CUSTOM AND COVERTURE IN THE MANOR COURTS: WOMEN AS TENANTS IN EARLY MODERN ENGLAND

by

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ABSTRACT

England's manor courts developed as a result of the tenurial agreements that structured the country's medieval and early modern land market. Operated by the landlord's steward and a jury of tenants, there courts were local institutions that fulfilled a wide variety of legislative, punitive, and adjudicative functions regarding the regulation of community resources and the resolution of conflict. The courts did not explicitly implement the common law doctrine of coverture, which denied women's legal independence at marriage. However, the customary exclusion of women from land inheritance meant that they were largely restricted from accessing the local power structures that the courts embodied. Nevertheless, despite these limitations, women were frequently landholding tenants in early modern England, which meant that they had the same rights and duties as their male landholding neighbours. These courts ultimately protected women's legal rights as tenants but enforced early modern England's broader patriarchal social order.

List of Abbreviations Used

d	pence
JP	Justice of the Peace
s	shillings

GLOSSARY[1]

- Amercement: A payment to a lord by a person found guilty of an offence in order to have his mercy.
- Bailiff (or Grave or Reeve): An estate official, often in charge of two or more manors. Responsible for the day-to-day management of the manor.
- Common land: Land over which tenants and perhaps villagers possessed certain rights (such as to graze animals, collect fuel, etc.).
- Copyhold: A tenure of land held by the custom of the manor that is proved by a copy of the court roll.
- Coverture: The legal status of a married woman under common law, considered to be under her husband's protection and authority.
- Custom: A framework of local practices, rules, and/or expectations pertaining to various economic or social activities.
- Customary tenure: Defined in the courts of common law as unfree tenure, whose obligations and terms were determined and enforced in the manor court.
- Distrain: Seizure of a tenant's property (usually animals) as payment of amercements and fines owed to the landlord.
- Dower: Widow's right to hold a proportion (normally one third) of her deceased husband's freehold lands for the rest of her life.
- Dowry: Land or money handed over with the bride at marriage.

[1] Definitions from: Louis Knafla, ed., *Kent at Law, 1602: Vol 2, Local Jurisdictions: Borough, Liberty and Manor* (List and Index Society, 2011), 402-408; Robert Field, ed., *Court Rolls of Elmley Castle, Worcestershire, 1347-1564* (Worcestershire Historical Society, 2004), 301-304; Bailey, *The English Manor, c. 1200 – c. 1500*, 241-247.

- Enfeoffment or feoffment: The action of investing a person with a fief, i.e. land, held on condition of service and homage to a lord.
- Essoin: An excuse for non-appearance in a court suit.
- Frankpledge: A pledge of corporate responsibility upon all 'freemen' of a tithing for each person's good behaviour and court appearance for any matter.
- Freebench: A woman's customary right to part of her deceased husband's holding.
- Freehold tenure: Tenure or status that denoted a greater freedom of time and action than, say, customary tenure or status. A freeman was entitled to use the royal courts, and the title to free tenure was defensible there.
- Heriot: A payment to the lord at the death of a tenant or, sometimes, when a tenement was transferred or a tenant withdrew from the manor. Took the form of the tenant's best animal or, sometimes, cash or goods.
- Homage: Act of submission by a new tenant to their lord. Also refers to the entire group of tenants who attended the court session or the subgroup of tenants who determined matters within the manor under oath, similar to a jury.
- Honour: An administrative unit based on a number of manors. The tenants of these manors owed suit to an honour court in addition to, or in place of, the normal manor court.
- Leet: The court of a vill whose view of frankpledge had been franchised to a local lord by the Crown.
- Mark: A unit of currency often used for land transactions valued at 13s 4d, which on the continent was a coin.
- Messuage: A house, including its outbuildings, curtilage, and adjacent land.

- Presentment: An accusation brought before a court by a body of men under oath.
- Scold: A woman (or rarely, a man) who brawls, or quarrels noisily, with abusive language.
- Steward: An officer of chief account in the jurisdiction, and often the presiding officer of a local court.
- Tenement: The land, house, or real property held of another person who holds in any form of tenure.

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CHAPTER 1: INTRODUCTION

The early modern English legal system both shaped and was shaped by the experiences of women, despite the many restrictions that were imposed which limited women's involvement. Manor courts, as well as the other local courts and minor jurisdictions of this period, were especially impacted by women's influence since these courts were at the front line of dispute intervention, economic regulation, and social control for all sorts of people within local communities. These manorial, borough, hundred, and market courts were governed by localized customs, whereas it was through the centralized common-law courts that the most explicit legal disadvantages for women were codified by the concept of coverture. Although local customary courts were certainly not free from rules and practices that favoured men over women, their quotidian nature and wide range of responsibilities meant that women necessarily became involved in nearly every aspect of community life that the courts regulated. Tradition and localization meant that a wider variety of acceptable legal principles guided these courts, each of which had different consequences for women within that local community. The records of these courts confirm that women participated in land transactions, perpetrated minor misdemeanours, and initiated law suits of all sorts, which demonstrates that women were intrinsic to the functioning of their communities. Early modern local court records can therefore be particularly valuable for examining the experiences of women over long periods of time and away from the more dramatic circumstances that initiated most other court records.

However, the early modern period was an era of decline in the importance of customary courts relative to other jurisdictions within the broader English legal system, and this decline eventually transformed the basis of the relationship between women and the institutions that governed and offered justice to them. All discussions of the significance of women's activity at the local courts must therefore be interpreted with reference to the shifting balance of power within the English legal system that was occurring in this period. For this study, records from a sample of manor courts in Yorkshire, Lancashire, and (to a lesser extent) Cheshire have been studied from the period of 1558 to 1700, with particular reference to the women who appeared before these courts. This was a period of dramatic demographic, political, economic, and legal change in England, covering the beginning of Queen Elizabeth I's reign to the relative stability experienced after the Glorious Revolution of 1688, which, as a result, fundamentally altered English society as a whole.

One of the most important changes that occurred particularly at the beginning of this period was accelerating population growth. The annual rate of population growth in the late-sixteenth century hovered around 1%, an "exceptional [rate] of growth for any pre-modern population." [2] This growth led to increasing demand on resources, a more competitive land market, higher prices, lower wages, and a larger proportion of the population dependent wholly upon wage labour. This volatility eventually created starker and more entrenched economic inequalities than had previously been the norm. Not only were landlords eager to recover the resulting erosion in their rental incomes by taking advantage of the more competitive land market in any way that they could, but the

[2] Keith Wrightson, *Earthly Necessities: Economic Lives in Early Modern Britain* (New Haven, USA: Yale University Press, 2000), 121, 149-197.

average person simultaneously became more hostile to rent increases which they could no longer afford. By 1620, semi-skilled artisans seem to have earned only between about a third and a half of their 1500 earnings.[3] As it became more difficult for labourers to support their own families under these conditions, the population rate stabilized by the mid-seventeenth century as an increased proportion of the population married later in life or never married at all.[4] The increasing economic polarization also contributed to increasing disconnections between men and women. According to Susan Amussen, "the experience of women and men diverged: in wealthy families, women were less economically active; in poor families, the wage labour of women was different from that of men. And as the family became a less important part of local government and discipline, women's role in family government lost its public significance."[5] Therefore it is by studying non-elite women's daily life at the local level that historians can begin to understand how this period of profound transition was experienced by the half of the population that generally had less access to the country's political and economic power.

In early modern England, this daily life was directed by localized customs. Custom was a powerful force in English society, both as a legal concept and as a social practice, as it guided people's decision-making process in both quotidian and exceptional circumstances. "At the interface between law and agrarian practice we find custom," E.P. Thompson has argued. "Custom itself *is* the interface, since it may be considered both as

[3] Steve Hindle, *The State and Social Change in Early Modern England, c. 1550-1640* (Basingstoke, UK: MacMillan Press Ltd., 2000), 40.
[4] Wrightson, *Earthly Necessities*, 226.
[5] Susan Amussen, *An Ordered Society: Gender and Class in Early Modern England* (New York: Columbia University Press, 1988), 187.

praxis and as law."[6] Theoretically, all customs were unwritten and were supposed to have existed since time immemorial, and these customs were enforced in England's local institutions, like the manor courts, as a way to ensure conformity to regional cultures and experiences. When discussing the legal basis of the manor courts in 1581, John Kitchin classified custom as the "fifth ground of the law," and he emphasized that the courts "ought not to allow any custom but that which hath been used from time to time and from time out of mind, and there ought to be precedents in the court rolls or good proof of that to be showed to the court accordingly."[7] Yet, custom's localized nature, use in unprecedented circumstances, and reliance upon memory meant that in reality it was quite adaptable to a community's changing needs. Lloyd Bonfield has argued that the medieval customary law implemented in the manor courts was sometimes confronted with cases where "there may not have been substantive common law for the manor courts to mimic," even if they had wanted to, and therefore custom developed over time in order to cover these gaps.[8] These customs and the local courts that regulated them helped to set the boundaries of a community, solidify that community's identity, emphasize an individual's belonging to (or exclusion from) a social group, and promote social, political, and economic order, all while still allowing for considerable malleability in order to be effective under changing circumstances.[9] The records that were created by

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[6] E.P. Thompson, "Custom, Law and Common Right," in *Customs in Common* (New York: New Press, 1993), 98. See also Andy Wood, *The Memory of the People: Custom and Popular Senses of the Past in Early Modern England* (Cambridge: Cambridge University Press, 2013).

[7] John Kitchin, *Jurisdictions or, The lawful authority of courts leet, courts baron, court of marshallseys, court of pypowder, and ancient demesne*… (London: 1651), 201-203; This was a popular translation from the original Law French: John Kitchin, *Le Courte Leete et Courte Baron*… (London: 1581). All spelling, punctuation, and capitalization has been modernized throughout this thesis.

[8] Lloyd Bonfield, "What Did English Villagers Mean By 'Customary Law'?," in *Medieval Society and the Manor Court*, eds. Zvi Razi and Richard Smith (Oxford: Clarendon Press, 1996), 111.

[9] Keith Wrightson, "Two Concepts of Order: Justices, constables and jurymen in seventeenth-century England," in *An Ungovernable People: The English and their law in the seventeenth and eighteenth*

this customary law and the minor jurisdictions of the local courts, despite their many limitations, offer historians a great deal of insight into how individuals of all ranks utilized the law to meet their needs on a daily basis.

A similarly important force in English life during this period was the common law principle of coverture, which, like custom, was simultaneously a legal concept and a cultural influence that affected the social, political, legal, and economic interactions of both men and women on a daily basis. Coverture was a patriarchal construct that asserted that women lost their legal identity at marriage. The husband immediately became the head of the household, and therefore all the profits and liabilities of the marriage partnership accrued to him. Wives were unable to participate in lawsuits at the common law courts without their husbands, which may have discouraged people from doing business with married women since their contracts could not be enforced without the participation and consent of their husbands.[10] Married women also lost ownership of their personal property in the form of moveable goods and chattels, which could often amount to a significant portion of a family's wealth, especially in poorer households. While wives technically retained ownership of their real property (land), their husbands had control over this land and claimed the ultimate authority over what was done with it. Therefore, throughout this period, women were more likely to inherit personal property while men more often inherited land – "land was symbolically associated with sons."[11] Earlier in the sixteenth century this amounted to a roughly equal division of families'

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centuries, ed. John Brewer and John Styles (New Brunswick, NJ: Rutgers University Press, 1980), 24; Adam Fox, *Oral and Literate Culture in England 1500-1700* (Oxford: Oxford University Press, 2000), 261.

[10] Chris Briggs, "Empowered or Marginalized? Rural Women and Credit in Later Thirteenth- and Fourteenth-Century England," *Continuity and Change* 19:1 (2004), 25; Carl Estabrook, *Urbane and Rustic England: Cultural Ties and Social Spheres in the Provinces, 1660-1780* (Stanford: Stanford University Press, 1998), 72.

[11] Amy Erickson, *Women and Property in Early Modern England* (London: Routledge, 1993), 77.

wealth, but the era's accelerating competition for land and its corresponding increase in value meant that it became an increasingly inequitable division that excluded women from the country's basis of wealth. At no point in their lives did men automatically lose control of their legal identity as a result of a fundamental life transition in the way that women did, and many contemporaries were aware of this inequality and tried to work around it. Interestingly, as Amy Erickson has argued, since this system was untenable to many men and women, it also seems likely that the restrictions of coverture "necessitated complex legal manoeuvres which produced complex financial instruments and a populace accustomed to using them," and therefore may have contributed to the eventual creation of England's extensive capitalist economy.[12]

An appreciation for coverture's restrictions alone does not provide a sufficient understanding of early modern English women's experiences, but its influence throughout English society was extensive and powerful. Marriage was a period in a woman's life, not a permanent condition, and only about half of adult women were married at any one time.[13] Nevertheless, coverture's significant restrictions were something that all women had to consider when getting married and making financial decisions, and therefore it set the symbolic tone for the country's approach to female ownership and determined what was normal or abnormal. Despite the many ways that the influence of coverture was often minimized or compensated for in daily life by enterprising women or benevolent men, it must be accounted for because, "in marking ownership, coverture delineated inequality and confirmed the ultimate power of the

[12] Amy Erickson, "Coverture and Capitalism," *History Workshop Journal* 59 (2005): 3.
[13] Amy Froide, *Never Married: Singlewomen in Early Modern England* (Oxford: Oxford University Press, 2005), 2-7.

husband."[14] Coverture restricted women's access to economic opportunities and perpetuated a broader culture of female subjection, creating "ideological, institutional, and practical barriers to equitable association with men (and indeed, with other women). But women have also colluded in, undermined, and survived patriarchy."[15] Therefore, any examination of the role of women and of legal institutions in early modern England must be cognizant of the complex influence that the common law doctrine of coverture had on the social and economic relationships of both men and women. Coverture meant that married women defaulted to a subordinate role in English culture and obscured women from the historical record. By investigating both of these mutable but fundamental forces in early modern English society, custom and coverture, historians can get a more complete sense of non-elite women's experiences at the local level.

Not all legal jurisdictions took the same attitude towards women's ownership rights as the common-law courts did. For instance, the equity based Chancery court sometimes redressed the disadvantages imposed by coverture by enforcing conditions that restricted men's ultimate control over their family's finances.[16] And coverture was never explicitly required or enforced by customary legal institutions like manor courts. Therefore, the opportunities for agency that local manor courts offered women perhaps constitute some of the ways that men and women negotiated the limits of patriarchy, providing a mechanism for the restrictions of coverture to be tempered while still maintaining the overall dominance of men. Nevertheless, at its foundations, customary

[14] Tim Stretton and Krista Kesselring, "Introduction: Coverture and Continuity," in *Married Women and the Law: Coverture in England and the Common Law World*, eds. Tim Stretton and Krista Kesselring (Montreal & Kingston: McGill-Queen's University Press, 2013), 9.
[15] Judith Bennett, *History Matters: Patriarchy and the Challenge of Feminism* (Philadelphia: University of Pennsylvania Press, 2006), 59.
[16] Sara Mendelson and Patricia Crawford, *Women in Early Modern England, 1550 - 1720* (Oxford: Clarendon Press, 1998), 38.

law was the purview of men, which is demonstrated by the fact that men were used almost exclusively as witnesses to vouch for the legitimacy of particular customs, even for issues that directly concerned widows.[17] Bernard Capp has argued that the "enduring pattern of male hegemony based on structures and principles accepted as natural, and *endorsed by custom*, law, and divine authority," is one of the most "fundamentally stable" characteristics of early modern English society.[18]

Yet, custom's flexibility and localism often meant that women had a different experience when interacting with customary courts than they were offered by the common law courts. Legal tools based on custom and implemented through local and ecclesiastical courts, such as enfeoffments, fines, joint tenancies, reversions, and wills, allowed men to leave land to their daughters and wives in ways that deviated from the defaults that excluded women.[19] Property ownership rights over customary landholdings were the most significant area determined by custom, especially regarding how much land should be owed to widows through freebench. Therefore, depending on the location, customs often limited men's sole ability to determine the devolution of their holdings and forced other heirs to recognize widows as landholders in their own right.[20] Especially in the earlier part of the period under examination, this was still a society that often placed a

[17] Tim Stretton, "Women, Custom and Equity in the Court of Requests," in *Women, Crime and the Courts in Early Modern England,* eds. Jennifer Kermode and Garthine Walker (Chapel Hill, NC: The University of North Carolina Press, 1994), 184.
[18] Bernard Capp, *When Gossips Meet: Women, Family, and Neighbourhood in Early Modern England* (Oxford: Oxford University Press, 2003), 20. Emphasis added.
[19] Barbara Harris, *English Aristocratic Women, 1450-1550: Marriage and Family, Property and Careers* (Oxford: Oxford University Press, 2002), 243.
[20] Lawrence Poos and Lloyd Bonfield, eds., *Select Cases in Manorial Courts 1250-1550: Property and Family Law* (London: Selden Society, 1998), cxxvii; Wood, *The Memory of the People*, 304; Lynne Greenberg, ed., *Legal Treatises. The Early Modern Englishwoman: A Facsimile Library of Essential Works. Series III, Essential Works for the Study of Early Modern Women: Part 1* (Aldershot, UK: Ashgate, 2005): xiii.

greater importance on a person's landholding status than their gender when it came to the issues determined and discussed in the manor courts. Therefore customs that decided the descent of land were significant because they ultimately determined which women had access to land ownership and for how long.[21] Customary law was culturally and legally influenced by the doctrine of coverture enforced in the common law courts, but it was implemented in local communities with an awareness of the unfairness that coverture could create.

Alice Clark published the first edition of her ground-breaking book *Working Life of Women in the Seventeenth Century* in 1919, which very briefly but significantly articulated the idea that customary law was ultimately more favourable to early modern women than was the common law. Clark saw customary law's flexibility as a positive force for women, and so the eventual loss of this jurisdiction to the common law courts was a major blow to women's standing in society:

> The changes which during the seventeenth century were abrogating customs in favour of common law, did in effect eliminate women from what was equivalent to a share in the custody and interpretation of law, which henceforward remained exclusively in the hands of men. The result of the elimination of the feminine influence is plainly shown in a succession of laws, which, in order to secure complete liberty to individual men, destroyed the collective idea of the family, and deprived married women and children of the property rights which customs had hitherto secured to them.[22]

[21] Mendelson and Crawford, *Women in Early Modern England*, 429.
[22] Alice Clark, *Working Life of Women in the Seventeenth Century*, 3rd ed. (London: Routledge, 1992), 237.

Clark's recognition of the connection between custom and women's economic and legal role in society was pioneering, and it was an insight that was largely not interrogated further by historians for many decades afterwards. Clark's belief that the ascendance of the common law over customary law had a deleterious impact on women was more recently echoed by Amy Erickson, who argued that the slow clarification of property rights and consolidation of the common law's jurisdiction after 1660 helped to increase the cultural importance of dynastic male hegemony and narrowed the ability of women to participate in the ownership of property.[23] Tim Stretton, on the other hand, has been more skeptical of the opportunities that customary law was able to provide women: "Custom certainly offered advantages to many women, because it was local, and because it was less expensive. However, the flexibility of custom meant that, as a system of law, it would have been as capable of absorbing, as it was of withstanding, the prejudice against women that is so often associated with the common law."[24] Ultimately, no evidence has yet been uncovered that shows customary law as being entirely separate from the standard patriarchal gender order that was expressed via coverture. Custom very likely helped some women in some times and places, but the common law seems to have largely codified the legal and economic frameworks that already regulated early modern English society. Coverture formed the default that customs only occasionally pushed against.

Customary law was determined in a wide variety of local courts in early modern England, but the manor courts were particularly significant to the culture of pre-industrial English society and the functioning of daily life. The manor court was the place where

[23] Erickson, *Women and Property in Early Modern England*, 29.
[24] Stretton, "Women, Custom and Equity in the Court of Requests," 185.

landlords, their tenants, and the customs that were created at their interface met and were put into effect for both individual and communal interests. According to John Baker, "for many – perhaps most – Englishmen it was the main authority that impinged on their daily lives."[25] Manors had originated as the primary subdivisions of landholdings during the medieval period, containing both the landlord's personal estate and the lands that were rented to tenants under specific obligations. According to long-standing tradition, it was the duty of the landlord to operate a manor court, either within their home or in some other public location within the manor. All tenants of the manor were expected to gather twice a year at the court leet (often called the View of Frankpledge) to hear the proclamations of the monarch and the statutes of the Parliament, as well as reinforce their loyalty to their landlord. Courts leet were also the lowest rung of the country's criminal justice system, where minor misdemeanours among neighbours were presented and either resolved or sent to a higher court. Courts baron were used to announce and formally record any changes to the ownership of property within the manor, as well as to adjudicate lawsuits regarding matters worth 40 shillings or less. These courts were often performed simultaneously "because the court baron [was] always an adjacent neighbour, if not a companion with, the court leet."[26]

The courts performed a wide variety of functions at each session, all of which were expressions of English society's needs and values, but this created inherent tensions within the system regarding whose interests were prioritized. The court steward, who was employed by the landlord and often had some legal training, facilitated the court sessions

[25] John Baker, *An Introduction to English Legal History*, 4th ed. (Oxford: Oxford University Press, 2002), 9.
[26] Ph. Ag., *The Power and Practice of Court-Leets With the Manner of Keeping a Court of Survey for Mannors...* (London: 1666), 41.

and ensured that the business was conducted properly. He was tasked with balancing the highly localized and often conflicting needs of the tenants and landlord while also being responsible for ensuring that the King's justice was done.[27] Contemporary commentators, such as John Kitchin, recognized the conflict of interest that this could create for stewards: "I have seen such subverting of justice by stewards, some by ignorance and willfulness, and some stewards to please their lords and for fear of losing their fee."[28] Nevertheless, manor courts continued to be significant institutions in early modern England because they offered a structured environment in which to punish misbehaviour, regulate the shared environment, facilitate economic transactions, and promote social order, all while allowing for considerable variations based on the local situation.[29] They were institutions of community regulation over a wide range of matters that impacted rural daily life, with the goal of promoting community peace and good governance in order to facilitate economic relationships between individuals within a shared space.[30]

Each manor court therefore acted as a form of local government in the medieval and early modern period, not just as a legal forum, but this is not to imply that manor courts offered every legal service that a tenant could possibly require. The courts could only examine lawsuits that were regarding matters of under 40 shillings and the manor's limited geographical scope meant that inter-regional disputes had to be handled by the

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[27] Christopher Brooks, *Pettyfoggers and Vipers of the Commonwealth: The 'Lower Branch' of the Legal Profession in Early Modern England* (Cambridge: Cambridge University Press, 1986), 39.
[28] Kitchin, *Jurisdictions*, 9.
[29] Brodie Waddell, "Governing England Through The Manor Courts, 1550-1850," *The Historical Journal*, 55:2 (2012), 279-285; Christopher Brooks, *Law, Politics and Society in Early Modern England* (Cambridge: Cambridge University Press, 2008), 261-276; Poos and Bonfield, *Select Cases in Manorial Courts 1250-1550*, xxi-xxiii.
[30] Marjorie McIntosh, *Autonomy and Community: The Royal Manor of Havering, 1200-1500* (Cambridge: Cambridge University Press, 1986), 184; Estabrook*, Urbane and Rustic England*, 21; Waddell, "Governing England Through the Manor Courts," 309.

higher courts. Also, a decision at a manor court could be overturned quite easily by a decision at a central court.[31] This sense of manor courts' relative provinciality was echoed by the legal scholar Sir Thomas Smith's description of the court baron's role within the English legal system:

> If any small matter be in controversy, it is put to them and commonly they do end it. But these courts do serve rather for men that can be content to be ordered by their neighbors and which love their quiet and profit in their husbandry more than to be busy in the law. For whether [sic] party soever will may procure a writ out of the higher court to remove the plea to Westminster.[32]

Nevertheless, there was no other institution available in non-urban early modern England that provided this sort of consistent and communal local governance over such a wide range of matters. Christopher Harrison has emphasized the importance of the governing function of the courts, claiming that "Tudor England could not be governed without manor courts or similar local jurisdictions: the administration of justice both criminal and civil was impossible without them."[33] It is this ubiquity of manor courts that makes the question of their inclusion of women especially significant. The records of manor courts demonstrate that women were not formally excluded from this local administration, which is central to understanding how women actually navigated the paradox of their theoretical subordination yet vital economic and social roles.

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[31] Baker, *The Oxford History of the Laws of England*, 118-119.
[32] Thomas Smith, *The Common-Welth of England and the Maner of Gouernment Thereof…* (London: 1589), 88.
[33] Christopher Harrison, "Manor Courts and the Governance of Tudor England," in *Communities and Courts in Britain 1150-1900*, eds. Christopher Brooks and Michael Lobban (London & Rio Grande, USA: Hambledon Press, 1997), 59.

Women can be found in the manorial court records participating in almost every aspect of life that was regulated by the manor: they are tenants, plaintiffs, defendants, offenders, victims, surrenderers and receivers of property, onlookers, and, rarely, officers. While most landlords were men, and all of the legal literature automatically assumed that landlords were men, in reality it was not uncommon for wealthy women to become landlords, usually as the heiress of her family's estate. However, these women still employed male stewards to manage the day-to-day operation of the manor, and therefore the fact of a woman acting as a manor's landlord does not seem to have had an appreciable impact on the experiences of her tenants. Wealthy female landlords benefited from the patriarchal economic and political structures that had allowed their families to accumulate property, and so these women, in general, perpetuated the system that oppressed women rather than acting to dismantle that system.[34] This may go a long way to explaining why the style and substance of the manorial leadership remained the same, regardless of whether the landlord was male or female.

Overall, coverture's restrictions against married women's property ownership meant that women certainly do not appear in manorial court records at a frequency equal to their proportion in the population. Women were further limited in their manorial representation compared to men because even when they were landholders they held smaller areas of land than men on average.[35] The only aspect of manorial court operations that women were explicitly and consistently barred from participating in was the jury. This was a significant limitation because, according to Maureen Mulholland, "the

[34] Harris, *English Aristocratic Women*, 9.
[35] L.R. Poos, Zvi Razi, and Richard M. Smith, "The Population History of Medieval English Villages: A Debate on the Use of Manor Court Records," in *Medieval Society and the Manor Court*, eds. Zvi Razi and Richard Smith (Oxford: Clarendon Press, 1996), 336.

members of the jury were the ultimate arbiters of custom and sometimes legislators, since, by stating a custom, or preferring one custom to another, they were in reality creating the customary law of the manor."[36] As Andy Wood has argued, this systemic exclusion of women from juries helped to sustain England's patriarchal society more generally since custom was really "the memory of man" instead of "the memory of the people."[37] The fact that all women present at the manor courts were judged by exclusively male juries also likely influenced the sort of misdemeanors that were presented at the courts and possibly even the integrity of the justice they received. Not being compelled to serve on the jury also likely limited women's motivation to attend the court sessions and therefore limited their exposure to the legal system more generally. An anonymous treatise on women's legal rights published in the 1630s argued that women were disadvantaged because they had "nothing to do in constituting laws or consenting to them, in interpreting of laws or in hearing them interpreted at lectures, leets, or charges, and yet they stand strictly tied to men's establishments."[38]

Nevertheless, despite their exclusion from the more formal structures of the manor courts, some women were clearly aware of the legal system and found ways to utilize the courts to pursue their own interests. For instance, we know via a letter written by a manorial steward to his landlord that a Widow Rippon was very dissatisfied about the state of her manor's mill, and so she hired an attorney to write a letter concerning the matter, persuaded the jurors of her manor court to sign it, and presented it to the lord via

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[36] Maureen Mulholland, "The Jury in English Manorial Courts," in *'The Dearest Birth Right of the People of England': The Jury in the History of the Common Law*, eds. John W. Cairns and Grant McLeod (Oxford & Portland: Hart Publishing, 2002), 70.
[37] Wood, *The Memory of the People*, 306.
[38] Anon., *The Lawes Resolutions of Women's Rights: Or, The Lawes Provision for Woemen…* (London: 1632), 2.

his steward.[39] This is an example of how women could use their social influence and the structures of their local manor courts to publicly compel their social superiors to address issues that impacted the entire community, despite being formally restricted from the traditional structures of governance.[40] It is not surprising that it was a widow who took the initiative to address this issue at the manor court, since widows were more often landholders and more frequent litigators than other women in this period.[41] It is difficult to know how often this sort of petition to the lord via the manorial court juries occurred, especially those initiated by a woman, since they and the deliberations of the jurors did not leave a trace in the formal record of the courts' proceedings. But Widow Rippon's relatively small action of commissioning a letter from an attorney and persuading the jury to sign it shows how the manor courts could be utilized by women for their own interests. Therefore, the patriarchal structures of English society must have been mitigated to some degree by the inclusion of female participants and the routine, community-centric aspects of the court gatherings. However, women's participation in manor courts has received very little sustained attention from historians so far. There is much that remains unknown about the contours of women's involvement at the manor courts in comparison with other jurisdictions and institutions, which this study is attempting to address. Overall, the records from early modern manor courts have been under-examined as sources and deserve more sustained attention in order to clarify the courts' role in post-medieval English society.

