

WOMEN AND LAND: ARISTOCRATIC OWNERSHIP OF PROPERTY IN EARLY MODERN ENGLAND

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In this Note, Anastasia Crosswhite examines land ownership of elite women in early modern England. Studying property disputes within two of the richest aristocratic families in early modern England, the Manners and the Talbots, Crosswhite fills a gap in English historical literature and also complicates the common scholarly view that the early modern English legal and social systems rendered female control and ownership of land a rarity. Although finding that the legal system generally discouraged female property ownership, Crosswhite also discovers that the women of the Manners and Talbot families did own, manage, and control land. In addition, the legal system itself provided the opportunity to do so, for it routinely placed the control, albeit often temporary, of land in women's hands. Yet these opportunities had to be exploited by individual historical actors, and Crosswhite concludes that the men and women of the Manners and Talbot families, being able manipulators of legal and social structures, did so to the benefit of themselves and their families.

INTRODUCTION

In a society that was still predominantly agricultural, land literally meant power in early modern England. As one prominent scholar remarked, "the foundation of aristocratic wealth, power, and honour rested on the land."¹ Control over property through marriage and kinship patterns was essential to the reproduction of patriarchy in this class-based society, although their exact relationship is little understood.² Studying the ability of elite³ women to own property, particularly land, reveals how patriarchal legal and social institutions

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¹ Lawrence Stone, *The Crisis of the Aristocracy* 273 (1965).

² As one scholar explained, "[p]atriarchal systems of male dominance, in which men obtain authority over women by heading households or families, are necessarily built on systematic relationships between marriage and property. This much we know. But we do not know precisely what part these relationships play in creating patriarchy itself" Martha C. Howell, *Marriage, Property, and Patriarchy: Recent Contributions to a Literature*, 13 *Feminist Stud.* 203, 220 (1987).

operated to control and constrain women through economic means. Yet such constraints and controls are only part of the story. Also significant are the ways the system and its players made land ownership and control a reality for some elite women.

This Note examines the property distribution choices made by individual women and men in two powerful elite families, the Manners and Talbots, during the period of 1560-1620.⁴ Using primary sources, it creates microhistories of these two families throughout the lifetime of their central female protagonists. By studying actual practice, the Note attempts to fill a gap in English historical literature and complicate the general scholarly view that the period typified strict patriarchal control of both land and the family.⁵

In the past two decades, there has been increased attention to specific questions regarding medieval and early modern women and their inheritance and control of land.⁶ Most recently, two scholars

³ This study is limited to the analysis of the wills, letters, and other personal documents written by the "elite"—the men and women of the knightly and noble classes (the aristocracy) who made up a minute percentage of the population. According to one estimate, there were about 961 noble families in 1688, and the nobility and the gentry comprised only two percent of the population in the same period. Keith Wrightson, *English Society 1580-1680*, at 24 (1982). One document from 1603 lists only fifty-five men of noble status and another three to four hundred knights existing in an estimated population of roughly four million. D.M. Palliser, *The Age of Elizabeth: England Under the Later Tudors 1547-1603*, at 68-69 (1983).

Despite their small numbers, these families possessed a preponderance of the property, wealth, and power in sixteenth- and seventeenth-century England. Eileen Spring, *Law, Land and Family: Aristocratic Inheritance in England, 1300 to 1800*, at 4 (1993). J.P. Cooper, using estimates and figures from 1436, estimates that "greater landholders" owned approximately twenty percent of the land in England. See J.P. Cooper, *The Social Distribution of Land and Men in England, 1436-1700*, 20 *Econ. Hist. Rev.* 419, 421 tbl.1 (1967).

⁴ This Note considers the period of 1560-1620 precisely because it is relatively ignored by legal historians. This inattention may be attributable to the lack of either the enactment of statutes of general impact or the creation of any new estates in land. See generally Lloyd Bonfield, *Marriage Settlements, 1601-1740* (1983) (focusing on dramatic shifts in inheritance strategies after 1660 through study of marriage settlements and wills); John Habakkuk, *Marriage, Debt, and the Estates System: English Landownership 1650-1950* (1994) (focusing particularly on strict settlement and its effect on landed society). The relatively static legal structure during this period provides an opportunity to focus attention on social practice.

⁵ See, e.g., Spring, *supra* note 3, at 183; cf. Lawrence Stone, *The Family, Sex and Marriage in England 1500-1800*, at 112-13, 165-67 (1977) (discussing formal relationship between parents and children, where their bonds depended upon inheritance and were mediated through strict discipline).

⁶ See generally *Marriage and Property* (Elizabeth M. Craik ed., 1984) (discussing legal concern over impact of marriage on property with particular emphasis on bride-price and dowry); *Family and Inheritance: Rural Society in Western Europe, 1200-1800* (Jack Goody et al. eds., 1976); *Marriage and Society: Studies in the Social History of Marriage* (R.B. Outhwaite ed., 1981); Jane Whittle, *Inheritance, Marriage, Widowhood and Remarriage: A Comparative Perspective on Women and Landholding in North-East Norfolk, 1440-1580*, 13 *Continuity & Change* 33 (1998).

have provided very different historical and methodological accounts of the degree to which women owned, controlled, and inherited land in this period. In *Law, Land, and Family: Aristocratic Inheritance in England, 1300 to 1800*, Eileen Spring paints a bleak picture for elite women.⁷ She claims that by the end of the early modern period, evolving property laws made it much more difficult for the wives and daughters of elite landowners to inherit property.⁸ By contrast, in *Women and Property in Early Modern England*, Amy Erickson discovered through the analysis of probate documents that large numbers of "ordinary" women did inherit and bequeath both real estate and chattel goods throughout the early modern period.⁹ Even more unexpectedly, many of these women retained control of property during their marriages.¹⁰

The divergence in the two accounts can be attributed to the different groups of women each author studied and to their differing methodologies. Erickson's assessments and arguments about ordinary women may not be fully applicable to elite women because of the heightened significance of patrilineal land ownership for the aristocracy and the greater scrutiny given to their property dispositions.¹¹ On the other hand, Spring's work, which focuses on legal doctrine and the reevaluation of other scholar's statistical studies, fails to consider the complexities within individual aristocratic families.

This Note yields findings about aristocratic women similar to those of Erickson's for ordinary women,¹² but reveals that aristocratic women and their families availed themselves of legal and social strategies specific to their class. The elite women studied here managed to own, control, and bequeath significant amounts of property, including land, despite the constraints of patriarchal institutions of law and fam-

⁷ See Spring, *supra* note 3.

⁸ *Id.* at 183 ("The first and major conclusion of this work is that female inheritance declined.").

⁹ Amy Louise Erickson, *Women and Property in Early Modern England* 224 (1993) (At an ordinary social level fathers without sons apparently did not choose to divert land away from their daughters in favor of more distant male kin Even where daughters did not inherit land, their parents tended to compensate them with a substantially larger share of moveable goods than their brothers had, in order approximately to balance all children's shares of parental wealth.).

¹⁰ *Id.* at 19 ("[I]n practice wives maintained during marriage substantial property interests of their own."). This work contains an excellent introduction to the many legal systems working in early modern England and how they worked regarding women and property. See *id.* at 21-45.

¹¹ See *infra* notes 50-51 and accompanying text.

¹² Given the chosen method of study, this Note cannot confirm that aristocratic women owned, inherited, and bequeathed land to the same extent that Erickson found for ordinary women.

ily. This reality of women receiving and controlling large amounts of land highlights two disjunctures: between law viewed as doctrine and law viewed through practice; and between patriarchal goals in the property-distribution system and the more immediate desires of individual fathers, husbands, and wives.

Although in theory patriarchs wanted land and property to be controlled by eldest sons, in reality many men wished to guarantee the financial well-being of all of their children, including their daughters, as well as that of their wives. Thus, even though the legal systems operating in early modern England generally discouraged female property ownership, women owned, managed, and inherited land. The many legal, social, and economic structures ostensibly created to foster male privilege and dominance did not fit seamlessly together to form a monolithic structure of patriarchy. Rather, individual women and men maneuvered within (and without) the many available legal and social options to own and devolve property as they saw fit.

The stories examined in this Note demonstrate that the patriarchal legal system often contained the seeds of its own subversion due to the fact that the doctrines themselves were created both to consolidate wealth in the patriline and provide for dependents. The legal system routinely placed land in the hands of women, albeit temporarily, in the form of dowers or jointures.¹³ Yet the openings created by the inherent tensions within the legal system did not operate automatically: The degree to which social practice deviated from the default system reflected the individual choices of the actors involved, including women who exploited, to their best advantage, the relatively small openings in the law and in their personal circumstances. How practices diverged from the default is almost as interesting as the divergence itself. How and to whom these women chose to devolve the property they fought so hard to control and own implicates them in the reproduction of patriarchy in interesting and subtle ways. It suggests that the legal system informed women's assessments of the best manner of preserving their hard-earned wealth for their descendants.

In order to lay out the convoluted and often conflicting legal landscape in which these women had to maneuver, this Note first looks at women's possibilities to own property in the English legal system as expounded in secondary legal textbooks and through a seventeenth-century legal tract written for literate women.¹⁴ Part I also sets forth legal techniques and institutions available specifically to aristocratic families. Parts II and III detail property disputes and ne-

¹³ See *infra* notes 32-40 and accompanying text.

¹⁴ See *The Lawes Resolution of Womens Rights* (photo. reprint 1978) (1632).

gotiations within two of the richest and most politically powerful families in early modern England: the Manners and the Talbots. Focusing on the women in each family, this Note narrates these families' conflicts over property. It illustrates the openings taken by women to gain control over property and the effects of women's ownership on these powerful elite families.

