INTRODUCTION

It appears that prior to the thirteenth century, the making of a will for the disposal of property after death was essentially an oral act, committed before witnesses who had to remember the substance of what the testator said, and report on it to the ecclesiastical authorities. With the advance of the thirteenth century, the written will was used increasingly to convey the testator's ultima voluntas. It is the purpose of this study to establish a general profile of written wills in later medieval England, from the legal and social perspectives. Within this broader context, special reference will be made to women's wills, to show the practical application of canon and common law rules pertaining to women's testamentary capacity, and the special treatment which women's wills received in the lay courts. It will become apparent that married women were legally disadvantaged under the common law respecting testaments. Despite the fact that widows were given full testamentary capacity under this legal system, the probate and execution of a widow's will could meet with obstacles in the lay courts if it could be shown that the document was drawn up while her husband was still living. The small

WILLS IN LATER MEDIEVAL ENGLAND, WITH SPECIAL REFERENCE TO WOMEN

by

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A thesis submitted to
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ABSTRACT

It is the intent of this thesis to establish a profile of wills in later medieval England from the legal and social perspectives. Special reference is made to women's wills within the broader context. In part, this is be accomplished by quantitative analysis of certain aspects of men's and women's wills dated between the early fourteenth and late fifteen centuries, and contained in volumes 1 and 2 of Testamenta Eboracensia, edited by James Raine, and published by the Surtees Society.[1] To illustrate the procedural aspects of probate and administration, reference is made mainly to individual wills proved and enrolled in the Court of Husting, at London.[2] Examination of married women's testamentary capacity under common law, and the special treatment which women's wills received in the lay courts demonstrates that, with respect to wills, women were at some legal disadvantage.

[1]Testamenta Eboracensia. Vol. 1. ed. James Raine. Surtees Society 4. London, 1836; Vol. 2. Surtees Society 30. London, 1855.

[2]Calendar of Wills Proved and Enrolled in the Court of Husting, London, 1258-1688. 2 vols. ed. Reginald R. Sharpe. London, 1889.

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INTRODUCTION

It appears that prior to the thirteenth century, the making of a will for the disposal of property after death was essentially an oral act, committed before witnesses who had to remember the substance of what the testator said, and report on it to the ecclesiastical authorities. With the advance of the thirteenth century, the written will was used increasingly to convey the testator's ultima voluntas. It is the purpose of this study to establish a general profile of written wills in later medieval England, from the legal and social perspectives. Within this broader context, special reference will be made to women's wills, to show the practical application of canon and common law rules pertaining to women's testamentary capacity, and the special treatment which women's wills received in the lay courts. It will become apparent that married women were legally disadvantaged under the common law respecting testaments. Despite the fact that widows were given full testamentary capacity under this legal system, the probate and execution of a widow's will could meet with obstacles in the lay courts if it could be shown that the document was drawn up while her husband was still living. The small extent to which women seem to have generally participated as executors and witnesses in the processes of probate and administration, will be demonstrated.

This study has been based on a sample of 96 women's, and 146 men's wills[1] made between the beginning of the fourteenth, and the end of the fifteenth century, and found in printed form in the first two volumes of the Testamenta Eboracensia, edited by James Raine, and published by the Surtees Society in 1836 and 1855.[2] All the wills contained in these works were selected from the diocesan registry at York. Raine's reputation for accuracy in transcription, and the wide availability of the volumes makes this group of wills ideal for study, especially when it is impractical to consult probate registers. Most of the wills in my sample are written in Latin, and many of these contain an admixture of Latin and English. A few examples are written entirely in English. Difficulties of translation and interpretation are compounded by the use of abbreviations, and inconsistent spelling in both languages. It is impossible to know from the printed source alone whether a testator wrote his will in his own hand, unless of course he included a statement to verify that he had. This appears to be rarely the case. For this reason, the

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[1]Hereinafter, referred to as the "York sample".

[2]Testamenta Eboracensia, Vol. 1, ed. James Raine, Surtees Society, 4, (London, 1836); Testamenta Eboracensia, Vol. 2, ed. James Raine, Surtees Society, 30, (London, 1855).

subject of lay literacy will not be discussed in this paper. The great majority of the wills used for this study, was made by members of knightly and merchant families. Only a very few examples were made by tradesmen and their wives and widows. As these volumes of the Testamenta Eboracensia contain little supporting documentation which sheds light on the procedural aspects of probate and administration, it was necessary to consult other sources. In the main, references will be made to illustrative examples from the two volumes of the Calendar of Wills Proved and Enrolled in the Court of Husting, London, 1258-1688, edited by Reginald Sharpe, and published in 1889.[3] These records pertain to procedure in a borough court, and illustrate some aspects of the treatment of women's wills in this venue. Aspects of procedure in the courts Christian are found in the collection of English conciliar canons and synodal statutes, edited by F.M. Powicke and C.R. Cheney.[4]

From the church's point of view, the primary purpose of the will was to allow the testator to leave instructions respecting the disposal of his property after death for charitable purposes, and for the benefit of his soul. Since the donation of alms was a spiritual concern,

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[3] Calendar of Wills Proved and Enrolled in the Court of Husting, London, 1258-1688, 2 vols., ed. Reginald R. Sharpe, (London, 1889).

[4] Councils and Synods With Other Documents Relating to the English Church, Vol. 2, parts 1, and 2, eds. F.M. Powicke and C.R. Cheney, (Oxford, 1964).

the church courts claimed jurisdiction over all testamentary matters. In principle, the common lawyers agreed with this. However, common law rules respecting the disposal of property, and the proprietary rights of certain persons sometimes caused the lay courts to interfere in the church's jurisdiction. Although the collection of debts which had been proved and acknowledged in the testator's lifetime were considered a testamentary matter, to be settled in the church courts, unproved and unacknowledged debts, of which the testator was the debtor or the creditor, were not, and had to be collected through the lay courts. Despite the fact that the church gave all women full testamentary capacity, cases involving the validity of women's wills, and the disposal of marital property by the married testatrix were tried in the lay courts, on the grounds of the severe restrictions which the common law placed on the married woman's testamentary capacity, and her rights respecting marital property. The common law did not allow the devise of land held in lay fee. However it was the custom in many boroughs to allow the free or restricted devise of borough lands and tenements. Consequently, borough courts directly challenged the church's claim to probate of wills by carrying out their own second probate where devise of borough lands and tenements were involved.

At the end of the twelfth century, the deceased's goods and chattels, along with his claims and liabilities, fell to the heir by right. The heir was the testator's personal representative, and it appears that the testamentary executor had a relatively unimportant role, probably as a supervisor. By the beginning of the fourteenth century, their positions had reversed: essentially, the executor had acquired the legal position of the testator's personal representative. The gradual expansion of the executor's powers of representation, within this period, and later, caused the office to become burdened with costly and time-consuming responsibilities which appointed executors were not always eager to accept. At the same time, taking up the office provided dishonest individuals with opportunities for making a personal profit out of the deceased's estate. Consequently, various safeguards had to be built into canon law respecting the procedures of probate and administration in order to protect the testator's personal property, and to ensure that his intentions would be carried out.

One of the most obvious characteristics of late medieval English wills is the large number and variety of bequests which they contain. Instructions pertaining to the disposal of goods and cash sums are often quite detailed. It is impossible within the scope of this study to analyse every type of bequest. Some of the difficulties involved in trying to do so are discussed in Chapter V. Bequests in connection with burial and funerary observances are discussed, since it appears that there was a growing interest in the details of these arrangements after the middle of the thirteenth century.[5] Generally, scholars have devoted most of their attention to pious and pro anima bequests, and have tended to neglect bequests of a more private nature. Some of the reasons for this are discussed also in Chapter V. Using the evidence of conditional bequests, and comparison of paired husbands' and wives' wills, I have attempted to provide some insight into the nature of personal relationships between testators and individual beneficiaries, and motives for private, personal gift-giving.

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[5] Michael M. Sheehan, The Will in Medieval England, The Pontifical Institute of Medieval Studies, Studies and Texts 6, (Toronto, 1963), 258.

I. TESTAMENTARY CAPACITY OF WOMEN

The common law gave full proprietary rights to widows and unmarried women of adult age. Under either of these conditions, a woman was free to own property and to alienate it by making a gift or sale inter vivos, or to dispose of it by will.[1] On the other hand, the common law severely restricted the proprietary rights and testamentary capacity of the married woman. Underlying the rules regarding the real property of married persons was the principle that a husband's and wife's lands were separate and were to be treated as such.[2] With certain exceptions

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[1]"Mulier eciam sui juris testamentum facere." Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur, ed. and trans. G.D.G. Hall, (London, 1965), 7.5, 80; Bracton also referred to the profits of dower lands which the widow was free to dispose of: "Mulier vero quae sui juris extiterit testamentum facere poterit, sicut alia quaevis persona, et disponere de rebus suis et fructibus in dote sua extantibus, sive separati sint a solo sive non, quod quidem olim facere non potuit, sed nunc potest, sed de gratia." Henry de Bracton, De legibus et consuetudinibus Angliae, 4 vols., ed. George E. Woodbine, and trans. Samuel E. Thorne, 2: fol.60, 178-179. Disposal of the profits of dower lands was allowed by the Provisions of Merton (1236): "Item, omnes vidue de cetero possunt legare blada sua de terra sua..." Statutes of the Realm 1225-1713, 46 vols., ed. W.E. Raitby, (London: Record Commission, 1810-1828), 1: c.2, 25.

[2]The notion of separate real property in marriage is discussed in some detail by Charles Donahue, "What Causes Fundamental Legal Ideas? Marital Property in England and France in the Thirteenth Century," Michigan Law Review 78, no.1 (1979), 64-66.

no one had the power to dispose of lands by will.[3] But in the common law treatises of the thirteenth century the notion of separateness respecting a husband's and wife's personal property is not obvious. Several passages respecting the married woman's capacity to own and alienate personal property seem ambiguous. Consequently, the questions arise as to whether the married woman could own goods and chattels and whether she had the power to alienate them. in Glanville, the brief remarks respecting women's testamentary capacity are not helpful: the married woman is under her husband's potestas and cannot make a will of her husband's property without his permission.[4] We are not told that she cannot own property or dispose of it freely in this way. It is reasonable to suppose that the wife was capable of owning personal property such as things which she received as gifts (not from her husband) and

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[3]Although a testator could not make an heir to real property of the country, the free devise of burgage lands and tenements was the custom in many English boroughs. In some boroughs, free devise was opposed (at Barnstable) or simply not permitted (at Norwich). In other places, some restrictions applied. For example, the owner might bequeath a tenement which he had purchased but not one of which he was the heir. A noteworthy limitation on free devise existed at London where a husband was not allowed to bequeath a tenement to his wife for longer than a life term. At York, where many of the testators in the sample of York wills held tenements, no such restrictions existed. Discussion of the free and restricted devise of English burgage tenure is found in, Morley de Wolf Hemmeon, Burgage Tenure in Medieval England, Harvard Historical Studies 20 (Cambridge, 1914), 130-144.

[4]"Si uero fuerit in potestate uiri constitua, nihil sine uiri sui auctoritate eciam in ultima voluntate de rebus uiri sui disponere potest." Glanville, 7.5, 80.

legacies. Otherwise, Bracton's rule that gifts exchanged between a husband and wife were invalid would make no sense.[5] It could be inferred from the text that either of them could exchange gifts with others. What prevented the wife from making a will disposing of those things which were hers? Bracton provides a clue: There is no mention of whose property she could not dispose of. We are told simply that she cannot make a will without her husband's consent.[6] Nevertheless, in Bracton's opinion, it seemed improper for a husband not to allow his wife to make a will disposing of the third part of her husband's goods and chattels which would come to her by right if she survived him,[7] particularly of those items of clothing and other articles of personal adornment which had been given to her and could be said to be her own.[8] From Bracton's text, we can gather that the wife could own personal property, the

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[5]W.S. Holdsworth, A History of English Law, 7 vols., 3rd ed. (Boston, 1923), 3:543; Bracton, 2: fol.29, 97.

[6]"Si autem fuerit sub potestate viri constituta, testamenti factionem non habebit absque viri sui voluntate..." Bracton, 2: fol.60, 179.

[7]"Verumptamen pium esset et marito valde honestum si rationabilem divisam uxori sue concessisset, scilicet ad terciam partem rerum suarum quam viva quidem optinuisset si maritum suum supervixisset...quod plerique mariti facere solent, unde merito commendabiles efficiuntur." Glanville, 7.5, 80; "...propter honestatem tamen receptum est quandoque, quod testari possit de rationabili parte quam habitura esset si virum supervixisset..." Bracton, 2: fol.60, 179.

[8]"...et maxime de rebus sibi datis et concessis ad ornatum, quae sua propria dici poterunt sicut de robis et iocalibus." Bracton, 2: fol.60, 179.

res parapherna, but the power to alienate it lay with her husband.

It seems that neither Glanville nor Bracton were set clearly against the ownership of goods and chattels by the married woman, but in practice the lay courts argued that only the husband could claim marital property, and therefore the wife could make no testament.[9] By merger of the wife's identity with that of her husband, he acquired both her goods and the right to dispose of them. As a result, the preamble in many widows' wills contains some statement which confirms the testatrix's widowhood. A survey of the York sample shows that this is the case. For example, Maud Eure stated that she was "late the wyfe of Sir William Euer, knyght, stonding in my pure wydowhode."[10] A woman who declared at the beginning of her will that she was a *vidua*, *relicta*, or formerly the wife of so-and-so was not merely identifying herself; she was confirming that she had full testamentary capacity.[11] A few married women were careful to declare that they had obtained their husbands' permission before the document was drawn up. Elena Barkar confirmed that she was making her testament with the

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[9] G.J. Turner, ed. *Year Books of Edward II*, 5 Edward II (Selden Society, 1947), 240-244.

[10] *Testamenta Eboracensia*, 30: no.231.

[11] For example, *Testamenta Eboracensia*, 4: nos.27, 40, 66, 282; 30: nos.58, 70, 136, 157.

special licence of her husband.[12] However, most of the married testatrices in the York sample made no mention of having obtained permission.[13] One explanation may lie in the fact that most of these appointed their husbands executors, which seems to imply approval. When a wife did not make her husband executor, as in the case of Elena Barkar, it was probably prudent for her to remark in her will that she had obtained his permission. However, the lay courts may have required more substantial proof: for a married woman's will to be admitted to probate by the Court of Husting at London, the husband had to set his seal to the document to confirm his prior permission. Without proof of the husband's approval the executors could run into trouble when they tried to execute the wife's will and found themselves answering to the lay courts for carrying off the husband's goods. In 1311, the executors of Felicia, the wife of Henry Thicke, were accused of taking Henry's goods. The executors testified that Felicia, lying *in extremis*, had made a testament disposing of half of Henry and Felicia's goods and chattels, with Henry's assent and permission. The executors had applied to the local ordinary and the will was proved. With Henry's permission they then proceeded to make the inventory. Her half was

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[12]"Ego Elena Barkar, uxor Johannis Husband de Wytby, cum speciali licencia michi a marito meo concessa, compos mentis, condo testamentum meum in hunc modum." *Testamenta Eboracensia*, 4: no.212.

[13]For example, *Testamenta Eboracensia*, 4: nos. 114, 119, 176, 202, 203, 210.

separated and delivered to them, and they completed administration. But Henry denied that his wife had made any testament with his permission. Consequently, the court ruled that since she could not claim property, her will was invalid.[14]

The canonists were concerned with the fair distribution of marital property when marriage was ended by declaration of nullity, separation or death. In their view, decisions on equitable division, whether they were made directly, or accessory to decisions in the secular courts, belonged to the jurisdiction of the ecclesiastical courts.[15] The jurists admitted that pleas of debts and chattels connected with matrimony or testaments (excepting cases of debt in which the debts were not formally recognized in the lifetime of the testator) belonged to the jurisdiction of the courts Christian.[16] For the purpose of testaments, canonists did not recognize the common law distinctions among the different conditions of women and their ability or inability to own property and alienate it. All persons who were not disqualified by some special rule of law, such as mental incompetence, had the full capacity to make a

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[14] Select Cases of Trespass from the King's Courts 1307-1399, ed. Morris S. Arnold. Selden Society 100, (London, 1985), 1: 13.8.

[15] Michael M. Sheehan, "The Influence of Canon Law on the Property Rights of Married Women in England," Mediaeval Studies 25 (1963), 110-113.

[16] G.B. Flahiff, "The Writ of Prohibition to Court Christian in the Thirteenth Century," Mediaeval Studies 6 (1944), 277-278.

will to dispose of goods and chattels for the welfare of their souls. In the case of married women, the church ruled that their competence was a customary right. A canon was issued by the Council of Lambeth in 1261 to impose the sentence of excommunication on those who, alone or by complicity with another, hindered a woman or prevented her from freely making her testament which was both the lawful and customary practice.[17] The common law did acknowledge that very many husbands allowed their wives to make a testament disposing of those things which could be called their own.[18] Some husbands provided well for their wives, giving them more than the customary third which, in turn, the wives could dispose of in their own testaments. In his own will, Sir Richard de la Pole wished that the view of inventory of his and his wife's goods exclude the adornments of her body and head. No value was to be applied to them and they were to be specially reserved to her, in addition to her customary third part.[19] He also

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[17]"Item, statuimus ne quis alicuius solute mulieris sive coniugate aliene vel proprie impediat vel perturbet seu impediri aut perturbari faciat vel procuret iustam et consuetam factionem liberam testamenti. Quod si fecerit, sciat se excommunicationis innodatum sententia ipso facto." F.M. Powicke, and C.R. Cheney, Councils and Synods and Other Documents Relating to the English Church, (Oxford, 1964), 2:1: c.19, 682.

[18]Glanville, 7.5.

[19]"Item lego et volo quod viso Inventario omnium bonorum et catallorum meorum et uxoris meae, praeter ornamenta corporis et capitis sui sibi specialiter sine precio apponendo reservanda...deinde volo quod Johanna uxor mea habeat terciam partem omnium bonorum et catallorum nostrorum..." Testamenta Eboracensia, 4: no.8.

bequeathed to her a life interest in various tenements. It is supposed that relations between a husband and wife were not always friendly, and as a result some husbands had a less generous disposition: in 1396, Nicholas Dagworth gave his wife the third part of his goods "to be quiet."[20] Generally speaking, a husband was not obliged to give more than this. By the custom of some cities, boroughs and vills, the wife could claim no more than her dower, and the children might have no claim whatsoever on their father's goods and chattels. Anything they received was given out of favour.[21] Although a husband might try to keep back his wife's and children's reasonable thirds altogether, it could only be a temporary measure. The secular courts recognized that after the husband's death the widow and children were entitled to their customary parts of his goods and chattels, and provided them with a special writ de rationabili bonorum for their recovery.

Instances of a husband denying his wife permission to make a will were probably rare. M.M. Sheehan was unable to discover a single case in which a bishop declared a wife deceased and intestate.[22] Intestacy was generally regarded

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[20] Testamenta Vetusta, ed. N.H. Nichols, 2 Vols., (London, 1826), I: 139, cited by Ann J. Kettle, "'My Wife Shall Have It': Marriage and Property in the Wills and Testaments of Later Medieval England," Marriage and Property, ed. Elizabeth M. Craik (Aberdeen, 1984), 93.

[21] Bracton, 2: fol.61, 180-181.

[22] Michael M. Sheehan, "The Influence of Canon Law on the Property Rights of Married Women...," 120-121.

with horror because it implied that a priest had not been present at the deathbed, and so the person had died unconfessed of his sins.[23] The man who allowed his wife to die without making a will probably incurred the shock and disapproval of his friends and neighbours, and found his reputation soiled. In the first half of the thirteenth century the church secured the right to distribute the goods of intestates for the benefit of their souls.[24] However, in cases where the deceased was a _feme covert_, the lay courts tried to interfere: in 1311, one of the king's justices ruled that if a wife died intestate, the bishop's ordinary was not to intermeddle in the matter, because she had no chattel that was her own in her husband's lifetime.[25] If a man was unwilling to let his wife atone for her sins and make a testament, then after her death he might be just as unwilling to hand over goods to the ordinary for distribution. Perhaps some widowers who complied with the ordinary were overcome with feelings of guilt or had succumbed to the pressure of family and friends. Although Sheehan was unable to identify positively an example of a husband excommunicated for

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[23]Charles Gross, "The Medieval Law of Intestacy," _Select Essays in Anglo-American Legal History_, 3 vols. (Boston, 1909), 3:723.

