³

Women are seen dealing personally with trouble concerning men who were under their authority. Alexander de Bettreche appealed John de Chelesham and John's mother Maud and an assortment of other people, men and women alike, of carrying off his chattels by Maud's order. Maud undertook to answer for all; Alexander was her man and she was distraining him for arrears of service. Petronilla de Stanweye paid the court forty shillings so that her miller, who refused to put himself on a jury but whom the jurors believed to be guilty of the death of Petronilla's servant, could abjure the realm rather than face any further proceedings. At a humbler level, Agnes of Coventry had Alicia Palefrey outlawed for the death of a person the rolls refer
³⁴ to as Agnes's "boy," probably her servant.

Criminal appeals give a glimpse of women who, before the incident for which they appealed, were living peacefully in their own households. Leticia de Clifesbi appealed two

men of robbery, saying that they came to her and her mother's house, tied them up, and robbed them. Leviva daughter of Siwat said she was raped and held in what seems to have been her house for eight days by a man who still had her chattels.
35

The circumstances and employment of these women come to us by accident; their relative independence was matched by that of many others who sued for their rights in land and by that of those who appealed because they were robbed or someone near to them was killed. The presence of a healthy minority of unmarried women shows that marriage was not indispensable to a woman's ability to function in medieval society.

This is not to say these women had never been married. Several were widows, the women long supposed to be best situated to manage their own affairs. But others were obviously women who were as yet unmarried, women such as Leviva daughter of Siwat, the groups of unmarried sisters who sued for their rights in land, and the eight sisters one widow had to sue for her dower. And we are reminded of the woman whose father bought the wardship of a minor heir to sustain her.
35

It would be rash to assume that these unmarried women would not later marry, or that none of the widows would remarry. A safer assumption would be that there were women who waited for some time after coming of age before they

married, and that some widows could delay remarriage or even forego it altogether if that was their wish; i.e., that there was a lengthening of the periods in women's lives when they found themselves able to live without husbands and protectors. With the exception of certain widows who had consolidated their position and could fend off attempts by their seigneurial lords to marry them to suitors of the lords' choice, most of these women were probably of relatively moderate means. If they were very rich they would be too valuable a commodity to remain outside the network of alliances of which medieval marriages were a part; if too poor they could not sustain themselves.

It is not possible to do more than speculate about the conditions that allowed women to function in an era that conventionally regarded a woman's options as being the choice between marriage and a nunnery.³⁶ In an expanding economy it may have been easier for everyone, women included, to get an adequate return from their lands. The slow change from labor services to rents, on the other hand, may have had little effect; M. M. Postan argues that in the period of inflation around the turn of the thirteenth century landlords, and presumably landladies, were finding rents³⁷ inadequate and trying to get labor services reinstated. The change from knight service to scutage, however, could have been very helpful to women; no doubt they could muster the required man or men to serve from among their depen-

dents, even though they could not perform knight service themselves, but rendering money would have been more efficient.

A major part in the easing of their circumstances would have been played by the legal system, which was in the process of easing the way for all litigants, and as I have argued for women in particular, by introducing and refining actions that permitted questions of land tenure to be decided on the basis of known fact. Masculine interest in women's rights in land may have helped to ensure that those rights continued to be a matter of interest to the courts, but single women benefitted equally. The money women expended to obtain or defend their rights in land was as welcome as that of male litigants.

In turn single women were having their own effect on the court. Masculine interest may have had much to do with innovations such the writ of entry cui in vita; a very early version of the writ was issued to speed the suit of Peter of Stokes, and Lady Stenton suggests that he may have had a³⁸ hand in drafting it. But another area of legal activity shows the court's direct, if informal, response to women who brought their actions alone. As we have noticed, women were bringing criminal appeals for offenses other than rape done to themselves and the death of their husbands, and the court in many cases was hearing these appeals in spite of its own statements to the contrary. The justices were

confronted with a group of women who for some reason were without the protectors who normally would bring their appeals for them, and had to respond. Rather than dismiss the appeals out of hand they chose to do justice to the women, and by their choice they signalled a tacit acceptance of the women's autonomous position.

A picture of women before the law as passive, as captives in a restrictive system who were unable to proceed except in narrowly circumscribed ways, does not adequately represent their achievements. Their activity in court was a subtle interplay among women, the legal system, and women's opponents, themselves often women. On the one hand the restrictions on women were greater than have been imagined. The unintended effect of purparty was greatly to hamper the legal actions of women and their heirs by subjecting them to further delay in an action plagued with delay, and women's nearest interests, even that of dower, were to a large extent the interests of the men with whom they shared their landholding.