I

CONSTRAINTS AND OPENINGS: THE "LAW" AND FEMALE OWNERSHIP OF LAND

In early modern England, the legal system regarding land¹⁵ and property encompassed two central yet conflicting goals: (1) the concentration of wealth and economic power in the patriline; and (2) a duty to provide for all dependents, particularly female kin, whether in the form of chattel property or temporary control of land.¹⁶ Even though much, though by no means all, of the land that found its way

¹⁵ There were five kinds of law with jurisdiction over property and inheritance: common law, equity, ecclesiastical law, manorial and borough customs, and parliamentary statutes. Erickson, *supra* note 9, at 23. Common law and equity had the most significant impact on how, or if, women could inherit or devolve land and other property. Although parliamentary statutes rarely dealt with matters of private law, under Henry VIII, two statutes were passed that dramatically changed property law: the Statute of Uses and the Statute of Wills. An Act Concerning Uses and Wills, 27 Hen. 8, c. 10 (1535) (Eng.) [hereinafter Statute of Uses]; The Act of Wills, Wards and Primer Feifins, Whereby a Man May Devise Two Parts of His Land, 32 Hen. 8, c. 1 (1540) (Eng.) [hereinafter Statute of Wills]. The Statute of Uses changed the equitable title of a beneficiary of a use interest (a "cestui que use") into a legal one, to make the beneficiary liable for feudal dues. Black's Law Dictionary 1423 (7th ed. 1999). Henry VIII tried to raise more revenue by preventing people from creating legal fictions that excused them from paying feudal dues to the Crown. J.H. Baker, *An Introduction to English Legal History* 289-93 (3d ed. 1990).

The Statute of Wills, on the other hand, was a concession by Henry VIII, for it "conferred for the first time the legal power to dispose of freeholds [estates in land held in fee simple, fee tail, or for term of life] by will, save that tenants by knight-service [noblemen] had to leave at least one third to descend." *Id.* at 293. Previously, land could not be willed; rather, it followed the rules of inheritance automatically. See *id.* at 300. Although wills were proved through ecclesiastical courts, any disputes about the land mentioned in them were settled either in common law or equity courts. See Jesse Dukeminier & Stanley M. Johanson, *Wills, Trusts and Estates* 38 (5th ed. 1995) ("Historically, in England, three courts had jurisdiction over probate. The king's common law courts controlled succession to land The ecclesiastical courts controlled succession to personal property . . ."). The ecclesiastical courts thus had little influence on the inheritance analyzed in this Note.

Finally, private parliamentary statutes sometimes were passed concerning individual elite women's inheritances and jointures. One scholar found that during the 1563 parliamentary session, fifteen acts dealt with the strictly private affairs of the nobility and gentry. Alan G.R. Smith, *The Emergence of a Nation State* 133 (1991).

¹⁶ Baker, *supra* note 15, at 308 ("[T]he law had to resolve the conflict between the interests of the living family in an extended sense and the dynastic instinct to preserve the unity of the patrimony in the male line."); Habakkuk, *supra* note 4, at 1 ("Any family with substantial property has to make arrangements to secure two ends: provision for the indi-

into elite women's hands was in the form of a life estate, not a fee simple,¹⁷ these two goals were clearly in tension with one another. The decision to provide for female family members, as well as younger sons, inherently impoverished the patriline. Nevertheless, the legal system enforced the decisions of patriarchs to provide generously for wives or daughters through wills, trusts, and contractual arrangements. For elite families in particular, there were also specific legal and extralegal institutions that handled property distribution and disputes through which women fought and often won control of land and its attendant power.¹⁸ Thus, although most of the legal constructs appeared to make female land ownership a rarity, other parts of the legal and social system enabled women to own, control, and devolve land.

Under the common law, there were two central tenets that enforced male hegemony and ownership of land. The first was the practice of primogeniture, a system in which the eldest son inherited all of the land of a title or main family estate.¹⁹ Primogeniture limited the ability of women to inherit, since any sons had priority over their sisters, although if there were no male offspring, daughters became co-heirs ahead of collateral²⁰ male heirs. Moreover, this practice did not prevent daughters and younger sons from receiving cash or chattel property from their fathers or even some land that was not part of the estate.²¹

vidual members of the family, and the transmission of the property from one generation to another.”).

¹⁷ See *infra* notes 32-40 and accompanying text (discussing widow's dower rights and jointures).

¹⁸ See *infra* notes 41-59 and accompanying text (explaining role of Chancery Court and Court of Wards).

¹⁹ Black's Law Dictionary, *supra* note 15, at 1210. Primogeniture operated automatically for titled land and main family estates that passed through fathers. Technically, patriarchs could not contract around this rule of inheritance and bypass the eldest son for a younger son or a daughter. See Baker, *supra* note 15, at 300 (“If the ancestor did die seised, the heir had an absolute right of succession and neither the ancestor's last will nor the lord's disapproval could disinherit him.”). This practice of passing the main estate to one heir dates back to the Norman Conquest and, according to one scholar, was established “in order to maintain a race of wealthy landowners who can see to it that the land is cultivated and the cultivators protected.” 3 W.S. Holdsworth, *A History of English Law* 172-74 (1923).

²⁰ A “collateral” heir refers to “[o]ne who is neither a direct descendant nor an ancestor of the decedent, but whose kinship is through a collateral line, such as a brother, sister, uncle, aunt, nephew, niece, or cousin.” Black's Law Dictionary, *supra* note 15, at 727.

²¹ Land often was not considered part of the patriline when it was purchased or came into the family through marriage. Cf. Baker, *supra* note 15, at 316-17 (demonstrating various estates in land and how these estates could be conveyed). Women's ability to inherit land not part of the main inheritance through a will became technically easier after the Statute of Wills was enacted. See *supra* note 15.

Landowners could further restrict female inheritance by the use of the entail, or more specifically the tail male, through which inheritance was limited to male heirs, even collateral male heirs, instead of female heirs.²² Yet as soon as these types of estates in land were created in the thirteenth century, landowners found ways to bar entails, converting them into fee simples which could be devised or alienated to the grantees of their own choosing, whether male or female.²³

The second doctrine that helped to sustain male ownership of land was coverture. Once married, husband and wife legally became one person; more precisely, the woman's legal identity was subsumed under that of her husband.²⁴ Under coverture, a woman could not sign a contract, contract debts, sue or be sued at common law (except in her husband's name), or be convicted of most felony crimes, with the exceptions of treason and murder, if her husband had either participated in them or coerced her into committing them.²⁵ In addition, any chattel property a wife brought into a marriage became her husband's.²⁶ Husbands also possessed the use of any land a woman brought into a marriage: He managed and received the profits from the land, but he could not alienate it without his wife's consent.²⁷ If the wife died first, and a child had been born during the marriage, the husband retained the use of these lands for his lifetime; however, this property reverted back to the wife if her husband died first.²⁸

²² See A.W.B. Simpson, *A History of the Land Law* 90 (1986) (discussing entailed estates in land).

²³ Common recoveries, uses, feoffments, and trusts—all of which involved fictive third-party owners—were methods used to circumvent the entail so that landowners could alienate land or bequeath land to their chosen heirs. See *id.* at 125-37 (describing various methods landowners used to bar entails); see also Baker, *supra* note 15, at 319-21 (same).

²⁴ 1 William Blackstone, *Commentaries on the Laws of England* 442 (1765-69) (“[T]he very being or legal existence of a woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband . . .”).

²⁵ Baker, *supra* note 15, at 551; *The Lawes Resolution of Womens Rights*, *supra* note 14, at 204, 206 (“It is seldome, almost never, that a married woman can have any action to use her writ onely in her owne name . . . [I]f a Feme Covert steale any thing by cohortion of her Husband, this is not felonie in her. . . . If a man and wife commit felonie joyntly, it seemeth the wife is no felon, but it shall be wholly judged the Husband's fact . . .”).

²⁶ *The Lawes Resolution of Womens Rights*, *supra* note 14, at 130 (If before Marriage the Woman were possessed of Horses, Peate, Sheepe, Corne, Wool, Money, Plate, and Jewels, all manner of moveable substance is presently by conjunction the husband's, to sell, keepe, or bequeath if he die: And though he bequeath them not, yet are they the Husband's Executor's and not the wife's which brought them to her Husband.).

In practice, however, widows usually were allowed to keep their clothing and other minor personal effects (called paraphernalia) as their own unless a husband sold them before his death. Baker, *supra* note 15, at 552.

²⁷ Baker, *supra* note 15, at 552.

²⁸ This practice was called the “tenancy by courtesy of England.” See 3 Holdsworth, *supra* note 19, at 185-89; *The Lawes Resolution of Womens Rights*, *supra* note 14, at 79-80.

Women could and did inherit land under common law, by inheriting either the main estate, when there were no male heirs, or land outside the main estate.²⁹ Moreover, they could acquire land from surplus income derived from their life estate and cash inheritance.³⁰ But under the common law, women's independent ownership of land was usually short-lived and often contingent on their status as widows who were no longer subject to the law of coverture.³¹ The principles of primogeniture and coverture anchored women's relationship, or lack thereof, to land. Combined, these legal doctrines helped to ensure that land remained (for the most part) under the control of the patriarch.

