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Women's Rights in Early England

I. INTRODUCTION

Throughout much of history, women have had little opportunity to control their own destinies. However, a surprisingly bright period for women took place from about A.D. 580 to 1066 in Anglo-Saxon England. "[O]ld English society allowed to women, not only private influence, but also the widest liberty of intervention in public affairs."¹ During this period women exercised considerably greater control over their destinies than did their female descendants after the Norman Conquest in 1066.

This Comment compares the position of women in Anglo-Saxon society with women in Anglo-Norman society and concludes that Anglo-Saxon women generally enjoyed more rights than their Anglo-Norman sisters. The Anglo-Saxon period is discussed in section II. A brief history of the period is presented, after which this Comment describes some of the legal and customary rights women enjoyed during the Anglo-Saxon period, including land ownership, marriage and child custody, professional opportunities, political leadership, and participation in the legal system. Section III begins with a brief history of the Norman Conquest, followed by a description of the above listed rights as applied to Anglo-Norman women. Section IV concludes with a discussion of possible reasons why Anglo-Saxon women had more expansive rights than their Anglo-Norman counterparts.

The particular rights discussed in this Comment are representative only. Women may have exercised, and very

1. Sheila C. Dietrich, *An Introduction to Women in Anglo-Saxon Society*, in *THE WOMEN OF ENGLAND: FROM ANGLO-SAXON TIMES TO THE PRESENT* 32, 43 (Barbara Kanner ed., 1979) (quoting Frank M. Stenton, *The Historical Bearing of Place-Name Studies: The Place of Women in Anglo-Saxon Society*, in 25 *TRANSACTIONS OF THE ROYAL HISTORICAL SOCIETY* 1, 1-13 (4th ser. 1943), reprinted in *PREPARATORY TO ANGLO-SAXON ENGLAND: BEING THE COLLECTED PAPERS OF FRANK MERRY STENTON* 314, 314-24 (Doris M. Stenton ed., 1970)).

probably did exercise, rights in many other areas. The reader should also bear in mind that much of what is known about both the Anglo-Saxon and early Anglo-Norman periods pertains only to the upper classes.² The scope of this paper is necessarily prescribed by the types of written materials that have survived: wills, land grants, and laws. These materials reveal information mostly about the upper classes. The lower classes, having little to bequeath or devise, left less of a legacy in the way of wills and land grants than the wealthier classes. However, at least one author has indicated a belief that women of both the peasantry and the nobility had similar rights as men within the same class during the Anglo-Saxon period, and further that the peasantry was not as adversely affected by the Norman Conquest as the nobility.³

II. THE ANGLO-SAXONS

A. History

The Romans began conquering Britain in A.D. 43.⁴ The Roman conquest in southern and eastern Britain was so swift that it is likely many Britons remained, for some time, unaware that they had been "conquered" and annexed to the Roman Empire.⁵ Initially, the Roman yoke did not rest easy on the Britons.⁶ Many of the uprisings by the Britons against the Roman conquerors were probably results of the rapid conquest of Britain; the British tribes may have felt that the Roman presence was an aberration and that the Romans could be easily overthrown.

Despite their early discontent with the Roman rule, the Britons undoubtedly regretted the departure of their Roman protectors when Rome finally abandoned its British provinces in the early fifth century. Saxons had been raiding the

2. See Joel T. Rosenthal, *Anglo-Saxon Attitudes: Men's Sources, Women's History*, in *MEDIEVAL WOMEN AND THE SOURCES OF MEDIEVAL HISTORY* 259, 264 (Joel T. Rosenthal ed., 1990).

3. Dietrich, *supra* note 1, at 41; see also CHRISTINE FELL ET AL., *WOMEN IN ANGLO-SAXON ENGLAND* 13 (1984).

4. David A. Thomas, *Origins of the Common Law—Part I: The Disappearance of Roman Law from Dark Age Britain*, 1984 B.Y.U. L. REV. 563, 565 [hereinafter Thomas, *Roman*].

5. *Id.*

6. *Id.* at 567-68 (citing G. WEBSTER, *THE ROMAN INVASION OF BRITAIN* 200-02 (1980)).

eastern coast of Britain since the second century, and Picts and Scots frequently invaded from the north.⁷ As if these foreign threats weren't enough, after the Romans left, the Britons themselves precipitated numerous civil wars.⁸ Britain was not a tranquil country. In an effort to stave off invasions by the Picts and Scots, the Britons hired Germanic mercenaries.⁹ This proved to be their undoing. These mercenaries established enclaves in Britain that served as staging areas for further Germanic forays and the eventual large-scale Germanic immigration onto the island.

The Germanic people who invaded Britain have come to be called Anglo-Saxons. They are traditionally regarded to have been members of three Germanic tribes: the Angles, the Saxons, and the Jutes.¹⁰ The Jutes probably came from "the Jutland peninsula (modern Denmark and north Germany), the Angles from roughly the modern Schleswig-Holstein region of West Germany . . . and the Saxons from the area immediately south of the Angles."¹¹ In his *Ecclesiastical History of the English Nation*, Bede hints at the magnitude of the Anglo-Saxon migration when he states that Anglia, from whence the Angles came in the mid-fifth century, was still deserted in his day, almost 300 years later.¹² The Anglo-Saxon migration to, and conquering of, Britain was a gradual process. Substantial parts of Britain were settled by the Anglo-Saxons during the fifth century, but Britain did not come completely under Anglo-Saxon control until A.D. 838.¹³ Each of the three Germanic tribes settled in different areas and established several kingdoms. The Jutes established Kent; the Saxons established Essex, Wessex, and Sussex; and the Angles established East Anglia, Middle Anglia, Mercia, and Northumbria.¹⁴ These, as well as several other kingdoms, gradually coalesced into seven kingdoms.¹⁵

7. *Id.* at 574, 591.

8. BEDE, *ECCLESIASTICAL HISTORY OF THE ENGLISH NATION* 32 (John Stevenson trans. 1870 & L.C. Jane rev. 1903, Everyman's Library 1954) (731).

9. *Id.* at 22-23.

10. *Id.*

11. David A. Thomas, *Origins of the Common Law—Part II: Anglo-Saxon Antecedents of the Common Law*, 1985 B.Y.U. L. REV. 453, 457 [hereinafter Thomas, *Anglo-Saxon*].

12. BEDE, *supra* note 8, at 23.

13. Thomas, *Anglo-Saxon*, *supra* note 11, at 478.

14. BEDE, *supra* note 8, at 22-23.

15. Thomas, *Anglo-Saxon*, *supra* note 11, at 478.

During the ninth and tenth centuries, the Anglo-Saxons themselves became the victims of invasions by the "barbarians." These barbarians, Vikings from Denmark, invaded and conquered all of the Anglo-Saxon kingdoms but Wessex. Alfred the Great of Wessex repulsed the Danes and regained much of the conquered territory.¹⁶ Sometime between A.D. 880 and 890, Alfred finally restored peace to England by making a compact, whereby the Danes retained control of some of their conquered lands.¹⁷ This Danish invasion forced all the Anglo-Saxon kingdoms to unite under one ruler, with Alfred the Great becoming the first king of England.

While the early Anglo-Saxons originally came to Britain as mercenaries, later immigrants were interested in colonizing Britain.¹⁸ They appear to have come in large family groups, bringing with them their laws and customs.¹⁹ The Danish invaders came from the same Germanic background as the Anglo-Saxons, so not surprisingly, laws and customs did not significantly change.²⁰ The Anglo-Saxon legal system and customs remained largely in place in England until 1066, when William the Conqueror successfully invaded England, bringing with him Norman aristocracy, laws and customs, and feudalism.²¹

16. *Id.* at 490.

17. *Id.* at 492. These lands came to be known as the "Danelaw." Dorothy Whitelock, *The Anglo-Saxon Achievement*, in *THE NORMAN CONQUEST: ITS SETTING AND IMPACT* ch. VI, 20 (C.T. Chevallier ed., 1966) (photo. reprint in *HISTORY, LAW AND LITERATURE IN 10TH-11TH CENTURY ENGLAND* ch. VI (1981)).

18. H.R. LOYN, *ANGLO-SAXON ENGLAND AND THE NORMAN CONQUEST* 3 (2d ed. 1991).

19. See FELL ET AL., *supra* note 3, at 24 ("[W]e are primarily dealing with a pattern in which entire Anglo-Saxon families, not merely Anglo-Saxon warriors, emigrated to England and settled."); Thomas, *Anglo-Saxon*, *supra* note 11, at 464 ("[T]he first written Anglo-Saxon laws, ca. A.D. 600, contain almost purely Germanic custom.").