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[39] Hainsworth and Walker, *The Correspondence of Lord Fitzwilliam of Milton and Francis Guybon*, Letter from John Catlin to Lord Fitzwilliam, 18 Nov 1704, 159.
[40] Greenberg, *Legal Treatises, The Early Modern Englishwoman*, xviii.
[41] Tim Stretton, *Women Waging Law in Elizabethan England* (Cambridge: Cambridge University Press, 1998), 109.

Unlike most other courts in early modern England, the sessions of the manor courts expected participation from the entire community throughout the process because they were meant to examine the needs of the manor as a whole rather than just disputes between individuals. The wide range of topics inquired into and actions taken at manor courts, from litigation to legislation to presentment to land registration to mere attendance taking, meant that detailed local knowledge was required from a wide range of people – and this included women as well as men. This gathering together of the entire neighbourhood, not just men or elites, to discuss a wide variety of legal, social, and economic subjects often led to dinners, drinks, and games being held after the business of the court concluded. For instance, Lord Fitzwilliam, landlord of the small manor of Norborough in Cambridgeshire in the late-seventeenth century, although not present at his court himself, expected the court proceedings to not last for more than one hour, "their business being little." He was then prepared to host a dinner for the participants at the manor's castle, where everyone would likely become "a little merry with good liquor."[42] The late-seventeenth century tenant William Coe seems to have had a similar experience at his manor court, writing in his diary in November 1694 that he felt remorseful because he "sat up 'till 1 a clock at play at our court." [43]

These incidents, though certainly anecdotal, convey the convivial atmosphere that could often accompany manorial court meetings as nearly the entire local community came together at least twice a year. It is likely that this informality and broad community

[42] D.R. Hainsworth and Cherry Walker, eds., *The Correspondence of Lord Fitzwilliam of Milton and Francis Guybon, His Steward 1697-1709* (Northampton: Northamptonshire Record Society, 1990), Letter from Lord Fitzwilliam to his steward Guybon, 30 Sept 1699, 58.
[43] Matthew Storey, ed., *Two East Anglian Diaries 1641 - 1729: Isaac Archer and William Coe,* Suffolk Records Society, vol. 36 (Woodbrige, UK: Boydell Press, 1994), 208.

participation at the manorial courts contributed to their eventual degeneration "into mere jollifications."[44] However, it is also this inclusive environment and the wide-range of functions not related to litigation that they performed that made manor courts almost unique among the vast array of legal settings available to early modern English people.[45] In order to participate in cases at the common law, equity, and ecclesiastical courts, people generally had to travel to a more central location and interact with people they had never met before. Summary sessions operated by Justices of the Peace (JPs), who determined matters without a jury, also tended to focus their activities on particular lawsuits and administrative tasks requested by individuals rather than on diverse presentments that addressed the needs of the community as a whole.[46] Parish vestry meetings, although concerned about matters of local regulation in ways similar to manor courts, involved only small, exclusively male groups of local elites. Neither summary courts nor vestry meetings included the rest of the neighbourhood in their decision-making process and both were more directly accountable to the central government, and therefore they were quite different from the type of governance that was performed by the manor courts. [47]

The fact that manor courts were based in non-urban communities made them particularly fundamental to the legal system since the vast majority of people still lived in rural settings and agricultural activities formed the basis of the economy. Borough courts

[44] P.D.A. Harvey, *Manorial Records*, revised ed. (London: British Records Association, 1999), 57.
[45] Bonfield, "What Did English Villagers Mean By 'Customary Law'?," 105.
[46] Peter King, "The Summary Courts and Social Relations in Eighteenth-Century England," *Past & Present* 183 (2004): 126-127.
[47] Naomi Tadmor, "Where Was Mrs. Turner? Governance and Gender in an Eighteenth-Century Village," in *Remaking English Society: Social Relations and Social Change in Early Modern England*, eds. Steve Hindle, Alexandra Shepard, and John Walter (Woodbridge, UK: The Boydell Press, 2013), 101-104; Mark Bailey, *The English Manor, c. 1200 – c. 1500* (Manchester: Manchester University Press, 2002), 18.

similarly used customary law to handle disputes that primarily arose from transactions made in the town markets, which also involved a significant proportion of people from the town's rural hinterland.[48] However, these borough courts generally represented the much smaller segment of early modern England's population that lived in urban environments and focused more on economic transactions than the land market. Craig Muldrew has estimated that by the mid-seventeenth century there were likely 130 to 150 chartered boroughs with active courts in England, whereas there were 12,000 to 15,000 manor courts in the countryside in the same period.[49] Therefore, although the average borough court almost certainly handled more cases than the average manor court, manor courts' ubiquity and variety of responsibilities meant that they penetrated English society at a scale that is entirely unique.

However, manor court records only tell the story of copyhold land, which was just one of many types of land tenures that existed in early modern England, and so the court rolls provide an inherently incomplete picture of how social relationships were structured by people's relationship to land and its use during this period. According to R.W. Hoyle, "tenure is the legal framework which regulated the relationship between lord and tenant and determined the financial obligations which the one owed the other."[50] The concept of a difference between freehold and copyhold land had emerged during the medieval period, which theoretically distinguished between certain lands whose tenants were free

[48] Maryanne Kowaleski, "Town Courts in Medieval England: An Introduction," in *Town Courts and Urban Society in Late Medieval England, 1250-1500*, eds. Richard Goddard and Teresa Phipps (Woodbridge, UK: Boydell Press, 2019); Craig Muldrew, *The Economy of Obligation: The Culture of Credit and Social Relations in Early Modern England* (Basingstoke, UK: Palgrave, 1998), 204-213.
[49] Muldrew, *The Economy of Obligation*, 204; John Baker, *The Oxford History of the Laws of England: Vol. VI 1483-1558* (Oxford: Oxford University Press, 2003), 117: Baker has proposed 12,000 as the minimum number of all local courts in late-medieval England.
[50] R.W. Hoyle, ed., *The Estates of the English Crown, 1558-1640* (Cambridge: Cambridge University Press, 1992), 163.

to utilize their property as they wished and had recourse to the common law versus the land whose tenants were ultimately subject to the will of the landlord and only had, until the mid-sixteenth century, recourse to the manor courts.[51] After the mid-sixteenth century it was generally acknowledged that copyhold tenures were inheritable and the customs that regulated their transfer were protected by common law in ways that made it difficult for landlords to exploit their tenants arbitrarily.[52] It is unknown exactly what proportion of the land was freehold versus how much was copyhold in early modern England. However, it is clear that the overall number of freehold tenures was increasing in this period as landlords sold them to their tenants in order to raise funds by capitalizing on the competitive land market. Significantly, holding freehold land of 40s or more gave a (male) tenant the right to vote in Parliamentary elections, which conferred upon freehold tenures a political and social importance that copyhold tenures did not. The fact that more people were holding freehold tenures, combined with the generally increasing value of land, meant that national political participation expanded significantly: the number of MPs in parliament increased from 296 to 507 men during the period of 1550-1640.[53] Much of the best work on the lives of women in early modern England so far has focused on wills as a source of information, which could only bequeath freehold land. Therefore, wills ignore women's experiences with the large amount of copyhold land that was integral to the English agricultural economy.[54]

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[51] John Dawson, *A History of Lay Judges* (Cambridge, USA.: Harvard University Press, 1960), 235.
[52] R.W. Hoyle, "Tenure and the Land Market in Early Modern England: Or a Late Contribution to the Brenner Debate," *The Economic History Review* 43:1 (1990): 3.
[53] Hindle, *The State and Social Change in Early Modern England*, 226.
[54] Jane Whittle, "Inheritance, Marriage, Widowhood, and Remarriage: A Comparative Perspective on Women and Landholding in North-East Norfolk, 1440-1580," *Continuity and Change* 13:1 (1998) 33, who specifically references the local studies written by Nesta Evans, Susan Amussen, Tim Wales, and Lynn Botelho.

Leasehold was another type of tenure that was becoming increasingly common during this period. Leasehold tenures were not subject to customary law and were therefore more sensitive to fluctuations in the land market. In 1612, Chief Justice Coke argued that the Statute of Fines should apply to both leasehold and copyhold land because "the third part of the realm is in copyholds and two parts in lease for years, and if these shall not be within the statute, then this doth not extend to three parts of the realm."[55] Coke's statement, while not a comprehensive representation of the early seventeenth-century land market, gives a sense of contemporaries' understanding of the proportion of copyhold versus leasehold tenancies at that time. Most historians now generally agree that close to two-thirds of the landholding population in the early sixteenth century were copyholds tenants. But landlords were increasingly transforming tenancies into leaseholds throughout this period because leaseholds allowed them to charge a higher rent and to predict when tenures would have to be renegotiated. Therefore, by the mid-seventeenth century leases covered about two-thirds of the land market.[56] This is significant to the history of manor courts because it means that the amount of land represented within the court records was gradually but consistently decreasing throughout England in favour of more market-based tenancies.[57] Consequently, although this study will only focus on women's engagement with copyhold land tenures, it must always be remembered that the early modern English land market as a whole was much more complex than the subsection that is presented here and that the different tenures each had unique restrictions and opportunities for women landholders.

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[55] Richard Brownlow, ed., *Reports of Divers Famous Cases in Law As They Were Argued*… Vol. 2 (London: 1675), 156. Argued in the case of Bicknell v. Tucker, Easter 1612.
[56] Hindle, *The State and Social Change in Early Modern England*, 44.
[57] Hoyle, "Tenure and the Land Market in Early Modern England," 9-10.

As the economic circumstances changed in the seventeenth century and the structure of the land market became increasingly commercialized and detached from custom, the legal system saw a shift in the balance of power away from manor courts. Mark Bailey has made the common argument that the manor's use as an institution of local social control and agricultural management had already ceased by 1500, but this does not explain why so many manor courts continued to be active for at least another 150 years.[58] Sidney and Beatrice Webb, writing almost a century earlier than Bailey, more correctly placed the decline of manor courts quite a bit later, after the Glorious Revolution. Their analysis of the history of English manor courts from 1689 to 1835 found that by this point, but not much before, "we are dealing with an institution that is nowhere in its prime, but in every instance falling into decay."[59] Landlords had increasingly relied upon common-law courts to determine titles to lands and rationalize customs, which ultimately atrophied the manorial system and further legitimized the national common law over local customary law.[60] One indication of this stagnation of the manor courts is the fact that their regulatory presentments did not noticeably increase as would have been expected during this period of population expansion, economic hardship, and generally increasing litigation levels.[61] As will be illustrated below, all of the manors that were examined for this study show a gradual decline in the frequency of

[58] Bailey, *The English Manor*, 17. See also: McIntosh, *Autonomy and Community*, 263.
[59] Sidney Webb and Beatrice Webb, *English Local Government From the Revolution to the Municipal Corporations Act: The Manor and the Borough*, vol. 3 (London: 1908), 31.
[60] Christopher Brooks, "The Agrarian Problem in Revolutionary England," in *Landlords and Tenants in Britain, 1440-1660: Tawney's* Agrarian Problem *Revisited*, ed. Jane Whittle (Woodbridge, UK: Boydell Press, 2013), 199; Harold Garrett-Goodyear, "Common Law and Manor Courts: Lords, Copyholders and Doing Justice in Early Tudor England," in *Landlords and Tenants in Britain, 1440-1660: Tawney's* Agrarian Problem *Revisited*, ed. Jane Whittle (Woodbridge, UK: The Boydell Press, 2013), 42; Wood, *The Memory of the People*, 33.
[61] Brooks, *Law, Politics and Society in Early Modern England*, 262.

almost all types of court activities that they performed and a narrowing of the range of matters that they recorded, with a particular shift around the mid-seventeenth century. Douglas Crowley's description of the manors of Brinkworth and Charlton is a useful summary of how this decline of influence and participation was experienced in most manors: "In the sixteenth century the courts apparently retained characteristics of a mass meeting and a criminal court; by the mid-seventeenth century they had lost some of those and had acquired some of the characteristics of a business meeting held to protect the interests of local farmers."[62] Therefore the seventeenth-century manor courts were certainly different from their medieval ancestors, but they nevertheless continued to play an important function in the economic activities of a wide range of people.

This decline in the legal functions of the manor courts created a dynamic environment that is particularly useful for exploring how changes in land tenures and governance institutions impacted English society more broadly. It was also a slow process that varied significantly from place to place, and therefore early modern manor courts should not be entirely dismissed as merely vestigial institutions. Even as late as 1887 a witness before the House of Lords suggested that there were still at least 3,000 active manors across England.[63] Brodie Waddell has shown that during the early modern period many manor courts shifted their focus towards matters of community infrastructure and local immigration, with some courts even handling more business in the seventeenth century for certain issues than they had in earlier periods.[64] Similarly, John Cruickshank has demonstrated that courts leet continued to perform important

[62] Douglas Crowley, ed., *The Court Records of Brinkworth and Charlton 1544-1648* (Chippenham, UK: Wiltshire Record Society, 2009), 91.
[63] Referenced in Hoyle, "Tenure and the Land Market in Early Modern England," 12 n45.
[64] Waddell, "Governing England Through the Manor Courts," 280.

administrative functions that were central to the governance of local communities, especially the election of constables, which made manor courts relevant and useful institutions well into the nineteenth century. For that reason he argues that "manors and their courts were not fossilised remnants, but in contrast did evolve and change to assume additional functions."[65] Therefore, it is simultaneously true that manor courts, and customary law more generally, were steadily losing their importance within the early modern English legal system, yet they remained consequential institutions within individual communities that made a real impact on the lives of the men and women who appeared before them.

Historiographical consensus is that parishes were the main governmental institutions that were in direct competition with the manor courts from the seventeenth century onwards. Parishes were tasked with implementing and overseeing the Elizabethan Poor Law of 1601, and so they collected taxes from wealthy community members and distributed the money in the form of relief for the impotent poor. The leadership of the parishes included many of the same people who also operated the manor courts as jurors and officers. However, the parishes had an explicit mandate to regulate the social behaviours that threatened the souls of parishioners, whereas the manor courts' mandate was mainly, though not exclusively, to regulate economic behaviours. Therefore the transition from manorial governance to parish governance, according to Steve Hindle, "added even greater depth and complexity to relations between the 'better' and 'worser' sort in the local community."[66] However, many elite people were reluctant to embrace

[65] John Cruickshank, "Courts Leet, Constables, and the Township Structure in the West Riding, 1540-1842," *Northern History* 54:1 (2017), 78.
[66] Hindle, *The State and Social Change in Early Modern England*, 206-208.

this system because it entailed a tax on their wealth, while many poor parishioners also chafed under the new surveillance of their behaviours that was required to access this benefit. It was not until the mid-seventeenth century, after energetic monitoring and enforcement from the central government, that parishes across the country accepted and implemented this vestry jurisdiction. Still, Keith Wrightson has estimated that the poor relief system was only operational in about a third of the country's 10,000 parishes by 1650.[67] Parishes were certainly becoming an increasingly important force within early modern English society, and they did eventually take over many of the tasks of community regulation that had previously been the jurisdiction of the manor courts. But this was a very gradual transition with an extensive period of overlap between the two institutions, and so the early modern manor courts should not be discounted as influential forces within English society too early.

This study focuses on the experiences of women who lived in manors in the northern counties of Yorkshire, Lancashire, and Cheshire, where it is thought that manorial structures and copyhold tenures survived for longer than they did in the more densely populated and less pastoral south.[68] Brodie Waddell has argued that it was likely that the north saw some of England's most active post-medieval manor courts because of the larger amount of common lands and more limited influence of rival legal institutions in the nearby area.[69] This area also saw an expansion in many industries during the early modern period, especially in mining and the production of woollen products, which increased the area's population and set it up to become an economic powerhouse in the

[67] Wrightson, *Earthly Necessities*, 216.
[68] Jonathan Healey, "The Northern Manor and the Politics of Neighbourhood: Dilston, Northumberland, 1558-1640," *Northern History* 51:2 (2014): 222.
[69] Waddell, "Governing England Through The Manor Courts," 299.

late-eighteenth century. It has also been suggested that landholders in Yorkshire may have been more willing to let daughters inherit land from as late as 1700 due to the lasting effects of medieval Viking settlers and their Scandinavian inheritance practices.[70] The extant, published records of two Yorkshire manors, Acomb and Wakefield, have been quantified for this study in order to gain a sense of the frequency with which women participated in the proceedings of the courts, a general sense of the proportion of female householders in the manors, the sorts of economic and social activities that women were engaged in, and the reality of how coverture influenced men and women's legal and economic behaviours. Although experiences at two manors cannot be used to generalize about the nature of customary law throughout England, the large number of surviving records from these two manors provide a helpful foundation for the rest of the analysis to be compared against. A handful of other courts from within the same region were examined in depth in order to develop a more complete picture of the experiences of women at the early modern manor courts.

Acomb was a very small manor in North Yorkshire, near the city of York, which had a traditional agricultural economy throughout the early modern period but maintained extensive connections to the nearby city. All of Acomb's extant, published manorial court records from 1567 to 1695 were quantified for this study, with the exception of a few gaps in the record, particularly from 1624 to 1649, which may have been caused either by a loss of the records or from the courts not being held in those years. [71] Acomb usually

[70] Erickson, *Women and Property in Early Modern England,* 62.
[71] Harold Richardson, ed., *Court Rolls of the Manor of Acomb,* vol. 1 (Leeds: Yorkshire Archaeological Society, 1969); Harold Richardson, ed., *Court Rolls of the Manor of Acomb*, vol. 2 (Leeds: Yorkshire Archaeological Society, 1978). Pagination is continuous between the two volumes, and hereafter both volumes are referenced as "Acomb." The years missing from the records are 1585-1591, 1595, 1608-1611, 1624-1649, 1653, 1655, 1662, 1665, 1670-1677, 1690, and 1694.

held court twice a year, with ad hoc court baron sessions held in between as needed. During the period under examination, Acomb was a crown property until King James I sold it to the Archbishop of York in 1609, who continued to be its landlord until the nineteenth century. This institutional ownership of both monarch and church likely helped to ensure the preservation of Acomb's court rolls, as well as the court's adherence to conventional procedures and the application of conservative estate management strategies. It also likely meant that the landlord was particularly disengaged from the court's day-to-day operations, the manor being just one small piece within a much larger portfolio.[72] After about 1660, like those of many other manors' courts, the Acomb court rolls became increasingly impressionistic and partial. Therefore, the following analysis should be regarded as an examination of the conflicts and transactions that were deemed important enough to be recorded by the court, rather than as a complete recording of everything that occurred within the manor.

The manor of Wakefield, in contrast, was a very large manor in West Yorkshire that covered 150 square miles and contained twelve townships, each of which acted as an administrative subsection within the manor.[73] Wakefield held court baron sessions to record land transactions every three weeks, and its courts leet (or tourns) occurred twice a year. Tourns would be held in multiple locations and extend over multiple days, with

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[72] Hoyle, *The Estates of the English Crown*, 5-6.

[73] C.M. Fraser, ed., *The Court Rolls of the Manor of Wakefield: For 1608/9,* vol. 11 (Leeds: Yorkshire Archaeological Society, 1996); C.M. Fraser, ed., *The Court Rolls of the Manor of Wakefield: From October 1688 to September 1689,* vol. 14 (Leeds: Yorkshire Archaeological Society, 2004); C.M. Fraser and Kenneth Emsley, eds., *The Court Rolls of the Manor of Wakefield: From October 1639 to September 1640,* vol. 1 (Leeds: Yorkshire Archaeological Society, 1977); C.M. Fraser and Kenneth Emsley, eds., *The Court Rolls of the Manor of Wakefield: From October 1664 to September 1665,* vol. 5 (Leeds: Yorkshire Archaeological Society, 1986); Lilian Robinson, ed., *The Court Rolls of the Manor of Wakefield: From 1651 to 1652,* vol. 8 (Leeds: Yorkshire Archaeological Society, 1990); Ann Weikel, ed., *The Court Rolls of the Manor of Wakefield: From October 1583 to September 1585,* vol. 4 (Leeds: Yorkshire Archaeological Society, 1984). Hereafter referenced as "Wakefield," with the volume number.

representatives from each of the townships appearing to present the business of their area along with the tenants involved. Aside from its size, the manor is exceptional for the fact that its court rolls from 1322 to 1925 have survived in an almost unbroken sequence. The large extent of this manor's activities made it impractical to quantify its records in totality, and so 7 sample years from 1583 to 1689 have been analyzed from published versions. The Wakefield manor court records give significant clues regarding the important role that the area would play within England's economy over the following two centuries, which makes it an especially valuable manor to study. When describing the Wakefield township of Halifax in 1748, Daniel Defoe commented upon the natural resources that made it a perfect place for the country's new industries, namely the area's large amount of coal and fresh water: "This place then seems to have been designed by providence for the very purposes to which it is now allotted, for carrying on a manufacture, which can no-where be so easily supplied with the conveniences necessary for it."[74] There are many references to coal mines and to cloth workers throughout the court rolls, and so the inhabitants were clearly involved in an increasingly diversifying and commercializing economy by as early as the late sixteenth century.

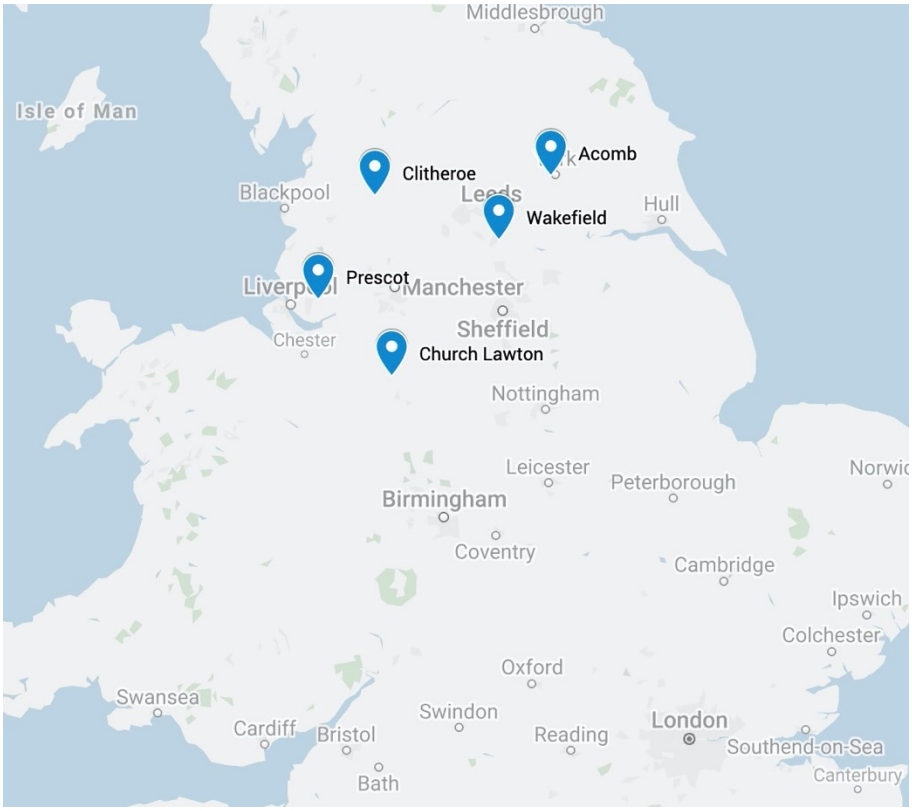
A few manors from the nearby counties of Lancashire and Cheshire have been examined but not quantified. The manor of Prescot was, according to Defoe, "a large market town but thinly inhabited," fairly close to Liverpool.[75] The published court records from 1558 to 1600 and 1640 to 1649 have been included in this study.[76] Prescot

[74] Daniel Defoe, *A Tour Thro' The Whole Island of Great Britain*…, vol. 3, 4th ed. (London: 1748), 138.
[75] Defoe, *A Tour Thro' The Whole Island of Great Britain*, 241.
[76] F.A. Bailey, ed., *A Selection From the Prescot Court Leet and Other Records, 1447-1600* (The Record Society of Lancashire and Cheshire, 1937); Walter King, ed. *The Court Records of Prescot 1640-1649* (Bristol: For the Record Society of Lancashire and Cheshire, 2008).

maintained an unusually robust customary jurisdiction into the mid-seventeenth century. Its tenants claimed benefits such as exemption from jury service outside of the manor, exemption from county taxes, the right to licence its alehouse keepers (which was usually granted by any two JPs), and it was not restricted to the traditional 40s limit on private suits.[77] The published records of the Honor of Clitheroe from 1558 to 1571 have also been examined, which was a group of manors owned by the monarch that were all administered together as a component of the Duchy of Lancaster during this period.[78] This meant that the activities of the honor were supervised by higher governmental authorities in a way that was not the case at most other manors, and therefore its records include some details that were not usually recorded in manorial court rolls. Finally, records from the conventional Cheshire manor of Church Lawton from 1631 to 1700 have been incorporated throughout this study.[79] The variety of the size, location, and jurisdictions of these different manor courts is intended to make what is presented in this study broadly representative of women's experiences with early modern manor courts.

[77] King, *The Court Records of Prescot*, xii.
[78] William Farrer, ed., *The Court Rolls of the Honor of Clitheroe in the County of Lancaster*, vol. 1 (Manchester: Emmett & Co., 1897); William Farrer, ed., *The Court Rolls of the Honor of Clitheroe in the County of Lancaster*, vol. 2 (Manchester: Emmett & Co., 1912); William Farrer, ed., *The Court Rolls of the Honor of Clitheroe in the County of Lancaster*, vol. 3 (Manchester: Emmett & Co., 1913); John Simpson, ed., *The Court Rolls of the Honor of Clitheroe, 1567-1568* (Helmshore Local History Society, 2000); John Simpson, ed., *The Court Rolls of the Honor of Clitheroe, 1568-1571* (Helmshore Local History Society, 2000).
[79] Guy Lawton, *Church Lawton Manor Court Rolls, 1631-1860* (Bristol: For the Record Society of Lancashire and Cheshire, 2013).

