"Living as a single person". Marital Status, Performance and the Law in Late Medieval England

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'Living as a single person':

Marital Status, Performance and the Law in Late Medieval England

In 1316 Semeine, son of Henry le Servant, appeared before the King's Bench, one of England's central courts of justice, on a charge of having abducted Isabel, the wife of William de Cornwall, and taken away some of William's goods. As Isabel's husband, common law gave William the use and control of any property that she had brought to the marriage, and it was perhaps these goods that are being referred to here. Semeine's defence was that on the day of the alleged charge he considered Isabel to be his legal wife and had done so for more than a year. Further, 'this Isabel at the time of the making of the contract of matrimony between her and the same Semeine and for days and years before *was living as a single person at Great Yarmouth and was regarded as single*'.[i] He alleged that banns were published in the parish church of the vill of Great Yarmouth and no one raised any objection to their marriage, a statement that supports his contention that the community also thought Isabel was single. Isabel, though, was evidently 'single' only in the sense that she did not live with her legal husband. Semeine also reports that William had successfully brought a case before an ecclesiastical court to have the marriage of Semeine and Isabel annulled, on the grounds that Isabel had already contracted marriage with William.

It might seem odd, in a special issue concerned with single women, to begin with an example that pertains to a (twice) married woman, but one approach to the vexed question of how we define the single woman is to think further about definitions of marriage, that is, about what it is that makes someone 'married' as opposed to 'not married'.[ii] One might argue that such an approach privileges marriage as the norm. I prefer to see it as a useful blurring of the categories, both of the 'married' and of the 'single'. The category 'single woman' means different things to different scholars. For some, 'single' encompasses a range of conditions,

both pre and post marriage.[iii] For others, the single woman is never married,[iv] or even the never married after a certain age.[v] But in both approaches the 'married woman' is the other to whom she is compared, implicitly or explicitly. To unpick the category of 'the married' further can therefore be productive. To some extent this was the project of Joan Chandler's 1991 study, *Women Without Husbands*. She saw the married/not-married division as arising from an 'idealisation of the nuclear family', and argued instead that '[i]n reality women not only have a variety of marital statuses, they also have a range of domestic and sexual relationships with men. In short, there are degrees of marriage.'[vi] Chandler therefore focused on 'the margins of marriage', such as cohabiting couples, the separated, the divorced, and women with absent husbands (for example, women married to servicemen). For Chandler, these women are on a marriage continuum. The approach taken in this essay differs. It argues that 'the margins of marriage', the grey areas produced by the definition of marriage, are also at the margins of singleness; understanding what marriage meant in a particular society can shed light on what it meant to live as a single person in that society, in this case, the society of fourteenth- and fifteenth- century England. This essay therefore makes use of some of the existing scholarship on medieval marriage in order to offer a different approach to the topic of singleness.

The example of Isabel and her two purported husbands, Semeine and William, touches on a number of key areas which this essay will examine further: firstly, the laws concerning marriage formation and dissolution, that is, at what point according to canon law someone moves from being single to being married and back again; second, the laws concerning property (common and customary law) and how these might differ for the single and the married. To sum up the legal context of the case, William was suing under common law for a trespass against his property, but Semeine's defence was that, by previously appealing to canon law to annul the second marriage, William had already made clear that

Semeine's intention was marriage rather than abduction and theft. The case illustrates the differing jurisdictions of canon and common law, particularly as they pertain to marriage, and how they might impinge on each other. But even within a particular legal discourse, the line between the single and the married might be blurred. This essay focuses on that blurriness, the margins of singleness and marriage, whether it was a product of the law in theory or of practice, whether widespread or the atypical actions of particular individuals, in order to investigate what it was that made someone married as opposed to not married.

Canon Law, Marriage, and Marital Status

It was only from the late eleventh century, as the Catholic Church established itself as an autonomous body in Western Europe with its own laws, that a systematic theology and law of marriage was developed, chiefly in the twelfth and thirteenth centuries. Key elements of the new teaching included marriage as monogamous and indissoluble, and that the sacrament of marriage was created by consent alone (the free consent of each spouse). This view was only fixed in the late twelfth century, after some debate.[vii] An alternative view, supported by the canonist Gratian and the Bolognese school, was that while a marriage was initiated by the consent of the parties, it was only rendered indissoluble by subsequent sexual intercourse. On the other hand, Peter Lombard and the Masters of Paris argued that words of present consent ('I take you to be my wedded wife') alone made a valid marriage (as it had for Joseph and the Virgin Mary), although words of future consent ('I *will* take you…') must be followed by sexual relations for the marriage to be declared indissoluble. It was the latter view that held sway from the time of Alexander III (1159-81) until 1753 in England, and was enforced by ecclesiastical courts. For the Catholic Church, then, a marriage was created if both parties were free to marry and freely exchanged words of consent in the present tense, or in the

future tense followed by consummation, even if this was done privately or secretly. It did not require the involvement of a priest, or even of witnesses. It also did not necessarily require sexual intercourse, although this was seen as important to the marriage itself. Canon law maintained that each partner owed marital coitus to the other (the 'conjugal debt'), and for this reason impotence was grounds for annulment of a marriage.[viii]

