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The Legal Position of English Women Under the Early Stuart Kings and the Interregnum, 1603-1660

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THE LEGAL POSITION OF ENGLISH WOMEN
UNDER THE EARLY STUART KINGS AND THE INTERREGNUM,
1603-1660

by

Leonore Marie Glanz

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Today, when there remain only a few barriers to legal equality between men and women, a return to the Stuart period to discuss the legal position of women under James I, Charles I, and the Interregnum seems almost like an antiquarian exercise. However, an understanding of the legal role of women in Jacobean society will help the reader to comprehend better why women were gaining increased notice in the documents, public and private, of the time. Because the law touched on so many aspects of daily life and because women of the working classes figured so little in the available sources, this paper can only attempt a general description of women's role in society; the description focuses more on areas where the relative legal position of women differed from that of men than on areas where it coincided or where both had common abilities and disabilities.

A truly definitive study of the legal position which women enjoyed or suffered under during the early Stuart period in England is not possible in the short time usually allowed for research on a doctoral dissertation. Although women outnumbered men in this period, they received less mention than the masculine sex, partly because contemporary writers concentrated on the men who predominated in court circles. This paper has attempted to make use of available published sources such as legal treatises, lawyer's reports, sessional records, and government documents, plus a
few personal papers as well as some guild and municipal records. However, many more sources have not been checked because they are unpublished and therefore unavailable in this country. It is for the latter reason that the findings indicated here are stated in tentative terms.

This paper has been written with the special aim to show that women wanted to be appreciated for themselves, which sometimes they could not "find." It is no wonder that these women were quite often not sure of themselves nor particularly concerned about their lot in life; they and their fellow men had been conditioned by tradition to accept a woman's lesser lot in life. Lawyers and jurists who ruminated on these matters were not always certain of where the law lay; when they lacked precedents they sometimes stated as actual fact what they thought should be the law, and when they were confused they tended to cite the opinions of all who had preceded them, whether in England or in antiquity. When this happens, the researcher, too, can become confused or disconcerted, and can only pick his or her way out of the morass of conflicting opinions by concentrating on what happened to the lady in question rather than on what various legal experts cited as authority. Fortunately, a pattern of decision or action emerges in most instances.

Because the aim of this paper is, simply, to explain how women fared in the law, there was no formal thesis to prove or disprove when beginning this paper, and the researcher looked into almost anything of a legal nature for the years 1603-1660 in England to find everything in them with a feminine gender attached.
In short, this writer did not know at first what was the whole scope of the subject, nor what she would find, but she feels that what has emerged is a coherent story of women's legal position in a period before the Industrial Revolution, when women were gaining increasing recognition and their position was being elucidated by jurists and legal writers. Discovering it, it must be confessed, has often been a tedious chore, especially since book indexers, like seventeenth century lawyers, have not been too fond of women, but writing it has been exactly the opposite. For any contribution towards historical understanding that is made here, I would like to give my initial gratitude to Dr. William Raleigh Trimble of Loyola University, Chicago, who included a topic similar to this in a list of suggestions for papers in his seminar on Stuart England and who graciously permitted the ladies to have first choice in selection. For my sources, I am indebted primarily to the Newberry Library in Chicago, which has almost all of them somewhere in its cavernous stacks, into which numerous pages descended nearly everyday to bring dusty, brittle, seldom-if-ever used volumes to my study carrel, and similar appreciation is extended to the Loyola University Law Library for opening its bookstacks to me.
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INTRODUCTION:

THE CONCEPT OF THE ROLE OF WOMEN IN ENGLISH SOCIETY

All through the Middle Ages in England and subsequently in the Tudor and Stuart eras, the position of women generally was subordinate to that of men. However, the chivalric code of the High Middle Ages, plus the decay of feudalism and manorialism in the later Middle Ages, helped to bring about some changes in their position. In the earlier period, romantic chivalry idealized women; in the latter period, the breakdown of military and agrarian society, with the declining need for powerful feudal warlords and with the growth of cities or towns, enabled women to assume a greater role in society—that is, in life outside the home.

In the new commercial centers, the wives of tradesmen, merchants, and artisans led lives that revolved around the marketplace and business obligations rather than around the manor and its accompanying agricultural or judicial services. These townswomen had an attitude of mind alien to that of the feudal outlook of knights and their ladies, and this accounts, in part, for the fact that borough customs differed from feudal customs in many parts of England. The new and growing urban centers had no need for the traditions of feudal society; in their place they developed customs and practices more atuned to their own commercial society. The latter, unlike
the feudal system where women were of little consequence in military matters, recognized that women were of growing importance in almost all aspects of the marketplace—as buyers, sellers, and makers. It was natural then that borough customs, which grew up side by side with feudal customs and which likewise were crystallized into law, took cognizance of the increasing stature of women in urban society.

At the same time, the Renaissance and its new ideas about the dignity of the human being generated an atmosphere in which it was possible for women, especially educated women, to emancipate themselves from the bonds of feudal neglect and ecclesiastical disdain. A number of exceptional women proved that they could be the equals of men in conversation, politics, or business. Lucy, the Duchess of Bedford (ca. 1582-1627), one of the most beautiful women at the court of James I and a confidante as well as lady-in-waiting to Anne of Denmark, was one of the discriminating art collectors of her day—she acquired Holbeins without regard to prices; she was a patron of poets such as Ben Jenson and John Donne; and she also was a coin collector. On her estates at Moor Park, Hertfordshire, which she managed after her husband's attack of paralysis left him with impaired speech and mobility, she laid out handsome gardens making use of natural foliage instead of the tortured and unnatural forms of topiary so dear to seventeenth century horticulturalists.¹

¹Jane Meautys Cornwallis, Lady Bacon, The Private Correspondence of Jane Lady Cornwallis, 1614-1644 (London: Bentley,
Her contemporary, Lady Anne Clifford (1590-1676), whose learning was praised by John Donne, also managed her own vast estates. She, too, had been a lady-in-waiting to Queen Anne. Her first husband, who was known as one of the greatest spendthrifts of the day, died leaving behind debts amounting to £60,000; her second husband, likewise, was a spendthrift, interested chiefly in horses and dogs. After his death when she was fifty-nine, she stayed on her properties in the North and made a new start in life, transforming herself from a languid and bored lady of London into a busy manager of six castles in need of repair or restoration, each of which she always visited in pomp and pageantry. She was continually engaged in lawsuits to defend her property rights, but at the same time she lavished contributions on charities—building a grammar school, rebuilding several churches, and above all, tipping her servants bountifully. She was also responsible for erecting the monument to Edmund Spenser in Westminster Abbey.²


²George C. Williamson, Lady Anne Clifford, Countess of Dorset, Pembroke and Montgomery... Her Life, Letters and Work (Kendal: Titus Wilson and Son, 1922); Wallace Notestein, Four Worthies: John Chamberlain, Anne Clifford, John Taylor, Oliver Heywood (New Haven: Yale University Press, 1957), pp. 123-166;
In England, the accession of Elizabeth to the throne very possibly caused men to question the traditional beliefs regarding the capabilities of women. All through the late Tudor and the Stuart periods books condemning the vices (oftentimes exaggerated) and extolling the virtues of women were printed. They were not all as vituperative as John Knox's First Blast of the Trumpet against the Monstrous Regiment of Women (Geneva, 1558), as drearily sentimental as a posthumous publication by William Austin (1587-1634) entitled Haec Homo: Wherein the Excellency of the Creation of Woman is described by way of an Essay,3 or so defensive as Rachel Speght's A Movzell for Melastomvs, the Cynicall Bayer of, and Foule mouthed Barker against Evahs Sex, or an Apologetickall Answere to that Irreligious and Illiterate Pamphlet made by Ioseph Swetnam.4

Rather, most books were somewhere in between, such as the popular Elizabethan book of manners called The Courtier of

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3(London, 1637). None of Austin's writings was published in his lifetime, but they circulated among his friends in manuscript. His name was on a list of members proposed for the abortive Royal Academy of Letters.

4(London, 1617). She was probably the daughter of Thomas Speght, a schoolmaster and editor of Chaucer's works; DNB, XVIII, 729.
Conte Baldassare Castilione, which ran through four editions between 1561 and 1603. The author, an Italian nobleman better known to English readers as Baldassare Castiglione, deemed the virtues of women to be "not a lotte inferior to mens." And John Wing, pastor to the English congregation at Vlishing in Zeeland surmised that a woman was better than a man because she was created of his flesh while he was made merely of "refined earth."

With this sentiment, Samuel Torshell, a Puritan minister who was tutor to the two youngest children of Charles I, seemed to agree. In a book dedicated to the young princess Elizabeth, he lamented the fact that women had been the object of male domination and reproach ever since the beginning of creation, but he professed that they were nevertheless capable of the same intellectual pursuits as men, even of taking an active part in government. In his list of eminent women who evidenced such attainments he included a famous contemporary—Anna Maria van Schurmann, a Dutch artist and mystic of great eminence and learning, who embodied all the finest ideals of

5Translated into English by Sir Thomas Hoby (London, 1603).

6Ibid., fol. N3r.

7The Grovvne Conjugall or the Spovse Royal (London, 1622), pp. 70-71.


9Ibid., pp. 34-35. She lived during the years 1607-1678.
the Dutch Renaissance. Her wide circle of friends and correspondents included Cardinal Richelieu, René Descartes, Queen Christina of Sweden, Princess Elizabeth of Bohemia, and Jean de Labadie, the French theologian, as well as Sir Simonds D'Ewes, the English antiquarian. 10

Peter Le Moyne, a Jesuit, in his Gallery of Heroick Women, echoed Torshell's sentiments. He pointed out that there were more male than female rulers who had dishonored their diadems and sullied their sceptres. 11 In a similar vein, Jacques Du Bosc, a Frenchman whose popular work on women was translated into English in 1639, declared that it was a "tyranny and a custome" which was "no lesse unjust...to reject them from the publicke government as if their spirits were not as capable of affayres of importance as that of men." 12

However much society praised a woman's virtues, it preferred her to be married rather than single; one writer declared that marriage was not only commended but also "Commaund" by the Almighty. 13 Tudor and Stuart documents seem to prefer the married woman. Yet, the happiest among that sex were probably to be found among the daughters and wives of in-


11 (London, 1652), pp. 7-8. See also DNB, XV, 537.

12 The Compleat Woman...faithfully translated into English By N. N. (London, 1639), fol. Cciv.

dulgent and understanding fathers and husbands as well as among widows and spinsters who managed to avoid being forced into undesired marriages. All other women were more or less at the mercy of fathers, guardians, or husbands during the lifetime of these men. This is not to say that life was especially hard for them. Sometimes they made life somewhat harried for men. As the character in one contemporary comedy declared to his companion,

I think your grace would grieve if you were put to it,
To have a wife or servant of your owne,
For wives are reckn'd in the ranke of servants,
Vnder your owne roffe to comman ye.14

The contemporary Puritan attitude toward women was based partly on verses in Saint Paul and partly on passages in the Old Testament—all reflecting an Eastern notion of their subordinate status. The more captious critics tended to blame women for being the first to transgress God's law, thereby causing mankind's fall, for which they were placed in subjection to men.15 Their attitude was given legal basis by law in the marriage ceremony wherein the bride verbally promised to her new husband to be "a loving, faithfull, and obedient wife."16

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14 John Fletcher, Rvle a Wife And have a Wife (Oxford, 1640), p. 37.
16 Great Britain, Acts and Ordinances of the Interregnum, 1642-1660, ed. by C. H. Firth and R. S. Rait (3 vols.; London:
This theme of the woman's subservience to man was a popular one in the printed works of the early seventeenth century. Whether the writers displayed attitudes of animosity or admiration for the feminine sex, they revealed an uncompromising insistence that women were secondary to men in importance. Writers who were vehement in their denunciation of women, as Joseph Swetnam in *The Arraignment of Leived, Idle, Froward, and Unconstant women*, fulsome in their praise, as Barnabe Rich in *The Excellency of Good Women*. The honour and estimation that belongeth unto them. The infallible markes whereby to know them, or merely offered good advice and counsel, as John Dod and William Hinde who, in their book *Bathsebaes Instructions to her Sonne Lemuel: Containing a*

H.M. Stationery Office, 1911), I, 601 and II, 716 (hereafter cited as AOI). See also John Cowell, *The Interpreter: or Booke Containing the Signification of Words* (Cambridge, 1610), fol. T3v; The 1637 edition of this book, printed in London, is virtually the same and will be used hereafter in the citation, Cowell, *Interpreter*.


18 (London, 1615); in this work, fol. B1r, Swetnam contended that most married women led idle lives, "to the great hindrance of their poore husbands." See also Nicholas Breton, *Pasquils Mistresse: Or the Worthie and unworthie woman with his description and passion of that Furie, Tealosie* (London, 1600).

19 (London, 1613). See also Nicholas Breton, *Praise of Virtuous Ladies*, first printed in London, 1606, ed. by Egerton
fruitfull and plaine exposition of the last chapter of the Proverbs. Describing the duties of a Great man, and the vertues of a Gracious Woman, held up as their standard the wife who knew that "her duty is in all reverence and humility to submit and subject herself to her husband in all duties relating to marriage. Richard Brathwait, in fact, declared that "all women ...should be seene and not heard." So many books exhorted women to obey and submit to their husbands that it seems as though women were either acting as they were wont--"Do what...men can, Women will haue their Will," or that they were rebelling against feudal notions regarding feminine incapabilities and were seeking a relaxation of their overprotected status. If this is true, then one can conclude that women--at least, those

Brydges (Kent: Johnson and Warwick, 1815) and Richard Brathwait, A Ladies Love-Lecture (London, 1641).

20(London, 1614). See also John Dod and Robert Cleuer, A Godly Forme of Household Government, For the ordering of private Families, according to the direction of Gods World (London, 1630), and William Whately, A Brideushing or a Direction for Married Persons (London, 1623). The latter insisted that a woman "first...must acknowledge her inferioritie; secondly, she must carry her self as an inferior," adding that even if the wife were more intelligent than her husband she should act as though it were her husband who possessed these qualities and should, likewise, not provoke her husband into striking or beating her. Yet, here again, if he should do so, even without cause, she was admonished to bear it patiently, pp. 189, 191, 211.


who could read—were dissatisfied with their position and felt that the law was rather restrictive toward their sex.

A small number of statutes passed in the Elizabethan and early Stuart periods ameliorated the lot of women. These were concerned mostly with criminal law. Between 1597 and 1660, for example, public and private statutes mentioning women covered such diverse subjects as adultery, alehouses, brothels, naturalization of aliens, debt and bankruptcy, bearing of illegitimate children, jointure, recusancy, travel, punishment for felonies and treason, wages of laborers, rape, relief of war widows and families, swearing and cursing, and marriage.24 Even then, by modern standards their rights and privileges seem acutely limited, for it was not until the nineteenth century that women began to gain legal equality with men.

It is this writer’s contention that although the law initially made few specific references to women, it did take cognizance of their influence and position in society; indeed it gave them a special status supported by various protective—one might say overly protective—measures. This cloak of protection was gradually removed, however; and as it was, the women gained in stature, socially, legally, and economically.

24AOI, I and II, passim; Great Britain, Statutes of the Realm (9 vols. in 10; London: Eyre, 1810-22), IV, Pt. II, 910-1271, passim, and V, 9-178, passim (hereafter cited as SOR). All citations to specific statutes in this paper refer to the version found in the SOR.
CHAPTER ONE: HER SOCIAL AND LEGAL STATUS

During the Stuart regime the place women held in their community and the influence they exerted on their contemporaries depended greatly on the social and legal standing of their husbands and also of their ancestors. Members of the noble and governing classes stood at the top of almost all these societal scales, and men were preferred for titles of nobility as well as for offices of honor, but women could acquire them—either through inheritance, by marriage, or with special grant from the crown. ¹ Inheritance was possible when there were no male heirs and if the title were not entailed in, or limited to, the male line. In fact, some titles were entailed in the female line. When these conditions were met, all female heirs, for example, were privileged to inherit a title such as an earldom; but, since the title itself could not be divided, the King traditionally had the right to bestow the entire earldom on whichever daughter he chose. Under the same circumstances, however, when an hereditary office of honor such as a right to be Lord Great Chamberlain of England was involved, the office

reverted to the Crown. The seventeenth-century mind could not envision, for example, two Earls of Oxford any more than it could co-Lords Great Chamberlain of England. 2

The married woman was preferred over the single one in feudal law and this attitude continued down through the Jacobean period. It grew out of the need for male heirs to perform the feudal services connected with lands, many of which were still held by military tenure down to 1660, when such tenures were abolished. A single woman could not carry out these obligations, but her father or guardian, if she were young, or her husband, if she were married, could perform them.

As a result, fathers were given immense powers over their young unmarried daughters. They had the right to find suitable marriages for them so that the maidens would not marry their fathers' worst enemies. And, they had the right to use the profits of any estates their daughters inherited. The Common Law did not permit parents or other relatives to inherit from children; instead it granted them the right to guardianship.

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over their estates. At the death of his wife, for example, the father could claim guardianship over estates descending from her to male children under age twenty-one and unmarried girls under fourteen. On his own death, if his property and titles descended to an unmarried girl of less than fourteen, a wardship was established for the heiress. Her mother was entitled to this guardianship unless the land was held in tenure by knight service, that is, in return for rendering military services. If the land had been subinfeudated, the guardianship devolved on the father's overlord. But if he had been a tenant-in-chief to the king and his heir was under age, a guardianship called a guardianship in chivalry was established and his heir became a ward of the Crown. The ward seldom remained so attached for very long, for the wardship was often sold in a short time—and more often to a complete stranger than to a mother or other close relative.4

Some women managed to gain exception to this custom. In 1626 Katharine, Dowager Duchess of Lennox, succeeded in having

3Coke, I Instit., fols. 88r-89r. See for example, the "Entry Book of Proceedings in the Court of Wards, October, 1640--May, 1641," in Great Britain, Public Record Office, Calendar of State Papers, Domestic...of Charles I, 1625-1649 (23 vols.; London: H. M. Stationery Office, 1899-97), XVII, 214-240 (hereafter cited as CSPD-Chas. I).

4Coke, I Instit., fols. 78v-79r, 84r-84v, 88v; CSPD-Chas. I, I, 563; III, 438, IV, 79-80; XIII, 418, 463, 517-518; The Lavves Resolutions of Womens Rights (London, 1632), p. 23 (hereafter cited as Lavves Resolutions). This book seems to have been written in the last year of Elizabeth's reign. Both the anonymous author and the lawyer who saw the book through the press were men who had a vast knowledge of the law and were conscious that it hardly dealt with women. Doris M. Stenton, The English Woman in History (London: Allen & Unwin, 1957), pp.
the King grant her partial control over her son's education and estate from the Archbishop of Canterbury, who was holding the guardianship; and in 1630 Katherine, Dowager Countess of Suffolk, asked for the wardship of her granddaughter, Bess Howard, in compensation for the expenses and damages suffered by her late husband in permitting James I to use his home for state purposes during negotiations for the marriage of Prince Charles with Henrietta Maria and, also, for hospitality throughout the years toward visiting ambassadors.5

Another type of guardianship was set up for orphan heirs of lands held by tenure in free and common socage, land held in return for services of a definite and honorable nature such as various kinds of agricultural tasks or, even, a quitrent (money payment). If a man or woman holding land in such tenure died leaving an heir less than fourteen years old, the guardianship was granted to the surviving parent or to heirs on the side of the family which could not inherit. That is, if the heir inherited his or her land from the father's side, the guardians would be chosen from the mother's side; but if he or she inherited from the mother's side, the guardian would be chosen from the father's side. It was presumed that the party


5CSPD-Chas. I, I, 474, 579; IV, 209. See also examples given in Great Britain, Public Record Office, Calendar of State Papers, Domestic...of James I, 1603-1625 (12 vols.; London: Longman, 1857-72), IX, 90, 105, 131 (hereafter cited as CSPD-Jas. I).
which could not possibly have any claim to the property would be a more disinterested guardian than one who had. A third type of wardship was set up for heirs of tenants holding lands in inheritable tenures by copyhold, that is, who held their lands by established customary right as indicated in the copy roll of the manor. Wardship in this instance was akin to that for both tenure in chivalry and tenure in socage. The guardianship could be exercised by the mothers of young wards but it was the prerogative of the lord rather than the family of the ward.6

Guardianships were also established for persons, regardless of age, who were considered incapable of handling their own estates. Young heiresses and women of property who were insane or led dissolute and spendthrift lives were likely to be placed under a guardian. This seems to have been a rather humane action to take, rather than otherwise, and the records of the Court of Wards and Liveries, which handled matters pertaining to the king's wards, indicate that the court handled such affairs with fairness. It freed Katheryne Tothill from imputation of idiocy in 1626 and dismissed her from guardianship.7

A woman's legal age varied according to her marital


status. If she were at least seven years old and the eldest daughter, her father or guardian could demand the marriage portion of his feudal aids, one of the pecuniary contributions claimed by lords from their tenants on special occasions. If he died leaving her unmarried, however, she could demand that his administrators turn over this money to her estate. Moreover, if she were married and her husband died after she reached nine years, she could claim her dower rights, that is, the share of her husband's estate which the law gave to a widow for the maintenance of herself and her children.8

At twelve years she was at the minimum age for making a contract, a will, or entering marriage. Contemporary opinion, however, tended to look with disfavor on marriage at such an early age. There is a case in the Court of Requests which indicates that the marriage of a yeoman's daughter who was less than twelve years old was not only refused sanction by the guardian but was disapproved by friends and neighbors because of her young age. It was possible, in this instance, for a woman to claim later that her marriage was not valid because she had not been of the age of consent at that time. In 1653 this age of consent for marriage, or for making a contract, was raised to fourteen for women.9

8Coke, I Instit., fols. 30v, 78v-79r; II Blackstone 64, n. 4; 3 Edw. I, ch. 36; Christopher Saint-German, The Dialogue in English, betweene a Doctor of Divinitie, and a Student in the Lawes of England (London, 1638), fol. 114r (hereafter cited as Saint-German, Dialogue).

If she were less than fourteen and unmarried at the time of her father's death, and her guardian then failed to offer her a suitable marriage by the time she had reached sixteen, she had a right to enter upon her lands and evict the guardian. Sixteen was the usual age for single women to be out of wardship for their persons, but today it seems surprising that a sixteen year old orphan would be regarded as capable of managing her own house and property. It did happen, for at Mappes-hall Manor in Clifton Hundred, Bedfordshire, Elizabeth Leventhorpe, whose father had died in 1621 when she was only four, obtained livery (release of her property from wardship) of her manor in 1633 at the age of sixteen. 10

If a female ward were offered a marriage before she reached sixteen and refused, her guardian was entitled to retain her lands along with their profits until she became twenty-one or tendered a marriage fine, that is, a money payment. As long as she remained in wardship for her person, she could not marry without her guardian's consent lest she lose her inheritance; if she did marry, her husband was in danger of

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losing his liberty for five years or of being assessed a fine in the Star Chamber. The full rigor of the law was not always exercised against young lovers, for young couples who presented good reason for their marriage could gain pardons from the statutory punishment. In the canon law of the Church of England, it should be remembered, persons under twenty-one who were still under the care of their parents or guardians could not marry without their consent.

On the other hand, if an heiress holding land by tenure in socage were at least fourteen when she came into her estate, she was considered old enough to marry and to have a husband to perform any duties connected with the land; wardship was not permitted. If she held them by tenure in knight service the same rule did not apply; in this instance her guardian, though not permitted to have guardianship over her person, was permitted to have guardianship over her lands until she reached sixteen years. These extra two years, unfortunately, were added solely for the benefit of the guardian.


12 Church of England, Constitutions and Canons Ecclesiastical...agreed upon with the Kings Maiesties license in their Synod begun at London...1603 (London, 1633), fol. M1r (hereafter cited as C. of E., Constit. 1603).

13 Lavves Resolutions, pp. 16-17, 23; Saint-German, Dialogue, Fol. 14v; Coke, Compleate Copy-Holder, p. 26; Coke,
No child could become a ward of someone else while the father was alive, but this rule did not apply when the mother was alive. In fact in 1611 it was found necessary to grant mothers one month's preemption over other petitioners for the wardships of their heirs. They seem to have been allowed longer delays occasionally; in April of 1641 a Philippa Rogers, the widow of a William Rogers, who had died the preceding November, leaving behind a young son, was permitted to have a delayed inventory made of the lands held by her husband. She claimed that she had been unable to do it earlier herself because of illness and because Thomas Rogers, the law student to whom she had entrusted the matter, had neglected to ask for an extension of time. In the meantime, a Mr. Lee had stepped in and seized all the lands as well as the wardship of her son William Rogers. 14

Occasionally also a widow, even though the wardship of her child had been granted to someone else, would be allowed to keep her child until she was old enough to be given some education and training. Whether children in wardship were generally uprooted from their families at an early age or whether exceptions for humane reasons were usually made is hard to say because the evidence is insufficient. One hopes that the wards

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were allowed to remain with their families, but it must be admitted that a few women were not the best of mothers, for Gilbert Lord Gerard, before setting out on a voyage of exploration in the 1620's, sufficiently feared his wife's resentment to state in his will that his son's wardship, if one became necessary, should be given to a brother and cousin.\textsuperscript{15}

Persons or committees holding wardships in socage or in copyhold were held accountable for the profits or revenues of estates held in their care. They were obligated to give the heiress who obtained \textit{seisin} (Possession) of her estates a reckoning of the property and revenues belonging to her. As has been noted, she was eligible for this at the age of fourteen. A guardian in chivalry, on the other hand, was accountable only for the land and property of the estate. Understandably, the heiress would want her estates intact but this was not always possible. For various reasons these estates might have been \textit{alienated}, that is, have had their title transferred to another.\textsuperscript{16}

A licence or permission to alienate land held by tenure-in-chief had to be obtained first from the Royal Chancery and seems to have been granted regularly. Among reasons given by guardians who petitioned to alienate or sell land belonging to their wards were a need to obtain money in order to pay the debts of the heiress' parents or to provide for her living expenses.

\textsuperscript{15}CSPD-Jas. I, X, 205; Bell, \textit{Ct. of Wards}, pp. 117-118, 156-157.

\textsuperscript{16}II Blackstone 71 (n.9), 72, 88; Coke, \textit{Complete Copyholder}, p. 27.
This practice of alienation benefited the king, for when any portion of land held in capite was alienated, the number of the king's tenants-in-chief was increased along with the possibilities for bringing more business into the court from the collection of feudal incidents, or obligations owed by a tenant to a feudal lord in return for possession of his lands.\textsuperscript{17}

Of these incidents the one which most affected women were those relating to primer-seisin, feudal aids, wardship, and marriage. Primer-seisin was the King's right to collect a year's profits from land held in capite, or directly from him, whenever it passed from one tenant to another. Aids, or subsidies, were of several kinds, among which was the obligation to pay the lord a lump sum of money as a contribution toward the marriage portion, or dowry, of his oldest daughter. This sum could be demanded anytime after the girl had reached seven years. Wardship included, as we have noted, the right of a lord to collect the revenues of an estate while holding custody of her person in order to educate and train her to perform her duties, and the right to collect a half year's profit when the heiress obtained livery and seisin of her lands. Before the wardship was terminated the lord could exercise his right of maritagium, or of marrying her off to someone of his own

\textsuperscript{17}II Blackstone 72, 287-289; Bell, Ct. of Wards, p. 4; CSPD-Chas. I, XI, 576; XII, 19; XIII, 41-42, 379; XV, 187-188; VCH-Beds., II, 345.

\textsuperscript{18}Holdsworth, HEL, III, 61-67; II Blackstone 67-71; Coke, I Instit., 80r-80v; Cowell, Interpreter, fol. C3r; John Skene, De Votorum Significatione (London, 1641), p. 45; Plata, p. 216.
choosing without disparagement, or indignity. Disparagement included marriage to: a mentally incompetent person, a close relative, one attainted (or convicted) of treason, a person of illegitimate birth, an alien, a tradesman such as a haberdasher, a crippled or physically handicapped person, one chronically sick or diseased, a person unable to have children, or a woman who had lost her virginity outside of marriage.

Stories about the abuses of wardship by guardians and by the Court of Wards and Liveries were legion. Guardians were accused of confiscating all or most of the profits of estates to themselves, of alienating them outright, of letting them fall into ruin, of forcing undesirable marriages upon the heiresses, or less culpably to modern mores, of forcing them to do labor beneath their station. Understandably, wardships were greatly sought after and would-be guardians petitioned for them even when the parents of future wards were still alive, likely to die, or in their last illnesses. They were regarded more like an investment for the profit of the lord than a trust for the benefit of the heir. The revenues of the estate could bring in considerable sums to be employed for the guardian rather than the heir; but more so, the wardships sometimes could be resold to a third party, or the marriage could be


sold, that is, money could be made by letting the heiress be married to someone who offered to pay the guardian's price. If the heiress refused to accept such a match, or preferred to marry someone else, she had to forfeit the value of the marriage to her guardian. The amount of this fee was assessed by a jury, or could be as much as the heiress was willing to pay. 21 One, John Goodhand, even attempted to acquire a wardship and marriage by fraud. He was accused in 1636 of having falsified the age of an heiress, who was over sixteen, and of giving false information to the Court of Wards in order to get her into his hands and to marry her to another ward of his. 22

Many times these early marriage contracts resulted in heartbreaking situations. Young girls and women had no legal recourse in this matter and were bound to obey their parents and guardians. The younger daughter of Sir Edward Coke exemplifies such a situation; she was forcibly married in 1617 to the Duke of Buckingham's doltish brother, who was inclined to fits of destructive madness, and this despite her own protests as well as her mother's plea in the Star Chamber. 23 And, in 1633 Katherine Bowen, a married woman of twenty-four with a dowry of £200, was spirited away by her family after her husband

21 Bell, Ct. of Wards, p. 115; II Blackstone 69-71 (including footnotes). See also CSPD-Jas. I, VIII, 302.

22 CSPD-Chas. I, IX, 212-213.

had been imprisoned following their accusations that she was only an infant whom he had stolen away. Her husband claimed that all this was just a pretext so that they would be unhindered in their plans to force her to commit bigamy by marrying another whom they felt was more deserving of her dowry. 24

The kings of England occasionally took a personal interest in arranging marriages for courtiers and their relatives. James I was present at the marriage of Frances Coke to Sir John Villiers in 1617; and two years later James sent a letter, followed by a visit, to Sir Sebastian Harvey, the Lord Mayor of London, to request that the latter's only daughter, a child of fourteen, be married to Sir Christopher Villiers, a second brother of the Duke of Buckingham. The Lord Mayor became ill at the thought, yet managed to withhold his consent to the marriage even when Villiers himself wooed the girl. His daughter later married a gentleman of the king's bedchamber. 25 She was not the only heiress who rejected the Duke's boring and unhandsome older brother; another heiress, who had no father to protect her, slipped away from her guardian and married still another gentleman of the bedchamber, "more to be rid of one than from love of another." 26 Charles I tried, unsuccessfully, to arrange a marriage between the widower Earl of Bath and Mistress 24 CSPD-Chas. I, VI, 435.


26 CSPD-Jas. I, X, 366; Complete Peerage, IX, 648.
Dorothy Seymour, one of the ladies at Court, but the Earl was unwilling and married another.27 Charles did succeed, as he usually must have done, in arranging a marriage between his servant John Houston and the heiress of Sir George Carew, a former master in chancery and member of an influential Cornish family, but not before he granted each of them £400 per year in order to stem her friends' objections to Houston's lack of estate.28

The only class of women who were secure from forced marriages were widows. They did not need parental or guardians' consent to marry but, whenever they did marry, they were required to have their lords' consent if they held lands by tenure in knight service. If they held their lands from the king himself, they needed his approval under penalty of losing one year's income from their dower estates.29

The feudal guardian's authority over the person and marriage of a ward were not an unlimited one, as we know. Often times these men and women probably yielded to the entreaties of their children or wards and did not press unwanted matches. By 1635, however, the principle had been enunciated in court that

27Complete Peerage, II, 18; CSPD-Chas. I, VI, 64. See also CSPD-Chas. I, XIII, 139 and VCH-Beds., II, 262, in which the heiress of George Keynsham of Tempsford, Beds., did not marry the son of Sir Francis Windebank despite the King's suggestion.

28CSPD-Chas. I, VII, 311; DNB, III, 959.

marriage contracts should be the result of free consent by both parties.\textsuperscript{30} This was sanctioned in 1645 when an act of parliament declared that the consent of parents and guardians should be obtained before marriage but that, at the same time, they should not withhold consent without just cause and should not force children to marry against their own wishes. In 1653 it was an actionable offense for an overseer or guardian to sell or place children in the hands of persons who were likely to force a marriage upon them.\textsuperscript{31}

The age of consent to marriage had long been legally fixed at twelve for a woman, but contemporary opinion frowned on marriages made before the bride was in her teens. There is a case in the Court of Requests which indicates that the objections of the parents and neighbors to a marriage in which the bride was less than twelve very obviously were based on the latter's youthfulness.\textsuperscript{32} In 1653, also, this minimum age for marriage for a girl was advanced to fourteen.\textsuperscript{33} The Court of Wards and Liveries was first abolished by various acts and ordinances of the Long Parliament and again in 1660 when the King, in return for monetary payments, surrendered his feudal privi-


\textsuperscript{31}AOU, I, 600 and II, 717.


\textsuperscript{33}AOU, II, 718.
leges including tenures in knight service, wardship, and marriage. 34

In English law, which was shaded by the canonical concept of marriage as a sacrament, a husband was given dominion over his wife and both were regarded as one person. Consequently, a married woman generally assumed the social and legal status of her husband while relinquishing that of her parents. 35 A seventeenth-century writer, William Heale, declared, "the wife is only dignified by the husband and not anyways the husband by the wife." 36 Despite this obvious method of rising in social standing, women were not supposed to be conscious social climbers, for contemporary literature casts doubts on the appropriateness of misalliances between men and women of different classes. But they did occur. It is a well known fact that English society was more mobile than that on the continent. 37 Yet, England had many facets of a closed society; we can sense something of this in a case concerning the right of Mary Ferriar, the wife of a freeman of Great Yarmouth, who was accused of sitting in church in a pew reserved for the wives of

34 Ibid., I, 833 and II, 1043; Bell, Ct. of Wards, pp. 150-166; SOR, V, 259.
35 Coke, I Instit., 123r; Holdsworth, HEL, III, 520; Finch, Law, pp. 41, 44.
The Common Law of medieval England, unlike the Roman Law of continental Europe, provided that children should inherit the status of their fathers. An English freewoman who married a villein, that is, a male person attached to a manor, assumed villein status for herself and her heirs while a niefe, a female serf, who married a freeman, gained free status for herself and her heirs. The Common Law reasoning behind this was that a child bore the father's name and a husband could never be in subjection to his wife. An exception was made in the case of illegitimate children: if the father did not recognize them, they were given the status of the mother.  

A niefe, as much as an heiress to lands held by tenure in military service, was not free to marry without her lord's consent if, by so doing, she prejudiced his claim on her services. Fortunately, the social and legal impediments of villeinage were scarcely felt by the time the Stuarts came to the throne; the institution was increasing in obsolescence and the last known instance of villein status was that tested in the case of Pigg v. Caley in 1616.

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40 Coke, I Instit., 136v.

41 Holdsworth, HEL, III, 507-509; II Blackstone 96.
When members of the noble classes were involved, the social situation was less rigid. A woman who belonged to the nobility by birth did not lose her status if she married a man who was not. If she gained this status by marriage, however, she could lose it in the same manner.\textsuperscript{42} Lady Elizabeth Hatton, the granddaughter of William Cecil, Lord Burghley, after the death of her first husband, married Attorney General Edward Coke. She refused to call herself Mrs. Coke or Lady Coke and preferred to be called Lady Hatton, as she was.\textsuperscript{43} But the contrary situation applied to the case of Lady Anne Powis. She was the legitimated daughter, born about five years before the formal marriage, of Charles Brandon, Lord Suffolk, and Anne Browne, a gentlewoman, and she was married to Ralph Hayward after the death of her first husband, Edward, Lord Grey of Powis. In a suit brought against Suffolk by Hayward and his wife, an exception was made to her use of a title belonging to her late husband. She was required to style herself according to the rank of her living spouse on the grounds that a woman was sub


\textsuperscript{43}CSPD-Chas. I, VII, 405; Charles W. James, Chief Justice Coke, His Family and Descendants at Holkham (New York: Scribner's, 1929), pp. 26-29; Catherine Drinker Bowen, The Lion and the Throne: The Life and Times of Sir Edward Coke (Boston: Little, Brown, 1957), pp. 123-126, 182; Hastings Lyon and Herman Block, Edward Coke (Boston: Houghton Mifflin, 1929), pp. 88-91, 112. Coke was not knighted until May, 1603, four and a half years after the marriage.
protestate viri, under the influence of her husband. In the same family, Lady Elinor, daughter of the Earl of Northumberland and the wife of Sir William, Lord Herbert of Powis, was permitted to use the higher rank and precedence which she inherited as the daughter of an earl rather than the one she gained from her husband's barony.

Although the daughters of noblemen were legally regarded as commoners, they were addressed by the courtesy title of "lady." This courtesy was usually extended to women who lost their peerage status by intermarriage with commoners. A similar courtesy does not seem to have been consistently applied to the non-noble spouses of these same ladies unless an actual title of honor, as opposed to baronial estates, was involved; that is, a widower of a woman who had held a barony was not entitled to be known by the term "baron." Even then, known instances of this practice are so few that it is not possible to make any generalizations.

Unlike men among whom the oldest living son—and only the oldest living son—automatically inherited the family title, women could not be certain regarding a title of honor. Theoretically, a woman could inherit a peerage if she were the only

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44 Doddridge, Law of Nobility, fol. L2r; Complete Peerage, VI, 142 and XII, Pt. I, 458; I Blackstone 401.

45 CSPD-Chas. I, III, 503; Complete Peerage, X, 642. For another example, see CSPD-Chas. I, I, 573; Complete Peerage, XII, Pt. II, 951-952.

living descendant in a direct line of the original grantee and if the title were not limited to male heirs. In the late Tudor and early Stuart periods this doctrine was not yet fully developed, for there had been few claims of female succession to a title. The number of such claims and of claims to succession through a female heir increased in frequency throughout this period, yet they do not present us with a clear progression of definitive statements in favor of women. Some claims were allowed, some were not, and success seems to have depended somewhat on whether or not there was a male to contest the claim.

In 1604 the House of Lords summoned Edward Nevill to Parliament as Lord Abergavenny despite the fact that in 1599 the judges of the Earl Marshall's Court had recommended that the title should be granted to Mary Fane, the only child of Henry, the previous Lord Abergavenny. Nevill was her second cousin and entitled, as heir male, to the estates and castle of Abergavenny. But the honors and titles were another matter. Nevill


48 Coke, I Instit., 1657; Complete Peerage, IV, 674, 702-705. See also the statements on the Abergavenny case in Collins, Proceedings, pp. 69-70. Incidentally, Bishop Stubbs, in his Constitutional History of England (3 vols.; Oxford: Clarendon Press, 1874-78), III, 438, says that the descent of the peerage through females and the creation of new titles of nobility by patent, alike, helped to put an end to the practice of calling a peer by his family name.
knew that his case was weak when he petitioned James I to refer his suit from the Earl Marshal's Court to the House of Lords. The peers, as could be expected, voted favorably for the party of their own sex; Edward Nevill received a summons to Parliament as Lord Abergavenny and Lady Fane was compensated with the barony of Despenser.49

Margaret, Countess of Cumberland, and her daughter Lady Anne Clifford, whom we have already met, petitioned in 1606, 1628, and 1663 for the barony of Clifford. They based Anne's claim for her father's titles and lands on custom and on the Common Law rule that females might inherit when there was no male heir. In his will, Anne's father, George Clifford, Earl of Cumberland, had left the barony to his brother despite the fact that it was entailed on Anne, his heir general; that is, she was his heiress because the barony was not limited to male heirs. Though Anne's uncle refused to surrender the lands, he knew his own claim was weak compared to hers, for he offered to pay Lady Anne's husband £20,000 at different times in return for her renunciation of the claim. But she was insistent and refused to be intimidated by her husband or the King into accepting this monetary offer. She also never succeeded in gaining the titles during her lifetime.50 In 1616, on the


50 It was later awarded to her, posthumously, we might say, when her son was granted it two years after her death. CSPD-Ches. I, III, 95, 432; Notestein, Four Worthies, pp. 126-134; Williamson, Lady Anne Clifford, pp. 33-35, 157; Complete Peerage, III, 295-297 and IV, 704, 712-715.
other hand, Sir Thomas Knyvett's claim to the barony of Berners was allowed; he claimed it through his grandmother, who was the sole heir of John Borchier, the last person to hold the title and who had died in 1533. She had never claimed the title.

In 1616, also, William Cecil, a great grandson of the first Baron Burghley, was confirmed in his claim, through his mother who had been the sole heir general of her father, to the barony of Ros. Cecil had been opposed by the Earl of Rutland, a cousin, who claimed that he was the heir male and that the barony had been "inseparably knit" with the earldom. In compensation, Rutland was given a new barony, Ros of Hamlake. In passing, it might be pointed out that the award was given to Cecil even though Rutland possessed the original estates of the barony and, also, that the court decision announcing it was written by Sir Thomas Lake, Cecil's father-in-law. Notwithstanding, Cecil's death without heirs two years later permitted Rutland to claim the barony of Ros, and Rutland's male descendants by his second marriage continued to claim it until 1667, when it was allowed to George Villiers, second Duke of Buckingham, who was the son of the sole surviving daughter and heir of Rutland's first marriage.52

51 Complete Peerage, IV, 701-703; Collins, Proceedings, pp. 350-351.

52 Complete Peerage, IV, 704-706; 733-734 and XI, 109-111; Collins, Proceedings, pp. 162-172; Round, P. and P., I, 249-250. For an interesting sidelight on this case, see Maud Stepney Rawson, Penelope Rich and Her Circle (London: Hutchinson, 1911), pp. 300-301 (hereafter cited as Rawson, Penelope Rich).
The issues raised in the Ros case, although settled in favor of the heir general, were revived in 1641. In that year Charles Longueville petitioned for the barony of Grey of Ruthyn, claiming it through his mother, the only sister of the previous Lord Grey, who was also the eighth Earl of Kent and who had died childless. Longueville was opposed by his distant cousin, the ninth Earl of Kent, who was the heir male to the earldom and barony. Kent maintained that the earldom and barony had been and were inseparable. He also cited precedents where baronies had been given to male descendants who, coincidentally, happened to be holding the earldom, even when there was a sole female heir. His two advocates were William Dugdale and John Selden. The latter had been the legal advisor of the eighth Earl and was gossiped to be the husband or intimate friend of the late Earl's widow, Elizabeth Grey, the granddaughter of the famous Bess of Hardwick.

