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Citation for published version:

Beattie, C 2019, 'Married women's wills: Probate, property and piety in Later Medieval England', *Law and History Review*, vol. 37, no. 1, pp. 29-60. <https://doi.org/10.1017/S0738248018000652>

Digital Object Identifier (DOI):

[10.1017/S0738248018000652](https://doi.org/10.1017/S0738248018000652)

Link:

[Link to publication record in Edinburgh Research Explorer](#)

Document Version:

Peer reviewed version

Published In:

Law and History Review

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**Married Women's Wills: Probate, Property and Piety in Later
Medieval England**

Journal:	<i>Law and History Review</i>
Manuscript ID	LHR-2018-0017.R2
Manuscript Type:	Original Article
Keywords:	married women; canon law; common law; paraphernalia; medieval England.

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Married Women's Wills: Probate, Property and Piety in Later Medieval England

In 1487 Master William Chaunt, notary public and proctor general of the court of Canterbury, held that it was "the custom [consuetudinem] of the kingdom of England [that] a married woman, first having obtained license [licencia] from her husband, can make a testament concerning her own property [bonis paraphernalibus et distinctis]".¹ In 1497 Chief Justice Fineux argued in the King's Bench that, "by ecclesiastical law she [a wife] can appoint an executor of her paraphernalia [son apparel de son corps] though they belong to the husband at common law, and she requires his consent at common law".² Both these legal disputes - one in a church court, one in a common law court - had

¹ Testimony of William Chaunt in Shannon McSheffrey (ed.), "Consistory: Testimony in the Late Medieval London Consistory Court", online at <http://consistory.cohds.ca/obj.php?object=deposition&action=view&id=41&expand=actors> (accessed 31 Oct. 2017).

² Trin. 12 Hen. VII pl. 2 f. 22a; trans. from A. K. R. Kiralfy, A Source Book of English Law (London: Sweet & Maxwell, 1957), 436; the Law French is from the Vulgate Year Books Reprint, online at David J. Seipp, "An Index and Paraphrase of Printed Year Book Reports, 1268-1535", <<http://www.bu.edu/law/seipp/>> (accessed 26 Jan. 2018), 1497.006 (hereafter the Seipp number only will be given). The evidence here is from a year book not the official roll of the court. Year books were unofficial reports, made by law students and practitioners who were interested in the arguments used in open court rather than in the verdicts. See further J. H. Baker, An Introduction to English Legal History, 4th edn (London: Butterworths, 2002), 178-80; E. W. Ives, "The Purpose and Making of the Later Year Books", Law Quarterly Review 89 (1973): 64-86.

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3 their origins in a married woman making a will at the end of the fifteenth century and
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5 there being some disagreement about whether such a will was valid. In both cases those
6
7 who believed that a married woman could make a will did so by setting out clear
8
9 parameters for such an act: she must secure her husband's permission (the King's
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11 Bench case discussed if this needed to be explicit or could be implied) and only
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13 bequeath her own personal property (and here the lawyers argued about what might be
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15 said to be the wife's own).
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22 In the King's Bench case, the Chief Justice referred back to an earlier case (1426) in
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24 which a Justice had argued that it did not matter if canon law allowed a married woman
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26 to make a will, in this court "our law" prevailed and under this law she had no
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28 possessions.³ Although this view was not the majority one in this particular court room,
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30 it sets up well the clash between the canon and common law positions on married
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32 women's wills. The scholarly consensus, cemented by Richard Helmholz's essay of
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34 1993, is that the common law position prevailed, at least to the extent that the Church
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36 did not succeed in convincing people that married women did not need their husbands'
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38 consent to make a will but perhaps also to the extent that married women largely
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40 ceased to make wills from around 1440 or 1450.⁴ I will summarize the debate about the
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47 ³ Trin. 4 Hen. VI pl. 21 f. 31; Seipp 1426.050; discussed in Sara M. Butler, "Discourse on
48
49 the Nature of Coverture in the Later Medieval Courtroom", in Married Women and the
50
51 Law: Coverture in England and the Common Law World, ed. Tim Stretton and Krista J.
52
53 Kesselring (Montreal: McGill-Queen's University Press, 2013), 30-2.
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55

56 ⁴ Richard H. Helmholz, "Married Women's Wills in Later Medieval England", in Wife and
57
58 Widow in Medieval England, ed. S. S. Walker (Ann Arbor: University of Michigan Press,
59
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common law and canon positions below, adding in the position of customary law. I will then review the studies of married women's will making in practice, adding some of my own statistical findings in order to argue that there was regional variation in the late fifteenth century. The article will then focus on the deanery of Wisbech 1465-77, its linked diocese of Ely 1449-1505, and the Archdeaconry of Buckingham 1483-97, where married women made wills in significant proportions and had them proved. In particular, a focus on court books (for Wisbech and Buckingham) which included visitation material, enrolled wills, and probate *acta*, enables more to be said about the kinds of married women who made wills and their possible motivations for so doing. The article argues that, in these areas, as well as a continued tendency for wives who had some land or buildings to make wills, wives who were married to, or had other close connections with, men who acted as churchwardens or jurors in church courts might also have their wills proved, even when they had little to bequeath. It will thus add another dimension to the debate about the impact of different legal jurisdictions on the property rights and legal abilities of married women, one that allows for more fluid practices.

Married women's wills: the legal position

1993), 175; Charles Donahue Jr, "Lyndwood's Gloss *proprium uxorum: Marital Property and the ius commune in Fifteenth-Century England*," in Europäisches Rechtsdenken in Geschichte und Gegenwart: Festschrift für Helmut Coing zum 70. Geburtstag, ed. Norbert Horn (Munich: Beck, 1982), 20; Mary Prior, "Wives and Wills 1558-1700", in English Rural Society, 1500-1800: Essays in Honour of Joan Thirsk, ed. John Chartres and David Hey (Cambridge: Cambridge University Press, 1990), 202.

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6 In late medieval England, church courts had primary probate jurisdiction and, according
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8 to canon law (following Roman law), married women were fully capable of making a
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10 testament of their separate property.⁵ English ecclesiastical legislation in the thirteenth
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12 and fourteenth centuries set out that husbands must not prevent their wives making
13
14 wills, under pain of excommunication.⁶ However, the matter of probate jurisdiction was
15
16 one of *customary* practice in England, not a canonical principle.⁷ This is one of the
17
18 reasons Helmholz offers for why there was room for development in the legal position
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20 concerning married women making wills.⁸
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27 While some people in this period made a “last will” for land and a “testament” for
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29 chattels, this separation was not always made.⁹ The lack of a clear distinction between a
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34 ⁵ Helmholz, “Married Women’s Wills”, 166.

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36 ⁶ Helmholz, “Married Women’s Wills”, 166; see also Michael M. Sheehan, “The Influence
37
38 of Canon Law on the Property Rights of Married Women in England”, Mediaeval Studies
39
40 25 (1963): 119-20.
41

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43 ⁷ R. H. Helmholz, Oxford History of the Laws of England: Volume I. The Canon Law and
44
45 Ecclesiastical Jurisdiction from 597 to the 1640s (Oxford: Oxford University Press,
46
47 2004), 387-8.
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50 ⁸ Helmholz, “Married Women’s Wills”, 175.

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52 ⁹ See Michael M. Sheehan, The Will in Medieval England: From the Conversion of the
53
54 Anglo-Saxons to the End of the Thirteenth Century (Toronto: Pontifical Institute of
55
56 Mediaeval Studies, 1963), 178, 192; E. F. Jacob and H.C. Johnson (eds), Register of Henry
57
58 Chichele Archbishop of Canterbury, 1414-1443, 4 vols, Canterbury and York Society, 42,
59
60

will and a testament is also evident in some contemporary discussions about whether married woman could bequeath property, which is significant because, under common law, a married woman owned no chattels.¹⁰ Under common law, with its doctrine of coverture, on marriage a husband became guardian of his wife's lands, whether they were part of her dowry or she inherited them, but she retained ownership and so when the marriage ended she should be able to recover them. With chattels, including those she received after marriage, the husband became the owner, with the possible exception of her clothes and jewelry.¹¹

The earliest treatises on English common law indicate that the initial common law position was that a married woman could not make a will without her husband's consent. The late twelfth-century treatise known as Glanvill stated that because "she is in the power of her husband" ("in potestate viri"), any chattels are his. However, it did go on to suggest that it would be "kind and creditable" for a husband to allow his wife to dispose of that third part of his goods that she would have obtained had he died first.¹²

45-7 (Oxford: Clarendon Press, 1937-47), II, xix -xxi. The terms are therefore used interchangeably in this article.

¹⁰ Donahue Jr, "Lyndwood's Gloss", 20 n. 3.

¹¹ Sheehan, "Influence of Canon Law", 113; Donahue, "Lyndwood's Gloss", 34-5; Frederick Pollock and Frederic William Maitland, The History of English Law Before the Time of Edward I, 2 vols (2nd edn; Cambridge: Cambridge University Press, 1911), II, 407-27.

¹² G. D. G. Hall (ed.), The Treatise on the Laws and Customs of the Realm of England Commonly Called Glanvill (Oxford: Clarendon Press, 1993), 80.

The division of a man's movables into thirds, if he had children (halves if he did not), originated in England as a customary rule and was widespread by the end of the reign of Henry I.¹³ The husband should leave a third of his goods to his widow, a third to his children and his testament would then concern the final third, which he could freely bequeath.

The treatise known as Bracton, largely composed in the late 1220s and early 1230s, was in agreement with Glanvill that allowing a wife to bequeath her third was "only proper" ("propter honestatem"), and added "especially things given and granted her for personal adornment, as robes and jewels, which may be said to be her own".¹⁴ Although the term "paraphernalia" was not used as yet, this is what came to be understood in common law by that term. Neither of the statements in Glanvill and Bracton about what wives might have been able to bequeath had the force of common law, but they are allusions to contemporary practice in the late twelfth and early thirteenth centuries.¹⁵

¹³ Sheehan, The Will, 291. R. H. Helmholz, "Legitim in English Legal History", University of Illinois Law Review 3 (1984): 659-74 (665), discusses why legitim was not treated as a right guaranteed by the statute law of the church in England.

¹⁴ "et maxime de rebus sibi datis et concessis ad ornatum, quae sua propria dici poterunt sicut de robis et iocalibus": Bracton on the laws and customs of England, ed. George E. Woodbine, trans. Samuel E. Thorne, 4 vols (Cambridge MA: Belknap Press, 1968-77), Vol. 2, 179.