[24]A statute of 1357 required the ordinary to commit administration of the intestate's goods "to the next and most lawful friends of the dead" who had to make provisions for his soul and account for them to the ordinary. See Gross, 3:723-724.

[25]See n.14.

impeding the execution of his wife's will, no doubt it sometimes occurred. In 1295, clerical petitions to the king included the complaint that, against approved custom, villeins and freemen were being prevented by their lords, and wives by their husbands from making a will out of movable goods.[26]

Under common law other disabilities which applied equally to men and women disallowed gift-giving, and therefore, the making of wills. A grantor had to be capable of giving consent to make a gift and certain individuals were considered unable to do so.[27] Those judged to be lunatic or insane, unless they enjoyed lucid intervals, could not give their consent.[28] It was Glanville's opinion that persons suffering in mortal illness were prone to lose both memory and reason, and to give extravagantly things which they never would have given away when they were well.[29] In the York wills, male and female testators frequently affirmed that despite physical illness, they were mentally sound and had experienced no

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[26]"Item quod nec servi nec liberi per dominos suos, nec uxores per suos maritos, de bonis mobilibus prohibeantur testari contra consuetudinum hactenus approbatum..." Councils and Synods..., 2:2: c.32, 1143.

[27]"Et regulariter tenendum quod nullus donationem facere potest qui donationi consentire non possit..." Bracton, 2: fol. 12, 52.

[28]"...nec furiosus nec mente captus nisi gaudeat dilucidis intervallis..." Bracton, 2: fol.12, 52.

[29]Glanville, 7:1, 70.

loss of memory.[30] Statements to this effect not only attested to the competence of the testator to make a will, but also might forestall disputes over the size and content of legacies and the testator's choice of beneficiaries. Interested parties, such as those who were left out of a will or those who were not going to get what they thought they deserved, might be keen to see a will suppressed, and argue that the document was drawn up hastily while the testator was in the throes of mortal illness and not in his right mind. Lepers who were cast out of the community could not make gifts.[31] Persons who were hard of hearing could give their consent, but those who were entirely deaf or could not speak presented a problem to Bracton, since some of these could give their consent by nodding or making gestures.[32] However, it was also his opinion that those who were born deaf and dumb, like idiots, lacked reason.[33]

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[30]Testators used several expressions to declare their physical and mental state at the time their wills were made: For example, "Ego...sana mente et corporali fruens sospitate..." Testamenta Eboracensia, 4: no.196; "I...beyng hole of mynde and discrecion..." Testamenta Eboracensia, 30: no.231; "Ego...in bona memoria existens..." Testamenta Eboracensia, 30: no.11; "I...hole in witt and mynde..." Testamenta Eboracensia, 30: no.115. For other variations, see 4: nos.15, 25, 46, 196, 235, 268; 30: nos.2, 79, 86, 105.

[31]"Item donare non potest leprosus extra communionem gentium positus..." Bracton, 2: fol.12, 52.

[32]"Item surdus qui omnino non audit, secus tamen si tarde. De muto vero qui omnino loqui non potest illud idem erit dicendum, possunt tamen consentire secundum quosdam per signa et per nutum." Bracton, 2: fol.12, 52.

[33]Bracton, 4: fol.436, 356.

Unfortunately, the sample of York wills contains no evidence that any of the testators suffered from either of these impairments, but there may be some doubt that, in practice, these disabilities necessarily had a bearing on the validity of a will written by a testator in his own hand. Certainly they would have presented an obstacle to the making of a nuncupative testament. Gifts made by persons who were under age and under guardianship were invalid as these persons did not have the full administration of their own affairs.[34] It is difficult to ascertain at what age persons were allowed to make a will. In the canonists' opinion, boys of fourteen years and girls of twelve were old enough.[35] Legal age under common law was later. It is impossible to know from the wills alone the exact ages of will-makers, but the majority of women's wills in the York sample, 85 out of the total of 96, were made by widows or women with husbands still living; 57 of the 85 had been succeeded by one or two generations; 38 are known to have had children, and 19 were found to have had grandchildren. It is unknown whether or not the remaining 28 of the 85 were succeeded by one or more generations, since children and grand-children are not

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[34]"Et sciendum quod prohibentur donationem facere omnes qui generalem et liberam rerum suarum non habent administrationem, sicut illi minores qui sunt sub tutela vel cura, et se ipsos regere non norunt..." Bracton, 2: fol.12, 51.

[35]W.S. Holdsworth, <u>A History of English Law</u>, 7 vols. (Boston, 1923), 3:545.

mentioned or cannot be identified. The fact that more than half the testatrices were widows with children or grandchildren suggests that most female testators were of a mature or perhaps advanced age. M. Sheehan observed that among wills dated prior to the end of the thirteenth century, examples made by the young are rare.[36] Survey of the York sample suggests that the same is true for the fourteenth and fifteenth centuries. In only 11 cases of the total 96 wills, no children were mentioned and the marital status of the testatrix is unknown. Of this group, 10 contained no incidental information that might suggest whether the testatrix was young or old. In one example it does seem likely that the testatrix was young and unmarried: she appointed her father and one sister as executors. Her bequests consisted only of a few articles of clothing and a gold ring with an emerald left to her sisters, a female servant and one other female. There is no mention of household goods or cash bequests, with the exception of 2s for funerary candles.[37] It is likely that the testatrix was still living in her father's household. Yet she cannot have been a minor under canon law: aside from the fact that she made a will which was proven, she

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[36]Michael M. Sheehan, The Will in Medieval England, 240-241.

[37]Testamenta Eboracensia, 4: no.4.

also chose her place of burial.[38]

TABLE 1

MARITAL STATUS OF TESTATRICES IN 96 WOMEN'S WILLS

Married	17
Widowed	55
Unknown if husband is living or deceased	13
Unknown marital status	11
Total	96

TABLE 2

MENTION OF CHILDREN AND GRANDCHILDREN IN 96 WOMEN'S WILLS ARRANGED ACCORDING TO MARITAL STATUS OF TESTATRICES

Married:	
Children not mentioned	9
Children mentioned	6
Grandchildren mentioned	2
Widowed:	

[38]The canonists did not allow minors to choose freely their place of burial because they did not have testamentary capacity. See Sheehan, The Will in Medieval England, n.31, 239.

Children not mentioned	16
Children mentioned	24
Grandchildren mentioned	15
Unknown if husband was living or deceased:	
Children not mentioned	3
Children mentioned	8
Grandchildren mentioned	2
Unknown marital status:	
Children not mentioned	11
Children mentioned	0
Grandchildren mentioned	0
Total	96

While the fear of intestacy and the canon law tended to protect the wife's right to make a will, any such right was denied under common law. If a married woman's will was admitted to probate in the church courts, the lay would refuse to recognize the executors.[39] As we shall see, even the will of a widow could be challenged in the lay courts on the grounds that it was made while her husband was still living, and without his express permission. The fact that a woman's will had been admitted to probate in a church court was no guarantee that her

[39]Robert E. Rodes, Lay Authority and Reformation in the English Church, Edward I to the Civil War (Notre Dame, 1982), 48.

executors would not find suits brought against them in the lay courts in connection with the will's validity.

II. Executors

I

At the beginning of the fourteenth century, when the earliest wills in the sample were written, the testamentary executor had acquired the essential features of his legal position as personal representative of the deceased: he received the dead man's goods and chattels and represented him regarding claims and liabilities. He also had a right to the residue.[1] The gradual expansion of the executor's powers, which took place from the end of the twelfth century, occurred at the expense of the heir. Probably in most cases, this was an advantage to the testator who could reassure himself that he would be represented by trusted parties whom he had carefully chosen, and who could be relied upon to carry out the provisions of his last will. In earlier days, when goods and chattels fell to the heir of the land by right, perhaps the fate of the last will was less certain in the mind of the testator, for a man could not choose his heir or remove (by legal means) an unscrupulous one who might meddle with his will or suppressed it for his own

[1]Robert Caillemer, "The Executor in England and on the Continent," Select Essays in Anglo-American Legal History, ed. Association of American Law Schools (Boston, 1909; rpt., Frankfurt, 1968), 3: 752; Holdsworth, 3: 583-584.

purposes.

In the last quarter of the twelfth century the legal position of the executor, when compared to that of the heir, was weak. In the Assize of Northampton (1176), goods and chattels along with the immovable property passed to the heirs of deceased free-holders. In turn, the heirs were supposed to distribute the movables. There is no mention of a third party to the transaction.[2] In Glanville (1188), the appointment of executors is mentioned, but the separate areas of responsibility belonging to the heir and the executor seem vague; there is no specific mention of goods and chattels being passed on to either of them. However, the text suggests that a shift away from the heir's full responsibility was beginning to take place. The executors ought to be those whom the testator chose for the purpose, and to whom he entrusted the administration.[3] If the executor did not receive the goods and chattels, and presumably he did not, he probably acted in the capacity of a supervisor, compelling the heir to pay out the legacies and carry out

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[2]"Item si quis obierit francus-tenens, haeredes ipsius...catalla sua habeant unde faciant divisam defuncti..." in William Stubbs, ed., Select Charters and Other Illustrations of English Constitutional History, 9th ed., ed. H.W.C. Davis (Oxford, 1913), c.4, 179.

[3]"Testamenti autem executores esse debent quas testator ad hoc elegerit et quibus curam ipsam commiserit." Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur, trans. and ed. C.D.G. Hall (London, 1965), 7.6. The editor translated curam as "business", but I believe that "administration" conveys the better meaning.

the instructions in the will. The assertion that "Heirs are bound to observe the testaments of their fathers and ancestors"[4] seems to imply that heirs were not to meddle with wills or interfere with their execution in any way. Perhaps it meant also that the heir distributed legacies, which is likely the case if he received the goods and chattels.[5] As before, the heir was accountable for the testator's debts,[6] even to the extent of paying out of his own property what his inheritance could not cover.[7]

However, by the second decade of the thirteenth century, the heir had lost to the executor the right to receive the goods and chattels of the deceased. In the Great Charter (1215), the movable goods of a man who held a lay fee of the Crown and who also was indebted to the Exchequer, after his death, were liable to seizure by the king's officials to the assessed value of the debt. It seems to have been taken for granted that afterwards the residue was to be handed over to the man's executors to

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[4]"Tenentur quoque haeredes testamenta patrum suorum et aliorum antecessorum seruare, et eorum debita acquietare." Glanville, 7.5.

[5]As the testator cannot dispose of any of his chattels without the heir's consent, excepting for the payment of debts, it is likely that the goods and chattels were destined to pass to the heir. See Glanville, 7.8.

[6]Glanville, 7.5 (See n. 6 above).

[7]"Si vero non sufficiant res defuncti ad debita persolvenda, tunc quidem heres ipse defectum ipsum de suo tenetur adimplere." Glanville, 7.8.

carry out the will.[8] Once it had been established that the goods and chattels were assigned to the executor, it naturally followed that he became responsible for the testator's debts. Goods and chattels were liquid assets, and creditors would normally seek payment from this source first. However, transfer of the claims and debts of the deceased to the executor took place only gradually over the thirteenth century. To the church's frustration, the common law was slow to admit the representation of the testator by the executor. In the mid-thirteenth century, the question of whether the heir or the executor was responsible for collecting and paying out debts was argued in Bracton (1250-1258): in principle, it was still the heir's duty to pay the testator's debts, and it was the heir that the creditor ought to sue.[9] The testator could not bequeath actions for debts owed him which had not been proved or acknowledged in his life time. Such debts were not considered a testamentary issue, and so the heir had to sue for them in the secular courts. Debts acknowledged

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[8]"Si aliquis tenens de nobis laicum feodum moriatur, et vicecomes vel balivus noster ostendat litteras nostras patentes de summonicione nostra de debito quod defunctus nobis debuit, liceat vicecomiti vel ballivo nostro attachiare et inbreviare catalla defuncti, inventa in laico feodo, ad valenciam illius debiti...et residuum relinquatur executoribus ad faciendum testamentum defuncti..." Magna Carta, 1215, c.26 in William Sharp McKechnie, Magna Carta. A Commentary on the Great Charter of King John (Glasgow, 1905), 376-382.

[9]"Et sicut dantur [actiones] heredibus contra debitores et non executoribus, ita dantur actiones creditoribus contra heredes et non contra executores." Bracton, fol. 407b.

in the lifetime of the testator were a different matter: if the details were contained in written and sealed documents, and could be proved by oath of the party, supported by compurgators, or the testimony of competent witnesses,[10] they formed part of the testator's estate, which belonged to the executor. Such debts were considered to be part of the goods and chattels and properly fell under the jurisdiction of the church courts. It was up to the executor, and not the heir, to attempt to collect them there.[11] Consequently, an inconvenient situation arose in which the executor had to depend upon the heir to sue for unproven debts for goods and monies needed to complete the will's administration. The divided responsibility and jurisdictions for the recovery of debts caused numerous delays, and the heir was not always willing to cooperate. On the other hand, the church was anxious for the prompt administration of wills to prevent greedy parties from seizing the deceased's goods, and to protect pious and charitable bequests, the delivery of which was of foremost concern to the church. In response to the problem, it

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[10]R.H. Helmholz, "Debt Claims and Probate Jurisdiction in Historical Perspective," The American Journal of Legal History 23 (1979), 72.

[11]"Item quaero an testator legare possit actiones suas. Et verum est quod non, de debitis quae in vita testatoris convicta non fuerint nec recognita, sed huiusmodi actiones competunt heredibus. Cum autem convicta fuerint et recognita, tunc sunt quasi in bonis testatoris et competunt executoribus in foro ecclesiastico. Si autem competant heredibus ut praedictum est in foro seculari debent terminari..." Bracton, 2: fol. 60, 181.

tried to enforce a time limit of one year on administration.[12] From the church's point of view, the deceased's debtors were, in fact, detaining his assets, and were considered impeders of the will.[13] Throughout the thirteenth century synodal statutes prescribed excommunication _in genere_ for _malitiose impedientes executionem rationabilium testamentorum_.[14] In view of the awkward circumstances, the church wanted to see that debt claims were undivided, and that the executor fully represented the testator under its exclusive jurisdiction.

As late as the end of the thirteenth century, some reluctance to admit representation by the executor under the common law is still evident. In _Britton_, it is mentioned in connection with protection of the widow's dower that the heir was liable for the payment of the dead man's debts.[15] However, a brief comment which appears in

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[12] Jerome Daniel Hannen, _The Canon Law of Wills_ (Philadelphia, 1935), 435.

[13] R.H. Helmholz, "Debt Claims and Probate Jurisdiction...," 73.

[14] Statutes of Stephen Langton, Archbishop of Canterbury, 1213-1214, in _Councils and Synods With Other Documents Relating to the English Church_, eds. F.M. Powicke and C.R. Cheney, (Oxford, 1964), 2:1: c.49, 33. Again, in ca. 1225-1237, a statute of William Briwere, Bishop of Exeter, provided for the excommunication of those "qui malitiose et scienter rationabilium testamentorum impediunt executionem." _Councils and Synods..._, 2:1: c.53, 231. A similar prohibition appears later among statutes for the diocese of York, 1241-1255. _Councils and Synods..._, 2:2: c.39, 495.

[15] "Et pur ceo qe dowarie deit estre purement fraunche, si n'ert la femme rien tenu des dettes le baroun aquiter, eynz ert le heir." _Britton_. 2 vols., trans. and ed. F.M.

Fleta (ca. 1290) indicates that the royal courts were willing to make some compromise respecting actions for debt, probably in response to clerical pressure: Bracton's argument regarding the separate spheres of jurisdiction and the shared responsibility for the collection of acknowledged and unacknowledged debts by the executor and the heir is repeated, but the author adds that it is sometimes permissible for executors to sue for payment in the secular court.[16] By the end of the thirteenth century the king's justices were upholding writs of debt brought by and against executors.[17] Administration of wills was further eased by the Statute of Westminster II (1285) in which executors were given the writ of account, "and the same action and process by that writ as the deceased had and would have if he were alive."[18] This writ permitted the executor to demand a reckoning of debit and credit from bailiffs and others who

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Nichols (Oxford, 1865; reprint, Holmes Beach, Fla., 1983), 2: 5.3.8.

[16]"Permissum est tamen quod executores agant ad solutionem in foro seculari aliquando." Fleta. ed. and trans. H.G. Richardson and G.O. Sayles. Selden Society, 1955. 2: 2.57.

[17]Year Book 20 and 21 Edward I. ed. and trans. Alfred J. Horwood. Rerum Britannicarum Medii Aevi Scriptores (Rolls Series), 374-375; 21 and 22 Edward I, 598-599; 30-1 Edward I, 238.

[18]"Habeat de cetero executores breve de compota reddendo et eandem actionem et processum per illud breve qualem habuit mortuus et haberet si vixisset." Statutes of the Realm 1225-1713. 46 vols., ed. W.E. Raitby, (London: Record Commission, 1810-1828), 1: c.23, 196.

had acted on behalf of the deceased while he was alive.[19] Later, in 1330, the statute de bonis asportatis in vita testatoris gave the executor action of trespass against parties who carried off the testator's goods in his lifetime.[20] In the fifteenth century, the action of assumpsit was used to enforce contractual claims.[21]

II

By the end of the thirteenth century the executor had acquired the essential aspects of personal representation of the deceased, and from that time forward, could find himself burdened with heavy responsibilities. His task was not always a relatively uncomplicated matter of taking inventory of the cash and movables on hand, and out of these assets delivering the designated legacies to the proper beneficiaries. Sometimes the executor was involved in the making of the will. A testator might chose his legacies according to the executors' advice.[22] At times, he left them to arrange the details of his funeral and decide the amount

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[19]The rendering of accounts to executors, granted by Westminster II, is mentioned briefly by Sheehan, The Will in Medieval England, 227.

[20]Frederick Pollock and Frederic W. Maitland, The History of English Law Before the Time of Edward I, 2nd ed. 2 vols. (Cambridge, 1968), 2: 347; Holdsworth, 3: 584.

[21]Pollock and Maitland, 2: 348.

[22]Testamenta Eboracensia, 30: no.86.

of money to be spent on it.[23] It might be necessary to sell some goods to cover the funerary expenses and cash bequests,[24] or to purchase certain new goods which the testator intended to beqveath.[25] The arrangement of suffrages, masses and memorial obits and lights, according to the testator's instructions, sometimes required intermittent cash payments to priests and monastic orders over a period of several years.[26] Often, testators left the selection and costs of pro anima bequests to their discretion.[27] Executors sometimes had to arrange and oversee the repair and decoration of churches, chapels and bell-towers, or the upkeep of various public works.[28] Those who accepted the administration of a will could find themselves involved in numerous actions over debt claims, or a series of complicated land transactions in order to cover the costs of carrying out a will's provisions. From the executor's point of view, the administration of a will

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[23]Testamenta Eboracensia, 4: nos.14, 15, 20, 36, 42, 96, 305; 30: nos.25, 120, 133.

[24]Testamenta Eboracensia, 4: nos.46, 63, 87, 152, 213; 30: no.72.

[25]. Testamenta Eboracensia, 4: no.238.

[26]Lady Elena Portington bequeathed £ 4 per year to each of four priests. The payments were to be made over five years. Testamenta Eboracensia, 30: no.167; see also 30: nos.101, 183.

[27]Testamenta Eboracensia, 4: nos.1-16, 139, 199, 203, 215.

[28]Testamenta Eboracensia, 4: nos.8, 26, 133, 143, 164; 30: nos.14, 40, 81, 108.

could be a costly and time-consuming business.[29] He was free to decline administration, but once he had accepted it he could not withdraw voluntarily. His obligations remained in force until he rendered account to the bishop's ordinary and was dismissed by letters of acquittal. If the executor was unable to complete administration in his lifetime, it passed to his own executors. Only the ordinary (or the bishop) could remove or replace an unsatisfactory executor.[30]

The wide powers of representation which had devolved upon the executor's office caused testators to consider the careful selection of honest, dependable executors to be a matter of great importance. Among the York wills of both men and women, there are occasional references to testators taking their appointed executors into their confidence and regularly seeking their advise:

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[29]Thomas Barton, a member of the household of Thomas Brantingham, Bishop of Exeter, was named as an executor in the Bishop's will which was proved in 1394. Between 1402 and 1415-16 he completed a number of land transactions in order to provide income to establish a chantry and perpetual annual obits for the souls of the Bishop and others. Among these activities he purchased the expensive license to alienate certain lands in mortmain. The business of administration had cost Thomas in both time and money. Although the Bishop had bequeathed the residue to the executors, it is likely that some of it was needed to complete the various transactions. As well, in 1415-16 Thomas may have been in a state of ill-health and under additional pressure to fulfill his obligations, for he died in the same year. See Malcolm C. Burson, " '...For the sake of my soul': The Activities of a Medieval Executor," Archives 13 (1978), 131-136.

