

# Women, Agency and the Law, 1300–1700

*Edited by Bronach Kane  
and Fiona Williamson*

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# WOMEN, AGENCY AND THE LAW, 1300–1700

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Bronach Kane and Fiona Williamson



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## WOMEN, AGENCY AND THE LAW, 1300–1700

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## LIST OF ABBREVIATIONS

BI	Borthwick Institute for Archives
BL	British Library
CCA	Canterbury Cathedral Archives
ERO	Essex Record Office
HMSO	Her/His Majesty's Stationary Office
<i>MED</i>	<i>Middle English Dictionary</i>
NCC	Norwich Consistory Court
NRO	Norfolk Record Office
<i>ODNB</i>	<i>Oxford Dictionary of National Biography</i>
TNA	The National Archives, Kew

## PREFACE

Bronach Kane and Fiona Williamson

In October 2009, scholars working in the field of gender studies in Britain met at the University of East Anglia (UEA), Norwich, to discuss the problems of reclaiming women's words from the historic record. The one-day event, a conference organized jointly by Fiona Williamson and Janka Rodziewicz, was titled 'Women's Voices: The Power of Words in Medieval and Early Modern Europe'. It was the product of ongoing discussions between scholars interested in recovering women's voices from textual sources, such as letters and, particularly, legal documents in line with the contemporary work of scholars such as Alexandra Shepard, Jeremy Goldberg, Garthine Walker, Tim Stretton and Cordelia Beattie, amongst others. Their work has highlighted the importance of legal documents, such as secular and ecclesiastic court proceedings, in understanding women's agency and ability to negotiate their own roles and contest those of others at law. In particular, this work has sought to move beyond the restrictions of prescriptive literature and dominant narratives of female identities to reconstruct women's real lived experiences through the in-depth analysis of their own words. The conference brought together leading names in the field, along with new scholars and postgraduate students, who engaged in discussion about the future of the field and the ways in which it might usefully build.

It is from these discussions that the idea for this collection was formed. This volume is not a conference proceeding per se, but a collection of essays inspired by the dialogue that took place during the event. As such, the scholars gathered here all share a common interest in recovering the female voice and revealing how women counterbalanced their knowledge of the legal system with the restraints of prevailing stereotypes about women's role, in many cases actively engaging in a process of manipulating these limitations to their best advantage. In so doing, the women in the cases highlighted in this volume demonstrate women's agency to negotiate and achieve their goals, or to take part in the male dominated world of the law, in often very difficult circumstances. These women were not always successful but their cases reveal much about women's agency in practice.

The editors wish to thank those people who, although not contributing to this volume, helped to make the 'Women's Voices' conference a success and

whose research collectively inspired this collection, particularly John Arnold, Anne Laurence, Wendy Perkins and Alexandra Shepard. The editors are also indebted to the anonymous reviewers of the collection, whose perceptive comments helped shape the final structure of the volume. We also wish to thank the Centre for East Anglian Studies (CEAS), the Norfolk Record Office (NRO), the Royal Historical Society (RHS) and the UEA Graduate Students Association, for providing the funds to make the conference possible. Finally, we would also like to thank all the contributors for their efforts in making this volume a reality.

# CONTENTS

List of Contributors	ix
List of Abbreviations	xiii
Preface	xv
Introduction – <i>Bronach Kane with Fiona Williamson</i>	1
Part I: Shaping Women's Testimony	
1 Your Oratrice: Women's Petitions to the Late Medieval Court of Chancery – <i>Cordelia Beattie</i>	17
2 Echoes, Whispers, Ventriloquisms: On Recovering Women's Voices from the Court of York in the Later Middle Ages – <i>Jeremy Goldberg</i>	31
3 Women, Memory and Agency in the Medieval English Church Courts – <i>Bronach Kane</i>	43
Part II: Encountering the Law	
4 'Utterly and Untruly He Hath Deceived Me': Women's Inheritance in Late Medieval England – <i>Rosemary Horrox</i>	63
5 'She Hym Fressshely Folowed and Pursued': Women and Star Chamber in Early Tudor Wales – <i>Deborah Youngs</i>	73
6 Women and the Hue and Cry in Late Fourteenth-Century Great Yarmouth – <i>Janka Rodziewicz</i>	87
Part III: Women's Voices and Women's Spaces	
7 Gender and the Control of Sacred Space in Early Modern England – <i>Amanda Flather</i>	99
8 The Travails of Agnes Beaumont – <i>Bernard Capp</i>	113
9 Parish Politics, Urban Spaces and Women's Voices in Seventeenth-Century Norwich – <i>Fiona Williamson</i>	125
10 'With a Sword Drawne in Her Hande': Defending the Boundaries of Household Space in Seventeenth-Century Wales – <i>Nicola Whyte</i>	141
Appendix	157
Notes	159
Index	203