¹⁵ In a King's Bench case of 1311, the serjeants argued about whether a married woman might make a will of the third share. One argued that it was against common law. Justice Rothbury cited clause 18 of the Magna Carta of 1225, which referred to the reasonable

Glanvill stated with reference to husbands allowing their wives to bequeath a third share: “many husbands in fact do this, which is much to their credit.”¹⁶

The question of whether a married woman needed her husband’s consent to make a will or not was publicly contested in 1344. The Archbishop of Canterbury John Stratford had issued a provincial constitution in 1343 stating that anyone who hindered married women from making a will, including their husbands, should be excommunicated from the church.¹⁷ This led to a Commons petition to the king in 1344, which seemed to object to the very idea that married women could make wills: “the commons pray: that whereas an ordinance was made by the prelates ... that bondsmen and married women [femmes] might make a will, which is unreasonable, may it please him and his good council to ordain remedy”.¹⁸

shares belonging to wives and children, as support but the serjeant responded that it referred to the woman as widow: Year Books of Edward II, ed. G. J. Turner, vol. 10, Selden Society, 63 (1944), 241; Seipp 1311.295ss.

¹⁶ Hall (ed.), Treatise on the Laws, 80: “quod plerique mariti facere solent, unde merito commendabiles effociuntur”.

¹⁷ David Wilkins, Concilia magnae Britanniae et Hiberniae, 4 vols (London: Sumptibus R. Gosling, 1737), II, 705-6; the dating is that offered by C. R. Cheney, “Legislation of the Medieval English Church”, English Historical Review 50 (1935): 415-17.

¹⁸ Chris Given Wilson (ed.), The Parliament Rolls of Medieval England, 1275-1504 (Leicester: Scholarly Digital Editions, 2005), hereafter PROME, June 1344, ii-149, IX. I have altered the translation of “femmes” from women to married women as that makes more sense in this context. The citizens of Dublin, also under the rule of the English

As Charles Donahue reminded us, we should be wary of assuming that the canon legal position had been “overwhelmed by the force of the common law” by the middle of the fifteenth century, even if it was in the sixteenth century.¹⁹ He demonstrated how William Lyndwood’s gloss “*propriarum uxorum*”, part of his canonical commentary *Provinciale* (completed by 1430), deliberately adopted a broad understanding of “paraphernalia” - all that is hers except the dowry, and those acquests attributable to it - in order to argue that a married woman did not need permission to dispose of something that she was considered to own.²⁰ The year book evidence suggests that around the same date common lawyers had a much narrower definition of paraphernalia; given the small number of legal treatises written in late medieval England, the year books are our principal source for the development of common law doctrines and concepts.²¹ A debate in the Court of Common Pleas in 1454, recorded in a year book, about whether a widow effectively took on liability for her deceased husband’s estate when she accepted delivery of certain goods, speaks to what the

crown, made a similar complaint in 1347: John T. Gilbert (ed.), *Calendar of Ancient Records of Dublin*, I (Dublin: Dollard, 1889), 145.

¹⁹ Donahue, “Lyndwood’s Gloss”, 37; here he was responding to, amongst others, Sheehan, “Influence of Canon Law”, 120, 123-4.

²⁰ Donahue, “Lyndwood’s Gloss”, esp. 22. For a discussion of both the work and the gloss, see Brian Edwin Ferme, *Canon Law in Late Medieval England: A Study of William Lyndwood's Provinciale with particular reference to Testamentary Law*, *Studia et Textus Historiae Iuris Canonici*, 8 (Rome: LAS, 1996), esp. ch. 7.

²¹ On year books see n. 2 above.

justices considered a woman's own property as opposed to her husband's. The justices argued about whether she even had a right to her own clothing; two justices argued that the widow should not receive her apparel nor any other goods until the question of administration had been settled, another argued that she could have what apparel canon law stipulated, and two others maintained that she could have suitable ("convenient") but not excessive ("excesse") apparel.²²

We also need to consider the status of married women's property under customary law. Bracton and Glanvill both referred to what was common practice in England and, as we saw earlier, in 1487 an ecclesiastical official referred to "the custom" of England. However, there were also regional customs. Bracton mentioned that in the city of London it was the custom that a wife would not get a third share if she had a specified dower from her husband; a Cambridge custom of 1299 specified that the wife should be allowed a half share.²³ There are a number of boroughs that recorded their stance on married women's ability to make wills; civic governments required wills that affected their jurisdiction – in that they, for example, concerned burgage tenure or the protection of orphans – be enrolled before them too.²⁴ In some of these the custom was little more than a reminder that a husband must consent to his wife's will (for example,

²² Mich. 33 Hen. VI fo. 31b; Seipp 1454.041. See also Mich. 18 Edw. IV fo. 11b; Seipp 1478.075.

²³ Bracton, ed. Woodbine, Vol. 2, 180; Mary Bateson (ed.), Borough Customs, 2 vols, Selden Society, 18 & 21 (London: Stevens and Sons, 1904-6), II, xcvi.

²⁴ See Charles Gross, "The Medieval Law of Intestacy," Harvard Law Review 18:2 (December 1904): 129-30.

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3 Bristol c.1240, Lincoln 1480-1) but in others it set out restrictions on what real estate a
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5 married woman could bequeath even with her husband's consent (for example, Ipswich
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7 1291, Godmanchester 1324, London 1419).²⁵ In terms of movable goods, there were
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9 also specific customs about what constituted "principalia" (heirlooms), which were
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11 reserved to the heir, usually the equipment needed for the household and its work.²⁶ In
12
13 Leicester, according to a custom recorded in 1293, after the death of a father the heir
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15 should get "the best boiler, the best brass pot, the best basin with the laver, the best
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17 mazer, ... the best table, with the best table-cloth".²⁷ In Godmanchester 1312-13, it was
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19 decided that if the wife received some of the "principalia" she should pay a deposit to
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21 the heir in case she damaged them.²⁸
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29 Janet Loengard has demonstrated that what was viewed as the wife's "paraphernalia"
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31 also varied regionally. For example, in the province of York and the city of London
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33 (perhaps the southern province in general) it included her bed and a chest; in London
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35 she might keep "her chamber", that is, all cloths belonging to it such as linen and wool
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43 ²⁵ See Bateson (ed.), Borough Customs, II, 108-11.
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45 ²⁶ Sheehan, The Will, 295.
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47 ²⁷ Bateson (ed.), Borough Customs, II, 141.
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49 ²⁸ Bateson (ed.), Borough Customs, II, 141-2. The equivalent Scottish custom also
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51 applied to mothers: Ibid., 138-40. Some of the English customs, including that of
52
53 Godmanchester, referred to the death of parents or ancestors, which could be gender-
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55 neutral, although the latter goes on to make clear it concerns a man's death: Ibid., 141
56
57 ("parentum suorum"); see also 142 ("antecessorum suorum").
58
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for the beds.²⁹ Helmholz has also argued that the custom of giving a third to one's children, legitim, was only preserved in parts of England by the end of the fourteenth century, again primarily the province of York and a few places in the south such as the city of London.³⁰ These findings move us onto the realm of practice. Did married women make wills and, if so, of what kind of property and were there regional variations?

Married Women's Will Making in Practice

The first foray into the area of married women's wills was by Michael Sheehan in 1963. He cautioned that it was hard to deduce how frequently wives made wills as most early extant wills survived because they concerned land, which was less likely to be a feature of married women's wills. However, he examined a printed consistory court register for the diocese of Rochester pertaining to the years 1347-8 and found that of 186 notes of probate (also known as probate acta), fifty-seven pertained to women's wills (30.6%) and twenty-six certainly belonged to those of married women (and probably at least five others; 14.0-16.7%). Sheehan concluded that, despite the common law position, married women "very often managed to distribute property at death."³¹ Donahue's

²⁹ Janet S. Loengard, "'Which may be said to be her own': widows and personal property in late-medieval England", in Medieval Domesticity: Home, Housing and Household in Medieval England, ed. Maryanne Kowaleski and P.J.P. Goldberg (Cambridge: Cambridge University Press, 2008), 164-5.

³⁰ Helmholz, "Legitim", esp. 667.

³¹ Sheehan, "Influence of Canon Law", 122.

1982 essay also argued that we need to examine practice, suggesting that such wills “seem to get less common as the middle ages wear on”.³²

It was Helmholz, in an essay dedicated to Sheehan, who took up the mantle to see if Sheehan’s impression - that, by the time of Elizabeth I, the ecclesiastical courts had lost their attempt to influence common law as regards married women’s rights to chattels - was correct.³³ Helmholz focused on whether married women continued to make wills in the fifteenth century and found that, while there were examples, they were very few in number “by 1450, at the latest”.³⁴ Like Sheehan, he examined notes of probate, choosing to do so because, while not all wills were recorded, “*acta* record all the wills proved by specific ecclesiastical courts and normally all cases of intestacy as well.”³⁵ Helmholz sampled unpublished records in five ecclesiastical jurisdictions to prove this decline (see table 1). He also cited, as supporting evidence, P.J.P. Goldberg’s work on the Exchequer Court in the diocese of York.³⁶ Goldberg counted enrolled wills rather than

³² Donahue, “Lyndwood’s Gloss”, 36; he referred to an ongoing survey of testamentary practice in late medieval England by Sheehan but unfortunately this was never completed.

³³ Helmholz, “Married Women’s Wills”; Sheehan, “Influence of Canon Law”, 123.

³⁴ Helmholz, “Married Women’s Wills”, 175.

³⁵ Helmholz, “Married Women’s Wills”, 169.

³⁶ Helmholz, “Married Women’s Wills”, 180, n46 citing P. J. P. Goldberg, “Female Labour, Service and Marriage in the Late Medieval North”, *Northern History* 22 (1986): 36.

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notes of probate but his findings do fit the chronological pattern that Helmholz was suggesting for England as a whole (see table 2).³⁷

"[Insert Tables 1 and 2 here]".

Helmholz argued that this decline in married women’s will making was not about increasing pressure from common lawyers on the church courts, which only happened at the very close of the fifteenth century, but was perhaps driven by “a growing social acceptance of the view that married women had no separate property and that what personal property they did have would normally have been held in trust for them.”³⁸ Helmholz refers back to his earlier argument that the custom of a man having to think of his chattels in thirds was dying out at the time and thus married women could no longer assume they had a third of the household’s goods to bequeath.³⁹ He also points out that it was the fifteenth century which saw a growth in trusts, known as the “use”, by which a married woman assigned legal ownership of land or chattels to a trusted party; what happened to this property in the event of her death would be covered by the terms of the use thus negating the need for a will.⁴⁰

³⁷ P. J. P. Goldberg, Women, Work, and Life Cycle in a Medieval Economy: Women in York and Yorkshire c.1300-1520 (Oxford: Clarendon Press, 1992), 264-9.

³⁸ Helmholz, “Married Women’s Wills”, 172.

³⁹ Helmholz, “Married Women’s Wills”, 172-3; see further Helmholz, “Legitim”.

⁴⁰ Helmholz, “Married Women’s Wills”, 173-4.