Selden argued that when an earldom and barony by writ were joined together, they could not be separated so long as there were male heirs to the earldom. He attacked the decision in the Ros case, asserting that by law and usage baronies by writ were descendable only to male heirs and that therefore a woman could neither inherit one nor convey to her heirs a right to one. He also maintained that where the king conferred such an honor on the only daughter of the baron, it was by His Majesty's grace rather than by law and was therefore a new creation. In the same case considerable argument was devoted to the matter of possessio fratris, the doctrine that a sister of
the whole blood should be given precedence as heir over a brother of the half blood when titles of honor were involved. The judges reasoned that the doctrine could not apply because no entry or seizure could be made upon a dignity as upon land. They also declared that anyone who claimed a title had to base his position on relationship to the first person to receive that title rather than to the last person who held the title.53

There is, nevertheless, the interesting instance of a woman inheriting a title that, by all precedents, belonged to a male heir. This occurred upon the death of Henry, 5th Baron Stafford, in 1637. He had only one heir, a sole surviving sister, Mary, but the barony was claimed by Roger Stafford, his cousin who was almost fifty years older than Henry himself and who was a grandson of the 1st Baron Stafford. Roger's succession should have been uncontested, for the barony was entailed in the male line, but he was unjustly denied the title on the ground of his "very mean and obscure condition." The dignity, instead, was awarded by the King's Commission to Mary Stafford and her husband, Sir William Howard, as Baron and Baroness Stafford. Roger, incidentally, was awarded £800 in 1639 for resigning his claims and title; he died the next year at Arundel House where he was said to have been kept prisoner to prevent his marrying.54

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54 Complete Peerage, XII, Pt. 1, pp. 184-189; CSPD-Chas. I, XVII, 54-55; Pine, Peerage, p. 286.
When there were two or more surviving heiresses to a title, the matter of inheritance was complicated. All daughters, even sisters of the half blood, had equal rights as coheirs to the dignity. Since, moreover, a title was an impartible inheritance which could not be divided, it was permitted to remain in abeyance, or suspense, until the king determined which one of the heiresses, or her husband, or her heirs, could bear it. Otherwise, the abeyance was not terminated until a male heir appeared or the titles of the coheirs became united in one person. This happened to the Baronies of Furnivall, Strange, and Talbot in 1616 at the death of the Earl of Shrewsbury; he died leaving these baronies in abeyance between his three daughters. His youngest daughter inherited them as the sole surviving heir in 1651.

This period of abeyance could range from a few months or years to many more. By the opening of the eighteenth century there were instances of titles that had remained in abeyance for a few centuries because it had not been determined to whom they should descend, and because in the meantime no one had actually claimed them. At the beginning of the seventeenth century, however, this doctrine was not yet fully developed or understood. This is partly indicated by the fact that the law dictionaries of the time limit the use of the word abeyance to


56 Complete Peerage, V, 592; XI, 715-716.
states and leases and do not mention it in connection with dignities or peerages. In the latter century the feudal system was rapidly breaking down and there was no reason for giving priority to the eldest daughter or to the daughter whose husband could be the most trusted by the king. This was especially true after personal titles unconnected with land began to be bestowed. Also, when the king granted a title of honor he no longer disposed of a dignity, a parcel of land, and a seat in the House of Lords as well. Sir Edward Coke, who is often cited on the matter of abeyance, did not really understand that the changing nature of land tenure made abeyance possible in his day, whereas it was not necessary in an earlier day when the eldest daughter, by the principle of esnecy, or seniority, had first choice among coparceners and usually chose the essential portion connected with feudal service or the title. In addition, Coke's citations were faulty; his cases have nothing to do with titles per se.

From today's hindsight, historians surmise that abeyance seems to have been applied only to baronies created by writ, that is, created by writ of summons to parliament. In the early Stuart reign, however, there was no conscious policy as to which degrees of peerage abeyance could be or would be applied. Although the doctrine of abeyance was not clearly

57II Blackstone 216, n. 13; Palmer, Peerage Law, pp. 100-102; Pike, Hse. of Lds., pp. 131-133; Cowell, Interpreter, fols. A1v-A2r; William Rastell, Les Termes De La Ley (London, 1624), fols. 3r-3v (hereafter cited as Rastell, Termes).

recognized until the reign of Charles II, there are some indications that it was admitted earlier. In 1626 Charles I awarded the earldom of Oxford to Robert Vere, a second cousin of the eighteenth earl, in preference to one of the half-sisters of the same earl. The king seems to have regarded the title as impartible among three coheirs and to have considered it as being at his pleasure to dispose of, whereupon he granted it to the second cousin of the half-sisters as a gift from the crown rather than by right of the petitioner.

In 1628 Catherine Ogle received letters patent confirming her possession of the barony of Ogle. She was the only surviving daughter of the 5th Lord Ogle, who had died in 1597, and was declared to be Baroness Ogle by special grant of the king (de gratia nostri speciali), just as had been done for the earldom of Oxford. Thirteen years later, a more definite recognition of abeyance was offered in the Darcy and Conyers Peerage Case. Conyers Darcy, a coheir to the Conyers barony (he was not the sole heir until 1644), petitioned for the barony of Darcy as sole male heir of his cousin. He was awarded both titles in a warrant which declared that the crown had the

288; Complete Peerage, IV, 674-679; Palmer, Peerage Law, p. 100; Round, P. and P., I, 128-140.

59Pine, Peerage, p. 148; Pike, Hse. of Lds., p. 133; Complete Peerage, VI, 700.

60Palmer, Peerage Law, p. 101; Pike, Hse. of Lds., pp. 132-133; Complete Peerage, IV, 711 and X, 256-257, App. F.

right to grant the title to one of the coheirs. 62

A similar case was presented in 1646 but was not settled until a few months after the Restoration of Charles II. In this instance the king proposed to grant the barony of Windsor to Thomas Hickman for his services in the Civil War. He was the son of Elizabeth Hickman, one of two sisters and coheirs to Thomas, Lord Windsor, who had died without issue. Nothing happened until 1660 when Thomas was granted restitution of the title; in the patent it was clearly stated that the king had the right to declare "which of the said coheirs shall enjoy the dignity of their ancestors." 63

Although the right of women to inherit dignities or to pass them on was gradually fixed in this period, that of their commoner husbands to share them was lost. From the time of the conquest there had been men who had enjoyed the dignity of barons and who had been summoned to parliament because they were in possession of their wives' lands. Whether they were entitled to this by jure uxoris, by right of their wives, or because they were in possession of lands which carried the burden or privilege of summons to parliament, is a debatable issue. 64 Early in the reign of James I the last case involving this matter


64 Pike, Hse. of Lds., pp. 103-107; Collins, Proceedings, pp. 2-3, 120; Doddridge, Law of Nobility, fols. G7v-G8v; Com-
was disposed of. From 1596 to 1604 Sampson Lennard continually petitioned to be named Baron Dacre in right of his wife. His petition was reported favorably by the Queen's officers but nothing happened and Lennard made another petition. Finally, several weeks after his wife had died in 1612, he was granted precedence as heir to his own son, who had inherited the rights as heir male. Ironically, had Lennard received the patent earlier when his wife was living, he would have lost it at the time of her death because his son would then have become her legal successor. 65

Married women in England, as elsewhere, were usually addressed by the feminine equivalent of their husband's titles. The English wives of English noblemen shared the dignity as well as many of the privileges of their husbands as peers; but when one of the spouses was not an English citizen by birth or naturalization, matters were complicated. The foreign wives of English noblemen could share neither the title nor the privileges of their husbands unless they became citizens themselves. Since foreign titles had no standing in English law, the foreign wives of foreign noblemen enjoyed no special privileges; in fact, the English wife of an Englishman who acquired a foreign title was incapable of sharing the honor or dignity.

65Palmer, Peerage Law, p. 136; Complete Peerage, IV, 11-12 and V, App. A; Round, P. and P., I, 15-16, 89-92. A confused account of the case is in Collins, Proceedings, pp. 24-60; in this same work, see p. 11 for Henry VIII's acerbic opinion on granting peerages by jure uxoris.
in England. This was true of Scottish and Irish titles to a great extent, for they had no standing in the law unless the holder were summoned by the king, under his Great Seal, to the Upper House of Parliament and assigned a seat in the Council among the peers.\(^66\) In a less negative vein, one must point out that women were not always limited by the social status of their husbands; indeed, a woman could gain a social status higher than that of her husband, for James I created peeresses without permitting them to share the honors with their husbands. In 1618 he made Lady Mary Compton, who was the wife of Sir Thomas Compton and mother of George Villiers, Duke of Buckingham, the Countess of Buckingham for life. This made Lady Finch, the daughter of Sir Thomas Heneage, Vice-Chamberlain of the Royal Household, so vexed that she importuned the King for similar honors until in 1628 she, too, received one—as 1st Viscountess of Maidstone and Winchelsea, with privilege to pass on the title to her male heirs. In 1640 the King granted Elizabeth Savage an earldom as Countess Rivers for life, and in 1644 he did likewise for Alice Leigh, one of the wives of Sir Robert Dudley, who possessed an imperial title. He granted her a lifetime title as Duchess Dudley.\(^67\)

Nevertheless, the legal existence of a married woman was generally suspended or incorporated into that of her hus-

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\(^66\) Doddridge, Law of Nobility, fols. L6r-L6v; Palmer, Peerage Law, pp. 137-139.

\(^67\) Selden, Titles of Honor, pp. 724, 726; Pike, Hse. of Lds., p. 372; Doddridge, Law of Nobility, fol. K7r; CSPD-Chas. I, III, 308; Complete Peerage, II, 391-392; IV, 486-487; VIII,
band, and she was known as a feme covert—literally, a woman under
cover or subordination. Her husband, for example, had no right
to grant as a gift or sell to her any lands because he could not
sell or grant anything to himself, and the goods he gave her were
regarded as his own. However, there were ways to circumvent these
restrictions. A few borough customs, such as in York, permitted
women to accept gifts from their husbands, and trusteeships could
be devised whereby land was given to a third party to hold for the
benefit of the wife. A single woman, known as a feme sole, or a
woman acting alone, was not bound by these restrictions. If she
were of legal age she could, in fact, perform many legal actions
on her own.\(^{68}\) Similar rights were held by women in the cities,
towns, and villages where bourgeois habits were discordant with
the complete merging of the wife's personality into the husband's.\(^{69}\)

Thy husband is thy lord, thy life, thy keeper,
Thy head, thy sovereign...

The Taming of the Shrew
Act V, Scene 2, Lines 146-147

752; XI, 26; XII, Pt. II, 773-775.

\(^{68}\) I Blackstone \(\frac{1}{2}\); Coke, I Instit., 112r; Lavves Resolutions, pp. 119, 125, 129, 136; Thomas Littleton, Littleton's Tenures in English, Lately perused and amended (London, 1612), fol. 35v (hereafter cited as Littleton); BLD, p. 745; Sir George Croke, The Reports of Sir George Croke, Knight: late one of the Justices of the Court of King's Bench (London, 1657), p. 355 (This book contains cases tried in the first sixteen years of Charles I; it is hereafter cited as Croke, Reports (1657)).

\(^{69}\) Plucknett, CHCL, p. 313; Mary Bateson, ed., Borough Customs (2 vols.; London: Bernard Quaritch, 1904-06), I, 222-230 (hereafter cited as Bateson, Borough Customs); Coke, Complete Copy-Holder, p. 95.
since women were under the dominion of their husbands, fathers, or guardians, they were almost entirely subject to them under the Common Law. Daniel Rogers, the Puritan divine, declared that a wife's first duty to her husband was subjection and her second, helpfulness. Nevertheless, those who were fortunate enough to have kind and understanding husbands were probably not conscious of any degradation in their own position and probably, even, had much influence on their husbands' thinking. As the lawyer, Sir Thomas Wentworth, declared during the parliamentary debates over the matter of the marriage between the Prince of Wales and the Infanta of Spain, "A wyfe taketh up a great rome in her husbands hart."

A woman who was so unfortunate as to be married to an inconsiderate or domineering man could be reduced to the position of a slave or a mere drudge with little recourse under the Common Law. An illustration of this can be pointed to in Sir


71 This is not the future Earl of Strafford, but the son of Peter Wentworth who was imprisoned by Elizabeth I for freedom of speech and who, himself, was imprisoned after the dissolution of Parliament in 1614. He was opposed to the Spanish marriage in 1621.


Thomas Seymour's Case (1613), in which the court agreed that Sir Thomas' wife had no remedy against him for threatening to beat her, because she was *sub virga viri*, beneath the rod or power of her husband. 74 Sometimes ill-treated women ran away from home to escape their husbands. In 1609, for example, Lady Elizabeth Kennedy came to the gates of her neighbor, Sir Arthur Gorges, "bare legged in her petticoat, old cloak, and night gear in a great fright, being violently driven out of her house by Sir John Kennedy;"75 she was the older of the two daughters of Lord Chandos and had a fortune of £16,500 but died in poverty eight years later. Moreover, in June, 1636 Mary Floyd petitioned Archbishop Laud for help after traveling over one hundred miles to her father's house to escape her husband and her father-in-law. After five years of marriage and three children her husband's father had called her a "whore" and "continually instigated" her husband against her so that they never lived peacefully together again. The previous December, after being "egged on" by his mother, her husband had even beaten her, stripped off all her clothes except one coat--so she said--and sent her out of the house with a threat to put her in the Bridewell. In this "distressed state" she traveled all the way to the house of her father, who would have had her pursuing husband thrown into prison until he agreed to support her. But she believed her husband's pleas


75CSPD-Jas. I, VIII, 541, 547; Complete Peerage, III, 127.
that he would maintain her, and this made her father so vexed
that he would have nothing more to do with her.\textsuperscript{76}

A husband was allowed to correct his wife with reasonable
personal chastisement. If he threatened her or beat her with
undue severity, she or the justice of the peace could ask the
law to stop him and give her protection against him.\textsuperscript{77} In
1608 a debate was held at Oxford University on this very subject—
whether it was lawful for men to beat their wives. The man who
defended this thesis was excoriated in print the following
year, for William Heale, the chaplain of Exeter College, wrote
a book to confute such an assertion.\textsuperscript{78} Likewise, if a woman
threatened her husband with bodily harm, he could claim the
same protection against her. The fact that he could, however,
does not seem to have been generally understood, for contem-
porary writers were not in agreement on this matter.\textsuperscript{79} One
kind gentleman who sympathized with the travails of these ladies

\textsuperscript{76}CSPD-Chas. I, IX, 546.

\textsuperscript{77}Dalton, Countrey J., p. 163; Fitzherbert's Natura Brevium,
fols. 80, 230, cited in William Lambard, Eirenarcha: Or the Of-

ciess of the Justices of the Peace (London, 1599), pp. 80-81;
S. C. Ratcliff & R. C. Johnson, eds., Quarter Sessions Order

Book 1625-1665, Warwick County Records, Vols. I-IV (Warwick:
L. Edgar Stephens, 1935-38), IV, 96 (hereafter cited as Warwick
Q. Sess. Rec.).

\textsuperscript{78}The subtitle of the book was: An Opposition to Mr.

Geager's his assertion, Who held in the Act at Oxford, Anno

1608 that it was lawfull for husbands to beate their wiues.

\textsuperscript{79}Cf. Lawves Resolutions, pp. 128-129, which states that

there was no remedy for buffeted husbands, with Dalton, Countrey

J., p. 163 and Lambard, Eirenarcha, p. 31, which says the con-

trary. Lady Stenton's book (Eng. Wom., p. 162), amusingly, does

not mention that henpecked or hurting husbands had equal rights

against their wives.
did suggest that they look to Parliament for liberation, and redress of their grievances, but this view seems to have been a minority one. Most women seem to have accepted their subordinate status in the community; there are few complaints of a nature that would lead one to think otherwise. Their voices, however, were almost as loud as their male counterparts when matters of property were involved.

80*Lawves Resolutions, pp. 144-146.*
CHAPTER TWO: HER PROPERTY RIGHTS

A complex set of rules relegated the seventeenth-century woman to an inferior legal position, less so for the single woman and more so for the married one. The Common Law distinguished between real estate, or immovable property such as lands and buildings, and personal estate, or movable property such as money, furniture, household goods, jewelry, and livestock. A woman could own both types of property, and the principal means through which she could acquire it were by inheritance, by will, by gift or grant, by purchase, and by marriage.

Her rights by inheritance in regard to property were less restricted than in regard to titles of honor. It was possible for a woman to inherit the estates of a barony but not the title attached. To claim property a woman had to be the surviving descendant of the last person who possessed it. She was preferred, when the land was not entailed in the male line, over collateral relations such as male uncles and cousins because the Common Law held that property descended to the issue ad infinitum of the person last seized before it could pass to any collateral relations. ¹ Unlike the inheritance of a title, ²

¹Finch, Law, p. 42; II Blackstone 384-388.
²Coke, I Inst., 15r; II Blackstone 208.
for which a woman had to prove herself to be the sole heir of
the person in whom the honor was first created, to inherit
property she had only to be the heir of the last possessor.
The reason for this difference in descent between titles and
lands seems to be that for peerage titles there was proof of
the creation in charters, letters patent, or writs of summons
to Parliament, for all of which there was a record in the Chan-
cery. This was not true for property records. 3

A woman's rights to real property were greatly restricted
by the law's discrimination in favor of men; the Common Law
favored the patrilineal and primogenitural line of descent.
It was patrilineal in that ancestry and descent were traced in
the direct male line; that is, heirs on the father's side were
preferred to the heirs on the mother's side, even if the for-
mer were female and the latter, male. However, if the proper-
ty and land were descended from the mother's side, her collat-
eral relations were preferred before the father's. The Common
Law was primogenitural in that the eldest son inherited the
property to the virtual exclusion of his brothers and sisters.
This was done to prevent the estates from being broken into
many holdings so small that they could not support the posses-
sor or his family. In this scheme of the law, the woman was
relegated to a secondary role. 4

3 Palmer, Peerage Law, p. 96; Pike, Hse. of Lds., p. 145;
Coke, I Instit., 12r.

4 II Blackstone 217-219, 231; Coke, Compleat Copy-Holder,
pp. 142-143; Coke, I Instit., 12r; Lavres Resolutions, pp. 9-
10; Saint-German, Dialogue, fol. 13r.
It was not only the law that insisted upon this arrangement. The men themselves felt this way—or, as one would say today, were conditioned to think this way. Sir George Selby, the mayor of Newcastle, had daughters but no son so he settled the greatest part of his estates, which apparently were not entailed, on his brother and the latter's male heirs, leaving a small part to his widow. After Sir George's death in 1625, his daughters protested and caused their uncle much expense in defending his title to the property. 5 The same was true of Lady Anne Clifford, the only surviving child of the third Earl of Cumberland and who herself should have inherited her father's lands because these lands were supposed to pass from eldest child to eldest child. She did not inherit them until 1643, when the male line of the Cumberlands died out. 6 Usually, however, these women—whether as daughters, granddaughters, or sisters, nieces, or cousins—seem to have had little difficulty in gaining recognition of their claims to inheritances. 7

Primogeniture did not apply in some instances. When es-


6 That is, her uncle's son died, leaving only a daughter as his heir. Notestein, Four Worthies, pp. 126, 148; Pembroke, Diary, pp. xxviii-xxix, xlii-xliii; Williamson, Lady Anne Clifford, pp. 33-36, 179-180.

tates were entailed in the female line, men had no right of inheritance. An entailed estate, such as one in fee-tail male or fee-tail female, differed from an estate in fee simple in that the latter did not limit the estate to heirs of either sex. A surviving daughter or other heiress, also, would be preferred over a surviving son when there were conditions attached to the possession of an estate. This was true of an estate in frankmarriage, where one man would grant an estate to another on condition that he marry his female heir, with the estate being limited to heirs of this marriage. A daughter by this particular marriage would be preferred to a son by another marriage.

Another instance when a woman had some preferential rights occurred when the surviving male heirs were heirs only of the half-blood or of a second and subsequent marriage. This was the doctrine of possessio fratris whereby a full sister would be preferred to a half-brother. Since descent was traced first through heirs having the same parents in common, a woman could inherit from her brother, providing he had survived his father and had taken possession of the estate, before their half-brother was entitled to do so. The reason for this was that the half-brother—for example, the son of a second marriage—was usually not the oldest surviving son at the time of the father's death. Had the half-brother been the oldest

8 Coke, I Instit., 24v; II Blackstone 114-115; Littleton, fols. 4v, 5r, 6r–7v.

9 Littleton, fols. 5r–5v; II Blackstone 115; Coke, I Instit., 88r.
male heir at the time of the father’s death, however, he would have been entitled to take possession of the estates; the estates would have passed to his side of the family and his half sister would have been excluded entirely. 10

It was possible for a person to lose or gain an inheritance because of the posthumous birth of a child who had greater rights as an heir or heiress to the previous possessor. If a woman inherited as sole heir to a man, whether as his daughter, granddaughter, sister, aunt, or niece, she could be disinherited if a closer relation were afterwards born. If she herself were born after a surviving, but less eligible relative had taken possession of the property, she (through her guardian) was entitled to claim it. The intervening revenues of the estates or property did not have to be surrendered as well; they belonged to the person who rightfully had possession at the time. 11 In 1619, for example, Gertrude Bacon, the posthumous daughter of John Bacon, an English merchant who died in Prussia two months before she was born there, successfully sued her cousin James Bacon, son of John’s younger brother, for possession of estates which rightfully belonged to her. 12 On the other hand, it was possible for a woman to withhold an estate requested by the legal living heir of her husband if she were pregnant at the time of the

10 Coke, I Inst., 11r-11v; II Blackstone 227; Coke, Complete Copy-Holder, pp. 142-143; Bacon, Elements of the Com. Law, p. 80; Littleton, fols. 3v-4r.

11 Coke, I Inst., 11v; II Blackstone 209, n. 6; Pinch, Law, p. 34.

12 Coke, Reports (1657), pp. 437-438.
latter's death. The "next heir at law" could resort to a writ de ventre inspiciendo, which compelled an examination to determine whether the landlord's widow were actually pregnant. 13

When there were no male heirs and women did inherit, primogeniture was not strictly applied; all daughters, even of different marriages or posthumous, inherited equal parts of the estate as coparceners, or equal sharers. If a man had no surviving male heirs or daughters, his granddaughters, sisters, nieces, aunts, or great aunts could be coparceners. The children of these coparceners, sons and daughters alike, also inherited as coparceners to some degree. That is, if a man had only two daughters, and both were deceased, but each had, in turn, two daughters, the four granddaughters would be coparceners in the estate. However, if one daughter had left him two granddaughters plus a grandson and the other had left two granddaughters only, the estate would still be divided equally between the man's two daughters. Here, the grandson could claim primogenital rights over the shares of his sisters; he could claim half the estate, while the other half would be divided between the heiresses of his aunt. 14

In 1619 the three daughters of Robert Burges, a gentleman who died without a male heir, sued their mother, who had remarried, to compel her to give them their rightful share of

13 Cowell, Interpreter, fol. XXXiv; I Blackstone 456.

14 Finch, Law, pp. 34, 118; Pike, Hse. of Lds., p. 91; Coke, I Inst., 163r-165v; II Blackstone 214, 237; Doddridge, Law of Nobility, fol. K8r; Saint-German, Dialogue, fol. 13r.
the profits of their father's estate; and in 1632 John Done of Utkinton, Cheshire, died leaving no surviving children so that his estate was to be divided between three living sisters and the son of a fourth, deceased sister. Another example of co-sharing was evidenced in 1606 when the three daughters of Edward Snowe combined their one-third share in his estate to lease it to Thomas Parsons. In this instance the co-parceners seem to have agreed to share the revenues of a manor. Another way to share the manor would have been for each sister to live on it for one-third of the year or every third year.

There were any number of ways in which an estate could be divided by the co-parceners. They could divide it up all together; they could draw lots with the eldest drawing first; they could let a disinterested party divide it up with the eldest sister choosing first; or they could let the eldest sister partition it with herself taking the last portion. If there were no agreement about partitioning the property, a writ could be sued to compel some sort of partition, possibly by the sheriff. It was also possible to sue out a writ if one or more co-parceners felt they were being forced to sell out or


16 VCH-Beds., III, 301.

17 Coke, I Institut., 4r.

18 Littleton, fol. 51r; Coke, I Institut., 165v-167r, 174v-175r.
give up their shares in an inheritance.19

On the other hand, if disagreement arose sometime after the partitioning was completed, the law did not offer much in the way of remedy. Unless a parcener was of diminished mental capacity or the coparcener was under age twenty-one, the partition was binding on her and her heirs, even if it were unequal or the value of the shares changed so that one became worth far more than the other or the other became worthless. When this happened the coparcener could protest by entering the part allotted to their sister, but, in the meanwhile, she had to be careful not to extract all the profits from her own share lest she be accused of de facto accepting the original partition.20

Since a sister who had received property in frankmarriage was barred from sharing with her sister in the remainder of her father's estate in fee simple (descendable to a man's heirs with no conditions attached) after his death, she was not permitted to be a coparcener unless she agreed to put her own lands in hotchpot, or mixture, with the remainder. In this way it was possible for her to acquire a greater share in the estate. It was also possible for her to lose some property if the remainder were small. One can assume that motives of fair

19Cowell, Interpreter, fol. Zz1r; CSPD-Chas. I, XXII, 386-387.

20Littleton, fols. 52r-52v; Coke, I Instit., 166r, 170r-173r. For an example of how parceners could avoid having their descendants upset a division of property, see Coke, Ibid., 172v-173v. In this instance, a mixture of lands in fee tail and fee simple is involved.
play and family concern, or, possibly, coercion played a part when inheritances were diminished by being placed in hotch-pot. 21

Among coparceners—especially on the Isle of Jersey—the eldest daughter seems originally to have been able to claim the principal manor on an estate, and since this manor was likely to be the enescia, or essential part of the estate, it could well incur the burden of military service or escuage, a payment in lieu of the same. A woman, whether as sole heiress or coparcener, was not expected to perform military service. It was performed for her by her father, or guardian if she were underage, or by a deputy if she were of age and unmarried. Her husband was liable, of course, if she were married. All persons holding land in such tenures were required to perform homage and fealty. The former was a ceremony in which a new possessor acknowledged holding land requiring military service, and fealty was an oath of loyalty to the landlord. 22

As feudal tenures declined in number and importance, the ceremony of homage became rather inconsequential per se, while associated feudal incidents increased in value. As long as military service was a necessity during the height of the feudal period, there was no question but that men should per-

21 Littleton, fols. 54v-55v; II Blackstone 190-191; Coke, I Inst., 176r-179v.

form the duty of service or pay scutage and that women should not take part in the ceremony of homage. In the later days of feudalism when military service was not as important, the revenues from marriage and wardship were of great interest to the Crown, and the king as well as his barons recognized the value of claiming homage and fealty together with wardship and marriage from all parencers of lands held in feudal tenures. By the seventeenth century heiresses to land held in such tenures seem to have been liable for performance of homage. The ceremony itself was adapted slightly for a woman. She could not say, "I become your woman..." as it was not regarded proper for a woman to declare that she would be loyal to any but her husband. Instead, she was supposed to say, "I do to you homage, and to you I shall be faithful and true and faith to you shall bear for the tenements I hold of you, saving the faith I owe to our Sovereign Lord the King."23

The exceptions to the Common Law rules for inheritance of property by women were few and scattered. Finding them all would be a nearly impossible task for they are sprinkled across the records of thousands of manors.24 A customary tenure such as gavelkind, which was peculiar to Kent, whereby all the


24Plucknett, CHCL, p. 313, has observed that borough customs are not thoroughly known.
nearest male heirs shared equally in an estate and were permitted to dispose of their lands by will as well as to alienate them when they were fifteen was, in a very few places, applicable to women when male heirs were absent. Another type of customary tenure, borough-English, or ultimogeniture, was likewise applicable to women in a very few manors, as in Dorsetshire or Berkshire. By this tenure the youngest surviving son rather than the eldest succeeded to an estate. Several reasons were given for this—among them, that the youngest son was more likely than his brother to be still dependent on the father, or that the lord of the fee, according to legend, formerly had the right to sleep with the bride on her wedding night and therefore the youngest son was more likely to be the offspring of the tenant and his wife than of the lord and the tenant’s wife.

Although the laws of inheritance greatly favored the male sex there were means by which a woman could be assured of, or gain, some share in the property of her father, her husband, or other relatives and persons. No man could give property to his

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25II Blackstone 84; Littleton, fol. 54r; Pollock & Maitland, HEL, II, 278; Coke, I Inst., 140r-140v; Coke, Reports, pp. 405-406; Silas Taylor, The History of Gavel-kind (London, 1663), p. 100 (hereafter cited as Taylor, Gavel-kind); William Somner, A Treatise of Gavelkind (London, 1726), pp. 7-8 (this work was first published in 1660).

alter ego, his wife, but he could leave it to her by will; and an agreement by a man to bequeath property to a woman if she married him could be enforced. Some men seem to have been generous to their female relatives. In his will in 1614, Sir Nathaniel Bacon, the brother of Sir Francis, gave his grandson's wife £400 more than he had assured her before her marriage, and John Bill in 1630, by his will, left a house, rents, and an annuity of £300 to his wife, plus legacies to his nieces, grandnieces, mother-in-law and sisters-in-law. However, eight years later Anne Blewett had to seek legal help in getting her brother to pay her the £600 bequeathed by their father's will, just as in 1640 the Council at Whitehall had to order William Steedard, who had been committed to the Fleet prison, to pay his sister the £24 annuity left her in their father's will or appear before the Court of the Star Chamber. And, of course, William Shakespeare's will, in which he bequeathed his second best bed to his wife, is famous. Such provisions were necessary, for at her husband's death a woman could claim nothing moveable unless provided in his will. Her possession had to await the disposition of his executor. This was especially true when a man died intestate.

As has always been recognized, women could receive many

27II Blackstone 496-497; Holdsworth, HEL, V, 310-311; Coke, I Instit., 112r.


29CSPD-Chas. I, XIII, 229; XV, 311-312.

kinds of property as a gift or by grant. Gifts were usually
gratuitous transfers of property and were too numerous to be
cited. Grants were often made in return for some considera-
tion, and referred to transfers of incorporeal property such
as leases and rents as well as to corporeal property such as
lands and houses. 31 In 1614 the Crown made a lifetime grant of
a messuage in the parish of St. Mary's, Aldermanbury, to George
Donhalt and his wife Leonore. 32 The Crown in 1638 granted
Mary du Boys, the widow of Peter du Boys, a house and land in
Berkshire held in fee, which had escheated to the Crown when
her husband died without an heir. 33 A few days later Mrs.
Elizabeth Howard, one of the maids-of-honor to the Queen, was
granted a thirty-one years' lease of pasture rights in
Mierscoe Park, Lancashire, in return for £25 yearly rent; and
two years later a private act was passed in Parliament grant-
ing to Elizabeth, the Dewager Countess of Exeter, and her
heirs forever, the site of St. Leonard's Hospital outside
Newark-upon-Trent together with the buildings on it and proper-
ty adjoining. 34 And, in London, poor maidservants who lacked
marriage portions were able to get help from several trust
funds set up for this very purpose by charitable donors. 35

31 II Blackstone 440-442; Saint-German, Dialogue, fol. 144r.
32 CSPD-Jas. I, IX, 228.
33 CSPD-Chas. I, XIII, 56.
34 Ibid., p. 62; SOR, V, 178.
Uses and trusts, also, could be created for women. These were transactions whereby one person could transfer title to another with the understanding that the latter held it for the benefit of a third party.  

In 1640 Richard Catesby of Drury Lane lent some of his land to Sir Nathaniel Brent for sixty years in trust for his daughter-in-law, Eleanor Catesby. She was to receive all the rents, issues, and profits until her son reached twenty-one, at which time the lease and trust were to become void. Three years later, by an Order-in-Council, Dame Lucy Apsley, the widow of Sir Allen Apsley, was granted the office of Custos Brevium, which fees were to be used for their children.

Still another way in which a woman could obtain property was by purchasing or leasing it for herself. In 1620, for example, Lady Mary Welde bought two manors in Stotfold, Bedfordshire, for £3,294,16s.10d., which had cost the former owner £5044 ten years earlier; and in 1647 Anne Greenehill, a widow of St. James' Parish, Clerkenwell, rented a tenement in London, known by the sign of the Holy Lamb in the same parish, from William Dudley, a barber-surgeon. A woman could also sell her property or rent it out to others. In 1625

36Holdsworth, HEL, p. 310.
37CSPD-Chas. I, XV, 256-257, 342.
39CSPD-Chas. I, XXI, 550.
Elizabeth Lady Morton sold her diamond ring and a jewel for £2400 to the King, who wished to give them to the ambassadors from Sweden and Brandenburg, and the next year Lady Benn rented her house at Kingston-upon-Thames to the government as a residence for the French ambassador. Six months earlier Lady Elizabeth Hatton had refused to rent her house in Holborn to the government for the same official because she claimed to have no other suitable lodging for herself.40

Just as women could be the recipients of property by gift or will, they could also bestow the same favor on others, providing that they themselves were over the age of twenty-one and not insane or married. If they were married, their husbands' consent was needed.41 There seems to have been no restriction regarding the recipients of such bequests, whether spouses and children or other relatives and friends. Most of these grants and wills, accordingly, were made by spinsters or widows.42 They dealt with everything from the divine to the trivial or substantial. Alethia, Lady Sandys, the widow of

40 Ibid., I, 141, 189-190, 551, 568.

41 Coke, I Instif., 78v; Pulton, Statutes, p. 750; Lawes Resolutions, p. 240; Croke, Reports, pp. 250-253; Rogers, Mari. Honovr., p. 272.

Sir William Sandys, granted the next presentation to either of two vicarages in Huntingdonshire in 1630 to Sir Francis Windebank, the Chief Clerk of the Signet, who seems to have shown some concern for her during her bereavement. The next year Ursula Rainolds bequeathed her "best petticoat," her "carsie {kersey} gown and cloak, green Penistone petticoat, red shag petticoat, worst petticoat and old red coat, and a stock of bees" to persons mentioned in her will; while Anne Hardware, in 1613, left her lands to her nephew and a message to the minister to pay her funeral expenses plus some debts owed to her two sisters.

Along with the right to make wills and to benefit from them, women had the right to act as executrices and administra-
trices of the property of others. The former was named by the person who made a will and the latter was appointed by the court to manage the property of persons dying intestate or without competent executors. Few women failed to be named the sole or chief executrices of their husbands' wills, and they also seem to have been preferred before other relatives, male and female, as administratrices when the executors named refused to perform the task or their husbands died intestate.

43 CSPD-Chas. I, IV, 178, 426-427. Sir Thomas died in 1629 and she remarried sometime before the end of 1632. Complete Peerage, XI, 446.

44 VCH-Beds., II, 94; Cheshire Inq. P. M., II, 64-65.

45 Smith, Commonwealth, pp. 117-118, 120; 21 Hen. 8, ch. 5; II Blackstone 496, 498. Sec, for example, CSPD-Chas. I, IV, 224; V, 381; XX, 219; Francis Collins, comp., A Catalogue of the Yorkshire Wills at Somerset House, for the Years 1649 to
This was partly due to the fact that when large estates or feudal tenures were not involved, widows and mothers were very often appointed as executors and administrators of estates for their minor children.  

The position was not just a simple one of little worry and some profitable gain. At times it could be quite the opposite. Mary Denny, the widow of Major John Gunter, an officer slain while fighting on the Parliamentary side during the Civil War, took over administration of her first husband's estate for their children when the executors relinquished the task after taking over some property and clothing. She thereupon became liable to debts of £2000 which the executors had not paid, and for this nonpayment she and her second husband, William Denny, were put in prison. Another widow, Dame Elizabeth Morrison, who was executrix of Sir William Harrington, her first husband, had to render an account in 1626 of the sums taken in and paid out by him when he was Lieutenant General of the Ordnance; while in 1637 Dame Elizabeth Darrell, the widow of a Navy victualler, complained about being ordered to repay £3280 given to her husband for goods which were never delivered.

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46 CSPD-Chas. I, IX, 3; XXIII, 738; Ridley, Civ. and Eccles. Law, pp. 216-217.

47 CSPD-Commonwealth, VII, 132.

The case of Elizabeth, the widow and administratrix of Peter Pett, was more charitably treated. She was given permission in 1633 by the Lords of the Admiralty to have judgment against Phineas Pett, her brother-in-law, for a debt owed by him to her husband for twelve years already. But three years later Alice Carringham, the widow and executrix of William Carringham, was named in a petition by her nephews for refusing to give them legacies stated in their uncle's will. On the other hand, one must admire Mrs. Anne Austin, the widow and executrix of William Austin, the author of a posthumous book of meditations; she saw his book through the press after his death.

Although a woman could own real property by herself—as we have seen—or jointly with her husband, her rights over the same were considerably reduced if she were married; for when she married, her husband acquired an interest or right over such property. Because the Common Law took the view that a woman's legal existence was suspended, or incorporated into that of her husband during marriage, she could not own property in common with him. In sum, she surrendered to her husband all ability

49Ibid., V, 516; X, 15.

50Devotionis Augustinianas Flamma, or, Certaine Devout, Godly, and Learned Meditations, Written by the excellently Accomplisht Gentleman, William Austin of Lincolnes Inne, Esquire (London, 1635), see title page.

51Layves Resolutions, p. 295; Finch, Law, p. 40; Goke, I Instit., 167r-168r; and Charles Calthrope, The Relation Between the Lord of a Manner and the Copy-Holder (London, 1635), pp. 79-82 (hereafter cited as Calthrope, Copy-Holder). See also CSPD-Chas. I, V, 53-54 and Sussex P. M. Inq.
to control her own property; he could use it, hold it, or give it to another to use; he was responsible for carrying out any obligations such as the upkeep of fenworks and riverbanks that were attached to the lands; and he could collect delinquent rents still owing at the time of her death. So long as the marriage lasted—and only so long as it lasted—he could dispose freely of the profits of lands belonging to her. He could also make leases of her land for periods up to twenty-one years or three lives, which her heirs were legally bound to maintain. Whether or not these leases were disadvantageous to the wife's heirs was irrelevant, for the law sought to protect lessees from being evicted on short notices, sometimes after having contributed much labor and considerable expense to improve the property, to plant crops, or to increase the livestock. 52

The few exceptions to this rule that the wife's estate became the husband's during the marriage applied to various local customs and to Chancery decisions regarding the property which the wife earned out of her own savings or which were held in trust for her. Another type of property in which the husband had no right was that which his wife held as executrix or administratrix of an estate. In fact, as an executrix she could sell land to her husband. 53

52 Lavvvs Resolutions, p. 1147; Pulton, Statutes, pp. 687-688, 693; CSPD-Chas. I. IV, 425-426; SOR, III, 784-785; I Blackstone 442 and II Blackstone 434-435; Cowell, Interpreter, fol. T3v; Rogers, Matri. Honovr, p. 289; Smith, Commonwealth, p. 117; Littleton, fol. 122v.

53 D. M. Kerly, An Historical Sketch of the Equitable Jurisdiction of the Court of Chancery (Cambridge: At the University
The husband's power over his wife's real property was actually somewhat in the nature of a guardianship, for no man could permanently alienate his wife's lands. This was especially true in regard to lands held in fee or in copyhold by the wife, and also to lands held in joint tenancy by both partners, and to lands reserved for the woman's jointure. If the husband did grant these lands away, the law permitted the wife or her heirs to enter them upon his death and to claim them. The only defense against this action which could be made by the lessees or grantees was that the wife had agreed to the conveyance by fine—that is, through an amicable agreement in court by both parties to the transfer of title. This indivisibility of marriage partners was carried to such extremes that a person who wished to give lands to a man, to his wife, and to a third person, could not give one-third share to each but had to give one-half to the husband and wife, the other half to the third party.


§ 32 Hen. 8, ch. 28, sec. 6; Ridley, Civ. and Eccles. Law, p. 217; Smith, Commonwealth, p. 120; Coke, I Instit., 35r, 112r-112v, 351v; SOR, III, 784-785; Gowell, Interpreter, fols. Rrr3r and V3v; Pulton, Statutes, pp. 422-423; Littleton, fols. 123r-123v. Advowsons were also covered here; see William Hughes, The Parsons Lavy (London, 1641), pp. 46-47.

Holdsworth, HEL, III, 526; The City-Law, p. 4; Coke, I Instit., 351v; Littleton, fol. 123v; Coke, Complete Copy-Holder, p. 171; II Blackstone 351; Saint-German, Dialogue,
On the husband’s death, all the wife’s lands reverted back to her or to her heirs, and she or her heirs could—as has been mentioned—seize any lands he had unlawfully alienated. On the wife’s death, the husband could claim tenancy of her lands by courtesy of England; that is, he was entitled to a lifetime possession of estates in which his wife had possession in fee simple or fee tail. However, if he or she had given no indication of taking possession of the property during the marriage—perhaps by farming it, collecting the rents due on a manor, or disposing of it, and no heirs were born alive to the marriage, he could not claim the property on her death. It passed on to her heirs.56

The real estate which a woman received in her husband’s will was usually her dower estate; it had no relationship to the dowry which she brought to her husband in the marriage. A woman’s dower right was probably her best property protection in the law for, if she had an avaricious and parsimonious husband, or one who owed many debts and who dissipated or even gave away her property, she had some means of regaining her estates. After her husband’s death she, if she were fortunate

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56Smith, Commonwealth, pp. 120-121; Finch, Law, p. 129; Saint-German, Dialogue, fols. 13v-14r and 49r-49v; Coke, I Inst., 27r-30r, 326r, 351r; II Blackstone 126-128, 432, 434; Cowell, Interpreter, fol. S33v.

57Coke, I Inst., 30v-33r; Holdsworth, HEL, III, 189-190;
to survive him, or her heirs, could sue to recover these dower estates. 57

There were five types of dower, all instituted to give a widow a competent livelihood during her lifetime. They were:

1) **Dower by Common Law.** This was the ordinary type of dower providing a wife with one-third interest in the land and tenements of which her husband had possession during his lifetime.

2) **Dower by custom.** In some parts of England a widow was entitled to a whole, a half, or merely a quarter of her late husband's estates.

3) **Dower at the church door.** After announcing their betrothal at the church door, the bridegroom-to-be declared exactly what part and how much of his estates were being set aside for the dower of his fiancée.

4) **Dower by the father's consent.** With his father's consent, the husband endowed his wife with a portion of the estates held in fee simple by his father, who was still alive.

5) **Dower de la pluis beala (or dower of the fairest part).** Here were involved a widow who occupied some lands of an heir as guardian in socage, holding the lands in return for performing services other than military, and a man who held the remaining lands as a guardian in chivalry. If she brought suit for her dower against the guardian in chivalry, he could counterclaim that she should consider as her dower the lands de la pluis beala which she already occupied. 58

The above provisions for dower were the minimum required in the law. They did not prevent a husband from leaving a larger share to his wife if there were no objections. And a

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58Littleton, fols. 8v-10v; Fitzherbert, New Nat. Brev., p. 368; Holdsworth, HEL, III, 190-191; Coke, I Instit., 33v-39v; II Blackstone 132-135; Finch, Law, p. 461; Cowell, Interpreter, fol. Bb1r; Rastell, Statutes, fol. 553r; Rastell, Termes, fols. 161r-161v. See also John Doddridge, The English Lawyer (London, 1631), pp. 86-87.
woman could refuse to accept her dower at the church door or
dower by the father's consent if she felt either was smaller
than dower by Common Law. But if she were so foolish as to
accept a dower arrangement which would give her only a one-
fourth, one-fifth, or smaller share in her husband's estate,
the law did not require that someone advise her to demand the
larger, one-third, share provided under the Common Law. On
the other hand, a poor widow, despite all the backbreaking
service she may have given her husband during his lifetime,
was still entitled by the Common Law to no more than a third
of the estates that remained at his death if there were
children or if debts were attached to any part of the property.59

A woman could not be endowed with lands to which her hus-
band had only a right but had not actually taken possession.
She could not claim dower rights in lands which she held
jointly with her husband or which her husband held jointly
with another. Also, she could not be dowered with lands which
were not held in fee; that is, if restrictive conditions were
attached to the inheritance of them. An exception was made in
the latter instance if her children could inherit the entailed
estates. She also had no dower rights in lands which her hus-
band held in lifetime tenure only.60

59Coke, I Instit., 36v; Lavves Resolutions, pp. 107, 1146.
A. V. Dicey, Lectures on the Relations Between Law and the Public
that the "daughters of the rich enjoyed, for the most part,
the considerable protection of equity, the daughters of the
poor suffered under the severity and injustice of the common law."