Divorce in the modern sense of the word was not legally possible in England until 1857.[ix] Canon law allowed for the annulments of marriages, divorce *a vinculo* ('from the bond'), on limited grounds, such as the existence of a pre-contract, too close a blood-relationship, or the use of force to obtain consent.[x] In such cases it was held that the marriage was never valid, due to a pre-existing impediment. Canon law also granted divorce *a mensa et thoro* ('from bed and board') on certain grounds, but this is closer to what we would call a separation in that, while the parties could live apart, neither would be free to remarry. Such separations could be granted on the grounds of cruelty, adultery, unnatural intercourse, or 'spiritual' fornication (the heresy or apostasy of one of the parties).[xi] Co-residency was thus seen as a key feature of medieval marriage (and one to which we will return) and if a separation *a mensa et thoro* was not granted, a spouse could be ordered to return to the marital home and pay the 'conjugal debt'. There is evidence from at least the fourteenth century that in northwestern Europe marriage coincided with the formation of a new household with the married couple at its core.[xii]

Thus canon law allowed for marriages to be made quite informally (two people exchanging vows, wherever they may be), but once made they were intended to be indissoluble (they could only be dissolved in certain circumstances). While the new rules were intended to set out clearly who should and should not be judged as married, it is the contention here that these attempts actually enabled a blurring of the line between the single and the married, in large part because it was not a system that the Catholic Church could fully

police. The argument is not a simple one of the Church's view as opposed to lay practice, though. It might be more accurate to say that it is about the implications of the new rules when tested in some way by individuals, whether they fully knew and accepted the law or not.[xiii] One key source of evidence that we have is the records of matrimonial cases brought before the ecclesiastical courts. While the court material is likely to over-represent marriages that did not follow the Church's ideal process, hence the dispute, such evidence has been effectively used by others to highlight common expectations and practices. As Shannon McSheffrey has observed, those seeking to have a marriage upheld would want to emphasize what was normal about the alleged marriage formation, rather than what was atypical.[xiv] Similarly, there is value to the stories told by witnesses as, even if they do not accurately retell what happened, they were presumably designed to be plausible accounts, which would work in court.[xv] The examples discussed below, though, do not claim to be 'typical' or 'representative' of medieval marriage formation and dissolution. They have been chosen because they illuminate in some way the shadowy margins of singleness and marriage.

The Catholic Church's new teachings on marriage meant that a marriage could be made with little or no ceremony or planning: it just required the two principals to exchange words of present consent, whatever the location, or words of future consent followed by consummation. Yet it is not difficult to imagine a situation in which a person might contract what the Church considered to be a valid marriage when that had not been their intention. The Church was not unaware of this problem and attempted to warn against it. For example, one thirteenth-century diocesan statute states 'Nor should anyone bind women's hands with a noose made of reed or any other material, be it cheap or expensive, so as to fornicate with them more freely, for fear that while he considers himself to be joking, he binds himself with the rites of marriage'.[xvi] Similarly, a thirteenth-century confessional manual, which survives in a relatively large number of manuscripts across northern Europe, enjoins the confessor to

ask a layman whether he has, foolishly or for the purposes of seduction, said to a woman 'I give to you my body as husband' and have her reciprocate, because - in whatever manner it was said - this would mean that the couple were married and could not be separated.[xvii] A case brought before York's consistory court by Maud Schipyn in 1355, to enforce a marriage with one Robert Smyth, offers a vivid example of the fine-line that the new teachings had created between sweet-talking someone into bed and contracting a marriage. A witness deposed that she witnessed the following:

she saw through the door of said basement how said Robert pushed and pulled the said Maud into his house towards a place which is called 'Kowbos' in English, and there he attempted to know her carnally. And then the said Maud said, 'Our goddes forbode that you should have the power to know me carnally unless you will marry me'. The said Robert answered, 'Behold my oath that if I take anyone to be my wife I shall take you if you will yield to me'. The said Maud answered, 'Behold my oath that I will be at your disposal'. And the said Robert took her in his arms and threw her to the ground in 'le Kowbos' and knew her carnally.[xviii]

Robert had evidently not intended to contract a marriage but rather to get Maud's consent to sex. But his conditional promise followed by consummation would have been considered valid by a church court, as canon law held that the sexual act negated any prior condition. Therefore Robert had to focus on challenging the two witnesses to that sexual act,[xix] as the court needed at least two witnesses to the 'contract', regardless of where and how it was made.[xx] In this case, as in many others, we do not have the final judgement to know how it turned out. Nevertheless, it presents a vivid image of a man who did not consider himself to be married but had perhaps unwittingly made a valid marriage contract.