Mary Prior, who was most interested in what happened to married women's will making in the period 1558-1700, suggested 1440 as the point at which the decline set in. She also mentioned "pockets of resistance" to the national trend, such as in the archdeaconries of Buckingham and Sudbury.⁴¹ In general, archdeaconry courts dealt with the wills of testators who did not have property in another archdeaconry (commissary courts with wills concerning property in more than one archdeaconry, and the Prerogative Court of Canterbury for those with property in more than one diocese).⁴² The Register for the archdeaconry of Sudbury, 1439-74, does contain some married women's wills, but not enough to be considered a pocket of resistance (see table 3). Prior cited an index as her source, which perhaps accounts for the claim. The index identifies 121 testators as wives for the period 1354-1530, eighty-six post 1440. However, a number of these women were widows who began their wills describing themselves as former wives. An examination of the Baldwyn Register (which covers the period 1439-74) reveals that of the thirty-three women described in the index as wives, twenty-six were actually widows. Also, of the twenty-nine married female testators in this register (twenty-six wills and three additional notes of probate, one for a married couple), only seven were described as wives in the index.⁴³ However, the archdeaconry

⁴¹ Prior, "Wives and Wills", 202.

⁴² Although in practice, these divisions might not have been kept. See Helmholz, Oxford History of the Laws of England, I, 427-9.

⁴³ Prior, "Wives and Wills", 202, n.2; Index of the probate records of the court of the Archdeacon of Sudbury 1354-1700, compiled by M. E. Grimwade, ed. W. R. and R. K. Serjeant, Index Library, 95-6 (Keele: British Record Society, 1984); Suffolk Record Office, Bury St Edmunds branch (hereafter cited as SROB), R2/9 and R2/10; Peter

of Buckingham, 1483-97, does seem to be a possible “pocket of resistance”. Although there are only two married women’s wills recorded in the court material for this period, there are thirty-five probate *acta* that pertain to married women in the same period (out of 195; 17.9%).⁴⁴ This suggests that, while married women continued to make wills in significant numbers and this court continued to prove them right up to the end of the fifteenth century, very few of these wills were thought to merit the expense of recording, perhaps because they did not concern immovable property.⁴⁵ The two married women’s wills that were recorded both mention a tenement they had acquired from a previous marriage; one left it to her current husband for life, one left it to her son, although her husband was joint executor of the will.⁴⁶

Northeast (ed.), Wills of the Archdeaconry of Sudbury, 1439-1474, 2 vols (Woodbridge: Boydell Press, 2001-10).

⁴⁴ The Courts of the Archdeaconry of Buckingham, 1483-1523, ed. E. M. Elvey, Buckinghamshire Record Society, 19 (1975). For discussion of how the court material is currently found in four manuscripts, one of which is itself a miscellany of registers see *Ibid.*, ix-xi.

⁴⁵ For discussion of what was recorded and why see Courts of the Archdeaconry of Buckingham, ed. Elvey, xxii-iv, xxviii. One man left a bequest of 6s 8d for the registration of his own will in 1493: *Ibid.*, xxii.

⁴⁶ Courts of the Archdeaconry of Buckingham, ed. Elvey, 23 (Joan Hobbis, 1486), 168 (Alice Mitchell, 1496). There is a third married woman’s will in this edition, from 1523, but the process of recording both wills and probate *acta* changed a lot between 1497 and 1523, hence the sample: *Ibid.*, xxi-ii, 412-3 (Alice Eyre).

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3 In terms of the chronological pattern identified by past scholarship, it is also worth
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5 noting that the numbers of married women's wills recorded in London were low at the
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7 start of the fifteenth century (see table 3), as well as at the end, although here we have
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9 to compare Robert Wood's work on the archdeaconry court with Helmholz's sampling
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11 of the consistory court as the probate materials for both do not survive for the whole
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13 period. Wood found only eight married women's wills enrolled in the Archdeacon of
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15 London's register in the period 1393-1415, out of 1,384 wills (0.6%).⁴⁷ If we turn to the
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17 city's court of Husting, which proved wills pertaining to citizens with property in the
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19 city, we find that two married women's wills were annulled in 1291 and 1307
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21 respectively, because the testators were "under the rod" (*sub virga*; echoing the
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23 language *Bracton* used for married women's legal coverture) or "feme covert".⁴⁸ The
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38 ⁴⁷ Robert A. Wood, "Life and Death: A Study of the Wills and Testaments of Men and
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40 Women in London and Bury St. Edmunds in the late Fourteenth and early Fifteenth
41
42 Centuries", unpublished PhD. Thesis (Royal Holloway, University of London, 2012), 12,
43
44 44, 153-5. In an earlier article he had suggested there were 7: Robert A. Wood, "Poor
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46 Widows, c. 1393-1415", in *Medieval London Widows, 1300-1500*, ed. Caroline M.
47
48 Barron and Anne F. Sutton (London: Hambledon Press, 1994), 56.
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52 ⁴⁸ *Calendar of Wills Proved and Enrolled in the Court of Husting, London*, ed. Reginald R.
53
54 Sharpe, 2 parts (London: J. C. Francis, 1889), I, 105, 188; *Bracton*, ed. Woodbine, II, 36.
55
56 On this court see Kate Kelsey Staples, *Daughters of London: Inheriting Opportunity in*
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58 *the Late Middle Ages* (Leiden: Brill, 2011), 18-22.
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custom in London from 1256 was that married women could not devise tenements, even with the permission of their husbands.⁴⁹

For Helmholz, his outlier finding from the diocese of Hereford that three of nineteen testaments (15.8%) proved in autumn 1453 were by certainly married woman was “quite unusual” but also his smallest sample.⁵⁰ However, there are similar if not higher proportions of married women’s wills for the middle of the fifteenth century from larger samples in other dioceses, albeit in registers that largely recorded wills rather than notes of probate (see table 3). A register of wills proved before the Dean and Chapter of Norwich in the period 1444-54 contains forty-six wills, of which eleven were by female testators and nine are certainly married women (19.6%).⁵¹ A probate register for the diocese of Ely, 1449-60, contains 257 wills of which seventy-five were by women and

⁴⁹ Ann J. Kettle, “‘My Wife Shall have It’: Marriage and Property in the Wills and Testaments of Later Mediaeval England”, in Marriage and Property, ed. Elizabeth M. Craik (Aberdeen: Aberdeen University Press, 1984), 95.

⁵⁰ Helmholz, “Married Women’s Wills”, 170.

⁵¹ Norfolk Record Office (hereafter NRO), DCN 69/1; the marital status of the other two women is unclear (5, 12). There is another surviving Dean and Chapter Register for Norwich that contains material from 1447-1559 but only 15 of the 257 wills therein predate 1500. Of these, 2 are by women and 1 of those was a married woman: NRO, DCN 69/2 (fos 8-8v Alice Cobald, married woman, 1468; fo. 15 Marion Albon, widow, 1496). The Register contains 2 other married women’s wills: Ibid., fos 41v (Agnes Blandes, wife of Thomas, 1509), 52v (Margaret Byllarde, wife of Adelarde of Sedgeford, 1529).

thirty-seven by certainly married women (14.4%).⁵² It is the latter area that I shall focus on, in part because we have a full series of probate registers from 1449, stretching into the sixteenth century. These are registered in bound manuscript volumes, which are labeled Liber A, B, C and D, with the titles being contemporary or near contemporary with the volumes' compilation.⁵³

"[Insert Table 3 here]".

Another reason for the focus on the diocese of Ely is that the second register in this series, Liber B, is actually a court book for the deanery of Wisbech, a rural deanery within the diocese of Ely, as well as a will register. In the fifteenth century a diocese was still divided into a number of deaneries, with deans appointed to administer these smaller units, on behalf of the bishop.⁵⁴ The deanery of Wisbech included the small

⁵² Cambridgeshire Archives (hereafter CA), VC 1. Three others are possibly by married women: see p. XX below. There is also one will made by a married couple: VC 1, fos 22v-23 (Thomas and Helena Smyth).

⁵³ CA, VC 1-4; see also L. R. Poos (ed.), Lower Ecclesiastical Jurisdiction in Late-Medieval England: The Courts of the Dean and Chapter of Lincoln, 1336-1349, and the Deanery of Wisbech, 1458-1484, Records of Social and Economic History new series 32 (Oxford: Oxford University Press, 2001), xxxviii.

⁵⁴ See R. W. Dunning, "Rural Deans in England in the Fifteenth Century", Bulletin of the Institute of Historical Research, 40 (1967), 207-13. See also A. Hamilton Thompson, "Diocesan Organization in the Middle Ages: Archdeacons and Rural Deans", Proceedings of the British Academy, 29 (1943), 153-94.

town of Wisbech plus four small, largely adjacent rural parishes (Elm, Leverington, Newton, and Tydd St Giles).⁵⁵ The bishop empowered one of his officials, sometimes the dean, to convene a court which dealt with a range of matters such as breach of faith cases, defamation suits, some sexual and marital offences, and granting probate for testaments in this deanery, as well as Whittlesey, which was technically outside the deanery.⁵⁶ The surviving court book includes 181 wills from the deanery (including Whittlesey).⁵⁷ Of these wills, twelve are certainly by married women (6.6%). Although, this represents a substantial drop from the previous register (see table 4), it is still high compared to the figures cited by Helmholz and Goldberg for this period (tables 1-2) and these wills have sparked comment for that reason.⁵⁸ The advantage of having surviving court material for the Deanery of Wisbech means that sometimes more can be said about the married female testators and their families than is revealed by a study of their wills alone. In a classic essay, Clive Burgess demonstrated the problems of using wills alone to assess how pious a testator was and how much property they owned. Using supplementary material, he demonstrated that a will might only be part of a testator's plans for their property and soul.⁵⁹ Liber B, which I will focus on first, can be used to find out more about the social status of the testators.

⁵⁵ Poos (ed.), Lower Ecclesiastical Jurisdiction, xxvi-xxvii.

⁵⁶ See Poos (ed.), Lower Ecclesiastical Jurisdiction; this volume includes an edition of the court book.

⁵⁷ For this reason, Whittlesey will be included in the counts of wills from the Deanery of Wisbech in the other probate registers too.

⁵⁸ See Poos (ed.), Lower Ecclesiastical Jurisdiction, liii.

⁵⁹ Clive Burgess, "Late Medieval Wills and Pious Convention: Testamentary Evidence Reconsidered", in Profit, Piety and the Professions in Later Medieval England, ed.

"[Insert Table 4 here]".

While Prior's study is much later in date, her qualitative approach to samples of married women's wills meant that she did find some noticeable trends in the kinds of women who made them. Her study was based on sampling in the Prerogative Court of Canterbury (PCC) 1558-1700 and in two courts in Oxfordshire to give her some women below the ranks of the elite.⁶⁰ First, she found that a substantial proportion of her PCC samples were women who had been married more than once.⁶¹ Second, she found that a significant number of the husbands in these samples were lawyers or had connections with the Inns of Court.⁶² Third, she found married women's wills tended to fall into pairs or clusters, for example, of women who shared kinship ties. She also found a few

Michael Hicks (Gloucester: Sutton, 1990), 14-33. See also Clive Burgess, "'By Quick and by Dead': Wills and Pious Provision in Late Medieval Bristol", English Historical Review 102 (1987): 855-6.