60Lavves Resolutions, pp. 93-95, 101, 106; II Blackstone
tenure were, in this way, exempt from dower because they were only estates at the will of the lord. On the few manors where the custom of free bench prevailed, a woman could claim dower of all copyhold lands of which her husband was seised at his death. 61

Of things other than land, a woman could not be endowed of the whole. For example, she could be endowed of three days of work each week, or every third week or third month; she could have a third of the profits of a law court, or one-third of the keeping of a park. However, if for example she were endowed of the profits of three acres of marsh worth twelve pence each and if the industry of the heirs increased its value, she was entitled to have the profits according to the improved value. To her advantage, too, was the legal provision that no debts could be charged to her dower share in the estates. 62

Even though this was an age when marriages by contract were made, that is, when young children were married to each other by their families for dynastic or financial reasons,

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61II Blackstone 129-130; Lavvies Resolutions, p. 101; Godbolt, Reports, No. 438; Calthrope, Complete Copy-Holder, pp. 93-94; Coke, Complete Copy-Holder, p. 84. For other restrictions on dower, see The Practick Part of the Law, pp. 145-147, 306-307.

62Coke, I Instit., 32 r; Lavvies Resolutions, p. 240; The Practick Part of the Law, p. 145; Great Britain, Parliament, Proceedings in Parliament, 1610, ed. by Elizabeth Reid Foster (2 vols.; New Haven: Yale University Press, 1966), II, 187 (hereafter cited as Proc. in Parl. 1610). See also an example of dower which was composed of part of the revenue from wine licenses in CSPD-Commonwealth, VII, 324.
a young widow could not claim her dower if her late husband was not at least seven years old and she herself, nine. 63

When it was known exactly what belonged to the wife's dower, she was permitted to enter her estates immediately. If this were not known, she was required to wait until the sheriff determined which lands should be assigned to her. He had forty days in which to determine this. In the meantime, she was allowed, according to Magna Carta, chapter vii, to remain in her husband's house for forty days. If this residence were the capital messuage, or chief dwelling house, of a barony, it belonged to the heir, and was not dowable, so that she was to be provided with a house of similar quality when her dower was assigned. Her residence could be either a manor house or a castle. Unfortunately, Sir Edward Coke declared that a woman could not be endowed of a castle needed for the defense of the realm; and this was long regarded as a true statement of fact. But it was an erroneous one, for medieval authorities whom he cited made no distinction between castles; rather, their emphasis was on the chief part of a barony. 64

There were a number of ways in which a woman could lose or be barred from her dower right. She could neglect or demand

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63 Lavves Resolutions, p. 93; II Blackstone 131; Saint-German, Dialogue, fol. 14r; Coke, I Instit., 31v, 33r, 78v; The Practick Part of the Law, p. 145.

64 Coke, I Instit., 32r-37r, 165r; The Practick Part of the Law, p. 145; Round, P. and P., I, 114-116; Lavves Resolutions, pp. 242-243; Finch, Law, p. 127; II Blackstone 132; Britton, Britton, the second edition. Faithfully corrected... by Edm. Wingate (London, 1646), fol. 245r (hereafter cited as Britton); Rastell, Statutes, fol. 553r.
it immediately after her husband's death; she might be an alien or marry one; her husband might be attainted of treason; she may have alienated the lands; she may have received a bequest in lieu of dower, or already hold an estate in jointure, a lifetime estate granted to her by her husband and which became hers on his death; she might be an adulteress or unchaste widow; she might divorce her husband and/or elope with another man; she might not be legally married; or she might detain the title deeds belonging to the property of her son. Whenever she or her late husband were tenants-in-chief of the king, she needed a royal license to marry again if she did not wish to lose her dower rights in lands held by such tenure. Strangely enough, she did not lose her dower rights if she neglected to bring suit for her husband's wrongful death, or if she "cut his throat in frenzy."65

On the other hand, under certain conditions she could regain her dower. This could happen, for instance, if she were naturalized or given a license to marry by the king, if she surrendered the title deeds belonging to the heir, or if her

65 Lavves Resolutions, pp. 144-145, 152, 382; Finch, Law, p. 127; Rastell, Statutes, fol. 193v; Rastell, Termes, fol. 161v; Doddridge, Law of Nobility, fol. L4v; Plucknett, CHOL, pp. 567-568; II Blackstone 136-137; Coke, I Instit., 31r-32r; The Practick Part of the Law, pp. 144, 151; Cowell, Interpreter, fol. R2v; Ferdinando Pulton, De Pace Regis et Regni (London, 1623), fol. 214v (hereafter cited as Pulton, De Pace); Sir Edward Coke, Second Part of the Institutes of the Laws of England Containing the Exposition of many Ancient and other Statutes (4th ed.; London, 1671), pp. 435-436 (hereafter cited as Coke, II Instit.). See also Godbolt, Reports, pp. 300-326 for a case of treason where dower rights were forfeit and p. 145 where a woman who was divorced causa adulterie retained her dower.
husband, without coercion by the Church, permitted her to be reconciled. Her dower rights were restored also, according to a quaint custom on some manors where copyhold tenure prevailed, when she made amends for her sexual transgressions. Here, the custom of free bench, or frank bank, which granted a widow her late husband's copyright lands for her dower, permitted a woman guilty of incontinency to regain her dower rights if she apologized by coming into the court riding backward on a black ram and reciting a petition in doggerel:

Here I am
Riding upon a black Ram,
Like a Whore as I am;
And for my Crinicum Crancum,
Have lest my Binkum Bancum;
And for my Tayles game,
Have done this worldly shame,
Therefore I pray you, Mr. Steward let me have my land again. 67

By a statute passed in 1586, a widow was prohibited from holding lands in both dower and jointure. She could waive her rights to either and accept the other if she felt it would be more advantageous and if the grants were made during the mar-

66Laws Resolutions, p. 145; Coke, I Inst., 31v; II Blackstone 136.

67Rastell, Termes, fol. 204v; II Blackstone 129; Sir Edward Coke, The Fourth Part of the Institutes of the Laws of England (6th ed.; London, 1681), p. 22 (hereafter cited as Coke, IV Instit.). The custom of free bench or frank bank is discussed on fol. Hh1v in both the 1607 and 1637 editions of Gowell's Interpreter, but the doggerel did not appear until later editions, e.g., London, 1681, same folio. It is cited by John Leland, the sixteenth-century antiquary, in his Itinerary, edited by Thomas Hearne (8 vols.; London, 1769), III, 139, in slightly different form. The source is given as Vol. 154, fol. 8r of Roger Dodsworth, MSS. Other sources which mention this doggerel are VCH-Berks, IV, 172 and The Spectator, No. 623 (November 22, 1714).
riage. But she could not repudiate jointures made before marriage. Jointure had some advantage over dower; there was no minimum age for receiving it; it could not be barred by the husband's treason, as could dower; and a widow could enter her jointure lands immediately after her husband's death, while a troublesome and tedious legal process oftentimes had to be undergone in order to determine just what comprised a woman's dower holdings. In a sizable number of marriage settlements during the early seventeenth century, the jointure was about one-third the value of the husband's estates. Unfortunately too, jointure property, like dower, could be saddled with legal restrictions that extended beyond the lifetime of the husband and infringed on the wife's rights. Leases for a term of years, as mentioned previously, could limit a widow's use of her jointure estates. And there is the sad instance of a Mrs. Burton's petition in 1654 to the Committee for Petitions for at least £200 of her jointure, which had been mortgaged by her husband to raise troops before he was slain in the war. Her suit was dismissed.

Unlike her real estate, to which the husband gained only a right of possession during her lifetime, a woman's personal


69CSPD-Commonwealth, VIII, 288.
estate became the husband's absolute property. Personal estate was referred to as chattel property, a term with an historical basis, for a cow originally had been the most valuable piece of personal property and in time all personal property had come to be known as "chattels," a variant spelling of cattle. Because the law magnified the husband's dominion over his wife, their marriage was regarded as making a gift of her chattels to him. They thereupon belonged completely to him and not at all to her. The husband generally could do as he wished with his wife's chattels; he might even alienate them, or give them away, for they did not revert to the wife on his death and she had no legal right to recover them. The word "generally" is used here because of some exceptions, as in the case of Lord Hastings vs. Sir Archibald Douglas in 1634, when the court declared that if a wife used and possessed some jewels, they became vested in both her and her husband. 70

Although in actuality and in equity, as well as by the provisions of some customary laws, men did give gifts to their wives, the Common Law for a long time saw otherwise. According to the latter, a man could give no chattels to his wife during his lifetime, for to do so would be to presuppose her separate legal existence. He could, however, bequeath them to her by a will to take effect upon his death. 71 Or, he could

70 Finch, Law, pp. 42, 43; Coke, I Institut., 351v; Lavvea Resolutions, pp. 129-130, 240; II Blackstone 433-435; Smith, Commonwealth, pp. 117-118; Saint-Germain, Dialogue, fol. 13v; Holdsworth, HEL, III, 526; Croke, Reports (1657), pp. 250-252.

71 I Blackstone 442 and II Blackstone 433-435; Coke, I Institut.
bequeath them entirely away from her if they were needed to pay his debts, as Sir Nathaniel Bacon, whom we met earlier, did in his will in 1616 when he ordered that his wife's great pearl chain was to be sold for payment of his own debts. Such actions became less frequent, however, because changing attitudes early in the seventeenth century toward property ownership permitted a woman to share ownership of chattels and personal property with her husband. 72

If, unfortunately, a man committed suicide, he forfeited all his chattels to the king and removed all possibility that his wife and family could enjoy them. He was regarded as having committed a felony, albeit upon himself, for which the penalty was forfeiture of these chattels as well as of land leased jointly with his wife. His heirs retained their inheritances in regard to land, however, and his wife retained her dower, but she lost all survivorship rights over their joint leaseholds because the king's title took precedence over hers. Her title took effect at her husband's death while the king's was regarded as taking effect from the time that the husband began his act of self-destruction. At the moment he cast himself into the water or pulled the trigger, for example, his wife was not the sole survivor and sole possessor of the estates;

112r; Smith, Commonwealth, p. 117; Bateson, Borough Customs, pp. xxii, cvi.

II Blackstone 492; CSPD-Jas. I, XII, 541-544. The changing attitudes on property ownership are discussed in Chapter III, Part III, of this paper.
since she was not in possession of his estates at this time, the Crown had the right to seize them.\textsuperscript{73} Rebecca Southcott, in about 1639, petitioned the King for part of her father's personal estate which had all been forfeit to the Crown after Sir George committed suicide.\textsuperscript{74} If, to take another instance, the husband died without a will, the Common Law entitled his wife and children to only a "reasonable part" of the estate as determined by the ecclesiastical ordinaries or administrators. A reasonable part for the wife was assumed to be a third after debts, including servants' wages or burial expenses, were paid. If there were no children, the wife could expect to get a larger share of the estate. A more certain provision for the wife was provided by a number of local customs, as in London, where the wife was entitled to one-third or one-half, depending on whether there were children.\textsuperscript{75}

Notwithstanding the law's provisions for their interests, diffident widows and heiresses felt obliged before marriage to tie up their property in a trust or to insert a clause in the


\textsuperscript{74}CSPD-Chas. I, XV, 254.

\textsuperscript{75}I Blackstone 445, n. 38 and II Blackstone 492-495; Lavves Resolutions, pp. 240-241; Finch, \textit{Law}, p. 175; Smith, Commonwealth, pp. 117, 121; Coke, \textit{I Institut.}, 12r, 33v; The City-Law, p. 7; Sharpe, \textit{London Wills}, pp. 731, 746; Cheshire Inc. P. M., I, 5-7, 12-13, 26-27; The Practick Part of the Law, pp. 143-144; Saint-German, \textit{Dialogue}, fols. 14v, 21r; Fulton, De Pace, fol. 214v.
marriage contract precluding the husband from disturbing their estates. Such stipulations, predictably, were reluctantly agreed to and often futile. In 1638 Dame Mary Powell petitioned the King for help in getting her husband to allow her the use of the real and personal estate which her parents, Sir Peter and Lady Vanlere, had left in trust for her by agreement with her husband. She claimed that the latter had de facto even if not de jure use of her property and that he would not let her live in peace with him unless she agreed to turn over her estate to him. 76

Because the law did not permit a person's own folly to excuse him or her for any wrongful act, it was held that a woman who married a profligate man or one who wasted her estates and was heedless of her condition was foolish in the first place for taking such a wastrel for a husband. 77 Sir Robert Carr sold lands valued at £3000 for £300 and then disappeared after taking a walk, leaving behind a large family with no support so that in 1638 Lady Carr, who believed that he was in London, felt constrained to petition the King for help against his "further designs." She eventually gained much of what she asked for, but only through an agreement worked out between her lawyers, her husband, the Archbishop, the Lord Treasurer, and the Lord Privy Seal. 78

76 CSPD-Chas. I, XII, 575-576; Stone, Crisis, p. 623; Holdsworth, HEL, III, 196 and VII, 379. See also other examples in CSPD-Chas. I, XII, 32 and XIII, 226.


78 CSPD-Chas. I, XII, 520-521, 585-586; XIII, 143; XV, 374.
That women were defenceless before the Common Law was well understood. The Earl of Northumberland boasted that the laws gave "much power to husbands as wives can neither alien, set, let, give lands without the man's consent if they have any...during the husband's life." And, the anonymous lawyer who wrote *The Laws Resolutions of Womens Rights* quoted Sir Thomas Smith, Queen Elizabeth's Secretary of State, in admitting that though the law seemed "somewhat rigorous toward the wives, yet, for the most part they can handle their husbands... well." Both writers believed that it was not the law but the wives who cared for husbands when they were sick and who treated them so nicely that in most instances, except in London where the city had a special interest in these matters, husbands responded by giving their wives everything they could of the property and the care of the children. There is nothing to prove these men were wrong in assuming that many women were sufficiently provided for by their husbands when the latter had property to provide, but it seems more natural to assume that this was not in return for their sickbed or deathbed services but, rather, for a lifetime of pleasant attention and matrimonial affection.

This is not the same person as Robert Carr, Earl of Somerset. For other examples of profligate husbands, see ibid., XII, 248-249 and XIII, 125-126.

79 Quoted in Stone, *Crisis*, p. 623.

80 The quotation is on p. 242 in *The Laws Resolutions* and on p. 120 in Smith, *Commonwealth*.

81 Ibid.
CHAPTER THREE: HER PERSONAL RIGHTS

Part I. In Civil Matters

An Englishwoman's personal rights in civil matters were a mélange of privilege and prejudice, mostly the latter; and the latter was a result of a tradition that women were subordinate to men in both private and public life. Some of the areas in which these differences between the sexes can be detected in the contemporary records are discussed below.

Aliens and Visas. Unlike continental law, the English Common Law did not permit marriage to change the nationality of a woman. An alien woman who married an Englishman remained an alien, and an Englishwoman who married an alien remained an Englishwoman. This was in accord with two principles— that British nationality could only be gained by birth in lands within the allegiance of the Crown and that it was not possible for English men or women to evade the responsibilities and obligations of nationality. For purpose of claiming citizenship the father's nationality was the sole consideration; a person born abroad of an English mother and an alien father was not an English subject.  

An alien woman's status could be changed by naturalization or denization. The former was an act of full citizenship which was granted by parliament, while the latter was a restricted grant originating with the king. The privileges of denization could be so restricted as to require that the person continue to pay customs; and this seems to have been a consideration when foreign merchants were involved, for the king lost half the customs on the trade of that merchant when he was changed from an alien merchant to a native one.² In 1631 Anne Mehoutl was one of a group of five foreign businessmen to whom the king granted denization with the proviso that they continue to pay customs as strangers; but later in the same year Lucretia Frend, wife of John Frend, one of the King's musicians, was granted denization without any such restrictions.³

Citizenship in general was an advantage to a woman for, unless given special permission by the King, an alien woman, while able to purchase lands for her own use, could not dispose of land to others; nor could she inherit lands, and neither could anyone devise them to her on penalty of forfeiture to the Crown.⁴ In 1629 Robert Fludd, a "Doctor of Physic" was


³CSPD-Chas. I, IV, 540 and V, 89.

⁴Shaw, Letters of Denization, vi, vii; I Blackstone 371-372 and II Blackstone 249, 274.
granted a messuage and lands in Suffolk which had come to the Crown for just this reason: Richard Smart had unlawfully devised them to Anne Deletto, an alien, for the use of a third party.5

Neither an alien woman nor an Englishwoman married to an alien could be given a jointure or be endowed of her husband's lands, just as an alien husband of a citizen could not claim the curtesy of England for his wife's lands. Nor could an alien widow or widower claim a guardianship over a ward holding lands in tenure by chivalry, for no alien was regarded as being capable of inheriting or holding a guardianship over lands held by military tenure; it was regarded as not to the well-being of the kingdom that foreigners should own English soil. Instead, the wardship was given to the king.6

Further restrictions regarding alien women forbade them to claim the privileges of an English title, even of their husbands, in courts of law although they otherwise were permitted to use them for social purposes.7 Naturalization bills were passed in parliament from time to time,8 and in May, 1642 the Dowager Countess of Oxford, who was born overseas of an ancient Frisian family, and her daughter took the oath of Al-

5CSPD-Chas. I, III, 570.
6I Blackstone 371; Coke, I Instit., 31v, 84v; Doddridge, Law of Nobility, fol. L6r.
7Doddridge, Law of Nobility, fols. L6r-L6v. See also chap. I, n. 65, above.
8See SOR, IV, Pt. II, 1016-1017, 1154, and V, 53.
legiance and Supremacy in Parliament prior to their naturalization. They did this, presumably, so as to inherit the estates of Robert Devere, the Earl of Oxford, who was killed at the siege of Maestricht in 1632.9

Travel overseas was restricted; as with men, women could travel to foreign lands only if they first acquired a license, or visa, permitting them to do so. A statute passed in 1603 declared that it was necessary for women travelers to have this license on pain of forfeiture of office and chattels by the ship's officers, of tackle by the boat owners, and of goods plus a year's imprisonment without bail for the seamen.10 The reason women gave for seeking visas include a desire to return home, or to sojourn abroad, or to join their husbands. In about 1628 Dorothy Jarvis, a great granddaughter of Edward Stafford, the Duke of Buckingham who was beheaded in 1521, petitioned the Council for permission to join a kinswoman at the court of the Queen of Bohemia. She claimed that her husband had been released from prison after five years and upon payment of £2,200, which he hoped to raise again by his own industry. After only five weeks of liberty, however, he died, leaving her with children and debts owing to his estate. She made a trip to Ireland, which had been sanctioned by the Council, to collect funds from his debtors, but the trip had


10Pulton, Statutes, p. 1256; SOR, IV, Pt. II, 1021.
been fruitless because the latter were all deceased. In 1641 two Irishwomen whose husbands were serving in the army of the Prince of Orange were not permitted to embark for Holland because they did not have a license, and in 1648 Joan Densme who was a recent bride of Claud Densme, a Frenchman, was not allowed to embark with her husband at Gravesend because she had neglected to secure a permit.

Dress and Apparel. A statute of James I in 1603 repealed all previous statutes concerning apparel because they were found impossible to enforce. Since a married woman's apparel as well as her personal ornaments were regarded as her husband's unless he neglected to exercise his right of possession, one can assume that her husband approved of what she wore.

The Commons in 1614 discussed a bill against excess of apparel and ornament, with penalties for female offenders, but nothing came of this. Six years later, the Dean of Westminster forbade ladies in yellow ruffs to be admitted to his

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11 CSPD-Chas. I, XXIII, 320; Complete Peerage, XII, Pt. I, 182, 185.

12 CSPD-Chas. I, XVIII, 423 and XXII, 380. See also ibid., V, 41; VII, 368; VIII, 480; XVII, 362 and CSPD-Commonwealth, II, 156; II, 256; VI, 429, 432-433, 473.


14 Notestein, Commons Debates 1621, VII, 629; Commons, Journals, I, 875.
Yet, women continued to dress and decorate themselves as they pleased. The results must have seemed ludicrous at times, for they spurred Thomas Tuke to write *A Treatise against Painting and Tinctvring of Men and Women* (London, 1616) and another man, who preferred to remain anonymous, to pen *Hic Nylier: Or, The Man-Woman: Being a Medicine to cure the Coltish Diseases of the Staggers in the Masculine-Feminines of our Times* (London, 1620). The latter was illustrated with a satirical woodcut on the title page showing the interior of a barbershop, with one woman about to be operated on by the barber and the other, looking at her cropped head in a mirror. Still later, Richard Brathwait's books for gentlemen and gentlewomen, which reached their third edition by 1641, warned against "dying haire," "laying out of brests," as well as over-concern with "shape," "borrowing complexion from the shop," and the wearing of "garish fashions." 16

**Education.** Oxford and Cambridge universities, as well as the Inns of Court, were closed to women. So, except for those few who received a good education from tutors or were self-taught, women were unable to receive any training which would qualify them, despite masculine prejudice, to hold responsible positions in the civil life of the nation. The fact, too, that their education was oftentimes so far inferior to that of their male counterparts possibly accounts for some

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15 CSPD–Jas. I, X, 129.

of the subordination of women.\textsuperscript{17} Their exclusion from so much of the intellectual life was lamented by persons such as Anna Maria van Schurman,\textsuperscript{18} while others stated more positively that though women were subordinate to men, they were not inferior to them. William Baldwin exemplified this viewpoint when he restated Plutarch's comment that "Women are no lesse apt to learne all ill manner of things as their men are."\textsuperscript{19}

**Judicial Rights.** To obtain the rights denied or taken from themselves, women sometimes had resort to legal measures. A number of writs, or types of action, were open to them. While the Roman Law and Canon Law considered a husband and his wife as two distinct persons, the Common Law considered them as one. Accordingly, under the Common Law a married woman almost never could sue or be sued alone. Her name had to be joined with her husband's in any writ or suit when her interests were involved or when her husband could not dispose freely of their property. Ordinarily, also, she could not sue him, nor he, her. However, there were times when the woman could sue and be sued in her own name as a single person; when she was unmarried, widowed, separated from her husband or denied maintenance by him, or was acting as an executrix, and


\textsuperscript{18}The Learned Maid or, Whether a Maid May be a Scholar (London, 1659).

\textsuperscript{19}A Treatise of Morall Philosophie (London, c1620?), fol. 152v.
when her husband had been attainted of treason or felony, or he was overseas. In addition, in some boroughs she was permitted to claim this right or liability if she were solely responsible for an action such as a trespass, if she were a merchant, or if she were carrying on a trade apart from her husband. In the High Court of Chancery she could be compelled to appear with or without her husband and to answer upon oath. In any case, she was obligated to come to court in person and not sue through an attorney, even if she were pregnant.

Gentlewomen and peeresses had some privileges not granted to commoners. They could have an indictment or appeal quashed if it gave them the appellation of "spinster," even when true, rather than "Gentlewoman," "Baroness," "Countess," or "Duchess." Titled ladies, especially, could allege a technical flaw in the writ and have it abated if they were


21 Holdsworth, HEL, III, 523; Kerly, Ct. of Chancery, p. 152; The Practick Part of the Law, pp. 302-303; The City-Law, pp. 40-41; Bateson, Borough Customs, II, cxiii; Croke, Reports (1657), pp. 49-50.

22 Lavois Resolutions, p. 339.
styled merely as "Lady." These peeresses, whether by marriage or birth, also had the same right as peers to be personally free from arrest in civil actions such as debt. They could, however, be questioned by officers of the court and could be cited for contempt if they refused to answer. The fear of a citation for contempt of court must have been strong, for in 1656 Elizabeth, Countess of Dirleton, pleaded with the Council that she had not obeyed an earlier order to attend because of her illness.

If a duchess, countess, or baroness were impleaded in a civil or criminal suit in the Star Chamber or Chancery Court, she could not be served with a writ of subpoena by a justice of the peace or other local magistrate but, like her husband, could only be notified by letter from the Chancellor. In fact, if she were brought to trial, she could only be tried by judges or peers of the realm in the same manner as her male counterparts. If she were a noblewoman by birth she retained this privilege even if she married a knight or one of lesser degree. However, a widowed noblewoman who had gained her title by marriage lost this special right to be tried as a peer of the realm if she later married a man who was not a peer.

23Doddridge, Law of Nobility, fol. N3r; Coke, II Instit., 668.
25GSPD—Commonwealth, IX, 141.
In addition, she could not be named in the same writ. The Countess of Shrewsbury, a daughter of the famed Bess of Hardwick, was imprisoned in the Tower in 1611 after aiding the Lady Arabella Churchill to escape from that same place, where she had been incarcerated after secretly marrying William Seymour, a grandson of Catherine Grey, without the King's permission. When questioned by the King's officers, the Countess refused to answer on the grounds that she had the "privilege of her nobility"—that is, of being examined judicially only before her peers. The court denied her claim in this instance on the ground that it could not be claimed when contempt of the crown was involved.

Women could not give surety, or be held liable for the debt, liabilities, or non-performance of others, but they could be required to give evidence to court officials or be a witness in court. The sole exception to this was that they could not be required to give evidence for or against their husbands in civil cases. Although this latter rule was also applied in criminal cases, it seems that exceptions were sometimes made, especially when the wife herself was the plain-


27 Coke, XII Rept. 94-95; Complete Peerage, XII, Pt. I, 69-70; CSPD-Jas. I, IX, 41, 48, 136; DNB, I, 525.
In 1628, for example, the mother, sister, and a neighbor woman of John Felton were examined for evidence regarding him as the accused assassin of the Duke of Buckingham, and in the next year one Mary Gibson's testimony was used at a coroner's inquest regarding the death of a man from blows suffered in a fist fight, while in 1640 some women gave depositions concerning a disturbance caused by several men in the Green Dragon in Bishopsgate Street. In 1644, also, Elizabeth Gray was examined in the Lords' Committee regarding Archbishop Laud's "illegal proceedings" in the High Commission Court.

Women could not serve as jurors except on a jury of matrons empanelled to give a physical examination to female defendants. The most frequent call for a jury of matrons seems to have taken place when it was necessary to determine whether a woman convicted of felony could have her sentence stayed because she was pregnant. Another instance, albeit rare, oc-

29 CSPD-Chas. I, III, 277-278, 343, 349.
30 Ibid., 469, 572.
31 Ibid., XVI, 612 and XVII, 36.
32 Ibid., XIX, 2.
curred during the Essex divorce trial when six women (including two midwives) examined the Countess to determine whether she had any physical defects that could impede consummation of her marriage with the Earl. Women, also, were not permitted to give testimony on the floor of the House of Commons. For the latter reason women whose testimony was needed for any parliamentary proceedings were examined in committee. A woman could, however, minister justice in a court baron, or manor court, if she were the lady of the manor and had the jurisdiction of the court; but she had to do this by deputy. All her life Anne Clifford, the Countess of Pembroke, relished the task of entertaining the justices when they held their assizes at her castle of Appleby, for she was the chief representative of Westmoreland County on such occasions, no one daring to challenge her right.

There were numerous causes for action, or instances when women had the right to bring a suit in court, but only a few examples will be given here. She could sue out a writ causa

[References]


35 Notestein, Commons Debates 1621, II, 56, 68, 73; IV, 45; V, 8, 253-254, 453; VI, 347-348; Commons, Journals, I, 519; Charlotte Carmichael Stope, British Freewomen: Their Historical Privilege (London: Sonnenschein & Co., 1894), pp. 105-106 (hereafter cited as Stopes, Brit. Freewomen).

matrimonii paelecti to recover her lands when she had given them in fee simple to a man on condition that he marry her and he had not done so within reasonable time. In order to recover her share, as provided by some local customs, of her late husband's goods, a woman could bring a writ of detinue, an action to recover specific chattels, along with damages, against the executors of her late husband's estate. On the other hand, if her late husband assigned too much of his estate to her as her dower, the king had the right to reapportion this dower in his Chancery Court. This was especially true if the lands were held directly from him, for any widow of a man who died holding lands of the king had to sue in the Chancery for her dower. If, however, she withheld the rightful inheritance of her late husband's next heir at Common Law on the ground that she was pregnant with her husband's child, the heir could sue out a writ de ventre inspiciendo to have her examined for proof of pregnancy. As the guardian of a young heir, a woman could bring suits for him in court, as did Lady de la Warr in 1635 when she brought suit against George Crutchman, alias West, of Basingstoke, Southamptonshire, for usurping the arms of her son Charles, Baron de la Warr, and for using them in windows

III, 518; Lives of Lady Anne Clifford, pp. 68-161, passim; and Williamson, Lady Anne Clifford, pp. 394-401.


38 Lavves Resolutions, pp. 237, 249, 255; The City-Law, p. 7; Croke, Reports, p. 256.

39 Cowell, Interpreter, fol. XXX4v.
and on seals. A woman could also join with her husband in a writ of trespass, an action against an unlawful act, to recover her own lands if they were seized by another person. She could also join with her husband in a writ of debt to collect debts owing to them both. If he died, she—and not the executors—had the right to continue the suit. In a similar action in about 1631-1633 to recover goods placed in trust for the wife, the lawyer John Selden was named among four defendants by Sir Thomas and Lady Sarah Darnell.

If her husband were slain, a woman had the right to bring an appeal, or private accusation against the murderer. In fact, she—or her husband's next heir if she were not alive—had an obligation to do this, and within a year and a day. It could be brought at any time and against anyone, including peers, even if her husband, already sentenced to be hanged for some felony, had been slain by someone other than the sheriff as he was walking to the gallows. And it could be brought by a woman even in cases where she was unable to claim dower, such as when her husband had been attainted for treason or she had eloped with another man. This was the only appeal for death permitted to a woman. She could not bring an appeal for the death of her father, son, brother, or...


42 CSPD-Chas. I, V, 233 and VI, 371.
other relative. Since this appeal for the death of a husband could be brought only by a man's widow, she lost the appeal when and if she remarried. A woman could also bring an appeal against another for robbery or for mayhem, that is, bodily disablement. An example of the latter would be if someone threw the church door keys with such force that they flew the window and put out her eye.

Contracts and Sales. As with the right to make wills and leases and to administer property, a woman could also make contracts or sell her property and goods if she were unmarried or a widow. But she found these rights circumscribed if she were married. Nevertheless, any disagreements of this nature made before marriage had to be kept during the marriage: the husband could neither interrupt any agreement made in good faith by his wife before he married her, nor could she relinquish undesirable ones by using her marriage status as an excuse to break them. A married woman, in general, could not carry out such actions on her own, and her husband's name had to be joined in any action regarding a contract or a sale of property. The courts were not consistently rigid in this respect, moreover; in some cases a woman was permitted to perform these actions if

43 IV Blackstone 314-315; Pulton, De Pace, fols. 151r-151v; Finch, Law, p. 311; Lavves Resolutions, pp. 333-341; Rastell, Termes, fol. 24r; Coke, II Inst., 68-69; Rastell, Statutes, fol. 15r; John Wilkinson, A Treatise Collected out of the Statutes of This Kingdom...concerning the Office and Authorities of Coroners and Sheriffs (London, 1618), fol. 12r.

44 Pulton, De Pace, fol. 152v; Lavves Resolutions, p. 333.
the property in question were her own. Especially in the towns women had more freedom in this respect. Some boroughs regarded women in business as single persons legally, while others permitted them to do as they wished with their goods and money so long as their husbands consented. It was assumed, logically enough, that such agreements as purchases of goods to be consumed by the household were carried out with the husband's consent. 45

**Marriage and Divorce.** From the moment of the wedding ceremony, the man and women were placed on different footings, with hers the subordinate one. In 1653 the law even prescribed the exact words of the ceremony in which each partner made similar declarations to be a faithful and loving spouse. The woman had to make an additional promise—to be an obedient wife. Until about 1640 any problems concerning matrimonial causes were handled by local magistrates or, to some extent, by Independent ministers and local pastors. Cromwell's marriage act of 1653 placed this power solely in the hands of civil magistrates. Throughout these years, it should be pointed out, husbands and wives who could not endure cruel and abusive treatment by one or the other could sue out a surety of the peace.

Women seem to have fared poorly in the Common Law Courts when property was concerned, and until the ecclesiastical

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courts were abolished, they petitioned the latter for redress in marital disputes.\textsuperscript{46} This sad fact is illustrated by the petition of Elizabeth Glover to Archbishop Laud in 1638. She claimed that after eighteen years of marriage and ten children, of whom only one was living, she was afraid to remain with her husband because he had inflicted on her a series of abuses such as nailing her foot to the ground, breaking a staff over her head so that a piece of skull was taken out, and so badly bruising her ribs that she had to go about on crutches; and all the while he was giving out scandalous stories about her. She had suffered all this because she would not let him sell one house out of her jointure, although on her part she had brought him much property in her portion.\textsuperscript{47} In the same year Lady Anne Clifford, who was then Countess of Pembroke, found it necessary to ask for the Archbishop's mediation in her quarrel with her husband, from whom she was separated. The latter refused to let her stay in their house in London when she was in the city and on business on the ground that it was too expensive to live there, but Lady Anne felt that he wished to keep her in the country while he lived a wild life in the city. She declared that she had already given him £12,000 in ready money, plus £1500 or £1600 per year out of her jointure,


\textsuperscript{47} CSPD-Chas. I, XIII, 113.
and that since their marriage she had supported their children so that, actually, she had proved no expense to him whether in the city or out of it. 48

In the ecclesiastical courts, the primary aim was to bring quarreling partners to a reconciliation, 49 but sometimes the only solution to marital difficulties was a divorce or a legal separation. The first was known as divorce a vinculo matrimonii (divorce from the bond of marriage), a total divorce, and the latter as divorce a mensa et thoro (divorce from bread and board), a partial divorce. In the former, which was akin to an annulment, the marriage was regarded as having an impediment which had existed even before the marriage took place; the divorce illegitimatized the children and enabled the parties to marry again if they wished. The woman lost her dower rights but was able to recover her own property, even some that had been alienated by her husband without her consent. She could also regain lands given to her husband in frankmarriage, for she had been the reason for his receiving them. In the latter divorce, the marriage was lawful from the beginning but some conditions were considered to have arisen to make it impossible for the parties to continue living together. The partners could not marry again; the women retained her dower rights; and, in addition, she was granted an estover or alimony for the main-

48 Ibid., VIII, 460-461 and Williamson, Lady Anne Clifford, pp. 177-179.
49 See, for example, CSPD-Chas. I, IX, 1485 and XVI, 414, 417.
tenance of herself and her children.\textsuperscript{50}

There were few grounds for a total divorce, which could only be legalized by an Act of Parliament. Here, the chief ground for dissolution was impotency on the part of one of the parties. In fact, the famous case of Lady Frances Howard against the Earl of Essex in 1613 centered around this claim. If either or both of the partners remarried and had children by another marriage, the second marriages were generally regarded as legal because it was believed that one could be potent or impotent with different partners.\textsuperscript{51} In a few instances, notwithstanding, it seems that the second marriages were declared void because the impediment claimed in the divorce was said not to have existed.\textsuperscript{52}

Civil law, Common Law, and canon law sometimes differed on grounds for divorce. In case of desertion, for example,

\begin{itemize}
\item \textsuperscript{50} Blackstone \textit{4:10-4:11}; Coke, \textit{I Instit.}, 21v-22r; Lavves Resolutions, pp. 226-228; Rastell, \textit{Termes}, fols. 144v-145r; Bulstrode, \textit{Reports}, Pt. I, p.2; Coke, \textit{Reports}, pp. 332-333; Pulton, \textit{De Pace}, fol. 70r; An Answer to a Book, Intituled, the Doctrine and Discipline of Divorce Or, A Plea for ladies and Gentlemen and all other Married Women against Divorce (London, 1644), pp. 2-4 (hereafter cited as An Answer...against Divorce); C. of E., Constit. 1603, fol. M3r.
\item \textsuperscript{51} Lavves Resolutions, pp. 219-233; Ency. \textit{Laws Eng.}, IV, 678; Rastell, \textit{Termes}, fol. 144v. For the Howard-Essex trial, see \textit{Tryth Brought to Light by Time: The Proceedings touching the Divorce between the Lady Frances Howard and Robert Earl of Essex (London, 1651)}, and Howell, \textit{State Trials}, II, 785-862. See also CSPD-Chas. I, VI, 353 in which the validity of a marriage was questioned because the bridegroom was intoxicated at the time of the celebration.
\item \textsuperscript{52} Lavves Resolutions, p. 223 and Howell, \textit{State Trials}, II, 850. These divorces and remarriages occurred during the reign of Queen Elizabeth.
\end{itemize}
the civil law allowed a woman to remarry if her husband had been gone for five years or more, his whereabouts were not known, and it was not known whether he was alive or dead. The Common Law allowed her to remarry if he were absent overseas for seven years or if he were in England and not known to be alive for the same number of years. The canon law generally forbade remarriage unless it was known for certain that the missing person was dead, but when a Christian partner was deserted by a non-Christian one, the established Church permitted divorce and remarriage. A mere refusal by one of the parties to live with the other was a cause for separation, but never one for divorce.53

All persons, lay and clerical, were in accord that consanguinity, or a relationship within the Levitical degrees, should be a bar to marriage. If it existed before marriage and was unknown at the time of espousals, it could be used as grounds for divorce.54 At the same time, there was no general consensus on the matter of incompatibility. The inability of a husband and wife to live peacefully together was not accepted as a cause for divorce by the established Church despite a small but genuine public opinion in favor of it. John Milton's book, The Doctrine and Discipline of Divorce,55 put forth the premise that incompatibility between a man and woman was a

53 Jas. I, ch. 11; Lavves Resolutions, p. 66; An Answer... against Divorce, pp. 3-4.
55 London, 1644.
good reason for severing the civil and canonical relationship. The author listed many reasons for which a husband should be able to put away his wife; he gave no thought to the fact that husbands could be difficult to live with as well. His work was answered, anonymously, by An Answer to a Book Intituled, the Doctrine and Discipline of Divorce Or, A Plea for ladies and Gentlewomen and all other Married Women against Divorce, which declared that as a man could not put away his wife for practicing a different religion, no more could he cast her aside for simple disagreements or "contrariety of disposition." 56

Civil and religious authorities, at any rate, did not interfere with private agreements to remain apart, as was the case with Lady Anne Clifford and her second husband, the Earl of Pembroke. But when one of the parties did not agree to remain apart, it was possible to sue for restitution of conjugal rights. 57

Similarly, neither adultery, nor crime, nor cruel and abusive treatment by either of the parties to a marriage could dissolve it completely. Nor could a claim of precontract, or previous betrothal, to another if the marriage were consummated. Adultery, however, could be used as grounds for separation, and this seems to have been the general practice even though advocates of divorce and remarriage continually pointed out that

56 pp. 4-5. See also DNB, XIII, 476 and Powell, Eng. Dom. Rels., pp. 95 ff.

57 III Blackstone 94. Among the many such suits are CSPD-Chas. I, XX, 218 and CSPD-Commonwealth, IX, 115.
the Scriptures permitted a man to put away a wife for adultery and to remarry another. The Puritan divines especially recognized adultery, as well as desertion, during marriage, as providing grounds for divorce. Moreover, no woman was required to live with a hardened criminal or one who continually and severely abused her.58 The fact that a separation or divorce a mensa et thoro had been granted seems not to have deterred many persons from remarrying. John Godolphin (1617-1678) pointed out in his Repertorium Canonicum (London, 1678) that an ecclesiastical canon of 1603 requiring parties to a divorce to give good and sufficient security that they would not remarry during the lifetime of the other had small effect in preventing remarriage. He said that whoever wished to remarry was free to do so simply by forfeiting the security, which satisfied the law.59

When a separation was granted the woman did not always receive custody of the children. In 1629 Archbishop Harsnet of York recommended that the son of Sir Richard and Lady Hawkesworth, whom he had failed to reconcile, should be raised by his maternal grandparents.60 Since the Common Law


60CSPD-Chas. I, III, 483.
and equity reasoned that in cases of necessity a woman was entitled to alimony, she usually received it so long as she was of good moral standing.\footnote{This is based on a statement by the lawyers in the case of Jane Evelyn, CSPD-Chas. I, XV, 122.} In 1634 one woman was threatened with discontinuance of her alimony if she continued to live with a sister who kept an alehouse,\footnote{John Southerden Burn, The Star Chamber: Notices of the Court and Its Proceedings with a Few Additional Notes of the High Commission (London, J. Russell Smith, 1870), p. 168 (hereafter cited as Burn, Star Chamber).} and in 1635 the Court ordered Prudence Lower to pay her husband £60 per year so long as they remained apart, but she was permitted to keep all the property she brought to the marriage.\footnote{CSPD-Chas. I, VII, 540.}

If a man refused to give his wife maintenance or pay alimony as ordered by the court and as based on their circumstances, she could sue for support.\footnote{III Blackstone 93; The Practick Part of the Law, p. 304.} This, again, was one of the few instances where a woman could sue her husband. There are many such cases on record and they show that the husband usually also paid the costs of the suit.\footnote{For examples, see CSPD-Chas. I, VII, 54, 325, 495; XVI, 401.} William Cumberford of Tamworth, Staffordshire, had an estate worth £450 per year in 1635 and was asked to pay his wife £150 per year alimony,\footnote{CSPD-Chas. I, VII, 532.} and in 1640 Thomas Whatman was ordered to pay his wife 40s. per week alimony for herself and five children who were living...
in his house, plus court costs.\textsuperscript{67} For continued refusal to pay alimony or maintenance, men could sometimes be committed to prison by the ecclesiastical courts.\textsuperscript{68}

One other type of suit arising out of matrimonial causes which was open to women was one for breach of promise. Many of these seem to have derived from the more or less contractual character given to contemporary engagements. The latter were of two types: \textit{sponsalia per verba de futuro}, a mutual promise to be married in the future, and \textit{sponsalia per verba de praesenti}, a declaration that the partners take each other immediately for husband and wife. The former was an engagement and became binding only if the parties had cohabited. It could be broken for just causes such as mutual consent, the date set for the marriage had passed, one or both of the parties were under age (fourteen years for men, twelve for women) when it was made and they now desired to break it, fornication with another, lingering disease, extreme dislike or cruelty, a relationship within the Levitical Code had existed or had now developed, or one of the parties contracted a \textit{sponsalia per verba de praesenti} or a marriage with another.\textsuperscript{69}

The latter was less indissoluble. It created a bond

\textsuperscript{67}\textit{Ibid.}, XVI, 401.

\textsuperscript{68}\textit{Bulstrode, Reports}, pp. 109-110.