Robert was unlikely to have been the only individual to make promises lightly but not all such cases would have been brought to a court's attention. Ecclesiastical courts generally respond to actions taken by one of the parties to enforce an alleged contract (although communities could prompt *ex officio* actions to enforce marriages).[xxi] Thus if both parties either did not believe that their words and actions had made an indissoluble marriage - or found it convenient not to - they could, for example, continue to *live as single people*, that is, to live apart and as if eligible to contract with another person. Court cases only reveal such practices at points of conflict and do not allow us to know how widespread they may have been.[xxii]

The new teachings on marriage also helped foster some blurriness of the line between the single and the married by conceiving of marriage formation as a process, rather than a one-off event. As such, it allowed for stages or degrees of marriage; for example, the teaching that future consent plus consummation made a valid marriage acknowledged a two-stage process to marriage. If the second stage did not follow what can be called a betrothal, then the person was not married. Further, even as the Catholic Church was formulating its rules as to the *minimum* requirements for a valid marriage, it also sought to publicize what it saw as *desirable* requirements, such as the reading out of banns and the public exchange of consent in the present tense by the couple within a religious ceremony. For the Church the ideal marriage consisted of a betrothal, banns, and a religious ceremony, that is, it would be a public marriage in order that the couple's new marital status was widely known. Ironically, all these elements were allegedly part of the alleged marriage of Semeine, son of Henry le servant, to Isabel, wife of William de Cornwall. Semeine, who had been accused of abducting William's wife and goods, was evidently at pains to point out that when he had married Isabel (already William's wife) he was unaware of her marital status. Thus the marriage formation process he described contains all of the desired elements:

after she [Isabel] and the same Semeine consented together to contract matrimony between themselves [mutuo consenserunt ad matrimonium inter eos contrahendo fuerunt], the banns of matrimony were solemnly published thereof between them in the parish church of the vill of Great Yarmouth, to which publication neither the aforesaid William nor anyone else raised any objection. So the same Semeine after the passage of time publicly and solemnly married her *in the presence of the church* [in facie ecclesie] aforesaid, and had and held her as his lawful wife on account of the aforesaid matrimony for a year and more.[xxiii]

The couple had apparently first agreed to marry; the future tense suggests that this was a betrothal. Then the banns were published in their local church; Semeine has already stated that Isabel had lived in this parish 'for days and years' prior to this.[xxiv] Finally, the marriage had been made *in facie ecclesie*.[xxv] These details were clearly intended to illustrate that the marriage had been conducted in an entirely open and above-board manner, with neither party appearing to have anything to hide, but they also suggest that these were now elements of a typical marriage, as opposed to just recommendations by church councils and synods. And, as this ideal gained acceptance, those who had exchanged words of present consent might consider themselves not to be 'fully' married until their union was solemnized. In her analysis of late fifteenth-century marriage litigation in the diocese of London, Shannon McSheffrey has shown that the laity also believed in degrees of marriage. For example, one deponent reported hearing a man declare the following: 'Katherine, standing here before you, *is my wife* before God and man, and as soon as she gives birth, *I will* marry her', thus suggesting a distinction between someone becoming a wife and the act of marriage.[xxvi]

Another way in which the new teachings contributed to a blurriness between the categories single and married concerns marriage dissolution, rather than marriage formation.

As noted earlier, canon law allowed for the annulments of marriages on limited grounds. In such cases it was held that the marriage had never existed but there is nevertheless a grey area in that, until the annulment, the marriage was probably commonly held to exist. For example, in the case of William de Cornwall and Semeine, son of Henry le Servant, Semeine's marriage to Isabel was annulled on the grounds of her pre-contract with William but, according to Semeine, he had 'had and held her as his lawful wife' for more than a year.[xxvii] Thus Semeine had lived as a married man but was then held to be a never-married man by an ecclesiastical court. Also, although the canon legal rules regarding impediments to marriages theoretically allowed for some marriages to be annulled at any point after the event, the standards of proof required must have meant this would not always happen. As Helmholz has pointed out, canon law made contracting marriages easy but proving them difficult, and proving an impediment in order to annul a marriage was similarly difficult.[xxviii]

Helmholz cites the case of one John Paynaminuta, from the diocese of London, which (while the case itself is not typical of those found before English ecclesiastical courts) is another example of how canon law's teachings about what makes a marriage might inadvertently have the effect of breaking what to others might be seen as a 'marriage'. John had married a woman named Katherine *in facie ecclesie*, believing his first wife, Conesyn, to be dead.[xxix] He had not seen or heard from Conesyn for eleven years but one day John was told by a man that his first wife was still alive and living in France. He thus declared himself divorced but only came to court when Katherine, who evidently did not want to live as a single woman again, sued for full rights of cohabitation. Presumably John had not sued for an annulment because he could not prove his first wife was still alive, having only one witness to call upon, the man who had told him. In court canon lawyers would probably have sided with Katherine, due to the requirements of proof.[xxx] Yet, canon law theorists did argue that a man in John's situation should desert the second wife, accept excommunication from an

earthly court for doing so, and be secure in the knowledge that he would be forgiven by God at Judgement Day. A late fifteenth-century Scottish canonist, William Hay, suggested that such a man should go with his true wife to a place where his situation was unknown.[xxxi] This particular case further illustrates that it was not necessarily the case that the Catholic Church and the laity had different perspectives on the line between the single and the married, but sometimes it was more a matter of what was considered to be the case in theory and what could be supported in practice.