⁶⁰ Prior, "Wives and Wills", 207-10.

⁶¹ Prior, "Wives and Wills", 212. Erickson made a similar point using the PCC data: Amy Louise Erickson, Women and Property in Early Modern England (London: Routledge, 1993), 140-2. Erickson also discussed the chronological pattern but the statistics are problematic in that some were taken from studies of civic courts (e.g. Bishop's Lynn), which tended only to record the wills that bequeathed burgage tenure, and others were taken from indexes/first lines of wills, which do not give the most accurate data: *Ibid.*, 140, 206.

⁶² Prior, "Wives and Wills", 211.

examples in which the successive wives of a particular man both made wills.⁶³ Fourth, Prior found that women whose families had been persecuted because of their religious beliefs formed another significant cluster.⁶⁴ Fifth, a key cluster that she identified in the Oxfordshire sample was that three married women's wills dealt with land in the ancient demesne manor of Long Handborough. Prior's thesis here was these wills were concerned with oversetting the custom of the manor in which the land would have gone to the youngest son; she also suggested a similar concern in some wills from Combe.⁶⁵ These are patterns to which we will return.

The intention of my case study is not just to make the case for the diocese of Ely, particularly the deanery of Wisbech, as another "pocket of resistance" in terms of married women making wills. It will appraise the evidence for why some married women made wills, something which is not explicitly stated in the documents themselves, and evaluate what this reveals about the women, their families and their communities. Further, it will consider what this might suggest about the impact of the

⁶³ Prior, "Wives and Wills", 214-5. There is an example of this discussed below. Also, in York, the successive wives of Warimbald Harlam both made wills: York Minster Library (hereafter YML), Dean and Chapter Registers, D/C Reg. 1, fo. 131r (Joan Harlam, 1401); Borthwick Institute for Archives (hereafter BIA), York, Exchequer Court, Probate Register 2, fo. 583r (Lawrencia van Harlam, 1408); I am grateful to Lisa Liddy for bringing the latter will to my attention.

⁶⁴ Prior, "Wives and Wills", 213-4.

⁶⁵ Prior, "Wives and Wills", 217-8.

law – be it, ecclesiastical, common or customary - on marital property and married women's will making.

Married Women's Wills in the Court of the Deanery of Wisbech, 1465-77

The twelve married women's wills in Liber B (or VC 2 as it is now known) all date from the period 1465-77.⁶⁶ Seven of the wills identify the testators as wife ("uxor") in the opening line, but in the other five it is only a later reference to a living husband ("maritus meus" or "sponsus meus") that identifies them as married women.⁶⁷ None of the twelve wills specifically stated that they had been made with the husband's permission but he was named as an executor in ten of the wills. Margaret Freman, who made William Satewyn from Bishop's Lynn (now King's Lynn) in Norfolk, her executor, had her husband, John Freman, witness the will.⁶⁸ The court when granting probate, then, would have been satisfied that the husbands in these eleven cases had consented

⁶⁶ See CA, VC 2, fos 21, 32, 37v, 38, 43v, 64 (x2), 66v, 67, 91v, 104, 109v. This volume has been edited and all subsequent references will be to this edition: Poos (ed.), Lower Ecclesiastical Jurisdiction, 267-592.

⁶⁷ For the seven women described as "uxor" see Poos (ed.), Lower Ecclesiastical Jurisdiction, 373 [Alice Qwyght; Joan Elyott], 389 [Alice Galyarde], 447 [Margaret Kellsull], 448 [Matilda Clerk], 537 [Joan Powdych], 589 [Elizabeth Tailor]; for the other five see pp. 321 [Alice Dowdynett], 356 [Alice Gylbert], 456 [Margaret Freman], 458 [Cicely Freman], 571-2 [Katherine Haukyn].

⁶⁸ Poos (ed.), *Lower Ecclesiastical Jurisdiction*, 456.

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3 to the making of the wills.⁶⁹ In the twelfth, Matilda Clerk's will, her husband (Thomas
4 Clerk) was assigned no formal role but was left various household items, alongside her
5 son, William Godfrey, who was one of the executors.⁷⁰ Perhaps William was a son from a
6 previous marriage as he does not share her surname. Although a previous marriage was
7 a feature in a large number of the wills in Prior's samples, only one of the twelve
8 women, Cicely Freman, explicitly referred to a former husband in her will. Indeed, part
9 of the intention of her will was to ensure that her late husband's will was honored. The
10 will requested that 40s. be distributed according to the will of Geoffrey Mobbe, Cicely's
11 late husband, which Thomas Mobbe (an unspecified relation) would have distributed if
12 he was alive.⁷¹ Even when the husband was given a formal role we cannot assume that
13 he always carried it out. We learn from the court entries that, c.1467-9, the husband of
14 Elizabeth Tailor, Richard, was presented for hindering the execution of her will by
15 withholding 6s. 8d. from her other named executor, Guy Alcok; her will had been proved
16 on 6 November 1466.⁷² It is noted in 1466 that Robert Galyarde of Wisbech withheld

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38 ⁶⁹ See also Helmholz, "Married Women's Wills", 167; Prior, "Wives and Wills", 203. Cf.
39 Chief Justice Fineux in the 1497 King's Bench case: "the husband has proved the will,
40 which proves his consent" (Kiralffy, *Source Book*, 436).

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45 ⁷⁰ Poos (ed.), *Lower Ecclesiastical Jurisdiction*, 448-9.

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47 ⁷¹ Poos (ed.), *Lower Ecclesiastical Jurisdiction*, 458: "Item volo quod xl s. distribuantur
48 secundum effectum testament Galfridi Mobbe quondam mariti mei, quos xl s. Thomas
49 Mobbe distribuisset si vixisset." Her husband's will was not recorded in Liber A nor B.

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54 ⁷² Poos (ed.), *Lower Ecclesiastical Jurisdiction*, 393, 589. The husband of Alice
55 Dowdynett was rebuked for not having settled his wife's debts to various guilds but this
56 does not relate to provisions made in her will: *Ibid.*, 378, 321.

40d. from the legacy of his wife which should have been paid to the church of St Andrew in Whittlesey.⁷³ The will of Alice wife of Robert Galyarde was not proved until 1472, so this seems to be an example of a man whose successive wives made a will.⁷⁴

If we turn to the detailed content of the wills, four in part concerned real estate, such as buildings and land, and this ownership of property was probably a significant factor as to why these married women made wills and why they were preserved.⁷⁵ One was the woman who was concerned with the will of her late husband: Cicely Freman of Wisbech. In her short will, she made her current husband, John, the executor and asked him to sell a dwelling (“messuagium meum”) in March, a nearby village, and spend the money on good works including celebrating the anniversaries of the burials of herself and her former husband in their parish church. John was to get 40s for his efforts. This will, while relatively brief, gives a clear sense that Cicely Freman saw herself as the owner of

⁷³ Poos (ed.), Lower Ecclesiastical Jurisdiction, 535. In 1463 the churchwardens of Whittlesey, a neighboring parish, told the general chapter that one Robert Galyard was administering the goods of his deceased wife, presumably without the church court’s authority: *Ibid.*, 363; the first case noted in this session explicitly stated “absque auctoritate ordinarij”. This might be about the same will. It is not recorded in either Liber A or B.

⁷⁴ Poos (ed.), Lower Ecclesiastical Jurisdiction, 389. See above for the discussion regarding successive wives making wills, as found by Prior.

⁷⁵ Here I discuss buildings together with land as real estate, although in some medieval discussions the former were seen as “chattels”, in order to distinguish between wills that bequeath very few goods of value with those which concern substantial property.

the property that she brought to the marriage and perhaps they had made a marriage settlement to that effect.⁷⁶

In the second of the two wills not to name the husband as executor, that of Margaret Freman, also of Wisbech, her house ("mansio mea") was to be sold by her executor, a William Satewyn of Bishop's Lynn. Her husband was to get 10s from the sale but also to have a home within this house for the rest of his life, at the discretion of her executor. The husband was additionally left "all my necessities pertaining to the hall and chamber" and all her apparel pertaining to her body except her best clothing, which was to serve as a mortuary payment.⁷⁷ There are no indications as to how she came by this property, whether it was from her natal family or a previous marriage. The church which was to get 20s from the sale of her property was in Sutton St James in Lincolnshire, which like Bishop's Lynn was not far from Wisbech despite being in another county.

The will of Alice Galyarde was largely concerned with real estate, leaving a dwelling house with its adjacent buildings in Wisbech to her husband for life and then to her sons and their heirs. She also requested that her properties and lands in the neighboring county of Norfolk be sold and the money go to her sons. The only material objects

⁷⁶ Poos (ed.), Lower Ecclesiastical Jurisdiction, 458. Prior argued that these were common in her period but hard to detect from the wills themselves: Prior, "Wives and Wills", 203-4.

⁷⁷ Poos (ed.), Lower Ecclesiastical Jurisdiction, 456: "omnia necessaria mea aule et camera pertinentia".

mentioned in the will were her best tunic, which was her mortuary payment, and a set of rosary beads that she was gifted by her mother, which she passed onto her husband.⁷⁸ This will suggests that Alice Galyarde held property in her own name, perhaps from her natal family (as the beads came from her mother) or it might have been from a former marriage. As discussed above, it seems likely that her husband Robert had been married before. The fourth will, that of Elizabeth Tailor of Wisbech, is also largely concerned with real estate and does not even begin with any religious bequests. Her husband was left a house and various lands for life, as well as a fishery called Blakdike.⁷⁹ The reference to her debts, which he should pay, suggests that she perhaps ran this as an independent business while married.

While the four wills just discussed dealt with real estate, the wills recorded in this book do not only concern such property. As Poos commented, “the Wisbech court book is especially noteworthy for the large number of early wills of obviously fairly humble people that it contains.”⁸⁰ This applies to some of the married women’s wills. The eight other married women’s wills were concerned only with movable goods and of these six were largely concerned with clothing. However, perhaps only three of the wills pertained to a strict, common law understanding of “paraphernalia”, that is, clothing

⁷⁸ Poos (ed.), *Lower Ecclesiastical Jurisdiction*, 389.

⁷⁹ Poos (ed.), *Lower Ecclesiastical Jurisdiction*, 589. There has been an archaeological excavation of a medieval fishery in Whittlesey, see http://archaeologydataservice.ac.uk/archiveDS/archiveDownload?t=arch-769-1/dissemination/pdf/vol42/42_019_044.pdf (accessed 19 Dec. 2017).