[30]R.J.R. Goffin, The Testamentary Executor in England and Elsewhere, (London, 1901), 78.

Thomas Wombwell appointed his son in quo prae ceteris specialiter confido.[31] Agnes, the wife of Hugh Hussey, omitted the usual expression, ordino et constituo meos executores..., but evidently intended that her husband would administer her estate and trusted him before anyone else: she left all the goods of her part to pay for their daughter's marriage portion,

because she trusted in him more than others.[32] It is likely that at least a cordial relationship between the testator and his executor was essential to the latter's appointment. Richard Lord Scrope of Bolton chose his executors because of the state of goodwill which existed between them and himself.[33] His son, Roger, later used the same phraseology in his own testament.[34]

In contrast to the selection of witnesses to the making of a will, fewer restrictions applied to the appointment of testamentary executors, though the church tried to establish some general guidelines: in theory, it frowned upon religious taking up the office, although it

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[31]Testamenta Eboracensia, 30: no.129.

[32]"Et quia in dicto Domino Hugone domino meo prae ceteris plus confido, lego omnia bona meam partem concernentia eidem marito meo, ad satisfaciendem pro maritagio filiae nostrae..." Testamenta Eboracensia, 4: no. 257.

[33]"...ordino et constituo executores meos, pro magna gratitudinis affectione..." Testamenta Eboracensia, 4: no.200.

[34]Testamenta Eboracensia, 4: no.228.

often gave them permission to do so.[35] In 1287, the Bishop of Exeter encouraged testators to choose their executors from among the faithful and substantial members of his flock and to avoid appointing outsiders from other dioceses.[36] The close supervision of executors who lived outside his jurisdiction might prove difficult. In warning against the activities of false executors, the church implied that individuals of ill-repute were unacceptable candidates.[37] The mentally defective executor was not entirely excluded from administration. Where the abilities of a sole executor were in doubt, the ordinary could simply appoint another to administer alongside.[38] According to common law the testator was free to choose his executors from among strangers or his near and distant relations.[39] There was no bar to women taking up the office. Despite the fact that the married women were denied testamentary capacity, by the end of the

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[35]Sheehan, The Will in Medieval England, 185.

[36]Councils and Synods..., 2:2: c.50, 1046.

[37]For example, "Quoscunque preter conscientiam decedentis falsa testamenta fabricantes et signantes, eos etiam qui cuiquam aliquid ascribunt in eisdem vel fraudem qualitercunque commiserint, presentis synodi approbatione excommunicamus, precipientes quod cum infames existant, ab omni actu legitimo tanquam falsarii repellantur." Synodal Statutes of Bishop Robert Bingham for the Diocese of Salisbury 1238-1244, in Councils and Synods..., 2:1: c.40, 382.

[38]The Eyre of Kent, 6 and 7 Edward II, ed. William Craddock Bolland. Year Books of Edward II, vol. 8, Selden Society 29, (London, 1913),

[39]Bracton, 2: fol.60, 181.

fifteenth century the common lawyers could find no impediment to their accepting administration. The argument held that although the married woman could not hold property in her own right, as an executor she held property in the right of another.[40] In 1497, it was the opinion of a king's justice that the <u>feme covert</u> could be made an executor, without the consent of her husband, of things or duties of which her husband never had possession.[41]

Despite the virtual freedom which they enjoyed in choosing their executors, analysis of the York wills reveals certain patterns in the selection of executors based on gender and relationship to the testator. A comparison of the sample collections of men's and women's wills shows similarities between them in the greater patterns of selection. Whereas canon and common law had placed no obstacles to the appointment of women an overall bias in favour of male executors is apparent in both men's and women's wills.

Executors were named in 96 of the total of men's wills (146). There is no clear explanation as to why the remaining testators neglected to set down the names of their executors. Perhaps it was not necessary to do so, especially if the testator and his intended executor had arrived at some oral agreement beforehand and the choice

[40]Holdsworth, 3: 544.

[41]<u>Year Books</u>, 12 Henry VII. Trin. pl. 2, 24.

was well known to the witnesses, who could be summoned by the ordinary to report the fact. The list of executors is usually found towards the end of the testament and may be the last item, especially where the names of the witnesses are omitted. Placement at the end of the document may signify that selection of executors was left until the last possible moment. Perhaps, the testator wanted to be sure of their intentions. If the document was recorded at the death-bed, the testator may have been too ill to make the final decision, or died before the will was completed. For the purpose of probate and administration, it was more important to make sure that the will was properly sealed and witnessed. In any case, if no one came forward to accept the executorship, the ordinary would simply appoint an administrator.

Out of a total of 334 appointed executors in the sample of men's wills, 68 or about 20% are female; 58 or 85% of the total of female executors are the testators' spouses.

TABLE 3

DISTRIBUTION OF 68 FEMALE EXECUTORS BY RELATIONSHIP TO THE TESTATOR IN 96 MEN'S WILLS

Relationship to Testator	Number of Executors
Spouses	58

Daughters	2
Daughters-in-law	0
Mothers	0
Mothers-in-law	0
Sisters	3
Sisters-in-law	0
Other female relatives (unknown relationship)	2
Identified female servants	0
Other females (unknown relationship)	3
Total	68

Evidently, the married man was more likely to choose his wife over any other female as executrix. Spouses form a significant portion of the total of executors in men's wills (about 17%). Data derived from the 65 wills of those male testators whose wives are known to have been living at the time those wills were drawn up, reinforce the conclusion that married men tended to appoint their spouses as executrix. In only 7 cases, the testator did not appoint his wife. The nature of the marital relationship itself provides a possible explanation for the preference shown for wives. A wife who was in her husband's confidence was perhaps in the best position to know the details of his affairs and his last wishes. In his will, Sir Ralph de Hastings stated that administration was to be carried out by his executors according to express instructions which he had given to both his confessor and his wife, whom he also appointed an executrix.[42] It appears that the courts also considered the wife to be a suitable executor, and in the absence of anyone else, appointed her to administer. It should be pointed out though, that when a man appointed his wife, it was seldom that she was permitted to act alone: among the 58 men's wills in which the testator appointed his wife, I have found that she was sole executor in only 5 cases. For the remaining 53 wills, she was accompanied by one or more male co-executors, either male relatives, or non-related males (including clerks).

Male testators seldom appointed females, other than their wives, to administer their wills. When spouses are eliminated from the total number of executors in the men's wills, other females form slightly less than 4% of the remaining executors. Of the ten other females in the men's wills, five are daughters and sisters. Two females of unknown relationship to the testator may be assumed to be family members, since they have the same last name as the testator. There is no indication that the last three women were related to the testator by either blood or marriage. Other than his wife, a male will-maker was more likely to choose a female relative than a female from outside the family. The sample contains no identified

[42]Testamenta Eboracensia, 4: no.15.

female servants, or females known to have been related to the testator by marriage (daughters-in-law, sisters-in-law, etc.). As expected, I found no instances of a female who was not the testator's wife acting as sole executor, although in one case a wife and daughter were appointed without accompanying male co-executors. In conclusion, analysis of these men's wills suggests that a man was far more likely to choose a male than a female executor, and when he appointed an executrix, it was usually his wife. In general, female executors were not given sole executorship.

In the sample of women's wills a similar pattern emerges. In 61 out of the total of 96 women's wills, a total of 188 executors were named; 168 or about 89% are male, and 20 or about 11% are female. The overwhelming bias towards male executors, which was found in the men's wills, is found here as well:

TABLE 4

DISTRIBUTION OF 168 MALE EXECUTORS BY RELATIONSHIP TO THE TESTATRIX IN 61 WOMEN'S WILLS

Relationship to Testatrix	Number of Executors
Spouses	9
Sons	30
Sons-in-law	2
Fathers	1

Fathers-in-law		0
Brothers		4
Brothers-in-law		2
Other male relatives		10
<u>Cognatus/Consanguineus</u>	1	
Nephews	3	
Uncles	1	
Others (unknown relationship)	5	
Identified Male Servants		13
Identified clerks of the church		46
Other males (unknown relationship)		51
	Total	168

TABLE 5

DISTRIBUTION OF 20 FEMALE EXECUTORS BY RELATIONSHIP
TO THE TESTATRIX IN 61 WOMEN'S WILLS

Relationship to Testatrix	Number of Executors
Daughters	5
Daughters-in-law	1
Mothers	1

Mothers-in-law		0
Sisters		4
Sisters-in-law		0
Other female relatives		2
Female related to former husband	1	
Cognata/Consanguinea	1	
Identified female servants		3
Other females (unknown relationship)		4
	Total	20

In a study of medieval Genoese wills from the twelfth and thirteenth centuries, Steven Epstein reached a similar conclusion: despite the fact that women were allowed to be executors, testatrices mainly selected men for the task.[43] In the majority of the 36 women's wills from the York sample, in which executors are named, and there is clear evidence that the testatrices were widows at the time they made their wills, the testatrix appointed male relatives (23 cases). Most often, she chose one or more of her sons (16 cases). Among male relatives appointed executor in the men's wills, sons were a favourite choice: almost half (40) of the male executors who were related to the testator were sons:

[43] Steven Epstein, *Wills and Wealth in Medieval Genoa, 1150-1250* (Cambridge, Mass., and London, 1984), 224.

TABLE 6

DISTRIBUTION OF 266 MALE EXECUTORS BY RELATIONSHIP TO THE TESTATOR IN 96 MEN'S WILLS

Relationship to Testator		Number of Executors
Sons		40
Sons-in-law		1
Fathers		1
Fathers-in-law		1
Brothers		14
Brothers-in-law		1
Other male relatives		24
Uncles	3	
Husband of granddaughter	1	
<u>Cognatus/Consanguineus</u>	5	
Others (unknown relationship)	15	
Identified male servants		4
Identified clerks of the church		71
Other males		109
	Total	266

Among the 7 women's wills in which executors are appointed and there is evidence that the testatrix's husband was alive when the will was made, the testatrix appointed her husband in 5 cases; in two examples she appointed one or more of her sons. It is evident then, that the female will-maker whose husband was alive was likely to appoint him executor. She was not obligated to do so but as she was under her husband's authority, and not sui juris, she disposed of what goods and chattels he allowed and made her will only by his favour and consent.[44] It was only natural that she should appoint him. Widows resorted to their next closest male relatives, their sons. When all the female executors in both men's and women's wills are taken into account, on the surface, it appears that men were more likely than women to appoint female executors. However, in determining the liklihood of women choosing female executors, the factor of female spouses does not exist. When spouses are eliminated from the group of female executors in the men's wills, comparison of the men's and women's wills leads to the reverse conclusion: the difference between the percentage of appointed non-spouse females in men's wills (4% of total executors) and that of appointed females in women's wills (11% of total executors) suggests that women were more likely than men to choose women as executors. In the case of women's wills, it appears more than likely that female executors were really a second choice, especially when the testatrix's husband was still living: among the 16

[44]Glanville, 7.5; Bracton, 2: fol.60, 178-179.

women's wills in which the 20 female executors are named, 11 which contain the names of 14 females were made by widows. There is only one example of a testatrix whose husband was living appointing female executors. Perhaps the prevailing attitude was disapproval of female executors, excepting the spouse, despite the fact that there was no legal impediment to women's taking up the office.

Overall,it seems that both male and female testators preferred to choose their executors from outside the family: Out of a total of 334 executors named in the sample of men's wills, 187 (about 56%) do not appear to have been related to the testator by blood or marriage. In the women's wills, 117 (about 62%) of the total of 188 executors seem to have been unrelated to the testatrix.

Of the 96 men's wills in which executors were named, 73 testators (76%) chose between two and four executors; only 6 testators appointed one person to the office. Out of the 61 women's wills containing the names of executors, 49 (80%) testatrices chose between two and four executors; 5 of them appointed one executor. It appears that most male and female testators did not want a sole executor. Most of the testators from the York sample were from the merchant and knightly classes, and their estates consisted of numerous goods, sometimes comprising more than one residence. Prompt disposal of estates of this size probably required the services of several executors, and perhaps more than one supervisor to coordinate the job. In one example, the will of Henry Lord Percy (1349), there are 11 executors.[45] The estate of such a personage would contain a vast number of goods; his will is one of the more lengthy examples. It seems that women were apt to choose fewer executors than men: groups of two and three executors appear in 40 (almost 66%) of the women's wills; about 26% of the women chose four or more, in contrast to the 38% of male testators who appointed more than three executors. It is possible that women generally had fewer goods to dispose of, and therefore required fewer executors. The will of Margaret, the widow of Nicholas Blackburn, a prosperous merchant and twice the Lord Mayor of York, is another lengthy example. However, Margaret appointed only two executors to dispose of her estate. Comparing the contents of the wills of Henry Percy and Margaret Blackburn provides some explanation as to why each appointed a rather different number of executors, despite the fact that both of them made a large number of bequests: Margaret's will was fairly straightforward, with most of the legacies going to individual family members and servants. There were few cash bequests; household goods formed the majority of gifts.[46] On the other hand, Henry's will was more complicated. His executors were left cash to cover the expenses of his

[45]Testamenta Eboracensia, 4: no.46.

[46]Testamenta Eboracensia, 30: no.37.

household. They were instructed also to make amends for debts which he owed anyone throughout England, if those debts could be proved. His will also included cash bequests to a large number of religious houses. The remainder, which as usual is not described, was probably extensive and probably comprised the bulk of his estate.[47]

TABLE 7

DISTRIBUTION OF NUMBERS OF EXECUTORS IN 146 MEN'S WILLS

Number of Executors Appointed	Number of Wills
0	50
1	6
2	19
3	35
4	19
5	8
6	3
7	2
8	2
9	0
10	1
11	1
Total	146

[47] <u>Testamenta Eboracensia</u>, 4: no.46.

TABLE 8

DISTRIBUTION OF NUMBERS OF EXECUTORS IN WOMEN'S WILLS

Number of Executors Appointed	Number of Wills
0	35
1	5
2	20
3	20
4	9
5	3
6	1
7	1
8	1
9	0
10	0
11	1
Total	96

We have seen that by the end of the thirteenth century, the testamentary executor had acquired the essental features of representation of the deceased. The office carried with it certain opportunities for making a personal profit. These could be so lucrative that unscrupulous individuals would go so far as to forge an entire will in the hope that the document would pass the scrutiny of the probate court. For the honest executor, the duties could be onerous indeed, and sometimes he could expect little compensation. Conceivably, the office could occupy him for several years. If administration was uncompleted before his death, the remaining business would fall to his own executors. It was no wonder that some executors were quick to decline the appointment when the will was presented for probate. With respect to the female executor, it appears to have been the wife who was often burdened with settling her husband's affairs. Other females were seldom appointed to the office by either men, or women.

III. PROBATE AND ADMINISTRATION

I

Submitting the deceased's will to probate court was the first step towards its implementation. It had been established late in King John's reign that the goods of deceased persons fell to executors for distribution.[1] Magna Carta also granted the supervision of the goods of intestates to the church.[2] For that purpose, there had to be some method for finding out whether the deceased person had made a will or not. The need for probate rules must have been apparent early on because episcopal statutes concerning probate and supervision of the distribution of property begin to appear early in the thirteenth century. In 1219, William de Blois, Bishop of Worcester, ordained that discovery by the bishop or his official of whether or not deceased vicars or beneficed priests had died intestate was preliminary to any distribution of their goods.[3] In 1229, he assigned the distribution of goods

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[1]McKechnie, c.26, 377.

[2]"Si quis liber homo intestatus decesserit, catalla sua per manus propinquorum, parentum et amicorum suorum, per visum ecclesie distribuantur..." McKechnie, c.27, 382.

[3]"Item, si persona vel vicarius decesserit, non fiat distributio rerum suarum, antequam constiterit episcopo, vel ejus officiali ipsum testamentum condidisse." D. Wilkins,

belonging to intestate persons to appropriate authorities according to the status of the deceased: the goods of the church's lay benefactors were to be distributed by the bishop or his official for their souls; goods of religious were to be distributed by the archdeacon or his official, and those belonging to other intestate clerks, by the parson or his priest.[4] Probate jurisdiction in England was broadly divided along diocesan lines, and properly belonged to the bishop and others commissioned with ordinary powers. However, within a given diocese, local church officials sometimes claimed probate authority. When a testator's property was scattered over more than one of these smaller jurisdictions, executors might find themselves having to submit a will for probate several times.[5] To complicate matters further, borough courts also claimed jurisdiction over testamentary probate when bequests of borough lands and tenements were involved, and refused to accept the church courts' decisions on validity as final. Some wills that were brought before the Court

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Concilia Magnae Britaniae et Hiberniae, 446-1718. 4 vols. (London, 1737), 1:571, cited by Sheehan, The Will in Medieval England, 197, n.144.

[4]"Ut bona beneficiatorum intestatorum per episcopum vel per eius officialem pro animabus ipsorum distribuantur; bona vero ministrantium in sacris ordinibus, si intestati decesserint, per archdiaconum vel per eius officialem; bona vero aliorum clericorum per personam vel eius capellanum." Councils and Synods..., 2:1: c.66, 181.

[5]Sheehan, The Will in Medieval England, 199.

of Husting in London ended up being proved twice.[6] Earlier proof of a will in a church court seems to have been taken into account by this borough court, and a note of endorsement by ecclesiastical authorities probably eased the probate process there.[7] Nevertheless, the church harboured much resentment over laity demanding a second probate, and threatened excommunication.[8]

One requirement for admission to probate was the presence of at least two unimpeachable witnesses to the making of the will, who heard what the testator had said, and agreed in all matters respecting his intentions. The probate court also verified the authenticity of the written will. For this reason, the witnesses were expected to be able to recognize the testator's seal and know precisely when the will was made. The document was examined also for signs of tampering or forgery. The court identified the executors and made sure that they were acceptable. In case the testator had not appointed any, the bishop's ordinary was empowered to assign one or more administrators. It seems that women were infrequent participants in the probate process. Widows whom their husbands had appointed executrices might present a will

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[6]Calendar of Wills Proved and Enrolled in the Court of Husting, London, 1268-1688, 2 vols., ed. Reginald R. Sharpe, (London, 1890), 1: Roll 52, no.30, 305; Roll 66, no.71, 434.

[7]Calendar of Wills Proved and Enrolled in the Court of Husting..., Roll 73, no.66, 487.

[8]Sheehan, The Will in Medieval England, 208-209.

for probate,[9] but women seldom appeared as witnesses. They were not altogether absent in this capacity, but neither male nor female testators preferred them. Although the probate courts may have made exceptions, the canonists generally barred female witnesses, particularly with respect to testaments.

The church courts used the same form of proof for the probate of wills as they used for any other case which came under their jurisdiction: the agreement of two suitable witnesses in all important matters constituted sufficient proof of most facts.[10] A valid will required the presence of at least two witnesses to the testator's oral expression of his _ultima voluntas_. They had to be of good character: One testator referred to the three witnesses to the sealing of his will as _discretis viris_.[11] All of them had to be of legal age and mental capacity. According to Glanville, witnesses to the making of a testament ought be two or more lawful men, either clerks or laymen.[12] Bracton remarked that the will of a free man had to be made before at least two lawful and respectable

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[9] _Calendar of Wills Proved and Enrolled in the Court of Husting..._, 1: Roll 44, no.134, 261.

[10] R.H. Helmholz, _Roman Canon Law in Reformation England_. Cambridge Studies in English Legal History. ed. J.H. Baker, (Cambridge, 1990), 22.

[11] _Testamenta Eboracensia_, 30: no.6.