The procedure adopted in ecclesiastical courts arguably led to a situation whereby couples might be more likely to self-divorce than to bring cases to such courts. Helmholz has suggested that the scarcity of suits for separations *a mensa et thoro* ('from bed and board') may be because couples simply agreed between themselves to part.[xxxii] As canon law recognised the validity of the *informal* formation of marriage, it is not inconceivable than some chose to dissolve their marriages informally too. It is difficult to evaluate how common such a practice was from the examples cited in various court records, but some scholars suggest that it might have been frequent.[xxxiii] Ecclesiastical and chancery court records refer to maintenance arrangements for a spouse who was no longer co-resident.[xxxiv] Although in the former these are generally cases where separation had been given church approval, in the latter the impression is given that some of these arrangements had been agreed by the couple only. The Chancery petition of Lucy wife of Roger Fitz Andrewe, for example, claimed that her husband had not been living with her for many years, but instead lived in 'avowtrie' (adultery) with another woman, a situation that the Catholic Church would obviously not have approved. She alleges that Roger had agreed to pay her seven marks a year for the rest of her life but had since fixed his estate so that no one could tell if he was alive or dead.[xxxv] We can also again turn to the case of William de Cornwall and Semeine, son of Henry le Servant: if we accept Semeine's story rather than William's, Isabel had attempted to end her

first marriage by moving away and 'living as a single person' in a new area.[xxxvi] From both accounts it seems clear that William had not agreed to this situation. Other cases before the king's courts for the abduction of a wife seem to refer to what Sue Sheridan Walker has called 'consensual abduction' or, in Sara Butler's terms, 'assisted spousal desertion'.[xxxvii]

Thus, the Catholic Church's new teachings on marriage formation and dissolution, the procedure adopted in ecclesiastical courts, and lay practice (whether widespread practices or the actions of individuals), all sometimes resulted in situations in which a person's marital status might not be definable as one hundred percent 'single' or one hundred percent 'married', but might fall somewhere between the two. Those who did not believe that their informal promises had really made a binding marriage would have carried on living as if single, even if they were 'legally' married, and so might contract subsequent marriages. Indeed, it was a plausible defence in ecclesiastical courts to argue that a marriage was not valid because a contract had been made previously with someone else, sometimes years earlier.[xxxviii] Likewise, for those couples whose marriages ended informally, that they were still married under the law would not have been readily apparent in a new locale (as is suggested by the case of Isabel, wife of William de Cornwall). One cannot say how many people fell into this grey area but consideration of this group enables us to think about singleness as *performative*, as to some extent created by 'living as a single person'. And the corollary is that, whatever the law, marriedness was also to a large extent dependent on 'living as a married person', that is, living together as a couple.

Co-residency brings in other elements, some of which have already featured above, such as sexual relations and common fame as a married couple. The pooling and management of property is another key feature. One of the reasons why William pursued Semeine before the King's Bench was because, as Isabel's husband, common law gave William the use and control of her property but Semeine had clearly taken up these rights after his so-called

marriage to her; the trespass alleged was of the abduction of William's wife *and his property*.
It is to therefore to the laws concerning property, under both common and customary law,
and how these might differ for the single and the married that we will now turn.

Secular Law, Marital Status, and Property

The thirteenth-century legal treatise known as *Bracton* opens with a discussion of how the
law relates to persons, according to various conditions: the first is whether one is free or
unfree; the second is whether someone was *sui juris* or in the *potestas* of another; and the
third relates to those who are in wardship or the *cura* of relatives and friends, and it is here
that he notes that '[s]ome are under the rod, as wives etc.'[xxxix] On marriage all of a woman's
property (real estate but also other assets) came under her husband's control, with the
exception of her 'paraphernalia' (personal clothes and jewels).[xl] The wife was still the owner
of the property but the husband was legally responsible for it; any actions to be taken at court
were to be taken in both their names. It is because of this common law position that the
married woman is referred to in various legal records as *coverte de baron* (covered by her
husband) or as *femme coverte* (covered woman). In contrast, the unmarried woman is the
femme sole, literally the woman alone. Under common law, unmarried women (of age) could
own land and chattels, sell and bequeath such property, and sue and be sued, whereas married
women could not. But this common law position could be modified by customary law in
particular locales. The custom of allowing a married woman to be treated as if *femme sole*,
that is, as a woman not under the coverture of a husband and thus as economically and legally
responsible, is well known by scholars, although some might question how widespread the
practice was in late medieval England.[xli] It is a custom that will be briefly discussed here as it
again offers an example of how the law itself might create a grey area in the differences

between some single and married people, a grey area that might be exploited in different ways, and will bring us back to the issue of married people being able to pass as single by virtue of their actions.

