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THE LANGUAGE OF ABUSE:
MARITAL VIOLENCE IN LATER MEDIEVAL ENGLAND

by

Sara M. Butler

Submitted in partial fulfilment of the requirements
for the degree of Ph.D.

at

Dalhousie University
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The undersigned hereby certify that they have read and recommend to the Faculty of Graduate Studies for acceptance a thesis entitled "The Language of Abuse: Marital Violence in Later Medieval England, the Case of Yorkshire and Essex"

by Sara M. Butler

in partial fulfillment of the requirements for the degree of Doctor of Philosophy.

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External Examiner

Research Supervisor

Examining Committee

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Abstract

This dissertation examines spousal abuse in later medieval England, focusing specifically on the counties of Yorkshire and Essex in order to discern regional approaches to the regulation of marital violence, while simultaneously constructing an understanding of the particularly English approach to abuse from the thirteenth to the early sixteenth centuries. Violence of this gendered nature implicitly involves notions of power and identity that require profound consideration. Accordingly, the goal of this study is to uncover the copious layers within medieval English understandings of the acceptability of marital violence and their impact upon actual rates of abuse through both a statistical and discursive analysis of court records. With such a perspective, this study is capable of addressing some of the most intriguing concerns in legal and social history of the medieval period in England. This study also places itself firmly within the context of Marjorie McIntosh's most recent work in which she situates the inception of a 'crisis' in communal conduct clearly in the mid-fourteenth century. The emergence of communal intolerance of assertive female behaviours, as well as the creation of legislation categorising the homicide of a husband as treasonous, are reflected in changing attitudes about spousal abuse. For this purpose, then, the evidence of community representatives as witnesses or jury members is utilised to interpret fluid notions of liability, gendered constructs and social expectations in the regulation of domestic violence.

Abbreviations

Cons. AB	Consistory Court Act book
CPR	*Calendar of Patent Rolls*
D/C AB	Dean and Chapter Act book
DL	Diocese of London
ERO	Essex Record Office
GL	Guildhall Library, London
LMA	London Metropolitan Archives
PRO	Public Record Office
YBI CP. E	York Cause Papers for the fourteenth century, preserved at the Borthwick Institute for Historical Research
YBI CP. F	York Cause Papers for the fifteenth century, preserved at the Borthwick Institute for Historical Research
York M	records of York Minster

Acknowledgements

Soon after I made the decision to undertake a study of spousal abuse in the context of late medieval England I awoke to the sudden realisation that it was not going to be an easy task to complete from Halifax, Nova Scotia. In fact, without the industrious assistance of Gwyneth Pace and Marlyn McCann of the Document Delivery department at Killam Memorial Library, I might still be writing this thesis. Similarly, I indebted to both the University of Western Michigan and the Church of Jesus Christ of Latter Day Saints for a multitude of microfilm generously sent northwards for my use. No dissertation on British History can be researched entirely from the comfort of a Canadian home, however. Thus, I would also like to thank the staffs of both the Public Record Office in London and the Canterbury Cathedral Archives for their assistance and patience.

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Introduction:

Spousal Abuse and its Place in the Study of Medieval History

Since the emergence of feminist history in the 1970s, social perceptions of the acceptability of spousal abuse have been employed frequently as a tool of historical analysis to evaluate male-female relations both within the family and the community at large. Inspired by current sociological trends, women's historians have stormed the past hunting for evidence of women's daily lives in order to determine the actual (as opposed to legal or literary) status of women in earlier societies and cultures. Despite the pertinence of the inferences drawn from a study of attitudes towards, and incidents of, spousal abuse within an historical setting, this area of research has been plagued with unbridled speculation and anachronistic projection of views onto the past. This is especially true in respect of pre-modern societies such as medieval England. Both medieval and early modern historians have approached the subject of spousal abuse with a combination of assiduity and conjecture, producing a great diversity of conflicting deductions regarding levels of spousal abuse within medieval society. The conclusions that have been drawn range from declarations of rampant abuse to the inconsequential.

Early studies of women and domestic violence suffer from two basic, yet interconnected, obstacles. The first evolves directly from the origins of women's history itself. Given that the field emerged out of a political commitment to making women as historical actors visible and to uncovering the extent of women's oppression throughout time, the political agenda too easily shaped the history. As Linda Gordon has had occasion to point out, there are some inalienable difficulties in uniting political ideology and historical research. This complicated union can propagate what Gordon coins "mythic power," a method of

writing history deliberately to elicit political change.[1] Ubiquitous abuse against women in history served to strengthen commitment to the feminist movement and justify its existence: past oppressions positively establish the need for a coalition to fight possible recurrences of this behaviour. While few authors of English medieval history have espoused this approach in a study of spousal abuse in particular, political commitment of this kind permeates manifold studies of English women from the period.[2] As a result of this politically inspired goal, the reader is constrained to speculate just how accurate or unbiased is the historical interpretation in the women's history literature.

Associated with this conscious politicisation of history, but not altogether related in origin, is the propensity of some historians to assume that history is linear. For women's historians, the rationalisation is apparent: if history is not linear, then the efforts of women's liberationists over the past century and a half may have been in vain. This political and historical perspective of the history of women has been vindicated and empowered by the findings of certain early family historians whose writing opened new paths into the research of the medieval family. In the early 1960s, Philippe Ariès's *Centuries of Childhood* radically altered the study of family and familial sentiment.[3] His examination of attitudes about children from the Middle Ages to the eighteenth century, based primarily on art and material evidence, argues that not only did medieval parents treat their children with indifference, they did not even recognise the existence of childhood as a separate phase in the human life cycle. According to Ariès, the "invention" of childhood occurred some time before the eighteenth

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[1] Linda Gordon, "What's New in Women's History," in Teresa de Lauretis (ed.), *Feminist Studies / Critical Studies* (Bloomington, 1986), p. 22.
[2] For example, see Ruth Campbell, "Sentence of Death by Burning for Women," *Journal of Legal History* 5 (1984), 44-59. The work of Judith M. Bennett often tends to fall into this category. For example, see Judith M. Bennett, *Women in the Medieval English Countryside: Gender and Household in Brigstock Before the Plague* (Oxford, 1987).
[3] Philippe Ariès, *Centuries of Childhood* (New York, 1962).

century: the circumstances of children in Western society have only improved since then. While historians rarely have embraced Ariès's work wholeheartedly because of the intrinsic faults with his sources, his approach demonstrated powerfully to historians that they could no longer merely assume the existence of parental love; human emotion, then, is not an historical constant.[4] Today, almost forty years later, the controversy sparked by Ariès's research still informs the study of medieval families.

Lawrence Stone was one of the first to grasp the larger implications of Ariès's study. He not only argued in favour of a medieval indifference towards childhood, but took the argument a step further to assert that married life was "brutal and often hostile, with little communication, [and] much wife-beating."[5] Family affection, he maintained, was perceived by medieval society as impractical owing to the high rates of mortality and because individuals commonly believed that "happiness could only be anticipated in the next world."[6] In consequence, ties between family members were no closer than those with neighbours. Many of Stone's assumptions about marriage and the family in late medieval society are based firmly in his belief that history is linear. He reasoned that human beings have become essentially less violent since the late medieval period, undergoing what he refers to as a "civilising process."[7] While Stone acknowledged that statistics do not confirm his conclusions about heightened levels of violence in the Middle Ages, and in fact indicate a higher level of

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[4] Anthony Burton offers an exceedingly comprehensive summary of the difficulties with Ariès's understanding of attitudes towards childhood in the Middle Ages. In brief, he argues that iconographic representations, in particular, result in an unfair evaluation: medieval art is only capable of offering negative evidence owing to its exclusive focus on Biblical narrative. See Anthony Burton, "Looking forward from Ariès? Pictorial and material evidence for the history of childhood and family life," *Continuity and Change* 4 (1989), 203-29.

[5] Lawrence Stone, *The Family, Sex and Marriage in England 1500-1800* (New York, 1977), p. 117.

[6] *Ibid.* p. 5.

[7] Lawrence Stone, "Interpersonal Violence in English Society 1300-1980," *Past and Present* 101 (1983), 22 -33. For a more complete discussion of the "civilizing process" see Norbert Elias, *The History of Manners* (New York, 1982).

spousal abuse today than any other era, he argued that these data are artificially inflated due to modern advances in forensic science (which aid in the detection of wives using poison to dispatch their unwanted husbands) and the advantages of a superbly organised police force. Despite the validity of both of these factors, even if they are not sufficient in themselves to explain the statistical variance, Stone's analysis relies on data from secular legal records in a very small number of urban centres, suggesting that his conclusions are atypical rather than representative of actual medieval families.

Stone's work suffers from what Gisela Bock has described as a more subconscious politicisation, when "today's ideals and values are simply projected back into the past, as an anachronism."[8] In attempting to understand the late medieval and early modern family, Stone looks for modern signs of domestic bliss; however, the illiteracy of the vast majority of the population of medieval England in itself should preclude any such endeavour. Peasant farmers simply did not express the way they felt about their children in writing because the act itself was beyond their capacity; those who could write generally used writing as a tool, and thus the documents that survive from the period do not necessarily reflect familial sentiment. This negative evidence in itself, however, should not determine our perceptions of an entire era. While Stone's work today is considered to be out-dated and seriously flawed, historians are still coping with the legacy of his vision of late medieval marriage and society. To this debate Philippa Maddern makes an important contribution. In her discussion of violence in late medieval East Anglia, Maddern demonstrates convincingly that, despite the general reticence of medieval scholars to engage historical theory, some of the teachings of post-structuralism can be applied successfully to the pre-modern era.[9] Applying linguistic

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[8] Gisela Bock, "Women's History and Gender History," *Gender and History* 1(1989), 8.
[9] Philippa C. Maddern, *Violence and Social Order: East Anglia 1422-1442* (Oxford, 1992).

theory to history, she explains that the concept "violence" is defined according to ethical and cultural standards, and is thus historically and regionally variable. What is excessive force in modern terms (perhaps, spanking a child) might then have been seen as required discipline. Changing definitions of the term, however, do not support a theory of historical linearity, since violence may have been understood in a variety of different ways since the medieval period. Hence, in such an analysis one cannot use a modern definition of violence, but must reconstruct the medieval understanding of what constitutes a violent act. In examining the medieval family with respect to emotional commitment and levels of abuse, then, we need to cast off traditional notions of primitivism, linearity and intrinsic barbarity, and attempt to unravel the medieval experience of familial affection and the intertwined power relations.

To write a history of violence against women in any context is no easy task; violence of a gendered nature implicitly involves notions of power and identity that require profound consideration. The difficulty, as John Tosh and Michael Roper remind us, is to avoid setting up what seems like a constant victim / victimiser dichotomy. Too often men are seen merely as agents of oppression, and "[w]ithout a more complete understanding of why men sought to control and exploit women, we risk returning to theories of an inherent male tendency towards domination," and in turn establishing an innate female desire to be subordinated.[10] The history of violence against women is not merely a history of women as victims. In order to elucidate medieval attitudes towards spousal abuse, it is necessary to shed all notions of essentialism and to understand how both men and women participated and even challenged and transformed the discourse through indifference, acceptance and rebellion. The goal of this

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[10] Michael Roper and John Tosh, "Historians and the politics of masculinity," in John Tosh (ed.), *Manful Assertions: Masculinities in Britain since 1800* (London, 1991), p. 10.

study, then, is to uncover the copious layers within medieval English understandings of the acceptability of marital violence and their reflection in actual rates of abuse.

Not only is a history of marital violence more than a history of women as victims, it is also more than a history of women as women. Spousal abuse is as much about men as it is about women. In the medieval context, abuse was interpreted by communities as a hallmark of failed masculinity: either a man neglected to govern the behaviour of his subordinates (in this case, his wife), or he failed to govern adequately his own behaviour. In a world where patriarchy was implicitly tied to notions of a strict social hierarchy and self-control, a man's communal standing was constantly endangered by his own actions and those of the people closest to him. As a result, any investigation of the language medieval men and women used to describe marital violence must be sensitive to male honour. Men may have purposely avoided beating their wives simply because they feared how such an act might reflect on their reputation.

The obvious concern with such a study is in the terminology itself. "Spousal abuse," "domestic violence" and all other such terms are a product of a politically-minded modern society. The medieval equivalent is *saevitia* (cruelty); the vagueness of such a term, however, leaves much to the imagination. Since there are no more meaningful medieval equivalents modern inventions will have to suffice. The question is, if the language was not really a part of medieval culture, and "violence" as a concept is historically variant, how do we define "spousal abuse" for the purposes of research? In this study, "abuse" as a category of historical analysis has been approached with the narrowest possible understanding as physical violence, because the latter is the only unequivocal manifestation of abuse; nevertheless, any indications that the concept may have been understood in a broader sense

have been considered and remarked upon in the course of the research. As this dissertation should demonstrate amply, it would be extremely misleading to assume that because medieval English society had no clear definition of spousal abuse means that the concept was not understood.

The Historiography of Spousal Abuse

Most of the research undertaken in the English context of domestic violence has been carried out by early modernists. While it is clear that their findings cannot be applied unquestionably to the later Middle Ages because of significant differences in religion, economic systems, political ideology and levels of urbanisation, their methodologies nevertheless provide models for the study of this subject in the setting of the Middle Ages and their findings hint at possible medieval antecedents. Two authors in particular, Frances Dolan and Laura Gowing, have completed some telling research in this field.

Frances Dolan has taken a very post-structuralist approach to the study of marriage.[11] Focusing specifically on representations of spousal abuse in the early modern setting as reflected in ballads and broadsheets, she attempts to uncover general perceptions of what English communities understood as domestic violence and how these interpretations were internalised by the individuals involved. For example, Dolan remarks that popular concerns regarding domestic violence shifted from an emphasis on overbearing women in the sixteenth century to tyrannical men in the eighteenth. Her goal is to deconstruct these dominant images in order to understand how they were created initially. The value of Dolan's critical approach for the current study is to demonstrate that, even if we cannot base a history of spousal abuse

[11] Frances E. Dolan, *Dangerous Familiars: Representations of Domestic Crime in England 1550-1700* (Ithaca, 1994).

firmly in the study of rates of homicide, it is still possible to write a story of changes in meaning and means of regulation in the context of spousal violence. The post-structuralist perspective transforms a mass of individual case studies into a body of data, the meaning of which can be interpreted within a variety of useful paradigms. Despite differences of experience owing to rank, age and region, the people Dolan examines shared an internalisation of social constructs regarding spousal abuse. In the process of exploring representations of spousal abuse in early modern England, she shows that it is possible to uncover a multitude of social perceptions concerning male-female relations, family dynamics, social welfare, and the role of women in society. This approach to understanding spousal abuse in an historical context has been very instrumental in shaping this study, particularly in unravelling the intricacies of the case studies of judicial separation appearing in Chapter Four.

Laura Gowing, on the other hand, offers an enticing venture into the world of early modern London.[12] Combining deconstruction with a more traditional legal approach, Gowing examines the records of the ecclesiastical courts in cases of slander and marriage litigation in order to illuminate gender relations at the most basic level during the period 1560 to 1640. Her reading of witness depositions has been extraordinarily pertinent to this study. She sees in these testimonies layers of cultural meanings; sifting through these one is made more aware of the various understandings of "woman", "wife" and "marriage" peculiar to London at this time. While both these early modern histories of spousal abuse and marriage have been helpful, Gowing's book has influenced fundamentally the tenor and approach employed in this study.

In the medieval context, spousal abuse rarely has been the focus of historical research.

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[12] Laura Gowing, *Domestic Dangers: Women, Words, and Sex in Early Modern London* (Oxford, 1996).

In fact, Barbara A. Hanawalt is the only medieval historian to have attempted systematic investigation of the subject of violence against spouses.[13] She focuses primarily on spousal homicide, the most severe form of domestic abuse, using records of the royal courts to produce a statistical analysis of the phenomenon. Her findings indicate that relationships between husbands and wives generated very few homicides in the Middle Ages, in stark contrast to modern statistics. She posits two explanations for this low rate of intra-familial homicide: either families were so tightly knit that disputes were resolved within the group and not permitted to escalate or, by contrast, families were simply a "loose grouping" of individuals, and tensions rarely developed because relationships were so casual.[14] While both these hypotheses appear feasible superficially, there are a number of problems with these assertions related specifically to her statistical approach. First, it must be taken into account that any comparison with modern statistics is intrinsically defective owing to the disparity in levels of reliable documentation. While modern police records are usually quite extensive, we do not know just how complete or incomplete medieval records actually are, and thus should not attempt to generate solid conclusions from divergent statistics. Second, the very nature of spousal abuse makes these records problematic for a definitive statistical analysis of society as a whole. Throughout most of the twentieth century domestic violence has been regarded as a private matter, and consequently has been notoriously under-reported as a crime. The dearth of evidence extant from the medieval period on this subject suggests that this also may have been the case for the Middle Ages. Any purely statistical study of spousal

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[13] Hanawalt's most important work on this subject can be found in chapter five of *Crime and Conflict in English Communities 1300-1348* (Cambridge, 1979); however, this is not the only work she has written in this area. See also "The Peasant Family and Crime in Fourteenth-Century England," *Journal of British Studies* 13 (1974), 1-18, and "Women before the Law: Females as Felons and Prey in Fourteenth-Century England," in D.K. Weisberg (ed.), *Women and the Law: A Social Historical Perspective* (2 vols, Cambridge, 1982), i.165-95.

[14] Hanawalt, "The Peasant Family and Crime", 5.

abuse in this period must therefore be appreciated for its limited value. Third, Hanawalt's statistical analysis rests exclusively on the findings of gaol delivery rolls.[15] These documents relate only to people who came to trial on indictments of felony before justices of assize. They do not relate to other alleged felonies, including those tried before justices of the peace or royal justices in the King's Bench, nor do they address non-felonious violence dealt with outside royal courts. The gaol delivery rolls, then, are controversial because, on their own, they do not provide the "total picture" when it comes to felonies. In addition, gaol delivery rolls give us a very poor sampling of society. Hanawalt expresses concern with the rank of individuals who commit this genre of crime, and yet she overlooks the simple fact that the upper ranks of medieval English society do not appear in gaol delivery records, since their status more or less exempted them from such venues.[16] Consequently, because Hanawalt's findings rely wholly on the evidence of gaol delivery rolls her statistics remain questionable.

Hanawalt is not the only medieval historian to have explored the subject of spousal abuse. Richard Helmholz's investigation of marriage litigation in later medieval England forms the base for all subsequent studies of marital relations. In his work, he offers a much different approach from that of Hanawalt.[17] Using instead the records of the church courts, he focuses on the church's approach to marital disharmony, specifically clerical precautions undertaken in order to reconcile the couple without fear of further physical abuse. His

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[15] Her statistical analysis is based exclusively on gaol delivery rolls from Essex, Herefordshire, Huntingdonshire, Northamptonshire, Norfolk, Somerset, Surrey and Yorkshire, during the period 1300 to 1348. She also uses examples from coroners' rolls of the same counties and manorial court records from Wakefield to illustrate her conclusions; however, she has not taken a statistical approach to the study of these records.

[16] Of course, only the peers of the realm had the privilege of being tried in what was to become the House of Lords; nevertheless, the nobility rarely appeared in the records of normal criminal processes because medieval juries were hesitant to indict their social superiors. Intimidation, then, worked to ensure that the crimes of the upper ranks of medieval society would be underrepresented in the records of the court.

[17] R. H. Helmholz, *Marriage Litigation in Medieval England* (London, 1974), specifically pp. 100-107. Domestic violence is only a minor aspect of this study. Helmholz is interested primarily in the church's

findings define the role of ecclesiastical judges in regulating marital bliss, placing them firmly in favour of upholding the sacraments whenever possible. Helmholz also identifies a significant gap between ecclesiastical prescription and secular practice, a breach which cannot be ignored when attempting to discern the subtleties of meanings of spousal abuse in the period. Yet, despite his powerful insight into medieval marriage, Helmholz's work cannot be perceived as definitive in respect of marital violence (an ambition to which he did not aspire, and which was certainly not the intention of his study), because its diffuse focus and randomly drawn case studies negate any possibility of detecting regional variation or atypical case selection. Ironically, then, despite Hanawalt's flawed approach, her work remains the quintessential study of familial abuse in the Middle Ages. Helmholz's research, however, demonstrates that any study of domestic violence in the medieval period must include the records of the medieval church. While Hanawalt is able to offer modulating levels and regional variations, her sources are all aberrant cases of exceptional spousal abuse leading to homicide. Helmholz's ecclesiastical court records, on the other hand, allow us to examine the more typical cases of abuse before they arrived at such an extreme state.

In approaching the study of spousal abuse in the late medieval period, this investigation uses both Hanawalt's and Helmholz's seminal works as a foundation, by incorporating both secular and ecclesiastical court records into the investigation. A study of the secular legal records provides a base for assessing legal constructions of spousal abuse in one context and for determining approximate levels of extreme familial violence; the ecclesiastical records allow an examination of constructions of marital violence in the ecclesiastical legal setting and provide an understanding of the prevalence of abuse at reduced

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approach in dealing with marital disputes of all kinds, and only briefly discusses the issues of inter-spousal violence, spouse repudiation and marital disharmony.

levels. Together, both kinds of records offer a much more complete picture of spousal abuse in the medieval context.

The Use of Statistics in Medieval History

Charles Donahue, Jr. offers the best possible answer to the question of why statistics are necessary for a study of the law courts of medieval England, particularly in the case of the courts Christian. He argues that the

> use of quantitative methods helps us to avoid the fascination of the "interesting" case. There are many interesting cases in the records of the medieval English ecclesiastical courts. They are made more interesting by the fact that in many of them the depositions have survived. We can thus hear ordinary English men and women of the Middle Ages speaking about their ordinary experiences. The dangers of relying on such evidence are substantial: Witnesses frequently told lies, and the process of redacting the testimony into a legal record involved considerable distortions. For historians who cannot resist the temptation to use deposition evidence, quantitative analysis is the penance for succumbing to that temptation.[18]

Without the use of quantitative evidence, the "interesting" case might well lead the historian astray. Statistical analysis permits the historian "to control the deposition evidence", to discern the "normal lies" from the "abnormal" and to identify the origin of prevarication.[19] Moreover, a quantitative approach ensures that the historian is aware of the rate with which a type of case appeared in court; although this may not represent the actual frequency of occurrence, at the very least the figure hints at the popularity of a suit among the ranks of late medieval society and its usefulness. In short, while eighty-eight cases of marriage litigation

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[18] Charles Donahue, Jr., "Female Plaintiffs in Marriage Cases in the Court of York in the Later Middle Ages: What Can We Learn from the Numbers?", in Sue Sheridan Walker (ed.), *Wife and Widow in Medieval England*, (Ann Arbor, 1993), pp. 184-5.
[19] *Ibid*, p. 185.

in the York cause papers represents only a sampling of those individuals experiencing marital difficulties over the course of the fourteenth century in the north of England, at the very least, it provides a reliable indication of the percentage of dissatisfied spouses who felt sufficiently secure in the outcome of their cases to plead a suit before the archbishop's officials.

Many historians have tried their hand at statistical analysis with varying degrees of success since the first attempts in the 1960s to make history a quantifiable subject and consequently transform history into a social science. In medieval history, this methodology has been particularly popular with a view to understanding just how violent were the Middle Ages. Their findings are clearly useful to this study because of their methodological approach, but also because their conclusions help us to understand the place of this study in current debates concerning the family and levels of violence.

Numerous British historians have described the late medieval period as an era in crisis. Accelerated concern about violence voiced in public petitions and royal statutes would seem to suggest that the normal legal machinery was incapable of addressing the current levels of crime. By the end of the thirteenth century, the English monarchy was compelled to experiment with various new forms of policing and law enforcement, such as the transformation of the keepers of the peace into justices, and the creation of trailbaston and oyer and terminer commissions for the purposes of dealing with sudden upsurges in levels of violence.[20] Barbara Hanawalt has argued that the rates of urban violence were so extreme that

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[20] For discussion of the diverse forms of governance instituted by the monarchy to deal with changes in levels and types of violence, see Richard W. Kaeuper, "Law and Order in Fourteenth-Century England: The Evidence of Special Commissions of Oyer and Terminer," *Speculum* 54 (1979), 734-84. Kaeuper also presents a good summary of the signs of growing concern in late medieval society that levels of violence were accelerating beyond control. See also J.R. Lander, *English Justices of the Peace, 1461-1509* (Gloucester, 1989); Timothy J. Runyan, "The Rolls of Oleron and the Admiralty Court in Fourteenth Century England," *The American Journal of Legal History* 19 (1975), 95-111; M. Keen, "The Jurisdiction and Origins of the Constable's Court," in John Gillingham, J.C. Holt (eds), *War and Government in the*

"in medieval London or Oxford, the man in the street ran more of a risk of dying at the hands of a fellow citizen than he did from an accident."[21] J.B. Given has taken this argument even further, declaring that "it is possible that every person in England in the thirteenth century, if he did not personally witness a murder, knew or knew of someone who had been killed."[22] Despite these bold assertions not all historians of the law have accepted this point of view without a degree of scepticism. In his study of oyer and terminer commissions of the later Middle Ages, Richard Kaeuper reminds us to ask ourselves whether what we are witnessing here was an increase in actual, as opposed to recorded, incidents of violence.[23] His query not only reminds us of the need to reconsider the effects of increased literacy and document preservation on the outward appearance of levels of violence, but also demands an accurate examination of statistical rates in order to determine just how violent was the period.

Both Philippa Maddern and J.B. Given have posited that late medieval culture in general was more violent than today's; each, however, attributes this level of brutality to different factors. Maddern argues that violence was institutionalised in medieval society in an overtly ferocious legal system that condoned execution, limited torture, harsh gaol conditions, and trial by battle. Further, she suggests that the knightly culture of medieval England centred on a cult of violence. Chivalry, with its tournaments, glorification of hunting and the duel, in effect rendered lawful a remarkably high level of brutality. Last, Maddern claims that Christianity itself justified violent acts. The portrayal of God as a wrathful being who both

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Middle Ages (Suffolk, 1984), pp. 159-69; Anthony Musson and W.M. Ormrod, *The Evolution of English Justice: Law, Politics and Society in the Fourteenth Century* (London and New York, 1999), pp. 115-160.

[21] Barbara A. Hanawalt, "Violent Death in Fourteenth- and Early Fifteenth-Century England," *Comparative Studies in Society and History* 18 (1976), 302.

[22] J.B. Given, *Society and Homicide in Thirteenth-Century England* (California, 1977), p. 40.

[23] Kaueper, "Law and Order in Fourteenth-Century England", 736.

permitted Jesus to suffer for the faith and supported the righteous in their violent actions (as occurred during the crusades) implicitly condemned pacifism as an anti-Christian value.[24]

While Maddern's assessment of medieval society is essentially sound, there is one significant oversight in her thesis as a result of her statistical analysis: she judges an entire era on the basis of records relating to one region of England spanning only twenty years. Such a generalisation does not take into account social, political or economic events that occurred beyond these two decades or outside her geographical area, both of which were sensitive to a variety of other criteria. Moreover, as Christine Carpenter duly notes, Maddern's research takes "insufficient consideration of qualitative, as opposed to quantitative, violence," a factor which flaws her statistical analysis.[25] Violence comes in many forms and needs to be addressed according to level of severity. Finally, her study is based entirely on the records of the King's Bench and gaol delivery rolls. As Maddern herself suggests, the former court was used primarily by members of the gentry as a tool to harass or coerce rivals in the land wars of the late medieval era. In an argument based on reliable, if complex, substantive reasoning, she maintains that propertied people were encouraged to categorise offences done against them as felonious trespasses. These records, on their own, are thus inadequate for the measurement of real levels of violence within medieval society. Ironically, moreover, they serve to contradict her main arguments. Even the meanest landholders, immersed as they were in the cults of both chivalry and piety, according to her criteria, ought to have tended towards violence, not purposely evaded it. Maddern's use of gaol delivery rolls also presents difficulties because these records reveal an incomplete perspective of violence in the later Middle Ages. In short, Maddern's sources of evaluation fail to meet her goals.

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[24] *Violence and Social Order*, pp. 79-84.
[25] Christine Carpenter, review of Maddern in *English Historical Review* 110 (1995), 714.

J.B. Given takes a different approach. He argues that medieval society was intrinsically violent for simple reasons. First, after the promulgation of the Statute of Winchester, all adult males in medieval English communities were required by law to carry weapons with them at all times, in the event that they might be called upon at a moment's notice to defend the village or apprehend a criminal. Given contends that the constant availability of weapons heightened the degree of violence among medieval Englishmen, easily transforming mild disagreements into potentially fatal encounters. Second, Given provides statistical evidence to suggest that the tavern was a common location for the occurrence of violent acts. From this observation he deduces that alcohol consumption aggravated aggressive tendencies; in other words, the noticeably high consumption of alcohol during the medieval period augmented levels of physical violence. While this is a plausible and maybe even logical assertion, the theory requires some sort of scientific validation before historians may comfortably accept alcoholism as a primary source of late medieval violence. Further, in a society where the local tavern (like the parish church) acted as an important social venue for community life, it does not seem all that unreasonable to assume that alcoholism may be less to blame than mere social interaction. Finally, Given advances the modern psychiatric view that the inability to think about the future was then, as now, a contributing factor in violent behaviour. He asserts that since mechanised clocks were a late fourteenth-century innovation, most medieval individuals before this suffered from an inability to think in time-related terms.

Given's arguments do not stand up to scrutiny. First, while it seems logical that the constant presence of weapons might have exacerbated a turbulent moment, Given fails to take into account the reality that in the heat of the moment any object can become a weapon if the

perpetrator wishes it to become so. For example, the Yorkshire gaol delivery rolls recount the tale of Robert Howet who found himself confronted by an angry woman, Dionysia the servant of Margaret de Swylyngton, in the kitchen of Margaret's home one day. He suddenly found himself cornered and unable to run for the door. Realising that his own death might be imminent he turned to the fireplace and picked up a burning torch to defend himself. After being struck repeatedly by the enraged servant, Robert responded with a single blow of the torch, immediately killing his attacker. Because the crime was perpetuated in self-defence and without malice aforethought, however, Robert was pardoned for his actions.[26] In the case of Robert Howet, a burning torch, while an unconventional weapon, was a useful one. Clearly, one argument cannot disprove an entire theory; however, this case certainly suggests that a more profound analysis of the statistics might offer a more insightful understanding of late medieval violence.

Second, in positing that medieval men and women were unable to think about the future without the aid of mechanised clocks, Given is also guilty of historical prejudice. Medieval society did have a concept of time, their mechanisms for measuring time were merely less precise. In this respect, it seems Given is confusing the measurement of time with time itself.[27] Last, Given's statistical analysis is intrinsically defective. Like Barbara Hanawalt, Given's ultimate goal is to make his study more meaningful by comparing his findings with modern levels of violence. In order to do so, he adopts a sociological convention of criminological statistical analysis, using population figures in order to determine how many slayings occurred per 100,000 people. The end goal of this, of course, is to estimate what

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[26] PRO JUST 3/141a, m. 26.

[27] For a discussion of medieval notions of time, see Jacques Le Goff, "Au Moyen Age: Temps de L'Église et temps du marchand," in his *Pour un autre Moyen Age: Temps, travail et culture en Occident: 18 essais* (France, 1977), pp. 46-65.

percentage of the population was involved in crime and to make it easier to compare to other periods and cultures in order to satisfy Given's anthropological leanings. The complication with this approach is that there are no accurate population totals for most regions in England from the medieval period. Any estimation of these figures, especially as constants for an entire century of the late Middle Ages, and one troubled with plague, pestilence and war, merely creates additional difficulties and inevitably discredits the entire study.

Despite the flaws in their arguments, and the vast differences in their approaches, Maddern and Given represent the prevailing scholarly perception of the late Middle Ages as a violent, lawless era. Implicit in both approaches is the notion that violence began in the home. Both Maddern and Given imagine the medieval home as a setting in which discipline was frequent and physical. Given, in particular, argues that "violence is a learned trait"; overuse of the rod and staff by parents in moral discipline taught their children how to be violent.[28] Owing to their flawed analyses, neither scholar is able to corroborate their assumptions with solid proof. Nevertheless, both feel sufficiently confident in their assertions to declare that medieval society was inherently violent, and further, that the cause of this brutality can be traced largely to an increased measure of violence at the most basic level. In light of this widely held assumption, a study of spousal abuse in later medieval England is of central importance to an understanding of how violent were the late Middle Ages. While it is not the goal of this dissertation to prove or disprove the theory that the Middle Ages were a period of exceptional violence, the findings of this study certainly suggest that both Given and

[28] Given, *Society and Homicide*, p. 193.

Maddern may have been overzealous in their conjectures concerning levels of domestic violence, and that families and neighbours worked together to diminish violence in the home.

The Secular Courts

To date, research into the sociology of crime by historians such as Barbara Hanawalt, J.B. Given and Philippa Maddern has focused primarily on gaol delivery rolls. These records also form an essential base to this study; however an attempt has been made to avoid the pitfalls inherent in these records with a cautious and judicious use of statistical analysis. In light of the statistical failings of previous studies, this author has espoused an approach to numbers and documents that is broad in perspective. This study focuses primarily on two regions of England in particular, York and Essex, and examines all gaol delivery records available for both over the course of the entire Middle Ages.[29] With this *longue durée* view, it is possible to discern changes over time, as well as to avoid the hazard of falsely assessing the entire period based on what might be a brief period of excessive violence caused by unknown exterior forces.

While both Given and Hanawalt have restricted their statistical analysis to gaol delivery rolls, it seems reasonable to examine also the coroners' rolls. In situations of violent or unexpected death, it was the responsibility of the medieval coroner to determine the cause of death. Rulings were made in the course of an inquest which included the questioning of the neighbours, any witnesses, and the first finder, and by means of careful examination of the body in order to detect any suspicious lesions or abrasions which might indicate death due to

[29] By "all gaol delivery records" I mean to imply not only those which belong to the class of records categorised as gaol delivery (JUST 3), but also those gaol deliveries which appear in the records of the eyre courts from the early part of the period (JUST 1) and those in the King's Bench rolls (KB 27).

unnatural causes (such as bruising caused by strangulation). This combination of verbal inquiry and physical examination sometimes led coroners to identify the spouse as a culprit. This type of evidence is of great value for a study of spousal abuse: coroners' inquests, convened soon after a body was discovered, provide a window into the minds of the community and often speak clearly to their immediate suspicions and attitudes. For the purposes of statistical analysis, the inclusion of this type of record has proven to be fruitful. For a variety of reasons, many of the cases of spousal homicide in the coroners' rolls were not also included in the gaol delivery rolls, among others because the accused fled the scene of the crime and failed to reappear in the community to stand trial. Occasionally such incidents make their way into the gaol delivery rolls, but not consistently, and thus a full perspective of spousal homicide from the period requires examination of both.

In order to round out the study of evidence of marital violence in the royal courts, all records of extant sessions of the peace for the two counties have also been included. Following the demise of the eyre in the fourteenth century, the royal government experimented with various forms of peace-keeping. The justices of the peace were only one of these creations intended to act as a local extension of the central government in dispute resolution and policing. Over the course of the fourteenth century, the royal courts sometimes entrusted the justices of the peace with the power to determine felony indictments. Owing to their jurisdiction, their ability to enact summary convictions, and their local nature, the peace keepers and their records must be an integral component of any thorough study of spousal abuse and homicide.

Finally, for the later part of the period, bills of complaint enrolled in Chancery and brought before the chancellor for resolution have been examined. These records are essential

to a study of spousal abuse in the late medieval period principally because they offer insight into unprecedented cases of abuse for which the common law was incapable of providing a remedy. Because of the paucity of these records dealing with cases of marital violence and marital disharmony, instead of examining only cases relating to York and Essex, all relevant records were taken into consideration.

The royal courts were not the only secular courts with criminal jurisdiction in England, however; in order to investigate spousal abuse at the most basic level possible it is necessary to delve into the extant records of the local courts, both manorial and borough. Theoretically, manor courts were seigneurial courts held by the lord of the manor for his unfree tenants.[30] The justice dispensed in these courts was grounded firmly in regional custom, although there are some grounds to suspect that common law held considerable influence in these courts as well.[31] The manorial courts primarily dealt with cases of civil jurisdiction, but also some disciplinary matters of a criminal (but non-felonious) nature, such as small-scale assault ("drawing blood", or initiating an "affray") and petty larceny. The borough courts for the urban centres worked in much the same way and dealt with similar cases. The borough courts were not feudal in nature; they were a development of the high Middle Ages, granted by the king as a concession intended to resolve the unusual problems that arise in an urban environment. Consequently, while they were royal courts *per se*, the common law was not as binding in this forum. In utilising both kinds of local documentation, differences between urban and rural strategies to combat marital disharmony become

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[30] In theory, at least, manorial courts were intended for a lord's unfree tenants. In practice, the situation was more complex than that. Anne and Edwin DeWindt note that it is important to distinguish between servile status and servile tenure because free men might hold servile tenements just as unfree men sometimes held free tenements. As a result, who was attending the manorial court was not necessarily as clear-cut as one might think. See Anne DeWindt and Edwin DeWindt, *Royal Justice and the Medieval English Countryside*, pt. 1 (Toronto, 1981), p. 109*n*.

immediately apparent. For the county of York, the voluminous records of the manor of Wakefield[32] have been examined together with extant materials from the manors of Sheffield, Thorner, Pontefract, Bradford, and Tickhill Honour. For Essex, Earls Colne,[33] Nazeing and the borough of Colchester[34] provide the base for a local investigation of domestic violence.

The use of records from such a wide variety of secular courts also offers insight into a part of marriage that often lies hidden: abuses of marital property and its effect upon a wife. This form of economic abuse can be very illuminating and offer evidence into why a marriage turned sour. Both common law and custom provided a wife with ample economic security after the death of her husband. By the time of Edward I, common law awarded a widow an irreducible one-third of her husband's lands at his death, and the husband might even specify that she receive more, providing his heir was in agreement. A widow's rights in this respect were quite extensive. The definition of dower was understood to imply not only those lands for which her husband had died seized, but all land her husband had held during their marriage.[35] Consequently, during their marriage, the wife's consent was required in order for

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[31] John S. Beckerman explores this issue in depth. See his "Procedural Innovation and Institutional Change in Medieval English Manorial Courts" *Law and History Review* 10 (1992), 197-252.

[32] The records of the manor of Wakefield are a stunning collection including a vast number of both courts and tourns from the thirteenth century onwards. Since a large number of these rolls have been transcribed (sometimes translated) and published by the Yorkshire Archaeological Society, only the published sources have been used for this study. While the headings of 'courts' and 'tourns' were intended to record the separate jurisdictions of the lord's court into civil and quasi-criminal actions, both types have been examined for the purposes of this study. Jurisdictions, particularly in the manorial records of the late medieval period, were never as firm as the term might suggest. Because these records are so pertinent to the study of abuse at a local level, an examination of both jurisdictions proved to be quite useful.

[33] This author made great use of Alan Macfarlane's translations and microforming of the Earls Colne records. See Alan Macfarlane, *Records of an English Village: Earls Colne, 1400-1750* (Cambridge, 1980-81).

[34] The records of Colchester borough are as abundant as those for Wakefield manor. In the interests of brevity, this author chose to examine only published borough records. Herbert Jeayes has edited and translated three large volumes of rolls, spanning the majority of the fourteenth century (1310-1352, 1352-1367, and 1372-1379). See *Court Rolls of the Borough of Colchester*, ed. and trans. Isaac Herbert Jeayes, (3 vols Colchester, 1921).

[35] Eileen Spring, *Law, Land, & Family: Aristocratic Inheritance in England, 1300 to 1800* (Chapel Hill, 1993), pp. 40-1.

the husband to alienate permanently any piece of land. In terms of goods and chattels, the widow was entitled to *legitim*, a customary division of family property intended to offer protection particularly for widows of merchants and manufacturers whose wealth may have been measured almost entirely in movable goods. Unlike dower, this was not a life-time grant, however; a widow was permitted to dispose of this property as she wished. Finally, English custom also made provisions for the widow's bench, the right of a widow to enter and enjoy her husband's estate for the duration of her life, provided she continue to pay rent for the property and perform the necessary services. The widow was also permitted to live in the house she shared with her husband for forty days after his death, at which point in time a suitable agreement was negotiated with her husband's heir.[36] Because some of the rights were afforded to widows by custom, not common law, the king's courts were not always the most appropriate venues to take action in order to defend a widow's property rights, and accordingly it is necessary to look at all the secular courts for cases of this type. The records certainly demonstrate that widows might, at times, be quite aggressive in the pursuit of their property. Nevertheless, during a marriage, a wife's rights to that same property were not protected. English law of the medieval period pursued a policy of coverture, in which the wife's rights were thought to be "covered" by her husband, so that the couple were in fact perceived as one person by the law. Accordingly, a wife deprived of support by her husband had little recourse since interspousal tort immunity existed between the two. In the case of a separated couple, a wife's rights were even more depleted. In order to explore fully the ramifications of the law of coverture in cases of economic abuse, and thus further illuminate

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[36] For a fuller discussion of *legitim* or the widow's bench, see Caroline M. Barron, "Introduction: The Widow's World in Later Medieval London," *Medieval London Widows 1300-1500*, ed. Caroline M. Barron and Anne F. Sutton (London, 1994), pp. *xvii-xxi*.

possible causes of domestic violence, both the secular and ecclesiastical court records have been culled for all information relating to abuse by deprivation.

Moreover, such a broad array of secular records also provides valuable insight into why men sometimes strove to keep a failing marriage together. The burden of supporting two separate homes may have been an alarming prospect for men of even the highest estate. Even in the Middle Ages men were expected to provide alimony for their separated wives. Consequently, a rapidly deteriorating marriage had important economic ramifications that may well have offered sufficient justification for prolonging an unhappy union. Clearly, if continued marital abuse is to be understood, the effects of coverture on both husbands and wives must be taken into consideration.

Given the broad range of data involved in the statistical analysis of secular resolutions of marital difficulties, this study should provide an accurate picture of levels of spousal abuse dealt with in the secular courts in the counties of York and Essex throughout the period. Yet, the significance of these figures must not be inflated. Rather than estimate populations or attempt to gage total percentages of violent crime in the communities, the goal of this study is to understand that these figures may only be analysed for an examination of fluctuations in levels of abuse within a limited context. In other words, the number of cases tells us more about excessive violence that necessitated secular legal intervention than total levels of violence within the community. This study, however, is about much more than mere numbers and rates. Despite their flaws, the records noted above are entirely appropriate for an understanding of representations of spousal abuse. Among the often terse descriptions of deaths, homicides and assaults there appear, intermittently, in-depth accounts of the abuse leading up to and including the death of a spouse. Indeed, the exceptional nature of the crime

occasionally warranted a full description of events, as well as of any precautions taken by neighbours and family to prevent such an occurrence. These accounts lend themselves well to a study of communal perceptions of blame in cases of spousal homicide, and, also, give us some insight into how the secular courts represented domestic violence. The records of the secular courts, then, not only provide powerful insight into levels of abuse, but offer indications of how both communities and the courts perceived cases of spousal abuse.

The Records of the Church Courts and their Value to a Study of Abuse

Among legal historians of the medieval period, there is a tangible division between secular and ecclesiastical historians; while secular legal historians are at ease shifting between royal, feudal and local courts, regardless of the massive distinctions among these jurisdictions, few secular legal historians have considered delving into the records of the church courts. This barrier seems also to apply in the reverse. There are many reasons for the existence of this boundary within the discipline; mostly it springs from a widely held belief that they are entirely different legal systems with separate jurisdictions, and that in the event of conflicting jurisdictions, the secular courts always superseded the ecclesiastical. Research by W.R. Jones and R.H. Helmholz demonstrates that both the jurisdictions and power structure of the two court systems were simply not that clear-cut.[37] The church courts often dealt with matters which should have rightfully come before the secular courts as felonies, misdemeanours or civil suits; however, as Jones has argued much of the difficulty is that

[37] See, W.R. Jones, "Relations of the Two Jurisdictions: Conflict and Cooperation in England during the Thirteenth and Fourteenth Centuries," in W. Bowsky (ed.), *Studies in Medieval and Renaissance History*, 7 (Lincoln, 1970), pp. 77-210; R.H. Helmholz, *Canon Law and English Common Law* (London, 1983), and his "Crime, Compurgation and the Courts of the Medieval Church," *Law and History Review* 1 (1983), 1-26.

> [n]either the clergy nor the laity were united among themselves in defending one jurisdiction or the other. Both laymen and clerks of all ranks took their legal problems to whomever could solve them regardless of rival claims and pretensions.[38]

Because of the failure of contemporaries to recognise any rigid distinction in jurisdictions, even cases of assault or homicide sometimes made their way into the venue of the church courts. In the case of homicide, for example, the charge frequently resulted from slander litigation: a person had been defamed in their community as a murderer, and wished to clear their name in the church courts through litigation.[39] To do this, however, an investigation into the allegations was required, in order to discover whether or not the crime had actually been committed. In this kind of situation, the church courts were, in effect, acting as judges in cases of felony. Similarly, by the late fourteenth century, it is said that any semi-literate man might claim benefit of clergy in cases of felony since a simple reading of the neck verse was more than sufficient to demonstrate one's clerical background.[40] In this way, many cases of homicide by laypersons also found their way before the officials of the medieval church for judgement.[41] Because of this shared jurisdiction, and the church courts' important function in dealing with marriages and delinquent spouses, the records of the ecclesiastical courts play a vital role in the study of domestic violence in this period.

There were two main divisions of ecclesiastical jurisdiction in late medieval England. Both are pertinent to the research undertaken here:

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[38] Jones, "Relations of the Two Jurisdictions", p. 88.
[39] For example, see the case of Idonea of Bainton on pp. 399-402 of Chapter Five.
[40] See Leona C. Gabel, *Benefit of Clergy in England in the Later Middle Ages* (New York, 1969), pp. 70-3.
[41] For a more in depth discussion of who might claim benefit of clergy, see Gabel, p. 79.

1) *Ad instantiam*: This jurisdiction was very much akin to the civil jurisdiction of the secular legal system. *Ad instantiam* cases were disputes between parties who believed they had been wronged in some way or another. Each case was initiated by one of the parties involved, rather than a judge or official of the court. In matrimonial cases, litigation typically revolved around confusion arising out of the private exchange of marriage vows. One of the most astonishing features of medieval wedlock was that, owing to its informality, it was conceivable for one party to suppose that he or she had entered into a valid marriage, and the other party to deny it. From the twelfth century onwards, a valid marriage was deemed to be one in which consent was conveyed in words of the present tense (*de praesenti* consent, that is, "I take you as my spouse"). However, because no set vocabulary was assigned for this purpose, misunderstandings may often have arisen out of the choice of terms or phrases used to indicate consent. Richard Helmholz illustrates the complexities in interpretation created simply by the use of the term *volo* (I will). He observes that

> [t]he dominant medieval opinion seems, however, to have drawn a distinction based on the nature of the verb which followed *volo*. Where that verb denoted the *execution* of a marriage, the contract was by *verba de presenti*. Where it denoted merely the initiation, the words constituted *verba de futuro* [betrothal]. 'I will take you as my wife' therefore constituted only *verba de futuro*, because the verb 'to take' refers to the start of a marriage relationship. But 'I will have you as my wife' was a present contract since the act of *having* a woman as a wife denoted the desire to participate in an already existing union.[42]

The exchange of marriage vows, then, was fraught with misapprehension. If a man believed he had initiated a betrothal and then later was not so confident, should he be held to this original (but misconstrued) contract? The ambiguity inevitably meant that the most frequent type of matrimonial case brought before the ecclesiastical courts was multi-party litigation in

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[42] Helmholz, *Marriage Litigation*, p. 36.

which two women alleged that they were married to the same man, or *vice versa*. These were not the only kinds of marriage litigation that appeared before the courts. Throughout the Middle Ages there were a number of recognised impediments to marriage, including consanguinity, affinity and sponsorship,[43] impotence, force and fear,[44] and nonage.[45] All of these situations acted as grounds for annulment if a marriage had been contracted and the impediment was discovered after the fact.

The records of cases heard *ad instantiam* reveal much about the intimate relationship between husband and wife. They include not only requests for annulment and enforcement of marriage, but also demands for restitution of conjugal rights or allegations of non-cohabitation and lack of marital affection, and so afford a great deal of insight into the minutiae of those relationships. More particularly, these records include requests made for divorce *a mensa et thoro* (from table and bed) -- a formal separation.[46] Although the church was adamant in its belief that marriages are indissoluble, it did at the very least permit couples to live separately in situations of excessive cruelty or adultery. A separation, however, did not annul the union: the couple was still deemed married even if they no longer behaved as a married couple. A discussion of the kinds of cases for which the church permitted a separation, then, reveal much about general attitudes towards spousal abuse.

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[43] By the early thirteenth century incest was defined as entering into marriage with a person related within four degrees (*i.e.* third cousin) by blood (*consanguinity*), by marriage or by sexual union (*affinity*), or by sponsorship or spiritual relationship (*e.g.* a godparent).

[44] Medieval canonists insisted that no individual might be coerced into marriage. Thus any marriage contracted under duress might be annulled. See Helmholz, *Marriage Litigation*, p. 93.

[45] According to Catholic doctrine, the marriageable age for females was twelve, for males fourteen. Any marriages contracted before these ages might be annulled.

[46] A formal separation was only a release from cohabitation, not an annulment. Remarriage was not possible after a divorce *a mensa et thoro*, and any further sexual relations were interpreted as a reconciliation, and thus nullified the separation.

2) *Ex officio*: The *ex officio* process that we see in the English ecclesiastical courts seems to have been derived from the inquisitorial process that emerges in the early years of the thirteenth century under Pope Innocent III. This process was developed in response to a perceived need to remove the central role in prosecution of sinful activities from the hands of individual complainants and transfer it to public authorities.[47] These cases were disciplinary prosecutions initiated by court summons and intended to reform the moral behaviour of the individuals arraigned. The courts obtained information regarding these cases through communal response to articles investigated in the course of episcopal visitations, complaints by churchwardens or through petitions to the ecclesiastical courts by individuals or communities. These records are of prime importance in studying spousal abuse in later medieval England for a number of reasons. First, they include petitions from frustrated neighbours complaining of the disruption of village harmony caused by an abusive couple. These petitions, then, alert us to one crucial aspect of spousal abuse which is usually hidden from the historian, that is, general perceptions of culpability in cases of domestic violence. These records demonstrate that men were by no means held exclusively responsible for conjugal violence in the late medieval context. Most important, however, these disciplinary records provide insight into cases of marital breakdown. The court was empowered to penalise couples for non-cohabitation or desertion; accordingly, the records allow a brief venture into statistical analysis to elucidate levels of spousal repudiation, while simultaneously constructing an understanding of the causes of marital breakdown. These records are explored in conjunction with the archbishops' registers, correspondence between various archbishops of York and Canterbury and lower church officials regarding individual

[47] For a fuller discussion of the origins of the *ex officio* process, see R. Fraher, "The theoretical justification for the new criminal law of the high Middle Ages: '*Rei publice interest, ne crimina remaneant impunita*',"

cases and actions.[48] *Ex officio* registers provide a fuller view of the archbishop in a disciplinary capacity, for they generally include discussions of matrimonial complications and transgressions by members of the upper echelons of society.

In examining both types of documents, the records of the archbishops for the northern and southern ecclesiastical provinces and records from the dioceses of York, Canterbury and London[49] have been utilised with a primary focus on the counties of York and Essex, with some insight into eastern Kent. Because of the paucity of records surviving for Essex, it seemed prudent to extend the investigation to neighbouring Kent, a county that shared much of Essex's rebellious history and political concerns.[50] Nevertheless, both the northern and southern provincial records include also a wide variety of records from other counties that were taken into consideration in this study in order to document the court's overall approach to abuse. Similarly, in the use of Chancery records for the later part of the period, bills of complaint for all counties of England were examined, rather than those for just Yorkshire and Essex. The goal, then, is not to describe the manifold understandings of abuse in the contexts of York and Essex alone, but to utilise these distant counties to uncover commonalities that may suggest a broader medieval English approach to abuse in and out of the courts.

The records of the church courts are an essential companion to the royal records in any study of levels of violence. That spousal abuse reached the point of homicide at all

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University of Illinois Law Review (1984), 577-95.

[48] Many archbishops' registers exist in printed form, and retain the Latin of their originals. While the archbishops' registers only offer insight primarily into the diocesan work of these officials (thus, limiting an investigation to the dioceses of York and Canterbury respectively) an examination of the printed records of the diocese of London (of which Essex was a part) was also included in this study. However, the London records had little to offer with respect to cases of marital violence.

[49] In order to reduce the volume of records, for the diocese of London only those records having to do with the county of Essex were taken into consideration.

[50] See p. 167 of Chapter Two for a discussion of the shared similarities between the two counties in terms of history and regional concerns. The diocesan records for Canterbury also include some parts of Sussex; however, the Kent material proved to be most useful.

demonstrates that, then as now, the communal and legal machinery was insufficient in dealing with domestic violence. Understanding the frequency with which husbands or wives resorted to homicide as a resolution, however, requires a fuller comprehension of the normal methods of dispute resolution.

The Dissertation in Brief

No study of domestic violence within an historical period would be complete without an analysis of literary representations of spousal abuse. The first chapter, then, begins with a study of standard works of shared culture from the late medieval period, covering as broad a spectrum of literature as possible. Sermon literature and legal treatises as well as popular songs are brought together with Chaucer's *The Wife of Bath's Prologue* and the Flood story of the English mystery plays. The purpose of this investigation is to discern general attitudes towards domestic violence as well as to unravel the complexities of the popular trope of the *mundus inversus*. More important still, Chapter One attempts to demonstrate the complexity of such a study. Medieval understandings of domestic violence as portrayed in literature focus not only on the ethics of beating one's wife, but also the causes of abuse. Sermon literature in particular provides an interesting and enlightening view of culpability, not so far divorced from the modern era as one might have expected. Finally, competing notions of acceptable masculine behaviour in a variety of literary venues is addressed in order to grasp medieval expectations for married men.

Chapter Two attempts to examine the regulation of marital violence in its earliest stages. Using manorial and borough court records as well as the evidence of the church courts for both York and Essex, the reactions of family and community to disruptions of the peace

by violent couples is examined, highlighting both official and unofficial actions employed to ease a couple's marital difficulties and the role played by both male and female members of the community in the regulation of domestic violence. These same records demonstrate that the regulation of spousal abuse by communities may have been linked intimately to a growing intolerance of aberrant behaviour. Marjorie McIntosh's recent book, *Controlling Misbehavior in England, 1370-1600*,[51] marks the late fourteenth century as a vital period in the history of communal relations. No longer willing to tolerate social nonconformity, local courts took it upon themselves to punish persons from within the community for spiritual sins as well as socially disruptive behaviour. Among others, aggressive women became an immediate target and were submitted to a variety of punishments to curb their unacceptable behaviour. There is also some suggestion that husbands were, at times, held accountable for the unruly conduct of scolds, as notions of patriarchy and governance became increasingly more central to English society. Chapter Two endeavours to draw the links between this growing intolerance of women who voiced their opinions, patriarchal supervision and domestic violence.

Barbara Hanawalt's work on crime and the community in the first half of the fourteenth century confirms that domestic homicide is the obvious starting point for an investigation into spousal abuse, primarily because the phenomenon yields records that can be submitted to quantifiable analysis. Chapter Three adopts this same premise, although it attempts to push the value of the records to their fullest. Coroners' rolls and records of gaol delivery, as well as the surviving records of the justices of the peace, are utilised in order to determine approximate numbers of violent crimes appearing before the royal justices of the late medieval period and what proportion of these figures reflect deaths at the hands of a spouse. Statistical analysis is employed in order to unearth similarities between cases of

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[51] Marjorie Keniston McIntosh, *Controlling Misbehavior in England, 1370-1600* (Cambridge, 1998).

domestic homicide, not only in methodology, but also in judicial treatment, in the hopes of confirming or rejecting the many assumptions historians have made about spousal homicide in the medieval period. Finally, each case of spousal homicide is submitted to a rigorous examination of the way it was recorded, an exercise intended to uncover the jury's reaction to cases of this type and to highlight any deviations in the accounts which might suggest general attitudes towards the phenomenon.

Chapter Four approaches abuse in marriage from a micro-historical perspective. Six case studies of applications for a judicial separation on the grounds of excessive cruelty, drawn from the York cause papers of the fourteenth to early sixteenth centuries, are examined both separately and as a collective in the hopes of revealing popular and ecclesiastical perceptions of domestic violence. For this chapter in particular, abuse has been interpreted in the widest possible sense. Although only physical violence might be put forward as a reason for a separation, libels and witness depositions both suggest that the people of late medieval England had a much more complex understanding of what constituted abuse within marriage, extending from misuse of marital funds to psychological torment. While very few verdicts survived the era, because litigants were cautious to shape their accounts in a way that might secure a sentence in their favour, the approach adopted by the late medieval church in England towards abuse is also discernible and is investigated together with more general perceptions.

Chapter Four approaches spousal abuse in the church courts using the records of marriage litigation extant from the late medieval period; Chapter Five, on the other hand, proffers a different look at the court's jurisdiction, emphasising instead the role of the church as disciplinarian in cases of domestic violence. Couples were summoned regularly before the

courts of the late medieval church to respond to allegations of spousal non-cohabitation or abuse. Chapter Five examines such records with a view to determining frequency of abuse, as well as popular responses to abuse. Because the cases of marital disharmony appearing in the records of the *ex officio* jurisdiction of the church were not initiated by a litigant but the court itself,[52] they offer insight into the regular process of dealing with abuse by the couples themselves, even if their actions may have conflicted with ecclesiastical values. Moreover, they provide valuable insight into life after a separation, highlighting the difficulties experienced by both men and women in the creation and execution of effective maintenance agreements.

Throughout the Middle Ages, there were cases that did not apply fully to either the secular or ecclesiastical jurisdictions, but it was not until the fourteenth century that a court was established specifically for the resolution of irregular suits. Chapter Six examines the English side of the court of Chancery, which emerged out of the mid-fourteenth century as a strange amalgam of royal and ecclesiastical judicial practice. While it was a royal venue, the judgements rendered in Chancery were based on canonical procedure dedicated to equity and *ad hoc* decision-making rather than the more restrictive methods of the king's courts. Because royal courts functioned on a writ system, all cases appearing in these courts were forced into the particular moulds available to them. If a writ did not exist, the crime could not be addressed in the king's courts. In fact, it was the inflexibility of the common law courts that required the establishment of a court to resolve those cases that fell through the gaps of

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[52] *Ex officio* cases in this period were usually informed by the presentments of church wardens. However, cases of this type might also arise from the promotions of a private party. With respect to spousal violence, an interested party might well be a family member of the victim, or a neighbour tired of continuous domestic strife. Even an *ex officio promoto* case, then, offers a much different perspective of spousal violence than marital litigation. In litigation dealing with domestic violence, there is inevitably a victim; *ex officio* cases of marital disharmony, on the other hand, do not require one.

the common law system. Over the course of the late Middle Ages, Chancery became progressively more popular as an alternative venue for dispute resolution, so much so that by the year 1487, at least 500 cases came before the court every year.[53] Because of the nature of the Chancery court as an extraneous forum for uncommon legal quandaries, it was tailor-made to suit the unique problems that arise from cases of marital disharmony. Chapter Six, then, undertakes a foray into the uncharted territory of spousal abduction and marital harassment, and takes up once again the issue of alimony in order to determine the court's general attitude towards domestic violence and its approach in resolving abuse-related claims.

The Parameters

Some necessary constraints have been placed upon this study, the most obvious being an exclusive focus on an English context. The decision to remain focused on English history derives from available documentary sources and distinctions in judicial settings and procedures. First, English legal records (both secular and ecclesiastical) demonstrate a level of completeness superior to most other European kingdoms of the era. Not only were English scribes dedicated to meticulous recording of juridical procedure, they were concerned equally with the preservation of these materials. For the purposes of a statistical analysis of levels of physical violence throughout the period, English records offer a greater likelihood of accuracy.

Second, it has been written that medieval England was an extraordinarily litigious society by both medieval and modern standards. This penchant towards legal resolution of disputes was not limited merely to the male half of society. As Sue Sheridan Walker has

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[53] Timothy S. Haskett, "The Medieval English Court of Chancery," *Law and History Review* 14 (1996), 277.

demonstrated in her study of Englishwomen and dower litigation, women showed a high degree of initiative and specialised legal knowledge in what was essentially the pursuit of "women's business."[54] This proclivity makes English society stand out from continental practice in general approach to the law, but it suggests that English examples of dispute resolution in cases of spousal abuse (where women were most often the victims) should be much more plentiful than the continental counterparts.

The large number of extant records for the English context, particularly where royal records are concerned, necessitates a more narrow focus than simply England. Consequently, this study concentrates primarily on the counties of York and Essex.[55] These two particular counties were chosen for a variety of reasons. Evidently, York and Essex represent the two geographic extremes with respect to England's legal centre. Because of its proximity to London and Westminster, any changes in legal perspective or practice would have been quickly disseminated to the royal courts of Essex. Recent studies of the courts of the northern counties, however, suggest that, while York may have been quite distant from the legal centre, northerners had a very strong sense of justice and were willing to use the royal courts to deal with the wide variety of problems associated with living near the Scottish border. For example, Cynthia Neville has noted that fifteenth-century northern juries frequently employed the laws of treason to their advantage in order to penalise cross-border criminal activity.[56] Such an innovative use of the law courts suggests that Yorkshire juries

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[54] Sue Sheridan Walker, "Litigation as Personal Quest: Suing for Dower in the Royal Courts, 1272-1350," in her *Wife and Widow in Medieval England* (Ann Arbor, 1993), pp. 81-108.

[55] As previously mentioned, this division by counties was not applied when looking at the records of the ecclesiastical courts. The records of the ecclesiastical courts are not quite as numerous, and thus it was feasible to examine the records of the two archbishops' courts for the entire period, focusing on both their provincial and diocesan business. For the south, records from the diocese of London were also used because in order to shed more light on the situation in Essex (which was part of the diocese of London).

[56] C.J. Neville, "The Law of Treason in the English Border Counties in the Later Middle Ages," *Law and History Review* 9 (1991), 1-30.

may well have adopted an equally creative approach to cases of spousal abuse. With such different social and political agendas, it seems clear that any similarities shared between these two distant counties with respect to situations of domestic violence, then, may well represent a peculiarly English perspective. Perhaps more significantly, the extant records for both counties are especially good. Because of its size and the reliable preservation of its legal documentation, records of all types (royal, ecclesiastical, and manorial) for the county of York in the later medieval period are plentiful and, in the case of the royal and manorial records in particular, appear to be fairly complete. Essex, on the other hand, with a much smaller jurisdiction and population, offers a more meagre lot of records, particularly where the records of the church courts are concerned.[57] In this respect, in order to provide a broader perspective of southern views of spousal abuse, records from the diocese of Canterbury have also been included. Given the similarity of histories and political activism in both Essex and Kent, the Canterbury diocesan records, which include eastern Kent and parts of Sussex, seem like a logical choice. With respect to the royal records, when compared to other central counties in England the survival of Essex's records seems to be particularly good. As a result, these two counties with sheer numbers on their side present themselves as ideal candidates for a statistically based study. Finally, Essex is an obvious choice for the study of a woman-centred subject in this period of transition simply because of its later history. As Alan Macfarlane has noted, Essex was a hotbed of witchcraft prosecutions in the late sixteenth and seventeenth centuries.[58] It seems possible that any abnormal attitudes towards women that

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[57] I would like the extend my thanks to Shannon McSheffrey who generously provided me with transcriptions of all the relevant cases of spousal abuse from the diocese of London (which included the county of Essex), specifically LMA MS DL/C/205, GL MS 9064/1-8 and 9065.

[58] Alan Macfarlane, *Witchcraft in Tudor and Stuart England: a regional and comparative study* (Prospect Heights, Ill., 1970).

might have encouraged a wave of misogyny of this magnitude may well have originated in the period immediately preceding the Reformation. Thus, a study of the late medieval courts of Essex offers a unique opportunity to view a society that was becoming increasingly troubled by the activities of women. It seems reasonable to suppose that this attitude may well be reflected in Essex's method of handling cases of domestic violence.

This study is also limited temporally to the period from 1215 to the Reformation. There are a number of reasons why this period boasts a certain integrity. First, changes in theology initiated by the reformation of the church in the twelfth century had profound ramifications on the formation and stability of marital relations. It was during this period, under the influence of the writings of both Gratian and Peter Lombard, that Pope Alexander III, and Innocent III after him, fully developed then refined the notion of marriage based solely on consent. Before the twelfth century, marriage differed widely according to local custom. Common to all Western European cultures, the principal features of marriage were some kind of a financial transaction between families, followed by consummation of the union by the couple. Thus, the church's reorientation of marital practice towards an exclusively consensual union that, by implication at least, overrode the wishes of families, represented a significant change in marital policy. It was also during this same period that the church standardised its views on what constituted impediments to marriage, a development that is integral to this investigation. With the church's renewed interest in such matters, marriage as an institution began the long trek towards uniformity throughout Christendom. It was not until the thirteenth century, however, that we begin to trace this quasi-standardisation in all Western European societies.

Moreover, the Fourth Lateran Council of Innocent III's pontificate, held in 1215, was an important turning point in both ecclesiastical and legal history. Most important to a history of marriage, it was at this gathering that marriage was included formally among the church's sacraments. The gathering also had a tremendous influence on the administration of criminal justice by the king's courts of the thirteenth century. Amidst the variety of other consequential rulings of the Fourth Lateran Council, it was determined that the church would no longer permit clergy to participate in trials by ordeal.[59] While the judicial ordeal was actually a secular legal procedure, a priest was required to officiate at these rituals in order to sanction it with divine judgement. Without ecclesiastical authorisation the secular courts in England were compelled to adopt an alternative method of proof, namely the petty jury, which persists to this day in most Commonwealth nations as the standard method of trial. The year 1215, then, constitutes a logical point from which to begin this investigation. Finally, because of the changes in attitudes to women and their role in society which followed the religious Reformation and the growth of the modern state, it seems wise to terminate this study with the very early sixteenth century.

Previous studies of violence in later medieval society generally agree that attitudes towards abuse in the home are central to a greater appreciation of levels of violence in English society. Of all the reasons for studying spousal abuse in the medieval era, the most important, then, is the most simple: spousal abuse had far-reaching effects on the well being of society. The health and welfare of a community are directly related to family dynamics within the

[59] 'Ordeals' were known as *iudicium dei* -- the judgement of God. They were physical judicial tests undertaken by defendants under strong presumption of guilt in which the outcome was perceived to be a divine sentence. See Robert Bartlett, *Trial by Fire and Water: The Medieval Judicial Ordeal* (Oxford, 1986) for the various types of ordeals and their uses in medieval society.

home. In order to represent more accurately the levels of violence within medieval society, attitudes and incidents of spousal abuse must be a primary focus.

Chapter 1:

"If I aske our dame bred, che takyt a staf and brekit myn hed":[1] Medieval Perceptions of Marriage and Domestic Violence

Although marriage in the medieval period seldom has been described as a positive experience for women the most censuring remarks made by an historian about marriage in the later Middle Ages have come from Lawrence Stone. His assessment of the medieval family as a passionless and violent group of individuals, tied together in a transient way purely by economics paints a grim image of late medieval society. Yet, as Alan Macfarlane has argued, the knot with Stone's conception is merely that he has "stated bluntly what many have assumed but never said."[2] The myriad studies since the 1970s concerning the position of women in later medieval society generally confirm Stone's beliefs and strengthen his argument. While many historians insist that our understanding of attitudes towards women in this period are ultimately shaped by the misogynistic writings of sexually frustrated clerics, both the literary and legal evidence clearly point to the fact that women's rights and role in society were restricted and firmly subordinated to their masculine counterparts.[3] The quantity of evidence alone has led some well known historians to conclude that in the Middle Ages "[f]emaleness was defined by submissiveness of wives who were expected to defer to their

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[1] From a "A Henpecked Husband's Complaint, I", author anonymous. This poem appears in full in Rossell Hope Robbins, *Secular Lyrics of the XIVth and XVth Centuries* (Oxford, 1952), p. 38.
[2] Alan Macfarlane, review of Lawrence Stone's *The Family, Sex and Marriage in England 1500-1800* in *History and Theory* 18 (1979), 104.
[3] For examples of this argument, see: R. Howard Bloch, *Medieval Misogyny and the Invention of Western Romantic Love* (Chicago, 1991); Jacques Dalarun, "The Clerical Gaze," in Christiane Klapisch-Zuber (ed.), *A History of Women in the West. II. Silences of the Middle Ages*, (Cambridge, 1992), pp. 15-42; Kitty Dean, "*Maritalis affectus*: Attitudes towards marriage in English and French Literature," Ph.D. dissertation (California, 1979).

husbands in both private and public," and that "[t]he wife's duty to obey, and the husband's right to ensure that she did, was a cornerstone of the ideal of marriage."[4]

Despite the devastating case against women, Rüdiger Schnell maintains that historians are being led astray on this fundamental issue because they are conflating two very different discourses. While representations of women throughout the medieval period are replete with images of weak-minded, loose-lipped, and morally depraved seductresses, Schnell argues that there existed an entirely separate and distinct discourse on wives which "strongly assert[ed] the wife's functional equality."[5] He argues that heretofore these sources have been disregarded or misunderstood by historians precisely because wives were not studied as a category apart from women. Schnell's claim in this respect may be somewhat exaggerated. Nevertheless, his observation that wives and women must be understood as two discrete categories of historical analysis surely explains some of the contradictory images of women that emerge from the period, and helps to situate those few pro-feminine works within the appropriate discourse.[6] Moreover, this dualistic vision of women reflects contemporary legal and literary representations in which marital status, even more than rank or age, was the defining characteristic of gender identity.

Stone anchors his history of married life firmly on the criterion of spousal choice, equating the right to choose one's partner with marital happiness. Despite more recent studies which have suggested that free will was central to the decision to marry in the late Middle Ages, Stone argues that the parents of the couple, rather than the couple themselves, typically

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[4] Judith M. Bennett, *Women in the Medieval English Countryside: Gender and Household in Brigstock Before the Plague* (Oxford, 1987), p. 6; Barbara A. Hanawalt, *The Ties that Bound: Peasant Families in Medieval England* (Oxford, 1986), pp. 213-4.
[5] Rüdiger Schnell, "The Discourse on Marriage in the Middle Ages," *Speculum* 73 (1998), 776.
[6] For a discussion of pro-feminine medieval works, see Alcuin Blamires, *The Case for Women in Medieval Culture* (Oxford, 1997), or Shirley Marchalonis, "Above Rubies: Popular Views of Medieval Women," *Journal of Popular Culture* 14 (1980), 87-93.

arranged marriage in medieval England. He thus concludes that there was no place for love in marriage. Since the publication of Stone's monolithic work, *The Family, Sex and Marriage in England 1500-1800* in 1977, many historians have refuted his vision of the family, suggesting instead that within medieval society the family might actually be a place of love and respect.[7]

Marital Affection and the Medieval Church

In his study of ecclesiastical writings from the later Middle Ages, Michael Sheehan has discovered the nexus between Schnell's contention of marital equality and the incessant calls for reappraisal of Stone's vision of the family. He argues that the church's insistence on the presence of *maritalis affectio*, or marital affection, meant that love within marriage was indeed a medieval concern. While the canonists never defined this term in any meaningful way, Sheehan notes that a careful reading of the decretalists Gratian and Pope Alexander III can be instructive. Both firmly maintained that marital affection implicitly involved mutual care and that the practice was not intended to be restricted solely to procreative purposes.[8] That church officials might amerce a person in court for neglecting to show sufficient marital affection should communicate the seriousness of the church's commitment to the emotional side of marriage.

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[7] Lawrence Stone, *The Family, Sex and Marriage in England 1500-1800* (New York, 1977). For a difference of opinion, see Michael Sheehan, "Choice of Marriage Partner in the Middle Ages: Development and Mode of Application of a Theory of Marriage," *Studies in Medieval and Renaissance History*, n.s. 1 (1978), 3-33. This article is reprinted in *Marriage, Family and the Law in Medieval Europe: Collected Studies*, ed. James Farge (Toronto, 1996). Finally, Alan Macfarlane has made some valuable contributions to this argument. See his *Marriage and Love in England 1300-1840* (Oxford, 1986).

[8] A diriment impediment did exist to marriage if it was formed on the condition of not having children (*exclusio boni prolis*). However, Thomas of Aquinas's notion that sexual intercourse was for procreation only in animals and humans, while it later became the church's stance, was not adopted during the medieval period. For a fuller discussion of diriment impediments, see Helmholz, *Marriage Litigation*, pp. 76-100.

A cursory examination of popular sermons from the late medieval period demonstrates that marital affection was a well-developed and accessible concept from a popular perspective, and that love was considered to be an integral quality of marriage.

> And ffor this cawse is the ryng putt and sett by the husbonde upon the iiii^{te} finger off the woman, ffor to showe that a true luff and precordiall affection must be betwyne hem. Cawse qwhy, as doctors sey, ther is a veyne cummynge frome the herte off a woman to the iiii^{te} finger; and therfore the ringe is putt on the same finger, that sche shulde kepe unite and luff with hym, and he with hyr.[9]

This brief excerpt from a fourteenth-century sermon, with its delicate balance of ecclesiastical prescription and literary imagery, not only clarifies and expands the church's definition of marital affection; it also illustrates the general reception of this ideology in late medieval English society. The church's emphasis on marital affection coalesced with popular notions of marriage and functioned as mutual reinforcement. While the clergy and laity may have prioritised marital affection in different ways, as we shall see in later chapters, the existence of love within marriage was certainly a critical issue relevant to both ecclesiastical and lay perspectives. In fact, Gratian's utter failure to define this significant term may speak to its popularity: marital affection was such a meaningful concept in late medieval society that it did not require definition in order to be understood.[10]

The church also strongly enforced the notion of marital equality where sexual rights were concerned. A spouse's duty to "pay the conjugal debt" was regarded as an essential and

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[9] As cited by G.R. Owst, *Preaching in Medieval England: An Introduction to Sermon Manuscripts of the Period c. 1350-1450* (New York, 1965), p. 269.

[10] Frederik Pedersen traces the use of this phrase in the York cause papers from the later Middle Ages. He notes that the first time the term "marital affection" was used in court by a witness, it was not in response to the libel, but brought forward on the witness's own initiative. This would seem to suggest that the term existed in popular usage at least by the early fourteenth century. See Frederik Pedersen, "'Maritalis Affectio': Marital Affection and Property in Fourteenth-Century York Cause Papers," in Constance M. Rousseau, Joel T. Rosenthal (eds), *Women, Marriage, and Family in Medieval Christendom. Essays in*

mutual obligation for which there were morally no circumstances adequate to condone refusal. Even during the days when the church urged married couples to abstain from sexual intercourse, if one spouse were to demand sex, the other was obliged to comply. A refusal to engage in sexual intercourse upon request was sufficient grounds to absolve subsequent adulteries and might be used as evidence in the courts to refute an invalid plea for separation on the grounds of adultery.[11] This way of thinking accords well with the medieval perspective on sexuality. As Kathryn Jacobs has argued, "medieval law tended to treat marriage as a sexual contract which partners must be able to rely on, since they were limited to a single supplier... [and w]hat happened if your supplier went bankrupt?"[12]

James Brundage posits that the equal treatment received by spouses in the conjugal debt had explosive ramifications on the role of women in both marriage and society.[13] First, the legitimisation of female sexuality permitted women to fulfil a basic human need, which, as Brundage points out, psychologists frequently have maintained is vital to mental and emotional stability. In broader terms, this recognition must have contributed to a more profound understanding of female sexuality and in turn diminished popular perceptions of the immoderate sexuality of women promoted by Christian theology. Second, Brundage suggests that equal access to sexual intercourse within marriage, particularly when it

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Memory of Michael M. Sheehan, C.S.B. (Studies in Medieval Culture xxxvii, Kalamazoo, 1998), pp. 175-209.

[11] For a good discussion of this phenomenon, see Elizabeth M. Makowski, "The Conjugal Debt and Medieval Canon Law," in Julia Bolton Holloway, Constance S. Wright, Joan Bechtold (eds), *Equally in God's Image: Women in the Middle Ages* (New York, 1990), pp. 129-43. See also Thomas N. Tentler, *Sin and Confession on the Eve of the Reformation* (Princeton, 1977), pp. 170-4.

[12] Kathryn Jacobs, "Rewriting the Marital Contract: Adultery in the *Canterbury Tales*," *The Chaucer Review* 29 (1995), 340.

[13] James A. Brundage, "Sexual Equality in Medieval Canon Law," in Joel T. Rosenthal (ed.), *Medieval Women and the Sources of Medieval History* (Athens, 1990), pp. 66-79, *passim*.

conflicted with canonical proscriptions, must have encouraged the development of the view that marriage is not solely a physical union for procreative purposes, but a powerful emotional bond between spouses. In this way, ideas of marital affection and the conjugal debt are inextricably related.[14] The records of the ecclesiastical courts reinforce this perspective. In cases in which the validity of a marriage was in dispute, witnesses to sexual encounters were often brought forward to confirm the existence of marital affection within the conjugal union.

The church displayed an unusual degree of sensitivity when it came to the enforcement of the conjugal debt. The sympathetic and careful handling of these cases advocated by the church is best illustrated by the Dominican John of Freiburg's *Summa confessorum* (c. 1298) which suggested that because women tend to be more modest than men in expressing their desire for sexual intercourse, "a husband should render his wife the debt not only when she asks expressly, but also when there is some indication of her desire."[15] Freiburg's manual suggests that some clerics in this period were willing to move away from the pessimistic view of sexual activity that can be found in the Latin church fathers and rely instead on their pastoral experience with women. This loosening of conceptual constraints reaffirms the argument that the church anticipated an emotional bond within marriage but it also substantiates Brundage's final point, that it is unlikely that equality within marriage was restricted to the conjugal union.

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[14] John T. Noonan has noted that the Roman conception of *affectio maritalis*, upon which the canonical notion of marital affection was founded, really had nothing to do with affection. Under classical Roman law, the term was interpreted simply to mean an "intention to marry". In the medieval period, particularly under Alexander III, however, this term was reinterpreted to mean something quite like 'affection' in the modern sense. See John T. Noonan "Marital Affection in the Canonists," *Studia Gratiana* 12 (1967), 479-509.

[15] "non solum quando expresse petit debitum uxori vir tenetur reddere: sed etiam quando per signa apparet eam hoc velle." John of Freiburg, *Summa Confessorum*, book 4, title 2, question 40, fo. 439 (Venice, 1568).

Ecclesiastical Writing and the Role of Men and Women in Marriage

Although it is difficult to find overt traces of any large scale movement towards a softening of theology about women in England in the later medieval period, there is unquestionably evidence of a reappraisal of views on wives and their husband's responsibilities towards them, particularly in the advice doled out to parish priests. For example, John Myrc's *Instructions for a Parish Priest* (c.1400) counsels the husband to act as a helpmate in the marital union. Myrc wrote that in confession a priest is responsible for asking husbands whether or not they had helped their wives when needed and avoided domestic strife, words of wisdom which might have seemed less incongruous were the roles reversed.[16] Thirteenth-century ecclesiastical writer Thomas of Chobham went further to clarify medieval perceptions of the role of women in marriage. In his *Manual for Confessors* (c. 1215), he noted that the entire institution was created around women, and that marriage is called "matrimony rather than patrimony because the woman suffers greater distress in bearing, generating and nurturing the children."[17] Accordingly, the wife plays a central role in the entire process and should be respected as such. Chobham also claimed for women an important voice in some very public issues. He wrote that

> many things are necessary to priests in imposing penances on married persons. There are so many cases of doubt that one is scarcely able to unravel. Women should always be urged in confession that they be preacher to their husbands. For no priest can soften a man's heart as a wife can. Hence the sin of a man can often be imputed to his wife if, through her neglect, the husband does not mend his ways. When they are alone and she is in her husband's arms she ought to speak soothingly, and if he is hard and merciless and an oppressor of the poor she ought to invite him to mercy, if he is a plunderer to detest his plundering; if he is grasping, let her inspire

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[16] John Myrc, *Instructions for Parish Priests*, ed. Edward Peacock (Early English Text Society, Old Ser., 209, London, 1940), 34, 42.

[17] "Dicitur autem potius matrimonium quam patrimonium quia mater sustinet plures angustias in portando quam vir et generando et nutriendo parvulum." Thomas Chobham, *Thomae de Chobham. Summa Confessorum*, trans. F. Broomfield (Analecta Medieavalie Namurcensia, 25, Louvain, 1968), p. 145.

> generosity in him and let her secretly give alms from their common property as well as the alms he fails to give. For it is licit for a wife to spend her husband's money in useful things and pious uses even though he is unaware of her action.[18]

Chobham's portrayal of the wife as an influential figure, characterised by economic independence and a greater tendency towards piety than men, is important principally because of the way in which it was disseminated. Confessors' manuals, like Thomas of Chobham's popular work, are one of the few mediums through which medieval historians can begin to appreciate religion as it was preached to the public.[19] Theological debates centred on the Aristotelian doctrine of woman as a deficient man, while intellectually stimulating, contribute very little to a clear understanding of popular religiosity and misogyny. Confessors' manuals, on the other hand, provide valuable insight into medieval pastoral care and the precise nature of clerical representations of women as they were conveyed to the people, which often contrasted with the more dogmatic texts. Furthermore, they demonstrate widespread ecclesiastical interest in the practical problems of marriage, rather than merely focusing on its spiritual aspects. In this respect, it seems apparent that parish priests made an intelligible distinction between "women" and "wives" in their sermons, and that the latter received much

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[18] "Multa igitur necessaria sunt sacerdotibus in imponendo penitentiam coniugatis. Tot enim dubii casus emergunt in coniugio quod vix potest aliquis enodare. Mulieribus tamen semper in penitentia iniungendum est quod sint predicatrices virorum suorum. Nullus enim sacerdos ita potest cor viri emollire sicut potest uxor. Unde peccatum viri sepe mulieri imputatur si per eius negligentiam vir eius non emmendatur. Debet enim in cubiculo et inter medios amplexus virum suum blande alloqui, et si durus est et immisericors et oppressor pauperum, debet eum invitare ad misericordiam; si raptor est, debet detestari rapinam; si avarus est suscitet in eo largitatem, et occulte faciat eleemosynas de rebus communibus, et eleemosynas quas ille omittit, illa suppleat. Licitum enim mulieri est de bonis viri sui in utiles usus ipsius et in pias causas ipso ignorante multa expedire." Chobham, *Summa Confessorum*, p. 375.

[19] Sheehan notes that Chobham's *Summa Confessorum* "reached a wide audience in the medieval world." Of the more than one hundred surviving manuscripts, at least two were printed in the 1480s, suggesting the enduring nature of the work. Moreover, many of these remaining manuscripts were used in priories and colleges "where they would have been accessible to a large readership". See Michael M. Sheehan, "Choice of Marriage Partner in the Middle Ages: Development and Mode of Application of a Theory of Marriage," *Studies in Medieval and Renaissance History*, n.s. 1 (1978), 25. This article also appears in his *Marriage, Family, and Law in Medieval Europe: Collected Studies* (Toronto, 1996), pp. 87-117.

fairer treatment than the former. In his advice to parish priests Chobham did not abandon contemporary notions of feminine vices. He simply reinterpreted them as they relate to wives. As Sharon Farmer has noted,

> [i]n their use of speech and sexual enticements to manipulate men, the pious wives of the eleventh-, twelfth-, and early-thirteenth-century sources resemble contemporary depictions of Eve, who compelled Adam "to obey her voice rather than the Word of God."[20]

Nevertheless, Chobham readily translated womanly weapons into positive attributes, providing a married woman wields them in accordance with Christian beliefs.

Schnell's demand that scholars examine wives apart from women thus reveals a much more even-handed treatment by the church. Yet his assertion that women were perceived as equals within marriage does not withstand a thorough examination of the sources. Even Chobham made it clear that women must be subjected to the rule of their husbands, and that husbands might enforce this hierarchy physically if required. His advice to husbands was specific: "if she is foolish, moderately and decently correct her, and if necessary castigate her."[21] Jacqueline Murray argues against the use of this prescription as evidence of a hierarchical relationship. Instead, she suggests that "Chobham presents a view of husband and wife as complementary and able to counter-balance each other's deficiencies."[22] Just as wives are compelled to correct their husbands' lack of generosity, husbands are required to correct their wives' intellectual and moral lapses by teaching them. Murray's position in this matter is certainly not without value: Chobham's ideal of marriage projected a union impressively balanced by opposing strengths and weaknesses in which women are credited

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[20] Sharon Farmer, "Persuasive Voices: Clerical Images of Medieval Wives," *Speculum* 61 (1986), 539.
[21] "et si stulta est, moderate et decenter eam corripiat, et si opus fuerit castiget." Chobham, *Summa Confessorum*, p. 375.
[22] Jacqueline Murray, "The Perceptions of Sexuality, Marriage, and Family in Early English Pastoral Manuals," (Ph.D. dissertation, University of Toronto, 1987), p. 282.

with a high degree of power. And yet, nowhere does Chobham sanction a wife's physical abuse of her husband on the moral high ground of spiritual discipline. Even the quality of the correction he advocated for each sex is substantially different. As he described it, a wife's correction is subtle; the husband is scarcely aware that he is the pupil. A husband's correction, however, is direct, deliberate and without deception; the potential physical nature of the wife's education unmistakably reveals the hierarchy. This fundamental inequity in the relationship prohibits even the semblance of equality. Chobham, however, was very cautious in the wording of this instruction; he made it abundantly clear that physical correction is a last resort, only to be implemented if "moderate" and "decent" attempts have already failed. He also immediately followed this advice with the statement that a husband should care for his wife above all else "because nothing should be more dear to him than his wife."[23] While Chobham may have been able to envision instances in which physical force is required, he was far from being an advocate of wife beating.

Moreover, Chobham's perspective on the use of force in marriage very much reflects the canons of the first council of Toledo (A.D. 400), included in Gratian's *Decretum*. Concerning the discipline of clerical wives, the council wrote:

> If the wives of any clerics have transgressed, their husbands may use non-deadly force in order to deprive them of any license to misbehave further. The husband may exercise the power to confine them, to place them under constraints within the house, compelling them to saving, not deadly, fasts, with the result that poor clerks might reciprocally give aid to each other if they lack household servants. They should not, however, take food with these wives who have sinned, unless their penitential acts should happen to return them to the fear of God.[24]

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[23] "Maiorem enim debet adhibere diligentiam circa uxorem suam custodiendam quam circa aliquam possessionem terrenam, quia nihil debet ei esse carius uxore sua." Chobham, *Summa Confessorum*, p. 375.
[24] "Placuit, ut, si quorumcumque clericorum uxores peccauerint, ne forte licentiam peccandi plus habeant, accipiant mariti earum hanc potestatem preter necem custodiendi, ligandi in domo sua, ad ieiunia salutaria, non mortifera eas cogentes, ut inuicem sibi clerici pauperes auxilium ferant, si seruicia non habeant. Cum uxoribus autem ipsis, sue peccauerant, non cibos sumant, nisi forte ad timorem Dei acta penitencia reuertantur." Gratian, *Decretum*, ed. Emil Friedberg (Leipzig, 1879), Causa 33 quaestio 2 canon 10. The

Neither the work of Gratian nor that of Chobham recommended physical force as a means of discipline. Chobham is very careful to note that only when all other means have failed is physical violence an acceptable option; Gratian, on the other hand, provides an even clearer statement on the acceptability of marital violence. Although he also advocates physical violence when necessary, in this passage he details a variety of other kinds of force a husband might employ in order to mend his wife's unruly ways. Gratian and Chobham shared a similar position on marital violence, then, that was fairly moderate: they believed that limited physical force was acceptable, on condition that it be restricted to educational purposes. This attitude may well be illustrative of a broader perspective embraced by the church. This notion is buttressed by the evidence of sermons from the collections of contemporary continental preachers. Many of these sermons were well known and influential in the late medieval English context, and may well have helped to mould the English ecclesiastical approach to marital strife. At the very least, it suggests that where the teachings of the church about marriage are concerned, England may not have been an exception to the rule.

Like Chobham, the thirteenth-century Genoese archbishop Jacopa da Varazze, usually identified as Januensis, like Chobham, was very careful to point out that physical force is acceptable only when all else fails. He suggested that husbands first turn to Christianity in the moral correction of their wives: "but if she cannot learn to blush with fear of God, let her grow red with the switch."[25] Her insubordination earned the same kind of punishment as a

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gloss presents this passage as a response to the question 'how are clerks to operate their households if their wives are doing penance?' The answer, then, is that if they do not have servants, they should seek the help of other poor clerks.

[25] As cited and translated in Andrew Galloway, "Marriage Sermons, Polemical Sermons, and *The Wife of Bath's Prologue*: A Generic Excursus," *Studies in the Age of Chaucer* 14 (1992), 18. Galloway notes that at least twenty-two collections of Januensis's sermons are extant from later medieval England, as well as manifold adaptations and derivations of his work by English preachers, suggesting that his sermons were very influential in late medieval English society. In fact, Galloway suggests that Januensis's sermons on women may well have provided the base for the Wife of Bath's discussion of marriage in *The Canterbury*

servant, "since she does not know how to feel shame like a free woman."[26] Also like Chobham, Januensis ascribed to women an instrumental role in marriage over their husbands' morality, particularly in the case of fornicating men. He urged wives to take an active position on this matter by throwing their husbands out of the home, or at the very least, by turning to the bishop for help. The reluctance of many women to do so arises, in part, "because they are frozen by fear, since they fear to be beaten by their husbands – but they ought more to fear a God who perceives what they do than a husband who beats them."[27] Finally, Januensis brought the argument full circle by reminding women that, irrespective of their husbands' opinions in this matter, wives should not act as servants to their husbands in matters of morality.

Januensis perceived domestic violence as an abuse of the hierarchical relationship within marriage: men beat their wives in order to gain ultimate control so that they will not be held accountable for their actions. As Chobham does in his advice to parish priests, Januensis makes us manifestly aware of just how complicated was the structure of a marital relationship in the Middle Ages. While the church and its representatives envisioned a hierarchy of gender-specific roles, they may not have intended as great a disparity between the husband and wife as was often the case. Such an interpretation, of course, raises the question: was this an unconscious extension of masculine authority emerging from ambiguous conceptions of gender identity within society, or does it represent a conflict between secular and sacred notions of gender roles?

Tales, and that the Wife's last husband, Jankyn, is intended to be a "parodically vernacularized version of Januensis" (*Ibid*, 19).

[26] *Ibid*, 19.

[27] *Ibid*, 12.

Januensis's contemporary, a Polish Dominican friar named Peregrinus, compiled a remarkably popular collection of Latin sermons which circulated throughout much of Western Christendom. The sermons in his collection reveal an even more complex perspective on the matter of marital relations. Peregrinus argued that a husband should "love his wife without speaking any evil words to her or striking her."[28] Like Januensis, he believed that the source of violence within marriage was founded unquestionably in the power relationship. He wrote:

> [y]et I fear that there are many husbands who are so angry after a visit to an inn that they enjoy beating their wives. They do not dare to strike those who insulted them because they know that, if they do, they will be beaten in return. But after they return home, in their rage, they take all the wrong they have suffered in the inn out on their wives: they grab them by the hair and shove them around the room. Because of this, your love must be such that you do not treat her poorly either in word or deed.[29]

Peregrinus's analysis is significant chiefly because he is not alone in his findings. The thirteenth-century sermon writer Berthold of Regensburg reached similar conclusions in his work. According to Schnell, Berthold's argues that "[o]utside the house some husbands cut a pathetic figure; inside the house, they acted like lions."[30] If Schnell has accurately reported Berthold, it suggests that Berthold had perceived what modern students of spousal abuse have stated, that men beat their wives because it makes them feel like "real men." Both Berthold and Peregrinus provided insight into the male psyche that is remarkably profound. In locating the source of wife abuse in the projection of male inadequacies they have brought to light a contemporary crisis in gender identity. That men chose to reassert their masculinity in the

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[28] As cited and translated by Schnell, "The Discourse on Marriage", 772. Galloway notes that there are at least six surviving English manuscripts which contain Peregrinus's sermon cycle, suggesting that his work was probably well known in England as well as on the continent. Galloway, "Marriage Sermons", 8.
[29] Schnell, "The Discourse on Marriage", 772.
[30] *Ibid*, 784.

home through violence argues that it was a vital component of general late medieval expectations of masculinity, and that these conceptions of gender identity were both internalised and widespread.

Recent studies of masculinity confirm that violence was thought to be integral to medieval maleness. P.H. Cullum has argued that "two of the activities which most obviously characterized the ideal of masculinity .... [were] fighting and reproducing".[31] Similarly, Ruth Mazo Karras, in her study of university students in the Middle Ages, notes that students found themselves in a very complex situation. Although many students may well have planned to marry and lead the typical lives of lay men after their formal education,[32] during their years at university they were forced to renounce their masculinity by leading chaste, peaceful lives. Accordingly, all students were forbidden to carry weapons, even though this was an integral feature of aristocratic masculinity in the period. Thus, it should come as no surprise that, in the midst of negotiating competing discourses, the conduct of many young clerics often fell short of expectations when they found themselves arrested for carrying daggers, shields, and swords. Karras argues that misbehaviour of this nature represents a "need to demonstrate masculinity through participation in brawls", just like any other (lay)man of their age.[33] The university students in this situation exemplify the difficulties associated with being male; as D.M. Hadley has argued, "important in the dynamics of gendering is the competition between

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[31] P.H. Cullum, "Clergy, Masculinity and Transgression in Late Medieval England," in D.M. Hadley (ed.), *Masculinity in Medieval Europe* (New York, 1999), p. 182.

[32] Men in the lower ranks of the clergy were often married and lead lives not unlike the majority of laymen. P.H. Cullum notes that by the late fifteenth century, even canon lawyers practising in church courts might easily be married clerks. *Ibid.*

[33] Ruth Mazo Karras, "Sharing Wine, Women, and Song: Masculine Identity Formation in the Medieval European Universities," in Jeffrey Jerome Cohen and Bonnie Wheeler (eds), *Becoming Male in the Middle Ages* (New York, 1997), p. 190.

different notions of acceptable masculine behaviour."[34] It seems likely that violence in the home during the medieval era may well have been another example of the unfortunate outcome of clashing discourses. Clearly, women and students were not the only ones forced to negotiate two discrete, and sometimes competing, discourses; men were confronted continuously with social expectations of what it meant to be a man, but also what it meant to be a husband. Cullum notes that, at times, "[s]ome forms of masculinity carry more weight than others".[35] Domestic violence may well represent an instance when one discourse of masculinity triumphed over another. These two discourses may well have been socially-specific and thus represent conflict between secular and sacred spheres. Notions of masculinity tied to aggression and physical violence represent strains of a secular gender identity actively resisting ecclesiastical expectations of the Christian husband. According to Peregrinus and Berthold, then, wife abuse occurred when a man's masculinity momentarily overpowered his marital self-identity, or in broader terms, when the aggressive male triumphed over the husband as educator and protector.

Like his contemporaries, Peregrinus cautioned husbands to use force judiciously and only for the purposes of chastisement. This preoccupation with the appropriate use of physical compulsion provides the historian with an opportunity to observe actual cases of abuse from the period. Because the church argued that moral discipline was the only appropriate grounds for which physical force might be employed, this was appropriated

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[34] D.M. Hadley, "Introduction: Medieval Masculinities," in Hadley, *Masculinity in Medieval Europe*, p. 4. Hadley is not the only historian to suggest that the church posited a different model of masculinity than was adopted by the laity of medieval England. With respect to sexual expectations, Shannon McSheffrey has noted that "[m]ale sexual reputablity was contested territory, as notions of self-governance, Christian morality and honor battled with an ethic in which male status and identity were defined by sexual conquest." See "Men and Masculinity in Late Medieval London Civic Culture: Governance, Patriarchy and Reputation," in Jacqueline Murray (ed.), *Conflicted Identities and Multiple Masculinities: Men in the Medieval West* (New York, 1999), p. 245.

[35] Cullum, "Clergy, Masculinity and Transgression," p. 193.

frequently by husbands to justify violence that exceeded acceptable bounds. In its exhortations against the immoderate use of force in wife chastisement, then, the medieval church not only recognised this misuse of ecclesiastical teachings, it also isolated and challenged a dominant justification for what it perceived as inexcusable behaviour.

What is most intriguing about this emphasis on the husband's right and duty to chastise his wife's ill behaviour is the fact that a wife's promise to obey was not even part of the medieval marriage ceremony. An examination of witness depositions in cases of matrimonial litigation from the York cause papers of the later Middle Ages provides ample evidence of contemporary wedding vows. "For richer and for poorer," "for better and for worse," "in sickness and in health," even "until death do us part" all have medieval antecedents together with a phrase that did not survive into the Book of Common Prayer, "for fairer and for laither (uglier)." Although none of these phrases was required to contract a valid marriage, their constant repetition in the exchange of wedding vows suggests that they were none the less commonly used to contract marriage. However, none of the exchanges reported in the depositions used in this study include a promise to obey on either part. P.J.P. Goldberg notes that the first evidence of this clause seems to be in the form of service contained in the 1549 Book of Common Prayer, strongly suggesting that while obedience was certainly a late medieval expectation for wives, it was not spelled out as such until the Protestant Reformation was already well underway.[36]

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[36] P.J.P. Goldberg, *Women, Work, and Life Cycle in a Medieval Economy: Women in York and Yorkshire c. 1300-1520* (Oxford, 1992), p. 238. Of course, the omission of this phrase in the medieval context followed by its sudden appearance in the mid-sixteenth century may be interpreted in a number of ways. It is very possible that it was not spelled out in the medieval marriage ceremony simply because it was taken for granted and thus did not need to be part of the ceremony. Its inclusion in the early modern ceremony, then, may well suggest that changes had taken place in the social and gender hierarchy making it necessary to make such a bold pronouncement of the role of women in marriage.

Peregrinus did not restrict his discussion of spousal abuse to physical violence. He also addressed the larger issue of economic deprivation:

> But I fear ... that there are many ... who give their wives absolutely no freedom, instead excluding them from everything so that they cannot give their children even the basic necessities, and often they do not even have enough to be able to pay for a bath.[37]

Peregrinus' decision to denounce this particular manifestation of marital unhappiness is perceptive and appropriate. Although husbands had a moral obligation to support their wives, female vulnerability in marriage was recognised by the church as a potential problem. Moreover, although it was not formally within the purview of their jurisdiction, the representatives of the church took it upon themselves to remedy this situation. What Peregrinus condemned in this sermon the ecclesiastical courts actively pursued in medieval society. Women abandoned by their husbands and lacking any financial resources regularly turned to the church for help.[38] Bearing this in mind, Peregrinus' reprimand assumes a more forceful tone. He was not merely addressing a tendency among married men to disregard the needs of their wives and families: he was reminding husbands subtly that in this situation they had exceeded the authority granted to them by the sacrament of marriage.

Schnell argues persuasively that in these late medieval sermons "[m]arriage is presented as an institution that repeatedly leads to conflict in daily life," and as a result sermons were designed to teach married people "[t]o compromise, to be tolerant, to adapt oneself, to practice forbearance, to be patient, to learn to overlook the other's errors."[39] In a society in which the indissoluble nature of the marriage bond took on a greater significance,

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[37] Schnell, "The Discourse on Marriage", 773.
[38] See discussion concerning the creation and enforcement of alimony agreements in the church courts on pp. 383-90 of Chapter Five.
[39] Schnell, "The Discourse on Marriage", 774 , 780.

compromise and tolerance were probably the two most critical qualities an individual might bring to marriage. In this respect, Schnell sees that each sex was called upon equally to live peaceably together despite each other's weaknesses. Schnell's case for equal treatment, however, undeniably is weakened by the failure of authors like Peregrinus and Berthold to address physical violence in a reciprocal fashion. Berthold counselled women to endure beatings by their husbands, while men were told to suffer their wives' anger and shrewishness. Is this equal forbearance? Can harsh words be equated with bruises and black eyes?