⁸⁰ Poos (ed.), *Lower Ecclesiastical Jurisdiction*, liii.

and personal jewelry. I will discuss these three first (the wills of Alice Qwyght, Joan Elliott and Alice Gilbert), before considering the three that bequeath a little more (Margaret Kellsull, Katherine Haukyn, Alice Dowdynett), and then will turn to the two which have more substantial goods to give away (Joan Powdych and Matilda Clerk). An appreciation of what married women's wills contain, something that cannot be ascertained from a study of probate *acta*, is important to an understanding of why these women had these documents made and what property they considered to be at their disposal.⁸¹

The will of Alice Qwyght of Leverington was relatively brief. After stating where she was to be buried, she left her best animal as a mortuary payment, and then bequeathed five specific items of clothing to four women, two of whom were her daughters. These items were referred to as "my gown" ("togam meam"), "my hood" ("caputium meum"), "my tunic" ("tunicam meam"), and "my overtunic and shirt" (supertunicam meam et camisiam meam).⁸² This looks like a basic wardrobe, not excessive apparel.⁸³ The will

⁸¹ Loengard also used wills to access what goods married women were seen as owning in practice, chiefly drawing on husbands' bequests to their wives: Loengard, "Which may be said to be her own".

⁸² Poos (ed.), Lower Ecclesiastical Jurisdiction, 373. An interpolation in Bracton stated that if a married woman died the Church should take the second-best beast, if the husband agreed: Bracton, ed. Woodbine, II, 178. This was also included in Fleta, a legal treatise written in the reign of Edward I: H. G. Richardson and G. O. Sayles (eds), Fleta, II, Selden Society, 72 (London: Selden Society, 1953), 191.

⁸³ Cf. the 1454 case discussed above; Seipp 1454.041.

then ends by saying that she left the residue to her husband, Thomas Qwyght, whom she made executor (a formulaic statement).⁸⁴ The majority of the will is thus concerned with leaving clothing to a few named women and in this does not stray too far from the “robes... which may be said to be her own”.⁸⁵ The other two wills, which generally concern a few bequests of clothing to family and friends, also made a number of donations to their local churches. The will of Joan Elliott left a cow as a mortuary payment but also 7d. to the high altar of Tydd St Giles, where she wanted to be buried, and 12d. to the fabric of the church, followed by payments to all the lights in that church, some named and given a higher amount than others.⁸⁶ She also bequeathed a tunic of rose russet, another tunic made from woolen cloth (“blanket”), one black hood and a shirt to a woman called Katherine Bryde. Again this was not excessive apparel but a basic set of clothes.⁸⁷ In this will the religious bequests dominate the short text.⁸⁸ The

⁸⁴ Poos (ed.), Lower Ecclesiastical Jurisdiction, 373.

⁸⁵ Bracton, ed. Woodbine, II, 179.

⁸⁶ On the importance of keeping candles burning before images, see Barbara A. Hanawalt, “Keepers of the Lights: Late Medieval English Parish Guilds”, Journal of Medieval and Renaissance Studies 14 (1984): 21-37 (esp. 21, 28); D. Postles, “Lamps, lights and layfolk: ‘popular’ devotion before the Black Death”, Journal of Medieval History 25:2 (1999): 97-114; Virginia Bainbridge, Gilds in the Medieval Countryside: Social and Religious Change in Cambridgeshire c. 1350-1558 (Woodbridge: Boydell & Brewer, 1996), 68-9.

⁸⁷ Blanket and russet wool were set out in the 1363 sumptuary legislation as the materials that agricultural workers, and those with less than 40s. in goods, were allowed to wear: PROME, 1363 October, ii-279, 31.

will of Alice Gilbert, also of Tydd St Giles, is analogous but she bequeathed Alice daughter of Roger Aylwarde a jet rosary (“j par preclarum de get”).⁸⁹ While Loengard was ambivalent as to whether all jewelry was seen as paraphernalia in the late medieval period, she did think rosary beads were included.⁹⁰

The will of Margaret Kellsull left a little more, although largely in cloth rather than money. In terms of religious bequests she left 12d. to the high altar, presumably of her parish church in Whittlesey, and some cloth to be used as vestments.⁹¹ She gave all of her godchildren (unspecified number) 2d. each. Then eleven named individuals (ten women, one man) were given various items of clothing or cloth; the one man, Robert Kellsull (possibly a brother-in-law), was to get a yard of woolen cloth and a pair of

⁸⁸ Poos (ed.), Lower Ecclesiastical Jurisdiction, 373.

⁸⁹ Poos (ed.), Lower Ecclesiastical Jurisdiction, 356.

⁹⁰ Loengard, “Which may be said to be her own”, 166-8.

⁹¹ Poos (ed.), Lower Ecclesiastical Jurisdiction, 447: “ad usum dicti altaris unam albam et j examitum de novo panno”. The “albam” could refer to white cloth or specifically to a priest’s long white gown; for the “alb” as a vestment see Henry F. Berry (ed.), Register of Wills and Inventories of the Diocese of Dublin in the Time of Archbishops Tregury and Walton, 1457-1483 (Dublin: University Press, 1898), 201. “Examitum” means six-threaded and thus costly and splendid. It was used, for example, to describe vestments in Evesham abbey: Daniel Rock, Textile Fabrics (New York: Scribner, Welford and Armstrong, 1876), 24-5. French and Lowe have argued that men were more likely to give ready-made vestments to the church, whereas women would give the cloth to make

shoes.⁹² This will seems to stretch the common law understanding of “paraphernalia”. While the custom in London might have been for widows to get the cloth pertaining to their chambers, that other married women in this area do not bequeath cloth suggests that this was not a local custom.⁹³

Two other wills are similar in that they also stretch the definition of “paraphernalia” by including the odd household item. The will of Katherine Haukyn, of Tydd St Giles, allocated some money to the church and items to seven individuals (six female, one male). Each person got an item of clothing, described by color or material or with adjectives such as “best” and “old”.⁹⁴ However, two women - her daughter, Matilda Pocok, and Katherine daughter of Geoffrey Godfrey - were also to get a household item. She left a gallon pot to her daughter (“j ollam enema mesure unius lagene”).⁹⁵ Women tended to do the domestic brewing, as ale was a staple of the late medieval diet, and so

them, but Liddy did not find such a gendered distinction: Katherine L. French, “Women in the Late Medieval English Parish”, in Gendering the Master Narrative: Women and Power in the Middle Ages, ed. Mary C. Erler and Maryanne Kowaleski (Ithaca: Cornell University Press, 2003), 160-2; Nicola A. Lowe, “Women’s Devotional Bequests of Textiles in the Late Medieval English Parish Church, c. 1350-1550”, Gender and History 22:2 (2010): 411-16; Lisa Liddy, “Domestic Objects in York c.1400-1600: Consumption, Neighbourhood and Choice”, unpublished PhD thesis, University of York (2015), 146.

⁹² Poos (ed.), Lower Ecclesiastical Jurisdiction, 447-8.

⁹³ See n. 29 above.

⁹⁴ Poos (ed.), Lower Ecclesiastical Jurisdiction, 571-2.

⁹⁵ Poos (ed.), Lower Ecclesiastical Jurisdiction, 572.

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3 this perhaps explains why Katherine Haukyn felt she could lay specific claim to it.⁹⁶ We
4 might see it as akin to “principale”, discussed above, in that she was passing it on so that
5 her daughter could continue to do the household brewing. She bequeathed a large chest
6 to Katherine Godfrey but noted that she was only to have it after the death of her
7 husband (“j magnam cistam post decessum Willelmi Haukyn’ sponsi mei”).⁹⁷ Perhaps
8 this was a chest she brought to the marriage as part of her trousseau or akin to the
9 chests that widows could take on their husband’s deaths in places like York and
10 London.⁹⁸ The will of Alice Dowdynett left, in addition to a kerchief each to three
11 women, a “focer”, which was a chest or coffer, to one of them, Agnes Perch.⁹⁹ There is an
12 argument for seeing such chests as part of a woman’s paraphernalia; a married woman
13 in York left her daughter all her jewelry but also a coffer to put them in (“pro
14 ornamentis meis conservand[um]”).¹⁰⁰

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38 ⁹⁶ See Judith M. Bennett, Ale, Beer, and Brewsters in England: Women’s Work in a
39 Changing World, 1300-1600 (New York: Oxford University Press, 1996), although she
40 argues that this was changing in the late fifteenth century with the introduction of beer
41 (ch. 5).

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43 ⁹⁷ Poos (ed.), Lower Ecclesiastical Jurisdiction, 572.

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45 ⁹⁸ See n. 29 above. There is a similar example in Liber A, discussed below.

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47 ⁹⁹ Middle English Dictionary, forcer (n.). at
48 <https://quod.lib.umich.edu/cgi/m/mec/med-idx?type=id&id=MED16708> (accessed 8
49 Nov. 2017).

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51 ¹⁰⁰ BIA, Prob. Reg. 2, fos 583-583v (Lawrencia Van Harlam).

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3 The final two wills concerned more goods. That of Joan Powdyche of Wisbech, refers to
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5 more items of high value than we have seen so far but they are largely items that could
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7 be considered as “personal adornments”, with the exception of two crucifixes.¹⁰¹ Joan
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9 left her two female servants some items of clothing, but she also left her brother the
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11 silvered blue girdle which she wore on her wedding day, her mother a big crucifix of
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13 silver gilt, and her father a small ring of gold.¹⁰² She also bequeathed a necklace
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15 containing a large amount of silver to a chaplain, a round crucifix of silver to another
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17 chaplain and a silver ring called a “crampryng” to a rector (this was an amuletic ring for
18
19 cramps, recommended for ailments such as epilepsy).¹⁰³ That the majority of Joan
20
21 Powdyche’s bequests were to her natal family suggests that this was the original source
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23 of the items and the jewelry and devotional items probably had personal as well as
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25 economic significance, which might explain why she thought of them as her own
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27 possessions. Her husband was her executor so he presumably agreed.
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35 ¹⁰¹ Loengard was sceptical that chains, pendants and brooches were included as
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37 “jocalia”, but she did note that perhaps many women just did not have such items to
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39 leave: Loengard, “Which may be said to be her own”, 168.
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42 ¹⁰² Poos (ed.), Lower Ecclesiastical Jurisdiction, 537-8. I would correct “recivium” here
43
44 to “recinium”, meaning a small veil: Ibid., 538.
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47 ¹⁰³ See Raymond Crawford, “The Blessing of Cramp-Rings: A Chapter in the History of
48
49 the Treatment of Epilepsy,” in Studies in the History and Method of Science, 2 vols, ed. C.
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51 Singer, I (Oxford: Clarendon Press, 1917-21): 165-87. For an example of such a ring see
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53 Science Museum, London, object number A641034, online at
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55 <http://broughttolife.sciencemuseum.org.uk/broughttolife/objects/display?id=92460>
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57 (accessed 21 December 2017).
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6 The eighth will, that of Matilda Clerk of Wisbech, starts in a similar way to most of the
7
8 wills discussed so far, in terms of its religious bequests. In addition to bequests of
9
10 clothing to her son, William Godfrey, and two women (one was probably William's
11
12 wife), Matilda Clerk specified that her gown and best hood, rosary beads and a ring of
13
14 silver were to be sold by her executors. This could all be classed as paraphernalia.¹⁰⁴
15
16 However, she then went on to apportion various household equipment and furniture
17
18 between her male kin, including her husband. For example, her husband was to have his
19
20 choice of her best pots and pans and her son William was to get the rest of them
21
22 ("Thomas sponsus meus habeat electionem optime olle mee et patelle et Willelmus
23
24 filius meus habeat alteram partem"); her son was to get her best table and one of her
25
26 grandsons was to have the other.¹⁰⁵ This sense of ownership of household property is
27
28 perhaps the result of an earlier marriage.¹⁰⁶ Her son is referred to as William Godfrey
29
30 and while it is possible he is her son-in-law this seems unlikely as Alice Godfrey is not
31
32 described by a familial relationship; this is also the one married woman's will in which
33
34 the husband was allocated no formal role.
35
36
37
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41
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44