20. See Laws of Edward and Guthrum, in *LAWS OF THE EARLIEST ENGLISH KINGS* 102-09 (F.L. Attenborough ed. & trans., 1922). By treaty, King Alfred of the English and King Guthrum of the Danes agreed to a joint set of laws. King Edward and King Guthrum later agreed upon the same set of laws. *Id.* at 103. But see FELL ET AL., *supra* note 3, at 64 (stating her belief that Cnut's laws were noticeably harsher than the earlier Anglo-Saxon kings).

21. See ANGELA M. LUCAS, *WOMEN IN THE MIDDLE AGES—RELIGION, MARRIAGE AND LETTERS* 83 (1983); see also FRANK M. STENTON, *THE FIRST CENTURY OF ENGLISH FEUDALISM, 1066-1166*, at 9 (2d ed. 1961) ("[The compilers of the Domesday Book] took for granted the existence of the new military society [feudalism] which had arisen in England since the Conquest.").

B. Legal and Customary Rights of Women

1. Land ownership

Women could hold, devise, inherit and sell land in Anglo-Saxon England. Three categories of real property developed in Anglo-Saxon England: bookland, folkland, and laenland.²² Bookland "conferred on its possessor hereditary tenure and the right of alienation, economic benefits based on demesne exploitation, and certain judicial rights and obligations. Book[land] gave Anglo-Saxon men and women the power to alienate estates and hold them in their own right."²³ Bookland was devisable and alienable,²⁴ and as such, was the most valuable type of land holding.

Laenland and folkland were lesser estates in land. Laenland was land held by lease. "[T]he best-known form [of laenland] is the lease for a term of three lives, that is to say for the lifetime of the original lessee himself together with the lives of two [consecutive generations of] heirs."²⁵ Folkland could not be alienated and "represent[ed] land still subject to the vaguer and more loosely defined burdens of communal obligation associated with early Anglo-Saxon kingship."²⁶ Early charters explain that communal obligations such as "[l]abor on the public works, the roads, and fortifications, was added to the army service, and made compulsory on every one."²⁷ Later, all land, unless it was exempted, carried with it duties of military service, fortress repair, and bridge upkeep.²⁸

Under Anglo-Saxon law, women could own and control all three types of real property. Women could receive grants

22. See generally LOYN, *supra* note 18, at 178-85.

23. Marc A. Meyer, *Land Charters and the Legal Position of Anglo-Saxon Women*, in THE WOMEN OF ENGLAND: FROM ANGLO-SAXON TIMES TO THE PRESENT, *supra* note 1, at 57, 58.

24. When bookland is created "[w]ords are used which expressly tell us that the donee is to enjoy the land during his life and may on his death give it to whomsoever he chooses." FREDERIC W. MAITLAND, DOMESDAY BOOK AND BEYOND 293 (W.W. Norton & Co. 1966)(1897).

25. LOYN, *supra* note 18, at 183.

26. *Id.* at 182.

27. H. Cabot Lodge, *The Anglo-Saxon Land-Law*, in ESSAYS IN ANGLO-SAXON LAW 55, 61, n.2 (Rothman Reprints Inc. 1972) (1905).

28. Compare FELL ET AL., *supra* note 3, at 100 with LOYN, *supra* note 18, at 182 (stating that while folkland may have been subject to more community obligations, bookland, if not exempt, may have had greater responsibilities regarding those obligations that remained).

of land singly²⁹ or jointly with their spouses.³⁰ Women could also make grants of land singly³¹ or jointly with their spouses.³² Some historians seek to diminish the significance of the fact that women held bookland by pointing out that most of the women who owned bookland received it because of their kinship with royalty or their positions in the church.³³ While this is likely true, it is also likely that men who received bookland received it for the same reasons.

Some modern historians question the extent to which women actually controlled their own land, stating that "[t]he real property she brought into the marriage remained in her possession, but its maintenance was vested in her husband; he held the land and could do with it whatever he wished except permanently alienate it from his wife's possession."³⁴ While this may be true in many cases, it appears that many women exercised rights and met obligations on their own behalf. F.M. Stenton argued that evidence of female ownership, control of, or connection with land can be found in the many still-existent feminine-based place names from the Anglo-Saxon period.³⁵ Women's names have been combined with roots that imply settlement or landholding status ("tun" and "burh")³⁶ as well as land clearing ("leah")³⁷ and

29. For example, one eighth century lease reads: "Lease of the minster at Fladbury by Ealdred . . . to Aethelburh, his kinswoman, for life, with reversion to the bishopric of Worcester; A.D. 777 x 781." DELLA HOOKE, *WORCESTERSHIRE ANGLO-SAXON CHARTER-BOUNDS* 34 (1990). Another eighth century charter reads: "Grant of land at *Peandan Wrye* (Wyre Piddle, Worcs.) by Ceolred, king of Mercia, to Mildburg, abbess; A.D. 709 x 716." *Id.* at 25.

30. The following is an example of a joint grant of land: "Grant of land at Lower Wolverton in Stoulton, Worcs., by Oswald, archbishop of York and bishop of Worcester, to Eadwig, his kinsman, and Wulfgifu, Eadwig's wife, to them and their heirs . . . A.D. 984." *Id.* at 230.

31. See *infra* notes 39-40 and accompanying text.

32. Grants similar to the following were made to assure the salvation of the couple: "Grant of land at Knighton-on-Teme. Newnham, and Eardiston in Lindridge, Worcs., by Wiferd and Alta, his wife, to the Church of St. Peter, Worcester: A.D. 781 x 796." HOOKE, *supra* note 29, at 82; "Grant of land at Himbleton and Dunhampstead in Himbleton by Eared and his wife Tunthryth to the Church of Worcester; A.D. 896." *Id.* at 103.

33. Meyer, *supra* note 23, at 59, 61.

34. *Id.* at 61-62.

35. Dietrich, *supra* note 1, at 43.

36. FELL ET AL., *supra* note 3, at 99-100. Examples of settlement names derived from women's names plus roots implying settlement are: Edburton, Sussex—derived from Eadburg; Wollaton, Devon—derived from Wulfgifu; Darlton, Nottinghamshire—derived from Deorlufu; and Elton in Welford, Berkshire—derived from Aethelflaed. *Id.*

37. *Id.* An example of a place name derived from a woman's name plus

"church, road and bridgebuilding" or maintenance ("cyrice," "straet," "ford," "brycg").³⁸

Further evidence of female control of land is found in the wills of Anglo-Saxon women. A woman named Wynflaed "bequeathe[d] to her daughter Aethelflaed her engraved bracelet and her brooch, and the estate at Ebbesborne and the title-deed as a perpetual inheritance to dispose of as she please[d]."³⁹ Another woman named Aethelflaed devised her numerous estates "to the Ealdorman Brihtnoth and [my] sister for her life," after which the various estates were to go to religious communities.⁴⁰

The ability to dispose of land gave Anglo-Saxon women a capacity for self-determination comparable to that enjoyed by men. Women devised land to gain political favor and to ensure that wills would be upheld. For example, a woman named Aelfgifu devised several estates as well as gold to the king.⁴¹ She also gave land to the church for the king's soul—a politically astute gesture sure to curry favor with the king in an age when life was uncertain and judgment upon death a certainty.⁴²

Women also used their land to attempt to purchase religious salvation for themselves as well as others. For example, a woman named Aethelflaed "bequeathed [land to the church] for the praise of God and the need of her soul."⁴³

Land could also be used to protect children and heirs. The following is an example of land being used by both men and women to protect their female and male children or heirs. Wulfric left property to his daughter and asked Aelfhelm, her uncle, to take care of her.⁴⁴

"leah" is Audley in Staffordshire. *Id.*

38. *Id.* at 100. For example, Aelflaede brycg is derived from Aelflaed; Buckle Street is derived from Burghild; and Aberford is derived from Eadburg. *Id.* at 98.

39. Will of Wynflaed (c. 950), in *ANGLO-SAXON WILLS* 11, 11 (photo. reprint 1973) (Dorothy Whitelock ed. & trans., 1930).