Some clerics took this theme even further. According to the anonymous writer of a fourteenth-century preacher's manual[40] entitled *Fasciculus Morum*, a wife's role might prove quite onerous:

> Humility as thus defined must be practiced, first because it patiently endures its troubles; just as a wife who is mistreated by her husband suffers it patiently so that she may not cause her husband to become worthy of public shame, and if perhaps, to his shame, some external lesion from his beating can be seen on her, she carefully dissimulates saying she took such an injury elsewhere.[41]

A society that recommends a wife keep silent about abuse in order to avoid embarrassing her husband is not one in which the marital partners are seen as true equals. While Schnell's intention to demonstrate that marriage in the Middle Ages was not a hierarchy is both

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[40] It is important to recognise the distinction between preachers' manuals and confessors' manuals. Confessors' manuals were intended to guide priests in their work in the confessional. They suggested the kinds of questions a priest should ask in order to uncover sins, as well as the advice a priest should dole out to his parishioners in the confessional setting. A preachers' manual, however, was quite different because its focus was entirely on sermon material. The method of dissemination, then, transformed the effect of the literature. Many of the ideologies expressed in a confessors' manual were probably shared with most parishioners; the perspectives found in a preachers' manual, on the other hand, were undoubtedly shared with a preacher's spiritual community.

[41] "Est igitur humilitas sic decripta imitanda, primo quia sue angustie est paciens tolleratrix; ut matrona a viro suo iniuriose tractata pacienter sustinet ne virum dignum vituperio reddat, et si forte vituperio ex verberibus lesio foris appareat, illam caute dissimulat asserens se aliunde tale malum incurisse." *Fasciculus*

commendable and insightful, this central dilemma makes his argument untenable and causes the reader to question how this perspective differs at all from St. Augustine's image of the ideal wife based on his own mother:

> For she bore his acts of unfaithfulness quietly, and never had any jealous scene with her husband about them.... he had a very hot temper. But she knew that a woman must not resist a husband in anger, by deed or even by word. Only when she saw him calm again and quiet, she would take the opportunity to give him an explanation of her actions, if it happened that he had been roused to anger unreasonably. The result was that whereas many matrons with much milder husbands carried the marks of blows to disfigure their faces, and would all get together to complain of the way their husbands behaved, my mother talking lightly but meaning it seriously, advised them against their tongues: saying that from the day they heard the matrimonial contract read to them they should regard it as an instrument by which they became slaves...[42]

Jo Ann McNamara confirms that this vision of women held a certain appeal in the medieval period. She argues that "[t]he self-control that certified masculinity was subtly rewritten as feminine self-abnegation. Self-subordination to the authority of a husband unworthy of her respect became an act of feminine heroism."[43] Berthold's advice to married women, then, together with the *Fasciculus Morum*, confirms that Augustine's vision of marriage may well have endured the eight centuries that had passed since his death.

Canon law does, at the very least, suggest that medieval wives had some recourse

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Morum: A Fourteenth-Century Preacher's Manual, ed. and trans. Siegfried Wenzel (Philadelphia, 1989), p. 64-5.

[42] "Ita autem toleravit cubilis injurias, ut nullam de hac re cum marito haberet unquam simultatem ... ita ira fervidus. Sed noverat haec non resistere irato viro, non tantum facto, sed ne verbo quidem. Jam vero refracto et quieto, cum opportunum videret, rationem facti sunt reddebat, si forte ille inconsideratius commotus fuerat. Denique, cum matronae multae quarum viri mansuetiores erant, plagarum vestigia, etiam dehonestata facie gererent, inter amica colloquia illae arguebant maritorum vitam, haec earum linguam, veluti per jocum graviter admonens, ex quo illas tabulas quae matrimoniales vocantur, recitari audissent, tanquam instrumenta quibus ancillae factae essent, deputare debuisse....". Augustine, *Confessionum S. Augustini*, l. 9, c. 9, *Patrologia Latina* 32, cols. 772-773.

[43] Jo Ann McNamara, "An Unresolved Syllogism: The Search for a Christian Gender System," in Murray, *Conflicted Identities and Multiple Masculinities*, p.4.

from their abusive spouses. A victim of domestic violence might apply to the courts for a divorce *a mensa et thoro*, literally a separation from bed and board, awarded on the grounds of cruelty or adultery. However, medieval canon lawyers remained divided on how the divorce *a mensa et thoro* should be applied in practice. One of the less controversial of the canon lawyers, Raymond of Peniafort argued that, in fact, a judicial separation should only be granted in cases of adultery.[44] None the less, in an earlier discussion, Peniafort made it clear that in cases where a husband was suing for a restoration of conjugal rights, a wife had the right to refuse cohabitation if the violence were extreme enough to warrant it. He declared that "a man seeking restoration should not be restored [if] his cruelty is so great that adequate security cannot be provided to the fearful woman."[45] This perspective may well have influenced and encouraged the practice, well entrenched by the fourteenth century, of awarding separations on the grounds of cruelty.

Sermon Stories and Power Relations within Marriage

The general agreement among writers of ecclesiastical treatises seems to be that moderate force restricted to moral instruction is acceptable in marriage; and yet, none is particularly illuminating about the precise degree of appropriate force, leaving much up to individual interpretation. In light of Augustine's harsh perspective, it is crucial to attempt to penetrate the ambiguity of their instruction. To this end, an examination of *exempla*, or popular sermon stories, from the period offers some modest indications of just how broadly the ecclesiastical guidelines might have been construed. Homiletic *exempla* were intended to

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[44] Raymundus de Peniafort, *Summa de poenitentia et de matrimonio cum glossis Johannis de Friburgo* 4.22 (Rome 1603; repr. Farnborough 1967), pp. 574-5. However, the gloss by Freiburg suggests that Peniafort also intended to expand the definition to include spiritual fornication, meaning heresy.
[45] *Ibid*, p. 568.

be instructive narratives with a realistic setting. The purpose of these stories was to provide concrete illustrations of Christian doctrine in order to make the homily's message more accessible to a lay audience. Essentially, they were an outgrowth of the Fourth Lateran Council's mission statement to provide the laity with satisfactory religious instruction in the vernacular through frequent preaching. As such, a study of *exempla* offers historians the opportunity "to witness the interchange between popular and scholarly theology and, in doing so, permits us to discover those unselfconscious cultural notions that, by their frequent hearing and retelling in narrative context, became imprinted on the medieval mind."[46] The overarching goal of these *exempla* was to combat contemporary heretical notions within Christendom by teaching orthodox Christian theology to the people. Consequently, they provide essential insight into late medieval standard Christian perspectives on sins within ordinary life.

The *exemplum* of "The Obedience of Wives" strongly reinforces the notion that violence should be restricted to moral discipline; nevertheless, it stretches the definition of what might be perceived as reasonable chastisement in both its justification and its punishment. One day, when returning from a fair, three merchants who were all convinced of the superlative nature of their wives' characters made a wager together to test their wives' obedience by commanding each of them to perform a senseless and ridiculous task. The person who won the bet was promised one penny from each of the others. When the first man asked his wife to leap into a basin that he set before her, she paused to ask why. In response,

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[46] Joan Young Gregg, *Devils, Women, and Jews: Reflections of the Other in Medieval Sermon Stories* (New York, 1997), p. 4. This is an excellent collection of eighty-three sermon stories translated into a modern English, but intended to remain as faithful as possible to the original in vocabulary and sentence construction. Young's collection is important in that, by presenting all the *exempla* on this particular theme together, she makes it possible to observe the similarities among representations of women, devils and Jews, and better understand some of the stereotypes perpetuated by the church and the alienation which must have occurred as a result.

"her husband struck out with his fist and gave her two or three great blows." At the second merchant's home, the request was greeted in much the same way to the great distress of the merchant. In order to show his wife the error of her ways, the merchant "took a staff and beat her badly." At the last merchant's home the men took a small respite from their rigorous testing schedule in order to share a meal. When the third merchant asked his wife for salt, she misunderstood his demand and instead leapt onto the table, as she believed he had requested because she was "afraid to disobey." Her husband immediately asked her why she had done this, she explained her confusion and added, "I have to do your bidding, as much as is in my power, even if it brings injuries to both you and me, and I would rather the both of us came to harm than that I should disobey your command." When her husband and the other merchants realised her error, they laughed at the humour in the woman's misunderstanding, and decided that it was no longer necessary for her to perform the basin test because this wife had proven her absolute obedience to her husband, "and she was not beaten as were the other two wives that would not do their husbands' bidding."[47]

The image of the good wife presented in this *exemplum* is in many ways unrealistic. This should not come as a surprise given the nature of the literature. *Exempla* were not intended to be precise reflections of reality so much as an enhanced reality, to demonstrate effectively and briefly a point of Christian doctrine. In this respect, we should not assume that *exempla* are factual reflections of social mores or that what justified abuse in these sermon stories should necessarily be translated into real life situations. And yet, *exempla* were not divorced from reality. These didactic stories were filled with "distinctive human

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[47] *Ibid*, pp. 117-8. Gregg has appropriated this *exemplum* from Geoffrey de la Tour Landry's *The Book of the Knight of Tour Landry*, 19.26-28, ed. Thomas Wright (Early English Text Society, Old Ser., London, 1906), p. 33. Landry's text was very well known in England and thus it can be assumed that this particular

beings functioning in clearly recognizable social contexts," and as such helped to bring theology to life through contemporary social issues.[48] Moreover, parish priests recounting these stories to entranced crowds maintained that these were authentic accounts of actual events, a factor which must have lent credibility to the stories and made them more personally meaningful. The medium itself was doubtless the most effective means of conveying standard ecclesiastical beliefs to the laity because of the familiar language and inherent entertainment value: the performative aspects of the *exempla* made the moral memorable. They also clearly distinguished the *exemplum* from the rest of the service. As Gregg suggests,

> [b]y the dramatic telling of a cautionary tale, those who slept during the sermon proper could be awakened, and those who were diverted from the sometimes dry and dull homiletic text by gossiping or doing business could be brought back to the spiritual matters at hand by the announcement of an illustrative story to come.[49]

Thus, the representation of women in this medium, even more than in sermons or manuals of confessional advice, is central to an understanding of what the laity actually learned about marriage from the representatives of the church. That the medium should have presented such a hierarchical and invective vision of marriage, then, is all the more significant. The *exemplum* of the three merchants emphasised the importance of obedience in a senseless and irrational manner; any woman or man put in a similar position surely would have questioned the motives of such a pointless request. And yet, the analogy imposed by this paradigm seems clear: do not question the church's beliefs or commandments, simply obey. The purpose behind this morality tale must have been to accentuate the similarity in relationships and to remind wives that marriage is indeed a hierarchy; nevertheless, the inane

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exemplum would have been among the stock sermon stories recounted to the English laity in the later Middle Ages.

[48] *Ibid*, p. 13.

[49] *Ibid*, p. 11.

nature of the command taints this hierarchy. If Chobham and Januensis seem to suggest that marriage is a hierarchy of near equals, these *exempla* promptly correct that false impression and restore to marriage a master-servant relationship. Furthermore, the beatings received by the two disobedient wives were severe. Neither was reprimanded with a slap or even harsh words, but rather with weapons and "great blows." How could such a minor infraction of a husband's authority result in this degree of violence? And what kind of measure was this? To be facetious, if questioning male authority earned a beating with a staff, should we assume that a failure to prepare dinner deserved death? Again, it is important to realise that the story of the three merchants was intended to be a caricature rather than an accurate representation of reality. However, even if we allow a degree of colouring, its underlying message is all too clear: the wife's welfare is far less important than the penny lost in a bet. Even more, this story is an explicit acknowledgement of the gender hierarchy and the embarrassment a disobedient wife might present to her husband. Given the growing numbers of scold prosecutions throughout this period and the seemingly high rates of unofficial separations, one can only surmise that women in the communities did not greet this message with equal enthusiasm.

The *exemplum* of "A Roper's False Wife" helps to clarify the church's perspective on domestic violence. When a "deceitful bawd" approached the roper's wife and convinced her to sleep with a libidinous prior in return for gifts and jewellery, the wife agreed to the sinful plan and invited the prior to come lie with her one night after her husband had fallen asleep. As he was leaving, however, a fire from the chimney lit up the room and the husband awoke to witness the prior's departure. When he asked his wife about what he had seen she responded simply that "she had no idea." The next day, in order to quell the husband's fears,

the bawd managed to convince him through trickery that the night before was "a night when folks believed they saw things which had not occurred" and that his vision was "but the day and the night striving against each other and there was great lightning." Not long after this event, the husband awoke early one morning to go to market to buy some fish. He brought with him a little bag which he found at the foot of his bed, but on arrival at the fish market he discovered that it was not a bag at all, but a man's breeches (they were not his own). Again, the woman and the bawd worked together to deceive the man so that he would not become aware of his wife's infidelity. When he returned from the market both women were wearing breeches under their dresses. The husband approached the bawd and told her of his suspicions, and she laughed with him, assuring him that "there is not a truer wife to a husband in this town," and explained that the two of them wore breeches "because of the hooligans that grab women and grasp them by their private parts." She proceeded to show him the breeches under her dress, and the husband's doubts quickly were put to rest. Some time after this, the husband decided that his wife seemed to be visiting the local priory much more often than necessary, and he commanded her not to return there. In order to test her obedience, he deceived her by saying he was going to town, and instead followed her to the priory and back. He then went into the town, made arrangement to hire a surgeon to heal two broken legs and returned to his home where he "took a pestle and broke both his wife's legs and said to her, 'At the very least, for a while, you will not go far and disobey my orders'." Even this did not put an end to the wife's wantonness. The prior visited her one night when they thought the woman's husband was asleep. Still convinced of his wife's treachery, however, the husband merely was feigning repose. When his wife and the prior were in the midst of the sexual act, he opened his eyes and silently grabbed his knife and "pierced them both through, fixing them

to the bed." He then called his neighbours and town officials to his home and showed them the evidence of his crime, "the which, they all said with one voice, was a proper way to punish them."[50]

"A Roper's False Wife" is a very graphic morality tale emphasising the dangerous consequences of the ultimate betrayal of the marriage bond. The most intriguing aspect of this tale is not so much the murder of the wife and her lover in such an explicit and horrific manner (because this kind of gory punishment was fairly typical of the genre), but the community's support of the crime. If this *exemplum* were intended only to suggest that sinners will receive their just deserts, then would it not have made more sense for God to strike the wife down in a way that did not seemingly justify homicide? A sudden illness or even an unexpected bath in boiling water might have communicated the same message without condoning murder. The fact that the husband's debacle was resolved with such brutality and that the fictional community met this punishment with resounding approval clearly suggests that this was not the only message intended to reach parishioners.

The moral of this tale is even more shocking when juxtaposed against contemporary cases of homicide from the period and their outcomes. Yorkshire gaol delivery rolls from the year 1341 provide a particularly illuminating example. One night when Robert of Laghscale was at home asleep in bed with his wife, John Doughty entered their home with carnal intentions. Seeing that Robert was asleep, John and Robert's wife, who is never given a name in the records, stole away from the bed and engaged in sexual relations. In the meantime, Robert awoke from his sleep, and "hearing the tumult in his home and perceiving his wife to be absent from his bed" he arose to find John and his wife otherwise occupied. John immediately turned to attack Robert, and realising that his life was in danger, Robert grabbed

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[50] *Ibid*, pp. 127-30. This also originally appeared in *The Book of the Knight of Tour Landry*, pp. 79-82.

a poleaxe and struck John in the head. John immediately died. Robert was imprisoned for his actions, but the final records of the case report that his time in gaol was spent awaiting a pardon from the king.[51] This is a fairly typical example of a contemporary account of a homicide by a man of his wife's lover. A case from the Yorkshire gaol delivery rolls of 1358 makes the point even clearer. The records note that William de Silver of Sutton had an extra-marital dalliance with the wife of Robert Grainson of Setcotes, and that the same William entered the home of Robert one night with malice aforethought. He saw Robert's son, also named Robert, sitting by the fire, and he proceeded to beat him with a wooden staff. Seeing that his son's life was in danger, Robert brandished a knife and stabbed William to death. In court he pleaded not guilty on the grounds of self-defence and was acquitted of the charges.[52]

In both situations, it seems perfectly clear that these stories cannot possibly represent accurately the events of either homicide. The first Robert was forced to defend himself from John's attack, but he did so by slicing into his head with a poleaxe. Was there was no gentler means of fending off his attack? The simple fact that such a manoeuvre would almost certainly require that the victim's back be turned suggests that this was probably not a "defensive" move at all.[53] The second situation poses similar problems. The entry begins

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[51] The Yorkshire gaol delivery rolls are housed at the Public Record Office in London (hereafter abbreviated as PRO). John Doughty's case is fairly lengthy and involved. The record states: "infra nocte predictus Johannes Doughty venit ad domum ipsius Roberti in predicta villa de Laghscales prefato Roberto cum uxore sua in lecto suo in pace Regis iacente et sompniente et domum ipsius Robertus intravit quod percipiens uxor ipsius Robertus secrete a viro suo surexit et ad ipsum Johannem ivit et predictus Johannes uxorem ipsius Robertus ibidem concubiit ... medio tempore predictus Robertus vigilavit et audiens tumultum in domo sua invenit eam cum predicto Johanno et statim predictus Johannes in ipsum Robertum cum quodam cultello vocato .... ibidem insultum fecit et ipsum verberavit vulneravit et inter ipsum et hostium eiusdem domus stetit semper cum cultello predicto ipsum percuciendo et vulnerando ipsum ibidem ad interficiendum et predictus Robertus videns periculum mortis sibi iminere et se ulterius nullo modo posse diffugere causa mortem suam propriam evitandi sumpsit quoddam polhachet et inde percussit predictum Johannem solo ictu in capite usque cerebrum unde statim obiit." See PRO JUST 3/78 m. 2d.

[52] PRO JUST 3/141a m. 38d.

[53] Otherwise, the victim would have seen the axe aimed for his head and moved. In this circumstance, even if he was still struck by the axe, he would most likely have been hit in the shoulder, chest or back.

with the statement that William slept (*concubivit*) with Robert's wife. This remark is thoroughly unconnected to the rest of the account, but was somehow relevant enough to the homicide to justify its inclusion in the record. Furthermore, no context is provided for the beating of Robert's son. It seems unlikely that William merely walked into the room and immediately began beating the child as the record suggests, but that some sort of an argument preceded these actions. More likely, there occurred no beating at all: the abuse of the child was merely fictionalised context by which to exonerate the homicide. In the same way, the affair was included in the account to clarify Robert's response and, in turn, to justify his actions. Quite simply, Robert was protecting his family.

Medieval juries were notorious for fabricating judgements of self-defence out of accounts of blatant homicide because they believed the death was excusable even if it did not meet the parameters of contemporary legal requirements.[54] But it seems possible that in the eyes of the community, homicide as revenge for female infidelity warranted an account, often fictionalised, of self-defence. In both Yorkshire cases, the sins against the husbands were multiple. Not only did the husbands' wives act in wicked fashion, in both cases the final conflict took place at night in the husbands' own homes (in the first instance, Robert was even awakened from his sleep). These infidelities and transgressions, then, were a clear invasion of the family's privacy and home. The elements included in the cases represented an attempt on the part of the trial jurors to construct a case for excusable homicide. One man was acquitted; the other most likely received a pardon for his crime. These judgements were fairly typical of

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[54] See Thomas A. Green, *Verdict According to Conscience: Perspectives on the English Criminal Trial Jury 12-1800* (Chicago, 1985), pp. 28-64. A person convicted of excusable or justifiable homicide in medieval England automatically received a pardoned for his crimes, but at a price. Not only were pardons expensive (16*s.* 4*d.*), but he automatically forfeited his chattels to the crown. For a discussion of the costs associated with pardons see John Bellamy, *Crime and Public Order in England in the Later Middle Ages* (London, Toronto, 1973), pp. 194-5.

other cases in which husbands disposed of their wives' lovers.[55] Of all the suspects who appeared in the York and Essex assize records over the course of the late Middle Ages not a single defendant was convicted for this crime. Thus, it seems likely that medieval juries sanctioned the slaying of an adulterer, and thus mitigated the harshness of contemporary law by altering the facts of the case to create a scenario of self-defence.

The legal evidence suggests that a closer look at medieval *exempla* as a mirror of contemporary values is in order. "A Roper's False Wife" was but one of a number of *exempla* that helped to confirm traditional beliefs by reflecting communal values in the teachings of the church. Sermon stories such as these argue that the church's perspective on spousal abuse was dualistic: the official position did not necessarily accord with beliefs held within the parish. This gap between standard and traditional perceptions within the church itself suggests that the issue of the husband's control over his wife was not resolved easily.

Sermon stories and homilies certainly help to shape our awareness of attitudes towards domestic violence in the later Middle Ages. Because the abuse found in sermons is often without context while the *exempla* offer impractical and extreme situations, it is difficult to relate these findings to actual marriages. Were contemporary marriages as violent as the sermon stories depict? Or do the sermons themselves present a more accurate representation? To this end, it is necessary to turn to what scant evidence of married life exists in the ecclesiastical literature of the period. One thirteenth-century treatise for women entitled *Hali Maidenhad* certainly illustrates the dark side of medieval marriage:

> While he is at home, all your wide dwellings seem too narrow for you: his looking on you makes you aghast; his loathsome mirth and his rude behaviour fill you with horror. He chides and jaws you, and he insults you

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[55] *Ibid*, pp. 42-3.

> shamefully; he makes mock at you, as a lecher does his whore; he beats you and mawls you as his bought thrall and patrimonial slave.[56]

Despite the bleak vision of marriage presented here, this excerpt must be taken with a grain of salt. This treatise had a definite agenda. It was intended to encourage women to join the convent, and consequently must be understood within this context as presenting a distorted vision of marriage, presenting the flip side of rhetoric of medieval misogyny by discouraging women from men's company. In fact, it has been argued that the attitude towards marriage and sexuality exhibited in *Hali Maidenhad* closely resembles contemporary Cathar beliefs, and as such imparts a particularly disapproving attitude of sexuality.[57] And yet, knowing this inherent bias, the particular image of marriage imparted in this treatise becomes all the more revealing. This was marriage at its absolute worst for women. This illustration of marriage in *Hali Maidenhad* suggests that the church fully recognised the potential danger for women of the unbalanced power relationship in marriage. Thomas Chobham took this a step further. In a brief discussion of homicide, he argued that uxoricide is far worse than parricide because husbands are much more inclined to kill their wives than sons to kill their fathers. [58] Here again, this does not give us a precise understanding of rates of violence within marriage, but it does at the very least suggest that concern for the phenomenon was sufficiently widespread to have attracted the attention of a number of clerical writers.

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[56] As cited and translated by Elizabeth Robertson, *Early English Devotional Prose and the Female Audience* (Knoxville, 1990), p. 86.

[57] *Hali Meidenhad*, ed. Bella Millett (Early English Text Society,London, 1982), p. 30. One of the main tenets of Cathar beliefs is purported to be that sex, even for procreation, was a sin.

Power, Marriage and the Common Law

Sermons, *exempla* and confessors' manuals are not the only sources available for a fuller understanding of gender roles within marriage. While the common law never clearly addressed the issue of domestic violence or marital hierarchy, the evidence of legal treatises from the late medieval period provides important insight into popular expectations. Legal treatises are a vast repository of knowledge concerning contemporary juridical practices, chiefly because the subject matter of these works is thought to have drawn heavily on actual cases adjudicated by medieval English courts.[59] As a result, where written law is vague and easily misunderstood, legal treatises provide a good grasp of contemporary practices.

Because the treatises are restricted exclusively to discussions of courtroom issues, the most informative material in any of these works is that which relates to contemporary beliefs of a married woman's responsibility in crimes committed in the company of her husband. Both the late thirteenth-century *Mirror of Justices* and the early thirteenth-century treatise *On the Laws and Customs of England,* traditionally attributed to Bracton, approach this subject in a more profound way. The *Mirror of Justices* is succinct but explicit in this matter: if a married woman stands accused of consenting to her husband's felonious activities, "she may answer that she is under her husband's rod and that she may not contradict [him]."[60] The *Mirror* goes on to declare that if her actions were committed "without her husband's

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[58] Chobham, *Summa Confessorum*, pp. 458-59.

[59] Since the early modern period, there has been some question over whether legal treatises were normative or prescriptive. *Bracton*'s treatise is a strange amalgam of material drawn from actual cases and the practices of the central royal courts, together with borrowings from Roman and canon law. Consequently, the reader is confronted with both contemporary practice and clerical attitudes of how the law should be exercised. For an interesting discussion of Bracton's work as an authority, see D.E.C. Yale, "'Of No Mean Authority': Some Later Uses of Bracton," in Morris S. Arnold *et al.* (eds), *On the Laws and Customs of England: Essays in Honor of Samuel E. Thorne* (Chapel Hill, 1981), 383-96.

[60] "qele est souz la verge son mari e qe ele ne poet contredire." Andrew Horne, *The Mirror of Justices*, ed. and trans. William Joseph Whittaker (Selden Society, vii, 1895), p. 140.

knowledge, then she must answer." While this perspective may have been useful as a legal strategy for women wishing to evade the consequences of their actions, it surely paints an unbalanced picture of medieval marriage. Reminiscent of Blackstone's "rule of thumb,"[61] the description of a married woman as "under her husband's rod" suggests that the courts anticipated the use of physical force by husbands in the good management of a home.

The *Mirror of Justices* presents a much more damning perspective of medieval marriage than does *Bracton*'s *On the Laws and Customs of England. Bracton*'s approach is, in many ways, much gentler than that espoused by the *Mirror of Justices*, while at the same time it is redolent of Chobham's expectations of female moral superiority. The treatise approaches the subject with the simple but vague statement that a man's "wife will not be held liable [for her husband's theft] because it is not she who has it within her *potestas* but her husband." The term *potestas*, or power, in this context is ambiguous at best: it neither contradicts nor reaffirms that a wife is "under her husband's rod." And yet, it establishes distinctly a hierarchy within the conjugal union in which the husband occupies the privileged position. The treatise continues: "A wife ought not to accuse her husband nor disclose his theft or felony, but neither ought she to assent to it or act as his confederate; she ought to keep

[61] Although the "rule of thumb" has often been assumed to have medieval origins, Blackstone's eighteenth-century treatise is the first known allusion to this custom in English legal writings, and even his description of the rule is not terribly clear. Essentially, the rule of thumb implied that a husband might beat his wife providing the branch he used to do this was no thicker than the width of his thumb. Blackstone's treatise refers to this rule in his discussion of a husband's right to correction. He notes: "[t]his power of correction was confined within reasonable bounds, and the husband was prohibited from using any violence to his wife, otherwise than lawfully and reasonably belongs to the husband for the due government and correction of his wife. The civil law gave the husband the same, or a larger, authority over his wife; allowing him, for some misdemeanors to beat his wife severely with scourges and sticks; for others, only to use moderate chastisement." See. J.W. Erlich, ed., *Erlich's Blackstone: Part One* (New York, 1959), 85.

him as best she can from felony and wickedness."[62]

How does this differ from Chobham's ideal of the pious wife who distributes her husband's wealth behind his back and uses "pillow talk" as a means to improve his moral character? The distinctly clerical perspective of the treatise *On the Laws and Customs of England* reminds us of the ecclesiastical credentials of its probable authors. Given that the authors were near contemporaries of Chobham and shared similar ecclesiastical training, it is not surprising that the two works should have shared the same expectations of gender roles within marriage. And yet, neither perspective accords with the more standard Christian theology on the inferiority of feminine moral integrity, and the outlook of both works on this issue was formed uniquely by their interactions with the lay community through the royal and ecclesiastical courts and the parish church. It seems clear that in the thirteenth century, Christian writing in both law and morals reflects a desire, not found in the earlier Middle Ages, to offer realistic solutions to ordinary laymen and women. Most likely, this new approach reflects the infiltration of the church by friars in the thirteenth century who deliberately altered their sermons in order to make them less offensive to women, because as Jacqueline Murray has argued, the demands of weekly preaching did not mean that "the laity will listen to advice that is irrelevant, insulting, or at odds with their own experience and values."[63] The result is a law and a moral theology that seems much more realistic than what had come before.

While *Bracton* attributed to the male a position of superiority within marriage, its

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[62] Henri de Bracton, *De Legibus et Consuetudinibus Angliae*, fol. 151b, ed. G.E. Woodbine, trans. Samuel E. Thorne (Cambridge, 1968), 2: 428.
[63] Jacqueline Murray, "Thinking about Gender: The Diversity of Medieval Perspectives," in Jennifer Carpenter and Sally-Beth MacLean (eds), *Power of the Weak: Studies on Medieval Women* (Chicago, 1995), p. 9.

vision is far different from that of the *Mirror of Justices*. In the latter, a married woman's primary allegiance is to her husband. This approach fits in well with medieval theology. A morally superior husband would not lead his wife into sin intentionally, but away from it. *Bracton* espoused a more practical perspective. It undermined the husband's ultimate power by arguing that "though she ought to obey her husband she need not be obedient to him in heinous deeds."[64] Presumably, the obedient wife of the third merchant in the *exemplum* discussed above would have fared little better in the courts of *Bracton*'s era. *Bracton*'s willingness to advocate compliance only when ethically and logically sound smacks of realism. While the *Mirror of Justices*, like the homiletic *exempla*, presents the ideal of the good wife who accedes to her husband's commands without question, most women probably related more easily to the first two merchants' wives, beaten for their insolence. *Bracton*'s perspective in this matter, then, provides a foil for that found in the *Mirror of Justices*. More important, it suggests that legal constructions of gender roles within marriage may have been no less ambiguous and contradictory than ecclesiastical perceptions.

Bracton and Chobham both assert a husband's authority and the need to enforce sometimes their dominance physically. As Maitland noted, however, a husband's right to use physical force was not "unlimited." He observed the existence of a form of writ from late medieval England directed to men who chastised excessively. Overzealous husbands were

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[64] Bracton, *De Legibus*, p. 428. Despite *Bracton*'s definitive statement, a case from a Yorkshire assize in 1256 would seem to suggest that a wife might indeed use her femininity as an excuse for heinous crimes committed in conspiracy with her husband. When Robert, accompanied by his wife Hawisia, slit the throat of Annabella of Elland one night in Robert's hostel, blame for the crime was laid on both halves of the couple. Robert managed to escape his fate by fleeing the scene of the crime. Hawisia was captured, however, and came before the court. The court was very lenient with her. She was acquitted for her part in the crime because, as the record stated, she could not contradict the will of her husband (*nec potuit contradicere voluntatem viri sui*). See PRO JUST 1/1109 m. 10. This was the only case of this genre that I discovered in the course of this investigation. Because of its early date, it is entirely possible that ideas about a wife's culpability may have changed over the course of the later Middle Ages (thus explaining the absence of hundreds of similar cases). Yet, it is significant that this case should appear not long after the

required to govern their wives well, and "to do no injury or ill to her body other than that permitted lawfully and reasonably to a husband for the purpose of control and punishment of his wife."[65]

Marriage in the Literature of Late Medieval England

While both the ecclesiastical and legal sources waver between moderate chastisement and absolute authority, the power relationship presented in the traditional literature of late medieval England swings to the other extreme. In the world of bawdy song and verse, wives were in ultimate control. Husbands forced to deal with the abuse of domineering wives were the unenviable subjects of these laments. This distorted view of marriage is a representation of the *mundus inversus*, a world turned upside-down, a popular theme in medieval literature in which the woman runs the household with a firm, tyrannical grip while the husband caters to his wife's every need. This antithetical view of the world was intended to be comical in its absurd representation of the marital relationship; none the less, the humour makes this perspective no less instructive. Literary representations can be very informative about social constructions of gender roles in marriage. As Anna Laskaya has argued,

> readers, like texts, are both constructed by and constructing the social, and if we assume that readers import their knowledge of the empirical world into their readings of texts across a gap of potentiality between the symbolic and the real, then we must grant that readers will bring back ideas and assumptions from the imaginary and symbolic to the actualized material world.[66]

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writing of *Bracton*, indicating that courtroom practices were not as standardised and rigid as this work would seem to suggest.

[65] Frederick Pollock and F.W. Maitland, *The History of English Law before the Time of Edward I* (Cambridge, 1968, 2nd ed.), 2: 436. However, none of the cases examined in this study included husbands prosecuted in the royal courts by their wives for assault.

[66] Anna Laskaya, "The Rhetoric of Incest in the Middle English *Emare*," in Anna Roberts (ed.), *Violence against Women in Medieval Texts* (Gainesville, 1998), p. 100.

The inversion of gender roles, then, was a literary tool used for entertainment purposes, but it also acted as a vehicle for instruction. While the *mundus inversus* may have been a farcical image of marriage, contemporary expectations of appropriate gender roles were defined in a very public setting in a way that was meaningful to the audience. The inversion of roles provoked laughter because of the unnaturalness of an aggressive woman or a submissive man, while at the same time it supported contemporary notions that the reverse is natural: women are inherently passive, men inherently active. The message was very clear. In this way, literary representations of domineering wives served a dual purpose: not only did they produce laughter with the inanity of the depiction, they also mocked women who ventured to adopt such roles.

Elizabeth Foyster has conducted similar research into the depiction of gender roles in broadside ballads from seventeenth-century England. She argues that

> while ballads were written primarily for amusement, the laughter provoked by them may itself have served the function of reinforcing gender control. By laughing at the stupidity of wrongs of others whose behaviour broke with the accepted norm, we can surmise that the readers were participating in the process of reconfirming the shared attitudes or values of the majority.[67]

Foyster, like Laskaya, makes two very important points on this issue. Representations of wives and husbands in this type of literature performed a didactic function, demonstrating to an audience the appropriate behaviour for each of the genders within marriage. And yet, the subject would not have been at all amusing unless the representation was in some way familiar to the audience. Literature did not create the norm, it merely confirmed to people what should be the norm. Foyster astutely observes that in this respect popular literature

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[67] Elizabeth Foyster, "A Laughing Matter? Marital Discord and Gender Control in Seventeenth-Century England," *Rural History* 4 (1993), 6-7.

functioned as a form of gender control within the community, ensuring that any deviance from the norm would be greeted with laughter. "Humorous ballads taught men and women to take their gender roles within marriage seriously."[68]

To mock another for his or her inability to conform to social expectations was a very important part of a medieval community's enforcement of moral codes and standards. For example, the use of pillories, stocks and the cucking stool by manorial and borough courts in the late medieval period reflected a desire to enforce conformity through social mortification. These punishments were employed exclusively for transgressions of the social norms: adultery, scolding, barratry, gaming, and other such crimes. The placement of these implements in a very public setting, usually a village green or square, ensured that the entire community was well aware of anyone spending time in the pillory. The church courts also found public humiliation to be an effective tool for the punishment of moral crimes. Adulterers and fornicators frequently found themselves in public procession or public floggings. Moreover, it has been argued that public humiliation was used as a weapon in both an unofficial and official capacity. Communities may have exerted their own pressure upon the couple to reform by means of the *charivari*.[69] As Natalie Zemon Davis has described it,

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[68] *Ibid*, 18. Of course, this phenomenon was in no way confined to theatrical representations of gender relations. The enforcement of social morality through mockery reached its height in the later comedies of Ben Johnson and Molière, where the miser, the cheat and the sycophant, rather than the hen-pecked husband and his garrulous wife, received the most scathing treatments.

[69] Although E.P. Thompson has suggested that "rough music" is a more appropriate term to denote this communal ritual than the "francocentric" *charivari*, I have chosen to employ the French term simply because the medieval English evidence offers no alternative. Terms such as "rough music", "skimmington", "lowbelling", "hussiting" and "riding the stang" derive from a later period, and there is little evidence to suggest a medieval heritage for any of them. In the absence of a distinctly medieval terminology, then, *charivari* offers the best alternative because it is widely-known and lacks any connotations specific to English regions. See E.P. Thompson, *Customs in Common* (London, 1991), pp. 467-538.

neighbours would darken "their faces, put on women's clothes, and assemble in front of the ... house, beating on wine vats, ringing bells, and rattling swords."[70] J.B. Given suggests that the *charivari* at times might have been even more dramatic. He notes that in France, "a husband who had been struck by his wife was paraded through the village on an ass."[71] The goal was to humiliate the couple for its indecorous behaviour by dramatising their relationship before an implacable village audience. In this respect, the husband was held to be especially responsible, for according to the medieval discourse on marriage, a man was to govern his household with a firm but gentle hand.

It is important to note that no historian has yet found irrefutable evidence of the *charivari* in late medieval English society. None the less, there are good indications that it was a medieval custom. First, there is an abundance of evidence that people in fourteenth- and fifteenth-century France practised this custom widely and for a variety of communal concerns, which should at the very least suggest a medieval heritage for this peculiar custom. Moreover, by the time written evidence of the *charivari* finally appears in English society in the sixteenth century, the custom seems so entrenched in the minds and actions of its English participants that it is likely to have enjoyed a long, but unrecorded, history.[72]

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[70] Natalie Zemon Davis, *The Return of Martin Guerre* (Cambridge, 1983), p. 21.

[71] J.B. Given, *Society and Homicide in Thirteenth-Century England* (Stanford, 1977), p. 136.

[72] As early as 1972, E.P. Thompson first put forth the persuasive argument that *charivaris* represent "the alienation expressed by people who still retain the remnants of their own communal law in states where the authorities claim to monopolize the legal system" (as discussed by Richard Firth Green, *A Crisis of Truth: Literature and Law in Ricardian England* (Philadelphia, 1999), p. 193. Green's discussion centres on an article written by Thompson in 1972. See "'Rough Music': Le Charivari anglais," *Annales E.S.C.* 27 (1972), 285-312.) Almost thirty years later, historians are just beginning to recognise the full implications of this corollary. Richard Firth Green has argued that Thompson's assessment of the *charivari* as a retention of folklaw is the key to understanding both the administration of criminal justice in the late medieval period and the modern perception of late medieval lawlessness (Green, *A Crisis of Truth*, chapter 5, *passim*). The *charivari* was a relic of an era preceding the ascendancy of the king's justice, but it remained crucial for local peacekeeping after the development of the common law precisely because the royal courts failed to adopt an adequate replacement. Consequently, cases of non-fatal domestic violence do not appear in the records of the king's courts simply because the courts of common law were not intended to deal with cases of this type. Rather, the community itself expected to regulate marital violence

If rituals of public humiliation like the *charivari* indeed laid the base for the social environment of a married couple's disputes, then, the *mundus inversus* took on a greater significance. Its popularity in song and verse alone suggests that there was a perceived need in society to reinforce gender roles through a medium that would reach a vast audience. As discussed in the following chapter, the *mundus inversus* mirrors a widespread concern among late medieval English society with women who transgressed the natural boundaries of their role, particularly assertive or outspoken women. Consequently, the nature of the marital relationship in these songs is extreme, intentionally drawing on popular imagery of the scolding wife in order to humiliate wives into proper behaviour. "A Henpecked Husband's Complaint, II" demonstrates unambiguously why women should not be in control of the home:

All þat I may swynk or swet,[73]
My wyfe it wyll boþ drynk & ete;
& I sey ovȝt she wyl me bete –
carfull ys my hart þerfor!

If I sey ovȝt of hyr but good,
She loke on me as she war wod,
& wyll me clovȝt abovȝt þe hod –
carfull [ys my hart þerfor!]

If she wyll to þe gud ale ryd,
Me must trot all be hyr syd;
& whan she drynk I must abyd –
carfull [ys my hart þerfor!]

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and was in fact considered to be the appropriate forum. Whether the *charivari* actually existed in late medieval England or not, it is certainly plausible that there were extralegal enforcement mechanisms at work in late medieval communities. Moreover, it seems clear that the *charivari* very much resembles the kinds of punishment employed in court settings of the period and thus would not have been incongruous in late medieval English society. Finally, Claire Sponsler's work on mummings and the morris dance demonstrates that these activities shared a number of features with the *charivari*; historians might best be advised to study these activities in more depth to understand the origins of communal regulation. See her "Outlaw Masculinities: Drag, Blackface, and Late Medieval Laboring-Class Festitivities," in Cohen and Wheeler, *Becoming Male in the Middle Ages*, pp. 321-47.

[73] *swynk or swet*: work and toil

If I say, 'it shal be thus,'
She sey, 'þou lyyst, charll, I-wovs!
Wenest þou to ouercome me þus?'
carfull [ys my hart þerfor!]
Yf ony man haue svch a wyfe to lede,
He schal know how iudicare cam in þe cred;[74]
Of hys penans god do hym med![75]
carfull [ys my hart þerfor!][76]

Termagant wives were not the only targets of this literature: husbands who allowed their wives free rein were equally subject to public ridicule. The failure of submissive husbands to assert their masculinity was the source of the problem. Any man truly in control of his home, as was this wife, would not suffer the laughter of his neighbours.

The representation of physical abuse in this song is fairly moderate; the use of physical force as a means of discipline was clearly not the primary lesson of this moral tale. Instead, its purpose was to depict an inversion of roles by focusing on the husband's obedience, passivity and fear (in turn suggesting that these traits are entirely appropriate for wives). The only hint of physical abuse is in the woman's threatened retaliation to the husband's unwelcome remarks (subtly implying that this was a provoked reaction); and yet, he has surely learned his lesson. The husband laments that "if" he were to question his wife's authority, he knows well what the response would be. His evaluation of the situation demonstrates the perceived value of force as an educational tool, for if his wife had never beaten him, he would not now think twice about his incessant nagging.

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[74] *He schal know how iudicare cam in þe cred:* he shall know how judgement came in the Creed. This reference is to the last lines of the Nicene Creed (*et iterum venturus est cum gloria iudicare vivos et mortuos*). The greater meaning, then, is that anyone who marries such a wife will live a life as if in perpetual Last Judgement.

[75] *med*: reward.

[76] Robbins, *Secular Lyrics*, pp. 39-40.

"An Old Man and his Wife" pushes this theme even further; here, the wife uses violence as a tool by which to maintain control.

Hey, how!
Sely[77] men, God helpe you!

This endres[78] day befel a strife
Totwex an old man and his wife;
She took him by the berd so plite
With hey, how!

She took him by the berd so fast
Till bothe his eyn on water gan brast,
With hey, how!

Out at the dore as he can go,
Met he with his neybres two:
'Neybur, why wepest so?'
With hey, how!

'In my hous is swich a smeke[79] –
Go under, and ye shall wete.'
With hey, how![80]

The degree of violence employed by the wife in this song is also relatively mild. She does not "beat" her husband, she merely pulls his beard. And yet, the husband is reduced quickly to tears and forced to flee his home, the home over which he is supposed to rule. After years of marital strife, the elderly husband has been taught his place. In this battle of the sexes, the wife is the victor. This is the quintessential *mundus inversus*; the natural order has been upended, transforming the husband into a woman. He exhibits all the desirable "feminine"

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[77] *sely:* wretched.
[78] *endres*: the other day.
[79] *swich a smeke*: such a smoke. With this allusion, the old man is attempting to hide his shame in the face of his neighbours by pretending that smoke made his eyes water (rather than his wife's ill-treatment). In many ways, his efforts to disguise his pain echo the words of wisdom offered to the battered wife by the *Fasciculus Morum*. A bruised and beaten wife should blame her bruises on an accident rather than shame her husband. See p. 58 of this chapter.
[80] *The Oxford Book of Medieval English Verse*, ed. Celia and Kenneth Sisam (Oxford, 1970), pp. 481-2.

traits: he is subservient and fearful of his wife's anger. Rather than continue their quarrel and challenge her rule, he retreats and weeps, confirming his wife's authority.

The old man's submissiveness is related intimately to his age. Old age is a prominent feature of this literature. In the world of song and verse, elderly husbands are frequently cowed by their wives' abuse. While the wife's age in this particular song is not provided, she is probably an elderly woman. The old man's wife displays all the typical characteristics of the elderly shrew, a stock character of medieval comedy. With years of marital experience behind her, she has learned to assert herself effectively in marriage, and dominates her husband. The emphasis on old age in this literature most likely reflects traces of a reality with which no one is terribly comfortable. Here, comedy again functions as a means of social control, by making men and women alike aware of the unacceptability of a domineering old woman. As Beverley Boyd has argued, even "[w]omen could join in the laughter at this old chestnut because the shrew was some other woman. Of course good Christian wives never nagged their husbands."[81]

"A Henpecked Husband's Complaint, I" typifies this genre of humour. The song begins with the husband cautioning other men not to marry an elderly woman precisely for this reason.

Yong men, I warne ȝou euerychon:
Elde wywys[82] tak ȝe non;
for I my-self haue on at hom –
I dar not seyn quan che seyȝt 'pes!'[83]

Quan I cum fro þe plow at non,
In a reuen dych[84] myn mete is don;

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[81] Beverley Boyd, "Chaucer's Audience and the Hen-pecked Husband," *Florilegium* 12 (1993), 179.
[82] *wywys*: wives
[83] *I dar not seyn quan che seyȝt 'pes'!*: I dare not speak when she says "peace!"
[84] *reuen dych*: broken dish.

I dar not askyn our dame a spon –
I dar not [seyn quan che seyȝt 'pes!']

If I aske our dame bred,
che takyt a staf & brekit myn hed,
& doþ me rennyn vnder þe bed –
I dar not [seyn quan che seyȝt 'pes!']

If aske our dame fleych,
che brekit myn hed with a dych:
'boy, þou art not worȝt half a pese.'[85]
I dar not sey quan che seyȝt 'pes!' [86]

Although the song retains the very gendered nature of the couple's labour, the inversion of the power relationship within the marriage makes its message even more pointed. Men who recognised elements of themselves in this depiction of the henpecked husband had reason for concern. And yet, this was clearly not a simple role reversal because the wife in this song is far too abusive. The justification for the use of force is very similar to the other henpecked husband's song discussed above: the husband cannot seem to keep quiet. In this instance, however, he is clearly not questioning his wife's authority or judgement. The use of violence in this context, then, is impossible to justify. It is senseless and unprovoked (even the "disobedient" wives of the *exemplum* presented a greater threat to their husband's position of authority).

This particular inversion of gender roles does not conform explicitly to any of the images presented in the ecclesiastical or legal literature. Instead, "A Henpecked Husband's Complaint, I" presents a sensationalised view of marriage intended to portray abuse in a comic way in order to reach a wider audience. None the less, the exaggerated perspective

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[85] *pese*: pea.
[86] Robbins, *Secular Lyrics*, p. 39.

does not detract from the moral of the story; in fact, it may have served an additional function. If the wife who beats her husband every time he opens his mouth is a comic figure, is this merely because she is a woman, or does the degree of violence play a role in this joke? The irrational and excessive nature of the violence in this depiction may well have been a tool calculated to berate husbands who resort too frequently to physical force in marriage. Could a man who participated in this discourse on marriage in good conscience beat his wife for no apparent reason? Songs of this genre may have caused him to rethink his actions.

The *mundus inversus* was not a theme restricted to literature; it was also a frequent subject of medieval English art. Ayers Bagley has described it as the "mainstay of the human comedy played out among the [church] stalls" in misericords.[87] Misericords are carvings found on wooden ledges which jut out from the bottom of the hinged seat of a choir stall in collegiate churches. Their purpose was to act as a support for canons and monks, especially elderly or infirm ones, by giving them the appearance of standing. These carvings were primarily decorative, but they also had a didactic function. Much like the homiletic *exempla*, they acted as miniature morality tales: a solitary image was intended to bring to mind a specific Christian teaching. Accordingly, the proliferation of images of the *mundus inversus* in this particular art form is very instructive. These carvings were constant visual reminders of the absurdity of female dominance and aggression. With celibate male canons as their intended audience, it seems clear that these images were intended to discourage them from marriage by highlighting it at its worst: marriage to a shrew.

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[87] Ayers Bagley, "Misericords & Choir Stall Carvings: Education, Imagery and Satire in Medieval Choirs," (Minneapolis, Nov. 09, 1999),
Many examples of misericords are listed in G.L. Remnant, *A Catalogue of Misericords in Great Britain* (Oxford, 1969), *passim*. The most prominent examples in Remnant's catalogue having to do with domestic violence, however, are those of Stratford-upon-Avon and Westminster Abbey (see figures 1-4 on pp. 113 and 114), and also Ely Cathedral.

The misericords show women beating their husbands with all the tools of their trade: men are struck with ladles, pots, brooms and distaff, wives pull beards and birch men's bottoms. The latter is a particularly curious inclusion because of its hierarchical implications: disobedient children are depicted regularly in medieval art having their bottoms birched by schoolmasters or parents. The drawing of an analogy between husbands and children must have made the lesson much clearer: in the world turned upside down, wives assumed the role of patriarch.

Undoubtedly, these images of husband beatings must have had an effect on social perceptions of the acceptability of domestic violence. The role reversal inevitably lends a comedic quality to the art. Yet, if marital strife is not upsetting, but amusing, how does this change our perspective of the real McCoy? This is a difficult question to answer. At the very least, this barrage of images likely entertained audiences while simultaneously making medieval spouses highly aware of social constructions of gender roles.[88]

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[88] Barbara Hanawalt, arguing from an English perspective, has asserted that this inverted vision of spousal abuse was "the usual illustration" in medieval artwork. Danièle Alexandre Bidon and Monique Closson, in their examination of the continental evidence, have claimed the opposite. In their examination of manuscript illustrations from the thirteenth through fifteenth centuries, Alexandre Bidon and Closson concluded that conjugal violence was much more frequently directed against women, in particular adulterous wives. This disparity in representations of marital violence clearly suggests a distinction in continental and English treatments of the phenomenon, despite the similarity of counsel in pastoral care. The continental images eschew the comedic façade entirely; consequently, the message implied in the image is much more direct. Within the parameters of the present study it is not feasible to attempt to understand why there was a perceived need for direct instruction about gender roles on the continent while this was apparently not the case in England; nevertheless, this finding certainly suggests that England dealt with marital abuse in a unique way. See Hanawalt, *The Ties that Bound*, p. 207, and Danièle Alexandre Bidon and Monique Closson, "L'amour à l'épreuve du temps: femme battues, maris battus, amants battus à travers les manuscrits enluminés (XIIIè – XVè s.)," in Danielle Buschinger and André Crépin (eds), *Amour, mariage et transgressions au Moyen Age. Actes du colloque des 24-27 mars 1983* (Göppingen, 1984), pp. 493-514.

Marital Violence in the Flood Plays of the English Mystery Cycles

The motif of the shrewish wife was probably best known to medieval audiences in the character of Uxor Noe, the wife of Noah in the Flood plays of the English mystery cycles. These collections of biblical plays ranging from Genesis to the life of Christ and the Last Judgement offer a glimpse into the minds of the medieval laity. Despite their religious content and unmistakable educational thrust, the mystery plays were written and performed by lay guilds and thus embody the beliefs of the urban elite. Because these men played a significant role in social control in the manorial and borough courts as jurors, the plays are very instructive about their perceptions of conduct appropriate to gender and rank. Moreover, these cycles had a very conscious objective. Much like the homiletic *exempla*, they were intended "to make sacred events *real* to lay congregations."[89] As a result, they employed contemporary dress and sets, and even addressed contemporary social or political concerns in an effort to facilitate audience identification with the characters and situations presented in them. The plays, then, represent a wide range of social perceptions: not only those of the elite urbanites who were instrumental in the writing and performance of these plays, but also of the members of the lower ranks who participated actively as performers in the crowd scenes and passively as audience members. The mystery cycles, then, should be considered one of the best means of unravelling shared perceptions of key social issues.

Four English mystery cycles have survived intact from the medieval period, three of which are examined within the parameters of this study. All these collections were related intimately to specific regions, the city of York, the manor of Wakefield and the town of Chester, and as such represent a more northern English perspective in particular. Although

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[89] A.C. Spearing, "Mediaeval Religious Drama," in D. Darches and A. Thorelley (eds), *The Medieval World* (London, 1973), p. 526.

the manuscripts in which these plays have been passed down have been dated reliably to the sixteenth century, it has been argued persuasively that the performance of these cycles dates at least to the early fourteenth.[90]

The depiction of Noe and his wife in these cycles is critical to this investigation not only because it is the most extensive depiction of domestic strife in English medieval literature, but also because it is one of the most fictionalised scenes appearing in the cycle plays and thus may well represent an attempt to make a mythical story memorable to medieval audiences. While Noe's wife was only mentioned in passing in the Bible, the Uxor Noe of the English mystery cycles was usually a lively and comic shrew who baited her husband and constantly disobeyed his orders.[91] The only English mystery cycle in which Uxor is not depicted as such is the N-Town cycle, often referred to as *Ludus Coventriae*, believed to have been associated with the town of Coventry in Warwickshire. This particular cycle adopts a much more continental typology by portraying Uxor as a type of Mary. The Chester, York and Wakefield cycles, all plays of northern origin, present instead the stock figure of Noe's wife as termagant, suggesting that the geographic concentration of these cycles is significant. Because the *Ludus Coventriae* is the only example of a central English cycle, and the representation of Uxor in this cycle is so vastly different from the northern plays, it seems likely that, in writing and presenting these plays, regions of England with strong connections to the continent may have adhered to the standards set by their continental counterparts in an effort to maintain an air of worldliness and sophistication.

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[90] For a discussion of the evidence in support of a fourteenth-century origin for these plays, see *The Cambridge Companion to Medieval English Theatre*, ed. Richard Beadle (Cambridge, 1994), articles by Richard Beadle, David Mills and Peter Meredith in particular.

[91] See Richard J. Daniels, "*Uxor* Noah: A Raven or a Dove?" *The Chaucer Review* 14 (1979), 23-32.

While the depiction of Uxor Noe varies widely in the surviving flood plays of the north and west, in each she is very much a type of Eve, the first disobedient wife, and a fitting role given that in the post-diluvian world she assumes the role of the new "Eve". Laura Hodges has argued that links between Uxor and Eve in the cycle plays were sometimes even explicit. The Wakefield pageant was the most deliberate in this respect. Representations of Eve in art and literature throughout the medieval period regularly associated her with the act of spinning. This particularly feminine task was symbolic in the Middle Ages of Eve's punishment after the Fall; thus, the distaff was a constant physical reminder of women's role in Original Sin.[92] Of all of the extant Flood plays from later medieval England, the Wakefield pageant alone represents Uxor as a spinner, and it was in this role that she best exhibited her disobedience. Her absolute refusal to board the ark because of her preoccupation with spinning is the ultimate defiance of Noe's authority. The allusions to Eve are at times even more clear-cut. Before the first exchange of blows between the two, Noe shouts to his wife, "I shall make þe still as a stone, begynnar of blunder!" (406), drawing here the connection between Uxor and Eve for those in the audience who might otherwise have missed the more subtle references.

In both the York and Chester plays, Uxor Noe first displays her shrewish behaviour when asked to board the ark. In fact, in the York mystery cycle Uxor does not even appear in the Flood plays until the work on the ark has been fully completed. Her reaction to the request makes it apparent that she was not even aware that her husband had been building an ark, despite the fact that "[a] hundereth wyntres away is wente" (114) since God first

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[92] Laura F. Hodges, "Noe's Wife: Type of Eve and Wakefield Spinner," in Julia Bolton Holloway, Constance S. Wright, and Joan Bechtold (eds) *Equally in God's Image: Women in the Middle Ages* (New York, 1990), p. 31. See also, Jeffrey Alan Hirshberg, "Noah's Wife on the Medieval English Stage:

commanded him to begin construction. When Noe sends his eldest son to ask his mother to come to the ark, her immediate response is to bid her son return to his father with the message that she "wol come no narre" (61). With some effort, finally she is persuaded at least to visit the ark and to discover what has been occupying so much of her husband's time. Noe orders her to come quickly and join him on the ark without revealing why. It is only when it becomes very apparent that Uxor has no intention of leaving dry ground for a life at sea that Noe unveils his plans and tells his wife about his conversation with God and the purpose of the ark. His confession is greeted with a mixed reaction from Uxor, but mostly she is angry with Noe for keeping this secret from his wife:

> Noye, þou myght haue leteyn me wete[93];
> Erly and late þou wente þeroutte,
> And ay at home þou lete me sytte
> To loke þat nowhere were wele aboutte. (113-16)

Noe's response that it was "Goddis wille" (118) earns him a "clowte" (120). Seemingly unaffected by her anger, he commands her simply to "be stille" (121). This is the only physical interaction between the two in the play, and it is significant that Noe chooses not to return the blow. Again, very much in line with continental typology, the York plays portray Noe as a type of Christ, steadfast and patient, refusing to be provoked by his wife's anger. He understands Uxor's distress but will not allow her to repeat Eve's mistakes. There will be no fall from grace on his watch.

Richard Daniels has argued that Uxor's rebellion is "the result [of] her stubborn refusal to accept the fact that Noah is the instrument of God's will." This is not an unusual reaction, even in biblical terms – after all, Joseph the holy foster father himself did not take

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Iconographic and Dramatic Values of Her Distaff and Choice of Raven," *Studies in Iconography* 2 (1976), 25-40.

[93] *wete*: know.

his wife's news at face value but required an angel sent by God to convince him of her sincerity.[94] While her shrewishness clearly presents a threat to Noe's authority as the patriarch in the family, then, her reaction is excused in part because of the stunning nature of Noe's assertion. In the absence of divine revelation absolute faith is a difficult path to follow. Bearing this in mind, it seems likely that Uxor's character was intended to act as contrast to Noe: Noe's faith and obedience shine when compared with the utter deficiency of both these qualities in his wife's conduct. Like the *exempla*, this was a deliberate construction intended to teach the laity a lesson in the value of faith.

Uxor's distress at hearing Noe's news is not merely for herself or her family. She demonstrates a very human concern for others:

> Nowe certis, and we shulde skape from skathe[95]
> And so be saffyd as ye saye here,
> My commodrys and my cosynes bathe,
> Þam wolde I wente with vs in feere.[96] (141-44)

She does not have to wait long to see the fulfilment of her fears as her "frendis" are soon "ouere flowen with floode" (151-52). Except for one last remark by Uxor lamenting the deaths of their "kynne" (269) after the flood has taken its toll on the world they once knew, the York play puts this theme to rest. The resulting image of Noe's wife, then, is certainly a disobedient shrew, but also a very human woman forced to deal with a tremendous loss. Her recalcitrant behaviour, while anti-social and destructive, merely disguises a woman in pain. Noe's ability to take control is the saving grace in this whole story. This vision of the relationship between Noe and his wife is a very different portrayal than that in either the

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[94] Daniels, "*Uxor* Noah", 26.
[95] *skape from skathe:* escape from harm.
[96] *Þam wolde I wente with vs in feere:* them I wish went with us in our company.

Chester or the Wakefield plays, and it is this particular aspect, the wife's attachment to her gossips, which remains one of the pivotal moments of the drama.

In the Chester plays, domestic strife also began with Noe's request that his wife enter the ark. The difference lies in the strength of both her refusal and his response. To Noe's first request, his wife replies, "[i]n faith, noe, I had as lief thou sleppit; / for all thy frankish fare / I will not doe after they red" (99-101). Angered, Noe commands his wife to do his bidding, but she refused once more. Noe's response to this second refusal demonstrates just how vast is the difference between the two cycles:

> Lord, that women be crabbed aye,
> and never are meke[97], that dare I saye
> this is well sene by me to daye,
> In witnes of yow each one.
>
> Good wife, let be all this beere[98]
> that thou makes in this place here;
> for all they wene[99] thou art master,
> and so thou art by St. John. (105-112)

In his appeal to his wife, Noe adopts a kind of reverse psychology: if he tells his wife what she wants to hear (that she wears the breeches in the family), then she might forget her anger and do as he wishes. This is very unlike the Noe of the York Flood plays. This Noe is impatient, easily provoked, and crafty, a far cry from York's Christ-like figure.

The situation declines from that point in the Chester group of plays. A third time Noe asks his wife to come aboard the ark. His wife tells him he might as well set sail without her because she "will not out of this towne" (200). The reason for her steadfast refusal is also quite distinct from that of the York Uxor. In the Chester plays, Uxor Noe is aware of her

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[97] *meke*: meek.
[98] *beere*: clamour.
[99] *wene*: believe.

husband's divine calling from the very beginning and has no qualms accepting his fate. Her disobedience stems entirely from her loyalty to her "gossips everichon" (201). If Noe will not allow them to board, then neither will he have the pleasure of his wife's company. With little time to spare squabbling over details, her son finally physically drags her on board against her will. Noe's welcoming words are greeted by his wife with a slap: "[a]nd haue thou that for thy mote!" (242). Despite Noe's more human portrayal in the Chester plays, like the Noe of the York cycle he manages to demonstrate his inherent superiority over his wife by refusing to succumb to her provocation with an exchange of blows. He may allow his wife to think she is the master, but his behaviour tells the audience who really wears the breeches.

Margaret Hallissy has argued that the figure of the gossip in literature is a key to understanding gender relations in the Middle Ages. She defines a gossip as a

> woman whose speech, though directed primarily toward other women, is considered antimale, because her relationships with women strengthen her in her relationship with her husband, thus undermining male authority.[100]

While Hallissy's understanding of a gossip as a specifically female figure who engages in idle chatter cannot be accepted as a medieval definition of the term,[101] her comments on female friendships seem particularly relevant to the mystery cycles. The Chester Flood play demonstrates all too clearly the predictable ends of these dangerous female friendships. Because God has no intention of saving Uxor's gossips from certain death, we are made painfully aware that these women are among those "sett fowle in sinne" (4) whom God laments at the very beginning of the first Flood play. And yet, because Noe has allowed his

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[100] Margaret Hallissy, *Clean Maids, True Wives, Steadfast Widows. Chaucer's Women and Medieval Codes of Conduct* (Westport, 1993), p. 75.

[101] For example, *The Prologe of the Wyves Tale of Bathe* alludes to a "gossib" who is clearly a man (243-5). A gossip, or "godsibbe" (originally meaning simply godparent of one's child) in the fourteenth century was

wife to indulge in these female friendships (that is, to associate with sinners and evildoers), Uxor aligns herself with them against her own family. She is even willing to face death out of loyalty to "the good gossopes." These women are a physical representation of her rebellion against the socially constructed power relationship of the conjugal union. The cautionary message in this morality tale is explicit: good husbands should not permit their wives to have female friends because it will only lead to another fall from grace. If Noe had not been so preoccupied with building the ark he would have ruled his home with a tighter grip. This episode is also, clearly, an emphatic confirmation that wives require the moral guidance of their husbands in order to lead a godly life. As Hallissy has argued, in this play Noe's wife is not given a recognisable personal name for a reason. She is intended to represent Everywife.[102] Her shrewish, insubordinate behaviour and her attraction to the world of sin are not exceptional character traits; they are simply predictable and unpleasant reminders of her femininity.

Both the York and Chester plays present a different perspective on the use of physical violence within marriage. In both it is apparent that Noe's refusal to respond to his wife's instigation unequivocally places him on the moral high ground. This is a very different message to husbands than that of Thomas of Chobham or even Berthold of Regensburg. According to these wise clerics, disobedience is the only acceptable reason to employ physical force in marriage. Uxor Noe's refusal to board the ark, then, should have provided fertile ground for the use of a firm hand in moral guidance. And yet, in a very Christ-like fashion, Noe chooses to turn the other cheek. Even the Chester Noe, worn down by years of shrewishness and willing to engage in mind games with his wife in order to avoid further

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understood primarily to be a familiar acquaintance of either sex. See *Oxford English Dictionary*, 2nd edition (Oxford, 1989), p. 700.

argument, exhibits a definite aversion to violence against women. This feature might well indicate a significant gap between lay and clerical understandings of the value of physical force in the preservation of male authority.

Although the Chester Noe fails to exhibit the characteristics of the archetypal husband found in the York Noe, both cycles clearly draw out the comparisons between Noe and Christ in his obedience, faith and authority. Likewise, Uxor provides the perfect contrast. While neither cycle openly associates her with the devil, there is an unspoken recognition that her destructive behaviour is a product of diabolical intervention. In this respect, the Newcastle Flood play provides more profound insight. The Newcastle Flood play is all that has survived of the *Corpus Christi* plays associated with this northern region, and also the only surviving play in which a connection between Uxor Noe and the devil is made explicit. As soon as Noe begins to build the ark the devil reveals himself to Noe's wife and informs her that if she does as her husband wishes, she can be certain of death for her and her family (118-20). He further persuades her that Noe's actions go against her welfare and that he intends to keep his work a secret from her. The devil gives her a drink "made of a mightful Main" (133), which she is to feed to Noe and which should extract a confession from him. Uxor obediently follows his advice and Noe reveals his plans for the ark. She is instantly critical, demanding of Noe "who Devil made thee a Wright" (171). The scene never gets as far as the boarding of the ark, but Uxor's refusal is already apparent: "By my faith, I no rake / Whether thou be friend or foe. / The devil of hell thee *take* / To ship when thou shalt go" (181-185).

Rosemary Woolf has argued that the depiction of the devil in the Newcastle Flood play is not an innovation by the Newcastle playwrights, but a common theme associated with a medieval folktale and based on an eastern legend. The legend in full suggests that the devil's

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[102] *Ibid*, p. 78.

intervention was not intended merely to prevent Noe from carrying out God's master plan, but was also an attempt to save his own skin. The devil's strategy was to distract Noe through his wife's disobedient behaviour and then board the ark by clinging to Uxor's back.[103] The inclusion in the Newcastle Flood play of this fragment of a popular legend was intended to make manifest to the audience the analogy with man's fall from paradise. And yet, in the end the Newcastle tale is much more uplifting than are the others: through a shrewd use of his authoritarian behaviour, Noe prevents a second fall and restores order to the world. The Flood play, then, makes clear what the story of man's fall does not: the *mundus inversus* in which the woman rules the family is nothing more than the world as the devil would have it.

The Wakefield, or Towneley, plays present the most creative vision of the relationship between Noe and his wife.[104] In many ways, Uxor and Noe in the Flood plays of the Wakefield cycle represent the medieval antecedent of the Punch and Judy plays. From the instant the two appear on stage together there is never a dull moment. This comedic slant is particularly interesting in light of the shared origins of the Wakefield and York cycles. As Lucy Toulmin Smith noted in the first edition of the York plays published in the late nineteenth century, the two plays are very closely related. Not only are they written in the same dialect, but also five of the pageants (not including the Flood pageants) are almost

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[103] Rosemary Woolf, *The English Mystery Plays* (Berkeley, 1972), pp. 132-158. Woolf notes that this legend has survived in its most complete form in visual art rather than writing. It is best exemplified in the illumination of *Queen Mary's Psalter*. See also, Frances Lee Utley, "Noah, His Wife, and the Devil," in Raphael Patai, Frances Lee Utley and Dov Noy (eds), *Studies in Biblical and Jewish Folklore* (Bloomington, 1960), pp. 59-91.

[104] This cycle is most often described as the Towneley plays. The name "Towneley" refers to the family that was in possession of the manuscript containing this cycle when it came to public notice in the nineteenth century. A permanent connection with this name was forged at the time of its first publication by the Surtees Society in 1836 with this very title. The cycle is commonly associated with the town of Wakefield in the West Riding of Yorkshire, which stood at the centre of the vast medieval manor of the same name. Because the Wakefield manorial rolls form an essential base for this study's understanding of spousal abuse in the local courts, it is particularly relevant to this investigation.

identical. [105] It seems clear that either one town borrowed from the other, or both derived their work from a common ancestor. And yet the Wakefield master (the name typically given to the anonymous writer who is thought to have authored some of this collection) chose to adopt an entirely different approach than York in respect of the relationship between Uxor and Noe in the Flood pageant. The York Uxor is indeed a shrew, but only marginally so, and her behaviour is kept firmly in check by the superior moral character of her authoritarian husband. The overall tone of the play is serious and is intended to convey a message to the audience about the importance of unwavering faith and obedience, while at the same time confirming contemporary notions of the power relationship within marriage. The Wakefield pageant goes to the other extreme. Like the Chester Uxor, Noe's wife in the Towneley play is both disobedient and critical in a way that is abundantly humorous; her faults do not stop there, however. She is insolent, derisive, acrimonious, hostile, and quick to the punch. She has all the negative characteristics of Eve, and much, much more. The mordant nature of her character, though, is not the only major distinction between the two cycles. The Wakefield Noe does not even distantly resemble his York counterpart. Long gone is the vaguely Christ-like Noe of York. Wakefield's Noe needs very little baiting to embark on a misogynistic tirade or an exchange of disparaging remarks. And unlike the Noe of York, Chester or Newcastle, this Noe displays no aversion to wife beating. The exchange of blows and incessant squabbling between the two reduces the pageant into a travesty of a failing marriage, and almost obscures the moral entirely. The depiction of the couple is so absurd that one begins to wonder why God did not decide simply to start from scratch.

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[105] Lucy Toulmin Smith, *York Plays: the plays performed by the crafts or mysteries of York, on the day of Corpus Christi in the 14th, and 15th, and 16th centuries, now first printed from the unique manuscript in the library of Lord Ashburnham*, (Oxford, 1885; repr. New York, 1963), p. xlvi.

The play opens with Noe's despairing appeal to God in all his majesty to save him from the wickedness and degradation of the world. Immediately recognising the purity of this man and the sincerity of his plea, God appears before Noe and reveals to him his plans to achieve vengeance "[i]n erth for syn sake" (88), "with floodys that from above shal fal, and that plenté" (146). He commands him to build a ship to save himself and his family so that they might "wax and multiply, / And fill the erth agane" (179-80). Distressed but comforted by God's charity, Noe then rushes off to tell his wife of these tidings. The trepidation he expresses at his wife's reaction guarantees that even before Uxor appears on the stage the audience knows exactly what to expect.

> My wife will I frast[106] what she will say,
> And I am agast that we get some fray[107]
> Betwixt vs both,
> For she is full tethee,[108]
> For litill oft angré;
> If any thyng wrang be,
> Soyne is she wroth. (183-89)

Noe's fears set the scene, and the audience is not disappointed by what transpires. A friendly greeting to his wife is met with immediate disapproval. While Noe has been off conversing with the divine he has been neglecting his duties, and Uxor is not hesitant to remind him of this. Before Noe has a chance to tell his wife about the flood and his building project, she immediately launches into a tirade directed first at Noe, then at the audience. She harangues Noe for his melodrama and constant over-reaction, and warns him that his depression "be it fals or trew" (201) is beginning to bore her. Having made her point and sufficiently distracted Noe from his original purpose, she turns away from her husband and

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[106] *frast*: fear.
[107] *fray*: affray
[108] *tethee*: tetchy.

wishes heartily to be "lowsyd" from the bonds of marriage (209). With an air of wisdom and experience, she invites the women in the audience to learn from her mistakes. Taking them into her confidence, she tells them what marriage is really all about: deception and revenge.

> If he teyn, I must tary, howsoeuer it standys,
> With seymland full sory[109], wryngand both my handys
> For drede;
> Bot yit otherwhile,
> What with gam and with gyle,
> I shall smyte and smyle,
> And qwite hym his mede[110]. (210-16)

Her aside is the beginning of the end. Frustrated and incensed, Noe casts the first blow: "Apon the bone shal it byte!" (220), and there follows a rapid exchange of blows and caustic remarks.

Eventually they both tire of the battle, and Uxor exits the scene, leaving Noe to begin the building of his ship. It is only after the ship is completed (ostensibly the same day) that he attempts once more to tell his wife about the impending flood. For a fleeting moment, the audience is privy to a tender exchange between the two. Alarmed by the news of the flood and the destruction of the world as she knows it, Uxor declares: "I wote neuer whedir; / I dase and I dedir /For ferd of that tayll" (313-15).[111] Noe immediately reassures his wife, "Be not aferd. Haue done; truss sam oure gere, / That we be ther or none, without more dere " (316-17).[112] The gentleness and affection exhibited in this brief chivalric episode are not enduring, however, and come to an abrupt end when Uxor first lays eyes on the ark. The ship is so misshapen that she cannot discern the bow from the stern. Deeply unsettled by this, she

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[109] *seymland full sory*: seeming full sorry.
[110] *And qwite hym his mede*: And pay him back instead.
[111] I know not whither, / I daze and I dither, / For fear of that tale.
[112] Be not afraid, have done, truss up our gear, / That we can be there before noon without more ado.

refuses to come aboard and pronounces her intention to spin. In utter amazement, Noe and his sons watch as she sets herself upon the hill and pulls out her distaff and wool. It is only once the water has reached the top of the hill and she is no longer able to spin on dry land that she considers boarding the ship. Her decision is greeted by her husband with anger and scorn.

> In fayth, and for youre long taryyng
> Ye shal lik on the whyp.
> ...
> For betyn shall thou be with this staf to thou stynk.
> Ar strokys good? say me. (378-9, 383-4)

This is followed by a brief pause in their violent exchange in which both spouses turn to address the audience. Uxor confides to the female spectators simply that she would be "at ese, and hertely full hoylle"[113] if only she might take up the "wedows coyll" (391). Noe's digression, on the other hand, is less acerbic and much more informative. In a conspiratorial tone he warns the men in the audience what will happen if they do not beat their wives:

> Yee men that has wifys, whyls thay ar yong,
> If ye luf youre lifys, chastice thare tong.
> Me thynk my hert ryfys both levyr and long, [114]
> To se sich stryfys, wedmen emong.
> Bot I,
> As haue I blys,
> Shall chasyse this. (400-06)

He then turns back to his wife and resumes the battle without the slightest consideration for the encroaching water. In the end, it is not the flood that drives them aboard the ship, but utter exhaustion. "[B]et so blo" (413) they agree to a truce and both enter the ark. From this point onward, the Flood play is much like any other. Noah and his wife cooperate in guiding the ship to land and they begin their new lives much more peaceably.

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[113] *hoylle:* hale.
[114] I think my heart is torn apart, both liver and lung.

This depiction of Noe and his relationship with his wife is so manifestly different than any of the other cycle plays that it requires a careful analysis in order to understand the morality of the tale. The difficulty lies in the fact that it can be interpreted in two very different lights, depending on how it was staged. Because there are very few stage directions in the manuscript (typical of medieval drama), it is important to recognise the full implications of both interpretations. On the one hand, the Wakefield Flood play may be interpreted as a black comedy. If the abuse were portrayed in a realistic manner, the play would convey a very distinct message. The level of violence in this play is both offensive and repellent while at the same time entertaining. The audience is intended to be amused by the malicious exchange of blows before their eyes, but simultaneously disturbed by the excessive nature of the violence, particularly in the final scene when Noe beats his wife with a staff. The end result would be a powerful introduction to the notion that violence in marriage is an exercise in futility. As Josie Campell has argued, in the unfolding of this plot "[b]oth husband and wife are chastised, and order is restored through a physical experience that makes them consider looking at their relationship in a different light."[115] Audiences participating in this battle for power cannot help but be aware that there is no decisive victory. After peace has been established and they board the ark, neither is master in the relationship: man and woman are forced to work together. They both spend time at the helm, and they make the decision together about which birds to send out. This progression represents a clear break between the old and new worlds. By entering the ark, the couple shed their past antagonism and become equal partners in marriage.

This is a very different understanding of the role of Noe than in any of the other mystery cycles from the period. Richard Daniels has argued that the Towneley interpretation

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[115] Josie P. Campbell, "The Idea of Order in the Wakefield *Noah*," *The Chaucer Review* 10 (1985), 83.

is critical to an understanding of the moral behind the story. "Noah's very humanity makes more complete, and thus more real, the bifurcation between Noah the man of God, the prophet; and Noah the man of the world, the irate husband."[116] While both the York and Chester playwrights accentuate Noe's godliness in contrast with Uxor Noe's frivolity, the Wakefield master chose instead to use Noe as his own contrast. His unhappy, abusive marriage and all too human reaction to Uxor's constant baiting would have been reasonably familiar to the audience; accordingly, the audience is permitted to witness the transformation of an ordinary man into a hero. This perspective clearly explains the extreme nature of the abuse: the more appalling and corrupt is his marriage in the antediluvian period, the more dramatic seems the change once he has embraced his role as the new Adam.

This particular interpretation of the Flood play as a dark comedy conforms to the original intention of these mystery cycles as a didactic tool. And yet, because this pageant is so unlike the rest of the cycle it is entirely reasonable to assume that its function as religious instruction may also have fallen by the wayside. The relationship of Noe and his wife can just as easily be interpreted as a slapstick comedy not unlike its more modern equivalent, Punch and Judy. Because Punch and Judy are puppets, the abuse they inflict on each other is funny. No one is at a disadvantage. They are equally matched. Their Wakefield audience most likely perceived Uxor and Noe in a similar fashion. While it is not inconceivable that the role of Uxor Noe actually may have been played by a woman, given the rarity of known cases of female actors in the Middle Ages and the fact that the shipwrights, mariners and fishmongers were primarily responsible for this pageant in the cycle, it seems highly unlikely that this

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[116] Daniels, "*Uxor* Noah", 28.

would have been the case.[117] This singular yet crucial detail would have had immense ramifications on the audience reaction to the abuse in this play. A man and woman beating each other is depressing because we already know the outcome; two men knocking each other senseless, especially when one is in drag, is just funny. This is not to suggest that as a burlesque the moral of the tale was ineffectual. As the popular songs of the era strongly suggest, humour was a useful tool in the expression of communal values. And yet, the visual imagery of two men beating each other may well have diminished slightly the effectiveness of this motif for the reinforcement of gender roles in marriage.

This second interpretation compels another glance at the questions raised by both popular songs and misericords of the late medieval period: if domestic violence in art and literature was intended to be funny and was appreciated as an element of comedy, what message (either conscious or unconscious) did that transmit to the audience? Did the constant repetition of this imagery have the effect of normalising domestic violence? Angela Weisl maintains that this was indeed the case. In her analysis of the fabliau as a literary form, she contends that it "turns violence against women ... into a slapstick comedy that distracts from its severity through humour."[118] In her opinion, "the humor takes place before a backdrop of

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[117] First, it has generally been assumed that the medieval stage was a masculine world. Over the last fifteen years, however, certain scholars have revised their opinions on this issue. It seems that women may have sometimes played a part in theatrical productions. While the records supporting arguments in favour of female actors are meagre at best, the sex of medieval actors was not often noted and might well have included women. Nevertheless, the general conclusion is that the medieval stage was overwhelmingly dominated by men. See Clifford Davidson, "Women and the medieval stage," *Women's Studies* 11 (1984), 99-113; Lynette Muir, "Women on the Medieval Stage: The Evidence from France," *Medieval English Theatre* 7 (1985), 107-19. Second, while there are no records for Wakefield suggesting that these guilds alone were responsible for the story of Noe and his wife, the *Ordo Paginarum* compiled by Roger Burton of York in the early fifteenth century lists the York guilds traditionally associated with particular plays in the mystery cycle. Given the correspondence between the nature of their work and the story of Noe, it seems likely that the decision was not arbitrary, and this reflects a more universal practice in the performance of the *Corpus Christi* cycle. See *The York Plays*, ed. Richard Beadle (London, 1982), pp. 23 – 27.

[118] Angela Jane Weisl, "'Quitting' Eve: Violence against Women in the *Canterbury Tales*," in Anna Roberts (ed.), *Violence against Women in Medieval Texts* (Gainesville, 1998), p. 117.

violence against women, which it normalizes by turning it into the punch line of a joke."[119] While Weisl focuses specifically on abuse of women (particularly in the form of rape), her assertion seems equally applicable to marital strife. In this respect, the popularity of spousal abuse as a theme in the arts may well have served a dual purpose. As Laskaya and Foster have asserted, this motif reinforced gender roles in marriage by confirming the unnaturalness of authoritarian or aggressive females; at the same time, through its slapstick representation in pieces like the Towneley Flood play it desensitised medieval audiences to the horrors of domestic violence, and established the naturalness of abuse as a feature of marriage.

Another Medieval Shrew: The Wife of Bath

Melvin Storm has argued that the character of Uxor Noe formed the basis for another well-known medieval shrew: Alisoun, the Wife of Bath. He remarks that "the similarities are so numerous that a reader versed in Chaucer must surely feel he is encountering, for better or for worse, an old acquaintance."[120] Not only are both saddled with old men for husbands (particularly in the case of Uxor whose husband was at least 900 years of age), they share a similar outspokenness and obstinacy in their relationships with their husbands that, even today, rarely fails to provoke laughter from their audiences. Like the mystery cycles, Chaucer's *Canterbury Tales,* in its notoriety and air of authenticity, provides a window into the minds of the general late medieval populace. While Chaucer himself was a courtier, his characters, which he strives to portray in a realistic fashion, are drawn from heterogeneous

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[119] *Ibid,* p. 120.

[120] Melvin Storm, "Uxor and Alison. Noah's Wife in the Flood Plays and Chaucer's Wife of Bath," *Modern Language Quarterly* 48 (1987), 306. Storm notes that the story of Noe and his wife as it is depicted in the mystery cycles must have been well known to Chaucer because he includes a reference to this in "The Miller's Tale": "'Hastou nat herd,' quod Nicholas, 'also / The sorwe of Noe with his felaweshipe, / Er that he myghte gete his wyf to shipe?" (3538-40).

backgrounds. At the very least, these characters suggest how one man of gentry rank perceived marriage and marital relations both among people of his own rank and others. Given the immense popularity of this work, however, it seems likely that his portrayals rang true even for those of lesser ranks. As an example of shared culture, then, the story of the Wife of Bath's struggle to wear the breeches contributes greatly to our understanding of gender relations in late medieval English society.

As Alisoun saw it, "soveraynetee" (818) is at the heart of the problem with marriage. Husband and wife cannot both be master, but "[o]on of us two moste bowen, doutelees" (440). In her first three marriages, Alisoun was very much in control. Through her youthful energy and sexual voracity she kept her elderly husbands in line. And whenever her husbands rebelled against her mastery, she "chidde hem spitously" (223) and reminded them of a man's proper place in the marriage. In this respect, the character of Alisoun, even more so than Uxor Noe, represents a figure of growing concern in late medieval society: the scold. Almost always a woman, the scold was a socially disruptive figure who, through her incessant nagging, gossiping, brawling and abuse, repeatedly harassed and troubled her neighbours. By the late fourteenth century most urban communities in England had passed bye-laws prohibiting such vexatious and disturbing behaviour.[121] Convicted scolds were to be submitted to either the cucking stool or the scold's bridle, an iron mask intended to still the tongue.[122] The connection between a disobedient woman and a horse needing to be tamed is very explicit in this imagery: like the wild horse, the scold lacks a master.

In *The Prologe of the Wyves Tale of Bathe* Chaucer consciously and deliberately

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[121] See Chapter Two, pp. 157-72 for a fuller discussion of this phenomenon.
[122] See image of a bridle on p. 183 at the end of the next chapter.

makes allusions to Alisoun as a scold. It is through this very behaviour that she gained "maistrie" (818) in her first three marriages, because as Alisoun claimed, "as an hors I koude byte and whyne" (386). Even in her fifth marriage, in which the struggle for power was most challenging and detrimental to her health, in the end her husband was brought to his senses and "yaf me al the bridel in myn hond" (813). Chaucer's remarks in this respect are illuminating. He makes an unmistakable link between scolding as a social phenomenon and female rebellion against the social construction of male dominance within the conjugal union. This association is never stated explicitly in surviving legal records, nor is it addressed overtly in the vast majority of the popular literature from the period. Chaucer's analysis of this situation suggests that the vision embraced by Chobham or Januensis of a distinct marital hierarchy was not accepted whole-heartedly in late medieval society by some women who indeed openly rebelled against it. That scolds were a growing concern of the late medieval period, then, demonstrates that late medieval English society was experiencing a gradual constriction in social constructions of gender roles in marriage. The Wife of Bath as a comic character, like Uxor Noe and the pot-wielding wives of the misericords, was probably intended as a reminder to wives that female dominance was a joke.

And yet, Chaucer's Wife of Bath, with her spirited and intelligent voice, clearly stands out from the scolding wives of the misericords and even Noe's wife in the Towneley Flood play. In the Wife of Bath, Chaucer created a woman of surprising intellectual capacities: she is capable of teasing out the complexities of theological discourse on the subject of marriage, while at the same time demonstrates a profound knowledge of ancient mythology. Such a woman forces audiences to take a second look at the scold; she may be untamed and overly-vocal, but she is certainly worth listening to.

In the discussion of her fourth husband, the Wife of Bath makes it clear to her audience that to her, "maistrie" does not imply merely female independence. With her fourth husband Alisoun was free from all constraints. Without a word in protest from him, she passed her time walking "[f]ro hous to hous, to heere sondry talys"(547) with her "gossyb" and friends, and still she was not happy. Her husband's philandering filled her "herte [with] greet despit" (481). Although nowhere does she confess to having loved him, her inability to control his actions angered and distressed her. It seems apparent that Alisoun was looking for ultimate control: she wanted not only freedom for herself, but absolute authority over her husband's actions. In essence, she was seeking the *mundus inversus*. When it became obvious to her that she would never obtain this degree of power in the relationship, she looked towards greener pastures and prepared to move on to husband number five.

It has sometimes been suggested that, in order to resolve her problems with the fourth husband, Alisoun participated in the most extreme form of domestic violence: spousal homicide.[123] Scholars who support this theory focus primarily on the fourth husband's age to buttress their arguments. The death of Alisoun's first three husbands certainly occasioned no surprise. They were much older than the Wife who was a mere twelve years of age on her first encounter with married life. Her fourth husband, however, is described as neither young nor old, and was presumably a man of her own age. In light of this, his "timely death," which permitted her to redirect her romantic endeavours towards the young clerk Jankyn, seems

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[123] Vernon Hall, Jr., "Sherlock Holmes and the Wife of Bath," *The Baker Street Journal* 3 (1948), 84-93. Beryl Rowland, "On the Timely Death of the Wife of Bath's Fourth Husband," *Archiv für das Studium der neueren Sprachen und Literaturen* 209 (1972), 273-82. See also D.J. Wurtele, "Chaucer's Wife of Bath and the Problem of the Fifth Husband," *The Chaucer Review* 23 (1988), 117-129, Donald B. Sands, "The Non-Comic, Non-Tragic Wife: Chaucer's Dame Alys as Sociopath," *Chaucer Review* 12 (1977-78), 171-82, and Mary Hamel, "The Wife of Bath and a Contemporary Murder," *The Chaucer Review* 14 (1980), 136. For counter-arguments, see T.L. Burton, "The Wife of Bath's Fourth and Fifth Husbands and her Ideal Sixth: The Growth of a Marital Philosophy," *The Chaucer Review* 13 (1979), 34-50, and also Susan

inexplicable. This interpretation of the Wife of Bath's prologue would have had an important effect on the reception of the tale. Medieval readers could hardly take pity on such a woman when she nearly suffered the same fate at the hands of her fifth husband. She clearly deserved whatever violence was meted out to her. Whether medieval audiences interpreted the Wife of Bath in this light or not, it seems apparent that she did not need to be a murderess to scandalise her audience. Rather, her readiness to leap into yet another marriage, going so far as to flirt with Jankyn at her fourth husband's funeral, should have been disgraceful enough.

After the Wife married Jankyn the "joly clerk" (628), a man twenty years her junior who pursued her actively during her previous marriage, her new husband's personality transformed altogether. "He hadde a book that gladly, nyght and day, / For his desport he wolde rede alway" (669-70). Obsessively he read aloud from his "book of wikked wyves" (685), detailing the sins women had committed against their husbands, in the hopes of teaching his wife her proper place. His constant torment, however, eventually led to his submission. Seeing that his tirade might go on indefinitely, the Wife plucked the book from his hands, tore three leaves from it and cast the first blow. Jankyn's response was equally vehement: "with his fest he smoot me on the heed" (795). The Wife was knocked to the ground unconscious. "[A]gast" (798), thinking he had killed her, Jankyn prepared to flee, and would have if Alisoun had not begun to emerge from her swoon. This brush with death had a profound effect on Jankyn, immediately snapping him out of his morose funk and causing him to make the proclamation, "As help me God! I shal thee nevere smyte" (805). Hoping to reconcile with his wife after this ordeal, Jankyn bent down to kiss Alisoun, and in return she "hitte him on the cheke" (808). "But atte laste, with muchel care and wo" (811), they devised

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Crane's rather presumptuously titled "Alison of Bath Accused of Murder: Case Dismissed," *English Language Notes*, 25 (1988), 10-15.

a solution to their problems. Jankyn ceded to his wife the "governance of hous and lond, / And of his tonge, and of his hond also" (814-5), and they lived happily ever after.

The Wife of Bath's prologue, then, is in an enigmatic and energetic introduction to the subject of marriage. The audience is left to unravel the various meanings of the prologue. The character of the Wife of Bath demonstrates the dangers of giving a wife too free a rein. Not only was she uncontrolled and outspoken, her manifold attempts to exert "maistrie" in marriage provide undeniable proof that power struggles within marriage drive out love. In this respect, it is essential to remember that the Wife of Bath is only the first of a group of tales focussed on the subject of marriage, and thus it should not be interpreted as Chaucer's final word on the subject. While the Wife of Bath's prologue confirms that female dominance in marriage is both offensive and destructive, the Merchant's Tale demonstrates that complete control by the husband is equally ruinous.[124] The moral of this group, then, is surely to demonstrate that complete control by either spouse is an exercise in futility, and inevitably leads to an unhappy (and perhaps even fatal) end. As the Frankeleyn's Tale suggests,

> Love wol nat been constreyned by maistrye;
> Whan maistrie comth, the God of Love anon
> Beteth hise wynges, and farewel, he is gon!
> Love is a thyng as any spirit free.
> Wommen, of kynde, desiren libertee,
> And nat to been constreyned as a thral;
> And so doon men, if I sooth seyen shal. (764-70)

How, then, is the audience intended to interpret the abuse in the Wife of Bath's prologue? The Wife herself has a mixed reaction to it. She describes her relationship with her fifth husband as a very unusual one.

> And yet was he to me the mooste shrewe;
> That feele I on my ribbes al by rewe,

[124] See discussion of the Merchant's Tale in Chapter Two, pp. 123-4.

And evere shal unto myn endyng day.
But in oure bed he was so fressh and gay,
And therwithal so wel koude he me glose[125],
Whan that he wolde han my *bele chose*,
That thogh he hadde me bete on every bon,
He koude wynne agayn my love anon.
I trowe I loved hym best, for that he
Was of his love daungerous to me. (505-14)

By her own admission, the Wife's fifth husband beat her badly ("on every bon") and frequently. In their final argument, the single blow she received was of such force that it not only knocked her unconscious, but of "the strook myn ere wax al deef" (636). And yet, broken bones and partial hearing loss aside, she "loved hym best" *because* "he was of his love daungerous to me." T.L Burton has argued that in this context "daungerous" should be understood to mean "reluctant to make love." Consequently, the entire passage should be interpreted to mean that the Wife of Bath loved this husband best because she liked to be dominated sexually.[126] Nevertheless, with the entire discussion directly preceding this phrase concerning his brutish and severe treatment of her, it is difficult to interpret the word "daungerous" in this light. Elaine Tuttle Hansen asserts instead that "daungerous" had much the same meaning as its modern variant. Thus, the phrase can be interpreted to mean that his brutality was the reason she loved him best.[127] The abuse in this account, then, has a very specific and equally dangerous message. Not only are women attracted to violent men, but

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[125] *glose*: flatter.
[126] Burton, "The Wife of Bath's Fourth and Fifth Husbands", 42.
[127] Elaine Tuttle Hansen, "'Of his love daungerous to me': Liberation, Subversion and Domestic Violence in the Wife of Bath's Prologue and Tale," in Peter Beidler (ed.), *Geoffrey Chaucer: The Wife of Bath – Complete, Authoritative Text with Biographical and Historical Contexts, Critical History and Essays from Five Contemporary Perspectives* (New York, 1996), pp. 278-80. Palomo adopts a similar argument. See Palomo, 315. Both Hansen and Palomo find some support for this contention in the *Middle English Dictionary*. It suggests that in this particular phrase "daungerous" should be interpreted to mean "niggardly" or "chary" (thus her fifth husband was stingy or sparing with his love). However, given the context of the phrase, following on the heels of a discussion of his physical abuse, it seems more than likely that the equally popular definition of "domineering" or "overbearing" might be a more plausible

they enjoy being beaten. Hansen, in fact, takes this a step further. She argues that, according to the Wife, "male violence is not just offset by good sex, but male violence and female pain are mutually constitutive elements of female desire": for a woman, violence is necessary for sex to be pleasurable.[128] Given that her sexual encounters with her four previous and much gentler husbands left her wanting, this may well have been the case.

Hansen further argues that the Wife of Bath's tale reiterates this message. Alisoun relates the story of "a lusty bacheler" (883) who, when riding from the river one day, espied a young woman walking and "rafte hire maydenhed" (888). He was forthwith brought before King Arthur's court and condemned to death for his unknightly behaviour. The Queen and ladies of the court decided to intercede on his behalf and plead with Arthur to show him mercy, which he granted. They then designed a test for the rapist in order for him to demonstrate to the court that he had truly experienced a change of heart in his attitude towards women. If he might discover "[w]hat thyng is it that wommen moost desiren" (905) within a year and a day, then his crime would be excused and he would be allowed to go free. He left the court and embarked on a journey to find out from women what they desire most in life. During his quest for the truth, the rapist met an old hag; a "fouler wight ther may no man devyse" (999). She promised to tell him the secret of what women want most if he does as she asks just once. He agreed, and she revealed it to him. Echoing the Wife of Bath's own experiences, she told him that what women want most is control: "Wommen desiren to have sovereynetee / As wel over hir housbond as hir love, / And for to been in maistrie hym above" (1038-40). With great relief, the bachelor went back to the court and made known his discovery. The ladies of the court all agreed that he had indeed uncovered the secret. He was

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interpretation in this sense, although neither have connotations of physical violence. See the *Middle English Dictionary*, vol. 3, 847-8.

forgiven his crime and allowed to live. It was then that the "loothly" (1099) lady demanded his hand in marriage in return for her words of wisdom. Repulsed and unhappy, he complied (because he gave his word). The story then came full circle when the knight was confronted by a difficult decision regarding authority in his own marriage. His new wife offered him a choice: she could be either "foul and old" but a "trewe humble wyf" (1220-1); or, she could be a young, beautiful woman with sovereignty (and if she was not sufficiently beautiful, she would grant him the power of life and death over her). Having learned his lesson well, the knight had no trouble making his decision: he immediately submitted himself to her "wise governance" (1231). "And thus they lyve unto hir lyves ende, / In parfit joye" (1257-8).

What exactly is the moral of this story? And more to the point, why would any woman consciously choose to marry a known rapist? The underlying message is far from clear. This tale may well be about the potential for reform. Mirroring the Wife of Bath's prologue, the rapist, like Jankyn, learns to respect female authority and give up his violent ways. And yet, this tale might well be interpreted in an entirely different fashion: the loathsome lady is attracted to him, not because she could see his potential for improvement, but because he is a violent man. Like the Wife of Bath, this woman is attracted to brutality.

As Hansen astutely points out, the Wife of Bath's narrative is grounded in two very distinct ideologies. First, in both the prologue and the tale the violent male undergoes a rapid and complete transformation of character. Both Jankyn and the rapist learn to love and respect their wives; moreover, in both cases, the union of the couple seems to erase the men's violent actions. We are led to believe that immediately after Jankyn nearly killed his wife in anger, he was reformed fully and never again returned to his old ways. As Wurtele has

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[128] *Ibid*, 278.

described it, "Jankyn's malicious nature is seen to change at a stroke."[129] He burned his book and informed his wife that she might do as she pleased for the rest of her life. Likewise, in the Wife's tale the man who so casually violated a woman sexually and showed no remorse at his trial except to worry how his actions might endanger his own welfare, through his wife's guidance also experienced a miraculous change of character and was never drawn to rape again. In both cases, the transformation is too rapid for such an immense change in perspective to be believable. Moreover, the rapist knight is not only won over to gentillesse, but he is rewarded through marriage to a beautiful young woman. Both the rapidity of reform and the happy ending trivialise the abuse. The women are not seen as victims, but as an insignificant part of a rite of passage.

Second, both the Wife of Bath and the woman in the tale are attracted to violent men. This twin reinforcement of the notion has the grievous effect of normalising violence against women: not only are men violent by nature, but women delight in it.[130] This message renders the sermons of Chobham, Januensis and Peregrinus obsolete. There is no need to tell husbands not to beat their wives, because a loving wife will both expect it and welcome such treatment.

Despite Chaucer's unexpected and somewhat cryptic argument concerning domestic abuse, he makes the audience very much aware of some of the reasons why men are driven to violence. Like the Uxor Noe of the York and Chester plays, the Wife of Bath is very much attached to her gossips, and it is this behaviour in particular that provokes ire from her husbands. Even Alisoun's fourth husband, who was unemotional and distant, was driven easily to shame when he found Alisoun sharing details of his private life with her gossips:

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[129] Wurtele, "Chaucer's Wife of Bath", 119.
[130] Hansen, "Of his love daungerous to me", 280.

I wolde han toold his conseil every deel.
And so I dide ful often, God it woot,
That made his face often reed and hoot
For verray shame and blamed hymself for he
Had toold to me so greet a pryvetee. (539-42)

All five of her husbands had good reason to fear the Wife of Bath's friendship and loyalty to her gossips. First, Alisoun herself perceived the capacity to visit her friends as evidence of her independence and sovereignty in marriage. Irrespective of her husbands' protests she exerted and won this right again and again, establishing to herself (if not others) that she was the master of her marriages. Moreover, as Jankyn should well remember it, it was on one of these walks about town that she first showed her affection for him and suggested that if she were a widow, he should wed her (568). Knowing the dangers this freedom provided her, he more than anyone should have feared extending her that same liberty. Second, the Wife prized her female friendships above all else. In fact, her relationship with one favourite gossip, a woman also named Alisoun, was much more enduring and personally meaningful than any of her marriages. Her primary allegiance to women undoubtedly empowered Alisoun, giving her the courage to stand up to her husbands and demand freedom of movement, but also undermined the potential for intimacy in marriage. When looking for her next husband, Alisoun was not driven to find a soul mate, because she already had friends with whom she might share the secrets of her life.

Throughout the discussion of the Wife of Bath's various relationships, Chaucer hints at the underlying problem with marriage in the fourteenth century: money. Alisoun figured out at an early age how to play the marriage game. Her first three marriages were based entirely on wealth. She married rich old men whom she goaded and harrassed into buying her "gaye thynges fro the fayre" (221). When she finally married for love rather than money,

however, she was no happier. In both her fourth and final marriages, the tables were reversed. We are told immediately that her fourth husband was "a revelour; / This is to seyn, he hadde a paramour" (453-4). If he already had a mistress why would he marry the Wife of Bath? Presumably he married Alisoun because of her money, in order to support his mistress and himself in the lifestyle to which he wished to become accustomed.[131] Similarly, the youthful Jankyn succumbs to Alisoun's charms only once she is a rich old widow. She is made painfully aware of her situation in their final battle. Thinking that Jankyn had tried to kill her, in a moment of self-realisation she cries out: "And for my land thus hastow mordred me?" (801). Money is clearly the thread that binds all of the Wife's five marriages. In this, Chaucer is distinctly criticising a feature common to marriage among in the later Middle Ages. Affection was secondary when large amounts of money and property had to be taken into consideration. While marriage with a view to augmenting wealth may have been the custom, Chaucer makes his audience acutely aware that it was not without its problems.

Feminist historians and literary scholars have long debated Chaucer's intentions in his portrayal of the Wife of Bath and her marriages: was he a proto-feminist confronting the traditional litany of misogynist clerics, or was he a staunch supporter of these anti-feminine views? Lamentably, it seems likely that this debate may continue for some time yet without definitive conclusion. None the less, a reading of Chaucer's *The Prologe of the Wyves Tale of Bathe* emphasises some of the common conceptions of difficulties in marriage. For the Wife of Bath, the *mundus inversus* is the ideal. Whether this was intended as criticism of dominant wives or as open rebellion against traditional constructions of gender roles in marriage, Chaucer has located the crux of the dilemma.