45 ¹⁰⁴ Loengard included wedding rings as "paraphernalia", but not other rings: Loengard,
46
47 "Which may be said to be her own", 168. However, Joan Balderton of Whittlesey, p. XX
48
49 below, gave away two silver rings.
50
51

52 ¹⁰⁵ Poos (ed.), Lower Ecclesiastical Jurisdiction, 448.
53

54 ¹⁰⁶ In a married woman's will from York, Alice Marchall, wife of William de Craven,
55
56 disposed of various pots and pans, which she specified had come to her after the death
57
58 of her previous husband, Thomas Marchall: YML, D/C Reg. 1, fo. 121v (1399).
59
60

Matilda Clerk, like Joan Powdyche and the women who owned real estate, had enough property to dispose of to account for her will's existence. Her sense of ownership of household chattels is interesting given the common law position. But if we return to the six other married women who left very little, we might particularly ponder why they made a will. There are the obvious reasons for making a will like piety, looking after one's soul and so on, although the will of Alice Qwyght barely touched on those elements.¹⁰⁷ But given married women's wills seem to have largely disappeared from probate registers and court books in some parts of England by this date, the question remains why did these wives make wills and their executors, usually their husbands, have them registered in court?

When looking into the family, particularly the husbands, of the married, female testators I found another connection that might explain why some made wills. Four of the six women whose wills left very little had husbands who had official roles which gave them direct access to the court that proved their wills. The women's husbands were named as a churchwarden ("iconomus") or a juror ("inquisitor") during their lifetimes. John Dowdynet, husband of Alice, is listed as a churchwarden in the early 1460s (she died in 1467).¹⁰⁸ John Elliott, husband of Joan, is listed four times as a juror in Tydd St Giles,¹⁰⁹

¹⁰⁷ Poos (ed.), Lower Ecclesiastical Jurisdiction, 373.

¹⁰⁸ Poos (ed.), Lower Ecclesiastical Jurisdiction, 329, 321.

¹⁰⁹ Poos (ed.), Lower Ecclesiastical Jurisdiction, 321, 335, 384, 421. Although the only heading in the first two of these entries is "Yconomi", we can assume that this just applies to the top two names, separated out, and the rest are "inquisitores" as that is the way the record works in the second two examples.

as is Henry Gilbert, husband of Alice,¹¹⁰ and their relationship is attested by Henry Gilbert witnessing the will of John Elliott in 1469.¹¹¹ Thomas Qwyght, husband of Alice, was listed as a juror for Leverington twice (but on one of those occasions it is noted that he did not appear).¹¹² The identification of Margaret Kellsull's husband as a churchwarden is more problematic. There is a William Kellsull named in that role in Whittlesey, her parish, but not until 1479-80 and Margaret Kellsull's will was proved in 1467 or 1468.¹¹³ Allegations of immorality had been leveled against both of them in the 1460s.¹¹⁴ Such allegations, even if true, might not have been enough to stop William becoming a churchwarden ten years later but the gap in time makes the identification less secure.¹¹⁵ However, we should also note that the brother of Joan Powdych, whose

¹¹⁰ Poos (ed.), Lower Ecclesiastical Jurisdiction, 290, 335, 384, 407; as discussed above, on 335 only the "iconomi" are labelled.

¹¹¹ Poos (ed.), Lower Ecclesiastical Jurisdiction, 439.

¹¹² Poos (ed.), Lower Ecclesiastical Jurisdiction, 286, 326.

¹¹³ Poos (ed.), Lower Ecclesiastical Jurisdiction, 308, 447-8. The will is said to have been made in October 1467 but proved in July 1467 so one of the years is incorrect.

¹¹⁴ In 1463 Margaret Kellsull was presented for sexual immorality with diverse persons and her husband was presented at the same court for harboring those guilty of illicit sexual relations, presumably a linked charge. William Kellsull appeared and denied the charges with the aid of five male supporters. In 1465-6 William faced a similar allegation, denied it and this time purged himself seven-handed and was warned to avoid such activity on pain of public penance: Poos (ed.), Lower Ecclesiastical

will largely dealt with jewelry and devotional objects that she wanted to pass to her natal family, was twice named as a juror for Wisbech.¹¹⁶

The sixth woman was Katherine Haukyn, she of the gallon pot; while I did not find Katherine Haukyn's husband, William, recorded as an office-holder in this court book, he can be found listed as a juror in the manor court of Tydd throughout the 1460s.¹¹⁷ It is not impossible that William Haukyn was also a church court juror at some point too. L. R. Poos compared some of the names of jurors and churchwardens in this court book with the jury lists from the same communities' manorial court records, another category of local office-holding, and his findings are revealing: almost one third (29%; twenty-five of eighty-seven) of churchwardens and jurors in the 1460s and 1470s were serving as manorial court jurors at almost exactly the same time.¹¹⁸ Joan Elliott's

Jurisdiction, 363-4, 537. That he avoided a punishment the first time and only received a warning the second time suggests he was believed or there were extenuating circumstances. For Helmholz, such dismissals point as much to the role of gossip and rumor in ex officio cases, as "to the inherent weakness of methods of proof in the ecclesiastical system": R. H. Helmholz, "Harboring Sexual Offenders: Ecclesiastical Courts and Controlling Misbehavior", Journal of British Studies 37:3 (1998): 261.

¹¹⁵ On churchwardens see Katherine L. French, The People of the Parish: Community Life in a Late Medieval English Diocese (Philadelphia: University of Pennsylvania Press, 2001), 68-98; Beat A. Kümin, The Shaping of a Community: The Rise and Reformation of the English Parish c. 1400-1560 (Aldershot: Scolar, 1996), 22-42; Clive Burgess, "Pre-Reformation Churchwardens' Accounts and Parish Government: Lessons From London and Bristol," English Historical Review 117 (2002): 306-32; Katherine L. French,

1
2
3 husband was a juror in the manor court of Tydd in 1465 (he is presumably one of the
4
5 overlapping jurors to whom Poos refers).¹¹⁹ This suggests both that certain
6
7 parishioners were especially likely to be selected for the maintenance of order and that
8
9 there was some clear overlap between the personnel of secular and ecclesiastical courts
10
11 here.¹²⁰
12
13
14
15
16

17 The overlap in families who made wills and those who were officials with a role at this
18
19 ecclesiastical court is doubtless because local office holders tended to be drawn from
20
21 the heads of established families of middling status.¹²¹ But, in terms of what this tells us
22
23 about married women making wills, one interpretation would be to argue that strong
24
25
26
27

28 “Rebuilding St. Margaret’s: Parish involvement and community action in late medieval
29
30 Westminster”, Journal of Social History 45:1 (2011): 148-71 (esp. 151-2, 155-6). I am
31
32 grateful to Kit French for discussion on this matter.
33
34

35 ¹¹⁶ Poos (ed.), Lower Ecclesiastical Jurisdiction, 274, 399 (Thomas Sorrell).
36
37

38 ¹¹⁷ Cambridge University Library (hereafter CUL), EDR, C 9/2/86. William Haukyn is
39
40 named as a juror in entries dated 1461, 1462, 1465, and 1467.
41
42

43 ¹¹⁸ Poos (ed.), Lower Ecclesiastical Jurisdiction, lxii.
44

45 ¹¹⁹ CUL, EDR, C 9/2/86.
46

47 ¹²⁰ Poos (ed.), Lower Ecclesiastical Jurisdiction, lxii. McIntosh had made a similar point:
48
49 Marjorie Keniston McIntosh, Controlling Misbehavior in England, 1370-1600
50
51 (Cambridge: Cambridge University Press, 1998), 8.
52
53

54 ¹²¹ See the sources on churchwardens in n. 114 above; on jurors see Ian Forrest,
55
56 Trustworthy Men: How Inequality and Faith Made the Medieval Church (Princeton:
57
58 Princeton University Press, 2018), ch. 6.
59
60

connections with the local court that dealt with probate might have been a factor in these women knowing that canon law allowed married women to make wills and having their husbands' support to do so. Prior's early modern study had found a connection between husbands with legal knowledge and married women making wills.¹²²

As the Buckinghamshire probate material, discussed above as demonstrating a possible "pocket of resistance", is also included in court material, I conducted a similar exercise. Here I found indications of a similar pattern to that identified in Wisbech. For example, Alice Picot -- a married woman from Upper Winchendon who had her will proved in 1490 -- was married to a man named Richard; a Richard Pigot was listed as a churchwarden in the same place c.1483-5.¹²³ The (unnamed) wife of Thomas Hawkyns, from Whaddon, made a nuncupative will in 1492 with her husband as executor and he could well have been a churchwarden in Wotton c.1483-5.¹²⁴ In the entries for Quainton 1485, Isabelle Maister's note of probate named a John Maister as executor and Alice Elys's note named a Thomas Elys.¹²⁵ While we do not have enough evidence from the acta to assert the women's marital status (hence the risk of undercounting in the studies by Sheehan and Helmholz and in my own figures for Buckinghamshire which do not include these women), the matching surnames suggest that these were also married

¹²² Prior, "Wives and Wills", 211.

¹²³ Courts of the Archdeaconry of Buckingham, ed. Elvey, 88, 7.

¹²⁴ Courts of the Archdeaconry of Buckingham, ed. Elvey, 118, 8. The husband did not have to pay the fine to have the probate registered in 1492 because he was poor.

¹²⁵ Courts of the Archdeaconry of Buckingham, ed. Elvey, 23.

women. In both cases the men can be found as churchwardens for the same parish c.1483-5.¹²⁶

Returning to the Wisbech material, it seems that twelve married women made wills and their husbands had them enrolled in the court book c.1465-77 for one of two reasons: either because they had specific property of value to bequeath or, when they did not have much to leave, because they had the support of men (usually their husbands) who were well connected to the court. We can now turn to the other will registers for the diocese of Ely to assess the content of the married women's wills and whether these changed over the course of the late fifteenth century.