Other legal principles were, however, simultaneously in operation to ensure that the financial interests and needs of other family members, particularly widows and wives, were not ignored. Widows generally received either a dower or a jointure from their deceased husbands' estates. The common law guaranteed widows a dower—a portion of her husband's estate—for her lifetime use, in addition to other cash and chattel property their husbands bequeathed to them.³² By the mid-fifteenth century, dower was set at "a third of the land of which the husband had ever been solely seized during the marriage."³³ Even if a husband wrote a will that did not leave anything to his widow, she still was entitled to this third.³⁴ Dower was thus a default system instituted to ensure that widows would not be left without any means of support.

In lieu of a dower, widows could receive property through a jointure created within a marriage contract.³⁵ Usually the father of the bride or the groom settled land on the husband and wife jointly for the

²⁹ Erickson, *supra* note 9, at 26 ("In the absence of any sons then the land went to all daughters, who inherited jointly.").

³⁰ See, e.g., *infra* notes 153-154 and accompanying text (describing Bess of Hardwick's acquisition of land for her sons from the profits of lands).

³¹ Widowhood made possible independent ownership of land. An elite woman who brought land into marriage and survived her husband regained title to the land and could manage and devolve it to her chosen heirs. Bess of Hardwick is a perfect example of this. See *infra* Part III.

³² The Lawes Resolution of Womens Rights, *supra* note 14, at 90 ("[The] Law of the Realme giveth every good Wife part of her Husband's Lands to live on when hee is dead, which wee call Dower . . .").

³³ 3 Holdsworth, *supra* note 19, at 193.

³⁴ See *id.*

³⁵ In addition to settling jointure lands, marriage contracts specified the bride's dowry (portion given to the groom). See Erickson, *supra* note 9, at 119-22. Such contracts also could be used to protect a daughter's or a remarried widow's inheritance. Through the instrument of a trust, women could retain some personal property for separate use, even during marriage. See *infra* text accompanying note 135 for an example of an elite widow's use of a prenuptial settlement to retain control and ownership of property; see also

use of the surviving spouse; in other words, once widowed, she would have the use of the land for her lifetime.³⁶ The jointure better accommodated both goals of the property distribution system. Elite families utilized jointures instead of dower because jointures (made up of new properties granted to the couple at marriage, not land of the main estate) allowed the main estate to go immediately to the heir instead of tying up one-third of the property through dower rights. The widow benefited as well from jointure arrangements since jointure, unlike the common law dower, protected her interest in properties not under the jurisdiction of the common law, such as land held in trusts.³⁷ Jointures also guaranteed the widow a specific amount of income, unlike dower which could fluctuate wildly depending on the fortunes of her marital family.³⁸ Once she died, however, jointure properties, like common law dower lands, would revert to her husband's heirs.³⁹ By the sixteenth century, most elite widows were provided for with a jointure.⁴⁰

Women's property rights under law, will, and contract sometimes were challenged by male relatives, and women were forced to enforce their claims formally.⁴¹ They did so primarily through the Chancery, which evolved in the late medieval period as an equity court.⁴² Chancery was a complementary jurisdiction to the common law courts and it sought to mitigate "the harshness of the common law;"⁴³ parties

Erickson, *supra* note 9, at 106-07, 122-24 (presenting evidence of such trusts among wealthier class of common women).

³⁶ Baker, *supra* note 15, at 309.

³⁷ Erickson, *supra* note 9, at 25.

³⁸ Stone, *supra* note 1, at app. 32. Stone found that the dowry-to-jointure ratio rose from 6.8% in 1575-1614 to 7.8% in 1635-1649. Often, the jointure was set at between 6% and 9% (per annum) of the bride's portion or dowry, which was usually cash the bride's family paid to the groom's father. *Id.* For example, if a bride's portion was £500, she might expect to receive the use of lands worth between thirty to forty-five pounds annually for her lifetime.

³⁹ See Baker, *supra* note 15, at 309 ("It became usual . . . for some land to be settled on the husband and wife jointly for the life of the survivor, so that a widow would have the land until her death in lieu of dower.").

⁴⁰ Erickson, *supra* note 9, at 25. It is important to note, however, that jointures were also created by families of less prominent status. *Id.* at 19 ("While marital property settlements are assumed to have been made only by the wealthy, ordinary women in fact made them too but the records are extremely difficult to uncover.").

⁴¹ See *infra* text accompanying notes 72-81 for an example of how a family dispute over female inheritance was brought to Chancery; see also Erickson, *supra* note 9, at 114-28 (discussing types of cases in which ordinary women appeared before Chancery, but explaining that they usually sued together with their husbands).

⁴² See Baker, *supra* note 15, at 112-33 (explaining historical development of Chancery and equity).

⁴³ Erickson, *supra* note 9, at 5.

would send a petition to the Lord Chancellor⁴⁴ asking for justice in cases in which there was no adequate remedy at common law. By the sixteenth century, increasing numbers of common and elite women brought their suits to Chancery.⁴⁵ Chancery adjudicated claims not just of widows but of married women as well, and it provided a range of remedies. Chancery "developed trusts for a wife's 'sole and separate use', giving married women of property a new independence."⁴⁶ Chancery also used injunctions to make trustees and male family members grant wives, daughters, and widows their due under wills and other contracts.⁴⁷ Another strategy the Chancery employed in resolving property disputes was sending the matter to local gentlemen and women for arbitration and conciliation in lieu of formal judicial resolution.⁴⁸

The most important "court" for elite families, however, was the Royal Court (Court).⁴⁹ Connections and access to the Court were essential during these intrafamily disputes over property.⁵⁰ Due to the prominence and political power of the families studied in this Note, familial disputes were of considerable concern to the Court, and high officials often were ordered by the monarch to step in and resolve these disputes directly.⁵¹ Maintaining good relationships with these officials and with Queen Elizabeth herself paid off for several of the

⁴⁴ The Lord Chancellor in modern times is the highest judicial officer in England, is speaker of the House of Lords, is a member of the cabinet, and presides at appellate judicial proceedings. Black's Law Dictionary, *supra* note 15, at 955. In the early modern period, he was the foremost minister of the Crown, the keeper of the great seal of England (with which all royal documents had to be authenticated and which had a preeminent position in the King's council), and was also known as the "Keeper of the King's Conscience." *Id.*

⁴⁵ Maria L. Cioni, *The Elizabethan Chancery and Women's Rights*, in *Tudor Rule and Revolution* 159, 160 (Delloyd J. Guth & John W. McKenna eds., 1982) (

The widow who did not possess the evidences to claimed lands, the jointress whose lands and profits were being withheld by the trustee, the separated wife whose husband would not permit her to enjoy a share of what she brought into the marriage, these and more had no case at common law but they made their way to Chancery.).

⁴⁶ Simpson, *supra* note 22, at 206.

⁴⁷ See Cioni, *supra* note 45, at 160-61.

⁴⁸ *Id.* at 161. For a more in-depth study of women's various interactions with and in the Chancery, see Maria L. Cioni, *Women and Law in Elizabethan England, with Particular Reference to the Court of Chancery* (1985).

⁴⁹ For an excellent study of women's activity as courtiers and patrons in the early Tudor period (1485-1550), see Barbara J. Harris, *The View from My Lady's Chamber: New Perspectives on the Early Tudor Monarchy*, 60 *Huntington Libr. Q.* 215 (1998).

⁵⁰ See, e.g., Erickson, *supra* note 9, at 111 (relating involvement of Royal Court in disputes between Lady Anne Clifford, first with her male cousins over land inherited from her father, and then with her husband over her jointure).

⁵¹ See *infra* notes 72-73, 102-05, 164-67 and accompanying text for examples of Royal Commissions created to settle property disputes.

women in both the Manners and Talbot families. These informal networks of patronage and friendship often proved more useful to women in their attempts to control land than the more formal mechanisms of the law and the courts.⁵²

A recurring dispute within elite families was over wardship of minor children and their inheritance. Court connections were important in this context as well, because the Court of Wards⁵³ determined who would control the ward and his or her very profitable lands until the ward reached majority. The Crown legally held all land and granted it to men who could perform service to the King (or Queen).⁵⁴ Since such service obviously could not be performed when the heir was a minor, the Crown took back the lands and their profits until the heir came into his majority.⁵⁵ By the sixteenth century, the idea of service for land was an outdated concept, but wardship was a cunning way for the Crown to obtain extra revenue, both by retaining wardships and by selling them off to the highest bidder.⁵⁶ Gaining control of a wardship was profitable because one was granted a lease of the ward's lands until he or she came of age.⁵⁷ In addition, the owner of the wardship gained control over marriage negotiations for the ward.⁵⁸

Elite women who gained a profitable wardship temporarily brought the patrilineal estate under their management. As the stories in the following Parts show, both men and women attempted to control the wardships of their underage relatives, both for the wealth that would come directly under their control and the ability to negotiate powerful alliances through marriage.⁵⁹

The laws that were supposed to uphold male privilege and control over property permitted most aristocratic women, especially if they lived to become widows, to manage and own land. Yet the openings that the legal system did create for women to own land could be uti-

⁵² See *infra* notes 77-79, 108-09, 169-70 and accompanying text for examples of the Manners and Talbot women using Court connections and patronage to their advantage.

⁵³ The Court of Wards was "created in 1540 to assert the Crown's right to income from a variety of feudal tenures." Black's Law Dictionary, *supra* note 15, at 368.

⁵⁴ For a good overview of the feudal system of land tenure, see Baker, *supra* note 15, at 255-82.

⁵⁵ See Joel Hurstfield, *The Queen's Wards: Wardship and Marriage Under Elizabeth I*, at 84-85 (2d ed. 1973) ("The crown . . . resumed possession of the land, because the ward could not render military service, and held it until the ward was of age and in a position both to serve the king and therefore reclaim his land . . .").