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[131] Palomo makes a similar argument, "The Fate of the Wife of Bath's 'Bad Husbands'", 308.

Conclusion

The sermons, homiletic *exempla*, various forms of literature and even the legal treatises of the period all accord with Chaucer's *The Prologe of the Wyves Tale of Bathe* in describing marriage as a hierarchy of power. And yet, none of these sources provides a clear understanding of the parameters of the relationship. Instead, these works espouse a wide assortment of views. *Bracton* and the sermon literature generally adopt a moderate approach. They suggest that physical force was permissible, but within certain bounds. The sermon stories and *The Mirror of Justices*, however, present an alternative view: wives must obey without question. Any deviation from this appropriate conduct merits savage retribution, which, if we are to believe Berthold of Regensburg, St. Augustine or the *Fasciculus Morum*, a wife should simply receive without complaint (and perhaps even enjoy, like the good wife of Bath). Unfortunately, only the Flood plays of the mystery cycles offer a view of domestic violence that is not offensive to modern sensibilities. In the Towneley cycle, the audience is made abundantly aware of the unacceptability of violence in marriage. Once Noe and his wife board the ark and leave the world of corruption and sin behind them, they begin their lives in a New World (God's world), and in God's world there is no place for violence. Even in the York and Chester plays, while Uxor may occasionally toss a punch at Noe, he refuses to be provoked, demonstrating that the good Christian husband keeps his anger in check. And yet, even the Flood plays proffer an ambiguous message: does Noe refrain from violence because he is a good man and a good Christian, or does he do so by virtue of the fact that he is divinely chosen (meaning that abstention from violence is an unobtainable goal for those who are not)?

Joy Wiltenburg has observed that early modern popular literature dealing with domestic violence in both England and Germany tends to cast marital discord "in terms of female resistance to male authority".[132] This is clearly very much the case for the late medieval period as well. The Wife of Bath and the *mundus inversus* of the misericords were important symbols in late medieval English society: they taught a powerful lesson about what happens to husbands who do not exert the kind of power expected of them. Men need not only beware the scold and bitter shrew, but must also suppress these latent tendencies in women, because it was believed strongly to be in women's nature to rebel against male authority. As far as Chobham, Bracton and other clerical writers might stray from these essentialist notions of woman as a type of Eve, in the end, they were always compelled to come full circle, because as Alisoun expressed it best, everyone knew that "[w]ommen desiren to have sovereynetee" (1038).

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[132] Joy Wiltenburg, *Disorderly Women and Female Power in the Street Literature of Early Modern England and Germany* (Charlottesville, 1992), p. 97.

Fig. 1: A misericord from Stratford-upon-Avon illustrating the *mundus inversus*. A wife pulls her husband's beard and prepares to hit him with a pot.

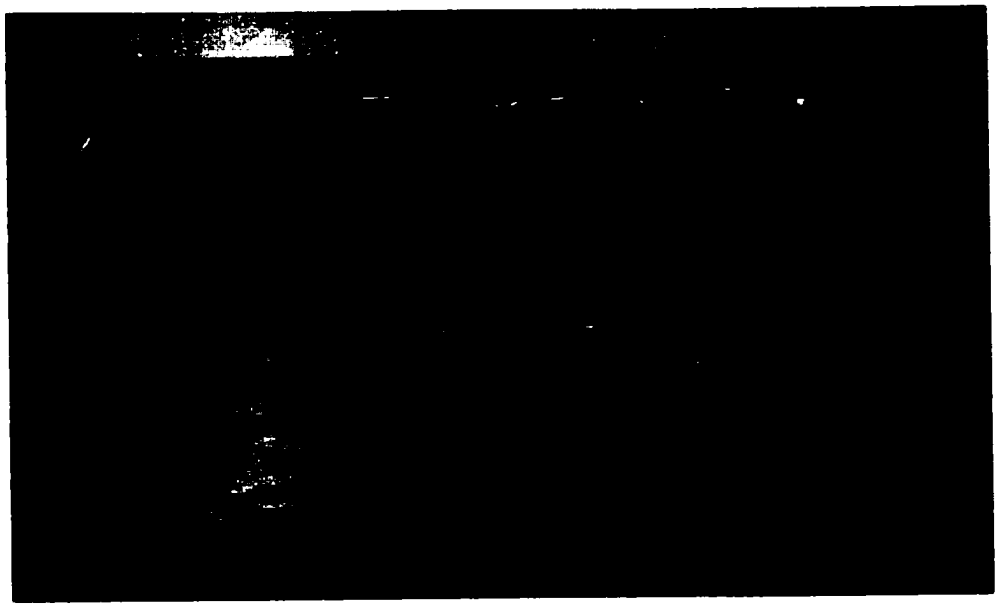

Fig. 2: A misericord from Stratford-upon-Avon depicting marital strife.

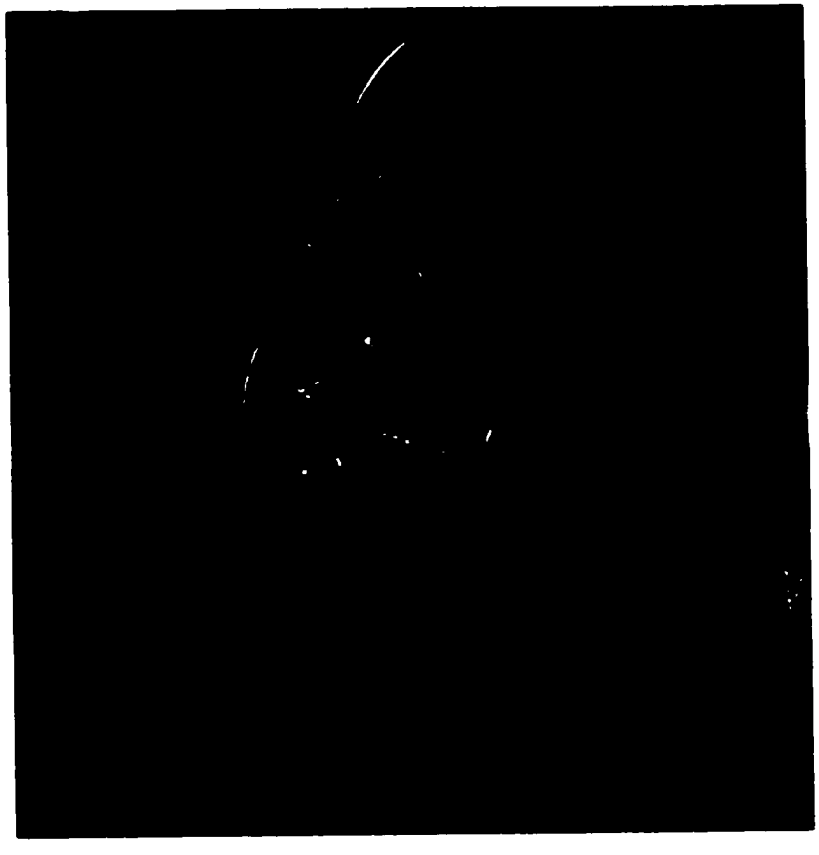

Fig. 3: A misericord from Westminster Abbey's Henry VII Chapel. A wife beats her cowering husband with a distaff.

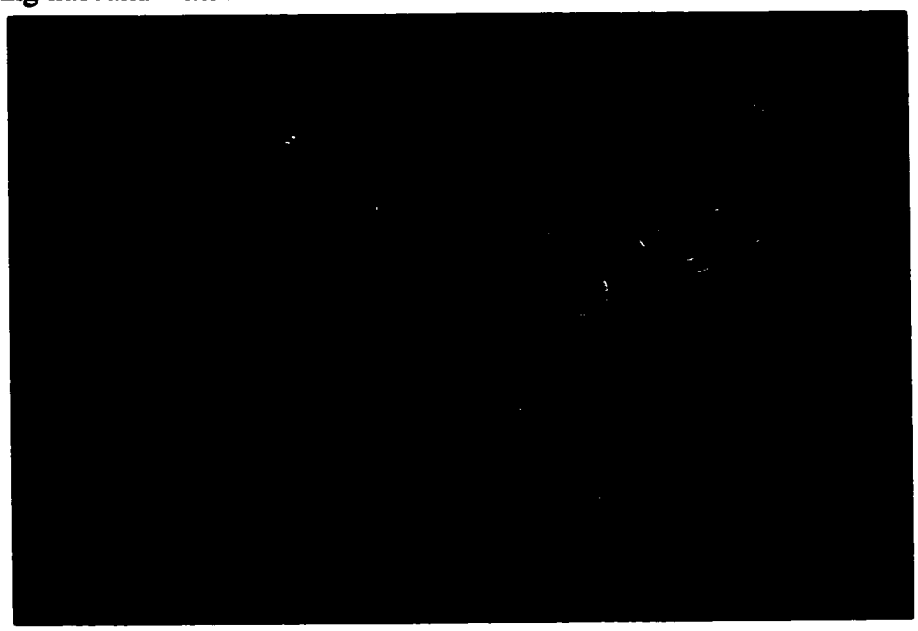

Fig. 4: A misericord from Westminster Abbey's Henry VII Chapel. A woman birches her husband's bottom. This imagery is reminiscent of a schoolmaster's punishment of a disobedient boy.*

* These images are reproduced here with permission from Bagley's "Misericords & Choir Stall Carvings."

Chapter 2:

Disturbing the Peace: Marriage, the Family and the Community

Because domestic violence so rarely appeared before the secular or ecclesiastical courts for resolution, it seems logical to assume that there was a more local and unofficial mechanism responsible for the regulation of marital disharmony. Historians like Barbara Hanawalt and P.J.P. Goldberg have suggested that family and friends probably intervened in situations that they perceived to be out of control.[1] Given the extensive involvement of families in marriage throughout the medieval period, this conclusion seems the most likely alternative. The present chapter will demonstrate that this assumption finds ample support in the sources for both Yorkshire and Essex. Although there is little extant evidence to illuminate the role played by these same individuals in medieval marriages, it is only a short leap in logic to arrive at the conclusion that families and friends eager to participate in and supervise the courtship process were equally interested in the future and prosperity of the couple after the marriage had been solemnised. The evidence of manorial and borough courts from the fourteenth century, however, would seem to suggest that the responsibility for overseeing marital happiness may well have shifted from a small group of family and friends in the early part of the period to the community in general after the mid-fourteenth century as communities across England became less tolerant of disruptive behaviour. Perpetrators of marital disharmony who were dealt with in an unofficial capacity prior to the fourteenth century suddenly found themselves presented and fined by manorial and borough courts as the century wore on and new ideas concerning personal liability emerged. This transition in local

[1] Barbara A. Hanawalt, *The Ties that Bound: Peasant Families in Medieval England* (Oxford, 1986), pp. 208-210. P.J.P. Goldberg has suggested that separations were probably arranged outside the courtroom

governance was not restricted to cases of marital strife; it was part of a much wider trend in the regulation of social behaviour across England in which local authorities took a more active role in the administration of the law and may be the key to understanding the transition from medieval to early modern expectations of the family.

Family Involvement in the Selection of Marital Partners

During the later Middle Ages, marriage was not a private affair. Michael Sheehan described it best in his 1978 article when he wrote that marriage was one of the medieval family's "procedures for recruiting new members."[2] Intervention by third parties began at the first possible moments of courtship. Youths were introduced to future spouses through organised communal events, such as guild activities, feast day celebrations, village dances and carolling. Group encounters of this kind allowed parents to manipulate the social environment of the youth by restricting with whom he or she might come into contact. In this way, families hoped to guide youths of marriageable age towards an "appropriate" partner, one who shared similar (or ideally, slightly better) economic and social standing within the community. Parents and older siblings as well played an active role in chaperoning the relationships of youths, in part, because the marriage of one member affected the entire family. Because wealth and land were critical factors in the choice of spousal partners, marriage required strategy: parents and siblings strove to form the most effective union possible that would at once benefit the couple and the family. While love and marital affection were surely not foreign concepts to this society, as some historians might profess, they were not always the

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setting by the families concerned. See P.J.P. Goldberg, *Women, Work, and Life Cycle in a Medieval Economy: Women in York and Yorkshire c.1300-1520* (Oxford, 1992), p. 267.

[2] Michael M. Sheehan, "Choice of Marriage Partner in the Middle Ages: Development and Mode of Application of a Theory of Marriage," *Studies in Medieval and Renaissance History*, New Series 1 (1978),

overruling concerns in the courtship process.[3] As Barbara Hanawalt has argued, "[t]o marry for love without land or chattels could assure nothing but a life of penury."[4]

Both families profited through marriage with the acquisition of new lands. Brides brought their *maritagium*, or dowry, to the marriage. Grooms, on the other hand, promised a dower of one-third to one-half of the property in their possession,[5] and sometimes endowed the new bride with a gift of land or chattels. Which family stood to gain the most economically is still an issue for debate, but both families benefited from the enhanced reputations associated with a well-suited marriage and the creation of new familial relationships. In her study of medieval Brigstock in Northamptonshire, Judith M. Bennett uses manorial rolls to reconstruct the social networks linking two local families through the marriage of Henry Kroyl and Agnes Penifader in order to demonstrate the full impact of a conjugal union on the social environment of both families.[6] She observes that marriage

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5. This article also appears in his *Marriage, Family, and Law in Medieval Europe: Collected Studies*, ed. James K. Farge, (Toronto, 1996), pp. 87-117.

[3] Although Michael Sheehan has argued that spousal selection in medieval England, especially among the lower classes, was indeed a matter of individual choice, more recent historians have suggested that familial intervention was still fairly common. See for example, Shannon McSheffrey, "Men and Masculinity in Late Medieval London Civic Culture: Governance, Patriarchy and Reputation," in Jacqueline Murray (ed.), *Conflicted Identities and Multiple Masculinities: Men in the Medieval West* (New York, 1999), pp. 243-78.

[4] Hanawalt, *The Ties that Bound*, 198.

[5] General understandings of what constitutes a dower were contested throughout the later medieval period. Widows were entitled to a third of their husband's property, but the meaning of "property" was fertile ground for misinterpretation. During the early part of the period, the widow's third was more often than not interpreted as the amount of property a man possessed at the time of his marriage. This definition was not universal, however, and varied from region to region. All of this gradually changed after Henry II's possessory assizes brought the issue of property to the forefront of the royal courts. As Joseph Biancalana has noted, royal justices attempted to standardise local practices by imposing their own interpretations. In permitting a broader definition of the term to denote all property at a husband's death, justices allowed widows to enjoy a full share in their husbands' land acquisitions since the time of their marriage. Meanings of dower once again experienced reinterpretation after Magna Carta, when it was decided that a widow was to have one third of her husband's property unless she had been endowed with less at the church door (that is, upon marriage). The effect of this ambiguous decision was to create confusion about what constituted a dower that lasted throughout much of the late medieval period. For more on this topic, see Joseph Biancalana, "Widows at Common Law: The Development of Common Law Dower," *Irish Jurist*, New Ser., 23 (1988), 255-329.

[6] Judith M. Bennett, "The Tie that Binds: Peasant Marriages and Families in Late Medieval England," *Journal of Interdisciplinary History* 15 (1984), 111-129.

established powerful links between families, attested by the frequency with which individuals turned to their in-laws to act as character witnesses in the legal process. For the new couple the groom's family remained the most vital association; but the social network of both families was altered profoundly. Bennett is very careful to note that marriage did not forge meaningful political bonds between families; instead, it provided the various members of both families with a range of options for a wider network of close associations that might alternately be accepted or rejected. Bennett's study strongly confirms that even in village life marriage furnished opportunities and established useful connections that had significant ramifications on the future paths of both families.

Outside peasant society, marriage alliances took on a whole new meaning. For the parents of the bride, in particular, wealth was a crucial concern in the negotiation process. After marriage, a woman ceased to exist as a legal individual. She became a *feme covert*, meaning that in the eyes of the law, her fate was bound up inextricably with that of her husband. He stood as a joint representative for the couple in public and legal matters; the assumption was that their interests were indivisible. The welfare of a wife was so embroiled in that of her husband that the law treated them as if they were one person. In disputes over property rights the same ideology was applied. According to the common law, wives retained the title to all land and goods in their possession at the church door, but husbands managed the land and enjoyed the profits from it during coverture. The only legal stipulation was that no man was permitted to alienate permanently his wife's property without her consent. Marriage in the medieval period, then, created a unique situation in which a woman wealthy in her own right had no actual control over her own property. The inevitable result was that a man's character and personal riches ultimately became necessary considerations in the

negotiation process. A woman's family had no wish for an idle man to lay waste its property, or to allow a man of lower rank to coerce his wife into selling property against her will and permanently alienate it from her family. As Sheehan has noted, these issues varied according to status: "the higher a woman's position within the class structure, the more her marriage was a choice involving a circle of advisors."[7]

The negotiation process involved in marriage was intended primarily to ensure that the new couple might be endowed sufficiently to establish its own household and to persuade the bride's family that its daughter's welfare would be safeguarded in the event of her husband's early demise. What each family deemed ample for its child had much to do with economic standing and social expectation – a factor that suggests both bride and groom were best suited if they shared similar backgrounds. This ideal of a "marriage of equals" was promoted strongly in the literature of the period throughout Western Christendom. The twelfth-century courtly love writer Marie de France was the supreme champion of the well-suited marriage between couples of equivalent age, social status and familial backgrounds. It was only when spouses proved unsuitable that she foresaw an adulterous affair resulting in happiness.[8] Geoffrey Chaucer advocated similar beliefs concerning marital happiness. In the *Merchant's Tale*, Chaucer recounts the story of aged January who determined to begin his life anew by abandoning his old ways of whoring and debauchery and embracing St Paul's view of marriage as a "remedy for sin." His ill-fated choice of mates, however, transformed him into a jealous man, suddenly aware of his advancing age. Fearing potential suitors, he commanded

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[7] Michael M. Sheehan, "The Wife of Bath and Her Four Sisters: Reflections on a Woman's Life in the Age of Chaucer," *Medievalia et Humanistica: Studies in Medieval and Renaissance Culture* n.s. 13 (1985), 23-42. This article also appears in *Marriage, Family and Law in Medieval Europe*, pp. 177-98.

[8] Kitty Chen Dean, "'Maritalis Affectus': Attitudes towards Marriage in English and French Medieval Literature", (Ph.D. dissertation, University of California, 1979), p. 183.

that young May stay within his eyesight at all times, restricting her to the walled garden where no one might reach her. During a bout of temporary blindness inflicted upon him as divine retribution for his absurd behaviour, his caged bird was liberated and flaunted her newfound freedom by engaging in extramarital sexual relations while her ailing husband sat nearby. The sudden miraculous recovery of his eyesight at this inopportune moment alerted him to his serious error in judgement. In marrying a woman less than half his age, January had transgressed the acceptable bounds of marriage; May's betrayal, then, was not only fitting, but comedic.

Marital unsuitability was often the cause of dissension in medieval families when youthful members attempted to exert their independence through individual choice in the selection of marital partners. Probably the most conspicuous of them all is the case of the wilful Margery Paston who rebelled against her family's wishes by marrying the head bailiff, Richard Calle. When her parents became aware of their daughter's sedition, they began a lengthy battle with both Margery and the church to have the union annulled. The Paston family's dreams were dashed mercilessly when Margery and Richard each announced during their separate examinations by the bishop that they had knowingly exchanged words in the present tense. Margery proceeded further in her defiance to declare that

> yf thoo worddys mad yt not suhere, sche .... wold make yt suerhere ore þan sche went thens; fore sche sayd sche thowthe in here conschens sche was bownd, wat so euere þe worddys wern.[9]

The bishop was forced to acknowledge that Margery and Richard had created a bond that "no man [might] put asunder." Eventually, Margery was permitted to live with Richard as his wife. Her family gained its revenge, however, by alienating her entirely: she was never again

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[9] *Paston Letters and Papers of the 15th Century*, ed. N. Davis (2 vols, Oxford, 1971-6), i. 342.

mentioned in the family's correspondence. None the less, her husband Richard was retained as the family's bailiff, a fact which A.S. Haskell argues may well have been an example of the double standard in action, where the woman was "considered to blame for binding herself to an inferior, while the man was blameless for attempting to marry up in society."[10] Although the case of Margery and Richard was exceptional for the period, its outcome is instructive. The Paston family's reaction to the marriage demonstrates that individuals who chose to assert their own marital preferences might suffer immense repercussions. In her investigation of sixteenth-century testamentary evidence, Diana O'Hara observed a similar kind of economic penalisation by parents who attempted to enforce their own preferences in spousal selection from the grave by devising their land conditionally. Children who needed financial support from their parents (and there seem to have been many such children) had a strong incentive to comply with their parents' plans for their marriages.[11]

Intervention by the family in the courtship process was an integral part of medieval marriages, firmly entrenched in the cultural ideology of the period; yet, it was not required or even sanctioned by the church. In the mid-twelfth century the Christian church was caught up in a reform of its views on marriage. With a view to harmonising the writings of the church into a comprehensive statement of Christian theology and practice, Gratian completed his *Concordantia Discordantium Canonum* ("Concordance of Discordant Canons") around the year 1140. This work eventually transformed the church's official position on the constitutive

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[10] Haskell's perception may be overly influenced by her literary background. The conclusion she has drawn in this respect raises the question: was this merely a standard upheld by and restricted to courtly love literature, or was it a value shared by literate audiences? A.S. Haskell, "The Paston Women on Marriage in Fifteenth-Century England," *Viator* 4 (1973), 468.

[11] Diana O'Hara, "'Ruled by my friends': aspects of marriage in the diocese of Canterbury, c. 1540-1570," *Continuity and Change* 6 (1991), 14.

elements of a valid marriage. Rather than accept current secular practices of marriage, which entailed permission from both the couple's feudal lord and family, Gratian drew instead upon classical Roman law in which the marriage bond was created by the mutual consent of the couple. Enamoured of the simplicity of Roman marriage, Gratian extolled its virtues for the medieval church. In practice, however, he preferred one minor modification to this principle: he maintained that exchange began a conjugal union, consummation completed it.[12] Pope Alexander III (1159-81) was the first to reflect officially on Gratian's re-interpretation of the marriage process. He chose to accept it in part as the official church stance. The only alteration to his design was the omission altogether of consummation as a requirement to cement the contract (most likely a result of the difficulty in proving this kind of contact in a courtroom situation). Thus, after the twelfth century, a couple's consent was all that was required to create a valid marriage in the eyes of the church.[13] The only other change of importance to take place in the medieval period after Alexander was a ruling by the Fourth Lateran Council of 1215 requiring that all marriages be solemnised by a priest. The Council's decision in this matter, however, did not effect the validity of a marriage, merely its legitimacy.

In rejecting the secular paradigm and embracing such an uncomplicated form of marriage, the church succeeded in usurping the power of two important parties. Not only did it eliminate the control of marriage by feudal lords, it also went some way towards ousting parents from the entire process. The reason why the church under the guidance of Pope

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[12] Michael M. Sheehan discusses this in some depth. See his "Choice of Marriage Partner," 1-33. The best introductory text on the subject is still J. Dauvillier, *Le mariage dans le droit classique de l'église* (Paris, 1933).

[13] Of course, Alexander III did not reject entirely the notion that consummation was an important element of a valid marriage. Throughout the Middle Ages, a future consent marriage could easily become a valid, indissoluble marriage if it were consummated. See Sheehan, "Choice of Marriage Partner", 7-16.

Alexander III chose to adopt such an individualistic form of marriage has long been the subject of debate among historians, chiefly because of the legal difficulties associated with this problematic construction of marriage.[14] Alexander's approach might very well be explained quite simply. His turn towards an individualist form of marriage was intended "to make marriage easy, since it is better to wed than to burn."[15]

Michael Sheehan has remarked that "[i]t has been said in jest, though not without a serious overtone, that Christianity destroyed the family."[16] This may well have been the long-term result of the church's high-handed intervention in the marriage process. In the medieval period, however, this was certainly not the case. It is important to note, that in supporting a selection of marriage partners by individual choice, Alexander never forbid parental involvement in the marriage of their children. Given the secular practices of marriage that existed prior to the twelfth century, then, it should come as no surprise that an individualistic approach to wedlock was never fully embraced by the peoples of Western Christendom simply because marriage was thought to be too important to leave to the couple. In fact, Georges Duby has suggested that "[t]he entire history of marriage in Western Christendom amounts to a gradual process of acculturation, in which the ecclesiastical model slowly gained the upper hand."[17] Changes in marriage requirements effected a gradual absorption of the ritual into the jurisdiction of the Christian church, particularly as priests began to assume a more active role in the process. Nevertheless, the evidence of the York cause papers demonstrates that irrespective of the church's official position, parents continued to play an

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[14] See pp. 261-2 of Chapter Four for a fuller discussion of the difficulties created by such an informal kind of marriage.
[15] Charles Donahue, Jr. "The Policy of Alexander the Third's Consent Theory of Marriage", in S. Kuttner (ed.), *Proceedings of the Fourth International Congress of Mediaeval Canon Law (Toronto, 21-25 August, 1972)* (Vatican City, 1976), p. 277.
[16] Sheehan, "Choice of Marriage Partner in the Middle Ages", *Marriage, Family and Law*, p. 90.

important role in the marital decisions of their children. While parental force and parental involvement are not the same, the presence of a number of cases of parental force in these records suggests that parental involvement did not cease with the decretals of Alexander III.

Marriage in the Middle Ages was an important decision that affected a large circle of people. As a result, it is easy to understand why parents and family sometimes often continued to exercise a high degree of control in the selection of their children's marriage partners. But it was not only the parents who believed they had an important role to play in the decision-making process; the children themselves supported and encouraged this system. Shannon McSheffrey has argued that

> [l]egally, only the present consent of the principals was necessary to create a binding contract of marriage; but socially, the right and wise thing to do was to marry with the advice and sometimes the consent of relatives, employers and friends.[18]

This preoccupation is everywhere reflected in the surviving records. Couples often exchanged marriage vows conditional on the future consent of parents or friends. Similarly, persons hoping to annul a union frequently asserted that consent had in fact been conditional and thus the marriage was not valid.[19] The popularity of this practice confirms that, despite the church's mandate, parental consent was often considered to be important to a valid marriage.

None of this suggests that medieval Englishmen and women did not sometimes exercise their own preferences and marry against their family's consent. In fact, Sue Sheridan

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[17] Georges Duby, *Medieval Marriage: Two Models from Twelfth-Century France*, trans. Elborg Forster (Baltimore, 1978), p. 17.
[18] Shannon McSheffrey, "'I Will Never Have None Ayenst My Faders Will': Consent and the Making of Marriage in the Late Medieval Diocese of London," in Constance M. Rousseau, Joel T. Rosenthal (eds), *Women, Marriage, and Family in Medieval Christendom: Essays in Memory of Michael M. Sheehan, C.S.B.* (Kalamazoo, 1998), p. 156.
[19] For a fuller discussion of this phenomenon and its manipulation, see *ibid*, p. 174.

Walker's study of ravishment cases in the royal courts of the later Middle Ages demonstrates that some people went to great lengths in order to assert their choice of marital partners. She argues that women not only "allowed themselves to be abducted in order to affirm their own choice of a husband and force their families to accept the relationship," but further that some women "allowed themselves to be abducted in order to leave their husbands."[20] Because the courts treated abduction as a form of theft, requiring only compensation for the loss rather than the return of stolen goods, it was a very effective means of eluding familial demands and asserting individual choice in a non-confrontational manner. The fact that some women went to such lengths at the very least demonstrates the powerful role that family and relatives might play in the typical marriage process.

The York cause papers demonstrate that familial intervention in the courtship process might be quite active. Within these records there exist two cases of what McSheffrey has described as "medieval equivalents of shotgun weddings."[21] In both, the families intervened when it became clear that the young couples' final objective might have been something other than marriage. The first, a case from the year 1334, recounts an unhappy tale of forced marriage not by parents, but by the bride's brother.[22] According to the plaintiff's brother,[23] one August night while John son of Ralph de Pennysthorpe was awaiting Elizabeth de Waldegrave in her father's bakehouse for an appointed tryst, he encountered instead Elizabeth's brother Richard armed with a sword and accompanied by his servant. Faced with

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[20] Sue Sheridan Walker, "Punishing convicted ravishers: Statutory strictures and actual practice in thirteenth and fourteenth-century England," *Journal of Medieval History* 13 (1987), 237-8.
[21] McSheffrey, "'I Will Never Have None Ayenst My Faders Will'", p. 172.
[22] YBI CP. E 26, John son of Ralph de Penysthorpe v. Elizabeth de Waldegrave (1334).
[23] In my discussion of the evidence from matrimonial litigation in the church courts, I have chosen to use the terms "plaintiff" and "defendant" although neither ideally translates the meaning of *pars actrix* and *pars rea*. Nonetheless, both Richard Helmholz and Charles Donahue, Jr. in their treatments of the cause papers have employed this same terminology because of its general familiarity, and accordingly this study has adopted the same logic.

an upset brother, John was easily convinced of the necessity of a swift marriage. Richard's servant was sent into the house to get Elizabeth. Moments later, she came out with her sister Alice, and the marriage was contracted there in the bakehouse. Soon after the fact John decided to take his stand. Risking the ire of his in-laws, he sued his case in court and demanded an annulment on the grounds that he had been coerced into marriage and was beaten badly in the process.

Most revealing about this case is the sense of entitlement that informs Richard's testimony. In his statement, Elizabeth's brother seems to imply that the wedding was accomplished without ever consulting Elizabeth for her opinion on the matter. According to Richard, he learned from an unnamed woman that John had frequent access to his sister and that he planned to come to the house that night with carnal intentions. Thus, of his own initiative, he met John at the appointed time and place, drew his sword and strongly encouraged an exchange of vows between the two. Nothing in his testimony, however, suggests that the plan was agreeable to his sister. It seems apparent that Richard did not even consider her opinion relevant in this matter. The fact that his sister does not appear to have shown any resistance to the idea suggests that she may well have been in agreement with her brother anyway.

When asked if this level of interference constituted a coerced marriage, Richard replied that he doubted whether his actions might be construed as sufficient force to turn a constant man, and thus liable to the church's grounds for annulment. Richard also argued that the marriage might not have taken place if he had failed to intervene, a remark which raises an important point. Clearly, John and Elizabeth were involved in an illicit, but regular affair that, if made public, would have been regularised by the church without the need for Richard's

intervention. This forces us to return to a question first offered by Richard Helmholz in 1972: "[s]hould a man forced to marry a girl for what society considers to be good and sufficient reason be able to divorce her by pleading force and fear?"[24] Elizabeth's brother certainly thought not. He sincerely believed that his actions were justified as those of a concerned brother and that he had transgressed neither communal nor ecclesiastical regulations. As he saw it, he was "making an honest woman" of his sister. While the canonists did not approve of consent extracted by force, nor would they have been in favour of a long-standing affair. Once again, Thomas of Chobham provides some insight into ecclesiastical perspective in this respect. He argued that a forced marriage was valid if the couple had been engaged previously in an illicit, long-standing affair.[25] In effect, the marriage was only a formalisation of their relationship; they were already behaving as if they were husband and wife. The ceremony simply forced them into a formal recognition. Shannon McSheffrey notes that this sentiment may have been more widespread than one might think. She argues that older men, in particular, "felt it was their duty not only to promote marriages between couples who asked their assistance, but also to prevent relationships from going too far without benefit of matrimony."[26] Moreover, she notes that the "concern of senior men with moral probity went beyond the patriarchal household and the master-servant relationship into the community as a whole", that "as the patriarchs of the community, [they] felt a responsibility to police relationships"; clearly, the supervision of couples by men may have gone well beyond the family relationship when required.[27]

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[24] Helmholz, *Marriage Litigation*, p. 220.
[25] "Unus casus exceptus est in violenta coactione, in quo casu non impeditur matrimonium. Si enim aliquis habuerit consuetudinem ad aliquam et eam prius corrumperit, si postea comprehendatur cum ea et cogatur per magnam violentiam contrahere matrimonium cum illa, tenebit matrimonium velit nolit." Thomas Chobham, *Summa Confessorum*, p. 183.
[26] McSheffrey, "Men and Masculinity in Late Medieval London Civic Culture," p. 250.
[27] *Ibid*, pp. 250-1.

The marriage of John de Pennysthorpe and Elizabeth de Waldegrave was not all that different from an ecclesiastically imposed abjuration *sub pena nubendi*. Couples who engaged in sexual activity and made their actions publicly known might find themselves threatened by the church to abstain from any further illicit contact *sub pena nubendi* (under the penalty of marriage).[28] Bearing this in mind, in the case of John and Elizabeth, Richard's actions might well have been perceived as those of a concerned family member in lieu of ecclesiastical intervention. However, that the sentence was returned in favour of Pennysthorpe in this case suggests that the courts believed Richard's interference to have been excessive. None the less, this case demonstrates that Pope Alexander only eliminated legal requirements for familial consent. He did not succeed in abolishing, nor did he necessarily intend to abolish the family's supervisory role.

A similar case brought before the courts over the course of the years 1431/2 recounts how John Ward, servant of John Burdesall of York, found himself in his master's barn faced by his lover, Alice Skelton, and an angry contingent comprising her brother Thomas Holme, his wife, and two armed men.[29] Alice's brother, with his hand upon his dagger, demanded that John marry his sister on pain of death. John, however, refused; he was already married to Margaret Dalton and had no intention of entering falsely into a second marriage, even when confronted by a dagger and several men gripping axes. The case ended up in court as multi-party litigation with Alice attempting to prove the legitimacy of her claim to marriage. In response to John's allegations of force, Alice's deponents instead maintained that his account was false and deceptive, intended to manipulate the system. The men who accompanied

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[28] For a fuller discussion of this practice, see R.H. Helmholz, "Abjuration *sub pena nubendi* in the church courts of medieval England," in his *Canon Law and the Law of England* (London, 1988), pp. 150-1.
[29] YBI CP. F 200, Alicia Skelton *c.* John Warde (1431-2).

Alice's brother were not brandishing weapons to coerce John into marriage; they were merely carpenters sporting the tools of their trade. Further, John's assertion that he was in the barn not to meet Alice for a romp in the hay but instead to reap it was parried cunningly by Alice's deponents, all seven of whom testified that the field in question lay fallow at the time of the encounter. Her strategy in court was clear: if he was not to be proclaimed her husband, she might at the very least hope to portray herself a victim and so avoid any counter accusations of fornication.

Unlike the case of Pennysthorpe *c.* Waldegrave, Alice's brother undoubtedly was propelled into action by his sister's call for help rather than his own initiative. His aggression, then, was motivated less by a desire to legitimise an illicit union than by his sister's ambition to be married. Moreover, their effort to disguise any evidence of force strongly suggests that neither Alice nor her brother supposed that their actions were defensible in any light. While force may have been acceptable in some forms, this degree of coercion exceeded all natural bounds. None the less, these two cases are very instructive. Together, they suggest that women may have turned naturally to their brothers for help in relationships gone awry, particularly when a little muscle was required. If brothers were this willing to intervene in their sisters' relationships at the courting stage, it seems difficult to imagine that they were not even more amenable to the notion of stepping in to shield a sister from an abusive husband.

Many historians have warned against using marriage litigation as evidence of the typical marriage process in the medieval period, chiefly because, as McSheffrey has noted "all marriages involved in litigation were, in some way, failed relationships and, thus, atypical." Still, marriage litigation is an invaluable source for understanding the regular process precisely because of this. In matrimonial cases

> deponents, who most frequently testified in favor of a valid marriage, were at pains to portray the process they witnessed as typical and normal. The testimony thus provides a wealth of evidence regarding what witnesses thought should be the ordinary course of events. [30]

Diana O'Hara shares this perspective. She has observed that "the evidence of matrimonial litigation is likely to produce the exceptional individual while at the same time demonstrating the conservative pressures."[31] The marriages portrayed in these records may have been far from the norm, but the tales of family intervention were not. The two brothers in these cases of shotgun weddings may have stepped beyond the bounds of socially acceptable external pressure, but they were not breaking new ground. Surviving records persuasively argue that the family played a crucial role in regulating courtships and marriages, and it was only when the pressure became excessive that some individuals spoke out against it.

Familial Cohesion in Late Medieval England

The evidence of the royal courts reinforces the notion that brothers, in particular, might be protective of their sisters. William son of William Sivier of Gilling in Yorkshire (1346) did not hesitate to step in to rescue his sister Cassandra from an altercation with Richard the carter of Gilling. Despite his good intentions, his sister was injured by his own knife during the affray and Richard escaped unscathed. Rather than saving his sister's life, as the coroner's jury contended was his purpose, William's intervention resulted in the accidental slaying of his sister and his own flight from an impending charge of homicide.[32] Although the outcome was a far cry from the original intent, William's willingness to mediate

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[30] Shannon McSheffrey, *Love and Marriage in Late Medieval London* (Kalamazoo, 1995), p. 3.
[31] Diana O'Hara, "'Ruled by my friends': aspects of marriage in the diocese of Canterbury, *c.* 1540-1570," *Continuity and Change* 6 (1991), 12.
[32] PRO JUST 2/214, m. 4.

a fatal argument on his sister's behalf illustrates his devotion to his sister and his wish to protect her from harm. On some occasions, the intervention was even more purposeful and (not surprisingly) more successful. When Matilda wife of John son of Michael of Essex (1271-2) determined to slay her husband, bringing an end to an unhappy marriage, she turned to her brother Roger and her sister Agnes to assist her in this act. Together they slew him at night while he lay sleeping, buried him in the backyard and fled the county.[33] Matilda's decision to enlist the aid of her siblings reinforces the argument that married women maintained lines of communication with their natural families after marriage. While married women may have become more firmly tied to their husband's family economically and politically, the emotional bonds of the early family relationships were not so easily dissolved.

If Matilda's case is an extreme example of family support, it should be noted that it was not uncommon for families to assist each other in their murderous deeds. In fact, the figures for the York and Essex gaol delivery rolls over the course of the fourteenth and fifteenth centuries suggest that a considerable number of murders committed with an accomplice or second principal were achieved with the help of a family member. The lowest participation rate comes from the Essex gaol delivery rolls. Of the 28.8% of cases of homicide committed by multiple accused or an accused with an accomplice found in the records relating to this period, 17.98% included family members. The Yorkshire gaol delivery rolls reveal a significantly higher figure. Of the 22.67% of homicides involving more than one accused or an accomplice, 26.86 % were committed in collusion with a family

[33] "...Postea testatum est quod Matillda uxor predicti Johannis et Rogerus frater eiusdum et Agnes soror eiusdem Matillda [et] Stephen filius Marisco de Hatfend ipsum occiderunt noctanter in lecto suo et ipsum sepelierunt retro hostium suum et statim fugerunt et malecredunt Ideo predictus Rogerus exigerent et utlagatur Et predictae Matill' et Agnes exigerent et weyfiunt nulla habeunt catalla." PRO JUST 1/238, m. 47.

member.[34] None of the figures presented here includes spousal or service relationships. If we were to incorporate the latter figures into the equation, the numbers are even higher. The Essex gaol delivery records demonstrate that 25.84% of the cases involving accomplices or second principals included family members, while the figure for the Yorkshire gaol delivery rolls is once again, notably higher at 33.86%. It seems clear that when individuals turned to anyone for help in perpetrating a murderous crime, they were most likely to turn to a member of the family.

The old adage "the family that slays together, stays together" may be at once trite and objectionable, but there is an undeniable truth imbedded in this aphorism. Since death was the only penalty available in the medieval courts for the crime of felony, entering into a murderous pact meant that medieval families were willing to put their own lives on the line in order to help one another. These findings are significant primarily because they fly in the face of the conclusions drawn by some historians about the medieval family. The most celebrated authority on the subject of domestic violence in the medieval English context, Barbara Hanawalt, has suggested that medieval families were simply a "loose grouping" of individuals

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[34] When reading these figures there are a number of important points to keep in mind. First, the numbers represent cases of homicides rather than victims of homicides (hence, each case of homicide may have had multiple victims and accused). If a homicide was recorded separately it was considered to be an individual case, or instance of crime, regardless of the number of victims. However, in the process of finding duplicate recordings of homicides within the rolls, if a case had the same victim but the accused was different (as is often the case in the recording of separate trials in gaol delivery rolls), it was still counted as only one case. Second, these figures include all cases where there were multiple accused (that is, where no one was identified as being more responsible for the crime than the others), and cases where there were accomplices (that is, those persons indicated as being secondary in responsibility). There is a somewhat artificial distinction that these records make between these two categories; consequently, for the purposes of understanding the role of the family in supporting murderous intentions, it seemed crucial to eliminate this distinction and equate second principals and accomplices. This category also includes those cases in which the accused was unknown, and yet the jury was convinced that the homicide had been committed by more than one person. Finally, being an accomplice involved a large range of possible crimes from "aiding and abetting," all the way down to "receiving knowingly." Some historians have suggested that receiving should not be treated on the same scale as assistance in other more serious ways. For the purposes of this study, no distinction has been made on this basis, merely because this differentiation does not appear to have existed in the legal theory of the period.

and that the trifling nature of affective ties may have been a key factor in the low rates of domestic homicides throughout the period.[35] While she does not see this as the only possible explanation for the statistical disparity between medieval and modern eras, her attitude very much reflects prevailing opinion in intellectual circles that is only beginning to change.

Hanawalt's conclusions are central to an understanding of late medieval families. It has been assumed far too frequently by historians that because the economics of marriage were so important in the medieval period, the family environment was not a place of affection. But there is no evidence to suggest that economics were necessarily at odds with affection. David Nicholas identifies the crux of the predicament inherent in studying the family in history.

> That the ordinary is not preserved well in the historical record poses severe problems to the historian who tries to reconstruct the history of women and family in a medieval city. Only when there is conflict or some extraordinary circumstance does someone bother to write of it.[36]

According to Nicholas, then, there are two basic problems to understanding the depth of affective relations between family members in the Middle Ages. The first is the almost total absence of evidence on the subject. Second, in the evidence that does exist there is an unfavourable portrayal of family life. But, as Alan Macfarlane has argued, "[s]ilence cannot be treated as synonymous with apathy or hostility."[37] To assume that because medieval parents did not write about their children they also did not love them is too subjective, anachronistic and narrow-minded an interpretation.

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[35] Hanawalt, "The Peasant Family and Crime", 5.
[36] David Nicholas, *The Domestic Life of a Medieval City: Women, Children, and the Family in Fourteenth-Century Ghent* (Lincoln, 1985), p. 33.
[37] Alan Macfarlane, review of Lawrence Stone, *The Family, Sex and Marriage in England 1500-1800*, in *History and Theory* 18 (1979), 116.

Recent studies instead suggest that historians have simply been looking at the wrong sources. Jacqueline Murray argues that if we want to know more about parental and family affection, testamentary sources provide an ideal site for an exploration of the late medieval period. Her examination of the bequest patterns, choice of executors and personal information found within the records of the London consistory court of the early sixteenth century reveals hardy familial ties.[38] Like most legal records of the time, medieval testaments were both standardised and formulaic; here too, departures from the norm provide the key to understanding affective ties between family members. One mother went to great lengths to express her fondness for two children from a previous marriage:

> As towchinge my sonne, Fraunces Pellysonne, I geve hym my blessyng prayeng the Creator Jeshus and Medyator of the worlde to Whome is all my hope that hit wolde please Hym to geve hym His grace and at the laste the lyffe eternall. To my dowghter, Jeromyme Pellysonne, whiche hathe kepte me yn my syckenes I leave her for all my gyftes and dowghter love my blessinge, prayenge the Lord Jeshus Chryste that hit wylle please Hym to geve her His grace and at thende lyffe eternalle, and fulfyllinge of her desyers.[39]

An appeal of this intensity is unusual in testaments; as such, it provides strong evidence of a profound emotional attachment between a parent and her children.

Parents not only expressed their love in terms of endearment, but also through requests for neighbouring burial sites and bequest patterns in which they provided economically for their children in their absence. Even the poorest of testators exhibited this concern. One impoverished man, Jamys Agarston, wrote: "My wyll ys that my master Henry Balle shall have my sone, Peter Agarston, and to use hym as hys awne, for I geve hym as frely unto hym

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[38] Jacqueline Murray, "Kinship and Friendship: The Perception of Family by Clergy and Laity in Late Medieval London," *Albion* 20 (1988), 372.
[39] As cited by Murray, "Kinship and Friendship", 382.

as God gave hym me."[40] Such a powerful deathbed preoccupation for family members clearly argues in favour of a strong emotional bond. In the same way, the high percentage of family participation as accomplices in crime reinforces notions of a tightly knit family compact. Although sentences of execution were not always carried out, the mere threat should have acted as an effective deterrent for those considering engaging or aiding in a felony. To support a family member in this situation, then, speaks to a willingness to disregard personal safety out of a desire to help one in need.

What these findings also emphasise is the importance of self-help as an alternative to curial dispute settlement. There were many reasons why Englishmen and women in the later Middle Ages might have preferred to bypass the courts and solve their problems themselves. Medieval courts were not only costly and time-consuming, but also notoriously ineffective. A suit of homicide or rape was more likely to be acquitted than not, and litigants were well aware of this fact. Why take a chance in court when there were other options available?[41] This perspective is pertinent to a more profound understanding of family intervention in marital

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[40] *Ibid*, 383. Murray's study is not restricted to parents and children; she notes the existence of strong family bonds in situations where one would least expect them. For example, it has generally been assumed that upon entering the priesthood, members of the clergy renounced their families and tied themselves emotionally to their new communities. And yet, Murray observes that priests often left money and goods to members of their family, even to distant members, such as cousins, uncles, and so on. Wills from the period also exhibit concern for the future of apprentices and servants, and testators often provided the latter with money or tokens of affections. One man even went so far as to appoint his maid-servant as his executrix. See *ibid*, 374-7.

[41] There were other reasons why families might have chosen to resolve interpersonal conflicts themselves. With the inadequacies of the royal justice system and its inflexibility in dealing with cases lying outside the normal parameters of customary law, many conflicts simply may have fallen through the gaps, making self-help a popular alternative. Edward Powell also supports this notion. He argues that by the end of the fourteenth century, self-help became even more crucial in medieval England as a method of dispute resolution because of the "perceptible slackening of royal control" (see Edward Powell, *Kingship, Law, and Society: Criminal Justice in the Reign of Henry V.* Oxford, 1989, p. 124). This shift mirrors the creation of new courts outside the regular fora for dispute settlement, such as the courts of Chancery and Admiralty, and the rise of private mediation. Cases with no prescribed remedy were for the first time being recognised as tangible issues and provided with a solution. And yet, as Powell asserts, the normal mechanism for dispute resolution was perceived by the masses as being less and less effective. In order to grasp fully the range of alternatives available to a victim in the medieval era, then, it is necessary to take self-help into

violence. Clearly, families were accustomed to resolving their own disputes in the absence of official alternatives. Intercession in the marriages and relationships of younger members, then, was merely an extension of a widespread concept of "self-help" and suggests that parents and family members were not motivated by economic concerns alone. Undeniably, financial considerations were a significant component of the marriage process, but it is difficult to imagine that such interests were fundamentally at odds with individual happiness.

If families were willing to intrude in such a heavy-handed fashion in the inception of marriages, why should we assume that supervisory role necessarily terminated after the exchange of vows? It seems very likely that parents and siblings who witnessed a marriage spiralling out of control would have been inclined to step in to assist the situation, especially in the absence of a formal setting responsible for this genre of dispute. Spousal abuse was one of those grey areas of medieval law. To hit one's wife was acceptable as long as it was not excessive; yet, as the evidence of the next few chapters will demonstrate, the term "excessive" was subject to an unusual degree of interpretation. Without an unambiguous legal definition, domestic violence required communal, not legal, intervention.

Beyond the Family: Communal Intervention in Marriage

Not all troubled wives had family members to turn to in situations of abuse. As the records of the York cause papers suggest, the urban setting engendered an atmosphere in which persons living apart from their families were likely to rely on neighbours and friends for help in their domestic troubles. Neighbours frequently acted *in loco parentis*, exerting the same kind of pressures on a couple as parents or family members. The case of Whytell *c.*

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consideration as one possible strategy and realise that it worked side by side with the common law. Cases of failed self-help may well have made their way into the royal courts for final settlement.

Beaumonde confirms that neighbourly advice and intervention were necessary and regular parts of the process of regulating medieval marriages.[42] According to Richard Dey of St Wilfrid parish in York, one night Margaret Whyttell came to the home of Richard Bryg, knelt before him and tearfully confessed that she had been poorly treated by John Beaumonde. She claimed that the two had exchanged words of betrothal and then afterwards consummated their union, thus creating a valid marriage in the eyes of the church (since the act confirmed the intention). John, however, was unwilling to acknowledge publicly his marriage, and conveniently no one had been present to witness the exchange. She went on to explain that John had made no effort to support his new wife financially or emotionally since the joining, and that they continued to maintain separate residences. Margaret was so distraught over her potential spiritual endangerment that she turned to her neighbour Richard for help. Between the two of them they immediately hatched a plan to encourage John into making a public declaration of his commitment.

One evening soon thereafter, John arranged to meet Margaret at her home so that, as a dutiful wife, she might wash his hair. Afterwards, they retired to bed. Richard, his wife Cissota, and another friend named John Gammel waited until the couple had withdrawn and all the candles had been extinguished. Then, with weapons in hand, Richard led the small contingent into Margaret's bedchamber where they encountered a shocked and surprised John, and demanded what he was doing there. Given no other choice, John replied that he had good license to be there because he and Margaret had been recently betrothed. As proof Richard called for a renewed exchange of vows. Convinced by Whytell's neighbour and his

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[42] YBI CP. F 75. It is important to note that in the case of Whytell *c.* Beaumonde, we are presented only with Whytell's side of the story. The depositions of Beaumonde's witnesses do not exist, nor is there a sentence.

armed companions, John and Margaret proceeded to exchange vows before them, acknowledging publicly their commitment to each other. Richard then extracted from John a promise that he would not mistreat Margaret in the future, and John immediately pledged his word. Two weeks later, Margaret was in court, trying to prove the validity of her marriage.[43]

While routine cases of domestic violence were subject to unofficial familial and communal intervention, at times the level or frequency of abuse exceeded communal controls and required legal action. Cases of extreme abuse might be presented in a number of different venues: the royal courts, when the level of violence extended to homicide; the church courts, when a separation was impending or had already occurred; and finally, manorial or borough courts. In cases in which the abuse was repeated and immoderate, but not serious enough to warrant a separation, manorial or borough courts adopted a disciplinary role. In addressing moral transgressions in this way the jurisdiction of the local courts encroached on that of the ecclesiastical courts. It seems likely that the manorial and borough courts complemented the church courts in this respect, by addressing those spiritual issues that most affected the well being of the community. In their fervour to uphold the marriage bond, in many ways, the local courts may have acted more like "marriage counsellors" than their ecclesiastical counterparts. The voluminous court rolls of the manor of Wakefield provide clear examples of marriage regulation by means of communal intervention in the courts. Unfortunately, in the vast majority of the cases, the records are unclear as to what actually transpired between the couple that caused one or the other of the pair to appear in court. For example, a case from a Wakefield tourn of 1339 states merely that "the wife of Robert de Sandale justly raised the

[43] Unfortunately, no sentence in this case has survived.

hue on Robert her husband who is amerced 3d. Robert de Sandale justly raised the hue on his wife who is amerced 3d."[44]

Similar entries can be found in the records of the local courts from Essex during the same period. In the vill of Nazeing in 1409, the wife of Robert Halmond raised the hue on her husband, who was in mercy; in Earls Colne in 1435 William Morce raised the hue unjustly on his wife Katherine and was amerced two pence.[45] That these cases appear in the records speaks to the frequency with which marital violence was resolved within the community. In fact, Barbara Hanawalt argues that the Wakefield court exercised a remarkably regular intervention in disruptive marriages, and cases of domestic violence appear in the Wakefield manorial rolls at least every three years.[46] The critical nature of the role played by manorial courts as judge is exhibited in the decision to describe these offences as the "just" or "unjust" raising of the hue. This was a qualitative assessment; the courts were effectively defining what level of violence warranted the raising of the hue. It is unfortunate that the records should not include the deliberations that led to these verdicts.

Very few cases within the manorial courts addressed actual physical abuse between spouses. In fact, in all the manorial and borough records examined here there were only three examples: one case from Colchester in 1374 of John Gardener's wife drawing blood from her husband, and two cases from Wakefield tourns. The first was a case from the year 1308 in

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[44] *The Court Rolls of the Manor of Wakefield from October 1338 to September 1340*, ed. and trans. K.M. Troup (Yorkshire Archaeological Society Record Series, 2nd ser., 12, 1999), p. 78.

[45] PRO SC 2/173 33 m. 8; manorial records for the county of Essex are housed at the Essex Record Office (hereafter abbreviated as ERO). See ERO D/DPr68. The court records for the manor of Earls Colne in Essex employed by the study were examined in translation using Alan Macfarlane's microfiche collection entitled *Records of an English Village Earls Colne, 1400-1750*, (Cambridge, 1980-81). Macfarlane uses a complex notational system involving a series of lengthy references numbers for each record. For simplicity's sake all references to ERO records in this dissertation refer instead to the original manuscript, rather than Macfarlane's microfiche.

[46] Barbara A. Hanawalt, "Females as Felons and Prey in Fourteenth-Century England," in D. K. Weisberg (ed.), *Women and the Law* (2 vols, Cambridge, 1982), i. 180.

which Juliana Wade drew blood from her husband William le Couhird; the other case appeared in 1340, when John Edelot's wife drew blood from her husband.[47] Both Wakefield cases include notice of the fine exacted on the defendant: Juliana Wade and the wife of John Edelot were required to pay twelve pence each to the court for their violent behaviour. This was a fairly typical sum. In this respect, domestic assaults were treated no differently than any other offence. It is noteworthy, however, that in each of these cases it was the wife who was punished for her conduct. In this sense, presentment performed a dual punishment. The wife was humiliated openly for her aggressive behaviour and encouraged in this way to reform; at the same time presentment served as a public pronouncement of the husband's inability to manage his home.

The manorial courts were also concerned with reconciling separated couples who had a history of abuse. A case from 1331 provides a glimpse of the court's supervisory role:

> Sureties for Thomas s[on]of John Kenward, that he will be reconciled with Agnes his wife, and will treat her well -- William Wade, Nicholas de Ananden, Adam Wade and John Couper. And if he fails and should be convicted, the sureties bind themselves to the lord in 40 s.[48]

Forty shillings was a goodly sum of money. Such a steep penalty strongly suggests that the courts considered wife abuse to be a serious matter.

Cases of adultery from this period exhibit the same gravity. When Margery wife of Richard Child ran away with her lover Robert del Clif, her husband took his revenge by suing Robert for abduction and theft of all the goods that Margery had taken with her. His demand for damages of twenty shillings for his double loss suggests that spousal desertion was not a

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[47] *Court Rolls of the Borough of Colchester*, ed. and trans. Isaac Herbert Jeayes, (3 vols, Colchester, 1921), iii.54; *Court Rolls of the Manor of Wakefield, 1274-1297*, ed. and trans. W.P. Baildon (2 vols, Yorkshire Archaeological Society Record Series 29, 1901-06), ii.185, i.221.

[48] *Court Rolls of the Manor of Wakefield*, ed. Lister, (1930), i.181.

matter to be taken lightly. While there was no accompanying order for Margery to return home, a case from the following year argues that the court may on occasion have adopted such a course of action:

> Richard Childe found pledges, that is Richard del Bothes and Robert son of Gilbert, that he receive his wife in his house and treat her agreeably and provide for her faithfully and courteously to the best of his ability etc.[49]

The families of the abused also turned to the law at times to intervene in domestic spats. When John del Scoles beat his wife Ellen and drove her from their home, her father retaliated by bringing a breach of contract suit against his son-in-law:

> Thomas Assholf sues John del Scoles, saying that they agreed for half mark of silver John should ... find the said Ellen food and raiment ..., but he afterwards drove the said Ellen from his house and beat her, so that she could not remain with him.
> John brings a cross suit against Thomas ... so that the said Ellen [shall be] removed from the house, with her goods and chattel.
> An inquisition to be taken in both matters.[50]

While the precise nature of the breach of contract suit is not entirely clear owing to the condition of the manuscript, it seems apparent that Thomas and John had previously agreed on the basis of a set sum that John would act charitably towards his wife. It was not his abuse, then, but his failure to keep his word that landed him in court. Is it possible that Thomas bribed his son-in-law to stop beating his wife and then was angry when the latter continued to do so?

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[49] *The Court Rolls of the Manor of Wakefield from October 1331 to September 1333*, ed. and trans. Sue Sheridan Walker (Yorkshire Archaeological Society Record Series, 2nd ser., 3, 1983), p. 72.
[50] *Court Rolls of the Manor of Wakefield*, ed. and trans. J.P. Walker (Yorkshire Archaeological Society Record Series, 109, 1945), p. 130.

The Importance of Local Courts in the Regulation of Social Misbehaviour

If abuse was not a frequent subject of manorial or borough records in later medieval England, issues intimately related to marriage and power relations do make occasional appearances. Recent studies of the self-regulation of communities in this era suggest that the appearance of marital and moral issues in the manorial courts reflects the development of a thriving sense of anxiety about public order which emerged in England some time in the later Middle Ages and flourished in the early modern era. In her most recent work, entitled *Controlling Misbehavior in England, 1370-1600*, Marjorie McIntosh presents the most comprehensive research on this subject to date.[51] Her work is unique because she has chosen to disregard the rigid boundary between the medieval and early modern periods artificially imposed by historians. In her work, she rejects the notion that early modern England did not begin to experience a "crisis of order" until the late sixteenth and early seventeenth centuries. More specifically, she challenges the validity of Keith Wrightson's popular argument that the issue of social control of morality originated in Puritan ideals of the seventeenth century. Wrightson contends that Puritans in powerful offices exploited their positions in the hopes of carrying through a widespread, locally based reform of what they regarded as the debauched behaviour of the English people by employing the rigorous ideals of their sect.[52] McIntosh suggests that the root of reform lay much further in the past. She attempts to reconcile instances of the social control of misbehaviour in the late medieval period with similar examples in the early modern era. She sees these cases as related manifestations of the same growing trend in which local communities attempted to expand their internal authority.

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[51] Marjorie Keniston McIntosh, *Controlling Misbehavior in England, 1370-1600* (Cambridge, 1998).
[52] Keith Wrightson, "Puritan Reformation of Manners, with Special Reference to the Counties of Lancashire and Essex, 1640-60" (Ph.D. dissertation, University of Cambridge, 1973); see also Keith Wrightson and David Levine, *Poverty and Piety in an English Village: Terling, 1525-1700* (Oxford, 1995).

McIntosh does note, however, that not all variants of social misbehaviour experienced the same pattern of regulation. Cases of disharmony (scolding, eavesdropping) and disorder (sexual misconduct, drunkenness) peaked in the sixteenth century and then declined. In contrast, offences related to poverty (vagrancy, subtenants) persisted until the end of the period. This important distinction demonstrates that not all crimes of misbehaviour can be treated in an identical manner. Likewise, McIntosh is careful to heed changes over time. While the earlier period witnessed a local regulation of social misbehaviour, over the course of the sixteenth century growing anxiety led to governmental intervention more and more frequently. Clearly, while social regulation had a long history in late medieval England, the Tudor era was qualitatively distinct. Puritanism and economic pressure created a new vigour for prosecuting poverty related misbehaviour; at the same time, these twin forces caused dissension in communities which often resulted in social tension, a situation that was resolved only in the Stuart era when an effective parish poor relief system was finally put in place.

Although she does not refer specifically to Thomas Green's work on the medieval jury, McIntosh's analysis of the late medieval period appears to have been influenced by the tenor of his arguments relating to jury nullification, ultimate control and the legal process, and the communal rationalisation for this phenomenon. Rather than focus on the trial jury, however, McIntosh chooses instead to look to the presentment jury and its role in the judicial process. She notes that this

> was by no means a simple "top down" phenomenon. If a type of behavior was causing trouble in their community, local jurors reported it, whether or not they had been authorized to do so. They were not dutifully carrying out the instructions issued by their superiors, for rarely had such orders been given. For some offences ... the lesser courts began to tackle problems well before intermediate-level institutions took notice of them.[53]

[53] McIntosh, *Controlling Misbehavior*, p. 39.

Transgressions of communal values and conventions, which were not categorised as legal infractions under the common law or according to local custom, were brought before the courts through presentment juries and punished. Bawdry, nightwalking, gaming, living suspiciously, and other offences against the locality became a substantial part of the standard repertoire of finable transgressions. Even violations that should have appeared properly before the church courts somehow made their way into the local courts for regulation. Henry the Chaplain was fined three shillings four pence for his seduction of a woman in his chamber one night in the year 1421, the act having been witnessed and reported by a troublesome neighbour. On this occasion, the Earls Colne court in Essex appropriated the power of the church to discipline the indiscretions of the clergy, a jurisdiction which had been the subject of dispute between the secular and ecclesiastical powers for some time already.[54] That the court confidently proceeded to judgement in this matter rather than referring it to the ecclesiastical tribunals suggests that a transformation in perceptions of local jurisdiction was well under way. McIntosh argues that this development has much to do with the composition of the presentment juries. Presentment was perceived in English society as the critical stage in the legal process.[55] Presenting jurors identified people in the community who had exceeded the limitations of informal, local controls, and required legal intervention. Trial jurors, theoretically, had nothing more to do than pass sentence. Yet McIntosh contends that this facet of the process was also predetermined. Presentment in the court for this sort of infraction was tantamount to conviction. Defendants rarely were given the opportunity to

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[54] ERO D/DPr91. Richard Wunderli makes a similar observation. In his study of sixteenth-century London, he notes that the local secular courts began to regulate prostitution, despite the fact that it traditionally belonged to the jurisdiction of the church courts. See Richard M. Wunderli, *London Church Courts and Society on the Eve of the Reformation* (Cambridge, 1981), pp. 96-101.

[55] See B.W. McLane, "Juror Attitudes towards Local Disorder: The Evidence of the 1328 Lincolnshire Trailbaston Proceedings," in *Twelve Good Men and True: The Criminal Trial Jury in England, 1200-1800,*

refute the charges; instead, they were fined for their behaviour and warned against repeating their conduct. The presentment jury was dominated by local elites well into the early seventeenth century. A clearly discernible social distinction between the two levels of jurors was thus created. Changes in the legal system such as these must be interpreted as overt attempts by the local elite to create new law within a restrictive manorial system based on custom and tradition.[56]

McIntosh astutely recognises that these developments did not occur independent of other more tangible transformations in legal procedure that point more clearly to increased anxiety over social disorder. She examines first the growing popularity of bye-laws in the mid-fifteenth century, an official appropriation by the locality of the kind of legislative power exerted in the royal courts or in boroughs,[57] which in effect permitted communities to create their "own local statutes."[58] This decisive move away from custom-based law vindicated and promoted the initiative of the presentment jury in the creation of new categories of transgressions, particularly those involving disruption of communal life, and it encouraged local resolution of local problems. At the same time, important changes in forms of punishment in the manorial and borough courts were taking place. Courts began to abandon traditional amercements and instead adopted more rigorous and effective means of discipline,

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ed. J.S. Cockburn and Thomas A. Green (Princeton, 1988), p. 41. This argument is discussed in more depth on pp. 236-7 of Chapter Three.

[56] As Albert Kiralfy has argued, however, this was not an unusual occurrence. The "immemorial character of custom" was rarely as ancient as claimed by those employing it for legal purposes. In the absence of a set of written laws to which to refer, the proof of "long enjoyment" was usually sufficient to substantiate immemorial origin. Many practices described as customs in the courts, then, may have actually had a relatively recent origin. See Albert Kiralfy, "Custom in Medieval English Law," *La Coutume / Custom*, vol. 11: *Europe occidentale médiévale et moderne / Medieval and Modern Western Europe* (Brussels, 1990), pp. 379-402.

[57] It seems likely that borough courts, owing to their character and proximity, acted collectively as a model for the manorial courts in the adoption of this legislative capacity. Certainly, it is worth noting that boroughs received this power through the granting of royal charters, while the development of by-laws to create new law in a rural environment was an innovation sanctioned by local authorities alone.

[58] McIntosh, *Controlling Misbehavior*, p. 39.

such as the stocks, pillory or the cucking stool. All were intended to shame or ridicule the defendant in the hope that the memory of public redress might deter regression and in fact reform the offender. The cucking stool in particular, with its origins as a dung cart and its continued association with excrement through the retention of the privy-stool design, must have been a humiliating punishment.[59]

When none of these means of punishment proved effective, some localities turned to eviction as a last resort. While the heavy economic damage inflicted upon an individual through eviction cannot be ignored or downplayed, it is necessary to consider its wider ramifications. In casting the offender out of the community, the manorial or borough court made an unmistakable statement that he or she was no longer of concern to that community. Whether the offender relocated to another village or town and persisted in ill-mannered, disruptive behaviour, was not an issue. Eviction was a local resolution. External consequences were not important. Manifestations of social control from this period, then, tell us about much more than anxiety over moral corruption; they signify a moment in history when the communities of England consciously turned inward.[60]

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[59] For more insight into the origins of the cucking stool, see Lynda Boose, "Scolding Brides and Bridling Scolds: Taming the Woman's Unruly Member," *Shakespeare Quarterly* 42 (1991), 179-212.

[60] To say that the communities of England consciously turned inward, however, does not suggest that the local authorities were, in any way, in competition with royal jurisdiction. Rather, English justice in the fourteenth century was a "story .... of shifting balances between differing, but complementary, agencies" in which local communities worked with, rather than against, royal justice (Anthony Musson and W.M. Ormrod, *The Evolution of English Justice: Law, Politics and Society in the Fourteenth Century*, London, 1999, p. 54). The collaboration between local and central authorities is perhaps demonstrated best in the use of special commisions of *oyer and terminer* and the rise of the justices of the peace, two developments of the fourteenth century in which local officials assumed integral positions of royal authority. The underlying objective of this merger was to maintain law and order through "the co-operation of men whose knowledge and influence within the local community could be put at the crown's disposal" (*Ibid*, p. 62). Musson and Ormrod have suggested that the Black Death itself was not the catalyst of this change, but rather just one event in a series of unfortunate circumstances (such as the economic crises and famines of the early fourteenth century) to usher in a transition in royal justice by which local officials adopted a more active position in the royal courts as legal administrators (pp. 75-157). This perspective may help to

The Impact of the Black Death and the Growth of the Concept of Liability

In a written response to McIntosh's book, Hanawalt wholeheartedly embraces this approach to the later medieval period and, suggests that a transition in terminology at this time supports the notion that morality was a growing concern.[61] Thus, in the late fourteenth century, the term "good governance" developed as a means of describing appropriate supervision of the morality of the household. The appearance of this phrase symbolised a powerful shift within late medieval society in which patriarchs were perceived as directly responsible for ensuring that the behaviour of their households conformed to communal standards. Any failure to internalise this belief structure was considered intolerable and liable to reprimand.

Hanawalt also attempts to explain why social control became as meaningful an issue as it apparently did after the fourteenth century. She argues that, in part, the scourge of the Black Death in the mid-century was responsible for large changes in communal structure and constitution, which in turn affected attitudes towards local governance. The plague not only disrupted the continuity of established family residences with its high death rates; the high levels of post-plague immigration meant that communities were compelled to respond to an influx of outsiders who were doubtless unaware of regional customs or ethics. Hanawalt argues that it was the creation of a mixed population that impelled manorial courts to abandon

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substantiate Marjorie McIntosh's argument that the social regulation of misbehaviour at a local level evolved gradually over the course of the late Middle Ages.

[61] Barbara A. Hanawalt, "'Good Governance' in the Medieval and Early Modern Context," *Journal of British Studies* 37 (1998), 246-57. McIntosh and Hanawalt are not the only historians to have examined the governance of social inferiors in late medieval England. Shannon McSheffrey, for example, has looked at the role senior men in a community played in the regulation of marriage and sexual relationships in her article "Men and Masculinity in Late Medieval London Civic Culture: Governance, Patriarchy and Reputation," in Jacqueline Murray (ed.), *Conflicted Identities and Multiple Masculinities: Men in the Medieval West* (New York, 1999), p. 243-78. In this article, which focuses primarily on the fifteenth century, she notes that men saw their civic government "as an extension of their patriarchal authority" (252).

traditional methods of enforcing good behaviour, such as compurgation and interpersonal bonds, and instead to rely on monetary fines.

Arguments about the dramatic changes wrought on medieval society through the effects of the plague have been unpopular of late among medieval historians. After a brief period in the early 1960s in which the plague symbolised the ultimate historical determinant capable of explaining all shifts in social, cultural, political, economic and religious thought since its appearance in Western Christendom in 1347, historians generally have viewed the plague with some trepidation, hesitant to attribute all but the most directly related social transformations to the Black Death.[62] Nevertheless, Hanawalt's view of the plague as a catalyst for the abandonment of compurgation offers a more complete understanding of the sentiments that underlay social change of this period. People came to believe that compurgation was an inferior proof, not because they no longer believed it was a divine proof as Beckerman has argued, but because after the arrival of the plague people were unwilling to stand up in court for neighbours they barely knew.

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[62] Some scholars, then, have adopted alternative explanations for post-plague variance. For example, John S. Beckerman contends that the manorial courts turned their backs on compurgation not because people were unwilling to pledge newcomers, as Hanawalt suggests, but because of its divine nature. Compurgation, like the judicial ordeals, was perceived as a judgement from God: "the ability (or lack of it) of a defendant and his assistants to complete the oath-swearing ritual successfully" was the key to understanding God's verdict. By the end of the thirteenth century, however, keeping in line with the church's rejection of the appropriateness of invoking divine justice, local courts began to see oath swearing as an inferior method of trial, particularly in light of the advent of the trial jury in royal courts. In order to reform the trial method of the local system, the function of compurgation in the courts experienced a subtle transformation in tenor. It came to resemble the role of the jury in the central courts with oath-swearers testifying to the facts concerned in the case, rather than merely the character of the litigants. Beckerman argues that this method of proof was further undermined by the decision of the manorial courts to emulate royal juridical insistence on written proof of contracts and transactions. See John S. Beckerman, "Procedural Innovation and Institutional Change in Medieval English Manorial Courts," *Law and History Review* 10 (1992), 203.

Hanawalt's conclusions echo those put forth by Robert Palmer in his dramatic study of the effects of the Black Death on the English common law.[63] In this work, the author argues that post-plague legislation like the Statute of Labourers was designed to compel the ranks of English society "to stand to their obligations". The increased mobility of the post-plague era created a society without honour, in which feudal obligations were abandoned in favour of individual gain. The high rate of mortality created a labour market in which competition simply did not exist; when serfs did not wish to work for paltry wages, then feudal lords were powerless to compel them to do so. Palmer argues that the Statute of Labourers was a royal attempt to enforce obligations and recreate the static and hierarchical social structure of the pre-plague era. Consequently, after the Black Death, royal governance moved "from centralization and authoritarianism to cooperation and inclusion".[64] The upper orders of English society benefited most from this new approach. Members of the new gentry, in particular, were integrated more efficiently into the governing system through the use of both facilitative and coercive legal devices in order to create a more effective system of policing to preserve traditional values. The end result was a host of legal innovations concerning the law of real property intended to force accountability on the various ranks of English society. The legal device known as the use, which has previously received no legal protection, was now permitted "because it allowed the upper orders to fulfill their obligations".[65] Palmer also

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[63] This brief summary does not do justice to Palmer's lengthy and fascinating book. His work offers an important re-evaluation of the impact of the Black Death as well as the growth of trespass. See his *English Law in the Age of the Black Death, 1348-1381: A Transformation of Governance and Law* (Chapel Hill, 1993). Palmer is certainly not alone is seeing the Black Death as an important moment in English history which irrevocably changed the direction of English society. Alan Macfarlane has suggested the impact of the plague can even be demonstrated at the level of marriage. He notes that after the Black Death, English men and women were willing to court and marry more readily without the advice and approval of others. See Alan Macfarlane, *Marriage and Love in England: Modes of Reproduction 1300-1840* (Oxford, 1986), pp. 119-25.

[64] *Ibid*, p. 59.

[65] *Ibid*, p. 60.

notes that a qualitative difference existed in the way the law was enforced after this period. Not only were the English people required to fulfil their feudal obligations, a new understanding of liability was imposed in which Englishmen were compelled "to perform to an acceptable standard".[66] This emerging attitude at the upper levels of government accounts for not only the development of *scienter* liability, but also for the origins of case law.

Palmer's vision of English government in the fourteenth century is too monocausal and imposing to reconcile with traditional images of late medieval governance. Moreover, the notion that royal forces were chiefly responsible for initiating such substantial changes in legislation is difficult to sustain simply because the king was not the primary beneficiary of these changes. The litigants themselves, those who believed they had been wronged and wanted some form of redress, stood to gain the most. Royal justice, then, was more likely reacting to external pressure, not purposely transforming itself into a monolithic bureaucracy. Otherwise, Palmer's argument linking the Black Death and the growth of an ideology of civil liability is impregnable. The increased mobility and break-down of traditional systems of social policing caused by the loss of over a third of the nation's population necessitated immediate legal action. The growth of civil liability was a national response to social misbehaviour.

While McIntosh sees widespread internal revision of morality restricted to the local courts, Palmer traces the same kind of changes at a national level. Palmer's focus on the importance of the rise of trespass illustrates the link between this phenomenon and growing anxiety about social misbehaviour. Beginning as far back as the thirteenth century, civil trespasses alleging direct forcible injury were gaining popularity in the central royal courts as a means of redressing interpersonal quarrels. The functionality of these *ostensurus quare*

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[66] *Ibid*, p. 295.

writs was impeded, however, by the conditions of the suit. In most instances, in order to obtain central royal court jurisdiction, the trespass had to have been performed with force and arms (*vi et armis)* and in breach of the king's peace (*contra pacem*). These requirements left many civil wrongs to the jurisdiction of the local courts. Plaintiffs desirous of avoiding the prejudice and inadequate enforcement of local resolution seem at times to have fictionalised the breach of king's peace and *vi et armis*. Defendants may also have been willing to accept resolution of such disputes in the central royal courts. Unlike the case in borough or manorial courts, the royal venue permitted special pleading in actions of trespass. Defendants were not restricted to making an unqualified denial of the allegations. In cases in which accusations were especially misleading, it was possible for the defendant to admit that he had committed the alleged trespass, but then to proceed to clarify the circumstances under which he had done so. For example, a man accused of killing another man's dog may well have admitted to a violation of his neighbour's rights, while at the same time justifying his actions by providing context to the infraction, that at the time of the incident the dog's teeth were viciously encircling the throat of another neighbour's four-year-old child.[67] Special pleading, then, levelled the playing field for both litigants and ensured at least in those cases in which it was available, that the pleading submitted to the jury more closely reflected what was really at issue between the parties.

By the year 1370, however, the king's courts had had their fill of child-slaying dogs acting against the king's peace while bearing arms. They chose instead to recognise the intrinsic value of trespass suits for the resolution of local civil disputes in an impartial setting, and they consciously abandoned constrictive traditional requirements. In permitting a looser

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[67] S.F.C. Milsom, *Studies in the History of the Common Law* (London, 1985), pp. 80-1. Milsom provides an excellent overview of the rise of trespass in the late medieval period.

definition of the term, the royal courts simultaneously gave birth to case law. While trespasses were direct injuries against a person or his land and goods, cases were consequential harms. A man who failed to reinforce the river walls even though it was his responsibility to do so might now be held liable for the damages caused to his neighbours by the resultant flooding. This was a substantial deviation from traditional legal objective. Before this, the concept of liability was foreign to secular civil litigation. Even in criminal suits the courts were uncomfortable with this concept, so that in a case of homicide, if John stabbed William when he had really intended to stab Robert, the courts were hesitant to hold him responsible for his actions.[68]

Whether we see this development, as Professor Milsom is inclined to do, as a response to the desire of litigants to bring such cases before the central royal courts, or as Professor Palmer is inclined to do, as a response by the king and those close to him to what they perceived as a crisis in order, it clearly involved the central royal courts in the regulation of more types of behaviour that the society regarded as deviant.[69] Later medieval society may well have been undergoing an important transformation in values and notions of personal responsibility to conform to a communal code of ethics. Whether we describe this as a "crisis of order" or simply a growing trend towards an intolerance of social deviation, it is important to recognise that these expectations reflect a long process of development and maturation, beginning perhaps as far back as the thirteenth century.[70]

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[68] Naomi Hurnard refers to this kind of death as "killing by transferred intent." See her *The King's Pardon for Homicide Before A.D. 1307* (Oxford, 1969), pp. 98-101

[69] S.F.C. Milsom is the foremost authority on both the growth of trespass and liability in medieval English law. For a fuller discussion of either of these, see Milsom, *Studies in the History of the Common Law*, pp. 1-104.

[70] There has been a great deal of dispute about the use (or abuse) of the term "crisis" to describe changes in early modern society. I have chosen to employ this terminology in quotations here because it is likely to be familiar to most scholars and to evoke the appropriate images of social misbehaviour. The work of McIntosh and early modernists Margaret Spufford and Martin Ingram has challenged the notion of a crisis

Personal Liability in the Local Courts: A Link between Scolds and Marital Disharmony?

An investigation into London civic culture in the fifteenth century by Shannon McSheffrey demonstrates that local officials might well be quite intrusive in the pursuit of this goal. She notes that, in fifteenth-century London, there was

> an apparent acceptance, on all sides, of public intrusion into domestic space. [Such that, a certain] John Calton, by virtue of his office [as local constable], entered a neighbor's house without his permission, late in the evening, because he had reasonable cause to suspect there were fornicators on the premises. Other constables and beadles also burst into people's houses – even at four o'clock in the morning – to catch offenders in the act.[71]

Social regulation in local communities was an unambiguous example of the imposition by local elites of a new morality founded on the tenets of personal privacy and a well-ordered hierarchy. In fact, the ethical nature of many of the accusations has caused some historians to coin the phrase a "reformation in manners" to describe the phenomenon, succinctly capturing the inferences of civility and propriety emanating from these indictments.[72] Persons whose behaviour conflicted with their positions within the proper order were obvious targets. Thus, men who comported themselves in a disorderly manner, inebriated, brawling, or gaming, were frequent victims of this evolving regulation.

Women were also scrutinised for lapses in moral governance; yet, there was a clearly gendered distinction in the nature of the offences for which they were presented. Evidence of

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in order, with all of the concomitant implications of immediacy and short-term causes, in favour of a gradual development traversing the boundaries of the era. For a good, brief summary of the variety of conclusions drawn in this respect, see Karen Jones and Michael Zell, "Bad conversation? Gender and social control in a Kentish borough, c. 1450-c. 1570," *Continuity and Change* 13 (1998), 11-14.

[71] McSheffrey, "Men and Masculinity in Late Medieval London Civic Culture," p. 254.

[72] The phrase "a reformation in manners" was first employed in Keith Wrightson and David Levine's *Poverty and Piety in an English Village* (New York, 1979). See also M. Ingram's response, "Reformation of manners in early modern England," in P. Griffiths, A. Fox and S. Hindle (eds), *The Experience of authority in early modern England* (London, 1996), pp. 47-88.

a woman's transgression of the social hierarchy tended to focus on one distinctively feminised aspect of misbehaviour: misuse of the tongue. Gossiping, nagging, berating of husbands and generally disturbing the peace through excessive verbosity were all comparable offences that fell under the general category of scolding. Unlike many of the male-oriented violations of communal norms, however, a woman had to engage in more than one instance of quarrelsome behaviour before she found herself presented before the court. It was in the repetition of the offence, the perpetual disruption of her neighbour's peace, that a woman's conduct became intolerable.

Antipathy to the female voice was a well-established and vital component of the medieval literary tradition of misogyny in both ecclesiastical and secular circles, and can be traced back to some of the most fundamental literary works of the period. The most obvious example, of course, is the story of Eve and its medieval interpretation. Lynda Boose has argued that Eve's transgressions were enormous in themselves, because "[t]hrough Eve's open mouth ... sin and disorder entered the world."[73] Eve first demonstrated her incapacity to use God's gift in a wise and intelligent fashion when she chose to respond to the serpent's queries. Her verbal sins multiplied, however, when she abused her power once again by persuading Adam to join in her disobedience. In both these verbal transgressions, Eve's fault is located in her misuse of speech, a characteristic destined to be the hallmark of womanly conduct in medieval literary culture.[74] Women who indulged in idle chatter and used their tongues to harass and scold provided priests the opportunity to remind their parishioners of St Paul's admonition that "women should keep silent." That women were being presented in

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[73] Boose, "Scolding Brides and Bridling Scolds", 204.

[74] Chiara Frugoni offers a comprehensive analysis of the reception and interpretation of the story of the Fall. See her "The Imagined Woman," *A History of Women: Silences of the Middle Ages*, ed. Christiane Klapisch-Zuber, trans. Clarissa Botsford (Cambridge, 1992), in particular pp. 358-62.

courts for their obstreperous behaviour only at the end of the Middle Ages does not suggest that they had hitherto adhered conscientiously to Paul's recommendation. Rather, the conditions of the later period may simply have offered more opportunities for social control and less forbearance of unruly conduct.

In her exceptionally broad investigation of manorial records from the late medieval and early modern eras, McIntosh observes that "by far the most common presentment within this [spectrum] was scolding." She also notes that while it was possible for men to be presented for verbally quarrelsome behaviour, it was an "overwhelmingly female offence."[75] Scolding was also not a matter to be taken lightly, as a case from the manorial records of Thorner in Yorkshire from the year 1365 suggests:

> Elena de ....., Matilda Countays, Agnes wife of Adam son of John, Alice wife of John Best, Elena wife of Hugh de Schirwod, and Elizabeth Hastenges are common gossips (*garulatores*) and disturbers of the peace, so that the penalty of ijs. which was ordained by the Court is (incurred). ..... [and] that wheresoever and as often as any of those gossips, or other common gossips, be found guilty of gossiping by those officers, that forthwith they be placed on the thew, under penalty of forty pence, to be levied upon those officers to the lord's use.[76]

Not only were women subject to steep financial penalties and threats of even greater future exactions in the event of continued misbehaviour; they were at times submitted to public humiliation and physical torment through the use of the "thew" or cucking stool. In a spirited response to D.E. Underdown's seminal work on this subject, Martin Ingram has argued that most communities never invested in the building of a proper cucking stool, and that even in those which did, the instrument was frequently in disrepair and unusable. He

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[75] McIntosh, *Controlling Misbehavior*, p. 58.
[76] "Fourteenth Century Court Rolls of the Manor of Thorner", ed. W.T. Lancaster (Thoresby Society, *Miscellanea*, vol. 15, 1909), p. 170.

further maintains that records of final sentencing are misleading: women ordered to be cucked were often able to commute their penalty into a monetary fine and to avoid the stool altogether.[77] Despite these protestations, Ingram misses the crucial implications of the very existence of such a tool. A cucking stool, functional or not, was a powerful symbol of communal values in which female assertiveness was identified explicitly as a direct threat to the welfare of the community. This interpretation is reinforced by the existence of torturous implements like the brank, or gossip's bridle.[78] Often described as "a kind of chastity belt for the tongue," the brank was a metal cage which enclosed the head, screwed in place around the temple, and placed spikes or sharpened iron in the offender's mouth. The scold's tongue was firmly pinned in place by the spikes so that if she attempted to speak it would be gravely injured.[79] The brank was no doubt intended to be a scold's pillory of sorts, to incapacitate temporarily the offender and force a woman literally to hold her tongue. Yet, such a vicious restraint far exceeds mere humiliation and mild discomfort. Whether this instrument was put to use frequently or not at all, its very presence must have acted as a powerful deterrent to women who might have otherwise voiced their opinions when presented with an exasperating situation. The typical late medieval Englishwoman learned efficiently to keep her peace in the community more through fear than respect or civility.

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[77] Martin Ingram, "'Scolding women cucked or washed': a crisis in gender relations in early modern England?", in J. Kermode and G. Walker (eds), *Women, crime and the courts in Early Modern England* (London, 1994), pp. 48-80; D.E. Underdown, "The taming of the scold: the enforcement of patriarchal authority in early modern England," in A. Fletcher and J. Stevenson (eds), *Order and disorder in early modern England* (Cambridge, 1985), pp. 116-136. Jody Enders offers an interesting discussion of the relationship between attitudes towards scolding and the emerging witch-hunt. See her "Violence, Silence, and the Memory of Witches," in *Violence against Women in Medieval Texts*, ed. Anna Roberts (Gainesville, 1998), pp. 210-32. Unfortunately, much of the research into this phenomenon has been in the early modern context (with the exception of Enders who looks at the end of the Middle Ages). The medieval evidence, however, strongly suggests that scolds were becoming a problem in the late Middle Ages and that instruments, like the cucking stool, existed for their punishment (for example, see p. 159 of this thesis).

[78] See figures 5 and 6 appearing at the end of this chapter on p. 183.

[79] As cited in Boose, "Scolding Brides and Bridling Scolds", 197.

Both Yorkshire and Essex during the later Middle Ages show signs of this growing intolerance of feminine aggression. The findings for each county differ greatly, and this disparity may well result from their geographical situation. In the north, the majority of the manorial records examined demonstrate an interest in scolding of various degrees. At two Wakefield tourns over the course of 1339 and 1340, women were presented as "common scolds," suggesting that each had repeatedly engaged in this offensive activity.[80] In one case, both a woman and her sister were presented for the same offence, perhaps an instance in which the parents failed in their duty to inspire appropriate feminine behaviour. The manor of Thorner in the years 1364 and 1365 punished a number of women for their outspokenness, their fines ranging anywhere between three pence and two shillings.[81] Several women were presented on more than one occasion for the same offence. Matilda Countays, Agnes wife of John Best, and Elena wife of Hugh de Schirwod appeared before the court for the first time on the Thursday before Trinity Sunday in 1364, then again in the month of November 1365. The repeat appearances in court clearly suggest that they had not reformed their behaviour sufficiently during that period in order to meet the standards established by Thorner's elite. Unfortunately, fines were only given for the second conviction; thus, it is impossible to discover whether the penalties increased with each subsequent appearance. It seems likely that the repetition of the offence incurred greater fines, a hypothesis sustained by the unusually high level of the second fine at two shillings. When the wife of John Yung of Thorner was fined for gossiping with the wife of Adam Souter, she was fined six pence, while the wife of Adam Souter was fined only three pence.[82] That two women accused of the same

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[80] *The Court Rolls of the Manor of Wakefield*, ed. Troup, pp. 78, 222.
[81] "Fourteenth Century Court Rolls," ed. Lancaster, pp. 162, 164, 170, 171.
[82] *Ibid*, p. 164.

misbehaviour should have been penalised by fines of differing amounts suggests one of two conclusions. Either one was held to be more responsible for the offence than the other, or there was a scale of exactions in which each subsequent repetition of the specific ill conduct moved the offender up a notch. If the latter were indeed the case, one can only assume that Matilda, Agnes and Elena were no strangers to the inner workings of the local court.

The manors of Pontefract and Bradford in Yorkshire shared a similar concern with vexatious women, yet each again revealed distinctions in the way the issue was addressed. In Pontefract, women were disciplined not only for being gossips, but also for their method of gathering information. In the year 1427, Johanna wife of John Persson was brought up on charges of eavesdropping at her neighbour's windows by night; in April of the next year, Elizabeth wife of William Falby was presented on the same charge.[83] The late dates of these charges may well suggest a heightened level of concern. The community of Pontefract was no longer willing merely to punish outbreaks of scolding; instead, the community attempted to extirpate it altogether by looking to the source. If women were prevented from invading their neighbours' privacy, they were clearly unable to gossip about anything that might be individually harmful or malicious.

The manor of Bradford, by contrast, reveals an even more peculiar development. On this manor, scolding was not exclusively a feminine offence. In the month of October 1351 Richard Jankyn, Hugh Dyisip and Hugh son of Thomas were all fined three pence for disturbing the peace with their clamourousness, while in October of 1357 Robert Dikson was fined for a similar offence.[84] The appearance of these male scolds is not entirely an oddity in

[83] PRO DL 30/129/1962, mm. 2, 4.
[84] PRO DL 30/129/1957, mm. 27d, 40.

the history of scolding; McIntosh also observes that males were sometimes punished for this offence.[85] Their appearance in the rolls of the manor of Bradford at this point, however, demands a reassessment of the understanding of scolding in Yorkshire in general. Evidence from both the manor of Bradford and the entire county of Yorkshire in fact, confirms that female scolds were not perceived in this northern region as a grave problem in need of widespread policing and reform. Quite the contrary: while there are some rudimentary indications of anxiety about scolds and the invasion of personal privacy, they are few and far between, suggesting that York had engaged in only a preliminary foray into the social control of misbehaviour.[86]

At a time when local courts all over England were reorienting and restructuring themselves by various degrees in order to deal with these lapses in social conformity, York appears as an anomaly. Lack of concern here may reflect a number of features specific to Yorkshire's political and geographical situation. It seems likely that the county's distance from the legal centre may have had much to do with this lag in curial trends. While the people of the north were generally *au courant* in their knowledge of changes to the common law and the administration of royal courts, transformations in local justice in central and southern England may well have disseminated slowly throughout the north. Because manorial and borough courts were local in nature, the changes wrought in these courts were less likely to be propagated by itinerant justices. Another possibility is that these standards had spread northwards but were not (as of yet) embraced without reservation as they had been elsewhere in England. Quite simply, the north may have been more sympathetic to female voices during

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[85] McIntosh, *Controlling Misbehavior*, p. 58.

[86] This argument is taken up once again in Chapter Five with an examination of scold prosecutions in the records of the church courts. See pp. 366-70.

this period. This possibility is strongly reinforced by the existence of six applications for judicial separation on the grounds of cruelty in the cause papers of the north while the southern counterparts of these papers produce nothing similar. Divorce *a mensa et thoro* cases, while not specifically evocative of female aggression, do at least demonstrate women willing to assert their individual rights in search of personal happiness, a feature that may well have conflicted with growing notions of female propriety. In societies in which scolding might be interpreted as a woman's attempt to berate her husband, it seems likely that few women would be inclined to initiate litigation against their husbands. Suits of this kind might well be perceived as evidence of their own quarrelsome and wholly unfeminine natures. What might begin as a suit against a woman's husband for his inability to conduct himself in a manner befitting his role as the patriarch might well end in a fine against the plaintiff for her own lack of passivity.

Scold Prosecution in Essex: A Model Patriarchy

The findings of local jurisdiction in the county of Essex suggest that regions closer to the legal centre may have engendered a more socially oppressive climate in the later medieval period than that of the north. The manor of Earls Colne in the later Middle Ages exercised a wide variety of controls on social behaviour. Scolding was not only an important issue here, it was interpreted in an even harsher light. The manorial rolls include numerous allusions to the offence. Margery Holdehall was described as both a "common scandalmonger," and an "abuser of her neighbours," while Isabel wife of John March was "a common scold and gossips and disturbs all her neighbours unjustly against the peace."[87] Both entries succinctly

[87] ERO D/DPr68.

capture in one phrase all the elements of social non-conformity. While Margery and Isabel were fined four and three pence respectively, penalties were sometimes even steeper. The wife of Breggs the butcher was fined three shillings four pence for being a common chider of her neighbours. Edith Thale, who was also brought up on charges of hedge breaking and threatened with a fine of forty pence if she repeated the offence, was warned to leave the village altogether because of her gossiping.[88] In both cases, the penalties demanded by the court were much greater than those habitually imposed on persons guilty of assault (an offence usually resolved with a fine of around three pence). Clearly, in the minds of the village elite in Earls Colne, a bloodied and bruised body meant little when compared with emotional distress.

The high fines imposed for other infractions of social norms underscore the critical nature of moral offences in late medieval Earls Colne. In 1433 Ralph Atte Pery was fined two shillings for being "a common night walker under the houses and walls of divers men harkening after their privy talk in the night." In 1422, John Chaloner paid three shillings four pence for keeping a whore in his house, and in 1503 Katherine Pecocke was exiled from the community for being a "common bawd," and was warned that if she did not comply with this command she would be fined forty pence.[89] Given the fact that a sheep could not be bought for less than ten pence and an ox cost at least seven shillings during this period,[90] none of these offenders was excused lightly. This particular late medieval manor in Essex, at least, was participating whole-heartedly in the trend towards local persecution of moral transgressions.

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[88] ERO D/DPr66.
[89] The first two examples are both from ERO D/DPr68, the last appears in ERO D/DPr 70.
[90] M.M Postan, *The Medieval Economy and Society: An Economic History of Britain 1100-1500* (Berkley, 1972), p. 232.

By far the most revealing of all the records for this purpose, however, are those of the borough of Colchester. Within a period of sixty-nine years, covering the majority of the fourteenth century (1311 to 1379), seventy-eight cases of scolding were brought before the borough court and punished accordingly.[91] This total is higher than that of any other local jurisdiction within the limits of the present investigation. Understandably, Colchester's quasi-urban nature might have contributed considerably to this substantially higher figure. And yet, as R.H. Britnell has noted, even by English standards, Colchester was never very large or its economy exclusively urban. Throughout the late medieval period the inhabitants of Colchester relied heavily on pastoral agricultural in order to sustain themselves. In fact, Britnell suggests that sixty-nine percent of the total population participated in agriculture in one way or another.[92] At a time when neighbouring London was overflowing with 40,000 inhabitants, Britnell estimates an early fourteenth-century population of Colchester at a mere 3,000 people.[93] Even at the height of population growth in the late fourteenth century, levels reached no higher than five or six thousand residents, although this may be an overestimate for the fifteenth century.[94] With the decline of the cloth industry after 1414, Colchester was incapable of compensating for a falling population caused by recurrences of the plague and industrial immigration. Clearly, despite Colchester's local and national prominence, it was no booming metropolis. Given its relatively small population, then, seventy-eight prosecutions of scolding offences over a period as short as sixty-nine years seems excessive.

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[91] Within these seventy-eight cases, one woman, Cristina Ferthyng seems to account for three separate instances of scolding: first in 1352, again in 1366 and finally in 1375. The total number of offenders, then, lies somewhere between seventy-five (assuming that all three Cristinas are indeed the same person) and seventy-eight.

[92] R.H. Britnell, *Growth and Decline in Colchester, 1300-1525* (Cambridge, 1986), p. 17.

[93] *Ibid*, p. 16.

[94] L.R. Poos, *A rural society after the Black Death, Essex 1350-1525* (Cambridge, 1991), p. 41.

While there are no specifically medieval figures available for comparative purposes here, Karen Jones and Michael Zell's study of the Kent borough of Fordwich provides a statistical analysis of a similar setting. While their study covers a later period and a smaller urban environment, Fordwich is a logical choice for a statistical comparison because it shared a number of corresponding characteristics with the Essex borough. While both were urban in nature, an agricultural economy continued to be of primary importance in each community. Moreover, their geographical proximity and joint political activity imply a very real possibility of a shared belief structure. When the peasantry of Essex actively opposed the poll tax in 1381 and rose up in armed revolt against the English aristocracy, their Kentish neighbours chose to support them. Similarly, when peasants in south-eastern Kent began Cade's rebellion in the mid-fifteenth century, acting out their distress with political officials in what quickly became an uprising of national concern, Essex was drawn immediately and directly into the conflict. Essex and Kent shared a unique political perspective strongly founded on notions of social injustice; given their similarity in outlook, it seems likely that the two regions might also have experienced comparable shifts in morality and local justice.

Jones and Zell chose a much longer frame of reference for their study. Over the course of one hundred and twenty years (from 1451 to 1570), the views of frankpledge for the borough of Fordwich produced thirty-seven scolds, of which the majority (twenty-one presentments) were concentrated in the decades around the beginning of the sixteenth century.[95] This figure is substantially less than that of Colchester for the fourteenth century; however, a number of variables must be taken into consideration when evaluating this disparity. Because Jones and Zell's study falls in the midst of a period of more intense

[95] Jones and Zell, "Bad conversation?", 15.

persecution of scolds, particularly at the turn of century (identified by McIntosh and other early modernists as an especially vehement moment in the history of social control), it is to be expected that the total number of scold presentments should have been quite high. The extreme nature of the period and the longer duration of the study, then, should serve to offset the population difference between the two regions. The Fordwich total pales in comparison with the findings of scold presentments in the Colchester borough.

What is even more unusual about Colchester's proclivity to prosecute female deviance is that it was fairly consistent throughout the fourteenth century. McIntosh argues that both manorial and church courts experienced the first pangs of anxiety about social misbehaviour around the year 1300; however, the regulation of these offences was discontinued after the year 1330 and failed to reappear in any important way until the early 1370s.[96] Nevertheless, Colchester's prosecution of scolds was not altogether in line with these national trends, as the figures in table one suggest.

Table 1: Colchester Scold Prosecutions: the Fourteenth Century

Decade	Number of Presentments for Scolding
1310-19	12
1320-29	0
1330-39	14
1340-49	2
1350-59	14
1360-69	6
1370-79	30
Total Number:	78

[96] McIntosh, *Controlling Misbehavior*, Chapter One, *passim*.

While the figures for Colchester in the 1310s conform to McIntosh's expectations, the figures for the entire century certainly seem to suggest that scolding was a fluctuating concern in the Colchester community and that the 1330s was a period in which scolding was equally contentious as the 1310s. In fact, during the period between 1330 and 1370 when scolding prosecution should have been almost non-existent according to McIntosh, Colchester reported thirty-six presentments, almost half the total number for the entire period under investigation. McIntosh's observation that the 1370s was a key period in the inception of harsh regulation of social misbehaviour is reflected in the findings of Colchester's borough records. This was evidently a moment in which Colchester rejoined the national pattern of changes in local justice, with thirty presentments over the course of the decade. Despite Colchester's renewed vigour in the 1370s, the figures for the period prior to this, however, remain fairly constant, allowing for a slight interruption in the progression with the onslaught of famine and the plague in the 1340s.

Colchester's extensive efforts in social control at such an early stage may well be explained by the unusual population trends of Essex during this period. L.R. Poos has argued that, "extensive geographical mobility had already become an integral experience of country life in Essex well before the Black Death." In fact, by the 1320s "rural Essex communities experienced rates of resident population turnover roughly equal in magnitude to those of English communities three hundred years later."[97] Such intense migration in the rural environment might not have occurred without significant ramifications on the urban setting.

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[97] Poos, *A Rural Society*, p. 160. Poos does note that while migration was "commonplace," it occurred within limits. "Essex people moved, not aimlessly or randomly over long distances, but to and from communities within, typically, a radius of ten or fifteen miles, longer-range resettling being relatively much rarer." (p. 162) This kind of movement within and between communities would have created a much different environment than one finds elsewhere in England at this time. The difficulties of governing such a highly-changeable population likely posed many problems to fourteenth century administrators and probably challenged traditional systems of communal policing.

Poos explains this aberrance as a heightened awareness of the economic benefits of population exchange; "migration was the means by which people found places in the local economy to fit into."[98] This early transformation in the composition of the population of Essex likely created a perceived need for social control not felt elsewhere in England. In this respect, then, Essex may have been more "progressive" or sophisticated in its precocious forays into moral regulation.

The prosecution of scolds in Essex, as elsewhere in England throughout the late medieval and early modern era, cannot be studied separately from the issue of marriage. Of the seventy-eight individuals involved in scold prosecution in the Colchester court, at least twenty-six were clearly identified as married women, representing exactly one-third of the total number of offenders. The final figure may actually be even higher than is suggested by a simple name analysis; however, without further investigation into local wills and other civic records it is difficult to offer a more precise total. Nevertheless, one-third is a sufficiently high proportion to support the opinion that Colchester elites were concerned specifically about scolding women, but also scolding wives. Not only did they avidly discourage scolding through consistent and public prosecution, their readiness to intervene in a marriage and attempt to reform the character of these aggressive women in the absence of suitable patriarchal controls may indeed have had a vital influence on rates of abuse. It seems clear that Colchester husbands were expected to keep a tight rein on their wives' social behaviour, suggesting that the power relationship within Colchester marriages was certainly weighted to the husband's advantage. An overly vocal wife, then, may have offered a husband burdened with these social expectations the prime opportunity to employ physical discipline regularly and enthusiastically. As the following two chapters argue, Essex women were far less likely

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[98] *Ibid*, p. 159.

to resort either to divorce or to murder as an escape from a violent marriage than were Yorkshire wives. Given the strictures of the environment in Essex, wives may not only have expected less from marriage in terms of emotional equality and shared authority, but have been more willing to assume a passive role.