[12] "Debet autem testamentum fieri coram duobus uel pluribus uiris legitimis clericis uel laicis et talibus qui testes inde fieri possint idonei." Glanville, 7.6.

men, clerks or laymen, summoned specially for the purpose who could prove the will if anything about it was in question.[13] The church demanded that one of the witnesses be a clerk. In 1217-1219, the Bishop of Salisbury, Richard Poore, instructed his clerical flock to remind lay persons frequently that they were not allowed to make their testaments without priests being present.[14] Between 1238 and 1244, Robert Bingham, the then Bishop of Salisbury, demanded that testaments of the laity be made in the presence of a priest or another ecclesiastical person, and two or three other suitable witnesses summoned for the purpose. He would consider testaments made under these circumstances to be valid.[15]

Sheehan has observed that fourteenth-century wills often include witness lists.[16] Unfortunately, there are few of them in the York sample: witnesses were named in only 12 of the 96 women's wills; out of 146 men's wills, only 26 contained a witness list. Why did so few of these

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[13]"Fieri autem debet testamentum liberi hominis ad minus coram duobusvel pluribus viris legalibus et honestis, clericis vel laicis, ad hoc specialiter convocatis, ad probandum testamentum si opus fuerit, si de testamento dubitetur." Bracton, 2: fol.61b, 181.

[14]"Precipimus quod laicis inhibeatur frequenter ne testamenta sua faciant sine presentia sacerdotis..." Councils and Synods..., 2:1: c.96, 91.

[15]"Testamenta laicorum in presentia sacerdotis vel alterius persone ecclesiastice, aliis duobus vel tribus testibus ydoneis propter hoc adhibitis, firma manere decernimus..." Councils and Synods..., 2:1: c.40, 382.

[16]Sheehan, The Will in Medieval England, 178-179.

testators see fit to include them? One reason may be, that since formal clauses were not required in written wills, testators were not obliged to write down the witnesses' names. Also, the increasing importance of the written will, a development which began in the thirteenth century, probably tended to devalue witnesses' testimony about oral wills. It may be that probate courts became more interested in the written will itself as proof of the testator's intentions, and less often referred to the witnesses for verification.

What little evidence there is in the York sample, if the existing witness lists are complete, suggests that testators did not always bother to meet the church's requirements: they ensured the presence of clerks for only 15 of the 26 men's wills in which witnesses are named; only 6 of these 15 included the names of two or more identified clerks. The women's wills show a similar profile: the names of identified clerks appear in only 6 of the 12 wills in which witnesses were listed; only 2 of the 6 contain the names of two or more clerks.

Women do appear occasionally among witnesses, despite the fact that canonists denied them the office.[17] Although female testators seem to have been more likely to have female witnesses, overall it is apparent that will-makers seldom made use of them: in the York sample, the men's wills contain 99 named witnesses; none of them are

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[17] Sheehan, The Will in Medieval England, 179.

female. Among the women's wills, 2 testatrices named only 3 female witnesses found out of a total of 40.

Testamentary witnesses were supposed to be impartial. For the purpose of probate, ecclesiastical tribunals were not to accept the testimony of anyone who might have a direct or indirect interest in a will, and whose position would be improved by its implementation. Executors and legatees were not to act as witnesses. The ban also applied to creditors of the deceased when the testator had left express instructions in his will that they were to be paid what he owed them out of his lands. In this case, the creditors would profit directly from the will.[18] For the most part, will-makers avoided making bequests to witnesses. In the York sample, only 5 male and 5 female testators made one or more witnesses beneficiaries.[19] Only one of the male testators made one of his executors a witness. However, this seems to have been no impediment to the probate of the will: the court appended a brief note to the document, stating that they were opposed to administration by one of the other executors and were reserving administration to the rest; there is no similar evidence that they objected to the former executor because

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[18]Edward Jenks, A Short History of English Law. (Boston, 1912), 269-270.

[19]Males: Testamenta Eboracensia, 4: nos.46, 52, 73, 134; 30: no.86. Females: Testamenta Eboracensia, 4: nos.235, 274; 30: nos.202, 231.

of his double office.[20] One of the women's wills seems to break all the rules: Agnes de Selby employed witnesses on two separate occasions, first to the reading of her will, and again when the document was sealed. Each time, her husband and her mother who were both among the beneficiaries were present. Her husband was also the sole executor. Two other males were present when the seal was affixed. One of these was not a legatee himself, but he seems to have benefited indirectly, since Agnes left his wife, one of her servants, some clothing. It appears that no clerks were present. Although the will is dated, the usual accompanying date of probate is absent.[21] I would guess that the probate court found the will to be unacceptable on a combination of several points respecting the witnesses. On the other hand, the court admitted the will of Isabel Belgrafe despite the presence of two female witnesses; the others were a priest and one unidentified male. None of these individuals were beneficiaries.[22] It may be supposed that the presence of female witnesses did not necessarily invalidate a will when the required number of clerks or other acceptable male witnesses were present, and all were disinterested parties. The meagre evidence of female witnesses found here does not allow us to know with any degree of certainty how the probate courts felt

[20]Testamenta Eboracensia, 4: no.107.

[21]Testamenta Eboracensia, 4: no.52.

[22]Testamenta Eboracensia, 4: no.202.

about them in practice. It does suggest the possibility that individual courts used their own discretion, and did not stick to a hard and fast rule banning female witnesses. It is likely that the probate courts may have let a few rules lapse on occasions when witnesses were not entirely acceptable, especially if the only alternative was intestacy.

Only one of the executors needed to bring the written will to the proper ecclesiastical authorities to be proved. The executor would present himself to the ordinary, claiming that the testator was deceased and asking to be admitted to the probate of the will. Once admitted, the executor would have to produce the witnesses.[23] It was not necessary that all of the executors appear at this time.[24] The ordinary examined the written will itself and questioned the witnesses regarding the contents. The record of wills enrolled in the Court of Husting gives an idea of the elementary kinds of information that witnesses were expected to know: Sometimes the testator's intentions were not entirely clear in the written will, and the witnesses might be asked to clarify the meaning of certain phrases.[25] For this reason, they had to remember what the testator had

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[23] Testamenta Eboracensia, 4: no.16.

[24] Calendar of Wills Proved and Enrolled in the Court of Husting..., 1: Roll 76, no.149, 539.

[25] Sheehan, The Will in Medieval England, 205.

said. In 1394, the Court of Husting was unsure of the identity of certain tenements which Thomas Waltham had devised; they found that the description in the testament was too general. It is curious that they asked his widow, the executrix, rather than the witnesses, to specify the tenements in question.[26] This may be an example of a court's acknowledging that a wife was in the best position to know the details of her husband's affairs. The will of Stephen Hauteyn was not admitted to probate because the witnesses did not agree as to the day on which it was made.[27] Alianora Busshe's will was refused for the same reason.[28] The wills of Hugh de Kyngeswode and John Tilly were not admitted; in both cases neither of the witnesses was able to recognize the testator's seal. Both wills were annulled and given an identifying mark with a chisel.[29] The depositions of the two witnesses for proving the testament of Richard de la Bataille were considered "not good and sufficient", and consequently, the will was cancelled, so far as it related to lay fee.[30]

[26] Calendar of Wills Proved and Enrolled in the Court of Husting..., 2: Roll 122, no.102, 309.

[27] Calendar of Wills Proved and Enrolled in the Court of Husting..., 1: Roll 32, no.71, 164.

[28] Calendar of Wills Proved and Enrolled in the Court of Husting..., 1: Roll 40, no.76, 227.

[29] Calendar of Wills Proved and Enrolled in the Court of Husting..., 1: Roll 32, nos.98, and 99, 165.

[30] Calendar of Wills Proved and Enrolled in the Court of Husting..., 1: Roll 57, no.118, 351.

Aside from witnesses'inconsistent testimony or their lack of knowledge, there were a number of reasons why a court might reject a written will. Again, the records of wills which were brought to the Court of Husting provide some particulars. Sometimes the Court questioned the legal capacity of the testator, although it appears from the record that in a few cases, the issue came to their attention only because someone challenged the testament on that point. The Court rejected the wills of persons who had not attained the age of consent at the time those wills were drawn up: a relative of Robert Dumars challenged his testament on the grounds that he was under age and non compos mentis.[31] Aside from the usual scrutiny which all wills received in both ecclesiastical and lay courts, women's wills presented for proof in lay courts met with additional difficulties. A will made by a woman who was not sui juris under the common law could be annulled in the lay courts, unless it was shown that she had obtained her husband's permission. The will of Emma Wylekyn was annulled and marked with the chisel because the testatrix was found to be a feme covert at the time of making it, as well as at the time of her decease.[32] It could be inferred from the record that if Emma had been a widow at the time of her death, the Court might have been

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[31] Calendar of Wills Proved and Enrolled in the Court of Husting..., 1: Roll 21, no.2, 103.

[32] Calendar of Wills Proved and Enrolled in the Court of Husting..., 1: Roll 35, no.98, 188.

willing to acknowledge her testamentary rights as a widow, and disregard the fact that she made the will when her husband was still living. The Court made sure that Joan Carre had obtained her husband's permission to make her will, and asked him to testify to this by setting his seal on it.[33] I get the impression that persons who challenged married women's wills in the lay courts sometimes used the argument of testamentary incapacity only when it was convenient to do so, as when they needed a means to have the will suppressed for other reasons. In the case of Cristiana Flaoners' will, the testatrix's legal incapacity does not seem to have been the primary issue, or of initial interest to the petitioner: in 1291, William le Fannere first challenged this will on the grounds that the testatrix was devising a tenement in which, by the custom of London, she could have had only a life interest. It seems that either his first claim was unsuccessful, or he felt the need to reinforce it with something more substantial, because on a second occasion he came forward and challenged the will, this time testifying that when it was made, the testatrix had a husband and therefore, was <u>sub virga</u>. On this point, the court voided the will. The testatrix may well have obtained her husband's permission, because she appointed him one of her executors.[34]

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[33] <u>Calendar of Wills Proved and Enrolled in the Court of Husting...</u>, 1: Roll 225, no.27, 599-600.

[34] <u>Calendar of Wills Proved and Enrolled in the Court of Husting...</u>, 1: Roll 21, no.27, 105.

However, if the written will contained no evidence of this, the court was within its rights to annul the document.

The authenticity of a will might be suspect if only the testator's seal was appended. A synodal statute of 1287 for the diocese of Exeter specified that immediately after the testator had completed his written will, he was to close the document with his seal, and those present were to add their seals immediately afterwards. A testament which was marked only with the testator's seal was in danger of being forged.[35] Undoubtedly, it was more difficult to forge a will that had several seals. The Court of Husting made an exception in the case of Sir Robert de Maidestan, a canon of Chichester Cathedral: His will was admitted to probate, despite the fact that neither he nor the other parties had affixed their seals. The court decided that the document was acceptable, since the testator had died at Avignon, where it was customary to have a will written out by a public scrivener and sealed only by a notary. Furthermore, the will had been proved already by the officials of the Archbishop of

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[35]"Quod postquam factum fuerit claudat et cum sigillo proprio si habeat, alioquin alieno, protinus consignet; quod presentium sigillis illico faciat consignari, alioquin contra testamentum, solo testatoris sigillo signatum, de facili potest presumi, cum post mortem testatoris posset testamentum aliud fabricari et sigillo ipsius sicut alias consignari..." Councils and Synods..., 2: c.50, 1046-1047.

Canterbury, and the Bishop of Exeter.[36] In view of the testator's position as a cathedral canon, as well as how the church felt about secondary probate, the court probably wanted to avoid confrontation with church officials over the matter. The Court of Husting was on the lookout for wills in which the whole or part of the text had been forged or altered in some way. In 1316, it was brought to the Court's attention that a certain will under the name of John le Botoner had been published and objected to as false. The Court called for executors to appear, but no one came forward. The executor who was named in the testament, a certain John de Pampsworth, was asked whether he knew anything of its making and if he intended to request probate. John knew nothing about it, and upon further examination, the Court found out that the so-called testator had never made an ultima voluntas. Furthermore, the court discovered that the document had been purposely manufactured to disinherit the testator's son.[37]

It is difficult to know precisely when a will came into its executor's possession, but courts were aware that executors sometimes retained a will, giving themselves and others ample opportunity to tamper with it. Henry de

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[36] Calendar of Wills Proved and Enrolled in the Court of Husting..., 1: Roll 52, no.30, 305.

[37] Calendar of Wills Proved and Enrolled in the Court of Husting..., 1: Roll 45, no.18, 263. See also, 1: Roll 108, no.15, 209.

Neuport's will was annulled and marked with the chisel on several grounds: evidently the Court believed that his will had been altered. When they examined the writing itself, they found an interlineation at the beginning of the testator's name in a hand different from the one used throughout the rest of the document. Also, someone had made an erasure in a suspicious place where the testator had made a legacy of tenements. The Court probably suspected that the executors had meddled with the document. It was remarked that they had kept the will in their possession for four years without bringing it to probate, and were unable to give any reason for the delay.[38] However, a long interval between the testator's death and the time when the will was presented for probate did not necessarily make the will inadmissible: in 1279-1280, the court found that William, the son of Robert Hardel, had fraudulently and maliciously retained his father's testament without probate, thereby preventing the testator's only daughter from taking up the lands and rents which her father had devised to her. Robert was summoned to appear and produce the testament. The court allowed all the legacies contained in it.[39] Alexander Heyrun's will was admitted despite the length of time that

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[38] Calendar of Wills Proved and Enrolled in the Court of Husting..., 1: Roll 35, no.98, 188.

[39] Calendar of Wills Proved and Enrolled in the Court of Husting..., 1: Roll 11, no.39, 47.

had elapsed since his death. The witnesses testified that the executors had maliciously witheld it.[40] Agnes de Bosenham postponed having her husband's will proved for fifteen years. In 1333, the will came to the court's attention only because their son lodged a complaint that he had not yet received certain tenements which his father had devised to him. When asked for an explanation, she offered the excuse that her husband had died so much in debt that she was afraid to prove the testament or undertake the burden of administration. Despite Agnes' difficult position, the court saw no reason why probate should be delayed any longer.[41]

The record shows that in the Court of Husting, each will had to be proclaimed so that anyone who so wished had an opportunity to come forward and make a claim on a portion of the estate, or object to the testament on whatever grounds. However, if a will was successfully challenged by a claimant, it did not mean necessarily that the entire will would not be executed. Sometimes, only an individual clause was annulled, and the court granted execution of the residue of the testament.[42]

At the time of probate, the court made an initial

[40] Calendar of Wills Proved and Enrolled in the Court of Husting..., 1: Roll 36, no.79, 197.

[41] Calendar of Wills Proved and Enrolled in the Court of Husting..., 1: Roll 36, no.79, 197.

[42] Calendar of Wills Proved and Enrolled in the Court of Husting..., 1: Roll 45, no.32, 264; Roll 50, no.102, 293-294.

decision about approving or rejecting the executors, and the executors were given the opportunity to accept or decline the office. According to the Legatine Council of London in 1268, the ordinary could not give full approval to the will, or admit the executor to administration, unless first the executor had clearly stated before him his intention to administer or not.[43] There was always a chance that one or more of the appointed executors would renounce the office. Here was another reason why both male and female testators rarely appointed just one executor. Sometimes a testator miscalculated his executors' sense of duty, and when the will was sent to probate, all of them declined. The executors named in John Kyng's will, which had first been proved before the Official of the Archdeaconry of London, all renounced their office.[44] The Court of Husting recorded that they did so of their own accord. The record seems to imply that sometimes, appointed executors were coerced into giving up administration. In their place, the Official granted administration to the testator's widow and a chaplain. It is significant that in this case, even

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[43]"Propterea super executione testamentorum duximus statuendum ut executor testamenti cuiuslibet ad executionem nullatenus admittatur, neque testamentum, cum ordinario secundum approbatum consuetudinem presentatur, per ipsum aliquatenus approbetur, nisi prius quo ad hunc actum sui fori privilegio coram eo expresse renuntiet executor." Councils and Synods..., 2:2: c.14, 765.

[44]Calendar of Wills Proved and Enrolled in the Court of Husting..., 1: Roll 66, no.71, 434.

though the testator had not appointed his wife executrix, the church court still considered her to be a desired choice as administrator. In a similar case from 1357, Thomas Broun's two male executors refused before the ordinary to undertake administration, and in turn, the ordinary granted it to the testator's widow.[45] The court wanted to be sure that the executors named in the will were the same ones whom the testator had chosen. Sometimes there was a variance between the text of the will and the testator's declared wishes: Adam Stedeman was named executor in a will brought before the Court of Husting. According to testimony, the testator had said that he did not want Adam to take up the office, and Adam voluntarily acknowledged this. Nevertheless, the Court required Adam to make a formal renunciation, probably because his name appeared in the written will. It seems that in this case, the evidence of the documented will took precedence over testimony respecting what the testator had said. The record of probate shows what the executor had to say in order to renounce the office: Adam promised that he would not administer any of the testator's goods or intermeddle in the administration.[46]

When there were several executors, it was not always possible to complete these initial proceedings on one

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[45] Calendar of Wills Proved and Enrolled in the Court of Husting..., 1: Roll 85, no.73, 696-697.

[46] Calendar of Wills Proved and Enrolled in the Court of Husting..., 2: Roll 113, no.32, 245.

occasion, unless perhaps it happened that they came to the court as a group. Some executors resided far away from the place of probate or were not even in England when the will was presented.[47] In the case of one will which was proved before the Bishop of London, all the executors were not present at the same time. However, it appears that the tribunal wanted to avoid delay, and allowed some of them to begin administration regardless: in 1324, after John de Triple's will had been proved in the Court of Husting for the devise of tenements, it was proved a second time before the Bishop of London for the testator's goods and chattels. The administration of his goods within the City was granted to five of the executors named in the will. The tribunal reserved "the right of granting similar administration to the other executors named when they should appear and signify their willingness to accept the same."[48]

II

The executors' first duty in connection with the estate itself was to make a list of the deceased's goods and cash as well as the debts. According to a statute for the

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[47]Calendar of Wills Proved and Enrolled in the Court of Husting..., 1: Roll 16, No.103, 77.

[48]Calendar of Wills Proved and Enrolled in the Court of Husting..., 1: Roll 53, no.66, 311-312.

diocese of Exeter (1287), the inventory was to consist of all the things which the deceased had at the time of death, including all the debts owed to him and by him, which they had written down expressly.[49] Each item was supposed to be described in some detail, and given a cash value.[50] Sometimes, goods were already in hands of beneficiaries, and these items also had to be accounted for.[51] It appears that in some places, the view of inventory was not part of the administration proper, but had to be completed and presented to the Ordinary before he would grant administration. In 1268, the Legatine Council of London ruled that executors had to prepare the inventory and show it to the ordinary before they could undertake administration. The bishop would punish all those who presumed to administer without completing this task first.[52] Here, precautions were being taken against so-called false executors who pilfered goods and used other means to profit from the deceased's estate. Once the court had a list of the testator's goods and chattels

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[49]"...executores fidele conficiant inventarium...in quo omnia bona que defunctus habuit tempore mortis et que sibi debebantur et que debuit aliis conscribantur fideliter et expresse." Councils and Synods..., 2:2: c.50, 1047.

[50]Testamenta Eboracensia, 4: no.91.

[51]Testamenta Eboracensia, 30: no.100.

[52]"Precipimus etiam statuendo quod huiusmodi testamentorum executores, priusquam administrationem bonorum attingant, inventarium...conficiant et illud suo superiori prelato ostendant. Si quis autem, inventario non confecto, administrare presumpserit, ad sui episcopi arbitrium puniatur." Councils and Synods..., 2:2: c.14, 765.

in their hands, it was probably more difficult for executors to devise ways of profiting from administration without detection. When it came time for the executors to render their account to the ordinary, there could be no inconsistencies with the instructions contained in the court's copy of the will and record of inventory. Also, these documents could be checked against the receipts which the beneficiaries had given to the executors when the legacies were delivered.[53] Nevertheless, it was probably during the preparation of inventory, when the court did not yet know the precise contents of an estate and the value of individual items, that unscrupulous executors had the best opportunity to help themselves to cash and goods. Generally, wills did not detail the full extent of the testator's personal property. All the wills in the York sample instruct the executors to dispose of the remainder without describing exactly what that was. The church courts had some remedies for the problem: executors were not allowed to prepare the inventory without the presence of qualified appraisers. The Legatine Council of 1268 required the presence of trustworthy persons who had some idea of the quality and value of the deceased's goods.[54] Of course, there might

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[53] Plumpton Correspondence, ed. Thomas Stapleton, Camden Society, Old Series, 4 (1839), xxix.