Figure 1: Map of the Manors Referenced



What is immediately obvious from these records is that these manor courts were not moribund by the start of Queen Elizabeth's reign in 1558, and therefore the courts provide a wealth of information into the daily lives of people from all levels of non-urban English society. Another obvious characteristic of the records is that women's participation was always accepted by the courts' administrators as an innate part of court operations. However, these administrators were representatives, first and foremost, of the people who held economic and legal power within their local manorial community. Overall, they used the institution as a forum to maximize individual tenants' wealth and maintain the status quo in terms of gender and class relationships in order to protect the matrix of social relations that formed the basis of their power. Some women successfully used the manor courts to pursue their individual interests, but they did so by exploiting

the courts' structural foundation that valued tenurial commitments above all rather than by circumventing that landholding social structure.

Unfortunately, unlike ecclesiastical or equity courts from this period, manor courts did not record depositional evidence or detailed explanations of the events that were judged at the manor. The courts recorded only very terse descriptions of what happened and who was involved, with very little indication of the decision-making process. Therefore insights into the courts' intentions can only be glimpsed in exceptional circumstances that encouraged more explicit comment or through the systematic analysis of the courts' normal activities over a period of time. These methodological difficulties have led historians interested in customary law to focus more on the disputes regarding manors that were settled in the central courts, which recorded more details. However, this lack of attention to the records of individual manor courts can skew our understanding of the frequency and nature of conflict over customs in early modern England since only a small and unrepresentative proportion of particularly contentious disputes ended up at higher courts.[80] This makes the quantification of manor court records an especially important way to gain an understanding of the usual versus the exceptional, as well as trends over time. By tracing the experiences of women at Acomb and Wakefield over several generations, it is possible to test the idea that "the preservation of the gender order" became a "higher priority than women's proprietary rights" over the course of the sixteenth and seventeenth centuries.[81] In the following chapters, women's roles in the three main functions of the courts – regulating land transactions, punishing minor

[80] Stretton, "Women, Custom and Equity in the Court of Requests," 172; Harold Garrett-Goodyear, "Common Law and Manor Courts," 38-42; Walter King, "Untapped Resources for Social Historians: Court Leet Records," *Journal of Social History* 15:4 (1982): 699.
[81] Mendelson and Crawford, *Women in Early Modern England*, 58.

misdemeanours, and facilitating local government – will be examined in order to decipher the complex nature of daily life within the manor that these women experienced. Close attention to these manorial court records demonstrates that the strict rules of coverture were not uniformly applied at the customary level, but nevertheless there was a broad cultural consensus that excluded women from full participation in the governance of their communities. Women certainly had significant agency, especially at the local level, and their opportunities to expand this agency occurred during periods of broader societal disruption. Therefore, manor court records provide an insight into how "patriarchy found ways to adjust to changing circumstances, and [how] women proved equally adept at finding ways to accommodate and negotiate it."[82]

Chapter one illustrates the many ways that women became landholders within manors, and, as a result, how they wielded a degree of economic power within this society that valued land above all. However, in ways that are very similar to coverture's regulation of freehold land, the customs that determined the descent of copyhold land preferred men in every circumstance, and so customary law was not particularly supportive to women's interests. Widows did have acknowledged customary rights to freebench that were protected and administered by the manor courts. However, coverture and the demographic realities of the period, which frequently led to early deaths, multiple marriages, and step children with competing interests, meant that these claims were often fragile and easily challenged, especially by men whose landholding rights were unambiguous. Women did hold land and gained economic power from this land, but

[82] Capp, *When Gossips Meet*, 374.

when compared to male landholders, on average they held less land, for shorter periods, shared it with more people, and were subject to more restrictive conditions.

This low frequency of women's landholding also meant that they were disproportionately under-represented in the presentment of misdemeanours at the manor courts, as demonstrated in chapter two. Men's default role as householders meant that women's actions within their communities – both productive and destructive – were frequently hidden from the view of the court and never made it into the court records. However, the misdemeanours perpetrated by women within the manorial community that were noticed and censured by the courts demonstrate that they played a very active role within the local economy and were involved in all sorts of agricultural activities. These records also demonstrate that the very male court structures were generally more willing to punish women's non-conforming or anti-social behaviours than men's, at least until this jurisdiction transferred to other institutions in the mid-seventeenth century. In this way, the courts were fundamentally tools for the patriarchal suppression of conflict and disorder, which was seen as particularly threatening when coming from women.

Finally, chapter three examines how the courts, as public forums and local institutions of the English state, sanctioned power and authority within communities, mainly through the lens of the court's election of officers and its adjudication of causes between tenants. Women were almost entirely excluded from participating in the structures of governance that the courts offered to the inhabitants of manors, and therefore the manor courts were a microcosm of England's patriarchal and deferential national governmental system. It appears that the exclusion of women from the political realm became even more thorough during the seventeenth century. Nevertheless,

individual women utilized the courts to legitimize the small degree of public authority that they were able to obtain at the local level as guardians of minors, instigators of inquest procedures, and litigants in private causes. The women who publicly engaged with their neighbours at the manor courts in these ways demonstrate the myriad ways that women were willing to confront the male-dominated power structures in order to protect their economic and legal interests.

It is clear that manor courts continued to be a very important part of agricultural life in sixteenth- and seventeenth-century England, but their impact in the history of women in early modern England is largely ambivalent. As institutions, they were neither small-scale analogues of the common law courts, nor were they separate from the legal culture that was becoming increasingly uniform throughout this period. Alice Clark's assertion that "the changes which during the seventeenth century were abrogating customs in favour of common law, did in effect eliminate women from what was equivalent to a share in the custody and interpretation of law" is surely an overstatement.[83] The jurors, stewards, and officers who ran the customary courts since the medieval era had always excluded women from their equivalent share of the law, even at the most local level. However, the quotidian nature of these courts meant that they were forced to accept the reality of women's participation in the community's economic, social, and political affairs. Women were always tenants, and this status gave them certain rights and responsibilities within the manorial community. The decline of the manor courts' influence in the mid-seventeenth century and the quickening of the land market meant that tenurial relationships between tenants and their landlords lost

[83] Clark, *Working Life of Women*, 237.

much of their significance. Landholding increasingly became a purely economic consideration, and the new institutions that governed daily life gradually became distinct from each other and more reluctant to include participation from the public at large. Therefore, while women continued to own land and be involved in lawsuits, these actions held less public significance and their behaviours were increasingly governed by institutions, such as JPs and parishes, that viewed them first and foremost as women rather than as manorial tenants.

In many ways the very existence of England's manor courts helped to systematize the patriarchal structures of ownership that governed medieval and early modern society. Women's access to property and ability to pursue power at even the most minor level was regulated at these courts by men who were willing and able to impose punishments and adjudicate conflicts in ways that consistently supported men's dominance as landholders. Manors were institutional manifestations of the tenurial contracts agreed upon between landlords and their tenants. Therefore, the fact that it was exceptional or generally undesirable for women to be included in these tenurial contracts helped to embed patriarchy as one of the foundational structures of English society. The public and recurrent manorial court meetings excluded women from acting as jurors, sanctioned humiliating punishments for women's anti-social behaviour, did not trust them to act as officers, and frequently obscured their identity by not recording their names. The manor courts' treatment of women demonstrates that they were not fundamentally democratic structures. Therefore women did not even have access to equal justice at the courts that were supposed to be the most accessible and convenient institutions within early modern English society.

CHAPTER 2: LAND AND LEGACY
WOMEN AS TENANTS AND ECONOMIC ACTORS

Manor court rolls document that women inherited land from their fathers, land was transferred between families at marriage, couples bought and sold land based on their economic circumstances, and women passed on land at their death. However, the restrictions enshrined by coverture and the customary rules of inheritance meant that women were systematically discouraged from participating in the land market at almost every turn, which explains women's underrepresentation in all sorts of economic transactions. According to Jane Whittle, "land stood at the heart of the economy and society in rural England…[and] ordinary women's inferior rights to land were a key aspect in women's subordination as a whole."[84] Women's more limited access to land meant that it was much rarer for women to act as the heads of their households, and therefore the reality of women's economic activities often became subsumed under the activities of their male family members. Nevertheless, significant information can be gleaned about the economic lives of women in early modern England from manorial court records via their engagement with copyhold land, despite the restrictions on their activities that they faced. As argued by Amy Erickson, "the reality of women's receiving large amounts of property and exerting power over it in a distinctive way does not change the fact of oppression, but it does highlight the disjuncture between theory and practice. It also exhibits the ingenuity of many ordinary women in working within a massively restrictive system."[85]

[84] Whittle, "Inheritance, Marriage, Widowhood, and Remarriage," 33.
[85] Erickson, *Women and Property in Early Modern England*, 19-20.

The records of early modern manor courts show women to be an integral part of the active and increasingly commercialized land market in England. There were three types of events in a woman's life when she was most likely to be involved in a land transaction before the court: when she inherited land from a relative, when she became a wife and joint tenant, and when she became a widow, because "virtually every death and every marriage involved a transfer of property."[86] This is a simplification, of course, since many women never married and others married multiple times, and similarly some women never received an inheritance while others received legacies from more than one relative. The transferring of copyhold land had to be presented at the lord's manor court, approved by the court steward, and recorded in the courts' rolls. After this occurred the clerk of the court would provide a copy of the transaction for the new landholder, and this copy became an important legal document that could be referred to in any future legal dispute over the land. In many areas the manorial court rolls ended up becoming a sort of crude land registry system for copyholders, and these registry transactions occupy the majority of the court rolls in most manors. An analogous registry for freehold land did not exist, and so this function may be central to explaining why manor courts continued to operate in post-medieval England and why their records were preserved by succeeding landlords.[87] Land transactions recorded by manor courts provide a wealth of information on the extent of women's actions as economic agents and custodians of land in early modern England. Simultaneously, these records reveal the effectiveness of the mechanisms that were employed at the local level to deny women economic equity despite their substantial role as landholders within the manor.

[86] Erickson, *Women and Property in Early Modern England*, 4.
[87] King, *The Court Records of Prescot 1640-1649*, xxiv.

Surrendering and regranting copyhold land was very important for tenants because this process created a formal foundation that secured the descent of a piece of land for future generations under conditions that were particular to each individual family's needs.[88] Of course, this was not always a perfectly executed process, as demonstrated at the honor of Clitheroe in 1571. A mill had been surrendered by Ellen Rissheton, widow, and John Rissheton, her son, but the record of the transaction in the court roll only mentioned Ellen, "either through the default of the said greave or else by oversight of the clerk who entered the same." This was a significant error because John Rissheton could make a claim to the mill in the future if the manor court roll did not reference his agreement to the sale. In order to fix the official record Ralph Rissheton, the new owner, had to exhibit a bill of complaint in Westminster before the Chancellor of the Duchy of Lancaster, who commissioned a new manorial court jury to be summoned to inquire into and determine the issue. Ultimately, the court decided that John Rissheton had indeed jointly surrendered the mill with his mother to Ralph Rissheton, and Ralph could rest easy knowing that his full ownership was duly recorded.[89] The lengths that Ralph Rissheton went to make sure that the manorial record of this transaction was accurate supports Poos and Bonfield's claim that it was this function of the court that protected tenants' "ability to enjoy the peaceful possession of customary land, its secure inheritance by descent or settlement to their selected family members, the ability to transfer property to others, and a forum to adjudicate disputes over their holdings."[90]

[88] Helen Jewell, "Women at the Courts of the Manor of Wakefield, 1348-1350," *Northern History* 26 (1990): 69.
[89] Simpson, *The Court Rolls of the Honor of Clitheroe, 1568-1571*, 83-85.
[90] Poos and Bonfield, *Select Cases in Manorial Courts*, cvii; see also Brooks, "The Agrarian Problem in Revolutionary England," 194.

The manor courts also validated the amount of fines, heriots, and rents that were owed to landlords by their tenants and enforced their collection, which gave the landlord a reason to continue to operate the courts even after many of the other functions performed by the court became increasingly irrelevant. In 1666 the author of *The Power and Practice of Court-Leets* felt that the collection of rents and assessment of fines at the sale of copyhold land was the only thing motivating the operation of manor courts at all by this point. "Were it not for this," he argued with concern, "few lords would keep any court at all, though they ought to do it to do justice to their tenants."[91] Lord Fitzwilliam's letter to his steward demonstrates how involved and vigilant landlords could sometimes be: "I always set my fines myself, and will not do so until I know whose life or lives are to be put in; what life or lives are in being; and the full improved value of the estate. Nothing shall be done until I have determined the fine."[92] Although landlords could negotiate the level of fines with their tenants in order to maximize profit (except in certain manors where the fines were fixed by custom), these fines were also quite unpredictable sources of income because they only became due at a tenant's death or at the sale of land. The equity courts had determined by the late-sixteenth century that a fine was reasonable if it could be paid without excessive strain to the heir or obliged him (or her) to surrender the inheritance.[93] Therefore landlords did not have unbridled power to use fines to exploit their tenants, but tenants were correspondingly obliged to fulfill a number of customary duties in return, such as repairing the tenement and attending court when required. If a tenant did not present the surrender in compliance with custom,

[91] Ag., *The Power and Practice of Court-Leets*, 45.
[92] Hainsworth and Walker, *The Correspondence of Lord Fitzwilliam*, Letter from Lord Fitzwilliam to Francis Guybon (15 July 1708), 274.
[93] Hoyle, "Tenure and the Land Market in Early Modern England," 5.

according to a late-sixteenth-century guidebook, "then the Lord shall have the mean profits of the same lands, all the rent services and reparations being deducted, until he be amerced of his fine according to his duty… For that [the defaulting tenant] doth as much as he may to defeat the lord of his fine, and also to defeat the other party to whose use the surrender was made."[94]

Therefore the transfer of copyhold land was the most fundamental business that was regularly performed by the court baron, and this function of the court only became more important as copyhold tenures become more complex in the sixteenth and seventeenth centuries. The higher courts of Chancery, Common Pleas, and King's Bench began to treat copyhold tenures more like freehold tenures during this period, ruling to minimize the burden of obligations owed to the landlord by copyhold tenants and allowing for the conditions placed on the tenancies to become more and more elaborate. Copyhold land could be entailed or mortgaged, be part of indentures and settlements, or have complex conditions placed on the descent of tenure, both within and outside of individual families.[95] This meant that tenants were increasingly buying and inheriting land and use-rights that were unconnected to their daily farming operations and created economic obligations that spanned multiple generations.[96] Tenants were also increasingly able to argue that their claims to land had been trespassed upon by their landlord, all of which helped to "assimilate copyholds to freeholds" by the middle of Elizabeth I's reign by assuming custom followed common law, "except where deliberate efforts were made

[94] Jonas Adames, *The Order of Keeping a Court Leete and Court Baron…* (London: 1593), D4r-v.
[95] Poos and Bonfield, *Select Cases in Manorial Courts*, xviii.
[96] E.P. Thompson, "The Grid of Inheritance: A Comment," in *Family and Inheritance: Rural Society in Western Europe, 1200-1800,* eds. Jack Goody, Joan Thirsk, and E.P. Thompson (Cambridge: Cambridge University Press, 1976), 337.

to preserve differences."[97] According to P.D.A. Harvey, these sixteenth-century changes "made copyhold a recognised form of tenure which was still administered by the court baron and still dependent on local custom but which was now the subject of a growing body of case law and legal definition (and, it might be added, of historical myth) at the hands of the royal courts, their judges and lawyers."[98] However, copyhold land, although not inherently different from freehold land in terms of agricultural productivity, still did not convey the same social status because it was more dependent upon the conditions placed by the landlord and the manorial community than freehold land was.

Custom, not the common law, determined how copyhold land descended over time, and these inheritance customs were often very influential in distinguishing and separating manors across the country. Some areas followed the common law's example by distributing land according to primogeniture, but this was only one of many possibilities. Other areas followed the principle of partible inheritance (often called "Gavelkind"), wherein all sons were entitled to an equal share of the estate, and other manors followed ultimogeniture (often called "Borough English"), wherein the youngest son inherited the copyhold land by default. Many families' estates included both freehold and copyhold land, and sometimes even copyhold land from different manors with distinct customs, which could combine to create complex rules of inheritance that could include specific kin in some land and exclude them in others.[99] John Rowe, a lawyer and the steward of a group of manors in Sussex, compiled between 1597 and 1622 a detailed analysis of the customs he found still being used in his manors. He became especially

[97] Baker, *An Introduction to English Legal History*, 308; See also Kitchin, *Jurisdictions*, 176-177.
[98] Harvey, *Manorial Records*, 56.
[99] James Hodson, ed. *The Court Books of the Manor of Cheltenham, 1692-1803* (Bristol: The Bristol and Gloucestershire Archaeological Society, 2010), xvii.

frustrated when confronted with the confusing web of customs that existed for the copyhold land in the small community of Notborne:

> All the residue of the tenants of this manor are copyholders, whose customs I find so variable as that I cannot certainly resolve myself thereof, much less satisfy others… So I find their estates to be entangled with the like difficulties fitter for the reverend judges of this kingdom upon mature deliberation to resolve than for mine insufficiency to determine.[100]

Although the rules governing copyhold land in most places were not as confusing as they apparently were in Notborne, the existence of such a wide variety of inheritance customs within a small region supports Erickson's argument that the diversity of landholding practices that existed in England meant that "while the custom of primogeniture was influential, it is a wholly inadequate description of the 'grid of inheritance' among ordinary people."[101]

This decentralized manorial regulation meant that coverture was somewhat less of a dominating force over how copyhold land was handled than it was over freehold land, but the common law's dislike of female householding nevertheless exerted a strong influence over attitudes towards copyhold land. The homogenizing influence of the common law during this period can be seen in the writing of Thomas Smith, a diplomat and legal scholar. After describing the multitude of customs that governed the inheritance of land in England, he wrote: "But these being but particular customs of certain places and out of the rule of the common law, do little appertain to the disputation of the policy

[100] Walter Godfrey, ed., *The Book of John Rowe, Steward of the Manors of Lord Bergavenny, 1597-1622* (Cambridge: Sussex Record Society, 1928), 93.
[101] Erickson, *Women and Property in Early Modern England*, 78.

of the whole realm and may be infinite. The commonwealth is judged by that which is most ordinarily and commonly done through the whole realm."[102] Women were excluded in processes that signified the community's trust in their role as head of household, such as not being allowed to act as a witness of land transfers that occurred outside of the manor court. All of the available customary patterns of land descent and inheritance in early modern England favoured giving real property to sons over daughters. Daughters inherited land as a family's last resort in the absence of male heirs, wives only became joint tenants at their husband's discretion, and widows were usually given only a third of the husband's estate as freebench. The preference for sons over daughters was reinforced by the fact that land left to a daughter was destined to leave the family at her marriage because of coverture, as well as the idea that the household economy dissolved as soon as the husband died.[103] The situation women found themselves in has been summarized well by Jane Whittle:

> Women were considered less suitable recipients of land because their legal rights were weaker than men's; the fact that women were less likely to hold land or be heads of household than men explains, in part, their lesser involvement in the legal system. It can also be argued that these two factors have a common root: the misogynist nature of cultural values in medieval and early modern England.[104]

[102] Smith, *The Common-Welth of England*, 136.
[103] Amussen, *An Ordered Society*, 91; Bennett, *History Matters*, 91.
[104] Whittle, "Inheritance, Marriage, Widowhood, and Remarriage," 64; See also Miriam Muller, "Peasant Women, Agency and Status in Mid-Thirteenth to Late Fourteenth-Century England: Some Reconsiderations," in *Married Women and the Law in Premodern Northwest Europe*, eds. Cordelia Beattie and Matthew Frank Stevens (Woodbridge, UK: The Boydell Press, 2013), 98.

Therefore, although coverture and primogeniture were less strictly applied in the manorial jurisdiction of copyhold tenure, the principles of these systems that excluded female landowners permeated into the economy and society more generally.

The manorial court records sometimes reveal the tension that the overt exclusion of women from holding land could cause within a community. For instance, at the honor of Clitheroe's manor court held in 1564, James Dryver Sr. presented a surrender of his land to the court under the condition that the land revert after his death to his son James and his male heirs. But if his son only had daughters, then the land would descend to his brother Geoffrey Dryver, who would be expected to pay "certain sums of money to the said daughter or daughters." But this attempt to exclude daughters so thoroughly from the land that would customarily belong to them meant that "contention and discord arose concerning this surrender" and whether or not it conformed to "the ancient custom of the manor", and so the court steward ordered a new jury be summoned specifically to decide the matter. This new jury found the surrender to be invalid because similar inquiries made in the reigns of Henry VII, Henry VIII, and Philip and Mary had determined that "no copyhold lands being within the precinct of the said manor ought to be surrendered to the heirs male or to their males to be entailed."[105] This incident demonstrates that some customs worked to preserve the rights of women to be landholders, even when particular men desired otherwise. However, the fact that similar disputes kept arising and inquiries continually had to be held to reinforce the custom meant that men must have been repeatedly attempting to exclude women from the line of descent.

[105] Farrer, *The Court Rolls of the Honor of Clitheroe*, vol. 1, 464.

Despite impediments to female landholding that were created by the system of coverture and the more general culture of discrimination against women that existed in this period, the reality was that many women were constantly involved in nearly every facet of the local land market. The broad contours of women's access to land stayed constant throughout the early modern period. Compared to men within the same community, women were more frequently joint tenants, it was less usual for them to buy or sell land outside of their family, and they transferred land less frequently throughout their lifetime.[106] Yet, the relative flexibility of custom meant that there were always exceptions to these general patterns. As Andy Wood has stressed: "patriarchal control over copyhold was messy, contested and locally uneven. Attention needs, therefore, to be paid not only to married and widows' rights over freehold but also to their myriad variation under copyhold."[107] And demographic realities meant that female family members often ended up becoming the only surviving heirs of an estate despite these disadvantages. When women did become landholders, they were not systematically excluded or discriminated against by the manor courts or seen as insufficient tenants. Sisters, daughters, wives, and widows faced nearly all of the same duties and responsibilities that their brothers, sons, and husbands faced in the supervision of their property, and if these duties and responsibilities were performed sufficiently then the courts were willing to protect women's rights to their land.[108] Ultimately, the records of manor courts support Amy Erickson's claim that "it is certainly true that land pulled

[106] Whittle, "Inheritance, Marriage, Widowhood, and Remarriage," 39.
[107] Wood, *The Memory of the People*, 304.
[108] McIntosh, *Autonomy and Community*, 171.

inexorably towards males, but it spent a good deal of time in female hands along the way."[109]

Freehold tenants owed relatively few obligations to their landlords compared to copyhold tenants, but they were expected to attend all court leet sessions to swear fealty to their landlord and the king. The court rolls often recorded the list of these tenants, and these lists provide some insight into the minimum amount of female tenancy in a manor at the freehold level at a specific moment in time. According to Marjorie McIntosh's analysis of the manor of Havering, women constituted 12% of all direct tenants (not sub-tenants) listed in the court rolls in 1251, 6% in 1405-1406, and just 2% in 1444-1445.[110] This general pattern appears to have continued into the early modern period. All of the manors that Jane Whittle examined in the period 1440 to 1580 had female tenants, but they rarely made up more than 10% of the total of landholders and were always widows.[111] The manor of Wakefield shows similarly low rates of female freehold tenancy in the years sampled, ranging from just 4% in 1583-1585 to no freehold female tenants in 1639-1640, with a total average of 2.1%.

Table 1: Number of Female Freehold Tenants at Wakefield

Manor of Wakefield: Freehold Tenants			
Year	Total Number of Freehold Tenants	Number of Women	Percentage of Women
1583-1585	100	4	4.0%
1608-1609	81	3	3.7%
1639-1640	97	0	0.0%
1651-1652	94	0	0.0%
1664-1665	77	2	2.6%
1688-1689	74	2	2.7%
Total	523	11	2.1%

[109] Erickson, *Women and Property in Early Modern England*, 5.
[110] McIntosh, *Autonomy and Community*, 172-173.
[111] Whittle, "Inheritance, Marriage, Widowhood, and Remarriage," 35.

The manor of Acomb is unusually helpful because it frequently listed copyhold tenants as well as freehold tenants in the manorial court rolls. It saw slightly higher levels of women listed as tenants for most of the early modern period, with an overall proportion of female tenants from 1570 to 1695 of 13.8%. This manor also shows how significantly the level of women householders could fluctuate from year to year: 25.2% of all tenants were women in 1661, but this dropped down to just 5.7% in 1680, the next time a list of tenancies was recorded in the court rolls. Acomb always had significantly more female copyhold tenants than female freehold tenants, and therefore women would have been particularly impacted by the diminishing role of copyhold tenures within the land market during this period.

Table 2: Number of Female Copyhold and Freehold Tenants at Acomb

Manor of Acomb: Freehold and Copyhold Tenants				
Year	Total Number of Tenants Recorded	Number of Women Freeholders	Number of Women Copyholders	Total Percentage of Women Tenants
1570	178	0	9	5.1%
1592	86	0	13	15.1%
1593	84	0	10	11.9%
1594	171	0	22	12.9%
1596	83	0	12	14.5%
1597	161	0	25	15.5%
1598	158	0	23	14.6%
1599	79	0	11	13.9%
1600	157	0	22	14.0%
1601	159	0	24	15.1%
1602	162	0	23	14.2%
1603	166	0	26	15.7%
1604	90	0	15	16.7%
1605	172	0	30	17.4%
1606	152	0	24	15.8%

1607	142	0	18	12.7%
1612	69	0	7	10.1%
1661	226	5	52	25.2%
1680	106	0	6	5.7%
1682	115	1	8	7.8%
1683	107	1	11	11.2%
1686	108	1	15	14.8%
1691	110	2	16	16.4%
1693	121	1	16	14.1%
1695	89	1	12	14.6%
Total	3251	12	450	13.8%

These figures are helpful for indicating the bare minimum of women's participation at the courts, but they do not tell us anything about how many wives held an estate jointly with their husband or were subtenants within the manor and were therefore not required to represent the land at the manor court. Nevertheless, it is clear that women were certainly present and actively engaged in the manorial land market and it was not an anomaly for women to be householders.

When a tenant died while in possession of copyhold land, their death was expected to be presented at the manor court so that their heir (or heirs) could be officially acknowledged and their estate's heriot assessed. But a tenant's death would not be presented if they disposed of their lands before their death, which many tenants did, and so not every death can be accounted for by manorial court heriots. The likelihood of a woman being a landholder increased during the course of her life as her likelihood of becoming a widow increased, and therefore older women were more frequently landholders than their younger peers. In Acomb, of the 104 deaths that were presented to the court from 1569 to 1686, 21 were women (20.2%). Of these 21 women, five had only female heirs (two were sisters, two were daughters, and the relationship is unclear in one

case) and two more had a group of heirs that included both men and women (the relationships were not indicated in either case).

Table 3: Heriots Due For Copyhold Land at Acomb

Manor of Acomb: Heriots Due at Tenants' Deaths			
Year	Total Number of Deaths Presented	Number of Women Whose Land Was Presented at Death	Percentage
1569-1579	16	3	18.8%
1580-1589	2	0	0.0%
1590-1599	9	1	11.1%
1600-1609	18	3	16.7%
1610-1619	10	2	20.0%
1620-1629	10	2	20.0%
1650-1659	18	4	22.2%
1660-1669	8	1	12.5%
1670-1679	5	1	20.0%
1680-1686	8	4	50.0%
Total	104	21	20.2%

In Wakefield during the years sampled, 15.1% of the 126 deaths recorded by the courts were women. Their heirs were other women in only four cases, always sisters of the deceased.