⁵⁶ See *id.* at 122 ("The custody of the child, his marriage and the occupation of his lands, all these the crown sold or leased for what price it could get.").

⁵⁷ See *id.* at 127 ("Yet even behind the most considerate treatment [of a ward] there lurked the always dominant interests of profit and revenue.").

⁵⁸ *Id.* at 129-56; see *id.* at 129 ("[G]uardianship, as everyone in Tudor England well knew, was a means to an end: marriage.").

⁵⁹ See *infra* notes 82-85, 96-97, 115-18, 142 and accompanying text.

lized only through active struggle and manipulation by family members, in particular women. How elite women were able to gain control of property from male relatives is one story; what the women did with this control is another. The following narratives paint a textured and complicated picture of patriarchy in practice, a picture that shows women working both in opposition to and in conformity with the normative gendered principles of land ownership.

II

THE MANNERS WOMEN: LITIGANTS, COURTIER, AND HEIRESSSES

The Manners family became one of England's most powerful and wealthy aristocratic families during the late fifteenth and early sixteenth centuries. This Part will study the property disputes of and between the wives of the third and fourth Manners Earls of Rutland.⁶⁰

As this Part will show, the story of the Manners and their property disputes developed through circumstances unique to the Manners family and emerged because of the absence of a male heir. The patrilineal estate was inherited collaterally, but it became encumbered and impoverished because the former patriarch had provided for his widow and daughter generously. Through jointures, dowers, and the unusual matrilineal Roos Barony, the Manners women inherited and gained control of a large percentage of the Rutland estate in the late sixteenth century.

Acting as vocal participants in property negotiations and disputes within the family, these women fought tenaciously for their rights and those of their heirs to property and titles. Playing diverse roles as litigants, courtiers, and executrixes,⁶¹ the Manners women were economically central to their family, both by bringing significant quantities of property into the family estate and by separating property from

⁶⁰ The documents used in this Part consist primarily of private correspondence between family members and servants, but they also include wills and letters and official documents from the highest-ranking servants of the Crown. Almost all of the documents are found in 1 The Manuscripts of His Grace the Duke of Rutland. G.C.B., Preserved at Belvoir Castle (London, Eyre and Spottiswoode 1888) [hereinafter Rutland].

⁶¹ The executor or executrix of a will possessed a great deal of power and responsibility. He or she managed the estate of the deceased by handing out the bequests, collecting and paying off debts, and even making decisions regarding who received what if the will was unclear. For example, the executor split up chattel property fairly if the testator did not list which exact items were to go to each beneficiary. There was also risk attached to becoming executor, for beneficiaries might disagree with one's judgment and sue. The executor also would be held responsible if parts of the estate went missing during the disposition of the estate. E.g., Jesse Dukeminier & Stanley M. Johanson, *Wills, Trusts and Estates* 37-39 (5th ed. 1995) (discussing modern and historical probate procedures and executor's role in probate process).

the earldom through lawsuits, jointures, and inheritances. The Manners women were astute courtiers, keeping a close eye on events at Court and constantly currying favor with prominent royal officials—and especially the Queen—who could influence decisions in Chancery and the Court of Wards⁶² regarding Rutland property. Each woman considered her welfare and that of her direct heirs to be of primary importance. Because they placed the well-being of their own descendants first, these women often acted in ways that conflicted directly with the interests of the patrilineal Rutland line. Perhaps counterintuitively, the system of property distribution itself created and exacerbated opportunities for family discord and for women to gain control of property.

A. “Collateral” Consequences:
Isabel and Lady Roos vs. John, Earl of Rutland

The Manners’s rise to prominence began with a very profitable marriage in 1469, when Sir Robert Manners married Eleanor, sister and coheir of Edmund, Lord Roos of Hamlake.⁶³ This alliance gave the Manners family the huge Roos estates.⁶⁴ As women could inherit the Roos Barony, unlike the earldom which had to pass to a male heir, it would split from the main estate if an earl only had daughters. This possibility became a reality in a future generation and caused many disputes within the Manners family.

The third Earl Edward was still a minor in 1563 when his father died. Sir William Cecil (later Lord Burghley⁶⁵) took over his wardship and education. Yet William Cecil could not control his young charge, for Edward made what his peers considered an alliance below his station and married Isabel Holcroft, the heiress of a London alderman.⁶⁶ When Edward died in 1587, he left behind his wife Isabel, who claimed her substantial jointure,⁶⁷ and a daughter Elizabeth (“Lady Roos”), who inherited the Barony of Roos. Edward’s will made it very clear that Lady Roos was the rightful heir to the Roos Barony, and he specifically listed the seventeen properties to which she was

⁶² See *supra* notes 49-53 and accompanying text.

⁶³ For a clear illustration of the relationships between people mentioned in this Note, see Appendix, a genealogical chart of the Earls of Rutland and their families.

⁶⁴ Lawrence Stone, *Family and Fortune* 165 (1973).

⁶⁵ Sir William Cecil (“Lord Burghley”) was one of Queen Elizabeth’s top advisors and courtiers. See *id.* at 3 (listing William Cecil’s offices).

⁶⁶ *Id.* at 173.

⁶⁷ Isabel was to “have the lease of Newark Castle and demesnes, and other property, free of any incumbrances.” Stone, *supra* note 64, at 175.

entitled.⁶⁸ Edward placed conditions on this grant of property, ordering that if his daughter did not marry "a Baron or heire apparaunt of a Baron, or one above the degree of a Baron, or other then a gentilman having landes of the yearlie value of 1,000^{li}," the lands would go to his cousins, the Courtenays.⁶⁹ Edward also bequeathed Lady Roos £4000 with no strings attached.⁷⁰ The properties that made up Lady Roos's inheritance added up to about one-quarter of the total Rutland estate.⁷¹

Since two dowager countesses, Bridget (Edward's stepmother) and Isabel, were drawing substantial jointures from the Rutland estate at this time, John (Edward's male heir and younger brother) was considerably poorer than his predecessors. This impoverishment of the Rutland estate through the normal system of providing for widows and heirs set the stage for familial discord and created an opening for the Manners women to take center stage in these disputes.

Edward made John, the fourth Earl of Rutland, his executor.⁷² The supervisors of the will constituted a "who's who" of Queen Elizabeth's top advisors and courtiers.⁷³ Yet even this distinguished cast could not prevent a confrontation between Edward's widow, Isabel, and John. By referring to himself in his will as "Lord Roos of Hamlacke," John demonstrated that he did not consider Edward's

⁶⁸ The Will of Edward Manners, 3rd Earl of Rutland (Dec. 8, 1587), in 121 *The Publications of the Surtees Society* 117-18 (1912) (

[W]hereas the stile and dignitie of my baronye of Rosse for want of heires males of my bodye is to descend and come to my heire generall, for that one of my auncestors whose heire I am, did marye the heire of the Lorde Rosse, by meanes whereof my auncestors enioied the title of Lord Rosse, as descended on the parte of the mother . . . therefore because I suppose the dignitie of the sayd Baronye not to be utterly extinguished, but suspended, for that the Earldome is intayled to the heires males of Thomas, my grandfather, and the Baronye is descendable to the heires generall. And that the Baronye of Rosse should not come unto my heire generall without some possessions, I bequeathe unto Elizabeth my daughter and her heires all my mannors of Storthwayte, in Melborne, Landricknes super Moram de Strothwhaite et Melborne, Seiton Rosse, Warter, Wighton, Ingmanthorpe, Kilvington, Thorne, Braughe, Middleton, Rosse in Holdernesse and Semer, Linton upon Ouse, Tarna hall and Cliff, and the rectories of Warter and Lunde, etc. . . .).

⁶⁹ *Id.* at 118. See also Stone, *supra* note 1, at app. IX (1965). This chart lists the mean gross annual income of a peer to be £2380 in 1559 and £3360 in 1601. It is impossible to compute twenty-first century equivalents for early modern monetary sums, but the above numbers illustrate that even £1000 was a large sum of money in early modern England.

⁷⁰ *Id.*

⁷¹ Stone, *supra* note 64, at 175.

⁷² The Will of Edward Manners, *supra* note 68, at 117. See *supra* note 61 regarding the role and importance of executors.

⁷³ *Id.* at 118. The supervisors included Cecill, Sir Francis Walsingham, the Lord Chancellor, the Lord High Treasurer, and the Chief Justice of England.

daughter, the Lady Roos, the rightful owner of the Roos estates.⁷⁴ John immediately challenged both Lady Roos's rights to some of the property given to her in Edward's will and Isabel's rights to her jointure lands. Although Isabel was supposed to receive the lease of Newark Castle and demesnes immediately,⁷⁵ as well as her own inheritance from her mother, John claimed that she should have only what remained after he paid Edward's funeral expenses and other debts.⁷⁶ John thus attempted to frustrate the customary property distribution system because it threatened the Rutland patriline and his own wealth and power.

A series of letters about this dispute shows Isabel and John marshalling their allies at Court, each attempting to ensure that the Chancery suit over this property would be settled in her or his favor. One of Earl John's servants, who was at Court in London, wrote to his master that the Earl "stand[s] in very gracious terms with the Queen, and the Countess Dowager [Isabel] has received but cold comfort. All that business is now very quiet, but she was with her mother again on Sunday last"⁷⁷ Isabel must have been circulating at Court to win support for her claim to her jointure, while Earl John's servants reported on her successes and failures. The Earl John's uncle, Roger Manners, also reported on Court machinations from London.⁷⁸ Despite these maneuvers at Court, the Earl and his cronies were not particularly effective, for the suit was sent to Burghley and Walsingham for arbitration.⁷⁹ They ordered John to return Frodsham to Isabel im-

⁷⁴ The Will of John Manners, 4th Earl of Rutland (May 21, 1588), in 121 *The Publications of the Surtees Society* 118 (1912).