Within the borough records of Colchester, individuals accused of scolding were given a wide range of designations: common scolds, litigious persons, babblers, chatterers, garrulous persons, brawlers, and disturbers of the peace. The range of names employed for the offence suggests the wide variety of transgressions involved in this kind of misbehaviour. Women who were continuously suing their neighbours in court were placed in the same category as those who gossiped or who initiated loud, disruptive arguments. Each of these offences was dealt with in a harsh and demoralising manner, although in none of these cases was the cucking stool invoked as a final penalty. Only one case from the records of this period even hints at the existence of the instrument in the Colchester environment. In 1334 Alice la Selkwimman and her daughter Mabel were convicted on their own confessions of being common litigious persons and ordered to be cucked for their offence. The punishment was never carried out. The penalty was commuted to a fine of two shillings on the "supplication of friends."[99] Apparently, while the behaviour of Alice and her daughter merited social mortification through public presentment and some kind of reproof, the cucking stool was considered excessive for this purpose. This case demonstrates, however, that the borough of Colchester was in possession of a functional cucking stool at a very early stage, and yet, paradoxically, chose not to use it. This contradiction inevitably brings us back to the social utility of a cucking stool within a community. Colchester's example strongly argues that,

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[99] *Borough of Colchester*, i.123.

during the fourteenth century at least, the instrument may have been intended chiefly as a physical deterrent to female aggression. It was a tangible warning of the potential disaster of violating the social hierarchy rather than a tool employed by the courts in the regular system of moral control.

Liability and Social Misbehaviour: The Burden of Being Male in the Late Middle Ages

On three occasions women were presented together with their husbands for the crime of scolding or disturbing the peace. In 1373 Walter Goodhewer and his wife Sabina were both convicted as common scolds, for "sitting under the walls of their neighbours houses." In 1375, William Tebaut and his wife were indicted for disturbing the peace, and in 1379 John Bosser and Alice his wife were also convicted of being common scolds and disturbers of the peace, although the precise nature of the offence in the two latter cases was not specified.[100] Offenders presented as couples may have been less directly abusive of others in the community and more abusive of each other to the nuisance of neighbours forced to endure hour after hour of shouting and fighting. Joint presentment of spouses in the borough court may have been a popular communal strategy of dealing with a persistently disruptive relationship that had passed beyond the capacity of unofficial controls by either family or friends. Alternatively, these cases may represent something entirely different. They may symbolise a tacit recognition of a husband's failure to control his wife's actions. This conclusion is a logical extension of the gender paradigm: to punish women for excessive activity without also addressing the issue of male passivity would be an exercise in futility.

Within the Colchester borough rolls there are a number of overt examples of men

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[100] *Ibid*, iii.31, 176.

failing in their role as husband and being held legally accountable. In a case from the year 1311 a couple was presented before the court for assault on a woman in the street. With the unfolding of the tale, it becomes immediately apparent that the husband in fact had very little to do with the perpetration of the crime:

> Joan, wife of William Sprot, complains of Richard le Blunt and Benedicta his wife on plea of trespass, owing to the said Richard failing to chastise his wife, when she the said Joan was on the King's way opposite her house near Stanwell, the said Benedicta came up and attacked her, to the damage of half a mark.[101]

This is not the only example of a husband openly blamed for "failing to chastise his wife." In a case from the following year we find a similar situation:

> Joan Pakes by the said Peter, her attorney, complains that as she was in the king's highway near "Berestal" in Colchester market, the said Clemence came up, for want of chastisement of the said Guy [her husband], and assaulted the said Joan, striking her with her fist and a stick and tearing her cloak and scarf to the damage of 40sh.
>
> The said Guy came and confessed to the said assault and begs for mercy. It was considered that Joan might recover the said 40sh.[102]

And again in 1333,

> Adam le Spycer and Felicia [his wife] plead not guilty of a trespass alleged by John [son of] Walter le Barber and Juliana his wife, viz., that Felicia, in default of chastisement by the said Adam, committed an assault in the market place on the said Juliana, tearing out her hair, and carrying off two veils, price 2sh., and inflicted other damage to the extent of 20sh. On an enquiry ordered, the case was adjourned to the Feast of St. Lucy following [Dec. 13].[103]

Finally, from 1334,

> Will[iam] le Delver and Agnes his wife plead not guilty to a charge of assault in Westokwollestrat committed by the latter "for want of

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[101] *Ibid*, i.56.
[102] *Ibid*, i.86.
[103] *Ibid*, i.114.

chastisement by her husband, the said William," on Agnes, wife of Richard le Tannere. Enquiry ordered.[104]

While these four cases are the only instances in which the husband's fault was clearly implied, there were at least two other assaults by women on their own in which the husband was held jointly responsible.[105] This phenomenon was not restricted to Essex. The Yorkshire manorial records include a smattering of similar situations, suggesting that here, too, people were concerned that husbands maintain a certain degree of control over their wives' actions. In 1339, when Joanna wife of Adam son of Jordan of Horbiry called Agnes Hughet a false thief and a jade, she and her husband both ended up before the Wakefield court denying the charges.[106] Likewise, both William Tiel and his wife Joanna were asked by the court at Bradford in 1347 to respond to Agnes Chapman's allegations that Joanna had beaten her.[107] Not only was the fourteenth century a vital period in the reiteration of notions of acceptable femininity and wifely duties; it was also an important moment in the history of gender relations in England. The courts were prepared to coerce men into taking a more active role in the regulation of the social and criminal behaviour of their spouses.[108]

Obviously, men were not always held responsible for their wives' hostility, otherwise they would have appeared with their spouses in all cases of scold prosecution within late medieval local jurisdictions. That they were not suggests that in some situations at least the offence had exceeded all regular controls and required higher intervention. A scolding wife

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[104] *Ibid*, i. 135.
[105] *Ibid*, iii. 9, 16.
[106] *The Court Rolls of the Manor of Wakefield*, ed. Troup, p. 47.
[107] PRO DL 30/129/1957, m. 16.
[108] Shannon McSheffrey notes that husbands were deemed responsible for their wives' behaviour where heresy was concerned as well. In her investigation into Lollardy in late medieval England, she notes a number of cases where husbands were fined by the church courts for concealing the opinions of their wives. One husband in particular, whose wife was up on charges of heresy, was ordered by the court to "manage his wife properly and honestly". The evidence is substantial enough for McSheffrey to note that "spinsters and widows were seen as responsible for their own conduct, while husbands were expected to

was judged to be a heavy burden for any man. In his study of the *ex officio* cases of the Rochester consistory court, Andrew Finch recounts the tale of a Kentish couple, Henry Cook of Hethe at Trottiscliffe and his wife. When brought before the court on charges of spousal non-cohabitation in December 1347, Henry argued that the fault was entirely his wife's because she was a scold. His spouse countered the argument with a more traditional defence, asserting allegations of his sexual infidelity and physical cruelty. Apparently neither spouse was able to present a convincing argument, because the court ordered them to be reconciled.[109] While Henry failed to persuade the court of the validity of his case, his resort to scolding as a justification for divorce is significant. At least in this one case, scolding was thought to be such an egregious behaviour that an ecclesiastical official from the period might have been inclined to sympathise with a scold's husband.

This view is supported by a number of cases from the London church courts of the late Middle Ages. Before the courts, Andrew Peerson was forced to admit that he had indeed exchanged vows of marriage with Agnes Wilson a year earlier. Since then he had refused to have his marriage solemnised, because Agnes had shown herself to be such a great scold (*tanta objurgatrix et scolda*) and had even been indicted by the local courts for this behaviour. Rather than deny the validity of the marriage, as Andrew might have hoped, the judge chose instead to grant Andrew and Agnes a judicial separation, ordering the two not to remarry. The court's decision demonstrates that it was not only defendants who considered scolding sufficient grounds for a divorce.[110] Similarly, in cases of divorce *a mensa et thoro*, husbands

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answer for the actions of their wives." See *Gender and Heresy: Women and Men in Lollard Communities, 1420-1530* (Philadelphia, 1995), pp. 94-5.

[109] Andrew John Finch, "Sexual Morality and Canon Law: the Evidence of the Rochester Consistory Court," *Journal of Medieval History* 20 (1994), 261-75.

[110] Cited in Richard M. Wunderli, *London Church Courts and Society on the Eve of the Reformation* (Cambridge, 1981), pp. 121-2.

were quick to blame their violent ways on their wives, by arguing that she provoked him with her disrespectful language. Such was the defence of William Hyndeley whose wife used opprobrious, contentious, scolding and vexatious words (*verba obprobriosa, brigosa, rixosa, et calumpniosa*), moving him to strike her.[111] Richard Styward also defended his violent actions by shifting the blame to his wife's unrestrained tongue. He contended that her use of very many opprobrious and despicable words (*quamplura verba obprobriosa et vilipendiosa*) was the cause of his beating.[112] Whether or not the medieval courts recognised scolding as sufficient grounds for beating is still unclear because the sentences have not survived for any of these cases; however, it seems evident that the defendants believed a scolding wife justified the use of violence.

The Regulation of Social Misbehaviour and Marital Breakdown

The advent of regulations controlling social behaviour in the fourteenth century not only helped to enforce rigorously contemporary notions of spousal roles, it also provided husbands, in particular, with the tools required to militate against potential marital breakdown. Husbands who discovered their wives' infidelities used the courts to guarantee moral reform and to punish the offenders. When Thomas Clerk of the borough of Colchester was beaten by his wife's lover, a Flemish man named John Danel, he brought the latter before the court for assault, theft and for sleeping with his wife, a charge which would have seemed less incongruous in the ecclesiastical courts of the era.[113] It is difficult to tell whether this was an additional charge perceived by Thomas to fall within the jurisdiction of the court, or simply a

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[111] GL MS DL/C/205, 293r, Joanna Hyndeley *c.* William Hyndeley (1475). The issue of provoking violence through scolding words will be taken up again in Chapter Four, *passim*.
[112] GL MSS 9065, fo. 62r, Ann Styward *c.* Richard Styward (1488).
[113] *Borough of Colchester*, ii. 205.

comment appended to the allegations in order to humiliate his wife. Nevertheless, it seems likely that such a public resolution may have been effective in dissuading his wife from engaging in any future indiscreet affairs. The ability of husbands to use the courts as a weapon against their wives' infidelity is supported by a number of different cases. A mid-fifteenth century case brought before the sheriff's tourn at Halomshire in Yorkshire demonstrates one of the most blatant examples.

> [A]nd that Robert Lymerst (who was distrained ii s), on the Tuesday next before the feast of the nativity of saint John the baptist then last past, came to the house of Thomas Reyner by night contrary to and against the wish of him Thomas, and was found there secretly hidden with the wife of the said Thomas, to the great annoyance of him Thomas, therefore he was being distrained.[114]

It is unclear whether the distraint was intended to compel Robert to appear in court to answer Thomas's charges of entering his home at night without permission, or as security for his good behaviour. Nevertheless, the mention of Robert's adulterous behaviour in this record had important implications: this was a public declaration of Robert's sinful activities, most likely intended to humiliate him and discourage any further activity.

Local courts were eager to assert primacy in moral issues such as adultery, and may have even encouraged jilted husbands to turn to local resolution by imposing exceptionally harsh penalties. In a Wakefield case from the year 1313, Thomas son of Gilbert de Alestanley was charged with adultery with Mariota wife of Peter de Wildeborleye. Both defendants confessed their guilt and promised to abstain from any future sexual relations under the threat of an especially high penalty: the forfeiture of all their lands and the confiscation of their goods and chattels. For their recent sins they were simply required to pay fines: Thomas ten

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[114] *A Descriptive Catalogue of Sheffield Manorial Records from the 8th Year of Richard II to the Restoration*, ed. T. Walter Hall (Sheffield, 1926), ii.34.

shillings, Mariota forty pence.[115] It is difficult to find, within the manorial records of the period, penalties that even come close to that paid by this pair. Another case of adultery from the year 1315 suggests that such harshness may have been typical of the court's treatment of sexual sins. When John Kenward of Hepworth ignored a court summons to respond to allegations of adultery with Alice daughter of Simon de Hepworth, he was fined six shillings eight pence. The charges against him were multiple, however. He had not only engaged in an extramarital affair, but had also driven his wife from his home in order to carry out this illicit relationship, behaviour that clearly warranted harsh redress. The courts were determined to punish adultery, but they were more concerned with protecting wives and the sanctity of marriage.

The gendered distinction in degrees of responsibility merits a passing observation. In the first case, Thomas's fine was significantly higher than that paid by Mariota; in the second, the issue of Alice's amercement or punishment was not even addressed. The tendency to exonerate women for their moral lapses may have been typical of the Wakefield manorial rolls. A case from 1307 suggests that even husbands were willing to excuse their wives, if not their wives' lovers.

> Alice wife of John Kyde of Wakefeud was abducted by night by the servant [*garcio*] of Nicholas, the parish chaplain of Wakefeud, on the chaplain's horse and by his command, and with the woman's consent; she was taken to Ayllisbiry, with goods belonging to her husband, to wit, 11 d., taken from her husband's purse; 3 gold rings, worth 18 d.; a cup of mazer, 12 d.; a napkin [*mappa*], 12 d.; a towel, 6 d.; a gown, 6 s. 8 d.; a new hood, taken from her husband's pack [*de fardello*], 12 d.; with many other things unknown. Afterwards Alice returned to her husband.[116]

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[115] *Court Rolls of the Manor of Wakefield*, ed. Lister, iii.122.
[116] *Court Rolls of the Manor of Wakefield*, ed. Baildon, ii.93.

While Alice had undoubtedly been a willing participant in these thefts, her husband chose to overlook both her involvement and her infidelity and to reconcile with her. The resumption of his marriage, however, did very little to compensate him for his economic losses. In order to seek the ultimate revenge against his wife's former lover, John chose to expose their affair in the local courts by demanding restitution for his goods, a suit which would have served both to embarrass the defendant and to punish him severely for his activities. None the less, to hold his wife's lover entirely responsible for these costs suggests that John and the courts shared a unique perspective. This case, as well as those of John's fellows in the court of Wakefield, seem to suggest that in cases of adultery, at least where money was concerned, the fault often lay with the man.

Conclusion

The fourteenth century appears to have been a formative period in the history of spousal relations. While understandings of what it meant to be a wife or a husband may not, in theory, have experienced a radical transformation in definition over the course of this century, in practice marital roles seem to have been more tightly bounded than ever before. The records suggest that during this period a universal understanding of marital roles was consciously constructed and gradually reinforced locally and nationally. Passivity was not simply expected and encouraged in wives; signs of active choice or the deliberate expression of individual thought conflicting with communal perceptions were construed in this era as symbolising a failure to internalise the ideal, and were punished accordingly. In turn, male activity and dominance were coming to be understood as an intrinsic quality of orderly life. Husbands who failed to exercise a suitable degree of control over their wives' conduct found

themselves in court responsible for the latter's criminous actions. It seems clear that none of this was an immediate or even rigorous change in social regulation. Quite the contrary, it was an unhurried imposition of elite values that varied regionally in type and in degree. It was not until the early modern era that this transformation culminated in a rigid and effective social control. It was, however, a widespread affair in the later Middle Ages even if primarily enforced in local jurisdictions.

The recognition by the royal courts of a flexible procedure for prosecuting trespass and the emergence of case law suggest that the transformation in social mores was not restricted to the local level. These were not the only innovations within the royal courts intended to reflect an awareness of the urgency to penalise social transgressions. Most notably, before 1352 there was no statutory definition of treason. While there was a general understanding of what constituted high treason (some sort of act against the king or usurpation of his power), it was an ill defined and often misunderstood offence. By the mid-fourteenth century there was widespread agreement that a clearer definition was greatly needed, not only for the king's benefit, but also by those among his subjects who felt they were being falsely punished under the rubric of treason out of the king's yearning to increase his finances.[117] The narrow interpretation of high treason within the 1352 legislation, then, was greeted enthusiastically by some. The redefinition of the offence responded to a variety of external pressures, of which the social control of misbehaviour was a guiding force. Although treason had sometimes been interpreted in the past as the slaying of a man's immediate lord, it was not ubiquitously or even consistently understood as such. The 1352 statute distinctly addressed the issue. Treason was henceforth to include two distinct

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[117] For a fuller explanation, see John G. Bellamy, *The Law of Treason in England in the Later Middle Ages* (Cambridge, 1970), *passim*.

categories of crime. The first involved direct offences against the person of the king. The second was a much broader category, encompassing serious transgressions of the social hierarchy, in which a master was slain by his servant, a prelate by a lesser cleric, or a husband by his wife.[118] In light of the developing sense of anxiety about social misbehaviour emerging in this crucial period, the redefinition of such a contemptible crime must be understood as participation by the centre in what McIntosh has identified as an exclusively local phenomenon. Deviance from the communal norm, particularly within marriage, was considered to be a fundamental cause of social disorder. How better to punish the ultimate violation of the family hierarchy than a public burning of the offender? That very few wives were ever submitted to this punishment, however, points to dissent in the community at large. Contrary to the growing trend towards moral correction, trial jurors may been reluctant to impose such a harsh penalty even for the ultimate transgression of the social and gender hierarchy.

The evidence of the York cause papers examined in the first half of this chapter demonstrates that, despite pope Alexander III's attempts to make the couple solely responsible for the creation of a valid marriage, families, friends and neighbours played an important role in both initiating and regulating marriage throughout the later medieval period. In fact, given the absence of any official mechanism to address domestic violence, it seems all too likely that communal resolution was considered to be the appropriate forum for marital

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[118] Although the statute does not explicitly label petty and grand treason as separate categories, it is generally understood to have been the legal creation of petty treason as an identifiable category of crime. One of the few dissenters in this respect is Richard Firth Green, who argues that the goal of this legislation was to restore to the law the feudal understanding of a felony as an infraction against one's lord. Accordingly, he contends that the drafter responsible for drawing up the legislation did not intend to establish petty treason as a category of treason, but merely to enforce a wider understanding of the offence by providing examples of actions already defined within English society as treason. His argument is both intriguing and creative in its use of literature and law together. However, the absence of plea roll evidence

conflict. The growing intolerance of social disruption beginning in the fourteenth century, however, brought disputes of this kind into a legal setting. Marital disharmony was still resolved within the community, but in a more open and severe manner. This shift in the administration of local law initiated an important re-evaluation of the phenomenon, causing the courts to place the blame for marital conflict on the shoulders of aggressive wives and passive husbands. The paradigm of conjugal relations established by manorial and borough courts in their discipline helped to ground notions of acceptable female behaviour within late medieval society, and set the standard for years to come.

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in support of Firth's position undermines his argument. See Richard Firth Green, *A Crisis of Truth: Literature and Law in Ricardian England* (Philadelphia, 1999), Chapter Six, *passim*.

Fig. 5: The "brank" or "gossip's bridle". [119]

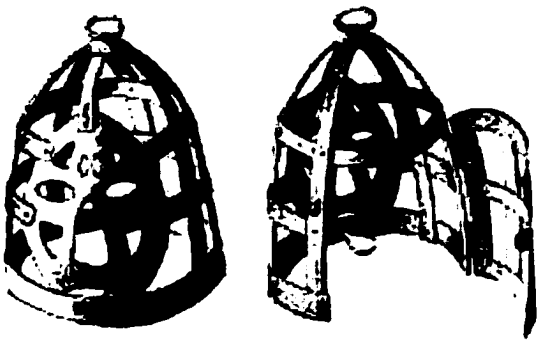

Fig. 6: A scold wearing a brank.

[119] Both images reproduced with permission from Shantell Powell's *Punishment, Torture, and Ordeal*, (July, 2000), http://shanmonster.bla-bla.com/witch/torture/brank.html .

Chapter 3:

"To deth us depart": The Prosecution of Spousal Homicide in the Royal Courts of Medieval England

In his celebrated book *Putting Asunder: A History of Divorce in Western Society*, Roderick Phillips refers to spousal homicide in medieval and early modern Europe as "one of the most drastic forms of informal divorce ... more akin to voluntary widowhood than to divorce."[1] Moreover, he notes that

> [i]t would not be surprising to find that wives were more frequently guilty of spouse murder than husbands. Men had many more options other than murder when faced with oppression, provocation, or simple incompatibility; husbands could more easily leave, evict their wives from the house, or force some sort of compliance by sheer physical strength.[2]

At first glance, these statements paint a harsh image of an infrequent and unusual phenomenon. Phillips seems to be suggesting that domestic homicide, especially for husband-killers, was a cold, calculated crime rather than the unintentional result of a marital dispute spiralling out of control. His argument is certainly not without its strengths. In a society in which women were wholly reliant on their husbands for economic support and social representation, and their social interaction was restricted to the household environment, separation was not a realistic option in the event of an unhappy marriage. Similarly, English wives were very much aware that if a man was killed and his murderers never found, his wife would not suffer the kind of deprivations she might otherwise encounter in a separation. In these circumstances, spousal homicide may well have seemed like the most viable option.

Phillips's gendered analysis of the situation is grounded firmly in contemporary legal

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[1] Roderick Phillips, *Putting Asunder: A History of Divorce in Western Society* (Cambridge, 1988), p. 306.
[2] *Ibid*, p. 307.

perceptions of the crime. While spousal homicide was perceived in general as especially repugnant and the ultimate transgression of the marital bond, the sex of the offender deeply influenced the handling of the case in the common law courts. As discussed briefly in the last chapter, under the law wife-killing was treated as if it were any other felonious homicide; husband-killing, on the other hand, belonged to a whole different category of crime. After the drafting of the 1352 statute of treason which sought to clarify the various acts that constituted the offence, the homicide of a superior by an inferior (such as a wife killing her husband, a servant his or her master, a cleric his prelate) was interpreted by the royal courts of medieval England as a form of treason.[3] Although the statute did not employ any specialised terminology to distinguish between the two main forms of treason (those directed against the person of the king *versus* the homicide of a superior), the term petty treason was adopted by at least the early fifteenth century to describe the category of homicides considered to be transgressions against the social (rather than political) hierarchy.[4] Nevertheless, this distinction may have been understood in a sense at an even earlier date. Bellamy notes that "at the end of the thirteenth century there was more than one type of treason, one kind being an offence committed against a man's immediate lord rather than the king."[5] A wife's attack on her husband certainly fell into this category. A woman of the upper ranks of English society at this time was expected to consider her husband "mon baron". It is difficult to know whether or not this was an operative social construct or simply a political anachronism; however, the language between the two would seem to suggest that a wife's relationship to her husband

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[3] 25 Edward III st. 5, c. 2.
[4] J.G. Bellamy has traced the first usage of the term "petty" to describe a treasonous act to the year 1423 during a parliamentary session. See J.G. Bellamy, *The Law of Treason in England in the Later Middle Ages* (London, 1970), p. 229.
[5] *Ibid*, p. 226.

resembled that of lord and vassal. Spousal homicide, in this situation, then, was effectively treason.

In the king's courts the treatment of both kinds of spousal homicide was identical: unlike acts of treason committed against the king, petty treason required no special forum or judicial formality. In fact, often the only indication in the records of the courts that a homicide had been categorised as treason rather than felony was the penalty assigned to the offender. Men convicted of petty treason were drawn to the place of execution on a hurdle and then hanged.[6] The intention, of course, was both punitive and didactic: not only was the convict shamed publicly, the display was intended to act as a graphic warning to spectators of the harsh treatment doled out to those who violated the social hierarchy. When compared with the disembowelment and decapitation typically assigned to men convicted of high treason, the unique punishment assigned to social transgressors certainly made a point, albeit in a less harsh way.

For women, however, no such distinction existed. Women convicted of high or petty treason suffered the same punishment: death by burning. The failure of the courts to differentiate between the two in cases of female offenders has led Frances Dolan to argue that "the punishment of female petty traitors collapsed the distinction between the two kinds of treason. For women, these capital offences were not only analogous but virtually the same."[7] The willingness of common law justices to equate petty and high treason where women were concerned speaks to the dual nature of the transgression. Women who slew their husbands were not only guilty of violating the social hierarchy, but also of undermining the

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[6] Bellamy, *The Law of Treason*, p. 20.
[7] Frances Dolan, *Dangerous Familiars: Representations of Domestic Crime in England 1550-1700* (New York, 1994), p. 24.

gender hierarchy. In this social and legal climate, their crime was just as egregious and socially disruptive as any attack on the life of the king. The perception was emphasised doubly in the penalties assigned for spousal homicide: while a man was hanged like any other felon, a woman was burned at the stake, a much more painful and prolonged form of execution than simple hanging. The message implicit in this distinction was not lost on the jeering crowds who flocked to the gallows to witness the execution of felons and traitors.

While petty traitors and wife-killers were submitted to the same judicial process, an early fifteenth-century petition concerning a wife-killer from the rolls of parliament demonstrates that communities certainly made a moral distinction between the two. The petitioners wrote:

> That where one John Carpenter, of Brydham, in the Shire of Suxxes, husbondman, the vii daye of Feverer, the yere of youre noble reigne the viii[te], saying to Isabell his wyff, that was of the age of xvi yere, and hadde be married to hym but xv dayes, that they wold goo togedre on Pilgremage, and made to arraye hir in hir best arraie, and toke hir with hym, fro the said Toune of Bridham, to the Toun of Stoghton in the said Shire, and there in a woode he smote the said Isabell his wiff on the hede, that the brayne wende oute, and with his knyff yaf her many other dedly woundes, and streped hir naked oute of hir clothes, and toke his knyff and slytte hir bely from the brest doune, and toke hir bowels oute of hir body, and loked if she wer with child; and thus the said John murdered horribly his wyff: of the whiche horrybly murdure, ye Thursday next after the Fest of Seint Ambrose the Bisshop, the yere of your reigne byfore seid, the said John was endited byfore Sir John Bohun Knyght, Henry Husee Knyght, and William Sydney, youre Commissioners of youre pees withinne the Shire foreseid, and proces made oute upon the same enditement, according to youre Lawe, till the said John Carpenter was outelawed of the said mourdure, and nowe graciously for the same cause areste, and in youre Prisone called the Kynges Bench. Please hit to youre rightwisnesse to considere the horrible murdure foresaid, and by auctoritee of this youre hie Courte of Parliament to ordine, that the said John Carpenter may be juged as a Traytour, in eschewying of suche horrible mourdurs in tyme comyng: Savyng allway to the Lorde of the Fee, eschetes of his landes, aftire yere, day and wast.[8]

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[8] *Rotuli Parliamentorum: ut et petiones, et placita in Parliamento temporo Edwari R. I [ad finem Henrici VII]* (London: n.d., c. 1767-77), vol. 4: 447. I would like to thank Shannon McSheffrey for bringing this petition to my attention.

Whether her age, the short duration of their marriage, his disrespectful post-mortem dissection of her body, or all three factors together, the community clearly found this offence to be outrageous and repugnant. Their demand that he be treated as a traitor for his crime demonstrates that this was no ordinary wife-murder, and that medieval communities made a bold distinction between the two. The killing of a wife was certainly horrific; petty treason, however, was absolutely scandalous.

More important still is the fact that throughout the later medieval period, following the emergence of a fresh legal perspective influenced by Roman tradition that "the will should be taken for the deed," some cases of attempted petty treason were prosecuted as if they had been successful.[9] Thus, an entry in the Year Book of 1322 makes note of a woman sentenced to burn at the stake for having attempted to murder her husband with the help of a lover.[10] This is not the only example of such an interpretation. John Bellamy also notes a case from 1321-22 in which a woman was tried and burned for attempting to kill her husband.[11] According to Albert Kiralfy, this practice was not restricted to petty treason. Throughout the fourteenth century it was extended to a variety of other kinds of attempted felony. The trend towards severity in the English legal system was short-lived, however. Increasing judicial prejudice against the maxim noted above rendered it obsolete by the beginning of the fifteenth century. As Kiralfy notes, "[w]hile at the beginning of the fourteenth century a highwayman who fired arrows at a merchant could be hanged as if he were in fact a murderer, a century later highwaymen were being prosecuted for lying in wait and not for murder."[12] Further, persons

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[9] Albert Kiralfy, "Taking the Will for the Deed: The Mediaeval Criminal Attempt," *Journal of Legal History*, 13 (1992), 95.
[10] *Ibid*, 95.
[11] J.G. Bellamy, *The Law of Treason*, p. 226. The current investigation did not uncover any records of attempted spousal homicide among the records of Essex or Yorkshire.
[12] Kiralfy, "Taking the Will for the Deed", 98-99.

who assaulted with homicidal intent might be prosecuted under the much lesser crime of wounding, a misdemeanour which by the early fourteenth century fell under the jurisdiction of the justices of the peace.[13] Yet, as Kiralfy observes, the "narrowing in the scope of criminal liability" was very purposeful. Until well into the early seventeenth century, "cases of attempted murder [were] only penalised as such if they [might] be fitted within the traditional boundaries of petty treason."[14] This approach reflects contemporary disapproval of flagrant transgressions of the social hierarchy. It can be connected with other changes in the legal system intended to control the misbehaviour of social non-conformists, notably the rise in scold prosecution discussed in depth in the previous chapter.[15]

Women who killed their husbands were not only singled out by statutory law in later medieval England; the suspicion that everywhere English wives yearned to do away with their husbands is echoed in popular practices, for example the veneration of the saints. Thus, unhappy wives were said to pray to Saint Wilgefort in the hopes that some terrible accident conveniently might befall their husbands. According to Thomas More, there existed rituals rumoured to guarantee just such an "accident." He, too, remarked that Wilgefort was celebrated in popular folklore because of her remarkable capabilities:

> she should provide a horse for an evil husband to ride to the devil upon, for that is the thing she is so sought for, as they say. Insomuch that women have therefore changed her name and instead of Saint Wilgeforte call her Saint Uncumber, because they reckon that for a peck of oats she will not fail to uncumber them of their husbands.[16]

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[13] *Ibid*, 99.
[14] *Ibid*, 98-99.
[15] See pp. 157-72 in Chapter Two.
[16] As cited by Sara Maitland and Wendy Mulford, *Virtuous Magic: Women Saints and their Meanings* (London, 1998), p. 126. Keith Thomas also makes reference to this practice. See Thomas, *Religion and the Decline of Magic: Studies in Popular Belief in Sixteenth- and Seventeenth-Century England* (London, 1971), p. 29. Finally, M.R. James remarks upon a similar custom peculiar to the counties of Suffolk and Norfolk and focused on a relic called the Good Sword of Winfarthing. According to local folklore, "it helped to the shortening of a married man's life, if that the wife who was weary of her husband would set a candle before that sword every Sunday for the space of a whole year, no Sunday excepted, for then all was

Although Wilgefort was not an English saint in origin (her cult having originated in fourteenth-century Flanders before spreading to other regions of Western Europe) she enjoyed a special prominence in England throughout the later medieval and early modern periods, as evidenced by artwork dedicated to her cult. A statue in her honour remains in Henry VII's Chapel at Westminster Abbey, and images of the saint were painted in Worstead, Norwich and Boxford (all in the county of Norfolk which had strong trading ties with Flanders in the fourteenth century) until the time of Edward VI.[17]

In order to determine whether either aspect of English culture (statute law or contemporary folklore) had an influence on popular perceptions of petty traitors a closer examination is required of medieval jurors as representatives of their communities as well as of their reaction to cases of husband-killing. Conviction rates and the wording of indictments provide some important insight into contemporary perceptions of husband-killers, but they also challenge Phillips's hypothesis that women were drawn more frequently to homicide as a convenient solution to domestic woe.

The Legal Process of Spousal Homicide

Spousal homicide is a logical starting point for any study of violence within marriage. Although homicide is an extreme form of spousal abuse, it is the most unequivocal and is generally subject to detection. Bruises and emotional scarring are hidden easily; a corpse is

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vain whatsoever was done before." Its popularity in Norfolk would seem to suggest that this county may have experienced some particular anxiety about petty traitors. See M.R. James, *Suffolk and Norfolk: a perambulation of the two counties with notices of their history and their ancient buildings* (London, 1930), p. 132. Joanna E. Ziegler and Walter Simons are currently working on a visual study of the figure in history, entitled "The Bearded Female Saint Wilgefortis: Cult, Culture and Sexual Meanings in the 15th Century."

[17] Maitland and Mulford, *Virtuous Magic*, p. 129. S. Baring-Gould also notes that the worship of Wilgefort appears briefly in the Salisbury Enchiridion, published in 1533, in which she is provided with hymn and collect. See S. Baring-Gould, *The Lives of the Saints*, July volume (London, 1874), p. 488.

not. As Hanawalt herself argued forcefully, moreover, coroners' rolls, with their focus on death and homicide, are a particularly appropriate source material upon which to base an examination of spousal homicide. The office of the coroner was established in 1194 in order to locate in each county an official specially empowered to deal with all pleas of the crown, as well as to maximise the king's profits from the deaths of English subjects.[18] All those convicted of homicide (including felonious suicide) forfeited their lands and chattels to the king for the period of a year and a day, after which these reverted to the family or lord of the hanged convict. In order to ensure that the king received the greatest possible profits from this process, royal officers were made responsible for investigating the deaths of persons on English territory and for determining whether a homicide had indeed occurred and, if so, who was to blame. [19] The task of the coroner, then, was to hold inquests into a variety of deaths where the cause of death was not immediately obvious to the community and might have been other than natural: accidental, felonious (homicide and suicide) and mysterious deaths.

Determining probable cause of death was a fairly simple, not always effective, procedure. Upon discovering a corpse, the first finder was required to notify the proper authorities, who in turn, initiated the official process by contacting one of the county's

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[18] For a good discussion of the creation of the position of coroner in the twelfth century, see R.F. Hunnisett, *The Medieval Coroner* (Cambridge, 1961), pp. 1-8.

[19] In this way, the king not only maximised his profits, he also managed to catch more criminals. An overriding preoccupation with profits is reflected in the records of these officials. Some accounts provide scanty detail about the crime committed, yet offer an elaborate list of the chattels and lands held by the accused (including an estimated market value for each). Moreover, the king claimed the value of instruments which brought about a death by accident (usually referred to as *deodand*). For example, if a child was crushed by a grindstone, the value of that object was owed to the king. See Anne Reiber DeWindt and Edwin Brezette DeWindt, *Royal Justice and the Medieval English Countryside* (Toronto, 1981), pp. 64-5. Finally, with each homicide the relatives of the victim were required to present his Englishry. This was a relic of the Norman Conquest when it was necessary to prove that a homicide had not been the result of ethnic conflict. If the victim was found to have Norman ancestry (or if jurors could not prove his or her English blood), a *murdrum* fine was levied on the entire hundred. By the thirteenth century, all tension between ethnic groups had died out, but sheriffs continued to exact the fine because it was an important source of profit. For a fuller discussion of the *murdrum* fine, see Hunnisett, *The Medieval Coroner*, pp. 27-9.

coroners. The coroner was expected to arrive in a timely fashion to hold a formal inquest into the death. This process consisted primarily of questioning the first finder, as well as the relatives and neighbours of the victim about what they thought (or knew) had transpired. A physical examination of the body for wounds and abrasions was also essential, as was a thorough investigation of the site where the body had been found, in order to uncover weapons left behind and to uncover any indications of struggle. The cross-examination of relatives and neighbours who made up the coroners' inquest jury usually proved to be the most informative part of the process. Here, it is important to understand that the medieval concept of a jury was completely unlike our modern counterpart. The former often knew (or thought they knew) exactly what had happened, even if they had not actually witnessed the death themselves. What these few neighbours had to say, then, significantly influenced the outcome of the case. In the course of this interrogation, the coroner recorded his perceptions of the death and the jury's beliefs. These notes were then passed on to his scribe who made up the final record, and are referred to collectively as the coroners' rolls.[20]

All of this was just the first stage in the legal process. The record of a coroner's inquest acted as an indictment. The coroner was required to arrest the suspect after the jury's pronouncement, and to send the accused to gaol to await his or her trial. From the mid-twelfth century, the delivery of gaols was the responsibility of the general eyre, the principal agency of royal justice in the early evolution of the English common law. With the decline of the

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[20] Coroners' rolls belong to the class of documents referred to as Justices Itinerant 2 (JUST 2) and housed in the Public Record Office in London. During the heyday of the general eyre, collection of coroners' rolls for deposit with royal justices was a fairly routine process. By the fourteenth century, however, it was much more infrequent. Consequently, it is rare to find counties with a continuous series of coroners' rolls. By the fifteenth century, coroners' rolls were seldom returned and even less frequently preserved. None the less, the county of York boasts a fairly complete series, spanning the years 1333 to 1393. Also, given the sheer geographical magnitude of the county, it has a substantially greater quantity of records than most. Essex's coroners' rolls, on the other hand, are in much poorer condition and cover only a twenty-year period in the late fourteenth century, from approximately 1369 to 1389.

general eyre in the late thirteenth century, however, the task of delivering gaols gradually was subsumed by the assize courts (which emerged originally as a complement to the general eyre, designed to reduce the weight of business in eyre), once again headed by itinerant commissioners whose competence was multifarious. The records of gaol delivery for the period, then, are found in a variety of materials; however, their basic format remained the same.[21] These records of felony indictments represent a number of different processes. Some were transcribed directly from the coroners' rolls;[22] some represent appeals by victims.[23] The vast majority, however, were the product of presentment juries, groups of men of substance from a community who appeared before the court to respond to a list of questions, known as articles of the eyre. Among other things, the articles required them to report any felonies that had taken place recently within their locality. The jurors then withdrew to draft their response to the articles (*veredicta*). Immediately after the juries had handed in their written

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[21] Most enrolments of gaol delivery and gaol files belong to the class of documents usually referred to as Justices Itinerant 3 (JUST 3), housed among the records of the early royal courts at the PRO. This class of documents also contains what few remnants exist from the judicial process, such as calendars, indictments and lists of jury panels. Because gaol deliveries were carried out by many different officials, however, records of this type can be found among the materials of other classes. Justices Itinerant 1 (JUST 1) contain both eyre rolls and assize rolls. Consequently, they include early gaol deliveries as well as those which took place after the statute *de finibus* of 1299 authorised justices of assize to deliver all gaols within the counties of their circuit. This class also includes sessions of the peace and oyer and terminer commissions, and thus offers a much more complete perspective of the administration of criminal justice in late medieval England. Finally, in times of war, the central court of King's Bench became an itinerant court. Because the latter acted as the superior court in whichever county it sat, all regular assizes and gaol deliveries were suspended. As a result, the class of documents referred to as KB 27, also stored at the PRO, includes a number of gaol deliveries held in York and Essex. All three classes were examined in the course of this investigation.

[22] The coroners' rolls were used as to check on the *veredicta* of the presentment juries in case jurors underreported the number of felonies that had taken place within their jurisdiction out of sympathy for the perpetrator. See Hunnisett, *The Medieval Coroner*, pp. 107-9.

[23] The term "appeal" in the medieval context does not share its modern sense. An appeal in medieval England was a formal accusation put forward by an individual rather than a representative of the king. Appeals were rare throughout the period, however, because an acquittal in turn initiated a suit of false appeal against the appelor.

indictments, the process of hearing pleas began. Trial juries were made up of men from several surrounding communities, and the prosecution proceeded rapidly to a verdict.[24]

Because the records of gaol delivery contain information compiled by an entirely different process than that which produced the coroners' rolls, they offer particulars not normally found in the latter. These include indictments for suspected homicide in those cases in which the jurors had a defendant and firm accusations, but no body.[25] Unlike the coroners' rolls, moreover, the jury's verdict was recorded within each record of gaol delivery, thus providing historians some insight into the petty jury's perspective.[26] For many of the reasons addressed above in the Introduction, these records do not lend themselves to a reliable statistical analysis of levels of crime in medieval English society.[27] Nevertheless, as Barbara Hanawalt and others have shown, statistical analysis can be employed as a tool in the study of these rolls to unearth some dominant trends and general perspectives.[28] Hanawalt herself has shown how coroners' records provide "the

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[24] A medieval trial usually lasted only a short period of time. Edward Powell notes that due to the busy schedule of circuit justice, "trials can rarely have taken as much as an hour, and they frequently must have taken much less time than this." As a result, the presentation of evidence and witness depositions must have taken place outside the courtroom setting. See Edward Powell, "Jury Trial at Gaol Delivey in the Late Middle Ages: The Midland Circuit, 1400-1429," in J.S. Cockburn and Thomas A. Green (eds), *Twelve Good Men and True: The Criminal Trial Jury in England, 1200-1800* (Princeton, 1988), p. 99. The situation in the early part of the period, however, was quite different altogether. Before 1215, cases of felony were determined instead by judicial ordeals. Such was the case of William Staikebutter, suspected of killing his wife Alice during the reign of King John and sentenced to the ordeal by water. See PRO JUST 1/1039, m. 6d.

[25] Records of gaol delivery do not necessarily include all the cases of homicide that appeared in the coroners' records. Because suspected felons more often than not fled the scene of the crime and did not return to stand trial, their cases generated no further record. The accounts of gaol delivery do sometimes indicate the exaction and outlawry of these felons, but they do not offer as full a record of the crimes as do the coroners' rolls.

[26] Coroners' rolls frequently include jury verdicts in the margin, but not as regularly as do the records of gaol delivery, chiefly because the former did not require a record of the outcome. When coroners' rolls did include evidence of the jury's verdict, it was for accounting purposes only: hanged felons had their goods and chattels confiscated, and the records of the coroner provided a useful tally to indicate goods already collected.

[27] See p. 10 of the Introduction for a discussion of the difficulties of using gaol delivery rolls for a definitive statistical analysis.

[28] See note 13 in the Introduction.

intimate view, the vignette, or peasants at their daily routine" and thus offer a window into the lives of the lower ranks of late medieval society.[29] Carrie Smith, too, has found the coroners' rolls to be one of the more useful sources in the study of late medieval society. She argues that

> [i]n point of fact, since coroners' inquests were held in local communities, dealing with individuals known to people whose memories of events were still fresh, it may be that in their own way they are more reliable than the records, for example, of court hearings such as those before the remote figures of King's Bench justices, whose cases frequently concerned events which had happened several years earlier to individuals with whom few present in the court had any familiarity; and they are certainly more informative than the majority of cases heard before gaol delivery justices. [30]

Her final words of wisdom, however, must be taken into consideration in all analyses of coroners' rolls. She notes that we must "be realistic in the questions we ask of our records, and stringent in the critical criteria we apply to them. No farmer would dream of allowing his corn to rot in the fields because it is unusable unless the worthless chaff is first winnowed out. Neither should we."[31] These comments relate well to all manner of court records from the period.

The records of coroners' rolls and gaol deliveries taken together yield information on 9294 victims of violent crimes for the county of York, and 1713 for the county of Essex.[32] In the former, 7300 were victims of suspected homicide, with 189 described as victims of spousal homicides. Thus, cases of spouse-murder amount to 2.59 per cent of all reported homicides in Yorkshire at this time, and an even smaller percentage (2.03 %) of all alleged

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[29] Barbara A. Hanawalt, *The Ties that Bound*, p. 11.
[30] Carrie Smith, "Medieval Coroners' Rolls: Legal Fiction or Historical Fact?" in Diana E.S. Dunn (ed.), *Courts, Counties and the Capital in the Later Middle Ages* (New York, 1996), 115.
[31] *Ibid.*
[32] Here I have defined "violence" as anything physical, thus: homicide, suicide, self-defence, assault, rape, abduction, and unlawful imprisonment.

violent crimes. Comparatively, all other domestic homicides for the county taken together represent only 2.01 per cent of the alleged homicides during the period in question, or 1.58 per cent of all violent crimes.[33] These figures suggest two distinct conclusions. First, neither spousal homicide nor domestic homicide in general accounted for many of the total number of slayings in the county of York during the later Middle Ages. Individuals were far more likely to die at the hands of a neighbour or someone else within their community, than of those of their own family. Second, although domestic homicide was a rare event, when members of a family slew a relative, the victim was most often a spouse, suggesting that the marital relationship was certainly the most passionate of all family relationships.

Spousal Homicide Rates in Essex and York

The figures for the county of Essex are substantially lower than they are for Yorkshire. However, its totals reflect the county's size and demonstrate the same pattern found in the Yorkshire figures. Of the 1560 victims of suspected homicide, only 44 were said to have been slain by a spouse, or 2.82 per cent of the total number of homicides, a slightly higher percentage than that of Yorkshire. In terms of family killings in general, the Essex figures, like those of York, suggest that spousal homicide was by far the most frequent manifestation

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[33] The definition of "domestic" has been construed in the broadest sense possible to include the modern definition of "family" (that is, parents and their children and any in-law relationships that fall within these parameters), as well as all master-servant relationships. Research over the past decade and a half has demonstrated that, owing to the frequency of the practice and the relationship of the master towards his servants, servants or apprentices must be viewed as an integral part of the family. See Barbara Hanawalt, *The Ties that Bound: Peasant Families in Medieval England* (Oxford, 1986), pp. 90-104; Alan Macfarlane, *Marriage and Love in England 1300 – 1840* (Oxford, 1986), pp. 83-7; and, J.M. Bennett, *Women in the Medieval English Countryside* (New York, 1987), pp. 54-64. Moreover, my records must be interpreted as a low estimate of familial involvement because I have included here only family relationships specifically identified in the records of felony indictment. I have made no educated guesses based on surnames or the like, because of the frequency with which some names occur in this period (for example, the name "Smith" apparently has enjoyed an enduring popularity from an early date).

of intrafamilial deaths. Only 1.67 per cent of the total number of homicides for the entire county occurred at the hands of a family member other than a spouse.

It is important to note that these figures represent indictments only and that they do not reflect actual rates of homicide in the late medieval period.[34] Many people accused of homicide were found innocent of the crime, and acquitted. Accordingly, the percentages mentioned above may well present a distorted vision of late medieval crime. Nevertheless, these figures are revealing given the vital role played by members of the community in the indictment process. The fact that the communities of Yorkshire and Essex pointed a finger at a spouse in each of these situations suggests that these 233 cases represent histories of poor relations and some physical abuse which in turn led neighbours to believe that a domestic spat had spiralled out of control.

The role of the jury in this process was certainly not easy. Medieval jurors were called upon to make fine moral distinctions in a variety of unusual circumstances. For example, in the 1349 death of Alan of Barnburgh of Yorkshire, the jury's reluctance to find in favour of spousal homicide demonstrates just how complex an unexpected death might prove. According to the findings of the Yorkshire presentment jury, Alan of Barnburgh's death was a suicide. The record states that he committed *felo de se*, the phrase habitually used to indicate

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[34] Historians of the English common law have long recognised the heightened tendency of medieval jurors to acquit felons even when their guilt was apparent, because death was the only penalty available and medieval jurors generally believed this to be too harsh a sentence. Accordingly, jury verdicts are an even less accurate guide to actual rates of felony in the late medieval period. For the purposes of this study, then, all statistical analysis in this chapter relies heavily on indictments as indicators of the community's initial suspicions after a crime occurred. This tendency is discussed at greater length on p. 199. Anthony Musson provides an alternate perspective. He argues that when approver's appeals are omitted from all statistical analysis, the numbers of acquittals appear much more reasonable. Although Musson's findings are not supported by either the Yorkshire or Essex data, they suggest that further investigation of the situation is required. See A.J. Musson, "Turning King's Evidence: The Prosecution of Crime in Late Medieval England," *Oxford Journal of Legal Studies* 19 (1999), 467-79.

this felony. And yet, tacked on to the end of the enrolled entry is the statement that the wife is suspected because she fled after the incident.[35] The suicide was accomplished with the use of a knife, and the wife was recorded as the first finder and thus the only potential witness. Ignoring the option of interpreting the incident narrowly as a husband-killing, the jurors instead chose to describe it as a suicide. What does this tell us? The incident may in reality have been a case of euthanasia; more likely, it bespeaks a coroner's jury hard pressed to portray the wife as a participant in a spousal homicide despite the suggestive evidence. Presumably, there was no clear knowledge here of prior incidents of spousal abuse or even marital tension that might point to homicide. The jurors' reluctance to implicate a potentially innocent woman suggests that cases in which the husband or wife was accused blatantly of spousal homicide were consequences of a high level of suspicion compounded by a least some evidence. Certainly, many jurors interpreted incidents of husband or wife murder this way.

Of the 233 cases in which a spouse was accused of conjugal homicide, 152 (or 65 per cent) were apparently uxoricides, or wife-killings. In these cases, the husband was almost always suspected as the principal offender (the person who actually carried out the crime). A total of 133 out of the 152 uxoricides, or 87.5 per cent, were thought to have been carried out without any assistance, suggesting that wife-killing was a solitary act. In light of J.B. Given's observation that "the most striking feature of medieval homicide, [is] its markedly collective character," the predominance of wife-slayers working alone is suggestive, highlighting the power relationship within marriage.[36] In the few cases in which a wife-killer did enlist the aid

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[35] Because the wife appeared as a suspect this has been counted as a possible husband-killing for the purposes of this study. See PRO JUST 2/215, m. 2.

[36] J.B. Given, *Society and Homicide in Thirteenth-Century England* (Stanford, 1977), p. 41.

of an accomplice, more often than not he chose to work with a man, or a group of men, unrelated to either the victim or the accused.[37] Only two accomplices were family members of the accused.

These results stand in marked contrast to the details of cases in which the husband, rather than the wife, was the victim. Some 81 of the 233 (34.7 percent) spousal homicides that occurred in Yorkshire and Essex consisted of husband-killings. Here, the wife was listed only 34 times (or 42 percent) as having committed the crime on her own. Out of the 47 husband slayings carried out with the assistance of others, the wife was described 24 times as being only an accomplice to the crime, aiding, abetting and procuring the crime while a male principal carried it out. Medieval juries may well have had some difficulty imagining that a wife was capable of committing such a heinous crime without the help of others. The records of felony indictment suggest that at times laying the blame against a wife may not have been easy. For example, in one Yorkshire case the wife is described as the principal in two separate records of her husband's slaying, each noted in two different rolls. In the second entry, however, the name of the wife is omitted. While the two other principals are identified clearly, she is described merely as "the wife of Roger Rudbrade," hinting that perhaps she was not the prime mover in this homicide.[38] In cases that included accomplices, it seems clear that husband-killers demonstrated the same preference for male accomplices as did wife slayers.

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[37] Only 34 accomplices aided in uxoricides. Of these 34, 10 were identifiably female, 23 male. The gender of one accomplice, however, remains a mystery. The accomplice is identified as Cassander child of William of Cawood of Bilton. It is possible that "Cassander" is an Anglo-Latinised equivalent of "Cassandra"; and yet, it seems unusual that the habitual feminine ending ("a") has been omitted in this entry. With such an unusual name, it is too difficult to postulate this accomplice's gender with any precision. See PRO JUST 2/242, m. 5.

[38] This case appears first as a presentment in PRO JUST 2/217, m. 8. It appears again in an almost identical format, but without the wife's name in PRO JUST 2/218, m. 5. On the other hand, throughout the entirety of this investigation I stumbled across only one case in which the name of the wife was mentioned and the husband's name omitted. In the appeal of Peter de Bransdale by Hawysia of Cockayne for the

Of 80 identifiable accomplices, 69 were male, 11 female, strongly suggesting that male fears of wives and their female gossips were groundless. Unlike wife-slayers, however, petty traitors were more likely (but only marginally so) to turn to a member of their household for support in their deed. Ten of the 80 accomplices were identified as being members of the accused's household.

What do all these figures tell us? Once again, it is important to remember that stories of spousal homicide were retold when neighbours and members of the community were questioned. They reveal more about beliefs than about what actually happened. Accordingly, these figures suggest that some modern assertions about medieval murderesses may not hold true.

Spousal Homicide and the Family

Only two husband killings were thought to have been carried out by a conspiracy between the wife and members of her household.[39] When Margaret wife of Robert Rasebek decided to do away with her husband, two of his servants were more than willing to help her carry out the plan.[40] Likewise, when Alicia wife of Simon de Flatherwick slew her husband, her maidservant Agnes assisted.[41] Cases of spousal homicide in the royal courts of medieval Yorkshire and Essex highlight the dual function of the family as both accessory and protector. Although spouse-murderers usually worked alone, when they did call upon others for help,

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death of her husband, her husband's name is absent in the record (PRO JUST 1/1053, m. 15). Given that the husband was also the dead victim, however, this omission is much less significant.

[39] This contradicts findings by a number of other historians of this area. Numerous other historians have suggested that female crimes were usually committed with accomplices. See Andrew Finch, "Women and violence in the later Middle Ages: the evidence of the officiality of Cerisy," *Continuity and Change* 7 (1992), 30; Barbara A. Hanawalt, "The Female Felon in Fourteenth Century England," in Susan Mosher Stuard (ed.), *Women in Medieval Society* (Philadelphia, 1976), p. 129.

[40] PRO JUST 1/1145, m. 3.

[41] PRO JUST 1/230, m. 4.

family members sometimes filled this role (roughly 10 per cent of accomplices were family members). Such was the case one day in 1284 in the village of Orsett, Essex, when John son of Walter of Wennington slew his wife Christian with the help of his brother Alexander and another man named Ralph de la Lee. The records of felony indictment for the counties of Yorkshire and Essex would suggest that men often turned to their brothers for help in cases of homicide;[42] and thus, it may have been a natural reaction for John to enlist his brother's assistance in such a significant enterprise. The jury's distaste of family quarrels is evident in the ruling on this matter: while Alexander managed to escape while on his way to the Colchester gaol, both John and Ralph were hanged for their deeds.[43] Likewise, when Henry son of Matilda of Bashall and his daughter Isabella slew Henry's wife Alicia with a "wey" (either a weight or a weighing machine), the Yorkshire jury assigned to the case exhibited a similar abhorrence. Not only was the act reported to have been committed by night (a phrase often included to indicate that it was a crime deserving of death),[44] Henry was also imprisoned and then executed. His daughter would probably have met the same fate had she not fled immediately after the fact. Accordingly, she was exacted and then waived.[45]

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[42] In the records of felony indictment for the county of York, a male felon chose to work with his brother to carry out a violent crime 420 times. The figure for Essex is substantially smaller, but still in proportion to its size. Brothers chose to work together in violent crimes a total of 47 times in Essex over the course of the late medieval period. While both of these figures clearly reflect only a small number of the crimes committed in both counties in the late Middle Ages, the numbers are high enough to suggest that brothers often supported each other in their actions, no matter how violent. Moreover, these figures are considerably higher than those for any other family relationship. The only relationship to come close is that of father and son. In the county of York, father and son worked together in violent crime on 206 occasions, while in Essex this pairing resulted in only 18 violent crimes. These figures only represent cases presented before the king's justices. If the figures were expanded to include all assaults committed jointly by family members and prosecuted within the locality (*e.g.* at the sheriff's tourn), the numbers would most likely be substantially higher.

[43] PRO JUST 1/242, m. 75.

[44] See pp. 230-3 of this chapter for a fuller discussion.

[45] PRO JUST 1/1098, m. 5. Because women were represented by men in frankpledge groups, a woman could not be outlawed because she was not considered to be under the law in the first place. A woman might be "waived," however, a process which basically entailed all the same legal restrictions as outlawry. Bracton described it best when he wrote that a waived woman should be "regarded as one abandoned, for

The records are occasionally even more revealing about the nature of family relationships. They confirm, for example, that when a married woman required assistance to resolve her marital woes she turned to her natal family.[46] When John son of Michael was found slain in the vill of Hatfield, York, his wife Matilda and her two siblings, Roger and Agnes, as well as one unrelated male accomplice, were indicted for the crime. The jury's extreme displeasure with family conspiracies is obvious from the unusually full account of the crime.[47] According to the record of gaol delivery, the four suspects chose their time well, waiting until the middle of the night when John was sleeping soundly in his bed. Seeing him defenceless, they seized the moment and feloniously slew him as he lay sleeping. Before fleeing the scene of the crime, they carried out an even more deceitful and despicable act: they concealed all evidence of their crime by burying his body behind the house.[48]

Another case from a thirteenth-century Yorkshire assize roll confirms that the wife's family may have played a more important role in the prosecution of spousal homicides than has previously been suspected. The case of Thomas Pye of Yorkshire is also revealing because it provides a better understanding of how juries reached their conclusions about a crime. According to the jury of twelve and the representatives of the four neighbouring vills,

> [w]hen Thomas' wife's brother came from his plough he found in the fields of Nunburnholme a certain cloth, and when he went there and lifted the

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waif is that which no one claims, nor will the prince claim her or protect her when she has been properly waived, any more than he will a male who has been properly outlawed ... Henceforth they bear the wolf's head and in consequence perish without judicial inquiry." Henry de Bracton, *De Legibus et Consuetudinibus Angliae*, ed. George E. Woodbine, trans. Samuel E. Thorne (2 vols, Cambridge, 1968), ii. 428.

[46] Sisters and brothers worked together in crime much less frequently than did brothers. Yet, given the much lower rate of female participation in felony to begin with, the fact that brothers and sisters worked together a total of 25 times over the course of the period in the county of York, and 8 times in Essex, suggests, once again, that relations between sisters and their brothers may have been quite strong.

[47] Royal records of felony indictment from the medieval period were notoriously terse. Thus, any exceptionally full record may reflect the jury's disapproval, intended to inflict a harsher treatment by the petty jury if the case should subsequently appear before the court. Of course, this is not the only explanation for an unusually full record. The story may simply have caught the clerk's interest.

[48] PRO JUST 1/238, m. 47.

> cloth he found, beneath the cloth, his sister's body, strangled. When he realised that, he immediately raised the hue and cry, and the village of Nunburnholme saw Thomas fleeing in the fields and they pursued and took him near Nunburnholme churchyard. Thomas was brought before the Justices and, asked when he was at his home, said that he was there on the Wednesday next before the Purification (30 Jan) and that he left his wife there, and then he went to the house of Reiner of Garton on the Wolds and stayed there the whole night. In the morning when he came he could not find his wife, and when he knew that she was dead he made no suit touching her death. Because he made no suit and, when suit was made by the village of Nunburnholme touching her death, the same Thomas was taken fleeing towards the church, and because the jurors and the 4 neighbouring villages bear witness that he is guilty of his wife's death, it is adjudged that he has failed [in his defense] and he is hanged.
> A certain Elena who was in this Thomas' house has fled and is suspected. Therefore let her be taken.[49]

The case of Thomas Pye and the woman known only as Elena demonstrates that the evidence used to indict (and convict) a person could very well be fairly slim. While this jury may have been confident that the evidence stacked against Pye was sufficient for a conviction, it is not hard to imagine that another jury in the same situation might have delivered an entirely different verdict. The unusually high acquittal rates for homicide throughout the medieval period might in fact be explained by this factor. Given that planned homicide generally involved a crime of stealth without any witnesses to share the story, even neighbours and family members, who (according to the established judicial process) were supposed to know what happened, might not be entirely certain of the circumstances surrounding a homicide.

The death of Thomas's wife, however, also alerts us to the likelihood that the wife's family may have filled the role of the accuser in the prosecution of cases of domestic violence, particularly after the fourteenth century when there occurred a decline of private

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[49] PRO JUST 1/1053, m. 9d. Cited and translated in *Rolls of the Justices in Eyre. Being the Rolls of Pleas and Assizes for Yorkshire in 3 Henry III (1218-19)*, ed. and trans. Doris Mary Stenton (Selden Society, vol. 56, 1937), pp. 306-307.

appeals in cases of felony indictment.[50] While presentments were supposed to be the product of a communal discourse concerning crimes committed in the area since the last visitation of the justices of assize, a slain wife's family may have operated behind the scenes, spearheading the attack against a husband by ensuring that his name be put forward as a suspect for the crime. Given the nature of the surviving record, this kind of pre-trial activity remains hidden from the modern observer. Such activity may even have been a natural extension of the wife's brother's role as protector, explored extensively in the preceding chapter.[51] It can hardly be coincidental that in both cases mentioned here in which the wife's family was called upon to lend a hand, the wife's brother played a vital role.

Spousal Homicide and the Parish Priest

More valuable still, the royal records of felony indictment provide insight into an even more elusive feature of late medieval society: the role of the parish priest in marital disputes. While historians of marriage have argued convincingly that the church courts of medieval England functioned as marriage counsellors, the role the church may have played at a more local level has been virtually ignored, chiefly because no sources address this issue explicitly.

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[50] The appeal most likely declined because of the hazards to which appellors were exposed. J.H. Baker notes that an "appeal was a strict form of proceeding which in the thirteenth century frequently collapsed on technical grounds: an appellor could be punished for trivial ambiguities in the count, or for withdrawing an appeal." In this respect, a presentment by the grand jury presented much fewer risks to the victim of a crime. See J.H. Baker, *An Introduction to English Legal History* (London, 1990, third edition), p. 574.

[51] See pp. 129-35 of Chapter Two. Overactive brotherly involvement might also have led to the death of one man by his brother-in-law, identified as John of Cleaving, in the year 1218. The accused immediately fled the scene of the crime and was eventually outlawed; thus, it is difficult to know how this incident might have been interpreted by a jury. A protective jury might well have sided with the dead brother. See PRO JUST 1/1053, m. 9d. Sisters may also have been called upon at times to protect women from their abusive husbands, as in the case of Eleanor Brownynge from the diocese of London who, with her husband in hot pursuit, fled to the home of her sister (LMA MS DL/C/205, fos. 203r-204v, Eleanor Brownynge *c.* Alexander Brownynge, 1473). However, the incidence of sisters rescuing sisters is less well represented in the records.

One somewhat cryptic entry in the Yorkshire assize rolls, however, suggests that the church's position as mediator in cases of domestic disputes involved its local representatives.

> Odo the Chaplain was found killed on Barmby Moor and on the same day in which he was killed he ate in the house of Gregory of Pollington. Gregory has come and is not suspected of the death and therefore let him be under sureties to answer if anyone wishes to say anything against him, and let the sheriff have the names of the sureties. The village of Wilberfoss said that Stephen of Wilberfoss beat his wife and she said that he killed the priest, and therefore let Stephen be attached. He has come and is not suspected by the jurors. Therefore let him be under sureties to stand to right etc if anyone etc and let the sheriff have their names.[52]

Although the representatives of Wilberfoss did not state clearly the connection between Stephen's abuse of his wife and his intentions towards the priest, one possible explanation is that Odo had taken it upon himself to meddle in family affairs and either to counsel Stephen to reform his behaviour, or his wife to abandon the marriage. Otherwise, Stephen's ill treatment of his wife would not have been sufficiently pertinent to the entry to warrant inclusion. Wife beating was not satisfactory evidence in and of itself to substantiate a murderous character. The decision of the scribe not to spell out the implications of Stephen's abusive behaviour is also enlightening. If intervention by priests in the disputes of couples within their parish was a familiar feature of late medieval society, the connection between the abuse and Odo's death certainly required no explanation.

Adultery and the Impediment of Crime

A popular assumption shared by both modern historians and medieval commentators concerning domestic violence is that the permanent nature of the conjugal union in the Middle Ages encouraged some spouses and their lovers to violence in order to terminate a marriage.

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[52] PRO JUST 1/1053, m. 9d. Cited and translated by Stenton, *Rolls of the Justices in Eyre*, p. 312.

It was owing to this possibility that the church included the impediment of crime among its numerous and variegated impediments to marriage. According to the canonists, if a man had a mistress he was not permitted to legitimise that union through marriage after the death of his wife if evidence existed to prove that he had had a hand in the death of his wife and that he had made a sworn promise to marry his mistress during the lifetime of his wife. This rule also held true in the reverse. Clearly, canonists were well aware that the permanence of marriage might be considered inconvenient to people who were expected to adhere to the laws of the church, and they wished to discourage spousal elimination as a ready solution for a man torn between two women.[53]

Despite prevailing expectations that adultery might lead medieval spouses into crime, there are only two cases extant in the records of both Yorkshire and Essex in which a person was accused of conspiring with a lover to do away with a spouse. The first is a fairly straightforward account. In the year 1285 "Robert de la Walle slew Amicia his wife in the vill of Ardlea .... [and] that the said Robert went [to stay] with his concubine, namely Mabil daughter of Thomas the Carpenter. And that the said Mabil and the said Robert have fled."[54] Unfortunately no details nor even a verdict provide any insight into how the jury might have felt about men working with their lovers in order to eliminate a spouse. In the case of Ivota wife of John Ireland, however, the record is much more revealing. She was brought before the coroners of Essex county in the year 1358 on the accusation of knowingly aiding and

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[53] Richard Helmholz includes a more lengthy discussion of this impediment in his *Marriage Litigation in Medieval England* (London, 1974), pp. 94-8. The impediment of crime was seldom brought forward as a reason for annulment in the medieval English courts. Helmholz is able to identify only three cases in which annulment on these grounds was proposed, yet there is no evidence that an annulment was in fact granted in any of the three.

[54] "Robertus de La Walle occidit Amiciam uxorem suam in villam de Ardlea..... quod predictus Robertus ivit cum concubina scilicet Mabiliam filia de Thomas le Carpenter Et eam ipsam Mabiliam cum predicto Roberto subtraxerit." PRO JUST 1/242, m. 98.

procuring the death of her husband in the village of Barking earlier that year. According to the jury, William Copyn of Barking met Ireland in the street and viciously assaulted him with a staff. Once he had John pinned defenceless on the ground, William pulled out his knife and feloniously stabbed his victim to death. The nature of the association between Ivota and William is made explicit in the record of the indictment that followed. William was said to have known Ivota carnally (*carnaliter cognovit*), indicating that the two were indeed lovers. As contemporary attitudes towards adultery might suggest, the couple was punished harshly for its crimes: William was hanged, and Ivota was burned at the stake.[55] This account, however, provides the only clear surviving indication that medieval Englishmen or women sometimes worked together with lovers in spousal homicides. It is possible that husband- or wife-killers often worked in conjunction with lovers, and that this relationship was simply not described in the documents. However, use of the term *amicus* to describe a lover, if not abundant in royal records of indictment, was certainly not unknown. [56] Had the community been aware of any illicit amorous relationship, it probably would have included mention of such a fact in the official records.[57]

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[55] PRO JUST 3/18, m. 7/1; a fuller account of the record appears in PRO JUST 3/18, m. 8/1.

[56] Numerous cases in the royal records remark upon the love relationship of those involved in the felony. This is particularly noticeable in cases where clerics were involved. For example, the Yorkshire coroners' rolls report that in the year 1360, William of Sowerby, a cleric from the county of Leicester, feloniously slew his *amica*, Margaret Spicer of Kendale, and buried her body in a stable before fleeing (see PRO JUST 2/215, m. 15b). Another case from the year 1364 uses the same vocabulary. The *amica* of Richard of Liverton, chaplain, was complaining to William son of Matilda Templeman about some matter or another, when William became enraged. William's attempt to beat Matilda turned her lover against him, and resulted in a particularly violent altercation between the two. In the end, William landed in Chancery with the hope of obtaining a pardon for Richard's death on the grounds of self-defence. See PRO JUST 3/155, m. 7 Finally, a case from PRO JUST 2/209, m. 7 demonstrates that other terms were also employed to describe an extra-marital relationship. Here, Robert Brimhand and his *concubina* Joanna Langons worked together in the murder of two men.

[57] Adultery as the cause of marital disharmony was certainly recognised by the medieval courts. For example, a Commissary Court Act book from the diocese of London offers up a case of fornication from the year 1476 which casually notes that Peter Glasdyer beats his wife for the love of another woman, Isabella Steyfurson (*ipse Petrus verberat uxorem suam pro amore predicte Isabelle*) (GL MS 9064/3, fo. 220r). Another act book from the same diocese notes the 1491 case of John Warwick who almost killed his wife out of his love for a woman named Rosa (*Johannes Warwick quondam clericus parochialis ibidem*

More common was the situation in which a husband became aware of his wife's infidelity and flew into a murderous rage. As the two Yorkshire cases discussed above in Chapter One would seem to suggest, a jealous husband was often acquitted of the homicide of his wife's lover. When Robert of Laghscale awoke one night to the sounds of his wife making love with another man, his anger led him to interrupt the couple, and eventually kill his wife's lover. Yet, the gaol delivery record suggests that he was pardoned for his actions.[58] Likewise, when Robert Grainson de Setcotes killed his wife's lover in their family home, he was acquitted of the crime.[59] In both cases, it seems very clear that the jury returned a verdict of acquittal simply because its members believed that the killing of a wife's lover was a justifiable homicide, even if the royal courts did not necessarily agree.

It has long been recognised that juries did not play a passive role in the royal courts of later medieval England. However, only recently has the extent of jury control in criminal cases been explored.[60] The discovery of what Professor Green has dubbed "merciful nullification" by the jury demonstrates that, in many respects, petty juries held the upper hand. It was up to these men to acquit or convict, and sometimes they were stubborn in returning acquittals even when the evidence strongly indicated a contrary result. Medieval jurors used their positions to give expression to their own standards of culpability even when these were at odds with the law. The subversion of the English judicial system did not escape the notice of contemporary observers. Thomas Brinton, a late fourteenth-century bishop of Rochester, wrote:

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adul' cum eadem Rosa Williamson et ob amorem illius mutulauit et quasi interfecit uxorem propriam) (GL MS 9064/4, fo. 212v.

[58] PRO JUST 3/78, m. 2d. See earlier discussion pp. 66-7 of Chapter One.

[59] PRO JUST 3/141a, m. 38d. See earlier discussion pp. 67-8 of Chapter One.

[60] Thomas A. Green, J.S. Cockburn, *Twelve Good Men and True: The Criminal Trial Jury in England, 1200-1800* (Princeton, 1988).

> [i]f a voluntary murderer or most notorious thief, who according to every law ought to pay the just penalty of his wickedness (2 Machab. vii), is captured in order that justice may be done upon his person, as though in compassion, they strive to keep him from danger, some saying, -- "He is young: if the youth has done wrong, the old man will be able to amend." Others declare -- "He is of our blood: if the Law proceeds against him, the whole of our clan will be shamefully disgraced." [61]

As much recent research confirms, the goal of a trial was not necessarily to convict the accused, or even, for that matter, to reach a verdict. Indictments were often a reaction by the community to flagrant transgressions of the communal belief structure; the trial was thus intended to frighten the miscreant into proper and legal behaviour. Similarly, the time spent in prison awaiting trial frequently was considered sufficient penalty on its own without the need for a conviction.[62]

The petty jury's reluctance to apply common law penalties in cases of revenge killings on lovers has been the subject of study by at least one historian of the medieval common law. Thomas Green remarks that this practice is reflected in the tendency of trial juries at gaol delivery to transform cases of blatant homicide into self-defence. This tactic was not exclusive to homicides involving adultery; it was employed frequently by trial juries throughout the medieval period in cases where popular perceptions of culpable homicide were at odds with the requirements of royal law. Green observes that trial juries often fabricated evidence of self-defence that did not appear in the coroner's rolls, even when the findings of the coroner's inquest jury would seem to suggest otherwise.[63] Naomi Hurnard has made a

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[61] As cited in G.R. Owst, *Literature and Pulpit in Medieval England* (Oxford, 1961), p. 340.
[62] Barbara Hanawalt put forth this argument as early as 1979. She wrote that "indictment was in itself a punishment since it necessitated either a costly stay in gaol while awaiting trial or the expense of a trip to the county gaol for the trial." See Barbara A. Hanawalt, *Crime and Conflict in English Communities 1300-1348* (Cambridge, 1979), p. 267.
[63] T.A. Green, *Verdict According to Conscience*, p. 41.

similar observation. Because the common law requirements for self-defence were rigid and exacting, stipulating that homicide must be a last resort when retreat was no longer possible and death was near at hand,[64] the tales told in the records often appear almost ludicrous. Hurnard was moved to comment:

> too many slayers in self-defense pulled stakes from fences and poles from carts, bolted into *culs de sac* or tried and failed to climb walls, were brought up against dykes or rivers, found swords unexpectedly but conveniently to hand or made random knife thrusts that just happened to hit vital spots.[65]

Hurnard and Green, however, provide conflicting hypotheses to explain myriad cases of this type. While the former suggests that the formulaic nature of self-defence pleas reveals little more than the medieval scribe's modest Latin vocabulary and a tendency towards repetitiveness, Green offers a much more convincing argument. He proposes that medieval jurors judged cases according to their own standards and manipulated the requirements of the law in order to justify the verdict they delivered. Because the law required a strict interpretation of self-defence, the jurors provided the appropriate scenario, whether or not the offence actually happened that way. Given the widely recognised tendency of medieval juries to mitigate the severity of the law, evidenced by the abnormally high acquittal rates of the period, Green's interpretation seems the more appropriate.

Nowhere is the jury's manipulation of the self-defence plea more evident than in cases

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[64] Green makes a very valid point in this respect. He notes that "given the nature of medieval life, the rules of both self-defense and felonious homicide were unrealistically strict. If firmly applied, they would have meant the condemnation of persons of pride who, when under attack, did not turn tail and flee until cornered beyond all hope of further escape." (Green, *Verdict According to Conscience*, p. 46). In a society where war and chivalry were glorified as noble causes, the common law was clearly out of step with national ethics. This finding helps modern historians to understand why jury tampering was tolerated. Royal justices probably shared many of the same values as their jurors, and did not wish to penalise persons who committed homicide in contravention of the law, especially when they might have chosen the same course of action if their positions had been reversed.

[65] Naomi D. Hurnard, *The King's Pardon for Homicide Before A.D. 1307*, (Oxford, 1969), p. 267.

of the slaying of an adulterer, although, as Green suggests, there were set rules to the game. "An aggrieved husband was not permitted to take the adulterer's life, but, as in the case of a trespasser upon his land, he would have been able to drive him away."[66] Homicide, then, was justifiable only when all else failed and the master of the house suddenly found his own life endangered. The degree to which the jury framed its verdict in order to create this illusion was, at times, significant. To return momentarily to the case of Robert of Laghscale: the gaol delivery rolls and the records of the coroner present entirely different accounts of the circumstances surrounding the event. The coroner's rolls offer a fairly straightforward case of homicide. Robert returned unexpectedly from working in the fields one afternoon to find his wife in bed with John Doughty. He was so enraged by the discovery that he struck John in the head with an axe, immediately killing him.[67] According to the inquest jury, then, this was a clear case of culpable homicide. Its members may have believed that Robert's rage was justifiable, but he was nevertheless responsible for his actions. The petty jury assigned to Robert's case, however, saw things in a different light. The gaol delivery account includes a much-reshaped version of the events, intended to emphasise John's trespass in Robert's home and to paint Robert as the victim.

> John Doughty came at night to the house of Robert in the village of Laghscale as Robert and his wife lay asleep in bed in the peace of the King, and he entered Robert's house; seeing this, Robert's wife secretly arose from her husband and went to John and John went to bed with Robert's wife; in the meantime Robert awakened and hearing noise in his house and seeing that his wife had left his bed rose and sought her in his house and found her with John; immediately John attacked Robert with a knife ... and wounded him and stood between him and the door of Robert's house

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[66] T.A. Green, *Verdict According to Conscience*, p. 42. Green notes that the laws relating to housebreaking were clarified by Judge Thorpe in 1349, when he reinterpreted the rule more broadly. He wrote: "in many other cases a man may kill another without impeachment, as if thieves come to rob a man, or to burgle his house, he may safely kill them if he cannot take them." (*ibid*, p. 83). It seems likely that this new construction of excusable homicide was manipulated frequently by jurors to secure a pardon when the circumstances were thought to have warranted one.

[67] PRO JUST 2/211, m. 1d/1.

> continually stabbing and wounding him and Robert seeing that his life was in danger and that he could in no way flee further, in order to save his life he took up a hatchet and gave John one blow in the head.[68]

As Thomas Green contends, this version of the events contains much more than the "usual allegations of homicide *se defendendo.*"[69] The jury's reworking of the setting to place Robert in bed asleep in the dark of night was a substantial and deliberate modification of the narrative, intended to accentuate the heinous nature of John's trespass.[70] John had not only intruded into Robert's home without consent, he was, in effect, usurping Robert's role as master of the house by taking sexual liberties with his wife while her husband was present. If Robert had been forced to kill a man of this low moral fibre in order to save his own skin, the jury's account suggests that it was certainly no great loss to the Laghscale community. Robert was pardoned for his crime.

The jury's decision to alter even the hour of the crime in this instance, unquestionably an attempt to heighten the deceitful and villainous nature of the crime, demonstrates just how gross a sin female adultery was considered to be in the eyes of those who spoke on behalf of English communities. In this respect, it is important to remember that women had no role to play as medieval jurors. Instead, juries were composed of men from the middling to upper ranks of English communities, the same kind of men who were responsible for presenting

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[68] "infra nocte predictus Johannes Doughty venit ad domum ipsius Roberti in predicta villa de Laghscales prefato Roberto cum uxore sua in lecto suo in pace Regis iacente et sompniente et domum ipsius Robertus intravit quod percipiens uxor ipsius Robertus secrete a viro suo surexit et ad ipsum Johannem ivit et predictus Johannes uxorem ipsius Robertus ibidem concubiit ... medio tempore predictus Robertus vigilavit et audiens tumultum in domo sua invenit eam cum predicto Johanno et statim predictus Johannes in ipsum Robertum cum quodam cultello vocato .... ibidem insultum fecit et ipsum verberavit vulneravit et inter ipsum et hostium eiusdem domus stetit semper cum cultello predicto ipsum percuciendo et vulnerando ipsum ibidem ad interficiendum et predictus Robertus videns periculum mortis sibi iminere et se ulterius nullo modo posse diffugere causa mortem suam propriam evitandi sumpsit quoddam polhachet et inde percussit predictum Johannem solo ictu in capite usque cerebrum unde statim obiit." PRO JUST 3/78, m. 2d/1.

[69] *Ibid*, p. 43.

[70] See pp. 230-3 for a fuller discussion of the meaning of the terms *noctanter* and *in lecto suo*.

scolds in the borough of Colchester.[71] It is not difficult to imagine that men of this rank and communal standing, eager to prosecute aggressive women and sexual sinners, would have encountered few ethical obstacles when presented with the opportunity to condone the slaying of an adulterer.

Poison: the Supreme Leveller

Another common modern conception is the belief that murderesses were suspected of compensating for their physical weakness by resorting to the use of poison.[72] Poison has often been represented as the supreme leveller, empowering the physically weak, and allowing wives, in their capacity as preparers of food, the opportunity to execute scandalous designs. Frances Dolan sees husband poisoning as a representation of the "violated home." She argues that contemporary fears of domestic mutiny came to life when women abused their position in the household by poisoning their unsuspecting husbands' food.[73] Despite modern conceptions, the medieval records of royal indictments do not reveal a comparable obsession. Only a very small number of women faced such accusations. A study of all records of felony indictments for both counties produces a total of six cases of women put to trial on charges of having poisoned their husbands. All six are confined to fourteenth-century

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[71] See pp. 157-72 of the preceding chapter for a fuller discussion.

[72] Lawrence Stone alludes to this belief in his article "Interpersonal Violence in English Society 1300-1980," *Past and Present* 101 (1983), 27; see also Garay, "Women and Crime in Later Mediaeval England: an Examination of the Evidence of the Courts of Gaol Delivery, 1388 to 1409," *Florilegium* 1 (1979), 92. Barbara Hanawalt also notes this perspective in "The Female Felon in Fourteenth Century England," p. 130, but suggests that the connection between women and poison was more popular in later periods. Like many other aspects of crime, however, it is not difficult to understand how such a connection may seem logical and thus ubiquitous in any era. Finally, Richard W. Ireland notes an association between women and poison based on the midwife's monopoly on abortifacients during the Middle Ages. See Ireland, "Chaucer's Toxicology" *The Chaucer Review* 29 (1994), 84.

[73] Dolan, *Dangerous Familiars*, p. 31.

Yorkshire, suggesting that either poison was more readily accessible in the county of York, or northerners were simply more suspicious people.

Perhaps most fascinating about these indictments is that in five of the six cases of husband-poisonings, the indicting jurors named an accomplice. If poison was assumed to be the wife's weapon of choice because it "levelled the playing field" in terms of physical strength, why would a wife have needed an accomplice (or two, as in the case of one husband-killer aided by both her daughter and another man)? The case of Matilda wife of William of Monkton sheds some light on indictments of this type. When Matilda's husband died suddenly in the year 1332, both she and his grandson, John, came under immediate suspicion. Although the records offer little indication of why these two were suspected of administering poison to William, it is plausible that the jury was drawn to this assumption by the economics of inheritance. Both Matilda and John stood to gain the most from William's death: Matilda through her dower rights and John presumably by right of descent.[74] William's demise probably belongs to that category of deaths in which the cause was unknown but highly suspicious (probably a common occurrence in late medieval England considering the limited scope of contemporary medical knowledge). In these cases, the coroner's inquest jury was called upon to offer the most reasonable explanation for the death. In William of Monkton's case, poisoning by his wife and grandson may have seemed like the most logical explanation.

Death at the hand of a relative was the jury's assumption in the case of Robert of Alta Ripa. After a fortnight on his deathbed, when the Yorkshire man finally succumbed to death, his wife and her daughter and a man whose relationship to the family was not stated were accused of having poisoned his food.[75] It is difficult to know why the indicting jury reached

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[74] PRO KB 27/92, m. 21d.
[75] PRO JUST 3/76, m. 33d.

the conclusion that Robert had been poisoned. Perhaps Robert himself uttered this accusation before his death. Perhaps a neighbour was a witness to the preparation of the fatal meal. It is equally likely, however, that the inability of local medical experts to diagnose Robert's condition and a history of bad relations informed the jury's decision in this case. Nevertheless, the trial jury was unconvinced and chose to acquit all three defendants.

The surviving indictments of homicide by poison also seem to suggest a commonly accepted association among clerics, murderous venom and domestic homicide. When John of Wink died inexplicably in 1334 in the village of North Frodingham, both his wife Juliana and Hugh of Alne, the local vicar, were indicted for homicide. The jury accused the couple of knowingly giving John poison to drink, thus bringing about his death in a deceitful manner.[76] The cleric's perceived interest in this relationship immediately raises some important questions. Was Hugh in fact Juliana's lover? This is certainly a possibility. Although the records do not indicate any amorous relationship in this case, priests in the medieval period were notorious for failing to adhere to the vow of celibacy. Another equally plausible possibility is that Hugh might have been a concerned priest, counselling one of his parishioners to leave an unhappy and abusive marriage. In the minds of a medieval jury it may have been understandable for a wife and cleric to conspire together using poison. First, given the church's firm stance on bloodshed and violence, it may have been logical to assume that a cleric would prefer a non-violent method of homicide, such as poison, if he were going to engage in the act at all. Despite the renowned violence of many medieval clerics,[77] there was a general perception that, because of his vows, a cleric was, in many ways, more feminine

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[76] PRO JUST 3/78, m. 11.

[77] C.I. Hammer explores this phenomenon in some depth in his "Patterns of Homicide in a Medieval Town: Fourteenth-Century Oxford," *Past and Present* 78 (1978), 3-23.

than his anatomy would suggest. The anonymous chronicler of the *Eulogium Historiarum* makes this comparison explicit in his discussion of trial by combat. According to the writer of this chronicle, Henry IV of England once suggested a duel between a woman and a clerk whom she accused of treason. To even the odds a bit, the king suggested that the clerk should have one hand tied behind his back. With some amusement, the chronicler informs us that the battle never took place. The association between women and clerics, however, leaves a lasting impression.[78]

Second, this was not the only case in which a man of the cloth was accused of aiding a petty traitor. Eight of the eighty accomplices to husband-killings were described as being members of the clergy (2 vicars, 2 canons, 1 provost, 3 clerics). As noted above, these findings suggest that priests played an important role within communities as marriage counsellors, especially when abuse was a concern. Such a role probably elicited a number of reactions from anxious neighbours. Repeated close contact with an abused wife may well have been misinterpreted, especially in situations in which a husband died inexplicably soon thereafter. In his study of medieval expectations of clerical masculinity, R.N. Swanson writes

> The collusion between clerics and women to civilize and Christianize medieval lay men could easily be interpreted as a conspiracy against male control over the family and domestic life: the clergy could be attacked as having too close attachments to women, encouraging their spirituality and acts of charity without reference to their husbands, thereby undermining male power.[79]

In fact, Swanson notes that medieval laymen largely distrusted clerics. He argues that this

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[78] Discussed in John Bellamy, *Crime and Public Order in England in the Later Middle Ages* (Toronto, 1973), pp. 127-8. The association between women and clerics was made on numerous occasions. The issue of just how masculine were male clerics has been discussed by a number of authors. See P.H. Cullum, "Clergy, Masculinity and Transgression in Late Medieval England," in D.M. Hadley (ed.), *Masculinity in Medieval Europe* (New York, 1999), pp. 178-96; and R.N. Swanson, "Angels Incarnate: Clery and Masculinity from Gregorian Reform to Reformation," in the same volume, pp. 160-77.
[79] Swanson, "Angels Incarnate," *Masculinity in Medieval Europe*, p. 170.

sentiment derived from the uncertain gender of the clergy; while "visibly male", clergy were expected to renounce their masculinity upon taking their vows. Thus, many features of medieval masculinity, such as sexual intercourse with women and violent altercations, were not supposed to be part of the clerical lifestyle. The relationship between lay men and clerics, then, was complicated by the lay refusal to believe that a man might successfully deny his masculinity.[80] Consequently, whether as his wife's lover, or her confidante, men expected the worst from clerics.

Equally likely is the possibility that indictments of this sort represent communal animosity towards meddling priests. How better to communicate dissatisfaction with the church's prying policies than to indict its representatives in the royal courts? Here, it is worthy of note that a cleric indicted in the royal courts did not face the same penalty as lay felons. Priests might claim benefit of clergy and have their case brought before the bishop's court, where the penalties were much less stringent. Accordingly, presentment by a community in no way endangered the life of the cleric, and in most cases would have been little more than an inconvenience. Abetting a vengeful wife would certainly not have been the only instance when English communities used the royal courts to punish clerical transgressions. Edward Powell notes that accusations of rape levelled at priests throughout the later Middle Ages represent an attempt by the community to penalise lecherous clerics in violation of their vows of celibacy.[81] Swanson makes a similar observation, noting that

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[80] *Ibid*, p. 167.

[81] See Edward Powell, "Jury Trial at Gaol Delivery in the Late Middle Ages: The Midland Circuit, 1400-1429," in J.S. Cockburn and Thomas A. Green (eds), *Twelve Good Men and True: The Criminal Trial Jury in England, 1200-1800* (Princeton, 1988), pp. 102-3.

clerical sexuality was always "available for use as an anticlerical weapon by the threatened males."[82]

The indictment of a woman for killing her husband with poison, although harsh, was easy enough; convicting her of the crime was something else entirely. While many such accusations may have sprung up in the absence of evidence, proving death by poison was well-nigh impossible given contemporary medical knowledge. Moreover, neither coroners nor medical experts were able to perform an autopsy so as to establish poison as the clear cause of death, even if they had had the technology to carry out blood analysis. The medieval church forbade physicians to engage in post-mortem human dissection because it considered the human body to be analogous to the temple of God, and its desecration endangered the human soul.[83] Not surprisingly, then, all six accused husband-killers and their accomplices pleaded innocence and were acquitted of the charges.

Irrespective of the jury's verdict in these six cases, it seems evident that women rarely used this method of homicide in the later medieval period to slay their husbands (the six cases represent only 7.41 per cent of such homicides). Poison was simply not a weapon of choice; or at the very least, it was simply not detected as such. In fact, more often than not, when mention of the weapon used by the defendant was included in the records, a wife was accused of using a hatchet or axe, an item of domestic use, but one not restricted to women. Thus, while poison may seem like the ideal weapon for the murderess, it does not appear to have been widely used in real life.

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[82] Swanson, "Angels Incarnate," p. 171. See also Robin L. Storey, "Malicious indictments of clergy in the fifteenth century," in M.J. Franklin and Christopher Harper-Bill (eds), *Medieval Ecclesiastical Studies in Honour of Dorothy M. Owen* (Suffolk, 1995), 221-40.

[83] It was not until the mid-fourteenth century that the church began to relax its strict position on human dissection; and yet, only the universities engaged in human dissection in the late Middle Ages. See Renate Blumenfeld-Kosinski, *Not of Woman Born: Representations of Caesarean Birth in Medieval and Renaissance Culture* (Ithaca, 1990), pp. 30-2.

Medieval juries, moreover, did not consider poison to be a weapon employed exclusively in cases of petty treason.[84] When in the last decade of the thirteenth century Joanna wife of Simon the Constable died, her husband was accused of seeking the assistance of Beatrice, the local midwife, to poison her.[85] While Simon's indictment is the only case from the records for both Yorkshire and Essex in which a husband-killer was charged with homicide by poison, this account may well suggest that any domestic homicide involving poison was thought to be particularly deceitful and conspiratorial. A homicide committed with poison, as opposed to a knife or hatchet, suggested premeditation rather than an act of sudden anger.

Beyond the Numbers: Formulaic Indictments and their Hidden Meanings

A study of spousal abuse from a purely statistical approach does not generate firm conclusions about the acceptability of domestic violence. Numbers can be too easily misinterpreted or misunderstood, and they lack the sort of basis from which to draw conclusions. A closer examination of these legal documents from another perspective, however, yields some powerful clues about communal attitudes. The inquests, appeals and other entries found in coroners' rolls are generally terse, unrevealing and exceptionally formulaic. A typical entry runs as follows:

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[84] Philippa Maddern also came across a case of a man accused of killing his wife with poison. John Joket was indicted by the coroners' inquest jury for having put poison in his wife's food with the aid of his lover, Margaret Norfolk, whom he married some time later. The trial jury, however, disagreed with the findings of the coroner's jury. It "recategorized the death as natural, stating that Emma had been gravely ill for some time, and had died 'nullo alio modo'." Maddern argues that, while it is possible the original indictment was the product of the local rumour mill, "it is equally likely that the trial juries were loath to convict a man of wife-murder." See Philippa C. Maddern, *Violence and Social Order: East Anglia 1422-1442* (Oxford, 1992), pp. 126-7.

[85] PRO JUST 1/1101, m. 41. Simon the Constable was an unusual criminal for the period. He stood accused not only of spousal homicide, but also of abducting the wife and goods of John Danethorp and

> The jury present on oath that on the Sunday next before the feast of the Nativity of the Blessed Virgin Mary, in the second year of the reign of King Richard II, at Ryther, Roger Uttyng of the same feloniously slew William Medde of Ryther by piercing his head with an arrow so that he immediately died. And the said Roger immediately fled. His chattels are none. Viewed by Thomas of Lockton coroner.[86]

It is easy to see from this entry how one might dismiss the wording of these rolls as so uninformative as to be of little use to the social historian. And yet, research has indicated that it would be a mistake to evaluate the evidence contained in coroners' rolls too hastily. The formulaic nature of the rolls is not a hindrance, but rather a reliable tool. Precisely because the majority of cases are set out in a prescribed manner, those that do not conform to the set format immediately take on significant meaning. The inclusion of details not normally recorded reveals a great deal about communal attitudes as these are represented by the members of the jury. And within the royal records of felony indictment for both Yorkshire and Essex there are a number of entries that fall into this category.

One such case is that of an inquest held in 1344 on a suicide victim. Like most entries in the coroners' rolls, it is a laconic recording of events, with one important exception. The roll entry states:

> the vills [of ....] present that on the Wednesday next closest before St Thomas Apostle, in the above-mentioned year, Alicia wife of Stephen Souter of Great Broughton went to the river running through Great Broughton and, of her own free will, she drowned herself because of quarrelsome words between herself and her husband.[87]

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robbing the priory of Swyne. He chose not to respond to the allegations altogether, instead submitting himself to *peine forte et dure*.

[86] "Jurati presentant super sacramentum suum quod die dominica proxima ante festum Nativitatis Beate Marie Virginis anno regni regis Ricardi secundi post conquestum Angliae secundo apud Rythe Rogerus Uttyng de eadem felonice interfecit Willelmum Medde de Rythe cum una sagitta percussiendum eum in capite unde statim obiit. Et dictus Rogerus statim fugit Catalla eius nulla. Visus per Thomas de Lokton coronator." PRO JUST 2/233, m. 5.

[87] "Magna Broghton Parva Broghton Eseby & Ingolby presentant quod die mercurii proxima ante festum sancti Thomae Apostoli anno supradicto quedam Alicia uxor Stephani Souter de Magna Broghton ivit ad

Most inquests into cases of suicide do not normally include a reason for the act. They simply present the means of death, the date, the place, and the name of the victim. The few that do contain details of causation usually note that he or she was *non compos mentis* or *extra sensum suum*, without giving any clues to circumstances that exacerbated the victim's mental state. Why, then, the anomalous inclusion of the circumstances surrounding Alicia's suicide? The husband is not named as an accomplice here, because he did not actually aid in her death. But why would his quarrel with her have even been mentioned unless the jury somehow felt that he was partially to blame for her demise? While tentative, this argument suggests that medieval English society may have considered husbands responsible for the mental well being of their wives.[88]

Even minor deviations from the norm are revealing. Most cases of homicide simply report that the victim was feloniously slain, and omit the particulars of the homicide. In the late thirteenth-century account of the death of Margeret wife of Stephen Calihorn, however, the way the victim died was significant. In her home in Childene, Essex county, Margeret was trampled (*conculcavit*) and beaten so severely by her husband that she languished for three days before dying.[89] Because Stephen fled the scene of the crime and was later outlawed, a more complete record of the crime was crucial. If he was to return to stand trial at a later date, this information was adequate to try his case. The image of a woman trampled to death by her husband would probably have been more than sufficient evidence to incline any

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aquam currentem per Magnam Broghton & sua mera voluntate se ipsam submersit propter verba litigiosa inter se et virum suum". PRO JUST 2/212, m. 19.

[88] Cecilia Wyvell's application for judicial separation, discussed below in Chapter Four, strongly supports the point of view that constant abuse leading to suicide was considered excessive, if not criminal. See p. 281 of Chapter Four.

[89] "... Stephenus Calihorn verberavit & conculcavit Margareta uxorem eius in domo sua in Childene ... unde tercio die praeter inde obiit. Et ipse statim fugit & malecredit Ideo exigetur & utlagatur..." PRO JUST 1/242, m. 90d.

jury towards a conviction. Similarly, in the homicide of Margaret wife of Henry de Blakemere by her husband around the same time, the term "feloniously slew" (*felonice interfecit*) is omitted altogether. Instead, Henry is reported as having beaten (*verberavit*) Margaret with a staff so badly that she died three days later.[90] Once again, this is a very subtle deviation from the formula, but this version was surely more meaningful and effective than others in conveying the scandalous nature of the offence.

An inquest from the year 1348 helps to unravel medieval perceptions of the acceptable limits of spousal abuse. The roll states:

> the jury presents on oath that on the Sunday closest after the feast of Saint Ambrose in the twenty-first year of the reign of King Edward the third since the conquest at Ormesby, an argument arose between Richard Sutor of Ormesby and Cecilia his wife, so that the said Richard struck the said Cecilia with his hand. And then the said Cecilia fled, and in fleeing, she fell into the fire over which a brass pot full of water stood (and) which overflowed on her stomach and around the said Cecilia and scalded[91] her, so that she died confessed the Sunday next closest after the Ascension of the Lord then next following. And immediately after the fact, Richard fled. [92]

Looking at this situation without any modern prejudices or legal perspectives, it is possible to see this death as excusable, rather than culpable homicide. In fact, in a society in which physical abuse of a wife was acceptable and even encouraged, it seems likely that an accident is exactly how such a case would be interpreted. This perspective is reinforced by

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[90] "...Henry de Blakemere verberavit Margareta uxorem suam quodam baculo Ita quod tercio die praeter unde obiit Et Henri postea fugit et malecredit Ideo exigetur et utlagatur Catalla eius xvii s. iiii d unde villam respondebit." PRO JUST 1/238, m. 53d.

[91] See "*scaturisare*" in Domino Du Cange (ed.), *Glossarium Mediae et Infimae Latinitatis*, vol. 7 (Graz, Austria, 1954), p. 342.

[92] " ...jurati presentant super sacramentum suum quod die dominica proxima post festum sancti Ambrosii anno regni regis Edwardi tercii post conquestum vicesimo primo apud Ormesby verba contumeliosa movebantur inter Ricardum Sutorem de Ormesby et Cecilia uxorem eius ita quod dictus Ricardus percussit predictam Ceciliam manu sua et tunc predicta Cecilia fugit & in fugiendo cecidit in igne super quo stetit una olla evea aque calide repleta que quidem olla submersit super ventrem & circa predicta Cecilia & eam scaturravit ita quod obiit confessa die dominica proxima post festum Ascensionis Domini tunc proxima sequens Et statim post factum dictus Ricardus fugit." PRO JUST 2/214, m. 11.

the omission of the standard phrase which would indicate that Robert "feloniously slew" (*felonice interfecit*) his wife Cecilia. And yet, Richard Sutor was not so convinced that a jury would believe his innocence. After the death of his wife, he immediately fled. The chief reason why he would have done so was in fear of execution, a penalty which would have been imposed were he to be found guilty of a felony. Hence, Richard perceived his own situation to be a case of homicide, and not an accident.

Naomi Hurnard, in her study of the king's pardon, has demonstrated that culpability for homicide was sometimes misunderstood during the Middle Ages, and that even bystanders now and then fled out of fear of judicial penalty.[93] Were this the only record of Cecilia's death in these records, Richard's flight would have to be questioned on these grounds. However, like many cases in the coroners' rolls, Cecilia's death appears more than once. A second entry in a later roll, while much less descriptive, is enlightening in its lack of detail. None of the events leading up to Cecilia's death are included in the record. Instead, it states merely that Richard Sutor of Ormesby feloniously slew his wife Cecilia.[94] Clearly, Richard was not the only one who interpreted Cecilia's death as a homicide; so, too, did the royal courts.

The inclusion of superfluous detail in particularly appalling cases of domestic homicide attests the strong sense of outrage experienced by the community and its desire to secure a conviction. For example, in the case of Richard Grayne of Fangfoss, taken for the death of his wife Elena, the indictment appears to have addressed the means by which she died in order to sway the trial jury's convictions. According to the written indictment, Richard "feloniously placed his wife Elena in a fiery oven where she was burned, and from

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[93] This is not entirely surprising considering the number of changes effected to the law of homicide throughout the medieval period. For a fuller treatment of persons who fled the scene of the crime see Hurnard, *The King's Pardon for Homicide*, p. viii.

[94] PRO JUST 2 / 213, m. 7

this incident she afterwards died."[95] The reason that Richard's actions were incorporated into the indictment was most likely the need to account for the lapse in time between the quarrel and his wife's death (that is, in order to prove that her death was, indeed, the direct result of his actions). The detailed and graphic nature of the homicide, and the deliberate use of the term *felonice* despite its unusual context, however, strongly suggest that the jury was determined to see Richard hang.

The death of Agnes wife of John Dryvere of Coggeshall, county Essex, was also one in which the lengthy duration of the homicide required explanation. The coroner's inquest jury offered a very explicit account of Agnes's unfortunate death.

> [The jury] say on their oath that John Dryvere son of Emma de Badewe, husband of the said Agnes, on Palm Sunday in the above-mentioned year led the said Agnes his wife to a certain field called Westfield in the aforesaid Coggeshale to the said well for the sheep in that field and there he beat her in the head and neck and so maltreated her that he almost killed her; and John Dryvere, believing her (Agnes) to be dead, he placed her entire body in the well except her neck and head so that Agnes lay there in the water in that way until the next Friday which was Good Friday, the said John Growel found her lying in the said way and on that day he notified the neighbours in the area who came and took her from the well and brought her to the home of Margery Russh in the said vill and there she lay living, and she languished until the next Thursday in the week of Easter on which day she died from her wound. And so the said John Dryvere feloniously slew the said Agnes.[96]

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[95] "felonice posuit Elena uxorem eius in quodam furna ardente ubi combusta fuit de qua combustione postea obiit." PRO JUST 3/141a, m. 16.

