Female Prosecutors in Thirteenth-Century England

Daniel Klerman

USC Olin Research Paper No. 00-13

USC
THE LAW
SCHOOL

RESEARCH PAPER SERIES

Sponsored by the John M. Olin Foundation

University of Southern California Law School
Los Angeles, CA 90089-0071

Female Private Prosecutors
in
Thirteenth-Century England

Daniel Klerman
USC Law School

September 7, 2000

The author thanks Albert Alschuler, Barbara Babcock, John Baker, Robert Bartlett, Lisa Bernstein, Paul Brand, Emily Buss, Isaiah Cox, Richard Craswell, Charles Donahue, Mary Dudziak, Laura Edwards, Catherine Fisk, Christina Foster, Jack Goldsmith, Charles Gray, Thomas Gallanis, Thomas Green, Roger Groot, Ariela Gross, Richard Helmholz, Morton Horwitz, John Hudson, Margaret Kerr, Julius Kirshner, Jacob Klerman, Lisa Klerman, Kevin Kordana, Pnina Lahav, John Langbein, Jonathan Lehrich, Janet Senderowitz Loengard, Tracey Meares, Martha Nussbaum, Richard Posner, Eric Rasmusen, Jonathan Rose, Stephen Schulhofer, David Seipp, Steven Shavell, Clyde Spillenger, Matthew Spitzer, Nomi Stolzenberg, Henry Summerson, Eric Talley, Eugene Volokh, Sue Sheridan Walker, and participants in the 1998 American Society for Legal History annual meeting, the 1999 Medieval Academy of the Pacific annual meeting, and faculty workshops at Boalt Hall, the Interdisciplinary Center Herzliya, Stanford University, Tel Aviv University, UCLA, University of Chicago, University of San Diego, and University of Southern California Law Schools for their advice, assistance, and critical comments at various stages of this project. This research was supported by a Fulbright scholarship, the National Science Foundation (Law and Social Science Program, grant # SBR-9412044), the Social Science Research Council, a USC Law School Summer Research grant, and the Herbert and Marjorie Fried and Robert B. Roesing Faculty Funds at the University of Chicago.

Daniel Klerman, Associate Professor, USC Law School, University Park MC-0071, 699 Exposition Blvd, Los Angeles, CA 90089-0071. dklerman@law.usc.edu. Phone: 213 740-7973. Fax: 213 740-5502.

Abstract

Women played a surprisingly large role in the private prosecution of crime in thirteenth-century England. Although law, custom, and even Magna Carta tried to restrict women's ability to prosecute, more than a third of all private prosecutors were female. Women brought nearly two-thirds of the homicide private prosecutions and all of the rape prosecutions. This article tries to explain why women were so prominent in the private prosecution of crime, compares men's and women's prosecutorial success, and investigates the social significance of prosecution by women. One reason that women brought so many prosecutions is that, unlike male prosecutors, they were immune from trial by battle. Female prosecutors were reasonably successful, securing settlements more often than men and favorable jury verdicts about as often. Women's ability to prosecute afforded them a modicum of power and a public role, albeit a limited one.

Women played a surprisingly large role in the private prosecution of crime in thirteenth-century England. Although law, custom, and even Magna Carta tried to restrict women's ability to prosecute, more than a third of all private prosecutors were female. Women brought nearly two-thirds of the homicide private prosecutions and all of the rape prosecutions. This article tries to explain why women were so prominent in the private prosecution of crime, compares men's and women's prosecutorial success, and investigates the social significance of prosecution by women.

Private prosecutions, called "appeals," were criminal cases initiated and controlled by the victim, or, in homicide cases, by a relative of the victim. Unlike modern appeals, these appeals were unrelated to the correction of legal errors. To "appeal" simply meant to prosecute. The prosecutor and defendant were often called "appellor" and "appellee" respectively.

That thirteenth-century women brought so many private prosecutions is surprising given the generally low status of medieval women. The most prominent medieval philosophers taught that women were mentally inferior and thus naturally subordinate to men.[1] Medieval governments excluded women from nearly all positions of power. Inheritance customs bestowed the lion's share of wealth on sons. And family law gave husbands the right to "reasonably" chastise their wives, as well as near absolute control over property that either spouse brought into the marriage or acquired during it. Nevertheless, recent studies have uncovered women's role in unexpected aspects of medieval life, from estate management and

[1] Assertions in this paragraph are discussed and footnoted in Section I.A.

warfare to civil litigation.[2] None, however, has noticed women's large role in criminal prosecution.[3]

A central implication of this study is the importance of going beyond formal statements of the law to an investigation of how the law was actually enforced. Even though treatises, Magna Carta, and abstract statements in legal decisions clearly restricted women's appeals, in practice, judges opened the courts to women's prosecutions by ignoring these restrictions unless the defendant objected. Since defendants almost always lacked legal counsel, they usually lacked the legal knowledge and skill to object to violation of rules restricting women's appeals. When defendants properly objected, judges enforced the letter of the law and quashed the prosecution. Nevertheless, judges often sent the defendant to jury trial anyway, thus *de facto* reviving the quashed prosecution.[4]

In addition to illuminating medieval law in action, the study of appeals can also shed light on ordinary women's lives. Much historical writing focuses on royal or aristocratic women, in part because the sources for them are more abundant.[5] One advantage of legal history is that

---

[2] Rowena E. Archer, "'How ladies ... who live on their manors ought to manage their households and estates': Women as Landholders and Administrators in the Later Middle Ages," in *Woman is a Worthy Wight* 149 (P.J.P. Goldberg ed., 1992); Megan McLaughlin, "The Woman Warrior: Gender, Warfare and Society in Medieval Europe," 17 Women's Stud. 193 (1990); Sue Sheridan Walker, *Introduction* to *Wife and Widow in Medieval England* 1, 6 (Sue Sheridan Walker ed., 1993) (noting that in one court session in 1225, twenty percent of all civil cases were brought by women seeking their dower).

[3] Even Doris Mary Stenton, who was an expert on the appeal on account of her pioneering work on early plea rolls, mentioned appeals only in passing in her book on women's history. *The Englishwoman in History* 66 (1957). While female prosecutors have received little attention, female criminals are discussed in Barbara A. Hanawalt, "The Female Felon in Fourteenth-Century England," in *Women in Medieval Society* 125 (Susan Mosher Stuard ed., 1976).

[4] This phenomenon is discussed and explained more fully toward the end of Section II.D.

[5] See, for examples, the three essays on queenship in *Power of the Weak: Studies on Medieval Women* (Jennifer Carpenter & Sally-Beth MacLean eds., 1995) and the essays by Hanawalt and McNamara & Wemple in *Women and Power in the Middle Ages* (Mary Erler & Maryanne Kowaleski, eds., 1988), which

the law touched nearly all classes, so legal records can provide information on the lives of the humble as well as the elite. Unfortunately, the light legal records cast usually shines only briefly. It is seldom possible to ascertain the full context for the alleged crime or the long-term results of the case.

Part I of this article sets out the social and legal background of private prosecution and uses two cases to illustrate the basic features of such prosecutions. Part II documents the number and variety of cases brought by women and tries to explain why women brought so many appeals. While women prosecuted all kinds of crime, their role was largest in homicide and rape. One reason that women brought so many appeals was that legal rules usually required the appellor to be the crime victim, so women were the only potential private prosecutors for crimes for which they were the victim. In addition, when more than one person could be the appellor (as in homicide cases), women were probably favored as prosecutors because they were immune from trial by battle. While both custom and Magna Carta placed restrictions on women's appeals, those restrictions were ineffective, largely because defendants, who were not ordinarily represented by counsel, lacked the legal knowledge and sophistication to enforce the restrictions. Part III analyzes the outcomes of women's appeals. It finds that women were more likely than men to settle their cases, and that juries were equally likely to convict those accused by women as those accused by men. Part IV explores the social significance of female prosecutors. The ability to prosecute gave women a modicum of power and allowed them to assume a public role, albeit a limited one. The power and public role of appeals was not limited to an elite, because female prosecutors were remarkably diverse,

---

focus on aristocratic women. Judith Bennett's essay in the latter book is a notable exception. Its subject is

including rich and poor, never-married, married, and widowed. Nevertheless, private prosecutions by women probably sometimes reflected family pressure as well as female power, and the public role which prosecution afforded women was limited by the fact that prosecution at this time seldom involved presentation of evidence or examination of witnesses.

I. Background

A. The position of women in thirteenth-century England

Whether one looks to government, church, law, or the family, medieval women occupied a subordinate position. Women were excluded from nearly all official positions in government. There were no female sheriffs, no female judges, and no female jurors.[6] The church was hardly better, denying women positions as bishops or priests. Universities and guilds were similarly exclusionary.[7]

Family was a key institution for both men and women, although women's exclusion from many other institutions made the family even more central for them. One area in which there was at least formal equality was the formation of marriage. In contrast to customs prevailing in the early middle ages, by the thirteenth century, canon (ecclesiastical) law insisted that marriage

---

peasant women. Note, however, that Bennett relies principally on legal sources.

[6] 1 Frederick Pollock & Frederic William Maitland, *The History of English Law Before the Time of Edward I*, 483 (Cambridge Univ. Press 1968) (1898) (women excluded "from all public functions... subject to few if any real exceptions"). As with many generalizations, there were occasional exceptions. So, for example, the daughters of Robert de Vipont became sheriffs of Westmoreland upon their father's death, because the office of sheriff in that county was hereditary. Even this, however, is the exception that proves the rule. Westmoreland was unusual, because it was one of only five hereditary shrievalties. In addition, the daughters' husbands were also made sheriffs of Westmoreland, and a male deputy performed the duties of the office. William Alfred Morris, *The Medieval Sheriff to 1300* 179-80 (1927); see also J. H. Baker, *Introduction to English Legal History* 530 (3rd ed. 1990).

[7] Barbara A. Hanawalt, *'Of Good and Ill Repute': Gender and Social Control in Medieval England* 71 (1998).

required the free consent of both husband and wife.[8] Nevertheless, there is substantial evidence that women were often pressured, if not coerced, into marriages arranged by their relatives.[9]

During marriage, women were expected to be subordinate to their husbands. Men could physically punish their wives, while a wife had to rely on persuasion or on social or legal pressure to influence her husband.[10] Under the doctrine of coverture, husbands controlled their wives' property,[11] and married women could not bring lawsuits without joining their husbands as co-plaintiffs.[12] Of course, the reality of marriage varied considerably from couple to couple. No doubt there were many marriages in which husbands treated their wives decently. And some wives, like Chaucer's wife of Bath, managed to get the upper hand over their husbands, in spite of the prevailing institutions and norms.

Women's subordinate position was justified by the philosophy and theology of the day. The most prominent thirteenth-century philosopher and theologian, Thomas Aquinas, followed the Aristotelian view that women were naturally inferior to men. Women were, from birth,

---

[8] Charles Donahue, Jr., "The Canon Law on the Formation of Marriage and Social Practice in the Later Middle Ages," 8 J. Fam. Hist. 144 (1983).

[9] Henrietta Leyser, *Medieval Women: A Social History of Women in England, 450-1500* 117-22 (1995); R. H. Helmholz, *Marriage Litigation in Medieval England* 90-94 (1974).

[10] Jacqueline Murray, "Thinking about Gender: The Diversity of Medieval Perspectives," in *Power of the Weak: Studies on Medieval Women* 1, 10 (Jennifer Carpenter and Sally-Beth MacLean eds., 1995); 2 Pollock & Maitland, *supra* note _, at 436 (Royal courts intervened only if husband maimed or killed his wife or if wife feared "violence exceeding reasonable chastisement."); R. H. Helmholz, *Marriage Litigation in Medieval England* 105 (1974) (Ecclesiastical courts would grant a divorce only if husband inflicted severe and unjustified physical injury.).

[11] Paul Brand, "Family and Inheritance, Women and Children," in *An Illustrated History of Late Medieval England* 58, 65 (Chris Given-Wilson ed., 1996)

[12] Unfortunately, there seems to have been little writing about this aspect of coverture in the middle ages. Nevertheless, it appears that, at least in most circumstances, the rule was applied. 2 Pollock & Maitland, *supra* note _, at 406, 408; Thomas Lund, "Women in the Early Common Law," 1997 Utah L. Rev. 1, 24-30; Judith M. Bennett, "Public Power and Authority in the Medieval English Countryside," in *Women and Power in the Middle Ages* 18, 22-23 (Mary Erler & Maryanne Kowaleski, eds., 1988). Books from the

"defective and *manqué*," because "the active power in the seed of the male tends to produce something like itself, perfect in masculinity; but the procreation of a female is the result either of the debility of the active power, or of some unsuitability of the material.... "[13] This defect from birth meant that women were inferior in intellect as well as body. As a result, "woman is by nature subject to man, because the power of rational discernment is by nature stronger in man."[14] Eve's sin in eating the forbidden fruit was also invoked to bolster men's dominant position, as was Paul's admonition in his Letter to the Ephesians: "Wives, be subject to your husbands as to the Lord; for the husband is the head of the wife, as Christ is the head of the Church. As the church is subject to Christ, so let wives also be subject in everything to their husbands."[15] Other, less influential theologians sometimes portrayed women in a better light, emphasizing Paul's doctrine of spiritual equality: "There is neither Jew nor Greek, there is neither slave nor free, there is neither male nor female; for you are all one in Christ Jesus."[16]

In spite of these beliefs and conditions, some women managed to carve out some autonomy. This was especially true of widows and nuns. While widows were often impoverished, their husbands' deaths freed them from coverture.[17] They thus had full legal control over their property and full capacity to sue and be sued in their own name. Widows

---

early modern period treat the issue more comprehensively. See, e.g., *A Treatise of Femes Coverts or The Lady's Law* 83-109 (1732). That same treatise, however, makes an exception for appeals of rape. *Id.* at 50.

[13] 13 Thomas Aquinas, *Summa Theologiae* 37 (Blackfriars eds. and trans., 1964) (Part I, Question 92).

[14] *Id*. at 38.

[15] Eph. 5:22-24.

[16] Galatians 3:28. See Jacqueline Murray, "Thinking about Gender: The Diversity of Medieval Perspectives," in *Power of the Weak: Studies on Medieval Women* 1-26. (Jennifer Carpenter & Sally-Beth MacLean eds., 1995).

were entitled to their dower, which was typically one third of their husband's landed property.[18] If the husband was sufficiently wealthy, the dower could allow women to live independent lives. Similarly, by entering the cloister, a woman could escape the inequality of marriage and inhabit a world largely governed by other women—the abbess and other nuns. Nevertheless, even an abbess's authority was frequently limited by the appointment of a master or guardian.[19]

---

[17] Sue Sheridan Walker, *Introduction* to *Wife and Widow in Medieval England* 1, 3 (Sue Sheridan Walker ed., 1993).

[18] Janet Senderowitz Loengard, "*Rationabilis Dos*: Magna Carta and the Widow's 'Fair Share' in the Earlier Thirteenth Century," in *Wife and Widow in Medieval England* 59 (Sue Sheridan Walker ed., 1993).

[19] Janet Burton, *Monastic and Religious Orders in Britain, 1000-1300* 171 (1994).

B. Legal background and two sample cases

In thirteenth-century England, crimes could be prosecuted in two ways: by presentment and by appeal. Presentment was accusation by a local jury and can be seen as an early form of public prosecution. Appeal, on the other hand, was a private prosecution by the victim herself or by a relative of the victim. Unlike modern appeals, these medieval appeals were not means of correcting errors by lower courts. Rather, to appeal someone meant simply to prosecute him for crime.[20] Nearly all appeals were tried in the general eyre, a court held by royal justices as they traveled through the countryside every few years.[21]

Appeals could be brought for many offenses. In order of frequency, they were brought for assault (including beating, wounding, and maiming), homicide, theft and rape.[22] Appeals were criminal prosecutions, in that, if the prosecutor was successful, the defendant was fined and the money went to the royal treasury rather than to the victim. Sometimes, especially in homicide or theft cases, the defendant was hanged. Although appeals were classified as criminal cases, to modern eyes they have at least one civil aspect. For much of the thirteenth century, the prosecutor and accused could settle. When they settled, the prosecutor would usually receive some compensation for her injury.[23]

---

[20] For general information on appeals, see Daniel Klerman, "Settlement and the Decline of Private Prosecution in Thirteenth-Century England," 19 L. & Hist. Rev. __ (forthcoming). This article can be downloaded from the web from http://papers.ssrn.com/paper.taf?ABSTRACT_ID=172986.