Married Women's Wills in the Probate Registers for the Diocese of Ely, 1449-1505

In the diocese of Ely, as well as a decline over the course of the late fifteenth century in the number of married women making wills and them being recorded, there was also a shift away from the recording of married women's wills when they had little to bequeath to married women generally only having their wills registered when they had real estate to bequeath (see table 5). Liber C generally overlaps in time with Liber B, which explains why in its earliest sections it contains virtually no wills from the Deanery of Wisbech and, perhaps as a consequence, only one married woman's will.¹²⁷

¹²⁶ Courts of the Archdeaconry of Buckingham, ed. Elvey, 6-7 (here John Master).

¹²⁷ See Poos (ed.), Lower Ecclesiastical Jurisdiction, xxxix, n. 79. The one married woman's will it does contain is that of Maud Bregge of Triplow who had some land to give to her husband: CA, VC 3, fos 2-2v.

For the purpose of chronological trends, then, we can count Liber B and Liber C together. The key registers to be discussed here are therefore Liber A and Liber D.

"[Insert Table 5 here]".

In Liber A (1449-60), there are thirty-seven married women's wills, possibly forty. In thirty-six of these the husband was named as the executor;¹²⁸ in another, the will of Joan wife of Robert Green, the husband was not the executor but he was left five acres of land for life.¹²⁹ In three other wills the woman identifies in the opening line of the will as "uxor" but does not mention him again and so I have not counted these in my

¹²⁸ CA, VC 1, fos 13 (Margaret Joly als. Lyster), 13v (Emma Elwyn), 15v (Christine Owtyng), 15v-16 (Katherine Towt), 18 (Margaret Coper), 18v (Katherine Howlet), 19v (Agnes Clement), 21v (Christine Marcaunt), 26 (Katherine Hawsold), 27 (Alice Clement), 28-28v (Joan Stevenson), 31-31v (Joan Grene), 34-5 (Alice Mas), 35v (Beatrice Edmund), 36v (Margaret Scherman), 39 (Joan Bolle; Margaret Wallarde), 39v (Margaret Reynalde), 41 (Alice Makrowe), 41v (Marion Pococke), 42 (Margaret Dawntre), 43v (Katherine Milner; Lettice Galyard), 44v (Margaret Derby), 45v (Katherine Writh), 47 (Katherine Fryng), 49v-50 (Agnes Tyler), 52 (Joan Hamond; Beatrice Kedewyn), 55 (Alice Skotte), 56v (Ellen Bateman), 57v (Emma Belman), 59 (Joan Brice), 60v-61 (Annis Alettes), 61v (Alice Botolf), 62 (Isabel Edward).

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2
3 statistics.¹³⁰ More than half of the married women's wills in this register were
4
5 concerned with small religious offerings and perhaps the odd gift of clothing (nineteen
6
7 of thirty-seven). For example, the will of Katherine wife of William Howlet, made in
8
9 1456, consisted of small monetary payments (from 2d. to 12d.) to the high altar and the
10
11 fabric of her parish church in Wisbech, to various lights (two specifically named) in the
12
13 same church and then a payment to a church in Leverington, perhaps where she had
14
15 lived previously. There were no other bequests and her husband and another man, as
16
17 executors, were to dispose of any residue.¹³¹ The will of Marion Pococke made in 1455,
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19 made a bequest to the high altar (6d.) and to the fabric (12d.) of the parish church in
20
21 Sutton but the only other bequests were items of clothing to two married women.
22
23 Marion Pococke's husband, Robert, was named as executor.¹³² A further six wills
24
25 referred to some other movable assets. For example, Katherine wife of John Towt made
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27 her will in 1456 and left one Agnes Hope some clothes but also a large chest ("magnam
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29 cistam"), the latter only after the death of her husband, as we saw in the will of
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31
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40 ¹²⁹ CA, VC 1, fos 66v-67. Her sons were named as executors, both with different
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42 surnames, which might suggest she had re-married.
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44

45 ¹³⁰ The three are Katherine wife of Godfrey Wyn (Ibid., fo. 36); Elena wife of Stephen
46
47 Kelful (CA, VC 1, fo. 42); Katherine wife of Adam Boole (Ibid., fos 51-51v).
48
49

50 ¹³¹ CA, VC 1, fo. 18v.
51

52 ¹³² CA, VC 1, fo. 41v. The wills of Marion and her husband Robert are discussed in the
53
54 Wisbech court c.1460-3: see Poos (ed.), *Lower Ecclesiastical Jurisdiction*, 336. For the
55
56 other 17 wills, see CA, VC 1, fos 13, 13v, 15v, 18, 19v, 39v, 42, 43v (x2), 44v, 47, 52, 55,
57
58 56v, 57v, 59, 61v;
59
60

Katherine Haukyn.¹³³ Johana wife of Richard Bolle, in her will of 1454, left to five of her children two sheep and a lamb each.¹³⁴ Only eleven of the thirty-seven wills dealt with real estate such as land or a dwelling. For example, the will of Alice wife of John Mas, made in 1454, left her husband a house (“mansionem meam”) in Wisbech in which one Thomas Sorham currently stayed, until her husband’s death when it was to go to the Gild of Holy Trinity. Her son, Walter, was to get seven acres of land in Tyrington; this land seems to have come from her mother’s side of the family as her mother’s will was mentioned here.¹³⁵

In terms of similarities with Liber B, it should be noted that of the thirty-seven married women’s wills in Liber A, only seven were from areas outside the deanery of Wisbech, if we include Whittlesey in the deanery’s jurisdiction.¹³⁶ This suggests that married women making wills might have been more common in the latter jurisdiction, rather

¹³³ CA VC 1, fo. 15v; see p. XX above.

¹³⁴ CA, VC 1, fo. 39. For the other 5, see *Ibid.*, fos 28-28v, 36v, 39, 41, 49v-50; the will of Alice Nakrowe (*Ibid.*, fo. 41) did not contain any bequests of animals or furnishings but it did contain a bequest of 6s. 8d. to her son, which is why I have grouped it here.

¹³⁵ CA, VC 1, fos 34-5. For the other 10, see *Ibid.*, fos 21v, 26, 27, 31-31v, 34-35, 35v, 45v, 52, 60v-61, 62. In the joint husband and wife will in this register, the land bequeathed came from the wife’s relatives: *Ibid.*, fos 22v-23.

¹³⁶ There are 7 wills from Whittlesey: CA, VC 1, fos 18, 39 (x2), 39v, 42, 43v (x2). It was technically in the diocese of Ely but see p. XX above. The 7 other wills are from Sutton (*Ibid.*, fos 36v, 41v), Ely (fos 41, 49v), Benwich (fo. 55), Downham (fo. 56v) and Chatteris (fo. 61v).

than the diocese as a whole. The will of Joan wife of Adam Stevenson of Elm, made in 1452, left three items of clothing to one Agnes Perche.¹³⁷ Agnes Perche was perhaps the same woman left a kerchief and a chest by Alice Dowdynett, whose will was recorded in Liber B in 1467; Agnes seems linked (perhaps married) to William Perch of Elm, who is named just above her in Dowdynett's will and was a juror in Elm, where Joan Stevenson resided, c.1467-72 and in 1479.¹³⁸ The will of Margaret wife of John Derby from Newton, made in 1454, only included religious bequests ranging from 3d. to named lights to 3s. 4d. to the fabric of her parish church (and she left money to a chaplain in Tydd St Giles which was within the Deanery of Wisbech).¹³⁹ There is a John Derby junior recorded as a juror for the manor court of Newton in 1461.¹⁴⁰ This again suggests that, as well as being a localized practice, women married or closely connected to jurors were more likely to make wills and have them enrolled, even when they had little to bequeath.

By the time of Liber D (1486-1505), the balance had shifted substantially towards recorded married women's wills – of which there are fewer - being concerned with real estate (seven of ten), primarily land. For example, Matilda Cokke of Ickleton, in her will

¹³⁷ CA, VC 1, fos 28-28v.

¹³⁸ Alice Dowdynett made a bequest to the servant of William Perch just before the bequest to Agnes Perch: Poos (ed.), Lower Ecclesiastical Jurisdiction, 321. For William Perch as juror see Ibid., 270 (undated), 279 (undated), 301 (1479), 378 (did not come), 491 (did not come and name crossed out).

¹³⁹ CA, VC 1, fo. 44v.

¹⁴⁰ CA, VC 1, fo. 44v; CUL, EDR, C 9/2/86.

of 1494, left her husband a property and all her lands for the term of his life on condition he commemorate her parents' deaths, presumably from whom she had acquired the land, as well as her own.¹⁴¹ A further two bequeathed some movable property. The will of Isabel Pecherde of Little Shelford left her children some household objects such as a large brass pot and a round pan to her son William.¹⁴² The will of Joan Balderton of Whittlesey was more extensive. It set out the religious bequests in Latin and then switched to Middle English for the bequests to family and friends. Her husband, also her executor, was to get two silver spoons but her son, John Edward, was to get her mash vat (for making wort from malt), a gile vat (for fermenting the wort), a lead brewing vessel, a cheese vat (for straining curds), three brass pans, two brass pots, six pewter pans, a candle holder, a saltcellar, two silver rings, two coverlets, a blanket, a pair of sheets and a gown for his wife.¹⁴³ This reads very much like the core elements of the household and perhaps also a brewing business and might be akin to principalia. In Torkesy, Lincolnshire, the custom recorded c.1345 set out that the heir on the death of his ancestors ("antecessorum suorum") would get, in addition to the tenement, the following utensils: "the best bed with counterpane and sheets, a hutch, the whole cupboard, a tun with the best cup if it be of silver or of mazer, a silver spoon, the best table-cloth, towel and napkin, the best table with tressels, the best laver and basin, the best pot, gridiron, pan and trivet, the best mash-vat and guile-vat and trough, and a tub

¹⁴¹ CA, VC 4, fos 90v-91. For the other 6 see Ibid., fos 6v-7 (Margaret Doughtteffyer), 8v (Agnes Keyd als. Jackson), 21 (Matilda Whytrett), 22v (Margery Plombe), 23-4 (Isabel Benett), 87v-88 (Alice Clerke).

¹⁴² CA, VC 4, fos 41v-42 (1487).