[96] "dicunt super sacramentum suum quod Johannes Dryvere filius Emmae de Badewe vir predicta Agnetis die Dominica in festo Ramis Palmarum anno supradicto duxit predictam Agnetem uxorem suam in quendam campum vocatatur Westfeld in Coggeshale predicta ad quoddam puteum quorum puteus Agnetam in eodem campum & ibidem ipsam verberavit ita caput et collum & ita male tractavit quod pene eam interfecit & ipso Johanne Dryvere credente ipsam Agnetam esse mortuam invenit in dictum puteum toto corpore ipsius Agnetis existente in aqua praeter collum & caputo Que quidam Agnes [eam] ibidem iacuit in acqua predicta modo predicto usque die Veneris proxima in Paraceve Domini quo die predictus Johannes Growel ipsam invenit iacentem modo supradicto adhuc veniente et innatavit vicinis ibidem qui extraxit eam de puteo predicto & duxit ad domum Margerie Russh in villa predicta & ibidem iacuit viviens & languebat usque die Jovis proxima in septimana Pasch quo die occasione lesionis predictis moriebatur. Et sic predictus Johannes Dryvere predictam Agnetam felonice interfecit." PRO JUST 2/35, m. 5/2.

The coroner's jury was clearly at pains here to formulate an account which would prove beyond the shadow of a doubt that John's actions were the direct cause of Margery's death, and thus that the case should be treated as culpable homicide. John fled and did not return to stand trial for his crime. Thus, the outcome of this case remains a mystery; yet, the jury's revulsion at John's treatment of his wife is apparent in the very full detail given in this account. If the coroner's jury had not been so eager to ensure John's conviction it would not have constructed such an airtight case.

Most intriguing about the unusually detailed entries of spousal homicide is that there are no cases in which a woman is described as having been castigated to death. As the sermons discussed in Chapter One amply demonstrate, wife chastisement was an acceptable form of spousal abuse in the later medieval period, providing that the violence employed was minimal enough to be cast within such a light. This theme is taken up again in Chapter Four, where applications for separation on the grounds of excessive cruelty are examined. Husbands as defendants in these cases often resorted to castigation as justification for their actions. This was a shrewd defence in this period, given contemporary beliefs about gender roles within marriage. For example, J.B. Given has argued that "the village community would on occasion punish women who had violated one of its regulations by ordering the errant woman's husband to beat her."[97] Although Given's evidence for this broad statement is narrowly based on a single entry in the Chalgrave (Bedfordshire) manorial rolls, the ruling is none the less significant because it suggests that the courts may even have expected husbands to discipline their wives using physical force. In this moral and political climate it might be expected that overzealous chastisement should be the foundation for most defences in cases of

[97] J.B. Given, *Society and Homicide*, p. 195. Given's evidence comes from an analysis of Marian K. Dale (ed.)'s *Court Roll of Chalgrave Manor, 1278-1313* (Streatley, Bedfordshire, 1948).

wife-killing. And yet, none of the husbands on trial for spousal homicide was reported as having defended his actions on this basis.[98]

Clearly, there were a number of ways the coroner's inquest jury might shape an account of spousal homicide in order to communicate its views on the fate of the accused. A detailed record of the crime accentuating its gruesome and sordid nature must have gone a long way towards securing a conviction. In this context, cases in which the victim of the crime was pregnant at the time of death acquire greater significance. The jury's decision to record evidence of the victim's pregnant state in cases of homicide satisfied two goals. First, and probably most obviously, jurors remarked upon a victim's pregnancy because it multiplied the offence. Medieval English law defined the offence of abortion in clear fashion. If the foetus was already formed or there had been some observance of foetal movement (generally after the fourth month), an abortion was treated as homicide, whether it had been procured or was the result of a physical assault. In his brief examination of abortion in the royal courts of later medieval England, John Riddle notes that prosecutions focused heavily on the condition of the foetus. Because it was difficult to ascertain whether or not the foetus

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[98] In this respect, it is important to note that the language of discipline was certainly not foreign to royal records of indictment. For example, the 1368 case of John Benet, which makes an appearance in the Yorkshire coroners' rolls, describes how John castigated (*castigavit*) his brother William with a rod until he died. PRO JUST 2/222, m. 10d. [98] J.M. Kaye notes that an early sixteenth-century serjeant named Keble who wrote a treatise on the law, actually addressed the issue of death by chastisement and declared that it was indeed a felony. He wrote: " if a master corrects his servant, a master his slave, a schoolmaster his student, and from the force of the same correction he dies, even if the master did not intend to kill him, still it is a felony" (*si un master correct son servant, le seignur son villeine, le schole(master) son clarke, & per force de mesme le correction il morust, coment qe le master nentend de eux occider, uncore il est* felony). See "The Early History of Murder and Manslaughter", 570. Although this statement does not refer specifically to the case of wife chastisement, it seems reasonable to suppose that it, too, would have been placed in this category. This helps to explain why discipline was not employed as an excuse in cases of homicide; if Keble's knowledge reflects a widespread understanding of the problematic nature of death by chastisement, abusive husbands may have realised the chances of justifying their actions in this way were slim.

had been formed, defendants were often acquitted.[99] While abortion as a suit on its own, then, was most likely destined for acquittal, compounding the charge with another more damning accusation (such as homicide) may have made it easier for the trial jury to find the defendant guilty of both charges. Second, highlighting the victim's physical state was a powerful method of making manifest the trial jury's opinion of the defendant. It seems that killing a woman was not an easily defensible act; killing a pregnant woman was a base and vile act.

In the records of royal indictments for the county of Yorkshire there survive only two cases of pregnant wife-killing. The first took place in the year 1331 in the village of Laughterton. During the week of Lent, Godfrey the village tailor feloniously slew his pregnant wife Isabella.[100] No other details of the incident are recorded. Yet, the marginalia would suggest that no other information was required, because the accused died before the case could come to trial. The second case of wife-killing in which the victim was pregnant took place at Newsome in Rydale in the year 1348. On the Tuesday after the feast of St George, William of Garton feloniously slew his wife Elena "with an infant living in her womb" (*cum infante vivo in ventre eius*). This turn of phrase was probably meant to emphasise that quickening had already begun and that William's actions therefore constituted an irrefutable case of double homicide. The account does not end there, however. After

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[99] John Riddle, *Eve's Herbs: A History of Contraception and Abortion in the West* (Cambridge, 1997), pp. 97-100. I was able to find only two cases of forced abortion which did not also include the homicide of the mother in the records studied in this investigation. The first took place in the year 1424. John Batley of Bentley, Yorkshire, and his son Thomas assaulted the pregnant wife of Joanna wife of John Wade so that she miscarried. Although the indictment was worded in order to secure a conviction (all the elements of stealth are included: the crime was said to have taken place at night in the home of the victim and with staves and swords), both defendants were acquitted. It seems likely that Riddle's assumptions also apply in this case. Because the victim was unable to demonstrate how far along was her pregnancy, she could not prove that a murder had actually taken place. See PRO JUST 3/199, m. 4d. Likewise, when Robert de le Skel came before the court at York in the late thirteenth century on charges of beating Matilda wife of William of Yorkshire so severely that she miscarried, he was also acquitted (PRO JUST 1/1098, m. 79).

[100] PRO JUST 1/1124, m. 5.

killing his pregnant wife, William took a number of his servants with him to slay an unnamed man, referred to only as a stranger to the community. He drowned the man in the river near the mill, though the body did not surface for another six months. William appeared before the court of King's Bench to respond to a series of accusations made against him. He pleaded not guilty and put himself on the country. The jury decided to acquit.[101]

The decision of the jury to deliver a verdict of not guilty in the case of William of Garton is not entirely unexpected. As John Riddle notes, abortion cases brought before the king's courts rarely resulted in a conviction, on the simple basis that abortion was an ambiguous category of crime. In theory, abortion was equated with homicide; but it was difficult for juries to assess when an abortion had actually taken place. Assault causing a miscarriage was the basis of England's legal definition of abortion;[102] however, the quickening must have already taken place in order for the assault to warrant an allegation of homicide.[103] In the case where a woman was actually delivered of a child after a beating, the forced abortion was more easily proven, but juries were still hesitant to convict. Britton, writing in the late thirteenth century suggests that the difficulty in convicting persons for abortion by assault lay with the victim. Concerning abortion, he wrote: "no one [is] bound to answer an appeal of felony, where the plaintiff cannot set forth the name of the person against

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[101] PRO KB 27/354, m. 66.

[102] John Riddle suggests that the notion of abortion as a form of homicide comes first from *Fleta*, an anonymous legal treatise written during the time of Edward III, and this principle seems to have been founded on a passage from Exodus 21:22-25: "If men strive, and hurt a woman with child, so that her fruit depart from her, and yet no mischief follow: he shall be surely punished, according as the woman's husband will lay upon him; and he shall pay as the judges determine. And if any mischief follow, then thou shalt give life for life. Eye for eye, tooth for tooth, hand for hand, foot for foot. Burning for burning, wound for wound, stripe for stripe." See Riddle, *Eve's Herbs*, 95.

[103] The quickening is described as the moment when after the first fetal movement, from roughly the fourth to the sixth month. The church's theological perspective was based on John of Naples' notion of a two-stage fetal development. After the quickening, ensoulment was believed to have taken place, meaning the foetus had received its soul. *Ibid*, 94-5.

whom the felony was committed."[104] In this respect, Riddle notes that the most plausible case of abortion by assault was a woman who was delivered of a live child, who later died of the wounds received while in the womb.[105] In the case of William of Garton, it seems most likely that the inclusion of the detail that his wife's child was "live in her womb" was intended to respond to these difficulties. Although the record does not suggest that his wife was forced to abort a live child, it certainly argues that her baby was well past the stage of quickening, and thus her death should be treated as a double homicide. If the courts had regularly enforced the common law position on abortion, such an elaborate description would not have been necessary. Despite the trial jury's decision to acquit, this wording suggests that the grand jury certainly perceived William's actions as both scandalous and deserving of censure.[106]

Juries, Verdicts and Encoded communication

A study of deviance from the norm is not the only method of illuminating common attitudes towards spousal abuse. Formulaic language itself provides insight into communal perspective represented by the members of the juries. In a recent work entitled *The Criminal Trial in Later Medieval England*, John Bellamy remarks that, apart from observing an occasional overlap in personnel, historians have essentially ignored the relationship between

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[104] Britton, *Britton: An English Translation and Notes*, ed. Francis Morgan Nichols (Washington, 1901), 1.45.7, pp. 95-6.

[105] Riddle, *Eve's Herbs*, 96-9. Riddle does note that a live birth did not assure a conviction. In all likelihood, the difficulty of linking a child's death with an assault on the mother some time before may have discouraged juries from finding the defendant guilty.

[106] Margaret Kerr notes an interesting case from thirteenth-century London in which a grand jury attempted to penalise harshly a husband's abuse of his pregnant wife. When wool merchant Richard Scharp beat his wife so badly that she gave birth to a stillborn child, Scharp quickly found himself indicted on charges of murder. Unfortunately, he, too, died before his case came to trial, and thus the way in which the jury might have dealt with the matter is unknown. But as Kerr remarks, it is interesting that the charges levelled against him were for murder of his son, rather than abuse of his wife. See Margaret H. Kerr, "Husband and Wife in Criminal Proceedings in Medieval England," in Constance M. Rousseau, Joel T. Rosenthal (eds), *Women, Marriage, and Family in Medieval Christendom: Essays in Memory of Michael M. Sheehan, C.S.B.* (Kalamazoo, 1998), p. 215*n*.

the indicting jury and the trial jury.[107] Consequently, communication between the two has been under-appreciated. This is an important argument, because some recent studies into medieval juries have challenged the notion that the trial jury was composed of witnesses to the crime. In his study of the Lincolnshire trailbaston proceedings of 1328, for example Bernard McLane notes that trial jurors were rarely drawn from the ranks of those who lived closest to the scene of the crime, and thus could not have been self-informing.[108] J.B. Post and Edward Powell have made similar observations.[109] If juries were not in fact self-informing, then they must have looked for evidence in other venues.

In the context of such a discussion, Bellamy turns to formulas used in felony indictments. He argues that indicting jurors manipulated protocol for their own purposes, inserting a specialised vocabulary of key words and phrases into their indictments in order to communicate apprehensions and opinions to petty jurors. In egregious cases of felony in which jurors of presentment wished to convey a high level of suspicion in respect of the accused and to emphasise the heinousness of the crime, they deliberately included these signals, or phrases of "afforcement" as Bellamy describes them,[110] to incline the petty jurors towards a guilty verdict. Noting specifically that a crime took place by night (*noctanter*), on the king's highway (*in regia via*), or that the accused was common or notorious were clues intentionally imbedded in the indictment to alert petty jurors that this was a crime committed by stealth, and thus worthy of death.

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[107] J.G. Bellamy, *The Criminal Trial in Later Medieval England: Felony before the Courts from Edward I to the Sixteenth Century* (Toronto, 1998).
[108] Bernard William McLane, "Juror Attitudes towards Local Discorder: The Evidence of the 1328 Lincolnshire Trailbaston Proceedings," in Green and Cockburn, *Twelve Good Men and True*, pp. 36-64.
[109] J.B. Post, "Jury Lists and Juries in the Late Fourteenth Century," in Green and Cockburn, 65-77; Edward Powell, "Jury Trial at Gaol Delivery in the Late Middle Ages: The Midland Circuit, 1400-1429," also in Green and Cockburn, *Twelve Good Men and True*, pp. 78-116.
[110] Bellamy, *The Criminal Trial*, p. 29.

Bellamy is certainly not the first historian of the English common law to contend that these phrases were meaningful; what is novel about his perspective is the number of phrases or terms which he views as part of this vocabulary. When applied to spousal homicide, however, it is necessary to expand the vocabulary of juridical dialogue even more. As Frances Dolan observed in her examination of legal representations of conjugal homicides in the early modern period that

> [t]exts about petty treason dwell on the violation of domesticity and marital intimacy entailed by this crime, which generally occurred in the central locations of marital life – the dining table and the bed. The formulation of legal separation as a divorce *a mensa et thoro*, "from table and bed," reinforces the significance of these furnishings as sites of intimacy and estrangement.[111]

Nowhere is this more apparent than in royal records of felony indictment for the later medieval period in both Yorkshire and Essex. On the Monday after the feast of St Bartholomew the Apostle in the year 1363 William the servant of John Smith of Rillington, Emma daughter of Thomas of Rillington and Joanna wife of Roger Rudbrade together carried through a villainous plot to murder Joanna's husband. Their indictments focused on the sordid nature of the crime, which took place in the dark of night while Roger was lying asleep in his bed (*in lecto suo*).[112] Likewise, when Margaret wife of John Trilly, Jr. of Waltham decided to do away with her husband, she also chose the middle of the night while her husband was in bed sleeping, to carry out her plan.[113] Inclusion of the precise location of a crime not only underlined the deceitful and conspiratorial nature of the offence, it also stressed the scandalous violation of the solemn bonds of marriage. A couple's bed was

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[111] Dolan, *Dangerous Familiars*, p. 29. T.A. Green makes a similar observation. See his *Verdict According to Conscience*, p. 58.
[112] PRO JUST 2/217, m. 17.
[113] PRO JUST 3/168, m. 4.

idealised as a place of trust and intimacy; the murder of one's husband in bed was the ultimate breach of this bond.

The phrase *in lecto suo* appears in a number of accounts of petty treason, cropping up in at least 6 of the 81 cases for both counties. Five of the six cases also note that the crime took place at night, while one of the six indictments further appends the damning phrase that the wife had not only feloniously slain her husband, but had murdered (*murdravit*) him as well. It seems apparent that in particularly egregious cases of petty treason, juries of indictment may have felt that the surest way to guarantee a conviction was to include as many terms or phrases of afforcement as necessary. Vocabulary highlighting violations of the marriage bed in cases of petty treason was just as popular as that focusing on the breach of trust between husband and wife who shared a table.[114] As discussed earlier in this chapter, in 6 of the 81 cases of husband-killing poison was deemed to have been the accused's weapon of choice.[115] Finally, an additional five cases of petty treason noted specifically that the crime took place in the home of the victim. Although this was not a transgression of table and bed *per se*, it seems all too likely that mention of the marital home as the location of the crime would have made a similar point. Together, phrases of afforcement that spoke specifically to the defilement of the marriage bond number 17 out of 81 cases, or 21 per cent. This is a sufficiently high percentage to suggest that medieval jurors were shocked and appalled at the

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[114] Although Bellamy chose to focus on the most universal phrases of afforcement (such as *noctanter, in regia via*, etc), Cynthia Neville's study of the northern law courts suggests that regions of England may well have created their own phrases of afforcement. Due to its proximity with the Scottish border, the north of England in the late Middle Ages was plagued with incessant cross-border crime. As a result, northern juries adapted their own circumstances to the English legal system by painting these ordinary felons as traitors, in order to ensure a high conviction rate. See C.J. Neville, "The Law of Treason in the English Border Counties in the Later Middle Ages," *Law and History Review* 9 (1991): 1-30. Her study strongly suggests that certain crimes might also have necessitated the creation of appropriate phrases of afforcement, such as the use of *in lecto suo* for cases of petty treason.

[115] See discussion earlier in this chapter, pp. 213-9.

nature of "these violations of domesticity, vividly figured through disrupted sleep and contaminated food." In particular, the indictments highlight "the dependent who should share the bed and table, and solace and nurture her husband's body, [but instead] abuses intimacy to invade and destroy that body."[116]

An even more compelling argument in support of the possibility that "representations of the violated home" were perceived chiefly as an element of petty treason is the fact that the phrase *in lecto suo* appears in only one indictment concerning wife-killing.[117] In general, terms or phrases of afforcement in cases of uxoricide were of an entirely different nature. Wife-killers were far more likely to be described as having murdered (*murdravit*) their victims than were their female counter parts (3 indictments for petty treason included this phrase, while it appeared in 8 indictments for wife-killings). In fact, with the sole exception of the one case of *in lecto suo,* the terms *noctanter*, *murdravit* and *in regia via* appear to have been the only phrases of afforcement used in uxoricides. This confirms that wife-killing did not stand out from typical homicide in the way that husband-killing inevitably did. It is noteworthy, however, that 22 out of 152 cases (or 14.47 per cent) of uxoricides employed these phrases, indicating that, even if wife-killing was not perceived as a violation of marriage

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[116] Dolan, *Dangerous Familiars*, p. 30.

[117] *Ibid,* 31; PRO JUST 1/235, m. 19. There is one other case in which the victim is described specifically as lying in bed; however, the case does not follow the typical pattern and as such does not really belong to the same category. In this Yorkshire case from either the year 1268 or 1269, Agnes wife of Robert Pymme was not lying in bed asleep; rather, her husband was lying in bed with her and the two were reported as having been in the midst of an argument when Robert picked up a knife and slit his wife's throat. This death was certainly a violation of the marriage bed, as Dolan would suggest, but the crime does not bear witness to the kind of stealth and deception typical of phrases of afforcement, and thus is not a clear example of the use of *in lecto suo* in order to incline the petty jury against the accused. See PRO JUST 1/1051, m. 9d. The fact that the wife was killed in the home environment, however, was mentioned in 9 cases of uxoricide (5.9 per cent of the total number of wife-killings). While this figure is certainly noteworthy, it is a much reduced figure when compared to the jurors' tendency to include phrases of afforcement concerning the defilement of the marriage environment in indictments of petty treason (21 per cent of uxoricides employed these phrases).

in the same way as was petty treason, it was still often considered a repugnant and sometimes inexcusable crime.[118]

If the grand jury was anxious to communicate to the trial jury its opinions about the appropriate fate of the accused, why should we assume that members of the coroners' inquest jury were not equally likely to voice their perspectives? Indeed, coroner's inquest juries may have had a greater interest in seeing the accused punished, chiefly because inquest juries were composed of friends, neighbours and relatives, all of whose lives were affected most tangibly by the conviction or acquittal of the defendant. This assumption finds strong support in the evidence of the coroners' rolls. For example, despite the small number of husband-killings found in the coroners' rolls for the county of York, it is interesting that 4 of the 11 incidents were described as having occurred by night, while only one out of 41 uxoricide indictments included this phrase. Of the 7 daylight husband-killings one was supposed to have occurred on the king's highway, while none of the uxoricides was so described. Likewise, one case of petty treason was committed while the defendant's husband was sleeping in bed, while none of the wife-killings included this phrase. Bearing in mind Bellamy's contention, it would seem that over half the inquests involving husband-killings in the county of York appearing in the coroners' rolls were recorded in a manner that would incline the petty jury towards a conviction, while only 2.4 percent of those for uxoricide received the same treatment. Phrases of afforcement also were used in cases of petty treason in the records of gaol delivery for the same county. Their appearance in these records, however, is quite low in proportion to the number of cases. It seems the more local the jurors, the more determined they were to secure a conviction in transgressions of the gender hierarchy.

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[118] See tables #2 and 3 at the end of the chapter.

Despite the widespread use of specific tactics in cases of felony, phrases of afforcement in felony indictments did not guarantee a conviction. Still, Bellamy's statistical analysis shows that the inclusion of these terms in an indictment substantially increased the likelihood of conviction. For example, in cases from the early fifteenth century in which the accused was described as a common felon, Bellamy observes a conviction against acquittal ratio of 1 to 3, while in cases in which the accused was not so described it was merely 1 to 8.[119] Cases of spousal homicide from the specific counties of York and Essex demonstrate a significantly higher ratio. In the 6 out of the 11 cases of husband-killing employing phrases of afforcement which actually came to trial,[120] 3 women were acquitted, 2 were burned and 1 was hanged.[121] The final verdicts in the 8 out of 22 cases of wife-killing in which terms or phrases of afforcement were employed, reveal that 3 men were acquitted, 4 were hanged, and 1 was convicted only (boasting a marginally higher ratio than that for petty treason).[122] It seems clear that spousal homicide was a sufficiently outrageous crime in its own right that juries needed little encouragement to produce a higher rate of conviction.

In his study of the medieval English jury, Thomas Green observes that indictments for petty treason often noted an accused person's attempt to conceal evidence of his or her actions by hiding the body of the deceased. He maintains that this detail was included in order to

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[119] Bellamy, *The Criminal Trial*, p. 30.

[120] The courts of medieval England were notorious for their inability to apprehend alleged felons. Bellamy describes the problem best when he writes: "in the more lawless decades of the later middle ages, a felon could consider himself distinctly unlucky if he were captured by the authorities." Bellamy, *Crime and Public Order*, p. 201.

[121] The record offers no clues to suggest why Beatrice wife of John Foweler of Ottringham was hanged for her crime rather than burned like the rest of the convicted husband-killers from the period. It is entirely possible that this was some sort of a qualitative assessment by the justices, implying that she was guilty of the crime, but not "as guilty" as some others. However, it is important to take into consideration the equally likely possibility that this may simply have been a scribal error. See PRO JUST 3/199, m. 5.

[122] The man who was convicted (but reportedly not hanged) was Sir Roger de Benton, Essex (PRO JUST 1/232, m. 9d). In all likelihood, his status as a gentleman saved his neck from the gallows, confirming the well-known late medieval adage, "Pore be hangid by the neck; a rich man bi the purs." Hanawalt, *Crime and Conflict*, p. 54.

highlight the deceitful nature of the crime and to convince the trial jury that the defendant had committed a crime worthy of capital punishment.[123] The records of spousal homicides for Yorkshire and Essex reveal that this phrase was not restricted to petty treason, although it often appeared in such cases. To be sure, the account of the slaying of William Storour of Hirst by his wife, who then buried him under the stable before fleeing, was intended to convince the petty jury of her amoral character. The incorporation of the terms *noctanter* and *murdravit* into the indictment laid against William's wife confirms the grand jury's intentions.[124] Indictments of wife-killing, however, might also contain this damning detail. For example, in a case from the year 1393, the coroner's roll recounts the tale of John Thorpe of Sharlston who not only beat his wife to death with a staff, but then threw her body into the river to hide the evidence of his crime.[125] In this case, the jury may have had ulterior motives in mentioning concealment of the body: tossing a body into the water was usually a fairly permanent way of hiding the corpse. In the absence of a body, there might not have been much of a case against John. None the less, it is undeniable that the full account of the deed included in this indictment certainly communicated the grand jury's opinions and may have helped to shape the jury's findings in respect of John Thorpe. The appearance of this phrase in only 4 of the 233 cases of spousal homicide, however, would seem to suggest that it was not particularly relevant to cases of this type.

That the inclusion of the term *noctanter* or any of its counterparts did not automatically secure a conviction suggests that trial jurors dissented frequently from the opinions expressed by indicting jurors. In light of Bernard McLane's recent findings

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[123] Green, *Verdict According to Conscience*, p. 58.
[124] PRO JUST 2/242, m. 5d.
[125] PRO JUST 2/250, m. 1d.

concerning the status of indicting jurors, at first glance, this seems like an astonishing pattern. In his study of the records of a fourteenth-century trailbaston commission, McLane observes that local notables were far more likely to have participated in the administration of the law as presenting than as trial jurors.[126] Elizabeth Chapman Furber notes that this hypothesis seems to hold true for the county of Essex as well. Many of the jurors involved in the Essex sessions of the peace during the late fourteenth century were wealthy land-holders or independent small farmers whose family names were associated with landmarks within their communities.[127] The logic behind this concentration of notables in the first stages of the process was really quite simple: juries of presentment were believed to exercise an onerous responsibility. Not only did they have to identify who in the community had exceeded the limits of local controls and required royal intervention, through the use of phrases of afforcement they also took the lead in determining the final outcome of a case. With this kind of clout, it seems odd that trial jurors, whose single task was to deliver a final verdict, should have possessed the arrogance to overturn the preliminary judgements of their social superiors. Yet, as McLane notes, their decision may not have been as straightforward as one might think. Many of those acquitted by the courts probably were innocent. Defendants might spend anywhere from a few months to a year in prison awaiting gaol delivery; during that lengthy period, information might be brought forward that would cast new light on the case. Alternatively, there is an equally likely possibility that trial jurors opted for acquittal simply because they did not know for certain if the accused actually was guilty. If trial jurors were not in fact drawn from the surrounding area, they may not have been as confident as were the

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[126] McLane, "Juror Attitudes towards Local Disorder", p. 42.
[127] See Furber's introduction to the *Essex Sessions of the Peace, 1351, 1377-79* (Colchester: Essex Archaeological Society, 1953), p. 33.

grand jurors in a guilty verdict. And because death was the only penalty for felony, theirs was an important decision.[128] Moreover, as Green reminds us, trial jurors had minds of their own and were willing to use them. He notes that

> [t]he fact that the jury had in many cases decided upon its verdict even before it was sworn does not mean that it was not in many others influenced by the defendant's statements and bearing in court or by the tone or substance of the questions that the justices asked. The trial often may have constituted an important part of the process by which the jury informed itself or confirmed its earlier impressions.[129]

When confronted with a sincere and remorseful display by the accused, the members of the petty jury might well have preferred to acquit.

The case of John Gelles de Caldcotes demonstrates just how significant the disparity between the juridical opinions of two jurors might be. According to two separate entries in the Yorkshire coroners' rolls, on the Sunday after the Nativity of St John the Baptist in the year 1364, an argument arose between John Gelles and John Lanerok of Ormesby. The disagreement reached such a feverish pitch that Gelles's wife Agnes stepped between the two in order to quell the argument, but she quickly found herself on the wrong end of Gelles's knife. She died soon after, peacefully lying in her husband's arms.[130]

The coroner's inquest jury made it very clear that Agnes's death was an accident; Agnes received a blow meant for someone else which, according to the jurisprudence of the times, was a clear case of excusable homicide.[131] Excusable homicide was not, in fact, a felony and the defendant received an automatic pardon from the king. Moreover, the fact that

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[128] McLane, "Juror Attitudes towards Local Disorder", pp. 56-64.
[129] T.A. Green, *Verdict According to Conscience*, p. 18.
[130] PRO JUST 2/217, m. 10 and PRO JUST 2/218, m. 10d. This appears in almost identical form. It is likely that one roll was merely a copy of the other. This would explain easily why the case appears more than once without any significant change.
[131] See note 68 of Chapter Two.

Gelles's wife died in his arms emphasises her husband's remorse. Certainly in the opinion of the coroner's inquest jury, Gelles did not intend to kill his wife and so should not be held accountable for the act. This decision, however, is entirely at odds with that of a third account that appears in the gaol delivery rolls for Yorkshire some time later. While much less descriptive, the indictment is enlightening in its lack of detail. None of the events leading up to Agnes's death are included in the record. Instead, the roll states merely that John Gelles de Caldcotes feloniously slew his wife Agnes.[132]

It is impossible to determine exactly why there should be such a disparity between the two accounts; yet, given the similarity of Gelles's case to others from the period, it is possible to speculate on the motives of both juries. The demise of Agnes wife of John Gelles was far from exceptional in the late medieval period. Death while attempting to pacify an argument was not as rare a way for English wives to meet their death as one might think. The Yorkshire coroners' rolls alone include at least two similar cases.[133] Yet in both the wife met her death at the hands of the husband's enemy, rather than the husband himself. The intention of the coroner's inquest jury was clearly to accentuate the similarities between John Gelles's dilemma and that of these two other grieving husbands in order to prove to the courts that this was indeed an excusable homicide, deserving of an acquittal. The real question, of course, is what exactly were Gelles and Lanerok fighting about that so intimately involved John's wife? What if she had been the source of the argument rather than the mediator? What if she had been defending Lanerok, a lover, rather than her husband? This line of thinking may help us

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[132] PRO JUST 3/145, m. 41.

[133] Agnes wife of John Berier of Bedford of Bulmer was struck with a hatchet during an argument between her husband and Richard Stephenson of Hildershelf (PRO JUST 2/218, m. 31). Similarly, during an argument between her husband and John son of John of Shark, Margaret wife of John of Sandalworth was killed (PRO JUST 2/211, m. 10). There are many other cases similar in nature where the victim and accused were not related.

to understand why the trial jury felt so strongly about this case that it entered a record of the death so much at odds with the sentiments of the coroner's jury.

The use of phrases of afforcement by juries in indictments of domestic homicide brings this argument full circle, back to Roderick Phillips's depiction of spousal homicide as a calculated escape from marriage. The significant percentage of cases in which terms or phrases of afforcement were employed (a total of 33 out of 233 cases of spousal homicide in York and Essex included phrases of afforcement, or 14.2 per cent), might suggest that medieval jurors shared Phillips's morose perspective. Royal records of felony indictment for both counties emphasise the self-serving nature of some cases of petty treason, especially those in which accomplices were involved. Some indictments even suggest that the husband-slayings may have been the work of hired assassins. Thus, when Thomas Kirkyn of Tickhill was slain feloniously by two men, his wife Elena was included in the formal charge. The records report that not only did she consent, aid and abet the crime, she led (*conduxit*) the men to do it.[134] At least three other cases involving charges of petty treason employ this vocabulary. In cases of uxoricide, on the other hand, this phraseology is nowhere to be found. How better to assert pre-meditation than to argue that the wife had actually hired men to carry out the homicide? Moreover, the case of Alice Brounrobynsdoghter demonstrates that jurors equated the procurement of felons with the felony itself. According to the Yorkshire coroners' rolls for the year 1340, John Tathum actually carried out the slaying of Robert Wasshebergh, Alicia's husband, but Alicia was indicted for procuring him, and aiding and

[134] PRO JUST 2/217, m. 43.

abetting.[135] A later account of the same crime in the Yorkshire gaol delivery rolls credits Alicia with the actual murder, stating only that she feloniously slew him.[136]

Felony Indictments: What do the Details Reveal about the Opinions of Jurors?

The kinds of weapons employed in the homicide at times may have been included in the indictment with the specific intention of communicating the nature of the deed, that is, of clarifying whether it was the result of a cold and calculated design or a moment of sudden fury. For example, the indictment of Henry Bruning of Clapham, who was reported to have slain his wife Matilda in their home in the vill of Clapham with a piece of firewood, suggests that her death was precipitated by a heated argument rather than months of planning.[137] The indictment of Henry of Wensley, who shot his wife with a bow and arrow, however, has a different flavour about it entirely. A man does not in sudden anger remove himself to a distance, draw an arrow, take aim, and kill his wife.[138] Apart from the six cases of poison, though, there is nothing about the kinds of weapons employed in cases of petty treason to suggest that these were planned endeavours. Spousal homicides of both types offer up a plethora of household implements: breadknives, hatchets, staves, even the occasional hammer or fork. Husbands were far more likely to strangle or drown their wives, but the numbers do not demonstrate any significant trends.

Phillips's assertion that wives were more likely to plot against their husbands is reflected in the records in a more pointed way, however. The only cases in which spousal

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[135] PRO JUST 2/210, m. 1.
[136] PRO JUST 3/78, m. 28d. Philippa Maddern reports a similar case in her study of fifteenth -century East Anglia. Margery Andrewes was indicted for complicity in the murder of her husband Walter, although her lover Thomas Tatenell actually carried out the crime. Nevertheless, Margery was burned as a traitor as if she herself had committed the crime. See Maddern, *Violence and Social Order*, p. 104.
[137] PRO JUST 1/1098, m. 1d.
[138] PRO JUST 2/215, m. 21.

homicide was described openly as being the result of hot blood were uxoricides; in each of these situations the slaying followed hard on the heels of a nasty domestic dispute. The jurors of Yorkshire reported that an argument between Simon Shepherd of Rudston and his wife Alicia came to an end when Simon plucked an axe from the corner of the room and struck his wife with it in the head.[139] Likewise, when Bella wife of John Fuller of Tadcaster met her death at the hands of her husband it was also in the midst of a vicious marital spat. On their way home from the tavern at Tadcaster, the two were crossing the bridge over the Wharfe River when John, angered with his wife, threw her into the river, where she drowned.[140] In both cases, it is clear why such a full account was necessary. The wounds inflicted by Simon on Alicia did not cause the latter's immediate death. She languished for two weeks after the incident, finally dying confessed. Because the period of time between the incident and her death was so prolonged, it was critical for the jury to demonstrate that Simon's actions had indeed been the direct cause of her death. In the case of Bella wife of John, the need for an elaborate account is apparent. Despite John's flight, Bella's body had not yet been found. Without a corpse a detailed record of the jury's suspicions was required because those suspicions were the only evidence that a crime actually had taken place.[141]

The need for a fuller account than usual is apparent in both these cases. Accordingly, the absence of such detail in similar accounts is highly suspicious. Although it is dangerous to speculate from negative evidence, the reason other accounts of this sort do not exist may

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[139] PRO JUST 1/1109, m. 30d.

[140] PRO JUST 1/1109, m. 11.

[141] In the case of John Fuller of Tadcaster, it is also possible that such a lengthy account was intended to provide him with grounds for a suitable defence upon his return to stand trial. As historian Nigel Walker has noted, drunkenness was often equated with insanity by the royal justices of the later medieval era, such that an intoxicated man might not be held more accountable for his actions than a lunatic. See Nigel Walker, *Crime and Insanity in England. Volume One: The Historical Perspective* (Edinburgh, 1968), p. 39. Naomi Hurnard makes a similar argument. See Hurnard, *The King's Pardon for Homicide*, pp. 168-9.

well be because slaying in hot blood represented the normative process of domestic homicide. Why would a royal clerk state explicitly that a man feloniously slew his wife during an argument if that was how most spousal homicides occurred? Given that scribes were more inclined in general to remark on the atypical and the abnormal, there is a strong argument here to suggest that most domestic homicides were the outcomes of sudden anger.

Moreover, cases of petty treason more often were described in meticulous detail, even if the details were all too likely pure fiction. In cases of this sort, it seems clear that the coroner's inquest jury fully appreciated the shock value of these particulars, and realised that a little embellishment might be utilised more effectively than stock phrases to ensure conviction. For example, in a homicide from the year 1346, we are told the story of John of Bingham. While he was kneeling and praying before the altar in the church of Aberford in Yorkshire one day, three men entered the church and struck him with a sword and two knives in the chest, head and back so that he immediately died. The records go on to declare that his wife Hawysia not only abetted the felony, but also procured the men who carried it out.[142] Had the inquest jury reported that this crime took place by night, on the king's highway and had been committed by a common, notorious felon, they might not have been assured the same judicial response that a full length entry of this crime, brimming with images of Becket's murder at the Cathedral, would produce. The inclusion of shocking details of this vile conspiracy and sacrilegious bloodshed, whether they actually occurred or not, was the closest the inquest jury could come to actually tying the noose themselves.

The tendency of juries to employ phrases of afforcement in cases of petty treason

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Bearing this in mind, the mention of the detail that Fullo and his wife were returning from the tavern at the time of the incident was likely to prepare the court for the pardon he was hoping to receive.

[142] PRO JUST 2/214, m. 5.

more often than they did in cases of uxoricide suggests a number of conclusions. First, later medieval England had a higher tolerance for abuse of wives than of husbands. This finding is not surprising. It has long been argued that there existed "strong social and cultural inhibitions against the use of force by women as a means of settling disputes."[143] In his study of violent crime in thirteenth-century England, J.B. Given observed that this widespread sentiment is apparent in the kinds of verdicts handed down to women accused of homicide. A woman stood a much greater chance of being sent to the gallows for homicide than did a man (33.3 compared to 18.3 per cent).[144] The frequent use of suggestive vocabulary in indictments for petty treason strengthens this argument. Second, these findings indicate that jurors were not outraged or shocked by the nature of wife-killings in general. Nor were they so incensed by these crimes that they sought to ensure a spouse's conviction. The more frequent inclusion of these key phrases in inquests for petty treason suggests the reverse. Jurors were more scandalised by cases of petty treason than wife-killing, and often sought to ensure that husband-killers would not escape punishment. These findings, then, substantiate what other historians have posited about contemporary social perspectives. Wife abuse was not regarded as exceptional; husband abuse broke all the rules.

Degrees of Culpability

The careful reworking of indictments in order to secure a conviction demonstrates that indicting jurors, in particular, exercised their own interpretation of culpable homicide, one that conflicted with current legal definitions. Until the end of the fourteenth century, medieval common law dictated that any deliberate slaying should be treated as a culpable

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[143] J.B. Given, *Society and Homicide*, p. 137.
[144] *Ibid*, p. 137.

homicide; medieval juries, however, were clearly much more focused on the issue of intent than were royal justices. The kinds of phrases of afforcement employed in indictments were intended to highlight the deceitful nature of the slaying. These incidents were not the outcome of hot blood; they were committed in a stealthy or secretive fashion. J.M. Kaye has argued that the first indications that medieval juries were beginning to distinguish between degrees of culpability in cases of homicide can be traced to the use of the term *murdrare*[145] which, he contends, appears for the first time in a petition by the Commons in the year 1347. The petition complained that because the king freely granted pardons to whomever he pleased, he had "greatly encouraged *Murderers, embleours des gentz, roberies, homicides & autres felones.*"[146] Kaye was careful to note, however, that "murder" in this context, and its companion term "malice aforethought" (*malicia precogitata*), did not imply premeditation as they do today; rather they included "killings by secrecy or stealth, killing from ambush, and ... all other killings which gave rise to no recognised defence."[147] The distinction made between degrees of culpability may not have constituted unambiguous recognition of the difference between premeditated homicide and manslaughter, but it was the first step towards it.

Kaye further argued that this subtle discrimination in degrees of culpability did not make its way into the courts of medieval England until the issue of a peace commission in 1380 in response to widespread anxiety over highway attacks and ambushes. He saw this as an important marker in legal understandings of culpable homicide. Before the 1380 commission, homicides were recorded only as incidents of *felonice interfecit* (feloniously

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[145] In contrast to *murdrum*, a "murder fine" that was imposed upon communities that were unable to prove the English ancestry of a homicide victim. See note 19 on p. 191 of this chapter for a fuller explanation. This fine was abolished in 1340, although the sense of the fine itself probably died out a long time before that.

[146] Kaye, "The Early History of Murder and Manslaughter", 378.

[147] *Ibid*, 392.

slew) or *occidit* (killed); after 1380, *murdravit* appeared for the first time in homicide indictments, indicating that the homicide indeed had been carried out with stealth.[148] This important distinction was not adopted officially by the courts, however, until it appeared in a statute of 1390 stating that pardons would no longer be granted to those who committed murder.[149]

Kaye's view of the emergence of this new terminology is based on his reading of statutory law; not surprisingly, more recent historians have suggested that this over-reliance on royal statutes led him astray.[150] John Bellamy notes that thirty years before the statute of 1390 the term *malicia precogitata* was commonly used, often as the antonym of *impetuose* (impetuously or rashly), suggesting that the distinction between premeditated homicide and a slaying in sudden anger existed long before the official recognition in the law codes. Bellamy blames the medieval jury for the common law's late recognition of this practice. Before 1390, a legal distinction in grades of culpability simply was not required, because in cases of manslaughter a defendant might plead self-defence and have his story accepted by the jurors.[151] Consequently, the use of terms such as *murdrare* or *malicia precogitata* in indictments prior to the 1390 statute was intended not only to communicate the seriousness of the crime to the petty jury (and thus to evade any possibility of escape on the grounds of self-defence), but to indicate as well that this was indeed a premeditated act.

Thomas Green, too, acknowledges, that the phrase *malicia precogitata* might have been used to communicate "true premeditation". He argues that the year 1380 places the

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[148] *Ibid*, 383-4.
[149] 13 Richard II, Stat. 2, c. 1.
[150] Kaye did use actual case records to support his contentions; however, his study was restricted to published sources, and in 1967 few records of felony indictments were available in published volumes.
[151] Bellamy, *The Criminal Trial*, pp. 61-3.

emergence of this distinction at too late a date. Instead, he maintains that throughout the fourteenth century jurors employed this vocabulary in order to indicate crimes of stealth. Green sensibly notes, however, that while jurors were conscious of premeditation, and may have voiced their opinions from time to time using the term *malicia precogitata*, premeditation was not a necessary element of murder; rather, the "planning was merely incidental to most acts of stealth."[152]

The records of felony indictment for Yorkshire and Essex reflect the contentions of both Bellamy and Green that premeditation influenced the jury's opinion of a case. Although a variety of phrases of afforcement, including the term *murdravit*, were used in the myriad cases of spousal homicide, *malicia precogitata* is absent entirely. The case of John Berney of Colchester, however, suggests that premeditation was an important consideration even if the standard vocabulary does not appear in these records. Moreover, it suggests that popular conceptions of culpability were sometimes very complex. One night in October of the year 1382 in the borough of Colchester, Essex, an argument broke out between John Berney and his spouse. Enraged by something his wife had said to him, John grabbed his staff with the intention of striking her. However, "by accident" (*ex infortunis*) and entirely "against his will" (*contra voluntatem suam)*, the staff missed its target and struck his 20-week-old daughter, Christina, so seriously that she died within the hour.[153] Although the record clearly states that Christina's death was bereft of intent, John fled the scene and never returned to stand trial. While the shaping of the indictment suggests that the grand jury believed this to be an excusable homicide, John's flight provides a glimpse of his own perspective. Irrespective of the jury's view, John certainly thought himself guilty.

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[152] Green, *Verdict According to Conscience*, p. 56.
[153] PRO JUST 2/33a, m. 11d.

The unfortunate death of Christina Berney is not the only case of its kind to appear among the royal records of indictment for Essex and Yorkshire. The Yorkshire assize rolls include two similar cases. Although John Walrand of Aike struck and killed his son William in the village of Hartley in the late thirteenth century, his blow, too, was intended for his wife.[154] He fled, perceiving his actions to have been culpable. The case of Ralph of Muscoates was of a much more serious nature. Wishing to strike his wife Elena with an axe, Ralph was surprised when she stepped aside and the axe landed squarely on the head of their son William so that the latter immediately died.[155] In the first two cases, the blows administered were not meant to be fatal. That they proved so speaks more to the age and fragility of the victim than to the blow delivered. The swing of an axe, however, was meant to kill. This fact may explain why Ralph's indictment contains none of the language evident in John Berney's account. Although the blow was aimed at his wife, it is not described as "an accident" or as having been "against his will." Like the other two men before him, Ralph also fled the scene of the crime; thus we will never know how the court might have dealt with his case. Given the brutal nature of the slaying, Ralph may well have encountered a more hardened jury than did his fellows. However, the care taken by all three juries to imply that the homicides were not deliberate would seem to suggest that all three were destined for acquittal.

These three cases raise some important questions. First, with such a thin line between accidental death and homicide, how many cases of misadventure in the coroners' rolls cloak an actual case of spousal homicide? While these three enrolments are explicit in describing the death, other cases may have been recorded merely as an *infortuna*. Second, how common

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[154] PRO JUST 1/1051, m. 37d.
[155] PRO JUST 1/1109, m. 21d.

was this situation as a defence? Berney, Walrand and Muscoates all found a sympathetic ear in the coroner's inquest jury. There is a lesson for the modern reader in these stories. Clearly, a strong defence in a case of homicide was to argue that the blow was meant for someone else (preferably one's wife). More important still, all three of these cases make an interesting point about premeditation. Why were these juries so eager to prove that these deaths had not been premeditated? Presumably because whether it appears in the records or not, premeditation was taken into consideration by the juries and used to guide them in their decisions.

Spousal Homicide and Insanity Pleas

Medieval records of felony trials do not include the accused person's response to the formal charges. The only traces of a defence appear in cases in which the defendant is described as having been *non compos mentis*. Medieval common law was very explicit in cases of insanity. The mid-thirteenth century treatise attributed to Bracton stated that "a crime is not committed unless the will to harm be present."[156] Those suffering from lunacy were thought to be innocent of intent, and therefore were not held responsible for their actions, even in cases of homicide or treason. Until the late fourteenth century, when the first public asylum was established in London, the courts of medieval England usually held the family of the lunatic accountable: such persons were released to the guardianship of their family whose members were in turn expected to restrain further violent activity. In cases of irremediable violent lunacy, it was possible for the justices to require perpetual imprisonment, although this practice seems to have been very rare.[157] In her study of the king's pardon to the early

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[156] As quoted in Walker, *Crime and Insanity in England*, p. 26

[157] Although in my own research I found no such treatment of lunatics, Walker notes the early thirteenth-century case of man named only as Ralph, described as being "out of his wits and senses," who had confessed to killing another man. The solution of the court was to put Ralph in prison, where he "will be for ever so long as he shall live, by order of the justices." See Walker, *Crime and Insanity*, p. 19.

fourteenth century, Naomi Hurnard notes that insanity pleas were sometimes difficult to sustain, particularly cases of temporary insanity. Therefore, the safest defence possible was to assert that after committing the crime the accused had also attempted to take his or her own life.[158]

Elizabeth Foyster's research on late seventeenth-century England suggests that defences of insanity proffered in cases of spousal homicide were riddled with even more problems. She notes that when cases of wife abuse appeared before the courts, allegations of madness cropped up fairly regularly. Madness, however, was used not as a defence for a husband's actions, but to condemn the act of wife beating (that is, only a mad man would beat his wife).[159] In some ways, this perspective must have facilitated the accused's defence. In cases of temporary insanity, however, the story probably varied considerably. Once a considerable amount of time had elapsed before a trial jury was faced with an exceedingly sober and lucid wife-killer, a defence of insanity was not easily sustainable. The case of Richard Sharp of Maltby, Yorkshire, reflects the problematic nature of temporary insanity pleas. According to the jury,

> for four years before the death of the said Agnes, Richard has been of unsound mind on occasion, sometimes for a quarter of a year, sometimes for longer. On that day, he was in such a state and lacking and deprived of his senses, he came one morning to Maltby and entered a house where his wife Agnes was staying. He carried with him an axe and in a rage struck her on the head and wounded her so that she died immediately. They say that for two months before the said deed, during the deed and for a month after it he remained *non compos mentis*. They say that he was in that state when he killed Agnes, and that she did not die as a result of felony or malice

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[158] Hurnard, *The King's Pardon for Homicide*, pp. 165-6.
[159] Elizabeth Foyster, "Male Honour, Social Control and Wife Beating in Late Stuart England," *Transactions of the Royal Historical Society*, 6th series, 6 (1996), 221.

> aforethought. Richard is therefore remitted to gaol, to await the king's grace, and nevertheless he has not fled.[160]

Given the shaky domestic situation of Agnes and Richard prior to the killing, it is easy to see why a lengthy and exaggerated defence was required. If Agnes was no longer living with her husband (as the record would suggest), Richard's actions might well have been interpreted as the last word in an ongoing marital spat. None the less, the jury's account makes it very clear that Richard's actions were not premeditated, and that Agnes's desertion was linked intimately to her husband's unstable mental state. The latter point on its own is significant. While this statement does not speak to the church's position on marital cohabitation, it does at the very least suggest that the English laity did not expect a woman to continue living with her husband under such conditions.

Richard received a pardon for his crime, although the record of his indictment suggests that this was no easy feat. Unfortunately, there exist no records for a woman in the same situation and it is thus difficult to know if the king's mercy applied differently according to the gender of the accused.[161] Still, the findings of some recent historians suggest that Richard's defence required a great deal of elaboration not merely because it was a case of temporary insanity, but precisely because of his gender. In his study of suicide in the late

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[160] "... predictus Ricardus quatuor annis elapsis ante mortem predictem Agnetis non fuit compos mentis sue per vices videlicet quandoque per quaternium anne quandoque per maius tempus ... et quod ipse in tali statu existens & omnino sensu suo carens & privatus venit quodam die mane apud Malteby et quidam domum in qua predicta Agnes uxore sua manebat intravit & cum quadam securi quam in manu gerebat eam in furore suo in capite percussit & fecit ei quidam plagam unde statim obiit unde precise dicunt quod per duos menses ante factum et in facto et per unum mensem post factum illud fuit idem Ricardus amens & in nullo compos mentis suis & quod ipse in tali statu existens predictam Agnete uxorem suam occidit & non per aliquam feloniam aut maliciam excogitatem. Ideo remittitur gaole custodiendum ad expectandum gratiam domini Regis Non fugit verumptamen catalla euis iii s vi d unde villa respondetur." PRO JUST 3/74, m. 3/14.

[161] The only account of a husband-killing induced by a bout of lunacy is from late thirteenth-century Yorkshire. Matilda, wife of Hugh of Wray, slew her husband while he was sleeping. Matilda's case never came to trial, however, because she died soon after the incident. See PRO JUST 1/1078, m. 81.

medieval period, Alexander Murray notes a striking predominance of *non compos mentis* verdicts among female victims.[162] Given contemporary perspectives on the weakness of the female mind and feminine susceptibility to the temptation of the devil, the medieval English courts likely forgave insanity in women more easily than in men.

Acquittal Rates and Medieval Justice

The court's failure to prosecute adequately cases of spousal homicide is evident in high acquittal rates. Out of the sixty cases of uxoricide from both counties that actually went to trial, the jury overwhelmingly sentenced in favour of the defendant: there were 46 acquittals[163], 10 hangings, 2 convictions (without any indication of the penalty assigned), one judgement of *sine die* and one case of *peine forte et dure*. The numbers show that the conviction rate of accused wife-killers was only 20 per cent. An accused petty traitor faced much greater odds, with a 34.7 per cent chance of conviction. Of the 49 cases of husband-killing tried before royal justices in the courts of medieval Yorkshire and Essex, 32 women were acquitted, 14 burned, 2 hanged, and one convicted only (without any indication of the penalty assigned). These figures are fairly typical of execution rates for general homicide in the medieval period. For example, J.B. Given notes a 29.9 per cent execution rate for indicted felons who appeared before the court to stand trial in the thirteenth century.[164] This is not significantly different from either a 20 per cent execution rate for wife-killers, or 34.7 per cent

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[162] Alexander Murray, *Suicide in the Middle Ages: The Violent Against Themselves* (Oxford, 1998), pp. 384-5.

[163] At least two of these acquittals were most likely granted on the grounds of insanity: the one discussed above on pp. 238-9, and the case of William Proudfoot of Barnby. Although the records do not indicate that a plea of insanity was put forward in William's case , the fact that he not only killed his wife Joanna, but also his eighteen week old son William strongly suggests that his acquittal was granted on that basis. See PRO JUST 2/227, m. 10.

[164] J.B. Given, *Society and Homicide in Thirteenth-Century England*, p. 97.

for petty traitors. None the less, all of these figures are much lower than one might expect. When execution was the only acceptable penalty, trial juries were much more likely to acquit.

Two specific cases of wife-killing, however, demonstrate that the role of trial juries did not constitute the only obstacle to medieval justice. The failure of grand juries to present felonies may have aggravated the situation by permitting known offenders to reoffend. For example, when Robert Frere of Crofton came before the king's justices in 1346, he was charged with multiple crimes. First, on the Monday before All Saints in the year 1339, he feloniously slew his wife Cecilia at Crofton. More than a year later he feloniously burgled the grange of Jacob of Crofton, fleeing with goods valued at five shillings.[165] The period of seven years between Frere's second crime and his trial seems excessive; however, in a time before investigative policing, justice might be very slow. It was not unusual for a defendant to spend a lengthy amount of time in gaol awaiting trial.[166] While seven years might be longer than most, it might be explained quite easily. Like most medieval felons, Frere probably fled the scene of the crime, and was either captured by accident at a later date or turned himself in once he was convinced that his chances of being acquitted had improved.[167] The year-long hiatus between crimes, however, is inexplicable. The exact date identified in the death of Cecilia wife of Robert Frere makes it clear that her death did not go unnoticed. If the jury was confident enough in their evidence to indict Robert for her death, how, in good conscience, might they have permitted him to roam free for a whole year, allowing him to

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[165] PRO JUST 3/78, m. 46d

[166] Barbara A. Hanawalt notes that justices of gaol delivery were supposed to be delivered twice yearly, suggesting that an accused felon might expect to spend six months awaiting trial. See her *Crime and Conflict in English Communities 1300-1348* (Cambridge, 1979), p. 5.

[167] Some cases of spousal homicide took a very long time indeed to come to trial. For example, when Thomas de Wod finally appeared before royal justices in 1341 to answer charges of having slain his wife Margaret, twenty-five years had passed since her death (PRO JUST 3/77, m. 4/11d). Similarly, William Cryske managed to elude justice for sixteen years after the death of his wife Alicia (PRO JUST 3/176, m.

commit a second act against the community? The altogether unpleasant conclusion to be drawn from this example is that Robert's behaviour was not considered egregious enough for royal intervention until after he committed the robbery.

The case of John Walker of Great Driffield is even more unnerving but, at the same time, an excellent example of how failure to prosecute a felon might have dangerous ramifications. When Walker appeared before the king's court at York in 1366, he was accused of slaying not one, but two wives. His first wife, Cecilia daughter of Robert Donays, was killed on the Sunday before St Martin in the year 1362. His second wife, Cecilia formerly wife of William de Cayton, met her fate on the Saturday after the feast of Saints Peter and Paul two years later.[168]

Most Englishmen or women who killed their spouses in the later Middle Ages were not even prosecuted. Like most medieval felons, a majority of accused spouse-murderers (56.2 per cent) fled the scene of the crime and were never heard from again. In this case, the sheriff immediately began the process of exaction. If a suspected felon failed to appear at five subsequent sessions of the county court when summoned, he was outlawed (or waived, if the felon was female). An outlaw forfeited the protections and privileges of the law, and if captured, might be beheaded on sight (at least until the fourteenth century when legislation forbidding this practice was enacted). Moreover, people who harboured a known felon or even permitted one to enter their home were indictable at law, and ran the risk of being hanged themselves as felons. Outlawry, then, was usually regarded as a great disadvantage. At the very least, it required the felon to resettle in a new community, which must have been a

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14). Both men were acquitted; in all likelihood, the verdict in each case reflects the difficulty of trying a case after members of the community had long since forgotten what happened.

[168] PRO JUST 3/155, m. 7d.

difficult process for single women. Naomi Hurnard contends that English outlawry was not as harsh as the laws might suggest. She argues that

> many outlaws remained in England and did not lose contact with their families and neighbours. Some settled successfully and undetected under new names in new localities. Those who went abroad could find new friends there or at any rate settle down and earn a sufficient livelihood.[169]

Once again, Hurnard's vision highlights the gap between popular perceptions of culpability and legal requirements. Some wife-killers were simply allowed to escape because their neighbours and friends believed the wife had got what she deserved. This perspective is supported strongly by the discrepancy of gender in flight figures of accused persons. While 67.8 per cent of wife-killers fled the scene of the crime and failed to reappear at a later date, only 34.6 per cent of petty traitors attempted flight.[170]

Not all spouse-murderers disappeared completely. If a felon was able to reach the safety of a church without being captured by the local authorities, he or she might take sanctuary there for up to forty days before deciding what course of action to pursue. Some felons may have used this time to initiate the pardoning process. Friends and family members were often engaged to petition the king for a pardon in the felon's absence. In fact, this may have been usual, though few spouse-murderers appear to have taken advantage of it (only two wife-killers, in fact). Alternatively, a person might stay long enough in sanctuary only to make a confession to the county coroner before abjuring the realm forever. In this situation, the abjurer was given strict instructions to travel to the nearest port, never veering from the

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[169] Hurnard, *The King's Pardon for Homicide*, pp. 33-4.

[170] Of course, it is essential to take into consideration the simple fact that it was easier for men in this period to flee and make a life elsewhere than it would have been for women. As Ruth Mazo Karras has demonstrated, working as a singlewoman in the late medieval period was not very common because there existed numerous preconceptions about the sexuality of singlewomen. Men, who did not encounter these same biases, must have found it much simpler to resume life as a bachelor. See Ruth Mazo Karras, "Sex

king's highway, and to take the first ship available out of England. Abjurers found off the king's highway were hanged (like any other convicted felon) or arrested. Once again, however, many felons who chose to abjure the realm probably returned at a later date and simply resettled in a new location. Moreover, some abjurers failed to leave the country at all, taking advantage of the first unsupervised moment to lose themselves conveniently in the impersonality of a large urban setting. Altogether, abjuration was not a popular option for people convicted of spousal homicide. But, like pardoning, it was an option available to persons accused of spousal homicide. The willingness of the court to apply the laws governing outlawry and abjuration to spouse murderers strongly demonstrates that domestic homicide was not widely believed to be an exceptional crime.

Conclusion

Because of the fragmentary and disjointed nature of the evidence, felony indictments for the counties of Yorkshire and Essex cannot tell a complete story about levels of spousal abuse in the later Middle Ages for either county, much less for England as a whole. None the less, it is important to acknowledge that the silences of extant records can often be just as revealing as their avowals. Two features are noticeably absent from these accounts. First, there are no indictments or appeals for assault by a spouse, even though a form of writ existed specifically for this purpose. Pollock and Maitland note that the writ required a husband "to treat and govern her [his wife] well and honestly, and to do no injury or ill to her body other than that permitted lawfully and reasonably to a husband for the purpose of control and

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and the Singlewoman," in Judith M. Bennett and Amy M. Froide (eds), *Singlewomen in the European Past, 1250-1800* (Philadelphia, 1999), pp. 127-45.

punishment of his wife."[171] Despite the explicit recognition, then, that a husband's behaviour might sometimes exceed the limitations of chastisement and require legal intervention, none of the wives in this study chose to exercise this provision. This finding is not entirely unexpected. In all of the records for both counties, there are only two cases of assault between family members, and in both these cases the appellor was male (presenting against his brother).[172] Given the fact that both counties together boast a total of 1367 assaults over the course of the later medieval period, 2 cases of intrafamilial assault certainly represent a very small percentage. It seems very clear from the records of royal indictment that violence between family members (especially spouses) was not regarded as a matter for the king's courts.[173]

Second, the records of felony indictment for both Yorkshire and Essex also do not suggest a high concentration of domestic homicides. Representing 2.63 per cent of all homicides for the two counties over the course of the later medieval period, spouse-murder was certainly not a frequent occurrence. Despite the sometimes alarming subject matter of these court records, the low numbers offer a positive assessment of the late medieval situation. Spousal homicide as an extreme manifestation of domestic violence was nevertheless not widespread in late medieval England. Indeed, the fact that some cases made their way into the records of the royal courts confirms that there were limits to abuse, and that homicide as a manifestation of such mistreatment was discouraged. Equally significant is the fact that out of the 10594 cases of violent crime recorded in the surviving record materials of

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[171] As cited by Kerr, "Husband and Wife", p. 214.
[172] See PRO JUST 1/253, m. 2d, and PRO JUST 1/1125, m. 7.
[173] As discussed in Chapter One, pp. 74-5 Pollock and Maitland note the existence of a form of writ designed for wives to prosecute abusive husbands. Although this would seem to suggest that the courts themselves may have considered spousal abuse a valid form of assault, its total absence from the actual records strongly argues that popular opinion held otherwise.

the two counties, 125 couples worked side by side to commit (or aid in) crimes. Thus, 1.18 per cent of violent crimes were thought to have been carried out (or assisted) by a married couple. While neither figure portrays an ideal couple, the latter is significant: medieval spouses were almost half as likely to team up to assault or slay someone else as they were to kill each other.

The notion that spouse-murder in general was a cold, calculated act finds little support in the records for both Yorkshire and Essex. While some deaths certainly resulted from cunning, secretive plots, they represent the exception, not the rule. On the other hand, Phillips's perception that gender determined rates and influenced general attitudes does have a basis in reality. Although English wives did not engage in spousal homicide as often as Phillips suspects, the royal records suggest that petty treason was considered to be an especially outrageous crime, more worthy of conviction than wife-killing. In light of fourteenth-century attitudes towards aggressive wives, surely this finding comes as no surprise. If English communities of the late medieval period willingly and eagerly punished women for verbal aggression, then no less should be expected of their treatment of physically violent women. Scolding may well have been interpreted as but the first step on the road to petty treason.

TABLE #2: **PHRASES OF AFFORCEMENT**

		Noctanter	*murdravit*	*in lecto suo*	*in regia via*	outcome
PETTY TREASON						
YORK						
Just 2/242, m. 5d*	Alicia wife of William Storour of Hirst	Yes	Yes	No	No	Fled
Just 2/215, m. 2	Beatrice wife of Alan of Barnburg	Yes	No	No	No	Acquitted
Just 3/199, m. 5	Beatrice wife of John Foweler of Ottringham	Yes	Yes	No	No	Hanged
Just 3/165a, m. 19	Cecilia wife of Robert Sagher of Bedale	Yes	No	Yes	No	Acquitted
Just 2/210, m. 1	Elena wife of John Aspillion of Sowerby	Yes	No	No	No	Fled
Just 1/1109, m. 17	Isabella wife of Roger Byreston of Manfield	Yes	No	Yes	No	Acquitted
Just 2/218, m. 5	Johanna wife of Roger Rudbrade	Yes	No	Yes	No	
Just 1/1078, m. 81	Matilda wife of Hugh of Wray	No	No	Yes	No	Died before trial
ESSEX						
Just 2/33a, m. 5d	Margaret wife of John Trilly Jr. of Walden	Yes	Yes	Yes	No	Burned
Just 3/129, m. 4d	Margery wife of John atte Wyndmilne	Yes	No	No	No	Burned
Just 1/238, m. 47	Matilda wife of John son of Michael	Yes	No	Yes	No	Fled
Total Number:	11					

*Most cases appear in more than one roll, but only one reference has been recorded for each.

TABLE #3: ***WIFE-KILLINGS***

PHRASES OF AFFORCEMENT

		Noctanter	*murdravit*	*in lecto suo*	*in regia via*	outcome
YORK						
Just 2/242, m. 5	Richard Johnson de Wallerthwayt	No	Yes	No	No	Fled
Just 2/217, m. 44d	William de Wynberg of Spaldington	Yes	No	Yes	No	Fled
Just 2/212, m. 16d	John Roper of Walton	Yes	No	No	No	Fled
Just 3/82, m. 7/8	Robert Cartwright of ThorNo m	No	Yes	No	No	Benefit of Clergy
Just 3/83, m. 20/14	Thomas Ravenfeld of Roderham	No	Yes	No	No	Hanged
Just 3/169, m. 28d	John de Sheles de Gatesheved	No	Yes	No	No	Acquitted
Just 2/242, m. 5d	Thomas Souter of Ulleskelf	No	Yes	No	No	Acquitted
Just 3/184, m. 1	John Wryght of Kilham	Yes	Yes	No	No	Hanged
Just 3/191, m. 26d	Thomas Midelewode of Doncaster	No	Yes	No	No	Acquitted
Just 3/199, m. 2d	John Norham of Harley	No	Yes	No	No	Imprisoned awaiting trial
Just 1/1108, m. 4d	Alexander Tothot	Yes	No	No	No	Hanged
Just 1/1108, m .5	Robert Brown	Yes	No	No	No	Fled
Just 1/1101, m. 29	Stephen Godhayer of South Kirkby	Yes	No	No	No	Fled
Just 1/1101, m. 31	John Woulfe of Doncaster	Yes	No	No	No	Fled
Just 1/1078, m. 43	Robert Sepil	Yes	No	No	No	Fled
Just 1/1051, m. 9	Henry son of Jordan the Fool	Yes	No	No	No	Fled
Just 1/1051, m. 9	William the ____ de Calehorn	No	No	No	Yes	Fled
Just 1/1098, m. 5	Henry son of Matilda of Bashall	Yes	No	No	No	Hanged
ESSEX						
Just 2/33b, m. 2	John Reedshull de Lukton	Yes	No	No	No	Imprisoned awaiting trial
Just 1/232, m. 9d	Sir Roger of Benton	Yes	No	No	No	Convicted
Just 1/233, m. 58	Simon the Welsh	Yes	No	No	No	Fled
Just 1/242, m. 75d	Randalph the Vagabond	No	No	No	Yes	Fled
Total Number:	22					

Chapter 4:

"Love on the Rocks": The Acceptability of Marital Violence in the York Cause Papers

One of the standard lessons of medieval history is that during the Middle Ages marriage was indissoluble. Once the vows had been uttered, there was no turning back. For modern-day historians, this kind of permanence of the conjugal union may seem almost grim and forbidding, particularly given the predominance of parents and other family members to involve themselves in spousal selection. Nevertheless, research over the past century has demonstrated that medieval marriages were not as enduring as was once thought. The proliferation of canon laws regulating impediments to marriage (such as consanguinity, affinity, and sponsorship) caused F.W. Maitland to declare that "spouses who had quarrelled began to investigate their pedigrees and were unlucky if they could discover no *impedimentum dirimens.*"[1] Since Maitland's time, egged on by investigation into the practice rather than theory of canon law, historians have rejected his cynical contention that distressed spouses exploited the provisions for annulment by seeking out impediments of relationship to escape the perpetuity of marriage. Instead, they have offered the hypothesis that unhappy couples turned first to the laws of bigamy. During the Middle Ages, bigamy (or precontract as it was then described) occurred much more frequently than today, owing to the fluctuating definition of medieval marriage. Medieval wedding ceremonies might be ambiguous – the only legal requirement was an exchange of vows (though with no set vocabulary)[2] expressing mutual consent in the present tense. While clergy at all levels regularly preached against

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[1] As cited in R.H. Helmholz, *Marriage Litigation in Medieval England* (London, 1974), p. 75. See the Introduction, notes 43 and 44 for a fuller discussion of these impediments.

[2] Although there was no set vocabulary required by the church to create a valid marriage, the vocabulary employed by Englishmen and women in marriage vows was remarkably fixed.

clandestine unions and insisted on ecclesiastical solemnisation of marriages at the church door, ironically, they were thwarted in their efforts by canonical sanction of these marriages.[3] The unpretentious nature of such a ceremony often led to uncertainty about whether or not a marriage had actually been contracted. The simplicity of the exchange created a situation ripe for manipulation, one that has become the focus of much recent debate. Michael Sheehan has argued that the private nature of many marriages furnished disgruntled individuals with a "way out": it was possible suddenly to "remember" an earlier union and request that the court annul a more recent marriage.[4] Likewise, it has been suggested that "[m]edieval marriages were more dissoluble than the rules would suggest ... because everyone, or at least many people, could come up with a precontract."[5] Richard Helmholz has observed that terminating a marriage was often even less complicated. Unhappy couples bypassed the laws altogether and simply divorced themselves, parting by mutual consent to carry on their separate lives.[6]

To this debate Frederik Pedersen offers an intriguing anecdote. In his recent investigation into the extent to which the medieval laity was familiar with and understood the canon laws of marriage, he reports the case of Palmer *c.* de Brunne and Southbrunne which

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[3] The medieval church had no choice but to approve clandestine unions; the only other option was to denounce the vast majority of Christians across Europe as fornicators, an alternative that might have diminished support for the church significantly. While the church courts of the medieval era were empowered to punish individuals who married without the presence of a priest, it was enforced irregularly and informal marriages continued to be the norm until well into the early modern era. It was not until the Council of Trent in the mid sixteenth century that the church took a firm stance on the matter, issuing an official decree which stated that a priest must be present at the exchange of vows in order for a marriage to be valid. A subsequent decree in 1827 directed to the Irish would suggest that the church's attempt to extirpate clandestine marriage altogether from Western Christendom was not universally successful. See Art Cosgrove, *Marriage in Ireland* (Dublin, 1985), p. 2. For a history of informal marriage in the English setting, see R.B. Outhwaite, *Clandestine Marriage in England, 1500-1850* (London, 1995).

[4] Michael Sheehan, "The Formation and Stability of Marriage in Fourteenth-Century England: Evidence of an Ely Register," *Mediaeval Studies* 33 (1971), 252.

[5] Charles Donahue, Jr., "A Legal Historian Looks at the Case Method," *Northern Kentucky Law Review* 19 (1991), 27.

[6] Helmholz, *Marriage Litigation*, p. 59. Helmholz does argue that self-divorce in the Middle Ages was not merely a form of wife repudiation, as some historians have suggested. More often than not the separation of the couple was rationalised as being "vaguely canonical," meaning that the couple perceived their

appears in the York consistory court in the year 1333.[7] The plaintiff Alice Palmer confessed openly before the archbishop to having exploited the provisions for annulment in order to undo an unhappy marriage. Apparently in collusion with her father, she procured the assistance of a man named Ralph Fouler and paid him to appear in court to testify that he had contracted marriage with Alice well before her exchange *de verbi praesenti* with Geoffrey de Brunne. This blatant defrauding of the ecclesiastical judicial system came to light a number of years later (for a variety of reasons), but only after Geoffrey had married Joanna Southbrunne. Although the outcome of this hapless story does not survive, it seems safe to assume that canon law prevailed and Geoffrey's marriage to Joanna was annulled while Alice and Geoffrey were compelled to resume their earlier union. Most interesting about this particular case is the conclusion at which Pedersen arrives after his examination of the incidents leading up to the deception. He writes:

> [t]he case of Palmer c. de Brunne and Southbrunne (CP E 25) seems to indicate that the courts might instruct individual members of the laity on how to obtain an annulment when their marriages were clearly beyond repair. Such action by the courts was strictly uncanonical and contrary to the law. But a strong impression is created by the facts of this and other cases in the Cause Paper material that individual members of the court would turn a blind eye to fraudulent claims.[8]

Pedersen's interests clearly lie in the means by which individuals came to understand how the provisions of the canon law applied to marriage and how they might manipulate these laws to their own advantage. He begins with the rather flawed assumption that knowledge of the canon law was the preserve of the educated; unlettered people presumably were taught

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marriage to be invalid for one reason or another. In this way, the laity was acting within the bounds of canonical doctrine, but without ecclesiastical sanction.

[7] Frederik Pedersen, "Did the Medieval Laity Know the Canon Law Rules on Marriage? Some Evidence from Fourteenth-Century York Cause Papers," *Mediaeval Studies* 56 (1994), 145-7.

[8] *Ibid*, 150. An examination of Pedersen's notes demonstrates that these "other cases" to which he refers actually amount to only one case, and here he fails to illustrate how the claim was fraudulent.

this knowledge or purchased it.[9] With this in mind, it is easier to comprehend his vision of the parish priest as a dealer in canonical know-how, doling out advice to the dysfunctional in order to resolve marital woe. His hypothesis is speculative and based on little evidence. None the less, his investigation makes an important point. This single case suggests that manipulation of the canonical provisions for marital impediments was certainly possible. Moreover, it demonstrates at least one plaintiff's exceptional grasp of legalese (however she happened to come upon this knowledge). Her extensive knowledge of the canon law of marriage may have been shared by many litigants in this period.

The possibility that persons might knowingly abuse the laws of the church in order to obtain an annulment certainly was recognised by representatives of the medieval church. Thomas Chobham addressed the issue directly in his *Manual for Confessors*. He wrote that a couple might work together to hoodwink the courts by contriving a tale of impotence, or some other such impediment, and thereby escape a jointly unsatisfactory marriage. Because of the potential for deception, Chobham argued that it was essential for the courts to meet with the couple's neighbours and inquire into the truthfulness of any claim.[10]

From this perspective, one would be inclined to think that all medieval marriages

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[9] This seems like a naive perspective in light of recent studies into the subject of late medieval knowledge of the law. For example, Cynthia Neville has demonstrated that, in a litigious society such as the later Middle Ages, details of the common law that were pertinent to the lives of the average individual were disseminated quickly among the population. Even communities in the north of England, despite their distance from the legal centre, exhibited a heightened awareness of the complexities and loopholes of the common law. See Cynthia J. Neville, "Common Knowledge of the Common Law in Later Medieval England," *Canadian Journal of History* 29 (1994), 461-78. Sue Sheridan Walker makes a similar observation in her work with dower rights. She notes that women who represented their own claims in dower cases often had a thorough grasp of the law. She suggests that, because dower claims were so frequent, a common knowledge of the laws applying to impediments to dower was widely know. It seems logical to suppose that this might also be the case with matrimonial litigation. See Sue Sheridan Walker, "Litigation as Personal Quest: Suing for Dower in the Royal Courts, circa 1272-1350," ed. Sue Sheridan Walker, *Wife and Widow in Medieval England* (Ann Arbor, 1993), pp. 81-108.

[10] Thomas Chobham, *Thomae de Chobham. Summa Confessorum*, trans. F. Broomfield (Analecta Medieavalie Namurcensia, 25, Louvain, 1968), p. 185.

should have been happy ones; among the records of the church courts, a small number of cases of domestic violence emerge defiantly to shatter this image. By at least the mid-thirteenth century, litigants were able to take advantage of the church's provisions for a divorce *a mensa et thoro* on the grounds of cruelty (*saevitia*).[11] A separation from table and bed was decidedly not the same as an annulment. The couple was still deemed married; the application was required merely to sanction separate living accommodations.[12] The existence of such a complex suit forces us to ask an obvious question: if assertions of precontract were such an easy "out", and self-divorce was so common, why do those few applications for separation exist at all? Would it not have been more logical to sue for precontract with a lover rather than stay married for an eternity to an abusive spouse?

One possible explanation for this quandary is that plaintiffs were seeking a guaranteed escape. Self-divorce required *mutual* agreement; sometimes consensus was simply not achievable, especially when alimony was concerned. If one half of the couple was not participating actively in the deception, a trumped up charge of precontract might be obvious to the court; but who can quibble with domestic bloodshed recounted by concerned friends and family? Armed with a solid case and copious evidence, a victim of abuse might have preferred to stick to the truth. Cases sued as divorce *a mensa et thoro*, then, most likely

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[11] The origins of the divorce *a mensa et thoro* specifically on the grounds of cruelty lay in Roman law, and discussion of the subject was not broached in Western Christendom until the twelfth century. Divorce on this basis did not make its way into medieval canon law without some debate, however. Most medieval canonists recognised fornication as the only acceptable premise for a separation from table and bed, and it was not until the sixteenth century at least that canonists in general agreed upon the necessity of separation in abusive marriages. Nevertheless, by the mid-thirteenth century, the church courts of medieval Europe were willing to grant a divorce *a mensa et thoro* on this grounds, providing the tales of abuse presented by the litigants was sufficient to be categorised as near fatal. For a good discussion of canonical debate on the subject, see A. Esmein, *Le mariage en droit canonique*, 2nd edition (2 vols, Paris, 1929-35), ii.106-13.

[12] During the Middle Ages, a couple could not choose of their own volition to live separately without ecclesiastical sanction because a separation was thought to be in contravention of the laws of marriage. Even couples who elected to live chastely because one of the parties to the marriage had joined a religious order required episcopal approval in order to live apart. Consequently, separated couples were frequently

represent situations of abuse egregious enough to meet the church's definition of cruelty. But how did the church and society define "cruelty" in this context? Time and time again, it has been argued that wife abuse was acceptable in the Middle Ages, as long as it was "within limits." This view is clearly supported by both sermon writers and the literature of the period.[13] Even the canonists adopted this perspective, as suggested by a gloss of Gratian's twelfth century, which stated:

> a man may chastise his wife and beat her for her own correction; for she is of his household, and therefore the lord may chastise his own .... so likewise the husband is bound to chastise his wife in moderation.[14]

But what exactly did it mean by "moderation"? As the study of sermons and *exempla* in Chapter One strongly suggests, the church's official line in this matter is difficult to discern. Nowhere in canonical legislation is cruelty given a clear definition; yet, evidence as to how this might have been understood is relayed through the clerical writers of the period. Thomas Chobham observed that the church defined "coercion" as the level of force employed to extract consent to marriage from an unwilling bride or groom. He noted that, according to Alexander III, the "degree of violence and fear must be such that it could turn a stable man, such as fear of death or physical mutilation."[15] While he did not suggest that this definition should be applied universally to all marital litigation, vocabulary of this kind appears in most of the English domestic violence cases, and as such implies that it was applied widely. He did qualify this statement, however, by declaring that "fear" is best interpreted individually

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summoned to appear before representatives of the church in their courts in order to respond to allegations of spousal non-cohabitation. This is discussed in greater depth in Chapter Five, pp. 350-9.

[13] See discussion of physical force in medieval literature in Chapter One, *passim*.

[14] As cited in G.G. Coulton, *Life in the Middle Ages* (Cambridge, 1929), 3.234.

[15] "Sed hoc intelligendum est de tali violentia vel de tali metu qui posset cadere in constantem virum, ut si timeat mortem vel mutilationem membrorum vel aliquid tale." Chobham, *Summa Confessorum*, p. 142.

according to temperament and personality. He preferred that the church take an equitable approach to cases of abuse. The evidence of the church courts, then, helps to reconstruct medieval perceptions of acceptable domestic violence. The records of the ecclesiastical province of York during the later medieval period provide the ideal venue to explore these boundaries. English scribes were meticulous in both recording and preserving the details of these cases, including witness depositions, and as such should shed some light on contemporary concepts of violence and marital disharmony.

The Records of the Medieval Church Courts

The later medieval church in England produced at least three different classes of documentation that can be used to trace both the frequency and intensity of domestic violence in this period. First, archbishops' registers, which chronicle correspondence with lower officials regarding particular cases, highlight especially egregious cases of abuse, as well as those of the aristocracy. Second, ex *officio* material, or the records of the disciplinary function of the court, provide insight into the frequency of presentments for transgressions of the marital bonds, and allow some understanding of the kinds of penalties incurred by offending couples. Records of this type usually adhered to two distinct formats: act books devoted entirely to *ex officio* business, or more typically, act books which record both office and instance litigation. Third, cause papers were documents used in the course of instance litigation in the consistory court. These cases were unlike the *ex officio* material in that all cases were initiated by a specific person rather than the court itself. All three genres of legal records are examined in the course of this dissertation. The present chapter, however, focuses

exclusively on the findings of the York cause papers, while the other two kinds of records will be discussed in Chapter Five.

The term "cause paper" is actually a twentieth-century invention rather than a medieval usage, coined by archivist J.S. Purvis during his tenure as an archivist at the Borthwick Institute in York.[16] Its designation is apt, because each file consists of a number of pieces of parchment dedicated to the various stages of a legal cause, be it matrimonial, testamentary, or some other matter of a spiritual nature. Like our modern system of civil litigation, each stage of the process required a particular form of documentation. Unlike most ecclesiastical and royal records, however, these were not simply a brief record of the court's daily business, but a much more extensive recording of the minutiae of the case. The length and detail of these documents caused Richard Helmholz to describe them as "the most valuable single set of documents available for the study of marriage litigation."[17] All these various records were eventually collected and stored at the court in cause paper files, and thus contain a range of documentary types:

1) The Libel: The libel was generally a brief summation of the plaintiff's petition to the court, broadly outlining the allegations against the defendant in an inventory of the chief points of the case, and terminating with a concise description of the plaintiff's desired course of action. Occasionally it is possible to find the survival of a general answer to the libel, called an exception, briefly stating his or her defence to the plaintiff's contentions. While helpful in determining conclusively the legal objective of the cause (which was not always as clear as one might think), as well as the full scope of the argument, neither is necessarily much more

[16] Helmholz, *Marriage Litigation*, p. 11.
[17] *Ibid*, p. 12.

useful owing to its brevity. For example, while the libel may assert that a man treats his wife cruelly, no episodes or details are recounted in order to demonstrate how the plaintiff defines the term "cruelty." Also, not all cases include libels. It was possible for litigants to submit an oral libel called a petition. In these cases, the plaintiff's actual legal strategy may be surmised only by the remaining documents in the file.

2) The Articles and Positions: The positions were a list of positive assertions stating in brief the evidence supporting the plaintiff's argument and concluding with a formulaic statement declaring that all these factors were well-known within the community and parish. Lists of positions served as an elaborate narration of the plaintiff's argument, and also provided a starting point for the case since only those positions refuted by the defendant need be proven in court. Originally, these positions were reformulated into questions (usually referred to as articles) before they were presented to the witnesses in private by the judge or his representative. However, by the fifteenth century, at least, the articles and positions were combined into one document of statements rather than questions, and the witnesses were required to comment on the separate parts of the declaration as the plaintiff had worded it. It is important to note that the interrogation of witnesses generally took place outside the court setting. The reason was to avoid witness intimidation by both plaintiff and defendant, in the hopes of obtaining a truthful account of the couple's marital difficulties. Moreover, witnesses were most likely examined in English. The court employed scribes who attended these interrogations and then translated the testimonies into Latin for the official record.[18]

[18] Because there are no extant copies of witness depositions in English, it seems likely that these translations were performed on the spot, meaning the deponent responded to the positions in English, and his or her response was redacted immediately in Latin.

Generally, there were between two and five witnesses for each cause, depending on the quality of the testimony and the nature of the case. Often in matrimonial litigation the number of witnesses was consistent with the number of people who attended the couple's exchange of vows, for proving the validity of the marriage was often the first step in the process. The goal was to establish that the couple was indeed legitimately married, a point which at times may have been contested by one or the other of the two parties as a legal strategy. This was not always the case, of course, but it was a fairly common practice.

3) The Interrogatories: The interrogatories were essentially the defendant's equivalent to the plaintiff's positions. These were a list of statements about the marriage from the defendant's perspective and who intended to discredit the plaintiff. Once again, originally these were reformulated into questions put to the witnesses outside the courtroom and in the vernacular. It is important to note, however, that the interrogatories were only directed to the defendant's witnesses. The defendant had no opportunity to question the plaintiff's deponents. His or her only possible defence, then, was to call in counter-witnesses to ensure that both sides of the story would be heard. Ultimately, the number of witnesses and their credibility must have had a great part to play in the final outcome of the case.

4) The Depositions: The responses of the witnesses were drafted into written depositions, in which the witnesses swore that the positions contained the truth and gave their own account of the marriage. Although witness rejoinders were submitted orally in the vernacular, the depositions themselves were transcribed in Latin, with only the occasional phrase or word in

English.[19] Accordingly, the depositions cannot be understood precisely as accounts by the witnesses in their own words because they have been mediated by a court scribe in the translation process. However, the fact that each account differs in detail and sequence, and that the depositions are very explicit and personal recollections, suggests that they should be perceived as authentic representations of the witnesses' perceptions and narrative of events. The testimonies themselves demonstrate a story-telling quality and near-vernacular tone characteristic of a simultaneous translation. Moreover, because many of the testimonies were heard only by the judge's representative, and the judge himself was forced to rely on the Latin account in order to formulate his decision, it is assumed that the scribe needed to be meticulous in the recording of the testimonies to convey the witnesses' complete perspective to the judge.

The depositions themselves have a very distinctive pattern. Most begin with the name of the witness, age, occupation, condition, and length of time he or she had known the litigants. This is followed immediately by a response to each article in the order that these were put to the witness.[20] Although the deponents were chosen specifically for their knowledge of the situation, it was not unusual for a witness to respond that concerning a particular article he or she simply did not know. Hence, it seems likely that plaintiffs and

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[19] The inclusion of English vocabulary is much more typical of the fifteenth- and early sixteenth-century cause papers than those of the fourteenth. For the early cause papers, if a word in the vernacular actually appears, it is because the scribe did not know the Latin equivalent, or because there is no Latin equivalent. However, in the later cause papers, when witnesses gave accounts of dialogue such as marriage vows or threats (in which the exact vocabulary employed may have been crucial to the success of the case), these snippets were often included verbatim in English.

[20] From the depositions, it easy to see that each piece of evidence was a direct response to the statements made in the plaintiff's positions (or defendant's interrogatories), because each new strand of evidence begins with a simple statement, such as: "concerning the first and second articles...." It is intriguing to postulate how their responses might have differed had the witnesses not been so restricted in their testimonies.

defendants may have selected a variety of witnesses who were capable as a collective of addressing all the arguments put forth by their opponents.[21]

5) The Sentence: If a case was pursued to completion, a formal sentence was drafted onto a piece of parchment and appended to the case file. It is important to note, however, that many cases did not reach this stage, although the low rate of case completion was emphatically not the result of legal impotency or inefficiency. Rather, as Brian Woodcock has argued,

> [t]he courts had no concern in seeing the sentence was given in suits where the responsibility for their prosecution rested with private persons. The judges only took the initiative where matters of correction were involved.[22]

The formal sentence includes a complete account of the steps taken in the legal process. Unfortunately, that is all the sentences include. Most judgements are so structured and formulaic that they reveal very little about how or why the decision was reached, a factor which would certainly have helped to illuminate much of this study. Helmholz argues that there were good reasons for this paucity of detail. He notes that "the repetition of the formulae was meant to be a guarantee that proper procedure had been used," and that the canonists held a "widespread belief that a degree of solemnity should surround the handing down of a sentence." The ceremonious quality of the judgement, then, both confirmed its validity and reflected the general tenor of the court.[23] Nevertheless, the formality of the sentences renders them impenetrable to the probing queries of the social historian.

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[21] Cynthia J. Neville, "Homicide in the Ecclesiastical Courts of Fourteenth-Century Durham," ed. Nigel Saul, *Fourteenth Century England I* (Woodbridge, 2000), p. 109.
[22] Brian L. Woodcock, *Medieval Ecclesiastical Courts in the Diocese of Canterbury* (Oxford, 1952), p. 60.
[23] Helmholz, *Marriage Litigation*, p. 21.

While cause papers exist for both ecclesiastical provinces (York and Canterbury), the York papers are by far the more complete and revealing where cases of divorce *a mensa et thoro* are concerned. Perhaps because of the much earlier dates of the Canterbury material,[24] the documentation of the Canterbury cause papers is poor when compared to the York material. While the York cause papers often include lengthy files boasting witness depositions and libels from the plaintiffs, the Canterbury material is extremely brief (often a single membrane of parchment which may contain no more than a paragraph summary of the case). Moreover, the Canterbury cause papers do not include any detailed cases of divorce *a mensa et thoro* on the grounds of violence. Consequently, the York material offers a much more fertile ground for the study of cases of domestic violence in this period. For the entire province of York in the later medieval period (that is, from the fourteenth to the early sixteenth centuries), there are only six files identifiable as applications for separation on the grounds of extreme cruelty.[25] The surviving documents for each vary: in three of the six

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[24] The *Sede Vacante* Scrap Book and the Ecclesiastical Suit Rolls are Canterbury's equivalent of York's cause papers. Both collections are concentrated in the thirteenth century, with some material from the early fourteenth. The York material, on the other hand, is much more focused on the fourteenth and fifteenth centuries. The difference in notation, then, between the court documentation of the two provinces may well reflect a trend in court notation towards a fuller written representation of a case. If cause papers existed for Canterbury from the late fourteenth and fifteenth centuries, we might well discover a set of documents similar to the York cause papers.

[25] Once again, it is important to point out that because the extant documentation is so varied and incomplete, it is difficult to identify the action in each cause with absolute certainty. Missing libels, in particular, force the historian to rely on other sources for indications of what action might have been sued. For example, in the case of Margery de Devoine and Richard Scot (YBI CP. E 257), all that survives are four membranes of six witness depositions focusing on Richard's adultery and maltreatment of his wife. Accordingly, this cause might be perceived in a couple of different ways. I am inclined to see this case as an application for divorce *a mensa et thoro* for two reasons. First, the accounts focus almost exclusively on Richard's poor conduct as a husband, and fail to respond to any particular allegations imputed against Margery. The general tenor, as a result, is very much that of a woman desperate to get away from an abusive husband. Second, the case is endorsed as Devoine *c.* Scot, suggesting that Margery was indeed the plaintiff in this action (although this does not exclude the possibility of a counter-suit). Charles Donahue, Jr., who is much more familiar with the records of the medieval English church, has been kind enough to point out to me the possibility that these depositions might well represent Margery's defence to an action for restoration of conjugal rights. Clearly, then, my decision to treat CP. E 257 as a case of divorce *a mensa et thoro* is a judgement call, but one that I feel confidently reflects the sentiments expressed in the depositions for this cause.

cases, the judgement has not survived. In the remaining three, two were decided in favour of the plaintiff. In all six cases, the plaintiff was female.

Devoine *c.* Scot (1349)

The case of Devoine *c.* Scot came before the archbishop of York in his consistory court in the year 1349.[26] Margery de Devoine and her husband Richard Scot had a very tempestuous relationship at best. According to Peter de Walworth of Benwell, who appeared in court for the plaintiff, the marriage had long since deteriorated to the point of exceptional hostility. Eight years before the suit, on a date that neither he nor the other witnesses could recall, but in the town of Newcastle-upon-Tyne in the Devoine / Scot household, Richard beat Margery with a staff about the head and shoulders, wounding her severely and knocking one of her eyes from the socket.[27] Margery was in such a pathetic state that neighbours immediately fetched a doctor to their home in order to treat her wounds. Richard was so infuriated by this intrusion that he told the doctor in no uncertain terms to leave, threatening to break both his arms and legs. Margery's injuries were left to heal unattended. Another witness for the plaintiff, John de Halghton, added that Margery later fled to a hospital in Newcastle-upon-Tyne on her own, dressed only in her underwear. Because of the cruelty and harshness of her husband, and out of fear for her life, she refused to return to her husband. None of the witnesses chose to disclose how this issue was resolved (or even if it was), and at

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[26] YBI CP. E 257, Margery de Devoine *c.* Richard Scot (1349).

[27] This interpretation of the events is deeply indebted to Frederick Pederson. While I was unable to read clearly the damaged portion of Peter de Walworth of Benwell's testimony, Pedersen had less difficulty. Upon reading his translation of this event, I was made aware of the inclusion in this tale of the ocular displacement – a factor which I will return to later in this chapter (see below pp. 328-31). For Pedersen's translation, see his "Marriage Litigation and the Ecclesiastical Courts in York in the Fourteenth Century," (Ph.D. dissertation, University of Toronto, 1991), p. 144.

least one witness seemed to believe the two were no longer married,[28] subtly implying that an unsanctioned separation had already occurred as far back as eight years ago.

This tale of abuse was repeated by five other witnesses with only subtle deviations in the particulars of the event, and it was depicted as the only instance of extreme violence between the two. Yet, this example was not treated as an unprecedented occurrence. They all agreed that Richard generally mistreated his wife, that his behaviour was well-known in the community, and that Margery did not dare cohabit with her husband out of fear for her life. As Peter de Walworth de Benwell suggests, Richard may even have been disciplined for his actions on a prior occasion. When called before the official of the archdeacon of Northumberland to respond to allegations of ill conduct, Richard had gone so far as to declare publicly that it was his right to beat his wife. Peter's decision to include this detail would seem to suggest that, at least, the witness did not concur.[29]

Clubbing one's wife in the head with a staff and grievously wounding her should have been abundant evidence to demonstrate a dangerous marriage. Yet Margery's approach to litigation suggests that she was not assured of her chances of obtaining a separation on these grounds alone. Astutely, she doubled her odds by adding an allegation of adultery, the other accepted premise for a judicial separation. Her witnesses testified that Richard not only had adulterous relations with as many as seven women, but as tangible proof of his depravity they noted that these unions had produced manifold illegitimate children, all of whom he supported and recognised as his own. The question of why women in Margery's situation

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[28] When recounting the tale of abuse, Margery is referred to as his "then wife" (*tunc uxorem*), suggesting that while she had been married to him at the time of the incident, she was no longer. This formulation is actually a fairly common inclusion in the court records for both provinces and would seem to confirm Helmholz's belief that self-divorce was a popular resolution to marital disharmony.

[29] "dixit se licenciam habere verberarandi uxorem suam." YBI CP. E 257 / 2.

included allegations of adultery in their requests for separation is one that has been the source of much debate by historians.[30] Perhaps the answer to this question is in the process itself. As James Brundage has noted, the court Christian practised what is known as the "clean-hands rule" : one adulterous spouse might not charge the other with adultery, regardless of how public the affair.[31] In this situation, Margery might have been attempting to safeguard her reputation by being the first to bandy about accusations of infidelity.[32]

Alison McRae-Spencer is one of the few students of medieval history who has also examined two of these same cases of divorce *a mensa et thoro* in the York cause papers. In addressing the issue of why female plaintiffs sometimes affixed allegations of adultery to cruelty litigation, she suggests that a woman's "case is greatly helped if the husband can be seen by the court to be blameworthy in another area of his life which is even less defensible than violence towards his wife."[33] Her unwavering assertion that male adultery is less "defensible" than male violence notwithstanding, the point is well taken. If a woman was at all uncertain whether the incidents of violence recounted by her witnesses would fulfil the requirements for judicial separation, then it made sense also to paint her husband as an extremely immoral character. And if adultery was another permissible justification for

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[30] Most of the research in this field, however, has been performed by early modernists. See Keith Thomas, "The Double Standard," *Journal of History of Ideas* 20 (1959), 195-216; Tim Stretton, *Women Waging Law in Elizabethan England* (Cambridge, 1998), pp. 194-201; and Laura Gowing, *Domestic Dangers: Women, Words, and Sex in Early Modern London* (Oxford, 1996), pp. 184, 188.

[31] James A. Brundage, "Sexual Equality in Medieval Canon Law," in Joel T. Rosenthal (ed.), *Medieval Women and the Sources of Medieval History* (Athens, 1990), p. 67.

[32] It is noteworthy that medieval husbands were not inclined to sue their wives for separation on the grounds of adultery. In this study, no cases of this type were discovered, although Charles Donahue, Jr. has suggested to me the possibility that YBI CP. F 110 may be a case of divorce *a mensa et thoro* on the grounds of adultery. The exceedingly poor condition of the record, however, makes it difficult to determine its cause with any certainty. The lack of cases of this type may well suggest that, although canon law allowed separations on the basis of adultery, the courts themselves may not have considered it sufficient grounds on its own.

[33] Alison McRae-Spencer, "Putting Women in Their Place: Social and Legal Attitudes towards Violence in Marriage in Late-Medieval England," *The Ricardian* 10 (1995), 190.

separation would it not have been the most obvious choice to pad a case of cruelty and so cover all the bases?

These allegations are noteworthy, however, because they contradict the work of historians who have argued in favour of the existence of a firm double standard in the medieval period, one which rigidly supervised the sexual behaviour of women, yet was indifferent to that of men.[34] Clearly, in order for Margery's witnesses to speak reprovingly of Richard's actions, their accusations must echo a wider sentiment shared by members of the community that male infidelity is no less reprehensible. As Shannon McSheffrey has argued, to posit a double standard in sexual behaviour in the late medieval period is to construct too simple a paradigm.[35] She notes that

> [l]ate medieval patriarchy brought with it the concept of governance: not just the rule of men over women, but also the responsibility of men to use that rule wisely. In addition, each man was expected to rule himself and contain his own lustful will. The limits of respectable behavior were placed differently for men and for women, but by no means was a man's sexual life irrelevant to his good name.[36]

Margery de Devoine's need to assert both cruelty and infidelity may merely suggest her extreme unhappiness with this situation and a need to vent her anxieties to any willing listener. And yet, clearly, we have to assume the likelihood that a double accusation might have been much more meaningful than a simple release of pent-up frustration or public revenge. Margery may have added the adulterous relationship to strengthen what she saw as a weak claim of abuse. Alternately, it is equally possible that the allegation of abuse was intended to fortify her argument for extreme adultery. Given that the witness depositions

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[34] For example, see Ruth Mazo Karras in *Common Women: Prostitution and Sexuality in Medieval England* (New York, 1996), pp. 31, 42-3, 52-3, 76 and 134.
[35] See Shannon McSheffrey, "Men and Masculinity in Late Medieval London Civic Culture: Governance, Patriarchy and Reputation," in Jacqueline Murray (ed.), *Conflicted Identities and Multiple Masculinities: Men in the Medieval West* (New York, 1999), p. 243-78.
[36] *Ibid*, p. 258.

respond first to the allegations of adultery (which in turn correspond to the order of complaints listed in the plaintiff's articles and positions), this may well have been the case with Devoine *c.* Scot. This hypothesis is supported by the length of time each witness spent within the depositions on the adultery as opposed to the violence. Each was much more articulate about Scot's illicit affairs: naming a variety of mistresses, detailing the number of children he supported from these unions, and even going so far as to explain how he or she had first learned about his extramarital activities. The violent altercation was certainly not an afterthought, but it was not as central to the depositions as were the affairs. Probably this was a litigious strategy purposely employed by Margery and her witnesses on the advice of her proctor. A close examination of one particular detail from the witness depositions may illuminate why, in Margery's case, it made sense to favour the charge of adultery. Almost all the witnesses carefully pointed out that some time ago, Richard's affairs had become so notorious that he was brought up on charges before the archdeacon of Northumberland. In the archdeacon's court, Richard confessed his sins and was condemned publicly. Bearing this in mind, when Margery's witnesses offered up this information, the intention may have been merely to support their verbal contention that Scot's adulterous behaviour was well known. Yet, it was probably more significant than that. Richard Helmholz has observed that in cases of judicial separation where adultery was the cause, witnesses were not required if the parties had confessed to their sins.[37] Helmholz's finding would suggest that in this circumstance, Scot was no longer willing to confess openly to his adultery and was hoping that all records of his *ex officio* case before the archdeacon of Northumberland had been lost or forgotten. In testifying to his confession, Margery's witnesses were trying to achieve the same goal, and thus guarantee a sanctioned separation. Regardless of whether Margery's primary intention

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[37] Helmholz, *Marriage Litigation*, p. 104.

was to sue for adultery or cruelty, her case is revealing in the combination of separate accusations. Her need to claim both would tend to suggest that this level of abuse (or adultery, for that matter) was not deemed by Margery, at least, adequate on its own to fulfil the ecclesiastical requirements for separation.

Wyvell *c.* Venables (1410)

Margery was not the only plaintiff who felt compelled to append allegations of adultery to her application for separation. In Wyvell *c.* Venables, Cecilia Wyvell presented a formidable case for marital cruelty.[38] Witnesses for the plaintiff offered two particularly memorable instances of abuse. The first took place seven years before the suit. Henry beat Cecilia to the ground with his fist, then punched her eye with such force that it was knocked from the socket and hung on her cheek by a thread. She would have lost the organ completely had her mother not been present to replace it gently in the socket. Some time after this occasion, her witnesses say that Henry pounded Cecilia to the ground and beat her with a staff. He then took her by the neck, strangling and suffocating her, and Cecilia had to be rescued by her neighbours. This incident alone left Cecilia bandaged around her arm and neck for a period of fifteen days or more. While these were the two most violent episodes used to illustrate his barbarous behaviour, the general consensus seems to be that Henry's usual conduct towards Cecilia was not much better. Agnes wife of Adam Shafton of York notes that

> [f]or ten years .... Henry has been and (still) is a violent, overbearing, adulterous and terrible man ..... (and) that Henry was and is accustomed at

[38] YBI CP. F 56, Cecilia Wyvell *c.* Henry Venables (1410). This file is not only in exceptionally good shape, but it also appears to be very complete, containing the plaintiff's libel, the defendant's response to the libel, the plaintiff's articles and positions, and witness depositions for the plaintiff.