[54] "Precipimus etiam statuendo quod huiusmodi testamentorum executores...inventarium in presentia aliquorum fidedignorum, qui versimiliter bonorum defuncti noverint qualitatem, omnino conficiant..." Councils and Synods..., 2:2: c.50, 765

be nothing to prevent collusion between the executors and the appraisers. A statute on testaments for Exeter (1297) allowed executors only fifteen days from the time of burial to complete the inventory, although it was admitted that this was not always possible.[55] The church courts wanted to avoid any delays in implementing wills, and there was probably a limit to what dishonest executors could accomplish for themselves in two weeks. A synodal statute of 1240, promulgated by Bishop Walter de Cantilupe for Worcester diocese, ordered the testaments be executed quickly as insurance against the fraud and negligence of executors.[56]

The church courts were well aware of the sorts of schemes executors concocted to make profits for themselves out of the estates of deceased persons. One common practice against which bishops repeatedly warned was the selling of the deceased's goods: in 1245-1252, the bishop of Chichester instructed that executors suspected of negligence in their duties, or of busying themselves fraudulently, as in selling the goods of the deceased for their own profit or the profit of others, were to be

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55"...fieri pricipimus infra quindecim dies si fieri potest a tempore sepulture..." Councils and Synods..., 2:2: c.50, 1047.

56"Quia vero testamentorum executio per executores seu per commissarios rarius quam deceret debitum sortitur effectum, tum per fraudem executorum tum per negligentiam eorundem, volentes super hoc decedentibus providere, statuimus et precipimus ut testamenta quorum executionem in se commissarii susceperint celeriter exequantur." Councils and Synods..., 2:1: c.82, 316.

compelled to render an account of administration.[57] A prohibition against this sort of activity was repeated for the diocese of Norwich in the mid-thirteenth century.[58] Later, in 1287, a statute for Exeter forbade anyone, on pain of excommunication, to act by themselves or through an intermediary to buy a deceased person's goods for an unfair price. Transactions of this sort could not take place in secret, but had to be witnessed by trustworthy persons.[59] An executor could appropriate the testator's goods only in the case of a legacy or debt owed him by the testator, or because of expenses incurred by administration, or if an honorarium was given to him by the ordinary for his trouble.[60] However, the church felt

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57"De executoribus testamentorum tam laicorum quam clericorum statuimus quod si negligenter vel fraudulenter, utpote de rebus defunctorum gratiosas sibi invicem vel aliis venditiones faciendo, versati fuerint, seu alias ex verisimilibus presumptionibus suspecti apparuerint...administrationis...compellantur reddere rationem...", Councils and Synods..., 2:1: c.53, 462.

58"Et quia nonnullos testamentorum executores in venditione bonorum defunctorum fraudem committere sepius reperimus, sub pena excommunicationis firmiter inhibemus ne cuius quam testamenti executor, de bonis ipsius cuius fuerit executor, a se vel a coexecutoribus suis, per se vel aliam personam ad emendum bona defuncti ad opus suum fraudulenter subpositam, emere de cetero quicquam presumat..." Councils and Synods..., 2:1: c.67, 359-360.

59"...sub pena excommunicationis interdicimus ne per se vel interpositas personas absque fidedignorum presentia et rationabili pretio quicquam de bonis defuncti emere sibi..." Councils and Synods..., 2:2: c.50, 1048.

60"Inhibemus etiam executoribus...ne de bonis defuncti aliquid recipiant emptionis titulo vel donationis vel per se vel per alios nisi fortassis aliquid eis fuerit legatum a dicto defuncto dum adhuc viveret aut donatum." Councils and Synods..., 2:1: c.83, 316; Also, see Goffin, 77.

that executors would be more willing to administer properly if they were allowed to recover from the deceased's goods moderate expenses which they had incurred.[61] Among the York wills, both male and female testators often compensated their testators in some way: William Mowbray allowed his executors to take for their labour and expenses whatever seemed reasonable to them, according to their conscience.[62] In a codicil, Margaret la Zouche willed, "that ich of my executors have for his labor v marc."[63] Lady Elena Portington left "cuilibet executorum meorum pro labore suo C s."[64] Often, testators who did not leave a specific bequest to pay their executors for labour and expenses, made a bequest to them elsewhere in the will. Generally, most executors, especially if they were members of the testator's family, could count on getting something out of the estate, although from their point of view it might be little recompense for what administration would cost them in time and money. In the entire York sample of the 157 men's and

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[61]"Et hoc liberius et promptius fiat, volumus ut per visum episcopi vel eius quem ad hoc duxerit deputandum, dum in eius executione laborant moderatas sibi sumant expensas de bonis defuncti..." Councils and Synods..., 2:1: c.82, 316.

[62]"...jeo ay ordeigne mez executours la dite Margaret ma femme, Sire Johan Grympston parson del Esglise de Sutton sur Derwent, et le dit Johan de Bysshuppton, preignaunt pour lour travell et pour lour despenses...que lour semble resonable par lour conscience..." Testamenta Eboracensia, 4: no.132.

[63]Testamenta Eboracensia, 30: 120.

[64]Testamenta Eboracensia, 30: no.167.

women's wills in which executors were named, 99 testators made some form of bequest to one or more executors that was not designated for labour or expenses, although most of these beneficiaries were family members. As compensation or reward was not automatically forthcoming, and administration could be a good deal of trouble, executors were not always anxious to take up the office. Sometimes, testators had to bribe them: In 1395, Lady Alice West promised to revoke legacies of goods to her son and his wife if they should renounce the executorship of her will.[65] Henry Lord Percy left 40 to one of his executors in case he intended to neglect administration.[66]

Nevertheless, for dishonest executors, the prospect of making a personal profit out of the testator's estate was tempting. Popular moralists commonly dwelled on the theme of the false executor. In Handlyng Synne (1303), Robert Mannyng warned that the accumulation of wealth attracts dishonest executors who, as soon as the body is in the ground, will make every effort to line their own pockets at the expense of the rich man's estate and his soul:

> Ryche men gadre ryche tresours
> To make with rych executors:
> þe whyles[67] þe executours sekke,

[65] The Fifty Earliest English Wills in the Court of Probate, London, ed. Frederick J. Furnivall, Early English Text Society, Original Series 78, (London, 1882; rpt., London, 1964), 9.

[66] Testamenta Eboracensia, 4: no.46.

[67] wills.

Of þe soul þey ne rekke;[68]
þe body, whyl hyt on bere[69] lys
A day or two ys holde yn prys,[70]
But whan hyt ys yn erþ broght,
Body ne soul gete ryȝt nought;
Be he broght nobly to hys pyt[71]
Dette and soul þey þynke al quyt.[72]

In the fifteenth century several versions of the expression "Too secuturs and an overseere make thre theves",[73] appeared. Mannyng cautioned the testator against making either his heir or his physician an executor:

Ne be þou neuere yn swych errour
To make þyn eyr þy secutour,
Ne þy sekutoure þy fysycyene,
Yn hope for to leue a-þene.'
For þy þyng, þy eyr sey þys;[74]
þat byfore was þyn, ne halt hyt hys;
þyn executure, to have þy þyng,
wlde þat þou madyst þyn endyng.[75]

In Peter Idley's Instructions to His Son, we find the didactic tale of three dishonest executors who kept the

68care.

69bier

70held in esteem

71grave

72Robert Mannyng, Handlyng Synne, ed. Frederick J. Furnivall, Early English Text Society 119, (London, 1901), 1:6233-6242.

73Thomas L. Kinney, " 'Too secuturs and an overseere make thre theves.' Popular Attitudes toward False Executors of Wills and Testaments," Fifteenth-Century Studies 3. eds. Guy R. Mermier and Edelgard E. DuBruck, (Michigan Consortium for Medieval and Early Modern Studies, 1980), 93-94.

74For thy wealth, thy heir saith this...

75Handlyng Synne, 1:1181-1188.

dead man's goods for themselves, because they saw little point in trying to save his condemned soul with alms and prayers.[76]

Stories about false executors were based on some truth Parish priests were instructed to question penitents closely on these matters: by witholding legacies or detaining the will, executors were not only guilty of avarice, but also of prolonging the sufferings of the dead man's soul in purgatory.

> Hast þou I-be any executour
> To any frende or neghbour,
> And drawe out hys gode þe
> tylle, And not I-do þe dedes
> wylle?[77]

Parish visitors inquired into executors' activities, and received reports of bequests diverted or witheld, and of executors who failed to render account. Several of these cases can be found in the records of visitations in Lincoln diocese from the early sixteenth century: visitors were interested in finding out whether executors were withholding

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[76] Peter Idley's Instructions to His Son, ed. Charlotte D'Evelyn, The Modern Language Association of America Monograph Series 6, (Boston, 1935), 2:1701-1785, 187-188.

[77] John Mirk, Instructions for Parish Priests, ed. Edward Peacock, (London, 1902; reprint, New York, 1969), 1197-1200.

bequests to the church.[78] In one case, they discovered an executor taking annual payments bequeathed for the repair of almshouses,[79] and in another, that two executors had stolen an altarcloth.[80] There are also instances of unfulfilled[81] and unproven testaments. On one occasion, the visitors discovered that a man had proceeded to administer the goods of his servant and a priest without authority; neither of the testaments had been presented for probate.[82]

In spite of the testator's best efforts to make sure that his estate would be administered properly, the appointment of a sufficient number of honest, dependable executors could

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[78]For example, "Robertus Hore debet ecciesie antedicte vnum quarterium de le malt ex legato Johannis Croxford." Visitations in the Diocese of Lincoln 1517-1531, 3 vols., ed. A. Hamilton Thompson, The Lincoln Record Society 33 (1936), 35 (1938), 37 (1940), 1:120. See also, 1:53, 84. 107, 118, 121, 123, 128.

[79]"Robertus Knyghteley de Dunstaple detinet ijs annuatim legatos per Johannem Bakar de Toternhoo biforsaid ad reparacionem tochiorum apud Toternhoo, que pecunie solute fuerunt a tempore immemorato vsque ad iij annos elapsos per quos ipse Robertus subtraxit eosdem." Visitations in the Diocese of Lincoln..., 1:103.

[80]"Willelmus Clyfford et Johannes Flodyate executores Thome Apdams subtrahunt vestimentum altaris relictum per eundem testatorem." Visitations in the Diocese of Lincoln..., 1:129.

[81]"Katerina Sylvester executrix Johannis Sylvester non complevit testamentum Johannis Sylvester." Visitations in the Diocese of Lincoln..., 1:62.

[82]"Quidam dominus Johannes, Capellanus...de Walcot, ibidem decessit et eius testamentum nondum fuit probatum. Et Johannes Clark, nuper serviens Humfridi Walcote, decessit ibidem et ipsius testamentum nondum approbatum. Idem Humfridus Walcote presumpsit disponere et administrare bona dictorum defunctorum absque auctoritate." Visitations in the Diocese of Lincoln..., 1:57.

executors. Other testators gave explicit instructions as to how each observance was to be carried out, who was expected to attend, and the exact amount which the executors were permitted to spend. In part, the kinds of funerary observances and the degree of elaborateness which a testator requested depended on what she or he could afford. More often that not, testators tried to put a limit on spending. A few wanted to be sure that their funerals would be of a size and grandiosity that was befitting their station in life. Others expressly asked for a humble funeral. In wills where this kind of request is combined with remarks on the contemptuous nature of the corpse, the possibility that the testator held Lollard sympathies has to be considered. Unfortunately, the wills contain little information about when various funerary observances were to be carried out; we can have only a rough idea of the order of events, with the day of burial and the 'eighth day' following being considered important occasions. If intercessory prayers and masses are considered part of the funerary religious observances, celebrations could extend over a prolonged period of years, or even indefinitely.

A sample of 60 of the York women's wills is of sufficient size to form some conclusions about women's preferences respecting burial and funeral arrangements. Testatrices showed a certain degree of individuality in this area. While some wanted elaborate funerals and the time came, their executors would not be inclined to apply themselves diligently to the task at hand. Foreseeing this eventuality, they provided incentives: in 1422, Lady Peryne Clanbowe left her executors 5 marks and a reward for costs "whan they labour specially for my maters."[85] Robert de Morton made a certain priest, William Myrfyne, an executor and the principal distributor of his goods. He bequeathed to William livestock and wheat to the value of 10, "on condition that he labour and busy himself diligently about the execution of my will..."[86] With the promise of a reward, William was probably eager to accept the office, but once he had, it is likely that he was compelled to fulfill his duties to the satisfaction of the ordinary before receiving the legacy. Presumably, the ordinary would demand an account and decide whether administration had taken too long before the legacy was paid out. It is possible that some executors, once they had discovered the costs and difficulties of administration, were negligent on purpose in the hope that the ordinary would remove them from office.

Once the executors received a grant of administration and the court had made a copy of the will, the original was

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[85] The Fifty Earliest English Wi[illegible]s..., 51.

[86] "Item Willelmo Myrfyne capellano...it[illegible] [illegible]uod ipse laboret et occupet se diligenter circa executionem voluntatis meae, animalia et blada ad valorem xl." Testamenta Eboracensia, 4: no.166.

delivered to them[87] so that they could proceed to settle the testator's affairs and dispose of the estate. The first duty was to arrange the burial and funeral of the deceased, including the various prayers and masses. In the thirteenth century the church had directed that funeral expenses were to be a first charge on the testator's goods and chattels.[88] In the case of a man's will, the wife and children were supposed to receive their one third portions at this time. Some did not, and had to resort to the courts to recover them: in 1271-1272, Lady Maud de Clare, widow of the Earl of Hertford and Gloucester, brought an action before the Archbishop's official at Canterbury against three of her husband's executors, claiming that they had failed to grant her the third part of his movables, which was her right under common law.[89] In 1389-1390, Piers Plenty attempted to recover one third of the chattels from his father's estate by bringing action of detinue de racionabili parte against his father's executors before the king's justices.[90] After the deduction of funeral expenses and the wife's and

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[87] Calendar of Wills Proved and Enrolled in the Court of Husting..., 1: Roll 38, No.75, 209.

[88] See canons of the council of the province of Canterbury at Lambeth in 1261 in Councils and Synods..., 2:2: c.24, 682.

[89] Select Cases form the Ecclesiastical Courts of the Province of Canterbury c.1200-1301. eds. Norma Adams and Charles Donahue, Selden Society 95, (1981), C.7, 138-144.

[90] Year Books of Richard II, 13 Richard III, 1389-1390, ed. Theodore F.T. Plucknett, The Ames Foundation, (London, 1929), no.4, 9-13.

children's thirds, the executors were supposed to pay the testator's debts. Testators frequently instructed their executors to pay their debts before disposing of any part of the estate for legacies or other expenses: Sir Hugh Willoughby asked "that my dettes be payyd before alle oder thyngis."[91] However, when the testator's creditors sought to recover what was owed to them through the courts, some executors tried to stall. A few denied that they had ever been executors. Consequently, the court had to find out whether or not they had administered: in 1321, John of Triple, a merchant of London, sued a bill of debt against William of Barton, the executor of Ralph of Sandwich, for 100s. William claimed that he was not the executor, but the jurors testified that he had administered Ralph's goods. Consequently, William was liable for the testator's debt.[92] If this case had been heard by justices of the king's bench, the court would have had the power to demand from the ordinary a certificate showing that the executors had rendered account. A favourite method by which executors delayed paying the testator's debts to his creditors was used when a writ of debt was brought against several of them. Only one of the executors would appear in court so that the others were protected against the penalties of default. Yet, the case could not proceed against them unless

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[91]Testamenta Eboracensia, 30: no.105.

[92]Year Books of Edward II. The Eyre of London, 14 Edward II, 1321, 2 vols., ed. Helen M. Cam, The Selden Society, 26 (1969), 2:316-317.

all the executors who were named in the writ presented themselves in court at the same time. In these circumstances, the case could be prolonged indefinitely.[93] One 'common' petition, which was presented to the king in 1333, raised the problem of getting all the executors into court at the same time. The chancellor was ordered to take the advice of the council and find a remedy, but nothing was done.[94] Disputes could occur at any stage of the execution, for example, over the payment of debts owed by the deceased to his creditors, or owed by debtors to the deceased. Those who held the deceased's goods had to be willing to release them to the executors.[95] At any time, the validity of the will could be challenged. We have seen this with reference to the wills of married women and widows. After settling these matters, the executors could then dispose of the dead's part according to his instructions. Once the executors had delivered the deceased's goods to the satisfaction of the legatees, and disposed of the residue as directed, administration was complete. Following this, they were compelled to render their accounts to the commission in order to receive letters of acquittal. With these in hand, no further claims could be made against them.

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[93] Select Cases in the Court of King's Bench, ed. G.O. Sayles, Selden Society 58, (1939), 3: xxxiv.

[94] Select Cases in the Court of King's Bench, Vol. 3, ed. G.O. Sayles. Selden Society, 58, (London, 1939), xxxiv.

[95] Michael M. Sheehan. "English Wills and the Records of the Ecclesiastical and Civil Jurisdictions," Journal of Medieval History 14:1 (1988), 5.

In conclusion, safeguards were applied to every stage of probate and administration to see that the deceased person's true last will was carried out. Nevertheless, dishonest executors continued to find ways to profit from the circumstances of their office, and avoid carrying out their duties. As a result, executors as a whole had a poor reputation. Sometimes, testators did not trust some of their executors entirely, and acknowledged this in their wills in various ways. However, as the executorship was charged with heavy responsibilities, and appointed executors were not always keen to accept the office, most testators probably had to be content with choosing the most trustwothy individuals they could find who were likely to accept the office, even if it meant resorting to bribery. With reference to the participation of women in probate and administration, it is apparent that as they were seldom witnesses to wills, they had little part to play in the probate process. The married woman was in a special position both as executrix, and testatrix: it could be said that the married woman often had the benefit of her husband's trust. But with respect to the executorship, her position was a liability since she was often inconvenienced with the administration of his estate. When her husband did not appoint her executor, and there were no others, the courts seem to have viewed her as an appropriate administrator. In theory, the wills of widows and unmarried females of full age were not to be treated differently than the wills of any other persons with the ability to perform a legal act. However, in the secular courts, the married woman's will was subject to additional requirements because of her testamentary incapacity under common law. Consequently, her will was at particular risk of not being fulfilled.

IV. BURIAL AND FUNERARY OBSERVANCES

A characteristic of wills throughout the period is the great number of individual bequests which they contain. Perhaps the growing use of the written will, with the advance of the thirteenth century, had something to do with it: the testator could make a large number of separate bequests, and convey complex instructions pertaining to delivery, reversion to secondary and other beneficiaries, conditions, etc., without having to rely on the memeory of witnesses to his oral testament. We have seen that when witnesses were asked to recall the substance of a will, sometimes they were unable to remember, or agree upon even the elementary facts surrounding its making. For this reason, the testator who wanted to be reasonably sure that his instructions surrounding his burial and funeral would be carried out, included them in his will. Also, when these arrangements were accompanied by specific bequests for the purpose, it is likely that they had to be included in the executors' accounts, and were enforceable by the probate court.

In the wills of the York sample, testators generally prepared for death by including in their wills some specific instructions for the location of burial, and funeral arrangements. Usually, testators expected to pay a burial fee. The incumbent of the testator's parish church, and more often, the priests and various clerks and under-clerks expected a tip. With the proper observances, the soul of the deceased had a last chance for redemption, as long as the testator was willing to pay for it: most testators provided for some combination of alms, masses, intercessory prayers and votive lights. Some made provisions to ensure that a sufficiently large gathering of friends, neighbours, and poor folk attended the various observances. Wills also contain arangements for the presence of accessory priests and other clerks at funeral masses and exequies. Sometimes, a selected group of poor persons were hired to carry candles or torches, and were fitted out with special identical garments made for the purpose. Each kind of observance was paid for in the form of a cash bequest. Persons who attended the prodeedings assumed that they would receive something for their trouble, and the testator expected to pay them. Cash bequests, and occasionally bequests in food and drink were provided for the purpose. Sometimes we know how much each person was to receive, as well as the total amount to be spent on the crowd; the number of people who were expected to attend can be estimated. Other testators provided a lump sum to cover all funeral costs. The details of funeral observances, burial, and costs were sometimes left entirely to the discretion of the executors. Other testators gave explicit instructions as to how each observance was to be carried out, who was expected to attend, and the exact amount which the executors were permitted to spend. In part, the kinds of funerary observances and the degree of elaborateness which a testator requested depended on what she or he could afford. More often that not, testators tried to put a limit on spending. A few wanted to be sure that their funerals would be of a size and grandiosity that was befitting their station in life. Others expressly asked for a humble funeral. In wills where this kind of request is combined with remarks on the contemptuous nature of the corpse, the possibility that the testator held Lollard sympathies has to be considered. Unfortunately, the wills contain little information about when various funerary observances were to be carried out; we can have only a rough idea of the order of events, with the day of burial and the 'eighth day' following being considered important occasions. If intercessory prayers and masses are considered part of the funerary religious observances, celebrations could extend over a prolonged period of years, or even indefinitely.