# INTRODUCTION<sup>1</sup>

Bronach Kane with Fiona Williamson

The field of women and the law in later medieval England and Wales has witnessed a number of significant historiographical advances in the past two decades, many of which build on arguments advanced by social historians of women and gender in the 1980s and 1990s. The essays in this volume are chiefly concerned with recent developments and consider the relationship between women and the law, seeking to identify continuities and changes in their legal encounters. Ultimately, this collection assesses the capacity of women to negotiate the legal systems of pre-modern England. As such, this study of women's agency aims to investigate avenues of female influence in legal cultures, focusing on the ability to interject in trial accounts, litigation or through legal and illegal acts. The contributors employ innovative methods in social and cultural history to draw new meanings from legal records that have traditional historiographical pasts. From gender history to feminist theory, and from the history of memory to landscape archaeology and the spatial turn, the collection generates novel ways of discussing women's agency and action in pre-modern settings.

The focus of this collection is influenced by a wider set of developments in historiography on later medieval and early modern social relations. Work by Judith Bennett, Marjorie McIntosh and Stephen Rigby has emphasized the nexus of status, authority, gender and the law that shaped later medieval experiences among non-elites.<sup>2</sup> Focused on social relations in early modern England, Keith Wrightson's concept of the 'politics of the parish' proposed a number of interrelated areas through which historians might explore 'social history with the politics put back in'.<sup>3</sup> The experience of authority has similarly emerged as a crucial context in which medieval and early modern individuals exercised agency. The work of James C. Scott and Antonio Gramsci, for example, has underpinned a number of studies on peasant and 'subaltern' experiences of state governance in late medieval and early modern England.<sup>4</sup> This focus on culture as a field of power influences the concept of agency applied in this volume as it explores women operating within the hegemonic paradigm of patriarchal authority. The legal testimony attributed to women in later medieval and early

modern judicial records, as well as women's experiences of the law, should be explored anew from this perspective.

Court officials recorded, interpreted and mediated female speech in ways that reflected contemporary thought on gender and prescribed forms of behaviour. Central to this project is the belief that legal records do not faithfully represent women's 'voices', but rather offer unparalleled insights into female encounters with the law. From these mediated sources emerge the choices, decisions and actions of women as litigants, witnesses and suspects. Nevertheless, even after a couple of decades of development, the conceptual tools of gender history are not perfectly attuned to social histories of non-elites or fully engaged with women's voices in legal contexts. In a special issue of *Gender & History* in 2008, also published as an edited collection, Alexandra Shepard and Garthine Walker note the neglect of contexts in which women were able to act as agents and thus effect change in their own right.<sup>5</sup> A related methodological problem surrounds the place of post-structuralism and cultural theory in gender history, with criticisms that these developments shift the analytic focus towards language at the expense of social practice. Shepard and Walker noted this move, commenting that many studies of masculinity have 'similarly prioritised representation above the material and subjective realities of men's lives'. It is this focus on experience over language that 'provides the key to understanding historical agency' and is the premise upon which this collection builds.<sup>6</sup>

A persistent concern in historiography on women's voices and agency is female 'resistance to social norms and oppressive power relations, namely male dominance.'<sup>7</sup> A number of theorists advocate the rejection of agency as a category of analysis, criticizing its lack of analytical precision as well as the supposed tendency towards abstraction.<sup>8</sup> While acknowledging these criticisms, this volume aims to demonstrate the underlying value of this concept in the context of women's use of the law. The concept of agency, however, encapsulates the theoretical relation between individuals, language and social practice, operating as the 'site of mediation between discourses and experience'.<sup>9</sup>

Female agency has also been highlighted since the 1990s in a series of studies that have debated the extent of women's empowerment.<sup>10</sup> Historians of later medieval and early modern women have explored the constraints and fields of influence that shaped women's choices and legal activities. Bennett, in particular, considers medieval women and their experiences of authority, through manorial fines, limited labour opportunities and socio-cultural marginalization. Bennett also underlines women's ability to alleviate elements of these restrictions, noting that historians must attend to 'women's agency within and against these constraints'.<sup>11</sup> Jeremy Goldberg, for example, emphasized the economic opportunities that young women may have gained while employed as 'life-cycle' servants in urban households.<sup>12</sup> Barbara Hanawalt similarly explored women's

agency in the context of family and the law in peasant communities, and more recently in medieval London.<sup>13</sup> For the sixteenth and seventeenth centuries, Laura Gowing, Susan Kingsley Kent and Garthine Walker, among others, have argued for widening the understanding of women's roles and, thus, addressing a broader range of roles and spaces for developing and exercising female agency.<sup>14</sup>