Most of the early evidence for the custom that allowed married women to act as if *femmes soles* comes from London.[xlii] The practice might date back to the early thirteenth century but the first known record of it was in the now lost Darcy's custumal of the 1330s and 1340s;[xliii] John Carpenter, who borrowed extensively from Darcy's custumal, copied the pertinent customs into the city's *Liber Albus* in 1419, and they were also adopted by other towns.[xliv] The customs allow some married women to be treated in respect of economic and legal matters 'as a single woman' or 'as though she were a single woman' (*come femme soule*). For example, one custom states that 'where a woman *coverte de baron* follows any craft within the said city by herself apart, with which the husband in no way interferes, such a woman shall be bound as a single woman [*come femme soule*] as to all that concerns her said craft'.[xlv] The custom continues that if the husband and wife are sued as a result, the wife should answer alone and, if she is found guilty, she should go to prison until she pays what she owes, but the husband and his goods should not suffer. Another custom is more explicitly concerned with the person interacting with the married woman: 'if a wife [*une femme*], as though a single woman [*come femme soule*], rents any house or shop within the said city, she shall be bound to pay the rent of the said house or shop, and shall be impleaded and sued as a single woman, by way of debt if necessary, notwithstanding that she was *coverte de baron* at the time of such letting, supposing that the lessor did not know thereof'.[xlvi] This custom was concerned that others (including husbands) did not suffer because married women might both act as *femmes soles* but claim the protection of the *femmes covertes*.

Petitions to the late medieval Court of Chancery do suggest that the grey area between what the common law said about married women on the one hand and what custom might

allow on the other was exploited by some individuals.[xlvii] For example, the late fifteenth-century chancery petition of John Fynkell relates how he had sold silk to one Joan Horne when she was married, as she had told him that 'she was sole merchaunt' and that 'she after the custume of London might in her owne name bye and selle' and all contracts and bonds 'by her and in her sole name' would be honoured. She subsequently refused to pay her debt, even after she was widowed, and Fynkell claimed that he could not get remedy at common law, even with reference to the custom of the city, 'in asmoche as it appereth not in recorde in the seide cite that ever she was admitted to be sole merchaunte'.[xlviii] Similarly, the petition of Barnard de Via Cava, a Genoese merchant, tells how he had traded with Cecily Walcote, silkwoman, when her husband was still alive. She had said she was a 'sole marchaunt after the custume of the cyte of London' but then refused to pay the money she owed him, 'knowing that ther is no mater of record that she after the custume of the cite was admytted sole marchaunt'.[xlix]

Both these petitioners make reference to the city's records, perhaps implying that they had expected the status to be recorded. While there are examples of women registering for *femme sole* status, they are of merchants, notably silkwomen, as the two women in these examples were.[l] Marjorie McIntosh has suggested that some married women might have chosen to trade on their own but remain a *femme coverte* in the eyes of the law, that is, not registering the status, so that 'she was free either to claim or to deny femme sole status if she were sued, depending on which worked to her benefit in that particular case', which appears to be the case in these two Chancery examples.[li] Lack of formal registration was perhaps even more likely when the women were engaged in smaller economic transactions; the first London custumal cited above was specifically concerned with women who follow a craft, although in practice the custom did apply to all female traders, including those who ran an inn or alehouse.[lii] A key point here, though, is that, in a society in which one's first reaction

was not to check a written record (perhaps the men were just explaining why their cases would fail in another court and why they wanted their cases heard in Chancery), *knowing* someone's status, particularly in a city of strangers like London where one might not be able to rely on 'common fame', was a matter of trust.

A Norwich custumal of *c*.1340 is interesting not just on the issue of ambiguous statuses, but also on informal separations. In a discussion about whether husbands should always be held liable for debts that their wives had amassed, it considers those married couples who live apart (which perhaps suggests that this was a not uncommon phenomenon).[liii] The custumal states that a husband is liable, even if the wife had borrowed money without his knowledge, as long as 'the wife of the said man is cohabiting with her husband at the time when the debt was made, *or living separate by his assent and good-will*' and 'she does not … wrongfully separate herself from her husband by her own wilfulness, and that she does not separate herself to make mischief'.[liv] The conclusion that a husband was still legally and economically responsible for his wife after a separation *a mensa et thoro* fits with the evidence of maintenance arrangements.[lv] The exemption for husbands whose wives were 'wilful' suggests that if the husband did not consent to the separation the wife should be considered economically and legally responsible for herself. But the reference to 'mischief' might be read in a number of ways. The concern could be that, as in the above cases, a wife might enter into an agreement as a *de facto femme sole*, which she would then refuse to honour, being *de iure* a *femme coverte*, but which the husband would also challenge, leaving the lender out of pocket. Or it could be read as suggesting that a separation might be a ploy to trick lenders into seeing a wife as a single woman. Both these readings are supported by other legal cases.

To give one example, a late fifteenth-century petition to the court of Chancery contains the claim that a married woman had pretended to be a single woman in order to

exploit the different legal rights and responsibilities of single and married women. According to the petition of John Watson, he had accepted one Joan Reed as a guarantor for John Wodman's debts, believing her to the man's sister and a rich widow. As a widow, he could have pursued Joan under common law for the debt, if John Wodman was unable to pay. However, Joan was actually Wodman's *wife*, rather than his sister. Thus John Watson was left in the position of having no one to chase for the debt, except Wodman.[lvi] This case and the Norwich custumal, like the opening example of Semeine and Isabel, thus highlight some of the problems of the invisibility of marital status: if a married woman lives or acts separately from her husband, how would anyone know that she was a married woman? For canon law, the potential repercussion of this performative singleness was unwitting bigamy, but for secular law the issue was more one of legal liability and property ownership.

