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The challenge of writing histories of ‘women’: the case of women and the law in late medieval Ireland

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ABSTRACT. *Critiques of women's history based on intersectional analysis have demonstrated the importance of recognising differences between women and the perils of assuming commonality of experience based on gender. The idea that we can treat women as a group in some meaningful way is further complicated in medieval legal history by the fact that women's legal entitlements differed depending on their marital status. This paper examines women's experiences of the law in the English colony in late medieval Ireland. It argues that, despite the importance of ethnicity, social status and marital status in shaping different women's experiences of the law, gender played a significant role in their legal arguments and the ways in which juries and justices perceived them. Women's experiences at law were influenced in myriad ways by shared societal assumptions about their vulnerability and subordination to men. These assumptions influenced women regardless of the many social divisions and circumstances that made each woman unique. This study finds, therefore, that 'women' is a legitimate and productive category for historical research in the late medieval legal context but urges historians to interrogate more robustly why 'women' is an appropriate analytical category for their specific historical questions.*

Thirty years ago, the ‘Agenda’ identified an ambitious programme for Irish women’s history and great strides have been made in many areas of research identified by its authors. Other topics which it raised, however, remain relatively unexplored and the importance of the ‘Agenda’ importance as a guide to promising avenues of enquiry continues. At the same time, there is a need to re-examine aspects of the ‘Agenda’, including its treatment of women as a group in a relatively unproblematised way.[1] It frequently acknowledges the importance of class, culture, and religion in shaping women’s lives but does not see these differences between women as serious barriers to the creation of a ‘history of women’. Scholars exploring topics suggested by the authors of the ‘Agenda’ must take account of the ways in which the landscape of women’s history has shifted in the intervening years and engage with the challenges associated with the use of ‘women’ as a category of historical analysis. This paper responds in two ways to the ‘Agenda’. It is, first, a discussion of women’s experience of the law using the types of legal sources identified

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[1] ‘Women’ are defined in this article as persons in the gendered social category of ‘women’ as identified by their personal names and terms like ‘wife’, ‘daughter’ and ‘widow’. This definition relates to the way in which these people were seen and classified in medieval society; we cannot access their own ways of thinking about their gendered identities.

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in the 'Agenda' as being underutilised for the history of women in Ireland.[2] In using this legal material it follows in the tradition of one of the authors of the 'Agenda', Mary O'Dowd, and her work on women in the records of the Irish court of chancery in the later sixteenth and seventeenth centuries. It also builds on important research in the legal history of women in medieval and early modern Britain and Europe completed in the last few decades.[3] Secondly, it engages with major shifts in women's history in the decades since the 'Agenda' was published that complicate and call into question the validity of writing histories of women, using the specific case of legal history in late medieval Ireland.

When we define ourselves as historians of women and conduct research on the experiences of women in a given time, place and context, we are implicitly arguing for the importance of gender as a determinative factor in shaping the lives of the people we study. Furthermore, we imply that women, as a group, have something significant in common with one another by virtue of their gender. This may seem obvious, and it is clear that in the medieval period, as in most historical periods, the impact of societal expectations about how women or men should behave was powerful. Set against this awareness of the power of medieval society's gender expectations to shape people's lives, however, is the recognition that class, wealth, religion, ethnicity and many other factors could be equally or more influential. Lessons learned from third-wave feminism, and highlighted particularly by Kimberle Crenshaw and other scholars of colour, have brought a greater understanding of the importance of examining women in an intersectional manner.[4] This means we must recognise the ways in which individual women's different circumstances, and often disadvantages — by virtue of, for example, class, race and ethnicity — can amplify one another, and make the experiences of one woman vastly different from another. As Mary Spongberg observed in 2002:

[2] Margaret MacCurtain, Mary O'Dowd and Maria Luddy, 'An agenda for women's history in Ireland, 1500–1800' in *I.H.S.*, xxviii, no. 109 (May 1992), p. 7.

[3] Mary O'Dowd, 'Women and the Irish chancery court in the late sixteenth and early seventeenth centuries' in *I.H.S.,* xxxi, no. 124 (Nov. 1999), pp 470–87. This wider historiography is enormous but the contents of a few volumes have influenced this research on law and life cycle most: Tim Stretton and Krista Kesselring (eds), *Married women and the law: coverture in England and the common law world* (Montreal, 2013); Cordelia Beattie and Matthew Frank Stevens (eds), *Married women and the law in premodern northwest Europe* (Woodbridge, 2013); Bronagh Kane and Fiona Williamson (eds), *Women, agency and the law, 1300–1700* (London, 2013); Sara Butler, *Divorce in medieval England: from one to two persons in law* (London, 2013).

[4] Crenshaw coined the influential term 'intersectionality' in a work of legal scholarship in 1989, and other prominent scholars and activists like Angela Davis also highlighted the different ways in which class, race and gender combine to marginalise African-American women specifically: Kimberle Crenshaw, 'Demarginalizing the intersection of race and sex: a Black feminist critique of antidiscrimination doctrine, feminist theory and antiracist politics' in *University of Chicago Legal Forum*, iss. 1, art. 8 (1989); Angela Davis, *Women, race and class* (New York, 1981). Historians have since drawn on these insights, though medievalists have been slower to explicitly engage with the term 'intersectionality', as Weikert and Woodacre pointed out in their 2016 volume on gender and status in the middle ages: Ellen Hartigan-O'Connor and Lisa G. Materson (eds), *Oxford handbook of American women's and gender history* (Oxford, 2018), pp 3–4; Katherine Weikert and Elena Woodacre, 'Gender and status in the medieval world' in *Historical Reflections*, xlii, no. 1 (2016), p. 3.

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> while second-wave feminism had generated the need for a 'history of women', the emergence of a more diffuse and divergent feminism rendered such a project problematic. Historians of women were forced to recognise that they had adopted the essentialist and universalising tendencies they had critiqued in masculinist history. This recognition marked the beginning of a new type of women's history, focused not only on issues of gender but also differences among women produced by race, class and sexuality.[5]

To apply this intersectional thinking to the specific context of legal history in later medieval Ireland, is it reasonable to argue that the legal actions and opportunities of a wealthy and influential English widow like Agnes de Valence (d. *c.*1310) were similar in some significant way to those of Joan Brennan, an anglicised and likely unmarried Irish woman who was a glover's apprentice in Dublin in 1490?[6] How much did either have in common with, say, a married Irish woman living as an unfree labourer on the lands of Elizabeth de Burgh in Lisronagh, County Tipperary, when they were surveyed in 1333?[7] Each woman's ability to afford legal advice, the courts they could access, the legal problems they were likely to encounter and their cultural and social background differed immensely.

The fracturing force of intersectional analysis on women as a group is exacerbated for historians of medieval women and the law by the fact that, in many medieval legal systems, and in the English system of law operating in the English colony in Ireland, women had different legal entitlements depending on their marital status. Under English law the principle known as coverture ensured that (in theory at least) married women were rarely able to plead in common law courts without their husbands; marriage, thus, constrained their legal independence, though it often gave them other advantages.[8] Although coverture was not uniformly implemented in English courts in medieval Ireland, even in those courts where it was the usual practice, it did ensure that many married women's experiences at law differed from those of their widowed or unmarried counterparts. Because of the differences in

[5] Mary Spongberg, *Writing women's history since the Renaissance* (Basingstoke, 2002), pp 229–39.

[6] Cormac Ó Cléirigh, 'The absentee landlady and the sturdy robbers: Agnes de Valence' in C. E. Meek and M. K. Simms (eds), *'The fragility of her sex'? Medieval Irishwomen in their European context* (Dublin, 1996), pp 101–18; Colm Lennon and James Murray (eds), *The Dublin city franchise rolls, 1486–1512* (Dublin, 1998), p. 25.