40. Will of Aethelflaed (c. 962-91), in *ANGLO-SAXON WILLS*, *supra* note 39, at 35.

41. Will of Aelfgifu (c. 966-75), in *ANGLO-SAXON WILLS*, *supra* note 39, at 21.

42. *Id.*

43. Aethelflaed's Bequest to St Paul's (c. 1004-14), in *ANGLO-SAXON WILLS*, *supra* note 39, at 67.

44. Will of Wulfric (c. 1002-04), in *ANGLO-SAXON WILLS*, *supra* note 39, at 47-49.

An interesting parallel to Wulfric's concern for his daughter and his appointment of a male protector is in the will of Aethelgifu, who is evidently concerned about the vulnerability of Leofsige . . . [her] male heir. . . . "[S]he asks her lady . . . to watch over him, and let him serve the prince, and do not let anyone rob him of his lands."⁴⁵

The behavior of Wulfric and Aethelgifu demonstrates that women and men used their land in similar ways.

A woman had the power to disinherit her children. In one reported case, a man named Edwin sued his mother for a piece of land. "The mother 'became very angry with her son,'"⁴⁶ and made a verbal grant, stating: "Here sits Leofflaed, my kinswoman, to whom I leave both my land and my gold, my furnishings and my clothing and all that I own."⁴⁷ She left "not a thing to [her] own son."⁴⁸ Her actions were reported and approved at the shire-meeting.⁴⁹

As these records indicate, primogeniture was not the mandated pattern of inheritance.⁵⁰ As is illustrated below, women were often featured in wills. The will of Brihtric and Aelfswith around the end of the tenth century prominently features a woman named Brihtwaru who received several life estates.⁵¹ In his will, Aelfhelm left his wife and daughter half of the profits from all his estates as well as portions of estates of their own.⁵² In another will, a father named Wulfwaru was interested in making sure each of his children was provided for; he granted both his sons, Wulfmaer and Aelfwine, and his daughters, Aelfwaru and Gode, estates or portions of estates.⁵³

45. FELL ET AL., *supra* note 3, at 76 (quoting from the Will of Aethelgifu).

46. *Id.* at 78 (quoting an uncited early 11th century Herefordshire family will).

47. *Id.*

48. *Id.*

49. *Id.*

50. Pauline Stafford, *Sons and Mothers: Family Politics in the Early Middle Ages*, in *MEDIEVAL WOMEN* 79, 82 (Derek Baker ed., 1978).

51. Will of Brihtric & Aelfswith (c. 973-87), in *ANGLO-SAXON WILLS*, *supra* note 39, at 29.

52. Will of Aelfhelm (c. 975-1016), in *ANGLO-SAXON WILLS*, *supra* note 39, at 31, 33.

53. Will of Wulfwaru (c. 984-1016), in *ANGLO-SAXON WILLS*, *supra* note 39, at 63.

2. *Family law*

Marriage in twentieth century United States is a matter of individual choice;⁵⁴ so, too, in Anglo-Saxon England. Anglo-Saxon women in some situations could choose whether or not to marry. While it is likely that most women married, at least a few women made other choices. For instance, "[t]he *Liber Eliensis* [reports] that the lady Aethelswith in the eleventh century, rejecting the idea of marriage, retired to Coveney and with her [servants] spent her time at embroidery with gold thread and at weaving."⁵⁵ While early Anglo-Saxon fathers appear to have exercised considerable authority over both sons and daughters,⁵⁶ by the eleventh century the laws of Cnut state: "let no one compel either woman or maiden to [marry a man] whom she herself dislikes."⁵⁷ This is an indication that Anglo-Saxon women may have played more than a passive role in selecting and marrying a husband.

Upon marriage the woman received a bride price called a *morgengifu* or "morning gift."⁵⁸ Evidence of such morning-gifts is found in various land grants.⁵⁹ As pointed out by Christine Fell, the practice of paying a bridal price to the bride's guardian upon marriage seems to suggest that "marriage was simple barter in Anglo-Saxon England, the father selling his daughter to her prospective husband."⁶⁰ However, Fell states that "there is a vast range of evidence . . . for the fact that the money the bridegroom had to pay . . . was payment to the woman herself, intended to

54. See *Loving v. Virginia*, 388 U.S. 1, 12 (1967).

55. FELL ET AL., *supra* note 3, at 41.

56. Ernest Young, *The Anglo-Saxon Family Law*, in *ESSAYS IN ANGLO-SAXON LAW*, *supra* note 27, at 121, 137-38.

57. Laws of Cnut cl. 74, *quoted in* Young, *supra* note 56, at 153 n.6.

58. FELL ET AL., *supra* note 3, at 56.

59. One land grant, for example, provides: "Marriage agreement whereby Wulfric, on marrying the sister of Archbishop Wulfstan, promises her land at Orleton and Ribbesford, Worcs., for her life, undertakes to obtain for her from the community at Winchcombe a lease, for three lives, of land at Knightwick, Worcs., and settles on her land at Alton in Rock, Worcs.; A.D. 1014 x 1016." HOOKE, *supra* note 29, at 329.

60. FELL ET AL., *supra* note 3, at 16; see Laws of Ine cl. 31 (688-725), in *LAWS OF THE EARLIEST ENGLISH KINGS* 34, 47 "If anyone buys a wife and the marriage does not take place, he [the bride's guardian] shall return the bridal price and pay [the bridegroom] as much again." *Id.*

guarantee her financial security and independence within marriage."⁶¹

Women did marry for political reasons. Sometimes a marriage was made to solidify a peace-agreement between two hostile tribes.⁶² The women in these marriages were called "peaceweavers."⁶³ Despite the political nature of the peaceweaver role, it seems unlikely that the woman was forced into it.⁶⁴ Indeed, it seems that it would be political suicide for a tribe to force an unwilling woman into marriage with a member of a hostile tribe. The peaceweaver's role was to conciliate the two tribes, not create more antagonism.⁶⁵

Not only could Anglo-Saxon women choose whether to marry, it also appears that some could also choose whether to have children. This was a significant choice in an age when many women died in childbirth. A prominent example is Queen Aethelflaed who only had one child. After bearing this child she apparently decided that labor and delivery was not something she wanted to go through again and refused to have any more children.⁶⁶

There is evidence that Anglo-Saxon women were valued in and of themselves, and not simply as bearers of children. Fell states that there have been found "no records from Anglo-Saxon society of wives being repudiated because they were barren."⁶⁷ Indeed, the laws of King Aethelberht do not provide for repudiation of a barren woman, although they do address who inherits her property, including the *morgengifu*, "[i]f she does not bear a child"⁶⁸

Much like today, many Anglo-Saxon marriages did not last "until death do we part." With dissolution of the marriage, be it by divorce or death, comes the question of child

61. FELL ET AL., *supra* note 3, at 16.

62. LUCAS, *supra* note 21, at 74; see also FREDERIC SEEBOHM, *TRIBAL CUSTOM IN ANGLO-SAXON LAW* 70 (photo. reprint 1972) (1911).

63. Dietrich, *supra* note 1, at 42.

64. In fact, it may have been illegal to force the woman into marriage. See *supra* note 57 and accompanying text.

65. See LUCAS, *supra* note 21, at 74.

66. Betty Bandel, *The English Chroniclers' Attitude Toward Women*, 16 J. HIST. IDEAS 113, 116-17 (1955).

67. FELL ET AL., *supra* note 3, at 75.

68. "If she does not bear a child, [her] father's relatives shall have her goods, and the 'morning gift.'" Laws of Aethelberht cl. 81, in *LAWS OF THE EARLIEST ENGLISH KINGS*, *supra* note 20, at 15.

custody. The Laws of Aethelberht state that if a woman "wishes to depart with her children, she shall have half the goods."⁶⁹ However, they further state that "[i]f the husband wishes to keep [the children], [the wife] shall have a share of the goods equal to a child's."⁷⁰ It appears from this sequence of laws that the woman was presumptively the custodian of the children, losing them only if the man wanted them. This allowance for the father is perhaps understandable in light of the greater burden the paternal kin had in giving surety.⁷¹

Laws also protected the right of the woman to raise her children once the father died. The Laws of Hlothhere and Eadric provide that "[i]f a man dies leaving a wife and child, it is right, that the child should accompany the mother."⁷² The Laws of Ine also provided child support for such children: "If a husband has a child by his wife and the husband dies, the mother shall have her child and rear it, and [every year] 6 shillings shall be given for its maintenance."⁷³

3. *Women's occupations*

Marriage was most likely the preferred state for Anglo-Saxon women. However, there were various occupations that could be pursued in lieu of, or in conjunction with, marriage. One of those occupations was the life of the convent. Lina Eckenstein noted that "[t]he right to self-development and social responsibility which the woman of to-day so persistently asks for, is in many ways analo-

69. Laws of Aethelberht cl. 79 (602-603), in *LAWS OF THE EARLIEST ENGLISH KINGS*, *supra* note 20, at 15.

70. *Id.* at 15, cl. 80.