Table 4: Heriots Due For Copyhold Land at Wakefield

Manor of Wakefield: Heriots Due at Tenants' Deaths			
Year	Total Number of Deaths Presented	Number of Women Whose Land Was Presented at Death	Percentage
1583-1585	31	5	16.1%
1608-1609	13	0	0.0%
1639-1640	23	5	21.7%
1651-1652	23	2	8.7%
1664-1665	23	4	17.4%
1688-1689	13	3	23.1%
Total	126	19	15.1%

Women were overrepresented among tenants who died while holding copyhold land, which means that the estates that women held were more likely to descend according to the custom of the manor rather than according to transfers and arrangements made ahead of their death. However, this was not always the case, and the manor court rolls do demonstrate instances of women making preparations for how they wanted their land handled after their death. Elizabeth Smith of Prescot, for example, was a spinster who held multiple cottages and parcels of land. On March 22, 1648 she made a surrender so that her land would transfer to William Brettergh after her death, which had already occurred by the time the surrender was presented to the manor court held on May 25, 1649. The surrender was only to continue "provided that the said William Brettergh shall permit Dorothy Lowe, his sister, to enjoy the messuage or cottage… during the life of the said Dorothy or until she shall be provided a better habitation."[112] It is unclear in this instance whether the condition for the provision of a cottage for Dorothy was imposed by the court or by the terms of Elizabeth's surrender, but it is a clear demonstration of how land transfers presented to manor courts were frequently utilized to handle the dependence of women on the men in their life.

Table 5: Female Inheritors of Land at Wakefield

Manor of Wakefield: Women as Heirs of Copyhold Lands						
Year	Total Number of Deaths	Only Female Inheritors	Percentage	Mixed Female and Male Inheritors	Percentage	Total Percentage (Female Only and Mixed Groups)
1583-1585	31	6	19.4%	1	3.2%	22.6%
1608-1609	13	0	0.0%	0	0.0%	0.0%
1639-1640	23	5	21.7%	0	0.0%	21.7%
1651-1652	23	4	17.4%	2	8.7%	26.1%
1664-1665	23	4	17.4%	0	0.0%	17.4%
1688-1689	13	5	38.5%	0	0.0%	38.5%

[112] King, *The Court Records of Prescot*, 156.

Total	126	24	19.1%	3	2.4%	21.4%

Table 6: Female Inheritors of Land at Acomb

Manor of Acomb: Women as Heirs of Copyhold Lands						
Year	Total Number of Deaths	Only Female Inheritors	Percentage	Mixed Female and Male Inheritors	Percentage	Total Percentage (Female Only and Mixed Groups)
1569-1579	16	1	6.3%	1	6.3%	12.5%
1580-1589	2	0	0.0%	0	0.0%	0.0%
1590-1599	9	1	11.1%	0	0.0%	11.1%
1600-1609	18	2	11.1%	0	0.0%	11.1%
1610-1619	10	2	20.0%	0	0.0%	20.0%
1620-1629	10	3	30.0%	1	10.0%	40.0%
1650-1659	18	2	11.1%	0	0.0%	11.1%
1660-1669	8	2	25.0%	0	0.0%	25.0%
1670-1679	5	1	20.0%	0	0.0%	20.0%
1680-1686	8	5	62.5%	1	12.5%	75.0%
Total	104	19	18.3%	3	2.8%	21.2%

As demonstrated in tables 5 and 6, at both Wakefield and Acomb, women were the recipients of land from the deaths of other customary tenants in about 20% of the cases, on average, usually as a sister or daughter.[113] But a woman's inheritance could be insecure if it was not diligently protected. Isabell Robert and James Robert (their relationship is not mentioned) complained against a group of 10 men (all seemingly unrelated) at their manor court in Clitheroe in 1562, alleging that the defendants had deforced them of valuable land, "which she had of the gift and surrender of Roger Robert, her brother."[114] It is not explained in the court roll who these men were or what claim they had towards this land, and intriguingly Isabell and James did not continue to

[113] This corresponds with Whittle's finding of women making up 24% of people who received land in the manor of Hevingham Bishops in the mid-fifteenth century and 19% in the mid-sixteenth century: Whittle, "Inheritance, Marriage, Widowhood, and Remarriage," 38.
[114] Farrer, *The Court Rolls of the Honor of Clitheroe*, vol. 3, 235.

prosecute their plea at this court. However, two years later a letter was written by Sir Ambrose Cave, Chancellor of the Duchy of Lancaster, to the steward of the manor court, which claimed that the steward had personally refused to admit Isabell to her inherited lands for no good reason:

> I do not a little marvel at your great willfulness, who as I hear (notwithstanding [Isabell Robert] offereth to pay her fine to the Queen's highness according to the said custom) do refuse to admit her tenant, contrary to the meaning of the said surrender…Whereunto unless you do apply I cannot but according to justice deal with you as you deserve and therefore I pray you admit the said Isabell unto her fine (if so of right she ought) for the lands to her surrendered.[115]

It seems likely that petitioning the Chancellor of the Duchy of Lancaster in this way was only a possibility for Isabell because she was wealthy and because the manor was more directly supervised as a crown possession. Who knows how often personal enmity or conspiracy from the landlord or steward left women barred from their rightful possession of land.

One of the most immediately noticeable characteristics of women's inheritance of land at the manor courts is that they were more likely to inherit copyhold land as part of a group while men were more likely to be the sole heir of a tenant's estate. Of all the deaths in Acomb whose inheritors included at least one man, in only 4.8% of the cases were men part of a group of multiple inheritors. Of the deaths where women inherited the tenancy, 54.5% of the cases included groups of more than one person, usually sisters, daughters, or

[115] Farrer, *The Court Rolls of the Honor of Clitheroe*, vol. 3, 247-248.

granddaughters.[116] Similarly in the years studied at Wakefield, 10.5% of male inheritors were part of a group, whereas women inherited with multiple people 66.7% of the time.[117] Therefore, women were disadvantaged in how frequently they were allowed to be householders, and even when they did inherit a tenancy they were much more likely than men to have to split the land as part of a group. The fact that land was divided equally among sisters could easily cause disputes that were eventually presented at the manor courts. At the Honor of Clitheroe in 1561, Geoffrey Grymshey and his wife Johanne complained against James Gryme and his wife Margaret in a plea of land. It turned out that Johanne and Margaret were sisters who, along with their other sister Alice, had inherited equal shares of their father's estate at his death. But now Alice had died and Johanne claimed that the land should descend to her entirely. The jury disagreed and gave verdict for the defendants. But "upon the complainants amending their suit and claiming one-sixth part of the said [land]…as the said Johanne's share of her father's property, the jury [gave] a verdict to complainants and order[ed] seisin to be given to them in one sixth-part of the premises."[118] This case emphasizes that the rule that sisters always inherited equal portions of an estate, regardless of other factors, was quite inflexible.

Manorial court records also demonstrate that marriage created an important economic partnership, though a partnership limited by the discrimination of coverture, and it significantly altered a woman's ability to utilize copyhold land within the manor. The legal scholar William Sheppard argued that it was not valid for a wife to surrender

[116] Of the 83 deaths whose inheritors included at least one man, 4 cases involved a group of inheritors. Of the 22 deaths whose inheritors included at least one woman, 12 cases involved a group of inheritors.
[117] Of the 57 deaths whose inheritors included at least one man, 6 cases involved a group of inheritors. Of the 15 deaths whose inheritors included at least one woman, 10 cases involved a group of inheritors.
[118] Farrer, *The Court Rolls of the Honor of Clitheroe*, vol. 3, 221.

land without her husband, in the same way that "infants, aliens, [and] idiots, such as are born deaf, dumb, and blind" could not surrender land. However, according to Sheppard, "the surrender to the use of a *feme covert* is good, till her husband disagree to it."[119] Therefore, wives had an acknowledged role in the land market, but this role was completely dependent upon their husbands in order to be seen as valid by the courts. In 1689, the wife of Thomas Kent in Wakefield attempted to organize a surrender out of court of her lands after her death, first to her husband Thomas and then to her son after Thomas' death. If her son had no children, then she wanted the land to descend to her two sisters and for them to pay her daughters £10 each. However, although the transfer occurred in front of witnesses and according to the customs of the court, the jurors determined this transfer to be void because the wife of Thomas Kent was "under covert and not examined" personally by the court.[120]

Many wives held copyhold land jointly with their husbands, which was effected via a surrender and regrant at the manor court and a payment of a fine to the landlord. These joint-tenant agreements were known as jointures and were often arranged for a portion of the couple's land before their marriage. These sorts of agreements, intended to support the wife during her widowhood in lieu of freebench or widow's estate and usually involving a cash payment to the husband in exchange, were becoming increasingly common during the early modern period.[121] Details about these arrangements were sometimes referenced in land transfer agreements, such as when

[119] William Sheppard, *The Court-Keepers Guide, or, A Plain and Familiar Treatise, Needful and Usefull for the Help of Many That Are Imployed in the Keeping of Law Dayes, or Courts Baron…* (London, 1649), 116-119.
[120] Wakefield, 14:33.
[121] Erickson, "Coverture and Capitalism," 3-4.

Henry Smyth of Wakefield surrendered in 1584 one third of a piece of land jointly to his son, John Smyth, and future daughter-in-law, Elizabeth Bannyster, "for the life of the longer liver in lieu of Elizabeth's dowry when John's death befell."[122] However, details like these did not always make it into the official court roll but instead were mentioned only in the private surrender agreements that the tenants wrote for their own use, and so the court rolls are an incomplete record of the motivations behind these joint tenancies between husbands and wives. Holding land jointly with their husband provided a number of legal advantages to wives because a husband could not transfer the land without his wife's consent and the land would transfer to the wife automatically at the death of the husband, without being liable to pay a new fine to the landlord.[123] The woman's identity was often subsumed in this process and the husband became the sole representative of the joint tenancy, as illustrated by the fact that the husband was not even technically required to provide his wife's first name on the joint tenancy transfer.

Thomas Smith wrote that "the land which the wife bringeth to the marriage or purchaseth afterwards, the husband cannot sell nor alienate the same, no not with her consent, nor she herself during the marriage, except that she be sole examined by a judge at the common law."[124] A married woman was examined separately by the manorial court steward when the land she held from before the marriage or that she held jointly with her husband was being transferred. As argued by Jane Whittle, this process can be viewed as "an example of the manorial court respecting women's rights to property," but it is much

[122] Wakefield, 11:29-31.
[123] Richard Smith, "Coping With Uncertainty: Women's Tenure of Customary Land in England c. 1370-1430," in *Enterprise and Individuals in Fifteenth-Century England*, ed. Jennifer Kermode (Stroud, UK: Alan Sutton, 1991), 58; Whittle, "Inheritance, Marriage, Widowhood, and Remarriage," 48.
[124] Smith, *The Common-Welth of England*, 134.

more likely that this mechanism evolved as a way "to protect the property rights of the person who acquired the land from the couple, by preventing the woman from claiming rights to that land when she entered widowhood."[125] The court records give every indication that the duty to obtain the wife's consent was taken seriously. For example, John Bolton and James Bamford, gentlemen, were deputized by the Wakefield court steward in 1665 to travel to Dublin and examine Mary Hoyle to get her consent for the surrender of some land that she had claim to as wife of Edmund Hoyle.[126]

Table 7: Women Who Received Land Via Transfer at Wakefield

Manor of Wakefield: Copyhold Lands Received (Female Only and Mixed Gender Groups)						
Year	Total Transfers	Only Female Receivers	Percentage	Mixed Gender Receivers	Percentage	Total Land Received by Women
1583-1585	363	20	5.5%	15	4.1%	9.6%
1608-1609	177	8	4.5%	22	12.4%	16.9%
1639-1640	145	16	11.0%	14	9.7%	20.7%
1651-1652	233	18	7.7%	11	4.7%	12.4%
1664-1665	212	21	9.9%	26	12.3%	22.2%
1688-1689	132	18	13.6%	5	3.8%	17.4%
Total	1262	101	8.0%	93	7.4%	15.4%

Table 8: Women Who Received Land Via Transfer at Acomb

Manor of Acomb: Copyhold Lands Received (Female Only and Mixed Gender Groups)						
Year	Total Transfers	Only Female Receivers	Percentage	Mixed Gender Receivers	Percentage	Total Land Received by Women
1567-1576	116	13	11.2%	5	4.3%	15.5%
1577-1586	91	10	11.0%	10	11.0%	22.0%
1587-1596	17	0	0.0%	3	17.6%	17.6%
1597-1606	74	9	12.2%	6	8.1%	20.3%
1607-1616	57	10	17.5%	4	7.0%	24.6%

[125] Whittle, "Inheritance, Marriage, Widowhood, and Remarriage," 48.
[126] Wakefield, 5:67-68.

1617-1626	46	3	6.5%	7	15.2%	21.7%
1627-1649	13	1	7.7%	0	0.0%	7.7%
1650-1659	38	7	18.4%	3	7.9%	26.3%
1660-1669	45	4	8.9%	10	22.2%	31.1%
1670-1679	1	0	0.0%	0	0.0%	0.0%
1680-1689	26	2	7.7%	5	19.2%	26.9%
1690-1692	3	0	0.0%	1	33.3%	33.3%
Total	527	59	11.2%	54	10.2%	21.4%

Table 9: Women Who Surrendered Land Via Transfer at Wakefield

Manor of Wakefield: Copyhold Lands Surrendered (Female Only and Mixed Gender Groups)						
Year	Total Transfers	Only Female Surrenderers	Percentage	Mixed Gender Surrenderers	Percentage	Total Land Surrendered by Women
1583-1585	363	11	3.0%	70	19.3%	22.3%
1608-1609	177	4	2.3%	54	30.5%	32.8%
1639-1640	145	5	3.4%	46	31.7%	35.2%
1651-1652	233	4	1.7%	53	22.7%	24.5%
1664-1665	212	14	6.6%	64	30.2%	36.8%
1688-1689	132	13	9.8%	35	26.5%	36.4%
Total	1262	51	4.0%	322	25.5%	29.6%

Table 10: Women Who Surrendered Land Via Transfer at Acomb

Manor of Acomb: Copyhold Lands Surrendered (Female Only and Mixed Gender Groups)						
Year	Total Transfers	Only Female Surrenderers	Percentage	Mixed Gender Surrenderers	Percentage	Total Land Surrendered by Women
1567-1576	116	4	3.5%	14	12.1%	15.5%
1577-1586	91	4	4.4%	9	9.9%	14.3%
1587-1596	17	2	11.8%	2	11.8%	23.5%
1597-1606	74	2	2.7%	6	8.1%	10.8%
1607-1616	57	6	10.5%	7	12.3%	22.8%
1617-1626	46	2	4.4%	12	26.1%	30.4%
1627-1649	13	1	7.7%	6	46.2%	53.8%
1650-1659	38	2	5.3%	13	34.2%	39.5%
1660-1669	45	3	6.7%	8	17.8%	24.4%
1670-1679	1	0	0.0%	0	0.0%	0.0%

1680-1689	26	2	7.7%	2	7.7%	15.4%
1690-1692	3	0	0.0%	0	0.0%	0.0%
Total	527	28	5.3%	79	15.0%	20.3%

It was quite rare for a wife to be involved in land transfers on her own while her husband was alive, but it was very common for a wife to become a joint tenant or to make transfers in partnership with her husband. Richard Smith has argued that *inter-vivos* land transfers, rather than transfers via customary inheritance channels at the death of a tenant, had been the more effective way for women to gain tenure over copyhold land in the fourteenth and fifteenth centuries, and there are no indications that this situation had changed significantly by the sixteenth century.[127] Wives' participation in the local land market as joint tenants with their husbands seems to have been relatively robust during the sixteenth and seventeenth centuries. For instance, at Wakefield in 1584-1585 there were nine transfers made that created joint tenancies for wives (2.5% of all transfers, 28.1% of transfers with female receivers), 16 joint tenancies made for wives in 1608-1609 (9% of all transfers, 57.1% of transfers with female receivers), and 12 joint tenancies made for wives in 1639-1640 12 (8.3% of all transfers, 40% of transfers with female receivers). [128] At Acomb, there were four transfers made that created joint tenancies for wives in 1567-1576 (3.4% of all transfers, 22.2% of transfers with female receivers), four again in 1607-1616 (7.0% of all transfers, 28.6% of transfers with female receivers), but just two in 1650-1659 (5.3% of all transfers, 20% of transfers with female

[127] Smith, "Coping With Uncertainty," 48.
[128] Jewell found that women received land jointly with their husband in 11 of the 61 (18%) instances of women receiving land at Wakefield in 1348-1350: Jewell, "Women at the Courts of the Manor of Wakefield," 68.

receivers).[129] These transfers clearly represent just a minority of the many types of transfers that occurred at the courts, most of which were transactions between men. But it is significant to note that a proportion of all transfers at all of the courts created an economic partnership between husband and wife that would (at least theoretically) last for their entire lives or until they both agreed to surrender it.

Land transfers can also sometimes provide details about the sort of work that women were doing within their community, often in partnership with their husbands. For instance, at a court baron held in the manor of Cheltenham in Gloucestershire in 1693, "Margaret Pumphrey surrendered for her daughter, Anne Holder, that part of the house in which Margaret now dwells which extends s[outh], namely the hall, buttery, shop, and the chambers over the same."[130] This example of a surrender of a shop from mother to daughter illustrates Amussen's argument that "women saw land as important for their daughters, and expected their daughters to be able to profit from it."[131] A transfer from William Fletcher at the 1643 Prescot manor court surrendered a piece of land that included a barn and a "shop and warehouse over it and the chamber next adjoining" to his wife Elizabeth after his death. However, "if the said Elizabeth happens to leave off keeping the shop and trade, then the said shop, warehouse and chamber to the use of the said Ellen Marshall [the married daughter of William Fletcher]." It is interesting to note that according to this transfer William Fletcher's shop would remain in the hands of his wife and daughter after his death, despite the fact that Elizabeth could remarry and Ellen

[129] These levels correspond with Smith's findings that between 20% and 33% of the parties involved in manorial land transfers were married couples in the early fifteenth century: Smith, "Coping With Uncertainty," 56.
[130] Hodson, *The Court Books of the Manor of Cheltenham*, 16.
[131] Amussen, *An Ordered Society*, 92.

was already married. The surrender went on to further require that Ellen pay "yearly 30s upon twelve coats for the clothing of twelve poor children within the townships of Prescot, Eccleston and Sutton…such as the said Ellen Marshall shall think most useful."[132] However, another surrender by William Fletcher was presented to the manor court five years later in 1648, which voided this original surrender. Now Elizabeth Fletcher was to again receive her husband's estate after his death, but she was also to be the person who determined how to distribute the 30s worth of coats to the needy each year. After William Fletcher's wife Elizabeth died, the land would then descend to Elizabeth Fletcher, their daughter.[133] This seems to imply that Ellen Marshall had been a daughter from William's earlier marriage and he wanted this land and shop to descend to his daughter Elizabeth since she was unmarried and therefore would likely be more dependent upon the land and shop for her income.

So much of the manorial courts' business revolved around marriage, either directly or indirectly, that it demonstrates the extent to which coverture influenced the courts' procedures and created significant complexities. Bridget Skadlock of Acomb "surrendered in her last illness" some land and a ruined cottage to her husband George Skadlock in 1568, and after his death the land was to descend to Joan Skadlock, his daughter.[134] Joan Skadlock, "spinster," then came to the court in 1583 and surrendered this same land to George Gill "and the heirs of her body legitimately begotten by the said Geo[rge]."[135] It seems that Joan Skadlock and George Gill were preparing to get married and this transfer of Joan's inheritance was a part of the marriage agreement. When a

[132] King, *The Court Records of Prescot*, 60-61.
[133] King, *The Court Records of Prescot,* 148.
[134] Acomb, 26.
[135] Acomb, 76.

marriage was severed or made invalid in any way it would have had economic, not just social or religious, consequences for the women involved. Richard Verley was sued by his uncle William Verley at the Clitheroe manor court in 1559 regarding the lands of Peter Verley, Richard's father, after his death. William claimed that the land should descend to him because "Richard Verley was and is a bastard, in that Agnes, [the] defendant's mother, was wife of Christopher Robynson and never divorced according to ecclesiastical law." The circumstances mentioned in this case most likely mean that Agnes and Christopher had obtained an annulment (*divorce ad vincula*), but the legal implications of this process were clearly complex and not readily understood by all the parties with interest in the land. The manorial jury ultimately decided that Agnes had been "lawfully divorced from the said Christopher by ecclesiastical sentence," and so the land properly belonged to the defendant, Richard Varley. Therefore, the "plaintiff should take nothing by his plea but is in mercy 3d for his false claim."[136] It is clear that Agnes' prior relationship with Christopher Robynson created significant complexities regarding how the land should be distributed when she later remarried.

Although daughters and wives plainly held land and played an important economic role within the manorial community, widows had by far the most economic independence among women. At their husband's death they became the head of their household and represented their subordinate family members before the court, and therefore their experiences are generally the easiest to find within the manor court records. Widows acting alone accounted for 62.7% of the women who surrendered land and 35.6% of the women who received land in the sampled years at Wakefield, and they

[136] Farrer, *The Court Rolls of the Honor of Clitheroe*, vol. 2, 291.

accounted for 39.3% of the women who surrendered land and 11.9% of the women who received land in Acomb.[137] Widows usually received a third of their husband's estate after their death (although this was subject to different manorial customs), and so widows appeared before the courts in a myriad of ways in order to represent their tenancy. The provision of land for a widow could cause tension with the landlord because she did not have to pay a new fine in order to claim her land, was often less financially secure without her husband's income, and frequently lived for many years after her husband's death.[138] The apprehension with which landlords often approached the continued tenure of widows can be illustrated by Lord Fitzwilliam, who asked his steward to find out what economic position Richard Ewing had left his widow in to determine how much of a financial risk her continued presence in the manor was for him: "If so well that we may venture to let her continue the farm, she may stay a year for £25… I will only let it for a year until I have considered it further."[139] Despite women's often lengthy widowhood, this period of relative independence in women's lives as landholders was usually much shorter overall than their husband's tenure as householder had been. Jane Whittle has found that widows held their copyhold land for an average of 5.9 years, while men held their copyhold land for an average of 24.5 years.[140]

Within the manorial community widowhood was "an accepted area of feminine presence, and this may have been an effective and creative one," but their tenancy was

[137] In the years examined at Wakefield, 62.7% of the transfers surrendered by women only were widows acting alone (32 out of the 51 transfers), while 35.6% of the transfers received by women only were widows acting alone (36 out of the 101 transfers). At Acomb, 11 out of the 28 (39.3%) transfers surrendered by only women were widows acting alone, while 7 out of the 59 (11.9%) transfers received by only women were widows acting alone.
[138] J.H, Bettey, "Manorial Custom and Widow's Estate," *Archives* 20 (1992): 210.
[139] Hainsworth and Walker, *The Correspondence of Lord Fitzwilliam*, Letter from Lord Fitzwilliam to Francis Guybon, 24 October 1700, 78.
[140] Whittle, "Inheritance, Marriage, Widowhood, and Remarriage," 60.

always subject to pushes against their customary rights from neighbours and even sons.[141] Therefore widowhood often appears in the manor court rolls as an era of relative economic freedom for women, but this era was just as frequently a time of economic precarity. A widow named Agnes Hartley utilized the manor court at Clitheroe in 1570 to complain against Nicholas Whitacar, his wife Ellen Whitacar, Henry Blakey, his wife Elizabeth Blakey, and Lawrance Blakey because they detained part of her dower land from her. "The defendants said that Agnes ought not to have her dower in the property because Henry Hartley, her husband, was not seised of it either on the day he married Agnes or ever after, so that Agnes could not have been dowered thereof nor did he die seised thereof." The jury ultimately decided that "the plaintiff ought to have her right dower…and that she was entitled to a widow's dower therein according to the custom of the manor."[142] Complex arrangements and court procedures meant that it was often unclear exactly which lands were owed to a widow for her dower. For instance, a controversy arose at the Wakefield court held in 1609 after the death of Richard Midgley Sr., who had purchased land but had not yet had the transfer validated by the court before he died. Richard Midgley Jr., his 19 year-old son, then questioned whether his father's wife Anne Midgley (it is unclear if she was also Richard Jr.'s mother) "be by law or by the custom of the said manor dowable of the premises or no?" Richard Midgley Sr.'s will stated that Anne should have the land for six years and pay a yearly rent of 40s to Richard, the son, under the limitation that she only receive a quarter of his goods, which was generally seen as a questionable arrangement. And so the widow and son agreed to submit to arbitration by a group of four respected (male) tenants of the manor.

[141] Thompson, "The Grid of Inheritance," 356.
[142] Simpson, *The Court Rolls of the Honor of Clitheroe, 1568-1571*, 59.

"Considering what suits, controversies, and great unquietness might fall out between the said parties about the premises if the same should not in friendly manner be ended," they ordered that Anne follow the wishes of her husband's will and receive only a quarter of his goods, but that Richard Midgley Jr. would pay her four marks annually for the rest of her life, "in lieu and full recompense of her dower," from the land that that Richard purchased before his death, "which we find was truly meant unto her."[143]

As this example demonstrates, husbands could (and often did) place complex conditions on the land that widows inherited, which were most frequently intended to ensure that children were provided for in the long term. These restrictions ultimately limited widows' decision-making freedom even during this period of their relative economic independence. One of the most common restrictions was that widows would only be allowed to possess their lands while they remained unmarried. Whittle has convincingly argued that this was less of an attempt by the husband to control his wife's behaviour than it was his attempt to make sure that his family's financial resources were used where they were most needed after his death. When a widow remarried it was assumed that her new husband would financially support her, and so the deceased husband's land and assets could more effectively be used by his children instead.[144] The surrender of land presented by a blacksmith named Ralph Halsall at the Prescot manor court illustrates how a husband considered the needs of both his wife and children after his death. Ralph had been joint tenants for life with his wife Ann, his son John, and his daughter Elizabeth (who was now married to Thomas Heirefoote). But at a 1646 court he paid a fine to change the tenancy to a term of 40 years, descending to his wife Ann after

[143] Wakefield, 11:154-156.
[144] Whittle, "Inheritance, Marriage, Widowhood, and Remarriage," 57.

his death "during her chaste widowhood", then to his children (with preference to the males) and their children for the remainder of the term. The landholder was also to pay £10 to their younger sister Ellen "towards her preferment" within six months after the death of their mother Ann. But if any of the siblings failed to pay Ellen this £10, then she was to have the profits of the tenancy until she recovered the £10 plus 8% interest. "If the said Ann do marry again after the said Ralph's death," then the landholder who was in possession should pay 40s annually from the profits during her life.[145]

Widows were expected to take care of their own economic business at the court, which implies that they either already knew how to do so based on earlier experiences as a wife, that they were able to learn quite quickly, or that other tenants in the community were able to help. In the manor of Brinkworth and Charlton in Wiltshire, the jury presented the widow Joan Norborne in May 1559 because she had not claimed her widow's estate within a year and a day as she was supposed to according to the manor's customs, and so her widow's estate was forfeited to the landlord. It is unclear why exactly Joan would not have claimed her widow's estate – perhaps she did not know the procedure. However, the landlord offered her an unusual deal, namely that she would deliver to him four oxen worth £10 before her death as prepayment of her estate's heriot fee.[146] This arrangement meant that Widow Norborne was offered the chance to keep her land as long as she was willing to pay ahead of time for the financial liability that would arise from her death, which seems to indicate that the landlord was suspicious of Widow Norborne's heirs' financial stability. It is also an example of a woman who did not follow

[145] King, *The Court Records of Prescot*, 104-105.
[146] Crowley, *The Court Records of Brinkworth and Charlton*, 102.

court procedures but was nevertheless able to negotiate an agreement that was workable for both parties.