[21] Some appeals, however, were heard in the central courts (King's Bench and Common Bench), and in the second half of the thirteenth century it became common for appeals to be heard by justices specially commissions to hear a particular cases. The eyre remained, however, the place where most appeals were heard. See *id*. at _.

[22] This ordering by frequency is based on the cases in the dataset described in section II.A.

[23] For more on the settlement of appeals, see Klerman, *supra* note _, at _.

The best way to understand women's appeals is to read two typical cases. The case below was heard in the Shropshire eyre in 1221:

> Bernard de Leya killed Ralf de Leya and fled and is outlawed by the suit of Isabel, Ralf's wife. His chattels, 10 shillings, whence let the aforesaid heir [i.e. the heir of Thomas of Erdington, the late sheriff] answer.[24]

Like most, this case provides little information about the parties or the incident giving rise to the prosecution. In fact, the three lines quoted above are the entirety of the surviving information about the case. Nevertheless, the basic facts are clear. Isabel brought a private prosecution against Bernard, whom she accused of killing her husband. Bernard was summoned to court four times, but did not appear, because he had fled. As a result, he was outlawed, which meant that it was illegal to give him food or shelter, and that he could be killed without further legal process, if he resisted arrest. In addition, an outlaw forfeited all his property to the king and his feudal lord. The case mentions that Bernard had 10 shillings in personal property. Thomas of Erdington was sheriff of Shropshire at the time outlawry was proclaimed, so he was responsible for collecting the ten shillings for the king. He, however, had died before the eyre, when this record was produced, so his heir was liable for the value of the forfeited chattels.

Fortunately, some cases are reported in greater detail. The case below, from Kent in 1241, contains one of the fuller reports.

> Gunora daughter of John Gronge appealed Geoffrey son of William Broketherl that he forcibly lay with her and deflowered her, etc. And Geoffrey comes and denies everything and puts himself on the country [i.e. pleads "not guilty" and submits to jury trial]. And the jurors say that, in fact, the aforesaid Geoffrey lay forcibly with the aforesaid Gunora and deflowered her, because immediately afterwards she was seen by the headborough and by respectable men and women who saw that she was sticky with blood and had been mistreated. Therefore let Geoffrey be taken into custody. Later,

---

[24] *Rolls of the Justice in Eyre ....Gloucestershire, Warwickshire and Staffordshire, 1221, 1222* (Doris Mary Stenton ed. and trans., Selden Society vol. 59, 1940) pl. 1259.

> the aforesaid Geoffrey comes and with permission [of the court] gives the aforesaid Gunora two acres of land in Mundham with their appurtenances. Therefore the sheriff is ordered to cause her to have seisin. And she retracts her appeal. She is poor [and is therefore not fined for retracting her appeal]. And Geoffrey made fine for his amercement by four marks [i.e. promised to pay the king four marks] by sureties [names of sureties omitted].[25]

The report of this case is much fuller, and the facts revealed are much more interesting. Gunora accused Geoffrey of rape. He appeared for trial, and the jury found him guilty. The jury was persuaded of his guilt because Gunora promptly reported the incident to the relevant authority (the headborough), and the headborough deputized men and women who examined her and found physical evidence to corroborate her claim. Because of the jury verdict, the judges ordered Geoffrey to be jailed, probably as a prelude to amercement (fining). Sometime later, Geoffrey and Gunora settled the case. Geoffrey gave Gunora two acres of land, and Gunora withdrew her appeal. The judges instructed the sheriff to enforce the settlement. Gunora would ordinarily have been fined for withdrawing from prosecution, but the judges forgave her fine, because she was poor. In spite of the settlement, Geoffrey still paid a fairly large fine (four marks) to the king.

Although every case presents unique features, the two cases quoted above are typical of most women's appeals. They involved homicide and rape, the two crimes most often prosecuted by women, and they resulted in outlawry and settlement, two of the most common case resolutions. Although the first case is more typical in its extremely brief report, the greater detail in the second case sheds light on actions and procedural steps which were probably

---

[25] London, Public Record Office, JUST 1/359 m. 35d (transcription and translation by the author). Henceforth, manuscripts in the Public Record Office in the JUST 1 series will be cited simply as "JUST 1/x m. y."

common to many cases, but left unrecorded by the laconic style employed by most judicial clerks.

Whether prosecutor or defendant in an appeal was ordinarily represented by counsel is an important, but difficult issue.[26] There were two kinds of legal representatives in medieval England, pleaders and attorneys. Pleaders (known as serjeants or narrators) were generally entrusted with speaking for the party. For a prosecutor, a pleader would have spoken the count, that is, set forward the formal words of the appeal. For a defendant, a pleader would have responded to the count by pleading defenses. Although a pleader spoke for a party, his words could be disavowed by the party. By the 1220's or 1230's, there were a number of full-time professional pleaders, later called "serjeants."[27] Before that time, however, pleaders would have been non-professionals, perhaps friends or neighbors of the parties.[28]

An attorney's primary function was to appear for the party in court, perhaps most importantly to prevent a default, to set in motion the procedures to secure the defendant's presence, and to seek default judgment if the defendant did not appear.[29] While the attorney did not usually make arguments to the court, whatever the attorney said bound the party. Unlike a pleader, an attorney could not be disavowed. Professional attorneys are not clearly

---

[26] On the thirteenth-century legal profession more generally, see Paul Brand, *The Origins of the English Legal Profession* (1992). On the history of defense counsel more generally, see J.B. Post, "The Admissibility of Defense Counsel in English Criminal Procedure," J. Legal Hist. Dec. 1984, at 23.

[27] Brand, *supra* note _, at 55.

[28] *Id*.; 1 Pollock & Maitland, *supra* note _, at 212.

[29] Brand, *supra* note _, at 87.

identifiable until the late 1250's. Before that time, however, non-professionals often acted as attorneys.[30]

It is clear that there were very few attorneys in appeals. Medieval treatises flatly prohibit the use of attorneys in appeals unless the party herself was incapacitated,[31] and this rule seems to have been generally observed in practice. So, for example, to the extent that outlawry would have required an appellor to appear five times in court to press her case, the female prosecutor would have had to appear herself each time. She could not have sent an attorney to appear for her. The case records usually indicate explicitly that the prosecutor or defendant did or did not come to court, and they almost never indicate that attorneys appeared for absent parties.[32] The *Placita Corone*, a mid-thirteenth-century treatise provides some sample courtroom dialogs which confirm that the parties were themselves present in court. One dialog involving a rape accusation is particularly pertinent. When the judge questioned the prosecutor, he addressed her as "Girl," and she responded in the first person: "Sir, if it please you, no matter what he says against me, I say openly that he was the first man who ever made carnal

---

[30] *Id*. at 65.

[31] 1 *Britton* 101 (Francis Morgan Nichols ed. and trans., 1865; repr. 1983); 2 *Bracton on the Laws and Customs of England* 353 (George E. Woodbine ed. & Samuel. E. Thorne trans., 1968-77) ("And note that no one may sue against another for felony by attorney, provided that he who complains and ought to sue is able to do so himself; if he is temporarily incapacitated...."); *Placita Corone or La Corone Pledee Devant Justices* 1(J. M. Kaye ed. and trans., Selden Society Supplementary Series vol. 4, 1966) ("let the plaintiff take care to make suit in county courts fully and in person, for such is the custom and legal mode of procedure."). The prohibition on attorneys in appeals was part of the more general rule against attorneys in cases in which a party might be imprisoned. Brand, *supra* note _, at 45.

[32] I have found only two only cases in which attorneys appeared for appellors, neither of them women. 3 *Pleas Before the King or His Justices, 1198-1212* (Doris Mary Stenton ed., Selden Society vol. 83, 1967), pl. 725 (Shropshire 1203); 6 *Curia Regis Rolls* 392 (1932) (case from 1212). Although it is not apparent from the records, these cases may have involved appellors who were incapacitated. They might, therefore, have been in accord with the general rule forbidding attorneys in appeals.

approaches to me, and did so wrongfully and against my free will....'[33] Similarly, the defendant himself responded to the judge's queries.[34] The dialogs suggest no role for an attorney in appeals.

It is less clear whether there were pleaders or serjeants in appeals. The presence of pleaders is difficult to detect in the official legal records which are the primary sources for this article. Even in civil cases, where pleaders were known to have been employed from the early thirteenth century, their presence usually is not usually explicit, because the records attribute their words to the parties. Nevertheless, there are three principal ways in which the presence of pleaders can be detected: by judicial punishment of pleaders for misconduct, by disavowals of their words, and through unofficial reports, which usually indicate if a pleader spoke, often mentioning the pleader by name.[35] These methods make clear that pleaders were common in civil cases from the early thirteenth century.[36] In addition, there is a small body of evidence

---

[33] *Placita Corone, supra* note _, at 9.

[34] *Id*.; See also *id*. at 17, forbidding defendant representation in appeals.

[35] The treatises are not very helpful in determining whether pleaders were common in appeals. *Glanvill* is silent on the issue. *The Treatise on the Laws and Customs of the Realm of England Commonly Called Glanvill* (G. D. G. Hall ed. & trans., 1965; repr. 1993) (henceforth simply "*Glanvill*"). *Bracton* and *Placita Corone* are ambiguous. On the one hand, they generally puts the pleadings in the third person, which suggests that they were spoken by someone other than the parties, i.e. by a pleader or serjeant. 2 *Bracton, supra* note _, at 416, 419; *Placita Corone, supra* note _, at 4-5, 7-8; Brand, *supra* note _, at 54. On the other hand, the inference from the use of the third person to the employment of pleaders is weak, because the *Placita Corone* explicitly bars pleaders for the defendant, even though its pleading examples use the third person. *Placita Corone, supra* note _ , at 17; but see David J. Seipp, "Crime in the Year Books," in *Law Reporting in Britain 15, 25* (Chatal Stebbings ed., 1995) (arguing that *Placita Corone* merely required the defendant to answer the charge, but allowed lawyers to make arguments to the court). Most probably, the pleadings were in the third person simply as a matter of convention. In civil cases, which were far more common than appeals, serjeants had become common by the mid-thirteenth century, when *Placita Corone* was written. As a result, it was conventional for pleadings to be put in the third person, and that practice was probably carried over to appeals, even though serjeants may not have been common. *Britton* explicitly states that serjeants were allowed in appeals, but does not indicate how common they were. 1 *Britton, supra* note _, at 101, 102 (mentioning possibility that serjeant might speak for appellor or appellee).

[36] Brand, *supra* note _, at 47.

suggesting that serjeants were employed, at least occasionally, in appeals from the late 1280's.[37] All this evidence comes from the central courts, that is, from King's Bench and Common Bench. The implications of that evidence for this article are unclear, because the appeals examined here are from the eyre in the period 1194-1294. Thus, the evidence of pleaders in appeals comes from the very end of the period studied in this article and from different courts (the central courts rather than the eyre).[38] There is no evidence, neither from disavowals nor from lawyer discipline nor from the unofficial reports, that serjeants spoke for either party in eyre appeals. On the other hand, disavowals and lawyer discipline were rare and few eyre reports survive, so it is possible that there were some serjeants representing prosecutors or defendants in the eyre, even though there is no evidence for it. Nevertheless, given the absence of surviving evidence, the most plausible inference is that serjeants in eyre appeals were very rare in the early thirteenth century and, at most, occasionally present in the later in the century.

Although representation at trial seems to have been uncommon, both sides might have consulted lawyers or local, non-professional legal experts for advice before trial. In fact, because at least five people from every village had to attend each eyre to participate in the adjudication of appeals and other cases, it is likely that both prosecutors and defendants would

---

[37] For evidence of lawyers in fourteenth and fifteenth-century appeals, see David J. Seipp, "Crime in the Year Books," in *Law Reporting in Britain* 15, 22-26 (Chatal Stebbings ed., 1995). All of the late thirteenth-century evidence comes from unpublished manuscript sources. Paul Brand generously shared his personal notes on these cases with me. He found four late thirteenth-century cases in which serjeants appeared in appeals. Three involved serjeants arguing on behalf of prosecutors, and one involved serjeants appearing on behalf of a defendant.

[38] This article focuses on appeals in the eyre, because that is where most appeals were heard. See *supra* _.

have been able to learn the basics of the relevant procedures by consulting neighbors who had previously been involved in such cases.[39]

II. Documenting and Explaining the Prevalence of Female Prosecutors

A. Sources

The cases used in this article were originally gathered in order to calculate and explain the changing frequency with which appeals were brought in the period 1194-1294.[40] The data set contains over a thousand two hundred appeals from select districts in fourteen English counties, ranging from Kent and Wiltshire in the south, to Shropshire on the Welsh border, Norfolk and Essex in east, and Yorkshire in the north. The districts were chosen because a larger percentage of their records survive. Although the cases in the data set are not a random sample of all thirteenth-century appeals, there is no reason to suspect that the cases are in any way unrepresentative. The survival of records for a particular district has more to do with random factors—such as whether the judge transmitted his records to the exchequer, as a 1257 order required,[41] and whether moisture or rats happened to damage records of a particular district—than factors plausibly correlated with women's appeals. The fact that the database includes cases from every part of England and from the entirety of the century also suggests that the cases are representative. All cases were heard in the eyre, which was the principal forum for appeals in the thirteenth century. Some of the cases have been printed and translated, while

---

[39] Barbara A. Hanawalt, *'Of Good and Ill Repute': Gender and Social Control in Medieval England* 128 (1998); Klerman, *supra* note _, at __.

[40] Klerman, *supra* note _, at __ (discussing the dataset in depth).

[41] David Crook, *Records of the General Eyre* 12 (Public Record Office Handbooks No. 20, 1982).

others exist only in Latin, parchment manuscripts stored in the Public Record Office in London. The use of such a large and representative database drawn from both printed and unprinted sources allows for quantitative as well as qualitative analysis of the issues raised by women's appeals and is one of the factors which distinguishes this article from prior analyses of women's appeals.[42]

B. Crimes prosecuted by women

Although homicide and rape were the crimes most often prosecuted by women, women brought appeals for the same range of offenses as men. Table 1 classifies appeals by the sex of the prosecutor and by the offense alleged.

[42] See, e.g., Patricia R. Orr, "*Non Potest Appellum Facere:* Criminal Charges Women could not—but did—Bring in Thirteenth-Century English Royal Courts of Justice," in *The Final Argument: The Imprint of Violence on Society in Early Modern Europe* 141 (Donald Kagay & L. J. Andrew Villalon eds., 1998) (relying exclusively on printed sources); 1 C. A. F. Meekings, *Introduction* to *The 1235 Surrey Eyre* 123-25 (C. A. F. Meekings ed., Surrey Record Society, vol. 31, 1979) (relying principally on records from a single eyre in a single county). For an example of the pitfalls of relying on such a narrow base of source material, see *infra* __.

Table 1. Appeals by sex of prosecutor and offense, 1194-1294

	Assault[a]	Homicide	Theft[b]	Rape	Other or unspecified crimes	All crimes
Number of appeals brought by women	53	223	30	126	20	452
Number of appeals brought by men	426	121	120	0	126	793
Number of appeals brought by woman and man together	4	3	2	0	3	12
Percent of appeals brought by women[c]	11%	65%	20%	100%	14%	36%

a. The assault column includes beating, wounding, and maiming.
b. The theft column includes larceny, robbery, and burglary, but excludes thefts committed in the course of other crimes. Such cases are counted in the column for the other crime.
c. In calculating the percent of appeals brought by women I have excluded appeals brought by a woman and man together (the third row). Since the number of such appeals is so small, inclusion would not alter the figures by more than 1%. In four cases, the sex of the appellor could not be determined. These cases have been excluded from the table.