⁷⁵ Demesnes are duties of tenants to "cultivate the lands which the lord farmed as his own"—essentially to turn over the profits from crops cultivated on lands the lord had not subinfeudated to tenants. Simpson, *supra* note 22, at 157.

⁷⁶ Letter from the Earl of Rutland to the Lord Treasurer, Sir Walter Mildmay, the Master of the Rolls, and Mr. Sellycots, Supervisors of the will of the late Earl of Rutland (June 2, 1587), in Rutland, *supra* note 60, at 216-17.

⁷⁷ Letter from Thomas Screven to the Earl of Rutland at St. Leonards, Newark (Oct. 24, 1587), in Rutland, *supra* note 60, at 221.

⁷⁸ Letter from Roger Manners to the Earl of Rutland (Oct. 24, 1587), in Rutland, *supra* note 60, at 229 (

I spoke with my Lord Chief Justice Anderson I think he will so satisfy them [supervisors of the will] as to prove himself your very good friend. . . . Her Majesty talked much of you and said that you were much commended to her by many She spoke of the Countess Dowager, but not more favourably than is convenient.).

⁷⁹ Burghley and Walsingham were two of the Queen's closest advisors. See generally Conyers Read, *Lord Burghley and Queen Elizabeth* (1960); Conyers Read, *Mr. Secretary Walsingham and the Policy of Queen Elizabeth* (1925).

mediately and to give her the Newark lease.⁸⁰ Despite this decision, Isabel was fighting for these jointure properties into 1589, almost two years later.⁸¹

The battle between Earl John and Isabel was not solely over her jointure land. Earl John also attempted to remove the young Lady Roos from the care of her mother since she was a royal ward.⁸² The Earl John even tried to gain control of her wardship himself, but Lord Hunsdon, a courtier, warned him against this plan.⁸³ Unconvinced by Lord Hunsdon's warning, the Earl John later sought to have one of his neighbors gain the profitable wardship.⁸⁴ Isabel furthermore attempted to obtain control of Lady Roos's wardship, although she had not received it as of early 1588.⁸⁵

Amidst these disputes, and after holding the title of Earl for only ten months, John died in February of 1588, leaving another minor, his son Roger,⁸⁶ as heir and *three* dowager countesses.⁸⁷ John's will provided for his widow Elizabeth, his three younger sons, and his three daughters.⁸⁸ He bequeathed Elizabeth control of two estates for her

⁸⁰ Stone, *supra* note 64, at 175. The footnotes suggest that Stone found this information in the Public Record Office documents, for there is nothing in the Chancery calendar or in the Rutland Manuscript calendar.

⁸¹ See *infra* notes 101-04 and accompanying text.

⁸² See *supra* notes 53-58 and accompanying text (discussing importance of wardship to women's property rights).

⁸³ Letter from Lord Hunsdon to the Earl of Rutland (June 26, 1587), in Rutland, *supra* note 60, at 220 (

I see that you are a suitor, to have the keeping of your niece, and you require my opinion in the matter. In my judgment you had better let the suit alone especially considering the nearness of blood betwixt you, so that in law you could not have the wardship, as you may possibly inherit the land after her decease. Also your sister [Isabel] cannot but take it unkindly that you should ask it, as she is her only daughter.).

⁸⁴ Letter from John Harper to the Earl of Rutland (Jan. 30, 1587[-8]), in Rutland, *supra* note 60, at 239 ("Sir Anthony Thorold has sent no application to the Lord Treasurer by which he and my Lady might be joint petitioners for the ward . . .").

⁸⁵ Letter from Thomas Screven to the Earl of Rutland (Jan. 15, 1587[-8]), in Rutland, *supra* note 60, at 237. It appears that the Master of the Wards, Lord Burghley again, maintained control over Elizabeth's inheritance and marriage negotiations.

⁸⁶ As an interesting aside, some literature scholars in the early twentieth century claimed that Roger, the fifth Earl of Rutland, was actually the author of the works of William Shakespeare. See generally Pierre S. Porohovshikov, *Shakespeare Unmasked* (1940); Claud W. Sykes, *Alias William Shakespeare?* (1947).

⁸⁷ Stone, *supra* note 64, at 176. The three Dowager Countesses still alive in 1588 were Bridget (widow of the second Earl), Isabel (widow of the third Earl), and John's widow Elizabeth. *Id.* at tbl.3.

⁸⁸ Each of his three younger sons (two of whom would become Earls of Rutland) received land as well. John granted each of his daughters £1000 and divided the remainder of his goods, one half going to his widow and the other half to be divided "amongst my three younger sonnes, and my thre dawghters equally." The Will of John Manners, *supra* note 74, at 119.

lifetime.⁸⁹ Like his brother Edward, John cared about the welfare of all his children, even though his bequests significantly depleted the assets available to the next earl. Again, the customary inheritance system would impoverish substantially the typical beneficiary of primogeniture, Roger, and instead give four Manners women⁹⁰ considerable control over the Rutland estate. John's decision to fight Isabel and Lady Roos's inheritance as the Earl and his decision to provide generously for his surviving dependents demonstrates the different calculi patriarchs used in their roles as guardian of the patriline and as fathers and husbands.

John named Lord Burghley and the Earl of Leicester as supervisors of the will.⁹¹ John evidently knew there was going to be trouble with his will, for he named his son Roger, his widow Elizabeth, and several male family members to be joint executors; he did not want his wife or young son dealing with any potential problems by themselves.⁹² Several of the men named believed that taking on the executorship of John's will would be risky, time-consuming, and possibly very expensive, as most of the potential coexecutors declined.⁹³ Elizabeth then begged for assistance from the supervisors of the will: "I who am a weak and sickly woman, am unable to manage an affair of that importance."⁹⁴ Lord Burghley appeared concerned with this outcome, but agreed to accept Elizabeth as sole executrix.⁹⁵

Almost immediately, the very men who declined to help her manage the execution of the will challenged Elizabeth's handling of her

⁸⁹ *Id.*

⁹⁰ The four women were the three dowager countesses (Bridget, Isabel, and Elizabeth) and the Lady Roos.

⁹¹ According to Lawrence Stone, the two rivals at Court fought for control over the wardships of both Elizabeth Lady Roos and the young Earl Roger, which only ended with Leicester's death in September of 1588. Stone, *supra* note 64, at 176-77.

⁹² The Will of John Manners, *supra* note 74, at 119.

⁹³ Elizabeth wrote to her husband's uncles John and Roger Manners, and her cousin Sir George Chaworth in March of 1588, and declared: "Before I decide whether I will accept the executorship of my late husband's will, I would know which of you will join with me as executor." Letter from Elizabeth, the Countess of Rutland to her uncles, John Manners and Roger Manners, and her cousin Sir George Chaworth (Mar. 29, 1588), in Rutland, *supra* note 60, at 244. John and George quickly responded with a note of their "desire to be relieved from the executorship of the will of the late Earl," and Elizabeth realized that she would be alone in attempting to execute her husband's last wishes. Letter from John Manners and Sir George Chaworth ? (Mar. 31, 1588), in Rutland, *supra* note 60, at 245 (question mark in original).

⁹⁴ Letter from [Elizabeth, Countess of Rutland] to the Earl of Leicester and Lord Burghley (Apr. 27, 1588), in Rutland, *supra* note 60, at 245.

⁹⁵ Burghley claimed that he did "not know why they have left or been excluded, so I must assent to your acceptance, offering you my help and assistance." Letter from Lord Burghley to Elizabeth, Countess of Rutland (Apr. 27, 1588), in Rutland, *supra* note 60, at 247.

husband's affairs.⁹⁶ Yet Elizabeth quickly found an authoritative voice and demanded her rights as executrix:

The late Earl of Rutland my brother[-in-law, the third Earl,] devised two parts of his lands unto his executors for the payment of his debts. By the death of my husband the executorship of that will is now vested in me, and I request to have the two parts of the lands assigned to me according to the meaning of the will.⁹⁷

Since her husband John had been the executor of his brother Edward's will, upon John's death, Elizabeth became the executrix of both wills. Thus, one Manners woman, Elizabeth, temporarily playing the role of patriarch, gained control over large amounts of land and property through her positions as a widow, executrix, and guardian of the fifth Earl Roger. Yet opposing her as they had opposed her husband were two other Manners women, Isabel and Lady Roos, who would use that same inheritance structure to break apart the Rutland estate and get the pieces of land to which they considered themselves entitled.

*B. In the Interest of My Children: Isabel and Lady Roos
vs. Elizabeth*

While John's widow Elizabeth attempted to assert her rights as executrix,⁹⁸ her niece, the Lady Roos, sued her in the Court of Wards for her inheritance—the £4000 her father (Edward, the third Earl) had bequeathed to her in addition to the Roos estates.⁹⁹ To add to Elizabeth's troubles, Isabel, Edward's widow, sued the young Earl Roger for her jointure lands, which she had not yet received.¹⁰⁰ Lord Burghley, now also the Master of the Court of Wards, thus found himself involved with the Rutland estates in several capacities. He wrote to the Dowager Countess Elizabeth that

[a] bill has been exhibited to me in the Court of Wards and Liveries, on behalf of Elizabeth[,] Lady Roos, the Queen's Ward, demanding certain moneys claimed to be due to her under the will of her father

⁹⁶ Elizabeth's servant Lancelot Turner warned her in April of 1588 that your uncles dislike your course and they threaten that if anything be done that is not according to the intent of the will, they will call not only yourself but the very officers into account. Do not however be dismayed, your uncle is an old experimented courtier, and is endeavouring to make you weary of the executorship.