Marital status can thus be seen as a performance that had to be acted out in order to be visible. For example, married persons should live together after vows had been exchanged, whereas single persons should not cohabit with a sexual partner. Husbands should take responsibility for the economic activities of their household, whereas single women could act independently. The examples considered in this essay suggest that in fourteenth- and fifteenth-century England one could not always trust what one saw and was told: someone 'living as a single person' might be a married person, someone posing as a rich widow might be *coverte de baron*, and an in debt *baron* at that, and someone trading as a 'sole merchaunt' might then take refuge in the common law position of *femme coverte*. While the law played a part in trying to sort out such situations, the laws themselves helped create some of these situations. The grey area between singleness and marriage is not one that lends itself to quantification. It does include the separated and the divorced, groups who are not just on the margins of marriage but also on the margins of singleness. Studies of the single, and not just

of the single in late medieval England, might usefully look at this group as well as the never married and the widowed. This essay has also argued, though, that one can think about this grey area between singleness and marriage more flexibly still by looking at how people act out their status, whether it was a valid one or not. The ambivalent evidence of married women sometimes claiming and sometimes denying *femme sole* status, of acting as if single and then acting married, is not just revealing of married women's legal and economic position but can be used to think about the advantages and disadvantages that being single entailed in the commercial environment.

[i] M. S. Arnold (Ed.) (1985) *Select Cases of Trespass from the King's Courts, 1307-1399*, Selden Society, 100 (London: Selden Society), pp. 77-78 (p. 77; my italics); the key phrase being 'fuit sola comorans apud Magnum Gernemuth et pro sola habebatur'. For a brief introduction to this court see A. Musson and W. M. Ormrod (1999) *The Evolution of English Justice: Law, Politics and Society in the Fourteenth Century* (Houndmills: Macmillan Press), pp. 17-20. This essay has benefited at various stages from the advice of Judith Bennett, Amy Froide, Shannon McSheffrey and two anonymous readers.

[ii] I have explored elsewhere the shifting meanings of the category 'single woman' as used in late medieval texts: C. Beattie (2007) *Medieval Single Women: The Politics of Social Classification in Late Medieval England* (Oxford: Clarendon Press).

[iii] e.g. see L. Amtower and D. Kehler (Eds.) (2003) *The Single Woman in Medieval and Early Modern England: Her Life and Representation* (Tempe: Arizona Center for Medieval and Renaissance Studies); M. Palazzi (1984) Female Solitude and Patrilineage: Unmarried Women and Widows During the Eighteenth and Nineteenth Centuries, *Journal of Family History*, 9, pp. 443-59; A. Fauve-Chamoux (1981) Présentation, *Annales de Démographie Historique*. pp. 207-13.

[iv] e.g. see A. M. Froide (2005) *Never Married: Singlewomen in Early Modern England* (Oxford: Oxford University Press); P. Sharpe (1999), Dealing With Love: The Ambiguous Independence of the Single Woman in Early Modern England, *Gender and History*, 11, pp. 209-32; C. Peters (1997), Single Women in Early Modern England: Attitudes and Expectations, *Continuity and Change*, 12, pp. 325-45.

[v] See S. C. Watkins (1984), Spinsters, *Journal of Family History*, 9, p. 310, n1; O. Hufton (1984), Women Without Men: Widows and Spinsters in Britain and France in the Eighteenth Century, *Journal of Family History*, 9, p. 357; M. Kowaleski, 'Singlewomen in Medieval and Early Modern Europe: The Demographic Perspective', in J. M. Bennett and A. M. Froide (Eds.) (1999) *Singlewomen in the European Past 1250-1800* (Philadelphia: University of Pennsylvania Press), p. 40.

[vi] J. Chandler (1991) *Women Without Husbands: An Exploration of the Margins of Marriage* (Houndmills: Macmillan), p. 2.

[vii] See, with varying degrees of detail, J. A. Brundage (1987) *Law, Sex, and Christian Society in Medieval Europe* (Chicago: University of Chicago Press), pp. 229-38, 262-78, 331-37; M. M. Sheehan (1996), 'Choice of Marriage Partner in the Middle Ages: Development and Mode of Application of a Theory of Marriage', in M. M. Sheehan, *Marriage, Family, and Law in Medieval Europe: Collected Studies*, J. K. Farge (Ed.) (Cardiff: University of Wales Press), pp. 91-100, originally published (1978) *Studies in Medieval and Renaissance History*, 1, pp. 1-33; C. McCarthy (2004), *Marriage in Medieval England: Law, Literature and Practice* (Woodbridge: Boydell Press), pp. 21-6; R. H. Helmholz (1974), *Marriage Litigation in Medieval England* (Cambridge: Cambridge University Press), pp. 26-7.

[viii] See E. M. Makowski (1977) The Conjugal Debt and Medieval Canon Law, *Journal of Medieval History*, 3 (1977), pp. 99-114.

[ix] See M. Ingram (1987), *Church Courts, Sex and Marriage in England, 1570-1640* (Cambridge: Cambridge University Press), pp. 145, 171; L. Stone (1990), *Road to Divorce: England 1530-1987* (Oxford: Oxford University Press).