71. The Laws of Alfred require that "[i]f anyone who has no paternal relatives fights and kills a man, his maternal relatives, if he has any, shall pay one-third of the wergeld and his associates shall pay one-third. In default of payment of the [remaining] third, he shall be held personally responsible." Laws of Alfred cl. 30 (871-900), in *LAWS OF THE EARLIEST ENGLISH KINGS*, *supra* note 20, at 77. Normally (i.e., when there were paternal relatives) the paternal relatives were liable for two-thirds of the payment and the maternal relatives were liable for one-third of the payment. See LOYN, *supra* note 18, at 307; see also Young, *supra* note 56, at 137-38. It seems reasonable that those with the greatest liability for payment should have the opportunity to train the child.

72. Laws of Hlothhere & Eadric cl. 6 (c. 673-685), in *LAWS OF THE EARLIEST ENGLISH KINGS*, *supra* note 20, at 19.

73. Laws of Ine cl. 38 (688-725), in *LAWS OF THE EARLIEST ENGLISH KINGS*, *supra* note 20, at 49.

gous to the right which the convent secured to womankind a thousand years ago [during the Anglo-Saxon period]."⁷⁴

Many early religious foundations were double houses—"monastery and nunnery side by side, always in Anglo-Saxon England ruled by an abbess."⁷⁵ Bede relates the life of Hilda, a powerful abbess of a double house. He states that "[h]er prudence was so great, that not only indifferent persons, but even kings and princes, as occasion offered, asked and received her advice."⁷⁶ Hilda was also a great educator. Five bishops came from her monastery at Whitby.⁷⁷

The church was one place where either men or women could gain an education.⁷⁸ Aldhelm in *De Virginitate* described the course of study of the nuns at the monastery of Barking as including scripture study, history, and grammar.⁷⁹ The education women received was often used to teach Christianity on the Continent.⁸⁰ St. Boniface, an Anglo-Saxon who taught in Germany, corresponded with several nuns asking for books. He wrote Eadburg, the abbess of Minster, asking her to "continue the good work . . . by copying out for me in gold the epistles of my lord St Peter."⁸¹ Aldhelm asked the nuns at Barking to critique his book *De Virginitate*.⁸²

The Viking invasions destroyed many of the double houses. The monasteries and nunneries were rebuilt, but generally not as double houses.⁸³ These physical changes, as well as the increasing tendency within the church to view women as "threats to men's salvation," combined to deprive women of their previous influence in the church.⁸⁴ However, there continued to be many abbesses whose lives

74. LINA ECKENSTEIN, *WOMAN UNDER MONASTICISM* ix (1896).

75. FELL ET AL., *supra* note 3, at 109.

76. BEDE, *supra* note 8, at 202.

77. *Id.*

78. See FELL ET AL., *supra* note 3, at 109 ("From the time that Christianity came to England men and women shared equally, not only in conversion to the new faith, but in the learning that accompanied it."); see also LUCAS, *supra* note 21, at 37.

79. FELL ET AL., *supra* note 3, at 110-11.

80. See generally ECKENSTEIN, *supra* note 74, at 134-42.

81. FELL ET AL., *supra* note 3, at 113.

82. *Id.* at 110.

83. Dietrich, *supra* note 1, at 37.

84. *Id.* at 37-38.

were venerated by having sainthood bestowed upon them.⁸⁵ This, in contrast to the dearth of female saints after the Norman Conquest, indicates the degree that women exercised significant influence in the Anglo-Saxon Church.⁸⁶

Some Anglo-Saxon women who chose not to marry could pursue occupations outside the church. A lucrative profession was cloth-making. Skill in weaving and embroidery was valuable.⁸⁷ That women with these skills were sought after is evidenced by Wynflaed bequeathing to her granddaughter, Eadgifu, two female slaves who were skilled weavers and embroiders.⁸⁸ Indeed, Leofgyo, an Anglo-Saxon noblewoman at the time of the Conquest, with the skill of her needle may have preserved her estate after her husband fell at Hastings in 1066. She was allowed to keep her estate and was granted revenue from other lands so she could teach the daughter of Godric the Sheriff to embroider.⁸⁹ Another well rewarded weaver was a woman named Eanswith. Dene-wulf, Bishop of Worcester, granted her land if she would care for and produce ecclesiastical vestments.⁹⁰

4. *Political leadership*

"[Anglo-Saxon] society allowed to women, not only private influence, but also the widest liberty of intervention in public affairs."⁹¹ In Anglo-Saxon England women were seen as capable leaders ruling jointly with their husbands,⁹² or ruling after the death of their husbands.⁹³

Anglo-Saxon rulers performed many functions. Kings led their warriors into battle, distributed gifts, resolved disputes,

85. *Id.* at 37.

86. See *infra* note 163 and accompanying text.

87. Evidence of this is the many wills that bequeath cloth, bedclothes, and clothing. See, e.g., Will of Wynflaed, *supra* note 39, at 11-15.

88. *Id.*; see also FELL ET AL., *supra* note 3, at 41.

89. FELL ET AL., *supra* note 3, at 41.

90. *Id.*

91. Dietrich, *supra* note 1, at 43 (quoting Stenton, *supra* note 1, at 324).

92. For example, Aethelflaed, "Lady of the Mercians," daughter of King Aelfred of Wessex, and her husband, Aethelraed, are referred to as equals: The Lady and the Lord of the Mercians respectively. LUCAS, *supra* note 21, at 183. Note also that a grant of land was consented to by both "Aethelred and Aethelflaed, lords of the Mercians." HOOKE, *supra* note 29, at 102.

93. For example, "Seaxburh, widow of Coenwalh of Wessex, who ruled for a year after her husband's death." LUCAS, *supra* note 21, at 183. Likewise, Aethelflaed ruled alone for eight years after her husband's death in 911. *Id.*; Bandel, *supra* note 66, at 115.

granted land, and supported the ecclesia. Women could and did perform all of these functions. For example, Queen Aethelflaed led armies, built fortresses, and sent expeditions against the Welsh and the Danes in Leicester.⁹⁴ Queen Welthow honored Beowulf with gifts just as the king did.⁹⁵ A man and his wife, Brihtric and Aelfswith, asked for the queen to uphold their will.⁹⁶ Women also granted land and supported ecclesiasti. For example, there is a record of a "[g]rant of land at Croome, Worcs., by Eanswith, consort of King Burgred, to the cathedral clergy of Worcester, for their dairy-farm; A.D. 853 x 874."⁹⁷

Political leadership in this period cannot have been an easy task. Kings had to ward off attacks from Danes, Scots, Picts, and the Welsh, as well as attacks from neighboring Anglo-Saxon kingdoms. A ruler had to have both leadership ability and the loyalty of the people in order to successfully rule. Women, such as Aethelflaed, proved themselves to be capable of leadership in this environment.⁹⁸

5. *The legal system*

The Angles, Saxons and Jutes brought with them the Germanic custom of *wergild*. Plainly stated, *wergild* was the monetary value of a person's life.⁹⁹ Everyone had a *wergild* value. A person's *wergild* varied depending upon one's rank in society. Women had the same *wergild* as men of their rank.¹⁰⁰ In fact, pregnant women were protected both by their own *wergild* and half the child's *wergild* which is "in accordance with the wergeld of the father's kindred."¹⁰¹

The laws of the Anglo-Saxon kings established when *wergild* was to be paid and to whom. Women were just as eligible to receive *wergild* payments as men.¹⁰² The Laws

94. See Dietrich, *supra* note 1, at 36 (citing Bandel, *supra* note 66, at 115-17); see also FELL ET AL., *supra* note 3, at 91-92.

95. BEOWULF 60 (Burton Raffel trans., 1963).

96. Will of Brihtric & Aelfswith, *supra* note 51, at 27.

97. HOOKE, *supra* note 29, at 102.

98. See FELL ET AL., *supra* note 3, at 91-92.

99. See SEEBOHM, *supra* note 62 (extensive discussion of *wergild* throughout); Thomas, *Anglo-Saxon*, *supra* note 11, at 468-69 (brief discussion of *wergild*).