¹⁴³ CA, VC 4, fos 24-24v (1495).

and a [bowl], the best boiler and hand-mills".¹⁴⁴ The tenth married woman's will in this register, that of Agnes Manne of Hardwick, largely concerned bequests of clothing and one pair of beads (a rosary).¹⁴⁵ In this it is similar to the majority of the married women's wills in Liber A, a quarter of those in Liber B, but it is unusual in the context of Liber D.¹⁴⁶

On the whole, there was clearly a trend away from recording married women's wills that did not deal with real estate. There appear to be no notes of probate for married women, apart from those that follow their wills, in Liber B (or Liber A). There are some in Liber D, although not on the scale found in Buckinghamshire, which might indicate that there was also a trend towards married women either not making wills or their husbands not bringing them to court.¹⁴⁷ However, in all of the Ely registers there are notes of administration relating to married women who died intestate. For example, in Liber B -- between the enrolled wills of Margaret Kellsull and Matilda Clerk (both

¹⁴⁴ Bateson (ed.), *Borough Customs*, II, 143; I have changed her reading of 'unam gatam' from 'a cat' to 'a bowl'; see *Dictionary of Medieval Latin from British Sources*, 'gata', 1 (<http://www.dmlbs.ox.ac.uk/publications/online>; accessed 26 July 2018).

¹⁴⁵ CA, VC 4, fo. 51v (1489).

¹⁴⁶ In this register 5 of the 10 married women's wills enrolled were from the deanery of Wisbech, including one from Whittlesey. The others were from March, Doddington (CA, VC 4, fo. 8v), Little Shelford (fo. 41v-42), Hardwick (fo. 51v), and Ickleton (fos 87v-88, 90v-91).

¹⁴⁷ See CA, VC 4, fos 15v (Agnes Persone), 48v (Elizabeth Tauntte), 61v (Marion Sturmyrn), 84 (Margaret Bedford).

married women) -- there are eight notes of administration for people who died intestate, one dated 1470, and three are married women. For example, Margaret Rede died intestate and her husband, John, was dismissed from paying a fee on account of poverty.¹⁴⁸ In Liber A, there are two such notes pertaining to married women below the will of Emma wife of William Belman.¹⁴⁹ This is significant as Sheehan expressed some doubt about whether church courts would treat marrying women without wills as dying intestate given the common law position about property.¹⁵⁰

Conclusions

The case study of married women's wills in the probate registers for the diocese of Ely 1449-1505 has shown that, while a decline set in of married women making wills, it was

¹⁴⁸ See Poos (ed.), Lower Ecclesiastical Jurisdiction, 448: "Eodem die commissa est administratio bonorum Margaret Rede decedentis abintestato Johanni marito suo et dimissus est propter paupertatem." The other married women who died intestate are Agnes Stone and Alice Boolde: Ibid.

¹⁴⁹ CA, VC 1, fo. 57v (wife of John Baret; Katherine wife of John Slynk). See also VC 1, fos 4v (Elizabeth Cutt), 8v (Katherine Sawnsun), 15 (Margaret Haw), 15v (Margaret Chapman), 16v (Katherine Grene), 43 (wife of John Emreth), 49 (Margery Meyrbek), 63 (Agnes Gabbys); CA, VC 4, fos 1 (Annabel Bothe), 15 (Agnes Croser), 52a (Isabel Smyth), 52b (Margaret Goodwyn), 61 (Margaret Symund), 104v (Agnes Plowryght), 123 (Agnes Karsay).

¹⁵⁰ Sheehan, "Influence of Canon Law", 120-1; reasserted by Ferme in his Canon Law, 139.

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2
3 later than Goldberg found in York and later than has been suggested for England as a
4 whole by Helmholz and Prior. The registers do signal that there was a particular
5 concentration of married women making wills in the deanery of Wisbech (including
6 Whittlesey) which further suggests regional variation in practice, as Prior suggested for
7 parts of early modern Oxfordshire. The registers also reveal a shift away from recording
8 married women's wills if no real estate was being bequeathed, so that by 1486 (Liber D)
9 any wills that did not include such bequests were rare. The Buckingham court book,
10 which only includes two married women's wills for the period 1483-97, suggests that
11 this might have been about the cost of registration as the probate *acta* included indicate
12 that married women continued to make wills and have them proved in not insignificant
13 numbers (17.9% of probate *acta*).
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31 In terms of which married women made wills and had them proved, the Wisbech and
32 Buckingham court books also suggest that another cluster was women who were
33 closely related to male officials whose roles provided direct access to the courts (there
34 are also indications of this in Liber A). This is not exactly the same as Prior's finding that
35 women related to lawyers were more likely to make wills in early modern England, but
36 the women whose wills were proved before archdeaconry courts were generally of
37 lower social status than those whose wills went to the PCC. We might conclude, though,
38 that knowledge of how courts worked might have been a factor in the drawing up and
39 proving of these legal documents. Other, smaller clusters (pairs) include connections
40 between married women who made wills, whether that is the two wives of Robert
41 Galyarde or the wives of Henry Gilbert and John Elliott, whose husbands knew each
42 other, or Joan Stevenson and Alice Dowdynett who both knew an Agnes Perch. Some of
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the married women who made wills in Ely were certainly remarried but this was not as noticeable as in Prior's PCC sample.

The social status point is also worth reflecting on. Helmholz commented, "by the middle of the fifteenth century, wills of married women had become rarities in England. There were always some, perhaps more so among the wealthy or the powerful than among the middling sort most diocesan courts dealt with".¹⁵¹ However, this study suggests that it is precisely amongst the records of archdeaconry courts that we find married women's wills in late fifteenth century England. In Prior's study of the PCC 1558-1700, her highest proportion of married women's wills, in 1694-1700, was less than 9 out of 1000 wills (less than 1%); for 1558-1583 she estimated it was less than 4 out of 1000 wills.¹⁵² Prior also commented that her "Oxfordshire sample goes further down the social scale than might be expected... two labourers' wives, the wife of a husbandman, and three other country wives in quite humble circumstance".¹⁵³ This is again congruent with the Ely material.

¹⁵¹ Helmholz, "Married Women's Wills", 170.

¹⁵² See Prior, "Wives and Wills", 208-9 for the figures and her methodology. I have identified four married women's wills in the PCC registers 1454-1500: The National Archives, Kew, PROB 11/7/39 (Elizabeth Chittok, 1480); PROB 11/7/304 (Agnes Lytton, 1486); PROB 11/8/87 (Alice Tympley, 1487); PROB 11/9/273 (Matilda Esterfeld, 1493).

¹⁵³ Prior, "Wives and Wills", 213.

Helmholz suggested that one possible reason for the decline in married women's wills was that families found other ways to pass on property such as trusts.¹⁵⁴ While that might have been the case, many of the married women's wills discussed in this study were not concerned with real estate and some bequeathed little in the way of movable goods. The latter point also suggests that there was no custom of shared marital property in these areas, although Donahue had pointed to hints of its survival.¹⁵⁵ The married women's wills considered in this study did not attempt to bequeath a third share, as was suggested as a reasonable practice in Glanvill and Bracton. The value of the wills, beyond the fact of their continued existence in spite of the position of the common law, thus lies in their communicating a sense of what items married women could claim as their own, something that we cannot access from probate acta. For Alice Qwyght it was just five items of clothing, for Katherine Haukyn it was a gallon pot, and for Joan Balderton it was a much more extensive list of household goods. As Prior articulated, "Wills are amongst the most useful sources for the study of ordinary people... For married women, ... they are almost our only source."¹⁵⁶

In terms of what married women's wills reveal about the law, they suggest that we need to be cautious in assuming that, just because common lawyers set out a particular position, medieval people followed it. Further, the matter of probate jurisdiction in late medieval England was one of customary practice, rather than canonical principle, which

¹⁵⁴ Helmholz, "Married Women's Wills", 173-4.

¹⁵⁵ Donahue Jr, "Lyndwood's Gloss", 36; he cites a Canterbury case from 1294 as evidence.

¹⁵⁶ Prior, "Wives and Wills", 201.

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3 allowed for regional variation, as Helmholz found for the custom of legitim. Just as some
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5 areas continued the practice of reserving a third of the parent's goods for his or her
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7 heirs for longer than others, some areas continued to allow (if not, encourage) married
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9 women to make wills. The references to married women dying intestate in the diocese
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11 of Ely c.1449-1505 suggest an expectation that married women would make wills and
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13 some wives did just that.
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For Review Only

Table 1: Helmholz’s data pertaining to married women’s will making in later medieval England

Diocese	Date	No. of probate acts	Female Testators %		Married Female Testators %	
Hereford	1453	19	6	31.6	3	15.8
Rochester	1457	123	18	14.6	2	1.6
Canterbury	1477	50	6	12.0	0	0.0
London	1497	72	10	13.9	0	0.0
Chichester	1506-8	42	5	11.9	0	0.0

Source: Helmholz, “Married Women’s Wills”, 169-70.

Table 2: Married women's wills in the Exchequer Court of York, 1389-1500

Dates	No. of wills	Female Testators		Married Female Testators	
			%		%
1389-1408	437	136	31.1	68	15.6
1418-1444	668	182	27.2	35	5.2
1445-1469	370	85	23.0	3	0.8
1470-1500	448	89	19.9	2	0.4

Source: Goldberg, Women, Work, and Life Cycle, 264-5.

Table 3: Married women’s wills in select ecclesiastical jurisdictions in later medieval England

Jurisdiction	Dates	No. of Wills	Female Testators		Married Female Testators	
Archdeaconry of London	1393-1415	1384	241	17.4	8	0.6
Dean & Chapter, Norwich	1444-1454	46	11	23.9	9	19.6
Archdeaconry of Sudbury	1439-1461	947	103	10.9	13	1.4
Ely consistory court	1449-1460	257	75	29.2	37	14.4
Archdeaconry of Sudbury	1461-1474	766	113	14.8	13	1.7
Archdeaconry of Norfolk	1459-1489	1143	161	14.1	18	1.6
Archdeaconry of Buckingham	1483-1497	85	9	10.6	2	2.4

Sources: Wood, “Life and Death”, 12, 44; NRO, DCN 69/1; Northeast (ed.), Wills of the Archdeaconry of Sudbury, 1; CA, VC 1; Northeast (ed.), Wills of the Archdeaconry of Sudbury, 2; NRO, ANF will register Liber 4 (Grey); Courts of the Archdeaconry of Buckingham, ed. Elvey, 1-189.

Table 4: Married women's wills in the Diocese of Ely, 1449-1505

Source	Dates	No. of Wills	Female testators		Married Female Testators	
				%		%
Liber A	1449-1460	257*	75	29.2	37	14.4
Liber B	1458-1484	181	45	24.9	12	6.6
Liber C	1478-1486	172	30	17.4	1	0.6
Liber D	1486-1505	549	81	14.8	10	1.8

* One joint will from a husband and wife; not counted as a woman's or wife's will.

Source: CA, VC 1-4.

Table 5: The types of bequests in married women’s wills in the Diocese of Ely, 1449-1505

Source	Dates	No. of wills by married women	No. of wills that bequeath		
			religious offerings/clothing/ personal jewelry only	other moveable property	real estate
Liber A	1449-1460	37	19	7	11
Liber B	1458-1484	12	3	5	4
Liber C	1478-1486	1	-	-	1
Liber D	1486-1505	10	1	2	7

Source: CA, VC 1-4.