> all times when he has access to Cecilia, his wife, to mistreating Cecilia and greatly beating her and wounding her enormously without cause.[39]

If Agnes is to be believed, Henry had not been terribly successful at hiding his unruly behaviour. Cecilia wife of William Redeness of York provided a very thorough narrative of the abuse suffered at Henry's hands. According to Redeness, Henry's habit of greatly beating his wife with a shortened staff had driven Cecilia to the point of suicide. As if she had lost her mind, Cecilia threatened to jump from a window in her highest chamber or drown herself in the river Ouse, and would have done so had her mother not intervened.

Cecilia's witnesses obviously knew what was required of them. Not only did they describe the brutality and excessive nature of the force, they placed the entire blame for these incidents on Henry. William Constowe of York declared that Henry's near blinding of Cecilia was without cause (*sine causa)*, while other witnesses referred to Henry's character alternately as severe (*austerus*), terrible (*terribilis*), demented (*demens*), and lunatic (*lunaticus*). Cecilia, on the other hand, was described by the same witnesses as a decent, humble, and kind woman (*mulier honesta humilis et benigna*). The implication, of course, is that Cecilia had in no way provoked his anger through disobedience or shrewishness; this violence was not excessive chastisement, but instead a manifestation of Henry's mental instability. In light of the witness depositions, Henry's response to the allegations seems overstated at best. He is self-described as a decent, mild, sombre, pious, kind, quiet, peaceful and humble man.[40]

Like Margery de Devoine, Cecilia also felt it prudent to include adultery in Henry's

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[39] "per decem annos ... Henricus fuit et est vir austerus ferox adulterinus et terribilis .... quod dictus Henricus solebat et solet omne tempus quo habuit constanter accesum ad Ceciliam uxorem suam predictam eandem Ceciliam male tractare ac ipsam enormiter et sine causa verberare et vulnerare." YBI CP. F 56 / 7 (all the depositions in this suit appear on this membrane and will not be specifically noted after this).

[40] "vir honestus, mansuetus, sobrius, pius, affabilis, quietus, pacificus, humilis." YBI CP. F 56 / 1. This description is taken from Henry's response to Cecilia's libel.

list of moral failings. Her witnesses attested that Henry had been involved in a serious relationship with Mabota Don over the past four years, and that Henry had fathered three illegitimate children by her. Their adultery was well known throughout the dioceses of York, Lichfield, and Coventry and in the vill of Westchester where he sometimes cohabited with Mabota, and he is described by one witness as treating the latter "as if she were his wife."[41] His behaviour, then, was not only in flagrant disregard of both Christian teachings and communal ethics, it also bordered on bigamy.

It may come as no surprise that Cecilia's suit for judicial separation was successful. Yet, what is most shocking about this case is how much she was willing to endure before applying for separation: not only general maltreatment, but one near blinding, one homicide attempt, pseudo-bigamy, and being driven to the brink of suicide. And it was only at that time that she believed her case to be sufficient for an application of judicial separation. Could the requirements for separation have possibly been so strict that such an outrageous situation was key to a successful plea? Or, rather, do these allegations represent something even more insidious? Is it possible that these allegations were just that, allegations trumped up to obtain a judicial separation knowing that the church could not possibly ignore violence of this extreme nature?

The atrocity of the marriage described in these documents leads us to one important query: what exactly was Henry's defence? In what would otherwise appear to be an exceedingly complete file, there are no extant depositions from counter-witnesses called on Henry's behalf. Is it possible that Henry did not appoint any? With such a powerful case for the plaintiff, it would have been foolhardy for Henry not to have done so. The only surviving

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[41] "ac si fuisset uxor sua." YBI CP. F 56 / 7. From the deposition of Alexander Johnson of Newcastle-upon-Tyne.

evidence of Henry's position is his response to Cecilia's libel. In this document, he not only denied vehemently the beatings, terrors, and ferocities imputed in the plaintiff's libel and positions, he chose instead to describe his marriage to Cecilia as both honest and praiseworthy (*honeste et laudabiliter).* If there were any problems in the marriage, he said that Cecilia was entirely to blame. While he treated her modestly and amicably (*modeste et amicabiliter*), she was "disobedient, hard-hearted, horrible, terrible, abominable, unsettled, overly-vocal, and noisy, and nearly a virago."[42] Forced to live with such an unpleasant woman, it is perhaps even more striking that Henry had made only two attempts on her life.

Clearly, there are some major difficulties with Henry's strategy in pleading this case. Not only was he too zealously denying any culpability whatsoever, but to say at once that his marriage is praiseworthy, *and* his wife is a virago and difficult to live with, is simply too contradictory. The marriage could not be healthy if his wife was truly as he says. Furthermore, despite his self-fashioned portrait as Henry the Venerable, he fails to address the issue of adultery at all, not even to issue a feeble denial. This response can only be understood as a tacit admission to the contrary. Finally, the complete failure of his response to mention or refer to counter-witnesses who might corroborate his story suggests that Henry actually may have intended to stand his case on his word alone. Henry's defence, then, consisted of an inconsistent and implausible account teeming with perfidy, denial and self-glorification, and nothing more. When faced with five credible witnesses for the plaintiff, testifying to numerous instances of extreme violence as well as behaviour that skirts the limits of bigamy, this defence appears not only ridiculous, but pitiful. One is forced to wonder what Henry's strategy might have been with this obviously flawed approach. The most logical

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[42] "inobediens, crudelis, horribilis, terribilis, abhominabilis, inquieta, vociferox, et clamosa, et quasi virago." YBI CP. F 56 / 1.

conclusion to be drawn from this scenario is that Henry wanted to lose. Cecilia's witnesses have painted a picture of a terribly unhappy marriage. Maybe after thirteen long years, Henry had finally decided to call it quits. Why else would he have chosen such a senseless and irrational path? Cecilia's case was successful then, not only because of her own skilful pleading and obvious distress, but because Henry chose to opt out of his own defence.[43]

Perhaps one of the most important questions is, was Henry's decision to lose made independently, or was Cecilia herself involved? Such a foolhardy defence may well represent collusion between husband and wife. If any part of Cecilia's narrative accurately depicts their marriage, then clearly both Cecilia and Henry were unhappy and probably desired to bring an end to their unfortunate marriage. A case of extreme violence brought before the church and poorly defended would have been a fair resolution for both. It is not hard to imagine, then, that Cecilia and Henry might have colluded to deceive the courts. Cecilia's tale of ocular displacement and psychological torment coupled with Henry's arrogance and incoherence provided the ideal court case to transform an unhappy marriage into a very happy separation. Similarly, this case reminds us that, just like the secular indictments discussed in the previous chapter, the tales of violence recounted by plaintiffs before the archbishop's representatives tell us more about attitudes towards abuse than actual instances of spousal violence.

Nesfeld *c.* Nesfeld (1396)

Of all the cases in this grouping only one is known to have been unsuccessful, and consequently provides valuable insight into what forms of violence remained within the

[43] In this respect, it is essential to keep in mind the dynamics of litigation. If Henry was prepared to abandon the marriage when Cecilia filed her suit, he may not have wished to concede to all her allegations, fearing the damage it might inflict upon his reputation. He may then have simply hired a proctor to contest

definition of "moderate chastisement." The witnesses for Nesfeld *c.* Nesfeld recounted two very distinct renditions of the marriage of Margery and Thomas. Margery's witnesses, both female, painted a picture of irrational and unprovoked murderous violence. According to Joan White of York,

> .... this witness was present together with Margery Speight, her fellow witness, and John Semer, servant of Thomas Nesfeld of York in the same Thomas' house in the parish of Bishophill, York, on the Saturday before the feast of St Bartholomew four years ago next within the darkness of night where and when she saw the said Thomas throw Margery, his wife to the ground with a club and beat her severely with the same and afterwards he drew his baslard [dagger] and gravely wounded her in the arm and broke the bone of that arm, commonly called 'le Spelbon' and he would then have killed her that night if he had not been prevented by this witness, the said Margery, her fellow witness, and John Semer, then servant of the same Thomas. Afterwards, for a week or two, as this witness believes, when the same Margery, wife of the same Thomas, was somewhat healed and restored, she went away from Thomas, her husband, because she dared not stay longer with him for fear of death...[44]

Both Joan White and Margery Speight, the other witness for the plaintiff, constructed their testimonies carefully, omitting entirely the context of this abuse in order to accentuate the husband's irrationality. If they had been the only witnesses for this case, Margery Nesfeld might have been more fortunate in her suit. However, Thomas provided two counter-witnesses. Richard Hanley of York appeared merely as a character witness for the case. He

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the case, regardless of consistency, with the single goal of maintaining what little communal standing remained to him, but without any intention of actually hoping to win the case.

[44] "Super primo articulo examinata dicit quod continet veritatem et hoc se dicit scire quia presens fuit ista jurata una cum Margeria Speight, conteste sua, et Johanne Semer, serviente Thome Nesfeld de Eboracum, in domo propria eiusdem Thome in parochia de Bichophill Eboracum die sabbati proxima ante festum sancti Bartholomei hinc a quatuor annos proxima elapsis infra noctis tenebras ubi et quum vidit dictum Thomam Margeriam uxorem suam cum uno bacculo ad terram prostravere et ipsam cum eodem graviter verbare et postea extrahit baslardum suum et ipsam in brachio graviter vulneravit et os eiusdem brachii vulgariter nuncupatur le Spelbon fregit et ipsam protunc eadem nocte voluit occidisse nisi impeditus fuisset per istam juratam, dictam Margeriam, contestem suam, et Johannem Semer tunc eiusdem Thome servientem et postea per unam septimanam vel duas, ut credit ista jurata, quum eadem Margeria uxor eiusdem Thome fuerat aliqualiter sanitati restituata recessit ab eodem Thoma marito suo quia non audebat cum eo propter metum mortis ulterius remanere ut dicit." YBI CP. E 221, Margery wife of Thomas Nesfeld *c.* Thomas Nesfeld (1396).

declared that he had known Thomas for twenty years, and during that time he had never seen or heard that Thomas assaulted Margery.[45] Hanley's inclusion in this case may seem incongruous, given that he appeared as one of only two counter-witnesses and he knew nothing about the alleged altercation. Still, Richard Hanley was a sixty year old male. In a society where both masculinity and age in particular were equated with authority and wisdom, his testimony must have carried a great deal of weight, despite his unsatisfactory knowledge of the events. Otherwise, Thomas would not have bothered to include him.[46] This left one actual counter-witness, John Semer, Thomas's former servant. John recounted the same violent exchange but from an entirely different viewpoint than that of the witnesses for the plaintiff. He declared that,

> four years ago the said Margery left her home in the parish of Bishophill and went to a house, the which this witness does not remember, in the city of York without and contrary to the said Thomas, her husband's mandate and precept, and stayed there from noon of that day until the darkness of night. When she returned to the house shared by the said Thomas and the said Margery his wife, Thomas asked why she had left her home against his will and precept. She replied that she wished to go where she would against the will of the same Thomas her husband, and then Thomas, seeing Margery's rebellion, struck her with his fist in order to chastise her.[47]

In this account, Margery is no longer the pitiable victim of senseless abuse, but a disobedient and potentially adulterous wife requiring moral correction by her husband. Even the degree

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[45] "cognovit dictum Thomas xx annis elapsis et numquam vidit vel audivit quod dictam Margeriam uxorem suam verberavit." YBI CP. E 221 / 1.

[46] In her study of the London consistory court of the fifteenth century, Shannon McSheffrey notes that age certainly played an issue in the perceived value of witness deposition. See Shannon McSheffrey, *Love and Marriage in Late Medieval London* (Kalamazoo, 1995), p. 10.

[47] "Quatuor annos elapsis recessit dictam Margeriam de domo sua in parochia de Bichophill situatus et transivit ad quod domum de que non recolit iste iuratus in civitatus Eboracum praeter et contra mandatum et preceptum dicti Thomae mariti sui et ibidem expectavit ab hora nova eiusdem diei usque ad noctem tenebris et quando [revenit]ad mansum cohabitem dicti Thomae et eiusdem Margerie uxoris sue et petit idem Thomas quare de domo sua exivit contram voluntatem et preceptum suum ipsam respondet quod voluit ire ubi ipsam voluerit contram voluntatem eiusdem Thomae mariti sui et .... idem Thomas rebellione eiusdem Margerie percipiendum cum pugno causa castigationis percussit." YBI CP E. 221 / 1.

of violence in this account is reduced significantly. John's version of the events included no weapons, no broken bones, no recovery period (apparently both kinds of witnesses could play the game of selective memory). John's testimony, however, did not end with this one act of violence. He went on to say that

> he was present one day, the which he does not remember, around the feast of the nativity of St John the Baptist four years ago in the aforesaid house when he heard the said Margery swear and say to Thomas her husband that she could kill him in bed at night if she wanted, which same Thomas, roused by anger, wanted to strike her with his fist. She immediately fled outside the door into the highway crying, wailing, weeping, and publicly exclaiming that Thomas, her husband, wanted to kill her.[48]

If there is any victim in this scenario, it is clearly Thomas, whose unruly wife has a history of making false accusations against him, and has even threatened his life. John concluded his testimony with the final damning statement that he never witnessed any violent behaviour towards Margery that was not provoked.[49] The court ruled against Margery, and she was required to stay married to Thomas.

The reason that John's testimony was preferred over that of Margery's two witnesses has been the source of some speculation. P.J.P. Goldberg of York University contends that it all comes down to gender. He remarks that "[s]ince Margery brought two female deponents to testify to the same events, whereas her husband had only one such (male) deponent and another (male) character witness, it is hard not to conclude that the court was prejudiced against the testimony of women."[50] This verdict would seem to fit with canonical

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[48] "... quod presens fuerat quoddam die de quod non recolit circa festum Sancti Johannis Baptiste huic ad quatuor annos elapsos in domo predicta ut audivit dictam Margeriam jurare et dicere ad Thomae marito suo quod ipsum potuerit si voluerit in lecto in noctibus occidere quod quidam Thomas iracundia motus voluit ipsam cum pugno percusisse ipsam statim fugit extra ostium in altum vicium clamando ululando et plorando et dicendo quod Thomas maritus suus voluit ipsam occidisse." YBI CP. E 221 / 1.

[49] YBI CP. E 221 / 1.

[50] P.J.P. Goldberg, "Debate: Fiction in the archives: the York cause papers as a source for later medieval social history," *Continuity and Change* 12 (1997), 445.

requirements for the procedure to be employed in medieval ecclesiastical litigation. In the late medieval period there existed a series of rules regarding the acceptability of testimony to which the canonists expected judges to use as guidelines in their decisions. According to Tancred's *Ordo*, "[i]f the witnesses on one side conflict with those on the other, then the judge ought to follow those who are most trustworthy – the freeborn rather than the freedman, the older rather than the younger, the man of more honorable estate rather than the inferior, the noble rather than the ignoble, the man rather than the woman."[51] This statement would seem to suggest that a woman's testimony was not as valid as a man's in the law courts of the medieval church. Yet, as Donahue has argued, many of the strict requirements advocated by the academic commentators were discarded or "imperfectly received" within the context of the English ecclesiastical courts on the basis that they did not fit with contemporary expectations of the legal system. Judges and deponents alike shaped the judicial procedure employed by the church courts in order to liken it to the secular processes of trial by jury and compurgation, and, in effect, to transfer the burden of judgement to the community.[52] Hence, to assume that the testimony of women was less valuable simply because the canonists believe it should be seems a rash conclusion to draw.

Despite Tancred's assertions that the testimony of women should be acceptable only under certain conditions, women did appear frequently as witnesses in cases of marital litigation, a fact which would suggest that their testimony was certainly not without value, and might even have been considered exceptionally appropriate.[53] Frederik Pedersen, in his

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[51] As cited and translated by Donahue, "Proof by Witnesses in the Church Courts of Medieval England: An Imperfect Reception of the Learned Law," in Morris S. Arnold, *et* al. (eds), On *the Laws and Customs of England. Essays in Honor of Samuel E. Thorne* (Chapel Hill, 1981), p. 131.
[52] *Ibid*, pp. 155-58.
[53] *Ibid*, p. 130.

demographic study of fourteenth-century cause papers involving matrimony, notes that of the 565 gender-identifiable witnesses, 389 were men, 175 were women.[54] While these levels do not even approach equal representation, the figures suggest a relatively high level of female participation as witnesses, at a ratio of 1:2.22 female to male witnesses. This figure is considerably greater than female participation in the church courts in other kinds of litigation, and dramatically higher than female participation in the legal process of the king's courts. These figures are fairly consistent with the ratio of male to female participation as witnesses in cases of divorce *a mensa et thoro* appearing in the medieval York cause papers. At 1:2.45 the figures demonstrate a marked predisposition for male witnesses.

It is clear that both plaintiffs and defendants preferred to found their cases on the testimonies of middle-aged men. But, it is also evident that women played no small part in the legal system as witnesses in matrimonial litigation. The fact that the only case of separation known to be unsuccessful had only female witnesses for the plaintiff, then, is simply not substantial enough without further gender break-down of all matrimonial cases (both successful and not) in the church courts of the period in order to discern any particular gender bias.

Goldberg may neglect one meaningful aspect in his analysis of the case of Nesfeld *c.* Nesfeld. Recent research by family historians demonstrates that, owing to the nature of the relationship, servants should also be considered members of the medieval family, despite their lack of consanguinity.[55] Consequently, John's position as servant in the Nesfeld

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[54] Frederik Pedersen, "Demography in the archives: social and geographical factors in fourteenth-century York cause paper marriage litigation," *Continuity and Change* 10 (1995), 420.

[55] See Barbara A. Hanawalt, *The Ties that Bound: Peasant Families in Medieval England* (Oxford, 1986), pp. 90-104; and J.M. Bennett, *Women in the Medieval English Countryside: Gender and Household in Brigstock Before the Plague* (Oxford, 1987), pp. 54-64.

household at the time of the violent exchange may have privileged his testimony. As a member of the Nesfeld *familia*, John Semer might very well have been perceived by the court as uniquely qualified to comment on Thomas and Margery's relationship. What Thomas lacked in quantity of witnesses, then, he compensated with quality. Finally, it is also essential to keep in mind the canonical requirements for proof. Because Margery was the plaintiff in the case, she shouldered the burden of proof. The law required her to produce two credible witnesses in order to convince the judge of her argument. Thomas, on the other hand, had no such burden. He did not need to establish his case affirmatively by two witnesses. All he needed to do was cast doubt on the testimony of Margery's witnesses. Without two strongly believable witnesses, Margery's case had very little hope of securing a sentence in her favour.

Thomas also responded personally to the allegations of abuse against him, and his version of events played upon John Semer's moralised account. In his positions, he argued that his actions were not only earned by Margery's rebellion, but that his "castigation" (not "beating") had been lawful and honest rather than excessive or cruel. His behaviour was intended only to reduce Margery's errors, as a good husband should. He went on to say that he was never harsh or cruel to any woman, and that he never engaged in any illicit beatings of his wife.[56]

John Semer's testimony, fortified by Thomas's reinterpretation of the relationship, radically changes the perspective on the cause of violence within this marriage; nevertheless, his image of the union is no more pleasing than that of Margery's two close friends. Whether Margery was innocent victim or murderous shrew, the marriage is still depicted by both as a dangerous, unhappy union. Regardless of this, the court chose to enforce this marriage. Two

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[56] YBI CP. E 221 / 2.

instances of the court held against Margery and supported the marriage. Thomas was required to give surety that he would not mistreat Margery in the future, a detail which argues strongly that the court accepted Margery's story in part. When she tried to appeal the case to the Holy See, however, the court official refused to refer the appeal. Margery could have continued to pursue the case in Rome without the court's protection, but there is no evidence to suggest that she persevered in her cause.

If the courts suspected Margery and Thomas's marriage was dangerous why uphold it? Richard Helmholz posits that in marital litigation the church courts assumed the role of "a rather heavy-handed marriage counsellor"; it was their intention to keep the marriage together whenever possible.[57] Still, in the case of Margery and Thomas, the court seems to have been less a marriage counsellor than a potential accessory to murder, if we are to believe any of the testimonies presented. That, however, may be the clue. Margery and Thomas had been married for more than ten years. How could a marriage of that length produce only three witnesses qualified to speak to the rocky nature of the relationship? Furthermore, each witness was able to testify to only one incident of actual (rather than threatened) violence. Margery de Devoine presented seven witnesses on her behalf, Cecilia Wyvell five. And both these plaintiffs submitted additional evidence of marital breakdown outside of the one memorable occurrence of domestic violence in order to illustrate a pattern of abuse rather than an isolated instance. The Nesfelds' three witnesses with such opposing views and only one violent incident between them likely was not ample evidence to convince the court that this was anything more than a trumped up case of marital disharmony. This case, then, tells us less about the church's definition of acceptable limits of spousal abuse than about the strict

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[57] Helmholz, *Marriage Litigation*, p. 101.

legal requirements for manipulating the sacraments. Nevertheless, John Semer's account does hint at traditional justifications of marital violence. To characterise assault as mere chastisement for disobedience and marital rebellion suggests that John Semer's assumptions were built on a heritage of ideas about gender roles in marriage. Whether the church agreed or not, John Semer certainly felt that Margery's free will and independent mind transgressed gender norms and justified violent retribution.

Munkton *c.* Huntington (1345-6)

The case of Munkton *c.* Huntington not only suggests degrees of acceptable violence, but it also addresses the original query of this chapter: why abuse cases were not prosecuted merely as precontracts in order to dissolve the union.[58] Agnes Huntington and Simon Munkton married for love rather than money, but money was their downfall. In the autumn of 1345 Agnes found herself under attack from her husband and evicted from the conjugal home after a passionate dispute between the two in which Agnes staunchly refused to consent to a sale of lands she had received from her father.[59] Fearing that Agnes might take legal action against him, Simon decided that the best strategy was, in fact, to beat her to it by filing a suit with the court of the dean of the Christianity of York claiming spousal abandonment without

[58] YBI CP. E 248, Simon Munkton *c.* Agnes Huntington (1345-6). For a fascinating, in-depth discussion of this case, see Frederik Pedersen, "'Romeo and Juliet of Stonegate': a medieval marriage in crisis," Borthwick Paper no. 87 (York, 1995).

[59] Simon's anger may have arisen from the fact that he had anticipated her forthcoming consent and already arranged the transfer of the lands to the steward of Lord Ralph Neville. Her refusal, then, may have placed him in a difficult situation. See the depositions of William Joveby, Nicholas Fraunceys and John Snaweshill in YBI CP. E 248 / 34, who all confirmed the transfer of land to Lord Nevill. Moreover, many of Agnes's witnesses confirmed that Agnes was unwilling to endorse Simon's use of her wealth. See CP. E 248 / 12; 248 / 13). It seems clear that Agnes was not the kind of wife who preferred to leave the management of her property up to her husband.

just cause.[60] In response to his action for a restoration of conjugal rights, Agnes argued that, because of Simon's cruelty and out of fear for her own safety, she was incapable of living with her husband, and in fact desired a separation from him in order to put as much distance between them as she was able. By October of 1345, the dean's court was clearly uncertain about how to proceed with the case: whether to treat it as a correctional matter and order Agnes to return home to her husband; or, instead to treat it as a civil action, and request Agnes and Simon to bring forward their depositions to sue a case of divorce *a mensa et thoro*. In order to resolve the dispute, the archbishop of York himself intervened in the case and brought it before his audience court for a more extensive inquiry into the state of their marriage. By the end of February 1346 it is clear that the archbishop had made up his mind on the matter and decided that Agnes had made enough of a case to proceed as a civil action. The charges of cruelty were renewed and the cases proceeded as if it were an application for a separation by Agnes on the grounds of cruelty.

At the archbishop's court, both sides presented very different versions of the assault. According to Agnes, Simon beat her "so much that blood poured out both by her nostrils and ears."[61] She was in such poor shape that Simon actually thought she had died during the beating. He fled the scene of the crime and was about to take refuge in the local church when it occurred to him to have someone look in on his wife. Simon asked his neighbour, Nicholas

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[60] An enrolment in the Calendar of Patent Rolls suggests that Simon pursued his cause in both the ecclesiastical and royal courts at the same time. Simon requested a commission of oyer and terminer to look into the "abduction" of his wife by William of Huntington (an uncle with whom Agnes was living during her separation from Simon), Richard de Grymesby and others. The enrolment notes specifically that Simon was concerned about the loss of his goods at York taken with Agnes, and detained from him still. See *CPR*, vii.102. It was not uncommon for husbands whose wives had deserted them to plead a suit of abduction in the king's court. The goal of such a suit was not the return of a man's wife, but reparation for the loss of goods taken during the "abduction". In many respects, a favourable response from the royal courts to his request might well have resolved his problems and made any further suit in the ecclesiastical courts unnecessary. This is discussed in more depth in Chapter Six. See pp. 431-45.

[61] "ita quod sanguis exivit tam per nares quam aures eiusdem." YBI CP. E 248 / 33.

Fraunceys, to stop in at his home and check to see if Agnes was still alive. Nicholas and another man carried the wounded Agnes, battered and bleeding, to the home of another neighbour, John Snaweshill, where she might be safe from her husband's rage. Simon then returned home to the happy news that he was not actually a felon, long enough to make it clear that Agnes should seek permanent accommodation elsewhere. In her positions, Agnes states bluntly that this brutal attempt on her life had occurred without reasonable cause (*absque causa rationabile*) and that, as she saw it, his beating had been both immoderate (*immoderatis*) and excessive (*excessivas*).[62] "[B]ecause of the likely threat of death ... and because of the pain of her body and the excessive cruelty committed against her by the said Simon," she clearly did not dare remain in a marriage with this man.[63]

Simon's defence, however, was redolent of images of Eve. He explained that an argument had arisen between them because "Agnes kept company with certain men in suspect places against the will and prohibition of the said Simon, the said Agnes' husband. And she conducted herself in a suspect manner in several ways against the said Simon and irreverently spoke disgraceful words against the said Simon."[64] Simon had no choice but to castigate Agnes for her unruly behaviour. Still, he argued that his reprimand was "without danger of death or mutilation of any limb, [but] lightly as is permitted by law."[65] He then produced witnesses to dispel Agnes's depiction of him as a money-hungry abuser. Picking up where Simon left off, his witnesses decried Agnes as an adulteress. She had not only associated with

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[62] YBI CP. E 248 / 26.
[63] ".. propter verisimilem mortis metum ..... ac propter cruciatum corporis sui et nimiam sevitiam per eundem Simonem...." YBI CP. E 248 / 40.
[64] "...cum quibusdam hominibus in locis suspectis colloquium habuit et tractatum contra voluntatem et inhibitionem eiusdem Simonis mariti eiusdem Agnetis et suspectam erga eundem Simonem in pluribus se reddidit ac verba probrosa contra eundem Simonem irreverenter protulit...." YBI CP. E 248 / 31.
[65] "absque periculo mortis seu mutiliatione membrorum, leviter ut sibi de jure licuit castigando." YBI CP. E 248 / 31.

"suspect men" and conducted herself in a "suspect manner," but she had already been presented at court and done public penance for an earlier affair with a squire named William Morthyng, providing definitive proof of her lewd and immoral ways. On this particular evening, when Simon confronted her about her lubricious conduct, she answered him both "disgracefully" and "irreverently," so that Simon "gave her a slap on the ear with his fist, a gentle one though ... and in order to castigate and not violently."[66]

In light of Devoine *c.* Scot and the church's "clean-hands rule," Simon's strategy becomes clearer. Not only was he justifying his violent behaviour as required moral discipline, and thus depicting himself as the upright, responsible husband, he was also attempting to negate her claim to a divorce *a mensa et thoro*. If an adulterous wife cannot demand separation because of her husband's adultery, and if adultery and cruelty are equated as grounds for separation, why should an adulterous wife be permitted to divorce a cruel husband? If his witnesses had actually been present at Agnes's public penance for her incontinence, their testimony would be as powerful as Agnes's own confession.

Whether Simon and his witnesses were being truthful in their account of Agnes's extramarital dalliances or this was merely a ploy to manipulate the legal system, their construction of these events is more than revealing. To interpret a beating of the intensity described by Simon and his witnesses as castigations for disobedience and sexual misconduct suggests that the church would have found the occasional slap or punch by a husband appropriate in the name of moral correction. Simon's need to diminish Agnes's account, however, demonstrates that her version of the events comes dangerously close to the ecclesiastical definition of excessive violence.

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[66] "Agnes verba protulit probosa et irreverenter respondit eidem dictus Simon dedit ei alapam cum pugno suo, levem tamen ... et causa castigionis et non violenter." YBI CP. E 248 / 30.

With such conflicting views and severe allegations, the court needed time to untangle the events. Agnes was granted permission to live apart from her husband during the time it took the court to reach a decision, and thus she resumed residence with her uncle, William Huntington, in Petergate, York. Simon soon tracked her there and grasped this respite as an opportunity for an out-of-court settlement by trying to beat Agnes into submission. According to neighbour Thomas Esoby, witness for the plaintiff, he saw Simon

> throw Agnes ... to the ground and in a very smelly place .... and lie upon her stomach. But whether Simon hit the said Agnes then he does not know for certain .... And while they, Simon and Agnes, were lying there, John de Midelton, a tailor living in the same neighbourhood, came and took the same Simon by his hood and pulled him to himself away from the stomach of the said Agnes ... Indeed, this Simon then drew out his knife but did not stab anyone with it, so far as this witness knows.[67]

Another witness for the plaintiff, Juliana de Aldeburgh, described just how brutal the beating actually was. She remarked how "she saw the Simon of the above-mentioned article beat Agnes with his fists and feet so that afterwards she lay for a period of fifteen days in her bed and was not able to leave during that period of time because of the beating ."[68] Clearly Simon's attempt had got him no closer to a reconciliation, nor had he managed to convince Agnes to grant him permission to sell her father's lands. None the less, Simon was astute enough to recognise the possible implications of his failed settlement on Agnes's request for separation. In order to counteract the damage, Simon sent in his own witnesses to defend his account of the confrontation. Both John de Midelton of York and his wife Agnes

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[67] "...prosternere Agnetam .... ad terram in loco valde fetido ut dicit et super ventrem eiusdem Agnete jacere sed an eandem Agnetam idem Simon tunc percussit nescit pro certo ut dicit. Et ipsis Simone et Agnete sic jacentibus accessit Johannes de Midelton cissor manens in vico predicto et cepit ipsum Simonem per capucium et ipsum ad se traxit de ventre dicte Agnete ut dicit. Qui quidem Simon cultellum suum tunc extraxit, sed neminem cum eodem percussit quod sciat ipse juratus...." YBI CP. E 248 / 26c.

[68] "vidit eadem iurata Simonem in eodem articulo nominatum verberare Agnes de qua agit cum pugno et pedibus suis ita quod ipsa postmodum iacuit per unam quindenam in lecto sua quo exire non potuit infra eandem quidenam propter verbationem predictam." YBI CP. E 248 / 26c.

appeared for the defendant. Their interpretation of the episode was considerably tamer than either Thomas's or Joanna's had been. Simon's intention was merely to meet with Agnes and persuade her to come home with him. The encounter, however, did not go as planned; Simon became physically abusive, but not to the extent outlined by the witnesses for the plaintiff. John was obliged to pull Simon off Agnes, but he did not see any knife being brandished, and Agnes was not seriously harmed in the incident. In fact, John argued that Simon and Agnes were reconciled some time after the encounter. He saw them sit together, eating and drinking, and "kiss each other peaceably, voluntarily and without fear"; he also commented how Simon "treated [her] kindly."[69] This rapprochement after the event is mentioned only by Simon's witnesses. It is not difficult to imagine why they included this detail. As Richard Helmholz has noted, any reconciliation subsequent to the act of cruelty or adultery barred a separation.[70] In fact, any reconciliation after a grant of separation by the church courts also lifts the grant. A wife cannot forgive her husband's sins and then use those same sins against him when convenient. With this information, then, Simon may have achieved another minor victory in the courtroom, but the case was still far from over.

Some time after this, Simon attempted his last coercive out-of-court settlement. Aided by a male acquaintance of the name Robert Tayergrave, Simon physically abducted Agnes from a Corpus Christi procession within the precinct of York Minster. While Agnes was not hurt in the process, the abduction was nevertheless accomplished against her will and was accompanied by physical restraint. Gervase of Rawcliffe testified that Simon and Robert carried Agnes away from the parade with Simon holding Agnes by the head, Robert by her feet. Agnes finally managed to convince them to let her walk and they discussed the issue

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[69] "et ad invicem osculari pacifice voluntarie et sine metu," "benigne pertractaret." YBI CP. E 248 / 55.
[70] Helmholz, *Marriage Litigation*, p. 100.

rationally, although Simon had no success in convincing his wife of the need to return home. In the end, Agnes emerged from this incident unharmed, but it was one more strike against Simon. Abduction, even without assault, was still an offence in fourteenth-century England,

Despite the renewed violence, Agnes chose this point in the litigation to change her tactic. In May 1346 Agnes alleged that her marriage to Simon was, in fact, invalid because of a precontract with John de Bristol; she then proceeded with her cases as an action for divorce *a vinculo* (an annulment) on the grounds of precontract.[71] Soon after, Simon also renewed his petition for a restitution of conjugal rights, although the court does not appear to have addressed it with much seriousness. Despite the strength of her case, including three instances of physical violence in varying degrees, Agnes chose this moment to abandon the case for judicial separation, and instead to sue for precontract to a former lover, John de Bristol. The story presented by Agnes seems very plausible. In February 1339 Agnes and John, the son of a successful Yorkshire businessman, decided to marry despite vocal protests from Agnes's parents who, for reasons unknown, had not taken a liking to the young man. Their disapproval was so vehement that the couple had difficulty in finding people willing to witness their exchange of vows. One servant of the household, a woman named Margaret Foxholes, was so determined to avoid a conflict of loyalties between Agnes and her parents that she actually ran from the exchange to prevent herself from being called into court as a

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[71] It is noteworthy that Agnes first brought up the issue of precontract with John de Bristol in response to Simon's original action for a restitution of conjugal rights. However, her claim was the last in a list of allegations discussing Simon's violent behaviour, which would seem to suggest that a separation from Simon was her primary concern. Given that the issue of a precontract was not mentioned again until May of the following year, it seems very clear from the pattern of the case and the kind of evidence brought forward by Agnes's witnesses, that her intention to date had been to sue for a judicial separation and that she simply changed her mind in May of 1346. Frederick Pedersen does not agree with this conclusion. His assessment of this situation is that Agnes may have been suing for precontract all along. Were this the case, however, Agnes would not have required any witnesses to the violence of her marriage with Simon. This detail would have been extraneous and inappropriate. To have expended this much time and money on witnesses to the abuse suggests that Agnes chose to deviate from her original course and instead sue for

witness.[72] Nevertheless, because of the notoriety of their relationship, it was not long before Agnes and John had the opportunity to defend their marriage publicly, when they found themselves called before the tribunal of the dean of the Christianity of York. At this meeting John and Agnes attempted to convince Agnes's parents to consent to the marriage, but it appears that their approval was not forthcoming. In the end, it seems that the youthful Agnes of 1339 succumbed to the wishes of her parents and reported to the tribunal that the contract had been conditional on her parents' consent, and thus the marriage was not valid. By 1346, however, it is clear that a much wiser and mature Agnes was more prepared to defend this marriage.

Simon's response to Agnes's claim of precontract was somewhat less coherent. His approach combined two distinct tactics. First, he presented witnesses who argued that Agnes and John's contract had indeed been conditional upon the consent of her parents and that, before Simon and Agnes decided to marry, the dean of the Christianity of York had declared them free to marry whomever they wanted.[73] Somewhat in contradiction to this assertion, he also argued that his exchange of vows with Agnes had taken place prior to her vows with John de Bristol.[74] One deponent even went so far as to describe an exchange of present consent between the two reminiscent of *Romeo and Juliet*. John Marschall notes that the exchange took place in the garden of Agnes's father's house, with Agnes standing in the window of her room while Simon stood in the garden below:

> and because the said window was so far from the said garden that the said Simon and Agnes could not touch each other with their hands, the said Agnes extended her hand and kissed it. Which hand she extended as far as

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precontract once she was no longer certain that she had a solid case of abuse. See Pedersen, *Romeo and Juliet*, p. 11.

[72] YBI CP. E 248 / 23.

[73] YBI CP. E 248 / 43; CP. E 248 / 44.

[74] YBI CP. E 248 / 18.

> she could towards the said Simon standing in the said garden as the witness says and the said Simon immediately kissed his own hand and reached as far as he could upwards by reaching above towards the said window so that the extension of his arm could replace a kiss by the said Simon just like the extension of the said Agnes's arm was made to Simon below as a sign of a kiss given to the said Simon...[75]

Whether Marschall's account of the romantic nature of the couple's exchange was sufficient to move the archbishop, or merely caused him to give up entirely will have to remain a mystery, since this lengthy file ends with the depositions that accompany the petition for annulment. What is most important with this case, however, is to try to understand why Agnes changed her mind in the first place, and suddenly decided to embark on this alternate route.

Agnes's case for precontract was certainly not weak. She originally proposed to present eleven witnesses to testify about her relationship with John de Bristol, and a further seven witnesses to confirm that he had also sworn that the contract he had made with Agnes was unconditional. With sheer numbers on her side, Agnes's proctor offered a formidable claim. That being the case, one has to wonder why this was not her first choice for prosecution? The only conceivable explanation is that Agnes was hesitant to resume her prior union with John, or that John was the reluctant party, a very plausible conclusion in light of his total absence from the proceedings. Yet, in the end, she felt this was a more trustworthy option than a judicial separation on the grounds of cruelty. Her choice suggests that she believed her case for abuse was too weak to be successful. This is difficult to

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[75] "Et quia dicta fenestra distabat a gardino predicto ita quo ipsi Simon et Agnes se invicem manibus tangere non potuerunt ipsa Agnes brachium suum extendebat et manum suam osculatum fuit quam porrexit dicto Simoni in dicto gardino stanti quatenus potuit ut dicit et idem Simon statim osculatus fuit manum suum propriam et ipsam porrexit superius quatenus potuit brachium suum extendum superius versus fenestram predictam, ut eiusdem brachii sui extentio esset loco osculi ex parte eiusdem Simonis sicut extentio brachii dicte Agnetis stantis in fenestra predicta facta fuit dicto Simon inferius in signum osculi eodem Simoni dandi ut dicit." YBI CP. E 248 / 18.

imagine. While her initial complaint might seem inadequate in light of Simon's allegations of her sexual misconduct and their ensuing reconciliation, his ceaseless hostility and disregard for his wife's safety should have corroded his defence. The church's decision in this case is not known; there is some suggestion that it may have sided with Simon in the end with respect to the case of pre-contract. While Agnes's intentions were good, as Frederik Pedersen has noted, in the end her case rested

> on the depositions of only three witnesses, one of whom had previously told the court that he had no knowledge of her prior marriage. When Simon presented his witnesses who, because of their higher social status, would probably have been given more credence than Agnes' witnesses by the court, Agnes had to revert to exceptions to the admissibility of their evidence on technical grounds rather than to the content of their testimony. Her case seems to have collapsed when her exceptions were shown not to be sustainable in court.[76]

While her case for precontract, in the end, was not as convincing as she had hoped, it is still possible that the court may have ruled in her favour in light of the charges of abuse. However, Agnes's legal strategy strongly suggests that she herself was not convinced that two brutal beatings and an abduction were sufficient to meet the ecclesiastical definition of extreme cruelty. It seems likely that Agnes's decision to change her position was determined by who was at fault in each suit. In the case of judicial separation, her attempts to place the blame squarely on her husband's shoulders may not have been as successful as she had hoped; in a case of precontract, however, the sin was entirely her own. The issue of who is more blameworthy, in a judicial setting, is all about control. In the request for judicial separation, Agnes had only a degree of control which might be countered too easily by Simon's re-interpretations and cross-allegations. With a case of precontract, Agnes had complete control.

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[76] Pedersen, "'Romeo and Juliet of Stonegate'", 24.

Her own confession was her best weapon. In shifting the blame from Simon to herself, then, Agnes was taking control of the direction in which the case proceeded.

The case of Agnes Huntington and her husband Simon Munkton does, however, offer meagre insight into causes for the breakdown of marriage. Although the premises, as presented by Agnes, seem to have been primarily economic in nature, the testimony of three of Agnes's witnesses would seem to suggest that the problems the couple were experiencing with their marriage may in fact have sprung from deteriorating relations after the death of a child. Agnes's witnesses note that the couple had given birth to a child soon after they cohabited, but that the child had lived only a year or two.[77] Although no other evidence is offered with respect to the child's demise, it does not seem a far stretch of the imagination to suggest that this child's death may have acted as the catalyst for change in this relationship. Given that the marriage rapidly deteriorated soon after this point, it seems probable that the death of their child may have been a traumatic experience that tore the couple apart rather than presenting itself as an opportunity for bringing them closer together.

Benson *c.* Benson (1448)

Of all the cases of divorce *a mensa et thoro* that came before the York consistory court, the case of Benson *c.* Benson was probably the least violent, and the most incomplete.[78] Only the plaintiff's positions and the corresponding witness depositions have survived and neither are in particularly good shape. Despite the poor documentation, the details of the case are very revealing. Agnes and Peter Benson had been married six years earlier in the parish of St Margaret in Walmgate, York. Over a very short period of time, their

[77] YBI CP. E 248 /18, 32, 33.
[78] YBI CP. F 235, Agnes Benson *c.* Peter Benson (1448).

relationship rapidly abraded to the point where Agnes claimed that Peter had tried to kill her, and would have done so had her witnesses not intervened. Because of his cruelty and out of fear for her life, she dared not live with him, implying that she had been separated from her husband since the brutal episode. The first witness for the plaintiff, Agnes wife of Robert Helagh of York, agreed heartily with Agnes's contention. According to the witness, four or five years earlier, between the feast of Purification of the Virgin and Ash Wednesday, Peter initiated a violent encounter that caused Agnes to withdraw from her home. While at the home of the Helaghs with the couple and their daughter (a young girl also named Agnes) Peter denounced his wife as having been sexually incontinent. When Agnes denied Peter's accusation he called her a liar (*mentris)*[79] and a false whore (*falsa meretrix*).[80] He then drew his knife intending to strike her with it, and would have done so if the witness's husband and daughter had not stepped in. With their assistance, Agnes was able to escape from the home unharmed. Robert Helagh, husband to the first witness, also appeared in court to support Agnes Benson's application for separation. His story is generally consistent with that recounted by his wife. The main difference between the two is Robert's account of Peter's verbal tirade. Not only did Peter indulge in a spate of name-calling, but Robert relates how Peter continued to employ further indecent words (*verba indecencia*) before attempting to stab his wife.[81] Robert also agreed that Agnes had withdrawn justly from her husband and did not dare live with him out of fear for her life.

With so little evidence, no counter-witnesses and no response from the defendant whatsoever, it is difficult for the historian to determine how this case might have concluded.

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[79] Although I was not able to find the word "mentris" is any Latin word-list, it seems probable that the term was a variant of "mendax" meaning "liar", or perhaps even a Middle English variant of the term "mentrice" meaning female liar in French.

[80] YBI CP. F 235 / 2.

Nevertheless, it contributes in an important way to our understanding of communal, if not ecclesiastical, interpretations of abuse. To say that Peter had accused his wife of adultery clearly places the violent episode within context and even taints the defendant's character as one who engages so casually in slander. This episode should have been sufficient to explain the circumstances surrounding the abuse and illuminate the uncaring and litigious nature of the defendant. Why, then, include the actual slanderous statements and continue further to say that he used indecent words? Perhaps this was merely for the purpose of accuracy, to convey the full extent and manifestation of his rage. Equally likely is the possibility that these statements were included because the witnesses themselves saw them as evidence of abuse. In her examination of the plentiful sixteenth- and seventeenth-century cases of *divorce a mensa et thoro*, Laura Gowing notes that when plaintiffs and witnesses recounted tales of marital disharmony their definition of what entailed abuse was quite broad, encompassing economic, mental and verbal cruelty in addition to physical violence.[82] This expanded definition of *saevitia* certainly helped to convey the extent of the violence, even if it did not conform to the church's understanding of the term. Without the ruthless slanders and Peter's severe expression (*vultu austero*) this case might have been interpreted as an isolated incident of rage, easily explained away by cheap drink. But aspersions of Agnes's sexual honesty slung about in the home of their neighbours paint the defendant as hot-headed, careless of his wife's reputation and bordering on neurotic. Such verbal abuse, when combined with an attempted stabbing, suggests that this was a deeply troubled marriage.

The case of Benson *c.* Benson is not the only case in which the definition of abuse seems to transcend the physical. To return momentarily to the case of Wyvell *c.* Venables,

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[81] YBI CP. F 235 / 2.
[82] Laura Gowing, *Domestic Dangers*, p. 210.

Cecilia Redeness of York, witness for the plaintiff, was graphic and pointed in her description of the beatings and physical abuse suffered by Cecilia Wyvell. She meticulously recounted two of the most violent episodes mentioned elsewhere; in the midst of these accounts she replayed the scene of a desperate Cecilia, driven to suicide attempts by Henry's incessant abuse. Cecilia's mental instability was not essential to the legal narrative. Nevertheless, the witness chose to incorporate it into her story. Her inclusion of this incident and her failure to distinguish it in any way from the acts of violence would suggest that the witness perceived the mental abuse as a manifestation of cruelty, and may even have equated it with the physical torment inflicted upon Cecilia by Henry. Laura Gowing reminds us of another significant detail in unravelling the meaning of these depositions. She notes that

> it was the proctors' responsibility to make comprehensive legal narratives out of people's words, selecting relevant evidence, ordering it, and ensuring it made sense to the court. Probably it was the proctors who had the most hand in deciding what details were the basis of a case: the exact words of abuse in defamation suits, the gradations of violence in complaints of cruelty, or the signs of affection and familiarity that could prove promises of marriage.[83]

None of these witnesses entered an interrogation without some contact with the proctor. Each tale was "coached"; the proctor knew exactly what details could make or break a case. Bearing this in mind, it was not merely the witness who was inclined to interpret evidence of mental abuse as intemperate cruelty, but also the courts. Why else would the proctor have chosen to include this detail?

Ireby *c.* Lonesdale (1509)

The final case in this grouping again supports the notion that abuse, in the eyes of the

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[83] Gowing, *Domestic Dangers*, p. 45.

witnesses, was about much more than the physical. In Ireby *c.* Lonesdale, witnesses for the plaintiff recount the tale of a marriage gone awry.[84] The most memorable incident of abuse retold in elaborate detail by five of the seven witnesses was that some time ago, on the Wednesday after Palm Sunday when Robert Lonesdale, with a flushed expression on his face (*faci ardenti*), struck his wife Joanna on the cheek and the eye with such force that her eye hung defective on her cheek and she was wounded gravely.[85] This was not the only beating endured by Joanna at the hands of her husband. Joanna Fleschawer of York, servant to the couple during their tumultuous marriage, remembered distinctly a time when Robert beat his wife so that he broke her head (*fregit caput eius*) while they sat together at the table. Over a year later, on a date the witness could not recall, Robert was so determined to kill his wife that he had to be prevented by the witness and her fellow servant Alicia, relative of Robert. They were not able to stop Robert's relentless beating, however, before Joanna suffered a broken arm and shinbone, and it was on this occasion that Robert was required to find sureties to ensure that he would not repeat this performance. Joanna wife of John Potter of York remembered a time when Robert brandished a dagger and tried to kill his wife with it; William Scorburgh Potter of York recalled an incident in which Robert threw his wife on a bed and then attacked her with a knife. Because of her husband's erratic and dangerous behaviour, Joanna was forced to withdraw from Robert's home. All the witnesses agreed that Joanna did not dare live with her husband out of fear for her life or mutilation of her body, and that Robert was entirely at fault in this situation. As John Potter of York recounted,

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[84] YBI CP. G 35, Joanna Ireby *c.* Robert Lonesdale (1509).

[85] Five of the seven witnesses for the plaintiff mention this beating, however, only John Potter of York remarks on how her eye hung defective on her cheek. This detail has been included owing to its relevance in light of the other abuse cases related in this chapter, and is discussed further on in greater detail (see pp. 328-31). All of the depositions of the witnesses for the plaintiff appear on the same membrane, YBI CP. G 35 / 1.

throughout their marriage, Joanna had been nothing but obedient (*obediens*), while Robert behaved cruelly.

The intensity of the abuse notwithstanding, what is most remarkable about the witness depositions in this case is how they contextualise the violence. Abstract narrative was the strategy adopted by most witnesses for the plaintiff, exclusive focus on the abuse to the point of neglecting the context entirely. The case of Nesfeld *c.* Nesfeld demonstrates why this was such a potent and effective tactic. Margery's two female friends described senseless violence from a barbarous man; Thomas's servant, on the other hand, transformed the narrative altogether by adding context. His account of the events leading up to the altercation and other disputes between the two emphasise mutual abuse provoked by a rebellious shrew. Many of the other cases of abuse recounted only from the perspective of the plaintiff probably hide similar details. In Ireby *c.* Lonesdale, however, the approach espoused by Joanna's witnesses is wholly different. In fact, her witnesses embrace context. According to witnesses for the plaintiff, the difficulties with Joanna and Robert's marriage could be traced back to money. When Robert leaned across their table to strike his wife on the head seriously wounding her, it was because Joanna had lent money to a friend, Petronella Russell of Goodramgate, without consulting her husband. This is an important detail. Its inclusion by a witness for the plaintiff strongly suggests that the witness (and probably the plaintiff's proctor) felt that the plaintiff was entirely within her rights to lend a sum of money to a friend if she felt like doing so. In late medieval England, married women had very few rights with respect to marital property. By law, a married woman was not permitted to sell, transfer or exchange property without her husband's consent. A married woman was not even permitted to make a will

without her husband's approval.[86] The case of Ireby *c.* Lonesdale, however, brings the issue of married women's property to light and suggests that a distinction may have existed between theory and practice. Legally, Joanna may not have been entitled to lend money without her husband's approval, but this witness clearly saw that it was within her rights. Had this detail been brought forward by a witness for the defendant, the interpretation would have been vastly different.

For a case of divorce on the grounds of cruelty, Joanna Ireby's witnesses dwell far more on the issue of money than one might expect. Witnesses for the plaintiff noted that before she married Robert, Joanna owned extensive lands and tenements worth twelve marks a year and goods worth forty pounds. Since their marriage, Robert had taken full possession of his wife's property. Without her permission, he sold all her goods, with the exception of some of her clothes, and refused her access to the profits. After Joanna left Robert out of fear for her life, she became so impoverished that she was forced to borrow money so that she might bring her case to court. What is probably most intriguing about Joanna's descent into destitution is the way it is narrated by Joanna's witnesses. Her deponents clearly saw Robert's actions as not only unlawful, but despicable. In an accusing tone, they recount how Robert was seized (*occupavit*) of Joanna's own property, and how he still has possession of it (the inference is that he holds this property despite their current separation). The fact that each

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[86] Recent research by Richard Helmholz has demonstrated that historians should be wary of common law restrictions on female rights. In his study of women and wills in the fourteenth and fifteenth centuries in England, he notes that many married women resisted the common law rules and exerted their testamentary freedom. In fact, litigation over the enforcement of married women's wills was taken to ecclesiastical courts on numerous occasions without addressing the issue of the husband's consent, as if it were simply not a question in the final decision. Helmholz's study makes us aware of a meaningful gap in medieval English society between common law regulation and actual practice. See R.H. Helmholz, "Married Women's Wills in Later Medieval England," in Sue Sheridan Walker (ed.), *Wife and Widow in Medieval England* (Ann Arbor, 1993), pp. 165-182. Helmholz is not the only medieval historian to have noted this feature, particularly as the laws concern women. See also Shulamith Shahar, *The Fourth Estate: A History of Women in the Middle Ages* (London, 1990), *passim*; Caroline M. Barron and Anne F. Sutton (eds), *Medieval London Widows 1300-1500* (London, 1994), *passim*.

witness dwelt extensively on the issue of property and to whom it properly belonged suggests that the deponents saw this transgression as both an infraction of marital property practices and as definitive proof of Robert's cruel and immoral behaviour. In the minds of these witnesses, cruelty was not only physical, but economic.

The issue of property in this case was not merely about abuse. Joanna came to the marriage endowed with a substantial amount of property, the value of which was repeated by each witness in turn. By focusing on the actual worth of the property, Joanna's witnesses achieve two goals. First, they demonstrate just how flagrant was Robert's transgression and abuse. Second, they provide the value of Joanna's property going into the marriage, and accordingly, what is owed to her upon leaving the marriage. It is clear that without maintenance, Joanna was unable to survive properly. Those lands and tenements were an essential source of funding for her lifestyle. If she and Robert were living separately and married in spirit only, what rights should he have to her property?

Mismanagement of money and the tendency to fly into a rage were not Robert's only faults. Five of the plaintiff's witnesses strongly suggest that Robert had some difficulties with authority. Although the details are scanty and the documentation poor, it seems that while Joanna was still living with her husband, a mix-up occurred one day over lunch. Apparently, Joanna used a new pewter dish for Robert's meal rather than the one to which he was accustomed, causing Robert to beat Joanna severely, and it was soon after this that Joanna withdrew completely from his home. The context of this beating is a purposeful inclusion intended to sway the judge's opinion. Did Joanna transgress her wifely bounds, requiring Robert to discipline her? Or was Robert treading into an area of domesticity that was beyond the constraints of patriarchal authority? Of Joanna's seven witnesses, five were male. These

five men all chose to recount this particular story of abuse. Their gender makes this story all the more meaningful. It seems quite clear that what these men were objecting to was Robert's abuse of his position as a figure of authority within the household. None of these men would have contested that a man is the head of his household and as such is required to use his power to keep his home in order, but he must use this power wisely. In beating his wife and driving her away over something as trivial as a pewter dish, Robert has demonstrated that he is incapable of exerting decently the authority conferred on him by virtue of their marriage.

Joanna Ireby was successful in her plea for separation; without any surviving evidence of the defendant's position, however, it is difficult to know exactly why. The sentence in her favour raises numerous questions. Would Robert's violence have been sufficient on its own to gain her a positive verdict? How influential was his abuse of authority? And did the ecclesiastical officials dealing with the case accord with popular perceptions of a married woman's property rights? Unfortunately, none of these questions may be answered given the surviving evidence. Ireby's case, more than any other, demonstrates the broad range of issues that an application for judicial separation had to take into consideration.

Why These Six Women?

It is inconceivable that six cases of abuse over a period of two centuries should constitute the total number of actual cases of non-homicidal, yet still excessive, marital strife in the northern ecclesiastical province of England. Nevertheless, these are the only extant records of violence to come before the archbishop in which the woman perceived the situation

to be critical enough to warrant legal separation.[87] Why these six cases? Perhaps, more appropriately, we should be asking, why these six plaintiffs? Why were these six intrepid women willing to tackle the ambiguous definition of cruelty in order to obtain marital freedom when many others were not?

In order to answer this question we must first grapple with the broader query of why any plaintiff sued a case before the York consistory court. Research by Frederik Pedersen and P.J.P. Goldberg in particular has demonstrated that plaintiffs in the archbishop's consistory were not there by mere chance. An examination of the 86 cases of matrimonial litigation before the court at York in the fourteenth century reveals that 61 of these cases (or, 71%) were sued by plaintiffs whose residence was less than ten miles from the court.[88] The majority of these cases, then, were initiated by persons within the city of York or immediately outside its perimeters. This figure would suggest that not only were urbanites more litigious, but that the less convenient a legal resolution, the less frequently it was sought. In this respect, Helmholz's assertion that many couples simply divorced themselves may be slightly more representative of rural environments, or those more distant from legal centres.

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[87] The act books for the northern ecclesiastical period make it abundantly clear that these were not the only cases of applications for divorce on the grounds of separation in the late medieval period. Act books record the daily business of the courts in a brief, perfunctory way, and thus provide very few details. None the less, cases of matrimonial litigation in which the dispute centres on physical abuse can be identified among these records, although there is no corresponding documentation of the various stages of the process in the York cause papers. It seems clear that many of the cause papers from the late medieval period have not survived. This does not, however, suggest that the extant cause papers cannot be used for an analysis of the kinds of people who typically used the consistory court for dispute settlement. The surviving papers demonstrate no specific uniformity of character to suggest that they were kept for a reason (others were destroyed). The York cause papers, then, present a random sampling of cases that came before the court of the archbishop, although it is impossible to discover what proportion of actual cases this might represent. See P.J.P. Goldberg, "Debate: Fiction in the archives: the York cause papers as a source for later medieval social history," *Continuity and Change* 12 (1997), 435.

[88] Frederik Pedersen, "Demography", 411. In this respect, it is important to remember that there were five active archdeacons in the diocese and that they also heard marriage cases. Consequently, we should not expect to find all northern marital disputes in the archbishop's court.

Goldberg's somewhat heated response to Pedersen's study reminds us that this urban / rural distinction is not just about convenience. He notes that "townswomen were less prepared to put up with unsatisfactory and violent marriages than may have been true of their rural sisters."[89] As Goldberg reports, this high degree of female agency is a direct result of urban / rural distinctions in the courtship process. While the rural north of the later Middle Ages practised what has come to be viewed as the model of medieval marriage, replete with manipulative and domineering parents and overarching concerns of property, the urban centre of York, in particular, demonstrated a far different pattern. Many of the young women living in the city of York were of rural origins, but had come to the city to work as domestic servants. Their departure from the familial household entailed less supervision not only of marriage, but of sexuality in general. Young people were "permitted a comparatively high degree of initiative," allowing them the opportunity "to become emotionally entangled with more than one partner," and even to choose their own marriage partners.[90] In this respect, urban marriage may have been actual love matches. With such initiative in the early stages of the marriage process, why should we assume any less agency in terminating a marriage?

By now, it should be abundantly clear that pleading a matrimonial suit in court was no easy process. Not only did it require exceptional courage and strength of character just to bring a case to court, but a plaintiff also required sufficient funds available to hire a proctor who might present the case in the best possible light. In fact, the entire legal process was remarkably expensive, demonstrating that the concept of the "profits of justice" was very much alive and well in later medieval England and not merely restricted to the king's courts. Each step of the judicial process had a price tag attached: introduction and dismissal of a suit,

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[89] Goldberg, "Debate", 439.
[90] *Ibid*, 433.

three pence each; letters of citation, four pence; writing of a libel, two shillings, four pence; examination of a principal party, one shilling. All of this adds up to a grand total of seven shillings, eight pence. This does not even account for the costs of the proctor (six pence per appearance), nor those fees exacted for interrogating the witnesses.[91] Moreover, in any case where a sentence was handed down, the party who lost the suit was responsible for paying in full all the costs owed by the successful party.[92] For an urban woman, then, matrimonial litigation might be quite the expensive prospect, particularly in the event of failure. For a rural woman, the costs would have been much, much steeper. Not only was she required to cover all these same costs, she also had to foot the bill for her witnesses' travel and lodging, as well as her own. For witnesses, then, the high costs of litigation may have been a significant factor; helping one's neighbour only goes so far without sufficient remuneration. The impossibility of embarking on such a costly course of action must have deterred most rural women from turning to the archbishop for a resolution of their marital woes. For urban women who were relatively assured of their possibilities of winning, and who had access to ample funds to pay exorbitant court fees, the consistory court would have been the quickest route to a permanent and legal solution.

Matrimonial litigation in general seems to reflect this trend. As Helmholz concluded over twenty years ago, the courtrooms of the late medieval church were no place for the lowest economic stratum of medieval society.[93] Nor, however, were they a forum for

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[91] These cost summaries have been taken from Brian L. Woodcock's *Medieval Ecclesiastical Courts*, p. 61. A case from the Chancery records of the late fifteenth century suggests that the cost for divorce litigation might have been particularly onerous. When Dame Jane Cursen divorced her husband, Edmund Aylmer, she was forced to borrow 40 marks in order to pay for the costs of litigation. It seems likely that few women would have had access to such a substantial sum of money. See PRO C 1 / 107 / 29, Dame Jane Cursen *c.* Edmund Aylmer, husband of complainant.

[92] Woodcock, *Medieval Ecclesiastical Records*, p. 61.

[93] Helmholz, *Marriage Litigation*, p. 160.

aristocratic matrimonial strife. Members of the upper crust ordinarily bypassed the courts and took their causes directly to the bishop or archbishop. Instead, the archbishop's court tended to the domestic affairs of the middling sort in society. The six cases of divorce *a mensa et thoro* on the grounds of cruelty fall neatly into this paradigm. Not only were all six plaintiffs urban women (five from York, one from Newcastle-upon-Tyne), most plaintiffs also belonged to that middle economic layer. It is not always easy to determine the economic standing of litigants in ecclesiastical causes, since their occupations are recorded irregularly. In the six couples in cases of judicial separation, it is possible to discern the standing of only three for certain. We are told that Simon Munkton is a goldsmith (*aurifaber*) and Henry Venables a young gentleman (*domicellum*), clearly situating both at the upper end of the middling variety. The case of Margery de Devoine and Richard Scot would also seem to suggest wealth. All their witnesses were asked specifically if they were tenants of the plaintiff, suggesting that she too was fairly well-off. With the remaining cases, it is not as easy to assess the situation with any certainty. However, we know that Margery and Thomas Nesfeld were sufficiently affluent to employ at least one male domestic servant. One of Agnes Benson's witnesses stated that he was a fraser, a very middle of the road occupation for the period. It seems safe to assume that Peter and Agnes Benson associated with people who shared a similar economic standing. And finally, with such heavy financial undertones, the case of Ireby *c.* Lonesdale strongly argues for an upper middling stratum as well. All six female plaintiffs, then, belonged to an order of women with some degree of economic clout.

The fact that these plaintiffs were all urban women with a solid financial base may explain why, as Goldberg puts it, they were "less prepared to put up with unsatisfactory and

violent marriages."[94] At the same time, these women most likely experienced more turbulent marriages because of their circumstances. Independence from familial supervision not only meant that urban women were permitted more freedom in marital choice, their marriages were also less supervised than were their rural counterparts'. As the evidence in Chapter Two demonstrates, families were more than willing to step in to resolve disputes within marriage. But to whom did troubled urban women turn when problems arose in their marriages? Employers sometimes may have filled the role of the absent parent in resolving or negotiating marital difficulties, but because of the frequency with which urban women changed employers, many probably did not share the same concern for their employees.[95] Moreover, the cases of divorce *a mensa et thoro* in this grouping confirm that service relations were meaningless in the urban environment: none of these cases includes testimony from a woman's former employer. With a much more ambiguous relationship, and in an environment which was still in many ways foreign to medieval society, it seems likely that urban marriages simply fell through the cracks of the normal marital process. Left on their own to sort through the difficulties of married life, urban couples may have found themselves more often in what appeared to be an irresolvable situation.

Similarly, couples who married for love rather than money probably had different expectations from marriage. If affection was no longer a part of the relationship, why perpetuate the marriage? Even more to the point, if a woman was capable of supporting herself, why stay with an abusive husband? The financial freedoms permitted to single

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[94] See note 83.

[95] Goldberg notes that it was not unusual for female domestic servants in the city of York to change employers after a yearly term of service, a factor which would argue strongly for a lesser emotional bond in the urban setting. See Goldberg, *Women, Work, and Life Cycle*, pp. 174-6.

women by an urban lifestyle dramatically transformed the nature of the union in the medieval setting.

In at least two of these cases, the financial standing of the plaintiffs provides the key to understanding their husbands' determination. Money was at the very heart of the matter. In the case of Munkton *c.* Huntington, violence first erupted between Agnes and Simon as a result of Agnes's unwillingness to sell her lands in Huntington and Earswick as Simon wished. Her refusal must have created some difficulty for Simon, who was evidently in dire financial straits. While married, he had access to the profits of Agnes's land and the ability to influence her decision of whether to sell it; if legally separated, he would not have the same control, and there was even the likelihood that he would be required to pay alimony. Consequently, it was in Simon's best interests to keep the marriage together. In the case of Ireby *c.* Lonesdale, the question of money was also central to the couple's unhappiness. Witnesses for the plaintiff paint a picture of a man unwilling to provide adequately for his wife because he delights in spending the profits from her lands on himself. How would such a man have felt about losing access to this wealth? Or paying alimony? Robert, like Simon, was motivated to fight a separation simply because of the money involved. When the financial stakes were high self-divorce was not an expedient option. As affluent urbanites, these women were both empowered and victimised by their circumstances.

More important still, these six women were fighting against the social grain. In his study of female plaintiffs in matrimonial litigation in the York consistory of the fourteenth and fifteenth centuries, Charles Donahue, Jr. observes that marriage litigation was, by and large, an activity initiated by women for the purpose of enforcing their marriages.[96] Despite

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[96] Donahue, "Female Plaintiffs", pp. 195-7.

their husbands' dalliances and desperate attempts to escape commitment without regard for children, impending pregnancies, or possible female destitution, the vast majority of the women appearing before the archbishop were determined to hold on to their men. Nevertheless, these six women emerge as anomalous, equally persistent, yet with a view to retreating from marriage. Given what other women were willing to endure from their husbands, we can only conclude that these particular women had suffered intolerable adversity.

From the Individual to the Collective: Shared Aspects of Domestic Violence

Individually, these cases tell us a great deal about abuse and communal attitudes; collectively, they reveal much more. In her study of similar cases of abuse in the early modern context, Laura Gowing has brought to light some important gender distinctions, both in the way men and women describe the violence, and in who chooses to intervene. She argues that

> evidence of communal intervention in men's violence towards their wives suggests that not all members of the community felt the same about the necessity to complain and intervene. It was women, more often than men, who protested to violent husbands, sometimes physically interposing themselves between husband and wife, and coming to court, later, to testify to their female neighbour's precise injuries, and it was women to whom battered wives turned first.[97]

The medieval evidence also reveals a gendered approach to domestic violence. Nesfeld *c.* Nesfeld is the only instance in which the gender of the witnesses reflects that of the litigants, creating a bold division between the sexes. This demarcation allows some insight into how one instance of violence can be interpreted differently depending on the sex of the deponent.

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[97] Gowing, *Domestic Dangers*, p. 217.

Margery's two female friends not only appeared as witnesses on her behalf, but were also instrumental in putting an end to a violent beating which they believed would have resulted in her death. In their accounts, both women emphasised the necessity of intervention required by the exceptional nature of the violence, as if the need for interference were sufficient proof in itself that the marriage was dangerous. Conversely, John Semer, who also participated in Margery's rescue, interpreted the altercation in a wholly different light, suggesting that communal intervention was not perceived by this male witness as tangible proof of a dangerous marriage.

The various accounts of Simon Munkton's first attempt at an out-of-court settlement with his wife demonstrate the same distinction in perceptions of communal intervention. All of the male deponents demonstrated a marked tendency to downplay the level of violence, although there were differences in the way witnesses for the plaintiff and for the defendant framed their stories. Agnes's witnesses all credited John de Midelton with having saved her from certain danger, and yet the man himself appeared as a witness for the defendant. His version of the episode, however, is so tame that one wonders why he bothered to intercede in their affairs at all. Nevertheless, it is not all that contrary to the testimonies of the male witnesses for the plaintiff. Thomas Esoby offers the most detailed description of the encounter. He saw Simon throw Agnes to the ground and restrain her with his body, "[b]ut whether Simon hit the said Agnes then he does not know for certain." He also witnessed Simon pull out a knife, although he was quick to point out that Simon "did not stab anyone with it, so far as this witness knows."[98] Neither account resembles the brutality alleged by female witness for the plaintiff, Juliana de Aldeburgh. She claimed that Simon's brutish

[98] YBI CP. E 248 / 26c.

behaviour caused Agnes to be confined to her bed for over two weeks after the assault. Even if the male witnesses had not been present for the duration of the episode, Agnes's condition after the fact, and her absence from the community for a period of fifteen days, should have been noteworthy. What Juliana de Aldeburgh perceived as an inappropriate and excessive use of force within marriage, John de Midelton saw merely as an annoying disruption of quiet communal life.

The case of Wyvell *c.* Venables offers yet another example of gendered distinctions in focus and priority. Of the five witnesses for the plaintiff, three were male. The depositions of two of the male witnesses are distinct in their preoccupation with the defendant's adultery, almost to the exclusion of anything else. One witness, Alexander Johnson of Newcastle-upon-Tyne, does not even refer to Henry's behaviour towards his wife, although he acknowledges that Henry is married, that his wife's exemplary disposition is known throughout the city of York, and that Henry is a violent and terrible man. This is all he has to say about their relationship. The rest of his deposition is restricted entirely to Henry's extramarital activities with Mabota Don, presenting a much fuller perspective on the relationship than any of the other witnesses for the plaintiff. Johnson not only summarises the long-standing nature of the affair and the number of children born of Mabota as a result, he also includes details omitted by the other deponents, such as where Henry and Mabota cohabited in Westchester, and Henry's public declaration that "no bishop would separate them from leading this life."[99] The next witness, John Kirkby of Newcastle-upon-Tyne, discusses the abuse briefly, mentioning that Henry is accustomed to beating his wife, that he is a violent, demented, terrible and lunatic man, and that Cecilia did not dare say anything about

[99] "quod nullus Episcopus ipsos advinculem separaret durante vita sua". YBI CP. F 56 / 7.

the abuse out of fear for her life. Otherwise, his testimony also focuses on the adultery of Henry and his concubine, describing how he has seen Henry alone with Mabota lying in a bed in her chamber, and reporting the number of children they produced between them. Why were both these deponents so engrossed in Henry's adulterous affair? Is it possible that they regarded Henry's illicit sexual encounters as a more egregious transgression than physical abuse? It is worth noting that of the five witnesses for the plaintiff these two deponents were the only residents of Newcastle-upon-Tyne. All the other witnesses resided within the city of York. The geographical distinction alone may well have made them more privy to Henry's affair with Mabota than his scurrilous behaviour towards his wife. Nevertheless, it seems peculiar, given that both men were aware of the dispositions of husband and wife, and had some knowledge of their marriage, that John Kirkby merely glossed over the abuse, while Alexander Johnson chose to omit it entirely. If the nature of the abuse were as virulent as indicated by the remaining three witnesses, this silence speaks volumes. To prioritise Henry's moral crimes as adultery first, near-fatal abuse second, indicates that these two men shared a perspective on the significance of violence within marriage far different from their female counterparts.

As witnesses to her husband's cruelty, Cecilia presented two females and one male on her behalf. All three recount very similar stories of abuse. The chief difference among the three depositions lies in the number of violent episodes described by each witness. Agnes wife of Adam Shafton of York offered two violent encounters. Cecilia wife of William Redeness of York addressed the same two instances, but highlighted this tale with a description of Cecilia's failed suicide attempts. William Constowe of York mentioned only the most memorable incident of violence when Cecilia was nearly blinded by Henry's

beating. Is it mere coincidence that the male witness presented the least violent account of their marriage? It may be that what Agnes and Cecilia Redeness interpreted as sure signs of abuse were not perceived as such by William.

The cases of Devoine *c.* Scot, Benson *c.* Benson and Ireby *c.* Lonesdale, on the other hand, do not show a particular predilection for female intervention nor gendered interpretations in addressing the issue of physical violence. Even in the case of economic deprivation by Robert Lonesdale, the male deponents felt as adamantly as their female counterparts that Robert's treatment of his wife was unjust. The only gendered distinction in this case concerns authority. The pewter bowl incident demonstrates the male deponents' aversion to an abuse of governance by Robert, and suggests that irrational rule was as abhorrent a transgression of the marital bonds as physical abuse. Gowing's hypothesis, then, that "women were likelier to perceive men's violence as unacceptable" would seem to hold true for the medieval period, although the paucity of case studies and depositions warrants a further study of the phenomenon. [100]

A gendered perspective of marital roles laid the base for telling stories of abuse in matrimonial litigation in the church courts of the period. Both witnesses for the plaintiff and for the defendant cautiously recounted their version of events in a way that highlighted each party's ability to stay within the scope of acceptable gender behaviour. Garthine Walker's recent study of rape and sexual violence in early modern England sheds some greatly needed light on this phenomenon and the importance for women, in particular, to plead normative behaviour. [101] In her investigation, Walker argues that victims of rape in the courts of early modern England deliberately shaped their woeful tales to emphasise their passivity. This

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[100] Gowing, *Domestic Dangers*, p. 231.

construction is explained easily by contemporary perceptions of female sexuality. Because the active female in discourses of illicit sexuality is either wanton (and therefore sinful) or a prostitute, women cannot describe themselves in an active role in situations of rape without depicting themselves as willing participants.[102] At the same time, because discourses of consensual sex revolved around the active male / passive female, victims of rape were utterly incapable of describing a sexual encounter that would suggest male criminality. When women told their stories to the courts, then, they were inclined to omit any of the details of the sexual act and to concentrate instead on the physical violence. In this way, they were able to focus on male action rather than female behaviour, and avoid the discursive pitfall of self-implication.

It is difficult to ignore the similarities between rape and spousal abuse. Not only do both involve a hierarchy in which gender defines the relationship, both implicitly involve masculine power over female bodies and as such share many of the same discursive difficulties. Rape may have been more recognisably unlawful than spousal abuse in the context of late medieval England, yet domestic violence was no easier to discuss. An active woman resisting the advances of a rapist was not a victim at all; in fact, she was everything one would expect from a willing, albeit lewd, participant. Likewise, a wife who returned her husband's blows was not a victim of abuse; she was a disobedient woman. And the courts were very much aware that a woman who defended herself too vehemently might easily cross the line between self-defence and petty treason.

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[101] See Garthine Walker, "Rereading Rape and Sexual Violence in Early Modern England," *Gender and History* 10(1998), 1-25.

[102] Ruth Karras Mazo makes an interesting observation about the treatment of singlewomen in the medieval period that tends to confirm these findings. From an analysis of ecclesiastical court records, she notes that late medieval English society tended to treat all sexually-active singlewomen as either prostitutes or victims of rape, because female sexuality outside of marriage could not be understand in any other terms. See her

Bearing this in mind, the most widespread and effective strategy adopted by plaintiffs and their deponents was to offer accounts of violent altercations with a narrow focus on male action, omitting entirely the female reaction. For example, when Margery de Devoine's husband, Richard Scot, beat her with a staff to the head, seriously wounding her and knocking one of her eyes from the socket, Margery apparently did not raise a hand in her defence. Cecilia Wyvell exhibited the same passive restraint when her husband, Henry Venables, beat her to the ground with a staff and then strangled her. It seems difficult to imagine that either woman meekly accepted her fate without casting a single blow in her defence, particularly when both their lives were clearly in danger. That either woman should have survived this degree of abuse is nothing short of a miracle. And yet, both plaintiffs and their witnesses would have us believe that they submitted themselves willingly to their husbands' authority, however excessive. Only one mention is made in these records of a woman actively resisting her husband. During a particularly unpleasant argument between Margery and Thomas Nesfeld, Margery ran into the street and raised the hue on Thomas. It is significant, however, that this single shred of proof demonstrating active female resistance was brought forward by a witness for the defendant and intended to cast Margery in a negative light. Moreover, even this description of human agency is specifically gendered. Self-defence for a man surely did not involve tears and wailing. The skilful manipulation of the details by medieval deponents in order to remove all evidence of female resistance paints the perfect picture for a suit of judicial separation: in this situation it is clear that the only transgression of acceptable gender boundaries was a masculine show of tyranny. In the minds of the witnesses for the plaintiff, this was not the case of excessive chastisement, but full-blown spousal abuse.

"Sex and the Singlewoman," ed. Judith M. Bennett and Amy M. Froide, *Singlewomen in the European Past, 1250-1800* (Philadelphia, 1999), pp. 127-44.

Female passivity was emphasised further in a number of different ways. Probably the most blatant means affected by plaintiffs and their witnesses was to describe carefully how the woman narrowly escaped death through the intervention of others. If Margery Nesfeld's friends had not stepped in, Thomas surely would have stabbed her to death. If Cecilia Wyvell's neighbours had not pulled Henry from Cecilia's body, she too would have joined the ranks of the dead. With such active friends and neighbours, a beaten wife was not required to act in her own defence. Even the language of the testimonies supports this interpretation of the events. Tales of abuse were invariably accounts of the active male. Men strike, beat or mistreat their wives; women, on the other hand, are struck, beaten or mistreated. The Latin construction of these tales emphasises the female position as object: the victim is almost always described in the accusative, while the nominative is reserved for the perpetrator of the abuse. Defendants are the actors, plaintiffs are merely acted upon. The formulaic statement included at the end of each libel and deposition captures best the sense of female inactivity the plaintiff and her witnesses hoped to convey: the wife "does not *dare* cohabit" with her husband out of fear for her life. If she dared return home, she would be a far braver person than her femininity permits.

Of course, the greatest irony of all is that, in effect, the testimonies did not reflect the reality even superficially, and both the litigants and the courts were well aware of this. If any of these women was as passive, submissive and frightened as her witnesses suggested, would they have been capable of suing their husbands in court? How does a woman make the transition from cowering victim to plaintiff? The fact that Cecilia Wyvell, at least, is known to have been successful in her plea suggests that this perceptible gap between discourse and reality may have been inconsequential in the grand scheme of things. Justice, even at this

time, had little to do with who was in the wrong; rather, it was meted out to those who told the most convincing story.

Male defendants regularly employed a similar strategy in pleading their cases. Of all the defendants in this grouping, Henry Venables was the only witness to deny the allegations, and thus reject male agency. His lack of success in court suggests that he might have been better advised to embrace the gender paradigm. In all the other cases examined here the husband, or witnesses on his behalf, demonstrated an astonishing aptitude to transform abuse into roughly acceptable, or slightly overzealous, wifely chastisement. Simon Munkton's response best exemplifies this approach. In minimising the intensity of the violence, and painting his wife as a lewd woman in desperate need of moral correction, Simon's actions were no longer those of an irrational, abusive husband; rather, he was the concerned and able Christian patriarch, teaching his wife the errors of her ways with a firm hand. Simon was not alone in asserting the right to correct his wife's failings; Thomas Nesfeld, Richard Scot, Peter Benson and Robert Lonesdale all argued at some point that it was their legal right to chastise their wives physically. Clearly, these men were manipulating the same model of male / female relations as were their wives. While the plaintiffs used this model to present themselves as victims of excessive male action, the defendants argued the opposite. It was not they who surpassed the limits of their authority, but instead their wives who took active, unsanctioned control of their lives. And, as Walker demonstrates, active femininity is necessarily sinful. Their wives' transgressions, then, compelled the defendants to exert their authority and force them back into positions of submission. If the discipline was excessive, its objective was none the less admirable.

The conscious shaping of stories in order to fit within socially acceptable parameters is nowhere more evident in the description of the weapons used to inflict injuries. In each tale, while husbands may have also used fists and feet, witnesses for the plaintiff regularly commented on the use of a specific weapon: Thomas Nesfeld used a dagger, a club and a knife, Simon Munkton a knife, Richard Scot a staff, Henry Venables a shortened staff, Peter Benson a knife, and Robert Lonesdale a dagger, a knife and a tapstaff. But, in the cases in which the defendant or his representatives had an opportunity to respond to the allegations, the weapons suddenly disappeared. John Semer, in support of his former employer, Thomas Nesfeld, argues that Thomas struck his wife with his fist, twice, but failed to mention any evidence of a brandished dagger. John de Midelton, in recounting Simon Munkton's street fight with his wife, emphatically denied the existence of a knife, despite the testimonies of a number of witnesses for the plaintiff. These same litigants attempted more desperately than any other to recast their abuse as moral correction. Apparently both men married rebellious, perfidious women. Simon Munkton's wife not only disobeys express commands, but she is also disrespectful and irreverent; Thomas Nesfeld's wife denounces him publicly and may even be of murderous intent. Both men argued that their "castigations" were within their legal rights and in response to their wives' immoral activities. Given the conscious moulding of the legal narrative, the defendants' renderings of the events are very meaningful. In the minds of both defendants and plaintiffs, fists and feet fell short of the legal requirements for a judicial separation; weapons did not.

The tendency of Yorkshire husbands to construct defences that played down the degree of violence strongly suggests that northerners were intolerant of physical aggression that might leave lasting marks on the body of the recipient. Thus, in the case of Cecilia

Wyvell, the witnesses for the defendant avoid all mention of the beating which left Wyvell bandaged around the arm and neck; or, in the case of Margery Nesfeld, her broken "spelbone" is never addressed by the defendant; and none of the defendants mention anything having to do with eyeballs popping out of their sockets. Evidence from the diocese of Canterbury raises the question of whether this expectation of limited physical injury was restricted to the north. In a case of domestic violence from 1470 in the London area, Yon Machon openly admitted to flying into a rage and beating his wife Elizabeth so that her skin turned black and blood flowed from her head. He also beat her left arm until he believed that he had broken it, and she was forced to wear it in a sling for over a month afterwards.[103] Although he acknowledged this as a beating and suggested that it was undeserving, he was also very careful to describe it as a castigation; yet, Machon fails to note why such vehement discipline was required. Likewise, in a case from Maldon, Essex, when William Hyndeley was facing allegations of abusing his wife Joanna, his own version of events was fairly gruesome. He describes how he struck Joanna with a staff so hard that blood flowed from her forehead, and she languished (languebat) in bed after the beating.[104] At the very least, Hyndeley offers an explanation for his violent actions. He argues that he was moved to strike his wife after she spoke opprobrious, contentious, scolding and vexatious words.[105] The evidence from the diocese of London may even suggest that southerners equated discipline with beatings as one witness for the plaintiff did in a case from the year 1471. When asked to

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[103] "ut credit indebite castigauit, quodam furore et calore iracundi pro tempore repletus, Elizabeth uxorem suam, in tanto quod caro et cutis ipsius Elizabeth de huismodi verberibus et indebita castigatione vertebandtur in nigrum et eciam quandoque ad sanguiniis offusionem in capitum, ac eciam verberauit ipsam in brachio dextero adeo ut credit quod huiusmodi brachium erat fractum eo qod ipsa portauit brachium suum in quodam manutergio postea per mensem et ultra." LMA MS DL/C/205, fo. 58r, Elizabeth Machon *c.* Yon Machon (1470).

[104] GL MS DL/C/205, fo. 293r., Joanna Hyndeley *c.* William Hyndeley (1475).

[105] "et dixit huic iurato verba obprobriosa, brigosa, rixosa, et calumpniosa quod iste iuratus mouebatur per huiusmodi verba ad sic percuciendum". *Ibid.*

comment on the marriage of Joanna Baron and Robert Howton, Joanna Hyde said that "she found fault with the said Robert Howton because of the correction or inordinate beating" (*quod ipsa reprehendebat dictum Robertum Howton propter correccionem siue percussionem inordinatam*) to which he submitted his wife. [106] After some elaboration, it became clear that this "correction" consisted of an attempt on her life in which he brandished a dagger and gravely injured his wife.[107] The degree of violence in all three of these cases is excessive when compared to their northern counterparts. While this disparity may well speak to the nature of violence exhibited in these nine specific cases, it is also possible that southern Englishmen tolerated more brutality in marriage than their northern countrymen.

Collectively, these six cases from the York court provide an equally important perspective of the regulation of domestic violence in the late medieval period. Most important, they point to the existence of an informal system of spousal expulsion and separation among the laity, despite canonical regulations forbidding it. In all of the cases of divorce *a mensa et thoro*, an unsanctioned separation of the couple had occurred prior to its appearance in the archbishop's consistory. In fact, often the depositions indicate that separation had taken place quite some time before litigation. Margery and Thomas Nesfeld had been separated for four years; Margery Devoine and Richard Scot, eight years; Cecilia Wyvell and Henry Venables, seven years; and Agnes and Peter Benson, six years. These lengthy periods of separation (or self-divorces) suggest a number of points. First, for these couples to appear in court, something must have happened to threaten their current situation. These couples were already separated *de facto*; a formal recognition of this would not have

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[106] LMA MS DL/C/205, fo. 93r, Joanna Baron alias Howton alias Palmer *c.* Robert Howton alias Palmer (1471).

[107] "quando idem Robertus Howton in presencia istius iurate et mariti eiusdem ac Johanne Boydon extraxit armicudium siue dagarum suum cum quo voluisset aggredi uxorem suam et hoc vultu iracundo, ut huic

altered the relationship in any tangible way. For these women to face the high costs of court and reopen old wounds, there must have existed the threat of a forced reconciliation, or perhaps even a desire for maintenance. It seems likely that most of these women recently had found themselves presented before the lower courts of the church for spousal non-cohabitation, and chose not to abide by the court's decision. Second, the only cases not to experience a lengthy period of separation prior to litigation were those in which the women were wealthy in their own right. Charles Donahue argues that this is a common feature of late medieval matrimonial litigation. He notes that it was women, not men, who usually fought to enforce a marriage; however, "when the financial stakes [were] high", medieval men suddenly took an avid interest in keeping a marriage together.[108]

Finally, most remarkable about these long separations prior to the court appearances is the fact that, despite the amount of time that had passed since the abuse, the witnesses still precisely and vividly recalled the instances of violence. This unusual ability to recollect events long past raises a number of vital questions. Were these memories indelibly etched on their subconscious because these instances of violence were so exceptional and disturbing? Or, is it possible that these were not really memories at all, but fabrications by the plaintiff and her friends in order to meet the requirements of the court?

Fiction in the Archives: Ocular Displacement and the Life of Saint Lucy

The similarity of the most violent episodes of abuse sustained in three of the divorces within this sampling would seem to suggest that plaintiffs may have embellished their tales of

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iurate apparuit, ad grauiter ledendum eandem siue interficiendum si maritus istius iurati ipsum non impeduisset." *Ibid.*

[108] Donahue, "Female Plaintiffs", p. 197.

abuse. Margery de Devoine, Cecilia Wyvell and Joanna Ireby all suffered an uncommon affliction as a result of beatings to the head: each was struck so hard that an eye burst from the socket and hung on the victim's check. This tale is repeated by three of Cecilia's witnesses; we are told that her eye was rescued by her mother, who was present during the altercation and gently replaced it in the socket. Only one of Margery's witnesses and one of Joanna's mentioned this detail in their narratives, and neither gave any indications of how this situation was resolved. Although these women experienced similar beatings to the head and therefore may have sustained identical injuries, it is highly unlikely that all three suffered such an unusual impairment. Rather, all three women are drawing on the same pool of images about spousal abuse or violence against women, influenced heavily by saints' lives and English folklore. The *vita* of the virgin martyr Saint Lucy is the most likely source for the abuse appearing in these tales. Saint Lucy of Syracuse was a fourth-century Christian whose mother, Eutychia, was desperate to have her married. Out of her devotion to God, however, Lucy had taken vows of celibacy in private, and was thus determined to fend off these undesired marriages. Her divine election was affirmed when she helped cure her mother who had suffered ill health for years by urging her to pray at the tomb of Saint Agatha. It was then that she told her mother of her plans to remain chaste and devote her life to God. Her mother then gave Lucy her dowry to do with it as she pleased, and like most saints, Lucy immediately disbursed it among the poor. When word of her actions reached the consul Paschasius, her intended bridegroom, he became enraged and denounced Lucy as a Christian. In order to punish her for her false conversion, he ordered that she be forced into prostitution. However, when the guards came to arrest her, they were unable to budge her from her place, even after they had tethered her to a team of oxen. Seeing these efforts were fruitless, Paschasius

ordered that she be tortured and then killed. They tried to burn her to death; but the bundles of wood which had been set afire would not consume her. Finally, she was executed by being stabbed in the throat with a dagger.

There are two different legends of the life of Saint Lucy having to do with eyes. In the first, when a suitor complimented her on the beauty of her eyes, she immediately plucked them out of their sockets and had them presented to this unwanted paramour. In the other, during the tortures inflicted upon her by Paschasius, her eyes were torn from her head. In both cases, her eyes were restored miraculously to their sockets. As a result, Lucy is usually represented iconographically by a statue of herself holding a dish with two eyeballs balanced delicately upon it. David Hugh Farmer notes that this element of her *vita* was especially prominent in late medieval representations, when she became not only patron saint of the blind, but the foremost authority on eye trouble.[109] Accordingly, her story would have been well known in late medieval English communities, and it was particularly suited to tales of abuse in a courtroom setting. First, while Lucy and Paschasius were not actually married, his position as the rejected betrothed of an arranged marriage placed him in a situation that made his violence analogous with spousal abuse. Second, when it comes to female saints, the most popular in all of Europe in the later medieval period were the virgin martyrs. These gruesome and graphic tales of abuse against women, redolent of overtly sexual imagery and notions of female purity, seem to have held a great deal of appeal for the late medieval masses.[110] Any woman wishing to paint herself the ideal Christian woman would delight in drawing similarities with such a pivotal figure.

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[109] David Hugh Farmer, *Oxford Dictionary of Saints* (Oxford, 1978), p. 404.
[110] For a fuller discussion of the popularity and meaning of the *vitae* of the virgin martyrs, see Shari Horner, "The Violence of Exegesis: Reading the Bodies of Ælfric's Female Saints," in Anna Roberts (ed.), *Violence against Women in Medieval Texts* (Gainesville, 1998), pp.22-43.

The real quandary, then, is why any of these witnesses contrived parts of their tales of abuse when, if their narratives are to be believed, it seems that these women were actually in dangerous marriages and might provide their own stories of abuse? The foregone conclusion is that none of these individuals felt assured that what she had suffered would be sufficient for the court's definition of cruelty. In their desire to aid a woman in need, they drew on their knowledge of what constitutes excessive violence against women in the eyes of the church, and included it in their testimonies. Irrespective of whether violence of this degree actually occurred, the stories recounted by the plaintiffs and their witnesses are meaningful. Both carefully constructed cases that they believed would meet the church's mandate: beatings that endangered the life of the victim, near-blindings, and even mental, verbal and economic abuse were, then, considered excessive by both the community and the church.

Spousal Abuse and Male Honour

If the plaintiffs presented even a shred of truth about the levels of violence within marriage, it is difficult to understand why their husbands defended their cases so vehemently. Why were these men so determined to save their miserable marriages? There are a number of explanations for these bold responses. First, it is important to acknowledge that these defences are necessarily a product of the ecclesiastical system of law to which the litigants submitted their marriages. Even if Henry Venables wanted a separation as much as his wife Cecilia, he could not simply appear in court and ask for one. The nature of the litigation demanded that he present a defence to his wife's allegations; any failure to do so might be interpreted by the courts as collusion, an attempt by husband and wife to deceive the court into falsely granting a separation. In this light, it made the most sense for any husband to

present his case with an air of confidence and entitlement; but, as in the case of Henry Venables, offer a defence based on little evidence and replete with contradictions and exaggerations, ensuring his wife's victory.

In this grouping of cases, however, it seems clear that Venables was the only defendant to fall into this category. All five of the other husbands eagerly refuted the accusations against them and seem to have presented the best defences possible. It seems all too likely that their obstinate refusal to let go of their marriages is linked to money: in the event of a separation, the husband was expected to continue to maintain his wife, even though she no longer resided with him. Providing enough money for food, clothing and shelter for a wife could be quite costly, and some men my have done anything to shirk this responsibility. Moreover, as in the cases of Lonesdale and Munkton, a separation might well endanger a husband's access to joint assets. Especially in those cases of men who married up in society, this might well have had negative repercussions on a man's livelihood.

Equally likely is the possibility that the defendants felt compelled to defend their honour. Both Richard Helmholz and L.R. Poos have explored instances of defamation in the law courts of later medieval England and uncovered similar conclusions.[111] According to Helmholz, a culture of slander, incomparable to anything that came before it, began to surface in the late Middle Ages and really flourished in the sixteenth century. In the royal courts, the vastly increased concern can be measured by the growth of the action on the case for words. The proper and more popular forum for resolution of defamation suits, however, was that of the church courts. Throughout the late medieval period, cases of defamation became more

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[111] R. H. Helmholz, *Select Cases on Defamation to 1600* (Selden Society, 1985), and "Crime, Compurgation and the Courts of the Medieval Church," *Law and History Review* 1 (1983), 1-26; L.R. Poos, "Sex, Lies, and the Church Courts of Pre-Reformation England," *Journal of Interdisciplinary History* 25 (1995), 585-607.

and more numerous, so much so that by the dawning of the early modern era the church courts of England were preoccupied with slander litigation to the exclusion of all else.[112] L.R. Poos has observed that the kind of defamation dealt with in the church courts of the later medieval period was a gendered construct. Slander struck right to the heart of gender identity and the culturally defined standards of morality associated with it. For women, this inevitably meant smears of their sexual character, while for men, honesty, reliability and respectability were much more at stake. Men appeared in court to defy allegations of theft, assault, even homicide in a fervent attempt to clear their good names. In fact, Poos maintains that plaintiffs in cases of defamation often came forward of their own initiative with compurgators in tow to purge themselves of any derogatory accusations, rather than awaiting a presentment in the church courts. Poos describes this form of legal prevention as "self-defence compurgation."[113] Helmholz perceives a similar feature in criminal cases brought before the ecclesiastical courts. He argues that those who were willing to submit themselves to purgation for a crime in the courts did so out of a desire to have a formal declaration of their innocence. This is emphasised by the verdicts given in criminal ecclesiastical cases: the defendant is not "acquitted," but rather "restored to good fame." [114] Late medieval society promoted a culture in which honest reputation enabled one to speak in the courts, to trade, to have a political voice and to gain respect within one's community. Reputation, then, cannot be underestimated as a motivation for zealous engagement in ecclesiastical litigation. Most important, as both Helmholz and Poos have argued, defamation suits were "not just about

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[112] For the early modern period, see also Laura Gowing, "Language, power and the law: women's slander litigation in early modern London," in Jenny Kermode and Garthine Walker (eds), *Women, Crime and the Courts in Early Modern England* (Chapel Hill, 1994), pp. 26-47.

[113] Poos, "Sex, Lies, and the Church Courts", 588, note 4.

[114] Helmholz, "Crime, Compurgation and the Courts", 22.

reputation in the abstract, but some very tangible penalties."[115] Condemnation in an ecclesiastical court entailed financial penalties; confirmed accusations of theft, assault and homicide might well be brought before the royal courts and end in execution. Men and women alike, then, had palpable reasons to protect their honour.

In his study of 102 cases of *ex officio* defamations from Wisbech, Durham and London in the fifteenth century, Poos uncovered the case of a man defending himself against allegations of ill-treating his wife.[116] At less than one per cent of the total number of cases of defamation in the courts, this figure does not suggest a frequent occurrence of suits of this type. However, the mere existence of such a case suggests that masculine honour was somehow linked with marital conduct. Late medieval society held certain expectations for men in marriage and, clearly, cruelty was not perceived as honourable behaviour. This is confirmed by popular practices of the period. Martin Ingram has noted that cuckolds and men beaten by their wives were ridiculed publicly for allowing their wives to assume the dominant role in marriage.[117] If male passivity provided fertile ground for mockery and communal intervention, it seems likely that those who assumed too much authority would receive the same treatment.

The cases of divorce *a mensa et thoro* from the York cause papers fit well with this paradigm. The allegations imputed against the defendants cast aspersions on their honour and masculinity. Concession to the demands of the plaintiff amounted, in effect, to a public confession of failed manhood, and admission that they could control neither their wives nor their tempers. The attempts by the defendants to normalise the violence by describing it

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[115] Poos, "Sex, Lies, and the Church Courts", 607.
[116] *Ibid*, 598.
[117] Martin Ingram, "Ridings, Rough Music and Mocking Rhymes in Early Modern England," in Barry Reay (ed.), *Popular Culture in Seventeenth-Century England*, (New York, 1985), pp. 166-97. While

within acceptable limits, then, takes on a whole new light. These men were not trying to hold together their marriages for the sake of the marriage; they were trying to salvage what remained of their marred reputations. Informal separation, while damaging to a reputation, might always be rationalised as a transient difficulty; judicial separation, however, was an explicit proclamation of a man's inadequacies and had to be avoided at all costs.

Conclusion

Richard Helmolz has described the church courts as "heavy-handed marriage counsellors," steadfastly keeping the marriage together wherever possible.[118] Charles Donahue similarly argues that the courts shared a "presumption in favour of marriage."[119] The only dissenter among these scholars is Frederik Pedersen, who takes a slightly different approach. He contends that ecclesiastical sentencing was entirely "pragmatic": unless the evidence was eminently persuasive, the judge maintained the *status quo*.[120] In respect of the divorces *a mensa et thoro* in the York cause papers, Pedersen's arguments seems the more persuasive. While only three verdicts have survived out of the six cases of abuse, distinction between success and failure seems to rely exclusively on number of witnesses and their credibility. Is this a "heavy-handed" approach? The success of Wyvell *c.* Venables and Ireby *c.* Lonesdale, at least, would appear to argue otherwise. The courts may have offered incentive for separation cases to obtain a formal resolution by presenting these couples in court, but the settlements of both these cases would seem to suggest that, where the evidence was plentiful, a separation was indeed granted. What these cases illustrate, however, is a

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Ingram's article is specifically early modern, he does note that this tradition can be traced back into the later Middle Ages.

[118] See note 51.

[119] Donahue, "Female Plaintiffs", p. 191.

distinct gap between communal and curial interpretations of spousal abuse, but also a diversity of discursive construction even within those two positions. Laura Gowing reminds us that

> we cannot assume an unproblematic community whose moral interests and ideas were more or less in accord with those of lawgivers in the spiritual and secular sphere and more or less the same across the differences of age, class, family, and gender .... the church courts reflected and shaped popular morals precisely because the women and men who presented each other acted from individual and shared interests and beliefs.[121]

While significant variations in interpretation existed, these cases allow us to develop a broader awareness of formal and public constructions of domestic violence and the interaction and exchange between the two.

Perhaps the most telling evidence of all comes from the records of royal jurisdiction. As the evidence presented in Chapter Three demonstrates, violence within marriage was not considered to be a matter for the king's officials. Consequently, none of these cases of divorce *a mensa et thoro* appeared as an assault in either the coroners' rolls or the records of gaol delivery for the county of York which have survived for this period.[122] The savage clubbings, near blindings, and attempted homicides on wives presented by these deponents simply did not conform to the medieval definition of assault. In this ethical and political climate, the agency of these six women is even more meaningful. That these women chose to take their cases before the consistory for cruelty within marriage and were supported by neighbours and friends suggests that, while these actions may not have constituted assault,

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[120] Pedersen, "Marriage Litigation", 147.
[121] Gowing, *Domestic Dangers*, p. 11.
[122] Granted, not all of these cases would necessarily have appeared in the York rolls. Wyvell *c.* Venables and Margery de Devoine, for example, might rightfully have appeared in those for Northumberland or Newcastle-upon-Tyne.

they were by no means within the acceptable boundaries of wifely chastisement in the eyes of the community or the church.

Chapter 5:

"To speke of wo that is in mariage": The church and its role in medieval matrimony

On November 11 of the year 1474 John Colam of Stonegate, York, a goldsmith, came before the archbishop of York in his court with what appears to have been a rather unusual request. Accused of adultery with a married woman, Colam asked the court to defer his compurgation in respect of the offence. His reason for this request was quite simple: he feared his infidelity might be brought to the attention of his wife or the woman's husband through such a public process and wished to avoid this unnecessary disgrace. Upon consideration of the petition, the archbishop and Colam reached a compromise of sorts. It was decreed that Colam should purge himself with his hand alone and the offence would be concealed.[1] For the archbishop, the concession was presumably insignificant. Regardless of the process, the outcome was the same: the offender confessed to his adulterous affair and began his penance. For Colam, however, the bargain was much more meaningful. It enabled him to put his moral lapse behind him while at the same time to keep his wife blissfully ignorant of her husband's failings.