As the lower right-hand corner of the table indicates, women's appeals constituted a sizable fraction (36%) of all appeals. Although the role of women prosecutors has not been systematically studied in other times and places, it appears that thirty-six percent is unusually high.[43]

[43] Comparison to other times and places is complicated by different procedures. For example, in early modern England, most crimes were prosecuted by indictment. In such cases, the victim was not technically a party. Nevertheless, because such cases usually required considerable victim initiative to secure a conviction, the victim in such cases is often referred to as a private prosecutor. Douglas Hay, "Controlling the English Prosecutor," 21 Osgoode Hall L. J. 165, 167-70 (1983). In Staffordshire, during the years 1740-1800, only six percent of prosecutors were women. *Id*. at 168; Douglas Hay and Francis Snyder, "Using the Criminal Law, 1750-1850," in *Policing and Prosecution in Britain 1750-1850* 18 n. 39 (Douglas Hay and Francis Snyder eds., 1989). Women's participation in the prosecution of misdemeanors in late seventeenth century and early eighteenth-century Middlesex approached the numbers reported here for thirteenth-century appeals. Women were responsible for 18.2% of all indictments and 34.9% of all non-indicted recognizances in quarter sessions. Robert B. Shoemaker, *Prosecution and Punishment: Petty crime and the law in London and rural Middlesex, c. 1660-1725* 208 (1991). These percentages are only approximate, because in many cases the gender of the prosecutor could not be ascertained. In mid-fourteenth century Florence, women seem to have been responsible for only about ten percent of all prosecutions, and that percentage dropped precipitously as the century progressed. Samuel K. Cohn, *Women in the Streets: Essays on Sex and Power in Renaissance Italy* 27, 33 (1996). (The percentage of female prosecutors was calculated by dividing the number of female plaintiffs in Table 2.2 by the total number of prosecutions in Table 2.1.).

The first row of the table shows that women brought appeals for all sorts of crimes. Their largest role was in rape and homicide. Homicide appeals account for nearly half of all appeals brought by women (49% or 223/452) and rape appeals account for more than a quarter (28% or 126/452). Women brought appeals for other crimes, including assault and theft, but as the table shows, such appeals were less common.

The bottom row suggests that women's role in the prosecution of homicide, the most serious felony, was especially noteworthy. Women brought nearly two-thirds (65%) of all homicide appeals.[44] As would be expected in a system which presumed that the victim would be the appellor (except in homicide or other special cases[45]), all rape appellors were female. While women's role in prosecuting other crimes (including batteries and thefts) was much smaller, it was still appreciable. The infrequent prosecution of batteries and thefts may reflect legal prohibitions against such actions.[46] The lower rate of appeals of thefts also probably reflects the fact that married women could not own chattels and that never-married women usually owned little.

The second to last row shows that a woman occasionally brought an appeal together with a man (typically her husband). It is unclear why appeals were brought in that form. One possibility is that such appeals reflect coverture, the idea that a woman's legal personality was

---

[44] In his analysis of the 1235 Surrey eyre, C. A. F. Meekings noted that four out of seven homicide appeals resulting in outlawry in county court were brought by women and that five out of six homicide appeals heard in the eyre were brought by women. He though "[s]uch a preponderance of women's appeals.... not typical of appeals of homicide in the surviving rolls...." 1 Meekings, *supra* note _, at 120. Nevertheless, based on his figures, one can calculate that 69% ((4+5)/(7+6)) of homicide appeals recorded in the 1235 Surrey eyre were brought by women. This is within four percentage points of the figure I derive after looking at more than fifty eyre rolls. Thus, contrary to Meekings' view, this preponderance of women's appeals was indeed typical.

[45] See *infra* __.

suspended during marriage. One consequence of coverture was that a married woman could not sue or be sued without her husband being joined in the action.[47] As will be discussed below, this explanation is not persuasive, because the rule against married female appellors seems to have been largely ignored, although it is possible that it exerted some force even though under-enforced.

The cases in the table are only a small sample of all cases prosecuted by appeal. They were chosen because they come from districts whose records survive with some abundance. Records for other districts, however, survive only in more fragmentary form and were not examined. Nevertheless, to appreciate scope of women's prosecution, it is helpful to have a rough sense of the total number of women's appeals. I estimate that the there were about eight thousand appeals by women during the period 1194-1294.[48]

Another way to put the number of appeals by women in context is to compare prosecutions by appeal and presentment. As mentioned in the beginning of section I.B, presentment was accusation by a local jury. Homicide and theft were often presented. Although it is difficult to ascertain the relative frequency of appeal and presentment, I have estimated that about one third of all homicide prosecutions were brought by appeal in the early

---

[46] See *infra* __.

[47] See *supra* __.

[48] This figure was calculated in three ways. First, I calculated the average number of appeals per year per district in the database and multiplied that number times the total number of districts. For enumeration of the districts, I relied on David Crook, *Records of the General Eyre* 196-252 (Public Record Office Handbooks No. 20, 1982). Second, using *Domesday Book* population figures, I calculated the rate of appeals per year per person for the four counties for which I have data from nearly all districts and then multiplied that rate times the entire population of England. H. C. Darby, *Domesday England* 336 (1977) (figures from 1086). Third, I repeated the second calculation using population figures from 1377 poll tax returns. Josiah Cox Russell, *British Medieval Population* 132-46 (1948). The estimates produced by these three methods were remarkably similar, ranging from 8086 to 8260. These methods somewhat undercount

thirteenth century, but that the proportion dropped to about ten percent by the end of the century.[49] Theft probably followed a similar pattern. Thus, if one calculated women's homicide appeals as a fraction of all homicide prosecutions, one would find that women prosecuted about twenty percent of homicides in the beginning of the century, but less than seven percent by the end. Similarly, women's appeals would drop from about seven percent of all theft prosecutions at the turn of the century to about two percent by the end. Assault and rape, however, were prosecuted in royal courts exclusively by appeal for most of the century,[50] so the percentages in the bottom row of the table for these crimes accurately describe women's appeals as a percentage of all prosecutions of these offenses.

C. Why did women bring so many appeals?

The previous section suggests that women brought over a third of all private prosecutions. The prevalence of women's appeals is a phenomenon which requires explanation. I suggest five reasons.

1) Women were often victims of crime, and the legal rules governing appeals tended to restrict prosecution to the victim herself. Contemporary legal treatises note that the appellor

---

the total number of women's appeals, because they consider only appeals heard in the eyre, not appeals heard in the central courts, in jail delivery, or under special commissions.

[49] See Klerman, *supra* note __, at __.

[50] Rape was probably not presentable until the 1275 enactment of the first Statute of Westminster. See J. B. Post, "Ravishment of Women and the Statutes of Westminster," in *Legal Records and the Historian* 150, 154-55 (J. H. Baker ed., 1978); Henry Ansgar Kelly, "Statutes of Rapes and Alleged Ravishers of Wives: A Context for the Charges Against Thomas Malory, Knight," 28 Viator 363, 364-66, 382-83, 387-88 (1997); Roger D. Groot, "The Crime of Rape *temp*. Richard I and John," 9 J. Legal. Hist. 324, 325-26 (1988). Even after 1275, rape presentments were rare.

must have been an eyewitness to the crime. She must "speak of her own sight and hearing."[51] For most crimes, the victim was the most likely and often the only eyewitness. In addition, *Bracton* says that, except in exceptional circumstances, only the victim herself (or relatives in the case of homicide) can bring appeals.[52] Since women were often victims of crime, they would frequently have been the only individuals legally qualified to appeal.

Explaining the high rate of women's appeals by the legal rules which restricted suits to victims is problematic, however, because those rules may not have been enforced. I have seen no case in which a defendant objected to an appeal because the appellor was not the victim, and only infrequently did the defendant allege that the appellor did not speak "of sight and hearing."[53] While it is possible that such objections were rare because the rules were rarely violated, the evidence regarding other defenses suggests that one cannot infer conformity to law from the absence of objection.[54] Defendants, who were not ordinarily represented by counsel, probably lacked the legal knowledge and sophistication to raise such technical objections even when they were applicable.

Using the eyewitness rule to explain the substantial rate of prosecutions by women is also problematic, because it cannot explain the fact that women brought two-thirds of the

---

[51] 2 *Bracton, supra* note _, at 397 ("Item cadit appellum ubi appellans non loquitur de visu et auditu.")

[52] 2 *Bracton, supra* note _, at 398-99, 413.

[53] JUST 1/358 m. 22 (Kent 1227) (Appellee in homicide case claimed that appellor did not mention sight and hearing in his appeal, but the judges did not address this issue and the appeal was quashed for other reasons.); JUST 1/62 m. 1 (Buckinghamshire 1232) (Appellor did not want to prosecute homicide case because he could not plead that he had been an eyewitness.); JUST 1/359 m. 32d (Kent 1241) (Homicide appeal quashed because appellor did not plead that she was eyewitness.).

[54] See *infra* __.

homicide prosecutions. While it is possible that women were twice as likely to witness homicides as male relatives, this seems implausible.[55]

2) A more plausible explanation for women's dominant role in prosecuting homicide is that, unlike most men, women who brought appeals did not risk trial by battle. When a case was tried by battle, the outcome hinged on personal combat between prosecutor and defendant. Although the overwhelming majority of appeals were tried by jury, trial by battle was often a possibility.[56] A male appellor was required to offer proof by battle. Before 1215, the appellee could choose either trial by battle or trial by ordeal.[57] After 1215, the appellee could chose either trial by battle or jury trial. If the appellee opted to defend by battle, the appellor's life was in danger. Female appellors, however, never waged battle. Those accused by women had to

---

[55]At least one historian has suggested that the eyewitness rule did not apply in homicide cases. William Sharp McKetchnie, *Magna Carta: A Commentary on the Great Charter of King John* 452 (2d ed. 1958). There is some evidence for this in *Glanvill*, but the formulae set out by *Bracton* require appellors to allege and swear that they saw the homicide. *Glanvill, supra* note _, at 174; 2 *Bracton, supra* note _, at 388, 399; see also *id.* at 397. While it is possible that everyone understood the eyewitness requirement to be a formality, as seems to have been the case with champions in land cases, there is no evidence to support this conjecture. In fact, the cases in which I have seen the eyewitness rule invoked were all homicide appeals. See *supra* ___.

[56] Defendants in a small, but not insignificant, number of cases claimed their right to trial by battle. In nearly all of those cases, the prosecutor then withdrew or settled the case. See 1 Meekings, *supra* note _, at 116 (finding trial by battle to have been scheduled in about one percent of cases—15 out of "well over a thousand"—in the period 1234-49). Only very rarely was battle fought. *Id*. (finding no battles fought in non-approver appeals during the period 1234-49); but see JUST 1/358 m. 20 (Kent 1227) (battle fought and won by defendant in mayhem appeal). The fact that prosecutors nearly always withdrew or settled if defendants claimed trial by battle suggests that prosecutors greatly feared trial by battle. The small number of cases in which battle was waged can probably be explained by two facts: (1) potential prosecutors who feared that they would lose in trial by battle did not appeal at all, and (2) defendants who feared that they would lose in trial by battle chose trial by jury. These facts suggest that, even though trial by battle was rare, fear of trial by battle may have influenced the decisions of defendants and potential prosecutors in many cases.

[57] The most common ordeal was the ordeal of cold water, in which the defendant was bound and thrown into a pool of water. If he sank, he was pulled out of the water and declared innocent. If he drown, he was guilty and hanged. See Margaret H. Kerr et al., "Cold Water and Hot Iron: Trial by Ordeal in England," 22 J. Interdisciplinary Hist. 573-9 (1992). On the significance of 1215 and the end of ordeals, see *infra* __. In this article, I generally refer to defendants as males, because the overwhelming majority of thirteenth-century defendants were, in fact, male. For a discussion of female defendants, see James Given,

submit either to the ordeal (before 1215) or to jury trial (after 1215). Since the rule restricting appeals to eyewitnesses seems not to have been enforced, in practice it seems likely that any relative could appeal, and thus that there were often several potential appellors—husband, wife, mother, father, sister, brother, niece, nephew, aunt, uncle, etc. Homicide thus presented the deceased's family with substantial choice. The fact that nearly two-thirds of homicide appeals were prosecuted by the wife or other female relative, thus, most likely reflects the fact that a woman's appeal would spare male relatives the peril of trial by battle. When a family has already had one member killed by the defendant, it would be understandably reluctant to put another member at risk in judicial combat. The fact that married women sometimes brought appeals for their husbands' injuries[58] and for property which legally belonged to their spouse[59] may also reflect women's immunity from the danger of battle.

The value of immunity from the battle declined, however, in the late thirteenth century, because judges put defendants to jury trial "at the king's suit" even when the appellor had dropped the case.[60] This policy effectively gave male appellors the same immunity from battle as women. If a man had appealed and then dropped the prosecution, he could avoid battle while nearly guaranteeing that the defendant would be put on trial. Even so, women retained three advantages. First, to avoid battle, a man would have to drop his prosecution, and thus

---

Society and Homicide in Thirteenth-Century England 135-49 (1977); Barbara A. Hanawalt, "The Female Felon in Fourteenth-Century England," in *Women in Medieval Society* 125 (Susan Mosher Stuard ed., 1976).

[58] See *infra* __.

[59] *Three Rolls of the King's Court in the Reign of King Richard the First, A.D. 1194-1195* 91 (Frederic William Maitland ed., Pipe Roll Society vol. 14, 1891); *The Earliest Northamptonshire Assize Rolls, A.D. 1202 and 1203* 70 (Doris M. Stenton ed., Northamptonshire Record Society vol. 5, 1930); JUST 1/358 m. 21d (Kent 1227); JUST 1/4 m. 29d (Bedfordshire 1247); JUST 1/232 m. 10d (Essex 1248).

[60] See Klerman, *supra* note _, at __; see also discussion *infra* _.

would be fined, whereas a woman could avoid a battle even if she pursued her case to judgment. Second, while nearly all late thirteenth-century non-prosecuted appellees were put to the jury, for reasons that are not clear, defendants were sometimes let off without trial. Thus, a dropped prosecution by a male prosecutor might not be as effective as a woman's appeal. Finally, it was sometimes said that sanctions at "the king's suit" after a dropped appeal were not as harsh as the sanctions that would have been imposed if the case had been diligently prosecuted.[61] If so, this difference would mean that female appellors possessed an additional advantage.

3) Over half of all homicide appeals were widows prosecuting those allegedly responsible for their husbands' death. This phenomenon may stem from a norm or custom that wives prosecute their husband's murderers. The fact that treatises, cases, and Magna Carta explicitly allow appeals in this situation[62] is probably reflective of that custom. This explanation and the previous explanation—women's immunity from battle—may have been related. Nothing barred male relatives from appealing the death of a married man. The custom that widows prosecute those responsible for the deaths of their husband may have arisen because the widow, as a woman, was immune from battle.

---

[61] *Bracton* reports that some people thought that capital punishment was not possible on the king's suit, although the treatise seems to side with the view that it was possible. 2 *Bracton, supra* note _, at 403. *Placita Corone* is contradictory on the subject. In some places it seems to agree with the position that capital punishment was not possible on the king's suit. *Placita Corone, supra* note _ , at 2, 3, 27. But in other places, the treatise insists on full punishment. For example, in discussing the king's suit after a quashed rape appeal, it insists upon the "judgment appropriate to the case; that is to say he will be blinded or castrated or both." *Id*. at 9. Similarly, in discussing the king's after a quashed woman's homicide appeal, the treatise insists on "full judgment," which may mean capital punishment. *Id.* at 6, 28.

[62] See *infra* __.