Letter from Lancelot Turner to [Elizabeth] Countess of Rutland (Apr. 16, 1588), in Rutland, *supra* note 60, at 246.

⁹⁷ Letter from Elizabeth, Countess of Rutland to the Lord Chief Justice of England (Sept. 20, 1588), in Rutland, *supra* note 60, at 261.

⁹⁸ See *supra* note 61 regarding importance and risk of being executrix of a will.

⁹⁹ See *supra* notes 68-71 and accompanying text about Lady Roos's inheritance.

¹⁰⁰ Stone, *supra* note 64, at 177; see also *supra* notes 75-81 and accompanying text.

Edward, Earl of Rutland. I beg that you will send for a copy of such bill¹⁰¹

A commission out of the Court of Wards was created in September of 1588 to find and examine "all the title deeds relating to the estates of Edward and John, late Earls of Rutland . . . in order to find out which of them belong to the present Earl, and which to Lady Roos."¹⁰²

Elizabeth was unhappy about the members of the Commission, which included Manners family members and local neighbors, but Lord Burghley assured her that it would be fair.¹⁰³ Elizabeth remained unconvinced by these protestations and decided to stall the Commission at every possibility. In response to a request by the Commission to turn over all evidences appertaining to the suit, she used delaying tactics, claiming that her

experience of reading them [evidences] is little, and my understanding is less. If you will respite me till Monday sennight I will take advice whether any of the deeds with me appertain to the inheritance and are not lawfully mine; in which case I will willingly and safely send them to you.¹⁰⁴

In another letter, she begged forgiveness for not sending the documents requested because she did not have a servant available to deliver them.¹⁰⁵

Throughout the dispute, Elizabeth proved herself to be a skillful manipulator and negotiator, especially when she claimed ignorance and weakness. Ironically, Elizabeth succeeded in convincing some historians of her ineptitude during the disputes. Although the Complete Peerage described her as "weak-minded, injudicious and help-

¹⁰¹ Letter from Lord Burghley to Elizabeth, Countess of Rutland (Sept. 20, 1588), in Rutland, *supra* note 60, at 260-61.

¹⁰² Letter from the Rutland Estates (Sept. 28, 1588), in Rutland, *supra* note 60, at 261. Correspondence about and from this Commission make up the bulk of the documentation about the property dispute between Elizabeth Lady Roos and her mother Isabel and the Dowager Countess Elizabeth.

¹⁰³ Lord Burghley wrote that he did "not see how the proceeding with the Commission can be prejudicial either to my lord your son or Lady Roos. You shall have such leases as set out as appertain to you only as executrix." Letter from Lord Burghley to Elizabeth, Countess of Rutland (Nov. 1, 1588), in Rutland, *supra* note 60, at 263.

¹⁰⁴ Letter from [Elizabeth, Countess of Rutland] to John Manners, Sir George Chaworth, Sir Anthony Thorold, Francis Harington and Philip Tyrwhitt (Nov. 8, 1588), in Rutland, *supra* note 60, at 264.

¹⁰⁵ Letter from [Elizabeth, Countess of Rutland] to the Commissioners at Belvoir (Nov. 20, 1588), in Rutland, *supra* note 60, at 265. In this collection, there are several more letters from Elizabeth, both claiming that she does not have any documents and that if she does, they do not concern the lands in question. See, e.g., Rutland, *supra* note 60, at 264-65, 274.

less,”¹⁰⁶ Elizabeth actually tried to exploit cultural stereotypes to her advantage.

Elizabeth had reason to be skeptical of the impartiality of both the Commission and the Master of Wards, Lord Burghley, for in 1589 he married his grandson to the Lady Roos.¹⁰⁷ Thereafter, Elizabeth attempted to win the favor of other Crown officials who might side with her if the Commission’s judgment went against her and her son.¹⁰⁸ Elizabeth also hoped that the favor shown to her daughter Bridget, a lady-in-waiting to the Queen, would rub off onto her as well.¹⁰⁹

Elizabeth, however, certainly realized by 1589 that Isabel possessed a strong claim to the jointure mentioned in her husband Edward’s will. Elizabeth therefore began to use Isabel’s jointure as a bargaining chip to lessen the amount owed to Lady Roos and her heirs in order to preserve as much of her son’s estate as possible. She wrote to the supervisors of Edward’s will in January that if they “will cause the Countess of Rutland [Isabel] to give up the statute of 4,000£ which she keep back against my son, I will give my consent for the parsonage of Frodsham and the demesnes and parsonage of Newark.”¹¹⁰ Lord Burghley responded brusquely in March that Elizabeth was to “deliver to the Countess Isabel the corn due her upon the parsonage and demesne of Newark, and also to send up to us a true and perfect account of all receipts and payments appertaining to the will of Earl Edward.”¹¹¹

¹⁰⁶ 11 George Edward Cokayne, *The Complete Peerage or a History of the House of Lords and All Its Members from the Earliest Times* 259 (Geoffrey H. White ed., 1949) [hereinafter *Complete Peerage*]. These kinds of commentaries about wives of early modern peers are found throughout this essential guide to the genealogies of the nobility. These comments make one wonder about the perspective of the author.

¹⁰⁷ Stone, *supra* note 64, at 177.

¹⁰⁸ Elizabeth wrote letters to the Lord Chief Justice (May 29, 1589), the Lord Treasurer (May 30, 1589), and Sir Francis Walsingham (May 30, 1589) thanking them for their “friendly dealing” and “kindness” in the “disputes between the young Earl and the Countess Isabel, concerning the will of Earl Edward.” See Rutland, *supra* note 60, at 272.

¹⁰⁹ See Letters from Elizabeth, Countess of Rutland to the Countess of Bedford (June 9, 1588 and July 26, 1588), in Rutland, *supra* note 60, at 250. Bridget Manners got her position as lady-in-waiting to Queen Elizabeth through the patronage of the Countess of Bedford, who was also the widow of the second Earl of Rutland. Stone, *supra* note 64, at 177. This hints at some cooperation between these women who were related only by marriage.

¹¹⁰ Letter from Elizabeth, Countess of Rutland to the supervisors of the will of Edward, Earl of Rutland (Jan. 20, 1588[-9]), in Rutland, *supra* note 60, at 268. Isabel had filed a suit to recover the £4000 that Edward bequeathed to his daughter Lady Roos in his will. See *supra* notes 74-76 and accompanying text.

¹¹¹ Letter from Lord Burghley to Elizabeth, Countess of Rutland (Mar. 11, 1588[-9]), in Rutland, *supra* note 60, at 269.

Elizabeth was, however, persistent and stated that before she would "give up the demesne and tithe corn of Newark to Isabel Countess of Rutland, [she would] entreat that [her] poor son may have some relief against the burden of the statute . . . kept in store by [Isabel] for his undoing."¹¹² By June, however, Elizabeth yielded to Isabel "the lease of Cleving Field and the right to receive the rents of the demesne of Newark and the possession of the parsonage of Frodsham,"¹¹³ although Elizabeth continued to contend that this went "directly against the meaning of her [Isabel's] husband's will."¹¹⁴

The disputes between the Manners women did not end with Isabel's successful claim to her jointure. Lady Roos and her heirs continued to fight to gain all of the properties granted to her in her father's will. In mid-1590, Lady Roos gave birth to a son, William Cecil, and died shortly thereafter in 1591.¹¹⁵ After Lady Roos's death, her mother Isabel and Lady Roos's widower, also named William Cecil, began another suit in the Court of Wards on behalf of Lady Roos's son, the new Lord Roos.¹¹⁶ The Lord Roos's great-grandfather, Lord Burghley, supported their suit by ordering surveys of all the land owned by the late Earl Edward.¹¹⁷ Elizabeth continued to fight against this suit in the name of her son.¹¹⁸

¹¹² Letter from Elizabeth, Countess of Rutland to the Lord Treasurer (Mar. 26, 1588[-9]), in Rutland, *supra* note 60, at 270.

¹¹³ Letter from Elizabeth, Countess of Rutland to Lord Burghley, High Treasurer of England (June 13, 1589), in Rutland, *supra* note 60, at 273.

¹¹⁴ Letter from Elizabeth, Countess of Rutland to the Lord Treasurer (Oct. 31, 1589), in Rutland, *supra* note 60, at 277.

¹¹⁵ Stone, *supra* note 64, at tbl.3.

¹¹⁶ Letter from Lord Burghley to Elizabeth, Countess of Rutland (Feb. 2, 1590), in Rutland, *supra* note 60, at 287.

¹¹⁷ See Letters from Lord Burghley to Samuel Bevercotes, Feodary of the County of Nottingham (Mar. 1, 1590[-1]); Lord Burghley to Thomas Morgan, Feodary of the County of Northampton (Mar. 1, 1590[-1]); Lord Burghley to [Elizabeth], Countess of Rutland (Mar. 4, 1590[-1]), in Rutland, *supra* note 60, at 288-89. Burghley was attached emotionally to his little great-grandson. In a letter from Burghley to a Manners relative, he wrote:

I most hartely thank you for your courtesy and payns taken at Newark . . . for assistance as a Godfather to christen your young coosyn the Lady Ross's sonne. And in that you have named hym William, therby I may affirm he is the youngest William Cecill and I the eldest. God bless him to follow my purposes, but not my paynes nor daungers.