[x] See Helmholz, *Marriage Litigation*, pp. 76-100; P. Fleming (2001), *Family and Household in Medieval England* (Houndmills: Palgrave), pp. 13-17.

[xi] See Helmholz, *Marriage Litigation*, pp. 100-7.

[xii] See R. M. Smith, 'Geographical Diversity in the Resort to Marriage in Late Medieval Europe: Work, Reputation, and Unmarried Females in the Household Formation Systems of Northern and Southern Europe', in P. J. P. Goldberg (Ed.) (1992), *Woman is a Worthy Wight: Women in English Society c. 1200-1500* (Stroud: Alan Sutton; reprinted as *Women in Medieval English Society*, 1997), pp. 16-59.

[xiii] On the question of knowledge see F. Pedersen (2000), *Marriage Disputes in Medieval England* (London: Hambledon Press), pp. 59-84.

[xiv] S. McSheffrey (2004) Place, Space, and Situation: Public and Private in the Making of Marriage in Late-Medieval London, *Speculum*, 79, p. 963, and see p. 971.

[xv] On this approach to court material see, e.g., L. Gowing, *Domestic Dangers: Women, Words, and Sex in Early Modern London* (Oxford: Clarendon Press, 1996), pp. 232-62.

[xvi] 1 Salisbury 83 (1217 x 1219) in F. M. Powicke and C. R. Cheney (Ed.) (1964). *Councils & Synods with other documents relating to the English Church, II, Part I 1205-1265* (Oxford: Clarendon Press), p. 87; the translation is from McCarthy, *Marriage*, pp. 31-2.

[xvii] J. Goering and P. J. Payer (1993) The 'Summa Penitentie Fratrum Predicatorum': A Thirteenth-century Confessional Formulary, *Mediaeval Studies*, 55, p. 25, ll. 13-18: '<si> dederit unquam corpus suum alicui mulieri in uirum, sicut faciunt stulti hominess sepe, edendo uel bibendo uel etiam mulieres decipiendo. Verumtamen inaniter se ipsos fallunt

quocumque modo fiat quia si dixerit uir, "Do tibi corpus meum et in uirum," et mulier dixerit, "Do tibi corpus meum in uxorem," coniugium est uerum et separari non <possunt>.'

[xviii] Pedersen, *Marriage Disputes*, p. 63, with the Latin (from Borthwick Institute for Historical Research, York, Cause Papers, CP, E 70) given in Ibid., pp. 63-4 n17.

[xix] Pedersen, *Marriage Disputes*, pp. 64-5; on conditional contracts see Helmholz, *Marriage Litigation*, pp. 44, 47-57.

[xx] On the proof required by church courts see Helmholz, *Marriage Litigation*, pp. 46-7; C. Donahue Jr (1976) 'Proof by Witnesses in the Church Courts of Medieval England: An Imperfect Reception of the Learned Law', in M. S. Arnold, T. A. Green, S. A. Scully, and S. D. White (Eds.) *On the Laws and Customs of England: Essays in Honor of Samuel E. Thorne* (Chapel Hill, NC: University of North Carolina Press), esp. pp. 143, 151-2, 154; P. J. P. Goldberg (1992), *Women, Work, and Life Cycle in a Medieval Economy: Women in York and Yorkshire c.1300-1520* (Oxford: Clarendon Press), pp. 235, 242.

[xxi] See Helmholz, *Marriage Litigation*, esp. pp. 70-2. For further discussion of the *ex officio* cases (those brought by the church courts) that impinged on marriages see L. R. Poos (1995) The Heavy-Handed Marriage Counsellor: Regulating Marriage in Some Later-Medieval English Local Ecclesiastical-Court Jurisdictions, *American Journal of Legal History*, 39, pp. 291-309.

[xxii] See the comments in Goldberg, *Women, Work, and Life Cycle*, pp. 234-5, 240-2. For e.g.s of cases that refer to alleged contracts, sometimes made years earlier, see Ibid., pp. 259-61; Helmholz, *Marriage Litigation*, pp. 57-9, 64-6.

[xxiii] Arnold (Ed.), *Select Cases of Trespass*, pp. 77-8.

[xxiv] Arnold (Ed.), *Select Cases of Trespass*, p. 77.

[xxv] On the different meanings of this term see M. M. Sheehan (1996) 'Marriage Theory and Practice in the Conciliar Legislation and Diocesan Statutes of Medieval England', in

Sheehan, *Marriage, Family, and Law*, pp. 156-8, 161, previously published (1978) *Medieval Studies*, 40, pp. 408-60.

[xxvi] McSheffrey, Place, Space, and Situation, pp. 966-7.

[xxvii] Arnold (Ed.), *Select Cases of Trespass*, p. 78.

[xxviii] Helmholz, *Marriage Litigation*, p. 62.

[xxix] Ibid., pp. 60, 62.

[xxx] Although there are examples, where suspicions about bigamy had been raised, of courts ordering parties not to cohabit until they could prove the authenticity of their marriage: Poos, Heavy-Handed Marriage Counsellor, p. 296.