4) Rape prosecutions constitute over a quarter of all women's appeals. In later centuries, such prosecutions were discouraged by the fact that rape trials were often humiliating for women. Women usually had to describe the rape publicly in shameful detail, and defendants often were allowed to introduce evidence of the woman's sexual history and reputation.[63] The fact that the jury was "self-informing" during this period[64] may have curbed these disincentives. The self-informing jury was expected to have gathered its evidence before trial, so trial did not usually involve the testimony (much less cross-examination) of the victim/prosecutor. Thus, the trial of a rape appeal would not have subjected the rape victim to potentially shameful examination. As the dialog from the *Placita Corone* quoted above indicates, the judge might question the appellor, but this questioning did not dwell on the potentially shameful and embarrassing details of the rape. On the other hand, although the sources are silent on the matter, the accusation itself and the jury's out of court investigation undoubtedly brought some shame on the victim/prosecutor. Nevertheless, since the jury's investigation was less public, the

---

[63] Laurie Edelstein, "An Accusation Easily to be Made? Rape and Malicious Prosecution in Eighteenth-Century England," 42. Am J. Legal Hist. 351, 364-66 (1998).

[64] For more on the self-informing jury, see *infra* _. That juries during the thirteenth-century were self-informing represents the consensus of legal historians. Thomas Andrew Green, *Verdict According to Conscience: Perspectives on the English Criminal Trial Jury 1200-1800* 16-17 (1985). Recently, some scholars have challenged this consensus by compiling evidence that fourteenth- and fifteenth-century juries seldom lived close to the defendant and thus were unlikely to have knowledge of the case before trial. See articles by Bernard William Lane, Edward Powell, and J. B. Post in *Twelve Good Men and True: The Criminal Trial Jury in England, 1200-1800* (J. S. Cockburn and Thomas A. Green eds., 1988). Nevertheless, most scholars remain convinced that the thirteenth-century jury, and probably the fourteenth century jury as well, remained heavily self-informing and only occasionally relied on in-court testimony by witnesses other than officials, such as reeves, coroners, and justices of the peace. See Thomas A. Green, "A Retrospective on the Criminal Trial Jury, 120-1800," in *id*. at 370-7; John H. Langbein, "Historical Foundations of the Law of Evidence: A View from the Ryder Sources," 96 Colum. L. Rev 1168, 1170 n. 6 (1996); Anthony Musson, *Public Order and Law Enforcement: The Local Administration of Criminal Justice, 1294-1350* 201, 220-221(1996); J. G. Bellamy, *The Criminal Trial in Later Medieval England: Felony Before the Courts from Edward I to the Sixteenth Century* 98, 101-5 (1998). No scholars believe that medieval witnesses were rigorously cross-examined. Vigorous cross-examination did not become routine until the eighteenth-century. See John Langbein, "Criminal Trial before the Lawyers," 45 U. Chi. L. Rev. 263, 282-83, 312 (1978).

negative consequences for the prosecutor may have been less severe. In fact, Barbara Hanawalt suggests that, even when a rape prosecution resulted in acquittal, the "satisfaction [of] tell[ing] the tale and nam[ing] the culprit" may have outweighed the danger to the women's own reputation.[65]

5) Finally, appeals by a woman for her husband's injuries and for crimes against her husband's property may also reflect a woman's role as her husband's agent in household and legal affairs when the husband was engaged in other business, such as war or harvest.[66]

D. The ineffectiveness of restrictions on women's appeals

The large fraction of appeals brought by women is especially surprising in light of customary rules which restricted women's ability to bring criminal prosecutions. A woman could bring an appeal only for rape, for the death of her husband, and perhaps for assaults to her own person. These customary rules were set out in the late twelfth-century treatise attributed to Glanvill, reiterated in the thirteenth-century treatise attributed to Bracton, and enforced whenever invoked by the defendant.[67] The only ambiguity relates to appeals of assault. Most formulations of the rule restricting women's appeals stated that women could

---

[65] Barbara A. Hanawalt, *'Of Good and Ill Repute': Gender and Social Control in Medieval England* 133 (1998).

[66] Rowena E. Archer, "'How ladies ... who live on their manors ought to manage their households and estates': Women as Landholders and Administrators in the Later Middle Ages," in *Woman is a Worthy Wight*, ed. P.J.P. Goldberg (1992), 149. See also 1 Pollock & Maitland, *supra* note _, at 482 (noting that "a woman will sometimes appear as her husband's attorney").

[67] *Glanvill, supra* note _, at 174 , 176; 2 *Bracton, supra* note _, at 419. For enforcement, see cases cited in the next four footnotes. For a good discussion of these restrictions, see 3 G. O. Sayles, *Introduction* to *Select Cases in the Court of King's Bench under Edward I* xi, lxxii-lxxiv (G. O. Sayles ed., Selden Society vol. 58, 1939). Sayles also discusses the possibility that a woman might have been able to appeal for the death of her unborn child. *Id.* Such cases were rare. Paul Brand has brought to my attention manuscript

appeal only for "injury to her body" (*iniuria corpori suo inflicta*) or for her husband's death.[68] Although the phrase "injury to her body" could simply be a euphemism for rape, the literal meaning would suggest that a woman was permitted to appeal assaults when she was the victim.[69] On the other hand, the rule was sometimes formulated as allowing appeals only for rape and her husband's death.[70] One consequence of either interpretation of the rule was that a widow was not supposed to bring an appeal for theft or burglary of her own property, which meant that no one was permitted to appeal such crimes. Although I have found only one case raising the legality of such appeals, it ruled against the widow.[71] Although no one could appeal such cases, they could still be prosecuted by presentment.[72]

Magna Carta (1215) also had a provision restricting women's appeals:

> No one shall be taken or imprisoned upon the appeal of a woman for the death of anyone except her husband.[73]

Most modern commentators interpret this provision as affirming that part of the customary rule which restricted women's homicide appeals to instances where the deceased was her

---

evidence that some late thirteenth-century authorities thought women could bring appeals of theft or robbery, at least where the thief was taken with the mainor.

[68] *Glanvill, supra* note _, at 174, 176; 2 *Bracton, supra* note _, at 353, 419; JUST 1/361 m. 42 (Kent 1255).

[69] This implication is clear from *Glanvill,* which states that women can make rape appeals "just as in every case of injury done to her body." *Glanvill, supra* note _, at 176.

[70] JUST 1/55 m. 21d (Buckinghamshire 1241).

[71] *The Roll of the Shropshire Eyre of 1256* (Alan Harding ed., Selden Society, vol. 96, 1981), pl. 566. This case is quoted *infra* _.

[72] See *supra* _. Note, however, that if the customary rule was interpreted to bar women's appeal of assault, not only could no one appeal assaults to a woman (except perhaps her husband), but such offenses could not be prosecuted by presentment either, because there was no presentment for assault (at least not in royal court). It is possible, however, that such cases could be prosecuted in local courts. Also, from the mid-thirteenth century, the woman could bring a civil trespass action. See Klerman, *supra* note _ at _.

[73] J.C. Holt, *Magna Carta* (2nd ed. 1992), 466-67 (Magna Carta, c. 54).

husband.[74] Some thirteenth century cases also interpreted the provision in this way.[75] Nevertheless, the more plausible explanation is that Magna Carta sought to clarify the pretrial implications of the customary rule. The customary rule simply said that women could not appeal except in narrow circumstances, but it left open what the accused's remedy would be. There were two possibilities. The customary rule could mean only that the defendant had a valid defense at trial, but that pretrial process (arrest, imprisonment, etc.) would be unaffected by the rule. Or the customary rule could mean that sheriffs, who were primarily responsible for pretrial process, should refuse even to arrest and imprison those accused by improper appeals. Magna Carta may have clarified this ambiguity by instructing the sheriff not to arrest ("take") or imprison when the appeal violated the customary rule.[76] This interpretation also explains why Magna Carta refers only to the homicide part of the customary rule restricting women's appeals. Homicide was the only crime for which defendants were routinely arrested and imprisoned. For other crimes, the defendant was merely attached, i.e. was left at liberty if he could find sureties.

---

[74] J. C. Holt, "Magna Carta and the Origins of Statute Law," in *Postscripta: Essays on Medieval Law and the Emergence of the European State in Honor of Gaines Post*, 15 Studia Gratiana 489, 497 n. 23 (1972); but see 1 Meekings, *supra* note _, at 124.

[75] 1 G. O. Sayles, *Select Cases in the Court of King's Bench under Edward I* 90 (Selden Society vol. 55, 1936); 2 G. O. Sayles, *Select Cases in the Court of King's Bench under Edward I* 25 (Selden Society vol. 57, 1938); JUST 1/13 m. 22 (Bedfordshire 1287).

[76] A 1275 Bedfordshire coroner's roll affords a rare glimpse of the effect of Magna Carta on pre-trial process. A man accused of homicide was about to be outlawed by a woman who was appealing the death of her brother. The sheriff, however, received a royal writ (procured by the appellee?) ordering "that all the enactments of the Great Charter be observed." As a result, the county court did not proclaim the appellee's outlawry. *Select Cases from the Coroners' Rolls* 35 (Charles Gross ed., Selden Society vol. 9, 1895). Note, however, that Magna Carta does not explicitly address the propriety of outlawry in this situation and that *Bracton* and the *Placita Corone* suggest that outlawry would be appropriate, even though the woman's appeal was forbidden. 2 *Bracton, supra* note _, at 353 ("a suit is valid no matter by whom brought, and for an indefinite time, when there is no one to except against him who sues"); *Placita Corone, supra* note _ , at 9 (woman's appeal forbidden by Magna Carta sufficient for outlawry, because "his recalcitrance indicates that he is guilty of the deed for which she appeals him."); *Id*. at 29.

Since the pretrial consequences of other forbidden appeals were so slight, Magna Carta addressed only homicide.

The reason for these restrictions on women's appeals has never been satisfactorily elucidated. Most commentators suggest that they reflect the advantage that female appellors derived from their exemption from trial by battle. Whereas men might be deterred from bringing appeals by fear of battle, women could bring appeals with impunity, confident that at worst they would be fined for false prosecution. Like the rule discussed above limiting even men's appeals to instances where they were victims, the restriction on women's appeals could be seen as a way, albeit a rather crude one, to reduce abusive appeals.[77] R. H. Helmholz has suggested that these restrictions were unrelated to women's immunity from battle, but instead mimicked similar provisions in Roman and canon law.[78]

Although it is difficult to understand why the law restricted women's appeals, it is clear that the restrictions were ineffective.[79] Table 2 classifies appeals by crime and the relationship between the appellor and crime victim. Appeals forbidden by the customary rules are shaded. Although assault appeals in which the female appellor was the victim may have been forbidden, because of the ambiguity regarding the legality of this category, the relevant cell was not shaded.

---

[77] 1 Meekings, *supra* note _, at 123-24; McKetchnie, *supra* note _ at 451 (but note that McKetchnie erroneously assumes that women could hire champions to fight for them).

[78] R. H. Helmholz, " Magna Carta and the *ius commune*," 68 U. Chi. L. Rev. 297, 350-52 (1999).

[79] See Patricia R. Orr, "*Non Potest Appellum Facere:* Criminal Charges Women could not—but did—Bring in Thirteenth-Century English Royal Courts of Justice," in *The Final Argument: The Imprint of Violence on Society in Early Modern Europe* 141 (Donald Kagay & L. J. Andrew Villalon eds., 1998); 1 Meekings, *supra* note _, at 125.

Table 2. Women's appeals by offense and appellor's relation to victim, 1194-1294

	Assault[a]	Homicide	Theft	Rape	Other crimes[a]	All crimes
Woman appeals injury to self	9%	0%	20%	100%	14%	17%
Woman appeals injury to husband	2%	51%	0%	0%	2%	15%
Woman appeals injury to other relative	0%	14%	0%	0%	0%	4%
All appeals by women	11%	65%	20%	100%	16%	36%

a. This column excludes cases in which the crime was not specified and so differs somewhat from the column labeled "Other and unspecified crimes" in Table 1.

While the two principal categories of women's appeals—rape and death of husband—did not run afoul of the customary prohibitions, many women's appeals did. As Table 2 shows, fourteen percent of all homicide appeals were brought by women prosecuting those whom they thought killed someone other than their husband. Similarly, twenty percent of theft appeals were brought by women, although such appeals were not within the permitted categories. Eleven percent of assault appeals were brought by women, of which most (appeals by women for injuries to themselves) were of ambiguous legality, and some (appeals for injuries to husbands) were clearly forbidden. The miscellaneous other appeals, including prosecutions for crimes such as arson and false imprisonment, were also forbidden to women, who nevertheless brought sixteen percent of them. In all, forbidden appeals constituted twenty-two or thirty-one percent of all appeals brought by women, depending on whether one classifies cases in which a woman appealed an assault against herself as legal or illegal.

Why were the restrictions so ineffective? The most important reason was probably that appellees were not ordinarily represented by counsel. Like modern criminal suspects, medieval appellees were generally unfamiliar with their rights and so failed to raise valid defenses. Nor were the judges inclined to inform them of their rights. As *Bracton* notes, "it is not for the king's

court to show him [the appellee] how he ought to make his defence.'[80] Thus, even when an appeal clearly violated the rules regarding women's appeals, judges sent it to jury trial, unless the defendant objected. In the early modern period, judges, in theory, provided legal counsel to defendants, but this was clearly not the case in thirteenth century. As a result, in most cases, the legal restrictions on women's appeals were ineffective on account of the ignorance of defendants and the indifference of judges.[81]

Another reason was judicial treatment of quashed appeals. Appellees did occasionally raise the customary restrictions as defenses. In such cases, the judges nearly always accepted the defense and declared the appeal "null.'[82] When appeals by women were resolved by ordeals, this ordinarily acquitted the defendant. As a result of the Fourth Lateran Council in 1215, however, the criminal justice system was forced to abandon ordeals, and jury trial swiftly became the norm. Soon thereafter, judges took advantage of the presence of a jury ready to decide the case and put defendants to trial even when the appeal had been declared "null." That is, starting in the 1220's, a quashed appeal no longer acquitted the appellee. The judges, "in order to preserve the king's peace," put the question of the defendant's innocence to the jury, just as they would have done if the appeal had not been quashed.[83] Thus, although

---

[80] 2 *Bracton, supra* note _, at 390; see also *Bracton* and *Placita Corone* on outlawry based on forbidden women's appeals, *supra* _.

[81] Historians of later periods have also noted that lack of representation usually led to under-enforcement of rights. See, e.g., J. S. Cockburn, "Trial by the Book? Fact and Theory in the Criminal Process: 1558-1625" in *Legal Records and the Historian* 60 (J. H. Baker ed., 1978).

[82] See cases cited *supra* __.