[7] This rental names a number of betaghs, three of them women, one a widow and the others perhaps singlewomen, but some of the many men named would have had wives whose names are not recorded. Betaghs were unfree labourers usually (though not always) of Irish descent whose status was similar to serfs in England, though like serfs their exact entitlements and responsibilities probably varied locally: Edmund Curtis, 'Rental of the manor of Lisronagh, 1333, and notes on betagh tenure in medieval Ireland' in *P.R.I.A.*, 43c (1935–7), pp 46–7; J. A. Otway-Ruthven, 'The native Irish and English law in medieval Ireland', pp 145–6 and 'The organisation of Anglo-Irish agriculture in the middle ages', pp 282–3, 285 in Peter Crooks (ed.), *War, government and society in medieval Ireland: essays by Edmund Curtis, A. J. Otway-Ruthven and James Lydon* (Dublin, 2008) [originally published in *I.H.S.*, vii, no. 25 (1950), pp 1–16 and in *Journal of the Royal Society of Antiquaries of Ireland*, lxxxi, no. 1 (1952), pp 1–13]; Linzi Simpson, 'Anglo-Norman settlement in Uí Briúin Cualann, 1169–1350' in Ken Hannigan and William Nolan (eds), *Wicklow history and society: interdisciplinary essays in the history of an Irish county* (Dublin, 1994), p. 229.

[8] See notes 28–29 below.

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legal entitlements depending on marital state, many historians of women and the law choose to analyse married women separately from widows or singlewomen.[9]

Without essentialising or relying on a biological understanding of women, that is to say focusing on social constructions of what it meant to be a man or a woman and what behaviours and roles were considered appropriate for each — in other words, looking at gender rather than sex — can we make a case for studying ‘women and the law’? How do we justify our focus on this disparate group as an analytical category? This article will argue that, despite our recognition of individual women’s differences from each other and the legal theory that stipulated different entitlements for women depending on their marital status, there is still a strong case to be made for writing histories of women and the law in the English colony in medieval Ireland. This argument will be made through an examination of case law from the courts of the colony, spanning from the late thirteenth to the late fifteenth century and exploration of the influence of gender on the implementation of the law in practice. It will focus on the ways in which gendered ideas of acceptable female behaviour affected female litigants, regardless of their class, ethnicity or marital status. It will also argue that the more we accept that law is both created by and mediated through the society which it governs, the more we can see the misogynistic assumptions of medieval society expressed in the legal sphere. The pleading strategies, the ways in which litigants were perceived by jurors and judges, and their ultimate success, or otherwise, at law, were all influenced by underlying gendered assumptions that shaped the experiences of married women, singlewomen and widows alike. Thus, one outgrowth of the (not so new) ‘new legal history’, which sees law as societally embedded and enacted, is that gender has much a greater role to play than is apparent from just the theory of how the law should operate.[10]

I

The secular legal system in place in the English colony in Ireland was created in the decades following the English invasion of Ireland (1167–72) and was based on English models.[11] The area over which this system was in place was not static, as the boundaries of the colony (here also called ‘English Ireland’) shifted, first expanding and then, in some areas, being pushed back in the centuries after the

[9] Cordelia Beattie, *Medieval single women: the politics of social classification in late medieval England* (Oxford, 2007); Stretton & Kesselring (eds), *Married women and the law*; Beattie & Stevens (eds), *Married women and the law*; Judith Bennett and Amy Froide (eds), *Singlewomen in the European past, 1250–1800* (Philadelphia, 1998).

[10] One early pioneer of ‘new legal history’ attempted to ‘understand the law not so much as it may appear to philosophers but more as it had meaning for workaday people and was shaped by them to their wants and vision’. Subsequent legal historians have sought to understand the ‘social function of law’ in part by turning to case law rather than treatises about the law: Samuel Astorino, ‘History and legal discourse: the language of the new legal history’ in *Duquesne Law Review,* xxiii (1984–5), p. 364.

[11] For an overview of the secular legal system in the colony, see Geoffrey Hand, *English law in Ireland, 1290–1324* (Cambridge, 1967). For the Irish parliament as a legal venue, see H. G. Richardson and G. O. Sayles, *The Irish parliament in the middle ages* (Philadelphia, 1952), pp 196–226; Steven G. Ellis, *Reform and revival: English government in Ireland, 1470–1534* (New York, 1986), pp 143–64.

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invasion.[12] The rest of the island was controlled by Irish lords and, though not politically centralised in a stable and enduring way, had a cultural and social coherence that maintained its separateness in the minds of both the Irish and the English of Ireland despite extensive assimilation and cooperation across ethnic lines.[13] The island of Ireland held, therefore, two socio-political regions for the entire period discussed here, and in Irish areas Irish law (sometimes called Brehon law) was in place, while the extensive and shifting borderlands saw a mix of legal systems and practices.

At its greatest extent in the later thirteenth century the colony stretched across most of the island, apart from large sections in western Ulster, but the most intensively settled parts of the colony lay along the eastern seaboard and in the south/south-east of the island.[14] These areas never fell out of colonial control and it is where the English legal system was most firmly and enduringly implanted. It is from the east/southeast that the legal cases discussed in this article come. As in England, the secular legal system co-existed alongside an ecclesiastical one, in which church courts operated using the shared canon law that governed ecclesiastical courts across western Christendom.[15] Different types of jurisdiction were also in place within the English secular legal system itself and the interlocking web of local and central courts operational in the colony. These included, at the local level, manorial courts that operated according to customary law as well as urban hundred courts and courts of the liberties. The judgments of these local courts could be appealed in the central common law courts of the colonial administration including the travelling general eyre, the Dublin bench and the justiciar's court, as well as the highest court of appeal in the colony, the Irish parliament.[16] The judicial role of the

[12] The 'expansion'/'contraction' model of colonial history, whereby the later twelfth and the thirteenth centuries are seen as periods of expansion and the fourteenth and to a lesser extent the fifteenth as periods of contraction for the colony, remains dominant in the historiography. It has been increasingly nuanced, however, by examinations like Steven Ellis's on areas of economic recovery in the fifteenth century or Robin Frame's stress on seeing the later medieval period as one of local adaptation to the colonial environment. Both Frame and Ellis emphasise the local/regional differences in these trends towards expansion and contraction: Robin Frame, *Colonial Ireland, 1169–1369* (Dublin, 2012), pp 128–53, esp. p. 131; Steven Ellis, 'The English Pale: a failed entity?' in *History Ireland,* ix, no. 2 (Mar./Apr. 2011), pp 14–17. The nuancing effect of their work but preservation of the core model of expansion and contraction is evident in the most recent survey of Ireland's medieval history: see Beth Harland, 'The height of English power, 1250–1320' and Brendan Smith, 'Disaster and opportunity, 1320–1450' in Brendan Smith (ed.), *The Cambridge history of Ireland*, i: *600–1550* (Cambridge, 2018), pp 222–43 and pp 243–71 respectively.

[13] For this cooperation, see Sparky Booker, *Cultural exchange and identity in late medieval Ireland: the English and Irish of the four obedient shires* (Cambridge, 2018).

[14] For cartographic representations of the changing extent of the colony, see Seán Duffy (ed.), *Atlas of Irish history* (Dublin, 2012), pp 37–47.

[15] Church courts were responsible for disciplining clerics and dealing with cases related to sexual sins, marriage and probate, and also heard some cases of defamation and breach of oath. The hierarchy of church courts stretched all the way from small local courts in rural deaneries up to the courts of the papacy and decisions in the lower courts could be appealed in the higher ones. For the remit of the church courts and comment on local variation in procedure and practice of canon law, see R. H. Helmholz, *The Oxford history of the laws of England: the canon law and ecclesiastical jurisdiction from 597 to the 1640s* (Oxford, 2004), pp 206–21, esp. pp 206–08.

[16] In Ireland, as in England, the general eyre declined in the first half of the fourteenth century and the last session seems to have taken place in 1322: Hand, *English law in Ireland*, p. 104.

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parliament is increasingly evident on the parliament rolls from the mid-fifteenth century onwards and until the sixteenth century, when an Irish court of chancery was fully established. In the later middle ages the Irish parliament was the primary legal venue in the medieval colony that operated according to equity principles (like the court of chancery in England) and was, therefore, more flexible in terms of its procedure and judgements than common law courts.[17] These various secular, English-style courts, therefore, differed in procedure and remit and sometimes jostled with one another for jurisdiction, but, as in England, more often cooperated.[18]

The legal system in the English colony in Ireland continued to evolve through the high and later middle ages, with some regional differences, but largely in step with England; innovations from England were communicated to the colony through royal directives, legislation of the English parliament, the education of lawyers from the colony in England and the deployment of English justices to the colony.[19] As subjects of the crown, English colonists in Ireland also had the right to resort to royal courts in England, and there to appeal cases that had been determined in colonial courts. As Ellis noted, this right to appeal ensured that practice in Irish courts could not drift too far from that in English ones.[20] This article, therefore, while acknowledging that the systems were not identical, uses comparisons and insights gained from the study of English law in England to reflect on the material from the colony.