On the other hand, women could do more in their own interest than has previously been acknowledged. Faced with the restrictions on them, women sometimes had to submit and accept what the legal system had to offer them. Submission was not, however, the only course of action open to them. Sometimes they could work within the options allowed to them and gain some form of redress when the system was least

responsive to them, as Marjory daughter of John of Turgirtorp did when she used her appeal of rape to frighten her assailant into an out-of-court agreement to marry her. In at least one case only indefatigable persistence in impossible conditions could bring about even a partial gain; Alice Clement won a part of her inheritance in spite of her guardian's machinations, her own excommunication, the displeasure of a king, and the passage of twenty years, and her achievement was incredible when measured by the obstacles she overcame. Sometimes women pushed against the limits imposed on them to get what they saw as their right. Lucia de Morestowe, a member of a profession usually thought disreputable, brought an appeal of robbery, one that the law said she could not bring, and was awarded the sum of money she needed to reclaim her stolen cloak. The actions of these women tell something about women, and thus about human beings, in any era: that a list of the limitations they operated under does not tell everything about the quality of their lives, the ways they found to mitigate the limitations, and the achievements they were able to make.

Notes

- 1 Chapter I, text at notes 52-59; Chapter IV, text at note 4; Chapter III, text at note 23.
- 2 CRR III 325-26.
- 3 See CRR V 247-48 and CRR VI 331-32, 372 for women acting in a relatively unrestricted way.
- 4 Chapter II, Table 2:3
- 5 Chapter II, text at notes 46-48.
- 6 Chapter II, text following table 2:3
- 7 Ibid.
- 8 Chapter II, Table 2:3.
- 9 Chapter III, Tables 2:3 and 3:3.
- 10 Robert C. Palmer, "The Origins of Property in England" Law and History Review 3 (1985), pp. 7-8, 47.
- 11 Note that the husband may still be blinded, but his wife's immediate concern was apparently thought to have been attended to; J. M. Kaye ed., Placita Coronae or La Corone Pledee devant Justices, Selden Society Supplementary Series, vol. 4 (London, 1966), p. 9.
- 12 Glanvill xiv 3, p. 174; Bracton ii pp. 353, 419.
- 13 Glanvill ibid.; Bracton ii p. 438.
- 14 Chapter III, Tables 3:6 and 3:7; and see Andrew Thomas Green, Verdict According to Conscience: Perspectives on the English Trial Jury, 1200-1800, pp. 28, 31-32, 34, 41, and passim for an opinion that juries were giving acquittals to men who had committed homicide rather than convict when they thought the death penalty was too severe a penalty for the particular homicide.
- 15 Chapter III, text at notes 40-43.
- 16 Chapter IV, text at notes 16-20.
- 17 Chapter IV, text at note 3.
- 18 Chapter IV, text at notes 36-48.

- 19 Chapter IV, text at notes 42, 43.
- 20 CRR I 148.
- 21 Chapter III, text at note 43; Chapter IV, text at
note 25.
- 22 Chapter I, text at note 6.
- 23 CRR IV 83, 154, 272, 304; RJLW 223, 726.
- 24 Chapter IV, text at notes 36-48.
- 25 Chapter II, Text at notes 11-13.
- 26 Turner, Judiciary, p. 62.
- 27 P&M ii 421-22.
- 28 Scott L. Waugh, The Lordship of England: Royal Wardships and Marriages in English Society and Politics, 1217-1327 (Princeton, N. J.: Princeton University Press, 1988); and see CRR VII 193, 263, 318.
- 29 PKJ 688, PCG 238.
- 30 PCG 734.
- 31 Doris Mary Stenton, The English Woman in History, (London: George Allen and Unwin Ltd, 1957) p. 30.
- 32 Helen Cam, The Hundred and the Hundred Rolls: An Outline of Government in Medieval England, (London: Methuen, 1930) p. 111.
- 33 ELAR 762, 898; for Maud de Espanes who vouched her court to warrant in a claim of mort d'ancestor see PKJ IV 4250.
- 34 CRR VI 208; PCG 330, RJE-GWS 970.
- 35 ELAR 854, 855, 916.
- 36 Stenton, English Woman, p. 41.
- 37 M. M. Postan, The Medieval Economy and Society: an Economic History of the Middle Ages (London: Weidenfield and Nicholson, 1972; Middlesex, England: Penguin Books, 1975).
- 38 PKJ I, Introduction, p. 19, Writ # 3157.

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