[83] *Placita Corone, supra* note _ , at 26; see Patricia R. Orr, "*Non Potest Appellum Facere:* Criminal Charges Women could not—but did—Bring in Thirteenth-Century English Royal Courts of Justice," in *The Final Argument: The Imprint of Violence on Society in Early Modern Europe* 141, 153 (Donald Kagay & L. J. Andrew Villalon eds., 1998).

women technically lacked the legal power to bring certain appeals, their quashed appeal was sufficient to force the appellee to jury trial. The following case, from Shropshire in 1256, shows how the procedure worked:

> Agnes, who was the wife of Warin of Tedstill appealed Thomas Hord, William of Pimley, clerk, Walter Walhop, Philip Hord, Philip Caloch, Stephen of Stocks, Richard of Brugeshull and Ralph of Roughton in the shire-court [alleging] that when she was in the peace of the Lord king in her house at Tedstill on the Wednesday of Easter week in the 37th year [of King Henry], Thomas and the others came about the middle of the night and tried to break into her house against the peace etc. This she offers etc. Walter Walhop, Philip Caloch, Stephen of Stocks and Richard of Brugeshull have not come. [Their sureties are fined.] Thomas Hord, Philip Hord and Ralph of Roughton come and deny the breaking-in and everything, and they ask it to be award to them that Agnes is a woman and has an appeal in two situations only. So it is decided that the appeal is null. William of Pimley comes and says that he is a clerk and ought not to answer here. On this the dean of the bishop of Coventry and Lichfield comes and claims him as a clerk and William is delivered to him. But that it may be known in what condition he is handed over, let the truth be inquired of the country. Verdict: Thomas and the others came by night to the house of said Agnes and broke into it, but not feloniously or to commit any robbery, but to take seisin. But since they did it at night and against the statutes of the Realm, they are to be committed to gaol. Afterwards, Thomas Hord, Philip Hord and Ralph of Roughton made fine at 40 shillings....[84]

Because the case involved eight defendants, it is somewhat more complicated than usual. Four did not show up for trial, and their sureties were fined. A fifth was a cleric and successfully claimed "benefit of clergy." That is, as a cleric, he was immune from secular justice. The remaining three—Thomas Hord, Philip Hord, and Ralph of Roughton—are the defendants of principal interest for this article. They came to the eyre and defended themselves both by denying the crime (burglary or, perhaps, attempted burglary) and by arguing that Agnes's appeal violated the customary rules restricting women's appeals. They asserted that "Agnes is a woman and has an appeal in two situations only," that is, only for rape (or perhaps injuries to

---

[84] *The Roll of the Shropshire Eyre of 1256* (Alan Harding ed., Selden Society vol. 96, 1981), pl. 566 (all material in square brackets was placed there by Harding, except "Their sureties are fined").

her body generally) and the death of her husband. The court accepted this defense and declared the appeal to be null. Nevertheless, the defendants were not acquitted. Rather, the judges "let the truth be inquired of the country." That is, they sent the case to trial by jury. The reason recorded for sending the case to trial—"that it be known in what condition he is handed over"—pertained only to William of Pimley, the clerical defendant. Nevertheless, it is clear that the jury was asked to render a verdict on all defendants. Other cases make clear that the reason for this practice was to "preserve the king's peace."[85] The jury's verdict partially incriminated and partially exonerated the defendants. They had violated the law by breaking into Agnes's home at night. Nevertheless, their actions were not a felony, because their intent was "to take seisin," not to steal. Presumably they were acting in accordance with a prior court judgment depriving Agnes of possession and/or ownership of the house. Because the defendants' actions were unlawful they were ordered committed to jail. As was normal in such situations, however, the defendants avoided imprisonment by paying a fine. Thus, even though Agnes's appeal was quashed, the defendants were tried and punished.

By prosecuting defendants "at the king's suit" when women had brought appeals prohibited by custom, judges effectively nullified those restrictions in the interest of public order. This policy was part of a larger judicial practice of ensuring that all defendants appealed of crime went to trial, even if the appeal was quashed or the appellor failed to prosecute. The explicit reason for this policy was to “preserve the king’s peace,” that is to punish and deter malefactors.

---

[85] *Id*. at pls. 567, 613, 621, 747, 811, 890.

These two practices—ignoring defenses if not raised by the defendant and putting defendants to trial at the king's suit when defenses were successfully raised—suggest that late thirteenth-century judges took a remarkably "deserts-oriented" approach to their criminal docket. They seem to have been impatient with technical rules and used their power to ensure that outcomes reflected jury verdicts on guilt or innocence, rather than legal niceties. To the extent that women's appeals were especially encumbered with legal restrictions, these judicial practices enhanced women's ability to prosecute.

III. The outcomes of women's appeals

Women prosecutors were reasonably successful in settling their cases and in the judgments they obtained in court. They settled more of their cases than men and obtained favorable jury verdicts about as often.

Determining the exact percentage of cases settled is difficult, because it is often impossible to ascertain whether there was settlement. Settlements were most likely in non-prosecuted cases, but appellors may have stopped prosecuting for many reasons other than settlement, including recognition that they were likely to lose the case or extra-legal pressure to drop it. Nevertheless, in many non-prosecuted cases the records indicate whether there was settlement. In addition, it is reasonable to assume that cases prosecuted to trial or resulting in outlawry were not settled. Using these cases, it is possible to calculate the approximate settlement rate. Because of the missing data, these figures probably underestimate the fraction of cases that settled and should be regarded with caution. Table 3, below, breaks down settlement rates by offense and by the sex of the prosecutor.

Table 3. Settlement by sex of prosecutor and offense, 1194-1294

	Assault	Homicide	Theft	Rape	Other or unspecified crimes	All crimes
Male prosecutor, settled	101	3	15	0	19	138
Male prosecutor, not settled	186	81	37	0	35	339
Female prosecutor, settled	14	9	4	35	4	66
Female prosecutor, not settled	17	119	8	27	7	178
Male prosecutor, % settled	35%	4%	29%		35%	29%
Female prosecutor, % settled	45%	7%	33%	56%	36%	27%

If one just looked at the overall percentages, it would seem that settlement rates were nearly identical. The percentages in the lower right hand corner are nearly identical. Twenty-nine percent of male prosecutors settled versus twenty-seven percent of women. Nevertheless, when one looks at each offense separately, women more often settled. Thus, female prosecutors settled forty-five percent of all assault appeals, while male prosecutors settled only thirty-five percent. For other offenses, the differences are not as large, but women still settled more. The fact that women settled a greater percentage of appeals of each offense, but slightly less overall is somewhat paradoxical. The apparent contradiction, however, is explicable by the fact that women brought proportionately more homicide appeals. Even though female prosecutors settled more of those cases than men, their settlement rate was still under ten

percent. This predominance of homicide appeals drags down the overall percentage of cases settled by female appellors.

Unfortunately, the terms of settlements are not generally known, and without that knowledge, it is hard to interpret the differences between male and female settlement rates. The greater settlement rate might reflect the fact that women were in a weaker bargaining position and settled more often and on less favorable terms. Or, the larger settlement rate might reflect greater bargaining power, perhaps because women prosecutors didn't face the possibility of trial by battle.

In a number of rape cases, however, the terms of the settlement were recorded: marriage. Many rape cases were terminated by marriage between the appellor and the accused. Settling rape cases through marriage was controversial. *Glanvill*, a late twelfth century treatise, abhorred such settlements, because they allowed men of humble birth to secure the marriage of women from good families, and because they allowed women of humble birth to coerce men of noble status into marriage. Nevertheless, he thought such settlements permissible if both the king and the families consented.[86] Such marriages were also controversial in the canon law (the law of the Church), although by the thirteenth century the weight of opinion was in favor of the legitimacy of such marriages.[87] That women consented to such settlements probably reflects the difficulty a non-virgin would have had in marrying. Given her reduced marriageability, and given the economic disadvantages single women suffered, marriage to the

---

[86] *Glanvill, supra* note _, at 176; See also 2 *Bracton, supra* note _, at 417.

[87] James A. Brundage, *Law, Sex and Christian Society in Medieval Europe* 209-10, 250, 312, 397 (1987); Kathryn Gravdal, *Ravishing Maidens: Writing Rape in Medieval French Literature and Law* 8-9 (1991).

rapist might have been the prosecutor's best alternative, albeit a rather grim one. On the other hand, when the rapist was of higher social status, as seems to have been common, marriage might have been viewed as a favorable settlement.[88] Two other explanations for marriage as settlement deserve mention, although they seem rather implausible. Some historians suggest that, when family disapproved of a woman's choice of spouse, the woman might appeal her lover of rape. By doing so, she might hope to coerce her family into approval of the match by dashing their hopes of her marriage to anyone else.[89] Another potential explanation is that the prosecutor had consensual sex with the defendant with the understanding that they were to wed. When it became clear that he would not marry her, she brought an appeal of rape.[90] In such a context, termination of the case in exchange for marriage might have been the desired outcome. On the other hand, appeals of rape in such circumstances would have been quite risky. If the jury knew that the sex was consensual, it would acquit the defendant and fine the prosecutor. In addition, to the extent that the defendant could anticipate an acquittal, he had little incentive to offer marriage as settlement.

Table 4 shows how women prosecutors fared before juries.

---

[88] J.B. Post, "Ravishment of Women and the Statutes of Westminster," in *Legal Records and the Historian* 150, 152 (J.H. Baker ed., 1978); Roger D. Groot, "The Crime of Rape *temp*. Richard I and John," 9 J. Legal Hist. 322, 328-29 (1988).

[89] Post, "Ravishment," *supra* note _, at 153; Barbara A. Hanawalt, *Crime and Conflict in English Communities, 1300-1348* 106-107 (1979). But see Barbara A. Hanawalt, *'Of Good and Ill Repute': Gender and Social Control in Medieval England* 132-33 (1998) (accusing historians who suggest this explanation of attempting "to shield themselves from the brutality of rape" and noting the absence of evidentiary support for "this romantic explanation for rape appeals")

[90] See *id*. at pl. 669 (The jurors say that "he had her with her good will for a year and that he took another to wife and for this reason she has appealed him.").

Table 4. Jury verdicts by sex of prosecutor and offense, 1194-1294

	Assault	Homicide	Theft	Rape	Other or unspecified crimes	All crimes
Male prosecutor, appellee guilty	155	10	22	0	16	203
Male prosecutor, appellee not guilty	94	24	34	0	14	166
Female prosecutor, appellee guilty	17	35	5	19	8	84
Female prosecutor, appellee not guilty	11	71	8	31	3	124
Male prosecutor, % of appellees guilty	62%	29%	39%		53%	55%
Female prosecutor, % of appellees guilty	61%	33%	38%	38%	73%	40%

At first glance, it appears that juries were much more likely to render guilty verdicts when the prosecutor was a male. Thus, as indicated in the lower right-hand corner of the table, male prosecutors obtained guilty verdicts in fifty-five percent of the cases prosecuted to trial and verdict, while women obtained guilty verdicts in only forty percent. Nevertheless, this difference disappears when each crime is analyzed separately. Men and women obtained convictions in assault, homicide, and theft cases at almost identical rates, while women obtained more convictions in appeals of other and unspecified crimes.[91] The lower overall conviction rate for women prosecutors stems from the fact that women brought fewer assault appeals, which resulted in abnormally high conviction rates whether brought by men or women. In addition, women brought more homicide appeals, and these appeals resulted in abnormally low conviction rates, whether the appeal was brought by a man or a woman. Thus, when one

controls for the types of crimes brought, juries seem to have been remarkably even-handed towards female prosecutors.

Of course, it is possible that juries merely appeared to be even handed, but, in fact, were reluctant to convict based on the accusation of a woman. Perhaps women, anticipating juror distrust of their accusations, simply failed to bring appeals which they thought they would lose (but which, if brought by men, would have resulted in conviction).[92] While this argument has some plausibility, it is not convincing, because, if it were true, the number of appeals brought by women would reflect the anticipation of this distrust, and there would have been many fewer women's appeals. The fact that women brought more than a third of all appeals suggests that they were not deterred from bringing prosecutions. In addition, the possibility, discussed above in section II.C, that women's appeals of homicide were part of a familial strategy, suggests that families thought that female prosecutors would get a fair hearing.

IV. The Social Significance of Women's Appeals

A. Appeals, women, and the public sphere

The concept of "separate spheres" has been one of the key organizing ideas of women's history for the last thirty-years.[93] According to this idea, men and women had different realms of activity, and this difference helps to explain women's subordinate position.

---

[91] None of these differences is statistically significant. All p-values are well above 10%.

[92] One might also argue that the similar conviction rates reflect the fact that women settled more of their cases, perhaps anticipating that jurors would treat them worse. This argument, however, would be incorrect, because the table includes jury verdicts even in cases which settled. As discussed *supra* __, starting in the 1220s, judges began to send defendants to jury trial even when the prosecuted had settled with the accused.

Men dominated the public sphere of politics and work outside the home, while women were relegated to private, domestic activities such as housework and raising children. Because the public sphere was more valued and gave men access to the power of state, the relegation of women to the home guaranteed their inferior position. According to some historians, the separation of men's and women's spheres was the product of the industrial revolution and democratization of society that began in the late eighteenth century.[94] Whereas previously both men and women worked in and around the home and neither had much opportunity to participate in politics, the turn of the nineteenth century created an economy based on larger scale non-familial organizations and a politics based on broader participation. Only men were generally allowed to take advantage of these new opportunities, and an ideology of domesticity and separate spheres developed to justify women's exclusion.

While the idea of separate spheres remains influential, two powerful critiques have emerged. One, championed by Michelle Rosaldo and Linda Kerber, argues that separate spheres may be an accurate description of most human societies, but that they fail as an explanation of women's subordination.[95] By suggesting that men and women inhabit largely different social worlds, the idea of separate spheres obscures the way that men and women, by interacting with each other, create and maintain the system of gender relations. The other critique, voiced most forcefully by Amanda Vickery and Robert Shoemaker, criticizes the idea

---

[93] Linda K. Kerber, *Towards an Intellectual History of Women: Essays by Linda Kerber* 159-99 (1997).

[94] Leonore Davidoff & Catherine Hall, *Family Fortunes: Men and Women of the English Middle Class, 1780-1800* (1987); Mary Ryan, *Cradle of the Middle Class: The Family in Oneida County, New York, 1790-1865* (1981).

that separate spheres were a creation of the late eighteenth century.[96] They argue that both the reality and ideology of gendered responsibilities and spaces predate the industrial revolution, and that, in fact, the history of gender relations shows remarkable continuity going back at least to the seventeenth century, and perhaps much earlier.[97]

In spite of these critiques, the idea of separate spheres remains an important tool for the historical analysis of women and gender. Both critiques acknowledge that separate spheres remain an accurate description of social life.[98] In fact, the Vickery-Shoemaker critique opens up the application of separate spheres to the medieval period.[99] Recent work by Barbara Hanawalt, a leading medievalist, shows the continued vitality of the idea of separate spheres.[100] She emphasizes a strand in the separate-spheres literature which focuses on the gendered nature of space,[101] arguing that a key to understanding medieval women is mapping the places a respectable woman could occupy or traverse and those which excluded her or which would

---

[95] M. Z. Rosaldo, "The Use and Abuse of Anthropology: Reflections on Feminism and Cross-cultural Understanding," in 5 Signs: J. Women & Culture 389 (1980); Linda K. Kerber, *Towards an Intellectual History of Women: Essays by Linda Kerber* 159-99 (1997).

[96] Amanda Vickery, "Golden Age to Separate Spheres? A Review of the Categories and Chronology of English Women's History," 36 Historical J. 383 (1993); Robert B. Shoemaker, *Gender in English Society, 1650-1850: The Emergence of Separate Spheres?* (1998).

[97] Extending the argument for continuity back to the middle ages, see Judith Bennett, "Medieval Women, Modern Women: Across the Great Divide," in *Culture and History, 1350-1600: Essays on English Communities, Identities and Writing* 147 (David Aers, ed., 1992).

[98] See M. Z. Rosaldo, "The Use and Abuse of Anthropology: Reflections on Feminism and Cross-cultural Understanding," in 5 Signs: J. Women & Culture 396 (1980).

[99] See also Linda K. Kerber, *Towards an Intellectual History of Women: Essays by Linda Kerber* 171 (1997) (on application of the idea of separate spheres "to the entire chronology of human experience").

[100] Barbara Hanawalt, *Of Good and Ill Repute: Gender and Social Control in Medieval England* 70-87 (1998).

[101] See Linda K. Kerber, *Towards an Intellectual History of Women: Essays by Linda Kerber* 188 (1997) (describing "attention to the physical spaces to which women were assigned" as a "third major characteristic of recent work, one whose potential is at last being vigorously tapped").

compromise her reputation. In addition, Hanawalt emphasizes that, when they ventured into public spaces, women were advised to keep their heads down and be silent.

While there is little literature applying the idea of separate spheres to women's litigation, the implications are relatively clear. Court was male space.[102] Judges were male, jurors were male, and lawyers were male. Court was also clearly public, in that it was an arena for the formal exercise of governmental power. Respectable women were admonished to stay away. For example, *Bracton*, a thirteenth-century treatise, explained that the (male) heir, rather than his widow, ought to control litigation relating to her dower, because a widow "ought to attend to nothing save the care of her house and the rearing and education of her children..."[103] *Bracton*'s argument is hardly persuasive—just one sentence later the treatise notes that the widow ought to have her own court for pleas pertaining to her as lord—but its very weakness may testify to the broad acceptance of its premise that litigation was not appropriate for women. The richer sources of the early modern period make clear that, in addition to formal legal barriers, "women were also discouraged from litigating by the idea that a modest woman speaks little, that a chaste woman does not appear in public, and that a good woman is ignorant of her rights."[104] Nevertheless, historians have shown that, under certain conditions, courts could be especially accessible to women. Tim Meldrum demonstrated that, in the early eighteenth century, female litigants dominated the ecclesiastical courts with suits alleging

---

[102] Barbara A. Hanawalt, *'Of Good and Ill Repute': Gender and Social Control in Medieval England* 135 (1998).