100. Compare Laws of Alfred cl. 18, § 3 with *id.* at cl. 10 (871-900), in LAWS OF THE EARLIEST ENGLISH KINGS, *supra* note 20, at 73, 71.

101. Laws of Alfred cl. 9 (871-900), in LAWS OF THE EARLIEST ENGLISH KINGS, *supra* note 20, at 69.

102. FELL ET AL., *supra* note 3, at 84.

of Ine established that "[i]f . . . the person [under whose protection the victim has been] is an abbot or an abbess, he [or she] shall share [the wergeld] with the king."¹⁰³ The Laws of Alfred provided that anyone assaulting a woman should pay her compensation according to her rank.¹⁰⁴

Another important aspect of Anglo-Saxon law was oath giving. "A man accused of an offense was usually permitted to meet the charge by swearing an oath to his innocence and bringing in several other[s] . . . to give similar oaths."¹⁰⁵ Oath givers were also present in civil suits. Anglo-Saxon women could be litigants and oath givers. One instance of this can be found in a suit between Wynflaed and a man named Leofwine. Wynflaed was required to prove ownership of certain estates. She did this by calling many female witnesses, including "the abbess Eadgifu and the abbess Leofrun and Aethelhild and Eadgifu of Lewknor and her sister and her daughter and Aelfgifu and her daughter, and Wulfwyn and Aethelgifu and Aelfwaru and Aelfgifu and Aethelflaed" ¹⁰⁶ Wynflaed won possession of her estates but agreed to return to Leofwine his father's gold and silver.¹⁰⁷

One final interesting aspect of the Anglo-Saxon legal system is the fact that Anglo-Saxon women were held accountable for their own crimes and not those committed by their husbands. As reasonable as this seems, it is another indication that Anglo-Saxon women were their own creatures and not merely appendages to their husbands. Wihtried, a late seventh century king, issued a law stating that "[i]f a husband, without his wife's knowledge, makes offerings to devils, he shall forfeit all his goods."¹⁰⁸ Only if the wife

103. Laws of Ine cl. 23, § 2 (688-725), in *LAWS OF THE EARLIEST ENGLISH KINGS*, *supra* note 20, at 43.

104. Laws of Alfred cl. 11, §1-5 (871-900), in *LAWS OF THE EARLIEST ENGLISH KINGS*, *supra* note 20, at 71.

105. Thomas, *Anglo-Saxon*, *supra* note 11, at 469. Examples of offenses requiring the giving of oaths are found in the laws of many kings: Laws of Hlothhere and Eadric, cl. 10, in *LAWS OF THE EARLIEST ENGLISH KINGS*, *supra* note 20, at 21 ("[T]he accused shall render justice to the other and satisfy him with money, or with an oath."); Laws of Ine, cl. 15 ("He who is accused of taking part in a raid shall redeem himself with his wergeld, or clear himself by [an oath equal in value to] his wergeld.") *Id.* at 41.

106. FELL ET AL., *supra* note 3, at 98 (quoting record of a lawsuit between Synflaed and Leofwine).

107. *Id.*

108. Laws of Wihtried cl. 12 (c. 695), in *LAWS OF THE EARLIEST ENGLISH*

participates are her goods forfeit.¹⁰⁹ Likewise, a law issued by Ine, also a late seventh century king, provides that "[i]f a husband steals a beast and carries it into his house, and it is seized therein, he shall forfeit his share [of the household property]."¹¹⁰ His wife, however, can keep her share of the household property if she swears she hasn't eaten any of the meat.¹¹¹ These early Anglo-Saxon laws are evidence that Anglo-Saxon women were accountable only for their own actions.¹¹²

C. Conclusion

[Anglo-Saxon] woman is a person not a thing. She lives, she speaks, she acts for herself.¹¹³

Anglo-Saxon women had a high level of self-determination. A significant indicator of this was land ownership. Women, in many cases, exercised land ownership to the same extent as men. That women had this ability is a significant indicator of their status in society. "[I]t is of the greatest importance that the fair sex should possess high estimation in society; and nothing could more certainly tend to perpetuate this feeling, than the privilege of possessing property in their own right, and at their own disposal."¹¹⁴

Anglo-Saxon women had the power, to some extent, to determine their own destinies. They may have been able to choose to marry and have children. And, upon divorce or widowhood, they were presumptively the custodians of their children. They could pursue an occupation, and, if the opportunity presented itself, they could rule kingdoms.

KINGS, *supra* note 20, at 27.

109. *Id.*

110. Laws of Ine cl. 57 (688-725), in LAWS OF THE EARLIEST ENGLISH KINGS, *supra* note 20, at 55.

111. *Id.* at 57.

112. Women's status as independent actors degenerated to the point that, under the common law, not only were they not responsible for their husband's wrongs but they were no longer responsible for the wrongs they committed: their husbands were. See *Culmer v. Wilson*, 44 P. 833, 837 (Utah 1896) ("Under the common law, [the husband] could inflict punishment on [the wife], for he was answerable for her misconduct, and the law left him with this power of restraint and correction, the same as he could correct his children or his apprentices.").

113. FELL ET AL., *supra* note 3, at 8.

114. *Id.* at 7; see also Meyer, *supra* note 23, at 58.

Anglo-Saxon women could also participate in the legal system of the day. As stated by Doris Stenton

The evidence which has survived from Anglo-Saxon England indicates that women were then more nearly the equal companions of their husbands and brothers than at any other period before the modern age. In the higher ranges of society this rough and ready partnership was ended by the Norman Conquest, which introduced into England a military society relegating women to a position honourable but essentially unimportant.¹¹⁵

III. THE NORMANS

A. History

Unfortunately, as is suggested in the above quote from Doris Stenton, the status of women fell significantly in Anglo-Norman times. In 1066, with the Battle of Hastings, the Normans began their conquest of the Anglo-Saxons.¹¹⁶ The Normans, as their name suggests, originally came from the North, from Scandinavia. The founder of the Norman dynasty was a Norwegian Viking named Rollo.¹¹⁷ "The origins of historic Normandy are as a Viking settlement in northern France, recognized and legitimized [by the] Treaty of St. Clair-sur-Epte in 911, whereby Charles the Simple, King of the West Franks, granted territories about the lower Seine and Rouen to . . . Rollo."¹¹⁸ These territories became known as Upper Normandy. Rollo then expanded his territory into Bayeux and Sees. His son, William I, further expanded the Norman territory into what became Lower Normandy.¹¹⁹

William the Conqueror was the great-great-grandson of Rollo. Although his ancestors came from Scandinavia, as did

115. FELL ET AL., *supra* note 3, at 13.

116. See FRANK M. STENTON, *ANGLO-SAXON ENGLAND* 573-613 (1943) (discussing the Norman conquest of Anglo-Saxon England); see also H.R. LOYN, *THE MAKING OF THE ENGLISH NATION* 86 (1991).

117. David A. Thomas, *Origins of the Common Law—Part III: Common Law Under the Early Normans*, 1986 B.Y.U. L. REV. 109, 110 [hereinafter Thomas, *Normans*]; see also DAVID C. DOUGLAS, *WILLIAM THE CONQUEROR: THE NORMAN IMPACT UPON ENGLAND* 16 (1964).

118. R. ALLEN BROWN, *THE NORMAN CONQUEST* xv (1984). See also Thomas, *Normans*, *supra* note 117, at 111; Whitelock, *supra* note 17, at ch. VI, 15.

119. Thomas, *Normans*, *supra* note 117, at 111.

the ancestors of the Anglo-Saxons, by William the Conqueror's time the Normans had adopted French customs and laws.¹²⁰ William the Conqueror recognized the differences between the French and Anglo-Saxon legal systems and initially intended to retain the laws of King Edward as they existed at the time of the Battle at Hastings.¹²¹ A writ from the King clearly indicates this intent:

William King of the English to Lanfranc the Archbishop and Geoffrey the Bishop and Robert Count of Mortain, Greeting. See that Remigius the Bishop does not demand new customs within the Isle of Ely. For I am unwilling that he shall have there anything except what his predecessor had in the time of King Edward, namely on that day the King died. And if Remigius shall wish to plead therein, let him plead therein as he would have done in the time of King Edward Cause the plea touching the lands which William de Ou and Ralf son of Waleran and Robert Gernun are claiming to stand over if they are unwilling to plead therein as they would have pleaded in the time of King Edward, and I will that as the abbey then had its customs, you cause it to have them completely as the abbot by his charters and by his witnesses shall be able to plead them—¹²²

Although William originally intended to retain the laws and customs of the Anglo-Saxons, he appears to have quickly abandoned that intention. "After 1072, with his success against native rebellion, his rule became more arbitrary."¹²³ This arbitrariness is documented in the Domesday Book.¹²⁴ "By 1086 [when the Domesday census was taken] there were only two English tenants-in-chief of

120. BROWN, *supra* note 118, at xv.

121. DORIS M. STENTON, *ENGLISH JUSTICE BETWEEN THE NORMAN CONQUEST AND THE GREAT CHARTER* 17-18 (1964).

122. *Id.* For another charter that shows similar intentions, see *The Writ of William the Conqueror Concerning the City of London* (1067), in BROWN, *supra* note 118, at 146.