A sample of 60 of the York women's wills is of sufficient size to form some conclusions about women's preferences respecting burial and funeral arrangements. Testatrices showed a certain degree of individuality in this area. While some wanted elaborate funerals and provided detailed instructions and large cash bequests for the purpose, others left few directions and spent very little. Few of the women's wills contain instructions to carry out every type of customary observance.

Most women chose a certain place of burial because it was associated with her family through place of residence, land-holdings or patronage. In the case of the married woman or the widow, those associations were likely ones established through her husband's family. In the sample of women's wills, 50 testatrices chose a place of burial. The majority of these (34) chose either their parish church or another location where family members were buried. Of the 30 testatrices who chose a location other than the parish church, 14 wanted to be buried next to family members. In 12 cases, the testatrix wanted to be next to her husband. In one case, she asked to be by her mother; her husband was still living. In one other case, the testatrix requested burial beside her ancestors; a daughter is mentioned in her will, but there is no evidence to show whether the testatrix was married or widowed.

TABLE 9

PLACE OF BURIAL REQUESTED IN 60 WOMEN'S WILLS

Place of Burial	Number of Testatrices

Parish church		20
Church belonging to religious house		14
Other (including St. Peter's, York)		16
ubi Deus disposuerit/ubicumque mei disposuerint		4
Not mentioned		6
	Total	60

The desire to be buried near family members was not necessarily movivated by feelings of sentiment; other concerns could be involved. While the testator was free to choose any place of burial,[1] interment in a family tomb which was located in a prominent location of a church, on the family's lands, or near the chief place of residence, provided visible proof of of a family's importance and influence, and served to reinforce local loyalities which the family had worked to establish in other ways. Widows who had married into important merchant and county families were probably expected to choose a place of burial next to their husband's. Only a few women from the sample did not care where they were buried: in 3 cases, the testatrix left the decision of burial location up to her executors, or asked to be buried wheresoever God would

[1]Sheehan, The Will in Medieval England, 141-142.

choose. One testatrix, a knight's widow, requested burial in the cemetery of the parish church in whatever parish she happened to die. The contents of her will shows a similar lack of concern over her funeral: she asked that her executors purchase four torches for 20s to donate for the benefit of her soul, but she made no mention of masses or suffrages, and gave no instructions respecting other funeral proceedings.[2] A similar correlation is apparent in the wills of the remaining 6 women who did not bother to mention burial at all; they made no references of any kind to their funerals. An exception to what is found in this small sample is the will of Lady Margaret Stapilton. While she arranged for most of the customary funeral observances and asked for burial at the nunnery of Clementhorpe, where she appears to have been staying at the time she made her will, in case she did not die there, she was to be buried wheresoever God would chose.[3] Similarly, Isabel Hamerton requested burial beside her husband in the church of St. Peter the Little, if she happened to die within the city of York.[4] One reason for requesting burial close to wherever one died may have been to avoid leaving others with the unpleasant duty of transporting a noisome corpse over any great distance. Prior to interment, it was usual to wrap the body in a

[2]Testamenta Eboracensia, 4: no.105.

[3]Testamenta Eboracensia, 30: no.217.

[4]Testamenta Eboracensia, 30: no.17.

winding sheet, knotted at the head and the feet.[5] Embalming may have been necessary if the body had to be kept for a long period while preparations were made for a lavish funeral,[6] but because of the expense involved, it is unlikely that the procedure was done often.[7] Another method of retarding decomposition was to wrap the body in a cere cloth (fabric saturated with wax). There is no evidence anywhere in the entire York sample that male or female testators requested either of these procedures. In the sample of women's wills, there is only one reference to the use of a coffin: Mary, the Lady of Roos and Oreby, left £5 in her will to pay for a coffin, wax, and a tomb beside her husband at Rievaulx.[8] Although some testators feared being buried alive and requested a waiting period, sometimes of several weeks before interment,[9] funerals

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[5]T.S.R. Boase, Death in the Middle Ages: Mortality, Judgment and Remembrance, (New York, 1972), 111. Reference to knotting the winding sheet appears in Peter Idley's Instructions To His Son, ed. Charlotte D'evelyn. The Modern Language Association of America Monograph Series 6, (Boston, 1935), 2:1717-1718.

[6]Attreed, Lorraine, "Preparation for Death in Sixteenth-Century Northern England," The Sixteenth Century Journal 3, no.3 (1982), 574; Clare Gittings, Death, Burial and the Individual in Early Modern England, (London, 1984), 29.

[7]In the account for the burial of the Fourth Earl of Northumberland, £13 6s 8d is entered "for the embalming, fencing and scouring of the corpse, with the web of lead and chest." Cited by Gittings, 29.

[8]Testamenta Eboracensia, 4: no.160.

[9]Gittings, 30.

receive 1d.[51]

Many testators made some provision for the burning of a certain number of candles placed around their bodies, just prior to burial, or for other votive lights to be placed at various locations during the funeral services, or offered to certain alters and icon paintings. Out of the sample of 60 women's wills, 33 testatrices made some sort of provision for lights. The directions varied considerably,[52] with testatrices stating how many candles would be needed, and how much each candle should weigh. Sometimes a specific sum of money was left for wax, or else a certain quantity of wax. It seems that the candles were not bought ready-made since testators often referred to the number of pounds of wax which was to be burned. Agnes de Selby bequeathed five and a half pounds of wax to be burned around her body in the form of five candles, made on the day of her burial. One candle was to be larger than the others, weighing one and a half pounds, and after her burial, it was to be placed before the altar dedicated to the Virgin at St. Michael-le-Belfry, York (her place of burial), to be burned during High Mass on all the feast days, as long as it would last.[53] There is

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[51]Testamenta Eboracensia, 4: no.63.

[52]Margaret Murphy found that this was the case in wills registered in the diocese of Dublin. See, "The High Cost of Dying; an analysis of Pro Anima Bequests in Medieval Dublin," The Church And Wealth, eds. W.J. Sheils, and Diana Wood. Studies in Church History 24, (1987).

[53]Testamenta Eboracensia, 4: no. 52.

normally began three days after death.[10] Sir Thomas Cumberworth took precautions and asked that "my body ly still, my mowth opyn, vnhild, xxiiij owrys...[11]" Robert Willoughby probably expressed a common opinion on the subject when he requested in his will, "yat alson as ye saule be out of ye boddy, yt ye be putte in ye erthe."[12]

From the early thirteenth century, the church repeatedly forbid priests to exact fees for burial or for performing funeral rites.[13] By the end of the century, bishops were still trying to curb the practice: in 1287, Bishop Peter Quivel of Exeter prohibited priests from demanding anything in return for burials and exequies.[14] An early fourteenth-century pronouncement which has been

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[10]Clive Burgess, " 'By Quick and by Dead': Wills and Pious Provision in Late Medieval Bristol," The English History Review 405 (October, 1987), 840.

[11]Lincoln Diocese Documents, 1450-1544, ed., Andrew Clark, (London, 1914), 45.

[12]Testamenta Eboracensia, 30: no.33.

[13]For example, "Inhibemus etiam sub pena suspensionis ne sacerdos aliquid exigat pro exequiis mortuorum..." (synodal statutes of Bishop Richard Poore for the diocese of Salisbury, 1217-1219), Councils and Synods..., 2:1: c.16, 65; "Generaliter prohibemus ne quis sacerdos in nostra diocesi pro sepultura...contra statua Lateranensis consilii aliquid exigat; quod si fecerit ab officio suspendatur." (synodal statutes of Bishop Peter des Roches for the diocese of Winchester, ca. 1224), Councils and Synods..., 2:1: c.27, 130; "Item, nec sacerdotes pro exequiis mortuorum...pecuniam exigant vel extorqueant, contra formam concilii." (synodal statutes of Bishop William de Blois for the diocese of Worcester, 1229), Councils and Synods..., 2:1: c.19, 174.

[14]"...districte inhibemus...sepulturis et exequiis mortuorum...quicquam presumat exigere..." Councils and Synods..., 2:2: c.38, 1033.

attributed to Archbishop Robert Winchelsey, forbade priests from taking any form of payment for taking the bodies of the dead for burial, without the license of the rector or vicar.[15] Of the 50 testatrices who requested a specific place of burial, only 11 bequeathed a sum of money specifically designated to cover burial fees. In these cases, they were not an unexpected expense. Apparently, the exact amount which would be charged was known ahead of time because each woman left a specific sum, ranging between 2s and 40s, for the purpose. The small proportion of women in this sample who left designated burial fees in their wills initially conveys the impression that burial fees were not exacted very often. However, when the wills are examined more closely, it appears that burial fees could have been disguised as other bequests, or included under total funeral costs. Of the 50 women's wills in which the testatrix chose a specific place of burial, 25 contained bequests of this sort: eight wills included gifts to the fabric of the church where the testatrix requested burial. These were likely burial fees, because several of the bequests which were so designated were given to the fabric of the church.

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[15] "Presbiteri stipendiarii necnon alii sacerdotes, propriis sumptibus vel per amicos sustentati, divina celebrantes in archiepiscopatu nostro non recipiant oblationes, portiones, obventiones, denarios pro requisitis, tricenalia, vel aliquam partem certam quotam, presertim oblationes pro corporibus mortuorum presentibus, non optenta licentia a rectoribus vel vicariis ecclesiarum in quibus celebraverunt." Councils and Synods..., 2:2: c.1, 1382.

In another 8 cases, a straight bequest of cash or goods or both was made to the place of burial. Two women left sums of money to cover all things pertaining to their bodies, and another three left amounts to cover funeral expenses. Elizabeth Wortelay asked her executors to satisfy the rector of the church where she was to be buried *de omnibus quae de jure vel consuetudine ad ecclesiam suam predictam per mortem meam pertinent*.[16] This bequest probably included both the mortuary and the burial fees. Agnes Percehay paid a rather large mortuary of 40s to the Priory of Malton.[17] Elizabeth Conyers' burial fees could have been covered by an amount taken from the residue of her estate, because she made only one bequest as a mortuary payment.

TABLE 10

BURIAL FEES, AND BEQUESTS WHICH MAY CONTAIN BURIAL FEES IN 50 WOMEN'S WILLS IN WHICH A PLACE OF BURIAL IS MENTIONED

Bequest	Number of Testatrices
For the favour of burial/foı burial in a specific church	11
To place of burial/altar	8
To fabric of place of burial	8
For expenses respecting the body	2

[16] *Testamenta Eboracensia*, 4: no.90.

[17] *Testamenta Eboracensia*, 4: no.42.

To the rector for all things pertaining to the death of the testator	1
For funeral expenses	4
Mortuary payment in cash	1
Residue of goods	1
Not mentioned	14
Total	50

It is not surprising that wills may have contained disguised burial fees: testators probably did not want an obvious payment for the favour of burial brought to the attention of the ordinary when the will was presented for probate. Nevertheless, incumbents of parish churches considered the payment of burial fees a necessary means to augment to their stipends, even though they were not supposed to demand them as a right.[18] Although the laity often lodged complaints with parish visitors over having to pay fees to incumbents for receiving the sacraments,[19] testators who wanted to be buried inside a prominent church, and especially in a coveted spot, probably had to accept the burial fee as an inevitable expense.[20]

[18]Ralph B. Pugh, "The Knights Hospitallers of England as Undertakers," Speculum 56, (1981), 572.

[19]R.N. Swanson, "Problems of the Priesthood in Pre-Reformation England," The English Historical Review 117 (October, 1990), 847.

[20]See references from late sixteenth-century visitation books to the non-payment of accustomed fees for graves and burial, in Tudor Parish Documents of the Diocese of York. ed. J.S. Purvis, (Cambridge, 1948), 74.

Closely related to the place of burial and burial fees was the custom of tipping the parish priest, the clerk and the under-clerk. These tips would be given at the testator's parish church. If the place of burial was elsewhere, the priest and clerks at that church would also expect to receive something. Most of the wills in the entire York sample include bequests to cover these expenses. The proportions were standardized, because we find the under-clerk often receiving 2 or 3d, the clerk, twice as much, and the parish priest, twice as much again.

The place of burial carried with it certain recognized social distinctions[21]. While folk with little money had to be content with a humble burial in the church's cemetery, others who were able to afford it could enhance and publicise the honour of the family by securing a more important resting-place within the church itself. A tomb in the sanctuary or the choir preserved the impression of social and spiritual superiority. Hawisia Aske requested burial in York Cathedral beside her first husband, William Selby, a wealthy citizen of York who had represented the city in Parliament several times.[22] Her second husband was Roger Aske, the head of a considerably

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[21]R.C. Finucane, "Sacred Corpse, Profane Carrion: Social Ideals and Death Rituals in the Later Middle Ages," Mirrors of Mortality: Studies in the Social History of Death, ed. Joachim Whaley, (London, 1981), 43-44.

[22]Testamenta Eboracensia, 30: no.142.

important family near Richmond. That family was associated with a monastic church in the parish of Easby, and Aske family members were buried there. However, the testatrix seems to have preferred the grander associations of the Cathedral, and judging from her legacies, was well able to afford 40s for the privilege of being buried there.[23] Testators could expect to pay a special fee for interment in an important part of the church: Isabel Persay bequeathed to the rector of St. Mary at Castlegate, York, 6s 8d for her burial in the choir.[24]

Occasionally, testators specifically asked for a simple burial with the minimum of fuss. When this type of request is combined with contemptuous remarks about the flesh, it may be suspected that the testator had Lollard sympathies. An example of this is seen in the will of Sir Thomas Cumberworth, who requested "my wrechid body to be Beryd in a chitte[25] with-owte any kiste[26]..."[27] There are no examples of this type of statement among the women's wills, and I have found only one in the sample of men's wills: Sir William Mowbray, of Colton, asked for five tapers to burn around his body "saunz plus lune...ou

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[23] Testamenta Eboracensia, 30: no.112.

[24] Testamenta Eboracensia, 4: no.199.

[25] sheet or shroud.

[26] coffin

[27] Lincoln Diocese Documents, 1450-1544, ed. Andrew Clark, Early English Text Society, Original Series 149, (1914), 45.

assemble ou ascun autre vaynglory faire entour mon vile corps..."[28] The preamble of the will may include a pious bequest of the soul to God, the Virgin, and the Saints, but it was not necessarily a profession of religious beliefs. Almost every will in the entire sample begins with this standard formula. While a will may contain both traditional expressions of piety, and eccentricities which suggest heretical beliefs, it is difficult to be certain from the evidence of the will alone whether or not the testator was a Lollard. The contradiction may simply be a matter of overlapping sympathies.[29]

The religious services which testators often requested in their wills were three special funeral services which differed in certain details from the ordinary Vespers, Matins, and Mass. The Vespers service, or _Placebo_, took place on the evening before the day of the funeral. The Matins service, which was called _Dirige_, took place in practice, several hours after midnight. Together, these services are often referred to in wills as the Exequies.[30] The Mass which testators referred to was known also as the Mass of _Requiem_. It was supposed to be celebrated first on the day of burial.[31] Some testators

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[28] _Testamenta Eboracensia_, 4: no.132.

[29] M.G.A. Vale, _Piety, Charity and Literacy Among the Yorkshire Gentry, 1370-1480_. Borthwick Papers 50, 1976.

[30] _Lincoln Diocese Documents..._, 8-9.

[31] _Testamenta Eboracensia_, 30: no.217.

requested a rather astounding number of Masses: in 1454-5, William Lord Lovell left instructions in his will that "within viij dayes after my deth a M Messes to be don for my soule."[32] William de Thorney, a pepperer of London, asked that his executors provide, from out of his goods, ten thousand masses to be celebrated by various religious houses in the City of London.[33] Evidently, these services were not always performed as soon as the testator would have liked, and the soul might be placed in jeopardy if the proper observances were delayed. Lady Margaret Stapilton gave instructions for all three services to be performed by the Mendicant orders at York. At the end of her will, after disposing of the residue and appointing her executors, we find an afterthought: she left a cash incentive of 13s 6d to each order to perform the Exequies and Masses quickly after her death.[34] Lady Margaret la Zouche bequeathed "to the Priour and Covent of Bradsall parke to do myn obbet in the seid Priorie immediately after my deth and for the saule of my Lord xx s.[35] Joan Hesilrigg gave £10 not only for the gathering of her

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[32]Andrew Clark, Lincoln Diocese Documents, 1450-1544. Early English Text Society, original series, 149, (1914), 72.

[33]Calendar of Wills Proved and Enrolled in the Court of Husting..., 1: Roll 79, no.34.

[34]"Item lego cuilibet ordini Fratrum infra Ebor. pro exequiis et missa fiendis cito post decessum meum xiijs. iiijd." Testamenta Eboracensia, 30: no.217.

[35]Testamenta Eboracensia, 30: no.120.

friends on the day of her burial, but also to ensure that her Office of the Dead would be performed properly.[36] Beyond the day of burial and the eighth day, testators often requested various combinations of masses and prayers, primarily for the soul of the deceased, although the souls of others might be included in the testator's request. While detailed arrangements for suffrages were not usually made in the thirteenth century, complex and detailed provisions for intercessory masses and prayers began to occur frequently in the following century.[37] Testators, who could afford it, asked for a natural sequence of masses: the three special services for the dead were repeated on the seventh day after decease or burial (known as the eighth day), followed by two more repetitions, on the thirtieth day, and at the end of one year. The annual commemoration could also be carried on for a certain number of years, or with a permanent endowment, forever. It could also be arranged to have these masses said at a number of designated locations. Few testators were able to afford this. In the sample of 60 women's wills, 27 testatrices purchased masses; far more than the number who purchased prayers. They most often arranged for a number of priests (1-6) to say masses for one year: clearly they thought that the benefits gained for the soul would be proportional to the number of

[36] Testamenta Eboracensia, 4: no.196.

[37] Sheehan, The Will in Medieval England, 259.

masses said. This was a rather expensive item among the various funerary observances, but almost half of the women in this sample were willing to pay for it. Although the sums bequeathed for this purpose varied slightly, the accepted rate was generally around £5 per priest, per year. Far fewer testatrices, only 7 of the 60, asked for intercessory prayers.

Testators who wanted to ensure that a sufficient number of worshippers would attend the various funeral services, had to be willing to pay them in food, drink and money. In addition, the testator was expected to provide guests with an offering, which they would give when the Mass was finished.[38] Out of the sample of 60 women's wills, 9 testatrices made provisions for the gathering of friends and neighbours at their funerals. These people expected to be paid for their trouble. In 7 cases, the testatrix made a cash bequest for the purpose, ranging between 3s and £10. The remaining two women allowed expenses according to the discretion of their executors. Looking elsewhere, it is not difficult to find examples of testators paying more: Isabel de Emelay left the sum of £20 for offerings, and food and drink for the gathering of her friends for the day of her burial and the eighth day observances. The people who attended these services as worshippers were expected to pray for the soul of the deceased. To give prayers more weight, testators made

[38] Testamenta Eboracensia, 4: no.150.

provisions to swell the gathering with individually paid priests and monks. The amounts paid for this were small, in this sample, ranging between 2d and 12d for each priest or monk. Agnes Harwood, left 6d to every priest coming to her Exequies.[39] Joan Lassels gave a similar amount to each priest coming to the Exequies and the Mass.[40] Elena Barkar was able to afford more, and paid 12d to each.[41] Joan Hesilrig, who expected something more for her money, paid 12d to each priest of her parish church attending her Exequies there, as long as they prayed zealously for her soul.[42]

Commonly, alms were doled out to various unfortunates on the day of burial. Paupers, lepers and the inmates of hospitals and prisons were included among these, as were the blind and the lame. Poor widows were another favourite object of testators' charity. The state of honest poverty was considered a blessed one, and the prayers of the poor on behalf of the deceased were thought to be particularly effective.[43] Richard Russel's bequest to blind and sickly paupers who lay in their beds and were unable to get up[44] was not an unselfish act of charity. A

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[39]Testamenta Eboracensia, 4: no.114.