II

As noted above, a woman's marital status dictated a great deal about her legal entitlements and capabilities under English law. From a purely theoretical standpoint, which focuses on how the law should operate according to legal treatises, widows and

[17] For the legal remit of the Irish chancery, see Ellis, *Reform and revival*, pp 143–64; H. F. Berry (ed.), *Statute rolls of the parliament of Ireland, reign of King Henry VI* (Dublin, 1910), pp 169–70, 173–4; S. G. Ellis, 'Parliament and community in Yorkist and Tudor Ireland' in Art Cosgrove and J. I. McGuire (eds), *Parliament and community: Historical Studies XIV* (Belfast, 1983), pp 45–51. For the Irish parliament in a later period (but with useful comment on petitions in the later fourteenth century), see Coleman Dennehy, *The Irish parliament, 1613–1689: the evolution of a colonial institution* (Manchester, 2019), pp 18–57.

[18] Much has been made of the competition between courts for cases and this is evident in the Irish material just as in the English, but cooperation between different courts was even more prevalent than competition: Edward Peter Stringham and Todd J. Zywicki, 'Rivalry and superior dispatch: an analysis of competing courts in medieval and early modern England' in *Public Choice*, 147, issue 3–4 (June 2011), p. 498; Daniel Klerman, 'Jurisdictional competition and the development of common law' in *University of Chicago Law Review*, lxxiv, no. 4 (fall 2007), pp 1179–85.

[19] Paul Brand, 'Ralph de Hengham and the Irish common law' in *Irish Jurist*, xix (new series), part 1 (summer 1984), p. 107; Paul Brand, 'The birth of a colonial judiciary: the judges of the lordship of Ireland, 1210–1377' in W. N. Osborough (ed.), *Explorations in law and history: Irish legal history society discourses, 1988–1994* (Dublin 1995), pp 46–8; Paul Brand, 'Irish law students and lawyers in late medieval England' in *I.H.S.,* xxxii, no. 126 (Nov. 2000), pp 161–73.

[20] Ellis, *Reform and revival*, pp 143–64; Steven G. Ellis, 'Tudor state formation and the shaping of the British Isles' in Steven G. Ellis and Sarah Barber (eds), *Conquest and union: fashioning a British state, 1485–1725* (London, 1995), p. 57.

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singlewomen who were of age had little in common with married women. Indeed, some medieval discussions of married women's position in English law compares them not to other women, but to monks, to minors and to other persons with limited legal capabilities.[21] Coverture is the term usually used to describe the limitations on married women's legal activities and property ownership. It is described by Baker thusly:

> According to law as stated in Bracton, the married woman was 'under the rod' of her husband, who was both her sovereign and her guardian. In the law French of the next generation, she was said to be *feme covert,* as opposed to a *feme sole* (single woman), and her husband was her *baron* (lord). If she killed him it was not simply murder, but petty treason. He looked after her and her property during the 'coverture', whereas she lost the capacity to own separate property or make contracts. She could not sue or be sued at common law without her baron, and this prevented her from suing him for any wrong done to her.[22]

In contrast, widows had full legal capabilities and could plead in common law and equity courts and make contracts, as could singlewomen who were of age.[23] Because of this legal independence, many historians have seen widowhood as a desirable state for women, particularly wealthy ones. Rhoda Friedrichs summarised this view in 2006, stating that 'widowhood has been regarded as a uniquely advantageous state for women of property in the late Middle Ages. It was a commonplace in the fourteenth and fifteenth centuries that women longed to be widows because of the freedom of action and of choice which widowhood brought them.'[24] The idea that widowhood was an advantageous state has been influential, though not unquestioned, in the historiography of medieval Ireland. Gillian Kenny explained why widows ever chose to remarry, given the legal disabilities they would then encounter: 'there are many reasons why widows remarried; loneliness, fear, and inability to administer land'.[25] This rosy view of medieval widowhood, however, has been challenged in important contributions by Friedrichs and Judith Bennett among others. The more precarious economic circumstances of many widows and singlewomen has been identified as a key way in which they may have often

[21] Tim Stretton, 'Coverture and unity of persons' in Wilfred Prest (ed.), *Blackstone and his commentaries: biography, law, history* (Oxford, 2009), p. 119; Stretton and Kesselring, 'Introduction' and Sara Butler, 'Discourse on the nature of coverture in the later medieval courtroom' in Stretton & Kesselring (eds), *Married women and the law*, pp 13, 31.

[22] J. H. Baker, *Introduction to English legal history* (4th ed., Oxford, 2007), p. 484.

[23] Judith Bennett and Christopher Whittick, 'Philippa Russell and the wills of London's late medieval singlewomen' in *The London Journal,* xxxii, no. 3 (Nov. 2007), p. 253.

[24] Rhoda Friedrichs, 'The remarriage of elite widows in the later middle ages' in *Florilegium,* xxiii, no. 1 (2006), p. 81.

[25] Gillian Kenny, 'The power of dower: the importance of dower in the lives of medieval women in Ireland' in Christine Meek and Catherine Lawless (eds), *Pawns or players? Studies on medieval and early modern women* (Dublin, 2004), pp 68, 74; Katherine Simms, 'Women in Norman Ireland' in Margaret MacCurtain and Donncha Ó Corráin (eds), *Women in Irish society: the historical dimension* (Dublin, 1978), pp 18–19. Bernadette Williams noted the positive aspects of remarriage for widows of property and those involved in business in later medieval Ireland, while O'Dowd, as discussed below, argued that husbands were often materially beneficial to female litigants: Bernadette Williams, 'Alice Kyteler: a woman of considerable power' in Christine Meek (ed.), *Women in Renaissance and early modern Europe* (Dublin, 2000), p. 73; see below, n. 31.

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occupied a less favourable position than married women.[26] Examples from medieval Ireland suggest that some women, instead of taking advantage of their legal independence while widowed, in fact waited until they remarried to pursue legal cases.[27] This may have been one reason that many widows of property remarried quickly.[28]

Women gained practical legal advantages when they married; their husbands might offer financial support, access to their legal networks and connections and, especially by the later fourteenth and fifteenth centuries and for high-status women, often some experience or training in the legal system.[29] As Matthew Stevens has shown for women pleading at the court of common pleas in medieval London, and likewise Mary O'Dowd for women in the Irish court of chancery in the early modern period, the support of a husband, financial and otherwise, was sometimes key to legal success.[30] Thus, the negative impact of marriage on a woman's experience of the law may have been overestimated, perhaps in part because many modern historians, informed by the second-wave feminism that underlay so much of the history of women in the 1970s, 1980s and 1990s, perceived independence of action as inherently beneficial. Given how many female (and indeed male) litigants in medieval Ireland drew on their male personal and familial connections to ensure success at law, it is likely that many medieval

[26] Friedrichs, 'Remarriage', pp 69–83; Judith Bennett, 'Widows in the medieval English countryside' in Louise Mirrer (ed.), *Upon my husband's death: widows in literature and histories of medieval Europe* (Ann Arbor, 1992), pp 69–114, esp. p. 69.

[27] The case of Joan, widow of James de la Hyde, is discussed below, but Alice, widow of John de la Felde, also may have waited until marrying John Belynges to pursue her dower claim; her new husband John Belygnes was a co-plaintiff when she sued for her dower provision to be delivered from the custody of William Nugent in the Dublin/Common Bench in the late 1370s/early 1380s. John de la Felde was dead by January 1376: Peter Crooks (ed.), *CIRCLE: A calendar of Irish chancery letters,* c.*1244–1509* [hereafter *CIRCLE*], Close Roll 8 Richard II, no. 69; Patent Roll 50 Edward III, no. 1.