[103] 2 *Bracton, supra* note _, at 281.

[104] Klerman, *supra* note _, at __.

defamation, principally of a sexual nature.[105] Across the Atlantic, Cornelia Dayton has shown that the Puritan exclusion of lawyers and rejection of the double standard for sexual misconduct made it possible for substantial numbers of women to litigate in colonial New Haven.[106]

The research presented here suggests that similar conditions led to the substantial representation of women among medieval English private prosecutors. Lawyers were rare in thirteenth-century appeals, which reduced the financial barriers to women prosecutors. While the lower cost of appeals would have made them attractive to both men and women, since women generally had less access to wealth than men, this aspect of appeals had a particularly large impact on women. In addition, as discussed in Section II.D, judges had a rather deserts-oriented attitude towards appeals. While there were many technical, procedural rules which might have severely restricted women's ability to successfully prosecute, judges did not rigorously enforce them. Rather, their overriding concern to see the guilty punished caused them to treat women litigants with fairness, if not indulgence.

The fact that lawyers were rare meant that a female prosecutor had to appear publicly and make her case.[107] She had to come to county court to make her accusation, and then, since the appellee seldom showed up until absolutely necessary, return to county court several times until he showed up or was outlawed. If she pursued the case to outlawry, as more than a quarter of women prosecutors did, she would have to appear five times at county court. If the accused appeared and her determination to prosecute remained steadfast, as happened in about

---

[105] Tim Meldrum, "A Women's Court in London: Defamation at the Bishop of London's Consistory Court, 1700-1745," 19 London J. 1 (1994).

[106] Cornelia Hughes Dayton, *Women before the Bar: Gender, Law, & Society in Connecticut, 1639-1789* (1995).

fifteen percent of all cases, she would have to continue her prosecution in the general eyre, the most awesome manifestation of royal judicial power outside of London.[108] All of these court appearances would require extensive public speaking, contrary to the norm counseling women's silence in public places.

Although appeals gave women a public role, this role was not indicative of public honor or selection as a representative by king or local community. In fact, especially when prosecuting rape, it is much more probable that prosecution led to shame and humiliation rather than honor. Women's participation in public life as prosecutors does not, therefore, detract from their overall exclusion from the honor and power of public offices such as the jury, the judiciary, and the shrievalty (office of sheriff).

In addition, although an appeal would have required the female prosecutor to appear in court and make her case, prosecution of an appeal in the thirteenth century required substantially less forensic skill than a modern criminal case. Prosecuting an appeal consisted principally of recitation of the appropriate legal formulae. Since this was the era of the self-informing jury, the appellor would not ordinarily have made speeches to the jury or questioned, much less cross-examined, witnesses. Instead, the jury was expected either to investigate the case before trial or to decide the case based on gossip and reputation. Nevertheless, the task of prosecution should not be minimized. Since mistakes in recitation of the legal formulae could result in quashing of the appeal, effective prosecution would have required a good memory. In addition, since the courts were run by powerful and imposing men (sheriffs and royal justices),

---

[107] See discussion above in Section I.B.

[108] John H. Baker, *An Introduction to English Legal History* 18-19 (3d. ed. 1990).

the atmosphere of the courts would likely have been quite intimidating. Prosecution would, thus, have required considerable courage and ability to perform publicly under pressure.

There is some irony in the idea that *private* prosecution gave women a role in the *public* sphere. In part, this represents anachronistic use of the terms public and private. Medieval people did not think of the appeal as private prosecution or presentment as "public." These are modern terms. Even as modern terms they are problematic. The privateness of the appeal is only relative. Compared to presentment or modern public prosecution, appeals are more "private," because they vest power in ordinary individuals (the victim or a relative of the victim) rather than representatives of the general public. Nevertheless, like any legal procedure, appeals required the active participation of governmental officials (such as judges and sheriffs) and ultimately relied on governmental coercion for enforcement. In addition, even appeals were becoming more "public" over the thirteenth century. As discussed above, in the 1220's and especially after 1250, appellors lost the power to effectively settle or terminate a prosecution. Even if an appellor withdrew or if the appeal was quashed for technical reasons, the defendant would still be put to trial "at the king's suit." Because appeals involved public order, judges insisted on trial for the defendant "in order to preserve the king's peace."

B. Women, appeals, and power

While the previous section deployed an analysis based on the idea of separate spheres, Rosaldo and Kerber's critique suggests that, while that approach valuable, it is important to go beyond it. Instead of emphasizing the separateness of men and women's lives, they suggest that historians focus on trying to understand how men and women interacted. This section takes up

that challenge by analyzing the ways in which appeals gave women the power to affect others, most often men who injured them, their relatives, or their property.

The ways in which medieval women exercised power have been an important topic of historical inquiry. In fact, two recent essay collections—*Power of the Weak: Studies on Medieval Women* and *Women and Power in the Middle Age*—take this subject as their theme.[109] Since women were generally excluded from formal, governmental office, historians have tended to see women's power as flowing through more informal channels, such as persuasion, sainthood, ownership of land, and family position. As Mary Erler and Maryanne Kowaleski put it, historians have moved "away from a limited and traditional view of power as public authority to a wider view of power which encompasses the ability to act effectively, to influence people or decisions, and to achieve goals."[110]

Surprisingly, medieval women's legal power has received little attention. For example, in the two books mentioned above, only one essay, by Judith Bennett, takes much note of women's legal activity. She emphasizes that women's access to court and power "waxed, waned, and waxed again over the course of the female life cycle" as women achieved some independence between adolescence and marriage, then lost it upon marriage, and regained it upon widowhood.[111]

---

[109] *Power of the Weak: Studies on Medieval Women* (Jennifer Carpenter & Sally-Beth MacLean eds., 1995); *Women and Power in the Middle Ages* (Mary Erler & Maryanne Kowaleski eds., 1988).

[110] Mary Erler & Maryanne Kowaleski, *Introduction* to *Women and Power in the Middle Ages* 1, 2 (Mary Erler & Maryanne Kowaleski, eds., 1988).

[111] Judith M. Bennett, "Public Power and Authority in the Medieval English Countryside," in *Women and Power in the Middle Ages* 18, 21 (Mary Erler & Maryanne Kowaleski, eds., 1988).

Erler and Kowaleski's definition of power—"the ability to act effectively, to influence people or decisions, and to achieve goals"[112]—is quite helpful for the analysis of appeals. Under this broad definition, the ability to successfully sue others is surely a kind of power. In particular, appeals allowed women to "influence people or decisions" in that it conferred on them the ability to influence jurors and judges to render legal decisions in their favor. It allowed them to "achieve goals," such as punishment of the defendant or settlement. And it allowed them to act effectively, or at least as effectively as men, in that women achieved settlement and conviction rates comparable to or better than those of men.

Although appeals gave women a form of power, that power should not be overstated. As discussed in section II.C, one of the reasons women brought appeals was that they had been victimized—assaulted, raped, or robbed. The potential power that appeals gave women had, at least in these situations, not been sufficient to deter the crime. Another reason women brought so many appeals, especially homicide appeals, was that they were immune from trial by battle and thus could prosecute crimes of interest to their families without the danger male members of the family might encounter. In these situations, women may have been pressured into prosecuting. Nevertheless, even in these situations, prosecution was still a form of power. A crime victim who can prosecute is more powerful than one who, like a slave, has no power to prosecute or who, like a child, is dependent on others to prosecute for her. Similarly, although a woman's prosecution may have been in the interests of her family rather than simply herself, to the extent that a woman's interests were aligned with those of her family, prosecution in the family interest may have benefited her as well.

---

[112] Mary Erler & Maryanne Kowaleski, *Introduction* to *Women and Power in the Middle Ages* 1, 2

The power of women's appeals may also have been limited by the possibility that women's appeals, even if successful, may have provoked social disapproval or even physical vengeance. To the extent that women prosecutors were violating social norms about women's proper role, the possibility of such disapproval or vengeance cannot be excluded. Unfortunately, the legal records shed little light on these possibilities, although violent retaliation could itself have resulted in a subsequent appeal or presentment.

The case below, which was heard in the 1249 Wiltshire eyre, provides an illustration of the power that appeals gave women.

> Alice, who was the wife of Henry of Wyly, appealed Robert Pycot, Robert Sterre and Gilbert Chynne in that against the King's peace wickedly and in felony they ejected her by force from a house in Salisbury. That they did this etc. she offers [to prove] etc.
>
> Robert Pycot is dead. Robert Sterre and Gilbert come and deny the force and whatsoever is against the king's peace. They fully admit that they ejected Alice from the house but not in robbery, rather by judgment of the Court of Salisbury and by the command of Robert Pycot then mayor of Salisbury. On this they put themselves on a jury and call the aforesaid Court to warranty. Upon this the aforesaid Court comes and says that Henry of Wyly, sometime Alice's husband, held the house and after Henry's death Alice was in seisin of the house for half a year. Then Avice, Henry's sister, sought the house in the Court of Salisbury saying that Alice was never married to Henry. And, because it did not appear to the Court whether Alice was married to Henry or not, the Court presented the seisin of the house to Avice. But they did not warrant that Alice should be ejected from the house by force. And because the aforesaid Court held this plea without writ and warrant it is held that the aforesaid Court be in mercy and let Robert Sterre and Gilbert, because they dispossessed [Alice of her house,] be taken into custody for the offence etc.
>
> Later it is testified that Alice received seisin of the house because she proved that she was married to Henry and that Henry in his will left her the house.[113]

(Mary Erler & Maryanne Kowaleski, eds., 1988).

113 *Crown Pleas of the Wiltshire Eyre, 1249* (C. A. F. Meekings ed., Wiltshire Archaeological and Natural History Society, Records Branch vol. 16, 1961), pl. 553.

Alice, a widow living in a house given to her by her husband, was evicted from that house after losing a suit in the Court of Salisbury. Although Alice had civil remedies to recover her house, she chose to bring an appeal against the mayor of Salisbury, who ordered her eviction, and against the men who carried out that eviction. Although her appeal was not within the two categories permitted to women (rape or injury to her body), the defendants did not object to this violation of the customary rule, and her appeal was successful. The justices in eyre found that the Court of Salisbury had acted improperly in depriving her of her house without a royal writ. As a result, the living defendants were ordered to be jailed, probably as a prelude to stiff fines. In addition, although the timing and circumstances are not clear, it appears that the justices in eyre allowed her to prove the substance of her claim to the house—that she was married to Henry and that Henry left her the house in his will. The power Alice wielded through this appeal is rather impressive. She successfully sued the mayor of Salisbury and two men who were carrying out his orders, secured their imprisonment, and recovered both possession and title to her house.

More generally, the legal power of an appellor was substantial. Appeals could lead to the imposition of serious penalties. If the defendant did not appear in court to respond to charges, he was outlawed. As mentioned above, an outlaw was a person without legal rights.[114] He forfeited all his property, and it was a crime to feed, shelter, or communicate with

[114] Women accused of crime could not technically be outlawed. Instead, a woman who failed to appear at county court was "waived," i.e. declared a "waif." Nevertheless, the procedure and consequences of waiver and outlawry were the same, so this difference is of no importance. 1 Pollock & Maitland, *supra* note _, at 482. Although outlawry was relatively severe, outlaws could secure pardons from the king. See 2 *id*. at 581-82.

him. If he resisted arrest, he could be killed without further legal process.[115] Women successfully outlawed defendants in about a quarter of all appeals they initiated. If, on the other hand, the defendant appeared for trial and was convicted, he could be executed or fined. Such outcomes were not as common as outlawry, but hardly rare. Thus, the appeal allowed women to impose substantial penalties on those who harmed them. Perhaps more importantly, although it cannot be proved directly, the fact that women had the power to initiate criminal prosecutions probably deterred some potential malefactors from harming women in the first place.

A crime victim could also use the threat of prosecution to induce settlements, which might consist of cash, land, or resolution of other disputes. In addition, as discussed above, rape cases were sometimes settled by marriage to the man the appellor had previously accused of rape. Although marriage to the man who raped her was undoubtedly in most cases a rather unfavorable settlement, it does not negate the idea that the appeal gave the prosecutor a modicum of power. To the extent that rape reduced a woman's marriageability, the fact that the appeal allowed the victim to pressure the defendant into marrying her conferred a benefit on the prosecutor. That such a marriage seems odious should not detract from the fact that it might have been preferable to the alternatives: impoverishment as a single woman or an even less favorable marriage. That the appeal gave women a way to pressure the alleged rapist into marriage should, therefore, be seen as a form of power. It is a power which could not right the wrong done to her, but one which could improve her post-crime position, even if only slightly.

Although historians of women, like Bennett quoted above, generally emphasize women's loss of independent power upon marriage, appeals provide an interesting, although

---

[115] 2 *Bracton, supra* note _, at 361-62, 378.

limited, counter-example. As discussed in the next section, at least five percent of female appellors were married women suing alone. Although this percentage is certainly lower than the percentage of married women in the population, it is noteworthy that married women were bringing suits at all.

Another way to appreciate the power which appeals provided is to contrast appeals of rape to trespass actions for ravishment. Whereas rape appeals were brought only by the aggrieved woman herself, ravishment actions were brought by husbands, fathers, and lords. Ravishment was the tort of abducting and/or raping a woman, and it became common around the turn of the fourteenth century. Such suits sometimes arose out of a woman's marriage contrary to the will of her father or her desertion of her husband in order to abscond with a lover.[116] In such situations, vesting the right to bring ravishment actions in the hands of fathers and husbands gave men additional power over women. In contrast, an appeal of rape was brought by the woman herself, which made it nearly impossible for an appeal to be used to thwart her choice of husband or lover.

As discussed in section II.B, women brought approximately eight thousand appeals during the thirteenth century. Although this may seem like a large number, it pales in comparison to the number of women who lived in England during this period, which probably approached ten million.[117] Thus, only about one in a thousand thirteenth-century English women probably

---

[116] J.B. Post, "Ravishment of Women and the Statutes of Westminster," in *Legal Records and the Historian* 157-60 (J.H. Baker ed., 1978); Paul Brand, "Family and Inheritance, Women and Children," in *An Illustrated History of Late Medieval England* 65-66 (Chris Given-Wilson ed., 1996).

[117] Estimating the number of women who lived during the thirteenth century is very difficult. Most probably there were between one and two million women in 1200 and almost double that number in 1300. Average life expectancy was thirty to forty years. J. L. Bolton, The *Medieval English Economy, 1150-1500* 48, 65 (1980). Together, these figures imply that between five and ten million women lived in England in the thirteenth century.

ever brought an appeal during her lifetime. The proportion of women who actually exercised the power of an appeal was therefore relatively small. On the other hand, to the extent that women's ability to bring appeals had a deterrent effect, appeals may have had a broader impact. Unfortunately, there is no way of measuring that impact.

C. Social status of female prosecutors

Many studies of women and power in the middle ages focus on aristocratic or royal women.[118] This bias is mostly a product of the fact that the sources for such women are more plentiful. One advantage of legal records, however, is that they often shine light on less prominent people. Records from manorial courts have been especially fruitful for the investigation of ordinary people.[119] Royal courts, in contrast, tended to hear disputes only by those who held "freehold" property, that is property not encumbered by the obligations a peasant ordinarily owed his lord. Appeals, although heard in royal court, seem to have been brought by a broad spectrum of society and thus can help shed light on the lives of ordinary women.