123. LOYN, *supra* note 18, at 327.

124. MAITLAND, *supra* note 24, at 1. "At midwinter in the year 1085 William the Conqueror wore his crown at Gloucester and there he had deep speech with his wise men. The outcome of that speech was the mission throughout all England of . . . collecting . . . a [description] of his new realm." *Id.* This "description" came to be known as the Domesday Book. *Id.* The Domesday Book contains a census as well as a detailed description of ownership of real property and livestock. *Id.* at 164-65

baronial rank [out of approximately 180] in the whole of England . . . both of whom [had turned on their] fellow-Englishmen."¹²⁵ An account of William's death-bed confession sums up his cruelty to the Anglo-Saxons:

I have persecuted the natives of England beyond all reason. Whether gentle or simple I have cruelly oppressed them; many I unjustly disinherited; innumerable multitudes perished through me by famine or the sword. . . . I fell on the English of the northern shires like a ravening lion. I commanded their houses and corn, with all their implements and chattels, to be burnt without distinction, and great herds of cattle and beasts of burden to be butchered wherever they are found. In this way I took revenge on multitudes of both sexes by subjecting them to the calamity of a cruel famine, and so became the barbarous murderer of many thousands, both young and old, of that fine race of people. Having gained the throne of that kingdom by so many crimes I dare not leave it to anyone but God. . . .¹²⁶

Under such oppression, within William's lifetime, Anglo-Saxon customs and laws were abandoned in favor of Norman customs and feudalism.¹²⁷

B. Legal and Customary Rights of Anglo-Norman Women

1. Land ownership

With changes in law and custom came a change in the overall status of women in England. Unlike Anglo-Saxon law and custom which, in many areas, treated men and women roughly as equals, "[t]he feudal world [of the Normans] was essentially a masculine world."¹²⁸ The King granted to his lords, and they granted to their followers, land in exchange for certain feudal incidents. These feudal incidents included military service and payment of taxes.

During the Anglo-Saxon period, land was taxed and holders of land were called on to defend it. After the Con-

125. LOYN, *supra* note 18, at 327-28; see also MICHAEL WOOD, *DOMESDAY: A SEARCH FOR THE ROOTS OF ENGLAND* 159 (1986).

126. WOOD, *supra* note 125, at 159.

127. LUCAS, *supra* note 21, at 83.

128. Dietrich, *supra* note 1, at 44 (quoting DORIS M. STENTON, *THE ENGLISH WOMAN IN HISTORY* 29 (1957)).

quest, taxes continued to be assessed and in many cases were oppressively increased.¹²⁹ Additionally, military service became much more important. "The knight's service 'by his lord's shield' was the most obvious expression of the feudal relationship."¹³⁰ "The major concern of king and landlord lay now much more in the obligation to send so many knights to follow the feudal host."¹³¹ Despite the ability of women to provide effective military leadership, as evidenced by Queen Aethelflaed's military feats,¹³² the Anglo-Normans perceived military service to be an exclusively male activity.¹³³ Land was granted to men in return for their services. Women were seen as incapable of gathering and leading a host of knights.¹³⁴ Thus, landed widows and heiresses were quickly married off by their lords, this being a way to reward deserving warriors and recruit a larger fighting force.¹³⁵

The preference for male land ownership was manifest by the establishment of primogeniture.¹³⁶ Primogeniture was more than a preference—it was legally mandated. Only absent a son could the daughters inherit. For example, a charter of land from one Roger de Valognes to the church at Binham in 1086 reads in part, "Agnes, namely, who was Walter's heir in respect of this land of Barney according to the appointed law that where there is no son the daughters divide their father's land by the spindles"¹³⁷ Thus, "[o]n the critical questions of inheritance . . . the world of the Anglo-Norman aristocrats was very much a man's world."¹³⁸

129. LOYN, *supra* note 18, at 339.

130. STENTON, *supra* note 21, at 192.

131. LOYN, *supra* note 18, at 327.

132. See *supra* note 94 and accompanying text.

133. LUCAS, *supra* note 21, at 84.

134. See *id.* (describing Anglo-Norman military arrangements and how an Anglo-Norman woman "could not serve an overlord in war . . ."); see also FELL ET AL., *supra* note 3, at 149 (suggesting that women landholders were an "anomaly" because the land system was based on military tenure).

135. See LUCAS, *supra* note 21, at 84, 87.

136. See Sue S. Walker, *Widow and Ward: The Feudal Law of Child Custody in Medieval England*, in *WOMEN IN MEDIEVAL SOCIETY* 159, 160 (Susan M. Stuard ed., 1976). Primogeniture is "[t]he superior or exclusive right possessed by the eldest son, and particularly, his right to succeed to the estate of his ancestor . . . to the exclusion of younger sons." BLACK'S LAW DICTIONARY 1191 (6th ed. 1990).

137. STENTON, *supra* note 21, at 39.

138. LOYN, *supra* note 18, at 334-35.

Since land ownership under the Anglo-Norman system was essentially a male prerogative, it is not surprising that after the Conquest women lost other rights connected to landholding as well. For example, after the Conquest a married woman could no longer make a valid will without her husband's consent.¹³⁹ Because land was valuable, and because a woman was viewed as incapable of controlling land during her lifetime, she was deemed incapable of controlling it upon her death.¹⁴⁰

This is not to say that land ownership among Anglo-Norman women was uncommon. Control of that land, however, was another matter. A woman who inherited property because of a decedent's lack of a male heir was valuable, and was soon married off to a man who controlled her estates.¹⁴¹

2. *Family law*

Customs regarding marriage and the selection of a husband changed dramatically for women after the Norman Conquest. Women generally had little choice in the selection of a husband.¹⁴² "Widows and heiresses were freely sold to the highest bidder or to the friends of the king or overlord, even if those friends were of low degree, to the ladies' 'disparagement.'"¹⁴³ That a widow could be free from another marriage only by paying a substantial fee underscores the commercial nature of these transactions.

"[Y]oung unmarried women [of good lineage] were carefully guarded as valuable assets, their virginity a precious saleable commodity to be used to the best advantage when their time came to enter the marriage market."¹⁴⁴ Anglo-Norman women were "given by one family to another for the mutual benefit of both houses,"¹⁴⁵ much like peaceweavers in Anglo-Saxon times. But unlike the marriag-

139. JENNIFER C. WARD, *ENGLISH NOBLEWOMEN IN THE LATER MIDDLE AGES* 9 (1992).

140. See *infra* note 136 and accompanying text.

141. See LUCAS, *supra* note 21, at 84-85; see generally Walker, *supra* note 136, at 157-59 (discussing the value of wardships).

142. LUCAS, *supra* note 21, at 85.

143. *Id.* at 86; see also AUSTIN L. POOLE, *FROM DOMESDAY BOOK TO MAGNA CARTA* 23 (2d ed. 1955).