\textsuperscript{69}\textit{Howard, Hist. Matr. Instit.}, I, 338; \textit{Pollock and Maitland, HEL}, II, 368; \textit{Henry Swinburne, A Treatise of Spousals or Matrimonial Contracts} (London, 1686), fols. A\textsuperscript{1}v, B\textsuperscript{3}r, C\textsuperscript{2}r and Hh\textsuperscript{2}v-Mh\textsuperscript{1}r (hereafter cited as \textit{Swinburne, Spousals}). Swinburne's book was printed posthumously; he lived about 1560-1623.
which could not be broken unless one of the parties entered
the religious state and this was not possible if cohabitation
had taken place, for then the betrothal automatically became a
marriage de jure. In fact, sponsalia...de praesenti was in
essence the legal equivalent of matrimony but lacked the regis-
tration, solemn religious ceremony, and the minister's bene-
diction needed to complete marriage before such privileges
as dower and legitimation of children could be attained.70 It
could not be dissolved, therefore, by a consummated marriage
with another, but if one of the parties was underage when the
contract was made and had not cohabited with the other, he or
she on reaching the age of consent could allege youth as a
reason for not having given consent to the contract in order
to be released from it.71 Lady Elizabeth Hatton, in fact,
attempted to stay her daughter's marriage to the Duke of Buck-
ingham's brother by claiming a precontract between her and the
Earl of Oxford. She was unsuccessful, chiefly because the
King and Sir Edward Coke desired the marriage.72

These betrothals were easy to pledge; witnesses did not
have to be present, and there was no requirement in the way of

70 Howard, Hist. Matr. Instit., I, 337-338; Swinburne,
Spousals, fol. A2v; Davis P. Harding, "Elizabethan Betrothals
and 'Measure for Measure,'" Journal of English and Germanic
Philology, XLIX (April, 1950), 141, 147 (hereafter cited as

71 SOR, IV, Pt. I, 68-69; Howard, Hist. Matr. Instit., I,
338; Swinburne, Spousals, fols. C1r and F3r; Pollock and Maitland,
HEL, II, 368.

72 Bowen, The Lion and the Throne, pp. 404-405; CSPD-Jas. I,
IX, 481, 483, 487.
words, tokens, or writing. For this reason secret, or clandestine, marriages were fairly common and constituted a problem to civil and ecclesiastical authorities. It is surprising, then, that actions were permitted for breaking a precontract or for breach of promise. Men generally were not allowed to initiate such action.73

Whoever broke a promise to marry was required to make double restitution of all gifts returned. If the espousal was broken by the death of one of the parties or a newly arisen relationship within the Levitical degrees, there was, of course, no obligation to return the gifts. However, any lands given to a man in anticipation of marriage had to be returned, and if he were obstinate his fiancée or her representatives could sue out a writ to recover possession of them.74 Even so, it seems that the canon lawyers and jurists were not consistent on the matter of returning gifts after a broken troth. Some, possibly those said to be influenced by French or Italian mores, felt that a woman who bestowed so much as a kiss on a man had given half of herself to him. In their view, if a woman accepted such gifts as gloves, rings, and bracelets from a man who was courting her and yet did not marry him, while giving him a kiss for his generosity, she was required to return


74Swinburne, Spousals, fols. Gg3r, Gg4r; Laveas Resolutions, pp. 74-75; Finch, Law, p. 264; Cowell, Interpreter, fol. M2v; Holdsworth, HEL, VI, 631.
only one-half of his gifts. At the same time, if she gave him any gifts of property in anticipation of the marriage, he was required to return them all. 75

It seems likely that men did not fare too well in these cases. For refusal to comply they occasionally could be excommunicated, and it was not until 1753 that suits to compel marriage because of precontract were cut off. 76 In fact, in 1634 when William Dallison, a great grandson and namesake of the famous jurist, and his "alleged" wife Elizabeth, a member of the prominent Oxinden family in Kent, were sued by one Judith May on the ground that William's precontract of matrimony with Judith invalidated the marriage, William's defense was accepted by the court with so little grace that he was ordered to pay the plaintiff's costs. 77 On the other hand, Thomas Cunliff in 1639 declared that he did not keep his promise to marry Margaret Collison because she had been carted through the streets in London for keeping a bawdy house and, moreover, that she had been precontracted to another. 78

Petition. The right of petitioning Parliament or high

75 Lavves Resolutions, pp. 71-72; Swinburne, Spousals, fols. Gg3r-Gg4r.

76 III Blackstone 93; CSPD-Chas. I, IX, 177-178. This was the act of 26 Geo. 2, ch. 33.


78 CSPD-Chas. I, XV, 137-138.
ecclesiastical officials for redress of grievances was open to women, and the public records are replete with petitions from them, singly, and in groups. The widows of men working for the East India Company brought a petition to Parliament in 1621 complaining about the company's failure to pay the wages of slain marines to the families of these men, and the county records of Worcestershire and Yorkshire contain many petitions from widows and other poor persons for relief. There were, also, numerous requests by women to visit or to have relatives set free from domestic prisons or foreign prisons, to have loved ones released from the service or impressment, for increased maintenance from their husbands, for pensions, and for a position for others, or for a pardon. There were also requests for a baronetage or for a recusant to visit Bath for her health. Some other more interesting petitions concerned

79 Notestein, Commons Debates, 1621, II, 261 and VI, 83.


82 CSPD-Chas. I, I, 96, 114; II, 150; XV, 458; and CSPD-Commonwealth, V, 204; XX, 84.

83 CSPD-Chas. I, XIV, 33; XX, 219.

84 Ibid., I, 340, 385.

85 Ibid., I, 208; III, 368, 557; IV, 112, 204.

86 Ibid., III, 188, 397.
Lady Raleigh's petition to the Privy Council in 1620 for "her shipp called the Destinie"; 87 that of Mrs. Mary Blithman, a poor widow with seven children, who desired to make one son a scholar by having him admitted to the Charterhouse School in about 1632; 88 that of Beatrice Foxley, who was in prison in 1639 when she requested permission to visit her sick husband; 89 Dame Frances Worsley's plea for more time than four days in May of 1640 to repair a breach in the fenworks on her property because she could not afford to pay a £2000 fine for not doing it in the time allowed; 90 Mary Bickley's desire in about 1640 that the Barons of the Exchequer let her pay a fine of £40 in reasonable yearly installments; 91 Elizabeth Mansell's request in 1625, made while her husband Sir Robert was serving in the navy, that the King intervene against persons who were infringing her husband's patent to make window glass and who had "enticed away" three of her workmen; 92 and Hannah Boyce's protest in December, 1656, to the Committee of the Council regarding eviction from her own home in Crooked Lane which she had purchased from the Government. 93


88 CSPD-Chas. I, V, 477.

89 Ibid., XV, 65.

90 Ibid., XVI, 151-152.

91 Ibid., XVII, 358.

92 Ibid., XXIII, 45 and DNB, XII, 974.

93 CSPD-Commonwealth, X, 187.
A similarly modern complaint can be noted in Mary Smith's protest to the Lord President of the Council about the misconduct of John Purser who was occupying her house and who had neglected to maintain it so that it had fallen into disrepair. 94

Women could also be the object of a petition. The Court of the Admiralty was petitioned in the spring of 1631 regarding Lady Teynham's unlawful claims to fishing grounds on the Kentish coast which caused poor seamen and fishermen to lose their livelihoods as well as the support of about 2000 persons. The court's investigation noted that "her Lord only claimed a certain spot, but her claim is boundless." 95

Political Rights and Responsibilities. Women had few tangible political rights and privileges. Although they could gain status as freewomen in some boroughs according to local custom, variously, by virtue of paying taxes, serving out an apprenticeship, owning a freehold (an estate in free tenure), or being the wife or daughter of a freeman, 96 they could not claim the same rights as their male counterparts. They were excluded from the electoral franchise, even when eligible, on

94 CSPD-Chas. I, IV, 244.

95 Ibid., 519, 525.

no specific grounds; in fact, a number of writers cite Sir Edward Coke as their authority and he, in turn, gives no authority for his statement that they could not claim this right. However, it appears that they did have a right to vote in a very few boroughs such as Gatton or Lyme Regis, either in person or by deputy. They could not sit in Parliament, and by the seventeenth century their husbands no longer possessed the right to sit in their place by jure uxoris. Furthermore, no women seem to have been knighted in this period.

Although jurists and lawyers of this period were not in accord regarding the ability of women to inherit hereditary titles of honor such as Lord Great Chamberlain, Lord High Constable, or Lord Steward, it would have been possible, it now seems, for a sole female heir to hold the dignity by deputy. The problem never really arose during the early Stuart reigns because court cases concerning the right of women to such honorary dignities were concerned more with tracing descent of claimants through females, who may or may not have held the office, than in placing contemporary women in those offices. Also, lawyers and jurists alike


98 Commons, Journals, I, 875; Stopes, Brit. Freewomen, p. 95; Luders, Controv. Elec., II, 14-15.


100 Ency. Laws Eng., XIV, 824.
were confused as to whether these titles were attached to the ownership of certain estates, so that descent would have to be traced through possession of land, or whether the estates were given as a curtesy to support the dignity, in which case descent would have to be traced through the title. The rules of inheritance of lands and titles vary, as we have noted in Chapter II.

A very few ministerial and administrative posts were held by women, but only in partnership with their husbands, or by deputy. The court in 1640 did declare that a ministerial post could be held by deputy, but this case involved a minor rather than a woman. The administrative posts were usually granted as a sort of financial subsidy as in 1655 when Lady Jermyn claimed one on behalf of herself and her two children. She declared that her late husband, Sir Thomas Jermyn, had wanted his position as Chief Registrar in Chancery to be granted to his family because he had no other means of providing for them. Consequently, Lady Jermyn wished to continue in his position by deputy so as to enjoy the profits of the office. Although women were eligible to hold local positions such as sheriff, constable, or forester

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102 English Reports, Full Reprint (176 vols.; Edinburgh: Wm Green & Sons, 1900-30); London: Stevens & Sons, 1900-30), LXXIX, 1078-1080; Croke, Reports (1657), p. 401.

103 The matter was not settled until after the Restoration. CSPD-Commonwealth, VIII, 284-285; Commons, Journals, VII, 877; Thomas Burton, Diary of Thomas Burton, Esq., ed. by John Towlhill Rutt (4 vols.; London: Henry Colburn, 1820), IV, 244 (hereafter cited as Burton, Diary). Additional instances of positions claimed primarily to enjoy the profits of office can be seen in
in fee, they seem not to have held any in the early seventeenth century except by deputy, or through their husbands if they were married. That is, they did not execute the office in person. 104

There are a few instances, however, of women who actually served as churchwardens, possibly because the duty was an onerous one and, as with the overseers of the poor, the nominees were appointed from the lists of property owners, each of whom was eligible to serve a turn. No record can be found of women who actually served as overseers of the poor or commissioners of the sewers even though there was nothing in the law to deny them this privilege or right. 105 This much was admitted by a lecturer at Gray's Inn in August, 1622 when he declared that although in law women were not to be "excluded as uncapable," it was only because of the "weakness of their sex" which made them "unfit to travel" and because they were "for the most part uncapable of learning to direct in matters of Judicature," as well as because of "discretion" that they were actually not appointed to such positions. 106

CSPD—Commonwealth, IX, 87 (a postmastership on the Dover Road) and in the chapter on "Economic Rights and Responsibilities" of this dissertation.


106 Robert Callis, The Reading... Upon the Statute... Sewers
At the same time that women were generally excluded from administrative positions, they were not required to serve on the posse comitatus, or power of the county. So, in a sense one disadvantage was matched by an advantage, for they could not be accused of neglecting to join the local posse in aiding the sheriff to keep the peace or to hunt criminals, which would be viewed as a contempt against the king's prerogative. However, women were obligated to help in carrying out such duties as repairing lanes, highways, and bridges, and were fined for nonperformance. Mrs. Mary Walley of Worleston was fined in 1640, according to the statute of 2 & 3 Philip and Mary, chapter 8, "for not working in the highwaies with a teame any of the fixed dayes appointed"; and a Lady Joan Dun of Theydon Garnon in Essex was ordered by the surveyors of the Special Highways Commission in September, 1618 to clear a ditch and cut away wood between the pond and the crossroads before the next lenten season.


107 Cowell, Interpreter, fols. Ccc4v-Ddd1r; IV Blackstone 122; Sheppard, Constables, p. 16.


It was possible for individual women to wield some political power on a local scale and to make their feelings felt on the national scene. The indomitable Lady Anne Clifford was able to influence the elections to Parliament from Westmoreland, partly, we can assume, through the fact that she enjoyed the hereditary right belonging to a representative of the Clifford family to be Sheriff of the County of Westmoreland. Since she herself could not exercise the right, she appointed a deputy.111 In 1641 a delegation of women from London and surrounding suburbs, led by Mrs. Anne Stagg, a gentlewoman and brewer's wife, crowded the door to the House of Commons to lobby for maintenance of the Puritan faith and for recognition of their right to inform Parliament of their opinions. The burgesses from Southwarke were sent to tell them that their petition was read and that the members would "use all the best Care they can for preventing and remedy-ing" their grievances.112

111This right was not surrendered to the Crown until 1849. Williamson, Lady Anne Clifford, pp. 393-403; Lives of Lady Anne Clifford, pp. 59, 99. See also CSPD-Jas. I, VIII, 408 for the same position held by her mother, the Countess of Cumberland.

CHAPTER THREE: HER PERSONAL RIGHTS

Part II. In Criminal Matters

Crimes and Punishments. Women had an almost normal capacity in law to commit crimes. An unmarried woman was usually believed to be acting on her own and could be held accountable for her own crimes. A married woman could, likewise, be held accountable when acting alone or in concert with her husband, but she could not be held responsible for crimes falling under her legal incapabilities, carried out under the coercion of her husband, or committed in self-defense, such as the accidental killing of a man who was attempting to rape her.\(^1\) In any case, her husband's name was almost always coupled with her own in indictments. And in one instance, at least, when the jury found a wife guilty of an offense but gave no verdict on the husband, no judgement could be rendered.\(^2\)

Women and girls, also, were liable to the same punishments as men and boys--fines, outlawry (a female outlaw was called a waive), forfeiture of property, whipping, branding, being placed in the stocks, transportation overseas, imprisonment, and death.

\(^1\) Blackstone \(444\); Holdsworth, HEL, III, 530; Dalton, Country J., p. 250; Hale, PC, pp. 53-54; Bateson, Borough Customs, II, cxiii.

\(^2\) Sir Henry Yelverston, Reports...of Divers Special Cases in the Court of the King's Bench (Andover: Flag and Gould, 1820), No. 106.
For felony, the capital punishment for both sexes was hanging.

With the death penalty for treason, however, there was a difference; men suffered it by hanging while women were burned alive. Before the fire reached a woman's body she was likely to be dead and oblivious to pain, for it was the practice to strangle her first by tying her to the stake with a rope around her neck.  

This courtesy was not as substantial as it seems, for a number of men were able to avoid the extreme punishment altogether by a privilege not available to women. This was the notorious benefit of clergy, an exemption from capital punishment for felony which was offered to all persons who could "prove" their clerical status by demonstrating that they could read. The privilege was at first only available to clergymen and meant simply that they were removed from the jurisdiction of the secular courts to that of the ecclesiastical courts, which did not inflict the death penalty. In time, the privilege was extended to clerks and subordinate officials connected with the church. By the time of the first Stuart, this privilege had come to be abused and could be claimed by any man who could read. What happened then was

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that, after conviction in court, a felon could give proof of his eligibility for clerical status by a sight reading from a passage in the Bible—usually the fifty-first Psalm—which was pointed out to him in court. If he passed this test his sentence could be commuted to a branding on the left thumb with a hot iron. This actually was a means for distinguishing persons who had enjoyed this privilege, as it was permitted only once. In addition, the judge could exercise discretion and keep the felon in prison for a period up to a year. Although a number of felonious crimes such as highway robbery, horse stealing, arson, and burglary were exempted from this privilege, the number of felons who escaped capital punishment was high. In Middlesex alone during the reign of James I, almost two out of every five convicted felons escaped death by claiming this privilege.4

Women, since they could not receive the tonsure, were not allowed to claim this privilege and, consequently, for simple felonies such as larceny, bigamy, or manslaughter, could suffer death where a man could claim his benefit of clergy and escape capital punishment. Fortunately, however, the courts were not entirely rigorous in enforcing the letter of the law, for many persons guilty of grand larceny were, instead, found guilty of petty larceny and lesser offenses, for which they could get off with a whipping. Moreover, a statute of James I in 1624 pro-

vided that any woman convicted of clergyable felonies involving
the stealing of money, goods, or cattle valued at less than ten
shillings and more than twelve pence should be permitted, in
place of the death penalty, to suffer branding on her left
thumb with a hot iron. She was to be punished further by impris­
onment, whipping, stocking (that is, being placed in a
wooden frame with holdes for the hands and feet), or being sent
to the House of Correction for a term up to one year, as the
judge or justice decided. This happened in 1634 to Ellianor
Angell and Magdalen Pulleyne; each was sentenced "to be burnt
in the brawne of the thumb with the letter T," El­lianor for
stealing twenty cheeses and Magdalen, for receiving them.

Women, also, were not permitted to be approvers. That
is, they were not allowed, when accused of treason or felony,
to turn King's evidence in return for lenience. However,
there was a privilege which women could claim in order to es­
cape the death penalty, even if only temporarily. It was var­
iously called the benefit of the stomach, benefit of the womb,
or benefit of birth; with it, any woman who was expecting a
child at the time she was convicted of a crime could ask to
have the sentence stayed. Unfortunately, this respite lasted

5 SOR, IV, Pt. II, 1216; Notestein, Commons Debates, 1621,
IV, 89, 258, 264 and V, 99-100; Dalton, Countrey J., p. 269;

6 B. Howard Cunningham, ed., Records of the County of
Wilts: Being Extracts from the Quarter Sessions Great Rolls of
the Seventeenth Century (Devizes: George Simpson & Co., 1932),
p. 110 (hereafter cited as Wilts. Q. Sess. Rec.).

7 Coke, III Instit., 129; Hale, PC, p. 158.
only until after the birth of her baby, and she had the privilege only once. If she became pregnant again, her punishment was nevertheless applied immediately. This claim of pregnancy was not an easy one to make, for a jury of twelve matrons had to be empaneled and to examine the claimant before her excuse was accepted. 8

In the Middlesex County Sessions during the twenty-six months between July, 1614 and September, 1616, five women failed to establish their claim to pregnancy and were hanged. 9 Sara Mitchell, the widow of Jesper Mitchell, successfully claimed this privilege in 1658 after she was found guilty on several indictments of felony and sentenced to death by hanging. A jury of twelve respectable matrons said she was "with quicke child," thereby making it necessary for the sheriff to respite her until she were "delivered or till it shall appear she is not with child." In the meantime he was required to keep her in safe custody until the time of execution. 10 Magdalen Dutton, who was convicted at the Assizes in March, 1634 for stealing a purse containing 110, was reprieved until after the birth of her child and was then transported to Guiana by the King's command in May, 1635. 11

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8Lavves Resolutions, p. 207; Lambard, Eirenarcha, p. 544; IV Blackstone 395; Coke, III Instit., 17-18; Pulton, De Pace, fol. 214r; Hale, PC, p. 237; Middlesex Sess. Rec., I, vii.


10Yorks. Q. Sess. Rec., VI, 1.

11GSPD-Chas. I, VIII, 285.
Seventeenth-century writers often discuss the various aspects of criminal law under the two headings of treason and felony, applying the first label to criminal actions involving some type of treachery or betrayal of trust against a superior and the second, to all other crimes punishable by death and forfeiture of property. Many of these offenses, however, were not punished so harshly and these were classified as larcenies or misdemeanors.¹²

Englishmen distinguished between two types of treason—petty treason and high treason. The former embraced crimes against citizens, such as a wife against her husband, a child against a parent, a servant against his master, or a vassal against his lord. High treason referred to the crime of killing, harming, or plotting malice against the King, his officers, or family. This crime did not extend to the king's sisters, or to his daughters-in-law, if they were married to younger sons who were not immediate heirs to the throne. For a man, punishment for petty treason was drawing, that is, dragging on a sledge or hurdle to the place of execution, and death by hanging. For a woman, it was drawing and death by being burned alive; if she were only an accessory to the murder of her husband, however, she was not burned but suffered the less painful death by hanging. In cases of high treason the bodies of men were also cut down from the gallows while

they were yet alive and quartered, or disembowelled and cut-up, with the entrails burnt and the quarters hung. Women were not required to undergo this additional agony and ignominy; a supposed decency to the female sex forbade exposing their bodies to the public.13

The penalty for high treason included, also, the forfeiture forever of titles of nobility and permanent revocation to the Crown of inheritance rights belonging to the offender and his family, including his wife's dower rights. A man attainted of treason also lost lands and goods in which he held a lease, but only for the extent of time in which he held an interest in them. At the termination of the lease the property reverted to the owner. Behind the legal reasoning for these stringencies was the assumption that a wife was cognizant of her husband's activities and should have persuaded him to act otherwise, as also concern for the plight of their families would make men and women cautious regarding treasonable activities. A woman who murdered her husband, although guilty of petty treason, would be treated in much the same way as one who murdered the king, for she could forfeit all her own property to the Crown and thereby lose them for her family and heirs. This could mean, for example, that if she were the sole heir of another, she could cause a permanent forfeiture

of property (and titles, if any were involved) to the Crown; if she were one of two coparceners, only her half of the property would be lost in this way. 14

The term felony was generally applied to any crime less serious than petit treason. It was punishable by hanging and forfeiture to the Crown for a year and a day of lands in fee simple as well as of goods, chattels, and profits of life estates. It also involved the corruption or loss of title—except where statutes provided otherwise, as for example, 1 Jas. 1, ch. 11 on bigamy—and inheritance rights to descendants—again, except for entailed lands. Lesser offenses such as larcenies and misdemeanors were not punished so harshly. Legally, the term larceny was applied to any wrongful taking of another's goods, but grand larcenies, where goods exceeding twelve pence in value were involved, were regarded as felonies in terms of penalties. Petty larcenies and misdemeanors were punished with fines, imprisonment, whipping, or loss of an ear, depending on the discretion of the magistrate or jurist. 15

In the legal code on these matters, a married woman had

14 Coke, I Instit., 163v; Pulton, De Pace, fols. 216v-217r, 218v, 225r-225v; Cowell, Interpreter, fol. G2v; Lavvse Resolutions, p. 152; II Blackstone 130 and IV Blackstone 380-382; Dalton, Countrey J., pp. 230-234, 267; Bacon, Treason, pp. 318-319; Ency. Laws Eng., I, 616. See also CSPD-Jas. I, XII, 423.

15 Holborne, Learned Readings, p. 94; Dalton, Countrey J., pp. 233, 238, 239, 256, 292; Cowell, Interpreter, fols. Ee2v, Rr2v; Pollock & Maitland, HEL, II, 496-498; Bacon, Treason, pp. 319-321; Ency. Laws Eng., I, 616; IV Blackstone 192-193; Coke, II Instit., 109; Hale, PC, p. 232.
a protection not available to single women. Except for crimes involving murder and treason against the King, his family, and the Commonwealth, a married woman could generally defend her actions as principal or accessory by claiming she did them only under the compulsion of her husband. This idea may have originated in the feeling that it was harsh to let a man go free with benefit of clergy while his wife might be put to death for committing the same crime with him. If she were convicted of felony, however, her chattels were safe for herself and her heirs, for no inquiry could be made of them on the legal assumption that her husband held all her property during marriage. And though it was a felony to give meat and drink knowingly to one who had committed an offense, a wife, since she was under the dominion of her husband, could not be forbidden to serve him even when she might know that he was guilty of such an offense. If a man discovered that his wife was guilty of a criminal offense, on the other hand, he was obligated to forsake his house and her company if he wished to avoid being charged with guilt along with her. Actually, it was to his advantage to bring her in to the authorities lest his goods be attached as bond for her appearance.

In prison, a woman generally received the same treatment

16 Dalton, Countrey J., p. 267; Cowell, Interpreter, fol. R2v; Bacon, Treason, p. 320; Bacon, Elements of the Com. Law, pp. 37-38; Ency. Laws Eng., III, 131; Holdsworth, HEL, I, 444 and III, 527; Pulton, De Pace, fol. 126v; Hale, PC, pp. 53-54; SOR, IV, Pt. II, 1028.

17 Finch, Law, p. 25; Lambard, Eirenarcha, p. 278; Dalton, Countrey J., pp. 268-269; Dalton, Off. Vicecom., fol. 63r.
as a man. If she had the means, for instance, she could have a personal maid to care for her. On the other hand, and for better or for worse, women were permitted to have their younger children and babies with them if no person offered to care for them. If they were penniless, they suffered the same as men from lack of food, clothing, bedding, and other necessities, for such services were not provided free; gaolers supplied them only to prisoners who could pay for them or whose relatives and friends furnished them. Prisoners, literally, could rot from neglect in the nauseous dungeons which many prisons of the day are described to have been. It is, then, a little heartening to come across a relatively humane gesture such as that in 1633 by a justice of the peace ordering a parish in Worcestershire to pay 6d. per week toward the upkeep of a mother incarcerated with her illegitimate child in the Bridewell. The father of the child had run out of the county and could not be found. Also, in 1657 the court ordered the Overseers of the Poor in one Warwickshire parish to pay to a woman who was in the gaol and "almost destroyed by vermin and through want" seven shillings toward her livelihood, plus twelve pence per week while she was in prison.

18 CSPD—Commonwealth, II, 184.
20 Ibid., II, 516-517.
Like men, women seem to have been liable to prison labor of sorts. No record of a sentence at hard labor has been found for them by this writer, but it is interesting that in 1629 the sheriffs of London and Middlesex were ordered by the court at Westminster to deliver up forty-seven felons from the gaols of Newgate and Bridewell for unspecified employment in the service of the King of Sweden. The only name mentioned in particular was that of one Elizabeth Leech. 22

As a rule, women seem to have been spared from torture, which in Stuart times was applied mostly in political and witchcraft cases, and never to the nobility. 23 However, it was possible for a woman to suffer the cruelest torture of all—peine forte et dure, or strong and hard pain. This was a punishment applied to persons who stood mute and refused to plead, either guilty or not guilty, and literally meant that they were pressed under weights until they made such a plea or died in agony while refusing. The advantage for all this belonged solely to the family and heirs of the victim, for a person who was accused of felony and refused to plead could not be put on trial; nor could he or she be convicted; nor could his or her property and title be forfeited. 24

Katherine Peters of Cranford, Middlesex, suffered this barbarous sentence in 1641. She probably was guilty of stealing

22 CSPD-Chas. I, III, 568.
24 Holborne, Learned Readings, p. 95; IV Blackstone 325-328; Veall, Law Reform, p. 27; Coke, II Institut., 177.
bedding, worth twenty shillings altogether, from a hedge where it was spread out, but it is somewhat difficult today to understand the pride which allowed her to stand mute rather than plead guilty. Her sentence stated that she was:

- to be brought to a close room and there to be layed upon her back naked from the middle upward her leggs and armes stretched out and fastened towards the four corners of the room, and upon her body to have so much weight and somewhat over then she is able to bear, the first day—she requiring food to have three morsells of course bread and noe drink, the second day drinke of the next puddle of water, not running, next the place she lyeth and noe bread, she every daye in like manner until she be dead.

After execution of this judgement the justices ordered her infant son to be kept and maintained by the inhabitants of the parish. This seems to have been the usual provision made for surviving children of widowed or vagrant women convicted for felony. If the child's place of birth were known, it could be sent back to that parish to be maintained.

It must be pointed out that when criminal actions were pardoned, women were the beneficiaries, for when a man's transgressions were pardoned, his wife became eligible again for dower in any estates which he recovered and which he gained subsequent to the pardon. If she herself were pardoned, she

26Ibid., pp. 136-137.
regained her property and inheritance rights. Women, equally with men, were entitled to such pardons for their criminal actions. Among the matters for which they were pardoned were: stealing linen cloth, buying stolen goods, bigamy when the first husband was believed to have died in the Low Countries, marriage within the levitical degrees, marrying at less than sixteen years without parental permission, adultery, witchcraft, clipping and filing (i.e., debasing) coins, harboring popish priests, murder, killing an apprentice boy by "unreasonable correction," "child-murder, the evidence being unsatisfactory," Judith Bush, for example, in 1626 was granted a pardon for stealing goods belonging to John Savage after presenting a letter from the Lord Mayor attesting that the bulk of these goods were in safe custody and ready to be returned.

Very likely, a pardon was forthcoming in two other instances. Ellen Charlton of Bower, Northumberland, in September of 1630, had petitioned for a general pardon granted on the birth of Prince Charles for her two sons, John and Thomas. They had been put on trial for stealing two mares plus three cows, and she herself was in danger of being questioned as an accessory. The judge of the assize certified that they were eligible for it but, notwithstanding, the clerk of the assize

30. CSPD-Chas. I, I, 574.
and other men secured a warrant for their execution. Mrs. Charlton petitioned anew in November of the same year and received a provisional pardon, that is, it was conditional upon her sons not being the same men who had been complained of in the county as being "notorious offenders." Unfortunately, they were; and they were executed. For harboring them, Ellen was in danger of being waived, or outlawed, and she next sought a pardon for herself in 1631. This, the Attorney General was inclined to grant whether or not she knew about her sons' offenses, for he believed that one should "favor a mother in such a case." 31

In June, 1637, Joan Haskins of Wiltshire wrote to a former neighbor who was secretary to Archbishop Laud and offered him £10 or £20, the most she could afford, if he would use his influence to obtain a pardon for her daughter Edith. It seems that the girl was married off, with a good portion, to one Edward Belemy who, in turn, squandered it in riotous living and then went to the Low Countries and Sweden. Over a period of many years her daughter had received reports that he was dead, and so she recently had married a man named Yates. On the very day they were married, Edward Belemy returned, took all the goods and clothes that she had earned during his absence, and sold them. He also produced a warrant which caused her to be tried at the last assize for bigamy—even though she had never bedded with her second husband—and to be condemned to

31Ibid., IV, 346, 382, 476, 489.
die, being granted a reprieve only until midsummer. Understandably, the loyal neighbor and correspondent, William Dell, asked Sir John Lambe, Dean of the Arches, to read her petition and perform a work of charity. 32

**Offenses against Person or Character.** Cases of assault, or threats to harm another, battery, or deliberately causing injury to a person, and defamation, or slandering another's reputation, were numerous, and women figured in them in many instances. To prevent frivolous and malicious suits based on mere words or threats from inundating the courts, statutes were passed in 1601 and 1624 declaring that where damages amounted to less than forty shillings, the plaintiffs could recover no more in court costs than the amount of damages awarded. 33

Assaults on women were fairly common and men who threatened or even attacked their wives figured in some of these instances. Thomas Beech threatened "to knock his wife's brains out even though he were hanged for it" and did "beate her black and blue without anie just cause moving him to do so." 34 Mistress Beach, of course, sued him because of his unloving behavior.

Women who were single or widowed could bring an appeal for assault or battery and be appealed for the same, but if

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33 *SOR*, IV, Pt. II, pp. 971, 1222-1223.

they were married they generally sued in company with their husbands. The persons sued, whether men or women, would be bound to the peace, that is, forced to pay bond and find sureties for good behavior.\textsuperscript{35} In 1603 a man was brought to court for assaulting the wife of Oliver Suthworth with a stick, while Michael Jackson's wife in 1613 was presented for rushing out of her house with a pitchfork and beating away a man who was cutting down her ale-rood, which was some sort of advertising sign.\textsuperscript{36} In 1627 when an irate husband sued for damages against a man who had assaulted his wife and had carried her off along with his goods, he was told that she must join with him in an action of battery.\textsuperscript{37} In 1634 John Westgarth made a plea against Margaret Pierce for critically injuring his wife by kicking her; he succeeded in gaining a warrant for Margaret's arrest from Chief Justice Richardson.\textsuperscript{38}

Women, indeed, do not seem to have been innocent of heinous assaults. In the reign of James I, Alice Nicholls, the

\textsuperscript{35} Cowell, Interpreter, fol. Ccc-r; Lambard, Eirenarcha, p. 81; Dalton, Countrey J., pp. 157-192, passim; Sir George Croke, Reports...of such Select Cases as were Adjudged...During the Reign of James the First (4th ed.; London, 1791), p. 239 (hereafter cited as Croke, Reports (1791)). For some cases involving these peace warrants, see Warwick Q. Sess. Rec., I, 256 and James Tait, ed., Lancashire Quarter Sessions Records, Remains, Historical and Literary, connected with the Palatine Counties of Lancaster and Chester, New ser., Vol. 77 (Chetham Society, 1917), p. 176 (hereafter cited as Lanes. Q. Sess. Rec.).


\textsuperscript{37} Croke, Reports (1657), pp. 63-64.

\textsuperscript{38} CSPD-Chas. I, VII, 279.
wife of Richard Nicholls, a yeoman and acquavite-stiller of Clerkenwell, attacked Margaret Selman and bit off her nose;\(^{39}\) while Joan Best, a seamstress, was accused by Elizabeth Hilde of beating her when she was quick with child so that she no longer felt any stirring.\(^{40}\)

Contrary to the childish jingle, these assaults with sticks and stones and feet or fists were regarded as no whit less harmful than name-calling. Persons whose words or writings slandered another's reputation were punished in the ecclesiastical courts; but when it was claimed that some damage actually resulted, their cases were tried in the civil courts. Ordinary bad language and character aspersions were censured in the church courts, for mere insults were not actionable. To get such cases into the Common Law courts, plaintiffs had to claim or prove some actual damages and that a third person had heard or seen the defamation. In her defense the defendant could claim that the statement was true, but if she or the plaintiff died, the case died. At this time, too, there was no clear distinction between libel and slander, that is, between the written and spoken defamation. An accusation, for example, of immorality or of religious laxity and deviation was not actionable and was tried in the ecclesiastical courts, while an imputation of

\(^{39}\) *Middlesex Reports*, p. 171. A perusal of the four volumes of the *Middlesex Sess. Rec.* shows that Alice was continually cited in court for disturbances and was known as a "common break-house"; in 1615 she was threatened with being waived for refusing to answer to the various charges against her (Vol. IV, p. 265).

\(^{40}\) *Middlesex Sess. Rec.*, I, 226.
unfitness for a profession or of bankruptcy which could affect someone's business, of a contagious disease which would exclude a person from society, or of commission of a criminal offense that would be punishable by imprisonment or fine, or of bastardy which might affect one's claim to title or property were triable in the Common Law courts.41

Thus, to say that a woman had an infectious disease was in itself not actionable, but if she kept an inn and lost her guests as a result of such an accusation, there was a cause for action.42 So, in Flowers' Case (1632) the court ruled that it was actionable to declare that many babies died due to a certain midwife's ineptitude, for this could affect her profession.43 However, it continually ruled that it was not actionable under the Common Law to merely call a woman a "bawd" or "whore" or her husband, a "cuckold." The case would have to be tried in the ecclesiastical courts if at all. However, if it was declared also that she kept a "house of bawdry" she could bring suit for defamation in the civil courts, for this was an accusation of wrongdoing which was punishable by the authorities.44

This necessity for alleging a temporal loss, while eliminating a number of frivolous suits or suits brought for loose


44Ibid., pp. 78, 166, 239; Croke, Reports (1791), p. 462.
words spoken in anger, did prejudice the situation of women somewhat. No suit could be brought, for example, if a woman's reputation were defamed due to an aspersion of immoral conduct. In a day when standards of morality were more rigid regarding women than men, this could have been no small vexation. A woman slandered had to prove, for example, that because of this false accusation she had lost a marriage which was being arranged before she could bring her case to court. So, Dorothy Brien, a widow, in 1634 claimed that she lost a marriage because of being called a whore and her children, bastards. But, Lady Anne Blount in 1654 sued one William Blount who was saying that she had contracted a marriage with him and who offered to cease these allegations in return for some money. Since there was no Bishop's Court for such actions, she appealed to the Commissioners of the Great Seal and then to the Protector's Council for help. The Council did investigate her case and summoned William Blount for questioning, but even this would not have happened had Lady Anne been a mere commoner without a peeress's privilege of having her case heard in the Council.

In this period, causes which were not actionable in the


46 Croke, Reports (1657), pp. 234-235. See also Anne Davies' Case in Ireland, Coke Repts. Abridged, pp. 106-107.

47 CSPD-Commonwealth, VII, 105.
Ecclesiastical courts were tried in the Star Chamber, but when the latter was abolished the Common Law Courts gradually took over such cases. However, this necessity to prove damages and the law's hazy concept of libel caused difficulty in cases involving printed slanders.48 Three women who were indicted in 1654 for publishing a libel in verse on three men were bound over to appear before the Quarter Sessions in Wiltshire at Eastertime and were then discharged.49

The punishments for slander varied. In 1627 Margaret Knowsley asked for remission of one of the three penalties imposed on her for slandering a Mr. Jerome. It had been ordered that on three successive Sundays she was to be whipped, to make public apologies to the defendant, to be carted, and afterwards to be bound for her good behavior. Margaret asked to be freed of her sentence to be carted.50 On the other hand, the persons involved in the slander against Lady Exeter, the young second wife of Thomas Cecil, who was the eldest son of the first Lord Burghley, were given substantial punishment. The persons involved were the widow of William Cecil, the great-grandson of Lord Burghley, whom we met when discussing his claim to the Barony of Ros, her servant, and her parents, Sir Thomas and Lady Lake. Lady Ros claimed that


her late husband (he had died in 1618) and his step-grandmother, the Countess of Exeter, were guilty of incest together and that the Countess had tried to silence her with poison. She brought in as evidence a letter——later proven to be forged——written by the Countess and also a witness, a servant who allegedly was hiding behind a wall hanging when the Countess acknowledged her guilt. King James himself had gone down to prove that the latter was patently not true, for he had the servant stand in the supposed spot to see for herself that the hangings would have concealed her person only up to her knees. When the punishments were announced, the King himself was in the court to pronounce them while the Countess of Exeter sat there attended by thirty lady friends who had come in as many coaches. Sir Thomas and Lady Lake, with their daughter, were ordered to be imprisoned during the King's pleasure and to pay fines plus damages, amounting to £20,000; a servant who had penned his name to a paper accusing the Countess of Exeter of poisoning his mistress, Lady Ros, was fined £500, and the maid was ordered to pay a fine of £100 in addition to being whipped, branded on the cheek with the letter FA, for "False Accuser," and being placed in the Bridewell for the remainder of her life. After admitting the guilt and justice of their punishments, however, all were freed and the fines, remitted except for £10,200 which Sir Thomas had to pay to the Exchequer and for another £4000 in damages to Lady Exeter.

Murder and manslaughter were regarded as the most serious crimes against the person and were punished accordingly. Late sixteenth and early seventeenth century legal treatises recognized five kinds of homicide—Chance-medley, or accidental, Felo da Se, or suicide, and Murder, which was regarded as the culmination of an intentional act committed with malice.\[^{52}\] Punishment for these offenses was meted out according to whether the crime was classified as a treason, felony, or misdemeanor. The most despicable of these crimes were called treasons, and women seem to have suffered more than men from them. It was not because of quantitative reasons—women did not commit more manslaughters or murders than men—but for qualitative reasons.\[^{53}\] The law presupposed women were subordinate to men so that it was regarded as a more atrocious crime if a woman killed her husband than if he killed her, for by this act she was considered to have rebelled against the natural authority of her husband. She was charged with petty treason while her husband, for killing her, would be charged with the lesser crime of murder, the same as if he had killed an ordinary stranger.\[^{54}\]

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\[^{52}\]Cowell, Interpreter, fols. Mm₂v, Q₁r, Wv₁r, Zz₁r; Stephen, Hist. Crim. Law, II, 192-194 and III, 48-50; Hale, PC, pp. 23-49, passim; Holborne, Learned Readings, p. 92.

\[^{53}\]The Middlesex Sess. Rec., for example, give some statistics which support the statement that women were responsible for fewer homicides than men. See Vols. I, xiii; II, x-xi; III, xiv-xv; IV, x-xi.

\[^{54}\]I Blackstone 445, n. 38; Lambard, Eirenarcha, pp. 238, 242; Dalton, Countrey J., pp. 231-233, 239-240. See also the
In a strange case in 1639 a man brought suit against his mother and a neighbor for poisoning his late father. The mother was found guilty of petty treason for the death of her husband while the neighbor, whom the son seems to have wanted found guilty, even if only for murder upon a stranger, was not charged.55 A similar reasoning prevailed when a servant was accused of murdering, or of being an accessory to the murder of, his or her master or mistress. A servant who let into the house the man who killed her sleeping mistress, but otherwise did nothing except to hold the candle, was charged with petty treason.56 When a newborn illegitimate child was found dead, the mother had to prove, by one witness at least, that the child had been born lifeless, lest she be regarded as a murderess and guilty of treason. In this instance the law assumed that a dead fetus could not have been born unless the mother had been given some assistance at birth. On the other hand, if someone were to strike her with such force that her child died either in the womb or shortly after birth, that person would not be charged with murder, for an unborn child was not regarded as a living thing; it was likely to be unbaptized and, moreover, it was difficult to prove the cause of death with the handicap of seventeenth-century medical science.

55 Croke, Reports (1657), pp. 382-383.
56 Pulton, De Pace, fols. 108v-109r; Holborne, Learned Readings, pp. 12-13; Dyer, Nouel Cases, fol. 128r.
However, if the mother herself died within a year and a day after such a blow, the attacker could be charged with felony.57

In 1616, for example, Mary Cooke, a servant of John Conquest, a grocer in High Holborn, Middlesex, was punished for murdering a female child, which had been born in her master's house, by dropping it down a privy;58 while in 1632 Elizabeth Draper, a prisoner in Newgate, was found not guilty of murdering her child because the jury impanelled to inquire into the facts believed the midwife's testimony that the child had no wound or bruises and was born dead.59 In 1651 a pregnant woman who attempted to take a physic to cure her dropsy was ordered to be apprehended on suspicion that she actually was trying to abort her child. Lest one forget Alice Nicholls who was mentioned earlier because of her continual embroilment with the law, it is sadly interesting to note that she was sentenced to be hanged in 1617 for the murder of one Thomas Shepperde.60

As with murder, crimes involving rape and ravishment, or the kidnapping of a ward, as well as forced marriage were regarded as felonies so heinous that they were consistently

57Hale, PC, pp. 227-228; Lambard, Eirenarcha, pp. 229, 236; SOR, IV, Pt. II, pp. 1234-1235; Wilkinson, Treatise, fols. 21r-21v; Dalton, Countrey J., pp. 242, 282.


59CSPD-Chas. I, V, 503.

excluded from the general pardons issued by the government. The fact that Henry Bibrest was personally pardoned by the King in 1629 for the rape of Rose Winsley seems to underscore the fact that this crime was not easily excused.