A letter from John Gale, who worked as an officer to the landlord Sir John Lowther, described the complex situation that the widow of Mr. Tickell faced after his death. Mr. Tickell had been in the middle of foreclosing on a mortgage on which he owed £190 when he died. There was then confusion as to whether Mr. Tickell's widow or his son, Parson Tickell, had the better right to the tenement if the mortgage's creditor redeemed the debt: "the money becomes personal estate and due to Mr. Tickell's executors [in this case, his widow], but as a lapsed thing and tenements they fall due to Mr. Tickell's heir-at-law." The creditor of the mortgage, after considering "his own interest in the future disposal of this affair":

> Now proposeth to Mr. Tickell's widow a renewal of this mortgage in some other name, her own or who else she pleaseth, and her friends advise her to take a new mortgage in her own name, destroying all the records of the old, but whether this procedure will be valid and indemnify her from Parson Tickell's son is a question that now lieth before Mr. Gilpin [the manorial steward] to be well considered off.[147]

This interesting incident demonstrates the complex financial situations that widows could find themselves in after their husband's death, especially at the close of the increasingly commercialized seventeenth century. It is also important to note that the discussion of the issue included the input and advice of many people, demonstrating the participatory and

[147] D.R. Hainsworth, ed., *The Correspondence of Sir John Lowther of Whitehaven, 1693-1698: A Provincial Community in Wartime* (London: Oxford University Press, 1983), Letter from John Gale, 14 May 1693, 17.

relatively public nature of copyhold land transactions. Unfortunately it is not clear how the situation became resolved.

This is also evidence of the complex market for mortgages in copyhold land that often existed within manors, which were financial instruments that were increasingly available for nearly all ranks of society in the seventeenth century. These mortgages appear in the court records as regular surrenders of land, but they end by explaining that if the surrenderer of the land paid the receiver a certain sum of money by a certain date, then the surrender would be void. These agreements do not seem to have involved attorneys, which means they would have been relatively inexpensive to organize, but they did create a fine that was owed to the landlord. These transactions represented only a temporary transfer of rights and entitlement, and the mortgagor continued to use the property as normal during the term of the mortgage, and defaults on the loans usually led to renegotiations of the debt rather than foreclosure of the land.[148] When considering how these mortgages were arranged, Juliet Gayton has suggested that stewards may have acted as mortgage brokers between tenants to find matches between people who needed funds and people who had money to loan.[149] This idea is supported by the example of Elizabeth Scott, wife of John Scott, a gentleman and the Wakefield court's deputy steward, who, with her daughter Alice (but interestingly not with her husband), loaned £50 in 1689 to John Chesman, a flax dresser, and his wife Elizabeth.[150] There were significantly different motivations between male and female borrowers, according to

[148] Juliet Gayton, "Women's Participation in Rural Copyhold Mortgages in Seventeenth-Century England," in *Women and Credit in Pre-Industrial Europe*, ed. Elise M. Dermineur (Turnhout, Belgium: Brepols, 2018), 147.
[149] Gayton, "Women's Participation in Rural Copyhold Mortgages," 166.
[150] Wakefield, 14:26.

Juliet Gayton's extensive analysis of copyhold mortgages in Hampshire: "Women's needs were focused on family matters such as child support and marriage, and the distribution of legacies, while men borrowed more to purchase and support business activities."[151]

The evidence from Acomb and Wakefield indicates that women generally mortgaged their land with a co-tenant and for smaller sums, while women who lent money frequently did so on their own and for larger sums. Overall there were 14 mortgages recorded in the Acomb court rolls, the first of which occurred in 1618, and the amounts involved ranged from 5s to £277. Only 3 of the Acomb mortgages involved women as mortgagors (21.4%), always in partnership with a co-tenant, the first of which occurred in 1622 and the last in 1660. The amount of money that these mortgages raised for these women was quite small, between just £10 and £14.[152] There were also three women mortgagees in Acomb, two of whom were involved in the transaction without a joint tenant. In 1666 Susan Newarke, widow, lent the substantial sum of £200 to Thomas Newarke, gentleman, which was due within just two and a half months.[153] Jonas Spacy, gentleman, mortgaged his land to Dorcas Beale in exchange for £60 annually for eight years beginning in 1651. However, because Dorcas was unmarried, John and James Beale were appointed to act as her agents for the transaction.[154] Mortgages seem to have been much more common at Wakefield and were used earlier than at Acomb, being found in every year examined. Eighty three mortgage transactions were recorded in the sampled years at Wakefield, thirteen of which involved women as mortgagors (15.6%)

[151] Gayton, "Women's Participation in Rural Copyhold Mortgages," 169.
[152] Acomb, 137, 149, 161.
[153] Acomb, 167.
[154] Acomb, 150.

for loans ranging from £5 to £236, all of which involved joint tenants (who were their husbands in 10 of these cases). Eleven of the mortgages involved women as the mortgagees (13.3%), six of whom entered the transaction without a joint tenant, for amounts ranging from £14 to £300. Overall, the experiences at Acomb and Wakefield corresponds with H.R. French and R.W. Hoyle's claim that the early modern period saw "a steady and inexorable rise in the numbers of acres mortgaged and a slower, but consistent, rise in the sums raised on mortgage."[155] Women who needed money, often with their husbands, were frequent utilizers of this tool, and women who had extra money to lend, who were often heiresses and widows, could use mortgage interest as a way to further expand their wealth. The public record created by copyhold transactions at the manor courts helped to facilitate and authorize these complex transactions.

Daughters, sisters, wives, and widows were not generally welcomed into the manorial land market, but nevertheless they were present at almost every turn. Customs of inheritance, despite their variety, all favoured sons over daughters, and when daughters did inherit land it was often small portions of an estate that was divided among multiple people. Wives were often joint tenants with their husband, which acknowledged an equal share in the legal ownership of at least a portion of the family's estate, but this legal ownership did not translate into equal recognition of status before the manor court as a whole. Their head of household status gave widows a degree of legal independence before the manor courts that was not afforded women at any earlier period in their lives, but they were faced with the complex implications of the financial decisions that had been made earlier by their husbands. Examining the transactions that were made

[155] H.R. French and R.W. Hoyle. "The Land Market of a Pennine Manor: Slaidburn, 1650-1780," *Continuity and Change* 14:3 (1999): 369.

regarding copyhold lands before the manorial courts emphasizes Alexandra Shepard's argument that "women as well as men derived credit from the property to which they had access, even if their formal legal entitlement to it was less secure - in ways that confirm the historiographical perils of underestimating women's responsibilities for providing and managing resources in the early modern economy."[156] The activities facilitated by the early modern English manorial courts demonstrates how the insecurities of women's entitlement to land played out at the local level. The frequent conflicts over women's copyhold estates show that obtaining land was just a first step – holding on to the land required constant vigilance.

[156] Alexandra Shepard, *Accounting for Oneself: Worth, Status, and the Social Order in Early Modern England* (Oxford: Oxford University Press, 2015), 31.

CHAPTER 3: CONTROL AND CONFRONTATION
WOMEN'S PRESENTMENTS AND THE SOCIAL ORDER

The cooperation of tenants was essential for the maintenance of the rural economy and the preservation of the social order, and manor courts helped to facilitate these fundamental objectives by punishing misdemeanours and regulating proper and improper behaviour within the community. It was the duty of the jurors, officers, and suitors to discover and present all of the breaches of the peace that had occurred within the manor since the last court session (usually six months earlier) so that the individuals could be punished (usually a monetary fine owed to the lord of the manor) and officially recorded within the court rolls. This meant that ordinary villagers, not legal professionals, had significant discretion in determining which misbehaviours would be punished and which would be ignored. One manor court guidebook hinted at this responsibility and the tensions that it could create between neighbours: "you must seclude all favour and affection to the parties, not fearing the rich nor pitying the poor, not considering the simpleness of any person nor the smallness of the offence, but having the truth only before your eyes, for love thereof say and speak that which you know to be true and no further."[157] The judicial and legislative activities of the manor courts as recorded in their rolls support Susan Amussen's argument that "neighbours did not like the task of keeping order in other households, but they would do so when necessary."[158]

The fact that the manor courts relied upon the discretion of ordinary men, which could be arbitrary and could promote the abuse of power, was so well known that it was commented upon for humorous effect in Shakespeare's play *The Taming of the Shrew*. At

[157] Adames, *The Order of Keeping and Court Leet and Court Baron*, A4v.
[158] Amussen, *An Ordered Society*, 98.

the beginning of the play a gentleman named Christopher Sly and his servants discuss Sly's recent erratic behaviour, the peak of which came when he angrily threatened his neighbour with taking her before the manor court without due cause:

> Yet would you say ye were beaten out of door,
> and rail upon the hostess of the house
> and say you would present her at the leet
> because she brought stone jugs and no sealed quarts.[159]

Bringing misdeeds to the manor court could bring shame and financial burden to a family, but it was also one of the most easily accessible ways to resolve grievances between neighbours, and the possible consequences were less serious than in most other courts. Other useful means of resolving community conflict, such as neighbourly mediation and intervention from religious leaders, were integral to maintaining positive relations within the manor. However, they were informal and ad hoc measures taken during times of crisis, whereas the manor courts were regular events that helped to systematize positive relationships in the long term.

The court records demonstrate that manorial communities were somewhat more willing to regulate women's non-conforming or anti-social behaviours than men's until the mid-seventeenth century. Men were much more likely to be presented to the court in general because manor courts targeted the head of the household for any deficiencies that occurred within their land, and women were less likely to be heads of households due to landholding customs that favoured men. Therefore the conflicts that arose between neighbours as a natural consequence of agricultural operations, such as not repairing

[159] William Shakespeare, *The Taming of the Shrew,* ed. Barbara Hodgdon (London: Arden Shakespeare, 2010), 154.

gates and hedges, incorrectly using the commons, or mishandling animals, generally involved men, although female householders were routinely presented as well. Men were also more often the perpetrators and victims of affrays, which were instances of clear disruption to the social order. But women were punished disproportionately for conflicts that had less tangible results yet were seen as equally disruptive to the peace between neighbours, such as scolding and eavesdropping. This demonstrates the different forms of conflict that men and women employed in early modern English society, and also the fact that the manor courts were one of many tools that existed to monitor and attempt to control the suitable behaviour of women within society. Male conflict was generally more concrete and indisputable, whereas female conflict was usually more subjective and so its punishment was more likely to be susceptible to the vagaries and pressures of social norms. Although the court leet had a broad mandate to enforce order and neighbourliness within the manor, this tool of social control was used more frequently against women for certain behaviours that did not have a direct impact on community resources but instead were seen to cause abstract conflict and disorder among neighbours, especially earlier in the period. Men were less often seen as the source of this type of social discord within the manor and instead were more likely to utilize direct confrontations in the form of physical violence. Overall, the limits of appropriate behaviour that were expressed through manorial court misdemeanours were more restrictive and subjective for women than for their male neighbours, and the easing of these limits in the mid-seventeenth century indicates that a significant shift had occurred within the social structures that guided the early modern English legal system.

Whereas the manor court's duty to authorize land transactions was meant to protect tenants' economic interests for future generations and ensure that the obligations owed to landlords were met, the court's duty to present and punish misdemeanours was meant to minimize disruptive conflict between neighbours so that these economic transactions could proceed smoothly.[160] The existence of the manor courts and the details that their records provide supports Peter Rushton's claim that "wherever people turned, they had faith to some degree that there would be some kind of legal resolution to their personal problem, and the authorities felt obliged both to solve that problem and to pay attention to resolving the wider social and community issues that lay behind them."[161] However, it must be remembered that the authorities who were tasked with solving these conflicts and upholding order within communities were always men, mainly from the rank of middling yeomen and tradesmen, although gentlemen and cottagers were also sometimes present. This meant that manor courts could come to act in the interests of a relatively small group of prosperous men rather than the community as a whole.[162]

Consequently, manor courts were essentially patriarchal institutions that subtly but consistently promoted the ubiquitous ideal of paternalistic social deference. However, the implementation of this ideal was constantly strained by the realities of daily life. The reliance upon custom and the limited resources of the courts created an inherently conservative perspective among court leaders, and so jurors and officers were generally reluctant to stray from the norms that traditionally guided expectations about how the

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[160] Keith Wrightson, *English Society: 1580-1680* (London: Hutchinson, 1982), 24; Hindle, *The State and Social Change*, 94-95.
[161] Peter Rushton, "Local Laws, Local Principles: The Paradoxes of Local Legal Processes in Early Modern England," in *Law, Lawyers and Litigants in Early Modern England: Essays in Memory of Christopher W. Brooks,* eds. Michael Lobban, Joanne Begiato, and Adrian Green (Cambridge: Cambridge University Press, 2019), 205.
[162] McIntosh, *Autonomy and Community*, 181.

courts should operate. These local courts, and especially their duty to adjudicate misdemeanours, seem to have been nearly perfect representations of Keith Wrightson's argument that:

> The maintenance of order, harmony and subordination in particular local societies required a constant, if usually undramatic, attention to balancing the forces of tension and co-operation, of differentiation and identification, thereby preserving the emotional force of the values of neighbourliness, paternalism and deference in the face of the undermining inconsistencies of reality.[163]

The courts did not exclude female tenants or offer them an inferior form of justice, but women were involved in a noticeably different pattern of presentments than their male neighbours were subjected to, which indicates that communities had a distinct, and more stringent, set of expectations for the behaviour of women than they did for the behaviour of men. Yet, at the same time, women were integral components of the economic communities represented by these courts. "The broad ideology of male supremacy and authority was clearly disseminated throughout society," Bernard Capp has argued, "accompanied by a mass of far more contradictory advice on how this should be translated into everyday behaviour."[164] These contradictions are found throughout the manorial court records as they were controlled by men of the middling sort but consistently involved, and were expected to appropriately address, the needs of men and women from throughout all levels of society.

These contradictory reactions to the theory of female subjection versus the reality of female agency as demonstrated via manorial court records was further complicated by

[163] Wrightson, *English Society*, 62.
[164] Capp, *When Gossips Meet*, 14.

the ideas of coverture, which, although not explicitly applicable to the customary jurisdiction of the manor courts, exerted a powerful influence over how women were treated before legal institutions of all types. Miriam Muller has warned against assuming that all women who were not directly referred to as a wife within the manorial court records were single, as some historians have done, and against the assumption that a husband did all of his family's court business on his own. After all, "while a woman's access to and ability to affect any agency in court were curtailed under common law, such restrictions did not apply to manorial courts in the same way. Wives were often held accountable for their own actions in the court."[165] There seems to have been no consistent set of rules that governed exactly when a married woman who misbehaved should be presented individually versus when her husband should be presented with her or instead of her. In some important ways, wives' status as *femme coverte* meant that they avoided having to face the legal repercussions of their actions. Depending on the severity of the offence, a husband may have tried to avoid the dishonour created by his wife being presented since it represented his failure to adequately control her behaviour.[166] Misbehaviour within the male-controlled realm of the manor court could bring particular shame, like William Nablesone of Acomb who was presented and amerced 6d in 1584 because his wife Alice "did rail and speak slanderous words against the last jurors and discovered some of the jury's secrets from the said William, he being one of the jury."[167] Men also faced punishment for any lapses in duties owed to the landlord, regardless of

[165] Muller, "Peasant Women, Agency, and Status," 106.
[166] Teresa Phipps, "Female Litigants and the Borough Court: Status and Strategy in the Case of Agnes Halum of Nottingham," in *Town Courts and Urban Society in Late Medieval England, 1250-1500*, Richard Goddard and Teresa Phipps, eds. (Woodbridge, UK: The Boydell Press, 2019), 90.
[167] Acomb, 79.

who actually committed the offence, because they acted as representatives of their households before the manor court. But ultimately the application of coverture was subject to considerable discretion, depending on the particular circumstances and the preferences of the jury and steward who ran the court.

Therefore the manor court rolls can sometimes be particularly opaque sources when considering the experiences of women. But coverture's more casual influence as a social principle that organized women's experiences is seen in the fact that women were frequently referred to without their first name and instead only by their relationship to their husband, such as wife or widow of a particular man.[168] But this was an unreliable shorthand used by the courts and not applied universally, even within the same court session. The inconsistent application of patriarchal principles could sometimes lead to confusion that required intervention from the manor courts, like when a byelaw was announced in Acomb in 1584 that stated no one was to "receive a man's goods from his wife or servant without the owner's consent."[169] This byelaw indicates that this manor was attempting to apply coverture within its jurisdiction like the common law courts, but also that the villagers were either unable or unwilling to do so without threat of an amercement.

A recurring theme when discussing the non-agricultural misdemeanours handled by the courts is a noticeable shift away from policing individuals' personal affairs that occurred in the mid-seventeenth century, which inevitably altered how women navigated their institutions of local governance. After a slight boom in the late sixteenth century,

[168] Jewell, "Women at the Manor Courts of Wakefield," 61: Of the 185 women presented for offences related to brewing, 122 (65.9%) were recorded as the unnamed wives of named males.
[169] Acomb, 79.

presentments declined in overall numbers in essentially every manor yet studied during the tumultuous seventeenth century.[170] The courts became increasingly unwilling or unable to regulate the social behaviour of tenants and instead focused more on infractions involving community resources and infrastructure. The very fact that manor courts were being used less frequently and individuals were choosing to bring their problems to other institutions is evidence that the manor courts were not providing justice that was sufficient for the needs of the villagers. Marjorie McIntosh has argued that this was because the manor courts' structure meant that they had limited tools available to address major social problems, and they did not have the mandate to implement positive, constructive approaches to social disorder in the way that other local institutions did. Therefore the courts continued to assign financial punishments, often without a noticeable change in community relations, until the matter was finally ignored or passed to another agency.[171] As a result, minor social offences often moved from being presented and punished by a jury of neighbours at the manor court to being decided summarily by the local magistrates or treated as a criminal matter at higher common law courts. This corresponds with Brodie Waddell's findings that by the early nineteenth-century, despite the widespread poverty and population growth that characterized that period, "the courts did not return to their Tudor role as guardians of the social order, instead serving as convenient mechanisms for protecting agricultural land and preserving shared infrastructure."[172] Other organizations and institutions had been developed to

[170] Waddell, "Governing England Through the Manor Courts," 302; Lawton, *Church Lawton Manor Court Rolls*, l (notes 1700 as the clear turning point for the Manor of Church Lawton); King, *The Court Records of Prescot*, lxi.
[171] Marjorie K. McIntosh, "Social Change and Tudor Manorial Leets," in *Law and Social Change in British History: Papers Presented to the Bristol Legal History Conference, 14-17 July 1981*, eds. J.A. Guy and H.G. Beale (London: Royal Historical Society, 1984), 76.
[172] Waddell, "Governing England Through the Manor Courts," 307.

handle the social disorder that had previously fallen within the purview of the manor courts.

Nevertheless, until the late-seventeenth century, manor courts were still the most accessible forums available for most villagers to adjudicate and discipline misdemeanours. The Quarter Sessions, summary trials performed by JPs, parish vestries, and borough courts all dealt with similar types of misdemeanours as the manor courts and could be especially useful in areas with minimal manorial infrastructure, but they each had a different focus and procedure than the manor courts. And although the different balance of these institutions within a community could have quite a dramatic impact on the different forms of justice that were available to villagers, they were usually operated by men within the same social rank who had the resources to be able to volunteer and wanted to obtain status among their neighbours.[173] Yet, manor courts across the country continued to handle a vast number of misdemeanours and remained an integral part of the criminal justice system throughout the seventeenth century. Walter King has found that the Prescot manor court saw 927 presentments for misdemeanours from 1640 to 1648, but only 9 people appeared before the local JP for similar offences in the same period.[174] At Shrewsbury, W.A. Champion found that there were fewer than five assaults per year presented on average to the borough quarter sessions in the early eighteenth century, whereas the average annual number of affrays presented to the court leet in the mid-seventeenth century had been 30.[175] This indicates that pre-1700 manor courts were still

[173] McIntosh, "Social Change and Tudor Manorial Leets," 78-79.
[174] King, *The Court Records of Prescot*, xix.
[175] W.A. Champion, "Recourse to the Law and the Meaning of the Great Litigation Decline, 1650-1750: Some Clues From the Shrewsbury Local Courts," in *Communities and Courts in Britain, 1150-1900,* eds. Christopher Brooks and Michael Lobban (London: The Hambledon Press, 1997), 194.

vibrant institutions that were frequently chosen by villagers as tools for handling the conflict that inevitably arose between neighbours who were dependent upon each other.

All of the offences that could be punished by manor courts were relatively minor, but the jurisdictional limits were otherwise quite blurred and differed from place to place. The offences handled at the manor courts could vary quite widely, from issues that seem almost comically insignificant, like Ellen Kildale's fine of 12d in 1640 "for selling stinking herrings,"[176] to issues that perhaps would have been more usually dealt with by a higher court, like the amercement of 39s 11d (the upper limit of punishment allowed by manor courts) assigned in 1661 against William Bradley and his wife Elizabeth for being "abetters to theft and receivers of stolen goods."[177] Depending on the conditions of the area and the imaginations of particular juries, and as long as the courts leet did not encroach too obviously upon the jurisdictions of the King's courts, it was normal for the types of misdemeanours handled by the manor courts to expand to address the needs of the community.[178] F.J.C. Hearnshaw has emphasized that the medieval history of the court leet's jurisdiction perpetuated the flexibility of their scope: "their spheres of influence… were only gradually and imperfectly delimited *negatively* by theorising lawyers, by encroaching rival courts, by upstart local authorities, and by unfriendly kings."[179] Therefore, it is fairly common for offences that seem abnormal to appear in the manorial records without comment, though the court rolls rarely provide no more than the barest details regarding the broader circumstances of the offence. Nevertheless, Brodie

[176] King, *The Court Records of Prescot*, 9.
[177] Acomb, 163.
[178] Dawson, *A History of Lay Judges*, 189 and 204.
[179] F.J.C. Hearnshaw, *Leet Jurisdiction in England, Especially as Illustrated by the Records of the Court Leet of Southampton* (Southampton, UK: Southampton Record Society, 1908), 3.

Waddell has helpfully determined seven main categories of offences that were consistently handled by early modern manor courts: violence and disorder; crafts and trade; immigration and accommodation; agriculture; non-agricultural resources; infrastructure; and miscellaneous nuisances.[180] Above all, custom and the experiences of generations of villagers created a generally accepted understanding of what issues were appropriately handled at the manor courts and what misdeeds needed to be sent elsewhere.

The legislative function of the manor courts simultaneously came from their duty to create and implement local byelaws and to enforce the national statutes that were passed in Parliament. A number of statutes continued to add to the manor courts' responsibilities throughout the Elizabethan and Stuart eras (though not as frequently as the new responsibilities that were given to JPs), and it was expected that all of the laws of the realm would be announced to tenants at the court sessions. This helped to integrate these local jurisdictions into England's national legal culture and was an implicit acknowledgment from Parliament that the manor courts were useful institutions for social control throughout the provinces.[181] This statutory function was generally taken seriously by the courts, as indicated by the many presentments that directly referenced the statutes. For instance, four men were presented at Acomb in 1572 "for shooting with a gun contrary to the statute," which likely refers to a law passed in 33 Henry VIII that forbade the shooting of guns and crossbows by anyone with an income of less than £100 per annum.[182] Similarly, over 100 years later, the draft court roll from the 1689 Wakefield

[180] Waddell, "Governing England Through the Manor Courts," 286.
[181] Brooks, *Law, Politics and Society in Early Modern England*, 270; Dawson, *A History of Lay Judges*, 284.
[182] Acomb, 42.

session recorded that officers of the court intended to present two women and one man for forestalling the market by buying butter and eggs and selling them the same day for a higher price, but it was left "to Mr. Steward to be considered of according to the contents of the statute."[183] As these examples demonstrate, the court stewards held significant influence through their ability to decide whether or not particular laws should be enforced in particular circumstances.

This statutory function made manors a part of the national legislative infrastructure, but the courts also developed a microcosmic legislature of their own through the byelaws that they created. A manor's byelaws could either apply a regulation broadly to all inhabitants of the manor or else target individual tenants who were misbehaving in some way with the threat of a future amercement if the behaviour continued. The legal theorist William Sheppard argued that these courts leet byelaws were justifiable, if they had the "mutual consent and agreement" of most people within the manor, "by the very common law, without any special custom, this being made by the major part will not only bind them who did agree to it but all others of that society."[184] But the line between a public nuisance and a private dispute was fine, and byelaws were often implemented solely to protect the interests of an individual landholding inhabitant. Although the whole manor court theoretically agreed to announce a byelaw, individual tenants frequently instigated these regulations when they had a problem with a particular neighbour or in order to protect a particular part of their property. E.P. Thompson warned against taking the lists of byelaws and customs that the courts produced at face value since they were "the outcome of bargaining and compromise between several propertied

[183] Wakefield, 14:140.
[184] Sheppard, *The Court-Keepers Guide*, 208.

parties in the manorial court, in which the cottager or the landless had no voice on the homage."[185] This prioritizing of some voices over others is illuminated by the experience of Elizabeth Birkhead of Wakefield, who was threatened with a large amercement of 39s in 1652 if she did not remove an elinge [lean-to] that was affixed to her neighbour's wall. This byelaw "being read and heard, the aforesaid Elizabeth Birkhead saith that she by reason of the aforesaid pain [byelaw] ought not to be troubled or in any wise molested because she saith that she ought not to remove the aforesaid elinge as is mentioned in the said pain. And upon this she putteth herself upon the country."[186] Unfortunately the court roll provides no further details about this incident or how the court reacted to Elizabeth's challenge of this byelaw, but she must have argued forcefully against it for her opposition to have been recorded in the court records at all. This sort of public refutation of a proposed byelaw being recorded by the manor court was very exceptional, but it is an important reminder of the disputes that these court records might be hiding and of the fact that the court rolls may only be telling one side of the story.

Another question, and one that likely can never be fully answered, is the degree to which the financial penalties that the courts applied to the perpetrators of these misdemeanours were effective punishments or if they were even collected. The prevalence of repeat offences indicates that amercements were not very strong deterrents for many people. The manor courts were theoretically able to use corporal punishment, such as stocks and whipping, for some offences, but these punishments seem to have been only rarely used after the mid-sixteenth century. [187] Only two instances of corporal

[185] Thompson, *Customs in Common*, 101.
[186] Wakefield, 8:93.
[187] For example: Ag., *The Power and Practice of Court-Leets*, 17 (public whipping ordered for unlicensed alehouse keepers who fail to pay their amercement) and Anon, *The Articles of Lete and Courte for the*

punishment being applied against women has been found during the period under examination: At Elmly Castle in Worcestershire in 1564, "Joan Haryson furtively took 3 cheeses of the value of 6d from the goods of Henry Wutton. Therefore the aforesaid constable is ordered to have the aforesaid Joan punished, the punishment to be corporal."[188] Anne Holland of Prescot was amerced 2s in 1589 for receiving vagrants and was ordered "to sit in stocks on market day at the deputy steward's pleasure."[189] Court manuals and manorial custumals continued to suggest corporal punishments, especially for largely female offences like scolding, but the courts seem to have been reluctant to actually carry out physical punishments in post-Tudor England, perhaps because of the weakening influence, and therefore diminishing perceived legitimacy, of the courts within the legal system. Or perhaps the deterrent effect of the threat of these punishments was seen as sufficient.[190] Manor courts did not have many of the tools that other institutions of criminal justice had: they could not bind offenders to keep the peace, they did not have gaols, and they were responsible for ensuring the community's stocks were maintained but did not themselves use them.[191] Early modern manor courts could therefore only impose monetary penalties called amercements, and in most courts the customary limit of these amercements was 40s.