The analysis of gender and agency in tandem provides a powerful tool for exploring not only women's actions, but also the relationship between gender, the law and social practice. As Padma Anagol notes of colonial India, women's agency does not exist as an independent and autonomous force.<sup>15</sup> A number of overlapping structures shaped the degree of choice that women exercised, from their position under the law and their ability to access resources, to societal expectations of female behaviour at each level of society. Thus, for the late medieval and early modern periods, female agency operated within dominant religious and intellectual frameworks, as well as the broad range of women's own actions. Studies of gender, then, should also account for hierarchies of status, economic power, or social and cultural capital, as well as competition between women themselves. As an analytic tool, the concept of agency also helps to explain how women upheld modes of oppression or colluded with oppressive hierarchies that constrained other women. The collection aims to avoid attributing women's agency solely to the experience of gender, noting how a number of other factors influenced participation in legal cultures. The ability to negotiate legal jurisdictions was influenced by sets of structures and processes – social, economic and religious – as well as the expectations of the law.

A persistent concern in women's history, to a greater extent than in historical studies of gender, is the relationship between continuity and change, with the latter often emphasized at the expense of the former. Bennett underlines the imperative to distinguish 'between *changes* in women's *experiences* on the one hand and *transformations* in women's *status* on the other'.<sup>16</sup> More work is needed on the historiography of gender relations in the century and a half after the arrival of plague. Previous studies have focused on the degree of improvement that women experienced from the late 1340s onwards in the wake of the first pestilence, with economic gains in urban areas balanced by repressive socio-cultural perceptions of women.<sup>17</sup> The decades before the plague merit similar attention, with further study needed of long-term patterns of litigation and economic engagement among women in urban and rural areas.<sup>18</sup> Likewise, gender historians of the 1980s and early 1990s were preoccupied with the idea that the position of women deteriorated during the early modern period, as many conventions governing women, and female behaviour, were consolidated in law.<sup>19</sup> Concerns over the problematic boundaries imposed by periodization are similarly highlighted by Shepard and Walker, whose 2009 collection questions the applicability of conventional chronologies for the study of gender.<sup>20</sup> There is a particular need for



more detailed understandings of women's legal agency that account for long-term continuity and change in women's property rights, the application of coverture and their use of courts. In addition, the influence of different jurisdictions, court processes and structures on women's agency varied across this period, with distinctive legal voices and narratives emerging at different points.

Although the present collection concentrates largely, though not exclusively, on women's experiences of litigation, the contributors address methodological concerns raised in recent historiographies of gender, crime and the law. A series of important works in the 1990s, including a collection of essays by Jenny Kermode and Garthine Walker, focused on the way in which women participated in both criminal activity and litigation, analysing patterns in different jurisdictions.<sup>21</sup> Since then, fundamental concerns in the study of women and the law have shifted from female participation in litigation to roles and power relations in wider legal cultures, following in part the innovative agenda set by Kermode and Walker.

Historians of women, agency and the law draw on methodological approaches from the broader field of social and cultural history, applying these to readings of women's activities in legal records. A number of important works concentrate on the construction of identities in court material, identifying the discursive influence of power relations on narratives attributed to parties, witnesses and suspects. Noting the different ontologies of early modern culture, for example, Lyndal Roper produced a psychoanalytic reading of witch accusations in Reformation Germany, interpreting these as 'mental productions' that reflected aspects of actors' subjectivities.<sup>22</sup> In his study of power relations in heresy trials, John Arnold explores the subjectivities of peasants in thirteenth- and fourteenth-century Languedoc, arguing that interrogations produced the 'confessing subject'.<sup>23</sup> From this perspective, the inquisitor's hegemonic position enabled the control of linguistic contexts, which in turn generated the identities of suspects in court transcripts.

The intersections of identity, power relations and the law provide the focus for several important studies of women in late medieval and early modern court records. Analysing patterns of crime in early modern Cheshire, Walker argues that perceptions of gender shaped prosecutions of social disorder, with physical violence associated with male suspects, while verbal insult and infanticide were interpreted as particularly female crimes.<sup>24</sup> Narratives deployed in legal defences relied on gender-specific discourses, as suspects adopted 'subject positions' that broadened the extent of their legal agency.

Aspects of the law which sought to police female bodies, particularly in cases of suspected pregnancy and infanticide, have also been considered by scholars. In her pioneering study of the politics of touch in seventeenth-century England, Laura Gowing analyses legal records relating to women and sexuality from a range