The penalty for rape was death, which extended also to the major accomplices, male and female, to the act. This punishment had been found ineffectual for discouraging offenders, however, and the felony was so prevalent that a statute had been passed during Elizabeth's reign to remove all possibility that rapists could claim the benefit of clergy and so escape the death penalty. If the accused felon could prove that the woman or girl had given prior consent to the act, he was of course not guilty. Sir Edward Moseley was acquitted in 1647 because Mrs. Anne Swinnerton was said to have ravished him instead, but he was reprimanded for keeping bad company. The accused rapist might also defend himself by claiming that a child had been born of the union, relying on the legal

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61 SOR, IV, Pt. II, 1011-1012, 1128, 1203, 1270-1271; AOT, II, 496-497, 568-569.
62 CSPD-Chas. I, IV, 93.
63 Fulton, De Pace, fols. 129v, 139v; Lavves Resolutions, p. 41; Lambard, Eirenarcha, pp. 253, 545; Doddridge, English Lawyer, p. 138; SOR, I, 87 and IV, Pt. I, 617-618; Dalton, Countrey J., pp. 281-282; Hale, PC, p. 200.
64 The Arraignment and Acquittal of Sir Edward Moseley, Baronet, Indicted at the King's Bench Bar for a Rape, upon the Body of Mrs. Anne Swinnerton, Taken by a Reporter there present (London, 1647), reprinted in the Harleian Miscellany (10 vols.; London: White and Co., and John Murray, 1808-13), II, 499-502.
authorities who stated that no child could be born of any union where consent was lacking and that, therefore, if a child were born there was no rape at all. Whether he could also claim in defense that the woman was his own mistress is difficult to determine. The thirteenth-century lawyer, Henry de Bracton, was cited by some seventeenth-century jurists as authority for the statement that the accused could defend himself by claiming that the woman was his own mistress but not by claiming that she was a harlot or someone else's paramour. As the eighteenth-century lawyer William Blackstone observed, the Common Law was more understanding toward women than to say that a man could not be punished "for violating the chastity of her who had no chastity at all or at least hath no regard to it." The woman, perhaps, may have repented of her former life, and she certainly should not have been made to suffer indignities because of it.

A rapist could not defend himself by alleging that the woman had given her prior consent when she had done so only under fear of death. If she were very young he had

65 Cowell, Interpreter, fol. II2r; Dalton, Countrey J., p. 281; Pulton, De Face, fol. 129v; Lambard, Eirenarcha, p. 253; Britton, fol. 45v; Finch, Law, p. 204; Wilkinson, Treatise, Tols. 23r-23v; Lavves Resolutions, p. 396.

66 Wilkinson, Treatise, fol. 23v; Lavves Resolutions, p. 396; Dalton, Countrey J., p. 282.

67 IV Blackstone 213.

68 Lavves Resolutions, p. 396.
no defense at all, for young maidens were presumed to be beneath the age of discretion and it was immaterial whether they had consented or not. This age of statutory rape was limited to ten years by a statute passed in Elizabeth's reign, while girls between ten and twelve could take recourse to the Statute of Westminster I (1275) where the age limit was twelve and the offense was regarded as a trespass punishable by two years' imprisonment and a possible fine. Unfortunately, there was no similar protection for girls above the age of twelve.69 However, the law did discourage the carrying off of willing young heiresses under sixteen. Parents and guardians of such young heiresses were distressed by the ravishments, or abductions, of their charges and the law obliged by making it a crime for any man to take away or to help someone else take away an unmarried heiress under sixteen without the consent of her parents or guardians. A person convicted of the offense was subject to two years' imprisonment or a fine assessed in the Star Chamber. If the abductor also married or committed fornication with the heiress, he and his accessories were liable to imprisonment for five years or to payment of a fine which was to be assessed in the Star Chamber. Half of this fine went to the Crown and the other half, to the distressed parties.70

69Lambard, Eirenarcha., pp. 252-253, 405; Coke, III Instit., 60; Dalton, Countrey J., p. 282; Lawves Resolutions, pp. 401-402; Pulton, Statutes, pp. 26, 1120-1121.

70Dalton, Countrey J., p. 282; Pulton, Statutes, pp. 996-998; Lawves Resolutions, pp. 385-386; IV, Blackstone 209; Rastell, Statutes, folio. 553v-554r.
In 1606 a man named Dawes sued another named Shereman in the Star Chamber for taking away and marrying his daughter without his permission or liking. She was only thirteen or fourteen years old, so the contract was voided and Shereman was sentenced to pay £500 or be imprisoned for five years. The court does not seem to have imposed the lighter sentence of two years in 1631 on Thomas Rogers, a tailor and serving man who enticed away Jane Cockyn, the eleven-year-old orphan daughter and heiress of Squire William Cockyn, and who convinced her to contract herself to him in marriage. Instead, it ordered Rogers to pay a fine of £2000 plus the £40 fine of his accessory Mary Partridge, who was imprisoned. The latter was the servant who let him into the house and carried Jane down from her bedchamber in her nightclothes. Though Lord Richardson, one of the judges, was in doubt about the sentence because the statute provided for two years' imprisonment or a fine for merely taking away an heiress, the court seems to have regarded this as a punishment "for example sake." In order to make this crime even less profitable for the abductor of a young heiress, the law provided that even if she willingly consented to or married him, she had to forfeit her inheritance during her lifetime to the person to whom it would normally revert, escheat, or descend at her death.

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72 Gardiner, Star Ch. Repts., pp. 75-77.
73 Holdsworth, HEL, IV, 511; Lavves Resolutions, pp. 385-386; SOR, IV, Pt. I, 330; Pulton, Statutes, pp. 996-998.
matter of fact, this profit motive was used to discourage crimes of violent rape. All women of means were encompassed within a law providing that any woman of substance who subsequently consented to her attacker would likewise have to forfeit all her inheritance during her lifetime. If she were married she also forfeited her dower, as has already been pointed out.74 This is exactly what happened to Elizabeth Venour according to the author of a 1632 compilation of laws for women. After her father’s death she was abducted and raped by John Worth, who later married her. When he was indicted for ravishing an heiress and took sanctuary in Westminster, she refused to forsake him or to testify against him in the Star Chamber. For this she lost her possessions to Robert Babbington.75

To avoid this penalty, John Derbyshire and Anne his wife, the daughter of Abraham Whittamore, petitioned in 1629 to avoid incurring the penalty imposed on heiresses who married without parental consent. Anne declared that they had run off to escape from her late, mercenary father.76 Apparently fear of a similar penalty led John Redman, a groom, to bring a suit in 1634 for false accusation against Robert Greene and others who had attempted to indict him for stealing away his employer’s daughter, Elizabeth Codrington, and for marrying

74SOR, II, 27; Pulton, Statutes, p. 212; Lavves Resolutions, p. 399; Finch, Law, p. 204.
75Lavves Resolutions, p. 399.
76CSPD-Chas. I, III, 447, 564.
her against her will. Redman's suit was dismissed by the court which thought it "not fit to give any countenance for such base grooms to inveigle their master's daughter." The same revulsion by the courts against persons accused of kidnapping, raping, or forcibly marrying an heiress can be seen in another case several years later. In 1637 Roger Fulwood was ordered to be hanged despite the petition of his mother, Lady Alice Fulwood, to the King. He was accused of taking Sarah Coxe, who had a portion of £300, away by force and then taking her to Strandbridge before bringing her to the Bishop of Winchester's House where she married him, willingly.

For quite identical reasons much attention was attracted in the fall of 1649 to the matter of Lady Jane Puckeringe, the daughter and heiress of Sir Thomas Puckeringe. She was walking in Greenwich Park with her maids one day when she was seized by Joseph Walsh and his friends, put on a horse, and led to the coast where a boat was waiting to carry her to Dunkirk, and from there taken to Flanders where she was shut away in a convent. It took much official action to effect her release: warrants were sued for her recovery and for the punishment of her abductors, who claimed that a marriage had been performed; appeals were made to the Spanish ambassadors; the Council of State sent over a Mrs. Magdalen Smith with letters of authority to seek for her; and a ship was sent to

77 Burn, Star Chamber, p. 137.
Flanders to be in readiness to bring her back. Also, the English agent at Brussels, Peter Thelwell, was told to give some attention to the matter. When Mistress Puckeringe was still not free the following spring, the Council wrote to Archduke Leopold of Austria for assistance about the same time that Thelwell took it upon himself to call on Prince Charles, even though Commonwealth officials were indisposed toward the royalists. Finally, in June of 1650 Jane Puckeringe was brought back to England in a man-of-war and the supposed marriage was voided, while her kidnapper was surrendered to the authorities and indicted for felony.79

It does not seem, however, that the courts were consistently rigorous in prosecuting charges of rape. The Middlesex Sessions Records for 1614-1615, for example, record the hanging of a man for raping a girl who was no more than eight years old and the reprimand of another for kidnapping an heiress of only fourteen years whom he married the next morning.80 These records also include several cases, at least, of alleged rape, which were dismissed. Evidently the offense was considered a vile one but not so abhorrent as to prevent the courts from finding reasons to avoid inflicting the death penalty.

For the offense of rape a single woman herself could sue


out an appeal, but a married woman could not have this remedy without her husband. Such appeals had to be brought within the county where the crime occurred. Although the law once required the woman to go immediately in her torn garments to complain about her wrong and to raise the hue and cry, it had relaxed sufficiently by the seventeenth century to require only that the complaint should be brought within a reasonable time after the crime and that the offense had taken place under circumstances where an outcry would not have been heard by others in the vicinity. The records do not reveal any appeals of rape, so this legal privilege seems to have been a dead letter. Appeals for rape actually had given way to other legal remedies such as trespass (an action for redress of unlawful bodily injury), or indictment (a presentment by a grand jury). At this same time, the common remedies for abduction were by indictment, by action for false imprisonment if the girl or woman was unwilling, by writ of habeas corpus, and occasionally by writs de homine replegiando (to recover or replevin a person out of another's custody).

It seems, moreover, that because women were ashamed to confess to such an outrage and loathe to undergo an inquiry, they were hesitant about reporting any such case. It was therefore provided in the law that their husbands, fathers, or next

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81 Pulston, De Pace, fol. 152v; Lavves Resolutions, pp. 210, 390-391; Dalton, Countrey J., p. 281; Hale, PC, pp. 153-154; Britton, fol. 45r.

82 Holdsworth, HEL, II, 360-361; Ency. Laws Eng., I, 24; Coke, II Instit., 55.
of kin had a legal right to pursue the abductor; if they failed to do so, the local law officials could step in. The latter was especially true in the case of the few remaining nieces, or villeins, in England, for such a woman could not bring an appeal herself. In this way, a man who hoped for mercy at the hands of the woman involved could no longer avoid the consequence of his action. The possibility that her male kin or the law might bring suit against him made it somewhat perilous for him to meddle with her. In fact, the law regarding the enticement away of women of means was so strict that, according to Sir William Blackstone, men were hesitant about giving hospitality to a woman who had lost her way on the road.

Unfortunately, however, there was no similar protection for poor girls and women, for the court decided in 1613 that the statute on punishment for abduction and forced marriages applied only to heiresses or women of property. The same court declared that a woman who was abducted but not married or defiled could have an appeal only for the kidnapping.

The law regarding abduction or kidnapping with intent to marry did not encompass poor women and girls until 1653 when all persons under twenty-one were placed under its protection.

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83 Pulton, De Pace, fol. 153r; Lawes Resolutions, pp. 380-383; SOR, II, 512; Coke, I Instit., 123v.

84 III Blackstone 139.

The law's rigor was modified at this time too; it no longer decreed death without benefit of clergy as punishment but imprisonment at hard labor for life. In addition, the abductor was to forfeit his entire estate, real and personal, with half going to the Commonwealth and half to the party kidnapped. Any accomplices convicted for the same offense were to suffer imprisonment at hard labor for seven years while the forced marriage was to be nullified. Furthermore, any guardian or overseer who had a ward or child in trust and who married off the latter against his or her will was to forfeit double the estate of the ward, with half going to the Commonwealth and half to the person forcibly married off. 86

For women over twenty-one, the law is silent. It may be that poor women were protected, if at all, by the Statute of Westminster I, which provided a punishment of two years' imprisonment plus a fine for persons who abducted any woman against her will. 87 As for women of substance, it does not seem likely that the law would insist on the old death penalty. Possibly, offenders were transported.

**Offenses Against Property.** The most common offenses against property rights by women and girls seems to have been the theft of items such as household goods, clothing, and money. They also committed a large number of other crimes against the property rights of individuals. Whether married women had any

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86 AOI, II, 717.
87 SOR, I, 29.
special immunities over single women and widows in such matters was debatable, as jurists differed on this point; those who cited the oldest authorities tended to cloak women with the most protection, and those who relied on more recent authorities tended to ignore these ancient protections. Such special protection was based on the fact that the Common Law did not recognize the giving of chattels to a woman by her husband but did regard all chattels she brought into the marriage as being confiscated by her husband. This technical nicety made possible a legal conundrum that a married woman could not be questioned regarding the whereabouts of her chattels if she were convicted of a felony. If the latter were not found, they could not be confiscated or forfeited and, consequently, remained for her family and descendants to enjoy. 88

The variation or confusion in the law regarding property ownership and conversion by marriage partners reflected the changing attitudes toward women. As they gained responsibility in property matters, they lost their immunities to prosecution for criminal offenses. Women themselves did not consistently advocate greater responsibility or more immunity; they seem to have preferred whatever was most advantageous to them at the moment, and this can be seen in the case of Powell and his wife against Plunket in 1605. To Mistress Powell's accusation, "Mr. Plunket did steal my plate out of my chamber," the

88 Holdsworth, HEL, III, 527; Ency. Laws Eng., VI, 647; Dalton, Country J., pp. 267-269; Coke, 1 Instit., 351r; Croke, Reports (1657), p. 355.
defendant replied that her words were "insensible and not actionable" because a married woman could not own any plate when it was legally the plate of her husband. The court rejected this contention, saying that she had a right to bring an action because in ordinary speech a woman speaks of her husband's goods as her own. 89 Yet in 1610, in the case of Draper v. Fulkes, when the plaintiff claimed that he had lost goods which the husband and wife together had found and used, the defendants protested that the action should be against the husband only because married women could not convert goods. But, the court declared otherwise, that the goods were converted to the use of both parties. 90

Under the older reasoning, a married woman could not be accused of stealing goods belonging to her husband, even if she took them when she eloped with another man. In this instance her husband's only recourse was to sue her companion. If she were taken away involuntarily the right to sue for the goods belonged to the King as well. 91 However, in 1635 William Gilbert was permitted to sue his wife for return of "goods & household Stuffe" which he claimed she had embezzled from him. 92 When a married woman, on the other hand, was involved in property offenses not concerned with her husband's goods,

89 Croke, Reports (1791), p. 38.
90 Yelverton, Reports, No. 166.
91 Dalton, Country J., pp. 268-269; Lavves Resolutions, p. 381.
she could be prosecuted to the full extent of the law, especially if she were guilty of abetting her husband in wrongdoing, as happened in 1618 in the matter of Sir George Sandys. He was hanged for stealing purses on the highway after having been pardoned once previously, while his wife and son were imprisoned as accomplices.93

This was true also if a woman were single or acting entirely apart from her husband. The crimes and punishments varied; they included almost everything from receiving stolen goods, for which there was imposed a fine of three shillings fourpence;94 to rustling a bay gelding worth £4, for which the sentence was hanging,95 and to stealing eight yards of kersey cloth valued at 6s.2d., for which the guilty offender was burned.96 Apparently the ability to make restitution had some effect on the punishments, for in 1603 a spinster, for stealing a shirt, was put in the stocks for two hours and was required to return the shirt to its owner,97 while in 1617 Sarah Greene, who had no goods, was sentenced to be hanged for stealing some gloves and twenty-two marks from Henry Robinson.98

93 CSPD-Jas. I, IX, 527.
94 Yorks. Q. Sess. Rec., IV, 139.
95 CSPD-Chas. I, XXII, 380.
98 Middlesex Sess. Rec., IV, 169. See also CSPD-Chas. I.
Some other offenses of this type for which women were indicted were cutting down and carting off four ash trees; milking a man's cow and taking away the milk; stealing cotton, yarn, and woolen cloth; burglarizing a house at night; stealing wool worth 6d. from the bodies of three sheep; and picking £6.0s.10d. from the pocket of a baker. When justices were loathe to apply the extreme penalty for offenses falling under the crime of grand larceny, they sometimes reduced the value of the stolen goods to make the offense fit a lesser crime. In 1637 Jennet Todd, the wife of Edward Todd, a laborer of Knaresborough, Yorkshire, was accused of stealing a pewter dish, a candlestick, and yarn worth 9d. altogether from Margaret Inchbald. She was found guilty of felony for goods worth 4d. and was sentenced to "be whipped upon her naked body until blood flowed."

III, 234—"Petition of Grace Jones."


100Warwick Indictments, p. 131.


103Yorks. Q. Sess. Rec., II, 45.


105West Riding Sess. Rec., p. 34. See also Middlesex Sess. Rec., I, viii.
Various types of fraud, or deceitful practices, also were committed by women. The Earl and Countess of Suffolk were together found guilty, in 1619, in the Star Chamber of embezzling from the King's Treasury. For this they were fined £30,000 (reduced from the £100,000 fine advocated by Sir Edward Coke and other justices) and imprisoned in the Tower. In addition, the Earl was dismissed from his post as Lord High Treasurer. The same court found two men and Dorothy, Lady Townshend guilty of destroying and forging a will, and fined them.

As with thefts, the frauds were a miscellaneous lot. Goodith Ree in 1637 was accused of selling ale at less than full measure and Dorothy Tymen, in 1615, of selling leaves of bread with shortweight; while Mary Gilliam in 1637 was charged with embezzling goods from her niece's estate. There were also a number of cases involving arson or trespass, the unlawful entering upon private property, as that of the three Whateley sisters, spinsters, who forcibly entered the house of William Brotherwood and evicted him; or of

106 Complete Peerage, XII, Pt. I, 464; Burn, Star Chamber, p. 86.
107 Burn, Star Chamber, p. 86.
108 Warwick Indictments, p. 41.
110 CSPD-Chas. I, XI, 50.
112 Warwick Indictments, p. 57.
Katherine Brindwoode, the wife of a spinner, who broke down the
close of Edward Holland, a gentleman, and beat his cows.113
When the offenses involved more than a few persons, they were
likely to be regarded as public wrongs. These seem to have
been presented in much the same manner as offenses against
individuals.

Public Wrongs. Merely for being poor and having no vis-
ible means of support or lodging was a public offense. Laws
were passed during the last years of Elizabeth's reign to or-
der that every person of that description, whether a disorderly
rogue, studly beggar, or mere vagabond, regardless of sex, was
to be apprehended, stripped bare to the waist, and whipped
"until his or her body be bloudye." This person was then to
be sent to his or her home parish or, if it were not known,
either to the last place where he or she had lived for a year,
or where he or she had been able to stay without punishment.
Since no person could be compelled to become a vagrant, the
authorities in the latter places were required to admit any-
one sent to them by other parishes and, also, to place the
same person at work in the House of Correction for a year or
longer, depending on how soon he or she was placed at some oc-
cupation or, if infirm, in an almshouse. Rogues and vagabonds
who were dangerous or refused to reform could be placed imme-
diately in gaol until the quarter sessions and banished; if
they returned they would be apprehended as felons without

benefit of clergy and hanged. At the same time, resident townspeople who had no visible occupation or means of maintaining themselves were to be set to work, while those who refused to accept the same were to be placed in the House of Correction.¹¹⁴

These punitive sanctions represent the criminal aspect of the Poor Laws, which made vagrancy and idleness a social crime. The feudal period had dealt with this problem by confining serfs to their manors, but the numerous classes of vagrants and beggars who infested the English countryside in the sixteenth and seventeenth centuries were free men. They were often guilty of disturbing the peace and of becoming charges on the parish. For these reasons, and because they were responsible for spreading much of the sickness and plague in the countryside, the public authorities attempted to keep idlers out of their jurisdictions. And for the same reasons a law was passed early in James' reign declaring any man or woman who ran away and abandoned his or her family to the care of the parish to be incorrigible rogues.¹¹⁵


To the tax-burdened parishes fearful of the dangers posed by wandering paupers, the Poor Laws seemed sensible. From a sociological and psychological point of view they were harsh. They provided that a vagrant woman and her children under seven years should be sent back to their husbands and fathers or, if he were no longer living, to the mother's last dwelling place. This provision could cause hardship at times, not only for the travel involved but also because a mother, especially a newly widowed one, might be better able to make a living at the place where she had relocated.\(^\text{116}\) In addition, these laws would work to separate families or to keep them apart. In 1641 Anne Douglas who was wandering and begging with her five children because she was destitute of habitation and livelihood was ordered by the court to be sent to Drayton en Clay in Leicestorshire where she was born. Her three youngest children, all under five years, were sent with her while the two eldest, Anne and Elizabeth, who were above the age of seven, were sent to their birthplaces at Nuneaton and Rugby, respectively, in Warwickshire.\(^\text{117}\) In 1647 it happened that when a woman from one village married a laboring man from another, she was not permitted to live with her husband, even though he had lived there all his life, because the parish

\(^{116}\) Lambard, Eirenarcha, fol. 206d; Sheppard, Constables, p. 100; Dalton, Country J., pp. 123, 125; Lambard, Constables, p. 50; Davies, The Early Stuarts, pp. 297-298; Somerset Assize Orders, p. 25.

authorities feared she might become a burden on the tax rolls.\textsuperscript{118}

One cannot feel the same sympathy for Margret Wilson, who in 1640 was ordered to be apprehended and dealt with as the law provided because she refused to stay home and work, preferring to go about begging in the high street between Ferrybriggges and Lancaster, even though her husband was able to support her.\textsuperscript{119}

She probably was whipped and sent back home with a warning while the two women and the men in a group of seven persons who wandered about begging in 1638 were apprehended, burnt on their left shoulders with the Roman letter \textit{R} and sent on. The latter seems to have been an unusual punishment, for it was not stipulated in any parliamentary laws. It may have been a local relict of the sixteenth century Statute of Vagabonds which provided for the branding of vagabonds with the letter \textit{V} on the chest.\textsuperscript{120} Any person who was found guilty of "obstructing" the laws concerning the punishment or conveying of vagabonds and beggars had to pay a fine of £5 and give sureties for good behavior.\textsuperscript{121} This happened in 1604 when Margaret Cowdocke, the wife of Thomas Cowdocke, was presented at the assizes for lodging two female vagabonds.\textsuperscript{122}

\begin{itemize}
\item \textsuperscript{118} See the instances from both the Worcestershire and the Somerset Quarter Sessions Records cited in Clark, \textit{Working Life of Women}, pp. 81-82.
\item \textsuperscript{119} \textit{West Riding Sess. Rec.}, p. 223.
\item \textsuperscript{120} 1 Edward 6, ch. 3.
\item \textsuperscript{121} 39 Elizabeth 1, ch. 4, sec. 5.
\item \textsuperscript{122} \textit{Lancs. Q. Sess. Rec.}, p. 227.
\end{itemize}
Since the small towns and villages of the day were chiefly agricultural, there were few positions of employment open to landless persons. They had to wait for an opening in the baker's, blacksmith's, carpenter's, or spinner's shop, for example, and an available cottage with a plot of land before they could settle in a place for the first time. The cottages themselves could not be built just anywhere the owner pleased but were required to be surrounded by at least four acres of ground so that the tenants could grow sufficient food and not be dependent on the charity of local citizens or Poor Law officials.123 Also, the cottages could not be set up in royal forests or common fields, partly because their presence disturbed the game and gave shelter to poachers. Elizabeth Milton was cited by the royal authorities in 1630 for erecting a cottage on the King's waste in Sunninghill and charging rent for the same,124 while in 1640 Dorothy Davies, a widow of Wellesborne in Warwickshire, was presented for erecting a cottage which did not have four acres of land attached.125

It was not only the vagabonds and idle poor who were accused of breaking the peace of the countryside and towns. Townsmen and townswomen frequently were presented for creating

123 Peter Laslett, The World We Have Lost (London: Methuen, 1965), pp. 90-91 (hereafter cited as Laslett, World...Lost); West Riding Sess. Rec., p. xxxii.

124 CSPD-Chas. I, IV, 247-248.

125 Warwick Indictments, p. 58.
disturbances. Any group of men, however peaceful and convivial, could be declared a riot and charged with breaking the peace whenever it moved from place to place. But a gathering of women and children could not be declared a riot under similar circumstances. It first had to be proven that they had assembled at the request of a man for some unlawful act. Such a situation took place in 1605 when a group of men and women were tried in the Star Chamber for pulling down an enclosure during the night. For this offense each man was fined £40 and each woman, £20, which the latter's husband had to pay whether or not he had knowledge of his wife's action.

The situation seems to have changed afterwards, for Sir Michael Dalton's book, The Countrey Justice, declared that men could not be charged with or punished for actions such as trespass, riots, and so forth, committed by their wives unless they themselves actually were a party to these offenses. This may have happened in 1631 when a number of women, together with their husbands, were accused in the Star Chamber of demolishing the works, attacking the foreign workmen, and destroying the implements used in draining the fens on royal lands in Lincolnshire and Nottinghamshire by the Dutch engineer, Sir Cornelius Vermuyden. They claimed that the draining was interfering with their customary right to pasture cattle

126 Lambard, Eirenarcha, pp. 181-183; Dalton, Countrey J., pp. 222, 335.
128 Dalton, Countrey J., pp. 200, 222.
and catch ducks in the fenlands; nevertheless, the men were fined £1000 each and one woman was fined £500 while the others were fined only 500 marks each. In addition they were required to pay Vermuyden £2000 for damages. In 1640 John Royden and his wife Elinor were together fined £1000 for abusing the bailiffs who were making an arrest. Possibly today this would be considered as resisting arrest or interfering with a law officer in pursuit of his duties.

For individual and overt acts of breaking the peace, law officers did not have to prove that female offenders had been instigated by men. Mary Mathews and her companions were fined in 1618 for brawling and violence in the parish church at Haverhill. They were heavily fined—400 marks for Mary and 100 marks for each of her companions—but were fortunate enough to have their fines reduced to about one-fourth, and less, of the original sums.

Persons who were contentious, whether continually wrangling and brawling with their neighbors, instigating lawsuits against them or verbally annoying them, were called barratrors. Barratry was classed as a public offense punishable by fine, imprisonment without hard labor, or by requiring sureties for good behavior. A person could not be convicted for a single

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130CSPD-Chas. I, XVI, 542.

131Ibid., XII, 549.
instance of barratry but must be sued as a common barrator.\textsuperscript{132} The phrase was applied to men as well as to women. Thomas Fell, a Lancashire husbandman and his wife, Jenet, a spinner, were present at the Quarter Sessions in 1604 for being "common barrators and mevers of discord among neighbors,"\textsuperscript{133} while Elizabeth Pinfold Squire was sent to the Bridewell in 1632 for troubling the Lords of the Council with petitions for restitution of her wrongs, which seem to have arisen out of a decree secured against her by her husband John Squire, the minister of St. Leonard's in Shoreditch. This seems, also, to be the rationale behind the sentence given by the Star Chamber in 1635 to James Maxwell and Alice, his wife. He was fined and imprisoned while she was ordered to be whipped and imprisoned for pestering the King and his Council with petitions about the illegal and oppressive actions of the Lord Keeper. The whipping and prison sentences were ultimately pardoned, but the couple were, nevertheless, sent away to Scotland.\textsuperscript{134}

Another type of person regarded as a common nuisance was the scold. Persons who made the lives of their family members and neighbors miserable by their habitual reproving, scoldings, or foul language were punished with public chastisement. Women, unfairly enough, seem to have been almost the only persons

\textsuperscript{132} Cowell, Interpreter, fol. K1; IV Blackstone 134; Ency. Laws Eng., II, 124-125.

\textsuperscript{133} Lancs. Q. Sess. Rec., p. 232.

\textsuperscript{134} CSPD-Cham., I, V, 260, 478 and VII, 31; Burn, Star Chamber, p. 1110.
accused of continual nagging and verbal abuse in this manner. The punishments consisted of the brank and tumbrell, or ducking-stool. The former was a sort of iron framework and nozzle that fitted over the head like a cage. Attached to it in front was a thin piece of iron which was sharpened, or covered with spikes, and which was placed inside the victim's mouth so that if she talked or moved her tongue in any way it was certain to be cut. A more common punishment for a scold was for her to be strapped to a ducking-stool and dipped in the village pond or well. If the dipping were prolonged, she might emerge half-drowned; but she could have her bittersweet revenge if—as occasionally happened—her ducking stirred up matter in the bottom of the well so that the village water supply became too murky for use. 135

In 1630 Alice Harper of Steple Ashton in Wiltshire was certified by ten neighbors of having "from time to time abused with her tongue the best men and women in the town," for being "most viperious with her tongue," and for using "unspeakably bad and groose language." 136 One can understand why such a woman would be heartily disliked but it is still possible to sympathize with these women when they were punished for matters


which were not really criminal offenses. In 1630 the wife of a man named Winter was committed to jail by the Northamptonshire Assizes until she should find sureties for good behavior; she was also sentenced to the duckingstool to be "doused and ducked in the manner of scolds." 137 Mary Owthwaite of Firby in the North Riding was given the same punishment minus the jail sentence in 1654; but a rather unusual sentence was given in the West Riding in 1614 to Ann Walker, who was ordered "to be runge through ye towne of Wakefield with basins before her, as is accustomed for common scowldes." 138 Occasionally townspeople took matters into their own hands when they disapproved of the conduct of married couples, whether it was for their scandalous behavior or whether because the man allowed himself to be henpecked by a quarrelsome woman. This was the rationale for the ceremony of "Skimmington riding," when inhabitants of an area congregated in procession with kettles, pans, and other instruments to make rough music and walked, carrying an effigy of the person objected-to, up to that person's house and captured him or her for a ducking in the village pond. It was not all simple fun, for in 1618 at Calne in Wiltshire the men and boys rushed pell mell into the house of Thomas Mills and dragged his wife down the stairs by the heels, threw her down into a mud


puddle outdoors, kicked dirt over her, and beat her until she was bruised all over.139

Among the offenses classified as public nuisances was that of keeping a brothel or common bawdy house. Such places were regarded as liable to attract dissolute and brawling persons who could corrupt public morals. Although adultery and fornication were tried in the ecclesiastical courts until 1640, the offense of brothelkeeping was usually handled by local civic authorities. Both men and women could be indicted for this offense,140 as were Roger Williams of St. Andrew's, Holborn, and his wife Margaret in 1613. Margaret was ordered to wear a blue mantel "like a bawd" when they were transported in a cart between their home and the jail, then to be set in the stocks and afterwards to remain in prison until they found sureties for good behavior.141

In 1614 an appropriately named Mistress Ilove seems to have been indicted for keeping a bawdy-house;142 while in 1618 the intrepid Bridget Passmore continued to maintain her notorious bawdy-house in the field leading from Holborn to the Strand, despite indictments by the law officers after riots had broken out at her place;143 and in 1634 Amy Holland's

140Coke, II Instit., 205.
142Ibid., II, xvii, 32.
143Ibid., IV, 336, 352.
fine for keeping a bawdy house was mitigated by the Court of High Commission on condition she give bond not to reopen it.\textsuperscript{144}

In 1650 Parliament made the punishment for such offenses somewhat more onerous. Any man or woman who kept a common brothel was to be openly whipped, set in the pillory, marked with a hot iron in the forehead with the letter B, and afterwards committed to labor in prison or the House of Correction for three years with bail and then to remain until he or she could put in sureties for good behavior. A second offense was to be regarded as a felony without benefit of clergy.\textsuperscript{145}

By comparison with the foregoing offense, which was more of a social crime than a criminal action, the offense of interfering with public rights and royal, or governmental, property was one which could be felt more positively—that is, it had an economic effect. In 1630 Mistress Marty Thompson was sued by the Admiralty for retaining ship masts which were lost in transport and driven ashore on her beach. Her excuse was that she had a grant from Queen Elizabeth to claim "wreck of the sea,"\textsuperscript{146}

In 1637 Anne Sandes of Nancetter, a widow, along with a carpenter and a mason, was indicted for blocking the King's Highway by putting up a wall,\textsuperscript{147} while in 1639 Isabel Peck, of Battersea,

\textsuperscript{144}GSPD-Chas. I, VII, 108.
\textsuperscript{145}Act. II, 388-389.
\textsuperscript{146}GSPD-Chas. I, IV, 301-303.
\textsuperscript{147}Warwick Indictments, p. 33.
another widow, attempted to defend herself before the Council in regard to complaints that she had blocked the lane running beside her home by setting up posts in the ground. Her defense was that she had set up an alternate route at a cost of more than £40 to herself.148

Since women seem to have committed and been held responsible for almost every type of offense known to the law courts, it does not seem strange that they were involved with counterfeit debentures and coins. During the period from 1652 to 1655, for example, the Council had an agent investigating a ring of counterfeiters who had been forging governmental debentures and public faith bills for seven months previously; over £115,045 in value of these fraudulent papers were seized. One of the most prominent members of the ring was Ellen Lovell, who seems to have carried on her activities while her husband, Captain Charles Lovell, was spending his time in the countryside surveying.149

In 1656 June Graveson represented herself as the widow of John Smith, who had been blown up at sea, and presented a claim for his wages. Her ruse was discovered and she was ordered into custody. What her punishment was is not stated, but one might surmise that it was not simple, for a few years earlier two of three women who were caught in the same act received harsh sentences. Elizabeth Salamon and Joane Garland were sentenced to be transported to Barbadoes, but a third woman, Frances

148_CSPD-Char., I, XV, 63-64.
Bouch, who was married, was not. One hopes that their petition to be pardoned was answered, for they promised "never to cheat the state again." 150

Fraud connected with the coinage was regarded as a much worse crime—as a petty treason punishable by death, with attending forfeiture of goods for life. It did not include loss of title and estate for heirs, nor did it cause a wife to lose her dower. 151 Nevertheless, it was considered onerous enough to be among those crimes specifically exempted from the general pardon. 152 Although the statutes concentrated their attacks on persons who defaced coins, made them, or imported foreign coin with intent to use them as English coin, those who knowingly circulated such counterfeit coin were considered to have committed an offense against the king, for they were performing the fraud at which the importers, debasers, and counterfeilers were aiming. 153 It should be remembered, too, that in treason cases all persons involved were considered as principals, 154 so

150 Ibid., VI, 504.

151 IV Blackstone 89-90; Pulton, De Pace, fols. 225r-225v; Hale, PC, p. 231; Stephen, Hist. Crim. Law, III, 122; 5 Eliz. 1, ch. 11 and 18 Eliz. 1, ch. 1.

152 3 Jas. 1, ch. 27 and 21 Jas. 1, ch. 35.


154 Bacon, Cases of Treason, p. 318.
that the person who committed a fraud by "uttering" or "passing" coin was as guilty as the one who set it up by actually counterfeiting, importing, or debasing it. In 1649 two women, Elizabeth Rowland and Susanna Moss, were included in a group of five persons, including Elizabeth's husband, whose arrest was ordered because they had been passing counterfeit coin. 155

The most serious public wrong was high treason, or treason in the sense that it is known today—plotting or performing actions harmful to the security of the sovereign, his heir, or the kingdom. The offense was considered heinous enough that it was one crime for which a married woman could not defend herself by claiming that her complicity was the result of coercion by her husband. 156 Careless talk could be construed as treasonable, for in 1628 Susanna Price was examined by royal officials concerning a statement she made at the dinner table of her informant—"that a Scotchman coming to London affirmed...the last King was poisoned by the Duke, with the consent of our sovereign," and that she had all this down in writing at her home. Of course she denied saying those exact words. 157 And, for uttering foolish statements which could be interpreted as seditious, it was possible for persons to be imprisoned, as

155 CSPD—Commonwealth, I, 533.
156 Dalton, Countrey J., p. 267; Hale, PC, pp. 11-13, 231. See also CSPD—Commonwealth, III, 522.
happened to Paul Williams and his wife, Marie, in 1650. \(^{158}\)

Incidentally, women as well as men could be fined and imprisoned for printing or disseminating treasonable or unlicensed literature. In 1649, for example, the Council of State fined Jane Bell, Elizabeth Purslow, and Gertrude Dawson £300 each and ordered them to find sureties to insure that they would not print any seditious or unlicensed books, pictures, nor let their presses be used for the same purpose. In 1653 it took an interest in the case of Mercy Collins, who had been prosecuted for importing Bibles printed in foreign lands. \(^{159}\)

**Offenses against Religion and Morality.** Accusations of religious deviation, religious laxity, and immorality were generally tried in the ecclesiastical courts. As has been noted, these included defamations which were not actionable in the civil courts (supra, p. 131) and which were incorporated into the formidably wide jurisdiction of church tribunals. Among the offenses of this class which most involved women were recusancy, witchcraft, and relations between the sexes. There were also a few cases involving the dissemination of deviant religious literature; Lady Eleanor Touchet Davies Douglas was fined £3000 in 1634 for publishing "fanatical pamphlets," \(^{160}\) as well as for disrespectful behavior in church; in 1638 Lady Eleanor was

\(^{158}\) CSPD-Commonwealth, II, 163.

\(^{159}\) Ibid., I, 523; V, 390.

\(^{160}\) CSPD-Chas. I, VI, 480.
accused of such matters as defacing the altar hangings with tar and "filthy things" and for defiling communion with holy water. 161 And in 1652 Mary Fisher, a spinster of Selby, who was probably a Quaker bent on insulting ministers of the organized, legally recognized Churches in every way possible, was fined £200 by the York assize for "brawling in church"; that is, she shouted at the minister while he was preaching and called out, "Come downe, come downe, thou painted beast, come downe. Thou art but an hireling, and deludest the people with thy lyes." 162

Recusancy or nonconformity, that is, the nonattendance at services in the Church of England, was the subject of parliamentary legislation and royal proclamation. 163 For that reason the offense was prosecuted by civil authorities as well as ecclesiastical. 164 The first parliament of James I reenacted and strengthened the penalties which had been passed against recusants in Elizabeth's reign. Convicted recusants were liable

161 Ibid., XII, 219; Hale, PC, p. 125.
163 For such proclamations made during the years 1603-1660, see Robert Steele, A Bibliography of Royal Proclamations of the Tudor and Stuart Sovereigns, Bibliotheca Lintianisana, Vol. I (Oxford: Clarendon Press, 1910), #s 1093, 1156, 1465, 1504, 1514, 1556, 1557, 1832, 1839, 2039, 2234, 2292, 2817, 3087, 3088, 3107, 3163, 3170 (hereafter cited as Steele, Proclamations).
to a fine of £20 per month so long as they refused to conform by attending divine services in the Established Church. Those who defaulted or refused to pay could have two-thirds of their property seized by the Crown or, if they lacked sufficient property, could be forced to abjure the realm on pain of being outlawed. They were also forbidden to travel more than five miles from their habitations without permit. Married women were exempted from the provision of the act relating to abjuration and the laws themselves were enforced in such a way that most convicted recusants managed to bribe commissioners or compounded with the Crown for smaller sums. 165

As a result of the Gunpowder Plot, Parliament on May 27, 1606, passed two pieces of legislation which imposed a strict set of penalties on Roman Catholics. The first renewed the requirement for attending divine service and, in addition, required convicted recusants to receive Communion at least once a year or incur liability to a fine of £20 the first year, £40 the second year, and £60 the third year so long as they refused to conform. Married women were excluded from the provisions of this act, which specifically stated, also, that they could not be forced to surrender their dower if their husbands were attainted under this act. Similarly, men could not be held

responsible for the recusancy of their wives.\textsuperscript{166}

The second act imposed a stringent set of financial regulations and introduced civil disabilities against Roman Catholics. By its provisions, recusants who were convicted lost the right to hold executorships and administratorships, even over their own children; nor could they hold guardianships over them. A married woman could not be fined per se for being a recusant, but if she did not conform at least a year before her husband’s death, she forfeited to the king two-thirds of the profits of her dower and jointure estates, lost the right to administer or execute her husband’s property, and could not have any of his goods or chattels. If she had been married outside the Church of England, she lost all rights of dower, jointure, and widow’s estate in her husband’s lands; and her husband, if he were a recusant, lost a comparable right of being tenant by curtesy. If her children were christened outside the Church, also, her husband—or if he were not living, she herself—had to pay a fine of £100. In any case, her recusancy lost for him the privilege of holding public office.\textsuperscript{167}

Despite some opposition to the separation of married persons or to making a husband responsible for his wife’s obstinate refusal to conform,\textsuperscript{168} Parliament passed an act in 1610

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\textsuperscript{166}Jas. 1, ch. 4; Robert Bowyer, The Parliamentary Diary of Robert Bowyer 1606-1607 (Minneapolis: University of Minnesota Press, 1931), p. 13 (hereafter cited as Bowyer, Diary); Commons, Journals, I, 257-313.
\textsuperscript{167}Jas. 1, ch. 5.
\textsuperscript{168}Bowyer, Diary, p. 91; Proc. in Parl. 1610, II, 252.
\end{flushright}
which accomplished both unpleasant objectives. By this act women over the age of eighteen were required to take the Oath of Allegiance to the King. Those who refused were to be imprisoned without bail until the next assizes, at which time, if they still refused, they would incur the dangers of praemunire, or of forfeiture of lands and goods to the Crown. Married women were exempt from this penalty. However, if a married woman, who had been convicted of being a Catholic recusant because she absented herself from services in the Established Church, refused to come to church for three months after being notified that she must, she was placed in prison without bail until her husband either surrendered a third of his land and tenements or paid £10 per month so long as she refused to conform. 169 The Parliament of 1621 discussed the possibility of changing this to a fine of twelve pence on the husband's goods for each time that the wife did not come to church; but nothing was done. However, in 1657 men who were not themselves Catholics, but who were married to one, were adjudged as recusants and made subject to seizure of two-thirds of both real and personal property. 170

Noblewomen were not exempt from any of the acts regarding recusancy, so that their religious nonconformity was likely to cost them dearly. However, the law of 1610 did provide that

1697 Jas. I, ch. 6.
170 Commons Debates 1621, IV, 102, 204, 306, and VII, 304; AOD, II, 1170-1178.
women of the degree of baroness and higher could only be required to take their oath before a privy councillor or the bishop of the diocese. Other women could take it before any two justices of the peace.

The Calendars of State Papers, Domestic contain dozens of notices about the granting away of estates and of the profits derived from them; many of these represent the forfeited property of recusants, both men and women. In 1611 the benefit of two-thirds of the lands of Lady Anne Curzon, the recusant widow of Sir Francis Curzon, who had died the previous year, were granted to two men for a term of forty-one years. This was the Addington Manor estate in Buckinghamshire. In 1618 Lady Anne's son, Sir John Curzon, succeeded in gaining a decision from the royal courts to the effect that for the recusancy of his own wife, Magdalen, he could not be punished any further than to pay £10 per month to keep her out of prison. Some sort of agreement must have been made about the manor, for in 1628 Sir John was in possession of it when he alienated it to still another party.

The fines imposed on recusants who did not conform were retroactive to the King's accession if they had never been paid. Payments of this sort could reduce a person to beggary, and they

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1717 Jas. I, ch. 6, sec. 3; Dalton, Countrey, pp. 105, 107, 108; Dodridge, Law of Nobility, fol. L6v.

were exacted from women as well as men. Collection of these fines was farmed out to favorites; in Derbyshire in 1610 the highest fine collected by one of these favorites was £100 from Mary Langford. Among the persons who, for nonpayment of fines, were liable to sequestration of two-thirds of their estates, was Elizabeth Waferer whose refusal to pay the fine for nonattendance at church gave royal officials an excuse to seize this much of her property as security in 1611.

For some years after 1611 there was a relaxation of persecution against Catholics and the average recusant was infrequently disturbed. In the 1620's opposition to Catholics intensified, and by the 1630's coercion was revived against all dissenters. The stringent laws against recusancy, which included suspicion of the same simply for nonattendance at the sacraments, must have laid very heavily on the minds of concerned persons, for in about 1631 Jane Leader and twenty-four other women of Walden, in Essex, declared that Goody Taylor, one of their co-parishioners, had refrained from taking Communion, not out of opposition to their minister, which was nevertheless possible considering the non-conformist character of the place, but because she was not strong enough to reach the communion

173 The next highest sum collected was £61.16s.8d., to which total five men contributed. Cox, Derbyshire Annals, I, 277-278. See also Gardiner, History, I, 203-204.