[28] This was the case elsewhere among propertied widows: Friedrichs, 'Remarriage', p. 69. We must rely on unusually fortunate source survival to reconstruct the marital history of women from medieval Ireland and it is, therefore, difficult to get an overall picture of how quickly widows remarried on average but an in depth examination of all of the chancery material, in which the women below are recorded, might provide a more detailed picture. The chancery material from the late fourteenth and early fifteenth centuries reveals a number of quick remarriages among widows of property. Simon Cusack died on 8 August 1385 and his widow Nicola petitioned for her dower alongside her new husband John Shryggeley by the 24 October 1385: *CIRCLE,* Close Roll 9 Richard II, no. 59, Close Roll 9 Richard II, no. 61. A woman named Agnes, whose husband Walter Kerdyff was alive in September 1400, had married John Birforde by March 1402: *CIRCLE,* Patent Roll 1 Henry IV, no. 152, Close Roll 4 Henry IV, no. 14. Katherine, widow of Philip Cruys, was remarried to William Stokys by 5 August 1389, but at this stage Philip's heir, Henry Cruys, was busy securing his inheritance, a step that usually took place soon after a landowner's death (and the note in no. 4 that 'it appears to the justiciar and council that Philip was dead' reinforces the supposition that he had died recently): *CIRCLE,* Patent Roll 13 Richard II, nos 4, 5, 6, 17, 18, 19.

[29] Many of the wealthy English of Ireland went to the Inns of Court in London to receive legal training and others would have had their own experiences at law to draw upon: Brand, 'Irish law students and lawyers, pp 161–73.

[30] Matthew Frank Stevens, 'London's married women: debt litigation and coverture in the court of common pleas' in Beattie & Stevens (eds), *Married women and the law*, pp 129–31; O'Dowd, 'Women and the Irish chancery court', p. 473.

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women did not perceive the legal independence afforded to widows in the same positive light.

The negative assessment of married women's position under the law is, therefore, due in part to the descriptions of coverture in treatises on English law, particularly the highly influential twelfth and thirteenth-century legal treatises known as Glanville and Bracton, rather than legal practice as assessed through analysis of case law.[31] This, however, is changing, as social historians of the law in pre-modern England turn increasingly towards case law. It is important to note that throughout the history of coverture, which persisted into the modern period, there were many instances in which secular English courts treated wives as their own legal entities, distinct from their husband. This partial application led Baker to term coverture a 'legal fiction': useful and sometimes relevant, but never resulting in the wife's legal identity being subsumed into the husband's.[32] Thus, even when coverture was adopted, it was, in practice, not monolithic and recent work on medieval coverture has highlighted its porousness and inconsistency of application.[33] This research on the flexibility of coverture has tended to focus on equity courts, manorial and other local courts, while the basic assumption that coverture operated in central common law courts has been subject to less scrutiny.[34] Much of the existing

[31] The authorship and dating of both texts are contested but Glanville is usually attributed to the 1180s while Bracton was written some fifty or sixty years later. See, for an introduction and short bibliography, Baker, *Introduction to English legal history*, pp 175–7, 193–4, and for a relatively recent revision of the arguments about Bracton, see Paul Brand, 'The date and authorship of *Bracton*: a response' in *Journal of Legal History*, xxxi, no. 3 (Dec. 2010), pp 217–44.

[32] Baker, *Introduction to English legal history*, p. 484; Lizabeth Johnson, 'Married women, crime and the courts in late medieval Wales' in Beattie & Stevens (eds), *Married women and the law*, pp 77–84. The idea of 'unity of persons' in marriage is a post-medieval one and one that, moreover, was not an accurate reflection of practice even after it became an influential theory: Stretton, 'Coverture and unity of persons', p. 115.

[33] See Beattie & Stevens (eds), *Married women and the law*, esp. chapters 4, 5, 6 and 7; Matthew Frank Stevens, 'London women, the courts and the "golden age": a quantitative analysis of female litigants in the fourteenth and fifteenth centuries' in *London Journal*, xxxvii, no. 2 (July 2012), p. 75; Butler, 'Discourse on the nature of coverture' in Stretton & Kesselring (eds), *Married women and the law*, p. 39.

[34] Stevens's work is an important exception: 'London's married women', pp 115–32. Joanna Bailey has highlighted the opportunities available to women in non-common law courts, and stressed the law of agency as an avenue for women in early modern England to circumvent the barriers to their ability to make formal contracts without their husbands: Joanne Bailey, 'Favoured or oppressed? Married women, property and 'coverture' in England, 1660–1800' in *Continuity and Change*, xvii, no. 3 (Dec. 2002), pp 351–72. Beattie also highlights the ways in which the law of agency or necessity softened the disabilities imposed by coverture: Cordelia Beattie, 'Married women, contracts and coverture in late medieval England' in Beattie & Stevens (eds), *Married women and the law*, pp 133–54. Beattie and Stevens argue that the existence of local and ecclesiastical courts lessened the impact of coverture and many of the chapters in this collection discuss the evidence for married women's legal actions in those jurisdictions: Beattie & Stevens, 'Introduction' in idem (eds), *Married women and the law*, p. 9; Lizabeth Johnson, 'Married women, crime and the courts in late medieval Wales', pp 71–90, Miriam Müller, 'Peasant women, agency and status in mid-thirteenth to late fourteenth century England: some reconsiderations', pp 91–113, esp. p. 94, and Alexandra Shepard, 'The worth of married women in the English Church courts, *c*.1550–1730' in Beattie & Stevens (eds), *Married women and the law*, pp 191–212. Mary O'Dowd argued that non-common law jurisdictions in early modern Ireland ameliorated

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work on women in medieval Ireland has assumed that coverture was in force in the colony from its inception, but recent work by Matthew Stevens on coverture in England suggests that, although Bracton treated coverture as approved practice in the mid-thirteenth century, it was only gaining in strength in the late thirteenth-century and took some time to be disseminated from central to regional courts.[35] As examined below, there is evidence of this incomplete application of coverture in the royal courts of the colony in Ireland in the later thirteenth and early fourteenth centuries.[36]

The dominance of coverture as a frame through which to view married women's experiences of the law has also obscured the importance in the medieval legal landscape of local and ecclesiastical jurisdictions in which coverture was not the rule. To comprehend women's experiences of the law in the round, the full legal picture, including ecclesiastical courts which ruled on cases relating to marriage, must be taken into account and the interplay between ecclesiastical and secular law will be noted in relation to cases discussed below. Additionally, the focus on the differences in legal entitlements between single women, married women and widows has not adequately taken into account the fact that legal disputes often spanned different phases of women's lives. That is to say, women often had to pursue cases that arose while they were widowed after they remarried or deal with their husband's estates when they were widowed. There was, as such, a continuity in women's legal concerns and aims as they shifted from one marital state to another. Each of these complicating factors necessitates a more flexible understanding of coverture and its impact on female litigants. This impact will be discussed further below using examples from cases heard before the secular courts of the English colony in Ireland.

III

What can we tell from case law about how married women behaved and were treated in English secular courts in Ireland? As we know, they retained their own, distinct legal personality, as demonstrated by common practices like the employment by married women of different legal professionals (both essoiners and attorneys) than their husbands.[37] The treatment of husband and wife as

some of the disabilities of common law for married women: 'Women and the law in early modern Ireland' in Meek (ed.), *Women in Renaissance and early modern Europe*, p. 96.

[35] Gillian Kenny, *Anglo-Irish and Gaelic women in Ireland,* c.*1170–1540* (Dublin, 2007), pp 61–2; Gillian Kenny, 'Two worlds collide: marriage and the law in medieval Ireland' in Beattie & Stevens (eds), *Married women and the law*, p. 53; K. W. Nicholls, 'Irish women and property' in Margaret MacCurtain and Mary O'Dowd (eds), *Women in early modern Ireland* (Edinburgh, 1991), pp 17–32. Matthew Stevens illustrated this spread of coverture from central courts to local ones by showing percentages of cases in courts from different areas of England and Wales with female litigants in the early fourteenth compared to the fifteenth century: Stevens, 'London's married women', pp 133–54.