[xxxi] Helmholz, *Marriage Litigation*, p. 63.

[xxxii] Ibid., p. 101.

[xxxiii] e.g. Ibid., pp. 62, 64, 68, 75; A. Finch (1993) *Repulsa uxore sua*: Marital Difficulties and Separation in the Later Middle Ages, *Continuity and Change*, 8, p. 12; Fleming, *Family and Household*, p. 81.

[xxxiv] See S. M. Butler (2005), 'Maintenance Agreements and Male Responsibility in Late Medieval England', in A. Musson (Ed.) *Boundaries of the Law: Geography, Gender and Jurisdiction in Medieval and Early Modern Europe* (Aldershot: Ashgate), pp. 67-83; S. M. Butler (2004) The Law as a Weapon in Marital Disputes: Evidence from the Late Medieval Court of Chancery, 1424-1529, *Journal of British Studies*, 43, pp. 301-2, 306-10; Poos, Heavy-Handed Marriage Counsellor, pp. 301-3; Helmholz, *Marriage Litigation*, p. 106.

[xxxv] The National Archives, Kew (hereafter TNA: PRO), Early Chancery Proceedings, C 1/19/418 (1386-1486); petitions are undated but references to specific Chancellors in the bills' addresses set date limits in the absence of other information.

[xxxvi] Arnold (Ed.), *Select Cases of Trespass*, p. 77.

xxxvii S. S. Walker (1987) Punishing Convicted Ravishers: Statutory Strictures and Actual Practice in Thirteenth and Fourteenth-century England, *Journal of Medieval History*, 13, p. 239; Butler, Law as a Weapon, p. 301.

xxxviii See Helmholz, *Marriage Litigation*, pp. 59, 64-6.

xxxix G. E. Woodbine (Ed.) (1968) *Bracton on the Laws and Customs of England*, trans. S. E. Thorne, 4 vols (Cambridge, MA: Belknap Press), ii, p. 36: 'quaedam sunt sub virga, ut uxores etcetera'.

xl E.g see Ibid., p. 179.

xli e.g. B. W. Gastle (2004), '"As if she were single": Working Wives and the Late Medieval English *Femme Sole*', in K. Robertson and M. Uebel (Eds.) *The Middle Ages at Work: Practicing Labor in Late Medieval England* (New York: Palgrave), pp. 43-4; M. K. McIntosh (2005) The Benefits and Drawbacks of *Femme Sole* Status in England, 1300-1630, *Journal of British Studies*, 44, esp. pp. 412, 413.

xlii Although on thirteenth-century Salford, Stockport, Bolton and Ipswich, see Gastle, "As if she were single", pp. 46-50.

xliii C. Barron (1989), The "Golden Age" of Women in Medieval London, *Reading Medieval Studies*, 15, pp. 39-40; see also McIntosh, Benefits and Drawbacks, pp. 413-14.

xliv e.g. York, Lincoln, and Worcester: see M. Sellers (Ed.) (1915) *York Memorandum Book*, Surtees Society, 125 (Durham: Andrews & Co.), pp. 144-5; Bateson (Ed.) *Borough Customs*, pp. 226-7; J. T. Smith and L. T. Smith (Eds.) (1870) *English Gilds*, Early English Text Society, original ser. 40 (London: N. Trübner & Co.), pp. 382, 410.

xlv H. T. Riley (Ed.) (1859-62) *Munimenta Gildhallae Londiniensis; Liber Albus, Liber Custumarum et Liber Horn*, 3 vols (London: Longman, Brown, Green, Longman, and Roberts), i, pp. 204-5, iii, pp. 38-9 (for the translation).

xlvi Ibid.

xlvii For further discussion of the nature of the court and its petitions see C. Beattie (2006) Single Women, Work and Family: The Chancery Dispute of Jane Wynde and Margaret Clerk, in M. Goodich (Ed.), *Voices from the Bench: the Narratives of Lesser Folk in Medieval Trials* (New York, NY: Palgrave Macmillan), pp. 177-202.

xlviii TNA: PRO, C 1/201/32 (1493-1500).

xlix TNA: PRO, C 1/110/125 (1486-93).

l McIntosh, Benefits and Drawbacks, pp. 416-17.

li McIntosh, Benefits and Drawbacks, p. 427. McIntosh argues that such ambiguity was not to the husband's advantage, though: Ibid., pp. 429-30.

lii E.g. A. H. Thomas (Ed.) (1924) *Calendar of Early Mayor's Court Rolls, Preserved Among the Archives of the Corporation of the City of London at the Guildhall, A.D. 1298-1307* (Cambridge: Cambridge University Press), pp. 214-5. See also McIntosh, Benefits and Drawbacks, p. 415.

liii M. Bateson (Ed.) (1904), *Borough Customs*, Selden Society (London: Bernard Quaritch), pp. 224-5.

liv Bateson (ed.), *Borough Customs*, i, p. 225 (with the Latin quoted on pp. 224-5).

lv Butler discusses some of the problems concerning separated wives and credit: Butler, Law as a Weapon, p. 308.

lvi TNA: PRO, C 1/111/56 (1486-93).