174 Jordan, Religious Toleration, II, 58; VCH-Beds., III, 137.

175 Jordan, Religious Toleration, II, 87-157, passim.
table which stood upon the "lofty and bleak stairs." They pleaded with the high commissioner to have it placed in a more convenient location; and added that all the child-bearing women of Walden would remember him with prayers. Even aliens were not exempt from harassment by informants. In 1631 Maurice Aubert, the Queen's chief surgeon, complained that his wife Anne, who had been given royal permission to attend Catholic services, was seized by one of the royal pursuivants when she was returning from Somerset House and, regardless of her pregnant condition and the fact that she showed her documents, was dragged roughly through the streets during a rainfall that she was likely to have an "abortion."  

Although they were not themselves recusants, women could suffer from the effects of it on their husbands. In 1637 Richard Fdden, because of his Catholicism, was ordered to close his inn despite the plea of his wife Anne that she and the younger children professed the Anglican faith and that the loss of her husband's livelihood would cause hardship to the entire family. If a recusant had no money or land, his or her personal effects could be seized to pay the fines. In 1653 Ann Leakers, a widow with four children, claimed to be in great want because her gold and silver to the value of £1000 was seized by order of


177 CSPD-Chas. I, V, 142.

178 Ibid., XI, 94-95, 130-131, 147, 553.
Sir John Maynard, the Presbyterian leader, on grounds that she was "a malignant and Papist." 179

Not all recusants had sad stories to tell; some had their punishments stayed or were given a sort of suspended sentence—among them, Dame Mary Parkins in 1633 and Lady Elizabeth Falkland in 1637. They were prosecuted for infringing the law's prohibition against the sending overseas for a Catholic education of young persons who did not have a license from the Privy Council. The penalty for all this between 1604 and 1627 was a fine of £100. In the latter year the penalty was revised so that it incurred the forfeiture of goods and chattels forever, of lands for life, and a disability to bring action in courts of Common Law or equity. Nor could a person indicted for this offense hold administratorships, executorships, and guardianships. 180 Dame Parkins had sent her daughter abroad to become a nun; the King's command put a stop to her indictment. 181 Lady Falkland was summoned in 1636 to appear before the Lords of the Privy Council for having sent her two youngest sons to study at a Catholic seminary in France. When questioned, she denied all this; and she was truthful, for her sons were still in London at the time. She was referred to Chief Justice Bramsen and, again, gave out no information; nor was she ever imprisoned.

179 Jordan, Religious Toleration, II, 58; CSPD–Commonwealth, VI, 325. For Sir John Maynard, see DNB, XIII, 155–156.

180 1 Jas. 1, ch. 4, sec. 5 and 3 Jas. 1, ch. 5, sec. 11; Steele, Proclamations, #1156; 3 Chas. 1, ch. 3.

181 CSPD–Chas. 1, VI, 52.
Her sons did escape later and were out of the country in January of 1637 when the Council ordered her to be confined "in such places as the Lord Treasurer shall think fit," but apparently she was merely required to live where the Council could easily find her.  

In addition to repeated absences from church and a steady refusal to receive the sacraments, several other ecclesiastical ordinances were enforced. Persons who absented themselves from Sunday services to watch sporting and game matches or plays were liable to a fine of 3s. 4d. or a stay of three hours in the stocks if the fine could not be paid. Later ordinances forbade also the travel, carting of goods, sale of food and goods, and secular labor on the Lord's Day. Meanwhile, persons who indulged in commonplace indecencies like tippling, cursing, profane swearing and other unchurchly behavior could also be cited. One such incident, which evokes a Brueghel painting, took place in 1630 when two single men and two single women left church together during the Sunday sermon to eat and drink at a tavern until the evening prayer services, when all but one man, who had fallen asleep in a field, returned. At the beginning of the sermon, one of the four, Jane Goodman, reeled down the aisle to the chancel, where she passed out on the floor and remained there with her hat lying at her feet until the end.

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183 [Chas. 1, ch. 1; 3 Chas. 1, ch. 2; A01, I, 420-421.]
of the sermon, when the sideman led her out to the churchyard because she was too drunk to walk by herself.\textsuperscript{184}

There were also a number of convictions for using such oaths as "God's blood" or "God's heart"; and one cannot assume that women were innocent of such offenses, for one clause in the "Act for the better preventing of prophane Swearing and Cursing" passed on June 28, 1650 specifically mentioned that women—whether married, widowed, or single—could be convicted and incur the same penalties as men of equal rank. The fines for the first offense ranged from 30\textshilling for a lord, to 6\textshilling for a gentleman, and 3\textshilling 4\textpence for lesser mortals. Persons who could not or would not pay this fine were liable to be set in the stocks for three hours, unless the offender were under the age of twelve, in which case he or she was to be whipped by an official, or by a parent in the presence of the constable. For a second offense the punishment was doubled and for the tenth, an offender could be bound with sureties to good behavior for three years.\textsuperscript{185}

The fact that blasphemy was the only form of swearing mentioned in the penal statutes did not indicate that English men and women were free to indulge in any other style of verbal

\textsuperscript{184}Jas. 1, ch. 9; 4 Jas. 1, ch. 5; 21 Jas. 1, chs. 7, 20; Stephen, Hist. Crim. Law, II, 406. Bills against cursing, swearing, and tippling were also discussed and passed in Parliament; see Commons, Journals, I, 251, 441, 622; II, 356; III, 724; IV, 35; V, 523; VI, 433.

\textsuperscript{185}A01, II, 393-396.
abuse that suited their fancies. Persons who were known as scolds and troublemakers or for having malicious tongues were often likely to be suspected of being witches. However, their suffering neighbors could not freely call them so, for witchcraft was a felony and fear of prosecution was so great that one falsely accused of being a witch could bring suit for defamation against the slanderer. For centuries witchcraft had been denounced as a form of superstition by the Christian Church, and throughout the Middle Ages practitioners of the black art were liable to punishment. 186

In England the passing of an act against witchcraft in 1558 removed primary cognizance of such cases from ecclesiastical authorities. 187 Here the belief in witchcraft was widespread enough that Parliament was able to pass a second act


against it in the first year of James' reign. By this act anyone who was guilty of employing magic and charms to incapacitate or bring death to another person, of digging up or using dead bodies for sorcery and necromancy, or involving evil spirits—even if they never came, or of consulting with them, was guilty of practicing witchcraft. This was a felony punishable by death, without benefit of clergy or sanctuary. The same act also set up a second class of offenses with a lesser degree of penalty. Anyone who was convicted of using sorcery to find treasure, to locate lost or stolen goods, to create spells or potions for purposes of helping unlawful love, of bringing harm and destruction to cattle and goods, or to hurt someone—even though that person was not affected—was to be imprisoned without bail for one year and to be placed in the pillory for six hours; he or she was also to confess the offense in some market town on market day during each quarter of that year. For a second conviction, the penalty was death by hanging, without benefit of clergy or sanctuary. After death the body was burnt and its ashes scattered. The heirs of the convicted person did not lose their inheritances and titles, however, nor could wives lose their dower rights. Peers, of course, had the right to be tried by their equals. 188

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The jurist John Selden declared that James' "Law against Witches does not prove that there bee any, but it punishes the malice of those people that use such meanes to take away mens lives." Selden upheld the right of the law to punish anyone who threatened the life of another, by witchcraft or otherwise; whether he himself believed in witchcraft is a moot point. The existence of such acts in the statute books does not seem to have encouraged the holding of witchcraft trials. They sprang up all over the country and women were the chief victims; in fact the special word for a male witch--warlock--seems to have applied at this time to practitioners of science. James I was at first a firm believer in witches and had even written a book on the subject, Daemonologie, in which he mentioned that there were "twentie women given to that craft where there is only one man...." Alexander Roberts, a preacher at King's Lynne in Norfolk, on the other hand, raised this ratio to

189 Selden, Table Talk, p. 140.


something like "a hundred to one." The actual ratio for men and women accused of witchcraft probably was less than the King stated it to be; in Essex it was about one to thirteen.

James later grew skeptical about witchcraft, renouncing his belief in it, and his son Charles I had the same disbelief. They attempted to halt the tide of the witch terror and pretty well succeeded by influencing the appointment of bishops and judges who were of the same mind. Unfortunately their protection of accused witches aroused so much resentment that a reaction was inevitable. When the authority of Charles I disappeared in the Civil Wars the long pent-up feeling against witches flared up; by 1645 the accusations reached their highest peak of the Tudor and Stuart reigns, and persecutions continued at a high level throughout the Commonwealth and Protectorate. The popular feeling seems to be epitomized by the fact that offenses involving witchcraft were considered sufficiently serious to be excluded from the general pardons passed by Parliament in 1606, 1610, 1624, and 1652.

194 MacFarlane, Witchcraft, p. 160.
195 Ibid., pp. 26, 57-58, 134-142; Davies, Witch-Beliefs, pp. 58, 76, 93, 95-96, 118, 143, 146-147, 161; Pollock & Maitland, HEN, II, 554. It is difficult to understand why Davies, Early Stuarts, p. 371, says there was an almost total cessation of executions for witchcraft during the Commonwealth and Protectorate; Ewen, Witch Hunting, p. 42, seems to agree when he says, "After the holocaust in 1645 witchcraft proceedings rapidly declined in England."
1963 Jas. 1, ch. 27; 7 Jas. 1, ch. 24; 21 Jas. 1, ch. 35; AOT, II, 569.
The stigma of the witchcraft mania could be attached to persons of all ages, to both sexes, and all classes, including the educated; it embraced addled or innocent victims as well as credulous or malicious accusers. No person was safe from it, especially foolish old women or silly younger ones. Even children could be asked for information, as happened to Elizabeth Device's son and daughter in 1612, when they were examined against their mother. When superstitious and fearful persons imagined that others were guilty of practicing it, life could become wretched or harassing. One woman complained in 1653 that as a result of such an accusation she had been forbidden by bakers from entering their shops, sometimes, also, neighbors accused one another out of spite. Frances Docker in 1634 said that she was accused by Edmund Robinson and his ten-year old son after she and her husband quarreled with the elder Robinson over the sale of a cow. Before her arraignment the latter had offered to remain silent if she would pay him 40s. which she apparently had not. Among


198 Dalton, Countrey J., p. 296; Ewen, Witch Hunting, p. 61; MacFarlane, Witchcraft, p. 17.

199 Hist. Mss. Comm. Rept., I, 127. For an example of the accusations leveled against a witch, see Howell, State Trials, II, 1049-1060.

the persons accused at this time by the younger Robinson were Jennet and William Device, who had been examined against their mother more than twenty years earlier.\footnote{CSPD-Chas. I, VII, 77-79, 141, 144, 152; Notestein, Witchcraft, pp. 126-127 and ch. VII.}

Some women charged with practicing witchcraft actually believed themselves to be witches, while a few may have come under the delusion or confessed to it as a result of the brow-beating or mental and physical anguish suffered in the course of their trials. However, they did not have to admit their guilt, for the testimony of one witness was sufficient for conviction in cases of felony. So the trials were fair according to the legal practices of the period, especially so since torture was not permitted under the Common Law. However, during interrogation of the prisoner and in an attempt to find evidence upon which to base conviction, the courts required defendants to undergo certain kinds of tests or ordeals, which amounted to virtually the same kind of agony or torture. Most frequently mentioned were torments such as being forced to go without sleep, in which quasi-drugged state numerous women admitted nearly everything charged against them. Or, after praying and fasting, accused witches could be bound with their arms and legs crossed over, that is, left thumb to right big toe and right thumb to left big toe, and then thrown into a body of water to see whether they sank, for water was supposed to reject impure or unchristian persons. Belief in this test was
so great that many women accused of witchcraft insisted on undergoing it. However, failure to sink did not insure a hanging. Suspected witches could also be detected by incriminating body marks, which could be located by means of pin pricks; a few persons seem to have been painfully pricked and prodded until they bled. A physical examination, usually by midwives, could be given as well; and this must have been as mortifyingly cruel for the accused as it was morbidly voyeuristic for the occasional male examiners.²⁰² It happened to Frances Dicconson in 1634, when eight male surgeons and ten midwives examined her and two other women for marks or "teats" by which they could suckle a creature of the devil.²⁰³ Not all persons accused of witchcraft were found guilty or hanged for the offense. Some of the so-called witches were freed when their accusers were unmasked as fakers of evidence.²⁰⁴ Edmund Robinson, the younger, was one of the latter; he admitted to his examiners that he first framed his tales to avoid being reprimanded by his mother for neglecting to bring home the cows, and that when people believed him he embroidered his tales.²⁰⁵ Since the persons he accused could not be


²⁰³CSPD-Chas. I, VII, 98, 129-130.

²⁰⁴Davies, Witch-Beliefs, pp. 58, 80, 159-160; MacFarlane, Witchcraft, p. 57.

²⁰⁵CSPD-Chas. I, VII, 152-153. For other instances, see Ibid., VIII, 477 and Burn, Star Chamber, p. 141.
convicted for non-practice, they had to be released. There were, on the other hand, instances when the persons accused were found guilty but yet did not receive the full punishment provided by law. In fact, the chances of a person being sentenced to the death penalty when arraigned before justices of assize were small. In the Home Circuit between 1559 and 1736, for example, eighty-one persons out of every hundred escaped death by hanging. This must have been the luck of the ineptly named spinster Dorothy Magicke, who in 1614 was sentenced to only a year's imprisonment without bail, plus four spells in the pillory and a public confession.

In a day when most civilized persons disbelieve in witchcraft and condemn even one death in punishment for practicing it as one-too-many, it is easy to characterize Englishmen of the seventeenth century as a generally deluded people. However, reprieves and respites were granted on various occasions, and there were many skeptics including the King himself, as well as numerous of his appointees, as has been noted. One of them, Bishop Bridgman of Chester, uncovered the crude evidence given against a twenty-year old maid, Mary Spencer, who had been convicted merely for her sprightly habit of rolling her

206 Ewen, Witch Hunting, pp. 31-32.
208 Ewen, Witch Hunting, pp. 32-35; Davies, Witch-Beliefs, ch. 5.
pail down a hill to a well and calling after it to follow her.\textsuperscript{209}

Writings protesting the belief in witchcraft did get published. The Reverend Henry Goodcole, who ministered to the condemned prisoners at Newgate, occasionally published the last confessions of these wretched persons; in one of his books published in 1611, he declared that he was publishing a witch's story because he wanted readers to know that pressure had been used at Newgate to extort a confession in which she admitted such ridiculous fictions as bewitching corn on the ground, or of having spirits attend her in gaol.\textsuperscript{210} Writers who condemned witchcraft—whether or not they believed in it—did admit that more women than men were accused of practicing it; they explained that this happened because the fair sex was also the "frailer" sex and more credulous as well as more easily deceived, so therefore possessing a greater tendency to succumb to evil temptations.\textsuperscript{211}

Another crime consistently exempted from the general pardon was bigamy,\textsuperscript{212} which was made a felony by a statute passed

\textsuperscript{209}CSPD-Chas. I, VII, 78-79.

\textsuperscript{210}The Wonderfull Discouerie of Elizabeth Sawyer a Witch, Late of Edmonton, Her Conviction, Condemnation, and Death (London, 1621), fols. A3r and B3v-B4r.


\textsuperscript{212}3 Jas. I, ch. 27; 7 Jas. I, ch. 24; 21 Jas. I, ch. 35; AOT, II, 569.
in the first year of James' reign. By this act any person who married for a second time while the first husband or wife was living could suffer the death penalty, unless one of five conditions was met. These were: absence overseas by one party for seven years, absence within the realm without knowledge by the other of whether the spouse were dead or alive, a divorce by sentence in the ecclesiastical courts, an annulment from the same court, or one of parties at the time of the marriage was under the age of consent. The latter was fourteen for men, and twelve for women until 1653, when it became sixteen and fourteen, respectively. The act also provided that a conviction under this act could not cause loss of title, dower, or inheritances.\footnote{213}{Jas. 1, ch. 11; Dalton, Countrey J., p. 276; Pulton, De Pace, fols. 130r-130v; Bacon, Cases of Treason, p. 320; AOT, II, 718; Croke, Reports (1657), pp. 332-333; Hale, PC, pp. 103-104; Coke, III Instit., 88-89.}

In practice, it seems that if the absent spouse were alive all this time, but the fact were not known to the bigamist, no sentence was passed; but the second marriage was regarded as null and void.\footnote{214}{IV Blackstone 164; Coke, III Instit., 89; Cleveland, Women Under Eng. Law, p. 182.}

The fact that some exceptions were included in the statute indicates that English men and women—albeit very few—did remarry after gaining divorces and annulments, even after a divorce by judicial decree, which is not mentioned in the act. Remarriages after such divorces seem to have been unchallenged
until Porter's Case in 1637, when the court advised the woman who remarried after a divorce for cruel treatment and fear for her life to secure a pardon for her action. Nevertheless, it must be admitted that the law did not wait until a second marriage had been completed before stepping in to begin proceedings for bigamy or to prevent a felony. In one instance in 1617, two men were summoned to appear before the Middlesex Assizes for John King, a carpenter who was accused of being a suitor in marriage to Helen Fludd, even though his own wife was still living.

The Crown did grant pardons, as well as full reprieves, for bigamy, thereby making exceptions to the exceptions in its own Acts of General Pardon. These were made on the basis of individual circumstances, to be sure. George Wigg and Anne, the wife of Christopher Wood, were granted one in 1627 because they had been misled by false papers into believing that Wood had died in the Low Countries. In 1639 Elizabeth Walley Windgate was granted a reprieve by the King until his justices could investigate the merits of her case. She had been widowed for eight years before marrying Christopher Walley, who wasted the estate left to her by her first husband and then deserted her, leaving her in great want. After six years, upon information from friends that led her to believe Walley was dead,


216 Middlesex Sass. Rec., IV, 123.

217 GAPD-Chas. I, II, 88, 90.
she had married her present husband. Walley afterwards returned and started proceedings against her for bigamy, for which she begged a pardon. One can almost assume that he was acting out of spite, for Elizabeth was one year shy of the legal provision for remarriage following the desertion and presumed death of a spouse.\(^{218}\)

A pardon seems to have been granted in 1655 to Captain Nicholas Foster of the *Phoenix*. His actions were questioned by four women who were not involved, but who were concerned about the morals of the case. They complained that he had married a woman sixteen years earlier in England, lived with her a while and, then, left for Barbadoes, where he married another woman. After eight years his first wife remarried, to a man in the East India trade, and had a son. Upon hearing of this—according to the four women—Captain Foster deserted his second wife and, claiming that he was advised to do so, took back his first wife while her new husband was in the Indies. He also seems to have courted a widow at Dover. Upon examination, it was revealed that Foster did marry one Elizabeth Remnant in 1639. A month later he sailed from London to Hartlepool but was shipwrecked in a violent storm and got to Amsterdam, from where he was sent to the West Indies. In the meanwhile he continually made inquiries about his wife and, after not hearing from her for eight years, married Mary Baker in Barbadoes in

\(^{218}\text{Ibid.}, \text{XIII, 494.}\)
1647. Three years later he was banished and returned to England, where he learned that his first wife was still living. He thereupon resolved to keep apart from both wives and engaged in service for Ireland while keeping company with a widow, Elizabeth Locke, before he learned that his second wife had been lost at sea on the way to England. Because of the affection that he felt for her and on the advice of friends who told him that it was sinful for a legally married couple to remain apart, he took back his first wife. Foster seems to have retained his position on the Phoenix, so one must assume that he was not prosecuted for his actions; but one is left with the nagging feeling that, since marriages made during the course of a previous and lawful one were void, Ann's second husband William Wildboare and their son were the sad losers in the case. 219

Women, to be truthful, were not always the innocent parties in bigamy cases, as evidenced by several instances in October, 1630. Henry Shetton was put on trial at Newgate for bigamy on charges brought by Joan Price and another woman. After it was brought out that Joan was a person of loose life, out of service, who spent her time "vagranting, idling, and shifting from place to place" and who slept in "heymoughes" or outhouses, Henry was acquitted. 220 A little later, Elizabeth Cooke, a "woman of mean condition," seduced into marriage a

220 CSPD—Chas. I, IV, 355.
young man from Herefordshire who was visiting in London. He was already married, with a wife living; so he requested a pardon, which was granted. 221 About the same time that this happened, Ralph Killinghall, an ensign in the navy, was sued for bigamy by Mary Hutchinson, whom he married just before his last voyage to Rochelle. He had forgotten a precontract with Elizabeth Presick, but when he returned from sea Elizabeth prevailed on him to remember it, and he married her. For this marriage Killinghall had been convicted and condemned, for according to the law a first marriage which had been consummated could not be dissolved just because there was a precontract agreement in the background. The case is somewhat puzzling because the lawful wife of a man could not be a witness against him, while his other wife, not being regarded as the lawful spouse, could be a witness against him. Elizabeth's testimony, if there were any, must have been damaging. At any rate, Killinghall received the pardon he requested "in consideration of his services and his descent from the House of Manners of Rutland." 222

As with men, women seem to have escaped full sentencing for their transgressions. In 1618 Anne Markham, the wife of Sir Griffin Markham, a conspirator in the Bye Plot, was punished for bigamy. For his part in the conspiracy Markham had been banished from the realm and had gone to the Low Countries.

221 Ibid., pp. 370, 374.

222 Ibid., pp. 367-368; Hale, PC, p. 224.
Lady Anne attempted to gain a pardon for him as late as 1609 but failed and, perhaps, in despair of ever seeing him again, married one of her servants. For this she was fined £1000 and did penance in a white sheet at Paul's Cross. The courtiers who discussed her case were surprised that both parties escaped the death sentence provided by law. It is sadly true that women were not permitted to claim the benefit of clergy until 1624, so one can understand why the courtiers thought her to be fortunate. But, their surprise that her new husband escaped the death sentence is puzzling; one wonders whether Lady Anne possibly married a man who was not a professional employee but one so inferior in social and educational scale that he lacked sufficient education to qualify for the benefit of clergy.

Incest, adultery, and fornication were also excluded from the general pardons offered during the reign of James I. However, it was not until 1650, during the Interregnum, that these offenses were declared felonies without benefit of clergy and entailing no loss of title, dower, goods, or inheritance. Previous to that year these offenses were usually regarded as falling within ecclesiastical jurisdiction; they now came under the authority of justices of the peace and judges on circuit.

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223 CSPD-Jas. I, IX, 516; Cowell, Interpreter, fol. K1v; DNB, XII, 1054.

224 3 Jas. 1, ch. 27; 7 Jas. 1, ch. 24; 21 Jas. 1, ch. 35.

225 Stephen, Hist. Crim. Law, II, 430; Pike, Hist. Crime Eng., II, 182-183; Coke, II Instit., 488 says that such offenses were heard in the King's courts at a very early date.
incest in the sense of illicit relations with persons of close consanguinity must have been more difficult to ferret out than incestuous marriages simply because the former were likely to be more private in nature. The limits to which legal revulsion against incest extended is somewhat evidenced by the charges made in 1636 against Sir Ralph Ashton of Whalley in Lancashire. Although his wife and children were living, he persisted in his adulterous amours with several women, among whom were Alice Kenyon, the wife of John Kenyon, and Joan Whiteacres, her niece. For having sexual relations with two women who were interrelated, and for his adulteries, but in consideration of his family, he received a reduced fine of £300, to be paid at the rate of £50 per year towards the repair of the West End of St. Paul's. The punishment for the women involved is not given. Nor do we know the full penalty inflicted on Elizabeth Sleath earlier in the same year for bearing a second child to her father. The father and daughter were ordered by the Northamptonshire Quarter Sessions to "receive severe chastisement" in the House of Correction before being turned over to the High Commission for further punishment.226

The ecclesiastical commission does not seem to have been completely harsh in punishing these cases, for pardons were occasionally granted. In 1638 it granted William Bainton a pardon for marrying his first wife's niece by her half-sister and,

226 CSPD-Chas. I, IX, 190, 500-501.
also, awarded one to Thomas Evans and Anne Waters, sister of Evans's former wife, for "having ignorantly contracted a marriage between them."\textsuperscript{227} However, in 1631 Sir Giles Alington and Dorothy Dalton, who was a daughter of Sir Giles' half-sister, were punished for intermarriage by being required to do penance at Paul's Crosse and at St. Mary's in Cambridge. In addition, he was fined £12,000 and her father, Michael Dalton, a justice of the peace for Cambridgeshire, was fined £2000 for his part in arranging the marriage, which was annulled by the Church. Dalton and Alington were later pardoned of these fines and penances. Sir Giles, however, was constrained to give bond of £2000.\textsuperscript{228}

The civil authorities are said to have been vigorous in executing the law which, understandably, was not renewed at the Restoration.\textsuperscript{229} The inflexible attitude of Puritan divines towards immorality could have been predicted by the definite statements made at the Westminster Assembly in the 1640's:

\begin{quote}
Marriage ought not to be within the degrees of consanguinity or affinity forbidden in the word, nor can such incestuous marriages ever be made lawful by any law or consent of parties....

Adultery or fornication being committed after a contract being detected before marriage, giveth just occasion to the innocent party to dissolve that contract, in the case of adultery after marriage, it is lawful for the innocent party to sue
\end{quote}

\textsuperscript{227}\emph{Ibid.}, III, 145, 215.
\textsuperscript{228}\emph{Ibid.}, V, 41, 62, 90, 91, 102, 108 and \textbf{DNB}, V, 435-436.
\textsuperscript{229}Pike, Hist. Crime Eng., II, 183; IV Blackstone 64-65.
out a divorce, and after the divorce, to marry another as if the offending party was dead.230

In this period, it should be noted, a constable had the right to enter and search any home where he believed adultery or fornication was taking place; he did not need a warrant.231

As with incest, adultery was punished with fines, of which £500 seems to have been frequent; and occasionally much higher sums were exacted. For this offense a married woman could lose her dower, as has been indicated; but, for the same transgression, her husband does not seem to have lost his curtesy rights on her property unless she divorced him on this account, and this was practically impossible (supra., p. 100) for her to obtain. In 1650 adultery was made a felony punishable by death, with exceptions that indicated some sexual biases. The offense was not adulterous for the male offender if he did not know his partner were married. If he were ignorant of her marital status, his offense was reduced to that of fornication, which was punishable by three months' imprisonment without bail for the first offense (but death, without benefit of clergy, for the second offense). No similar escape was offered to women, however; a woman could defend herself by claiming that her husband had been absent overseas for three years; that he was reputed to be dead; or that he had been gone for three years and his fate was unknown. The severity of such

230Parker, Confession, p. 263.
punishments stiffened the minds of juries and they refused to convict the many persons guilty of this transgression; in only three or four cases at most, among the numerous presentations for adultery, was the death penalty inflicted. 232

The punishment for adultery committed prior to the Interregnum statute varied according to circumstances. In about 1612 Sir William Chauncey, who was accused of expelling his lawful wife and living with another woman, was committed to the Fleet by the Court of High Commission and ordered to give maintenance to his wife. 233 One of the most famous cases first came before this court in 1625. This was the case of Frances Coke, Lady Purbeck, whom we have already met (supra, p. 23). She deserted her husband in 1621, four years after being forcibly married to him, and fell in love with Sir Robert Howard, the fifth son of the Earl of Suffolk. A child was born to her in 1624 and Howard was suspected to be its father. For this Frances and her lover were cited to appear before the High Commission in 1625 on a charge of adultery. Both were found guilty, excommunicated, and imprisoned—she in Alderman Freeman's house and he, in the Fleet. Howard soon obtained a coronation pardon and his freedom while Frances was cited before the Ecclesiastical Commissioners again in 1627 and sentenced to do penance walking barefoot in a white sheet from Paul's Cross to the Savoy, where she was to stand before the door of St.


233 Coke, XII Rep., 82-83.
Clement Danes for everyone to see her. Frances never performed her penance and eloped with Howard, leaving her property with Purbeck, from whom she never received a divorce or legal separation. After her father's death she returned to London with Howard and was put into the Gatehouse in 1635 by order of the court. Howard was imprisoned in the Fleet for a month and forced to enter bond for £2000 to avoid her company. This time Frances escaped to France. She later returned to England and lived again with Sir Robert until shortly before her death in 1645.  

In 1634 Amy Green was fined £2000 by the Court of High Commission "for notorious adultery." She must have been able to afford such a huge sum. In the same year Thomas Cotton and Dorothy, the wife of William Thornton, were ordered by the High Commission to do penance for adultery in their parish church of St. Michael's, Lichfield. Cotton was fined £500 and both were ordered to pay court costs. Cotton did not pay, and both lived miserably in prison until 1639, when they petitioned to be released and entered bonds to perform the sentence of the court. In 1636 Ralph Tedder and his pretended wife Margaret were accused of living together in adultery because her first

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235 CSPD-Chas. I, VI, 481, 535; VII, 176.

236 Ibid., VI, 584; XV, 282.
husband, Edmund Crouch, was still alive. The defendants declared that Crouch had left his wife about fifteen or sixteen years earlier, that four years later she received letters about his death, and that nine or ten years previously she had married her present husband. The court decided that witnesses to prove Crouch was still alive were not credible and that since the person calling himself Edmund Crouch did not appear in court, the case would have to be dismissed for lack of evidence. However, there was no allowance for court costs and the validity of the second marriage was sent to be determined in the Court of Arches. 237

Fornication was regarded as a lesser offense entailing smaller penalties, probably because it involved no betrayal of wedding vows. Nevertheless, it was still regarded as a serious matter, as were all lapses in sexual morality, especially when they involved persons who were expected to be paragons of virtue. In Kent, for example, a widow who was convicted of fornication could lose her dower, 238 while by the custom of certain towns she could lose her free bench, or share in copyhold lands. 239 Sometimes the offense was prosecuted after a ridiculous length of time had passed. Jane Blague of Dudcote, Berkshire, in 1635 was accused of this offense by her brother and sister-in-law for an event that had happened thirty years previously. Jane claimed that their suit was grounded on spite

237Ibid., IX, 511-512.
238Pulton, Do Pace, fol. 214v; SOR, I, 224.
239Cowell, Interpreter, fol. Hn1v.
because she had regained some property that they had kept from her for twenty-two years.\textsuperscript{240} This matter of bringing up past offenses must not have been unusual at the time, for by statute passed in 1787 a limit of eight calendar months after the event was set on the time from which such an offense could be reported. Likewise, if marriage followed fornication, the complaint could not be brought to court or continued.\textsuperscript{241}

Single women accused of incontinency were given various types of punishment according to the degree of lewdness, as it might be determined by ecclesiastical authorities. Often they were put on good behavior for a year or given some form of fine, imprisonment, or corporal penance such as a whipping, sitting in the stocks, or confession while wearing a white sheet in front of the church. The latter was said to be considered somewhat of a joke by young blades who regarded it as evidence of their prowess.\textsuperscript{242} A few of these women were labeled as common whores, a label which was not to be taken lightly in

\textsuperscript{240}GSPD-Chas. I, VIII, 229.


\textsuperscript{242}Burn, Eccles. Law, II, 403-404; G. Rattray Taylor, \textit{Sex in History} (London: Thames and Hudson, 1953), p. 67; Germaine Greer, \textit{The Female Eunuch} (New York: McGraw-Hill, 1971), p. 210. The latter work does not give the source for its information, but Ms. Greer has written to this writer that she may have found it in Philip Stubbs, \textit{The Anatomie of Abuses} (London, 1583); it is on fol. 55v. Although the book does not seem to have been issued in the seventeenth century, the statement was most likely still valid in the Stuart period.
all places for, by custom in a few boroughs such as Norwich, these women could be banished.\textsuperscript{243}

Presentations by churchwardens for fornication appear throughout the court records, but there are fewer records of indictments. In the period when repeated offenses could mean the death penalty—that is, during the period of Puritan rule—juries were understandably loathe to convict for such human failings. It seems unnecessary to describe these cases involving the "fleshly frailties" of women, but it is interesting to note that communal sex was not unknown in the seventeenth century, for in 1613 four persons were indicted at the Middlesex Sessions because "they were all four seene in bed together at one time...all att one tyme att several tymes for a fortnight together...in most beastlyke manner."\textsuperscript{244}

Responsibility for ferreting out offenses such as fornication or adultery does not seem to have kept the churchwardens and justices as busy as much as that of bastardy. When pregnancy resulted from an illicit union the original transgression of the moral code became almost impossible to conceal. The term bastardy was used whenever a child was born outside of marriage; it did not matter that a child may have been conceived before marriage so long as he was born during it. In this sense the Common Law differed from the Civil Law, which permitted

\begin{footnotes}
\item[244]Middlesex Sess. Rec., I, 280.
\end{footnotes}
a child born before marriage to be considered legitimate and to have full inheritance rights. During and after marriage a reasonable amount of time was allowed, subsequent to the death or absence of the husband for the child to escape the stigma of illegitimacy; this period, however, was closer to ten months than to the eleven months sometimes noted in legal works.²⁴⁵

To seventeenth-century churchwardens and justices of the peace, bastardy was largely a matter of law, morality, and economics, but hardly a matter of love. The law required them to seek out cases of bastardy, for the dishonor brought upon the county and parish was regarded almost as reprehensible as the cost to the parish of raising the child. The justices were required topunish the parents of bastards for offending the moral codes and to make provision for maintenance of the child until it could survive on its own.²⁴⁶ The problem was solved if the parents married each other, or if the woman married someone who would care for the child. But if they could not or would not marry, or if the woman's husband were not financially


able and refused to support a child not his own, parish officials were obligated to assume responsibility.²⁴⁷ Because a person born illegitimately could not inherit property before legitimate heirs, such as his or her own brothers and sisters, he or she could be put at an economic disadvantage. If this person seized property upon a parent's death and continually maintained possession without protests from others, however, he or she could keep the property. The matter of bastardy was more likely to be a problem with males among whom primogeniture prevailed, than when females were the sole survivors, for heiresses shared equally as co-parceners.²⁴⁸

Since a bastard child was not always welcomed into a family, the obligation for seeing that it received support until able to be self-supporting belonged to the officers of the parish—specifically to those of the parish where the child was born, unless the parents had surreptitiously contrived the birth away from their own parish(es).²⁴⁹ The fear of adding a body to the tax rolls was so great that an unmarried woman servant who was discovered to be pregnant with child conceived in another parish was likely to be sent back to the place where she was last settled, whether or not it was the one where the child

²⁴⁸ Coke, I Inst., 244r-245r; Saint-German, Dialogue, fol. 13v.
²⁴⁹ Eliz. 1, ch. 3; Bott, Poor Law Decisions, I, Pt. 2, p. 403.
Anne Williams was begotten in 1629. She was such a person that she was refused permission to live in Kinkham, Oxfordshire, by the townsmen because of her pregnant condition. She was ordered to be sent back to her former place of employment and residence at Barton upon Heath, where the Overseers of the Poor and the Churchwardens were to put her to employment so long as she was able to work. In addition, in 1631 the King's Bench declared that the reputed father of a bastard child could be ordered by the justices of the peace to give bond that he would support the child after it was born or to answer at the Sessions for failure to do so.

Once a bastard child was born, parish officials were required to prevent it from becoming a burden on the parish by exacting contributions to its support from the mother or reputed father. In actual practice both parents and even relatives such as grandparents were ordered to support the child, either in the home belonging to one of them or in the Workhouse, when no one wanted to provide shelter.

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250 Sheppard, Constables, pp. 220-221; Somerset Assize Orders, p. 65.

251 Warwick Q. Sess. Rec., I, 71. See also Sussex Q. Sess. Rec., p. 11.


253 18 Eliz. I, ch. 3; Dalton, Countrey J., p. 39; Worcester Q. Sess. Rec., I, clxxxviii. See also the "Reading in the Middle Tempic (1607)" by Sir Francis Moore, the law reporter and legal counsel to Oxford University, in Gareth Jones, History of the Law of Charity, 1532-1827 (Cambridge: At the University Press, 1969), pp. 27-28.
the King's Bench declared that it was very reasonable for the
grandfather of Benjamin Gregory, "a poor Fatherless and Mother-
less Childe," to contribute towards his maintenance because he
was a man "of good sufficiency." The court did acknowledge
that parish officials could not compel him to support the
child.254 In 1642 the widowed mother of a reputed father who had
run away was ordered to use the profits of her son's lands to pay
12d. weekly for the relief of his illegitimate child.255

The sum exacted for the support of the child varied from
parish to parish and with the financial ability of the parents.
While the father seems to have suffered less moral censure than
the mother—as attested by his ability to escape corporal pun-
ishment in many instances—he was made to bear the heavier bur-
den of financial support. Even when the child was maintained
in the Workhouse rather than the dwelling place of the mother
or reputed father, and both parents could be held liable for
support, the reputed father was still made to pay a larger sum.

In 1603 Edmund Taylor of Rossendale in Lancashire was
ordered to pay Susan Mitchell 26s.8d. yearly until their child
reached the age of twelve; if he chose to maintain the child
himself, the payments were to cease.256 The Wiltshire Quarter
Sessions in 1614 ordered the mother of an illegitimate child

254Bulstrode, Reports, Pt. II, pp. 344-345.
to keep it for three years while the father paid her 10d. weekly in child support. At the end of this period the father was to keep the child until it could be bound as an apprentice in some trade and the mother, in turn, was to pay the father 4d. each week so long as he kept the child.257 In 1617 one man in Worcestershire was ordered to pay 12s. weekly to the mother for the support of their child while the mother was to give security to the churchwardens that she would not abandon the child to the parish.258 Two years later the Manchester Sessions ordered Dorothie Elme, who had married John Dawson, to pay Adam Wilshawe 20s. immediately, plus 5s. quarterly until their bastard child reached the age of ten. Adam was to keep the child so long as it did not beg or become a charge of the parish.259 In 1630 in Northamptonshire one man was ordered to pay 8d. to commit his bastard child with the mother to the House of Correction and to pay the Overseers 12d. weekly until their child was ten.260 After that he was to pay them 1s. weekly until the child was put to an apprenticeship. The child's mother, Joan Thayne, was sent to the House of Correction for a year.261

259 Manchester Sess. Rec., pp. 90-91
1655 the same court ordered that an illegitimate child was to join its mother after she married and that the Overseers were to pay her 18d. weekly for a year.\textsuperscript{262} That same year when Leah Barber ran away leaving her bastard child behind, the reputed father, Thomas Eacock, was ordered to pay the Overseers 40s. immediately, 6s. 8d. weekly until the child reached ten and, then, £20 towards its apprenticeship. He refused and was thrown in gaol until he agreed to pay.\textsuperscript{263}

What usually happened in these instances was that the child remained with the mother in its early years, even in the gaol or House of Correction, as much out of respect for traditional maternal feelings as for the fact that it was convenient to let a nursing child remain with its mother.\textsuperscript{264} Ann Key petitioned Archbishop Laud on the matter in 1638. She said that though poor she had kept her child by Bartholomew Hutchins for about three years. However, during her recent bout with the smallpox he took the child and she feared she would never see it again. She wanted both her child and support.\textsuperscript{265} These maternal feelings were not always present, however, and in one instance at least one can sympathize with the mother, Anne

\textsuperscript{262}Ibid., p. 75.
\textsuperscript{263}Ibid., p. 76.
\textsuperscript{265}CSPD-Chas. I, XIII, 183.
Wright, who asked the court in 1608 to compel John Clough to keep his own child because she apparently had no liking for the child born to her as a result of rape. 266

In addition to finding means to prevent an illegitimate child from becoming dependent on parish relief, the justices of the peace were empowered to assign some type of punishment to the parents of the child; at least two of them were needed to carry out this duty. The punishments were not spelled out in the law but tended to be the same as for other offenses against morality—imprisonment, confession in church while wearing a white sheet, or whipping. The latter could be performed in the House of Correction, in the marketplace, or on the street where the offender lived; just where, however, is seldom stated in the court records, possibly because the occurrence was common enough. 267

Women were more apt than men to be mentioned in this respect. In 1613 Joan Lea was sentenced to be "openly whipped at a cart's tail in St. John Street...until her body be all bloody" for confessing that she had had a bastard child by Thomas Bates, who lived on the same street; 268 and in 1644 Jennett Hawkes was ordered to be "stripped naked from ye middle upwards, and presently be soundly whipped through the towne of Wetherby" while the father, Thomas Guyer, was not even

267 18 Eliz. 1, ch. 3; Dalton, Countrey J., p. 38; Middlesex Sess. Rec., I, viii.
apprehended by the constable.\textsuperscript{269} When the punishment for both parents is indicated in the records, it can be noted that sometimes they received similar punishment, as happened in 1603 to Ann Tompson and William Dicconson, both of Plylyn, Lancashire, who were ordered to be whipped in Preston and then imprisoned at the "rogues' post" for one hour.\textsuperscript{270} At other times punishments varied. In 1617 in Worcester one man paid £3.6s.8d. for fathering a bastard and was committed to the gaol for seven days while the woman, after churching, was to spend ten days in gaol because she could not afford to pay a fine.\textsuperscript{271}

By the end of James' reign a double standard of morality would seem to have been given legal sanction. A statute passed in 1624 provided that a woman who bore an illegitimate child which was dependent on the parish for its support was to be punished and sentenced to labor for a year in the House of Correction to repent of her indiscretion. For the second offense she was to be confined to the House of Correction for at least a year and longer, or until she found sureties for good behavior. The reputed father is not mentioned in this law as deserving similar punishment.\textsuperscript{272} In essence, the law seems to have regarded the woman as the chief transgressor in this offense. At

\textsuperscript{269}West Riding Sess. Rec., p. 12.


\textsuperscript{271}Worcester Q. Sess. Rec., I, 248-249.