Bearing in mind that adultery was one of the two acceptable premises for an ecclesiastically sanctioned separation, the archbishop's actions in this case seem contradictory at best. Why would an ecclesiastical official knowingly permit an offender to conceal his sins from his wife when his offence directly influenced her? Should he not have felt obligated to inform the wife of her husband's extramarital romance? Allowing the husband to cover up his sins seems almost to excuse them. At the very least, the secrecy of the penance would

[1] This case is cited in J.S. Purvis, *A Mediaeval Act Book with some account of Ecclesiastical Jurisdiction at York* (York, 1943), p. 28.

have diminished the effectiveness. Public confession and contrition were fundamental aspects of medieval theology: together they were intended to humiliate the miscreant and thereby deter any future recurrences of the offence. Without publicity, the presentment was merely a nuisance.

Colam's affair was certainly not the only instance in the later medieval period when the English church chose to sidestep canon law in order to avoid scandal. During his incumbency as archbishop of York over the course of the last two decades of the fifteenth century, Thomas of Rotherham opted for privacy in a marital issue on at least three occasions, when his decision would seem merely to have paved the way for future litigation. In October 1486 Rotherham permitted William Hawkesworth and Joan Alman of Ribstone in Goldesburgh parish to marry without having published the usual banns because "they fear that as Hawkesworth is a gentleman and Alman of humble origin, the publication of banns would cause unreasonable objections to be raised by his family."[2] Similarly, in August 1491, Raynebrowne Bolling and Alice Philip of the parish of Methley were allowed to elude the gossipmongers by marrying without banns. They had lived together as husband and wife for such a long time that it would have been a shock to the community to discover that they were not already married.[3] Finally, in April 1495 Rotherham also granted licence to the curate of Sutton on Derwent to marry John Eglesfeld and Joan Thomson without the requisite banns because Joan was visibly pregnant and it was thought that publication of the banns would only cause them scandal.[4]

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[2] *The Register of Thomas Rotherham Archbishop of York, 1480-1500*, ed. Eric E. Barker (Canterbury and York Series, 69, 1976), nos 1731, 216.
[3] *Ibid*, nos 1849, 234.
[4] *Ibid*, no. 660, 81.

These three cases are all related through the omission of a central part of the ritual for the solemnisation of marriage. Publication of the banns was required by the church in order to discover any impediments to the marriage. Without this formal process, church officials risked contravening canonical regulations for marriage concerning consanguinity, affinity or sponsorship. Nevertheless, the church was willing to disregard the implications of failing to discover impediments when the situation might be publicly humiliating. While this may well have laid the groundwork for future annulments, it was clearly the more sympathetic course of action.

Herein lies the difficulty of using records such as act books to uncover a canonical definition of extreme cruelty. While royal justices were bound by the formalities of common law procedure and custom, there were no firm and fast rules governing the decisions made by archbishops or bishops in their courts. Canon law functioned as a guide in the day to day business of the court, but cases were judged chiefly on their individual circumstances. At times a heartfelt plea or an honest face persuaded an ecclesiastical official to act contrary to what he understood to be the church's authoritative position on an issue. The adaptability of the court and compassion of its judges, particularly in matters of marital difficulty, led Richard Helmholz to observe, "[i]f we think of the ecclesiastical judge as a rather heavy-handed marriage counsellor, we come nearer the truth than if we see him as a man who limited himself to the determination of points of law."[5]

The result of this approach to the law is an array of seemingly contradictory rulings, such as Colam's secret atonement or the omission of banns. Yet, this very human quality in the courts' judgements renders their records more valuable to a social historian than

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[5] R.H. Helmholz, *Marriage Litigation in Medieval England* (London, 1974), p. 101.

canonical writings. The decisions of ecclesiastical officials in their courts represent not only the mores of the church, but the values of the society in which they lived. The cases of Colam and the three couples substantiates J.S. Purvis's claim that, in England at least, even if the church courts intruded frequently and oppressively in the marriages of the medieval laity, "the general impression is of lenience rather than of severity."[6]

The flexibility and deep-seated sensitivity of ecclesiastical judgements represent the principal distinction between sacred and secular jurisprudence. As the coroners' rolls and records of gaol delivery examined in Chapter Three amply demonstrate, the royal courts of justice in the later medieval period had frequent recourse to fiction. In order to circumvent the rigidity of common law prescription, medieval jurors manipulated the law through invention: tales of self-defence extended to meet the legal requirements, premeditated homicide transformed into indisputable self-defence, and domestic homicide phrased in order to secure an acquittal.[7] For the social historian, wilful deception by medieval juries renders the records vulnerable to complex decipherment and much uncertainty of interpretation. In this light, the records of the courts Christian seem vastly more appealing. Because the church courts of medieval England did not operate under the same restrictions, the records of the ecclesiastical courts should present a less artificial and more straightforward perspective of domestic violence.

None the less, the evidence of the York cause papers examined in Chapter Four makes it clear that ecclesiastical records were not entirely free of prevarication either. The false nature of the claims was intimately related to the individuals involved. Any lawsuit involving the testimony of litigants and witnesses will inevitably be flawed by personal biases and a

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[6] Purvis, *A Mediaeval Act Book*, p. 5.
[7] For a fuller discussion of fiction in the royal courts, see Chapter Three, pp. 209-13.

degree of falsification, conscious or otherwise. In suing a plea in court the plaintiff had specific goals, whether these were a judicial separation, annulment, or forced reconciliation. The objective inevitably shaped the litigation. Given the plaintiff's distinct agenda, the evidence presented in matrimonial litigation cannot be taken at face value. Yet, the church court records are more useful than those of royal indictment simply because the courts Christian heard both sides of the story. A deceased spouse cannot offer an opposing view. This may well have reduced the possibility for extravagant invention inasmuch as outright lying was made obvious when there was someone present to contradict the account.

Matrimonial litigation in the later Middle Ages was also hindered by one major bias. Recent research into the success rates of plaintiffs in cases of marital disharmony by Charles Donahue, Jr. suggests that the church courts regularly sentenced in favour of the plaintiff. Fifty-one out of 64 cases (79.7%) over the course of the fourteenth century, and 56 out of 72 cases (77.8%) over the course of the fifteenth were settled in favour of the plaintiff.[8] These statistics imply that initiation of the suit was in itself considered to be evidence of legitimacy. A strong presumption in favour of the plaintiff may well have impeded the objectivity of the courts' decisions. This finding does not diminish the value of matrimonial litigation to this study. It merely confirms that women like Cecilia Wyvell or Margery Nesfeld, who chose to initiate suits of separation from table and bed, were perceived differently than those summoned before the courts with their husbands for marital disharmony.[9] Marriage litigation was evidently acknowledged to be a much more formal stage of the process.

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[8] Charles Donahue, Jr., "Female Plaintiffs in Marriage Cases in the Court of York in the Later Middle Ages: What Can We Learn from the Numbers?", in Sue Sheridan Walker (ed.), *Wife and Widow in Medieval England* (Ann Arbor, 1993), pp. 194, 200.

[9] As discussed in Chapter Four.

The *Ex Officio* Process

Chapter Four approaches spousal abuse in the ecclesiastical courts using the records of marriage litigation from the late Middle Ages. The present chapter, however, chooses instead to examine the role of the church as disciplinarian in cases of domestic violence. Archbishops, bishops, and archdeacons exercised an *ex officio* jurisdiction in which they dealt with quasi-criminal acts including a wide range of moral offences connected with marital disharmony. On the basis of information provided by visitation articles, parish priests or lay informants, miscreants were summoned before the courts to respond to accusations laid against them and to begin the penitential process. Because cases of this type were initiated by court summons rather than plaintiffs' initiative, the disciplinary side of the court offers a unique perspective of marital discord, one which did not involve a specific plaintiff. This subtle procedural change, in theory, should have removed the courts' bias in favour of the plaintiff. Nevertheless, as L.R. Poos has argued,

> this distinction may be more operative at the level of legal theory than social reality. Reports or complaints to officials by victims or other interested parties were undoubtedly the source of many ostensibly ex officio actions.[10]

Still, this procedural difference must have affected the nature of the "plaintiffs" in cases presented before the court. Without the need to pay the substantial fees attached to instance litigation, persons of lesser means might have their difficulties addressed and resolved by the court.[11] This had implications for cases of spousal abuse. As the six cases of divorce *a mensa et thoro* examined in Chapter Four amply demonstrate, women who were willing to take their

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[10] L.R. Poos, "Sex, Lies, and the Church Courts of Pre-Reformation England," *Journal of Interdisciplinary History*, 25 (1995), 587.

[11] For a fuller discussion of the high fees of marriage litigation, see Chapter Four, pp. 311-2.

husbands to court on the grounds of cruelty were of a special breed. These financially secure, independent and town-based individuals did not represent the vast majority of women who experienced marital discord. Women like Agnes Huntington and Agnes Benson had an additional economic motivation to plead their cases in court.[12] Typical cases of domestic violence in medieval England involved couples of low to middling rank who lived a great distance from the legal centre in a rural community where a great variety of informal and extra-legal processes interacted to restrain and subdue marital discord. Consequently, cases of domestic violence presented before the church courts were those that had exceeded the control of the usual check; thus, they "represent, not routine marital strife, but situations where marriages reached extreme breaking-point."[13]

Incidents of spousal abuse in the *ex officio* act books of the Middle Ages, then, represent atypical abuse among common people. However, it is important to consider that in many of these presentments the informant may not have been a spouse, but a family member concerned for the well being of the couple. A neighbour weary of continual disruption may also have been the source. In these situations, the court was not confronted by a desperate, battered woman in need of a sanctioned separation from an abusive husband. Instead, two unhappy individuals appeared before the court, displeased with their marriage, but reluctant to turn to the church court for a resolution. In this environment, the decisions of the judge, more than at any other time, were as close as possible to being objective and a genuine product of conscience. The kinds of penance he imposed suggest much about contemporary perceptions of domestic violence and ecclesiastical resolution of such disputes.

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[12] The cases of both these women are discussed at length above in Chapter Four.
[13] L.R. Poos, "The Heavy-Handed Marriage Counsellor: Regulating Marriage in Some Later-Medieval English Local Ecclesiastical-Court Jurisdictions," *American Journal of Legal History* 39 (1995), 309.

Given the importance of such record materials it is unfortunate that the *ex officio* records should be more terse and formulaic than those of the royal courts. Entries in the *ex officio* act books for both York and Canterbury are abrupt, often obscured with abbreviations.[14] Rarely do the records include an explanation of how the case came to be prosecuted, although it is assumed that the vast majority arose from a person's general ill fame. Likewise, the records seldom include details of the offence or the deliberations of the judge in reaching his decision. The paucity of detail may well be the result of belated recording, since act books were often assembled several weeks after the court day. At their most complete, entries offer the nature of the case, its date, and the fine imposed (although the latter is frequently omitted, particularly in the case of those records housed at Canterbury).

The poor documentation of *ex officio* business probably arises from the value of these cases to the court. Unlike instance litigation, the costs of an *ex officio* case were quite small: there were no elaborate citation mandates because offenders were summoned orally. Even letters of excommunication or suspension were inexpensive. Moreover, parties to an offence appeared without the assistance of legal counsel, which in itself must have severely reduced the costs of court. Consequently, as Brian Woodcock has argued, ecclesiastical officials most likely regarded court business "as a duty rather than as a source of profit."[15] The low returns undoubtedly did not justify the expense of an elaborate record of the offence. Nevertheless,

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[14] For published examples of *ex officio* records, see: A. Gransden, "Some late Thirteenth-century Records of an Ecclesiastical Court in the Archdeaconry of Sudbury," *Bulletin of the Institute for Historical Research* 32 (1959), 62-9; S.L. Parker and L.R. Poos, "Notes and Documents: A Consistory Court from the Diocese of Rochester, 1363-4," *English Historical Review* 106 (1991), 652-65. A convenient guide to the surviving act books of the ecclesiastical courts may be found in Charles Donahue, Jr. (ed.), *The Records of the Medieval Ecclesiastical Courts: Reports of the Working Group on Church Court Records 2: England, Comparative Studies in Continental and Anglo-American Legal History* 7 (Berlin, 1994).

[15] Brian L. Woodcock, *Medieval Ecclesiastical Courts in the Diocese of Canterbury* (Oxford, 1952), p. 79.

even the abbreviated entries offer a much more complete perspective of rates, causes and resolutions of marital disharmony than any other record.

Ex officio business appears in two distinct formats. First, there are numerous *ex officio* act books, volumes dedicated entirely to the recording of *ex officio* cases distinct from any other aspect of the court's purview.[16] These records are undoubtedly the most concise accounts of moral offences to be found among all the records of the province's judiciary business. Second, consistory court act books, which chronicle the daily business of the court, often record *ex officio* cases together with instance litigation. In these accounts, the discussion of the offence are usually much more detailed.

The procedural differences between litigation and *ex officio* business also had significant ramifications on the substance of the cases brought before the court. G.R. Elton has quite accurately described *ex officio* records as "among the more strikingly repulsive of all the relics of the past."[17] The *ex officio* records expose a "moral underworld" of sexual transgression, defamation, clerical misconduct and general depravity.[18] Sexual offences occupied by far the vast majority of the court's time. For example, in a statistical analysis of one act book covering the period 1396 to 1485, J.S. Purvis counted a total of 3640 charges, of which 3236 (88.9%) were cases of fornication, adultery or similar moral offences.[19] In the sheer range and quantity of cases presented, the courts demonstrated their willingness to intrude heavy-handedly in the daily lives of Englishmen and women.

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[16] Act books dedicated exclusively to the recording of *ex officio* business are found only among the records of the southern ecclesiastical province. The vast majority of act books belonged to the second category, in which *ex officio* and daily business were recorded together.
[17] G.R. Elton, *England 1200-1640* (Ithaca, 1969), p. 105.
[18] Poos, "The Heavy-Handed Marriage Counsellor", 291.
[19] Purvis, *A Mediaeval Act Book*, p. 4. The object of investigation in this study is a court book of the peculiar jurisdiction of the Dean and Chapter of York usually referred to as D & C AB/1.

None the less, Purvis's statistics suggest that the courts of the medieval church were no more successful than were their royal counterparts in enforcing justice, for almost half the charges remained unanswered or untried.[20] Failure to appear in answer to a citation was regularly punished with excommunication. In theory, excommunication was very effective. It entailed not only exclusion from the church and all its privileges (such as divine services and receiving of the sacraments), but also exclusion from the community of the faithful. In general, medieval Christians were well aware that trading with, selling to, or merely consorting with an excommunicate merited severe punishment by the church. For merchants and artisans in particular this must have generated grave legal disabilities and excommunication thus applied sufficient pressure to compel the contumacious to submit to ecclesiastical justice. If an individual persisted in his stubbornness for more than forty days, the church courts could set the secular arm of the law in motion. The courts Christian wielded the right of caption, meaning that upon the request of the higher clergy, the crown arrested and imprisoned excommunicates and held them captive until they pronounced their willingness to appear in court. But caption was not merely reserved for the gravest of crimes, as demonstrated by the early fifteenth-century case of Margery Longford. Margery's disregard for the repeated injunctions by the court to restore conjugal rights to her rightful husband, the armourer Richard Clyderhowe, landed her in trouble with royal justice when the archbishop turned to the secular authorities to request her seizure.[21]

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[20] *Ibid.*

[21] *The Register of Henry Chichele Archbishop of Canterbury 1414-1443*, ed. E.F. Jacob (2 vols, Oxford, 1938), i. 185. This case also appears in the records of the court of Chancery and is discussed at length in Chapter Six. It seems clear that Margery was stalling in her efforts to obtain a divorce *a mensa et thoro* until a suitable maintenance agreement had been established in which she retained the property which she brought into the marriage. The repeated attempts by her husband to restore conjugal rights may well have been in an attempt to impede this process. See Chapter Six, pp. 418-9. Donald Logan's research into the bishop's power to signify excommunicates and set the secular arm of the law into motion demonstrates that the two jurisdictions co-operated extensively in the capture of excommunicates. From the thirteenth

In practice, however, the process of excommunication and caption was not as foolproof a weapon as one might think. Dissension between royal and ecclesiastical officials frequently impaired the effectiveness of the system. Caption arose as a subject of dispute first in the mid-thirteenth century when sheriffs refused to carry out the arrest of excommunicates at the demand of bishops. Because the king never officially addressed this problem, it remained an issue throughout the period.[22] Moreover, W.R. Jones has argued that, like outlawry, excommunication was overused by the courts. The effect, inevitably, was a diminished capability to impel compliance through fear.[23] Given that excommunication was the courts' most drastic weapon in the enforcement of moral codes, it is not surprising that they were incapable of asserting the kind of monolithic power to which the church aspired.

A good number of offenders did appear in court and began the process of penance. The glaring omission of any discussion of the legal process in the vast majority of the cases strongly suggests that most *ex officio* business was dealt with by summary procedure,[24] meaning the accusation in itself was a *fait accompli.* Because there is no presumption of guilt in Romano-canonical procedure, the burden of proof is shifted to the defendant, providing there is sufficient evidence that he has committed the crime. Consequently, the court appearance was intended to offer reprobates an opportunity to refute the claims against them.

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century until the period immediately preceding the Reformation, roughly 7,600 significations of excommunication were issued and still survive. He argues that "[t]hese records are without parallel in western Europe, just as, it would appear, the English procedure against excommunicates as a highly formalized and institutionalized procedure was itself without parallel. What they reveal is a practical area in which close cooperation – not wholly without irritants – characterized the relations of the ecclesiastical and secular jurisdictions." See F. Donald Logan, *Excommunication and the Secular Arm in Medieval England: A Study in Legal Procedure from the Thirteenth to the Sixteenth Century* (Toronto, 1968), p. 24.

[22] W.R. Jones, "Relations of the Two Jurisdictions: Conflict and Cooperation in England during the Thirteenth and Fourteenth Centuries," in William M. Bowsky (ed.), *Studies in Medieval and Renaissance History*, v. 7 (Lincoln, 1970), p. 91.

[23] *Ibid*, p. 142.

[24] J.S. Purvis also sees that this was most likely the case. Purvis, *A Mediaeval Act Book*, p. 13.

Individuals who chose this route, such as Beatrice Kereby, were assigned to purgation. When Beatrice was brought before the court of the Dean and Chapter on charges of being a common scold and defamer, she denied the accusation and was permitted to purge herself by the hands of seven honest women.[25] While denial and compurgation were certainly a choice available to all those summoned to court, most offenders opted for a less rigorous course of action, namely confession and penance. In effect, the court appearance was dedicated almost entirely to an official pronouncement of the charges and the penance to be imposed. In this setting, a man's decision to betray his wife's trust and to engage in an extramarital affair had public ramifications. When Robert Fowud of the parish of St Helen's in Stonegate, York was summoned before the court on charges of adultery with his servant, he was not only commanded to cease any further illicit activity and to avoid discord between himself and his wife, but was required to don a white sheet and to proceed publicly around the cathedral church of York on the following Sunday.[26] Penance of this kind was typical of that assigned for sexual transgressions. The court also commonly ordered public floggings and carting through the streets.[27] At times, these public punishments were combined with a financial exaction or the threat of future amercement if the individual should reoffend. The public nature of these penalties seems to have been effective: persons rarely appeared before the courts more than once for the same offence.

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[25] York D & C AB/1, fo. 49. The English courts Christian implemented a system in which the perceived honesty and forthrightness of the offender were judged and applied to a sliding scale of proof. For example, while Beatrice Kereby was permitted purgation by the hands of seven honest women to clear her reputation as a scold and defamer, several years later, when faced with identical accusations, Beatrice Bryght required eight hands in order to purge herself (York D & C AB/1, fo. 94).

[26] York D & C AB/1, fo. 183.

[27] In his examination of the local courts of archdeacons and bishops in the medieval period, James Brundage notes that "offenders were often subjected to some type of ritual humiliation, such as parading round the parish church bare-chested and bearing a lighted candle before Sunday Mass, for example, in order to expose them to the scorn and derision of their neighbours and kin." See James A. Brundage, "Playing by the Rules: Sexual Behaviour and Legal Norms in Medieval Europe," in Jacqueline Murray

The Prosecution of Spousal Non-Cohabitation by *Ex Officio* Jurisdiction

Given the intimate nature of the charges, *ex officio* cases provide valuable insight into marital breakdown in the later medieval period, particularly in the case of marriages that had already reached the point of dissolution. As the mere six cases of judicial separation in the York causes papers for the entirety of the late medieval period confirm, unhappy couples in later medieval England seldom turned to the church courts in order to terminate their marriages. Rather, they simply "divorced" themselves. These informal and often long-term separations were frequently at the root of accusations of adultery or precontract. In his research on marital disharmony appearing in the *ex officio* jurisdiction of the Dean and Chapter of Lincoln cathedral from 1336 to 1349, L.R. Poos uncovered the remarkable case of a man whose frequent presentments before the court sprang from his decision to separate informally from his wife. Roger de Lissington and his wife Elizabeth had been separated for a prolonged period of time and Roger had in the meanwhile begun a new life for himself at Friesthorpe in Lincolnshire when he first came to the court's attention. After his preliminary four citations for adultery with the same woman, Roger was questioned for the first time as to whether his previous wife had actually died (as he contended). Roger claimed that she had deserted him thirteen years before and that he had since heard rumour of her death three years earlier in Ghent. Unwilling to rely on hearsay and uncomfortable with the precariousness of Roger's situation, the court ordered him to travel to Ghent to look for Elizabeth and to produce incontestable proof of his wife's death. When his search proved fruitless the matter was dropped, although a few months later Roger once again found himself before the court with an order to resume his search. Presumably, Roger had continued to engage in illicit

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and Konrad Eisenbichler (eds), *Desire and Discipline: Sex and Sexuality in the Premodern West* (Toronto, 1996), p. 33.

activities with the same woman with whom he had already been presented on four occasions. If he was indeed married, his behaviour would have been considered adulterous and dealt with harshly. If he was not, however, it warranted an order of separation *sub pena nubendi* in order to regularise the union. In light of Roger's indeterminate marital state, the representatives of the court were uncertain how to approach the issue and preferred to seek confirmation of the death of Roger's wife. Unfortunately, the outcome of this case remains a mystery since this was the last record of the dispute.[28]

The case of Roger de Lissington demonstrates clearly why the church courts of medieval England displayed a certain determination to reunite separated couples. Spousal non-cohabitation not only debased the sacrament of marriage; it was the breeding ground for a wide variety of other marital transgressions, from adultery to bigamy to the impediment of crime.[29] As the records of an *ex officio* act book from the diocese of Canterbury over the course of the years 1468 to 1474 (presented below in table 4) amply demonstrate, the courts were not willing to tolerate unsanctioned separation:

Table 4: Charges of Spousal Non-Cohabitation, Canterbury 1468-74

1468:	2
1469:	12
1470:	9
1471:	4
1472:	6
1473:	6
1474:	3
Total:	42 [30]

[28] Poos, "The Heavy-Handed Marriage Counsellor", 295-6.

[29] The term "impediment of crime" was used to describe the situation by which a widow or widower sought to marry a lover with whom she or he had had an affair during the lifetime of her or his now deceased spouse, and for which there was evidence to suggest the surviving spouse had engineered that death in order to marry again. This was a necessary proscription intended to deter unhappy spouses from resolving marital woes through murder and remarriage.

[30] Compiled from Canterbury Y.1.11. The specific book was chosen for this study simply because of its late date. With such high figures for the period of 1468-74, this book would seem to suggest that the English

Each case represents an accusation of spousal non-cohabitation levelled at an individual offender, meaning the husband or wife alone rather than a joint presentment. Among these forty-two cases, there are only three recognisable instances in which husband and wife appeared separately in court for the same charge. Taking this overlap into account, over the course of this seven-year period the court penalised 39 couples for a failure to co-reside.

Thirty-nine cases of spousal non-cohabitation over a period of seven years undoubtedly does not represent the total figures for actual cases of informal separation in the entire diocese of Canterbury. None the less, it is a very high figure on its own, suggesting that the courts were anxious to uncover evidence of self-divorce and to compel the offenders into a reconciliation, however unwelcome this might be. A similar study from the period suggests that English ecclesiastics were especially vigilant in the prosecution of spousal non-residence. In his examination of the register of the Norman abbatial peculiar of the officiality of Cérisy la Forêt in the diocese of Bayeux and the returns from Bishop Trefnant's 1397 visitation of the diocese of Hereford, Andrew Finch provides an interesting perspective on both Norman and English marital discord. Over the course of the years 1314 to 1413 in the officiality of Cérisy, the register indicates 14 cases of informal separation prosecuted by the court.[31] Given the great disparity in the length of time involved in this study when compared to that of the Canterbury *ex officio* act book, the archbishop of Canterbury appears to have been vastly more concerned with marital dissolution than the Bayeux officials. The Hereford visitation returns of 1397, in which 27 cases of informal separation were brought before the court,

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church was more than willing to take an active position on the regularisation of marriage even in the very late Middle Ages.

[31] Andrew Finch, "*Repulsa uxore sua*: marital difficulties and separations in the later middle ages," *Continuity and Change* 8 (1993), 17.

confirm an English preoccupation with the irregular dissolution of marriage.[32] Even the penalties imposed by the two jurisdictions for cases of this genre varied greatly. The officiality of Cérisy exhibited a striking reluctance to punish the offenders or to enforce conformity with the rulings of the court, whereas the visitation returns of Hereford demonstrate the penitential floggings and public humiliation typical of English courts Christian of the medieval period.[33]

Of the 39 cases of spousal non-residence appearing in the Canterbury *ex officio* act book of 1468 to 1474, only two of the accused chose to deny the allegations. Both Richard Potter de Harboldoweme and Agnes Borell of the parish of St Dunstan argued that they were innocent of marital non-cohabitation on the grounds that their spouses had died and were buried at Guldeford and Dunstable respectively.[34] The remaining accusations were unchallenged by the offenders. The difficulties encountered by the representatives of the court with these particular cases suggest that their concerns were well founded. Almost half the couples (a total of 17) brought before the court exhibited the anticipated complications:

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[32] *Ibid*, 21.

[33] *Ibid*, 24. A vast difference in the handling of spousal non-cohabitation was not the only distinction between the English and French church courts of the late medieval period where matrimony was concerned. This feature is echoed in cases of domestic violence appearing in the courts of both regions. For example, Finch's investigation of the records of the Hereford visitation of 1398 uncovered 16 cases of marital disharmony, or approximately 8 per cent of the total number of matrimonial cases. A similar study in the Parisian context, however, demonstrates a marked increase in allegations of *saevitia* at 10 per cent of the total number of matrimonial cases, but a noticeable reluctance to award judicial separations. This disparity is significant enough to suggest that canon law was adapted to suit the circumstances and peoples of the various courts in which it was applied. Consequently, historians must be cautious to avoid extrapolating from written law in order to determine contemporary practice. For a more in depth discussion of matrimonial disputes in the courts of the church at Paris, see Jean-Philippe Lévy, "L'officialité de Paris et les questions familiales à la fin du XIVe siècle," *Études d'histoire du droit canonique dédiées à Gabriel Le Bras* (2 vols, Paris, 1965) ii: 1265-94. Finally, the work of Charles Donahue, Jr. confirms that English and French approaches to matrimonial cases differed widely. In his examination of the treatment of clandestine marriages in the courts of England and France he notes an important distinction. While the English church simply ordered couples to solemnise their marriage, the French courts instead treated the phenomenon as a quasi-criminal case, by fining the couple for marrying clandestinely. See his "The Canon Law on the Formation of Marriage and Social Practice in the Later Middle Ages," *Journal of Family History* 8 (1983), 149-50.

[34] Canterbury Y.1.11, fo. 70d and 87.

since the separation, one of the delinquent spouses had taken a lover or had remarried. Although the records omit any discussion of the length of separation between husband and wife, the high numbers of spouses living elsewhere and remarried strongly suggests that the separations were not recent and were intended by those involved to be a permanent solution to their marital woes.

This conclusion is supported by both the evidence of the cause papers and recent studies by other historians in this field. To return momentarily to the cases of judicial separation from the York cause papers discussed above in Chapter Four, it seems apparent that informal separations were often lengthy. Margery and Thomas Nesfeld had been separated for four years prior to their appearance in court, Margery de Devoine and Richard Scot eight years, Cecilia Wyvell and Henry Venables seven years, and Agnes and Peter Benson six years. These were clearly meant to be permanent separations and were only sued in court once something happened to bring their relations to a head (perhaps an *ex officio* presentment for spousal non-cohabitation). In his investigation of Cerisy and Hereford, Finch encountered a similar phenomenon. The vast majority of separations had already occurred before the couple first appeared in court and often the couple had been living independently for extensive periods of time. For example, Thomas la Pie and his wife had been living in separate residences for five years before they appeared in court at Cerisy in 1325, while Jean la Pie and his wife Jeanne had not slept with each other in seventeen years, and both had taken lovers. [35] It seems evident that ecclesiastical support of the permanency of marriage conflicted with lay conceptions. As Finch has argued, "the church's desire to control and regulate marriage would not represent the imposition of order upon disorder, but rather the gradual erosion and replacement of an existing system of law and custom by

another."[36] Much like clandestine marriage,[37] self-divorce may have represented a remnant of the traditional system of marriage in which conjugal unions were formed and unformed both privately and with some ease. Self-divorce presented a similar threat to the control of the church over marriage, and by extension, over the laity and the state in which they lived. Accordingly, clandestine unions and self-divorce were sometimes prosecuted by church officials under the rubric of sexual morality and female vulnerability.

The breach between sacred and secular understandings of marriage raises the question: how effective were the courts in the actual reconciliation of separated couples? Within the Canterbury *ex officio* act book for the years 1468-74 no person was presented on more than one occasion for spousal non-cohabitation. This finding contrasts with the records of the Cerisy court, in which Jean le Scelé, for example, appeared on three separate occasions for failing to live and share a bed with his wife.[38] It is possible that, as a result of the court of Canterbury's greater dedication to punishment and reform, the judgements of the court were respected. Separated couples submissively obeyed the court ruling by shedding any recent attachments and reforming their earlier conjugal unions. Yet, it seems all too likely that many couples merely evaded any official decision by manipulating the process. In a legal system in which information is supplied voluntarily by members of the community and in which justice

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[35] Finch, "*Repulsa uxore sua*", 18, 17.
[36] Andrew John Finch, "Crime and Marriage in Three Late Medieval Ecclesiastical Jurisdictions: Cerisy, Rochester and Hereford" (Ph.D. dissertation, University of York, 1988), p. 65.
[37] The English church railed against clandestine marriage until well into the early modern period. While clandestine marriage was, in fact, legitimate (if sinful), the church attempted to restrict opportunities for fraud and deception by making sure that marriages were made public through a formal process that included ecclesiastical blessing. Nevertheless, many couples disregarded these provisions and married clandestinely. For a discussion of the legal ramifications of clandestine marriage, see Martin Ingram, "Spousals Litigation in the English Ecclesiastical Courts c.1350-c.1640," in R.B. Outhwaite (ed.), *Marriage and Society: Studies in the Social History of Marriage* (New York, 1981), pp. 35-57. T.C. Smout discusses clandestine marriage in the Scottish context and notes that this traditional form of marriage perplexed Protestant clergymen until well into the modern period. See T.C. Smout, "Scottish Marriage, Regular and Irregular 1500-1940," in Outhwaite, *Marriage and Society*, pp. 204-236.
[38] Finch, "*Repulsa uxore sua*", 18.

is local in nature, couples had numerous options to escape legal proscription. If silence could not be bought, the most logical course of action was for the offenders simply to change their place of residence. Newcomers might easily hide the evidence of a past union, just as a man and woman might pose as husband and wife without eliciting the suspicions of their new neighbours. Amidst the relatively high levels of migration peculiar to post-plague England, this strategy would have been an easy alternative for couples reluctant to renew an unhappy union.[39]

Some couples obviously did submit to the will of the church courts. When John Chamber of Langthorpe and his wife Elena appeared before the court for spousal non-cohabitation and adultery, they were not only ordered to resume their marriage but were forced to undertake public penance for their actions by participating in a procession around the cathedral church at York wearing the traditional garb of white sheets.[40] The case of John and Elena was certainly not unusual. Spousal non-cohabitation was considered sinful and a disgrace to marriage; thus it could not be remedied with a mere court order. Penance was required to absolve the sin. Would any couple have willingly undertaken such a public pronouncement of its moral inadequacies if both persons were not equally willing to comply with the court's decision? It seems unlikely that this would have been the case. Couples in this situation simply would not have appeared in court.

Charles Donahue, Jr. has argued persuasively that women in medieval England initiated marriage litigation for different reasons than did men. More often than not, men began litigation in order to escape one union and legalise another. Women, on the other hand, appeared in court to restore a previous union or legitimise one that was in the process of

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[39] See L.R. Poos, *A rural society after the Black Death: Essex 1350-1525* (Cambridge, 1991), 160-5.
[40] York D & C AB/1, fo. 100.

dissolution.[41] The *ex officio* cases, at first glance, do not appear to conform to Donahue's model. The evidence of the *ex officio* act book of 1468-74 would seem to suggest that wives were considered delinquent nearly as often as were husbands in cases of spousal non-cohabitation. Of the forty-two individual cases of dereliction, 25 offenders were male, 17 were female. While the numbers are weighted in favour of male offenders, the difference is not substantial, certainly not substantial enough to argue that the church courts equated spousal non-residence with male desertion. None the less, the language of the articles submitted in respect of these cases would seem to betray this impression. The allegations of non-cohabitation in the records are exceedingly formulaic. Although almost always abbreviated, the wording of the offence is fairly standard: "John Tailor of Faversham does not cohabit with his wife." Seven of the forty-two allegations, however, adopt an entirely different wording: "John Tailor of Faversham expelled (*expulsit)* his wife." Usually appended to this brief statement is the further damning assertion: "and he keeps (*custodat*) another [wife]." In these particular allegations, then, the charge is not merely spousal non-cohabitation, but eviction from the family home.

As Donahue's figures suggest the perpetrator in each of these seven cases was invariably the husband. The preponderance of male offenders in cases of forced non-cohabitation shifts the balance in support of the belief that men were held primarily responsible by the courts for the dissolution of conjugal unions. This verdict is upheld by the evidence of another *ex officio* act book for the diocese of Canterbury, covering the years 1449-57. Although the figures are lower, in the seven cases of marital non-cohabitation presented before the court the delinquent spouses were all male.[42] Andrew Finch makes a

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[41] Donahue, "Female Plaintiffs," p. 197.
[42] Canterbury X.1.1, *passim.*

similar observation in his study. He notes that in instances of desertion or spousal repudiation the husband usually took the initiative.[43] Undoubtedly, Donahue's observation that men were more inclined to dissolve a union than preserve it did not go unnoticed by the courts of later medieval England.

A case from the diocese of London demonstrates that some men may have been very much opposed to the church's efforts to intervene in cases of spousal repudiation. When Katherine Burwell approached her husband William and asked him to receive her back into their home and treat her as his wife, he replied that he never wished to live with her as his wife, nor treat her as his wife, and that if any judge should try to restore their marriage or compel Katherine to adhere to him as his wife, then he would seize a knife and slit the throat of his wife and he would kill her without mercy.[44]

The records of the *ex officio* jurisdiction of the ecclesiastical courts demonstrate that the courts Christian might play an even more invasive role in medieval marriages. It was entirely within the purview of the court not only to order a resumption of the marital union, but also to demand payment of the conjugal debt. As briefly discussed in Chapter One, spouses were obliged to engage in sexual intercourse with one another upon demand, and refusal to do so was considered to be a grave sin. Spouses might plead a suit in court in order to enforce the payment of the debt, yet this particular suit seldom appears among the records of medieval marriage litigation.[45] The representatives of the court might also take it upon

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[43] Finch, "*Repulsa uxore sua*", 25.

[44] "quod nunquam vellet secum cohabitare ut cum uxore sua, neque ut uxorem huiusmodi suam tractare, hoc adiciendo, quod si aliquis iudex ipsum decerneret restituendum fore seu compellendum prefate Katerine adherere tanquam uxori sue, quod ipse cultro arrepto scinderet guttur eiusdem Katerine, et absque misericordia interficeret eandem". LMA MS DL/C/205, fo. 313r, Katherine Burwell alias Bachelere *c.* William Bachelere (1476).

[45] Helmholz notes that a case of restitution of conjugal rights might cost upwards of 33 s. 4 d. (Helmholz, *Marriage Litigation*, p. 161). Given that restitution of conjugal rights probably only became an issue in

themselves to intervene in unhappy marriages and demand that couples adhere to each other and pay the conjugal debt. In the York and Canterbury records, this degree of intervention into the personal lives of the laity, if not common, was more frequent than one might suspect. Over the course of the period 1372 to 1492, there were at least 34 cases of the diocesan court demanding restitution of all conjugal rights.[46] The court's willingness to interfere in marriage in such an intimate way demonstrates the kind of power the church wished to wield over the lives of parishioners. However, the court's ability to oversee compliance of their rulings was another matter entirely. As Finch observed in his study, the courts' "effort to re-establish the physical reality of the marriages, through enforcing the mutual obligation to pay the debt, largely failed in the face of the obvious hostility of those involved."[47]

Adultery and Marital Breakdown

The act books of both ecclesiastical provinces are particularly revealing with respect to the various stages of marital breakdown. Whether as a cause for separation or merely a symptom of matrimonial disharmony, adultery played a large role in the dissolution of marriages. Cases of adultery appearing in the books are numerous. Together with simple fornication, adultery was one of the most common moral offences to find its way into the church courts of later medieval England. It would be absurd to suppose that the high rate of incidents of adultery had no effect on the number of informal separations. Marital discord

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cases of spousal desertion, it seems likely that the abandoned spouse on her or his own may not have been wealthy enough to afford the high costs of litigation.

[46] Canterbury Y.1.1 (1372-5), fo. 18; Y.1.2 (1398-9), fo. 110; Y.1.3 (1416-23), fos 38, 40, 112, 113, 229 and 240; Y.1.4 (1419-25), fos 79, 88, 93, 95, 97, 114, 159, and 162; Y.1.6 (1463-8), fos 120, 186, 260; Y.1.7 (1459-63), fos 47, 54, 171; Y.1.8 (1468-74), fos 78, 261, 299, 299, 35; Y.1.12 (1474-9), fol. 51, 90, 279; and Y.1.15 (1488-92), fos 66, 134, and 234. It is perhaps significant that the act books for the years 1500-1502, and 1503-1505 contain no mention of cases of this sort. It is entirely possible that an invasion of personal privacy of this type no longer suited communal mores.

[47] Finch, "*Repulsa uxore sua*", 24.

probably resulted first in adultery, exacerbating an already turbulent situation, and then led finally to informal separation.

At times, the records very clearly place the blame for marital breakdown on the adulterous activities of a particular spouse. In the case of a late fourteenth-century Yorkshire miller named William of Sledmere and his wife Hawysia Martyne the various squabbles and discord between the two (*diversas rixas et discordias inter eos*) were reported as a direct result of the husband's adultery (*propter adulterium per dictum W.*). His betrayal of the trust implicit in the marital relationship was certainly taken into account in the court's final judgement. While Hawysia and William were required to make peace, the court released Hawysia from her obligation to render the conjugal debt.[48] This was a fairly standard judicial response to allegations of adultery. Adultery was considered to be a sufficiently grievous sin that it wholly transformed the nature of the marital relationship. As a result both halves of the conjugal union no longer retained equal rights within marriage. The loss of sexual equality in marriage was only one consequence, although as James Brundage suggests in his treatment of the conjugal debt, this was a serious deprivation.[49] The stipulation of equal access to the conjugal debt by both marital partners broke down barriers in the gender hierarchy; unequal access, then, would have challenged what was considered to be the source of a genuine bond of affection between the two. Andrew Finch makes a similar observation. He argues that marital affection, as it was employed in courtroom terminology, was merely a "euphemism for sexual intercourse," suggesting that the courts believed that sexual intercourse and affection within marriage were deeply intertwined.[50] To eliminate equality in this aspect

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[48] York M 2(1) c, fo. 29.
[49] See previous discussion on pp. 45-6 of Chapter One.
[50] Finch, "*Repulsa uxore sua*", 21.

would have created emotional and psychological barriers between the two that may well have condemned the marriage to a lifetime of distrust and unhappiness. The applications for separation of Margery de Devoine and Agnes Huntington, discussed above in Chapter Four, clearly demonstrate the other serious consequence of being presented in court on charges of adultery.[51] In both cases, past adultery directly influenced the dissolution of a marriage. A convicted adulterer was prohibited from pleading a suit for divorce *a mensa et thoro* on the grounds of adultery, and perhaps even on the basis of cruelty. The court's penalty for adultery, then, had much more enduring effects than the transitory shame of public penance.

The courts' especially condemnatory attitude towards adultery derived not only from their perception that it contributed to the high rates of informal separation, but also because of its associations with domestic violence. The records of the court suggest that adultery led to situations of abuse often enough for there to exist a recognised connection between the two. This correlation was drawn explicitly in a number of cases from the consistory court act books of the later medieval period. In July 1440 the case of Thomas Marr of Huggate came before the Dean and Chapter at York. In Thomas's case, adulterous activities lay at the heart of his floundering marriage. We are told first that he maltreated (*maletractat*) his wife Agnes and expelled her from the family home (*expulsit de domo sua*). The expulsion, however, occurred subsequent to his adultery with a woman named simply as Emmota whom he had previously sworn to abjure. Since his wife's departure, Emmota had moved into his home and behaved as his mistress. The blame for the fiasco was laid entirely at the feet of Thomas. He was not only ordered immediately to cease his relationship with Emmota, but required to don a white robe and bare his feet and shins for processions around the parish church at Huggate three Sundays in a row and a further procession around the cathedral church at York. In addition,

[51] See discussion of the "clean-hands rule" in Chapter Four, p. 276.

he was required to abjure any further sin on pain of twice the usual penalty. As to his wife, Thomas was commanded to treat her honourably (*honeste*). The two were asked to submit themselves to local arbitration in the hopes of repairing some of the damage inflicted by Thomas and resolving some of their differences.[52]

The example of Thomas Marr and his wife Agnes is revealing. Unlike the case of William of Sledmere and Hawysia Martyne, the court was not concerned simply with punishing the adultery. The focus on marital disharmony and abuse as a result of adultery suggests that the Yorkshire court implicitly recognised these features as possible effects of marital deceit. More important, however, the court presented a solution to the problem. Thomas and Agnes had clearly reached a point in their marriage where they could no longer resolve their differences without outside intervention. If they were a married couple today, they would almost certainly succumb to the pressure to get marriage counselling. The court's request that they undergo arbitration suggests that counselling of this genre is certainly not a modern invention. It is unfortunate that the records provide too little detail to discern clearly the nature of arbitration. While this is the only case uncovered in this investigation where arbitration as a solution to marital discord was required by the court, judges may regularly have advised couples informally to participate in arbitration. In the case of Thomas and Agnes, the solution is revealing. The court recognised the earmarks of an impending divorce *a mensa et thoro* and understood that serious measures were required in order to avoid this path.

A case from the diocese of London strongly suggests that the link between adultery and domestic violence was not only recognised by the courts of the later Middle Ages, but by the victims of abuse themselves. After being beaten by her husband, Agnes Badcok presented

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[52] York D & C AB1, fo. 97.

herself at the home of her husband's mistress, declaring publicly "A vengeaunce on the hor, Johan Essex, this haue I for thi sake, thou art my husbandis hore and this haue I for thi sake."[53] According to another witness, John Smert, Agnes compounded the injury by adding a further accusation: "Wil ye se, yendir sittith an hoor, this same is my husbondis child."[54] Joanna's willingness to plead a suit of defamation against Agnes for the accusations made against her suggest that she also considered this a serious matter.

These are not the only accounts among the records of the court in which marital strife was expressly linked to adultery. In a case from the year 1404, Thomas Tebbe of Driffield was presented before the court of the Dean and Chapter of York for a variety of moral crimes. When he first made the decision to engage in sexual intercourse with Joanna servant of Peter Tebbe, Thomas probably believed his extramarital activities would remain a secret between the two. In a small community where gossip ran rampant such a choice tidbit may have been too enticing for local chatterboxes to conceal. The ensuing scandal (*scandalio*) caused by his flagrant adultery had disastrous effects on his marriage and was reported to be the source of discord between Thomas and his wife. As a result, "Thomas maltreats (*maletractat*) his wife" and was compelled to answer to the court for both his adultery and the abuse.[55]

Although no sentence is recorded in the case of Thomas Tebbe of Driffield, it seems likely that his penalty was harsh because this was not his first offence of this type. A record from 1400 in an earlier act book demonstrates that Thomas's behaviour towards his wife landed him in court on at least one other occasion. In the earlier instance, Thomas was presented before the court on the grounds of spousal mistreatment alone. His behaviour

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[53] GL MS 9065, fo. 44v, Joanna Essex *c.* Agnes Badcok (1488).
[54] *Ibid.*
[55] York D & C AB/1, fo. 33.

earned him twelve floggings around the church, and he was ordered to treat his wife decently (*decenter*) in future. Given that his first offence was dealt with in a severe and public manner, in all likelihood his second, more grievous, offence would have been treated more harshly. Unlike the case of Thomas's adultery, however, in the first offence Thomas was not held solely responsible for the couple's marital discord. His wife's rebellious behaviour was also highlighted in the account, tacitly suggesting that her vituperative tongue may have provoked the abuse. For her part, she suffered no immediate penalty but was required decently (*decenter*) to obey her husband under pain of twelve floggings.[56]

This erstwhile account of constant antagonism leading Thomas to beat his wife is reminiscent of John Semer's testimony in the case of Nesfeld *c.* Nesfeld, discussed extensively in Chapter Four.[57] In order to refute Margery's claims of extreme cruelty as grounds for a separation from table and bed, Thomas's former servant shrewdly painted a picture of constant provocation by a potentially lecherous woman. In face of Margery's insubordination and irreverence Thomas's emerged as the voice of reason. While John certainly agreed that Thomas was driven to beat his wife, his account suggests moderate chastisement even when confronted with open rebellion and death threats. John's testimony, whether fact or pure fiction, likely was modelled on a contemporary perception shared by the representatives of the court in the case of Thomas Tebbe: that women frequently incited their husbands to physical abuse through their inherent disobedience. In his testimony, the gendered weapons of marital discord are clearly distinguished: male physical force, female verbal aggression.

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[56] York M 2(1) f, fo. 35.
[57] See pp. 285-6 of Chapter Four.

It is impossible to ignore the harsh implications of the court's double sentence in the case of Thomas Tebbe and his wife: she had been beaten repeatedly and expelled from the family home, not just because Thomas experienced obvious difficulties with anger management, but because through her own rebellion, she had provoked her husband's wrath. The court's decision to hold Tebbe's wife accountable, even in part, for the violence inflicted upon her is both startling and disturbing, chiefly because her disobedience seems to excuse the abuse, confirming that a man's fists were a viable defence when faced with the acerbic tongue of a woman. Even more distressing is that upon further examination of the records of the medieval church from the northern province of England, it soon became apparent that the court's decision in the case of Tebbe's wife was not that remarkable. When Thomas Rigton and his wife Ibbota appeared before the court in 1406 to respond to allegations that Thomas had long abused his wife, the court required Ibbota to swear formally that she would in the future humbly obey her husband (*iuravit de humiliter obediendo dicto marito suo*).[58] In the case of Richard of Epworth of York and his wife Margaret the records reveal that even in situations of admittedly extreme abuse the wife might still be held accountable. According to this late fourteenth-century consistory court book, Richard exercised great cruelty in his conduct towards Margaret. He is described as having "fiercely or inappropriately beat[en] [her], and excessively or indecently castigated [her]."[59] Under pain of one hundred shillings and 12 floggings around the church Richard was ordered to refrain from any further cruelty towards his wife. Margaret's culpability in her own abuse was also recognised. She was commanded henceforth to obey her husband under pain of 24 floggings.

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[58] York D & C AB/1, fo. 39.

[59] "attrociter vel inconvenienter verberavit aut castigabit incongrue vel indecenter." York M 2 (1) c, fo. 27.

The open admission by the courts Christian that marital conflict might be blamed on both halves of the couple is unexpected and thus the precise nature of the transgressions identified and associated with each gender merits discussion. The judgements in these cases confirm John Semer's understanding of the essential differences between husbands and wives: men and women differed fundamentally in the way they participated in marital strife. Men expressed their unhappiness through physical violence; women, on the other hand, resorted to vocal disobedience. Women like Margery Nesfeld or Margeret of Epworth were probably perceived by their communities as scolds because of their insubordinate attitudes. As the investigation into scold prosecution in the secular courts of medieval England undertaken in Chapter Two amply demonstrates, medieval English people were was preoccupied with the loose tongues of wives. The borough of Colchester's 78 scold presentments over the course of a 69-year period in the fourteenth century is a disturbing number in and of itself. Yet, the records of the church courts' act books demonstrate that the local courts were not the only ones concerned with scold prosecution. More important still, they shed much needed light on the disparity between York and Essex figures.

Scold Prosecution in the Church Courts of Later Medieval York

The court book of the Dean and Chapter of York covering the period 1387 to 1494 manifests a remarkable concern for female verbal aggression; in fact, with respect to a relatively small group of parishes over which the Dean and Chapter had direct jurisdiction, this ecclesiastical court very much adopted the role of the manorial court. Over the course of this 108-year period, 31 cases in which the offender was accused of both scolding and defaming appeared before the court, while an additional 23 accused of scolding only and 20

accused of defaming only were also brought forward, for a grand total of 74 cases of verbal transgressions.[60] As was the case in the borough of Colchester, the persons charged with these allegations were overwhelmingly female. Only six of the 74 offenders were male. One man, Richard Carterbarn de Dugheborth of York, appeared twice for scolding and defaming together; however, on the first occasion he appeared with a spouse who stood accused of the same crime, suggesting that she might very well have been considered the primary instigator. The only other man presented for both offences was John Bygan, who also appeared with his wife. The other three male offenders were charged with defaming only. That no man was charged with scolding alone confirms that, even more than the secular courts, the church courts perceived this to be a particularly feminine offence. It is evident that verbal offences were also often considered to be a married woman's misdoing. Just over one third of the women accused of either scolding or defaming (or both) in the records of the court of the Dean and Chapter were recognisably married.[61] This is roughly the same proportion as the married scolds who appeared in Colchester's borough court over the course of the fourteenth century.

A number of conclusions may be drawn from these records concerning contemporary social attitudes about domineering women. First, they were subject to prosecution in a wide variety of legal venues. While the manorial courts of Yorkshire do not offer many examples of this type, the number of scolds appearing in those records is sufficiently high to confirm that scolding as an offence was considered to be within the purview of the local courts. That

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[60] York D & C AB/1. I chose to examine this particular book simply because it spans such a long period, and one in which I expected scold prosecution should have been popular, even in the north of England.
[61] By "recognisably married" I mean women who were identified specifically as being the wife of a named man, for example Joanna wife of Henry Thorp. It seems highly likely that a number of other women were also married but were recorded in the court books under their own names without any reference to their husbands. There were only two identifiable cases of women who were (almost certainly) not married because they were distinguished in the records as being servants.

these cases also appear in the records of the Dean and Chapter, then, indicates that the church in York may have been participating jointly in the objective to bind the tongues of unruly women.

The ubiquity of scold prosecution must have had ramifications on social understandings of domestic violence. In a society where women who refused to be quiet and submissive were subject to punishment by the courts, it seems only fitting that they should have shouldered some of the responsibility for their husbands' abuse. One way of interpreting these findings is to argue that abuse was not simply a male transgression of gender boundaries, but also a female appropriation of male power. Because the unhappy wife chooses to take an active, assertive stance, she shifts the gender balance in the relationship. Her identifiably masculine conduct compels her husband to adopt ultra-masculine characteristics. Her aggression, then, excuses his violence.

Second, the York figures for scold prosecution in the church courts demonstrate a marked difference between northern and southern approaches to controlling disobedient women. The act books for the diocese of Canterbury also suggest a growing preoccupation with garrulous women. While only 16 cases of defamation came before the Canterbury consistory court in the years 1372-5, the act book covering the years 1416-23 boasts 144 defendants in cases of slander litigation.[62] Finally, instance *acta* for the years 1474-9 exhibit the highest numbers of defamation cases at 329 persons accused of defamation over a six year period.[63] These figures certainly suggest that the Canterbury court, like its northern counterpart, was concerned with punishing verbal offences. However, a number of major differences distinguishes the records of the north and the south. Most interesting, none of the

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[62] Canterbury Y.1.1 (1372-5); Y.1.3 (1416-23).
[63] Canterbury Y.1.12 (1474-9).

Canterbury records suggests that women were singled out as being specifically blameworthy. For example, in the years 1372-5, the defendants in defamation litigation were split down the middle according to gender, 8 male, 8 female. Of the 144 defendants accused of slander in the years 1416-23, 89 were male, 55 female. Even the totals for the period 1474-9 suggest a male predominance, with 183 male defendants, 146 female. Thus, while the court of Canterbury was rapidly becoming more intolerant of verbal offences as the late Middle Ages wore on, it did not perceive them to be a specifically female offence.

Also, the northern court punished both scolding and defamation; the southern court lacked scold prosecutions altogether. This glaring contrast confirms what the records of the borough court of Colchester strongly suggest: in the south, local communities were so appalled by scolding women that they took it upon themselves to correct the problem. In the north, where scolding did not generate the same kind of anxiety, the Dean and Chapter court was considered to be more than capable of bridling the tongues of women, and thus only the most rebellious of women found themselves faced with court proceedings. Once again, the distinction undoubtedly influenced regional attitudes towards spousal abuse: in the south, violence may well have been considered an unavoidable remedy to female aggression.

That regional variation in northern and southern attitudes towards "unbridled" or domineering women should exist is hardly surprising. As Helen Jewell has argued, "[t]he north-south divide in England is truly as old as the hills."[64] In fact, throughout the medieval era northerners and southerners were preoccupied entirely by different concerns: the north with warring Scotland, the south with France. North and south were in a sense united briefly in the thirteenth century after the first attacks from Scotland, as the south eventually came to

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[64] Helen M. Jewell, "North and South: The Antiquity of the Great Divide," *Northern History* 28 (1991), 23.

see the north as being worthy of defense. But by the fourteenth century, the north had turned in on itself almost entirely as the battle against its Scottish neighbours continued. Relations between north and south were strained at best. The surviving records would seem to suggest that the "the North was the poor relation throughout the middle ages," and that "southerners desire northerners to be subordinate and are annoyed when they do not behave so."[65] Moreover, Cynthia Neville has noted that common law in the north was applied in a unique fashion to cope with the difficulties of life in a region plagued by continuous war. For example, after the 1352 statute of treason northerners were able to penalise more effectively Englishmen who abetted Scots in crime through the statute's broad definition of treason to include those who collude with the king's enemies. Consequently, northerners were far more likely to impute treason than were southern Englishmen.[66] Bearing this in mind, that the two regions should have dissented on the handling of scold prosecution is reasonable and perhaps predictable. Northern women led lives that were "arguably more stressful and precarious than those of most medieval Englishwomen", and thus a certain degree of female aggression may have been more readily acceptable in this environment.[67]

Domestic Violence in the Ecclesiastical Courts

This disparity is certainly echoed in cases of abuse. Domestic violence is largely absent from the records of the diocese of Canterbury's disciplinary courts. The act books present a smattering of cases of domestic violence. For example, the *ex officio* act book of

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[65] *Ibid*, 18-9.
[66] Cynthia J. Neville, "The Law of Treason in the English Border Counties in the Later Middle Ages," *Law and History Review* 9 (1991), 1-30.
[67] Cynthia J. Neville, "War, Women and Crime in the Northern English Border Lands in the Later Middle Ages," in Donald J. Kagay, L.J. Villalon (eds), *The Final Argument: The Imprint of Violence on Society in Medieval and Early Modern Europe* (Woodbridge, 1998), p. 165.

1395-1410 specifically mentions the case of William Chapman presented because he beat (*verberavit*) his wife;[68] similarly, the *ex officio* act book of 1468 to 1474 recounts how Thomas Preston and his wife Dionisia were presented jointly for openly arguing in the fields close to their home.[69] For the most part, however, in cases with a direct impact on marriage, the records restrict themselves almost exclusively to adultery or spousal non-cohabitation. That is not to say that the act books of instance litigation do not occasionally record suits for judicial separation on the grounds of extreme cruelty. For example, in a case from 1454, John Colwell and his wife Margaret came before the courts in full agreement that a separation was in their best interests. When the judge attempted to reconcile the couple, they argued that they would prefer death in prison than living together because their relationship had become so violent that each lived in daily fear of the other. The court was convinced by their sincerity and unanimity, and chose to grant them a separation.[70] Cases like John and Margaret Colwell's separation from table and bed, however, are few and far between in the records of the southern ecclesiastical courts and restricted almost entirely to marriage litigation.

This is certainly not the case for the ecclesiastical courts of the north. Cases of spousal abuse are also few in number in these records, but the church courts here were accustomed to dealing with cases of abuse in both an adjudicative and disciplinary capacity. In the consistory court book for the year 1417 to 1420, at least three cases of marriage litigation appear in which the plea was recognisably a suit for judicial separation on the grounds of cruelty.[71] Given that there are only six cases of this type in the York cause papers

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[68] Canterbury X.8.1, fo. 31d.
[69] Canterbury Y.1.11, fo. 188.
[70] Canterbury Y.1.5, fo. 37v. The conclusion to this case appears in an act book of the Episcopal archives of Hereford county for the year 1442 and is discussed in Helmholz, *Marriage Litigation*, p. 103.
[71] York Cons AB/1: Selby *c.* Cawood, fo. 63; Wod *c.* Wod, fo. 82; and Foxholes *c.* Littester, fo. 99.

for the entirety of the later Middle Ages, three cases over a four year period is a relatively high number. While these records are lacking in detail and vexingly short, they all share the language of the judicial separations of the York cause papers. In each case the records submit that the wife does not dare live with her husband *in thoro et mensa* on account of fear of death or cruelty to her body. While three cases of marriage litigation on the grounds of abuse over a four year period is certainly not staggering, these findings indicate that the number of cases of judicial separation were probably far greater than the surviving records for York would seem to suggest.

Like the few surviving accounts of marriage litigation, the vast majority of the *ex officio* records concerning domestic violence are exceedingly terse. Such is the case of John Knyght of Burnham, presented before the court for spousal mistreatment. The records reveal only that he "maltreats his wife greatly" (*maerone*).[72] Although his abuse is boldly stated, the details of his actions are omitted entirely, preventing a fuller understanding of what "great" spousal mistreatment might have entailed.

Often accounts of abuse are even more ambiguous. For example, in the case of Thomas de Craven of York the records do not even record his abuse, they simply allude to it in a rather cryptic manner by requiring Thomas treat his wife decently and honourably (*decenter et honeste*).[73] Because the records are so formulaic in nature, the case is immediately identifiable as an instance of abuse. Violent husbands were regularly ordered to treat their wives *decenter et honeste.* When Richard Machonne was presented before the court because he "exercises cruelty" (*seviciam exercebat*) in his treatment of his wife Alice, beating and castigating her excessively and indecently (*verberabit aut castigabit incongrue*

[72] York D & C AB/1, fo. 9.
[73] York M 2 (1) c, fo. 30.

vel indecenter), he was also commanded to treat his wife decently and honourably.[74] As Richard's case demonstrates, the opposite was also true. "Indecent" behaviour seems to have been a euphemism employed by the courts for abuse. John of Kellingley was similarly reported to have conducted himself indecently with his wife because he treated her cruelly and beat her in an inappropriate manner (*attrociter pertractet vel inconvienter verberavit*).[75] While the records are annoyingly vague about what decent and honourable behaviour towards a wife might constitute, beatings and excessive chastisement were clearly not considered acceptable behaviour.

The language of abuse evident in marriage litigation also found its way into cases of domestic violence presented before officials of the court. Christiana wife of Robert of Moorby feared living with her husband because she believed that his abuse might lead to her death.[76] Joanna daughter of William Matheuson also preferred not to live with her husband Robert of Pontefract, even though they had been married for a long enough time to produce five children. She argued that she was in such fear for her life that she did not dare live with him.[77] It is easy to see why couples brought before the court for non-cohabitation commonly employed the formulaic language of plaintiffs in suits of judicial separation. In arguing that the violence might well be fatal, the wife painted a portrait of abuse intended to meet the court's requirements for separation. At the same time, in asserting that she does not "dare" live with her husband, or that she "fears" him, the wife was very careful to remain within the acceptable gender boundaries of marriage: she was the victim. Both "dare" and "fear" indicate her submission and inferiority, reminding the court that it was not she who violated

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[74] York M 2(1) c, fo. 23.
[75] York M 2(1) c, fo. 21.
[76] York M 2(1) b, fo. 2.
[77] York M 2(1) c, fo. 15.

social constructions of gender identity. Given the court's propensity to hold scolding wives accountable for provoking their husband's abuse, this was probably the only strategy capable of procuring the desired goal of a sanctioned separation.

Records of domestic violence appearing in the northern consistory court do not regularly record the judge's ruling in the matter. When sentences were included, however, the strategy of the court seems to have been fairly consistent. The reasons for the abuse (adultery, scolding, non-cohabitation, and so on) were addressed and penalised accordingly. Then, once there were no longer obstacles standing in the way of the couple's happiness, a monition was added to the court's judgement, warning the husband individually, or both husband and wife jointly, to treat each other appropriately on pain of an even greater penalty. This tactic is what Helmholz refers to as "an amicable settlement":[78] rather than simply grant a judicial separation, the church courts preferred first to attempt reconciliation. John and Margaret Colwell's blatant refusal to continue their marriage clearly suggests that not all couples were willing to submit to the court's intrusion in this respect;[79] however, when no objections were forthcoming, it seems likely that the decision of the court to resolve rather than dissolve may have motivation enough for the couple to reevaluate their relationship.

The kind of penalties assigned in cases of spousal abuse as both penance for past sins and monitions against future transgressions were fairly typical of the church's approach to moral offences in general: floggings and processions in multiples of three, with or without the added humiliation of the white gown and bare feet. Occasionally the court imposed even more grievous penalties, suggesting that church officials might well have considered some types of domestic violence to be problems of a serious nature. For example, the register of

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[78] Helmholz, *Marriage Litigation*, p. 101.
[79] Canterbury Y.1.5, fo. 37v. Discussed above on p. 351-2.

the court of the Dean and Chapter of York recounts that John Dammsell not only cohabited with his mistress Matilda of Leck, he also maltreated his wife and did so for three years. He was ordered by the court to admit his wife back into his home and treat her well under the pain of the usual processions around the church. In addition, if he was found to have ignored the authority of the court, he was subject to confiscation of two measures of wool.[80] The threat of amercement by the court was likely a result of the multiple nature of his crime: he was guilty of long-standing adultery, spousal eviction and recurrent spousal mistreatment over the course of a three-year period. Even with the embarrassment of the court appearance and public confession, John Dammsell was inclined to be a repeat offender. A man of this nature might be more inclined to listen to reason if he believed his future welfare was in danger.

The penalty for abuse might be even steeper. When John of Strensall came before the court on charges of fornication and spousal maltreatment he was warned to treat his wife more kindly on pain of 20 shillings.[81] In the case of Margaret wife of Richard of Epworth discussed earlier, although she was held responsible for provoking her husband through disobedience, Richard of Epworth was counselled not to revert to his former violent ways on pain of both 12 floggings around the church and a fine of 100 shillings, a high price even for the wealthiest ranks of medieval English society.[82] The nature of John of Strensall's abuse is not disclosed, but in the case of Richard of Epworth, the records very clearly state that the treatment of his wife was extreme: not only was he cruel, his discipline was excessive and indecent. The exceptional nature of his misbehaviour was likely the cause of the stiff financial threat. Most interesting about the church's approach in this situation is that rather

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[80] York M 2 (1) f, fo. 10.
[81] York M 2 (1) f, fo. 9.
[82] York M 2 (1) c, fo. 27. Discussed above on p. 365.

than grant the couple a separation on the grounds of cruelty (the requirements for which, according to their own records, Richard of Epworth's conduct certainly met) ecclesiastical officials chose instead reconciliation by intimidation. Because Richard did not appear at any later date in surviving court records on the same charges, it appears that blackmail may have been a more effective tool against domestic violence than one might imagine.

The case of Richard of Epworth and his wife Margaret is not the only incident of domestic violence among the *ex officio* business of the northern courts in which the resolution seems altogether inappropriate and perhaps even reckless. When John Eget and his wife appeared before the court at York in 1382 for spousal non-cohabitation Alice informed the judge that she did not dare live with her husband out of fear for her life. Despite the clear suggestion of excessive cruelty, the courts compelled the two to resume co-residence. In addition, John was cautioned to treat his wife with marital affection or suffer the penalty of twelve floggings around the cathedral church at York.[83] If the abuse inflicted upon Alice Eget was so extreme that she feared he might someday kill her, how advisable was their reconciliation? Moreover, why was his monition so petty? Clearly, there was more to this case than meets the eye. An inquiry into the circumstances of abuse might have revealed that Alice exaggerated the degree of violence in an effort to manipulate the court. Alternatively, John may have presented irrefutable proof of his wife's antagonism, making her the scapegoat for his actions. None the less, the cases of both Richard of Epworth and John Eget serve to confirm the observations that Donahue draws from the success rates of marriage litigation: the church courts of medieval England unquestionably shared a "presumption in favour of marriage."[84]

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[83] York M 2 (1) f, fo. 23.
[84] Donahue, "Female Plaintiffs", p. 191.

This conjecture is substantiated by the case of Roger Fouk of Allerston. Roger was brought before the court on a number of different transgressions. First, he was engaged in an adulterous affair with a woman named Margaret Schephird with whom he was related within the fourth degree. Second, the records stress that Roger maltreated his wife (*male tractat).* He continually beat her and even wounded her arm (*eam verberavit et vulneravit et brachium suum*). Given the nature of the abuse, one would expect a harsh ruling, but Roger's punishment was only slightly more severe than that of other unruly husbands presented before the court. On pain of six days in procession around the cathedral church at York and also at Pickering and Malton he was required to treat his wife more kindly.[85]

The most telling case of all those appearing in the act books of the court at York is that of Geoffrey de Rainworth of York and his wife Emma. While the records are usually silent on the nature of the abuse, the account of Geoffrey's mistreatment of his wife highlights the features of his behaviour that were considered especially egregious. First, Geoffrey is described as exercising cruelty towards his wife on a daily basis (*sevicia quam cotidie exercivit*). The inclusion of the frequency with which he beat his wife (a detail that is seldom recorded) strongly suggests that this was thought to be excessive in the eyes of the court. Second, the records also clearly state that, in his beatings, Geoffrey did not hesitate to use weapons as well as his hands and feet, and that (once again) he chastised his wife excessively and indecently. These details do much to provide a better understanding of the ecclesiastical perceptions of domestic violence; moreover they further illuminate the six case studies of judicial separation from the York cause papers noted above in Chapter Four. Why did all six female plaintiffs describe the weapons used to inflict their wounds? At the same time, why did the defendants and their witnesses try so hard to eliminate any mention of weapons

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[85] York M 2 (1) f, fo. 10.

whenever possible? As the case of Geoffrey de Rainworth indicates, even in domestic warfare weapons were not acceptable.[86] For his crimes, Geoffrey was ordered to treat his wife better on pain of 100 shillings and public processions around the church on six consecutive Sundays.[87]

Public penance and monition were probably the most popular method of dealing with cases of domestic violence, but they were not the only methods. In cases of abuse (as in other moral offences), ecclesiastical judges might insist on a guarantee of the husband's future behaviour. Usually referred to as a *cautio*, it might take several forms: a pledge of money or goods, a personal promise on oath to improve one's behaviour, or guarantee by sureties, meaning men of good reputation who were willing to pledge future good conduct. As the records discussed above demonstrate, the first two forms of *cautio* were frequently employed in cases of domestic violence. The third form, however, was also fairly common. For example, when Thomas Catryk was presented before the court for exhibiting cruelty to his wife, behaviour that was witnessed and confirmed by his enraged father-in-law, Thomas was required to produce sureties for his future good conduct.[88] If he reverted back to his old behaviour his pledges were to be subjected to financial penalty by the court. This was a strategic move. Essentially, the church was deliberately involving the wider community in order to enforce its rulings. The *cautio* made Thomas responsible not only to the church, but also to people within the community who trusted his word enough to lay their own reputations

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[86] The whole issue of weapons in household management was clearly a touchy issue. A Chancery petition concerning the beating of a Yorkshire servant helps to shed some light on this matter. Thomas Lincolne claimed that his master, John Hewett of York, a shearman, beat him "with tonges off iron and such oder unresonable wepons." The incident is described once more by Lincolne as an "unreasonable betyng," and he wished Hewett to take him back into his service only if he could "use hym self reasonably toward hym" (C1/324/12). Lincolne's claims in this perspective make it all too clear that chastisement remained within the realm of discipline only if weapons were not involved.

[87] York M 2 (1) c, fo. 31.

[88] York Cons AB/3, f. 6.

on the line, not to mention their purses. This would have been one of the most effective strategies in dealing with abuse. One of the greatest obstacles to communal intervention in cases of domestic violence was the personal nature of the offence. It is not always obvious that marital strife should have been a matter for public resolution. Nevertheless, a *cautio* went to great lengths to make spousal abuse someone else's business.

Marital Separation and the Division of Property

Despite the efforts of the church, marital disharmony had sometimes progressed beyond the point where reconciliation was still possible. The six case studies of separation from table and bed examined in Chapter Four demonstrate the course of action required in this situation. And yet, these records do not adequately address one significant issue: the division of property. In the case of Joanna Ireby and Robert Lonesdale, witnesses were very careful to point out the value of the wife's property before the marriage and Robert's mismanagement of it since, as if to suggest that it should return to her control after the separation. Because Robert's personal wealth is not referred to in this account, however, it is impossible to discover what proportion of the couples' property it may have represented. Moreover, this single case is unusual in and of itself. Most abused women could not afford to sue a plea in court for a judicial separation. Did Joanna's wealth give her a greater entitlement to her dowry than any other woman? What about women who had no personal property? Were their husbands required to support them even after a separation had been granted?

There are no easy answers to these questions. Both canon law and common law fail to address this problem adequately. It was not until the late sixteenth century that English courts addressed the issue directly and an equitable resolution to the problem was established. As

Maria Cioni has observed, the case of Walgrave *c.* Arthur Goldinge in 1581 brought the matter to the attention of the court of Chancery and determined how the court would deal with this point in future cases. When Mary Walgrave wedded Arthur Goldinge she was a wealthy heiress in her own right. Her marriage to Arthur did not last long. They were soon separated and Mary found herself in need of financial support. Accordingly, she petitioned Chancery to have her property revert back to her name now that she was required to support herself. Although the court did not choose this precise course of action, her appeal may well have influenced their decision. All the land from her inheritance was sold, and the proceeds were put into a trust for Walgrave in order to guarantee her separate maintenance, thus giving her ultimate control over her estate.[89]

The decision of the Elizabethan Chancery to permit separated wives control over property they brought into the marriage made separation a viable alternative for early modern women who might otherwise have been forced to remain in an abusive relationship. Before the success of this case, however, there existed no clear-cut method of determining the level of support (if any) that a husband was required to offer his wife in the event of a separation. In all likelihood, there existed a general belief that it was a husband's responsibility to provide his wife with the necessities of life afforded by his means; and yet, there were no laws either common or canon in existence to compel a husband into living up to this responsibility when his wife was no longer sharing his home. In fact, there is some suggestion that this duty might easily have been mitigated in certain circumstances. For example, according to the second statute of Westminster in 1285, an adulteress was ineligible to claim dower rights after

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[89] Maria L. Cioni, *Women and Law in Elizabethan England with Particular Reference to the Court of Chancery* (New York, 1985), p. 172.

the death of her husband unless he had forgiven her and the two were reconciled.[90] Almost a century later, Richard II's law makers restated these sentiments. A statute of 1382 notes that if a wife was raped and consented afterwards, she was prohibited from all rights to dower or jointure after the death of her husband.[91] As Sue Sheridan Walker's study of dower suits in the royal courts of the late thirteenth and fourteenth centuries demonstrates, this mandate posed serious problems to widows, for allegations of adultery were frequently imputed against them in order to deprive them of their dowers. One case in particular suggests that, in reality, abuse may have been at the root of numerous cases of this type:

> One widow met her adversary's charge of adultery by saying that her late husband had driven her to live elsewhere. She denied that she went off and set up housekeeping in various counties with Robert Chaumberlayn, the man named by the defendant as her lover. The widow, Joan, explained that she did not leave her husband, Simon de Percefoil, "spontaneously of her own free will" but that, due to this "harshness," she had gone to live with Philip le Lou and Margery, his wife, in Warwickshire.[92]

Because Joan and Simon's son settled out of court, the manner in which the royal justices might have proceeded in this matter is not known. While none of these cases specifically address wives in cases of judicial separation, they certainly suggest that a wife's support was not necessarily a right, but an ethical decision influenced by the particular circumstances of a case. Consequently, medieval wives living separately from their husbands were in a precarious position.

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[90] Westminster II, c. 34: "And of Women carried away with the Goods of their Husbands, the King shall have the Suit for the Goods so taken away. And if a Wife willingly leave her Husband, and go away, and continue with her Advouterer, she shall be barred for ever of Action to demand her Dower, that she ought to have of her Husband's Lands, if she be Convict thereupon, except that her Husband willingly, and without Coertion of the Church, reconcile her, and suffer her to dwell with him; in which Case she shall be restored to her Action." For a fuller discussion of this issue, see J.B. Post, "Ravishment of Women and the Statutes of Westminster," in J.H. Baker (ed.) *Legal Records and the Historian* (London, 1978), pp. 150-51.

[91] Richard II, st. 1, c. 6.

[92] Sue Sheridan Walker, "Litigation as Personal Quest: Suing for Dower in the Royal Courts, circa 1272-1350," in her *Wife and Widow in Medieval England* (Ann Arbor, 1993), pp. 88-9.

The church's position on the support of separated wives is very difficult to unearth. James Brundage notes that canonists certainly seemed to believe that it was the church's responsibility to support those who might not support themselves.

> Bishops, according to Gratian, had a general obligation to defend and protect the poor; Rufinus, a law professor and early expositor of Gratian's text, added that a bishop who failed, despite repeated warnings, to fulfill this obligation could, on that account, be deposed from office.[93]

Both widows and separated wives certainly fell within the category of "the poor." And yet, the writings of Pope Innocent IV would seem to suggest otherwise. He argued that

> widows came under the jurisdiction of church courts ... only when it was obvious that they could not secure justice elsewhere. The protection of the Church should be reserved ... for the deserving poor alone, not for every woman who had suffered tragedy in her life or for those who were poor because they were too shiftless to work.[94]

In the absence of their husbands' support, then, wives may have had a difficult time justifying their needs to the court. In practice, however, the English representatives of the church may have taken an entirely different stance where separated wives were concerned. The early sixteenth-century case of Ireby *c.* Lonesdale from the York cause papers certainly seems to suggest that division of property upon termination of a marriage may not have been an Elizabethan innovation but a continuation of medieval practices. This hypothesis is borne out by the rulings of an English ecclesiastical synod. The synodal statutes of II Exeter (1287) commanded husbands to love their wives, pay the debt and provide them with the necessities of life according to their means.[95] Although the statutes did not include a contingency plan in

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[93] James A. Brundage, "Widows as Disadvantaged Persons in Medieval Canon Law," in Louise Mirrer (ed.), *Upon My Husband's Death: Widows in the Literature and Histories of Medieval Europe* (Ann Arbor, 1992), p. 194.
[94] *Ibid*, p. 197.
[95] *Councils and Synods, with other documents relating to the English Church*, ed. F.M. Powicke and C.R. Cheney (2 vols, 2 parts each, Oxford, 1961-81), II.ii. 999. For a fuller discussion of this statute, see Finch, "*Repulsa uxore sua*", 24.

the event of separation, it seems likely that where finances were concerned, these expectations of appropriate husbandly conduct may have been anticipated and enforced by the church after separation.

Provisions for alimony are seldom mentioned in cases of judicial separation, even where rulings have survived.[96] A number of conclusions can be drawn from this omission. Separated women may have simply moved in with their parents or other family members and consequently were not concerned with enforcing payments of financial support from a deadbeat husband. Alternately, support of a wife may have been so ingrained in the minds of late medieval Englishmen that it was not necessary for the courts to address the issue. Even more likely, however, is the possibility that it was regularly addressed by the courts of the medieval church in their handling of judicial separations, but the process was so standardised that scribes simply did not record it. Still, the records of the church courts do give some indications to suggest that the court certainly recognised and enforced a husband's obligation to support his wife. When Thomas Waralynton was presented before the court, he swore to treat his wife Matilda Trippes with marital affection *in mensa et thoro*, and to provide her with necessities in food and other materials according to his ability (*ministrare sibi necessaria in victualibus et aliis materiis iuxta posse suum*).[97] In this situation it seems clear that Thomas had effected his own informal separation, abandoning his wife to her own resources. The court intervened on her behalf before she was forced to resort to begging. The willingness

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[96] In his study of a variety of late medieval ecclesiastical courts, L.R. Poos is able to provide some insight into the regular process of alimony agreements. He notes that "the courts occasionally recorded agreements between spouses to submit themselves to arbitrators, either to bind themselves to future good behaviour during their resumed life together, or – in extreme cases – to arrange support payments from husband to wife in cases of separation." (301) He goes on to offer four different cases of support in which husbands were required to provide their wives with maintenance, although none of the cases provide a sense of what "maintenance" actually entailed. See L.R. Poos, "The Heavy-Handed Marriage Counsellor", 301-3.

[97] Canterbury Y.1.1, fo. 28v.

of the courts to step in suggests that the church acknowledged a husband's duty to provide for his wife and, at times, compelled delinquent husbands to carry out this obligation.

Occasionally the rulings in cases of judicial separation specifically comment on the issue of financial support. In the majority of these cases the purpose was clearly to offer minimum provisions for the separated wife. A yearly payment of a fixed sum of money seems to have been an easy and popular route, most likely because Englishmen and women were accustomed to the practice through the support of widows. In her study of late medieval Sussex, Mavis Mate noted that annuities were a common solution to dower disputes or for widows who simply did not wish to "cope with the problems associated with leasing and direct management."[98] The maintenance of widows, then, may well have set the standard for separation agreements. It is clear that this was not the only means of providing for one's wife, however. The Canterbury act books provide at least two cases in which husbands were required to pay their wives a specific sum of money each week for the rest of their lives. The amount of money involved might vary substantially. For example, while John Cok de Holyngham was required to pay his wife 12 d. per week, the wife of William Bergh was to receive only 6 d. per week from her husband.[99] Similarly, annual alimony payments demonstrate the same disparity. In the case of Richard Mervyn and Joan Dencourt, when they separated in 1394 Mervyn agreed to pay Dencourt the sum of five marks sterling each year until the end of her life; but when Robert Tebold and Matilda Copiltyk separated in 1422,

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[98] Mavis E. Mate, *Daughters, Wives and Widows after the Black Death: Women in Sussex, 1350-1535* (Woodbridge, 1998), pp. 100-113.

[99] Canterbury Y.1.3, fos 112 and 116. A case of child support taken from the former suggests that weekly payments of this type may have been fairly typical. The court ordered Thomas Philpot of Northgate, Canterbury to pay Alice Christian 3 d. per week in child support. Assuming that an adult woman's expenses are greater than a child's, this amount is fairly consistent with the grant to both Cok and Bergh. See Y.1.3, fo. 186.

Robert was required to pay only 6 s. 8 d. yearly towards Matilda's maintenance.[100] Of these two cases, Joan Dencourt clearly got the better end of the deal; however Matilda and Robert were probably poorly endowed to begin with.

The case of Richard Wilkynson and his wife Margaret offers an entirely different perspective. In 1420, when the couple approached the court to request a separation to which both parties unanimously consented, their property was divided equally between them, and the division itself was carried out by four arbitrators, two chosen by each party.[101] Bearing in mind that this was a case of marriage litigation rather than a disciplinary action, it seems likely that Richard and Margaret belonged to the middling ranks of society. Because of their affluence, division of property in this manner would have more than exceeded the guidelines for support of a wife set out by the synodal statutes of II Exeter.[102]

Taken on its own, the case of Richard and Margaret might seem to suggest that this kind of equity was only achievable in amicable settlements, in which the terms were set by the participants rather than the court. The evidence of a fourteenth-century Lincolnshire case undermines this conclusion. In his study of the Lincolnshire Dean and Chapter court, L.R. Poos came across the case of William Chipgold whose staunch refusal to cohabit with his wife Isabella landed him in court. The reason for his obstinacy was that his son refused to live in the same house with Isabella, and consequently his loyalties went to his son over his wife. In dealing with this case, the court presented William with an alternative: either he treat Isabella as his wife *in thoro et in mensa*, or else give her a sum of money representing half his

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[100] Canterbury U.41, fos 70r-70v; Y.1.4, f. 79.
[101] York Cons. AB/1, fos 177r-177v.
[102] Although it is unlikely that a York court would have adhered to the findings of a synod effective only in the diocese of Exeter, it is possible that the Exeter findings indicate a guideline that was widely accepted as a minimal expectation.

wealth.[103] While two cases are certainly not enough to build a strong case for equitable division of property, they do suggest that the church courts of medieval England might have supported such a division where appropriate.

The promulgation of legislation demanding that adulteresses forfeit all rights to their dower raises the question of whether or not the courts of the medieval English church considered culpability in their decision to provide alimony. If a woman were primarily responsible for her separation, might she reasonably expect to be supported financially? While the records of the northern and ecclesiastical provinces remain silent on this issue, Poos's investigation of the Lincolnshire records once again suggests an answer to this query. In 1340 when Simon Smith was presented for failing to treat his wife appropriately, he replied that she had committed adultery with three different men, including John Penser, who was related to Simon within the third degree. Simon's wife Cecilia appeared before the court and confessed to her adultery and incest. Simon then requested a separation, which the court granted; however, he was warned by the court to provide his wife with all the necessities of life.[104] Similarly, among the records of the bishop's court at London, Richard Wunderli offers a rare case of judicial separation granted on the basis of the wife's cruelty. Joan Alpe pleaded a suit in court against her husband for spousal non-cohabitation. Her husband, William Alpe, appeared before the bishop's officials and adamantly repeated his refusal to live with her. He argued that his wife was insane and that he could not live with her out of fear for his life. His wife did not reply to those allegations. The separation was granted, but

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[103] Poos, "The Heavy-Handed Marriage Counsellor", 302.
[104] *Ibid*, 302.

not before William agreed to pay Joan the sum of 10 s. per year in order to provide her with the necessary food and clothing for her maintenance.[105]

The cases of Simon Smith and William Alpe allow one to argue that the church courts of medieval England took an equitable approach to separation cases. It seems apparent that the courts were sensitive to the economic disadvantage suffered by women in medieval society, that they recognised the contribution a woman's work made to the marriage, and consequently did not withhold support even in cases where the woman was clearly at fault. That women seldom seem to have been apportioned half of the marital property does not conflict with this perspective: in a society where women were not regarded as equals under the law (particularly as it pertained to property), the prevailing opinion was most likely that women did not need or deserve as much. Cases in which property was divided jointly between the two, then, may speak more clearly to the affluence of each party prior to marriage rather than mere support. The case of Ireby *c.* Lonesdale suggests an intriguing question: why should a woman lose her inheritance simply because she married the wrong man?

The fact that very few property agreements are included in the rulings of judicial separation suggests that these negotiations often took place outside the legal setting. This suspicion is confirmed by a single entry for the borough court of Colchester in 1311:

> William de Hetha, chaplain, complains of Roger Cartar that he forcibly entered his house at La Hethe, in the suburb of Colchester, and searched for the wife of Peter de Aseton, and even entered the said William's chamber and looked for her there, and accused him of keeping her with him, and of other enormities, whereas the said William had made arrangement with the said Peter that he would support the latter's wife at his table for the whole of that year for 3 marks, but on account of this accusation and defamation the

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[105] As discussed by Richard M. Wunderli, *London Church Courts and Society on the Eve of the Reformation* (Cambridge, 1981), p. 121.

> said Peter refused to keep to the agreement, to the loss of the said William of 40s., and thereto produces suit.[106]

Whether the relationship between Peter's wife and William the chaplain was sexual in nature or purely economic, it is apparent that this arrangement was a form of maintenance agreement in order to provide for Peter's wife now that she no longer shared the same dwelling as her husband. Without Roger's invasion of William's property by Roger this contract probably would not have become public knowledge. Its appearance in the records of the Colchester borough court, however, is meaningful. It strongly suggests that a complete understanding of maintenance agreements requires a much fuller investigation of civil records, particularly those cases of breach of contract. This kind of informal understanding was probably much more common than the limits of the records of this investigation demonstrate. Bills of chancery, examined in the next chapter, certainly confirm this assumption.

The Archbishops' Registers

It is possible that the wife of Peter de Aseton was willing to abide by an informal, out-of-court settlement probably only because her husband could not offer her more in the first place. She may have counted herself lucky that he had bothered to provide for her at all. In cases in which a great deal of money was concerned, such as the separation of Ireby and Lonesdale, it was an entirely different story. Any out-of-court settlement between the two inevitably would have resulted in a substantial loss of property to Joanna Ireby. Women in her situation were more likely to turn to the church for an equitable and enforceable resolution in order to preserve the way of life to which they had become accustomed. Consequently, the registers of the archbishops of York and Canterbury are a logical source for the study of

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[106] *Court Rolls of the Borough of Colchester*, ed. Isaac Herbert Jeayes (3 vols, Colchester, 1921), i.16.

propertied separations and the division of wealth. Because archbishops' registers contain archiepiscopal correspondence with lower church officials regarding individual cases and actions, they provide information on a vast array of subjects. Where marriage is concerned, archiepiscopal records are an essential source for an investigation of the matrimonial difficulties of the upper ranks. Members of the gentry and nobility of medieval England frequently by-passed the usual process in spiritual matters and took their concerns directly to the local bishop or archbishop for resolution. Accordingly, the cases of marital breakdown in these registers provide essential insight into the division of property among those with actual property.[107]

The registers for both York and Canterbury confirm that from an early stage the church courts of medieval England were determined to force delinquent husbands into living up to social expectations concerning the support of their wives, whether they cohabited with them or not. In a letter to an archdeacon's official dated June of the year 1286, archbishop of York John Le Romeyn ordered that William of Beltoft of the parish of Clayworth be compelled to treat his wife with marital affection as owed to her by the state of matrimony. William was said to have caused a scandal (*scandalum*) because of his poor conduct. He not only maltreated (*male tractat*) his wife, but deprived her of nourishment (*alimenta*). Consequently, he was to be compelled to reform his behaviour through ecclesiastical

[107] For the purposes of this study, only published registers for the dioceses of York, Canterbury and London were subject to investigation (although the records for the diocese of London proved to be of no help with respect to cases of marital disharmony). The reasons for this are many. First, there survive such large numbers of registers from the later medieval period that the amount of time required to read through all these vast volumes of material would have far exceeded that allotted for this study. Second, many registers have been published in printed form (sometimes translated, but more often than not in the original Latin), and each retains the language of the original. Finally, the published editions regularly summarise each case in the margin of the volume, making the task of ploughing through multiple volumes of this material surmountable. Although an investigation of all surviving registers might offer a more thorough and systematic approach to this subject, the number of registers employed in this study more than adequately fulfils the requirements of this investigation and presents a good perspective of contemporary matrimonial

censure.[108] Similarly, in a mandate from August of the same year, the archbishop demanded that Sir Michael of Upsall, who maltreated his wife and withheld necessities from her, also be compelled to treat his wife with marital affection.[109] In both these cases, there was no immediate danger of separation; neither man was reprimanded for failing to adhere to his wife or spousal non-cohabitation. It seems likely that both mandates appeared in response to complaints from either the women involved, or family and friends outraged at the treatment of these respectable women. The high social standing of their husbands would inevitably have highlighted the contemptible nature of the offence. To deprive one's wife of the necessities of life would certainly not have been commendable behaviour to begin with; for a man of this rank, who might well afford to offer his wife luxuries, this behaviour was not only reprehensible, but scandalous.

A case from the register of Robert Winchelsey, archbishop of Canterbury, from the year 1297 sheds some light on contemporary attitudes concerning spousal deprivation. In a mandate to the dean of Shoreham, Winchelsey takes Walter de la Mare to task for having deserted his wife four years earlier and refusing to provide her with maintenance. Winchelsey notes that Walter not only despoiled (*spoliavit*) her of the possession of the conjugal debt, but he also inhumanely (*inhumaniter)* refused to render to her the necessities of life out of her dowry and other common goods of theirs in contempt of his salvation and the scandal of many since great danger to souls is transferred because of these things.[110] This is not the only account in which failure to provide for one's wife was painted in this unholy light. The

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difficulties among the upper ranks for the entirety of the period and for both the north and south of England.

[108] *The Register of John Le Romeyn, Lord Archbishop of York, 1286-1296*, ed. W. Brown (2 vols, Surtees Society, 123, 1913), i. nos 718, 250.

[109] *Ibid*, i. nos 545, 191.

[110] *Registrum Roberti Winchelsey Cantuariensis Archiepiscopi, 1294-1313*, ed. Rose Graham (Canterbury and York Series, 51, 1952), pp. 194-5.

register of Thomas of Corbridge, archbishop of York from 1300-1304, contains a mandate to the official of the provost of Beverley on behalf of Alice wife of Elias son of James of Lockington. She argues that without reasonable cause (*sine causa racionabili*), Elias banished her from their home. Moreover, he does not treat her with marital affection; and what is more inhumane (*quod inhumanius est*) he has deprived her of the necessities of life and other things, contrary to the teachings of the church and putting her soul in jeopardy. Accordingly he is compelled to treat his wife with marital affection.[111]

The letters concerning both Walter de la Mare and Elias de Lockington strongly suggest that husbands who did not live up to their marital duties, especially when they were more than capable of doing so, were considered to be grievous offenders. It is no accident that Walter de la Mare was described as having "despoiled" his wife of what was rightfully hers. Moreover, the use of the term "inhumane" to describe this treatment indicates that the courts shared the expanded definition of abuse evident in the cases of judicial separation from the York cause papers. As the registers describe it, this was undoubtedly considered to be a form of economic abuse, endangering the physical and spiritual well being of these women. Clearly, a woman's soul was thought to be in danger without economic support, suggesting that the courts well understood a woman in dire financial straits might be tempted to trade sexual favours for food and shelter.

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[111] *The Register of Thomas of Corbridge, Lord Archbishop of York, 1300-1304*, ed. William Brown (Surtees Society, 141, 1928), ii.44-45. Records from the diocese of London suggest that the use of the term *inhumaniter* may have been a stock phrase used in cases of domestic violence, or at the very least was used on a number of occasions to describe situations of violence in marriage. For example, one witness in the divorce *a mensa et thoro* case between William Hyndeley and his wife Joanna described a particularly savage beating that left Joanna in the hands of a Franciscan monk for healing as having been committed *inhumaniter* (LMA MS DL/C/205, fo. 289r, Joanna Hyndeley *c.* William Hyndeley, 1475). When William Badner beat his wife with swords so badly that her life was thought to be in peril, he was also described as having treated her *inhumaniter* (GL MS 9064/6, fo. 86r, 1494).

A case from the register of Archbishop Thomas of Corbridge presents an interesting twist to this study. Henry Leue of Walkeringham, like Walter and Elias before him, was warned to treat his wife with marital affection and to provide her with necessities. Above and beyond these basic requirements, he was ordered to pay his wife five shillings annually for her support, even though it is clear that this was not a case of separation and that the court intended that he reside with her.[112] Why ask a man to pay alimony to his wife if he were not separated? The obvious answer is that Henry Leue was a repeat offender and the court no longer had the confidence that he would support his wife as requested. A fixed payment documented and enforceable in court was an easy alternative to constant supervision and frequent citations. At the very least, an annual payment of alimony would assure the representatives of the church that they would see him in court no more than once a year. A drastic solution of this nature certainly demonstrates the court's willingness to put wives in charge of their own maintenance when forced to deal with irresponsible husbands.

In all the registers under investigation in this study there is only one case of separation in which the issue of support was clearly addressed. Although the case of Henry de Leck of Gloucester and his wife was not specifically described as a case of divorce *a mensa et thoro*, the register noted that it pleased them to lead chaste lives apart from one another. Because neither Henry nor his wife was referred to specifically as a member of a religious order, this may have been a separation from table and bed rather than a mutual decision to pursue religious vocations.[113] Henry's obligation to support his wife, however, remained intact.

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[112] *Ibid*, i. 201.

[113] *The Register of William Greenfield Lord Archbishop of York 1306-1315*, ed. William Brown (Surtees Society, 371, 1931), i. 163. It is entirely possible that Henry de Leck and his wife arranged to live chastely not because of marital discord, but rather because they had religious aspirations, much like Margery Kempe and her husband John (although in the case of Margery and John Kempe it seems clear that it was entirely Margery's decision to pursue a celibate lifestyle). Irrespective of the motivations for the separation, the court's determination to force Henry to support his wife despite their arrangement is meaningful.

Goods held jointly by the couple were to be divided equally between them. Henry's wife was allowed to retain her complete inheritance, comprising two acres of land, and Henry was asked peaceably (*pacifice*) to give her one dress worth 20 s. every two years or the value of the dress in cash. This situation resembles that of Joanna Ireby and Robert Lonesdale. Henry's wife was a wealthy woman in her own right, and the court did not feel that she deserved to lose her inheritance as the result of her failed marriage. None the less, it is intriguing that, despite her personal wealth, Henry's obligation to support her should have been upheld. If her inheritance was more than sufficient to provide her with maintenance, why require an equitable division of goods held jointly or the biennial gift of clothing? The resolution of this case would seem to suggest that even when a man married a wealthy woman, he was expected to act like a man and support his wife.

The registers of the archbishops for both ecclesiastical provinces also demonstrate clearly that spousal mistreatment was a part of married life at all levels of society. Even husbands of the gentility and nobility sometimes needed the occasional reprimand by the church in order to treat their wives appropriately. Similarly, the cases of abuse in these records suggest that the courts adopted similar approaches to their resolution.

In a commission to the dean of Westbere to inquire into the case of a man who continues to treat his wife cruelly, full details of the abuse are recounted. The man, referred to simply as "A. de N." beat his wife Alice greatly (*enormiter verberare*) and wounded her on several occasions (*aliquociens vulnerare*). He treated his wife badly (*male*) and dangerously (*periculose tractare*), suggesting that his abuse might well prove fatal if unchecked.[114] There was an explicit recognition by the court here that the degree of violence exhibited in the

[114] *Registrum Roberti Winchelsey*, pp. 83-4.

conduct of A. de N. towards his wife Alice exceeded the acceptable bounds of wife chastisement, and indeed met the legal requirements for a divorce *a mensa et thoro*. None the less, as in similar cases found in the *ex officio* act books of the York church courts, Archbishop Winchelsey chose not to set the couple on the road to separation, but instead to demand simply that the man desist from his ill conduct and treat his wife with marital affection. While this ruling certainly confirms the court's desire to uphold the bond of marriage wherever possible, the judgement in this case demonstrates that this policy applied equally to couples of all classes. For this case to have come to the personal attention of the archbishop, either Alice or representatives on her behalf must have petitioned privately, an assumption that in and of itself establishes Alice's high social standing. The level of abuse described by her suggests that she would have preferred a sanctioned separation. That the court chose instead to compel her husband to proper behaviour merely demonstrates that ecclesiastical justice was not easily bought.

The monitions threatened in cases of moral transgressions in the archbishops' registers reflect the greater accessibility of disposable cash among the accused. Penalties in these cases were ordinarily measured in pounds, rather than shillings. When John husband of Juliana daughter of Sir Walter de Stirtheley was presented before the court for failing to treat his wife with marital affection, he was ordered to adhere to his wife and treat her more kindly on pain of £20, no small sum in thirteenth-century England, even for a member of this rank.[115] Moreover, there seems to have been a general tendency in certain sexual offences to view men as the instigators and to penalise them more harshly accordingly. For example, in the case of Sampson de Strelley and Elizabeth of Clipstone, brought before the court on charges

[115] *Register of John Le Romeyn*, i. nos 257, 280-81.

of adultery, Sampson was described as the party wholly at fault. Sampson held (*tenuit*) Elizabeth for many years as his mistress, and consequently not only exposed her soul to danger but made her the subject of scandal in the church (*in anime sue periculum et ecclesie scandalum manifestum*). Both parties were ordered to refrain from any further contact of this nature on penalty of a £20 fine at the expense of Sampson de Strelley. Elizabeth of Clipstone did not escape entirely without punishment. For her part in this sinful activity, she was required to perform public penance of floggings on three days around the parish church of Oxcombe. The distinction in penalties along gender lines certainly suggests that a monetary fine may have been considered a more appropriate deterrent for a man of this status than public penance. [116]

A similar case from the register of Archbishop William of Greenfield substantiates this argument. When Henry de Rokkeley and Dulcia wife of Thomas de la Chaumbre appeared before the court on charges of adultery, they were ordered immediately to abjure further sin. If they continued their sinful activities, Henry would be subjected to a penalty of £20. Dulcia's monition was not of a financial nature; rather, if she engaged in further adultery, she would do so on pain of twelve floggings, six around the parish church of Derfeld, three around the market of Barnsley, and three around that of Rotherham.[117] The disparity in fines is impossible to disregard. As in the case of Elizabeth of Clipstone, while Dulcia's monition was certainly embarrassing and unpleasant in nature, it was much less severe than the heavy fine imposed on her lover. It is possible that both Elizabeth and Dulcia were spared the harshness of a financial exaction simply because they were married: in this circumstance the penalty would not really be inflicted on either woman, but their husbands

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[116] *Ibid*, i. nos 247, 272-3.
[117] *Register of William of Greenfield*, i. nos 904, 94.

who would have been held responsible for paying the fines. It also seems possible that Henry's fine was greater because the courts held him primarily responsible for the sin of adultery. The outcome of both these cases, however, sheds some light on why the courts seldom awarded separated wives cash or financial favour: husbands were expected to bear the financial burdens of marriage in so many ways.

An Unexpected Find: a Medieval Case of Marital Rape

Perhaps the most unexpected case of marital discord appearing in all of the registers investigated in this study is that of John le Cupper of Nottingham and his wife Agatha. The two appeared before the court in response to Agatha's request for a divorce *a mensa et thoro*. Her reasons for the separation were multiple. She maintained that John had committed many adulteries, even though she had never given him cause to pursue other women (*ipsa nullam sibi dante vel dedisse materiam adulterandi*). Moreover, his conduct towards her had been less than exemplary. She recounted how one night, against her will, John abducted Agatha to his home and "willingly and consciously he lay with her and knew her carnally" (*secum jacentem volentem et conscencientem carnaliter cognovit*). His violent treatment of her and his flagrant extramarital sex life constituted, in Agatha's mind, grounds for a judicial separation. Nevertheless, the register suggests that the archbishop thought otherwise. For the violent abduction (*violenta abduccione*) John was presented before the court of the ordinary and required to pay a fine of £20 or be flogged on ten days around the Nottingham market. Then, through the intervention of the court and other friends the couple was reunited, but John was warned that if he should treat his wife badly in the future he would be required to pay a fine of £10 or be flogged on five days in the above-mentioned manner. He must treat his wife

honourably and with marital affection and he must not commit any serious fault against her (*contra ipsam graviter non delinquet*). The record continues briefly to mention that the discord between John and Agatha's son, John Kyt, has finally been settled.[118]

The case of John and Agatha offers a tale of abuse which might best be categorised as marital rape, even though canonists argued that a wife could not be raped by her husband. The prevailing belief was that if a woman had consented to marriage then her consent to intercourse had already been given.[119] At first glance, this ideology would seem to contradict canonical notions of the conjugal debt. Canon law was very clear that it was a spouse's responsibility to engage in sexual intercourse when asked, even if the act might seem sinful, because it was better to commit the sin of fornication on a holy day or even in a holy place than it was to betray the conjugal union.[120] With this in mind, although John might well have used undue force by compelling his wife into the act, Agatha should have been equally guilty for spurning her marital duty. Given John's history of repeated adultery, however, these rules did not apply in Agatha's situation because the adultery of one spouse exempted the other from the payment of the conjugal debt. Hence, John's actions were not only an excessive display of violence, but indeed rape.