[36] The incompleteness of the application of coverture in royal courts in Ireland — in line with Stevens's findings from England — has been noted previously by this author and by Stephen Hewer: see above, n. 1; S. G. Hewer, 'Justice for all? Access by ethnic groups to the English royal courts in Ireland, 1252–1318' (Ph.D. thesis, Trinity College Dublin, 2018), p. 113.

[37] *Calendar of justiciary rolls Ireland*, ed. James Mills *et al.* (3 vols, Dublin, 1905–56) [hereafter *C.J.R.*], i, pp 104, 123, 164, 321, 329. Essoiners were 'employed to make formal excuses for [a litigant's] non-appearance at court' and their role gradually became absorbed into that of attorney: Baker, *Introduction to English legal history*, p. 156.

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separate legal entities in civil suits sometimes resulted in split verdicts, in which one member of a married couple was found guilty while the other was not. In English Ireland examples of these split verdicts survive from a session of the justiciar's court held in Naas in 1302 and the hundred court of New Ross in 1376. In both cases wives, but not their husbands, were found to have disseised (wrongfully dispossessed of their property) the plaintiffs, and the plaintiffs in both cases were ordered to pay fines for false accusations against the husbands.[38] Furthermore, records from the justiciar's court, which is the central common law court for which we have most evidence, indicate that one of the most well-known tenets of coverture — that women could not plead in civil cases in royal courts without their husbands as co-plaintiffs — was not uniformly followed in the later thirteenth and early fourteenth centuries. This was decades after it had been theorised in Glanville and Bracton.

Married women pleaded without their husbands as plaintiffs and appeared singly as defendants before the justiciar's court. In 1297, for example, Nesta, wife of Adam de Burton, appeared on her own at a sitting of the justiciar's court at Limerick and with no mention of her husband's absence in relation to her case of novel disseisin (this was an action litigants could take in common law courts if they had been unlawfully dispossessed of lands they held). Nesta had won her case already but had to appear when her opponents — unsuccessfully — appealed the ruling.[39] A successful debt case taken in the justiciar's court at Limerick by Juliana, wife of Philip le Waleys, in 1297 made no mention of her husband as co-plaintiff. This is particularly interesting because her case relates to debt rather than a dispute over land.[40] Some interpretations of coverture held that, since ownership of a woman's movable goods, including money, passed to their husband upon marriage, married women could not sue for debt because any money owed to them was owed instead to their husbands. Stevens's examination, however, has shown that married women in the fourteenth century routinely appeared as co-plaintiffs in debt cases before the court of common pleas in London, though he does not cite any examples of them appearing without their husbands.[41] The theoretical inability of married women to own movables under English law was not universally accepted, and historians of medieval and early modern England have shown that many men and women perceived goods that women brought to marriage as theirs.[42] Moreover, the church upheld the rights of married women to dispose of goods in wills, a stance predicated on the idea that they owned those goods. The friction between secular and canon law concerning married women's goods was apparent in England and in Ireland, where the citizens of Dublin complained to the crown in 1347 that prelates (perhaps specifically the archbishop of Dublin) protected the rights of married women in the city to make bequests of moveable goods.[43] Cordelia Beattie has examined the gap between canon law and English

[38] *C.J.R.*, i, pp 413–14; Edmund Curtis (ed.), *Calendar of Ormond deeds* (6 vols, Dublin, 1932–43), ii, p. 147, no. 213.
[39] *C.J.R.*, i, pp 97–8.
[40] *C.J.R.*, i, p. 163.
[41] Stevens, 'London married women', pp 133–54.
[42] Bailey, 'Favoured or oppressed?' pp 351–72.
[43] These goods were described as belonging to the women's husbands but according to the common law position this would be true of any goods the wife brought with her to the marriage or acquired thereafter: J. T. Gilbert (ed.), *Calendar of Ancient Records of Dublin* (17 vols, Dublin, 1889–1922), i, p. 145.

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law in their treatment of women's marital property and highlighted regional variations in how often married women made wills in different areas of England.[44] In English Ireland, just as Beattie found for some parts of England itself, the common law position on married women's moveable property was not fully enforced and many married women made wills.[45] This nuancing of our understanding of married women's disabilities at law — here relating to the right to own movables — lessens the gap in lived experience between women at different life cycle stages.

Married women from the colony who appeared before the justiciar's court alone sometimes did so because their husbands were absent in England or elsewhere, often on royal service.[46] Indeed, in some cases and in the interest of avoiding delays in the provision of justice, married women were asked by the court to answer cases alone if their husband was repeatedly absent. A dispute lasting at least six years (from 1296 until 1302) in the central common law courts of the colony between Nicholas de Neterville, a landowner of County Meath, and the archbishop of Armagh involved the claims of two married women. These two sisters — Matilda (sometimes called la Botilere, which was presumably the name of her deceased husband) and Margaret — were daughters of Alexander de Notingham and they claimed the right to portions of land in Nobber, County Meath as an inheritance from him.[47] The record of the case noted that Margaret's husband, Richard de London, 'without whom … [Margaret] … cannot answer', repeatedly essioned himself (made excuses for his absence and failure to answer the archbishop's case).[48] Finally, the court decided that Margaret should answer alongside her sister Matilda and without her absent husband. The women countered with several objections, one being that Matilda should not appear without her husband, John de Boneville, who had not yet been mentioned in the record of the case and without whom Matilda already had been admitted to defend. The court found that, as she already had been admitted to defend without her husband, the case should progress; the archbishop, therefore, faced two married sisters in the case, both of whom appeared without their husbands. The court found against Matilda, but she appealed, claiming that she was named incorrectly in the record and that when she was told to answer alone without her husband, her husband John was in fact present in court; she thus argued that there were multiple errors in the court record. Matilda's initial willingness and subsequent contestation of her right to plead alone, as well as her failure to object to her supposedly incorrect name until after the verdict had gone against her, raises the possibility that she and her legal counsel allowed errors to occur and even played on the very flexibility of the application of coverture to provide excuses to contest the eventual verdict.

[44] Cordelia Beattie, 'Married women's wills: probate, property and piety in later medieval England' in *Law and History Review,* xxxvii, no. 1 (2019), p. 30.

[45] Cordelia Beattie, 'Married women's wills in late medieval Ireland, England and Scotland' at James Lydon Seminar, Trinity College Dublin, November 2015. For many of these married women's wills from Dublin, see H. F. Berry (ed.), *Register of wills and inventories of the diocese of Dublin in the time of Archbishops Tregury and Walton 1457–1483* (Dublin, 1896–7).

[46] *C.J.R.*, i, p. 306.

[47] The case heard in the Dublin bench was appealed in the justiciar's court and the record of the case includes a transcription of the bench's record; *C.J.R.*, i, pp 408, 431–9; *CIRCLE,* Close Roll 28 Edward I, nos 17, 22.

[48] There is an error in this record at this stage, where it confuses Margaret and Matilda.

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Another woman, Mabina, wife of Gerald Tyrel, may have used a similar legal strategy in a dispute about control of lands in west County Dublin that spanned the two years from 1297 to 1299 and included cases taken in three different central common law courts: the itinerant eyre, the Dublin bench and finally the justiciar's court. Emma, widow of Richard Tyrel, claimed the lands (a third of Tyrel's manor at Lyons) as her dower provision. The relationship between Emma and Mabina is not explained in the record of the case; that they were both married to men in the Tyrel family might suggest that they were in-laws of some kind and that Richard Tyrel was Gerald's father, brother, cousin or some other close relation that would explain his estate passing to Gerald on his death. However, the fact that Mabina was a co-plaintiff indicates that the claim was through her inheritance, not her husband's. Perhaps she too was a member of the Tyrel family (Richard's daughter?) and she had married a cousin or relation in Gerald.[49] The Tyrel family was a prominent office and landholding family of Kildare and west and south county Dublin, and Mabina's husband Gerald Tyrel was a particularly well-connected figure.[50]