144. LUCAS, *supra* note 21, at 85.

145. *Id.*

es of Anglo-Saxon women, Anglo-Norman marriage arrangements sometimes appear to have been less a matter of inter-tribal peace than a matter of benefitting the family coffers and social standing.¹⁴⁶ Also, unlike the Anglo-Saxon peaceweaver whose role was conciliation, the Norman woman's main function was to "become the mother of the next heir to her husband's property."¹⁴⁷

Theoretically, consent by the woman was required before the marriage could take place.¹⁴⁸ However, evidence that in some cases this consent was coerced is found in the life of St. Christina of Markyate who was reportedly beaten for refusing to accept the husband her parents had chosen.¹⁴⁹ Another example of coercion is found in the life of Elizabeth Paston. Elizabeth refused a marriage her parents had arranged for her. For her refusal "[s]he was shut away, allowed to speak to no one, not even a servant. She was beaten once or twice a week 'and some tyme twyes on [one] day, and hir hed broken in to or thre places.'"¹⁵⁰

Additionally, heiresses were quickly married regardless of their young age. The concept of consent had little meaning when the girl consenting was still a child and had little concept of what she was consenting to. An example of an especially appalling case is found in the *Life of St. Hugh of Lincoln* which

tells of a child who, because she was believed to be a great heiress, was married at the age of four to a great nobleman. Two years later he died, and she was immediately married to another. When *he* died, she was exchanged for 300 marks with yet a third noble bridegroom, and she was scarcely eleven years old. The first husband was excommunicated and the priest who had officiated at the marriage . . . was deprived; yet the bishop in question never said that the marriage was invalid, and the third

146. See *id.* at 100; see also WARD, *supra* note 139, at 15-19.

147. LUCAS, *supra* note 21, at 85; see also Christopher N.L. Brooke, "Both Small and Great Beasts": An Introductory Study, in MEDIEVAL WOMEN, *supra* note 50, at 1, 2.

148. See LUCAS, *supra* note 21, at 100.

149. FELL ET AL., *supra* note 3, at 150.

150. LUCAS, *supra* note 21, at 101 (quoting 2 THE PASTON LETTERS AND PAPERS OF THE FIFTEENTH CENTURY 32 (N. Davis ed., 1976)).

husband was enjoying his privileges as a spouse twenty years after his marriage.¹⁵¹

Child custody is another area of family law where Anglo-Norman women were less fortunate than their Anglo-Saxon sisters. When a man died, his children (and his wife for that matter) became wards of his feudal lord.¹⁵² The feudal lord became the guardian of both the children and the children's land. Wardship of the land and the children could be sold either separately or together.¹⁵³ Thus, a child might have many guardians, none of whom "would, of right, be his mother."¹⁵⁴

"[W]ardship of the body carried with it the lucrative right to arrange the heir's marriage."¹⁵⁵ A writ from Henry I exemplifies the control a guardian had over the lives of his wards. A man named Geoffrey Ridel had drowned, leaving a wife and several young children as the king's wards. The king states: "Know that I have given to Richard Basset the daughter of Geoffrey Ridel to wife, and the custody of Geoffrey Ridel's land until Robert Ridel can be a knight and marry the granddaughter of Ralf Basset."¹⁵⁶

It is likely that only the male heir was drawn into active wardship. The mother probably retained custody of the other surviving children.¹⁵⁷ If, however, the child who was heir died, the mother lost the next child to wardship. The following writ of Henry III demonstrates this principle. The writ orders a mother to deliver her daughter, as heir-ess, into wardship to take the place of the deceased heir:

To Mabel late the wife of Roger Torpell. She must well remember that the king gave the custody of the land and heirs of the said Roger de Tropell [sic], with the marriage of the heirs, to R. Bishop of Chichester, the chancellor, during the minority of the heirs, whereof because William the eldest son and heir, has died, the king commands her,

151. *Id.* at 89-90.

152. Walker, *supra* note 136, at 159.

153. *See id.* at 159, 162 (stating that "some widows entered the feudal wardship market to purchase the heir's custody").

154. *Id.* at 159.

155. *Id.*

156. STENTON, *supra* note 21, at 35.

157. Walker, *supra* note 136, at 160.

as she loves herself and her goods, not to eloin Acelota, sister and next heir of the said William, whom the chancellor committed to her ward to nurse, but to deliver her to the messenger of the said bishop bearing these letters with letters of the bishop testifying that he is his messenger.¹⁵⁸

Mothers were often allowed to keep custody of a very young child for a "period of nurture"—usually until the child's marriage or betrothal around the age of six or seven.¹⁵⁹ If the mother retained custody of the child she was entitled to receive payments from the child's guardian for the child's support.¹⁶⁰

3. *Women's occupations*

The contrast in England between pre- and post-Norman Conquest is less dramatic in the area of church affairs than in others. Prior to the Conquest, women had been gradually losing their power and influence in the church. Women were increasingly seen as seductive creatures who destroyed men with their charms.¹⁶¹ The vilification of women that had begun in the late Anglo-Saxon period continued and worsened as church law was canonized.¹⁶² Lina Eckenstein sums up the waning of feminine power in the church:

Most of the women who were honoured as saints in England belong to the first hundred years after the acceptance of Christianity in these islands. A few other women have been revered as saints who lived in the 10th century and came under the influence of the monastic revival But no woman living during Anglo-Norman times has been thus honoured, for the desire to raise women to saintship was essentially Anglo-Saxon and was strongest in the time which immediately followed the acceptance of Christianity.¹⁶³

158. *Id.*

159. *Id.* at 161.

160. *Id.*

161. FELL ET AL., *supra* note 3, at 152; Brooke, *supra* note 147, at 6.

162. LUCAS, *supra* note 21, at 6. "Gratian, the 'father' of Canon Law, indicated that woman was not made in God's image, the natural result of which is her subjection to man, the lesser serving the greater, without authority, unable to teach, witness or govern." *Id.*

163. FELL ET AL., *supra* note 3, at 11.

In contrast to the great intellectual regard Boniface and Aldhelm held for their female counterparts in the early Anglo-Saxon period, the patronizing church hierarchy of the Norman period had a *Guide for Anchoresses* written in English rather than Latin "out of deference to female ignorance."¹⁶⁴ This fact emphasizes both the point that men looked down on women's intellectual capabilities as well as the limitations placed on women's education.

Despite the decline of powerful women in the church there were still advantages to joining an abbey: "Most of the women who lived a monastic life, with or without vows, received some education."¹⁶⁵ However, as pointed out above, the quality of education women received in the monasteries declined after the Conquest. "The English nun in the later Middle Ages [was] a poor descendant indeed of her pious, disciplined and scholarly ancestors of Anglo-Saxon times."¹⁶⁶

Though most Anglo-Norman women either married or took the veil, some had secular occupations prior to or in addition to marriage.¹⁶⁷ Most occupations were regulated by male-controlled guilds.¹⁶⁸ Women were admitted into these guilds but generally only if their husband or father was or had been a member.¹⁶⁹ In some towns there were occupations that were almost exclusively female including brewing,¹⁷⁰ cloth-making¹⁷¹ and cheesemaking.¹⁷² As urban life developed it is likely that more occupational opportunities were available to women; thus, there were probably more occupations available to women after the Norman Conquest.¹⁷³

164. *Id.* at 110.

165. LUCAS, *supra* note 21, at 139.

166. *Id.* at 150.

167. FELL ET AL., *supra* note 3, at 157.

168. *See id.* at 160. Fell states that "[s]ome merchant-gilds admitted women . . . as members in their own right." *Id.* This suggests that most guilds did not. It likewise suggests that most guilds were controlled by men.

169. *Id.*

170. *Id.* at 159.

171. *Id.* at 160.

172. *Id.* at 157.

173. *See id.* at 158.

4. *Political leadership*

In the Anglo-Saxon period women were capable of becoming powerful political figures. After the Conquest the opportunities for women to govern and exercise military leadership dwindled as societal attitudes about the appropriateness of such activities for women changed.¹⁷⁴ The change in societal attitudes is reflected in the writings of historians from this period. "[M]any chroniclers exhibited narrower attitudes toward women who did occasionally engage in [military or political] activities."¹⁷⁵

Aethelflaed's treatment in twelfth- and thirteenth-century chronicles differs radically from that in the *Anglo-Saxon Chronicle*. Her martial exploits are neglected; her marital exploits or, more accurately, her lack of them, come to the fore. She is no longer the woman who successfully led the Mercian army against the Danes; she has become the woman who had only one child because labor pains so bothered her that she henceforth refrained from intercourse with her husband.¹⁷⁶

This is an indication that the Anglo-Norman male chronicler rewrote English history to force women into the chivalric mold.