Letter from Lord Burghley to John Manners (June 8, 1590), in Rutland, *supra* note 60, at 282.

¹¹⁸ For example, Elizabeth requested "support and assistance" from the Keeper of the Great Seal in the suits pending against her. Letter from [Elizabeth, Countess of Rutland] to Sir John Puckering, Lord Keeper of the Great Seal (Oct. 1592), in Rutland, *supra* note 60, at 304. Elizabeth's uncle Roger Manners reported that "[t]he Lord Chancellor is well inclined towards you, though he is earnestly pressed to the contrary by great personages," the latter comment being a reference to Burghley and his faction. Letter from Roger

This suit continued even after Elizabeth's death in 1595, when the Earl Roger came into his own.¹¹⁹ But in June of 1596, the case finally was thrown out of the Court of Wards essentially for lack of jurisdiction as the young Lord Roos was not a ward of the Crown.¹²⁰ Yet even this did not signal an end to the verbal wrangling and letter writing between Isabel and Lord Roos on one side, and Roger, the fifth Earl, on the other.¹²¹ The specific properties Lord Roos controlled after this decision are unclear, but in any event he died without an heir only two years later in 1618.¹²²

Active as litigants, courtiers, and property holders, the Manners women assiduously worked to further their interests and those of their heirs. The Manners women used their connections to the Royal Court, either through marriage or placement in the service of the Queen, to improve their chances for a successful resolution to these property disputes. These noblewomen used Court politics to benefit their interests in much the same way as their male relatives and counterparts, even though women (besides the Queen) possessed no political authority.

Furthermore, both mothers and fathers in this family consistently placed the welfare of their children ahead of the interests of the patrilineal Rutland line when they conflicted. What is most interesting, however, is how even though the inheritance structure worked properly, its functioning led to the very discord and impoverishment of the Rutland estate that enabled the various Manners women to gain control of land. The patriarchal system itself thus created the openings

Manners to Elizabeth, Countess of Rutland (Oct. 20, 1591), in Rutland, *supra* note 60, at 297.

¹¹⁹ Stone, *supra* note 64, at 178.

¹²⁰ The Court of Wards found that

[t]he heir general is no ward to her Majesty, neither for body nor lands, and so being without the protection of the Courts of Wards ought not to have any relief there against the now Earl, who indeed is ward and by that Court to be protected both for body, lands, goods and evidences

Letter from Roger, Earl of Rutland to the Court of Wards (June 30, 1596), in 6 *Calendar of the Manuscripts of the Most Honourable the Marquis of Salisbury, K.O.*, Preserved at Hatfield House, Hertfordshire 232 (London, Eyre and Spottiswoode 1895) [hereinafter *Salisbury*].

¹²¹ William, Lady Roos's son, finally was named the rightful Lord Roos and heir general in 1616, while Francis, the sixth Earl of Rutland was created Lord Roos of Hamlake, named after the property which descended in male tail. Complete Peerage, *supra* note 106, at 109-10.

¹²² Stone, *supra* note 64, at tbl.3. The barony passed back to the sixth Earl of Rutland, Francis Manners, because Roger had no children. Francis's only child, Katherine Manners, became the second heiress to gain the title Baroness Roos in 1632. See *infra* app. There is little information about Katherine or what property she inherited from her father; given her marriage to George Villiers, Lord Buckingham (King James I's favorite), it is unsurprising that no one challenged her right to the title or any property she received.

these women needed to become active players in this elite game of power and property.

III FROM "A WOMAN OF SO BASE A PARENTAGE" TO THE COUNTESS OF SHREWSBURY: BESS OF HARDWICK

The sixth Earl of Shrewsbury's second wife, best known as Bess of Hardwick,¹²³ brought a great deal of real estate into the Shrewsbury estate and then took it back when their marriage collapsed. By focusing on the conflict between Bess and George Talbot, the sixth Earl, which lasted from 1583 until George's death in 1590, Part III analyzes how a single aristocratic woman managed to control her property even while she was married. What is significantly different about Bess's conflicts from those of the Manners women is that they were with *male* family members, making her successes all the more notable.

This narrative illustrates the importance of female property ownership and the opportunities for it that widowhood and remarriage provided. Though Bess benefited from both jointures and dowers from her previous marriages, she did not rely only on these customary legal entitlements for her support. Bess exhausted alternative methods to circumvent the rules of inheritance and coverture. These included the joint acquisition of land with one of her husbands, the use of a prenuptial contract with another, and the conveyance by deed of the property Bess brought into the marriage from her last husband to her children from a previous marriage.

Through her three previous marriages, Bess inherited land and income that she used to acquire more property and assert considerable independence from her fourth and last husband. She gained financial experience and Royal Court connections that were central to her ability to retain control over her property. With connections to the Court, and particularly to the Queen, Bess had crucial allies and support to fight successfully against her last husband when he challenged her ownership of land.

Bess fought for the financial interests of her children from a previous marriage even though it brought her into direct conflict with George and other Talbot and Cavendish relatives. The personal and legal battles between George and Bess fractured both the Talbot es-

¹²³ Bess is quite a famous historical figure and her Hardwick Hall is one of the most visited country houses in England. Both are featured in Jan Nescott, *The Tower and the Dream* (1974).

tate and the family itself, requiring George's and Bess's children to take sides.¹²⁴ Yet for all of Bess's remarkable victories over male foes and her incredible accumulation of land and wealth, she still saw the world through a patriarchal lens, for her ultimate goal was to create another patrilineal dynasty headed by her son, William Cavendish, from a prior marriage.

A. *Early History: Elizabeth Hardwick, Elizabeth Barley, Elizabeth Cavendish, Elizabeth St. Loe*

Bess of Hardwick's life before her marriage to George, the sixth Earl of Shrewsbury, was a rocky but profitable one. Born into a relatively minor Derbyshire gentry family sometime in 1527, Bess's father died less than a year later.¹²⁵ The family fell into dire financial straits when the Crown took over their lands since the heir (Bess's brother) was a minor and a ward of the King.¹²⁶ Bess quickly was married off to a Derbyshire gentleman before she was sixteen.¹²⁷ Like her father, her first husband died prematurely, leaving her a widow at the age of sixteen and a half fighting to wrest her meager jointure from the Court of Wards.¹²⁸

After spending four years as a widow, Bess married Sir William Cavendish, a successful Court official, in 1547.¹²⁹ She bore eight children during their ten-year marriage, six of whom survived to adulthood. During this period, Bess developed a lasting friendship with the woman who would become one of her staunchest allies, then-Princess Elizabeth Tudor. The Cavendishes purchased a great deal of property in Derbyshire, starting with Chatsworth, then the Manor of Ashford, 8000 acres near Chatsworth from the Earl of Westmorland in 1550, and another 400 acres near Chatsworth in 1553 and 1554.¹³⁰ Because the lands were bought jointly by Sir William and Bess for their lives,

¹²⁴ Bess and George had no children together, although they each had several children from previous marriages. See generally David N. Durant, *Bess of Hardwick* (1st rev. paperback ed. 1999).

¹²⁵ *Id.* at 1-2.

¹²⁶ *Id.* at 5-6. See *supra* notes 53-58 and accompanying text regarding Court of Wards.

¹²⁷ *Id.* at 8.

¹²⁸ *Id.* at 10. Bess had to fight for her jointure in the Court of Wards because her first husband was still in wardship when he died. *Id.*

¹²⁹ *Id.* at 12.

¹³⁰ *Id.* at 23. There is no indication how much these lands were worth, but Durant does mention that they cost more than Sir William could earn from his profits and rewards of office, so they must have been expensive. *Id.*; see also Arthur Collins, *Historical Collections of the Noble Families* 10 (1752) (claiming that William Cavendish had "so great an Affection for [Bess], that, on her Desire, he sold his Estate in the *Southern* parts of *England*, to purchase lands in *Derbyshire*, where her own Friends and Kindred lived").

Bess, and not the male heir Henry, gained control of them when Sir William died.¹³¹

Although Sir William died in debt and disgrace in 1557,¹³² Bess took advantage of connections at Court and became one of Queen Elizabeth's ladies-in-waiting shortly after her coronation in 1558. Through this position, Bess met her third husband, Sir William St. Loe, the Queen's Captain of the Guard, whom she married in 1559, but with whom she bore no children.¹³³ St. Loe died in 1565, leaving Bess, still in her mid-thirties, a widow for a third time.¹³⁴ Learning from past experiences, Bess had signed a prenuptial agreement that settled St. Loe's property on herself and her Cavendish heirs ahead of St. Loe's daughters and brothers.¹³⁵ Bess was now considerably wealthier than before her third marriage. Too restless to remain a widow at her country estate, Bess returned to Court and became one of Elizabeth's Ladies of the Privy Chamber.¹³⁶

B. Finally: Elizabeth, Countess of Shrewsbury

Unsurprisingly, given her marital history, Bess did not remain in Elizabeth's service for very long. Only two years later, Bess married George Talbot, the sixth Earl of Shrewsbury.¹³⁷ The Talbot family was one of the wealthiest and most influential in Elizabethan England. Their rise to greatness began with the first Earl of Shrewsbury, John Talbot, who was granted the title in 1442 by Henry VI.¹³⁸ By the time George came into his inheritance in 1560,¹³⁹ he was one of the richest noblemen in England.¹⁴⁰ Unfortunately, no marriage contract or settlement survives, but, considering the amount of wealth Bess brought into the marriage and her acumen in prior marriages, it is hard to believe she neglected to protect her interests. At the time of her marriage to George, Bess's gross annual income was £1600.¹⁴¹ Also, it is clear from an indenture dated January 7, 1568 that the couple's marriage contract provided that two of Bess's Cavendish children would

¹³¹ Durant, *supra* note 124, at 23 (suspecting that Bess demanded that property be bought in this fashion to avoid lands falling into hands of Court of Wards if Sir William died while his heir was still minor).