Gerald was excused for his absence from proceedings before the Dublin bench because he was abroad in the King's service, as he was several times in this period. Mabina, however, appeared in person and without her husband before the justices of the bench, to defend her right to the lands at Lyons. In the next stage of pleading, Gerald appeared in person and Mabina by her attorney, who objected that she should not have been allowed to plead alone in the previous stage. Mabina may have chosen to plead alone while her husband was absent, knowing that she could later interrupt the progress of the lawsuit on those grounds. It is all the more interesting that on the occasion that she pleaded alone, Mabina came in person, not by attorney. We can only speculate as to whether this was part of a legal strategy and, if so, whether it was her own, wholly or in part, or if she was advised to do this by her attorney. Either way, this highlights one way in which the flexible application of coverture could be harnessed by married women to their own ends. Mabina and her attorney raised a number of other objections about errors in procedure in the case before the bench. Her opponent Emma answered (by her attorney) that the case had proceeded in the presence of the chief justiciar and so, if anything occurred amiss, it did so under his oversight. Emma's attorney did not, therefore, respond specifically to the issue of Mabina pleading alone, nor did the justice's decision that there had been an error. As a result, we cannot know how that specific argument about the inappropriateness of a wife pleading without her husband was received, though Mabina did succeed in retaining control of the lands in the short term.[51]

This material from the central common law courts in the late thirteenth century demonstrates the flexibility in the application of coverture and also, perhaps, an awareness among married women and their legal counsel that this flexibility could be used to their advantage. In discussing the depth and nature of the divide between married and unmarried women at law, it is important to note also that there

[49] Although marriage between cousins and other close relatives contravened canon law, dispensations from the papacy for such marriages indicate that they were relatively common in colonial Ireland as they were elsewhere, perhaps particularly at the higher levels of society: Sparky Booker, 'Intermarriage in fifteenth-century Ireland: the English and Irish in the "four obedient shires"' in *P.R.I.A.*, 113c (2013), p. 249.

[50] Áine Foley, 'Violent crime in medieval county Dublin: a symptom of degeneracy?' in Séan Duffy (ed.), *Medieval Dublin X* (Dublin, 2010), pp 226–7.

[51] *C.J.R.*, i, pp 211–14, 251, 288, 303; *CIRCLE,* Close Roll 26 Edward I, no. 51.

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were situations in which wives remained, in terms of the legal theory, entirely legally independent from their husbands. This included criminal cases.[52] Yet, though married women were prosecuted individually (i.e. without their husbands as co-defendants) in criminal cases, there is evidence that wider societal assumptions about power dynamics within marriage or, indeed, within non-marital relationships between men and women, influenced the decisions of justices and juries in criminal contexts. For example, when in Cork in 1295 William Savage and his wife and Robert Derby and his wife (neither woman is named) were found guilty of counterfeiting, the men were drawn and hanged while the women went free.[53] The leniency shown to the woman was in consideration, apparently, of the fact that they 'were their [Savage and Derby's] married wives'. This suggests that the jury took into account the marital relationship and assumed, in essence, that married women were under the control of their husbands and therefore not fully liable for their actions. Sentencing resulting from similar assumptions has been identified in medieval and early modern England: Sara Butler discusses a ruling in a Wiltshire eyre of 1249, when a woman named Christiana Sprot was acquitted of murder because she only took part in the act out of fear of her husband. As Butler notes, this limited liability of wives in some cases where they committed crimes with their husband 'existed both in theory and in practice', since it was described in Bracton.[54] Marisha Caswell has seen the 'echoes of coverture' in this type of judgement in the early modern period, despite the fact that coverture was not relevant, theoretically, in the criminal sphere. She states that married women sometimes used the defence of 'marital coercion, which held that a married woman who committed a crime with her husband — with the exceptions of murder and treason — was presumed to be acting under his coercion and was therefore not liable for her offence'.[55]

However, it may be more accurate to see these judgements not as 'echoes of coverture' or as arising from that legal practice but to see both coverture and these judgements as the natural consequence of the drafting and implementation of law by members of a society with shared conceptions of women's weakness and the appropriate power relationships between men and women. Furthermore, while the record of the acquittal of the counterfeiters' wives in 1295 suggests that the existence of valid marriage was necessary to benefit from this limited liability for crimes, another verdict from the justiciar's court shows that women who were not in canonically recognised marriages could also benefit from assumptions made about their vulnerability to male influence. In 1302 Isabella Cadel and her maid Fynewell Seyuyn were accused of spying and consorting with felons in the Dublin mountains and admitted guilt for those offences. They were pardoned the serious charge of breaking the king's peace, though they were punished for their offences by loss of their chattels. The reasons given for their pardon were the service of Isabella's father to the crown, the advocacy of several influential magnates in the colony and the 'simplicity of the women in this affair'. According to the court record,

[52] Baker, *Introduction to English legal history*, p. 484; Johnson, 'Married women, crime and the courts in late medieval Wales', pp 77–84; Stretton & Kesselring, 'Introduction' in idem (eds), *Married women and the law*, p. 17.

[53] *C.J.R.*, i, p. 34. Counterfeiting was considered a treasonous offence, which is why these men suffered such a severe punishment: W. R. J. Baron, 'The penalties for treason in medieval life and literature' in *Journal of Medieval History,* ii (1981), pp 187–202.

[54] Butler, *Divorce in medieval England*, p. 12.

[55] Caswell, 'Coverture and criminal law in England, 1640–1760', p. 95.

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they were following the command of Dermot Odymsi (*Diarmait Ó Diomasaigh*),[56] Isabella's lover, but not husband.[57] This is a highly gendered way of thinking about the women's culpability and the assumed domination of the women by men in their lives.

This type of thinking may also have motivated justices in the case of the homicide of Walter Sewyn, a royal serjeant, in 1297, to look with leniency on two women who were involved in the attack that resulted in his death. These women, Agnes, widow of John Moyl, and Nevoc Inyn Oconoyl, were important figures in the account of the attack and its aftermath. The homicide occurred in Nevoc's home — her son was one of the attackers — and seems to have been prompted by Walter's attempts to seize her property. Agnes, after the attack, concealed Nevoc in a chest in the local church until she could escape. Nevoc's chattels were confiscated, but neither woman was outlawed, while all of the seven men who participated in the attack were.[58] Dianne Hall suggests that a lighter punishment may have been rendered because the women were 'viewed as less dangerous than the men' (itself a gendered perception), and also that if the women did not take up arms themselves, they may have not been considered guilty of murder.[59] That may be so, but in addition to these factors, the same gendered ideas of women's vulnerability to male coercion may have been at play in sentencing. It was not an automatic exemption — some women were outlawed or found fully liable for their actions even when they committed crimes alongside men — but there are sufficient examples to suggest that juries sometimes applied gendered understandings of power dynamics to their treatment of female defendants.[60] It seems, therefore, that it was not just marital status that influenced verdicts and sentencing, but gender overall. Women sometimes sheltered men in their family or household when they committed crimes, and it may be that there was some leniency shown for women like Isabella de Moorton, who was found not guilty of sheltering her brother, described in the court record as a felon, in 1298.[61] De Moorton was fulfilling an accepted female role of supporting male family members and this may have led jurors to look on her case sympathetically.[62] The source does not reveal the jury's reasons for finding as they did in de Moorton's case, but the bare facts of a case were not all that medieval juries considered and the wider gendered context here may have influenced them as it did in the case of Isabella Cadel. Studies of jury nullification in English secular courts in this period (notably in homicide and rape

[56] Dermot O'Dempsey was the lord of Clann Máel Ugra in modern County Laois, while Isabella was the daughter of William Cadel, a former seneschal of the liberties of Kildare and Carlow': Kenny, *Anglo-Irish and Gaelic women*, p. 45.

[57] *C.J.R.*, i, p. 368; Kenny, *Anglo-Irish and Gaelic women*, p. 45.

[58] *C.J.R.*, i, p. 187.

[59] Dianne Hall, 'Women and violence in late medieval Ireland' in Meek & Lawless (eds) *Pawns or players?*, p. 139.

[60] For examples of women being outlawed when acting alongside men (sometimes their husbands), see Agnes and the unnamed wives on *C.J.R.*, i, p. 188, Agatha de Appelby at *C.J.R.*, i, p. 192 or Christina, wife of Gilbert Lenfaunt at *C.J.R.*, i, p. 178.

[61] *C.J.R.*, i, p. 197.

[62] In a much later context, but one in which many of the same ideas about appropriate female behaviour persisted, Caswell has shown that in eighteenth-century England, women were treated with greater leniency when they were fulfilling 'normative roles' and 'assisting their husbands' or male family members: Caswell, 'Coverture and criminal law in England, 1640–1760', p. 95.