Although it is difficult to ascertain the social status of people appearing in medieval court records, it is occasionally apparent that the appellor came from modest circumstances. For example, in five percent of all cases, fines female appellors incurred were pardoned "on account of poverty," as in the case quoted above on page _. Since fines were not imposed in every

---

[118] See, for examples, the three essays on queenship in *Power of the Weak: Studies on Medieval Women* (Jennifer Carpenter & Sally-Beth MacLean eds., 1995) and the essays by Hanawalt, and McNamara & Wemple in *Women and Power in the Middle Ages* (Mary Erler & Maryanne Kowaleski, eds., 1988), which focus on aristocratic women. Judith Bennett's essay in the latter book is a notable exception. Its subject is peasant women. Note, however, that Bennett relies principally on legal sources.

case, the number of poor women undoubtedly exceeded five percent. How poor a woman had to be to qualify for a remission of fines on account of poverty is unclear. The ordinary fine imposed in the eyre was half a mark, or 6s. 8d. That would have been a trivial sum for any significant landholder, but almost certainly more than the average peasant could pay.[120] On the other hand, it is apparent that such pardons were sometimes given even to those who were not poor. For example, in the case quoted on page _, Gunora's fine was pardoned even though, having just received four acres in settlement, she would hardly still qualify as poor.

The records sometimes mention an appellor's occupation. So, for example, one female prosecutor is described as a washerwoman (*lotrix*).[121] She was undoubtedly of humble status.

It is also likely that an additional ten percent of female appellors were poor. In addition to the five percent whose fines were pardoned on account of poverty, ten percent of female appellors are recorded not to have found sureties to prosecute and instead merely swore that they would prosecute. Swearing rather than finding sureties is probably indicative of poverty. Occasionally, the link between swearing and poverty is explicit in the records,[122] but it is a plausible inference even in cases where the connection is not explicit.[123] Appellors ordinarily

---

[119] See Bennett, *supra* note __ .

[120] See Christopher Dyer, *Standards of Living in the later Middle Ages* 70, 117 (1989).

[121] 2 *Pleas Before the King or His Justices, 1198-1202* (Doris Mary Stenton ed., Selden Society, vol. 68, 1952), pl. 15 (Norfolk 1198).

[122] *Crown Pleas of the Wiltshire Eyre, 1249* (C. A. F. Meekings ed., Wiltshire Archaeological and Natural History Society, Records Branch vol. 16, 1961), pls. 130, 517, 562; JUST 1/614B m. 41d (Northamptonshire 1247) (non habuit plegios nisi fidem quia pauper); JUST 1/615 m. 3 (Northamptonshire 1253) (non invenit plegios quia pauper); *Id*. at m. 5d; JUST 1/361 m. 50 (Kent 1255) (nec invenit plegios nisi fidem quia pauper); *Id.* at m. 53d (Kent 1255) (non invenit plegios nisi fidem pro paupertate).

[123] See Ralph Pugh, *Introduction* to *Wiltshire Gaol Delivery and Trailbaston Trials, 1275-1306* 1, 11 (Ralph Pugh ed., Wiltshire Record Society, vol. 33, 1977); Roger D. Groot, "The Crime of Rape *temp*. Richard I and John," 9 J. Legal Hist. 322, 328 (1988).

initiated their suits at county court, and were required at that time to nominate sureties. If the appellor later failed to show up for trial or withdrew her suit, or if the appellee was acquitted, the appellor was fined. If the appellor could not or would not pay, the sureties were liable for the fine. Sureties naturally wanted some assurance that the appellor could pay her own fines or would indemnify them for any fines they paid. Poor litigants would be the group most likely to be unable to provide such assurance, so it is likely that those who failed to find sureties were most often poor. Nevertheless, the correlation is not iron-clad. In some cases, although the appellor did not find sureties to prosecute, her fine for non-prosecution was not pardoned on account of poverty.[124] The lack of a perfect correlation between failure to find sureties and poverty might suggest that the fact that ten percent of female appellors are recorded as not having found sureties would mean that less than ten percent were poor. Nevertheless, one must also take into account the fact that whether an appellor found sureties is recorded in less than half of the cases. So, the ten percent figure may substantially under-count the number of poor female appellors.

The substantial uncertainty which surrounds who was classified as "poor" for the purposes of pardoning fines and who would be unable to find sureties makes it impossible to give a precise figure for the percentage of female appellors who were poor. Any figure from about five percent to over thirty percent would be possible. Nevertheless, it seems safe to conclude that a significant number of female appellors were from modest circumstances.

Examination of the marital status of female appellors also reveals considerable diversity. Naming provides the principal clue to marital status. Those called "A who used to be B's wife"

---

[124] See, e.g., *Collections for a History of Staffordshire* 41 (William Wrottesley ed., William Salt

(*A que fuit uxor B*) can safely be categorized as widows. Similarly, those called "A wife of B" (*A uxor B*) can be safely categorized as married. Names such as "A from place X" (*A de X)* or "A daughter of B" (*A filia B)* give no information on marital status. Although such women might have been married or widowed, I will generally assume they were never married, unless there is other evidence of their marital status.

The overwhelming majority of female appellors were either widowed or never married. Most homicides were prosecuted by widows.[125] In addition, six percent (14/229) of women who appealed crimes other than homicide were widows. Nearly all rapes were prosecuted by never-married women.[126] A small, but appreciable fraction (5% or 23/452) of all female appellors were married women. This figure is interesting, because it is usually thought that a married woman's legal personality merged into her husband's through coverture.[127] In some cases, a married women's right to appeal was challenged,[128] but in most cases it was not.

Archaeological Society vol. 3, 1882) (Staffordshire 1199).

[125] See *infra* __.

[126] A few rape appeals were prosecuted by married women and widows. See JUST 1/358 m. 27d (Kent 1227) (rape appeal by widow); *Crown Pleas of the Wiltshire Eyre, 1249* (C. A. F. Meekings ed., Wiltshire Archaeological and Natural History Society, Records Branch vol. 16, 1961), pl. 296 (rape appeal by widow); *Id*. at pl. 207 (rape appeal by married woman). The legality of such appeals is unclear. Although the married women and widows who brought these appeals were presumably not virgins, there is a case from 1244 which held that only those who were virgins before the rape could bring appeals. See J.B. Post, "Ravishment of Women and the Statutes of Westminster," in *Legal Records and the Historian* 153 (J. H. Baker ed., 1978). Nevertheless, there are cases (although not many) both before and after 1244 which seem inconsistent with a rule against rape prosecutions by non-virgins. See Roger Groot, "The Crime of Rape *temp*. Richard I and John," 9 J. Legal Hist. 325 (1988); JUST 1/359 m. 30d (Kent 1241); see also cases cited at the beginning of this footnote. In addition, the treatises attributed to Bracton and Britton assume that there was no such rule. See 2 *Bracton, supra* note _, at 415, 418 (discussing rape of married women, widows, and prostitutes), but see *id*. at 344, 414, 416-17 (assuming that rape appeal will be brought by one who was a virgin before being raped); 1 *Britton, supra* note _, at 114 ("With regard to an appeal of rape, our pleasure is, that every woman, whether virgin or no, shall have a right to sue vengeance for the felony by appeal....")

[127] See *supra* _.

[128] *The Earliest Northamptonshire Assize Rolls, A.D. 1202 and 1203* (Doris M. Stenton ed., Northamptonshire Record Society vol. 5, 1930), pl. 70 (appeal quashed, because married woman did not prosecute with her husband); *Collections for a History of Staffordshire* 92 (William Salt Archaeological

Because of the reliance on naming, these figures almost certainly understate the number of appeals brought by widowed and married women.

V. Conclusion

As is well known, the number of appeals declined markedly in the late thirteenth century.[129] Presentment became the nearly exclusive means of prosecuting crime. Since the presenting jury was entirely male, the decline of the appeal meant a reduction in the role of women.[130] One might see this decline in the status of women as part of a general, Europe-wide "tendency, as the Middle Ages progressed ... towards a lessening of the public activity of women."[131] Susan Mosher Stuard has explained this trend as reflecting "the failure of early medieval society to define rigidly a public and a private sphere and to relegate women to the latter."[132] As the quote from *Bracton* in section IV.A makes clear, by the thirteenth century, such a distinction had been clearly made. The prominence of the appeal until at least the late

---

Society vol. 3, 1882) (Staffordshire 1203) (man fined because he permitted his wife to appeal, but did not want to prosecute with her); JUST 1/358 m. 21d (Kent 1227) (appellees not attached, because female appellor did not prosecute when her husband, although present, did not prosecute with her); JUST 1/4 m. 29d (Bedfordshire 1247) (appellee asked the court to note that the woman who appealed him of robbery and wounds could have no property because she was married, but appellee submitted to jury trial anyway).

[129] See sources cited in Klerman, *supra* note _, at __.

[130] Of course, since almost two-thirds of appellors were men, there was also a decline in the prosecutorial role of many men as well. Nevertheless, since men could be on presenting juries, while women could not, the move to presentment had the effect of removing all women from prosecution, while merely shifting the male prosecutorial role from one group (crime victims and their relatives) to another (the presenting jury). Nevertheless, to the extent that presenting juries (and later grand juries) were composed primarily of higher status men, the shift to presentment may have resulted in the exclusion of lower status men from prosecution.

[131] Susan Mosher Stuard, *Introduction* to *Women in Medieval Society* 1, 3 (Susan Mosher Stuard ed., 1976).

[132] *Id*. at 4; see also Jane Tibbetts Schulenburg, "Female Sanctity: Public and Private Roles, ca. 500-1100" in *Women and Power in the Middle Ages* 102, 105 (Mary Erler & Maryanne Kowaleski eds., 1988).

twelfth century can be seen as reflecting the earlier lack of separation between public and private. Although I have sometimes referred to the appeal as "private prosecution," it was neither entirely private nor entirely public. Although the appeal was brought by individuals, it lay only when the king's peace had been violated, and thus when more than the victim's own interest was affected. The introduction of presentment in the twelfth century and its ascendance in the thirteenth can be seen as reflecting the separation of the private and public, putting prosecution of breaches of the king's peace in the hands of representatives of the community (the presenting jury) rather than the victim.[133] In this way, the marginalization of women through the ascendance of presentment can be seen as fitting Stuard's theory that the separation of public and private harmed women.

A different but complementary interpretation would note that the increasing power of the state in thirteenth century often imposed and enforced distinctions—male/female, orthodox/heterodox, Christian/Jew, gay/heterosexual—which disadvantaged the smaller or less powerful group.[134] Early medieval society had been less effectively governed, and thus less often enforced rigid distinctions. Gays and Jews, although occasionally persecuted, were usually left in peace and often rose to prominence. Heretics were not subjected to the rigors of the inquisition. Women could govern both monks and nuns in double monasteries. They could prosecute. This is not to imply equality. Early medieval women could be powerful abbesses, but the could not be priests or bishops. Women could bring appeals, but the crimes for which

---

[133]The introduction of trespass writs in the mid-thirteenth century, however, again muddled the distinction between public and private, and between civil and criminal. Klerman, *supra* _ at _.

[134]John Boswell, *Christianity, Social Tolerance, and Homosexuality* 270-71 (1980); R.I. Moore, *The Formation of a Persecuting Society* 1 (1987).

they could do so were circumscribed. But it does seem that the rise of presentment, an institution which explicitly excluded women, was part of a more general phenomenon in which the newly emergent European states used their increased power to exclude certain groups from power and public life.

While the previous two paragraphs attempt to provide a broader historical context for thinking about the decline of women's role as prosecutor, they must be regarded as tentative. The kind of historical generalizations upon which they rely have been criticized as part of a romantic search for a "golden age."[135] Although the specific generalizations—that the distinction between public and private became more rigid during the middle ages and that governments in the twelfth and thirteenth centuries enforced a greater number of disadvantaging distinctions—remain substantially unchallenged,[136] it is not unthinkable that historians in the future will refute them. While the evidence presented in this article supports these more general hypotheses, the verdict awaits additional research. As Janet Senderowitz Loengard suggested, an article such as this is best seen as "a piece in the mosaic that must be constructed, the jigsaw that must be put together."[137]

---

[135] Judith M. Bennett, "'History that Stands Still': Women's Work in the European Past," 14 Feminist Stud. 269 (1988); Pauline Stafford, "Women and the Norman Conquest," 4 Transactions Royal Hist. Soc'y. (6th Ser.) 221 (1994); Amanda Vickery, "Golden Age to Separate Spheres? A Review of the Categories and Chronology of English Women's History," 36 Historical J. 383-414 (1993).

[136] See Bennett, *supra* note _, at 282 n. 8.

[137] Janet Senderowitz Loengard, "'Legal History and the Medieval Englishwoman' Revisited: Some New Directions," in *Medieval Women and the Sources of Medieval History* 219 (Joel T. Rosenthal ed., 1990).

USC LAW SCHOOL WORKING PAPER SERIES

2000

00-1 W. Bentley MacLeod, *Complexity and Contract* (forthcoming, REVUE D'ECONOMIE INDUSTRIELLE, April 2000).

00-2 Jennifer Arlen, Matthew Spitzer and Eric Talley, Endowment Effects, Other-Regarding Preferences, and Corporate Law.

00-3 Christopher Slobogin, *An End to Insanity: Recasting the Role of Mental Disability in Criminal Cases* (forthcoming in the VIRGINIA LAW REVIEW).

00-4 Christopher Slobogin, *Mental Illness and the Death Penalty*, 1 CALIFORNIA CRIMINAL LAW REVIEW 3 (2000).

00-5 R. Michael Alvarez and Edward J. McCaffery, "Is There a Gender Gap in Fiscal Political Preferences?"

00-6 Ariela Gross, "Between 'Race' and 'Nation': Indian/Black Identity in the Southern Courtroom, 1780-1840."

00-7 Peter H. Huang, *Reasons within Passions: Emotions and Intentions in Property Rights Bargaining*, (forthcoming in 79 OREGON LAW REVIEW, November 2000).

00-8 Marcel Kahan and Ehud Kamar, "Price Discrimination in the Market for Corporate Law."

00-9 Dan Klerman and Nuno Garoupa, "Optimal Law Enforcement with a Rent-Seeking Government."

00-10 Dan Klerman, "The Selection of Thirteenth-Century Criminal Disputes for Litigation."

00-11 W. Bentley MacLeod, "Cognition and the Theory of Learning by Doing."

00-12 W. Bentley MacLeod and Mark Pingle, "An Experiment on the Relative Effects of Ability, Temperament and Luck on Search with Uncertainty."

00-13 Daniel Klerman, "Female Prosecutors in Thirteenth-Century England."

1999

99-1 Howard F. Chang and Hilary Sigman, *Incentives to Settle Under Joint and Several Liability: An Empirical Analysis of Superfund Litigation* (forthcoming in 29 JOURNAL OF LEGAL STUDIES (January 2000)).

99-2 Mary L. Dudziak, The March on Washington, At Home and Abroad.

99-3 Pamela M. Kato, Thomas D. Lyon, John Flavell, Raquel S. Klibanoff, Robin Higashi, and Lynne C. Huffman, Preschoolers' Moral Judgments About Illness and Treatment: Who's Bad?

99-4 Thomas D. Lyon, *Child Witnesses and the Oath: Empirical Evidence* (forthcoming in SO. CAL. LAW REV. (2000)).

99-5 Paul Mahoney and Mark Weinstein, The Appraisal Remedy and Merger Premiums.

99-6 Eric Talley, *Precedential Cascades: An Appraisal*, 73 SO. CAL. L. REV. 87 (1999).

99-7 Eric Talley, *Taking the "I" Out of "Team": Intra-Firm Monitoring and the Content of Fiduciary Duties*, 24 J. CORP. LAW 1001 (1999).

99-8 Antonio Bernardo, Eric Talley, and Ivo Welch, *A Theory of Legal Presumptions*, 16 J. LAW, ECON. & ORG. 1 (2000).

99-9 Antonio Bernardo and Eric Talley, A Note on Presumptions with Sequential Litigation.

99-10 W. Bentley MacLeod and Daniel Parent, Job Characteristics and the Form of Compensation.

99-11 R. Michael Alvarez and Edward J. McCaffery, *Gender and Tax* (forthcoming in GENDER AND POLITICS, Jyl Josephson and Susan Tolleson-Rinehart, eds.).

99-12 Daniel Klerman, *Settlement and the Decline of Private Prosecution in Thirteenth-Century England* (forthcoming in 19 LAW & HISTORY REVIEW (2001)).