[40]Testamenta Eboracensia, 4: no.274.

[41]Testamenta Eboracensia, 4: no. 212.

[42]Testamenta Eboracensia, 4: no.196.

[43]Burgess, n.6, 841.

[44]Testamenta Eboracensia, 30: no.40.

bequest to sickly paupers might be more favoured by God than one to the healthy poor; it was a greater investment in the future of the soul. Sir Nicholas Strelley was concerned that the paupers receiving his bequest of alms be of upright character. The most deserving poor were to be selected specially for the purpose, as long as they did not play at dice and other illicit games, or haunt night-taverns.[45] Henry de Blythe seems to have thought that men's prayers were worth more than women's; each poor man in the hospital at Fosse Bridge, York would receive 3d, but each poor woman, 2d.[46] Testators wanted alms to be distributed as soon as as possible after death. Acts of charity would do no good for the welfare of the soul if they were delayed. In 1444, Robert Strangeways left 5 marks to be distributed to paupers, according to the discretion of his executors, within fifteen days after his death.[47] Richard Russell specified that alms to the poor had to be given out between the times of his death and burial.[48] In the sample of 60 women's wills, 18 individuals made provisions for distribution of food or money to the poor at the time of burial. The amount which

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[45]Testamenta Eboracensia, 30: no.3.

[46]Testamenta Eboracensia, 4: no.57.

[47]"Item do et lego quinque marcas sterlingorum ad distribuendum pauperibus per discrecionem executorum meorum infra quindenam post decessum meum." Testamenta Eboracensia, 30: no.89.

[48]Testamenta Eboracensia, 30: no.40.

each person was to receive was quite small. Two testatrices requested that 1d be received by each hand, and one asked that the value be given in soul bread. Elsewhere, 1d is often the stipulated amount. Rather than allow an unlimited distribution, the remaining 16 women in the sample left a specific lump sum for the purpose. It was probably wiser to do this, since large numbers of needy individuals might be more than willing to join the crowd if they thought they were going to be paid for it. Thomas Harman, writing about 1566, provided an anecdote about a mob of beggars attending the funeral of a man of some importance around 1521: at night, the poor householders returned to their homes, but the rest were lodged in a large barn. When the building was searched, it was found to contain 140 men and at least as many women.[49] Although vagrant beggars did not become a really serious nuisance until the sixteenth century, with respect to funerals in an earlier period, Harman's description may be apt: in 1377, a certain John Constable left £2 to be distributed to the poor attending his burial, and more if many of them showed up.[50] Richard Colier, a merchant of Nottingham, expected a rather large mob of paupers to attend his funeral, evidently, up to 2,400 people; he left £10 for distribution and instructed that each was to

[49]Cited by E.M. Leonard, <u>The Early History of English Poor Relief</u>, (Cambridge, 1900; rpt., New York, 1965), 11-12.

[50]<u>Testamenta Eboracensia</u>, 4: no.74.

receive 1d.[51]

Many testators made some provision for the burning of a certain number of candles placed around their bodies, just prior to burial, or for other votive lights to be placed at various locations during the funeral services, or offered to certain alters and icon paintings. Out of the sample of 60 women's wills, 33 testatrices made some sort of provision for lights. The directions varied considerably,[52] with testatrices stating how many candles would be needed, and how much each candle should weigh. Sometimes a specific sum of money was left for wax, or else a certain quantity of wax. It seems that the candles were not bought ready-made since testators often referred to the number of pounds of wax which was to be burned. Agnes de Selby bequeathed five and a half pounds of wax to be burned around her body in the form of five candles, made on the day of her burial. One candle was to be larger than the others, weighing one and a half pounds, and after her burial, it was to be placed before the altar dedicated to the Virgin at St. Michael-le-Belfry, York (her place of burial), to be burned during High Mass on all the feast days, as long as it would last.[53] There is

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[51]Testamenta Eboracensia, 4: no.63.

[52]Margaret Murphy found that this was the case in wills registered in the diocese of Dublin. See, "The High Cost of Dying; an analysis of Pro Anima Bequests in Medieval Dublin," The Church And Wealth, eds. W.J. Sheils, and Diana Wood. Studies in Church History 24, (1987).

[53]Testamenta Eboracensia, 4: no. 52.

one reference outside this women's sample that suggests that the incumbent of the parish church was sometimes expected to supply the lights: Henry de Blyth offered the parson 6s 8p for the lights around his body. If he did not find this acceptable, Henry promised to leave him four pounds of wax.[54] The number of lights used seems to have been related the status of the deceased: Lady Constance de Skelton asked, that for her burial there be five candles and twelve torches and no more, this number being suitable to her rank.[55] Another expense in connection with lights was the clothing of paid mourners who would carry some of the candles or torches on the day of burial. Five testatrices out of the 60 women's wills requested that special garments be made for a certain number of paupers, between 8 and 13 individuals. Outside the sample, I have found that testators often requested the clothing of 12 and 13 people for this purpose.

If they did not specify the individual amounts to be spent on each item, both male and female testators often put a ceiling on the total combined cost of burial and funeral. These amounts ranged widely, in part depending on what the testator could afford. In the sample of 60 women's wills, 10 testatrices who did not bother to itemize their funeral expenses left a lump sum

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[54]Testamenta Eboracensia, 4: no.57.

[55]"Item, quoad ceram, volo quod in sepultura mea sint v cerei et xii torches et non plures, meo statui competentes." Testamenta Eboracensia, 4: no.214.

for the whole affair. The only expense which may have been omitted from the calculation in most cases was the burial fee. In this group of women's wills, the amount ranged from 20s to £20. One of the risks of leaving one amount to cover all the funeral expenses was that executors may have been tempted to spend some of it on themselves. Hawisia Aske left 10 marks "pro expensis meis funeralibus die sepulturae meae et octavo die circa corpus meum honeste fiendis."[56] While some testators may have been worried that too much money would be spent, others were more concerned with keeping up appearances and gave their executors permission to spend whatever they had to in order to give them an honourable burial in a manner befitting their rank. In 1447, Sir Thomas Chaworth was uncertain as to what amount would need to be spent for the distribution of alms to paupers and for the preparation of his body for burial. He requested that his executors use their discretion and take out of his chattels whatever was needed to give him the proper burial for a knight.[57]

As Sheehan has observed, a growing interest in the details of the burial and funeral seems to have developed

[56] Testamenta Eboracensia, 30: no.112.

[57] "Et quia expensae die sepulturae meae circa corpus meum et in distribucione pauperum non possunt pro certo poni, rogo et humiliter queso executores meos quatinus me de catallo meo proprio secundum statum meum et ut Militi decet honorabiliter faciant sepelliri." Testamenta Eboracensia, 4: no.38.

after the middle of the thirteenth century.[58] While it was less usual to omit references to burial and funerary observances altogether, testators were generally unable to make provisions for every kind of customary practice, probably because of the expense involved. Other concerns were the expectations associated with social position, and the desire to preserve or enhance a good reputation. As a result, testators showed a great deal of individuality in making funerary arrangements. This seems to be the case as far as female testators were concerned.

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[58]Sheehan, The Will in Medieval England, 258.

V. BEQUESTS AND BENEFICIARIES

Within the limits of this study, it is impossible to analyse every type of bequest, and every beneficiary found in the York wills. Scholars who have been interested in the broad social, political, and economic implications of gift-giving practices among later medieval English families have concentrated on *pro anima* bequests.[1] Generally though, scholars have ignored the subject of private, personal bequests. By comparison to the reasons for private, personal gift-giving, the motives lying behind pious and charitable donations often seem clearer. First, there was concern with personal salvation and the doctrine of purgatory: the fate of the souls of those who died in the grace of God, but not fully atoned for their sins, was uncertain. The testator hoped that gifts of cash and goods to religious orders, churches, hospitals,

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[1]For example, see Norman P. Tanner, *The Church in Late Medieval Norwich 1370-1532*. Studies and Texts 66, *Pontifical Institute of Mediaeval Studies*, (Toronto, 1984); Joel T. Rosenthal, *The Purchase of Paradise: Gift Giving and the Aristocracy, 1307-1485*. Studies in Social History, ed., Harold Perkin, (London, 1972); Margaret Murphy, "The High Cost of Dying; an Analysis of *Pro Anima* Bequests in Medieval Dublin," *Church and Wealth*, eds. W.J Sheils, and Diana Wood. Studies in Church History 24, (London, 1987); M.G.A. Vale, *Piety, Charity and Literacy Among the Yorkshire Gentry, 1370-1480*. Borthwick Papers 50 (1976); P.W. Fleming, "Charity, Faith, and the Gentry of Kent 1422-1529," *Property and Politics: Essays in Later Medieval English History*. ed. Tony Pollard, (Gloucester, 1984).

and so forth, would expiate his pain, and ultimately save him from damnation.[2] But, there were other reasons for making these kinds of donations. Generous gifts to prestigious establishments enhanced and publicised the good reputation of the deceased and his family. Like the extravagant funeral and burial in a prominent location, they were regarded and used as proof of power and influence. Families of consequence competed with each other in their philanthropic activities; those who wanted to climb the social ladder, and could afford to do so, tried to emulate their betters.[3] The reasons for gift-giving to family, friends, and members of the household are usually more difficult to discern. Yet, personal, private bequests often form the majority of donations in wills. This certainly seems to be the case in women's wills where bequests of household goods and articles of personal adornment to individual persons frequently outnumber all other types of gifts. Often, it is impossible to know whether a private donation was an expression of affection, a bribe, a means of repaying a favour, or the fulfillment of some other form of obligation. There were no formal requirements for written wills, and testators were not obliged to record their reasons for making bequests. However, although neither male nor female testators regularly stated in their wills

[2]Boase, 46-57.

[3]Rosenthal, 126.

why they made gifts to certain members of the family and household, friends, and other associates, occasional examples serve to illustrate that they were sometimes moved to do so. While it is impossible within the scope of this study to analyse a large number of wills containing testators' remarks about their reasons for making personal bequests, individual examples permit some general conclusions about their motives. However, survey of a sample of unrelated men's and women's wills, and comparison of paired husbands' and wives' wills clearly reveal gender-related differences in patterns of gift-giving. Beyond the severe legal restrictions which applied to the married woman's testamentary capacity, the freedom of some married women could be further hampered by having to follow a husband's instructions in making a will. It may be discovered also that a testatrix has made her own will solely for the purpose of carrying on the executorship of her husband's. A few of the women's wills contain statements which suggest that even if a woman had obtained her husband's permission to make a will, not all of its provisions were necessarily of her own choosing.

While it is difficult, or impossible to know the motives behind most private bequests, There are other possible reasons why scholars have avoided making general surveys of these gifts and their beneficiaries. One is the difficulty encountered in attempting to quantify the data. Pious or charitable bequests usually consist of certain sums of money given to designated religious houses, churches, etc. Often it is impossible to assign all the other kinds of gifts to discrete groups for analysis. Not all bequests in kind fit into neat categories of household goods, church furnishings, goods related to occupation, etc. Substantial testators sometimes left all the goods of one or more residences, or places of commercial business to one person, without listing individual items.[4] Similarly, it seems to have been usual to omit any description of the residue's contents. An item may have been given along with "all things pertaining to it".[5] It is often the case, even in wills which are written mostly in Latin, that the names of individual items pertaining to the testator's occupation, household and personal adornment are written in English. It may be difficult to identify an object because of the use of an unusual spelling, or an abbreviated name. In classifying bequests according to type, and to the gender of the beneficiary, it is impossible to categorize the bequest of a single object or group of objects to several people, where there are no instructions as to how the bequest was to be divided up or used. Bequests to be shared by a husband and wife (without instructions for division) also are difficult to place in the scheme.

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[4]For example, see Testamenta Eboracensia, 4: no.42; 30: no.12.

[5]For example, see Testamenta Eboracensia, 4: nos.24, 109; 30: no.23.

While it is relatively easy to say that one person received more objects than another in a given will, it is hard to know whether the one who received the greater number of goods, in fact, received more than the other, unless objects were described in the will in terms of their equivalent cash value. The church demanded the proper appraisal of goods listed under the inventory, but it was rarely the case that testators listed the market value of individual goods in their wills; occasionally, executors were given leave to deliver either an item, or its cash equivalent. The same problem applies to a collection of things forming a single bequest, such as the entire contents of a residence: the researcher has no idea of the value of this kind of gift. The researcher faces an additional problem when trying to categorize the beneficiaries according to their relationship to the testator. Testators often identified individual legatees by giving a first and last name, and other information about their relationship with some other person (for example, so-and-so, son of...; formerly my servant...; my daughter's husband). In the case of close family members, some sort of identification was usually supplied. As these persons generally received most of the private bequests, perhaps it was prudent for a testator to describe them carefully, in order to prevent or discourage fraudulent claimants from coming forward. Honest executors and the church courts wanted to be sure that bequests were delivered to the proper parties. Unfortunately, testators were not consistent in identifying their beneficiaries, and it is not always easy to know to whom they were referring. There are other difficulties in identifying beneficiaries: the meanings of *consanguineus* and *cognatus* are ambiguous, and could refer to a cousin, or a more distant kinsman. The same beneficiary may be mentioned several times in a will; where two or more family members have the same first and last name and no other identifications are supplied, the researcher cannot know whether they are the same individual. There is also some confusion over the use of *brother*, *sister*, *daughter*, and *son*: for example, I have found that *my sister* may refer to the testator's own sister, or to his brother's wife. *My son* could refer to the testator's son, son-in-law, or even a grandson. It is necessary to examine the beneficiary's last name, as well as the names and identities of other persons named in the will for clues as to his identity. The problem of working out the relationship between a testator and beneficiary is often encountered in the case of servants and associates: not one male or female testator throughout the entire York sample identified a beneficiary as a friend. The researcher may well suspect that several individuals who are not designated servants, were members of the testator's household, since the testator had left them similar small cash bequests which appear to be tips or stipends. On the other hand, we sometimes find generous gifts of cash and a variety of goods to servants, and small identical cash bequests to a testator's own sons and daughters. One cannot be sure that several equal cash bequests of a shilling or two were not given to friends as a tokens of remembrance.

I have analysed 30 men's and 30 women's wills from the York sample to determine whether there is a pattern of gift giving that is related to the genders of both testators and individual beneficiaries. The data taken from the men's wills represent 366 male and female beneficiaries, and 890 individual bequests. In the women's wills, a total of 353 male and female beneficiaries received 771 separate bequests. As it is impossible to divide residues, third parts, and other undescribed collections of goods and cash, for the sake of convenience, I have designated any such assemblage as one bequest where the whole is received by one individual. I have not included undivided collective bequests received by several persons, or groups of beneficiaries who are not individually identified. Unfortunately, I have no way of gauging even the approximate worth of these bequests where no equivalent cash value has been placed on them. The researcher might have a better idea if the will and the executors' inventory could be examined side by side (although the researcher cannot know if the view of inventory was entirely accurate). Reference to descriptions of items and their assigned values in unrelated inventories dated to approximately the same time as the will also might be helpful. In terms of numbers of separate bequests in the women's wills, it seems that women were favoured slightly over men as beneficiaries: 53.3% (195) of the total number of individual legatees are female, and they received 57.2% (509) of the total bequests. Male beneficiaries form 46.7% (171) of the total, and received 42.8% (381) of the bequests. In the sample of men's wills, the reverse is true, and the gap is wider: 61.5% (217) of the total beneficiaries are male, and they were left 65% (501) of the total bequests; females form 38.5% (136) of the total, and received only 35% (270) of individual legacies. In the women's wills, on average, females received more bequests (2.6) than males (2.2); in the men's wills, women received fewer (1.9) than men (2.3).

TABLE 11

DISTRIBUTION OF BEQUESTS TO INDIVIDUAL MALE AND FEMALE BENEFICIARIES IN 30 WOMEN'S WILLS

Beneficiaries	Male/Female	Bequests
171	Male	381
195	Female	509
Total 366		Total 890

TABLE 12

DISTRIBUTION OF BEQUESTS TO INDIVIDUAL MALE AND FEMALE BENEFICIARIES IN 30 MEN'S WILLS

	Beneficiaries	Male/Female		Bequests
	217	Male		501
	136	Female		270
Total	353		Total	771

Comparison of paired husbands' and wives' wills sometimes shows that one spouse favoured different individual beneficiaries from those found in his or her partner's will. Both may not have remembered the same children, or provide for them equally. Family members, servants, and other persons may not have received equal treatment by both. Indeed, one spouse may have made bequests to persons who were left entirely out of the other's will. These inconsistencies are accentuated when a husband and wife also made very different provisions for funeral observances, Masses and prayers, and other pious causes. One might expect to find such differences when one spouse outlived the other by many years: the surviving partner may have been living in entirely different circumstances, and may have associated with a different group of people, especially if he or she remarried. The sphere of the family may have narrowed or broadened: there may be issue from one or more subsequent marriages. Some of the original couple's children may have died or married, and grandchildren may have appeared on the scene. The differences between a husband's and wife's wills take on greater significance when the pair have died close together in time, perhaps within a year or two of each other, and their wills show a few, or no points of similarity. While it is impossible to know for certain why these inconsistencies exist, to some extent they may have been the result of the marriage partners leading separate lives, each one forming a different set of social attachments, and having separate spheres of activity. While their wills may contain no evidence to suggest the existence of marital discord between them, we do not get any sense of there having been what Lawrence Stone has described as the "companionate marriage" which, he asserts, began to characterize marital relations in the modern period.[6] One example of how different the wills of

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[6]Lawrence Stone, The Family, Sex and Marriage in England 1500-1800, (London, 1977), 217-253. Barbara Hanawalt has observed that marriage in medieval English peasant society was an economic and emotional partnership, characterized by separate occupations at home and outside, and directed towards the effective functioning of the household unit. In contrast to the characteristics of modern marital relations, medieval marriage partners did not seek entertainment and emotional comfort from their union.

a husband and wife can be is illustrated by the testaments of Margaret[7] and Sir Henry Vavasour, of Haselwood:[8] Henry's will was drawn up and proved in 1413; Margaret's was written in 1414, and proved the year after that. An outstanding feature of this pair of documents is in connection with provisions for the children. We would never know, from Henry's will alone, that the couple had any children, because he makes no mention of them anywhere in the document. According to the pedigree recorded at the College of Arms, they had issue of William, Henry's heir, and three daughters, Elizabeth, Margaret and Alice.[9] Furthermore, three other children, Henry, John, and Joan come to light in Margaret's will. While Henry left the residue to his wife, with no proviso attached, and an annuity of 13s 6d to his sister Katherine, no other positively identified family members appear as beneficiaries in the text. On the other hand, Margaret left bequests of jewellery and valuable household goods including plate to five of their seven children. Only William and Alice were not remembered in her will. Another point of comparison is the provisions which Margaret and Henry made for their funerals. Margaret left

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See, The Ties That Bound. Peasant Families in Medieval England, (Oxford, 1986), 218-219.

[7] Testamenta Eboracensia, 4: no.264.

[8] Testamenta Eboracensia, 4: no.263.