The register of Archbishop Henry of Newark's incumbency permits the rare opportunity to compare the assigned penalties in a case of marital rape and the more typical kind. A mere thirteen days before Agatha appeared in court in the hopes of having her separation approved by the archbishop, Newark was confronted with the case of James of

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[118] *The Register of John Le Romeyn*, i. nos 254, 279-80.
[119] For a more detailed discussion, see James A. Brundage, *Sex, Law, and Marriage in the Middle Ages* (Hampshire, 1993), p. 70, or his "Implied Consent to Intercourse," in Angeliki E. Laiou (ed.), *Consent and Coercion to Sex and Marriage in Ancient and Medieval Societies* (Washington, 1993), pp. 245-56.
[120] For a fuller discussion of this subject, see James A. Brundage, "Sexual Equality in Medieval Canon Law," in Joel T. Rosenthal (ed.), *Medieval Women and the Sources of Medieval History* (Athens, 1990), pp. 66-79.

Pocklington, rector of the church at Holme, found guilty of abducting and raping one of his parishioners in April of the previous year. While rape normally fell within the purview of the royal courts, James as a cleric was able to claim benefit of clergy and to have his crime removed to the church court. In lieu of the execution which a conviction of rape would merit in the king's court, James's sentence was to pay 20 s. to the young woman whom he had offended in 5 s. increments over the course of the next four years. In addition, he was required to enter into a bond of 10 marks to guarantee his future good conduct, with the threat of a further 30 marks in the event he returned to his criminal way of life.[121]

While James of Pocklington was certainly not lightly excused, his immediate fine was much reduced compared to that of John le Cupper, even if his monition was similar. The chief distinction between the two cases is the nature of the relationship between victim and accused; in each, the rape was clearly a breach of trust of varying degrees. That the archbishop chose to punish John le Cupper's offence much more severely than James de Pocklington's suggests that he believed John's transgression the more egregious of the two.

Given that marital rape is seldom recognised as such in modern courtrooms the inclusion of this case among the records of the medieval archbishop's business is quite astonishing. And yet, the church courts of the medieval era were much more attuned to the sexual lives of their litigants than it is possible to imagine today. John le Cupper's appearance in court and his amercement for violent abduction suggest that the medieval courts Christian may well have been better equipped to deal with this kind of offence, and certainly more willing to accept that transgressions of this nature might occur between married people.

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[121] *The Register of John Le Romeyn*, i. nos 249, 276-77 (this volume also contains the register for Henry of Newark).

Once again, John le Cupper's appearance in court argues strongly in favour of an expanded definition of abuse employed by the courts, even though the archbishop chose to reunite John and his wife Agatha. Two features of the account indicate that the archbishop was led to believe that reconciliation was in the couple's best interests. First, the register notes that both the court and the friends of the couple were in favour of reconciliation. If those who knew John and Agatha intimately were inclined to believe that they might overcome their differences, then the court's representatives were in no position to disagree. Second, the tale of John and Agatha's appearance in court concludes with the settlement of a dispute between Agatha's son and husband. While the source of contention between the two is not made explicit in the archbishop's register, this disagreement was probably the cause of strife between John and Agatha. Having resolved the dispute, the archbishop had every reason to believe that John and Agatha might resume their marriage in a much happier state.

Overlapping Jurisdictions: Spousal Homicide in the Archbishop's Court

John le Cupper and his wife were certainly an unexpected find in the archbishops' registers; but occasionally one stumbles across a case that seems so out of place that, upon preliminary investigation, it is difficult to explain exactly why it should have appeared before the church courts at all, rather than the king's justices itinerant. Such is the case with the 1397 purgation of Idonea, widow of William Pynder of Bainton, on the charge of complicity in the death of her husband. According to a memorandum copied into the register, William received the fatal wound not from his wife, but from an unknown assailant. Idonea "was said to have consented to his death and to have planned it by placing a long tent into William's

head as far as the brain and by removing four bones from his head."[122] The appearance of this death among the records of the archbishop is certainly difficult to explain. Without a subsequent entry in the register, her purgation before the rector of Bainton would have remained entirely inexplicable. According to the next memorandum, the archbishop sent a letter to the rector commanding him to begin the process of excommunication against persons guilty of defaming Idonea in the death of her husband.[123] The reason why Idonea chose to appear before the courts Christian rather than royal justices suddenly becomes clear. She was not, nor had she ever been, formally accused of spousal homicide; rather, she was present before the officials of the court in order to clear her name in a defamation accusation against neighbours who believed that she had been involved. Richard Helmholz has argued that this was a relatively frequent occurrence. Englishmen and women often appeared before the ecclesiastical courts to purge their names of murder, and more often than not, the appearance was to refute rumours of complicity in the death of a loved one.[124] This finding is not altogether surprising. As the poison accusations examined in Chapter Three would seem to suggest, when a person died and the cause of death was unknown, a recent fight with a family member may have seemed like the logical explanation.[125] Without evidence or even a strong presumption of guilt, however, defamation was the only sure way of initiating an investigation. While it was undoubtedly Idonea who turned to the church in order to clear her

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[122] *A Calendar of the Register of Robert Waldby Archbishop of York, 1397*, ed. David M. Smith (Borthwick Texts and Calendars, 2, 1974), p. 11.
[123] *Register of Robert Waldby*, p. 12.
[124] R.H. Helmholz, "Crime, compurgation and the courts of the medieval church," *Law and History Review* 1 (1983), 10. A number of cases of this type appear in the Commissary Court Act books for the diocese of London. For example, in the year 1471 Symon Hervy accused John Euilyn of hiring his servant, John Hervy, to poison his wife Joanna whom he had treated poorly on a number of occasions (GL MS 9064/1, fo. 106v). Also, in a case from the year 1486, William Asker and his wife defamed Joanna Pollard by saying that she kept a knife at the head of her bed with the intention of slitting her husband's throat. This accusation was so loaded that Joanna's husband threw her out of their home. (GL MS 9064/2, fo. 156r).
[125] See pp. 213-9 of Chapter Three.

name, the only recourse of the courts was to perform a thorough examination of the charges in order to determine her role in the death. If found guilty the next logical step would have been to inform the secular authorities and have her formally charged.

The entire process of defamation, inquiry and purgation suggests that a number of conclusions may be drawn about the system of criminal justice in medieval England. Clearly, both the community and the church played a much more extensive role in the indictment of individuals than historians have previously allowed. Defamation functioned as an informal method of accusation either upon which royal justices acted in their capacity as criminal investigators, or to which the defamed individual responded by appealing to the church for a formal investigation. This finding certainly suggests that the courts may have been biased in favour of the plaintiff (on the basis that the guilty might have preferred to let sleeping dogs lie). However, given the evidence of rife curial manipulation in both courts, ecclesiastical judges may have recognised this possibility and taken it into account. More important still, this new understanding of the scope of ecclesiastical justice reinforces the notion that domestic violence, even in its most extreme form, may well have been considered the jurisdiction of the church courts. More simply put, domestic violence was interpreted by the courts as an issue of marriage, not an issue of violence.

Idonea's perceived complicity in the death of her husband, as described by the account in Robert Waldby's register, seems a far stretch of the imagination. There is certainly some debate over exactly what happened. As David Smith notes, while the word *tentum* has often been translated as "stake," in this particular situation it is undoubtedly a "tent," meaning

> [a] roll or pledget, usually of soft absorbent material, often medicated, or sometimes of a medicinal substance, formerly much used to search and

> cleanse a wound or to keep open or distend a wound, sore or natural orifice.[126]

This translation makes it clear that unless Idonea was dabbling in some form of illicit medieval voodoo, she was trying to save her husband's life by removing debris from his crushed skull and cleansing the wound. The court's decision to sentence in her favour corroborates this hypothesis. None the less, this interpretation of the events still leaves unanswered the question of why Idonea was the natural victim of her neighbour's gossip. It seems apparent that she and her husband had a history of marital discord, but one not severe enough to convince the royal authorities of her guilt. One possibility is that rumour stemmed from the growing discomfort in late medieval England with the medical practices of midwives. In order to perform such an intricate procedure as tenting a head wound and dislodging bone fragments, Idonea probably had extensive medical training, and may even have been a practising midwife. When she failed to revive her husband, it must have seemed obvious to her neighbours that if she had wanted to save him, she could have; hence, she must have deliberately chosen not to.[127]

The case of Idonea of Bainton resembles in some respects a witch-hunt gone awry. Without Waldby's support, she might well have found herself alienated from the community and unable to work. In her case the church courts certainly played an instrumental role in putting an end to spurious accusations of this sort and allowing her to move on with her life. This was not the only instance, however, when the church courts of medieval England were

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[126] *Register of Robert Waldby*, p. 11 *n.* Smith's source for this particular interpretation of "tent" was the *Oxford English Dictionary*, which suggests the year 1400 as the earliest usage of this defintion (see *OED*, vol. 17, 2nd edition, p. 785).

[127] In his investigation into the effects of the Black Death on the common law of the late Middle Ages, Robert Palmer also notes a growing uneasiness with physicians. Within a few years of the initial outbreak of the plague, for the first time ever doctors were being held legally responsible for negligent harm and

called upon to adopt this role. In 1290 Dame Christiana Meynell, wife of Sir Nicholas de Meynell, fell victim to similar charges. Her saving grace was the fact that her husband survived. Moreover, it was her husband who brought charges of attempted homicide against her; thus his continued existence was probably not welcome news for Dame Christiana. According to the account, the charges against her were manifold. "It is said that she engineered the plot to kill her husband, to poison him, having prepared a measure of venom, and she committed adultery with the clerics W. de Grenefeud and Walter de Hamerton."[128] It seems likely that Sir Nicholas's aims in compounding the charges against his wife were not unlike those of Cecilia Wyvell or Margery de Devoine. Adultery and attempted murder unquestionably met the requirements for a divorce *a mensa et thoro*, although this intention is nowhere announced in the register. If the investigation into the charges had substantiated his claims, Sir Nicholas would have had all the necessary proof to obtain a separation. His was certainly a very shrewd strategy. Although it would have been virtually impossible to prove that poison had actually entered his system, the former was often thought to be the weapon of choice for the physically inferior woman and thus would not have been incompatible with social expectations.[129] Sir Nicholas may not have invented the incident at all; but given the choice of weaponry wielded against him, his accusation may have been nothing more than a gnawing suspicion.

In the end, Dame Christiana was not found guilty of attempted homicide. The court's decision to sentence in favour of Dame Christiana and to proclaim her innocence publicly

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malpractice. See Robert C. Palmer, *English Law in the Age of the Black Death, 1348-1381: A Transformation of Governance and Law* (Chapel Hill, 1993), pp. 185-96.

[128] "quod dicebatur ipsam in mortem dicti mariti sui machinatum fuisse, ad intoxicandum eundem, venenosum poculum preparasse, ac cum magistris W. de Grenefeud et Waltero de Hamerton adulterium commisisse." *Register of John Le Romeyn*, i. nos 481, 170.

[129] See discussion of poison victims, pp. 213-9 of Chapter Four.

might well be explained by her choice of lovers. The William de Grenefeud to whom the commission refers was not only a respected and accomplished clergyman, but also the future archbishop of York.[130] With such a powerful man on her side, it probably would not have mattered whether the allegations were fact or fiction.

A letter written to the king by the archbishop two years after the fact, however, suggests that Sir Nicholas may have had good reason to suspect that his wife wished to see him dead.

> To the lord king. We have recently received a letter of your highness containing [the following]: that because the wife of Sir Nicholas de Meynell, it is said, has withdrawn from him against his will, putting distance between herself and him and leading a sinful and also dishonest life, refusing to adhere to him, at the great and serious cost of the said Nicholas, we wish to offer a suitable remedy. Accordingly, it is brought to the attention of your lordship, after examination of the said Nicholas and his wife by the usual procedures in the ecclesiastical court, we find that Nicholas in violent fashion threw his wife out of her home in contravention of the law governing married people and thereafter neglected to support her against the church's ruling, which ruling was intended to secure her an honest manner of living and [adequate] sustenance. More particularly [it was found that] the fault [here] lies with the husband, who inflicted bodily harm on this blameless woman. Given this cruelty and the fragility of the woman, it is not advised to return to the control of the man without requiring of him suitable warranty that he will treat her in future with marital affection, as appropriate; yet it was frequently and publicly sworn that, in contravention of ecclesiastical law, the husband refused to undertake such a pledge. Therefore do not be surprised, your lordship, if as a result of this injury and with the agreement of the community in which she now resides, the church has pity on this oppressed woman.[131]

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[130] The editor of the volume, William Brown, is responsible for making this connection. See *Register of John Le Romeyn*, p. 170, note 2.

[131] "Domino regi. Celsitudinis vestre litteras nuper recepimus continentes ut super eo quod uxor domini Nicholai de Menille ab eo invito dicitur recessisse, se elongans ab eo vitamque ducens peccatricem ac eciam inhonestam, et recusans adherere eidem, in ipsius Nicholai dispendium maximum et gravamen, curaremus remedium competens adhibere. Vestra itaque attendat dominacio quod, examinato processu habito in foro ecclesiastico inter predictum N. et uxorem ejusdem, invenimus quod dictus N. uxorem suam motu austero a domo sua expulit contra legis debitum conjugalis, eamque postea contra decretum ecclesie neglexit alere; cui tanquam bone et conversacionis honeste judicio ecclesie certa decreta fuerant alimenta, pro eo presertim quod sua culpa non divertit a viro, set viri pocius sevicia eam innoxiam sic afflixit. Propter cujusmodi seviciam ad viri redire dominium mulieris fragilitas non est avisa sine caucione ydonea a viro prestanda, quod eam maritali affectu, sicut convenit, pertractabit; quam vir ipse contra statuta canonica se nolle prestare aliquatenus in judicio et extra pluries et publice est testatus. Unde, si sic

The solution to which the archbishop refers was undoubtedly a separation from table and bed with a court approved maintenance agreement. It seems likely that because of the impending division of property, however, the archbishop found it politic to contact the king for approval. Sir Nicholas de Meynell was a royal tenant-in-chief; therefore, if any of his property were to change hands royal authorisation was required to make the exchange lawful. Otherwise, Sir Nicholas was legally justified in disregarding the archiepiscopal decree. He could even sue a case in the royal courts against his wife on the grounds of unlawful ejection, and if her adulterous past was verifiable, he would be permitted to reject her claims to dower after his death. As a result, in order to guarantee Dame Christiana's future economic and spiritual well being, the archbishop needed to co-ordinate his efforts with the king. Officers of the king, then, might be called upon in the event that Nicholas once more refused to obey the decrees of the court.

This is the last missive written on behalf of Dame Christiana de Meynell to survive among the records of the archbishop's register, and it is difficult to determine whether Le Romeyn's pleas were well received or merely fell on deaf ears. None the less, her case certainly brings together much of the prevailing beliefs echoed in both the ecclesiastical act books and the archiepiscopal registers concerning the duty of the husband to support his wife. More important still, the letter permits a glimpse into the mind of a high ranking ecclesiastical official in order to understand his personal opinion of what constituted excessive abuse. Le Romeyn's perspective, expressed so eloquently and passionately on behalf of Dame Christiana, is vital to a more complete understanding of the attitude and approach adopted by the representatives of the medieval English church.

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depresse mulieri compaciatur ecclesia, cui eciam compatitur patria communiter in qua degit, vestra, si placet, excellencia non miretur. Conservet vos ecclesie, etc." *Register of John Le Romeyn*, nos 96, 76-77.

The details of the physical abuse were not what interested the archbishop most. The forced eviction from the home, Dame Christiana's terror at returning to her husband's lordship, and the spiritual ramifications of Sir Nicholas's refusal to provide financial support seem to have been the three most fundamental elements of Le Romeyn's understanding of abuse. From the archbishop's perspective, Sir Nicholas was entirely to blame. He maintained that Dame Christiana withdrew from her home "unwillingly," even though her home environment was not blissfully happy, her husband was admittedly cruel and she later demonstrated such reluctance to return. Consciously or not, Le Romeyn painted Dame Christiana as an ideal victim. He referred to her alternately as both "blameless" and a "fragile woman." She was the passive woman who dared not return home. She was also constantly acted upon: she was expelled from her home, bodily harm was inflicted upon her. Most seriously, if her reputation was marred with sin, then once again her husband must take the blame. Without the support of a husband, all too easily a woman might be driven into a life of dishonesty.

From Le Romeyn's perspective, there was no question about where to lay the blame. The answer was clear. His position differs widely from cases appearing among the *ex officio* business of the court in which wives were thought to have shared the blame for their husbands' cruelty. Le Romeyn's interpretation of the situation, however, was probably influenced by the status of the woman involved. Dame Christiana was a respectable woman from a family of high standing within the realm of England. To accuse her of adopting masculine aggression, and Sir Nicholas of failing to live up to his responsibilities as a husband, would have meant offending two important people (rather than just one).

Conclusion

In his letter, Le Romeyn seems to hold the husband responsible for his wife's morality. Was money the only obstacle standing between most women and a life of sin? In this respect, the two cases of adultery discussed earlier in this chapter, in which both Elizabeth de Clippeston and Dulcia wife of Thomas de la Chaumbre were punished much less severely than their male lovers, are particularly illuminating. These women may not have been deemed as accountable as were their partners simply because they were women. The dominant thread in all this material is the expectation of superior moral fibre in the male half of the species. Despite contemporary treatises and church writings arguing that women, like Eve before them, led men into sin, the records of the English church courts seem to suggest the opposite: it was men who led women into sin, either directly (as in the two cases of adultery), or indirectly (through economic deprivation). A woman might not be held entirely responsible for her sinful actions, then, because the greater moral fortitude of the male should have prevented her from engaging in these activities. For a woman, the fall from grace was short and steep; for men, the distance was much greater. Men were supposed to be morally superior, but were often responsible for leading women into sin. Accordingly, when a woman sinned, the greater share of the blame must inevitably have belonged to the man who should have stopped it before it happened.

This is admittedly a complex hypothesis of male and female moralities. And yet, in many ways it helps to explain a number of features pertinent to this study. Why were maintenance agreements important? Because husbands were responsible for their wives' souls. Why were Colchester's husbands charged for their wives' crimes? Because husbands were responsible for leading their wives away from a life of sin. Why did the church

sanction physical chastisement in marriage? Because husbands were responsible for teaching morality to their wives.[132]

This is not to suggest that medieval wives were exempt from responsibility. Simply put, it seems likely that women were not thought to be ultimately in control, and their obligations were of a much different sort. As the records of the church courts suggest, wives were responsible for not provoking their husband's anger. Or as Thomas Chobham argued, it was a wife's duty to help her husband realise his good qualities. In this perspective, however, the equilibrium of the relationship was seriously unbalanced. As a result, when a man like Archbishop John Le Romeyn came across a marriage in which the husband had so obviously committed multiple sins against his wife by failing in his spousal duties, finally we are presented with an authentic interpretation of contemporary beliefs about spousal abuse. It seems that in this cleric's mind at least, a much sinned against woman was the victim of abuse.

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[132] Kate Mertes's research into the household as a religious community would certainly seem to suggest that noblemen were responsible for the religious education of their entire households (including their wives) and that this responsibility was not taken lightly. See Kate Mertes, *The English Household 1250-1600: Good Governance and Politic Rule* (Oxford, 1988), pp. 139-60. Thomas of Chobham's work, discussed extensively in Chapter One (see particularly p. 49) certainly seems to suggest that a husband, in general, was expected to teach his wife if her actions were foolish.

Chapter 6:

"Moste shamefull and unmanly wise": Women's Voices in the English Court of Chancery

By far the greatest obstacle confronting unhappy English husbands and wives was the fact that domestic violence did not fall squarely within the jurisdiction of a single medieval court. If the life of either spouse was threatened and a separation was in order, the church courts were the logical solution. Otherwise, while royal, ecclesiastical and local courts were all capable of addressing non-fatal spousal abuse, none of the three was an obvious choice. In some of the more unusual cases, doubt about which jurisdiction to turn to for an appropriate settlement may well have exacerbated the situation. For example, to which court should a man have addressed his grievance when his wife employed a friend to sue a false appeal of trespass against him? A trusting individual might have relied on the deception being uncovered in due course; however, when the penalty was imprisonment the defendant might have preferred an active resolution to the problem. Likewise, when a man repeatedly harassed a woman to contract marriage, to whom should she turn? The church courts only provided justice to women who had already been coerced into marriage, not to those only part of the way there. Persons who experienced these kinds of difficulties were at a distinct disadvantage: because their plights did not fall directly within the purview of any single court, they might easily fall between the cracks of medieval England's expansive and heterogeneous judicial systems.[1]

[1] The royal courts of medieval England were least likely to provide a solution to an unusual problem. The formality of common law procedures and its strong base in custom left little room for manoeuvre. The local courts, such as the borough and manorial courts, were much less constrained in this sense. Yet, in cases of marital strife, a local resolution might have been the least desirable option, certainly the least impartial. Of the three choices, the courts Christian were undoubtedly the most flexible. Unlike courts of common law, church courts could hear cases for which there was no established resolution. Still, the courts of the medieval church were limited in a number of respects. Irregular cases occasionally found their way

The inadequacy of English law did not go unnoticed in late medieval England. Contemporaries steadfastly believed that it was the king's responsibility to provide justice to his subjects. Consequently, from an early period any case without remedy by normal procedure might be brought before the king's council by bill of complaint. In the second half of the fourteenth century, the king began to pass many of these bills on to the chancellor for resolution. Because all common law original writs were drafted in Chancery, the chancellor was already deeply involved in the administration of justice and the logical choice to resolve those conflicts for which no writs existed. By the year 1400, the regularity of this process was so ingrained in the medieval system of justice that many petitioners began to address their bills directly to the chancellor, although the court of Chancery itself did not come fully into its own until the second half of the fifteenth century.[2]

The way in which Chancery dealt with bills of complaint was very much influenced by the background of its chancellors, who were almost always archbishops or bishops. Thus,

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into the archbishop's court, but only if they might somehow be classified as a spiritual or moral transgression. If a dispute could not fit itself within this rubric, the church courts were not qualified to address the problem. Unsuitability was not the only limitation. While litigation in the church courts might provide solutions to a wide variety of disagreements, the fees attached to each stage of the legal process were well beyond the reach of many medieval Englishmen. Faced with the shortcomings of all three systems, then, married persons with grievances of a quasi-criminal nature concerning their spouses found themselves in an unlucky predicament.

[2] There are a number of speculations as to why there was such an increase in bills at this time necessitating the creation of an entire court to deal with them. Alan Harding argues that the "Court of Chancery arose in answer to the demands of the aristocracy at a time when the Crown was weak and the barons in the king's Council strong" (Alan Harding, *The Law Courts of Medieval England* (London, 1973), p. 103). Robert C. Palmer builds on this theory. He argues that the creation of Chancery was intimately linked to the rise of uses in late medieval English society. A use was created when an individual enfeoffed a third party with property to be held by that party for the use of the real beneficiary of the arrangement. This was an important development in late medieval society because it permitted an individual to enfeoff all his property before death and hence avoid the feudal incidents associated with the passing of a tenant. The upper ranks required assistance in the protection of uses in order to provide for their families; however, the existence of uses was not recognised by the regular courts. In response to this need, Palmer argues that the king encouraged the growth of the court of Chancery to deal with the difficulties of the upper orders in land law. See Robert C. Palmer, *English Law in the Age of the Black Death, 1348-1381: A Transformation of Governance and Law* (Chapel Hill, 1993), pp. 104-32. For a brief history of the development of the Chancery as a court see, Timothy S. Haskett, "The Medieval English Court of Chancery," *Law and History Review* 14 (1996), 245-313.

it should come as no surprise that the court adopted the same approach to dispute resolution employed by the ecclesiastical courts. Conscience was the overriding determinant; thus, the court "exercised the king's right of discretion by allowing a plaintiff to set out the full details of his case and request that due consideration be given to special circumstances inadmissible at common law."[3] As W.J. Jones has suggested, this strategy stood in stark contrast to the common law courts of medieval England. While common law justice matured slowly into an inflexible and overly structured judicial system, the English court of Chancery had few restrictions.

> Judges might take into consideration the weighty analysis of their predecessors – if they could find an adequate record of what had been done and said – but they were just as likely to shun too great an attention to the case-law of the past. This is not to suggest that every case was treated in the light of fresh principles and fresh minds, but it is apparent that judicial 'precedents' were only binding in so far as they could, if discoverable, be considered as good arguments.[4]

The versatility of Chancery made it the ideal venue for cases without an established resolution; however, it was certainly not restricted to cases of this type. Many suits that should have appeared properly elsewhere often found their way into Chancery. The probable explanation for this was the great appeal of the chancellor's justice. First, Chancery was the least expensive court in which to plead a suit. There were no costly writs to purchase. The entire process was surprisingly economical and therefore a convenient legal remedy. There was, however, a principle that the petitioner have no adequate remedy at common law, although it seems this regulation may have been sidestepped occasionally. Second, the court of Chancery was best suited to the resolution of particular kinds of trespass. While late

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[3] Anthony Musson and W.M. Ormrod, *The Evolution of English Justice: Law, Politics and Society in the Fourteenth Century* (London and New York, 1999), p. 23.
[4] W.J. Jones, *The Elizabethan Court of Chancery* (Oxford, 1967), p. 2.

medieval common law justices were able to award damages for the non-performance of a contract, this was the limit of their abilities. Chancery, on the other hand, was entirely capable of both awarding damages and ordering the performance of the contract, even in oral agreements.[5] In spousal disputes, this provision meant that maintenance contracts for separated wives might be enforced effectively. As the evidence in Chapter Five demonstrates, the church courts were also capable of addressing this issue, but they provided inferior solutions. Excommunication, public penance, fines and monitions only went so far. Chancery could have the delinquent husband arrested and cast in prison (without waiting the forty days required by the law of caption) and then compel performance of the contract. To a woman without any immediate support, Chancery undoubtedly offered the most expeditious solution.

No study of marital disharmony in the medieval period, then, would be complete without an investigation of the records of the court of Chancery. The surviving documentation for the early Chancery proceedings, however, is somewhat disappointing. It does not include records of the court's daily business, only the bills of complaint brought to it. Nor have any of the court's decisions been preserved. As a result, it is possible to discover what kinds of cases the court addressed, but much more difficult to know how they dealt with them. None the less, Chancery bills offer clear insight into the minds of the petitioners, principally because of the language in which they were written. Unlike the records of any other court, Chancery bills of complaint were ordinarily written in English.[6] As a result, the historian is actually permitted to hear the voices of the victims of abuse and understand the situation from their perspective. Granted, it must be taken into consideration that all bills were drafted by a paid clerk and advised by a court proctor. Mediation by a scribe or lawyer certainly accounts

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[5] Harding, *The Law Courts of Medieval England*, p. 102.
[6] Early bills were drafted in French; however, all but one of the cases relevant to this study are in English.

for the generally formulaic structure of Chancery bills: formal greeting, detailed account of predicament, formal request for help. Still, there is a much more authentic feel to these accounts. The reader is able to see how the victim would have phrased the abuse in words familiar to him or her. To say that a woman *non audet cohabitare cum eius virum* (does not dare live with her husband) gives us little perspective into how a beaten wife personally would have described her situation. This phraseology was merely a formula employed by court clerks to deal with a fairly standard legal issue. In the English court of Chancery, however, there were no fixed procedures, let alone such a standardised vocabulary. Reading Margery of Longford's words to the chancellor that "she was sore aferd of hyr sayde husbond," and Alice wife of George Softley of Latton's that her husband "so hurt and bette her that she was therby in perell of her liff," we are finally given an opportunity to hear the victim's side of the story.[7]

That said, it is surprising that the fifteenth- and early sixteenth-century records reveal no identifiable cases of victims of abuse using the court of Chancery to prosecute their husbands for violent trespass, or to obtain a formal separation. Indeed, English men and women appear to have considered the court inappropriate for the resolution of domestic assault, particularly where the goal was to terminate a marriage. None the less, the records of the court of Chancery offer numerous cases of marital discord which provide a clearer understanding of the difficulties associated with an abusive marriage, as well as the sundry ways in which the courts themselves might be employed as a weapon in domestic disputes.

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[7] PRO C1/6/318, Lady Margery of Longford *c.* her husband Richard of Clitherow (*c.* 1424-5); PRO C1/162/46, Alice wife of George Softley of Latton previously wife of Thomas Westwode of Latton, and Richard son of the said Thomas and Alice *c.* George Softley of Latton (*c.* 1504-9). Unfortunately, it is difficult to date many of the chancery documents because the bills themselves do not provide any

The Court of Chancery and the Division of Marital Property

Disputes concerning marital property litigated in Chancery tended to deal with problems arising from previous agreements. Thus, they provide some insight into the various ways in which men maintained their separated wives. For example, Thomas Leylond of Norfolk chose to care for his wife through enfeoffment. He granted the use of a messuage of land in Cley to another man on the condition that he provide meat, drink and clothing for Thomas's wife Agnes. However, the feoffee failed to live up to his side of the bargain and the court of Chancery was asked to step in when Thomas refused to pay for Agnes's support.[8] Use of a feoffee was a fairly standard procedure in this period for all sorts of purposes. In this situation, it seems likely that the wife could not hold title to the land and thus her husband made alternate suitable arrangements for her welfare. It was merely Agnes's ill fortune that her husband's replacement was even less happier about his fate.

In many ways, Agnes's predicament resembles that of the wife of Peter de Aseton of Colchester, who made a brief appearance in the previous chapter. [9] When Peter and his wife decided to separate, Peter arranged for the local chaplain, William de Hetha, to house and feed his wife for a period of one year, a service for which William was promised 3 marks. But when a local observer (whose relationship to those involved is unstated) accused William of keeping Peter's wife with him, Peter called the whole arrangement off and refused to pay William anything.[10] Once again in this situation, a husband chose to make someone else

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indication of the year. Consequently, for the purposes of this chapter, I have attempted to date each bill according to chancellor. In some cases this was simply not possible.

[8] PRO C1/266/23, Agnes wife of Thomas Leylond *c.* her husband Thomas Leylond (*c.* 1500-1509).

[9] See earlier discussion of this case in Chapter Five, pp. 387-8.

[10] "William de Hetha, chaplain, complains of Roger Cartar that he forcibly entered his house at La Hethe, in the suburb of Colchester, and searched for the wife of Peter de Aseton, and even entered the said William's chamber and looked for her there, and accused him of keeping her with him, and of other enormities, whereas the said William had made arrangement with the said Peter that he would support the latter's wife at his table for the whole of that year for 3 marks, but on account of this accusation and

responsible for his wife rather than pay her directly a set sum of money, although the records of the church court suggest an annuity may have been the more usual route. In the cases of Peter and Thomas, however, an annuity may have required more disposable cash than either had available. Peter clearly did not have three marks to pay William at the beginning of the agreement, nor was he able to pay instalments; otherwise William would not have found himself in court over this dispute. Thomas, on the other hand, had land available, but land does not produce money without work. For some reason or another, he believed his wife incapable of supervising the necessary agricultural production, even though many women of this era filled this role in the absence of their husbands. His decision to appoint a guardian for his wife was, in the end, a poor choice, but it may have seemed the most secure option without sufficient funds for regular alimony payments.

The separation agreement of Thomas Broune and his wife Elizabeth seems to have been more typical of the kind of alimony payments one sees in the ecclesiastical records, though decidedly more formal. When the couple resolved to separate, each had a deed of separation drawn up detailing exactly what Elizabeth would receive as a one-time only payment for her support. According to the petition of William Broune, Thomas's executor, it

> was agreed betwene the seid Thomas & Elizabeth that the same Thomas shuld delyver to the same Elizabeth & to oder persones to her use a certeyne money & plate and that the same Elizabeth from thensforth shuld neyther vex trouble ne sue the seid Thomas ne his executors for eny parte of his good catall money or plate and it was further aggreed betwen the same Thomas & Elizabeth that the same Thomas shulde bounden to Thomas Ffynes Knyght & Godard Oxenbrig Squier in an obligacon in the some of cc li. for the same agrement to be kept on the parte of the same Thomas and in like wyse the seid Elizabeth with oder for her shuld be bonnden by obligacon to that Michell Priour of the hous of Seynt Mary Overe yet lyving

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defamation the said Peter refused to keep to the agreement, to the loss of the said William of 40s., and thereto produces suit." *Court Rolls of the Borough of Colchester*, ed. Isaac Herbert Jeayes (3 vols, Colchester, 1921), i.16.

> & to Rychard Morland decessed in cc li. for the true performans of the seid agrement of the seid Elizabeth.[11]

Thomas's executor argued further that Elizabeth had received the money and plate as stipulated in the penal bond. His witnesses could attest that she had been given £30 and more, as well as "dyvers penys goblett salt & sponys to a gret value," and that she had been "fully content" with this agreement; that is, until her husband died. Elizabeth's suit in King's Bench against the executor for the sum of £200 she claimed was outstanding on the non-performance of this obligation was the cause of William's petition to the chancellor.

The amount of money involved at once places Thomas and Elizabeth Broune in an entirely different category than Thomas and Agnes Leylond. Unfortunately, because William's petition offers no mention of the size of Thomas's estate, it is impossible to determine what proportion of their marital property was conferred on Agnes by this agreement. Thomas's decision to opt for a lump sum payment upon their "deforce ... from bed & borde" rather than yearly instalments was perhaps motivated by a desire to be rid of his wife once and for all. This sentiment is emphasised by his inclusion in the agreement of a statement to the effect that Elizabeth "shuld neither vex trouble ne sue the seid Thomas" in future. While there is no indication in William's petition of physical abuse between the two, this was certainly a troubled and unhappy marriage.

Thomas's wish to put Elizabeth as far from his mind as possible is understandable in light of their severe marital discord, but his decision highlights the difficulties associated with this kind of agreement. Thirty pounds or more and many expensive trinkets might seem like a fair arrangement, yet it was insufficient to keep Elizabeth in the lifestyle to which she had

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[11] PRO C1/289/33, William Broune, executor of Thomas Broune *c.* Elizabeth wife of Thomas Broune (*c.* 1504-9).

become accustomed. Elizabeth's decision to go to court after Thomas's death suggests that the end of the money was now in sight. This couple's problem raises an interesting question: if a woman in Elizabeth's situation ran out of funds while her husband was still alive, was he obligated to support her beyond the agreement? Unfortunately, no cases of this type have survived in order to suggest what might have been the usual course. However, it seems likely that a man was compelled by custom (if not law) to support his wife.[12] Although they no longer cohabited, she was still his wife. Thomas Thornton's appeal to the chancellor in an action of debt suggests that popular opinion sided with the wife in this respect. When James Mawncy of London crippled his wife, Agnes Bawdewyn, and then deserted her for more than a year, Thornton felt obligated as a chaplain to assist her in her time of need. In total Thornton spent 20 marks to feed and shelter Agnes during her husband's absence, and was enraged when Mawncy finally returned and refused to repay "any peny" of the 20 marks to Thornton. The situation quickly degenerated. Not only did Mawncy enter Thornton's home in London with "force and armys and made assault uppon the seyd Agnes his wiffe," he also falsely sued an action of trespass against Thornton, for which Thornton was arrested and imprisoned. The chaplain's request to the chancellor, then, was for both a writ of *corpus cum causa*[13] in order that he might be released from prison, but also a *subpoena* directed to Mawncy compelling him to pay Thornton the money he owed for Agnes's support.[14]

The case of James Mawncy and his wife Agnes was clearly far different from that of Elizabeth and Thomas Broune. There was no pre-arranged maintenance agreement, and the

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[12] According to the synodal statutes of II Exeter, a husband was required to provide his wife with the necessities of life. See pp. 382-3 of Chapter Five. While these statutes did not apply to those outside of Exeter, it seems likely that the synod's judgement in this situation reflects a more widespread perception of the importance of a husband's duty to his wife.

[13] A writ of *corpus cum causa* requires the keeper of the gaol to bring the prisoner before a judge in order that the legality of the imprisonment may be inquired into.

[14] PRO C1/365/37, Thomas Thornton chaplain *c.* James Mawncy of London carpenter (*c.* 1504-9).

former was a case of desertion rather than separation. And yet, Agnes's priest was very confident of his rights to compensation. Maintenance of an abandoned wife was not a charitable matter; according to the chaplain, Mawncy was fully responsible for his wife's support, even if he no longer resided with her. Thornton's sense of entitlement in this issue is striking. If his was a well-founded expectation, it seems all too likely that, despite a formal arrangement renouncing any future support, a husband was still responsible for his wife's maintenance. In short, this was what being a husband was all about in the medieval context.

The complaint of Lady Margery of Longford in Staffordshire against her husband Richard of Clyderhowe demonstrates why Chancery was the best option for settlement in some cases of separation. Although she did not provide the sordid details of their faltering relationship, Lady Margery made it clear that she was living in fear of her husband and had every intention of obtaining a judicial separation. Her apprehension, however, was that she would lose her property in the process. On the advice of friends, before she took her case to the church courts for a "devors bytwene hy and hyr" she petitioned Chancery to assist her in creating an equitable separation agreement that would keep her property intact. Her bill provides few particulars concerning the extent of Lady Margery's wealth; none the less, her anxiety indicates that she was substantially more affluent than her husband. In her mind, "a gode accord" between them consisted of a £40 grant to her husband and the right to curtesy[15] if Margery should die first. Margery's vision of a fair agreement was, in many respects, much more even-handed than that of Thomas Broune. She was willing not only to provide for her

[15] "Curtesy" means title to the property, without the ability to sell or alienate it from the heirs, as long as he should live.

spouse with a one-time grant of £40, but also to supply him with a dower of sorts to guarantee his future prosperity.[16]

Because this is the only case of husband maintenance to have been uncovered in the course of this investigation, it is unfortunate that the chancellor's final judgement should remain a mystery. What his decision might have been in this matter is difficult to discern. The case of Ireby *c.* Lonesdale in the York cause papers certainly suggests that the court may have permitted Lady Margery to retain her premarital property.[17] At the very least, Ireby's deponents, like Lady Margery, believed that hers was the just course of action. Yet, because Lady Margery's complaint is the only identifiable case of this sort in the medieval records of Chancery, and she was forced in the first place to turn to the chancellor for protection in this matter, it seems unlikely that this was regular practice in the later medieval period.

Abuse before Marriage: The Court of Chancery and Coerced Marriage

Some scholars argue that Chancery developed primarily as a court of redress for the land problems of the upper ranks of medieval English society. Alan Harding maintains that it was so exclusively class-based that by the sixteenth century the king needed to create the court of requests as a kind of "poor man's Chancery" in order to deal with the judicial irregularities of the rest of England's subjects.[18] The petitions of Margery of Longford and

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[16] PRO C1/6/318, Lady Margery of Longford *c.* her husband Richard of Clyderhowe (*c.* 1424-5). This case also appears in an archiepiscopal register from the period and is discussed in Chapter Five. It seems that while Margery was in the process of obtaining an equitable separation agreement and court sanctioned separation, the church courts were attempting to enforce an action for restoration of conjugal rights. In fact, the archbishop's court even turned to the secular arm of the law in this matter after repeated injunctions failed to convince Margery to return to her husband. Whether the secular courts actually got involved in the case is hidden from the historian; but Margery's case certainly demonstrates that marital disputes could well find their way into a variety of courts in an attempt to find an equitable resolution. See Chapter Five, p. 347.

[17] See Chapter Four, pp. 304-9.

[18] Harding, *The Law Courts of Medieval England*, p. 107.

William Broune certainly suggest that the English court of Chancery may have been especially useful for this purpose. At the very least, women who appeared in Chancery on marriage related issues frequently belonged to the more affluent portion of English society. This is nowhere more apparent than in those cases of women forced to appeal to the chancellor to fend off extortionist husbands-to-be. When Isabel Grene of Yorkshire commissioned the writing of her bill of complaint she was clearly at the end of her tether.

> Mekely besechith your pour Oratrice Isabell Grene Wedewe. Where as one Rob[er]t Daweson hath taken divers accions of dette and trespas ayenst yor said Oratrice at Kyngeston uppon Hull in which accions the said Rob[er]t at all suche tymes when xii men shuld appere he fallith nonnsued and so wrongfully vexeth and troubleth dayly your said Oratrice at her grete costes it is so graceous lord that the said Rob[er]t hathe long tyme proposid to marye with your said Oratrice be cause of certayn godes and lyvelode that she hath of her owne and she therto in no wise woll assent nowe late hath taken a newe accion of trespas ayenst her afore the shiref of the said toun and proposeth to have her condempned in the same ayenst all right and gode conscience.[19]

The last line of Isabel's appeal strikes right at the heart of the issue. Robert's use of the courts to harass Isabel repeatedly in the hopes of exhausting her resistance was not unlawful in the courts of the royal justices, yet to her it certainly felt as if it should be. The king's courts were unable to address this subversion of the common law system even though the injustice of the situation was obvious. Her only alternative was to turn to the chancellor that he might bring an end to the aggravation.

While Robert Daweson's actions may seem out of place in the world of courtship, in terms of extortion they were very shrewd. Many women in this situation would have bowed to his wishes eventually, or bribed him to leave them alone. Robert's choice of victims underscores the vulnerability of widowed women in late medieval England. Isabel's status as

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[19] PRO C1/46/171, Isabel Grene, widow *c.* the Sheriffs of Hull (*c.* 1467-70).

a widow made her an ideal target not only because of her dower rights, but because she had no male protector. The appearance of similar cases in the records of Chancery suggests that this may have been a common ploy for young men wishing to get ahead. Joanna Halstead of Bury St Edmunds, Suffolkshire, found herself in the same situation. Unable to take no for an answer, John Morley initiated several false actions of debt and trespass against her. Faced with a prison sentence for offences she had not committed, Joanna turned to the chancellor for help.[20] Likewise, Agnes wife of Robert Raphaels experienced similar trauma in her relationship with Hugh Oversall of Kingston upon Hull before she married her current husband. Hugh spotted the opportunity for profit after Agnes's first husband died and she came into her dower rights. "[C]raftely & disceytfully" he laboured for her hand in marriage, "which she utterly denyed & refused". Incensed by her rejection and determined to find "sucor & advantage" he cautioned Agnes that unless "she would gyff hym large money att hys pleasour" he would force her into marriage by falsely claiming she had handfasted with him. Agnes reported that she was "in such fere & dreade that she to be in rest & without trowble & have a release of hym suffred hym to take of her a last of mutton talowe which as then was worthe xii li of Englisshe money," even though she had not promised to marry him. Only after she married Robert Raphaels did she acquire the courage to take action against the thieving mariner.[21]

These three tales of abuse highlight the options available to women in medieval England when faced with scheming swindlers. Isabel Grene and Joanna Halstead had little choice but to turn to the chancellor for help, otherwise the actions of their extortionist

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[20] PRO C1/140/35, Joanna Halsted of Bury St. Edmunds (*c.* 1504-9). *Certiorari.*
[21] PRO C1/353/42, Robert Raphaels and Agnes his wife *c.* Hugh Oversall of Kingston on Hull, mariner (*c.* 1504-9).

pursuers might well have landed them in prison. Agnes wife of Robert Raphaels, on the other hand, was in an entirely different situation. By the time she came to court, she was no longer being harassed, and perhaps had no desire to meet Hugh Oversall ever again. Had her new husband not become involved, she probably would not have pursued any legal action whatsoever. The fact that her petition was submitted jointly suggests that a deeper reading of the situation is in order. Robert was likely more interested in obtaining the value of the tallow than was his wife. Moreover, these cases remind us that abuse of process in the common law courts was grist for the chancellor's mill in this period.

Isabel, Joanna and Agnes were not willing to be passive victims. But how many women were, simply because they believed they had no other option open to them? The piteous cases of these three women pinpoint one of the greatest pitfalls of medieval marriage among the upper ranks of English society: without control over their own property, wives were a means to make money rather than objects of affection. The appearance of these women in the English court of Chancery was a tacit admission that, although the vulnerability of women in this respect was recognised, the abuse that might be directed against them generally was not.

Husband pitted against Wife: the Case of Alice and George Softley

Of all the bills of complaint surviving among the records of the early Chancery proceedings there is only one case in which petitioner and respondent were husband and wife. Alice wife of George Softley of Latton in Essex and her son Richard were driven to the court of Chancery in order to safeguard Alice's property (also Richard's inheritance) of "ii meser and lx acres lond wode mede and pastur in Latton" from a shameful and unmanly fellow who

just happened to be Alice's husband. After the death of her first husband, Thomas Westwode of Latton (father to her son Richard), Alice contracted marriage to George Softley, a man of much lesser means "havyng no substans but the good possessionis that he had with the seid Alice." It became immediately apparent, however, that George had married her only for her money. According to the bill of complaint, he

> entreteth the same Alice in moste shamefull and unmanly wise and kepeth her so streit that she hath not her sustennance of mete and drynk like a woman but without cause often tymes grevously bethe her and in hervest last past so hurt and bette her that she was therby in perell of her liff and drove her owte of her owne hous wherby she so beten and driven away and not havyng a kerchef on her hede nor clothes hable to cover her body came to the seid Richard her son dwellyng within a myle of her hous for socour.[22]

Her son received her into his home, but soon after returned to her household with reinforcements to talk to his stepfather and convince him "to kepe and cherissh his seid wyff like a woman." George's immediate response was overt hostility. He "rebuked and reviled the seid Richard and bete him and drove him oute of his hous and wold have slayed him if he had not hastily aborded." Thereafter the situation rapidly deteriorated. Richard and his mother were living in daily fear for their lives. Aided by a couple of local thugs, George constantly harassed the two. More seriously still, Richard was convinced that his inheritance was quickly being spent. George had pilfered evidence concerning the inheritance from Richard's mother and refused to surrender a copy to his stepson. To make matters worse, he had pleaded so many false suits in court against his stepson that Richard feared it would soon "empoveryssh hym so that he shulde never be hable to sue for his right of his seid reversion."

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[22] PRO C 1/162/46, Alice wife of George Softley of Latton previously wife of Thomas Westwode of Latton, and Richard son of the said Thomas and Alice *c.* George Softley of Latton (*c.* 1504-9).

Devoid of remedy in the courts of common law, Alice and Richard turned to the chancellor in hopes of ridding themselves of this unwanted parasite.

It is noteworthy that in this case Alice and Richard were joint petitioners and that fully the second half of the bill is occupied with Richard's fears concerning his inheritance. In consequence, Alice's own plight is diminished in importance and inextricably bound up in Richard's larger concerns. The account conveys the sense that she is merely the custodian of his property, and through her ill-fated choice in marital partners she endangered that which was rightfully his. This is an important distinction to make. If her son's economic welfare had not been in danger, Alice's case would never have come before the chancellor. She was only included in this case because the property was currently in her possession, and consequently Richard was not justified in petitioning for property that was not yet his. More pointedly, while George's abuse of his wife is emphasised in the bill, it is used here primarily to illustrate his contemptibility and irrationality; it is not the reason she and her son were in court. The appearance of this case in the court of Chancery certainly does not suggest that the forum was considered appropriate for the resolution of marital ill treatment. That the petition describes George's abuse of Richard more harshly than of Alice confirms this. While Alice was beaten and driven from her home in a state of disrepair, Richard was almost slain. If the intention had been to secure protection for Alice from an abusive husband, the narration of the events would have reversed the degrees of severity.

Still, a secondary motivation for this petition was certainly to bring to a halt the constant harassment of Richard and Alice by George and his company of brutes. As such, it is the most direct evidence in all these records of a woman suing her husband for violent trespass or assault. The bill specifically requests that George, Richard Brown of Netteswell

and Aleyn Tanner of Latton be required to "fynd sufficient suertie of their good aberyng and to kepe the kyng peas." Oddly, nowhere does the petition address the fact that Alice was still, at least legally, married to the leader of this criminous trio. George was not asked to treat his wife with marital affection, nor was he required to cohabit with her. Alice and Richard clearly expected George's behaviour to improve, but it is apparent that Alice had no intention of resuming her former relationship with him. In her perspective, his untoward conduct was inexcusable.

The case of George and Alice, incidentally, reveals a great deal about contemporary constructions of gender identities. George is not only depicted as a dishonest crook and shoddy husband, but an utter failure as a man. His violent behaviour towards his wife and dereliction in his obligation to maintain her and provide her with the necessities of life are described as "moste shamefull and unmanly wise." In this context, being a man was clearly much more about caring for a family than it was about masculine aggression. This insight helps to untangle medieval perceptions of masculinity. Sermon writers Peregrinus and Berthold of Regensburg (discussed in Chapter One) both suggest that men in the later Middle Ages were often torn between two competing notions of masculinity: one in which masculinity was defined by an intuitive aggression in a physical sense, and another focusing instead on the good husband who provides for his family. The case of George Softely confirms the existence of a discursive hierarchy in the home. When rival gender identities came head to head in the home environment, the good husband was expected to prevail. In the domestic milieu, the physically aggressive male was not a man at all.

When Richard returned home with his mother and asked his stepfather to reform his behaviour, he also chose to phrase his request in gendered terms. He wished George "to kepe

and cherissh the seid wyff like a woman." In explicitly reminding George of Alice's femininity, he was appealing to the latter's role as protector. George's repudiation of Richard's appeal suggests that this was a role he had never wished to fill in the first place.

The case of Alice and George Softley also demonstrates the integral role played both by the family and the community in the management of marital discord. When Alice was driven from her home unclothed, she instinctively turned to her son for assistance. Likewise, when Richard chose to confront his stepfather about his ill conduct he did not approach him alone, but in the safe company of his neighbours, a feature which apparently required no explanation. Obviously communal intervention was the regular procedure for dealing with these kinds of familial disputes, and it was only George's prolonged mistreatment that required intervention by a higher authority.

The Role of the Family in Domestic Disputes

The Softley dispute was not the only case to appear in the late medieval court of Chancery in which a family member or friend was forced to intervene in a matter of domestic violence. When John Baker of London was made aware that his sister was suffering abuse at the hands of her husband, he found himself drawn into a situation that quickly turned against him.

> [O]ne Thomas Seynt Nicholas have maried the sister of your said Oratour betwene whome nowe of late fell greate unkyndnes in somoche that the said Thomas Seint Nicholas for a mater of smale substannce did bete his wyff so grevously that it was thought that she wold dye and your said oratour heryng of the mysdemeanour of the said Thomas Seint Nicholas came unto hym in good maner and entreated hym with good wordes to be good and kynde lover unto his sister and nomore to demeane hym selfe after such manner and he wolde be unto the said Thomas as good a frend as he had ben in tymes past and the said Thomas Seint Nicholas answerd your said Orator that he wolde punysshe his wyff at his pleasour and the more for his

> ... [saying it] and then in a greate fury departyd frome your said Oratour and so it is good and gracious lord that your said Orator came to London for such busines as he had there to do and the said Thomas Seint Nicholas therof knowing sent to London one Willim Seint Nicholas brother of the said Thomas and desyred hym onely for vexacion and trouble to attach your said Orator upon suspicion of felony and so the said William hath nowe your said Orator upon the said feyned surmyse in the compter in london and there hath contynued by the space of xvi dayes and more.[23]

His petition concluded with a heartfelt plea to the chancellor to consider John's circumstances and accordingly to grant him a writ of *corpus cum causa* so that he might be released from his unjust imprisonment.

As John suggested, the beating inflicted upon his sister was thought to be of a grave nature. His intervention, then, was that of a concerned brother wishing to prevent a recurrence of this abusive behaviour. That he chose to confront his brother-in-law, rather than remove his sister altogether from a harmful environment, is revealing. If the first known instance of abuse was that severe, and the reason for the abuse was reportedly "a mater of smale substannce" (as opposed to a serious argument spiralling out of control), then separation was the logical solution to the problem. John's decision not to pursue this route strongly suggests that there was an established process of intervention, and family involvement was only the first stage. Moreover, John's mention of this episode as justification for his actions demonstrates that a forceful *tête-à-tête* with his ill-mannered brother-in-law was fully expected. Unfortunately, the record reveals little about John's response to the declaration that Thomas "wolde punysshe his wyff at his pleasour." But that was clearly not the intention of this comment. It was included in his petition in order to make a point about the flawed nature of his brother-in-law's character, in the hopes that this flagrant

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[23] PRO C1/287/47, John Baker, clerk (*c.* 1504-9).

disregard for social ethics would portray the latter not only as a wretched husband, but also a disagreeable person.

John's petition to Chancery seems oddly incomplete. The request for a writ of *corpus cum causa* so that he might be released from gaol was appropriate and predictable. However, one would expect to see a secondary request to have Thomas and his brother William brought before the chancellor and compelled into good behaviour, much like the clause Richard and Alice included in their case against George Softley and his associates. Without an explicit reproach of Thomas and William's shady involvement in John's current predicament, there was no reason for them to discontinue their dogged harassment of John and his sister. An appearance in court before the chancellor supplemented by a demand for sureties would have eliminated the source of both problems (John's imprisonment and the endangerment to his sister's life). The omission of such a request invites an obvious conclusion. John did not appeal to the chancellor for help in his sister's domestic situation because it was not the appropriate venue. Thomas and William's behaviour was a communal problem best dealt with in an informal and extralegal setting; only John's imprisonment might not be resolved so easily. His failure to address the issue of spousal mistreatment suggests that Thomas's actions had not yet exceeded communal controls, even though Thomas "did bete his wyff so grevously that it was thought that she would dye."

The petition of Isabelle widow of Richard Vergeons presents an even more disturbing image of family involvement in domestic warfare and its chilling outcome. Six months before the writing of the petition, the wife of Thomas Hyll the wiremonger of London approached the petitioner's husband, begging for "secour and saufgarde of her lyf." She was driven to this request only after "dyvers variantes & discordes betwene her and the seid Thomas her

husbond and for grette fere and inpartye that the seid Thomas put to her of her lyf." When Richard happened upon her she was being chased by Thomas, who was wielding a dagger. Seeing "the ungoodly and hasty disposition of the seid Thomas and the greate fere of his seid wife," Richard decided to take matters into his own hands. He received Thomas's wife into his home and then confronted him about his actions, hoping to reason with Thomas and convince him to treat his wife appropriately. This soon proved to be a colossal mistake.

> Richard entreted and desyred the seid Thomas to take his seid wif to hym ageyn and to gyde her and chastice her under a due maner and not to draw his dager to her and the seid Thomas annswered yf he myght mete wt his seid wyf he wold utterly slee her and the seid Richard seyng his ungodly disposicion kept her in his hous tyll anone after by the false and myschevous labour & procurement of the seid Thomas the seid Richard then husbond unto your seid oratrice was slayn at his owne dore in London.

Richard's death only strengthened Isabelle's conviction to shelter Thomas's wife from her truculent husband. Isabelle locked her home and refused to allow Thomas near her, but he was not so easily dissuaded. Thomas made repeated threats on Isabelle's life, and then turned to the courts to continue his assault. He sued a plea of trespass against Isabelle and arranged with the sheriff of London to hold an inquest into the action. Fearing imprisonment or worse, the newly widowed Isabelle threw herself on the mercy of the chancellor.[24]

In the case of Isabelle Vergeons and Thomas Hyll, there is more to the story than meets the eye. If witnesses could prove that Thomas Hyll had assaulted and slain Richard Vergeons, he most certainly would have been arrested by the coroner and thus be unable to sue a case of trespass against his victim's wife. That he was not diminishes the reliability of Isabelle's story. Richard's death was probably an unwitnessed assault which Isabelle believed

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[24] PRO C1/82/87, Isabelle, late the wife of Richard Vergeons *c.* Thomas Hyll, wiremonger of London, brother-in-law of complainant (*c.* 1487-1503).

was related to the hostility between Thomas and her husband, and yet she had no proof of his involvement. The fact that she was merely requesting a grant of *certiorari* to have her case heard before Chancery rather than the local sheriff also suggests that her evidence of Thomas's villainous actions was weak and unconvincing. If the plaintiff story is to be believed, then, Thomas's suit in court against her was likely an attempt to silence his victim's wife before she had the opportunity to finger him.

Nevertheless, the language with which Isabelle chose to recount this tale of abuse is illuminating. When Thomas pursued his wife through the streets of London with a dagger in hand, Richard willingly stepped in to put an end to this "ungodly" behaviour. His request that Thomas take his wife home and "gyde her and chastice her under a due maner" points to a number of interesting conclusions. First, Richard explicitly acknowledged Thomas's right to correct his wife, if only in the name of chastisement; but that right had identifiable limits that did not include death threats. Second, Isabelle, as a woman in a similar position, also recognised Thomas's claim to use physical force with his wife. In fact, she appears to have agreed wholeheartedly with her husband's request that Thomas curb the degree of force, rather than eliminate it altogether. This suggests that, at least when they were trying to get a trespass case removed to the Chancery, "chastisement" as a form of wife abuse was socially approved and internalised by both genders in the medieval community.

When it became obvious that Thomas's murderous rampage might continue, Richard and Isabelle volunteered themselves as protection to Thomas's wife and willingly moved her into their home. Richard and Isabelle were motivated in their actions by an existing family relationship, rather than a simple desire to be neighbourly. At the beginning of her petition, Isabelle identifies Thomas as her brother-in-law, although she does not give any clue as to the

exact nature of the relationship, that is, whether Thomas's wife was sister to her or to her husband.[25] None the less, this relationships helps to clarify the nature of family supervision of domestic violence. In all the cases of family intervention in wife abuse investigated in this study, it was the wife's family who chose to intercede, not the husband's. Whether through family allegiance or custom, the wife's family was thought to be primarily responsible for the arbitration of marital discord in cases of explicit abuse, suggesting that when protection of the woman was required it may have been more natural for her to turn to her family.

Spousal "Abduction": a Variation on the Theme of Spousal Desertion

The records of early Chancery proceedings provide the opportunity to witness a multitude of informal separations in the guise of spousal abduction. In her study of trespassory ravishment of wives in the courts of King's Bench and Common Pleas, Sue Sheridan Walker makes some important discoveries relevant to the current investigation about the use of the terms "ravishment" and "abduction" in the medieval context.[26] More often than not, when a husband sued a plea in court for the ravishment of his wife, it was in the hopes of retrieving the value of the goods taken with her rather than the wife herself. Walker uses the term "consensual abduction" to describe the actions of these women. She argues convincingly that "[t]he wives in question were probably not only willing but had their portable possessions packed awaiting the arrival of their abductors."[27] This legal fiction was recognised and accommodated by the royal courts of medieval England. Consequently, in a

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[25] Given the disparity in names between the two men, it seems likely that the blood relationship was between Thomas's wife and the couple, rather than between Thomas and Richard.
[26] Sue Sheridan Walker, "Punishing convicted ravishers: statutory strictures and actual practice in thirteenth and fourteenth-century England," *Journal of Medieval History* 13 (1987), 237-50.
[27] *Ibid*, 239. This is also discussed in Chapter Two, pp. 128-9.

suit of ravishment, the plaintiff might request an award of damages, but it was not accompanied by an order for the restoration of one's wife. Walker claims that this was an explicit "extension of control by women over their lives and marriages," and that by allowing themselves to be abducted, unhappy wives were consciously acting out a wish to bring an end to their marriages. [28] The fact that many of these abducted wives were simultaneously involved in cases of divorce in the church courts confirms that the abduction was, in point of fact, a variation on the theme of spousal desertion.[29] Plaintiffs who appeared in the royal courts with pleas of ravishment, then, were persons who had abandoned all hope of repairing the marriage, and who sought only to be compensated for the loss of goods and chattels taken during the abduction.

Chancery petitions concerning spousal abduction were, perhaps predictably, of an unusual type. Generally, they began as typical cases of consensual abduction that had since gone very wrong. In the case of John Haket, his wife Alice had been abducted by Nicholas Montgomery of Wiltshire quite some time before his petition came before the court of Chancery. His marriage was clearly in a poor state; Haket shows much more remorse over the loss of goods "to a notable some" than his wife. Consensual abduction, however, was only the first step in his wife's decision to take control of the situation. According to Haket, since the abduction,

> Nicholas and Alice have procured strange persones to lye in wayte for þe seid supplicant to slee hym for ye wheche cause he hase purchased a writte of manace ayens hym and nowe it is soo fulgracyouse lorde yt ye seid Nicholas hase waged foure unknawen persones nonnsuffyciant wche ou of hym for a noble in deceyt of oure soverayn liege lorde ye kynge & his court to be come maynpernes for ye seid Nicholas & Alice in ye seid court wherfore liketh to youre graciouse lordesship to charge ye court þt if any suche maynpernors come in to þe seid court to undirtake for þe seid

[28] *Ibid*, 238.
[29] *Ibid*, 246.

> Nicholas & Alice yt hor suffycyante mowe be knawen & if thay be founde disceyvable in þt partie þt thay may be punysshed after youre wyse discrecion in cnsammple of other for goddes luf & in werk of charitee.[30]

Attempted homicide and legal harassment were crimes not easily prosecuted in the medieval courts of common law; and so, the English court of Chancery was indeed the appropriate forum for the resolution of Haket's problems. In the absence of any further details, it is difficult to surmise the exact circumstances of the abduction. The most likely scenario is that of an unhappy relationship brought to an end through the wife's adulterous affair with Nicholas Montgomery. Only after she had achieved distance from her despised husband and had secured Nicholas's support did she decide to strike back.

Although the nature of Alice's relationship with Nicholas Montgomery is never specified, he was probably Alice's lover; otherwise, John would have identified him as a family member or neighbour. This being the case, John's bill of complaint remains questionable. Why would Nicholas and Alice hire "strange persones to lye in wayte" rather than simply do away with John themselves? The cases of murderous lovers appearing in the royal courts of medieval England would seem to suggest that the notion of wives and lovers joining ranks to terminate an unhappy marriage was certainly not unfathomable.[31] In this light, John's accusation seems all too convenient. In all likelihood, John's suit was simply a pre-emptive tactic intended to attract the attention of the chancellor before Nicholas and Alice had the opportunity to pursue their legal options. A trumped up charge of attempted spousal homicide certainly would not have damaged his chances of obtaining redress and, perhaps, would have had the added benefit of punishing Alice and Nicholas for their actions. Whether

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[30] PRO C1/71/139, John Haket *c.* Nicholas Moungumrey, alias Shyrley of Salisbury (*c.* 1487-1503).
[31] See Chapter Three, pp. 205-13.

Alice and Nicholas actually did make an attempt on his life or not, John's petition confirms that abduction was not necessarily the last move in matrimonial war.

The overwhelmingly economic nature of abduction suits is most clearly brought to light by John Monmouth's petition to the chancellor for redress. John wrote that some time earlier his wife Margaret, through the persuasion of "evyll disposed persones," namely Richard Coote and Thomas Bondiant, had been convinced to leave her husband and to travel with them to Glastonbury. These two villainous persons not only abducted Margaret from her husband against his will, but also took with them goods belonging to Monmouth amounting to the value of £100. Most important, among those goods were "evydences of lond concernyng your said Oratours right." Since then, Margaret had died, and Monmouth was determined to have these documents returned.[32] This whole situation seems somewhat bizarre. How could a man plead spousal abduction when his wife was already dead and he was incapable of even the pretence of reunion? Given the unusual nature of his request, it should come as no surprise that Monmouth suddenly found himself without remedy at common law procedure (a legal fiction was only acceptable as long as it was reasonable). His sense of entitlement, however, certainly suggests that in suits of abduction, the fate of the wife was insignificant.

Money was once again the central issue in the petition of Philip Cabull of Bristol. When Philip married Margaret, widow of Philip Barthelmewe of Bristol, he suddenly found himself moving up in the world, but only for a short time. His wife's abrupt desertion after a brief period of marriage suggests that social mobility may have been his only reason for marrying the widow Margaret and this fact had quickly become apparent to his new bride. As a result, while he was away in London, Margaret's sons, William and John, stepped into

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[32] PRO C1/150/54, John Monmouth, merchant *c.* Richard Coote and Thomas Bondiant (*c.* 1504-09).

action. With their mother's full "consent & agreement," they took her and goods and chattels reported to belong to her husband "of grete value the extente wherof ys seid Orator knoweth not." They carried her away to the city of London where she had been in residence for a year prior to the petition. Since then, Philip was unable to "speke wt the said Margaret ne have eny parte of his seid good." Moreover, her sons, "by covyn & crafte between theym intendyng utterly to undoo her seid husbond," sued falsely numerous actions of debt against Philip in court, "contrarie to all right & conscience" and egged on "by the procuryng & steryng of the seid Margaret." Philip's request to the chancellor, however, reveals that there may have been more to the story than he wished to admit. Instead of a simple demand of reparation for the goods stolen from him by his two vigilante stepsons, he requested only a writ of *subpoena* directed to them in order to prevent them from bringing further actions against the petitioner in court. If the stepsons had indeed abducted their mother and taken goods belonging to the petitioner as he asserted, he would have certainly demanded damages or compensation for the value of the goods. Margaret's motivation, then, may well have related to Philip's attempts to spend her sons' inheritance, as well as his treatment of their mother.[33]

These cases demonstrate just how useful the courts of equity were for the purposes of coercion or harassment. In many of the petitions addressed to the chancellor stemming from marital discord it seems likely that the respondent was at least partly justified in his or her use of the courts. In the case of Philip Cabull, whether or not the actual actions sued against Philip were legitimate, Margaret's two sons had reasonable concerns about their inheritance and about their mother's happiness. At the very least, Cabull had the decency not to protest his

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[33] PRO C1/83/38, Philip Cabull of Bristol *c.* William and John, sons of complainant's wife for abduction of complainant's wife (*c.* 1487-1504).

own innocence overtly, as did Richard Ores in his petition before the court. According to the latter's bill of complaint, he had endured many inequities at the hands of William Harryson. Ores had been defamed, compelled to perform public penance for a sin that he had not committed, and had had false suits brought against him in court. Moreover, Harryson had compounded his sins against Ores by carrying away his wife and goods from his home. Despite Harryson's seedy allegations, with a clear conscious Ores was able to assert that he was "as giltlesse therin as the chyld born this nyght."[34] It is unlikely that many of the petitioners who appeared before the chancellor were as virtuous as Ores claimed to be. Complainants resorted to the courts as a means of both redress and coercion when a marital dispute escalated in nature. This tactic was employed by both parties. As this study demonstrates, many complainants were already facing suits against them in the courts of common law. Still, while the king's courts proved to be useful weapons in domestic warfare, the English court of Chancery was the ultimate weapon. In bringing his case before Chancery, Ores hoped once and for all to put an end to his wife's happiness with Harryson and to be compensated for his multiple losses.[35]

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[34] PRO C1/343/57, Richard Ores *c.* William Harryson (1504-09).

[35] Probably the most revealing instance of the subversion of the judicial system concerning marital discord is the unfortunate case of the wife and servant of Ralph Lyn of Hertfordshire. When Ralph Lyn decided to move to London, he went there first by himself in order to find a new home. Once he was established he wrote to his wife Joanna and requested that she pack up their goods and join him. Joanna and her servant Richard immediately set about packing up their home. When the neighbours witnessed the two of them loading up a cart with diverse goods clearly belonging to her husband, they immediately leapt to the wrong conclusion. Believing them to be murderers fleeing the scene of the crime with all the goods they could manage between them, Ralph's concerned neighbours mobilised the secular arm of the law. The bailiff and constables were brought in to investigate and Joanna and Richard were immediately imprisoned on suspicion of petty treason. When the plight of his wife and servant was finally brought to Ralph's attention, he went to the gaol of Hertfordshire in person to prove that he was very much alive and well. Unhappy to lose the profits that two prisoners could bring in, the sheriff of Hertford and the keeper of the gaol refused Ralph's request and informed him that if he wished his wife and servant released he would have to pay a fine. Thus, Ralph found himself before the chancellor petitioning for a writ of *corpus cum causa* so that Joanna and Richard might be released from their unjust imprisonment. PRO C1/45/128, Ralph Lyn, late of Babraham *c.* the Sheriff of Hertfordshire and keep of Hertford Gaol (*c.* 1467-70).

In the case of Margaret Barthelmewe and her two sons, the circumstances of her abduction demonstrate all too clearly how very misleading the term "abduction" can be in cases of this type. It is possible that William and John Barthelmewe were not abducting their mother for nefarious purposes; they may have been rescuing her from a bad situation. While Walker seems content to describe this as "consensual abduction," "assisted spousal desertion" might be a more accurate description of the situation. These women chose to leave their husbands but needed the support of a loved one in order to carry out their plans. Once again, the intervention by Margaret's two sons suggests that family members were the obvious choice. Similarly, when the daughter of William Morton of Bilburgh, Yorkshire chose to leave her husband, it was her father who "abducted" her from her home.[36] To call these cases "abduction" rather than "desertion" makes a very powerful point: these men were not holding their wives legally responsible for their actions (nor could they). Instead, the wife's lover, family member or friend was held accountable and required to find the funds in order to pay the damages, even though it is evident in all these cases that the respondent merely abetted the wife in a plan of her design. None the less, the deserted husbands had no other choice. A man could not sue his own wife for damages because, legally, a wife was incapable of stealing from her husband since their property and goods were held jointly. If the abandoned husband was interested only in damages, rather than the return of his wife, he had no choice but to claim abduction. Without this legal fiction he had no one to blame but himself.

This tactic was employed even in cases where the wife's desertion was not described as abduction. When Alice wife of John Matheu de Tamall of Cornwall decided that she no longer wished either the "felowschip ne governaunce" of her husband, she deserted him and

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[36] PRO C1/492/ 35, Richard Chirden *c.* William Morton of Bilburgh, father-in-law of complainant (*c.* 1515-1529).

took with her goods and chattels belonging to her husband. Matheu heartily believed that she had been encouraged in her decision by the "counsail & wykked ecitation" of two men, Walter Hankocke and Richard Martyn of St Cue in Cornwall. Since then, she had not only come to despise her husband, but refused to "abeye his governance" and kept his property from him. Moreover, both Hankocke and Martyn "dayly vexe & troble" Matheu by "manessess & threteng in lesinge of his lyff" so that he might not comfortably "come in the felowship of hys wyff." In his petition to Chancery Matheu directed his suit against his wife's thugs, blaming them for "inducing" her to withhold his goods and chattels, choosing to ignore the possibility that his wife may have chosen this path of her volition.[37] Likewise, Nicholas Dobson's wife was also incited to leave her husband by the "inordinat demenying" of Richard Wymond, grocer of London. Richard caused "the wife of your said Oratour to be of no gode rwele" and "to absent hir from hir husbond," and had since "affermyd an untrewe and a fayned accion of trespace" against Dobson, for which he had been arrested and imprisoned.[38]

The language employed in the complaints of both Nicholas Dobson and John Matheu betrays the late dates of these petitions. In each the petitioners carefully describe the problem as an issue of poor governance or ill rule, which, as Barbara Hanawalt has convincingly argued, was a linguistic development of the late fourteenth century. Hanawalt has examined the shift between the use of terms emphasising reputation to those highlighting personal conduct. She argues that

> the introduction of "governance" suggests a change in expectations for individual behavior. A person of "ill repute" gains his or her bad reputation only by external labeling, but a community condemnation of "bad governance" implies that a person should know better. In other words, there is a shift in an idea of individual control over personal behaviour. A person

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[37] PRO C1/45/46, John Matheu de Tamall, yeoman *c.* Walter Hankocke and others of St. Cue (*c.* 1467-70).
[38] PRO C1/61/382, Richard Wymound, grocer *c.* Nicolas Dobson (*c.* 1473-4).

> lacking this has ... simply not learned to behave and has not internalized community standards. Such a person is an outcast from society.[39]

Shannon McSheffrey has put forward an even more elaborate definition of the term "governance." She argues that it was not merely about personal conduct, but that being a man in late medieval society meant taking responsibility for the behaviour of social inferiors as well as one's own conduct.[40] Both Hanawalt's and McSheffrey's descriptions certainly seem to fit cases of scolds, eavesdroppers and other persons unwilling to respect the privacy and peace of their neighbours. Nevertheless, these two cases of abduction provide some insight on the use of the term where women were concerned. Both Nicholas Dobson's wife and Alice wife of John Matheu seem to have had very little control over their own ability to be governed, having both been led astray by evil men. Because, as McSheffrey suggests, governance was intimately related to submission to a superior male authority, the situations of both women help to shed some light on the meaning of governance in this context. A woman was of good rule if her husband ruled her; a woman was of ill rule if she were ruled by a man other than her husband (especially a lover). Clearly, female independence was not even an option.

The Role of the Clergy in Spousal Abduction

In her study of consensual abduction Walker notes the frequency with which clergymen were identified as spouse abductors, and suggests that these men "may have been acting in their capacity of spiritual advisor."[41] This seems like a very logical assumption. If a

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[39] Barbara A. Hanawalt, "'Good Governance' in the Medieval and Early Modern Context," *Journal of British Studies* 37 (1998), 248.
[40] See Shannon McSheffrey, "Men and Masculinity in Late Medieval London Civic Culture: Governance, Patriarchy and Reputation," in Jacqueline Murray (ed.), *Conflicted Identities and Multiple Masculinities: Men in the Medieval West* (New York, 1999), pp. 243-78.
[41] Walker, "Punishing Convicted Ravishers", 245-6.

woman had no family or lover to rescue her from an abusive relationship, who better than the local priest to fill this role (assuming he was not also her lover)? A number of bills of this genre have survived from the early proceedings of the English court of Chancery. In the case of Thomas Gwyn *vs.* Thomas Colle, parson of the church of Combe Merton in Devonshire, Gwyn accused Colle of frequenting the family home in order to spirit away his wife. After four years of friendship with the couple, Colle came to the house of Thomas Gwyn and "toke away Johes the wiff of youre seid besecher all his goodes yit thar keepeth soo that your forseide pore bedman by the forseide Thomas Colle is brought in so grete povertee that he hath nothynge to sewe hym by the common lawe." Moreover, the not so mild-mannered parson had "by untrewe menes feyned accions" against the petitioner, and "hath soo labored ayenste youre forseide besecher [that] he der not come in to his cuntrey and thus utterly proposith to undo hym." Impoverished and harassed, Gwyn turned to England's chancellor for assistance.[42]

Like most men in Gwyn's position, the primary concern of this bill was the loss of goods and subsequent impoverishment. Nowhere in the bill of complaint does he ask for the return of his wife, nor did he seem to expect that she will come home to him.[43] His exclusive focus on economics raises an interesting question: if Colle and Joanna Gwyn had wished for a clean break in the relationship, why did they feel the need to rob him blind? It must be remembered, of course, that Thomas's plight is recounted entirely from his perspective. If Joanna had been given the opportunity to present her side of the story, we may well have discovered that the goods "stolen" from the couple's home had been hers before marriage.

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[42] PRO C1/75/39, Thomas Gwyn *c.* Thomas Colle, parson (*c.* 1487-1504).

[43] Of course, it is important to note that Chancery did not have the power to return his wife. If a marital reconciliation was his aim, Gwyn needed to take his case to an ecclesiastical court.

Indeed, her intention may well have been simply to leave the marriage with the goods she had brought to it. Thomas's petition to the chancellor was perhaps a pre-emptive move to secure the return of these goods before Joanna had the opportunity to act on her own behalf. His chances in this suit were quite favourable. Unless Joanna were able to prove cruelty, and then somehow obtain a court enforced maintenance agreement, she legally had no rights to the property held jointly by the couple. This may be where Thomas Colle fits in. If this were indeed an abusive relationship and the parish priest were witness to that, his testimony in the archbishop's court might have obtained the divorce which Joanna sought. Of course, it is also possible that this was simply an unhappy marriage, and Joanna chose to strike out against her husband in a way that wold hurt him most: by targeting his purse.

Intervention in the marriage of John Knight of London and his wife Pernel by Thomas Hervy, canon of St Mary Overies in Southwark, was even more intrusive than that of Thomas Colle. According to the petitioners, the aforementioned John Knight and a man named Richard Knight (relationship unspecified), Hervy commanded the forgery of a bond to compel John into divorcing his wife. John admitted that his wife had long been under the influence of the canon, and that he had been greatly inconvenienced as a result. Not only had he lost his wife, but "Thomas Hervy ha[d] vexed trowbled & empersoned [him] for þe seid Pernels sake." His petition, then, sought specifically to have Thomas Hervy brought before the chancellor with his forged obligation and compelled to desist in his unwarranted harassment.[44]

It is possible that Hervy was Pernel's lover and in a desire to have Pernel to himself, he was attempting to drive Knight away. Given the inability of many medieval clerics to

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[44] PRO C1/29/400, Richard Knight, surgeon, and John Knight, tailor of London *c.* Sir Thomas Hervy, canon of St. Mary Overies, Southwark (*c.* 1460-1).

adhere to their vows, this was certainly a likely possibility.[45] Another conceivable scenario, is that Pernel was simply in an unhappy relationship and Hervy had taken it upon himself to counsel the couple in their marriage. In this light, it is possible that after counselling failed to make an impact on Knight's behaviour and a separation had been required, Hervy had been forced to resort to threats and even imprisonment in order to keep Knight away from his wife. Although this explanation for the tension between Knight and Hervy may not reflect the actual circumstances in this case, it seems that this situation may have been a fairly common one.

A man in Hervy's position probably believed that meddling in the marriages of his parishioners was part of his job as a man of the cloth. This perspective may not have been shared by men like Pernel's husband, however. The tendency of abusive husbands to interpret the actions of an ecclesiastical official as a personal attack rather than institutional intervention may have been a common feature in cases of ecclesiastical arbitration in later medieval England. The petition of John Carvare, clerk chancellor to the archbishop of York, substantiates this conjecture. In his bill of complaint, John recounted the distressing story of Joanna wife of Guy Dawny, esquire. When she came before the archbishop of York in his court with a request for a divorce on the grounds of cruelty, she claimed that her life was in imminent danger. Her testimony to the court alleged that her husband had "manacal[ed] and threte her to mayhem and to slay" her. Given the volatility of the situation, it was in the best interests of both parties for Joanna to be sequestered from her husband within the city of York for the duration of the suit. Irrespective of the court's ruling, Guy decided to take matters into

[45] Thomas Hervy certainly had a reputation for consorting with women. Shannon McSheffrey brought to my attention a reference to another bill in chancery relating to Hervy in which he was accused by the prior of the convent of St. Mary Overies in Southwark of resorting to women of unclean life and stealing money from the priory. See C1/27/417.

his own hands. With "force and armes" he came to the place where Joanna was staying and "ayenst her wyll wt great vyolence toke and set [Joanna] in to a karte and her caryed awaye and the same Johan then makyng theroff a great exclamation that a multitude of peple cam and retyened the said carte." The archbishop was once again called in to arbitrate. He decided that Joanna should return to her place of residence in the city of York until the suit was determined, and Guy was ordered to leave his wife alone. John Carvare, as clerk to the archbishop, was the court official appointed to escort Joanna back to her home in York. His intervention so enraged Joanna's husband that Guy sued an action of trespass against Carvare and "intendith by myght and power that he hath in the same cytee to contemp yor said besecher in great cost and damage to his great hurte and losse." Facing imprisonment, and unable to turn to his superior (the archbishop having recently died), Carvare found himself in a disagreeable situation.[46]

Guy Dawny's actions clearly had the same intent as those of John Knight. In using the royal courts falsely as a weapon to harass the church's officials, these men hoped to discourage any further prying in their matrimonial affairs. Given the low numbers of cases of divorce *a mensa et thoro* on the grounds of extreme cruelty, it seems likely that this was an effective strategy. More to the point, the hostility that both Guy and John exhibited to ecclesiastical intervention speaks to the resentment felt by some in English communities towards the church's encroachment into issues relating to lay marriage. Their combined reactions may represent a more general belief that marital disharmony was an issue best left to the community.

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[46] PRO C1/295/4, John Carvare, clerk chancellor to Thomas late archbishop of York (*c.* 1504-9). *Certiorari.*

The case of Guy Dawny and his wife Joanna provides additional insight into the regular process employed by the church courts in dealing with cases of domestic woe. Although matrimonial cases were resolved in a relatively short period of time in the medieval courts Christian, they often required a number of appearances in court, thus extending the duration of the case. Richard Helmholz notes that the average time for the settlement of marital disputes in Canterbury during the period 1372 to 1375 was 5 months, 7.5 days.[47] For the period, this was a very speedy process; none the less, for an unhappily married couple, it must have seemed like an eternity. If the abuse was potentially life threatening, the woman would not have been expected to live with her husband during the time it took for the court to reach a decision. In respect of Joanna, it is clear that the court granted her permission to live separately and that Guy was required to respect this ruling and stay away from her. The practice of sequestration was provided by canon law with the intention of safeguarding the freedom of individual consent in matrimonial cases. If the plaintiff was able to demonstrate that it was necessary, the judge might order a sequestration in order to prevent the application of undue force.[48] The *ex officio* records of the court of Canterbury suggest that endangered wives were frequently sequestered during matrimonial litigation; however, this practice appears to have been typical only of the very late Middle Ages. For example, although the fourteenth-century act books fail to make explicit mention of sequestration, it appears with some frequency in those of the late fifteenth and early sixteenth century, appearing at least nine times over the period 1463 to 1505.[49] The only mention of this practice in litigation

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[47] R.H. Helmholz, *Marriage Litigation in Medieval England* (London, 1974), pp. 114-5.
[48] Ralph A. Houlbrooke, *Church Courts and the People during the English Reformation, 1520-1570* (Oxford, 1979), p. 63.
[49] These cases appear in Canterbury Y.1.6, fo. 21; Y.1.15, fos 160 and 201; Y.1.16, fo. 253; Y.1.17, fo. 13; Y.1.19 in which the folios are unnumbered but the cases are those of Ralph Huddingfeld of Smorden and his wife Amica Humfrey, and Lodan of Betrysden and his wife Elisabeth Barker; and finally, Y.2.2, fos 37 and 110.

before this period is that of the case pending between Agnes Huntington and Simon Munkton, discussed in Chapter Four.[50] Agnes was given express permission by the court to live in the city of York apart from her husband for the duration of the proceedings. But, like Guy Dawny, Simon also ignored the court's decision. It is likely that the blatant violation by these women's abusive husbands was the only reason the court's grant was mentioned in either case. This is confirmed by the way in which it is recounted in both cases. Neither Agnes Huntington nor John Carvare seemed to believe that the court's decision in this respect required a lengthy explanation, suggesting that an order of this kind was not unusual in circumstances of abuse, even in the fourteenth century. More important still was the court's decision to appoint a guardian for separated wives in their husband's absence. In almost all cases of sequestration the wife was remanded to the protection and supervision of another man, usually a relative, during the time it took for the court to reach a verdict.

Conclusion

Cases of marital discord in the early proceedings of Chancery add an important dimension to an investigation of spousal abuse. While domestic violence itself does not figure largely in these records, the numerous cases of informal separation (under the guise of consensual abduction, desertion or otherwise) certainly seem to suggest possible sources of matrimonial disharmony which may have provoked or intensified situations of abuse. Moreover, as the records of the *ex officio* business of the court amply suggest, adultery leading to consensual abduction brought couples to a whole new level of abuse in which hired thugs and false suits appealed in the royal courts became the most powerful weapons in

[50] See p. 291-301 of Chapter Four.

marital warfare, saddling unsuspecting spouses with costly legal fees and unjust prison terms. It was ordinarily once the marriage began to disintegrate (although some couples apparently did not wait that long) that money moved to the forefront of the discussion and became the central issue of dispute. Legal battles over maintenance and division of property were clearly every bit as petty and bitter as those appearing in court today. The fact that it was usually women in medieval England who turned to the court in property issues after the settlement of a separation highlights the legal vulnerability of women in a society where marital property was thought to belong primarily to the husband. At the same time, however, it suggests a popular sense of justice which may have supplemented the inadequacies of the common law system in the regular negotiation of maintenance agreements. Thomas Leylond's wife may have ended up in court when her husband's provisions for her maintenance collapsed; however, his decision to provide for his wife through the legal fiction of a use most likely reflects a popular practice built on the communal ethic that a wife should not suffer economically because her marriage had failed.

Much like cases of judicial separation appearing in the church courts of late medieval England, the records of chancery present some insurmountable problems for the historian when it comes to analysis. Whether the petitioner actually experienced the level of abuse indicated in these bills, we may never know. It is all too possible that these bills may also represent a degree of fiction intended to gain a sympathetic ear. What we do know, however, is that the petitioner strongly believed that by telling the Chancellor about these events she would improve her chances of securing his intervention. Consequently, these petitions offer plentiful insight into a world the Chancellor was intended to find reprehensible. Moreover, while cases appearing in Chancery were, by virtue of their appearance in that particular

forum, of an unusual nature, nevertheless they open a window onto the regular process of communal supervision of marital discord. Family members, neighbours and clergymen all played essential roles in arbitrating unhappy marriages long before they appeared before the church courts for a formal resolution. In the traditional methods of marital dispute resolution employed in medieval English communities, the courts were the last stage of the process and not even a necessary stage. Legal intervention by the ecclesiastical or royal courts ordinarily occurred after the couple had already made the decision to separate. In this respect, the medieval courts played a meaningful role in the formalisation of separations and in the negotiation and protection of marital property rights. Richard Helmholz may well describe the church courts as medieval marriage counsellors for their part in this, and yet credit should be given where it is due. Families and communities were clearly the true marriage counsellors of medieval England.

Conclusion

When in the late fourteenth century the officials of the consistory court of York ordered Richard Machonne to return home and treat his wife "decently and honourably," they were appealing to Richard's sense of identity as a man in late medieval Yorkshire.[1] Spousal abuse in the context of English communities in the late Middle Ages was as much about male honour as it was about wives as victims. An honourable man was one who demonstrated an ability to control his household, but without exceeding the boundaries of that power. In short, a good husband chastised his wife (or hoped that he would not need to); a poor husband beat her. The line between the two, however, was often blurred and subject to personal interpretation. Thus, when Richard Scot declared before the official of the archdeacon of Northumberland that it was "his right to beat his wife," he may have sincerely believed this to be the case.[2] Families and friends in medieval communities who witnessed this abuse were nevertheless unforgiving in their judgements. Machonne's conduct was considered indecent and dishonourable. Similarly, when George Softley of the vill of Latton in Essex beat his wife Alice so greatly that "she was therby in perell of her liff," his behaviour was described as "shamefull" and "unmanly."[3] Cecilia Wyvell's deponents were even more relentless. Henry's abuse of Cecilia earned him the reputation of being both "lunatic" and "demented."[4] Clearly, wife-beating was not only proof of a person's deficiency as a man, but as a human being. It should come as no surprise, then, that one fifteenth-century man from London was willing to risk the costs of litigation in order to defend his reputation against rumours of

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[1] York M 2(1) c, fo. 23.
[2] "*dixit se licenciam habere verberarandi uxorem suam.*" York CP. E 221 / 2.
[3] PRO C1/162/46, Alice wife of George Softley of Latton previously wife of Thomas Westwode of Latton, and Richard son of the said Thomas and Alice *c.* George Softley of Latton (*c.* 1504-9).
[4] York CP. F 56 / 7, Cecilia Wyvell *c.* Henry Venables (1410).

marital ill-conduct.[5] In a world in which being a man was so closely tied to being a good husband, reputation was invaluable.

The language of honour permeates the records of all the courts reviewed in this investigation. And yet, it would seem that physical violence was not the only kind of wife abuse that might smear a man's reputation. William of Beltoft's failure to provide his wife with the necessities of life was a "scandal" in late thirteenth-century Yorkshire.[6] Similarly, Walter de la Mare's decision to desert his wife and leave her penniless for over four years not only caused "many scandals," but his actions were described as "inhumane."[7] This expanded definition of abuse, which may have even included marital rape, was employed variously by both courts and communities. Archbishop John Le Romeyn's outrage at Sir Nicholas de Meynell's refusal to support his wife, a decision that endangered her soul, reflects the same kinds of concerns that caused a mid-fourteenth-century Yorkshire jury to remark how Alice wife of Stephen Souter was driven to suicide by her husband's harsh words.[8] Late medieval Englishmen and women recognised the many faces of abuse: physical, spiritual, economic, psychological, even verbal, although the latter was the most problematic of the five. Verbal abuse was rarely considered to be a male trait. The readiness of men like Henry Venables, Thomas Nesfeld and Simon Monkton to defend their violent actions with tales of wifely shrewishness demonstrates just how complex were gender relations within marriage in the late medieval period.[9] Beating a wife was not acceptable; taming a shrew was.

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[5] L.R. Poos, "Sex, Lies, and the Church Courts," *Journal of Interdisciplinary History* 25 (1995), 598.
[6] *The Register of John Le Romeyn, Lord Archbishop of York, 1286-1296*, pt. 1, ed. W. Brown (Surtees Society, 123, 1913), nos 718, 250.
[7] *Registrum Roberti Winchelsey Cantuariensis Archiepiscopi, 1294-1313*, ed. Rose Graham (Canterbury and York Series, 51, 1952), pp. 194-5.
[8] *Register of John Le Romeyn*, i. nos 96, 76-77; PRO JUST 2/212, m. 19.
[9] All three cases are discussed at length in Chapter Four.

Wives, then, were in a precarious position in late medieval England. When faced with an overbearing, abusive husband, assertiveness or aggression was simply not an acceptable option. A woman who crossed over the gender barrier and exhibited these masculine characteristics soon found herself labelled a scold, or worse, a petty traitor. The discourse of abuse inevitably victimised women: self-defence led to social alienation, passivity might well lead to death. The saving grace was that the vulnerability of women in this respect was fully recognised within late medieval communities, and was addressed accordingly. England's various courts of redress provide ample evidence to suggest that there existed an established process for dealing with marital violence. Victims of abuse had a variety of options available to them before even contemplating legal action. First, family members, friends and neighbours all expected to play an active role in the supervision of spousal violence, and did not hesitate to step in when required to remind an overly aggressive husband of his responsibilities towards his wife. In fact, this process was probably even more complex than the surviving records suggests. It is reasonable to suppose that confraternities or guilds might also have provided a logical support network for the wives of guild members. In this respect, public humiliation proved to be the most effective means of curbing violent tendencies. The dramatisation of abuse in local theatre, like the Flood plays, and the homiletic *exempla* taught village audiences through mockery and laughter that a world without established gender roles was a world of chaos.

Those few husbands who failed to internalise this pivotal message and persisted in their violent behaviour, however, eventually found themselves in court faced with representatives from those same communities judging their ill conduct. Once again, victims of abuse discovered many options available to them in terms of legal venues. While the church

courts of late medieval England were responsible for addressing serious cases of marital violence, manorial or borough courts clearly offered a welcome alternative for dispute settlement to a number of abused wives. By the late medieval period, the English court of Chancery provided itself as an additional choice for those cases without established legal remedy, and it is likely that some victims of abuse found themselves in all three venues at one point or another during a rocky marriage. It is very clear, however, that medieval litigants understood the various strains of the English legal system as a whole. Secular, ecclesiastical, local or equity, medieval Englishmen and women simply turned to whichever court they believed might offer the best possible resolution to a problem.

Both communities and the church alike in medieval England also recognised that an abusive marriage might not be salvageable. If the abuse was life-threatening and all other means of settlement had been exhausted, representatives of the church were willing to grant a divorce from table and bed. But, such a resolution far exceeded the financial resources of the vast majority of medieval Englishmen and women. Instead, self-divorce and consensual abduction were both tolerated widely in communities throughout England as a necessary evil, without which spousal homicide rates would surely have been considerably greater. Herein lies the difficulty. While informal separation was sanctioned by communities, the English church stood firm behind the opposite position. A gap thus existed between ecclesiastical and lay beliefs where spousal abuse was concerned. Representatives of the church were reluctant to give up on any marriage, and chose rather to send in their own militia. Parish priests were the first line of defence, expected to intervene in marriages that evinced evidence of abuse. The death of Odo the chaplain of Wilberfoss at the hands of an angry husband, however, suggests that this kind of intrusion may not have been embraced by all members of late

medieval communities.[10] Hostility to ecclesiastical interference in marriage is evident in the failure of many couples to abide by the laws of the church. Despite repeated admonishments, marriages continued to be created and terminated without the assistance (or approval) of church officials. Moreover, couples who did turn to the church for ecclesiastical divorce only did so when informal separation failed, meaning either one party to the marriage refused to separate, or they suddenly found themselves in the bishop's court on charges of spousal non-cohabitation.

Lay communities and ecclesiastical representatives not only differed in perspective where separation was concerned: both understood abuse in different lights. The fact that plaintiffs and their deponents in cases of divorce *a mensa et thoro* felt the need to embellish their tales of domestic violence, sometimes borrowing freely from saints' lives in order to meet the church's stringent requirements for abuse, confirms the disparity between lay and sacred understandings of the kind of violence that necessitated separation. While the medieval English church and laity both tolerated substantially higher levels of abuse than today, the expectations of the church were out of step with contemporary values. What was considered abusive among the laity did not necessarily warrant an ecclesiastical separation. The inability of both the royal and ecclesiastical courts of the late medieval period to provide suitable remedies for victims of coerced marriage demonstrates that the discontinuity between local and legal perceptions of abuse was notable.

The laity of medieval England, however, were equally divided among themselves in their approach to domestic violence. While most female deponents in cases of violence dwelt on the overwhelmingly physical nature of the abuse, male deponents and court justices were more troubled by economic deprivation, adultery and spiritual endangerment. This bifurcated

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[10] PRO JUST 1/1053, m. 9d.

vision had important ramifications for the treatment of spousal abuse at law. Because men alone acted as the community's representatives in court, victims of abuse were rarely able to find a sympathetic ear when physical violence was the only charge. Moreover, the laity was also divided in their reactions according to rank. The general medieval laity exercised their own sense of justice that differed from that upheld by medieval England's law-makers. Not only did they condone the killing of a wife's lover, but they may have often permitted known wife-killers and some petty traitors to elude execution. Finally, locality played a crucial role in the acquittal rates of medieval felons. Because the lives of trial jurors were less affected personally by the crimes they judged than indicting juries, they were more inclined to acquit.

Joy Wiltenberg has argued that marital discord in the early modern era was usually described in terms of female resistance to male authority.[11] This perspective holds true for the medieval period as well. The fact that husbands of known scolds might receive a separation on this ground alone supports this argument.[12] And yet, in the late medieval period in England, the conditions were much more complex than this statement might suggest. In fact, abuse, in many ways, was less about women than it was about men. The outrage and loathing expressed by deponents, juries and court officials about men who overstepped their authority suggests that they were held responsible for much of the violence found in late medieval homes. But men who failed to live up to contemporary expectations and adopted instead a passive role in their marriages were equally reprehensible. The underlying message in cases of female misbehaviour in a variety of the records from both Yorkshire and Essex is surely that these women were disorderly because they were ill-ruled, with the blame for

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[11] Joy Wiltenburg, *Disorderly Women and Female Power in the Street Literature of Early Modern England and Germany* (Charlottesville, 1992), 97.

[12] There is only one case of this, however. See discussion on pp. 175-6 of Chapter Two.

their conduct placed squarely on the shoulders of their ineffectual spouses. Wives may have provoked their husbands' wrath through shrewishness and scolding, but if their husbands had exercised proper control from the very beginning, there would have been no problem at all. For this reason, manorial and borough courts in particular were willing to hold husbands legally responsible for their wives' scolding and even assaults. It is precisely this desire to uphold the hierarchy within marriage, however, that created difficulties in defining abuse. Violence in marriage was only sometimes abuse; more often than not it was chastisement.

Ideals about appropriate gender roles in marriage and spousal abuse did not necessarily undergo profound transformation over the course of the late medieval period; what did change is how they were enforced. The fourteenth century seems to have been a crucial period in the development of accountability for social misbehaviour. Increased mobility after the Black Death dealt a blow to traditional systems of behavioural supervision. Families and neighbours were no longer capable of exercising the kind of unofficial power they had in the past, and were compelled instead to adapt the legal system to meet the needs of a changing society . Although families and neighbours continued to play an important role as informal arbitrators in incidents of marital disharmony, the English judicial system was transformed in order to supplement traditional methods. Bye-laws against disruption of the peace and scolding are two examples of local resolutions intended to check levels of domestic violence; at the national level, changes to the laws of trespass and treason reflect this widespread anxiety. The overall effect was a much tighter rein on marital disharmony, as well as a multitude of other social misbehaviours. Simultaneously, legal intervention raised public awareness of social misbehaviour and gave birth to a sense of crisis.

The north and south in England responded differently to the changes wrought by the arrival of the plague in Europe. In the south, the Black Death served merely to intensify an ongoing battle against social misbehaviour. By the mid-fourteenth century, rural mobility had been an integral feature of Essex life for such a long period that communities like Colchester had already begun to use the local courts to punish persons who refused to conform to communal standards of acceptable behaviour. Growing anxiety about social misconduct in the post-plague period is most apparent in the records of the church courts. In Canterbury diocese defamation suits increased exponentially from a paltry 14 suits during the years 1372-5 to 324 in the six-year period between 1474 and 1479.[13] In the south the church courts worked together with the local judicial system to stamp out social non-conformity. The growing number of prosecutions, then, points less to increased misbehaviour than it does to a heightened awareness of the problem and a greater determination to eliminate it.

Yorkshire, on the other hand, was much slower to react to changing perceptions of how communal values should be enforced, perhaps reflecting its distance from England's legal centre. Although Marjorie McIntosh has pinpointed the 1370s as the crucial period when communities across England decided finally to take legal action against social misbehaviour, the local courts of Yorkshire in particular chose instead to address their concerns through traditional means. Prosecution of antisocial behaviour under the guise of spiritual transgressions multiplied in the northern ecclesiastical courts, while the manorial courts of Yorkshire addressed only the occasional and most egregious cases of social non-conformity. With only 74 suits of verbal offences over the period 1387 to 1494, it is clear that

[13] Canterbury Y.1.1 (1372-5); Y.1.12 (1474-9).

the courts of York never exhibited the same kind of anxiety as did their southern counterparts.[14]

The disparity between the two regions had an important effect on the prosecution of spousal abuse as well as general attitudes towards it. In the south, a wife's assertiveness in an unhappy marriage may well have resulted in a presentment before the local courts for scolding and a heavy fine. In York, that same wife might instead take her case before the archbishop's court with every expectation that her friends and family would support her application for separation on the grounds of cruelty. The preoccupation with scolding wives and petty traitors in sixteenth-century England, however, suggests that, in the end, the south's tendency to oppress domestic violence through the rigid enforcement of socially-approved gender roles became the more popular of the two approaches.

The two regions, however, shared many similarities with respect to domestic violence. Most important was an eagerness to impose the death penalty on petty traitors. While 34.7% of petty traitors in Yorkshire and Essex were burned or hanged for their actions, only 20% of wife-killers received the same treatment. The substantially higher execution rate for women accused of spousal homicide confirms that husbands might transgress the bonds of marriage more easily than wives.

Collectively, the court records of both the north and the south present a grim and gruesome image of late medieval society. This representation is an inevitable consequence of the choice of court records as evidence of daily life. By nature, court records offer insight into the dark side of the medieval era. In reality, while some medieval Englishmen abused their wives, spousal abuse was certainly not a universally accepted practice. The law courts of medieval England demonstrate that English communities had an effective system of dealing

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[14] York D & C AB/1.

with marital strife. Both unofficially and legally, domestic violence in the medieval context was punished through public humiliation. In the village setting, families and neighbours mocked abusive couples through theatre, parish teachings and gossip circles; legally, presentment itself was an extremely embarrassing process which acted as a public declaration of one's moral failings. Even the penalties imposed by the secular and ecclesiastical courts were of a public nature: processions, cucking and carting before a crowd of familiar faces would have been a humbling experience for even the proudest individual. This kind of communal pressure to reform must have been difficult to resist. Furthermore, it seems clear that medieval England's extensive multi-layered system of familial, communal and legal intervention in cases of marital disharmony prevented many marriages from reaching the point where homicide seemed like the best solution to the problem. None the less, while extreme physical violence was discouraged, it seems all too clear that beating one's wife did not necessarily fall into the category of abuse. This is emphasised by the very fact that wife-beating in medieval England was considered a moral failing, not a crime. It only became a crime when wife-beaters crossed the thin line between sin and murder.

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