This 40s (£2) limit was imposed by statute in 1278 and had not been allowed to adjust with inflation, which meant that the punitive impact of the amercements eroded

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Lyberties of Southwarke (London: 1561), B2v (constables to be amerced 20s if they do not put vagabonds into the stocks for three days and nights); Crowley, *The Court Records of Brinkworth and Charlton,* 36-37.
[188] Robert Field, ed., *Court Rolls of Elmley Castle, Worcestershire, 1347-1564* (Worcestershire Historical Society, 2004), 292.
[189] Bailey, *A Selection From the Prescot Court Leet*, 244.
[190] Martin Ingram, "'Scolding Women Cucked or Washed': A Crisis in Gender Relations in Early Modern England," in *Women, Crime and the Courts in Early Modern England*, Jennifer Kermode and Garthine Walker, eds. (Chapel Hill, NC: The University of North Carolina Press, 1994), 59.
[191] McIntosh, "Social Change and Tudor Manorial Leets," 76.

especially quickly during the rapid inflation of the sixteenth and seventeenth centuries. By 1600 a wage labourer might earn 4s a week and an oxen cost 50s, and so even when the maximum penalty was applied, which was quite rarely and only for the most significant offences, a manorial court amercement could be significant but not ruinous for all but the poorest of families (that is, if the court successfully collected upon the penalty).[192] The fact that no statute was passed to adjust this limit seems to indicate that the more centralized state infrastructure was comfortable with the manor courts' diminishing relevance within English society. And the courts had few legal tools available if villagers were unwilling or unable to make payment, other than distraining the tenant's goods (usually animals that were added to the common pound). An individual court's effectiveness in collecting on the amercements owed to it may have been an indication of the overall vitality of the court and the esteem in which it was held within the community. Prescot forgave a large portion of the debt from amercements owed to it in 1650 in an attempt to collect on at least part of it, and Church Lawton reduced the annual average amercements it applied by 48% between two generations in the mid-seventeenth century.[193]

Throughout the early modern period there were countless instances of women and men who were repeatedly presented at the court for the same offence, despite the application of amercements that were intended to correct the issue. Widow Anne Walton of Church Lawton, for instance, was amerced 3 or 4d "for breaking the lord's soil" in 1658, 1662, 1663, and 1667.[194] John Beckerman has argued that landlords had an

[192] Brooks, *Pettyfoggers and Vipers of the Commonwealth*, 74 and 97.
[193] King, *The Court Records of Prescot*, xlv; Lawton, *Church Lawton Manor Court Rolls*, liv.
[194] Lawton, *Church Lawton Manor Court Rolls*, 71-97.

incentive to collect on the amercements as a supplementary income stream, which incidentally helped to ensure that peacekeeping and civil justice was maintained in the manor. Therefore, when the amercements were no longer persuasive due to inflation or the court's disciplinary jurisdiction became lax, the justice available to tenants simultaneously worsened.[195] The ubiquity of recidivism, the apparent inability of manorial officers to collect the amercements that were applied, and the diminishing impact of their financial penalties all help to explain why the adjudicative function of the manor courts declined during the seventeenth century. Compared to when the courts were originally developed, it was increasingly not worth the effort for landlords to rigorously maintain the courts, and therefore the tenants did not respect the institution because it was not successful in providing the benefits of an upheld social order.

Organizing the balance of supply and demand within England's agricultural economy was the manor courts' main priority, and the perception of what a misdemeanour was and the kinds of presentments that were made emphasizes this fact. This was a very interconnected society, as epitomized by the existence of highly valued and regulated common lands, and so the abuse of limited resources by one person could deeply impact another person's livelihood. Daniel Defoe's description of Halifax in 1748, which was a township within the manor of Wakefield, vividly illustrates how important the proper maintenance of the community infrastructure that the manor court regulated was for inhabitants:

> In the course of our road among the houses, we found at every one of them a little rill or gutter of running water; if the house was above the road, it came from it and

[195] John Beckerman, "Procedural Innovation and Institutional Change in Medieval English Manorial Courts," *Law and History Review* 10:2 (1992): 252.

> crossed the way to run to another; if the house was below us, it crossed us from some other distant house above it; and at every considerable house was a manufactory, which not being able to be carried on without water, these little streams were so parted and guided by gutters or pipes, that not one of the houses wanted its necessary appendage of a rivulet.[196]

Any abuse of the roads, ditches, watercourses, fences, dykes, and hedges within this delicate ecosystem was remedied through the courts in order to support the economic health of the entire community. The mishandling of animals, such as letting them roam onto other people's fields or not ringing pigs [inserting a metal ring in the pig's nose to discourage rooting], was the cause of 9.0% of all presentments made at Acomb and 5.5% of the presentments in the Wakefield sample, of which 4.4% and 11.9%, respectively, involved female offenders.[197] Anne Willysell kept a flock of geese on her village's common instead of her private land, and so she was amerced the fairly significant sum of 2s.[198] Despite their agricultural value, geese were understandably deemed to be a serious nuisance. The failure to maintain fences, hedges, ditches, and watercourses sufficiently accounted for a further 12.0% of all presentments in Acomb (women were the offenders in 7.2% of those cases) and 6.4% of the sampled presentments at Wakefield (women were the offenders in 12.2% of those cases).[199] The regular appearance of these somewhat unremarkable presentments, and the byelaws that were announced in order to try to prevent these kinds of issues before they arose, are consistent reminders that the

[196] Defoe, *A Tour Thro' The Whole Island of Great Britain*, 137.
[197] Acomb saw 135 of a total 1498 presentments for animals, 6 of which were perpetrated by a woman. The Wakefield sample included 84 of a total of 1527 presentments, 10 of which were perpetrated by a woman.
[198] Farrer, *The Court Rolls of the Honor of Clitheroe*, vol. 2, 364.
[199] Acomb saw 180 of a total 1498 presentments for property maintenance issues, 13 of which were perpetrated by a woman. The Wakefield sample included 98 of a total of 1527 presentments, 12 of which were perpetrated by a woman.

production of food was the main preoccupation of this society, but also that constant intervention was deemed necessary in order to facilitate this production.

Within the local agricultural economy, the market was often a particularly contentious location. Three women from Prescot, all named as the wives of local men but not presented with their husbands, were amerced 24d in total because they "forestalled the market by buying butter on a market day before it was brought to the cross" in 1640.[200] Two more women were each fined 3d two years later for "forestalling the market and taking up fruit and raising the market by selling the same on greater rates the same day."[201] These types of offences demonstrate not only that women were actively involved in their local economy as retailers, but also that they were willing and able to manipulate the rules of that economy to create as much profit for themselves and their families as possible, just like their male counterparts. Mary Clarkson of Wakefield was amerced 12d in 1651 with four men, all of whom were referred to as butchers, because they had set their stalls before the door of a local gentleman.[202] It is impossible to know if these butchers meant this action to be an intentional affront to their social superior, but the fact that setting up at the market was likely a routine job for the butchers and this offence occurred just once indicates that it may have been the result of some conflict with this man. Female landholders were also the employers of labourers and servants, and this could sometimes become a fraught relationship. In 1563 Mage Webster and Jane Holte were the target of a byelaw in Prescot when they were found to not be providing enough provisions to their labourers. Each woman was to "yearly provide sufficient fuel and

[200] King, *The Court Records of Prescot*, 9.
[201] King, *The Court Records of Prescot*, 43.
[202] Wakefield, 8:2.

frying to serve her, at the oversight of the 4 men, and if she refuse so to do, to be expulsed forth of the towne."[203] The severity of the punishment and, even more significantly, the fact that the court directed manorial officials to directly monitor the women's behaviour, demonstrate how seriously the community took this issue.

Widows were more frequently the subjects of manorial court presentments than other women because they were more often the heads of their own households, but the presentments made against them emphasize the economic precarity that many of these women likely faced. The widow of Henry Nutter was presented at the Clitheroe manor court in 1564, along with four men from her community, for using unlawful mill stones "to the great injury of the farmer or tenant of the Queen's mill newly erected." Widow Nutter was likely trying to cut down on costs by not paying the miller's fee, but the court seems to have recognized the difficult situation she was in because it waived her 3s 4d amercement because she was poor and had "nothing."[204] The experience of Margery Johnson, a widow in Church Lawton, is an example of how a poorer person's attempts to sustain themselves could simultaneously lead to them becoming the focus of the displeasure of their better-off neighbours. Widow Johnson was amerced eight times from 1662 to 1667 for maintaining a cottage for herself on the wasteland owned by the landlord.[205] The amercements against her were quite small, ranging from just 2d to 4d and totaling 2s 3d, which may indicate that the court was willing to tolerate Widow Johnson's cottage but felt that they had to publicly present her in order to dissuade others from attempting to make cottages of their own. These amercements also may have acted

[203] Bailey, *A Selection From the Prescot Court Leet and Other Records*, 157.
[204] Farrer, *The Court Rolls of the Honor of Clitheroe*, vol. 2, 333.
[205] Lawton, *Church Lawton Manor Court Rolls*, 77-97.

as a sort of license fee paid to the lord in lieu of an official manorial rent. Some widows ultimately resorted to more dubious economic opportunities, like Mary Hey who, along with her son Lawrence and daughter Grace, were presented "for daily committing petty bribery *al'dict* [, as others say] petty larceny."[206] Of course every widow's experience was unique, but the court records reveal more about the activities of widows than any other group of women, and they appear to have been more likely to face court sanction in their attempts to provide for their families.

Affrays were the most common type of behavioural misdemeanour that were presented and punished at the manor courts, which often involved bloodshed and injuries. A guidebook published in 1561 instructed jurors and manorial officers to "inquire of all assaults, [af]frays, batteries, and bloodsheds done and committed against the Queen's peace, that is to say, that he that with force or other act cometh to any man, he maketh the assault. And he that draweth the first weapon maketh the affray, and he that draweth the first blood is guilty of the bloodshed."[207] In Wakefield during the period of 1658-1659, affrays and bloodsheds represented a quarter of all presentments made by constables.[208] At this manor, the usual amercement for an affray was 10d and 4s 2d for affrays with bloodshed. The frequency of these presentments, the terseness of their records, and their relatively light punishments can make it seem as if these affrays were minor conflicts, but that is not necessarily the case and cannot be determined from just manorial court records. Details from the draft Wakefield court roll of 1608 include a 10d amercement of John Estwood for almost cutting off the leg of his victim, and a 20d amercement of

[206] Farrer, *The Court Rolls of the Honor of Clitheroe*, vol. 3, 240.
[207] Anon, *The Articles of Lete and Courte*, B1r.
[208] Wakefield, 18:xiv.

Charles Turner, "for breaking the head of Samuel Whitticar with a stone in his hand."[209] Therefore the laconic presentments of "affray" or "affray with bloodshed" that appear regularly within the manorial court records could hide quite a lot of important details that would drastically alter our perception of the violence prevalent in early modern English society.[210] Surely almost cutting off a neighbour's leg was exceptional, which is why it was explicitly mentioned in the draft court records, but it correspondingly cannot be assumed that all affrays were simply minor squabbles.

Overall, women were involved infrequently in affrays and it was an offence much more likely to be committed by men, but women became more frequently presented over the course of the seventeenth century. The masculine nature of this misdemeanour and the frequency with which it occurred was commented upon in Prescot in 1570: "Divers young men within this town do misorder themselves divers times with brawling, fighting and otherwise, which have no money to pay their amercements."[211] The court then threatened that future offenders would be forced to sit in the stocks for three days, but there is no indication in the court record that this punishment was actually implemented.

Table 11: Presentments of Women Involved in Affrays at Wakefield

Manor of Wakefield: Affrays, Bloodsheds, and Assaults					
Year	Total	Female Offenders	Percentage	Female Victims	Percentage
1583-1585	187	3	1.6%	4	2.1%
1608-1609	77	1	1.3%	1	1.3%
1639-1640	131	12	9.2%	10	7.6%
1651-1652	19	6	31.6%	4	21.1%
1664-1665	34	5	14.7%	7	20.6%
1688-1689	4	0	0.0%	0	0.0%
Total	452	27	6.0%	26	5.8%

[209] Wakefield, 11:118-119.
[210] King, "Untapped Resources for Social Historians," 699.
[211] Bailey, *A Selection From the Prescot Court Leet and Other Records*, 177.

As shown in Table 11, presentments for affrays in general were becoming more infrequent after the mid-seventeenth century. Wakefield had a total of 452 instances of affrays and bloodsheds in the years examined, 27 of which (6%) were perpetrated by women and 26 of which (5.8%) involved female victims. The fact that the frequency of female victims and female offenders was almost always the same demonstrates that women do not appear to have been especially victimized by affrays. The frequency of affrays seems to have fluctuated quite dramatically from year to year, which likely indicates periods of particular tension within the community. For example, the spike of 131 affrays that occurred in 1639-1640, the eve of the Civil Wars, may be a signal of the deadly conflict that was brewing.

As the general frequency of affrays was declining over time, the proportion of women who were presented for this offence generally increased over the period until the court stopped presenting affrays almost entirely in the late-seventeenth century. It seems unlikely that women were becoming more violent over time. Instead, this likely indicates that the courts were increasingly willing to punish individual women for this offence that had traditionally been seen as an almost exclusively male misdemeanour. However, it may also indicate that the social conditions of post-war England led more women into violent conflicts. These findings from Wakefield broadly correspond with Walter King's analysis of Prescot, where women were the perpetrators in seven out of 176 affrays from 1640 to 1648 (4.0%).[212] Acomb saw 64 presentments for affray and bloodshed from 1567-1668, only two of which were initiated by women (3.1%). Women were also the

[212] King, *The Court Records of Prescot*, lxi.

victim in both of these cases, and they occurred in 1592 and 1621, which were particularly bad harvest years and emphasizes that affrays were influenced by broader economic conditions and social tensions.[213] The much lower rate of female involvement in affrays in Acomb may indicate a local custom of not presenting women with this misdemeanour, or perhaps women's violence was presented at another court or under the guise of another offence. The lack of violence resulting from domestic abuse is a noticeable omission in the court records – all of the presentments involve perpetrators and victims that seem to be unrelated to each other. Therefore the manor courts were used to punish only inter-family conflicts and did not interfere with intra-family conflicts.

For a society that so frequently emphasized the importance of female obedience and deference, manor court presentments are witness to a significant number of women who seem to have readily confronted local authority figures. Henry Toane of Acomb, for instance, was amerced 20d in 1614 because "his wife made rescue from the common serjeant."[214] Margaret Rowley of Church Lawton was amerced 6s 8d in 1636 for making an affray against the constable when he was serving a warrant.[215] These affrays also provide some glimpses into the ways that women were impacted by power dynamics and the expectations of deference within communities when conflict erupted. For instance, Katherine Holt of Clitheroe was fined 1s in 1567 for starting an affray against another woman, but her father, Oliver Holt, received double the amercement (2s) because he had "procured and encouraged the said Katherine in doing the same."[216] This seems to recognize that Oliver Holt had abused the power that was entrusted to him as a father.

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[213] Acomb, 83 and 132.
[214] Acomb, 119.
[215] Lawton, *Church Lawton Manor Court Rolls*, 27.
[216] Simpson, *The Court Rolls of the Honor of Clitheroe, 1567-68*, 24.

Anne Townley, a widow also of Clitheroe, was fined 3s 4d in 1564 because she made an affray against Agnes Spenser. The roll mentions that a male servant of Anne's joined her in the affray, but he was not amerced since he had presumably been acting under the orders of his mistress.[217] These experiences highlight the fact that many women had to negotiate both extremes of the spectrum of deference in early modern society, being both the constant subordinate of their fathers and husbands and simultaneously the superiors of their servants and children.

If affrays were stereotypically male expressions of local conflict, scolding was the corresponding stereotypically female offence that was handled by the manor courts. Scolds could technically be of either gender, and they were seen by the manor as "disturbers and disquieters of their neighbours." A scold was "the common incendiary of strife in his neighbourhood and [was] ever fishing in troubled waters."[218] There were 53 presentments of and byelaws implemented to deter scolding in Acomb and none recorded in Wakefield (perhaps a customary limit on its jurisdiction), and so it was not brought to the courts nearly as frequently as affrays were. However, it seems likely that many more minor instances of "scolding" occurred within the community without being deemed serious enough to be punished by the court, whereas it was more difficult for affrays to be ignored. The evidence at Acomb is consistent with the historiographical consensus that 85% to 95% of people who were prosecuted for scolding were women.[219]

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[217] Farrer, *The Court Rolls of the Honor of Clitheroe*, vol. 2, 338.
[218] Robert Powell, *A Treatise of the Antiquity, Authority, Uses and Jurisdiction of the Ancient Courts of Leet*… (London: 1641), 90-91.
[219] Sandy Bardsley, *Venomous Tongues: Speech and Gender in Late Medieval England* (Philadelphia: University of Pennsylvania Press, 2006), 6.

Table 12: Presentments for Scolding at Acomb

Manor of Acomb: Scolding Presentments and Byelaws Against Individuals			
Year	Total	Female Offenders	Percentage
1567-1579	9	7	77.8%
1580-1589	17	14	82.4%
1590-1599	10	10	100%
1600-1609	1	1	100%
1610-1619	1	1	100%
1620-1624	15	14	93.3%
Total	53	47	88.7%

Wives were particularly likely to be presented for scolding: 32 of the 53 (60.4%) presentments for and byelaws against scolding at Acomb were in response to a wife's behaviour. This corresponds with the findings of Karen Jones and Michael Zell, who have theorised convincingly that perhaps married women "were more likely than men to resort to verbal violence because they had less access to the legal system" and could not initiate suits on their own and therefore had to resort to more informal means of confrontation.[220] Presentments for scolding also seem to have occurred in bursts: 4 cases occurred in 1582, 3 in 1583, 4 in 1620, 6 in 1622, and 3 in 1624. This seems to support the idea that scolding presentments occurred after periods of particularly intense interpersonal conflict within the manor, rather than as the routine result of normal social relations.

Scolding women had also traditionally been subjected to punishments that were specifically intended to humiliate them in front of their community, which was unique among the many categories of offences that were handled by the manor courts. For

[220] Karen Jones and Michael Zell, "Bad Conversation? Gender and Social Control in a Kentish Borough, c. 1450 - c. 1570," *Continuity and Change* 13:1 (1998): 29.

example, a late-fourteenth century custumal from Kent said that a woman who scolded in public was supposed to carry a large mortar and pestle through the town, preceded by a minstrel or piper. And, notoriously, communities sometimes used cucking stools as punishments for scolds, which were devices that publicly dunked the offender in a body of water (although no examples of their use was found in the manors examined for this study).[221] This highly disproportionate level of female scolders and the particularly humiliating punishments that they were threatened with supports David Underdown's argument that the existence of presentments of scolding "disclose an intense preoccupation with women who are a visible threat to the patriarchal system."[222] It would have been seen as necessary for the common good of the community to censure this offence, even if the scold's behaviour was actually only impacting a small group of individuals within the community, in order to re-establish the ordered, patriarchal societal ideal.[223] The last appearance of a scolding presentment in Acomb occurred in 1624,

[221] Jones and Zell, "Bad Conversation?," 27.
[222] Underdown, D.E., "The Taming of the Scold: the Enforcement of Patriarchal Authority in Early Modern England," in *Order and Disorder in Early Modern England*, Anthony Fletcher and John Stevenson, eds. (Cambridge: Cambridge University Press, 1985), 119. Underdown's analysis was ground breaking for connecting scolding presentments to broader social issues in the early modern period. However, he incorrectly argued that scolding presentments were a new phenomenon in the period of 1560 to 1640 and that they corresponded with other social trends, such as the popularization of anti-feminist literature and witchcraft prosecutions. Ingram ("'Scolding Women Cucked or Washed'") was the first to challenge the chronology and the true impact of scolding presentments, emphasizing their relative infrequency compared to most other manorial presentments. He also saw scolding as instances of individual conflict, rather than as a manifestation of the broader tensions between men and women. Later historians, particularly Jones and Zell ("Bad Conversation?"), have further nuanced this discussion by emphasizing that most of the women who were presented for scolding were established community members who were not repeatedly presented, rather than particularly confrontational and anti-social women as had been suggested by Ingram. Controlling women's behaviour through scolding presentments never occurred with enough frequency for it to have been considered a significant priority of the manor courts. Nevertheless, although Underdown's argument that scolding presentments were a symptom of a particular crisis in the gender order has been largely disproven, his work is nevertheless very significant for drawing attention to the inherently misogynist nature of scolding presentments.
[223] Ingram, "'Scolding Women Cucked or Washed,'" 66; Bardsley, *Venomous Tongues*, 17-18.

which indicates that it became less of a concern for villagers over the course of the period.

Eavesdropping was an offence that was similarly implemented when a woman's behaviour was deemed unacceptable to the community because of its ability to cause social conflict among neighbours. It was a much rarer offence than scolding, occurring just twice in Acomb with both incidents involving women, but the wording of the presentments illustrates how much disorder this offence was thought to cause. For example, Elizabeth Banke of Acomb was warned under pain of 5s in 1577 "not to chide or scold with her neighbours and to keep her house in the night season and not be an eavesdropper under men's windows."[224] Mary Heyes, a spinster of Prescot, was fined 3s 4d in 1640 "for being an eavesdropper and sowing sedition among neighbours."[225] The theory was that eavesdroppers committed the offence in order "to hear the discourse of others and to carry tales thereof to others, thereby to make debate or strife amongst their neighbours," which highlights the similarity of the offence to scolding.[226] Although it was always a rare offence, it seems to have stopped being prosecuted entirely at the manor courts in the mid-seventeenth century. Perhaps this was because the social behaviour of an individual stopped being seen as a threat to the economic activity of the manor. In this world where order and social harmony were so essential to daily life, the manor courts seem to have been willing to express dissatisfaction with certain women's behaviours during periods of conflict.

[224] Acomb, 60.
[225] King, *The Court Records of Prescot*, 9.
[226] Ag., *The Power and Practice of Court-Leets*, 22.

Another offence that threatened the social harmony of the manor and had a particular impact on the lives of women was the lodging of undertenants, who were usually people who were unknown to the community and paid to live in the house of an established tenant. These presentments by the manor courts had the dual purpose of punishing the perceived misbehaviour of exposing the community to risky people, as well as determining the social limits of the parochial and manorial community, which was generally hostile to strangers.[227] After all, in the words of a court manual author in 1666, strangers "may be an annoyance to their neighbours or likely to bring charges upon the parish."[228] It would not have surprised officials that some undertenants lodged by Isabell Heigh of Clitheroe burned her neighbours' hedges and made roads over their land, and so she was fined 2s for this offence in 1564.[229] However, the courts sometimes also took issue with non-strangers. For example, William Rowley of Church Lawton was amerced 40s, the maximum the court could amerce, in 1641 "for converting an outhouse into a cottage for the habitation of Nicholas Hobson and one of the daughters of the said William Rowley, being the wife of the said Nicholas Hobson."[230] And the difference between lodging an undertenant and hiring domestic help could be blurred, as in the case of Robert Roo's amercement of 6d in 1571 "because he received into his house a woman vagrant who now lives with him as a servant."[231] This was an offence that was especially subject to the discretion of the manorial community, and so having the consent of the

[227] Estabrook, *Urbane and Rustic England*, 20-21.
[228] Ag., *The Power and Practice of Court-Leets*, 39.
[229] Farrer, *The Court Rolls of the Honor of Clitheroe*, vol. 2, 339.
[230] Lawton, *Church Lawton Manor Court Rolls*, 52.
[231] Simpson, *The Court Rolls of the Honor of Clitheroe, 1568-1571*, 86.

locality was likely more important than the strict letter of the law (or in this case, custom).

Once again, like scolding and eavesdropping, Acomb's manor court was much more willing to prosecute the offence of lodging undertenants than Wakefield's manor court was, which highlights the different priorities that people in different localities could have when policing the social order.[232]

Table 13: Presentments for Lodging Undertenants at Acomb

Manor of Acomb: Presentments and Byelaws For the Lodging of Undertenants					
Year	Total	Women Host	Percentage	Women Named As Undertenant	Percentage
1572-1579	9	1	11.1%	3	33.3%
1580-1589	2	0	0.0%	0	0.0%
1590-1599	16	1	6.3%	8	50.0%
1600-1609	15	2	13.3%	5	33.3%
1610-1619	6	0	0.0%	1	16.7%
1620-1629	18	1	5.6%	0	0.0%
Total	66	5	7.6%	17	25.8%

Wakefield saw just 3 men be the target of byelaws or presentments for lodging undertenants during the years examined, including the innkeeper John Roberts, who was fined 10s in 1651.[233] The evidence provided by Acomb demonstrates that women were infrequently the people who were punished for this offence, but they were much more likely to be the very undertenants that were the focus of the misdemeanour, when the undertenant was directly named. Pregnant women were an especially serious concern for the manor because the location of the birth of the child would determine which parish

[232] Peter Rushton has argued that these different patterns of prosecutions and priorities of regulations between manors can indicate a distinct "local legal culture," which ultimately defined the social relations of a locality; Rushton, "Local Laws, Local Principles," 186.
[233] Wakefield, 8:137.

was responsible to maintain the child. At Prescot, Jane Greene was presented in 1641 and amerced 6s 8d for "harbouring and entertaining a woman great with a bastard child… The said Jane had notice to remove her but did not."[234] Keith Wrightson has argued that these offences, along with witchcraft and increasing theft prosecutions, indicate that "it was becoming ever harder to preserve the balance between communal identification and social differentiation upon which the stability of the social order rested."[235] Yet, like scolding and eavesdropping, these misdemeanours drop out of the court records in the mid-seventeenth century. Perhaps this is an indication that the social order was stabilizing and policing people's behaviours became less of a priority for the men who ran the manor courts. However, it seems more likely that other jurisdictions took over this duty as the manor courts became a less significant part of early modern England's justice system.