[9] Testamenta Eboracensia, 4: n.1, 361.

instructions for burial in Henry's chapel at Haselwood, and for the provision of lights and the celebration of Masses. Henry, also requested burial at Haselwood, and asked for two trentals of Masses to be celebrated for his soul. However, he left express instructions that no one was to be invited to attend on the day of his burial.[10] The two also made different provisions for charitable bequests. While Margaret left sums of money to several priories, and 40s to each of the Mendicant orders at York, Henry gave to only one religious house. On the surface, from the evidence of their wills alone, Margaret and Henry appear to have had little in common, but this may not be the case. Certainly, the differences between their requests surrounding their funerals may have been simply a matter of individual taste. Margaret may have decided independently to leave something to the religious houses named in her will, but as she had received the residue of Henry's part, which was probably the bulk of that portion of the estate, there may have been some agreement between them that she would make those bequests on behalf of both. While Henry's will contains no evidence of a reason why he did not make bequests to his children, we cannot automatically assume that he did not feel affection towards them. Children who received comparatively more than their siblings under the provisions of a will were

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[10]"Item volo quod nullus sit invitatus ad funeralia mea in die sepulturae meae." Testamenta Eboracensia, 4: no.263.

not necessarily more favoured. One answer to the problem may be found in the right of the children of a deceased man to claim the reasonable third part of his goods and chattels.[11] Henry may have felt that he would be providing sufficiently for his non-inheriting children in this way. On the other hand, Margaret had no such constraints on the disposal of her personality which, at the time she made her will, included the residue and her reasonable third of Henry's goods, and perhaps other things as well. The widow was free to be generous towards her children. While both parents may have felt that William, as Henry's heir, had no need of special consideration, I cannot find an obvious reason why Alice was left out of both wills. Perhaps she had died, or had been provided with a marriage portion. The disposal of personal property by will gave parents an opportunity to give material support to those children who were not married, or otherwise provided for. In the wills of Elizabeth (written and proved 1454)[12] and Thomas de la River (written and proved in 1451),[13] there is a similar

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[11]Occasionally, the customary division of thirds is mentioned in a man's will, but most of the time it is not. As the division was a recognized right under common law, it may not have been thought necessary to include any mention of it in a will. When it does not appear in the text, this does not mean necessarily the wife and children would be forced to recover them in the courts.

[12]Testamenta Eboracensia, 30: no.141.

[13]Testamenta Eboracensia, 30: no.118.

pattern with respect to provisions for the children. While each testator made gifts to their own brothers and sisters, only Elizabeth provided for their son and two daughters. None of these children, or any others appear in Thomas' will. In the wills of Joan (written and proved in 1421),[14] and Thomas Scargill (written in 1432, and proved in 1433-4),[15] we find the reverse to the examples above: Joan's will is rather short in length. There are only a few bequests, and these are all of a pious nature. She left various articles of clothing to the fabric of several churches. One blue gown was to be sold and the proceeds distributed among the poor inmates of hospitals at York. She made no mention of children, or of bequests to any individual beneficiary. Moreover, Thomas Scargill left various household articles, predominantly sets of bed-clothes, vessels, and silver spoons, as well as cash bequests to their daughter Joan, and their son John, and John's sons and daughters. He also remembered his brother Roger, and Roger's children. A explanation for the differences between these two wills can be found again in the common law, this time in connection with the married woman's testamentary capacity: since Joan died before Thomas, she was not yet legally entitled to the third part of his goods. Consequently, the numerous bequests of household articles, which normally appear in the wills of

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[14]Testamenta Eboracensia, 4: no.284.

[15]Testamenta Eboracensia, 30: no.28.

widowed women belonging to the merchant or knightly classes, are absent in Joan's will. Instead we find quite a few bequests of this nature in her husband's will. Apparently, Thomas had allowed her to dispose only of articles of personal clothing, her parapherna, for pious bequests. If Joan had survived her husband, her will might have looked rather different.

The married woman's will was subjected not only to legal obstacles under common law, but sometimes also to the dictates of a former husband. If she was his executrix, as it was so often the case, and was unable to complete administration before her death, the executorship of his will would fall to her own executors. In 1431-32, Nicholas Blackburn made provisions for the reconstruction of several bridges. The proposed work, to which he was one of the contracting parties, was to be completed within the four years next following his death. He appointed his wife, Margaret, one of several co-executors, and in 1432 his will was proved.[16] In the next year, Margaret drew up her will. Evidently, by this time, work on the project was not progressing as planned: Margaret was obliged to leave instructions for her two daughters to pay £100 to the fabric of each of two of the bridges. The time limit had to be extended once again so that the work would be completed within four years after her death.[17] In 1443,

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[16] Testamenta Eboracensia, 30: no.14.

[17] Testamenta Eboracensia, 30: no.37.

Margaret Holym found herself in the position of having to make her will with the permission of her then husband, with a view to carrying out the several wishes of her former husband, her co-executors having died. Aside from her request for place of burial, it appears that she made no other provisions for herself.[18] Bequests such as the following one, found in the Will of Matilda Benetson, suggest that some wives may not have chosen all the legacies in their wills, themselves: Matilda left her best brazen pot to her niece; she remarked that the gift had been promised earlier by Matilda's husband.[19]

There is some indication that testators wanted to provide for younger members of the family, aside from their own children. Richard Russell left his own sister only 40s, but saw to it that her children were well provided for: Eufemia received £40, probably in aid of her marriage, and Robert was given £30 to support his studies at Oxford.[20]

Sometimes, testators wished to acknowledge an order of precedence among their children, probably by age, and placing sons before daughters. Isabel, the wife of Sir William Fitz William of Elmley, left a horse from her stables to each of her children. Her son was to receive

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[18] Calendar of Wills Proved and Enrolled in the Court of Husting..., 1: Roll 171, no.35, 501.

[19] Testamenta Eboracensia, 4: no.146.

[20] Testamenta Eboracensia, 30: no.40.

the second best mare following the mortuary, and each of her daughters, the third, fourth, fifth best, and so on.[21] In 1346, Emma Paynot distributed livestock to her sons and daughters in the same manner, giving the second and third best pigs to each of her sons, and the third and fourth to her two daughters.[22]

Testators from the York sample rarely expressed feelings of trust, or used superlative terms of endearment to describe individuals mentioned in their wills. Where this was found, it was almost always in connection with the appointment of a spouse or other family members as executors.[23] I discovered only one incidental remark of this nature respecting a bequest: *Item lego Christianae Payne domicellae carissimae uxoris meae in auxilium maritagii sui xx*l.[24] Quite often, the researcher comes across conditional bequests, which tend to convey some negative aspect of the relationship between the testator and the beneficiary. Sometimes, a testator wanted to ensure that the terms of a will would be carried out, or to exert his influence after death for other reasons: Sir Giles Daubeny warned that the various pieces of plate which he left to his son, William, would be sold for the benefit of Giles' soul if the boy tried to impede the will

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[21] *Testamenta Eboracensia*, 4: no.40.

[22] *Testamenta Eboracensia*, 4: no.17.

[23] For example, *Testamenta Eboracensia*, 4: nos.160, 270.

[24] *Testamenta Eboracensia*, 4; no.32.

or make trouble for his father's executors. William was Giles' eldest son by his first wife, and there was issue from two later marriages. All the lands which Giles had purchased were to go to his children by his third wife, and in default of issue, to Giles' married daughter, and her children. Perhaps William was less than pleased with this arrangement.[25] A married woman could resort to using a conditional bequest to try to prevent her husband from impeding her will. In 1497, before the Court of Husting, John Carre set his seal to his wife's will in witness of the fact that she had obtained his permission. Nevertheless, she had taken the precaution of leaving him certain lands and tenements so that he would not stand in the way of its execution.[26] Robert Titlot was worried that his wife would interfere with the execution of his will: his bequests to her would remain in force only so long as she maintained a spirit of good will, and did not try to oppose the executors.[27] There is evidence that male testators expected to exert their authority beyond the grave over their wives and children by making conditional bequests, and relying on the supervision of the executors. Apparently, Robert Titlot thought that his wife would be tempted to lead an unvirtuous life after his

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[25]Testamenta Eboracensia, 30: no.91.

[26]Calendar of Wills Proved and Enrolled in the Court of Husting..., 1: Roll 225, no.27, 599-600.

[27]Testamenta Eboracensia, 4: no.109.

death. He left instructions that she had to behave properly and not divest herself of her goods foolishly by living in a wicked manner. He was anxious for her to remarry someone suitable, and the executors were burdened with the additional task of advising her as to her choice.[28] Richard Welby instructed that "in case that my Executours...se that any of my Childer to whom any thing I haue beqwethed to, wille not thryve nor be vertuouse, that then his parte to be taken from him, and to be giffen to him that wol thryve, hauyng regard to noon."[29] The third Sir Ralph Verney was anxious for his daughters to make suitable marriages. When making his will on his death-bed in 1525, he gave a portion of 500 marks to each daughter, with a proviso for reduction of the sum received before marriage in case any of them would not be advised or ruled on the matter by his executors and supervisors. This measure was to continue until "she will be refourmed."[30] Testators also used conditional bequests as bribes, to ensure that the debts owed them would be recovered by the

[28]"Insuper volo quod omnia data et legata prescripta Johannae uxori meae stent et permaneant in virtute sua, si predicta Johanna post decessum meum fuerit grata et benevola, non impediens executores meos facere et implere volumtatem meam ultimam, et si fuerit de bona gestura, caste vivens, et bona sua male vivendo fatue non devastaverit, quousque habuerit sponsum sibi et statui suo habilem et idoneum, cum consilio executorum meorum..." Testamenta Eboracensia, 4: no.109.

[29]Lincoln Diocese Documents..., 124.

[30]Letters and Papers of the Verney Family, ed. John Bruce. Camden Society, Old Series No. 1, 56 (1853), 45.

executors. John Greystoke left 10 marks to his sister, on condition that her husband would pay what he owed to the executors.[31] Elizabeth de Wortlay stipulated that all bequests in her will were to be taken out of the £30 which her daughter owed her. To ensure that this would take place, Elizabeth appointed her daughter executrix, and left her the residue of the £30 to keep for her own use.[32]

Using data from the sample of 60 men's and women's wills referred to above, I attempted to discover whether men and women generally treated their sons and daughters differently, showing more favour towards one than the other. It was impossible to do this, because many of the male, and a few of the female testators left collections of things to one or more children. I could not know what these bequests specifically consisted of, or what their equivalent values were. For example, Thomas de Yarom left all his books to his son, and all his bronze vessels to his daughter.[33] Nevertheless, there is indication from evidence of cash bequests that some testators tried to treat the children they named in their wills equally. Thomas de Yarom's will certainly gives this impression: aside from the goods mentioned above, his two children each received £5; another £7 was divided equally

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[31]Testamenta Eboracensia, 4: no.167.

[32]Testamenta Eboracensia, 4: no.90.

[33]Testamenta Eboracensia, 4: no.5.

between them. In other wills, some of the children named were treated equally with one or two exceptions: three of Walter Percehay's sons and two of his daughters got 40s by their father's will; one daughter received only 20s, and another son, 100s.[34] Walter may have been showing favouritism here, but it is possible that he took into account each child's need for his material support. This was a consideration when Sir Richard de la Pole drew up his will. He could have left to the children, as a group, their reasonable part, allowing them to squabble about its division. Instead, he instructed that it was to be halved: his daughter was to take one for her marriage portion, and the other was to be divided equally between his two sons. If any of the children died before his own part was delivered, that portion was to be distributed among the other children wherever there was greatest need.[35]

At least one identified servant is remembered in most wills. Sometimes, the testator's instructions respecting bequests to members of his household seem rather impersonal. Sometimes testators left something to their former servants: Lady Margery de Aldeburgh's husband had died young, and she remembered his nurse in her will by leaving her a furred gown.[36] Occasionally, a

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[34] _Testamenta Eboracensia_, 4: no.7.

[35] _Testamenta Eboracensia_, 4: no.8.

[36] _Testamenta Eboracensia_, 4: no.122.

servant, as well as his family benefited under the master's will: in 1438, the widow of Peter Lord Mauley made several bequests to Robert Cross, one of her squires, and several members of his family. Robert received £10 together with a piece of plate, and the Lady's red psalter. Elena Cross, probably Robert's wife, was given 10 marks, a covered cup of gold and silver, and two coffers with all "le stuff" inside. Matilda Cross was left £20 and a furred gown for her marriage portion, and Anna, 10 marks for the same purpose. Both Robert and Elena were appointed executors.[37] Of course, it is possible that the Cross family was related to the testatrix, which could account for her generosity. Sometimes, testators extended their largesse beyond the household to those who worked for them in the fields, and even to servants other than their own: Simon de Staunton left 2 marks to his brother's servants, and another 10 marks to his villeins, to be divided up among them as the executors wished.[38] Margaret de Knaresborough left measures of cloth to two women serving her sister's husband,[39] and Agnes Bird gave two of her second best veils to the maidservant of a certain Robert Burton.[40]

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[37] Testamenta Eboracensia, 30: no.50.

[38] Testamenta Eboracensia, 4: no.20.

[39] Testamenta Eboracensia, 4: no.171.

[40] Testamenta Eboracensia, 4: no.176.

One testator bequeathed 5s to his ploughmen and shepherds.[41] Joan, the wife of Wermbolt Harlaam, a goldsmith of York, left to Agnes Gomersall, her father's servant, a cash bequest, measures of fabric and various articles of clothing including a gown which had once belonged to the Countess of Northumbria.[42] The nature of the gifts suggest a close relationship between the two women. A testator might consider a servant to be just as deserving as one of his own children: Isabel Belgrafe left to her daughter and her maidservant almost identical bequests of certain articles of clothing, and coffers.[43] There is some evidence that testators wanted to ensure that their servants remained with them at the time of death: in 1450, Joan Buckland bequeathed "to the womman that is next me at my departyng Cs., j. bolle pece, & ij. spones, and j. gowne furred with Mynkys."[44] William Conesbye, a carpenter of York, promised 6p to each servant being present on the day of his death.[45] Some female servants could expect to receive a marriage portion.[46] In a case such as this, there may have been some prior agreement that, in place of a salary, the girl would be

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[41]Testamenta Eboracensia, 4: no.26.

[42]Testamenta Eboracensia, 4: no.205.

[43]Testamenta Eboracensia, 4: no.202.

[44]Lincoln Diocese Documents..., 43.

[45]Testamenta Eboracensia, 30: no.67.

[46]Testamenta Eboracensia, 30: no.50.

guaranteed a dowry and given the promise to be married off at the end of her service.[47] Similar to the distribution of alms, a testator's acts of generosity towards his servants were investments in the welfare of his soul. Servants' prayers were thought to be more effective than those of their betters, and their souls, more deserving of God's salvation. It was for the good of his soul that Sir William de Mowbray, of Colton, left all his garments to his household servants.[48]

In this chapter, it has been shown that both male and female testators made bequests for a great variety of reasons. Conditional bequests can be especially revealing with respect to testators' motives, although they show that testators sometimes needed to use some form of bribery to ensure that their wishes would be carried out. For the most part, the researcher has to rely on a prosopographical approach. Superficially, wills appear to lend themselves to quantitative analysis. However, where private, personal gift-giving and individual beneficiaries are concerned, the researcher is faced with a large number of interconnecting pieces of information which are very difficult to sort and interpret by this method. Much of the information derived from wills tells us little about

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[47]Michael Goodich, "Ancilla Dei: The Servant As Saint in the late Middle Ages," Women of the Medieval World. Essays in Honor of John H. Mundy, eds. Julius Kirshner, and Suzanne F. Wemple, (Oxford, 1985), 122.

[48]Testamenta Eboracensia, 4: no.132.

testators' personal relationships inside, and outside of the family.

VI. CONCLUSION

It has been the aim of this thesis to establish a profile of later medieval English wills from the legal and social perspectives. While testamentary matters were dealt with under canon law, and normally fell within the jurisdiction of the church courts, the commom law exerted influence on the making of wills and their execution, through its rules respecting proprietary rights.

The canonists established safe-guards to protect the integrity of the deceased's estate, and to see that his intentions were carried out, without hindrance or delay: rules were established respecting the appointment of proper impartial witnesses. The executors had a limited period of fifteen days in which to produce an inventory of the deceased's goods and chattels, including outstanding debts which had been proved and acknowledged in the testator's lifetime. The view of inventory had to be carried out in the presence of qualified appraisers, and the executors had to present a record of it to the probate court before administration would be granted to them. Administration was not complete until the executors rendered their accounts to the court. For this purpose, they had to produce receipts for the legacies which they delivered, and account for all the profits they made. The probate court kept copies of the inventory and the will so that these could be checked against the executors' activities at each stage of the process. Although it was not always possible to enforce it, a time limit of one year was allowed for the completion of administration. Nevertheless, unscrupulous excutors and other persons found ways of profiting from the estates of deceased persons. It is unlikely that the administration of very large estates could be completed in a year, especially where the sale of goods and lands, and the diversion of rents and profits to establish endowments, and so forth, were involved. Also, the process of administration could be held up indefinitely where the collection of debts was involved. Although the common law treatises were somewhat vague as to whether the married woman could own personal property, in practice, the lay courts denied her any claim to the marital property. The logical conclusion which they reached was that she could have no testamentary capacity. The married woman could make a will only with her husband's express permission, of which proof had to be shown. It is impossible to say to what extent the common law rules and the opinions of jurists influenced practice in private life. We do not know whether husbands generally insisted that their wives obtain their permission before making a will, or whether some husbands took it for granted that the marital property belonged to their wives as much as it did to themselves. So much may have depended on whether relations between a husband and wife were happy and cooperative. It is likely that the church's insistence on the married woman's full testamentary capacity, and the general horror of intestacy tended to foster an attitude among the laity that the married woman ought to dispose of some personal property, ether it could be said to be her own or her husband's, at least for the sake of her soul. Unfortunately, we do not know to what extent the provisions of a married woman's will were of her own choosing. It appears that widows, who were so often their husbands' executors, sometımes found it necessary to settle their husbands' affairs by means of provisions in their own wills. The wills of married women and widows received special attention in the lay courts, to make sure that the husband's permission had been obtained beforehand.

The growth of the executor's powers of representation, which had been taking place since the end of the twelfth century, caused the executorship to be burdened with heavy responsibilities; honest executors were not always keen to accept them. Adequate compensation for the costs and trouble of executing a will was not necessarily forthcoming, and the probate courts sometimes had to see that executors were given something to cover their moderate expenses. Both husbands and wives tended to appoint their spouses to the office, although perhaps, each had different reasons for doing so: as men rarely appointed women, other than their wives, to the office, it is probable that wives were chosen so often by virtue of being in their husbands' confidence, and in the best position to settle their affairs. Perhaps, the surviving spouse was the person most likely to feel the greatest sense of obligation towards the deceased. In general, both male and female testators showed a bias in favour of male executors.

Instructions for burial and funerary observances appear to have a great deal of individuality, although it seems that to some extent these were subject to social expectations, and considerations of cost to the testator's estate. Some testators felt the pressure to conform to expected standards of ostentation and ritual, appropriate to their social status. An honourable funeral, attended by large crowds of mourners and onlookers, and followed by burial in a prestigious location reflected well upon the reputation of the testator, as well as his family. However, arranging a grand funeral with all the trappings was an expensive business. It seems that testators generally put a ceiling on the costs by allowing the executors to spend fixed amounts on each item, or a total amount on the entire affair. Only a few testators seem to have shown little concern with choosing a place of burial, and providing for a funeral. The tastes of these persons may have been out of the ordinary, but it should not be assumed that they reflected Lollard sympathies. The researcher needs to examine these wills for signs of pious investment. Some testators may have been unable to afford, or unwilling to pay for the sort of funeral that was generally expected.

The will provided a means for the disposal of personal property after death. As this seems to have been its primary purpose, there was no formal requirement that the testator had to justify the provisions contained in it. For this reason, the testator's true feelings and intentions lying behind various bequests are often difficult or impossible to discover. While the motives for charitable and pro anima bequests often appear to be fairly obvious, the reasons for making private, personal donations do not. The researcher encounters methodological problems in attempting to sort and quantify the data surrounding personal gifts. Although testators usually revealed some aspect of their relationship with a beneficiary in the case of conditional bequests, it is usually of a negative nature. The wording of these bequests often suggests a lack of trust on the part of the testator. This type of gift appears to have been used often to ensure that a beneficiary paid his debts, or would not impede the will. Sometimes, testators tried to exert their influence from beyond the grave for other reasons: the proper behavior of wife and children was a concern, and conditional bequests could be used to ensure that the widow would not disparage herself, or that the children would thrive and marry well. Comparison of paired husbands' and wives' wills suggests that the common law rules respecting the rights of the widow and children to their reasonable thirds of the deceased husband's goods and chattels, had some influence on how husbands provided for their wives, and parents for their children. There may have been some feeling that the non-inheriting children were most deserving of consideration under a parent's will. Perhaps some husbands were not inclined to make bequests to their wives and children out of the 'dead's part', since they stood to receive their respective thirds after his death. More detailed research needs to be done on the various aspects of gift-giving within the household, although the researcher needs to keep in mind that a quantitative method may be difficult to apply.

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