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cases where juries were often reluctant to find defendants guilty and so trigger capital punishment) show that juries could return not guilty verdicts because they sympathised with a litigant and found their behaviour understandable rather than because they thought they were innocent of the charges against them.[63]

Women's presumed vulnerability to male violence may have sometimes been taken into account when women facilitated illegal activities while they were without male protection. John de Lyvet's account of the theft of his horse in 1302 near Ballyloughan, County Kildare alleged that his sister, named only as 'the wife of Rys Beket', was holding the horse for him, but that William de Lyvet (who appears to have been a relative of John's) went to her when her husband was away, intimidated her and threatened her with 'great danger'. Out of fear, she turned the horse over to William and John demanded its return. John crafted his plea with the assumption that this story about a threatened, fearful woman without a male protector would be both believable and sympathetic and his sister's fear is mentioned several times in the court record.[64] Again, like the assumption that women might not be fully culpable for their actions if they committed them under the influence of men in their lives, not all women benefited from the fact that a jury might feel sympathy for a woman without male protection. Some, like Isabella, wife of John Wolf in Kildare in 1298, paid a fine for the offence of sheltering serving-men of her husband and their stolen goods even though her husband was absent at the time.[65] Conversely, it was most often but not only women who could benefit from societal ideas about their vulnerability or susceptibility to the influence of those more powerful than them. Minors like Adam, son of Christina Obrey, might also be treated with leniency. He was found guilty of larceny alongside his mother in 1295 but although she was hanged, he was not because he was underage.[66]

The account given in the court records of two women in a case of cattle rustling in 1306 is particularly interesting. The account includes the reported speech of one of the women which, although fascinating, cannot be taken at face value. Her words as they appear in the record were mediated through attorneys and court officials as well as the process of translation, but they do represent a version of female speech and

[63] Thomas Green, *Verdict according to conscience: perspectives on the English criminal trial jury, 1200–1800* (Chicago, 1985), pp 38–46.

[64] *C.J.R.*, i, pp 368–9. John was of sufficient status and wealth that he was able to negotiate with a party of so-called felons, English and Irish, who captured him in 1302 and secure his release by offering his own hostages in his stead. He also secured the return from these 'felons' of two of his horses which became the property at dispute in this case. He was included in this year as one of the 'magnates of Ireland' (of almost 200 men, mostly of English descent) described as such in a letter from Edward I requesting aid from Ireland in his Scottish wars: Bernard Burke, *A genealogical history of the dormant, abeyant, forfeited and extinct peerages of the British empire* (London, 1866), pp 625–6; *Cal. Doc. Ire.*, v, p. 18.

[65] This case does not record a verdict or state that Isabella submitted to jury trial ('put herself on the county') but, rather, that she was charged and paid a fine, suggesting that she admitted culpability and made restitution accordingly; she would not have done so, presumably, if she or her council had been confident she would not have been found guilty because she had been alone and supporting members of her husband's household when the offence occurred: *C.J.R.*, i, pp 201–02.

[66] This pardon was described as being for the benefit of the King's soul: *C.J.R.*, i, p. 13. A number of similar verdicts or forgiveness of fines are described for underaged boys in both civil and (more rarely) criminal contexts in the record of the justiciar's court: *C.J.R.*, i, pp 27, 36, 57, 144–5, 161, 273, 301, 332; *C.J.R.*, ii, pp 374–5, 378, 388, 420; *C.J.R.*, iii, p. 7.

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behaviour that was believable to the jury. The account of events related in the case stated that the wife of a *hibernicus* (here meaning both Irish and an unfree labourer attached to the lands of their lord) named Geoffrey McWhither was instructed by her husband to help steal the cattle of Geoffrey de Brandewode, his lord. McWhither had, according to the record of the case, become frustrated with what he must have seen as his lord's excessive demands for his labour, and decided to depart to an enemy of de Brandewode with his cattle. This unnamed wife of McWhither, adopting an intercessory role often ascribed to women in medieval accounts, pleaded with Geoffrey Savage for protection and housing for the stolen livestock when she arrived on his land. When de Brandewode tracked down his cattle and arrived at Savage's household, he found Savage's wife there alone. When he demanded to know why she impounded his cattle, she claimed she had no idea and that it was nothing to do with her. She did not object when he began to drive the cattle back to his land, stating, in the words of the translation, 'Take them for me for I do not meddle in such things'.[67] This case, therefore, includes two characteristics seen in other legal narratives discussed here. First, women were often described as acting under the direction of men in their lives. Following from this, women could claim, believably, to have had no part in the decisions of these men — to adopt a passive position — and, thereby, distance themselves from their actions in a way that was, in some cases as least, exculpatory.

In 1460, over 150 years after the cattle rustling case of 1306, and in a different secular jurisdiction in the colony, the Irish parliament, we again see legal arguments that relied on the acceptance of women's passivity in the face of their husband's actions. Margaret Nugent, widow of William Butler, a Lancastrian who was attainted in the Yorkist-controlled Irish parliaments of the late 1450s, pleaded that she should nevertheless receive her dower from Butler's lands, since his rebellious actions were not her fault. They were, she claimed, 'very much against her will', and she implied that she could not be expected to influence him.[68] Her defence was accepted and dower awarded. This position of female passivity was, apparently, as acceptable to audiences in the fifteenth century as it had been to those in the late thirteenth and early fourteenth. Butler's success also related to the fact that, like Isabella Cadel who had been pardoned for spying in 1302, she was able to draw on the 'service' to the crown or colony of influential male members of her family — in Butler's case her father — to garner favour with the court. Women secured not just favourable treatment in legal disputes, but also sometimes forgiveness of fines for infractions like remarrying without the king's permission, through the service of their male family members in the colonial administration or on military campaigns.[69] Taking two representative examples from a multitude surviving in administrative records from English Ireland, Joan the widow of Thomas Vernoill, married Robert Hemyngburgh and her fine for doing so without the king's permission was forgiven in 1389 because of Robert's service to the crown in Ireland. As 'the king's attorney in the exchequer and common bench', this particular husband would also have brought a good deal of legal expertise to the marriage.[70]

[67] *C.J.R.*, ii, pp 326–7.

[68] For Margaret's case, see Sparky Booker, 'Widowhood and attainder in medieval Ireland: the case of Margaret Nugent' in Deborah Youngs and Teresa Phipps (eds), *Litigating women: gender and justice in Europe* c.*1200*–c.*1750* (London, 2021), pp 81–98.

[69] Widows who held land directly of the king required his permission to remarry.

[70] *CIRCLE*, Patent Roll 12 Richard II, no.157, Patent Roll 8 Henry IV, no. 89.

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Margaret, widow of Milo Mandeville, was also forgiven a fine in 1389 because of her new husband, Richard Russel's 'good service in Ulster' against the Irish (perhaps relating to the taking of Niall Óg Ó Néill in 1389).[71] Neither the military nor the administrative avenues of garnering the favour of the colonial administration were available to women themselves, so they had to avail of the benefits such favour could bring by relying on their male familial networks.[72]

Ideas of female vulnerability, and perhaps also the notion that royal justice was responsible for protecting vulnerable women, were also employed by male plaintiffs in their pleas.[73] Peter Bermingham complained in the justiciar's court in 1305 that his pregnant companion, Ele, was so frightened by an attack on Peter and his associates in Drogheda, that she went into labour with a premature male infant, who died, and that she never recovered her health.[74] Similarly, John, son of Simon, argued that his opponent in a trespass suit of 1306 so frightened his wife that she fell into long-term illness. He claimed that his opponent riding into his home while his wife and a female companion were entirely alone, without male protection, and chased them into town, brandishing a staff at them.[75] In both of these suits, the damage done to women was tangential to the case, legally, but these supporting details demonstrated how grievously the defendants acted. The ways in which litigants and petitioners played on shared assumptions about female vulnerability is apparent in the petition to the Irish council in 1374 of Joan, widow of James de la Hyde, who sought restoration of the goods and chattels of her husband which had been taken into the king's hands for his debts. Joan cited James's service to the crown militarily as one reason her petition should be granted — so, like other women, whether married or single, she relied in part on male networks in securing favour. Even in the terse language of directives from the Irish chancery, one can see glimpses of this widow's petition, and the arguments she used — perhaps, in person before the governor and council at Naas — highlighting her poverty, vulnerability and her need to support her children. The trope of the vulnerable widow, in special need of royal protection, was often employed in the pleas of widows to equity courts in later medieval England, but the way in which it draws upon wider ideas about female vulnerability in general is clear.[76] In

[71] *CIRCLE*, Patent Roll 12 Richard II, no. 116; Close Rolls 9 Richard II, no. 34; Patent Rolls Richard II, no. 170.