99-13 George Lefcoe, Mortgage Prepayment by Defeasance.

99-14 Edward J. McCaffery, *The Burdens of Benefits* (forthcoming in the VILLANOVA LAW REVIEW).

99-15 Edward J. McCaffery, A Life Estate Conception of Property.

99-16 Edward J. McCaffery, *The Missing Links in Tax Reform* (forthcoming in the CHAPMAN LAW REVIEW).

99-17 Alexander M. Capron, *Genetics and Insurance: Accessing and Using Private Information*, 17 SOCIAL PHILOSOPHY AND POLICY FOUNDATION 235 (Summer 2000).

99-18 Alexander Morgan Capron, *Social Science, Bioethics, and the Law: What Contributions to Policy Development?* 128 DAEDALUS (JOURNAL OF THE AMERICAN ACADEMY OF ARTS AND SCIENCES) 295 (Fall 1999).

99-19 Lorne Carmichael and W. Bentley MacLeod, Caring About Sunk Costs: A Behavioral Solution to Hold-up Problems with Small Stakes.

99-20 David B. Cruz, *"The Sexual Freedom Cases"? Contraception, Abortion, Abstinence, and the Constitution*. (A revised version of this paper is forthcoming in 35 HARVARD CIVIL RIGHTS-CIVIL LIBERTIES LAW REVIEW, No. 2, Summer 2000).

99-21 Gregory C. Keating, Fairness and Two Fundamental Questions in the Tort Law of Accidents.

99-22 Kevin Davis, Self-Interest and Altruism in the Deterrence of Transnational Bribery.

99-23 Thomas D. Lyon, *Expert Testimony on the Suggestibility of Children: Does it Fit?* (forthcoming in B.L. Bottoms, M.B. Kovera & B.D. McAuliff (eds.), CHILDREN AND THE LAW: SOCIAL SCIENCE AND POLICY (New York: Cambridge)).

99-24 Thomas D. Lyon, *Questioning Children: The Effects of Suggestive and Repeated Questioning* (forthcoming in J. Conte (ed.)., SUGGESTIBILITY OF CHILDREN AND ADULTS (Thousand Oaks, CA: Sage)).

99-25 Thomas D. Lyon, Karen J. Saywitz, Debra L. Kaplan, and Joyce S. Dorado, *Reducing Maltreated Children's Reluctance to Answer Hypothetical Oath-Taking Competence Questions*. (Revised version of Olin Working Paper No. 98-9). (Forthcoming in LAW & HUMAN BEHAVIOR).

1998

98-1 Cindy Alexander, Jennifer Arlen and Mark Cohen, *Regulating Corporate Criminal Sanctions: Evidence on the Effect of the U.S. Sentencing Guidelines*, 42 JOURNAL OF LAW & ECONOMICS 271 (1999).

98-2 Jennifer Arlen, *Economic Analysis of Tort Damages: A Survey* (forthcoming in the ENCYCLOPEDIA OF LAW AND ECONOMICS).

98-3 Howard F. Chang, *Migration as International Trade: The Economic Gains from the Liberalized Movement of Labor*, 3 UCLA JOURNAL OF INTERNATIONAL LAW AND FOREIGN AFFAIRS 371 (Fall/Winter 1998-99).

98-4 Mary L. Dudziak, Birmingham, *Addis Ababa and the Image of America: Managing the Impact of Foreign Affairs on Civil Rights in the Kennedy Administration* (forthcoming in Brenda Gayle Plummer, ed., AMERICA'S DILEMMA, University of North Carolina Press).

98-5 Ariela J. Gross, *Litigating Whiteness: Trials of Racial Determination in the Nineteenth Century South* (forthcoming in 108 YALE LAW JOURNAL (1998)).

98-6 James R. Hackney, Jr., Law and Neoclassical Economics Theory: Structure, Development, Dissolution and Resolution(?).

98-7 Daniel Klerman, Private Prosecution of Crime in Thirteenth-Century England: The Importance of Settlement and Female Prosecutors.

98-8 Michael S. Knoll, Tax Planning, Effective Tax Rates and the Structure of the Income Tax.

98-9 Thomas D. Lyon and Karen J. Saywitz, *Young Maltreated Children's Competence to Take the Oath*, 3 APPLIED DEVELOPMENTAL SCIENCE 16 (1999).

98-10 Thomas D. Lyon, *The New Wave in Children's Suggestibility Research: A Critique*, 84 CORNELL LAW REVIEW 1004 (1999).

98-11 Eric L. Talley, A Model of Hierarchical Judicial Auditing.

98-12 Charles D. Weisselberg, *Saving Miranda* (forthcoming in 84 CORNELL L. REV. (1998)).

98-13 Scott Altman, A Theory of Child Support.

98-14 Jennifer Arlen, *Comment: The Future of Behavioral Economic Analysis of Law* (forthcoming in VANDERBILT LAW REVIEW, Symposium issue (1998)).

98-15 Susan Athey, Kyle Bagwell, and Chris William Sanchirico, Collusion and Price Rigidity.

98-16 Michael S. Knoll, Hedging in an Economy with Asymmetric Taxes: A Comment on Moshe Ayre Milevsky & Eliezer Z. Prisman, *Hedging and Pricing with Tax Uncertainty: Managing Under an Arkansas Best Doctrine* (forthcoming in the ANNUAL PROCEEDINGS OF THE CHICAGO BOARD OF TRADE).

98-17 Nancy S. Marder, *The Myth of the Nullifying Jury* (forthcoming in 93 NORTHWESTERN LAW REVIEW).

98-18 Alexander S. P. Pfaff and Chris William Sanchirico, Environmental Self-Auditing: Setting the Proper Incentives for Discovering and Correcting Environmental Harm.

98-19 Chris William Sanchirico, Enforcement by Hearing: An Integrated Model of Evidence Production.

98-20 Chris William Sanchirico, Games, Information and Evidence Production: With Application to Legal History and "Decoupling."

98-21 Chris William Sanchirico, Taxes Versus Legal Rules as Instruments for Equity: A More Equitable View.

98-22 Matt Spitzer and Eric Talley, *Judicial Auditing*, 29 J. LEGAL STUD. 649 (2000).

1997

97-1 Scott Altman, *Should Child Custody Rules be Fair?*, 35 U. OF LOUISVILLE J. OF FAMILY LAW 325 (1997).

97-2 Jennifer Arlen, *Corporate Crime and Its Control*, THE NEW PALGRAVE DICTIONARY OF ECONOMICS AND THE LAW, Peter Newman (ed.), Vol. 1, p. 492 (1998)

97-3 Michael S. Knoll, *Products Liability and Legal Leverage: The Perverse Effects of Stiff Penalties*, 45 UCLA LAW REVIEW 99 (1997).

97-4 Paul G. Mahoney, *Contract Remedies: A Survey and Critique* (forthcoming in the ENCYCLOPEDIA OF LAW AND ECONOMICS).

97-5 Paul G. Mahoney, The Stock Pools and the Securities Exchange Act.

97-6 Jennifer Arlen and Reinier Kraakman, *Controlling Corporate Misconduct: An Analysis of Corporate Liability Regimes*, 72 NYU LAW REVIEW 687 (1997).

97-7 Lucian Arye Bebchuk and Howard F. Chang, *The Effect of Offer-of-Settlement Rules on the Terms of Settlement* (forthcoming in 28 JOURNAL OF LEGAL STUDIES 489 (June 1999)).

97-8 Linda S. Beres and Thomas D. Griffith, *Do "Three Strikes" Laws Make Sense? Habitual Offender Statutes and Criminal Incapacitation* (forthcoming in the GEORGETOWN LAW JOURNAL).

97-9 Thomas D. Lyon, *Scientific Support for Expert Testimony on Child Sexual Abuse Accommodation Syndrome* (forthcoming in Jon Conte, ed., THE KNOWNS AND UNKNOWNS OF CHILD SEXUAL ABUSE).

97-10 Judith Resnik, *Changing Practices, Changing Rules: Judicial and Congressional Rulemaking and Civil Juries, Civil Justice, and Civil Judging*, ALABAMA LAW REVIEW (forthcoming 1998).

97-11 Matthew L. Spitzer, *The Economics of Freedom of Expression* (forthcoming in the NEW PALGRAVE DICTIONARY OF ECONOMICS AND THE LAW).

97-12 Christopher D. Stone, *Too Many Fishing Boats, Too Few Fish: Can Trade Laws Trim Subsidies and Restore the Balance in Global Fisheries?* 24 ECOLOGY LAW QUARTERLY 505 (1997).

97-13 Eric Talley, *Interdisciplinary Gap-Filling: A Review of Game Theory and the Law*, J. OF LAW AND SOCIAL INQUIRY (forthcoming 1997).

97-14 H. Lorne Carmichael and W. Bentley MacLeod, Fair Territory: Preferences, Bargaining, and the Endowment Effect.

97-15 Ronald A. Cass, Richard D. Boltuck, Seth T. Kaplan and Michael S. Knoll, Antidumping.

97-16 Mary L. Dudziak, *The Little Rock Crisis and Foreign Affairs: Race, Resistance and the Image of American Democracy*, 70 SOUTHERN CALIFORNIA LAW REVIEW 1641 (1997).

97-17 Michael S. Knoll, Financial Innovation, Tax Arbitrage, and Retrospective Taxation: The Problem with Passive Government Lending.

97-18 Michael S. Knoll, The Principle of Marginal Deterrence in Torts: The Potentially Perverse Effects of Stiffer Tort Penalties and Higher Taxes.

97-19 George Lefcoe, How Buyers and Sellers of Development Land Deal with Regulatory Risk.

97-20 Thomas D. Lyon, *Are Battered Women Bad Mothers? Rethinking the Termination of Abused Women's Parental Rights for Failure to Protect,*in H. Dubowitz, ed., NEGLECTED CHILDREN: RESEARCH, PRACTICE AND POLICY (Thousand Oaks: Sage Publications, 1999, Chapter 12, pp. 237-260).

97-21 Thomas D. Lyon and Jonathan J. Koehler, *Where Researchers Fear to Tread: Interpretive Differences Among Testifying Experts in Child Sexual Abuse Cases,* in S. Ceci and H. Hembrooke, eds., WHAT CAN (AND SHOULD) BE SAID IN COURT: EXPERT WITNESSES IN CHILD ABUSE CASES (American Psychological Association: Washington, DC, 1998, Chapter 13, pp. 249-263).

97-22 W. Bentley MacLeod, Complexity, Contract and the Employment Relationship.

97-23 W. Bentley MacLeod and James M. Malcomson, Motivation and Markets.

97-24 Eric L. Talley, *Turning Servile Opportunities to Gold: A Strategic Analysis of the Corporate Opportunities Doctrine* (forthcoming in 108 YALE LAW JOURNAL (1998)).

1996

96-1 Antonio E. Bernardo and Eric L. Talley, *Investment Policy and Exit-Exchange Offers Within Financially Distressed Firms,* 51 J. FINANCE 871 (1996).

96-2 Howard F. Chang, *Carrots, Sticks, and International Externalities,* 17 INT'L REV. OF LAW & ECON. 309 (1997).

96-3 Howard F. Chang, *Liberalized Immigration as Free Trade: Economic Welfare and the Optimal Immigration Policy,* 145 U. PA. L. REV. 1147 (1997).

96-4 Erwin Chemerinsky & Catherine Fisk, *The Filibuster,* 49 STANFORD L. REV. 181 (1997).

96-5 Susanne Lohmann and Hugo Hopenhayn, *Delegation and the Regulation of Risk* (forthcoming in GAMES AND ECONOMIC BEHAVIOR).

96-6 Michael S. Knoll, *Products Liability and Legal Leverage: The Perverse Effects of Stiff Penalties,* 45 UCLA LAW REVIEW 99 (1997).

96-7 Susanne Lohmann, *Demosclerosis, or Special Interests 'R' Us: An Informational Rationale for Political Gridlock*, in Michelle R. Garfinkel and Stergios Skaperdas, eds., THE POLITICAL ECONOMY OF CONFLICT AND APPROPRIATION (Cambridge: Cambridge University Press, 1996, Chapter 7, pp. 119-130).

96-8 Susanne Lohmann, Electoral Incentives, Informational Asymmetries, and the Policy Bias Toward Special Interests.

96-9 Susanne Lohmann, *Federalism and Central Bank Autonomy: The Politics of German Monetary Policy, 1957-1992* (forthcoming in 51 WORLD POLITICS, April 1998).

96-10 Thomas D. Lyon & Jonathan J. Koehler, *The Relevance Ratio: Evaluating the Probative Value of Expert Testimony in Child Sexual Abuse Cases*, 82 CORNELL L. REV. 43 (1996).

1995

95-1 Ron Garet, *Deposing Finnis*, 4 SO. CAL. INTERDISCIPLINARY L. J. 605 (1995).

95-2 Michael S. Knoll, *An Accretion Corporate Income Tax*, 49 STANFORD L. REV. 1 (1996).

95-3 Michael S. Knoll, *A Primer on Prejudgment Interest*, 75 TEXAS L. REV. 293 (1996).

95-4 Mark Weinstein, *Profit Sharing Contracts in Hollywood: Evolution and Analysis*, 27 J. OF LEGAL STUDIES 23 (1998).

1994

94-1 Scott Altman, *Lurking in the Shadow*, 68 SO. CAL. L. REV. 493 (1995).

94-2 Jennifer Arlen and Deborah Weiss, *A Political Theory of Corporate Taxation*, 105 YALE L.J. 325 (1995).

94-3 Lucian Arye Bebchuk and Howard F. Chang, *An Analysis of Fee-Shifting Based on the Margin of Victory: On Frivolous Suits, Meritorious Suits, and the Role of Rule 11*, 25 J. OF LEGAL STUDIES 371 (1996).

94-4 Howard F. Chang, *An Economic Analysis of Trade Measures to Protect the Global Environment*, 83 GEORGETOWN LAW J. 2131 (1995).

94-5 Howard F. Chang, *Patent Scope, Antitrust Policy, and Cumulative Innovation*, 26 RAND J. OF ECON. 34 (1995).

94-6 Erwin Chemerinsky, *The Fifty-Fifth Cleveland-Marshall Fund Lecture: When the Government Must Make Content-Based Choices*, 42 CLEVE. ST. L. REV. 199 (1994).

94-7 Erwin Chemerinsky, *The Values of Federalism*, FLORIDA L. REV. (forthcoming).

94-8 Jeffrey A. Dubin and Matthew L. Spitzer, *Testing Minority Preferences in Broadcasting*, 68 SO. CAL. L. REV. 841 (1995).

94-9 Ronald R. Garet, *Gnostic Due Process*, 7 YALE J. LAW & HUMANITIES 97 (1995).

94-10 Gregory Keating, *Reasonableness and Rationality in Tort Theory*, 48 STANFORD L.REV. 501 (1996).

94-11 Michael S. Knoll, *A Primer on Prejudgment Interest*, 75 TEXAS L. REV. 293 (1996).

94-12 Michael S. Knoll, Put-Call Parity and the Development of the Modern Mortgage.

94-13 Michael S. Knoll, Socially Responsible Investment and Modern Financial Markets.

94-14 Elyn R. Saks, Interpreting Interpretation: The Limits of Hermeneutic Psychoanalysis (forthcoming in her book on Hermeneutics, Yale University Press, 1997).

94-15 Pablo Spiller and Matthew L. Spitzer, *Where is the Sin in Sincere? Sophisticated Manipulation of Sincere Judicial Voters (with applications to other voting environments)*, 11 J. LAW, ECON. & ORGAN. 32 (1995).

94-16 Christopher D. Stone, *What to Do About Biodiversity: Property Rights, Public Goods and the Earth's Biological Riches*, 68 SO. CAL. L. REV. 577 (1995).

94-17 Charles D. Weisselberg, *The Exclusion and Detention of Aliens: Lessons From the Lives of Ellen Knauff and Ignatz Mezei*, 143 UNIV. PENN. L. REV. 933 (1995).