The most vivid example of the breakdown of the social order that occurred in early modern English society was the Civil War. However, and perhaps tellingly, most of the courts did not directly address the subject and their records shed very little light on how these dramatic events impacted people's daily lives. Some courts stopped recording altogether during the periods of the most intense conflict. Many others continued to function almost normally, with fluctuating dating methods being the only hints of the national drama that was occurring elsewhere. However, this is emphatically not the case in Prescot, where the war seems to have brought considerable disorder to the manor. The Royalist victory at the "Massacre of Bolton" occurred within about 20 miles of the manor in 1644, which meant that soldiers were present in the area. Also, the Lancashire Quarter Sessions did not meet from 1643 to 1645, which meant that the manorial court leet

[234] King, *The Court Records of Prescot*, 27.
[235] Wrightson, *English Society*, 224.

incorporated some of its jurisdiction during this period.[236] The ongoing tensions created by these conditions can been seen in the presentment of Elizabeth Poughten in 1646, who was amerced 6d "for denying to quarter a soldier who was imposed upon her husband."[237] One of the manor's constables, Ralph Plumpton, had a particularly difficult time maintaining order during this period: John Rainforth was amerced 2s "for drawing his knife and offering violence against the said Ralph," three people were amerced 6d for abusing him with foul words, Richard Sumner and his wife Ann were amerced 12d for railing at and striking him, and Thomas Kenwrick broke his lantern at night.[238]

But it was the Hoole family that seems to have become the central focus of the conflict between villagers on each side of the political divide. In May 1646 Mistress Blundell and Mistress Tyrer provided information to the court that John Hoole, his wife Eleanor, and their daughter Ellen committed "notorious abuses against divers of their neighbours within this town, and so thought unfit to continue in the town." 3s 4d was owed by them or anyone who received them for every night that they stayed in Prescot.[239] John Hoole had apparently brought four Royalist soldiers into the house of William Blundell, gentleman, and these soldiers:

> in a violent manner came into the house and forced the said Mrs. Blundell out of her bed, she then lying in child bed, and gave her base language, calling her devil and Roundhead whore, and did plunder and take from the said Mrs. Blundell two

[236] King, *The Court Records of Prescot*, lii-liv.
[237] King, *The Court Records of Prescot*, 101.
[238] King, *The Court Records of Prescot*, 101
[239] King, *The Court Records of Prescot*, 98.

silver spoons, one hat and 2s in money, and threatened her to carry her away prisoner before the Prince.[240]

Eleanor and Ellen had also called both Mistress Blundell and Mistress Tyrer "Parliament whores" and threatened them so that they were afraid for their lives. Eleanor "also threatened the wife of Ralph Houghton, that she should not be left worth a groat for nursing a Parliament whore's child."[241] Despite this damning presentment and the order made for the Hoole family to leave the manor, they did not leave Prescot, which is another indication that amercements were not very efficacious. The Hooles were amerced £6 13s 4d in 1647 for remaining in Prescot, and Nicholas Marshall and his wife Margaret were fined the same amount for lodging the family. But Eleanor and Ellen Hoole still had not left by 1648, when another order demanding they leave the manor was implemented under threat of a 26s 8d amercement.[242]

The experience of the Hoole family is a particularly extreme example of how the manor courts attempted to deal with misbehaviour, but all of the examined presentments, to greater or lesser degrees, represent moments of disruption within a community. But the volume of these presentments and their generally mundane nature indicates that the manor courts provided a suitable public forum for villagers to raise their complaints against one another and hopefully find resolution to the conflicts that inevitably arose when people's lives and resources were so intimately interconnected. Through presentments at the manor courts the streets were maintained, the common was regulated, animals were confined to the appropriate fields, the instigators of affrays were

[240] King, *The Court Records of Prescot*, 99.
[241] King, *The Court Records of Prescot*, 99.
[242] King, *The Court Records of Prescot*, 115 and 132.

confronted, and strangers were excluded. But being an expression of the social order also meant that the manor courts were particularly vulnerable to the influence of those members of society who held the most power. Somewhat surprisingly, it was not the landlord who benefitted most from this situation, but instead it was the wealthier yeomen who had the most to gain through the meticulous upkeep of the community's infrastructure and the suppression of troublemakers. And in this way, the tools of the court were sometimes applied with special vigour against women. The presentments and byelaws are witnesses to the very active role that women played within nearly all realms of community life. But the courts were also willing to use their authority to penalize women's perceived misbehaviours in ways that do not appear to have equally applied to men, such as scolding and eavesdropping. Punishment of these behavioural offences were rare and seem to have been used only during times of particular strife, but all women lived under constant threat of financial penalty and community humiliation if they spoke or acted inappropriately. However, due to a number of factors, this forum was used less and less frequently over the early modern period, which means that individuals turned to other institutions that were often not as community focused as the manor courts were at their best. And the courts seemed to have abandoned the specifically patriarchal functions especially early, allowing other institutions to take over that role. Therefore, this period of dramatic change in the use and impact of the manor courts in English society also saw a change in the experiences of the women who used these most local of courts.

CHAPTER 4: POLITICS AND POWER
WOMEN'S LOCAL PUBLIC AUTHORITY

As shown by the clash between the Hoole family and their neighbours in Prescot during the Civil War noted in the previous chapter, women's lives were not isolated from the political disputes that transformed the country in this period. Aside from these brief insights into national power struggles, the court records also demonstrate the various ways that politics could be expressed within the smaller realm of the manor and how the courts could be utilized by female tenants as a way to gain a limited form of social power over their neighbours. Although most people did not attend their local manor court unless they were required to do so or had business to perform there, it was nevertheless an inherently public venue wherein women, representing themselves or attending with their husbands, had their personal matters discussed before their neighbours and community leaders. Anne DeWindt has argued that the manor courts, and particularly the jurors of the court leet, "functioned much like other political institutions that have long attracted the historian's scrutiny," operating with significant power and responsibilities and effectively negotiating between the needs of the community and outside authorities.[243] The men and women who held power at the courts expressed this power by legitimating some customs over others, determining which misdemeanour presentments actually impacted the public peace versus which were purely interpersonal strife, and by choosing whether a plaintiff or defendant's claim in a private cause had the most validity. Therefore, the manor courts became not just an expression of local political authority but the location where that authority was negotiated year after year.

[243] Anne Reiber DeWindt, "Local Government in a Small Town: A Medieval Leet Jury and its Constituents," *Albion* 23:4 (1991): 628.

The political power of the manor courts was emphasized through their annual election of tenants to local offices and in jurors' determination of civil litigation between neighbours. Many different factors determined how this power was allocated, especially wealth and social status, but women, by and large, were excluded from the formal political structures that men frequently utilized at the courts. Nevertheless, the manorial court rolls demonstrate that this formal exclusion did not mean that women were completely separated from the social power that was legitimized by the courts. Landholding women often used the manorial court structures to utilize public exposure to support their own interests, very frequently in direct confrontation with male neighbours. However, their formal exclusion due to their gender meant that the political role they held often appeared to be more informal and tenuous than the roles filled by men of the same rank. The manor courts of early modern England did not welcome the political participation of women, but women's integral involvement in the local economy and the courts' emphasis on landholding tenure and the public resolution of conflict meant that they became a place where women's authority could be expressed and reinforced.

For instance, the correspondence of John Gale, colliery steward for Sir John Lowther's estate in Cumberland, described a situation wherein a manorial court session was held "at the new schoolhouse" after the death of Mr. Collin to debate whether his son from a second marriage or his daughter from a first marriage should inherit a particular house. Ultimately, the court steward argued that "the son was immediate heir to his father, and that there was not the least pretence of any title for the daughter; so that [the court steward] admired who it was that prompted the daughter's husband to hope for such

a thing."[244] This event emphasizes the public nature of a dispute that otherwise seems like a private matter. The matter occurred in a public location, the schoolhouse, and it involved many men of local significance, such as the court steward (who frequently mentioned the authority that had been granted to him by the landlord), the collier steward, and an attorney for the son. The participation of all of these men indicates that manorial court sessions were "in the public sphere and very much a male domain," but the fact that the dispute was regarding a woman's inheritance and that she was willing to fight for her claim over it is an important reminder that women, "with notions of custom and law quite separate from lord and state, imprinted their own agenda on local court proceedings."[245] But this event also emphasizes that any political status that the manor courts offered through tenurial agreements was only truly accessible to relatively prosperous, landholding women. Wealth could frequently matter more than gender, since women who were mothers, mistresses, or wealthy neighbours had legitimate authority over men and boys of lower social standing. This, according to Susan Amussen, "made gender a problem in the class system, just as class became a problem in the gender system."[246] Ultimately it was landholding widows and potential heiresses, like Mr. Collin's daughter, that could express their local power at the courts, while poor women were more frequently prevented from gaining meaningful political power.

The very fact that some women were required to attend the court sessions in order to deal with routine administrative issues means that they were exposed to the court's operations and, correspondingly, that the courts were expected to handle their needs.

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[244] Hainsworth, ed., *The Correspondence of Sir John Lowther of Whitehaven*, Letter from John Gale, 2 May 1697, 380.
[245] Muller, "Peasant Women, Agency and Status," 95-96.
[246] Amussen, *An Ordered Society*, 3.

Although many historians have pointed out the important political role that women played within informal gossip networks, women were not entirely confined to this informal realm. As Bernard Capp has emphasized, many women "had some experience of direct contact with the world of local public administration, and a small minority found quasi-formal if modest roles in public life. Others were ready to take direct action to protect communal interests, while some voiced strong opinions over national issues."[247] Although this is a much more tenuous form of political power than was afforded men of their own status, it was power nevertheless and could be extremely significant when dealing with agricultural matters at the level of the manor court. Therefore, the manorial court records support Nicola Whyte's claim that "it is a stretch too far to assume that women perceived themselves as, and were considered to be, merely partial members of local communities."[248] The nearness, openness, and immediacy of the manor courts is what made them particularly useful to women who were otherwise excluded from most public life.

The smooth operation of manorial court activity required the active but unpaid participation of a significant proportion of the community, and these court-appointed officers represented a degree of localized political power separate from but in cooperation with the early modern English state. Keith Wrightson has evocatively called village officers "the much tried, sorely abused, essential work-horses of seventeenth-century local administration," who were people given the difficult task of mediating between "national legislative prescription and local customary norms."[249] The previous example

[247] Capp, *When Gossips Meet*, 288.
[248] Nicola Whyte, "Custodians of Memory: Women and Custom in Rural England, c. 1550-1700," *Cultural and Social History* 8:2 (2011): 168.
[249] Wrightson, "Two Concepts of Order," 22.

of Ralph Plumpton, constable of Prescot during the Civil Wars, demonstrates how difficult these positions could be for only intangible rewards. The position of constable was the most important office decided by the manorial courts of early modern England, being "both the Crown's officer in the community, and also the community's spokesman to higher authority."[250] Constables were responsible for investigating crimes committed within the manor, raising the hue and cry, collecting taxes for the central government, and representing the manor at other courts. Graves (also called reeves or bailiffs) handled the day-to-day administrative management of the manor, including executing warrants for the seizure of land issued by the landlord and organizing the manorial court jury. The pinder was responsible for maintaining the manorial pound for stray animals and animals distrained for amercements. Manors also elected people to a wide range of ad hoc positions, such as overseers of the maintenance of infrastructure (especially fences and wells), regulators of the local trades (especially aletasters), and affeefors, who assessed the appropriateness of fines and amercements applied by the courts. These positions were all essential to making sure that the byelaws, seizures, and penalties imposed by the courts were actually implemented in the community. They were performed by copyholders whose landholding in the manor meant that they had an interest in performing their duties properly since they benefited nearly as much from the maintenance of communal resources and good order as the landlord did. Manorial officers, especially constables, performed public duties and were accountable to other early modern governance structures, and so they were, as Steve Hindle has argued, "able to appeal to the state itself as a symbol of their instrumental authority, justifying and

[250] Cruickshank, "Courts Leet, Constables, and the Township Structure in the West Riding," 63.

legitimating their activity in political and moral terms."[251] Manorial officers had a degree of informal political power as representatives of the state, but the localized focus of their duties meant that "the 'governors' were not too distant – or different – from those they governed."[252]

The process of choosing manorial officers was neither democratic nor entirely exclusive, yet women were ultimately left out of even the minor political power bestowed by these offices. The court rolls refer to the officers being "elected" from amongst the copyhold tenants, for which unpaid service as an officer was an implied obligation of their customary landholding agreement, but it is highly unlikely that there was anything like an open vote for the positions.[253] Instead, it is more probable that a small group of jury members and community leaders filled the positions amongst themselves. Certain positions within some manors, like the graves of Wakefield,[254] were automatically rotated amongst copyholders based on the location of specific lands. This system and the fact that women were a consistent minority of landholders within most manors meant that women sometimes came up in the rotation. Some manors chose to exclude women from this public duty by skipping to the next male copyholder in the rotation or else the woman would be required to find (and pay) a deputy to do the job for her.[255] The King's Bench ruled in 1634 that the custom of electing constables by rotation "cannot be a good custom; for then a woman being an inhabitant in one of the said houses, it may come to her course to be a constable, which the law will not permit."[256] This is the only reasoning

[251] Hindle, *The State and Social Change in Early Modern England*, 23.
[252] Amussen, *An Ordered Society*, 135.
[253] Crowley, *The Court Records of Brinkworth and Charlton*, 88.
[254] Wakefield, 1:ix; Jewell, "Women at the Courts of the Manor of Wakefield," 76.
[255] Crowley, *The Court Records of Brinkworth and Charlton*, 89.
[256] 79 Eng. Rep. 940, Prouse's Case, Michaelmas 10 Charles I; Referenced in Mendelson and Crawford, *Women in Early Modern England*, 52.

for this decision that was reported, and it indicates that the courts were becoming more comfortable with explicitly denying women political status due to their gender. The election of officers, like most of the manor court's activities, was traditionally based mainly on landholding status and the customs that governed manorial tenures rather than by other, often related, factors like gender, wealth, or social status. But throughout the seventeenth century those customary processes that guided the manor courts were becoming increasingly influenced by the norms that governed other political institutions, such as parliament and common law courts, which explicitly excluded women.

Women were occasionally chosen for manorial offices, but the election of women was rare enough that they can be considered effectively excluded from official manorial politics. The widow of Edward Tattersall was co-elected with John Tattersall as grave of Clitheroe in 1567, "namely, the said John for three parts of the year, and the late wife of Edward Tattersall for the fourth part of the year."[257] This arrangement likely recognizes Widow Tattersall's dower rights to the land and the corresponding responsibilities to the community that they entailed. Only two women are recorded as being officers in Acomb during the period examined: Elizabeth Burdeux was chosen as grave in 1578 and Alice Burdeux was chosen in 1601.[258] The fact that the two women were probably related makes it seem likely that the duty to act as grave was attached to the piece of land that remained within the Burdeux family. Interestingly, Elizabeth Burdeux had a byelaw applied against her in the same court in which she was elected, requesting that she clear a drain under penalty of 6s 8d, which indicates that a minor agricultural misdemeanour was

[257] Farrer, *The Court Rolls of the Honour of Clitheroe*, vol. 2, 370.
[258] Acomb, 65 and 108.

not seen as serious enough to disqualify her from the acting as grave.[259] It is also possible that the fact that Elizabeth was being elected to the office of grave meant that she was personally present at the court when she otherwise may not have had a reason to be, and therefore the court decided to announce this byelaw since she was already at the court. Unfortunately Acomb did not record whether or not deputies were appointed for elections, and therefore it is impossible to know if Elizabeth and Alice Burdeux performed the duties of grave themselves. Wakefield, on the other hand, did record whether or not an officer chose a deputy. During the years examined, Wakefield elected seven women to be graves and in five of those cases it is explicitly stated that a deputy was chosen. The other two women who did not have a deputy named were part of a group of graves that included men, so perhaps it was assumed that the men would be deputized for the women. Women were sometimes elected at the same time as their husband, like Edmund Hylylee and his wife,[260] which likely indicates that they were joint tenants of their land when it was chosen in the rotation and therefore seen as equally responsible for fulfilling the duties of the office.

Five of the female graves of Wakefield were chosen in 1584, one in 1608, and the last reference to a woman chosen as grave came in 1639. The example of Wakefield corresponds with the experiences of the other manors, all of which indicates that women were increasingly unlikely to be officially included within the manorial officers system after the end of Elizabeth's reign and were almost entirely excluded after the 1630s. Despite the fact that women were liable for the negative aspects of being a copyhold tenant, including presentment at the court for infractions and the paying of fines to the

[259] Acomb, 65.
[260] Wakefield, 4:77.

landlord, they were barred from exercising the political privileges that came from their tenure and that would have conveyed some social capital and status.[261] Of course, this also meant that women were also exempt from fulfilling the onerous obligations that also frequently came with these positions, which was likely a relief to many busy female landholders. At the Gloucestershire manor of Cheltenham, Joan Gardiner, widow, was ordered in 1692 to "find a suitable person as tithingman" under the very large penalty of £5 – clearly the manor did not intend for her to fulfil the position's duties herself, regardless of her landholding status.[262] Some women even fulfilled the duties of an office without receiving any of the social or political recognition. This can be seen when William Cobstacke was presented to the Acomb court in 1596 and amerced 20d "for making an illegal recovery from the wife of the common pinder as she was leading his cattle to the pinfold," which she was likely in the process of distraining as payment for a previous amercement.[263] Similarly, in Church Lawton, Richard Rowley was amerced 3s 4d in 1636 "for making a rescue and taking cattle violently from Margret Pursell, wife of Richard Pursell, as she was taking them to the town fold."[264] Margery Plumpton of Prescot, wife of the ill-treated constable Ralph, was abused by a neighbour when she "went with her husband" to search for a strange woman who had entered the manor.[265] These instances indicate that women were certainly involved in the administrative operations of the courts but were not formally recognized for their actions. As Naomi Tadmor has argued, by the eighteenth-century the local "power axis simply bypassed

[261] Mendelson and Crawford, *Women in Early Modern England*, 54.
[262] Hodson, *The Court Books of the Manor of Cheltenham*, 9.
[263] Acomb, 87.
[264] Lawton, *Church Lawton Manor Court Rolls*, 27.
[265] King, *The Court Records of Prescot*, 101.

women, if only by default," and this "structured exclusion of women was from its very outset part and parcel of the 'parish state', which in many ways succeeded manorial institutions."[266] The official inclusion of women into the local structures of power had always been rare in England, but the shift away from using land tenures to determine the election of officials via manor courts helped to solidify the idea that a woman's gender inherently disqualified her from official public service.

Besides the electing of officials, the manorial court operations involved a number of roles that conferred power onto regular tenants and sanctioned them with the authority to act for the public good, like jurors. However, in all of the manors examined, no examples could be found of a woman acting as a juror or as a witness to the surrender of land. If it is true that "it was through participation in the presentment jury that members of established and economically comfortable local families tried to ensure that their own attitudes and values became official policy," then even wealthy women's attitudes and values were excluded from the jury.[267] Nevertheless, like all other courts in early modern England, women were still sometimes used by the courts to act as eye witnesses to the disputes that were presented to the courts. For example, Richard Taylor, "a dissolute young fellow," was presented at the Prescot court in 1642 for saying scandalous things about a local gentleman. Jane Angsdale, a married woman, was called upon by the court to depose what she had heard Richard say, namely that the gentleman "was an upholder of papist so as he would undo all the country."[268] Unfortunately most disputes were not as intense or as well recorded as this example, and so the lack of detail provided in the court

[266] Tadmor, "Where Was Mrs. Turner?," 110.
[267] McIntosh, "Social Change and Tudor Manorial Leets," 78.
[268] King, *The Court Records of Prescot*, 47.

rolls means it is impossible to get a full sense of how involved women were in the courts' decision making processes. In some ways, women were particularly well placed within their communities to be guardians of the everyday concerns that were governed by manor courts. Women's agricultural work, which often took place on the commons or involved cooperation with neighbours, meant that they were able to observe if anyone exploited local resources or transgressed a custom, and these resulting disputes were supported or amplified by the gossip networks that they were usually a part of.[269]

Another way that some women gained a degree of official authority within their communities was by becoming guardians over underage children who inherited copyhold property. The Wakefield court had a formal procedure for these circumstance wherein the guardian could have custody of the child's lands if they paid a 12d fine to the court and made a full account of the estate when the ward reached the age of 21. Of the 15 guardianship agreements that were made at Wakefield in the years examined, 10 of the guardians were women (66.7%), all of whom were widows obtaining guardianship over the lands of their deceased husband's children. A particularly convoluted facet of coverture is that mothers did not automatically receive custody of their children at the death of their husband because the mother's remarriage would interfere with the children's line of inheritance of their father's land and goods. Therefore the court records only refer to these children as the sons and daughters of their deceased fathers and do not specify if the guardians being appointed were their mothers or step-mothers. In three out of the five cases where men were appointed guardian, the men did not seem to have any familial relationship to the children (all of whom were boys), which indicates that the

[269] Whyte, "Custodians of Memory: Women and Custom in Rural England," 164.

courts generally, but not universally, preferred that children remain with their family. The courts also allowed older children to have some agency in the choice of their guardian. For example, Susan and Elizabeth Charlesworth, "being beyond the age of 14 years," came to court in 1661 after their father's death and chose Anne Charlesworth to be their guardian until they reached the age of 21 – a rare instance of the courts listening to the wishes of young female tenants and an example of the wide variety of people who must have been in attendance at most court sessions.[270]

An especially evocative example of this guardianship process can be found in Acomb in 1578, during the brief period where Lady Isabell Hall held the manor and acted as steward (an extremely rare instance of a female steward). A copyhold tenant named Lancelot Swaile had died when his son Peter was only 11 years old:

> The lady of the manor, having care for the education and custody of the said Peter and his lands during his minority, and *trusting the industry, diligence and circumspection of Christiana Smythe* of Acomb, widow of Thomas Smythe, to whom custody of the said Peter and his lands was committed by Lancelot Swaile, his father, appointed the said Christiana, at her special request, to be the tutor and guardian of Peter Swaile. She was to educate him honourably and provide him with food, drink and clothing and other necessities during his minority and pay to him when he came of age 13s 4d p.a.[271]

It is unclear what the relationship was between Christiana Smythe and Lancelot Swaile, but she had certainly not been married to him because Christiana's original husband, Thomas Smythe, was still alive in 1577. The court referred to Thomas Smythe as a

[270] Wakefield, 5:81.
[271] Acomb, 62-63, emphasis added.

labourer, which indicates that Christiana was not chosen as guardian for Peter due to her family's wealth. Thomas had been accused of beating and maltreating the wife of Robert Holgaite in 1575, causing damages of 20s, but the jury determined that he was not guilty of this trespass. Although he was not convicted, this incident likely left a stain on his reputation within the community or had occurred in the first place due to his negative reputation. By 1579, Christiana was remarried to Robert Prince, but only Christiana continued to be particularly referred to by the court as "guardian of Peter Swaile."[272] The nature of this guardianship agreement is not surprising, but the details that it provides about why Christiana was chosen and what exactly was expected from her in the task are unusual. This agreement emphasizes that "industry, diligence, and circumspection" were valued traits for the job and therefore a woman's reputation within the community was an important aspect of the court's consideration of whether or not to agree to the guardianship. This also implies that Christiana's reputation was still seen as an individual, separate from her husband's less than perfect reputation.

Manor courts sometimes authorized small groups of male tenants to evaluate a situation that was impacting a landholder, such as the customary location for a ditch or whether or not an enclosure should be granted, and make a binding decision about the matter that was officially recorded by the court. Although women were excluded from being a part of these inquests, they did sometimes initiate them in an attempt to use the legitimating authority of the court for their own purposes. Eleanor Higgs, a widow of Cheltenham in Gloucestershire, requested in 1697 that a group of six (male) copyhold tenants meet at her house at nine in the morning on May 1 and "determine the most

[272] Acomb, 55-56, 61, 65.

expedient route for a footway and a driftway for her beasts, carts, and carriages" through one of her fields, under threat of a 6s 8d penalty if they failed to do so. The tenants did exactly as requested "in accordance with this order and after examining witnesses."[273] In Wakefield, Mary Grice and her husband John paid 6d to initiate an inquest in 1664 to determine whether or not a piece of a meadow should be considered a part of the land that she co-inherited from her father's estate, which the tenants ultimately determined she did have a right to.[274] These inquests were helpful for settling matters of fact that may otherwise have led to disputes between neighbours and for creating an official record that could be called upon as evidence if needed in the future. And this sort of accessible and community-centered dispute resolution was an integral part of the manor courts' continuing role within early modern England.

Some disputes arose between individual tenants that did not breach the peace of the entire community but that represented interpersonal conflict, and the manor courts had the ability to resolve these civil private causes. The private causes that were adjudicated by the manor courts very frequently involved women, in much the same way that women were involved in cases in other courts throughout early modern England. When women came before the courts, either alone or with a husband and either as a plaintiff or as a defendant, their reputations were tested and the reservoir of local power that this reputation created was drawn from.[275] The personalized nature of these disputes is illustrated in the cases between Edmund Turner and Ellen Eastehedd, a spinster of Prescot, in 1575. Edmund sued Ellen for £10 damages resulting from slander, a

[273] Hodson, *The Court Books of the Manor of Cheltenham*, 54.
[274] Wakefield, 5:26-27.
[275] Capp, *When Gossips Meet*, 224.

provokingly large sum that he likely knew he would never actually receive, and Ellen immediately countersued for £5 damages for "unjust vexations."[276] The next year, Ellen complained against William Leadebeter Jr. and John Ledebeter for trespass, for which she was only awarded 8d of damages of the £3 6s 8d that she requested.[277] Manor courts had jurisdiction over a variety of civil matters, but debt, trespass, detinue, and dower or land claims appeared most regularly. These courts were generally restricted to dealing with matters within the 40s limit that also limited amercements (although Prescot was exempted from this restriction), which meant that these courts dealt with quite minor matters that were not worth the hassle and expense of taking to a higher court. This purpose was explicitly stated by the author of a manorial court guidebook in 1666: "The court baron holds plea of all personal actions and trespasses made within the manor, where the tenants are and ought to have justice at home and not to be at the charge of a suit at Westminster for every petty action: where sometimes the damage is not three pence, 20 *l.* is spent in deciding the controversy."[278] This same author was quite impressed by the manor's procedures for dealing with these minor causes, which involved a complaint being initiated by the tenant and having summons issued with attachment and distress of goods to ensure the defendant's appearance to answer the charge. This was described as "a laudable way of granting out process in all courts of judicature, coming nearest the purity of the original and ancient practice of the laws of this nation."[279]

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[276] Bailey, *A Selection From the Prescot Court Leet*, 192.
[277] Bailey, *A Selection From the Prescot Court Leet*, 199.
[278] Ag., *The Power and Practice of Court-Leets*, 42.
[279] Ag., *The Power and Practice of Court-Leets*, 54; Beckerman explains that this pattern of lawsuits (count, denial, proof, and judgment) had been in place since the medieval origins of the manor courts. Private causes had originally been used by the lord or his steward when tenants abused the public peace or

This legal theory that encouraged relatively formal legal procedures at the manor courts seems to have been generally followed by the courts in reality, though with significant flexibility, which ultimately made manor courts a tribunal of some authority within the community. The forms of common law writs were usually used by the manor courts, but the submission of an oral complaint was sufficient, which means that there is significantly less surviving written documentation of these private causes than from other courts of the period.[280] The nature of the entries in the court rolls makes it hard to know exactly how cases proceeded most of the time, but there are enough brief examples provided to give a sense that the formal legal procedures were generally followed. For example, George Gill of Acomb complained against the widow Elizabeth Shipton in 1569 regarding a plea of four acres of land. The plaintiff "made protestation to pursue the complaint in the form of a writ of right. He sought that proceedings be taken against the tenant according to manorial custom. She was summoned to be at the next court."[281] Poos and Bonfield have argued that it is appropriate to describe the customary law of manor courts as a form of jurisprudence because:

> There was an accepted set of disputes cognisable in manor courts, an accepted procedure to bring them before the court, and a process of finding, creating and applying customary norms to resolve the controversy before the tribunal. There was no strict uniformity of procedure, process, or legal reasoning shared by all manorial

seignorial rights, but this eventually evolved into jury presentments to streamline the process: Beckerman, "Procedural Innovation and Institutional Change," 198.

[280] Louis Knafla, ed. *Kent at Law, 1602: Vol 2, Local Jurisdictions: Borough, Liberty and Manor* (List and Index Society, 2011), xliii; Baker, *An Introduction to English Legal History*, 53.

[281] Acomb, 30.

jurisdictions. Rather, there was an understanding of how disputes between those who owed suit to the manor court ought to be resolved.[282]

This formalized procedure in an otherwise quite simple institution was likely encouraged by the fact that being a manorial court steward had become a stage in the careers of many common lawyers, and so "it is surely legitimate to presume that there may have been some cross-fertilization between common law and manorial justice."[283] Attorneys were also sometimes utilized by tenants in causes at the manor courts.[284] However, this formality of procedure could sometimes cause significant delays that made it harder to apply true justice. Marjorie McIntosh has found in the fifteenth-century manor courts that it usually took eight or more sessions for a case to come to completion.[285] Taking a suit against a neighbour to the manor court, therefore, was not a frivolous or insignificant event but was a serious and public action that utilized the procedures that had been formalized in civil courts throughout England.