[72] Booker, 'Widowhood and attainder', pp 91–3.

[73] Thomas Lund, *The creation of the common law: the medieval year books deciphered* (Clark, NJ, 2015), p. 137.

[74] *C.J.R.*, ii, pp 31–2. Another case from the justiciar's court describes a woman (the unnamed wife of Henry de Lyvet) being assaulted so severely that she aborted a male infant. As in Ele's case the sex of the infant was stated: *C.J.R.,* ii, pp 338–9. The vulnerability of pregnant women was also emphasised in a case from 1306 where a pregnant woman was described as being afraid of being forcibly ejected from her mother's house: *C.J.R.*, ii, pp 320–21. In these cases, the defendants were not being prosecuted for the harm done to these women or their unborn children but Sara Butler has examined prosecutions for 'abortion by assault' in England in this same period, finding that juries were often reluctant to convict on this felony charge: 'Abortion by assault: violence against pregnant women in thirteenth- and fourteenth-century England' in *Journal of Women's History*, xvii, no. 4 (winter 2005), pp 9–31.

[75] *C.J.R.*, ii, p. 171.

[76] W. Mark Ormrod, *Women and parliament in later medieval England* (Cham, 2020), p. 77; Laura Flannigan, 'Litigants in the English "court of poor men's causes" or court of requests, 1515–25' in *Law and History Review,* xxxviii, no. 2 (May 2020), p. 323.

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Joan's case, the petition was successful, and the council ruled that she should be given back her husband's livestock and grain that had been seized into the hands of the king.[77] By the following year Joan was married to Maurice fitz Eustace, and the couple petitioned for the custody of lands in Dundaghlyn and Roweston in addition to Joan's dower lands.[78] It is interesting that Joan seems to have waited until she was married to sue this dower writ, even though she petitioned the council while newly widowed and unmarried in 1374 for the return of movable goods of her husband.

IV

It is not surprising that both male and female litigants exploited tropes of female vulnerability to suit their purposes in any given lawsuit. It is, nevertheless, an important reminder of the societally embedded nature of law and its implementation. Law was a reflection of, and practiced according to, societal norms and expectations. Juries and judges, then as they are now, were swayed by emotive arguments, as well as strictly legal ones, and litigants shaped the law in a very direct way by presenting challenges to suits according to their legal knowledge. Female litigants, regardless of their wealth, status or ethnicity, had a shared range of acceptable positions they could take and use to their advantage.[79] In particular the assumption of women's vulnerability and subordinate position vis-à-vis men could be used to exculpate them from blame in some situations or make an opposing litigant's actions seem more heinous.

Additionally, the more we see law as socially created, embedded and operated, the clearer it is that we cannot see coverture as a monolithic legal invention, but rather as an expression of wider sexist norms and assumptions about the relationships between men and women.[80] Husbandly domination of a couple's legal life was common across the medieval world and was the norm before coverture was formally theorised in the twelfth century and in regions and jurisdictions where it was not in place. Patriarchal structures and assumptions were not limited to coverture, and they permeated courts and legal practice in many other ways: all women might encounter similar difficulties and opportunities related to their gender.

[77] *CIRCLE,* Close Roll 48 Edward III, nos 99, 146; Close Roll 5 Richard II, no. 62.

[78] The lands in Dunshaughlin and Roestown (which may have been jointure lands) had been taken into the king's hands in 1374 for debts that James owed to the king that arose out of his time as 'sheriff of Limerick, seneschal of the liberty of Meath and escheator of Ire[land]'; office holding could be a very onerous and expensive task, as officials were personally responsible for shortfalls in their accounts: *CIRCLE,* Close Roll 5 Richard II, no. 62; Close Roll 48 Edward III, no. 99.

[79] Cordelia Beattie's idea of the carefully crafted 'petitioning subject' is a very useful way of looking at the interplay between actual experience and the creation of an acceptable persona to adopt before the court: Cordelia Beattie, 'I your oratrice: women's petitions to the late medieval court of chancery' in Kane & Williamson (eds), *Woman, agency and the law*, pp 17–30.

[80] Mary O'Dowd made this point forcefully with regard to the sixteenth century, arguing that 'the patriarchal principles on which English society was based were embedded in its legal system' and highlighting the ways in which justices and juries were uncomfortable undermining patriarchal control even when the law dictated that they should do so: O'Dowd, 'Women and the law', pp 96, 107.

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This is most obvious in the fact that legal spaces were entirely dominated by male officials, justices, juries and attorneys, but societal expectations about women's supposed weakness, both physical and mental, also played out in the courtroom in ways that could be disadvantageous or materially advantageous to women, whether they were wives, singlewomen or widows. Broader societal ideas about women and femininity influenced both the formation of law and its implementation by judges and juries in late medieval secular courts in the English colony in Ireland. Examples from case law from Ireland show the ways in which women in different life stages were impacted by similar sets of assumptions about female weakness and vulnerability. Women in the English colony were, too, dependant on the support of male family members to a greater extent than their male counterparts since they could not offer military or administrative service in the same way. Thus, despite the very real differences between women based on their marital status at a given moment, to say nothing of differences causes by distinctions of class or ethnicity, gender was in itself a sufficiently relevant factor in women's experiences of the law to justify the writing of the history of women and the law in medieval English Ireland. That such a project remains incomplete, despite major advances, confirms the continuing relevance of the 'Agenda' in driving Irish women's history.[81] But as we continue to respond to its call we must also respond to the historiographical moves forward in women's history in the years since it was written. In particular, we must interrogate more robustly why 'women' is an appropriate analytical category for the specific historical questions we are asking. This paper is an offering in that direction.[82]

[81] Katharine Simms's ground-breaking article 'Women in Norman Ireland' in MacCurtain & Ó Corráin (eds), *Women in Irish society*, pp 14–24 remains essential reading for a rounded picture of women and the law in Ireland. Her work on women in Irish areas in this period, cited in the 'Agenda', has been perhaps even more influential. Since its publication, Art Cosgrove, Dianne Hall, Gillian Kenny and, more recently, Áine Foley and Stephen Hewer's work has greatly advanced the area, particularly in regard to marriage litigation, crime, violence and dower: Art Cosgrove, 'Marrying and marriage litigation in medieval Ireland' in Philip Reynolds and John Witte (eds), *To have and to hold: marrying and its documentation in western Christendom, 400–1600* (Cambridge, 2007), pp 332–59; Dianne Hall, 'Gender and everyday violence in medieval Dublin' in Séan Duffy (ed.), *Medieval Dublin XV* (Dublin, 2016), pp 305–19; eadem, 'Women and violence in late medieval Ireland' in Meek & Lawless (eds), *Pawns or players?*, pp 131–40; Kenny, *Anglo-Irish and Gaelic women*; Kenny, 'The power of dower', pp 59–74; Hewer, 'Justice for all'; Dr Foley's work on rape and abduction in medieval Ireland is forthcoming.

[82] This research was conducted for the Arts and Humanities Research Council project 'Women negotiating the boundaries of justice: Britain and Ireland, 1100–1750' (AH/L013568/1). A version of this paper focusing on the permeability and incomplete application of coverture, 'Coverture in the courts of the English colony in Ireland', was delivered in November 2015 at the 'Collusion, subversion and survival: women in medieval Irish history' conference at T.C.D. Elements of this research were also presented in May 2016 at the 'Tyrannous constructs: conceptual history' workshop at T.C.D. and in February 2018 at 'New directions in early modern women's history' at N.U.I.G. I would like to thank the organisers and participants at these events for their comments.

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