\textsuperscript{272}7 Jas. 1, ch. 4, sec. 7; Bott, Poor Law Decisions, I, Pt. 2, p. 384; Dalton, Countrcy J., p. 192.
times she was the only one charged with or punished for this indiscretion if the reputed father could not be discovered, either because he was no longer living, had run away leaving no property behind, or because the mother refused to divulge his name, as Mary Smarte of Bozest did in 1656, when she "saith that she will neuer confesse it what soeuer misery she endureth." 273 Justices were required to interrogate an expectant mother or new mother about the father of her child so that they could take action to insure that he would be available when the baby was born and could help support the child. If necessary, the justices could bind him to good behavior for this purpose. However, they could neither give corporal punishment to nor imprison the mother until she had regained her strength after childbirth. 274

Aside from a refusal by a woman to implicate her lover, a man could gain some sort of protection from the contemporary legal fiction that it was impossible for a very young boy to father a child. The age was not stated specifically, although Sir Edward Coke suggested that at eight there was "an apparent impossibility" to father a child and others seem to have suggested ages as high as fourteen. 275 This was tantamount to


275 Coke, I Instit., 244r, suggests that a boy under the age of eight has an "apparent impossibility of procreation." Later authorities seem to have raised this age to fourteen. See Ency. Laws Eng., I, 249.
statutory non-fatherhood and may or may not have given unfair protection to youth in the Stuart period; the records rarely give the ages of offenders, so that no examples can be cited here. A reputed father could be spared detection because a feeling of guilt and shame or the fear of punishment on the part of the mother may have led her to conceal the birth and death of a stillborn child, or of one which died soon after birth by either natural or human means. A law passed in 1624 made concealment, by burial or otherwise, of the birth and death of an illegitimate child conclusive evidence of its murder. It did not matter that a child was born dead or how it died; the mother had to have one witness at least to vouch for her story.276 In 1659 Alice Hunt of Coundon in Warwickshire was delivered of a stillborn child which was suspected to be a bastard, but an examination was ordered because she was known to have used intemperate language during labor and the baby, to be bruised.277

Still another means by which a man could be saved was the court's refusal to believe a woman's charges that he was the father of her son. It is possible that when love soured or was unrewarded with wedding vows, a woman would implicate a man she had once protected, but it is also possible that some men were falsely accused out of mere revenge, as may have happened to John Baker in 1614, when the justices were skeptical of such charges brought against him by Martha Moyse two years after her

276 21 Jas. I, ch. 27.
child was born and after John's recent marriage to another. That same year, Jane, the wife of Roland Somersall, a yeoman of High Holborn, was sentenced to be publicly whipped until bloody because she blackmailed men for money by accusing them of fathering children upon her. She never had had a child in her life, and so she and her husband were also sentenced to Newgate Gaol until they found sureties for good behavior. 278 However, if a woman who originally protected her lover later had second thoughts about him, as when he refused to keep his promise to marry her, failed to support her, or she could not bear the jeers and opprobrium of neighbors, she might resort to suing him for child support. The parish officials did not always ignore this means of easing the financial burden of the poor rolls. 279

It is unfortunate, but there seems to have been no time limit for prosecutions against the parents of illegitimate children. Apparently punishment had to be given as a deterrent to future offenders as well because justices were legally bound to carry out their duties by the statute. Mary Metcalfe in about 1636 was cited after already bearing three or four illegitimate children. 280 Then, in 1657 a woman who was indicted for fornication was discovered to have had a bastard child—an offense for which she had not yet been punished. For this,

279See, for example: Cheshire Q. Sess. Rec., pp. 92-93; Middlesex Reports, p. 214; CSPD-Chas. I, IV, 92.
280CSPD-Chas. I, X, 262.
her sentence of three months in gaol was stretched to include a year in the House of Correction. However, in 1649 neighbors asked for the release of a woman who had been put in the House of Correction for bearing an illegitimate child five years previously. They declared that she had been a good homemaker and had maintained a decent home for her child without cost to the parish and both were unlikely to become a public charge if she were discharged. Earlier in 1627, however, no one came to the defense of Bridget Walker of Astley in Warwickshire, who was sentenced to a year and a day in the House of Correction for previously bearing three illegitimate children without receiving punishment. In her case, her undoing was a generally offensive, rude, and uncivil behavior.

Bastardy in general seems to have caused more problems for economic reasons than anguish over moral codes unheeded. A majority of illegitimate children seem to have been ordered to the House of Correction or to be placed in apprenticeships. It would be logical, then, to see how young girls were set to learn a trade and how women fared within the economic framework of the early seventeenth century.

CHAPTER THREE: HER PERSONAL RIGHTS

Part III. Her Economic Rights and Responsibilities

Englishwomen living in the first sixty years of the seventeenth century had a number of economic privileges either granted to them specifically by law or derived from the obligation of certain officials to take responsibility for their needs. Among the most obvious and more general of the latter were the statutes requiring each parish to care for its own poor and unemployed inhabitants. The mere fact of settlement in a place gave its inhabitants a right to poor relief if ever this became necessary; to lessen the latter possibility, however, the law required all persons to have some visible means of support or to be set at gainful tasks. The Overseers of the Poor had the duty to assume responsibility for such matters. They were entitled to levy taxes for the relief of the needy poor, but were inclined to avoid taxation and, instead, to prefer other legal means of providing for the parish poor. ¹

The Overseers could force parents or grandparents, infant and handicapped poor, or the children of aged poor, to maintain them or face a penalty of thirty shillings for not doing so. They could also set able-bodied poor persons to work.² In 1631

¹Eliz. 2, ch. 2.
the two grandfathers of an illegitimate child were ordered to care for it and the mother after the child's father ran away; and in 1642 the widowed mother of three small orphans was ordered to keep the eldest of them because she was financially able to do so. Sometimes these persons would not or could not maintain their poor relatives, in which case the parish had to shoulder the responsibility itself or give some support to enable relatives to do so. In Yorkshire in 1638 one widow went off to London, abandoning her children to the parish, which had to maintain them. But, the parishioners of Alesly in Warwickshire refused to obey a court order in 1651 to give maintenance to Elizabeth Oughton and her child because, so they claimed, she did "little or nothing else but follow the Justices at Assizes and Sessions with her petitions as she hath done for many years past." They noted that she was an able woman and that her daughter who was about eighteen was "somewhat lame" but still able to get her own living.

Persons other than relatives could be paid to care for a poor person. In 1604 the widow of William Plat was to be paid to house a man infected with the plague; in 1626 Elizabeth

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5West Riding Sess. Rec., p. 78.
7Ibid., III, 58-59. See also Vol. II, pp. 27, 35-36.
Floyde was given a yearly pension for keeping Katherine Bentt, who had been born in the gaol where her parents were prisoners; in 1643 a woman was given payments for keeping her stepchildren; in 1647 Joan Smyth, a widow, was offered three shillings yearly to keep Joan Beasley, an aged woman who was getting sixpence weekly in relief; in 1655 one woman's new husband demanded and received money to purchase clothes for her granddaughter, who had been sent to them with only the clothes on her back; and in 1658 one man was paid eightpence weekly to maintain an orphan girl of fourteen, an idiot who was unable even to put on her own clothes or spin thread. Those who refused to aid indigent relatives or parish dependents were liable to punishment. Robert Mason preferred to remain a prisoner in the Fleet rather than give support to his mother and sister. He even took rooms in the Old Bailey and settled his family there to enforce his resolution so that his mother had to petition the King's Council in 1638 for relief. Elizabeth and Anne Radway were sent to the House of Correction in 1651 for refusing to let Joyce Astley, a widow, live with them and for putting her out of their house.

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14CSPD-Chas. I, XII, 216.
contrary to an order by two justices of the peace. They also suffered a fine of twenty shillings for cutting up the widow's clothes. The court ordered Joyce to be sent to stay with her two children if they would have her.  

When no help was forthcoming from relatives or the parish, distressed persons could ask for aid from other authorities. This was what Loucy Myhill, age 67, who had lived in Eastham, Worcestershire, for more than twenty-six years, did in 1613 when she claimed that the Overseers of the Poor had refused an order to give relief despite her frailty, blindness, age, and poverty. At the West Riding Sessions in 1639 two widows complained that they had not been paid for nursing and educating two illegitimate children only because the Churchwardens and Overseers of Wortley township could not come to an agreement on the tax assessments.  

About ten years later Joan Story, a widow who had lived in Westminster for almost sixty years, petitioned the Crown for the next vacancy in the King's Hospital in the Long Woolstable because she was aged and unable to walk. In 1655 and 1657 the widows of John Bastwick and John Lilburne, the political pamphleteers, petitioned the Protector for aid. Susanna Bastwick, who claimed that she was aged and sickly, unable to help two sons at the university without some assistance, and in debt

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18CSPD-Chas. I, XXII, 394.
with no means of subsistence ever since she had sold her jointure to pay her husband's debts, petitioned Oliver Cromwell to receive the £5000 in reparations which had been voted, but never paid, to her husband. She eventually settled for a pension of forty shillings weekly. 19 Elizabeth Lilburne in 1657 asked Richard Cromwell to have a £7000 fine against her husband cancelled because she was a widow with three young children; the House of Commons voided it on August 15, 1659. She was also granted a continuation of her husband's weekly pension of forty shillings in return for surrendering all her husband's papers, which were to be burned. 20

Local officials were likely to be cooperative when inhabitants suffered reverses due to losses by fire. This was probably a reflection of the prevalent danger and fear of fires, which were apt to get out of control and inflict much damage. The West Riding Sessions in 1614 ordered that 6s.8d. be given to Sibill Mawthorne after she lost her house and everything in it by fire, 21 and the North Riding Sessions in 1640 allowed £3 towards the relief of Dorothy Woode, a widow who was "utterly undone" because she had "not onely her house and goodes burned."


The families of men who were employed in or performed some service for the government were likely to suffer when the men did not receive their wages and fees or died before being paid. The usual recourse was to petition for restitution of arrears on these sums from government agencies or for relief in the courts. In 1642 the wives of the four coachmen attending Queen Henrietta Maria in Holland petitioned the Commissioners of the Treasury for a second payment of £20 each out of money due their husbands; the women said that their families were "in great want" while the men were away. They probably received some of the monies requested.

The wives and families of men who were pressed into service during wartime sometimes were left in similar destitute straits. Many of them applied for and received relief from the government, the courts, or parish officials; however, the able-bodied among them could be set to work. In 1625 a Warwickshire Sessions Court ordered the Churchwardens and Overseers of Hampton to pay fourpence weekly to Ann Harte, whose husband had been pressed into service, leaving her and their three children destitute. Ann herself was to be set to work "for her better maintenance."

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23 CSPD-Chas. I, XVIII, 303-304; Carola Oman, Henrietta Maria (London: Hodder and Stoughton, Ltd., 1936), pp. 123-124. See also CSPD-Chas. I, VI, 206.

The same court ordered the parish authorities of Chilverscoton to pay Ann Tilly, whose husband had been pressed into service, leaving her and a nursing child without support, an allowance of sixpence weekly. Twenty-five years later the Admiralty Commissioners ordered the collectors for prize goods to pay £5 to the wife of Edmund Bamfield of the St Andrew as part of her husband's wages, which were to be returned when his ship came in and he was paid off. In 1645, however, the Commissioners for the Sick and Wounded allowed Susan Cane, the wife of a cook on the St Andrew, only £3 for transportation to Guernsey; this sum was considered sufficient because she did not live with her husband, led a loose life, and had "more than ordinary skill in making stockings."27

Widows of men slain in government service during wartime could receive help from the central or local government authorities, variously by petitioning for unpaid wages, by requesting a private grant, or by seeking a share of special assessments levied in the parishes according to parliamentary ordinances. A considerable number of widows whose husbands had been slain on the expedition to Rhe in 1627 and at Edgehill in 1642 petitioned for, and presumably received, financial assistance.28

25Ibid., p. 28. See also Ibid., I, 18, 20, and II, 44.
26CSPD-Commonwealth, II, 234. See also Ibid., VI, 575.
27Ibid., VII, 484.
28CSPD-Chns. I, IV, 460-461; VI, 233; XXIII, 566-567, 645.
The latter seems to have varied according to the social standing of their husbands. The widow of Lieutenant Francis Musgrove, who was slain at the assault on the Isle of Rho, was granted the prize ship, the St Peter, with all its tackle and furniture in 1628. On the other hand, the Council of State in 1649 recommended to the Treasurers of Christchurch that they make Jane Browne, the widow of a man slain in the service, the recipient of public charity.

The latter seems to have been in keeping with the parliamentary actions taken in 1601, 1642, 1645, and 1647, which provided for the collection of taxes, to be assessed in every parish for the relief of widows and orphans of soldiers and marines killed in the wars. Parliament also passed an act in 1651 giving pensions or allowances to widows and orphans who could present certificates from the commanders of the deceased servicemen. The previous year, 1650, the Council of State authorized the Admiralty Committee to receive the petitions of widows of men lost at sea during wartime and to give them rewards not exceeding £10. These allowances did not hinder the women from petitioning for unpaid wages owing to their husbands.

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29 Ibid., III, 401, 410.
30 CSPD—Commonwealth, I, 461.
31 AOI, I, 102, 938, 997, 1055 and II, 556; Steele, Proclama-
32 CSPD—Commonwealth, II, 51-52. For examples, see Ibid.,
33 Ibid., IV, 387.
allowances were not limited to widows, for in 1650 the Committee ordered £7 to be paid to Richard Styles to train the orphan daughter of John Brown, a pilot who was slain at sea in the Elizabeth, to earn her own living. The Admiralty Committee's concern extended also to the mothers of servicemen, for that same day it ordered that £3 be paid to the widowed mother of Peter Strong, who was drowned when the Mary Rose was lost at sea.34

Compensation paid to widows of servicemen was, as is customary, based on the latter's rank.35 The Council of State, for example, in 1653 ordered £300 to be paid to the son and widow of Captain Walter Hoxon; in the previous year it had ordered only £40 be given to the widow and four children of Henry Arnold, master of the John.36 The feelings of these widows regarding the small sums granted by the government were stated succinctly in the petition of Elizabeth How to the Protector in 1654, when she asked for relief for herself and two children orphaned after her husband was slain during an engagement with the Dutch the previous year. She claimed that the £8 she had received "goes but a little way to satisfy the loss of a whole family's livelihood."37 Unfortunately, not all widows of men who lost their lives in the armed services were entitled to financial help. Lucy Collier, the widow of the quartermaster

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34 Ibid., II, 362.
35 See, for example, Ibid., V, 485-487.
36 Ibid., pp. 451, 482.
37 Ibid., VII, 45.
of the Assurance, requested a pension saying that she was left with two young children who had not enough bread to eat; the Admiralty Committee refused her request with a note saying, "Nothing can be done."\(^\text{38}\)

Government pensions were granted to some widows of servicemen\(^\text{39}\) as well as to the wives and widows of men who had performed some other type of service for the government. In 1625 Mary Andrews and her husband Michael, one of King James' Surgeons-in-Ordinary, were granted a pension of £150 per year in consideration of Michael's services.\(^\text{40}\) James' grants of two annuities worth £100 and £200 to Sir Maurice Dromond were surrendered in 1627 in return for one worth £300 to both Sir Maurice and his wife, Dame Dorothy.\(^\text{41}\) King James had sold Dorothy Speckart, a widow, an annuity of two hundred marks for life on the customs of beer exported. By 1641 it was not being paid, so that it was £1,633.6s.0d. in arrears in 1655 when Dorothy claimed she was ninety years old and in debt, with attachments on all of her moveable property. The Council did not grant her petition for the arrears and restitution of the former pension, but it did note that she would be given a new pension of twenty shillings weekly.\(^\text{42}\)

\(^{38}\)Ibid., VI, 539.

\(^{39}\)For example, see CSPD-Chas. I, II, 525 and XIII, 266-267, also CSPD-Commonwealth, VIII, 208, 226-227.

\(^{40}\)CSPD-Chas. I, 547.

\(^{41}\)Ibid., II, 163.

\(^{42}\)CSPD-Commonwealth, IX, 139. See also ibid., VI, 415 and Complete Pearage, IX, 790.
it did grant her anything at all is probably due to the fact that her husband's service antated 1642, for a parliamentary statute of 1649 made provision for payment of wages due for services to the royal government so long as the performer had adhered to the parliamentary government since the 24th of March, 1642. 43 Dorothy was fortunate, for the government during the Interregnum did not often consider itself responsible for such commitments made by the royal governments. 44 In 1655, for example, Bathshua Makins, who had been granted a pension of £40 yearly for her services as an attendant to the children of Charles I and who had not been paid for a long time, was refused payment of the arrears on her pension as well as, presumably, any continuation of the former pension. The government apparently acted as it did, partly for political reasons and partly for economic ones. The latter may have been the prime reason for cutting the pension of Alice Jellybrown, the widow of a soldier who had lost his life in Ireland. She asked in 1653 for a restoration of the full pension of three shillings weekly, half of which had been stopped on a false report that one of her two small children was dead. 45

Shelter for the needy was considered one of the responsibilities of parish authorities. Because there were only a limited number of dwelling places available owing to the

43 AOI, II, 167-168.
44 See, for example, CSPD-Commonwealth, VIII, 289-290.
45 Ibid., VI, 544.
requirement that cottages be surrounded by at least four acres of land (supra, p. 158), local officials had to assume control over housing as a matter of course. Some of this was due to the fact that the law permitted Churchwardens and Overseers of the Poor to build houses on the waste or common for needy poor if the lord of the manor consented.\footnote{46} In 1628 Sir Thomas Thinn consented to the erection of a cottage for the widow Edith Curtis of Crockerten and in 1640 Lady Anne Beauchamp, Lady of the Manor of Edington, gave permission to Francis Relfe, the village blacksmith, to build a house on a piece of her land.\footnote{47}

On the other hand, persons who were unable to build a cottage for themselves could be provided with one at the expense of a close relative, as in 1650 when Alice Savage, a widow and a "woman of sufficient estate," was ordered to provide a house for her destitute son and his wife.\footnote{48}

Housing, food, and other necessities for poor persons could be provided by placing them in service or apprenticeships, where they lived somewhat as a member of the family or in servants' quarters. Two Elizabethan statutes were designed for this purpose. One required that all single women between the ages of twelve and forty who did not have any visible livelihood should work in certain specific trades for a year, a week, or a day, as decided by two justices of the peace, the mayor,

\footnote{46}{31 Eliz. I, ch. 7 and 43 Eliz. I, ch. 2, sec. 4.}
\footnote{47}{Wilts. Q. Sess. Rec., pp. 91-92, 133.}
\footnote{48}{Warwick Q. Sess. Rec., III, 40.}
or other local officials. In addition, women between the ages of twelve and sixty could be compelled, along with men, to help out in husbandry during harvesttime. A second act provided further that beggars should be bound to service if someone were willing to take them. The former act was more likely to be applied to poor persons than to any others, and understandably so. Mothers of illegitimate children who were placed in the House of Correction until they could find sureties for good behavior were candidates for this type of employment. Eleanor Bradneck, for example, was released in 1639 when a Mistress Saunders agreed to take her in service for three years.

Wages were set by the justices of the peace and then proclaimed by the mayor, sheriff, or other officials, and it seems that women were usually paid less than men, even for the same work. Some of this inequality may have reflected the generally greater physical abilities of men, as in reaping and hay-making, but they were not indicative of responsibilities as when a "man-servant of the third-best sort," or a "second hand" or a "plain laborer" in husbandry could be paid £10 per year 

49 Eliz. 1, ch. 4, sec. 17; Pulton, Status, p. 1034; Lambard, Eirenarcha, p. 325; Dalton, Countrey J., p. 81.
50 Eliz. 5, ch. 4, sec. 15; Dalton, Countrey J., p. 83.
51 Eliz. 1, ch. 5, sec. 24; Pike, Hist. Crime Eng., II, 70.
in 1610 and 46s. 8d. in 1635, while a "woman servant of the best sort, able to take charge of malting, brewing, and baking" would be rated at 26s. 8d. and 30s. in the same years, respectively.54 Such wages were likely to keep the poor, especially ordinary servants or laborers, poor because their levels were not based primarily on market demand; any employer found guilty of paying higher rates or wages than these published in the proclamations could be imprisoned for ten days and fined £5 while the employee who accepted these wages could be imprisoned for twenty-one days.55

Women who refused to serve could be committed to wardship, and any who might run away to avoid service could be returned and imprisoned until they agreed to serve.56 The court did permit Suzan Hedges to leave her master in 1615, but only because he had slapped her and dislocated her neck so brutally that her father and friends found it necessary to take her to a bone-setter who, in turn, had informed on the master. The poor girl was committed to the House of Correction, to remain there until she was placed "in some honest man's service."57 These terms of service could not be terminated by marriage; they were binding and a woman's husband could not take her out of service.58

55Eliz. 5, ch. 4, sec. 13; Clark, Working Life of Women, p. 65.
56Eliz. 1, ch. 4, sec. 17-18; Norfolk Q. Sess. Rec., p. 29.
58Dalton, Countrey J., p. 83.
various reasons, then, women and their masters occasionally had serious disagreements. In 1635 Catherine Dyer Willson, who was a cousin of Lord Cottington, Master of the Wards, said that the woman under whom she was placed in service by her guardian once gave her a disfiguring blow in the nose which had so hurt her chances in marriage that when she was finally married it was to a man of no property. 59

Masters and mistresses of bound servants had a concomitant obligation to accept and retain them for the period of employment agreed upon; any who dismissed a servant without permission from the justices could be fined forty shillings. 60 Ann Atkins, who was hired as a servant by John Johns of Great Snoring was discharged before her time had expired, so Johns was ordered in 1651 to take her back until her time was up and, also, to pay her back wages as well as court costs of £10. 61

Somewhat higher in the socio-economic scale than these servants were apprentices, as in addition to earning wages they learned a trade or craft for which they were required to spend at least seven years in preparation and from which they could not be released before reaching the age of twenty-four in the cities and corporate towns or twenty-one everywhere else. Except in London and Norwich, which permitted freemen to enter any

59 CSPD-Chas. I, IX, 71; Complete Peerage, III, 462.
60 5 Eliz. I, ch. 4, secs. 5-6.
61 Norfolk Q. Sess. Rec., p. 36.
occupation or to accept apprentices in one, there were restrictions on eligibility to take apprentices and to be apprenticed. 62 A placement fee of sorts was needed to enter an apprenticeship, and local officials as well as Overseers of the Poor were entitled to use moneys donated for this purpose in order to choose poor and deserving children under the age of fifteen to receive sums which would help them enter a desired apprenticeship. 63 These must have been similar to a scholarship or fellowship of the present day. Aside from encouraging such voluntary apprenticeships, local officials had the power to place persons under twenty-one in compulsory apprenticeships. They also could imprison persons who did not want to work at all or who did not like the apprenticeship chosen for them; and they had the power to apprehend persons who ran away to avoid serving. 64

The minimum age for apprenticeships varied. A ten-year old, of his or her own volition, could bind himself or herself as an apprentice in husbandry until the age of twenty-one or twenty-four, as agreed. 65 However, children whose parents were too poor to maintain them could be bound out to apprenticeships


63 7 Jas. 1, ch. 3.

64 5 Eliz. 1, ch. 4, secs. 28-29, 34; Somerset Assize Orders, pp. 39, 63.

65 5 Eliz. 1, ch. 4, sec. 18; Dalton, Countrey J., p. 83.
as early as the age of seven if the consent of two justices of
the peace were given. Court orders regarding illegitimate
children sometimes stipulated that support payments by the re-
puted father were to continue until the child was put to an
apprenticeship at age seven, or able to be self-supporting at
age twelve. These poor apprentices were required to serve un-
til age twenty-four if male and until twenty-one, or married, if
female. In effect then, some persons could be made to serve
apprenticeship terms lasting longer than seven years.

Female apprentices received little or no favoritism in the
law. They were required to serve out their terms equally with
men. Among the few exceptions permitted were discharge for
service in the wars, which—naturally—was limited to males, and
for marriage, which was—as noted above—limited to women.
Anne Hanson petitioned the Duke of Buckingham in 1626 for the
discharge of her apprentice, who had served as a barber and
surgeon's mate on the expedition to Cadiz. In 1649 Ann
Stapleton was put into an apprenticeship with Thomas Healopp of
Hempstead in Norfolk. When he died two years later and his widow

66 39 Eliz. 1, ch. 4, sec. 16; 43 Eliz. 1, ch. 2, secs. 1-2;
Dalton, Countrey J., pp. 83, 93.

67 For examples, see West Riding Sess. Rec., pp. 268-269 and

68 43 Eliz. 1, ch. 2, sec. 13; Dalton, Countrey J., p. 93;

69 A01, I, 1055 and II, 1006-1007, 1132.

70 CSPD-Chas. I, I, 363.
found herself unable to retain Ann, the justices did not discharge her but assigned her another master for the balance of her term.  

Women could be bound as apprentices as well as have apprentices bound in their service. Very few written rules excluded them from apprenticeships, yet girls were seldom apprenticed, especially in the skilled trades, or crafts such as those of the carpenters or pewterers. While the professions—the armed services, the Church, medicine, the law—were closed to women, girls were sometimes placed in apprenticeships to apothecaries and midwives. The latter, incidentally, had to be licensed by ecclesiastical authority and to take an oath to serve the rich and poor alike. More of them were apprenticed in agriculture, the retail trades, in women's trades such as millinery and mantuamaking, and in food trades such as baking, milling, brewing, and butchering. They were virtually excluded from cloth weaving, yet predominated as spinners. In many of these occupations a seven-year apprenticeship was not really necessary, for the skills could be gained in a much shorter time or were normally acquired while learning the household arts. Others, such as retailing, depended more on general intelligence and tact than on manual dexterity, but still others, such as spinning, required almost no mental dexterity.  

71Norfolk Q. Sess. Rec., p. 30. See also ibid., p. 29.  
72Clark, Working Life of Women, pp. 10, 191.  
73Ibid., pp. 42-289, passim; Carl Bridenbaugh, Vexed and Troubled Englishmen 1590-1642 (New York: Oxford University Press,
Apprentices were required to be respectful and law-abiding. For breaking the law, Jane Cobb, who was indicted of felony in 1644, was discharged from her apprenticeship to a fisherman, the indentures notwithstanding.74 Apparently, apprentices who were truculent, lazy, or careless could be given a mild punishment or reproof without complaint, for none appear in the sessions records. However, when punishment was severe and disagreements between masters and apprentices became serious, justices of the peace were empowered to mediate.75 At the Middlesex Sessions in 1614 the justices permitted Joan Hackerley to be discharged from the service of a tailor who gave her undue correction and who threw a knife at her. Joan further accused her former master of having the "use of her body at divers times," and he retaliated by accusing her of stealing meat which she had gone to fetch him from the butcher's.76

Since the law required all persons to accept servants or apprentices if parish officials felt they could support one or more of them, personality clashes were likely to develop. A wealthy man, for example, who had few or no servants and preferred to live simply could be forced to accept an unwanted servant or apprentice in housework, husbandry, or business.77 Joan and


75 Eliz. 1, ch. 4, sec. 28.

76 Middlesex Sess. Rec., II, 64.

77 Bott, Poor Law Decisions, I, Pt. II, 538; Somerset Assize Orders, pp. 63-64.
Mighell Souch, laceworkers, petitioned the Wiltshire Sessions in 1636 that they had done their best to teach and look after Ales Ireland, who was apprenticed to them, but that she still had run away eighteen times despite good food and no correction. Worse yet, she continually went about in a filthy condition, so "full of vermin in such sorte not fitting to coum with in any mans dores before she be clensed." Sadly for patient Master and Mistress Souch, the court merely ordered Ales to be sent to the House of Correction for a time and then to be returned to them.78

Although women were excluded from some occupations such as cloth-weaving, on the ground that their strength was not sufficient for the heavy work needed, public opinion resisted barriers preventing women from helping or carrying on in their husband's trades.79 For this reason they can be found today in records and documents as employers of apprentices, as was Margery Harris, who was presented in 1610 at the Middlesex Assizes for enticing away an apprentice from his former master.80 In 1632 one widow in the North Riding was told either to repay the money her late husband's apprentice had given him or to teach the youth his trade as butcher.81 Mary Wheeler, the widow of George Wheeler, a shoemaker, was permitted in 1656 to retain Thomas Greene as an

78 Wilts. Q. Sess. Rec., p. 117.
79 Clark, Working Life of Women, pp. 103-104.
80 Middlesex Reports, pp. 147, 206.
81 Yorks. Q. Sess. Rec., V, 120.
apprentice until he had served out his time and, also, to employ him as a shoemaker in summer and in maltmaking during winter-time. The law required a seven-year term for apprentices but this law was not rigorously enforced, at least during the period between the beginning of James' reign and the Civil Wars. Exceptions were made by some guilds to permit the employment of a master's wife and children while forbidding other, unapprenticed, persons. In many guilds, also, the rules regarded a member's wife as his partner, able to share fully in the social and religious life of the guild and entitled to carry on his business after his death and to be confirmed in possession of his leases as well as his apprentices during her widowhood. In fact, at times the provisions of a man's will were set in a way that it would have been highly unprofitable for his widow to marry outside his guild.

84 Davies, Enforcement, p. 266. Davies, ibid., pp. 265-266, also points out that when the law was most effectively enforced, it was because of paid informants. She also notes that this was not the unapprenticed journeyman but his master who was prosecuted, as the latter was more likely to have the means to pay a fine.
85 Ibid., p. 148; Clark, Working Life of Women, pp. 183-185; Bateson, Borough Customs, I, 229-230; Stopes, Brit. Freedwomen,
Hundreds of Jacobean women were independent businesswomen, tradeswomen, and laborers, especially the latter. They were not completely dependent on their husbands in this preindustrial age when the idea of a man as the sole support of his wife and family was not widespread in England; both were dependent upon one another in this respect. 87 Not all or most couples, of course, were independent entrepreneurs. Under the putting-out system, for example, both men and women worked in their homes as spinners. 88 Although most women of the yeoman class spent their time caring for their home and household needs, surviving court reports, local records, and government documents give evidence that women—single, widowed, and married—were engaged in business and in the occupations. A number of them lived above their shops and had helped their husbands or fathers while the men were alive and continued in the shops after the men died. Sometimes the help given by the wives and female relatives was so necessary that they had to leave the domestic drudgery to hired servants. Such a situation was especially true during wartime when the men were away in the services. 89

pp. 80-83.

87 Clark, Working Life of Women, pp. 12-13, 156.
These merchant consorts and daughters of tradesmen were often almost like partners in their family businesses and played an increasing part in town life. Some borough and court records indicate that they were regarded, legally, as single women and could buy, sell, or make business deals on their own. Some of their activities, of course, depended on special grants from the government; women were continually petitioning officials for monopolies and patents. The Countess of Buckingham, who held a title higher than that of her second husband, Sir Thomas Compton, was in the logwood business because of a twenty-one year patent granted to her husband to import fifty tons each year in return for a payment of £50 per annum. After Sir Thomas' death the Countess was given 108 tons of logwood by the government in 1628 in return for surrendering the patent, which was twelve years short of expiration. That same year Jane Murray, a widow, was granted a thirty-one year lease on 376 acres of herbage, pannage, and timber in the Park of Berkhamstead, Hertfordshire, in return for a payment of £550 and a yearly rent of £44.6s.10d. She was also given permission to convert the land into arable or pasture. Her activity was consonant with the enclosure movement spreading, despite the opposition and rioting of small farmers, across pasture, marsh, fen, and waste

90Bateson, Borough Customs, I, 227-229 and II, cxiii; The City-Law, p. 40; Holdsworth, H.E.I., III, 523.

91CSPD-Chas. I, III, 223.

92Ibid., III, 3. Other monopolies or grants held by women are given in Clark, Working Life of Women, pp. 25-35.
lands in England. The government seems generally to have aided the entrepreneurs, for the men who opposed Lady Mary Wandesford's attempt to enclose a marsh and lands in Hampshire were ordered by the Council in 1637 to cease their opposition.

Some other types of activities dependent on a government contract, patent, license, or monopoly in which women participated either on their own or in partnership with men were: printing of Bibles, books, and playing cards, cutlery and swordmaking, butter exporting, supplying of fuller's earth, manufacture of copper farthing tokens to be used among tradesmen, sale of old clothes and artifacts, brewing, or the ownership of a brewery, carting of ammunition for the army and fleet, keeping an ale house or victualling house, and the manufacture of copper pin and wire. Allan and Katherine

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93 See, for example, Steele, Proclamations, #1041; CSPD-Chas. I, IV, 398, 402, and XIII, 611.

94 CSPD-Chas. I, X, 343.

95 Ibid., X, 267; XII, 288; XIV, 458 and CSPD-Commonwealth, I, 523.

96 CSPD-Commonwealth, IX, 151.

97 Ibid., VI, 444.

98 Ibid., XII, 111.

99 Steele, Proclamations, #s 1128, 1145.

100 CSPD-Chas. I, VI, 39.


102 CSPD-Commonwealth, V, XII, 396.

103 Warwick Q. Pass. Rec., II, 149; IV, 95.
Boteler were permitted to retain the monopoly of the pin and wire business which Katherine had inherited from her father, Sir Thomas Bartlett, who had expended his great estate in the undertaking. Somewhat less of an investment, on the other hand, was needed to teach school or to open and maintain an alehouse.

Common Law provided that a qualified clergyman had preference over other persons for a license to teach. For this reason, at West Wittering, Sussex, in 1623, Nicholas Coles and his daughter were presented for teaching school without a license; the curate was eager to perform this function. And the next year at Sutton, Margaret Shipden was presented for teaching the "boyes and girles to write and read" as the curate was willing to "doe the same for the more increase of his living." There must have been a shortage of available curates at Dorchester, Dorset, in 1651, however, for the Mayor and the officials of the municipal hospital agreed to permit Robert Guilford's wife to use a room in the hospital building for teaching any poor children who presented themselves for reading lessons. If there were thirty children or fewer, she was to be paid £10 per year, but if more than thirty presented themselves, she was to be paid £12.

104 CSPD-Chas. I, XV, 232-233.
106 Dorchester Rec., p. 518.
The alewife was often a woman who brewed beer or ale for sale as other homemakers did privately. Her home took the place of the village inn, which was still uncommon in those days. People could do their drinking at the home of a person who had a license from two justices of the peace to brew and sell ale or beer; it was not necessary for these alehouses to post a sign, for a bush hung outside the door was sufficient notice to a semi-literate populace.107 There were only a few restrictions against brewers and alehouse keepers. A license, renewable each year, was needed to remain open; otherwise an offender was liable to a fine of twenty shillings to be used for the poor of the parish. If he or she refused to pay, his or her property could be distrained (seized) to pay the fine; but if the offender had none, he or she could be sentenced to a whipping. For a second offense, the penalty was one month's sentence in the House of Correction; and for subsequent offenses the stay there was at the determination of the justices.108 Also, no beer or ale could be sold to an unlicensed alehouse on penalty of 6s.8d. per barrel.109 Each alehouse was required to keep at least one bed, and no tippling or drunkenness was permitted on fine of ten shillings for the proprietor, with a smaller fine or a few hours in the stocks for patrons.110 In addition, no ale or beer could be

107 CSPD-Chas. I, XVI, 226-227; 5 Edw. 6, ch. 25; Laslett, World,"Inst., p. 75; Stenton, Eng. Woman, p. 121.
1085 Edw. 6, ch. 25; 3 Chas. 1, ch. 4; Steele, Proclamations, # 1233; Dalton, Countrrey J., p. 29.
1094 Jas. 1, ch. 4.
110Steele, Proclamations, # 1233 and 1 Jas. 1, ch. 9;
sold at more than the regulated price. The strictures against excessive drinking did not avail, so that in 1610 a statute was passed providing for the loss of license for three years of any alehouse-keeper convicted of permitting tippling or drunkenness on his premises. It was repassed in 1624.  

The sessions records are liberally sprinkled with notices of women being awarded licenses to keep alehouses or victualling houses as well as with presentations and indictments made against women who maintained unlicensed alehouses or breweries. In 1639 Mary Arnold was committed to the Fleet for refusing to cease brewing in a rented house upon the Millbank, Westminster. She was released after promising to brew no more and to remove her brewing vessels out of the house. Her husband was required to give bond that he also would not brew or help her. For keeping a disorderly alehouse frequented by lewd persons, Anne Hancock of Bewsall lost the privilege of obtaining a license for at least three years by order of the Warwickshire Sessions in 1655.

When a woman did not open her alehouse out of her own endeavors, she probably stepped into it either because she had

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4 Jas. 1, ch. 5; 21 Jas. 1, ch. 7; 3 Chas. 1, ch. 4.

111 Jas. 1, ch. 9, sec. 2; Steele, Proclamations, # 1233.

112 Jas. 1, ch. 10; 21 Jas. 1, ch. 7.


114 CSPD-Chas. I, XIV, 131-132.

helped her father in the business, she had inherited from a relative, or she was in partnership with her husband. In one of the latter instances, it is puzzling to read that when John Watson of East Retford and his wife Elizabeth were given a license at Westminster in 1625 to keep a tavern, they were permitted to "sell wine at such prices as they please, certain statutes notwithstanding, upon a payment to the King of £3 per annum." It is interesting to note, incidentally, that municipal improvements caused problems for business persons then, as now.

Elizabeth Porter was one of several shopowners at the southwest end of St. Paul's who, in 1632, because of repairs to the cathedral, were ordered to vacate their premises in return for "reasonable satisfaction." Elizabeth's occupation was not given.

Other than alehouse keeping, service occupations in which women engaged included decipherer to the Queen, embroiderer to the Queen, teacher of needlework, quartering servicemen, supplying food and hay to the services, and laundress.


117 CSPD-Chas. I, I, 3.


119 CSPD-Chas. I, II, 81.

120 Ibid., IV, 174.

121 Ibid., IV, 286.

122 Ibid., V, 200; CSPD-Commonwealth, III, 479.

123 CSPD-Commonwealth, IV, 602 and XII, 238, 463.
and semnpstress. In the last instance, Dorothy Chiffinch com-
plained to the Council of State that she had worked for the royal
family and had been unpaid so that she had to borrow money at in-
terest to pay the servants working in her laundry. There is
also a note in the Calendars of State Papers, Domestic about a
"female employed in the Navy office"; she probably performed
work similar to that of a charwoman. In the medical field,
women provided many paid services ranging from wetnursing and
midwifery (supra, p. 232) to nursing sick and wounded service-
men. Unfortunately, in 1615 Ann Dell, the wife of a butcher
in Shoreditch, was charged "by practicing of surgery to do much
wrong to divers of His Majesties subjects."

Women also had a share in capitalistic enterprises and
financial investments, many of which required a government grant
or sanction of some sort. They had part ownership of a private
vessel with letters of marque to take pirates, consignment
of India tobacco imports, membership in a company of fishery

124 Ibid., X, 258.
125 Ibid., X, 258.
126 CSPD-Chas. I, III, 585 and IV, 183, 278.
127 CSPD-Commonwealth, VI, 413, 422.
129 CSPD-Chas. I, III, 285.
130 Ibid., p. 480.
adventurers, 131 part ownership of a merchant vessel, 132 and proprietorship of hackney coaches. 133 Individual women claimed the tolls of fairs and markets in a parish, 134 received rents for a house used by the government to house ambassadors, 135 collected the interest on tobacco taxes in return for a loan to the king, 136 could gather fees for inspecting undressed cloths in lieu of a pension, 137 and had a lease on the duties paid for importing gold and silver thread. 138 Cicely Crofts, one of the maids of honor to Queen Henrietta, received the rents due to the King for digging coal mines in Northumberland. 139 In 1637 Anthony St Leger and his wife Barbara, the widow of a man who had lost his life at Rhe, asked, in recompense for money owed to the deceased by the King, for permission to establish a registry office for ships and unemployed sailors. 140 This must have been some sort of employment agency.

131 Ibid., V, 510.
132 Ibid., XXIII, 540-541.
134 Burn, Star Chamber, p. 115.
135 CSPD-Commonwealth, XI, 555-556 and XII, 584-585.
136 CSPD-Chas. I, V, 120.
137 Ibid., II, 110.
138 Ibid., IV, 54.
139 Ibid., XII, 247-248 and XVI, 126.
140 Ibid., XII, 2-3.
In addition to receiving these grants of property and privilege, women, often in partnership with or in succession to their husbands, could be appointed to positions of responsibility. These offices were sought, not for political power—for women seldom could hold such offices unless by deputy—but for the monetary advantages attached. Near the bottom of this socioeconomic scale would be the position of gaolkeeper. In a day when prisoners paid for any comforts such as food, furniture, bedding, heat, or laundry services, any gaoler who followed the customary practices to the letter was apt to be reviled; and the few female gaolers found in the records seem to have been quite rigorous in exacting their fees. Five male prisoners petitioned the Worcestershire Sessions in 1616 regarding the gaolkeeper, a Mrs. Moore, who overcharged for beer or ale and food, inflicted fines on those who refused to pay, refused to separate debtors from felons, and unlawfully tormented some prisoners with double irons.\textsuperscript{141} In 1628 Anthony Bruning and his wife Mary were granted the manor of Woodcote and gaol of Winton in Hampshire to hold by knight's service directly from the King,\textsuperscript{142} and earlier, in 1604 following this general pattern, William Hogan, his wife Anne, and their son Charles were together granted the Keepership of the gardens at Hampton Court Palace.\textsuperscript{143} However, the widow of Sir Alexander Brett received her late husband's position


\textsuperscript{142}CSPD-Chas. I, III, 116.

\textsuperscript{143}CSPD-Jas. I, VIII, 75.
as Surveyor of the Ordnance only after his death. And even then she received only the profits of the place, for the execution of the office was given to Lady Brett's brother-in-law. In 1655 a Widow Marsh petitioned to continue in her husband's place as postmaster at Southwark, and in the next year the widow of Henry Johnson petitioned to continue in his employment as chapel-keeper at Whitehall. In 1657 Katherine Shadwell's petition to continue in her husband's place and salary as clockkeeper at Whitehall was granted after she claimed that the position was needed to support their six children and that she had agreed with one John Maidstone to maintain the clock and ring the bell.

Women who were able to participate in the economic and business life of the nation had to accept responsibility for their failures even as they enjoyed the advantages of success. A single woman could sue or be sued for debt and could plead bankruptcy, but if she were married her husband generally had to be named in the suit. However, in certain towns, in her capacity as a businesswoman she gained the privilege and also had to accept the sole responsibility for these matters, the same as if she were a single person. Ellen Acton was fined sixpence in

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144 CSPD-Chas. I, VIII, 75.
145 CSPD-Commonwealth, VIII, 131. See also CSPD-Chas. I, V, 382.
146 CSPD-Commonwealth, IX, 127.
147 Ibid., XI, 65.
148 Holdsworth, HEL, III, 573; Bateson, Borough Customs,
the Fair Court of Hatton in 1638 for nonpayment of a debt owing to one Thomas Mason.149 On the other hand, Mary Gargrave's creditors were dunning her so much and even attached her pensions so that she had to petition the King in 1631, and again in 1634, for protection.150 Ann Swayne, who had eight children and was expecting a ninth, petitioned the Council of State in 1656 to buy a parcel of land in the enclosure of Shrewsbury Castle from her husband. He was in prison for a debt, and she wanted to obtain his release by paying the debt with the proceeds from the sale. The rents on the land were in arrears and so were not available for this purpose.151 A woman's husband was not responsible for her business debts if he were not associated with her in business; otherwise he assumed responsibility for any debts she incurred before their marriage and retained this responsibility so long as she was his wife. If she became widowed or were living apart from him, and no judgment had been rendered on the debt, she reassumed the responsibility for it.152

I, 227-229 and II, cxiii; Croke, Reports (1657), pp. 49-50; The City-Law, p. 40. See also CSPD-Commonwealth, V, 447.


150 CSPD-Chas. I, IV, 528 and VI, 477. See also Ibid., XX, 217.

151 CSPD-Commonwealth, X, 118.

Just as it must have been a fortuitous relief for some women to have their husbands assume responsibility for their liabilities, it likewise must have been a small advantage for them to assume his capacity as a creditor. Joan Coxe of Allesley was permitted in 1634 to receive payments owing to her husband as a creditor because he had deserted her and was living with his mistress.\(^\text{153}\) In 1640 Mrs. Mary Tate, who had lent £1000 to Oliver, Lord St. John, and to Sir Capell Bedell, and who had been paid neither the principal nor a great part of the interest, petitioned the King to remove their protection so that the men could be brought to justice. This was granted and, in addition, Sir Capell was outlawed.\(^\text{154}\) In 1659 Katharine Bowyer, a Woolwich widow, petitioned the Admiralty for payment of the sums of £2000, £488.16s.3d., and £361.15s.6d. which had been due to her over two years previous for supplying the ironwork used on ship repairs at the naval stores in her city.\(^\text{155}\)

As administratrixes of their husband's estates widows often sued to recover their debts or petitioned government agencies, as has been noted, for back wages.\(^\text{156}\) There is a strange instance of this in about 1637 when Martha Wildman sued Sir Edward Bishop, the slayer of the dramatist, Sir Henry Shirley, for £17 which


\(^{154}\) CSPD-Chas. I, XVII, 94-95.