5. *The legal system*

After the invasion, women were excluded from the legal system as they had not been during Anglo-Saxon times. A woman was either the responsibility of her father or her husband.¹⁷⁷ "[T]he married woman was unable on her own to bring litigation or plead in the courts. Once she was widowed . . . she was allowed this right, but it would again cease if she remarried."¹⁷⁸ A wife had to have her husband's consent to make a valid will, although widows needed no one's consent to make a valid will.¹⁷⁹ Additionally, "Anglo-Norman women were rarely called upon to wit-

174. Dietrich, *supra* note 1, at 36.

175. *Id.*

176. *Id.*

177. WARD, *supra* note 139, at 2-3.

178. *Id.*

179. *Id.* at 9.

ness charters or to grant lands to nunneries, as they had reduced rights to hold land and make wills."¹⁸⁰

C. Conclusion

From this brief survey of Anglo-Norman women's rights, we see that Anglo-Norman women had lost considerable ground vis-a-vis their Anglo-Saxon counterparts. Land ownership was just as important in Anglo-Norman England as it was in Anglo-Saxon England. However, the Normans brought with them a feudal tenure based on military service.¹⁸¹ In Anglo-Norman England, only men could fulfill these military obligations. Thus, feudal tenure was essentially masculine in nature. This made transfers of land to women rare. Moreover, the land that women did own was usually controlled by their husbands or guardians. Because Anglo-Norman women did not have the opportunity to own and control land the way that Anglo-Saxon women had, they were less able to determine their own destinies.

Anglo-Norman women likewise had little control over whether they were to marry, as well as who they married. Upon the dissolution of her marriage the Anglo-Norman mother, unlike the Anglo-Saxon mother, had no presumptive right to custody of her children. However, because of the gradual urbanization of England, Anglo-Norman women probably had more occupational options than their Anglo-Saxon sisters. Finally, Anglo-Norman women simply never ruled kingdoms. Kingship, like military service, was strictly a man's job in Anglo-Norman England.

Anglo-Norman women were generally unable to participate in the legal system. Only upon widowhood did a woman obtain the right to litigate on her own behalf, make a will, or control her land. Once a woman or heiress became widowed she became a ward of the king or overlord who would, for his own profit, arrange another marriage for her.¹⁸² Since women gained control of their own legal destinies upon widowhood and lost it upon remarriage it is not surprising that many women paid the king to avoid remarriage.¹⁸³ King John made such a profit from these payoffs

180. LUCAS, *supra* note 21, at 184.

181. See *supra* notes 128-35 and accompanying text.

182. LUCAS, *supra* note 21, at 86.

183. CHARLOTTE A. NEWMAN, *THE ANGLO-NORMAN NOBILITY IN THE REIGN OF*

that the Magna Carta provided that "[n]o widow shall be compelled to marry so long as she prefers to live without a husband, provided she gives security that she will not marry without [her lord's] consent."¹⁸⁴

IV. CONCLUSION

Anglo-Norman women of the upper class had fewer rights and opportunities than Anglo-Saxon women. Several social and historical factors may help explain this change in women's circumstances. First, church attitudes towards women were changed. Even prior to the Conquest women had gradually been losing power in the church. The church's teachings stressing the inferiority and subordination of women undoubtedly had an effect on how women were perceived in society.¹⁸⁵ Had the Conquest never taken place, this trend probably would have continued and women may have eventually lost their power both within and without the church. The Conquest merely accelerated the process. The Normans were Christians without a heritage of female saints; women had never played a substantial role in their religious culture. Thus, it is likely that the coming of the Normans merely aggravated the growing tendency within the church to vilify women.¹⁸⁶

A second possible explanation for the waning of women's rights may be the introduction of Norman feudalism. Even before the Conquest, Anglo-Saxon England was becoming increasingly feudalistic. Anglo-Saxon England began as several kingdoms that gradually coalesced into the kingdom of England with land held at the pleasure of the king. This set the stage for the arrival of Continental feudalism with the Normans. "The imposition of Norman feudalism was made possible by the creation in late Anglo-Saxon England of communities dominated by landlords bound closely in turn to the king."¹⁸⁷ By the eleventh century, Anglo-Saxon England was becoming a more feudal society with great parcels

HENRY I—THE SECOND GENERATION 44 (1988).

184. GREAT CHARTER OF LIBERTIES (MAGNA CARTA), 17 John, § 8 (Eng. 1215), in SELECT DOCUMENTS OF ENGLISH CONSTITUTIONAL HISTORY 42, 44 (George B. Adams & H. Morse Stephens eds., 1916).

185. See generally WARD, *supra* note 139, at 2.

186. See *supra* notes 161-64 and accompanying text.

187. LOYN, *supra* note 18, at 310.

of land being held by the privileged few.¹⁸⁸ "The Norman Conquest in one aspect stopped this natural growth of feudalism: in another it may be said to have introduced the feudal system."¹⁸⁹ Anglo-Saxon England, had it continued, would probably have become a feudal state.¹⁹⁰ However, it would have been a feudal state different from that imposed by the Normans. The Anglo-Saxons recognized that women could be effective land owners.

A third possible explanation for women's loss of opportunity and rights lies in the changing political structure. When the Angles, Jutes, and Saxons first migrated to England, life was brutal. They came in small clans and tribes and every member of the tribe had to contribute to the defense of the tribe. Women had to fight. These tribes slowly coalesced into kingdoms, which gradually formed the kingdom of England. As the political bodies grew, more people became available for the defense of the whole, and men were undoubtedly chosen as warriors before women. After all, as is stated in *Beowulf*, "[n]o female, no matter how fierce, could have come with a man's strength."¹⁹¹ Women became less necessary to defense. "Anglo-Saxon England developed from an early pioneering stage where the peasant householder was free but society violent, into a more peaceful ordered community where much of the earlier freedom had been lost."¹⁹² As part of this gradual loss of freedom it is likely that women would eventually have come to be viewed as incapable and/or unnecessary in waging war. The Conquest, however, accelerated the process. The Normans brought with them a culture steeped in chivalry; men were knights and women were to be protected.¹⁹³

A corollary to these changes in the political structure of England were changes in the nature of battle. The armored knight was preeminent on the continent and in Anglo-Nor-

188. Whitelock, *supra* note 17, at 30.

189. SELECT CHARTERS AND OTHER ILLUSTRATIONS OF ENGLISH CONSTITUTIONAL HISTORY 14 (William Stubbs ed., 9th ed., 1921).

190. *Id.*; see also MARJORIE CHIBNALL, *ANGLO-NORMAN ENGLAND, 1066-1166*, at 161-62 (1986) (noting similarities between the Norman and Anglo-Saxon societies prior to the Conquest, including the "increasing importance of lordship" in both cultures).

191. *BEOWULF*, *supra* note 95, at 63.

192. LOYN, *supra* note 18, at 301 (paraphrasing Frank Stenton); see also Whitelock, *supra* note 17, at 33.

193. FELL ET AL., *supra* note 3, at 13.

man England. "[T]he Normans excelled in contemporary warfare--[which was], in France . . . increasingly based upon knights and castles."¹⁹⁴ In fact, the Norman reliance on mounted knights was key to their subjugation of the Anglo-Saxons.¹⁹⁵ Knights wore armor and carried lances¹⁹⁶ that women physically were probably less capable of supporting. Even if a woman could support the armor it is unlikely she could best a male knight in battle.¹⁹⁷

A final explanation lies entirely with the Conquest. William the Conqueror awarded his followers with land. These were male warriors. By 1086, twenty years after the Battle of Hastings, a "massive shift" in land ownership from the English to the Anglo-Normans had taken place.¹⁹⁸ Primogeniture was already an established system in Normandy. This comprehensive substitution of Norman landowners had the end result of excluding women from inheritance.

It may be difficult to determine why and exactly when the women of England began to lose their rights. However, it is apparent that Anglo-Saxon women had legal rights and opportunities women coming after them did not have.

Christine G. Clark

194. BROWN, *supra* note 118, at xvi.

195. See ELEANOR SEARLE, PREDATORY KINSHIP AND THE CREATION OF NORMAN POWER, 840-1066, at 239 (1988).

196. See generally LOYN, *supra* note 18, at 330; R. Allen Brown, *The Battle of Hastings*, in *ANGLO-NORMAN WARFARE* 161, 172 (Matthew Strickland ed., 1992).

197. This biological explanation has interesting implications today. Women currently do not serve in combat-ready army troops. However, they do serve on combat-ready ships and fly into combat zones on reconnaissance missions. As combat comes to require less brute strength, it becomes increasingly likely that women will return to battle.

198. "[A]mong the 180 or so tenants-in-chief who possessed large estates . . . only two are English; of the 1400 or so lesser tenants-in-chief about 100 or so are English; of the further 6000 sub-tenants there is a much more sizeable English element, many of them leasing land which they had owned freely before 1066." WOOD, *supra* note 125, at 159.