Table 14: Frequency of Private Causes at Acomb and Women's Involvement

Manor of Acomb: Frequency of Private Causes			
Year	Total Number of Causes	Causes With Women Involved (Plts. Or Defs.)	Percentage of Causes That Involved Women
1567-1569	13	3	23.1%
1570-1579	65	9	13.9%
1580-1589	3	0	0.0%
1590-1599	7	1	14.3%
1600-1609	13	2	15.4%
1610-1619	0	0	0.0%
1620-1629	3	1	33.3%
1650-1659	0	0	0.0%

[282] Poos and Bonfield, *Select Cases in Manorial Courts*, xxx.
[283] Mulholland, "The Jury in English Manorial Courts," 63.
[284] For example: Wakefield, 11: 21, 28, and 42; Acomb, 40-41, 43, 45.
[285] McIntosh, *Autonomy and Community*, 200.

1660-1669	2	1	50.0%
Total	106	17	16.0%

"Up and down the country, it is clear," Sidney and Beatrice Webb found in 1908, "there were, especially in the north of England, scores of such courts still hearing pleas of debt and trespass up to forty shillings, right down to the reign of Victoria."[286] However, like many other manorial court activities, the seventeenth century was a period of quite drastic change in this part of the courts' affairs, with most manor courts' jurisdiction over private causes becoming reduced or else no longer being formally recorded with the rest of the courts' business. The experience at Acomb confirms Christopher Brooks' claim that local jurisdictions broadly followed the boom in litigation that is so prominent in early modern England, but with a peak that came in the later sixteenth century instead of the early seventeenth century.[287] Acomb's jurisdiction over civil causes seems to have been quite healthy throughout the 1560s and 1570s, but declined steadily after that. The hearing of interpersonal cases at the manor of Brinkworth and Charlton in Wiltshire stopped in 1625, the abruptness of which has led Douglas Crowley to argue that this was likely as a result of formal closure of the jurisdiction by the steward or homage.[288] In Prescot, Walter King has found that the manor handled an average of 53 personal actions each year throughout the beginning of the seventeenth century, but these causes "mysteriously disappeared" from the court rolls after 1635. However, the continuing

[286] Webb and Webb, *English Local Government*, 120.
[287] See table 14. Christopher Brooks, *Lawyers, Litigation and English Society Since 1450* (London: The Hambledon Press, 1998), 69-70; Also supported by the experience of the Manor of Dilston, Northumberland, which experienced its heyday of civil litigation in the sixteenth century and was still in "robust health" in the 1630s: Healey, "The Northern Manor and the Politics of Neighbourhood," 237.
[288] Crowley, *The Court Records of Brinkworth and Charlton*, 30.

existence of lists of jurors-between-parties seems to indicate that the court continued to hear these cases until at least 1672.[289]

Wakefield saw a similarly puzzling disappearance of suit records. Private causes stopped being recorded in the court rolls after 1630, though defendants had already stopped appearing to answer debt claims decades earlier, but some later rolls include "cryptic notes" referring to inter-party juries and writs.[290] The continuing importance of the Wakefield court for settling minor civil causes is confirmed by the fact that an act of Parliament in 1777 extended the maximum value of claims that could be considered by the court (and a handful of other nearby manor courts) to £5.[291] And the court was still functional in 1819, when Sarah Holroyd accused the steward and bailiff of the manor in the King's Bench of unlawfully distraining her goods to cover the £9 14s damages and costs that the court had determined she owed to another tenant.[292] The fact that much of Holroyd's case questioned the manorial officers' authority to seize goods indicates that manor courts had lost the confidence of their tenants as being a legitimate part of the legal system. Overall, the court rolls become increasingly unhelpful for understanding minor private causes between tenants after the early seventeenth century in most courts, partly due to a loss of jurisdiction to other courts and partly due to changes in documentation. It seems likely that the cases began to be recorded separately from the rest of the court business, but it is not clear what prompted this change.

Women appeared relatively infrequently in the manor courts' litigation but they were not inconsequential. In Wakefield, women were involved as plaintiffs or defendants

[289] King, *The Court Records of Prescot*, xvii.
[290] Wakefield, 1:x; Wakefield, 5:xiv.
[291] Cruickshank, "Courts Leet, Constables, and the Township Structure in the West Riding," 77.
[292] 106 Eng. Rep. 439, Holyroyd v. Breare and Holmes, May 1, 1819.

in just 22 of the total 311 cases that appeared at the court in 1583-1585 and 1608-1609 (7.07%). Wakefield women were much more likely to be plaintiffs than defendants (19 cases, or 86.4% of all cases that involved women), and in only one case did they appear before the court with another person (Agnes Sharp came with her husband John to sue Thomas Smyth for debt in 1584).[293] The experience at Wakefield corresponds with Jonathan Healey's findings at the Manor of Dilston in Northumberland from 1558 to 1640. Healey found that only 10% of the court's suitors were women, which led him to argue that "this was a court open to women, but it was still a male-dominated institution."[294]

Table 15: Women Plaintiffs Involved in Private Causes at Wakefield

Manor of Wakefield: Private Causes With Female Plaintiffs						
Year	Total Causes	Causes With Only Female Plaintiffs	Percentage of Total Causes	Causes with Mixed Gender Plaintiff Group	Percentage of Total Causes	Total Causes with Female Plaintiffs
1583-1585	155	12	7.74%	1	0.65%	8.39%
1608-1609	156	6	3.85%	0	0.00%	3.85%
Total	311	18	5.79%	1	0.32%	6.11%

Table 16: Women Defendants Involved in Private Causes at Wakefield

Manor of Wakefield: Private Causes With Female Defendants						
Year	Total Causes	Causes With Only Female Defendants	Percentage of Total Causes	Causes With Mixed Gender Defendant Group	Percentage of Total Causes	Total Causes with Female Defendants
1583-1585	155	1	0.65%	2	1.29%	1.94%
1608-1609	156	0	0.00%	0	0.00%	0.00%
Total	311	1	0.32%	2	0.64%	0.96%

[293] Wakefield, 4:24.
[294] Healey, "The Northern Manor and the Politics of Neighbourhood," 238.

Acomb saw significantly fewer private causes than the examined years at Wakefield, but Acomb had a slightly higher proportion of women involved: women appeared as a defendant or plaintiff in 16.0% of the suits (17 of the 106 total) during the period of 1567-1661. In contrast to Wakefield, women were more likely to be defendants than plaintiffs in Acomb (13 cases, or 76.5% of all cases that involved women). These numbers are similar to the proportions of 9% female plaintiffs and 6% female defendants that Craig Muldrew found at the King Lynn's Guildhall Court in 1689, which was a borough court that had similar jurisdiction over minor civil matters.[295] It also corresponds with Marjorie McIntosh's findings of women constituting 6-8% of the parties to civil suits in the manor of Havering in Essex from 1352-1353 and 1444-1445.[296] In all of these examined manors, women usually appeared alone before the courts as widows and spinsters, and it was uncommon for women to appear at the court with their husband or other family members. These investigations demonstrate that there was a relative consistency in the frequency of female appearances before local courts throughout late medieval to early modern England.

Coverture was an important influence over these personal causes, like it was over many other aspects of women's experiences before the manor courts. It seems that coverture was applied in broadly the same way that it was at the common law courts, although inconsistent recording of women's marital status makes it difficult to say for sure. The manorial court manuals did not make a specific declaration about whether or not coverture should be applied, but it was implied throughout most of their discussions regarding marriage and female landholding. John Kitchin, for instance, wrote: "a married

[295] Muldrew, *The Economy of Obligation*, 244-246.
[296] McIntosh, *Autonomy and Community*, 219.

wife hath no will but the will of her husband."[297] Women seem only to have appeared with their husbands in land disputes when the issue involved land that the husband had claim to via his wife. Wives were also sometimes involved in debt cases with their husbands, which indicates that the debt likely arose from the wife's actions and so her husband automatically became liable.[298] At the manor of Church Lawton, for instance, John Hall sued a tailor named John Lawton in 1634 for trespass on the case for withholding some cloth. Lawton "deposed that he never had any more taken a little piece of taffeta," which he brought to show the court. But it turned out that Lawton's wife had withheld payment to John Hall and so the jury found the defendant guilty and John Lawton was liable to pay 12d in damages.[299] Oliver Orrell, clerk of Prescot, and his wife Dorothy complained together against George Tapley for 5s of coals, which indicates that Dorothy must have been involved in the transaction.[300]

However, the rareness of incidents like these compared to the much higher frequency of non-married women's appearances has led Chris Briggs to emphasize that people may have been reluctant to deal directly with wives because of their relative impunity to default on debt which could lead to unforeseen difficulties in getting repaid and increased legal costs. Therefore, coverture did not just determine legal formalities but had a direct impact on how married women were treated within their communities because their legal standing made financial dealings with them more risky.[301] The tenant-landlord relationship that served as the structure for all interactions at the manor added an

[297] Kitchin, *Jurisdictions*, 365.
[298] Briggs, "Empowered or Marginalized?," 21-22.
[299] Lawton, *Church Lawton Manor Court Rolls*, 17.
[300] Bailey, *A Selection From the Prescot Court Leet*, 205.
[301] Briggs, "Empowered or Marginalized?," 25.

additional complication to these cases because in some ways the landlord was a higher authority than a wife's husband. In Prescot in 1591, the bailiff had been to the house of the wife of John Knowle on multiple occasions "to the intent to have made leave for certain debts against her heretofore in this court recovered," but she had no goods to distrain. The jurors of the court therefore ordered "that the owner and landlord of the same house shall pay all the same debts so recovered, or else shall avoid and put the said Knowle's wife out of and from the same house."[302] It seems likely that Knowle's wife was an undertenant within the manor, and therefore the copyholder of her land held ultimate authority for her compliance or lack thereof. It is fascinating that the court makes no direct reference to her husband, John Knowle, in this order – it is possible that he was dead and the court was simply careless in its record keeping. However, this could be a recognition by the court that the wife had been operating as a *feme sole* and therefore was responsible to cover her own debts.

Debt was by far the most common cause of interpersonal disputes that the manor courts dealt with, but (or perhaps as a result of their ubiquity) debt cases also appear to have been the easiest to handle. Land and trespass claims frequently involved the same parties making multiple appearances at the court, the use of complex writs, interactions with other jurisdictions, and the involvement of attorneys. Debt cases, on the other hand, appear to have been handled much more quickly and straightforwardly, generally in one court appearance and without the use of attorneys. They also involved men and women from all social ranks, which supports Craig Muldrew's argument that "while the expansion of the market led to a relative swelling of the ranks of the poor, because of

[302] Bailey, *A Selection From the Prescot Court Leet*, 250.

credit it also led to the expansion of a contractual legal culture in which responsible members of households who engaged in economic exchange were given a great deal of moral autonomy in their economic agency."[303] Debt cases accounted for 49.1% of all the private causes that were recorded in the Acomb court rolls (52 out of 106 total cases) and a whopping 98.1% of all the private causes recorded in Wakefield (305 out of 311) during the periods examined. Marjorie McIntosh has argued that some of the debt pleas that were initiated at manor courts were likely recorded mainly as a way to authorize a loan or contract, which would eventually be withdrawn after the agreement was repaid.[304] This is an intriguing idea that may help to explain why most of the defendants did not seem to appear at the Wakefield court, but ultimately it is impossible to know based on the evidence provided in the court rolls. Women's appearances before the court for issues related to debt demonstrate not only the extent to which women were economically entangled within the agricultural economy, but also that their social capital was partly based on the wealth that they lent to or borrowed from their neighbours.

These private causes regarding debts became public articulations of the activities that women performed, who their interactions were with, and the degree that they were trusted. In Prescot, for example, Robert Chadocke successfully sued Margaret Tyldesley, widow, for 4s 8d owed for 4 loads of coal.[305] In another case, Lettice Holt of Clitheroe complained against William Lomas for a 22s debt in 1563 for the "education and maintenance of one of his boys for 2 years and pasture of animals." The jury found in Lettice's favour but only awarded her 3s 4d of the debt.[306] In the reverse situation,

[303] Muldrew, *The Economy of Obligation*, 318.
[304] McIntosh, *Autonomy and Community*, 198.
[305] Bailey, *A Selection From the Prescot Court Leet*, 213.
[306] Farrer, *The Court Rolls of the Honour of Clitheroe*, vol. 3, 391.

Margaret Hulse of Church Lawton, widow, was found guilty and owed 18d of damages in 1634 for not paying James Shaw for work done by his sons, namely for one day of mucking, two days of harvesting, two days of weeding, and for using his mares to make two trips to nearby towns.[307] Alice Pryse of Prescot and her husband William Pryse were successfully sued by William Harden in 1577 for detinue of two blankets, one pillow, a sheet, and apparel for children, to the value of 10s.[308] The couple then complained against Anne Rachedale three years later for a debt related to a 26s 8d marriage portion and 13s 4d for a kirtle – they were not successful in this suit.[309] These incidents give a sense of the variety of transactions that women were involved in, as well as the fact that these women were very frequently involved in disputes with men – female versus female causes are very rare and usually involved mixed gender groups of plaintiffs and defendants if they happened at all.

Causes of debt also demonstrate the extent to which women acted in a management capacity over the agricultural affairs of their estates that were fundamental to rural life, and this became especially apparent when widows acted as the executor of their deceased husband's estate. A husband's decision to appoint his wife as executor implied that he believed that she had sufficient knowledge of his business and legal affairs, and this confidence in her abilities was publicly declared to the community when the widow appeared before the manor courts in this capacity.[310] And a husband's death certainly seems to have increased the need for women to appear at the courts. Elizabeth

[307] Lawton, *Church Lawton Manor Court Rolls*, 23.
[308] Bailey, *A Selection From the Prescot Court Leet*, 201.
[309] Bailey, *A Selection From the Prescot Court Leet*, 212.
[310] Amussen, *An Ordered Society*, 81; Christine Churches, "Putting Women in Their Place: Female Litigants at Whitehaven, 1660-1760," in *Women, Property, and the Letters of the Law in Early Modern England*, eds. Nancy Wright, Margaret Ferguson, and A.R. Buck (Toronto: University of Toronto Press, 2004), 58.

was the widow of the gentleman Ralph Sutton of Prescot, and she initiated four debt cases in 1574 in her capacity as "administrator of his goods and chattels": Ralph Stocke owed 12s for one stone of wool, John Leadebeter owed 24s for two stone of wool, William Price owed 2s for taking care of a cow, and Richard Leadebeter owed 16d for the pasturage of a cow.[311] In Acomb, John Austen took Ellen Brand, executrix of her husband Robert, to court for a 5s debt in 1624, which was supposedly owed due to sheep that Ellen and Robert had bought from John in 1609-1610, nearly 15 years earlier. Ellen "protested that she owed nothing for the agreement which had been paid in full," and the jury agreed with her.[312] All landholders "learned their business as if by osmosis" from the examples of family members and neighbours, rather than through more formal training, and many women absorbed this knowledge as well as men. Many married women from landholding families likely had experience running their family's estate before they became widows, and this was especially true if their husbands were frequently absent to attend to legal business or to appear at court or Parliament.[313] Therefore, some women seem to have been prepared to handle their family's affairs after the death of their husbands.

Coverture made women's claim to land particularly vulnerable, and so the court records sometimes illustrate how women protected their claims or disputed others' claims, but the infrequency of these cases makes it likely that men and women were more confident in the common law courts' ability to adjudicate these matters. Legal theory held that "if a wife dowable by custom recover her dower by plaint in the lord's court, and in

[311] Bailey, *A Selection From the Prescot Court Leet*, 189.
[312] Acomb, 142-143.
[313] Wrightson, *Earthly Necessities*, 278; Mendelson and Crawford, *Women in Early Modern England*, 310.

the action she recover damages also, she may not sue for these damages at common law,"[314] which may have made some women reluctant to use the manor courts for dower complaints if they felt that a common law court would award them better damages. Some women faced claims to their landholdings from even their closest family members, like Ellen Crooke of Clitheroe, who was sued by her son Richard in 1562 for 20 acres of land (the jury was enrolled for this case but the verdict was not stated).[315] In Acomb women were involved in 11 of the 25 appearances that were related to land disputes (44.0%), but women were involved in none of the land claim disputes that appeared before the Wakefield court in the period examined. The experience of the widow Ellen Goodicar in the manor of Prescot is illustrative of the lengths that many women went through to secure their landholdings in their own name. She sued John Goodicar, the 14 year-old son of her deceased husband, and his guardian Henry Blundell for her customary dower in 1596, which was a tenuous claim because Prescot had very weak customary dower protections. It was ultimately agreed by the parties of the cause, with the consent of the steward and "sundry others the customary tenants of the same town," that she would have certain houses and parcels of ground, "for the relief and education of her and her young children, as in recompense of her pretended demand of in and to the same lands," while John Goodicar would be seized of all the rest of his father's lands. And it was proclaimed in court that "this order shall remain of record as a testimony of this agreement forever."[316] This example demonstrates that the causes that were brought to the manor courts had very real impacts on a woman's ability to take care of herself and her family.

[314] Sheppard, *The Court-Keepers Guide*, 179.
[315] Farrer, *The Court Rolls of the Honour of Clitheroe*, vol. 2, 295.
[316] Bailey, *A Selection From the Prescot Court Leet*, 263.

Even if Ellen's suit was a "pretended demand" on the land, it was recognized that she needed some way to take care of her other children and so a negotiated settlement was agreed to. This settlement was validated by its public proclamation at the manor court after it was witnessed by neighbours, which also demonstrates how the manor courts became an important venue for affirming or denying women's positions and rights within the local community.

Ellen Goodicar's experience also emphasizes how the courts did not always stick entirely to formal procedures and instead encouraged negotiations to come to practical solutions that could work for both parties. Like all other jurisdictions of law in early modern England, the manor courts tried to have disputes between tenants settled as peacefully as possible and frequently through arbitration outside of the court sessions. The manorial court records support Keith Wrightson's argument that "the maintenance of order in the sense of restoring good relationships among neighbours might be better served by the avoidance of prosecution than by the stern enforcement of the law."[317] The flexibility and the localized nature of the complaints that were brought to the manor courts has led Christopher Brooks to argue that, despite the seemingly formalized common law procedures that the courts used, they "may have had more in common with what jurists today would describe as alternative dispute resolution than with litigation as we understand it," stressing reconciliation instead of conflict.[318] Unfortunately the courts seemed particularly uninterested in recording the terms of these agreements when they did not impact the landlord. In the cause of 3s of debt between Anna Hobson and John Poole in Church Lawton in 1641, the court bailiff reported that the parties had come to an

[317] Wrightson, *English Society*, 157.
[318] Brooks, *Lawyers, Litigation and English Society*, 125.

agreement and that the matter was dropped.[319] This involvement of the bailiff in this report indicates that the conflict-resolution structures of the court were used, but unfortunately no information is provided about how the agreement was made or what its terms were. Similarly, in Prescot in 1580 a carpenter named George Garnett complained of a debt against Ellen Kenrycke, a widow and executrix of her deceased husband's estate, which was put to arbitration by the court and both parties ended up being in mercy to the court.[320] A preference for alternate means of dispute resolution is not at all unique to the manor courts, but the intimate relationships that all of the parties had with each other and with the issues under consideration makes it likely that these courts were particularly well suited for handling causes in this way. Women do not appear to have been treated differently in the arbitration and negotiation process, but it was likely recognized that a widow's increased responsibilities to take care of children was a form of leverage if the community wanted to minimize the poor relief that she would require.

There are a number of ways that the early modern manor courts delegated authority to members of the community, and the court's role as a public forum meant that its operations publicly demonstrated which individuals had power within this local realm. Expressions of power and the lack thereof at the manor courts created an interpersonal politics that was reliant upon each person's reputation and had a tangible impact on men and women's capacity to gain support for causes that influenced their everyday interests. Other than some rare exceptions, women were excluded from the offices that represented the formal politics of the manor, as well as from being arbiters of justice as jurors, which represents a significant form of repression. Nevertheless, women managed to find a

[319] Lawton, *Church Lawton Manor Court Rolls*, 63.
[320] Bailey, *A Selection From the Prescot Court Leet*, 212.

number of ways to participate in manorial politics and express the limited degree of power that they were able to accumulate. Doing the duties of an office despite lacking official recognition, providing evidence as witnesses, initiating inquests by copyhold tenants, being appointed guardians for landholding children, acting as executrixes, and being litigants in private causes are all ways that women represented their interests before their community and asserted their agency. These actions, however, were available only to women who had some landholding interest, either through matrimony or patrimony, and therefore the limited political power that the manor courts provided to women was even further limited by class. The declining influence of the manor courts also restricted women's ability to access local politics since the parochial and county-centric realms that were increasingly gaining dominance were even more exclusive. In the manor courts, women were certainly excluded, but this was due mostly to their diminished landholding capacity than anything else. The manor court records of early modern England are valuable sources for shedding some light on how women proved themselves as capable individuals that were fundamental to the workings of their community. Manor courts were public venues that were often used to deal with very private matters, and the ways that some women utilized the courts' institutional structures represents a degree of local political finesse and reputational power that should not be ignored.

Chapter 5: Conclusion

This thesis has examined the extent of women's involvement in manorial land markets, how the manors attempted to maintain the social order by regulating women's misbehaviours, and finally how local political structures influenced the amount of power that was available for women to utilize within their community. The fact that tenancies were the fundamental unit of manorial organization and that landholding customs consistently favoured male descendants meant that women were dramatically underrepresented at the courts. Nevertheless, this concern for tenancy above all meant that the courts did not explicitly discriminate against women due to their gender. The records of the manor courts demonstrate that women were an undeniably integral part of the early modern English agricultural economy and were very commonly holders of land. However, this landholding was consistently challenged in ways that was never true for landholding men of the same status. The courts were more willing to utilize their legislative and penalizing capacities to police women's non-conforming misdemeanours than men's, as women's anti-social behaviours were seen as particularly threatening to the social order. There are some indications that this fear of women's actions was stronger during periods of social and political upheaval, but this is particularly hard to determine due to the courts' contracting jurisdiction during this period. Finally, manor courts were institutions that ultimately reinforced the overall subordination of women rather than challenged this paradigm. While some individual women were able to use the courts to protect or promote their own interests, which did afford them a degree of local political power, the courts' overall exclusion of women from their organizational structures mimicked the country's patriarchal governance systems more broadly.

The influence of coverture can be found throughout the court rolls, though without the consistency with which it was applied by the common law courts, and it created significant legal complexities for both men and women and for transactions both big and small. Married women were often referred to only as the wife of a particular male tenant, which not only subsumed women's identities at the time but also makes it particularly difficult for historians to tell the stories of individual women using the court records. Coverture meant that women lost control of any land claims that they may have had from before their marriage. It also meant men who received land had to ensure that the courts obtained wives' direct consent for the transfer in order to ensure that the new landholder's claim could not be contested at a later date. Agreements regarding a wife's freebench and jointure had to be settled by individual families at the time of the marriage in order to negotiate coverture's restrictions, which necessitated the creation of complex and costly legal instruments. Customs that governed how land would descend to widows were some of the most frequently consulted and contested manorial regulations. In addition, husbands were usually held responsible for their wives' misdemeanours and any private causes that were brought against them. The fact that married women may have been protected from paying debts if their husbands claimed not to have authorized the transaction likely limited the extent to which people wanted to do business with married women. Coverture also meant that a woman did not automatically become guardian over her children once her husband died – permission from the court and a fine would have to be paid in order to approve her continuing care of her own children. In these ways and many more, coverture was ubiquitous throughout the operations of the manor courts and had significant impacts on both men and women, in ways both direct and indirect.

The decline of the courts as dynamic institutions had a real impact on women's experiences of local government and the legal system more generally. At the most basic level, other courts were held in more centralized locations, which created travel expenses that would have increased the costs of a case. This also meant that jurors were likely less familiar with the circumstances of the case and the personalities of the people involved. As the seventeenth century progressed, summary trials run by local Justices of the Peace and parish vestries took over many of the punishment and regulatory functions that had previously been handled by the manor courts.[321] Neither of these institutions involved the use of juries, and so there was an even thinner veneer of community consent involved in their proceedings. It is during this period that the landlord-based source of power that the manor courts rested on gave way to the increasingly more dominant power source of the nation state, likely as a result of the commercializing land market's erosion of the medieval tenurial system. As a result, individual characteristics other than tenures, such as gender and wealth, increasingly became the foundation of social relationships. This is not to argue that the customary law of the manor courts was any sort of ideal system of women's representation in local government, but it is nevertheless true that the transition away from manor courts must have had an appreciable impact on the lived experiences of women when interacting with the English legal system and government.

Although the different functions of the early modern manor courts have been examined separately in the preceding analysis, it is the breadth of the functions that each court session dealt with that makes them stand out as important institutions in early modern England. There were many other courts that adjudicated small claims or punished

[321] King, "The Summary Courts and Social Relations in Eighteenth-Century England," 126-129.

minor misbehaviours or elected officials or created legislation for the regulation of shared resources, but there were no other institutions that handled all of these functions at the same time (aside from the manor courts' urban counterpart, the borough courts). This intermingling of functions meant that a wealthy gentleman who was surrendering his copyhold land could appear before the same court as a poor widow who was suing her neighbour for not paying a 7s debt. The universality of the courts, both in who they were open to and the types of problems that they attempted to solve, meant that they were truly accessible institutions for most people that determined who belonged within a particular community. There is a long tradition in the historiography of emphasizing the almost egalitarian functions of the manor courts. In 1835 Henry Merewether and Archibald Stephens, for example, wrote in reference to manors:

> A court more important to the real rights of the people - to the protection of their privileges, and the correction of their grievances; as well as to the due administration of the law - the good government of the people - and the constant preservation of the connecting link between the governors and the governed, than all the other courts in the kingdom.[322]

"The socio-political function of these courts should not be underestimated," Christopher Harrison argued over 150 years later. "In many respects they were agencies of a primitive but effective democracy, ubiquitous units of local government."[323]

However, it should also not be forgotten that the manor courts were originally created to preserve the interests of landlords and were controlled by groups of exclusively

[322] Henry Alworth Merewether and Archibald John Stephens, *The History of the Boroughs and Municipal Corporations of the United Kingdom…* (London: 1835), 1294.
[323] Harrison, "Manor Courts and the Governance of Tudor England," 45.

male jurors that rarely included people outside of the middling ranks. This meant that the manor courts were unlikely to promote anything but the concerns of that particular social group. The actual experience of participating in these courts, therefore, was likely highly dependent on the personalities of the stewards, officials, and jurors who controlled them at any one time. In this way, the courts were microcosms of the rigidly deferential and patriarchal power structures that governed early modern English society more generally. This led F.J.C. Hearnshaw to argue forcefully in 1908 that courts leet, in particular, had "elements of barbaric indiscriminateness and irresponsibility," and therefore "it is progress, and not retrogression, which has caused leet jurisdiction to pass out of the operative forces of our modern life. Its place has been taken by more calculable, more equitable, more effective instruments of justice and police."[324] The customary law administered by these courts was certainly more accessible and adaptable to specific community needs than the higher courts, but its focus on land rights and the preservation of the social order certainly did not offer particular help to women in general. It is this fundamental paradox of manor courts, that they involved such a large proportion of the community yet were ultimately tools for the preservation of elite interests, which formed the tension at the foundation of the history of the manor courts.[325] It was this tension that could not be sustained in the increasingly polarizing seventeenth-century society, and therefore the manor courts floundered.

[324] Hearnshaw, *Leet Jurisdiction in England*, 358.
[325] See Thompson, *Customs in Common*, 9 for a discussion of the similarly paradoxical "rebellious traditional culture" of the eighteenth-century plebeians.

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