\(^{155}\) CSPD-Commonwealth, XII, 500, 525.

\(^{156}\) For example, see CSPD-Chas. I, V, 516, 531, and VI, 238, 422.
Shirley owed her husband. In many instances these unpaid sums appear to have been the only type of property left behind by deceased spouses, especially when the couples were initially poor or when property had to be used to pay off the husband’s debts. Nevertheless, women did have some sort of protection from creditors; their dower lands could not, it seems, be distrained for debts due to the king by their husbands. On the political scene, a sort of financial protection was given to the wives and children of Delinquents, or persons who refused to swear loyalty to the parliamentary forces. They were allowed by a statute passed in 1643 to keep at least one-fifth of their husbands’ and fathers’ estates when the latter were sequestered to satisfy the assessments. Two years later this protection was withdrawn from all but Protestant families.

Because a woman could not own chattels, she could not be questioned regarding the whereabouts of any which might be sold to pay off her husband’s debts in case of bankruptcy proceedings. To close this gap in the law, a statute was passed in 1624 giving commissioners in bankruptcy power to examine wives of bankrupts and to compel them to give information. Persons who refused to answer their questions could be imprisoned until they cooperated.

157 Ibid., XII, 124; DNB, XVIII, 125.
158 See, for example, CSPD-Chas. I, III, 586 and CSPD-Commonwealth, VII, 94.
159 Coke, I Inst., 31r.
160 AOI, I, 258, 769.
while those found guilty of perjury could be placed in the pillory for two hours and then have one of their ears cut off. This increased liability of women was consonant with their economic obligations in taxation and community projects. Women could be required to work on highway repairs, as has been discussed in Chapter Two, but wealthier ladies could pay to avoid this obligation. In 1620 Lady St Albans, Lady Raleigh, and Inigo Jones were among persons cited for refusing to pay for mending highways in St Mary's Parish where they lived. Concerning community projects, one woman was presented at the Helmesley Quarter Sessions in the North Riding in 1614 for neglecting her yearly practice of having a water sewer that ran through her field scoured and cleansed, which resulted in the stopping-up of ditches and the consequent flooding of footpaths and pasture lands on Howarth Moor near the city of York. Three years later Sarah Draper, a widow of Hornsey, was fined at the Middlesex Sessions for permitting a bridge on her property to fall into decay.

The problem of taxation for local and national expenses was a continual one and women had to share the burden as well as did men. In some boroughs, as in London, customary taxes

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1611 Jas. 1, ch. 15; 21 Jas. 1, ch. 19, sec. 5. See also Pulton, Statutes, pp. 1401-1402.
162 CSPD-Chas. I, I, 392.
165 See, for example, Lancs. Q. Sess. Rec., pp. 274-275.
were exacted from everyone according to his or her ability; women who paid became freewomen of the city.166 Those who did not pay were liable to fines. For refusing to contribute her share of the taxes levied on the inhabitants of Wolvey, the Warwickshire Sessions declared Mistress Bridget Marrowe to be in contempt of justice and ordered the town constable to attach whatever lands or rents were necessary to satisfy her taxes.167 The same court in 1653 ordered that Mrs. Mary Kendrick be reimbursed £3.10s.6d. by the entire parish of Burton Dassett for being overcharged on taxes.168 However, the widow Dame Elizabeth Winwood had to petition the King's Council in 1636 to get an order appealing her taxes. She claimed that she was rated in London as well as at her country places for ship money, and that at Stoke Poges in Buckinghamshire she had been rated at seventeen times higher than she should have been.169

These wives and daughters of husbandmen, merchants, professional men and gentry often managed their property prudently and well enough to pay taxes as well as to bestow substantial amounts on charities and yet bequeath property to relatives and friends. The generosity of these women was not limited to their own circle

166Stopes, Brit. Freewomen, p. 85; Pollock & Maitland, HEL, I, 647-648.
168Ibid., III, 181, 233, 236.
169CSPD-Chas. I, IX, 539-540.
of friends. Women donors gave considerable amounts to charity, particularly during the decade of the Civil War when men were away in the fighting. These women—especially the widows of husbandmen, burghe~ merchants, artisans, clergymen, gentry, and nobility—built up schools, provided municipal improvements and established rehabilitation agencies. Dame Margaret Hawkins, the widow of Sir John Hawkins, in 1619 left £800 for the purchase of lands or buildings for the maintenance of a free school in Kington, Herefordshire; while Elizabeth Hamden, the widow of John Hamden, former rector of the parish of Chipstead, Surrey, left £40 in 1641 to be distributed among the poor of the parish. Alice Owen, however, preferred to see the fruit of her charitable works during her own lifetime. In 1608 she gained a royal license to purchase land toward the erection of a hospital (probably in London) for poor widows and to give it, together with other lands worth £40 annually, to the Brewer's Company. Two years later Lady Jane Browne donated £10 to the Governor of the municipal hospital in Dorchester to set poor persons on work.


172 CSPD-Jas. I, VIII, 438.

173 Dorchester Rec., p. 514.
A considerable portion of the property and wealth, including land, of women such as these was held in their own names rather than by inheritance from their husbands and no doubt they utilized the latter as well as their own wealth for charitable purposes. Yet, though their comforts, their wealth, and their largesse may have been comfortable, or even considerable in many instances, they seldom surpassed that of the first lady of the land, the Queen.
CHAPTER FOUR: THE QUEEN

The Queen of England—whether Queen Regnant, Queen Consort, or Queen Dowager—occupied an especial place among Englishwomen. There was no Queen Regnant during the early Stuart period, but had there been she would have had the same position and prerogatives as a King.¹ There was also no Queen Regnant or Queen Dowager living in England during this time, so the statements made here focus mainly on the activities of the Queen Consorts, Anne of Denmark, who died in 1619, and Henrietta Maria, who did not reside in England during and after the Interregnum; they enjoyed all the rights and privileges of their sex but few of the disabilities. In her proprietary and legal capacities the Queen was regarded as a single woman, for unlike other married women under the Common Law, she could receive property as a gift from her husband, the King, and could sue or be sued apart from him. She could also purchase, grant, sell, or will property in the same manner; this presumably was to free the King from petty cares so that he could concentrate on the business of government.² Should the Queen remarry after the death of the King, she retained her social

¹ 11 Mar. 1, St. 3, ch. 1; Cowell, Interpreter, fol. Hhh_y; I Blackstone 218; Coke, III Instit., 7r; Coke, XII Rept., 110.

² I Blackstone 218-219 and II Blackstone 498; Holdsworth, HEL, III, 525; Coke, I Instit., 3r, 133r and II Instit., 50; Ireland, Coke rents, Abridged, pp. 114-115; Proc. in Parl. 1610, II, 237; 32 Hen. VIII, ch. 51; Doddridge, Law of Nobility, Fols. 14v-15r.
position and did not relinquish it for that of her new husband.  

Although the law forbade the holding of lands in both dower and jointure, 4 an exception was made to permit the Queen to receive property from her husband, the King, for her jointure and dower; of these estates and tenements she was free to dispose, both during their joint lifetimes and later. 5 Even if she were an alien the Queen was entitled to her dower, 6 which was a special kind of dower by gift of the King. Sir Heneage Finch, the Speaker of Parliament, during his speech on Impositions in 1610 declared that "by order and disposition of the law the queen shall not have dower," 7 yet both Queen Consorts seem to have received property later known as dower estates during the lifetimes of their husbands. 8 The point is somewhat moot here, for Anne died before James and never had to sue for her dower. Henrietta Maria did outlive Charles I, but her petition to Cromwell for her dower estates was rejected by the Protector on the grounds that she had never been crowned as Queen and that she was, therefore, an

3 Coke, II Instit., 50.  
4 27 Hen. 8, ch. 10, sec. iv.  
5 32 Hen. 8, ch. 51.  
6 Coke, I Instit., 31v.  
7 Proc. in Parl. 1610, II, 236.  
8 There is mention of dower estates belonging to both Anne and Henrietta Maria in Oman, Henrietta Maria, pp. 38, 306, 317. See also Henrietta Maria, Queen of England, Letters, ed. by Mary Anne Everett Green (London: Richard Bentley, 1857), pp. 411-412. In CSPD-Chas. I, IV, 37, there is a note about Henrietta Maria's "jointure and dower"; this may be a mere collocation.
alien whose rights could not be recognized.\textsuperscript{9}

Of jointure, however, there is ample evidence in the records for both Anne\textsuperscript{10} and Henrietta Maria.\textsuperscript{11} They received honors, lordships, manors, lands, and tenements; Henrietta Maria, for example, at one time in 1627 was granted the houses and parks of Oatlands and Nonsuch, plus rents from lands in various parts amounting to £16,915.\textsuperscript{12} The Queen's livelihoods were insured by such grants towards their dower and jointure estates, which names, incidentally, seem to have been used more or less interchangeably, with jointure being preferred for estates held during her widowhood. It was suggested by various other grants, leases, and incomes made by the King during his lifetime.\textsuperscript{13} An auditing of Anne's revenues in 1616 revealed that her yearly income from all sources amounted to £25,929.7s.4 3/4 d.\textsuperscript{14} After her death her property was valued at £400,000 in jewels, £90,000 in plate.

\textsuperscript{9}Oman, Henrietta Maria, p. 254, actually uses the word "dowry," here, but it must be a misnomer for dower as Henrietta Maria was a widow, not a new bride.

\textsuperscript{10}Commons, Journals, I, 226; Proc. in Parl. 1610, I, 75; CSPD-Jas. I, VIII, 35-45, 106, 226, 523, 574, and IX, 118 as well as XII, 431.


\textsuperscript{12}CSPD-Chas. I, II, 84. See also Ibid., IV, 140.

\textsuperscript{13}For Anne, see e.g., CSPD-Jas. I, IX, 223, 224.

\textsuperscript{14}Ibid., p. 346.
80,000 jacobuses in ready money, and a costly wardrobe. Her death enabled the King to reduce his expenses by £60,000 in food, her jointure, and £13,000 allowed her on sugars and cloths. 15

Henrietta Maria received similar income-producing grants such as knight's fees, wardships, and advowsons during her lifetime. 16 She also received, for example, the fine imposed on Sir Giles Alington for an incestuous marriage with the daughter of Sir Michael Dalton (supra, p. 196). 17 She was not always a good landlord, however, for in about 1631 the Keepers of some parks in Bedfordshire which belonged to the Queen petitioned to have the expenses of repairs to the lodges, pales, and fences which the Queen's Council had neglected to pay. 18 It should be pointed out, however, that when the Queen received income from lands held by knight service and the heir had died, she was not entitled to hold the wardship, which was reserved to the King. 19 These wardships were quite valuable; even the wives of Henry VIII were known to have occasionally competed for them. 20 Altogether, Henrietta


16 CSPD-Chas. I, I, 279 and IV, 267.

17 Ibid., V, 62.

18 Ibid., p. 218.

19 Doddridge, Law of Nobility, fol. L4v.

20 Bell, Ct. of Wards, p. 6.
Maria's revenues were considerable enough so that the Interregnum government ordered the sale of honors, manors, and lands belonging to the Queen and all her revenues (as well as those of the King and Prince) to be paid to the army treasury. 21

Because of her position the Queen possessed some additional legal exemptions; she did not have to pay tolls, nor could she be fined in any court or be required to find pledges. 22 This latter exemption presumably meant that she was not required to proffer bail or sureties. She was not obliged to answer a writ directly but could be sued only by petition; in fact, any writs involving her person had to be directed to her bailiff rather than to the Queen herself. 23 She seems not to have been restricted by the technical niceties of suits; if one of her tenants should alienate part of his or her leasehold, the Queen could distrain, or seize, any part of that tenant's lands as security or in compensation for the alienated lands without first going to court. 24 Moreover, despite the recusancy laws, she was not punished for practicing her religion even though such practices added nothing to her popularity. Henrietta Maria was herself protected by secret clauses in her marriage treaty which guaranteed her freedom in the


22 Coke, I Institut., 133r-133v; Finch, Law, p. 185; Doddridge, Law of Nobility, fol. L4v; I Blackstone 219.

23 Doddridge, Law of Nobility, fol. L5r; Coke, I Institut., 133v.

24 Coke, II Institut., 133v.
exercise of her religion. Neither Anne nor Henrietta Maria seems to have been hindered from attending a Catholic mass, although Henrietta Maria did agree to Parliament's request that she refrain from using her chapel more than was absolutely necessary and to dismiss the papal representative at her court. 25

Apart from these specific exemptions stated in the law, the Queen was akin to any other of her husband's subjects regarding legal privileges and obligations. The Queen Dowager was like widows who held lands directly from the king insofar as she could not marry without his approval, and any man who did marry her without a license could forfeit his lands and goods while she herself was required to pay a fine equal to one year's revenues of her dower. 26 She was entitled to sue for her dower, if it became necessary, 27 but—as we have noted—Henrietta Maria was unable to take advantage of this privilege. Like her compatriots, but unlike the King, the Queen could not ignore time, or be restrained by any statutes of limitations; nor could she be immune to protection. In the first instance, where the king was not restricted by limitation on time, the Queen could be restrained from bringing suit if a long interval had occurred between the commission of an


26 Sir Edward Coke makes this claim several times, but he does not seem to know where he derived this information as he cites a different law each time—Coke, I Institut., 133v; II Institut., 18; IV Institut., 51. See also I Blackstone 223.

27 Cowell, Interpreter, fol. Aaaa₁v.
act and her complaint. And, in the second instance, where the
king could not be deterred from initiating legal proceedings be-
cause the defendant had sued out a protection, or a writ grant-
ing him or her a year's protection from personal and civil suits
while he or she was out of the realm, such a writ could be used
to deter the Queen. As other peeresses, the Queen was en-
titled to be tried by her peers in Parliament, but Henrietta
Maria, when she was voted a traitor for laying war against the
Parliament and the Kingdom in 1643, was impeached in the House
of Commons on the ground that she had never been crowned as
Queen in England. Henrietta Maria had refused to participate
in a non-Catholic ceremony and so had not shared Charles' coro-
nation, as Anne had shared James'.

The Queen possessed some perquisites which gave her a
source of income. One was Aurum Reginae, or Queen-Gold, the
right to a tenth of every voluntary fine or gratuity made to
the Crown in return for a privilege or favor such as a pardon;

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28Dodridge, Law of Nobility, fol. Lgr.
29Coke, 1 Inst., 130v-131r.
30Oman, Henrietta Maria, p. 148; I Blackstone 222; Commons,
  Journals, II, 98, 139.
31Oman, Henrietta Maria, pp. 24, 42, 148; DNB, IX, 429;
  CSPD-Chas. I, I, 192, 225, 245, 246.
32D. H. Willson, King James VI and I (London: Jonathan Cape,
  1956), pp. 93, 165; Proc. in Parl. 1610, II, 35; CSPD-Jas. I,
  VIII, 25. See also Church of England, Liturgy, The Ceremonies,
  Form of Prayer, and Services Used in Westminster-Abby at the
  Coronation of King James the First and Queen Ann his Consort,
a license to hold a fair or market; a permission to donate lands
or tenements in mortmain; for liberty to enclose woods or assart
lands (convert them into arable) in the King's forest; for
charters, patents, tenures, offices; or for refusal to accept
a knighthood. This was over and apart from the sum paid to the
King; it automatically became a debt owing to the Queen Consort
when the offering to the Crown was recorded, and it was due to
the Queen even when a fine was reduced. William Prynne, the
antiquarian and parliamentarian, noted that some of the "richest
Veins" of Queen-Gold were cut off when enforced knighthood was
abolished in 1640. He also questioned just how voluntary
this fine could be despite the court ruling made during the
Easter term in the fourth year of James' reign--"That it ought
to be Sponte by the Subject sine coactione,"--since if it were
not voluntarily paid, it became a debt levied by a writ from
the Exchequer to the local sheriff. Again, the point seems
rather moot for, according to Prynne, Anne claimed but never ex-
acted Queen-Gold; in fact, James had asked his lawyers to deter-
mine what exactly were the Queen's rights in regard to it.
Prynne added that Henrietta Maria encouraged Charles I to issue
a writ for levying this tenth but later found it would be too

33Coke, IV Inst., 358; I Blackstone 219-220; 15 Edw. III,
St. 2, ch. 6; Coke, XII Rept., 21-22; Cowell, Interpreter, Ehh2v;
34Prynne, Aurum Reginae, p. 127; 16 Chas. 1, ch. 20.
35Prynne, Aurum Reginae, pp. 7, 125; Coke, XII Rept., 21-22.
burdensome to collect and instead gave her £10,000.  

Another of the Queen's perquisites was her right to the tail of every whale caught off the coasts. The reason for this given by some writers—that the whalebone used to furnish the Queen's wardrobe—seems rather fanciful, for the whalebone lies in the head which, incidentally, belonged to the King. The Queen was additionally entitled to have a separate household and officers apart from the King in matters of ceremony and law. Her attorney general and her solicitor general had as much right as the King's counsel to be heard and, considering that the Queen herself did not appear in the court to answer suits, actually were necessary servants. Henrietta Maria was personally solicitous of her Chancellor John Lambe, who was also the Keeper of her Great Seal; she ordered the rangers in the woods and reservations within her jointure to deliver to him "one fee buck of the season in summer and one fee doe of the season in winter out of all the forests, chases, and parks in their several charges... as has been formerly granted to former chancellors of herself and her predecessors, the Queens of England."  


37I Blackstone 222; Fleta, p. 100; Britton, fol. 27r. 

38I Blackstone 218; Ency. Laws Eng., XIII, 513. See also CSPD-Chas. I, IV, 37 for names of some of Henrietta Maria's officers. 

39CSPD-Chas. I, XVII, 196.
Still another manner in which the Queen's position was indicated by special practice was that evidenced when two or more surviving heiresses were entitled to the same title. Usually the King decided which among them should bear it, but when there were no surviving male heirs to his own crown he did not have the right to decide which of his daughters should succeed to his own title. This right automatically went to the eldest daughter.\(^40\)

The Queen's estate was so highly rated and her influence so greatly regarded that various persons and groups petitioned her for help. In 1633 Thomas Edmondes, who had been at dinner in a "respectable London poorhouse" when he and others present were seized on suspicion that they were priests, a charge which was later dismissed, petitioned the Queen to speak to Secretary Windebank or to some member of the King's Council to give order that Edmondes should be free from official harassment. It seems that spies were continually blackmailing him for money lest they report him again.\(^41\)

On February 5, 1640 Henrietta Maria's Master Comptroller informed the House of Commons that at the request of the Lords who had petitioned the King for a parliament, she had sent an emissary expressly to persuade the King to hold one.\(^42\)

To further indicate the high esteem in which the Queen was held, the law made it high treason to attack her in any way, by

\(^{40}\) Coke, I Instit., 165v.

\(^{41}\) CSPD-Chas. I, VI, 348.

word or deed. This meant that the Queen Consort was placed on
the same footing as the King and the King's eldest son. The
Queen Regnant, of course, stood here also, but her consort did
not unless, as under Philip and Mary, a special act were passed
to bring him under cover of the act concerning high treason.
Nor was the Queen Dowager encompassed within these limits, for
she no longer was the companion of the King or the possible mother
of an heir. Moreover, it was regarded as treason—albeit not
high treason—to violate the King's wife, his eldest unmarried
daughter, or the wife of his eldest son and heir apparent.
Were the monarch a woman, the Queen Regnant and her family would
be understood in terms of this latter provision. Here again, a
Queen Dowager and a divorced queen were not encompassed within
the law.43 A Queen Consort who was unfaithful to her husband
would be regarded as a traitor to her sovereign lord the King;
this restriction did not apply to the consort of the Queen
Regnant.44

The Queen's person and character were held in high esteem
and could not be attacked or bandied about in conversation.

Christian Cowper was examined by Attorney-General Heath for

4325 Edw. 3, ch. 2; 1 & 2 Ph. & M., ch. 10; Coke, I Instit.,
133v and III Instit., 2-3, 7; I Blackstone 222-224 and IV
Blackstone 76-77; Bacon, Treason, p. 317; Doddridge, Law of
Nobility, fols. Lr, Lv; Robert Holborne, The Reading in
Being the Statute of Treasons (Oxford, 1642), pp. 5, 7, 8; Hale,
PC, pp. 11-12.

44 I Blackstone 223.
foolishly declaring in 1629 that the King had been inclined toward a parliament but had been dissuaded by the Queen, and furthermore that she (Christian Cowper) wished that the Queen were dropped into the sea with a millstone around her neck.\(^{45}\) In 1637 several women who had been talking together and had become quarrelsome, in the course of which it was alleged that one of them said, "Let the Queen be Hanged," were formally questioned about the circumstance surrounding the threat;\(^{46}\) and Rachel Thorne who was drunk when she declared that the Queen's mother was a whore and that the Queen herself was one was arrested by a constable and sent to the Bridewell before being examined by a justice of the peace in 1638.\(^{47}\) It may seem that some foolish or alleged aspersions about the Queen were blown up to ridiculous proportions by government officials, but they were apt to be acting in tune with the contemporary feeling expressed by Judge Doddridge that:

> for though the matter do only concern the Capacity of the Queen, yet it doth also concern all the subjects of the Realm, for every subject hath interest in the King... and as all the Realme hath interest in the King, so and for the same Reason the Queene being his wife.\(^{48}\)

\(^{45}\) CSPD-Chas. I, III, 517-518.

\(^{46}\) Ibid., XI, 417

\(^{47}\) Ibid., XII, 259.

\(^{48}\) Doddridge, Law of Nobility, fols. L₄r-L₄v.
CONCLUSION

In England during the Renaissance and early modern times there was a greater awareness than previously during the Middle Ages of the role women played in daily life. They were no longer the chatelains of feudal castles or mere servants and peasants on landed estates. A number of these women made new lives for themselves in the growing urban and market centers as specialists in certain types of goods and services, or as the wives of men who were merchants, craftsmen, artisans, and bankers. For these women the old feudal restrictions were anachronistic and overly protective; the burgeoning commercial and urban society had little place or patience for the woman who was entirely dependent on her husband or guardian. The feudal restrictions on women began to break down slowly, perhaps too slowly, for the women who were privileged enough to receive some education and could read. It is for them, perhaps, that a number of men wrote treatises exhorting women not to dishonor the privileged position given to them in society by neglecting their housewifely duties or by rebelling against their husbands and making life less than pleasant for them.

By today's standards these women were overly protected and prevented from reaching their full capacities in many aspects of life, especially in the law, in government, and in the universities. But by the standards of Jacobean society their restrictions and protections may have seemed all in the nature of things.
It is not easy to generalize about the rights and privileges of Jacobean women—mostly because precept and practice seemed diverging and because only a small number of scattered records from the local level are available. These records, manorial and municipal as well as magistral and economic, do much to help one perceive how women actually fared under the law. Women seem to have circumvented their legal restrictions in many ways, and this was possible, perhaps, because the law made so few actual references to them as persons apart from men. It may have been easier to circumvent practices and restrictions which were not codified. In a number of instances, also, women who failed to gain justice under the Common Law sought redress in Chancery Law.

Regarding the legal position of Jacobean women, then, one can merely hint at the overall picture by suggesting where lines can be sketched to conform to some sort of recognizable pattern. The picture is clear when it describes women of substance such as the wives of noblemen, gentry, merchants, artisans, and tradesmen, or women of notoriety such as scolds, witches, and adulteresses; but it is vague when it concerns the wives and daughters of poor or ordinary men such as servants and laborers. One can surmise that the latter either had relatively few rights or that almost all their legal problems were ironed out in the local courts and by local magistrates, or that records pertaining to them have not been fully exploited.

Although men were preferred for titles of nobility and had preferential rights in the inheritance of property, women could sometimes succeed to both. When this happened it was usually due
to default of male heirs or to entails in the female line. The legal preference for men was such that married women were preferred to single women, for the former had husbands who could carry out the legal and military obligations attached to property. These feudal notions permeated all of society and were in turn influenced by canonical ideas about the dominance of the male sex. Men in general were assumed to have authority over their wives and daughters; wives had to obey their husbands even to the point of accepting reasonable chastisement for failure to do so, and orphan heiresses were obligated to admit a legal guardian for their lands and persons. No matter how these guardians used or abused their powers, the heiresses remained in wardship under them until they reached legal age, came under the authority of another man in marriage, or—more seldom—until the Court of Wards adjusted the situation.

A woman's legal age depended primarily on her marital status. At seven she was considered old enough for her father or guardian to solicit a marriage aid in her behalf; at nine, if she were already betrothed and her betrothed had died, she was adjudged old enough to claim dower rights; and at twelve she was eligible to make a contract, a will, or to enter marriage. If she were fourteen when her father died, she was able to avoid personal wardship for her socage lands, to enter them, and to marry; while, for her lands held in tenure by knight service, she remained in wardship until she reached sixteen. However, if she were less than fourteen when her father died, she could be placed in personal wardship for all her lands. If her guardian had failed to offer
her a suitable marriage by the time she had reached sixteen, she could enter her lands and evict the guardian; but if he had offered her a suitable match, albeit one not to her liking, and she married another instead, she forfeited the value of her marriage to her guardian. If she refused such a match but still remained single, she was obligated to continue in wardship until she reached twenty-one. No children could be placed in wardships while their fathers were alive; the same rights did not apply to mothers although they were granted one-month's preemption over other petitioners to sue for the wardships of their own children. Occasionally they were permitted to keep their children while the lands were given in wardships to others.

Considerable pressure was used to force young girls into unwanted but advantageous marriages; widows and mature women, however, seem to have been freer to follow their own inclinations, although the heiresses among those who possessed lands held in tenure by knight service needed approval from their lord to do so. By the beginning of the Protectorate, it was made an actionable offense to force a marriage upon any persons and, while the age of consent for marriage was fixed at twelve years for a woman, contemporary opinion frowned on such an early age so that the minimum age was advanced to fourteen. In marriage a woman usually assumed the social and legal status of her husband and relinquished that of her parents. For this reason the law seemed to be more concerned that women should not be disparaged by marriage to a social and legal inferior than it was in preventing undesired marriages where mutual affection was lacking. Misalliances were disliked
especially because children—unless they were illegitimate—inher-
ted the status of their mothers. Women who were nobly born did
not lose their own status if they married social inferiors, but
women who gained this status by marriage could lose it again in
the same way.

Women did not find it a simple matter to claim succession
to titles of honor, for there was no clear-cut doctrine of succes-
sion similar to that for men. Women who were claimants to a title
found obstacles such as entail in the male line and the rule of
possessio fratriis, which was held not to apply to titles as it did
to land, meaning that anyone who claimed a title had to prove a
relationship to the original holder rather than to the last
holder. When there were several female heirs, all were regarded
as equally qualified to receive the honor, with the king being
given the privilege of deciding which of them should bear it. If
he neglected to make a choice, the title remained in abeyance—a
period which could range from a few months to a few centuries. In
a day when titles were losing their feudal connotations, a title
in abeyance could be of little relevance to national security. On
the other hand, it was possible for a woman to gain a social
status higher than that of her husband; there are a few instances
of women who gained such a title even when their husbands did not
or when the latter were deceased.

A married woman was known in the law as a feme covert, which
meant that she was under the protection of her husband; and she
could not freely sue nor be sued, nor buy, sell, grant, nor be
granted property and chattels, even by her own spouse. The law
was less restrictive with a **feme sole**, whether an unmarried woman or a widow. Married women were almost entirely subject to their husbands, who could make life for them exceedingly pleasant or exceedingly difficult, and though there are complaints to show that some husbands did overuse their privilege of giving reasonable chastisement, they are few enough to indicate that women in general accepted their subordinate status.

A woman's rights to property were more easily defined than her rights to a title, but these rights were hindered by the law's preference for men, as in primogeniture, and by the fact that property descended to the issue of the person who last possessed it before it could pass to a collateral heir. To inherit it a woman had to prove herself the heir of the last possessor rather than the sole heir of the first possessor. She had some preferential rights regarding property when estates were entailed in the female line or when **possessio fratri** was applied. She could lose these rights if an heir were born posthumously to the previous possessor, but she did not have to return the revenues if she had taken them during the interim. This same situation applied if she herself were the posthumously born sole heiress. When the only surviving heirs of a person were female, they shared the inheritance as coparceners and had to divide up the property fairly among themselves according to procedure established by law. The male heirs of each of these coparceners, in turn, could claim primogenital rights over their own sisters. The eldest daughter among coparceners originally had the right to pick the principal manor on the estate and, since this was likely to be the one to
which was attached the burden of military service, she thereby in-
curred the obligation to have the service performed by a male rel-
ative or to avoid it by paying escuage. As these military tenures
declined in importance, women gained the right to share in the
ceremony of homage, which was exacted when a new tenant came into
possession of his estates. The ceremony was altered for women.

Since a married woman's legal existence was incorporated in-
to that of her husband, all her real estate and chattels became
his to use or give away as he pleased during the marriage, save
that at the end of the marriage he or his executors had to account
for the real estates which she held jointly with him or which were
part of her dower. The law permitted her to recover these estates
in order to have some means of maintenance for herself and her
children. The dower could be as large as the husband desired it
to be, but if it were too large it could be reduced by the crown;
and it could be no less than one-third. However, a woman who ac-
cepted smaller shares by custom or arrangement would not be com-
pelled to seek more. Unfortunately, the minimum of one-third
could be inadequate to live on and might evince much too small a
regard for a poor woman who gave her husband long years of back-
breaking toil. Unfortunately also, a man might own no lands with
a clear title which could be given in dower to his wife. The
woman, too, could be barred of her dower rights because she al-
ready had a jointure settlement from her husband or for reasons
such as her neglect to claim the property immediately after her
husband's death, her husband's attainder for treason, her own
adultery and elopement with another, her refusal to turn over the
title deed to the property, her own alien status, or because she was divorced from her husband. She could regain these dower rights under certain conditions as denization, a license to marry from the king, surrender of title deeds, or an apology for her incontinency in places where the custom of free bench prevailed.

A married woman could perform alone few actions of a personal nature regarding her real property, and none at all regarding her personal property, for to do so would be to accept her separate legal existence. During his lifetime her husband could not give her any property as a gift for her own personal use as it would be akin to giving something to himself. Yet, despite the preference for men in the Common Law, women did gain property in various ways. Women could seek redress in the Chancery Courts if their property rights were ignored but many men during their own lifetimes did give property and presents to their wives even though in the eyes of the law everything they gave their wives was something which belonged to them both in common. Men usually made provision for their wives in their wills, but since legal theorists claimed a man could not give his wife sole ownership of property during his lifetime, they were also legally able to remove it from their wives' use by giving it away or willing it to others instead of to their spouses. On the other hand, if a man died without a will, only a "reasonable part" of the estate was allowed to his wife and children. And if he committed suicide there was again a loss of property rights for the wife.

To prevent such losses or alienations of property by their husbands, some heiresses tied up their property in a trust before
marriage; and to skirt restrictions on the granting of property to their wives, some men set up uses for their benefit. In the boroughs where women in trade or business could not be bound by such restrictions, these limitations were less in evidence and women were regarded as *femae sole* for legal and business transactions. Unmarried women and widows, of course, could perform all of these actions on their own. They could also acquire or alienate property by will, purchase, sale, grant, or lease—actions for which a married woman needed her husband's consent.

In civil life, criminal proceedings, and economic matters, a Jacobean woman's personal rights and responsibilities were, on the one hand, a *mélange* of privilege and prejudice while, on the other hand, they were similar to those for men. For almost all female citizens many types of legal action were available. Alien women could not, by marriage alone, become English citizens with full privilege to enjoy civil and property rights under the Common Law but had to undergo a process of naturalization or denization. This was because British nationality could only be acquired by birth in lands within the allegiance of the Crown or by a citizenship process. Married women acting in consort with their husbands had the same rights as single, widowed, separated, and divorced women. Noblewomen had certain additional legal privileges granted to male peers but not available to commoners. Widows could bring suit for dower or jointure estates which had been alienated, and all women could sue for debt or for lands distrained from them. Although all women could bring suit for physical violence, widows were the only ones permitted to sue others
for murder or manslaughter; they were entitled to sue for the death of only one person—their husbands. No mother, for example, could sue for the death of her son, nor a sister for her brother, nor a daughter for her father.

Any woman could petition the government for such favors as pardons, relief from some distress, for grants of property and title, for pensions, or for licenses to carry on certain businesses. And any woman could bring a suit against a suitor for breach of promise or against her husband for divorce. Divorces, although extremely difficult to obtain, were not impossible. There were two types; one, a legal separation granted on the basis that some condition had arisen to make it impossible for the parties to live together, gave the wife an alimony and permitted her to retain her dower or jointure rights; the other, a total divorce, dissolved the marriage on the basis of some impediment which had been present from the beginning and which would have prevented the marriage if known. Children of the latter marriage were, unfortunately, illegitimatized, but the parties were free to marry again.

The universities were closed to women, making it impossible for them to obtain the training necessary to hold responsible administrative or legal positions. Although they were permitted to give evidence for legal matters, to hold some honorary positions, and to serve in local administrative offices, albeit mostly by deputy, they were generally denied the franchise. Nevertheless, they were required to pay taxes. Although women were criticized for costly dress and for indulging in contemporary fads such as
close-cropped hair or the wearing of yellow ruffs, the government was never able to restrict their enjoyment of apparel. In fact, in the first year of James' reign, the sumptuary laws were found too difficult and were repealed.

The laws against women accused of serious crimes were, however, enforced. Women were not as likely as men to commit crimes and they were not quite able to commit as many as men. Possibly their generally less aggressive occupations accounted for their lesser likelihood in this matter, but certainly the law's reluctance to grant women—especially married women—full legal capacities accounts for the few protections granted to them. Although all persons, men and boys as well as women and girls, suffered the same punishments—fines, outlawry or waiving, whipping, branding, stocking, transportation, imprisonment, and death—there were exceptions. When sentences for petty treason were meted out, men suffered death by drawing and hanging while women were drawn and then burned alive; however, the fairer sex were first strangled before being put to the torch. For lesser felonies they were hanged. In cases of high treason where men suffered the additional pain of quartering, women were spared this agony and ignominy on the grounds of public decency.

Despite this courtesy, women convicted of felonious offenses and major crimes generally suffered more than men convicted for the same. Women could not claim the benefit of clergy to escape the death penalty for felonious offenses as men often did, but after 1624 those convicted of clergyable felonies valued at less than ten shillings were permitted to suffer branding plus impris-
onment, whipping, or stocking in place of death. Moreover, if they were convicted of an offense while pregnant, they could claim the benefit of birth—a privilege which merely permitted them to have their sentences postponed until after the child were born. A woman who killed her husband was guilty of petty treason and forfeited all her property to the Crown, thereby losing it for her descendants, while he would only be charged with murder or manslaughter for killing her. In a more inequitable vein can be noted the fact that a woman who bore a child which died at birth, or soon after, suffered almost the entire blame herself for murder, if that were charged against her.

Married women did have an advantage not open to unmarried women or to men. Because of their legal disabilities they were considered incapable of committing certain kinds of offenses. A married woman was considered to be under the dominion of her husband, so that she could not be held responsible for crimes committed under his coercion. A man had to forsake his house when he knew that his wife had voluntarily committed some offense with which he did not want to be associated in guilt, but she was not obligated to forsake her husband when he was guilty of a similar offense. A married woman could not own chattels; therefore, she could not be questioned as to the location of stolen goods or, even, of chattels owned by her husband which could be sold to pay off his debts. A statute passed in the first year of the reign of James I removed this legal inequity and compelled all persons who were questioned regarding debt and bankruptcy to give information or to be arrested and imprisoned for refusing.
In prison, women received the same treatment as men and usually were permitted to bring along their babies and younger children. Although they seem to have escaped torture except in witchcraft cases, they were not immune to the ultimate and cruel peine forte et dure. Like men, they could enjoy pardons for committing the same transgressions such as assault and battery, defamation, murder and manslaughter, theft, fraud, arson, trespass, and for printing unlicensed literature. They could, likewise, be charged with keeping a bawdy house or an unlicensed tavern, with begging and vagabondage, or for breaking the peace. However, while women in a group could not be arrested on suspicion of a riot as easily as men could be in similar circumstances, they seem to have been the ones most often accused of being common scolds or of practicing witchcraft. The former offense was often punished with a refined instrument of torture for the tongue called the brank, or by forcing a couple to go "Skimmington riding." The latter offense—witchcraft—was punishable by death and the penalty was so much feared that a woman could bring a suit for defamation against anyone who falsely accused her of it.

The recusancy laws caused similar apprehension for, in addition to suffering heavy fines, all convicted recusants incurred some civil disabilities such as loss of right to hold executorships and guardianships. In addition, the husbands of convicted recusants were denied the right to hold government offices and were required to surrender as much as one-third of their lands or to pay a fine to keep their wives out of prison. The convicted female dissenters, themselves, forfeited to the Crown the profits
of their dower and jointure estates. Accusations of incest, bigamy, adultery, and fornication were equally feared, especially because they were consistently excluded from the general pardons issued by the Crown.

The law did make serious attempts to protect women and girls against the fear and disgrace of kidnapping and rape by making it a felony punishable by death without the privilege of benefit of clergy. The kidnappers and rapists often must have been undesirable and undesired mates, but it seems that women and girls of substance sometimes consented to being carried off or married to their abductors, who could take over their estates or inheritance, much to the financial distress of their parents and guardians. For these reasons the law, until 1653, made it a statutory offense punishable by death to carry off any young girl under twelve and, also, made it an offense punishable by imprisonment or fine to carry off, to rape, or to marry any heiress under sixteen without the consent of her parents or guardian. Unfortunately, the abductor's own wards and bondservants were specifically exempted from this early statutory protection, while poor women and girls between the ages of twelve and sixteen were not given the same protection as heiresses in the law on abduction and forced marriage until 1653. To make the offense even less profitable the law provided that the heiress should forfeit her inheritance during her lifetime even if she willingly married her abductor. The women who were kidnapped or disgraced were themselves expected to go about in their torn clothes and raise the hue and cry against their offenders. Since they were, understandably, reluctant to
do this, their relatives were obligated to pursue the culprits either in person or, by means of the appropriate legal remedies. If they failed, the local magistrates did so, for the Crown stood to benefit from the felons' fines and forfeitures.

No governing body, however, stood much chance of benefiting from an increase in population due to an increase in bastardy. As a matter of fact, illegitimate children were likely to become parish charges and, to discourage it, the Common Law denied full inheritance rights to persons born outside of marriage. At the same time, the statutes obligated parish officials to ferret out cases of bastardy and to punish both parents as well as to exact from both some provision for the maintenance of the child, usually until the child was old enough to be placed in an apprenticeship. The mother was more likely to suffer corporal punishment than the reputed father, not only because the prevailing double standard of morality and the laws inflicted less censure on men, but also because it was easier for a man to skip town than for a pregnant woman or one with a nursing child. Unmarried women who were discovered to be pregnant could be sent back to the parish where they conceived or where they were last settled if they were newcomers, so greatly did parish officials fear burdening their tax rolls with additional poor and homeless bodies.

Women who had no visible means of support could be cared for by local government officials. Like men, they were not permitted to wander about in search of a livelihood, to starve, or to remain idle. When no help was forthcoming from relatives, nor compensation for debts, unpaid wages or pensions for service owing to
husbands and fathers of these women, parish authorities were obligated to step in and provide them with food, clothing, shelter, and work. The statutes against vagabondage sometimes caused hardship when they prevented a newly married servant living in one parish from joining his or her mate in another, or when the widow and children of a poor serving man were obligated to leave the parish where they were residing and move on to another. These statutes were strengthened by others requiring women without visible means of support to work in certain specific occupations at wages determined by local magistrates. The wages were set consistently lower for women than for men and these schedules could not be circumvented on penalty of fine and imprisonment for both employer and employee.

The work enforced on persons capable of labor varied from husbandry to skilled trades. Young persons were likely to be placed in apprenticeships and older persons, in some type of indentured service. The more fortunate ones attained a position in an occupation to their liking while the less fortunate received exactly the opposite or, even, a master or mistress who mistreated or resented them because he or she did not want to be bothered with servants and apprentices forced upon him or her by parish authorities, who utilized all means to keep the Workhouse population down. Servants were obligated to remain with employers until their period of service had expired, and this period could not be terminated by marriage. Apprentices, who ranked somewhat higher in the social and economic scale because they had learned a trade or craft, were also paid a wage but had to remain in their occupa-
tion for at least seven years; and they could not leave before they were twenty-one or twenty-four years of age, depending upon where they lived. Women could leave whenever they married and men, when they served in the wars. These apprenticeships provided a good means for women to gain opportunities not usually open to them, and although they were excluded from some occupations by tacit understanding and custom or on the ground that they were not strong enough to perform such tasks, local practice did not deny to them the right to help their husbands in such work or to carry on after their deaths. Women, then, could get into an apprenticeship by marriage and out of one in the same way.

In the towns, above all, they were engaged in many types of occupations; hundreds of them were the proprietors and partners in their own or a family business, craft, or trade, and they also had apprentices. They had nearly all the legal rights, including the privileges, liabilities, and responsibilities, necessary to conduct business or to administer their wealth and to carry out philanthropic works. They often were the generous benefactors of charitable enterprises and the financially competent executrices or administratrices of the property of others, such as deceased, orphaned, aged, or infant relatives. Most often they performed this function for their deceased spouses and minor children. In urban business society, then, as well as in other areas of English life, women were both restricted and overprotected by the law. As they lost the cloak of protection, they gained in legal stature and responsibility; but when they, individually, felt unduly hampered by these limitations, ways were found to circumvent the law.
or recourse was had to equity as well as to local practice and custom. It is quite possible that a poor, uneducated serving woman or farm girl in the rural counties was unaware of the rights enjoyed by the feminine relatives of a wealthy merchant in Bristol or London. And it is equally possible that the wife of a rapacious rural landlord may have been unaware of the freedom gained by these townswomen.

Superior to all these women in terms of her legal freedom was the Queen. A Queen Regnant had exactly the same stature and privileges as a king. But the Queen Consort had slightly less, for in some instances she was like any other of her husband's subjects. In her proprietary and legal capacities, she was regarded as a single woman; she was not bound by the usual legal disabilities of married women and could perform many actions separate from her husband. This, presumably, was to free her husband, the king, from mundane cares so that he could concentrate on the business of governing his realm. Because her husband's domains were considered to be different from the domains of other men, she could not be dowered to the same extent as other married women. She was given a special type of dower—a jointure actually—of specific manors or tenements, or of their profits. She could also receive any gifts or grants her husband desired to bestow upon her. However, the Queen Dowager was required, like other widows holding land in capite, to seek the king's permission before remarrying.

On the other hand, the Queen was obligated to pay no tolls or court fines. Nor could she be sued except through her deputies. She was entitled to have her own household officials and
to collect Queen Gold, the revenues based on gratuities made to the Crown in return for licenses, privileges, and patents; and for some reason the tail of every whale caught in England's coastal waters belonged to her. Above all, to threaten any harm to her reputation or person was regarded as high treason—a crime as great as if one threatened harm to the king himself.
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The dissertation submitted by Leonore Marie Glanz has been read and approved by members of the Department of History. The final copies have been examined by the director of the dissertation and the signature which appears below verifies the fact that any necessary changes have been incorporated and that the dissertation is now given final approval with reference to content and form.

The dissertation is therefore accepted in partial fulfillment of the requirements for the degree of Doctor of Philosophy.

September 37, 1972
Date

Signature of Advisor