¹³² *Id.* at 30. Right before Sir William died, it was discovered that he had been "borrowing" from royal funds under his control. *Id.* at 22-23.

¹³³ *Id.* at 34.

¹³⁴ *Id.* at 48-49.

¹³⁵ Collins, *supra* note 130, at 14.

¹³⁶ Durant, *supra* note 124, at 50.

¹³⁷ *Id.* at 54.

¹³⁸ Complete Peerage, *supra* note 106, at 701.

¹³⁹ *Id.* at 713.

¹⁴⁰ Durant, *supra* note 124, at 54.

¹⁴¹ *Id.* at 53.

marry two of George's children.¹⁴² This arrangement would connect the fortunes of the Talbots and the Cavendishes forever, making sure that Bess's children benefited materially from her marriage with George.

According to this document, Gilbert, George's fourteen-year-old second son, was to marry Bess's daughter Mary, then twelve years old. If either of them died before the nuptials, then Gilbert and/or Mary were to be replaced by a sibling. A second match was arranged between Bess's eldest son Henry Cavendish, then eighteen, and George's youngest daughter Grace, no more than eight years old at the time. Like the previous couple, alternative brothers and sisters were named to replace a dead bride or groom. Luckily, no deaths occurred and the couples married at Sheffield on February 9, 1568.¹⁴³ The lands settled on the two couples and their heirs were to be enjoyed jointly by George and Bess during their lives, granting Bess some control over these properties during their marriage.¹⁴⁴

Bess's other Cavendish sons also benefited from a grant George made in 1572.¹⁴⁵ In this extraordinary document, George granted William and Charles Cavendish all the lands Bess brought into their marriage, while she herself regained a life interest in these properties.¹⁴⁶ This arrangement suggests that Bess had not protected her inheritance with a settlement before their marriage and that Shrewsbury initially gained control over all her properties under the law of coverture.¹⁴⁷ Yet this grant would further Bess's goal of establishing a Cavendish dynasty in her sons.

George gained from this transaction as well, for he no longer had to pay "great Somes of money which he the saide Earle Standeth Chargeable to pay as well to the yonger chyl dren of the said Countesse as also for the debts of the said Countyesse and for dyvers other weighty Consyderations."¹⁴⁸ It is unclear what exactly these "dyvers other weighty Consyderations" were, but they must have

¹⁴² *Id.* at 56.

¹⁴³ *Id.* at 57.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* at 77-79. The deed was written in 1572. Since this property transfer occurred in a deed and not a contract, there was no need for Bess to agree to it or sign it, which she could not have done under coverture in any event.

¹⁴⁶ *Id.* at 77.

¹⁴⁷ It is hard to explain why Bess allowed her fourth husband to gain control of her hard-won assets, especially considering Bess's tight control over her finances during her previous marriages. Perhaps George conditioned his marriage proposal on her guarantee that he would receive the profits from her lands.

¹⁴⁸ See Durant, *supra* note 124, at 77 (quoting George Talbot, sixth Earl of Shrewsbury).

been worth the £1050 a year he surrendered.¹⁴⁹ He certainly saved thousands of pounds since he no longer owed William and Charles Cavendish large cash settlements due upon their majorities.¹⁵⁰ Although it appears that everyone benefited from this agreement, this deed became the spark that lit the dispute that developed between Bess and George almost a decade later.

A combination of George's financial difficulties and the economic and personal strains caused by his job as caretaker and guard of Mary Queen of Scots catalyzed the dispute and estrangement between Bess and George. The Queen assigned George the prestigious but very expensive job of housing and guarding her cousin and Catholic rival, Mary Queen of Scots, in 1569. By 1580 he had spent thousands of pounds, and Queen Elizabeth never fully reimbursed him for the expenses incurred on behalf of his royal prisoner.¹⁵¹ In addition, all of his children were deeply in debt, mostly due to personal extravagance, and were begging for assistance.¹⁵²

Meanwhile, Bess prospered and provided for her children, spending a fortune (estimated to be around £25,000) purchasing land in her younger sons' names.¹⁵³ Again, these purchases furthered the interests of her Cavendish sons over the interests of her husband and her daughters, two of whom were married to her husband's sons. Her own personal income from her estates also had risen to £2500 annually, partially due to her acquisition of the Hardwick estate in 1581.¹⁵⁴ Although Bess legally acquired all of the land she and her sons owned, George felt that the 1572 deed was invalid. He claimed both that he was ill when it was written and that it was forged.¹⁵⁵ Bess, in his view, was robbing him and his Talbot heirs to benefit her Cavendish sons.¹⁵⁶

¹⁴⁹ Bess's lands were originally worth £1600 per year, but £550 of it was settled on Henry Cavendish when he turned twenty-one in 1571 according to his father's wishes. *Id.* at 78-79.

¹⁵⁰ The deed did not mention how much George owed William and Charles upon their majorities, but since they both were to turn twenty-one within two years, George avoided paying them cash immediately. Since stepfathers normally would not owe stepsons anything when they came of age, this deed suggests that there was a prenuptial arrangement made between Bess and George. *Id.* at 77-78.

¹⁵¹ *Id.* at 96, 106, 108.

¹⁵² *Id.* at 105-08. Durant does not specify how the Talbot children managed to squander their money, but he does claim that the Earl felt besieged with requests for financial assistance from his children. *Id.* at 108.

¹⁵³ *Id.* at 113.

¹⁵⁴ *Id.* Bess gained Hardwick on the death of her brother James, who died without children in Fleet Prison. *Id.* at 104-05.

¹⁵⁵ *Id.* at 137.

¹⁵⁶ See *id.* at 114.

C. Round One: Bess vs. George, Earl of Shrewsbury

In June of 1583, Bess left George and their home at Sheffield for Chatsworth on business.¹⁵⁷ George never allowed her to return, stopped sending her the allowance of £800 a year to which he had agreed, and tried to recover the properties he had granted Bess and her sons in 1572 by force and court order.¹⁵⁸ In 1584, some of George's henchmen even forced Bess and her son William out of Chatsworth.¹⁵⁹ George then had William thrown into Fleet Prison for taking all the furnishings.¹⁶⁰ George also made it impossible for Bess to gather the profits from her lands by harassing her estate managers and taking the rents and crops, leaving Bess with little means of support.¹⁶¹

George explained his position to an important courtier in an August 1584 letter: he claimed that the 1572 deed granting Bess and her sons property was invalid, and therefore that William's action in taking furniture and plate out of Chatsworth was stealing.¹⁶² He also made the untenable claim that Bess was "pretending" to be dependent on her sons, although he had confiscated almost all of her lands and stopped sending her an allowance.¹⁶³

This dispute between two prominent Court figures clearly disturbed the Queen and Court, for a commission was organized in 1584 to study it and arrange a settlement.¹⁶⁴ The Commission duly studied the evidence and witnesses proffered by each side and came to a judgment in late April 1585.¹⁶⁵ This decision held in favor of Bess in al-

¹⁵⁷ *Id.* at 119.

¹⁵⁸ *Id.* at 119-21.

¹⁵⁹ *Id.* at 121.

¹⁶⁰ *Id.*

¹⁶¹ *Id.* at 120-21.

¹⁶² Letter from the Earl of Shrewsbury to the Earl of Leicester (Aug. 20, 1584), in *V Calendar of the Manuscripts of the Most Honourable The Marquess of Bath, Preserved at Longleat, Wiltshire 52* (G. Dyfnalut Owen ed., 1980) [hereinafter *Talbot*]. The letter read: William Cavendish denies in part the charges against him, but I shall bring substantial proof of my allegations.

As to the grant under my hand and seal for the quiet enjoying of lands, etc., which Mr[.] Cavendish produces, consideration must be had of the time of its making, the considerations for which it was made and the possession of the thing granted.

In any case he had no right to come to Chatsworth by night and convey away the principal stuff, and that on two occasions. . . . Now my wife pretends she is wholly dependent on her son and his allowance.

¹⁶³ Bess retreated to Hardwick Hall, the only property Shrewsbury did not claim; unfortunately, the estate was in dire disrepair and cost more to run than it made. Durant, *supra* note 124, at 121-22.

¹⁶⁴ Two chief justices and the Lord Chancellor served as the members of Commission of Enquiry. *Id.* at 136.

¹⁶⁵ *Id.* at 137-38.

most every respect, for it claimed that "such dedes and grauntes as your Lordship hath conveyed to my Lady at sondry tymes under your hand and seall, . . . which her highnes did commytt to the grave consideration of my Lord Chancelor and others her lernyd juges, . . . as they all think the meaning of your Lordship was that my Lady should enjoye all those gyftes . . ." ¹⁶⁶ The Commissioners ordered George to stop pestering Bess, her kin, and her servants with superfluous law-suits. They hoped for "a godly and crystyen reconcylement betwene [Bess and George] as man and wyfe." ¹⁶⁷

George, understandably upset with this judgment, attempted to avoid following its orders without seeming to disobey his Queen. In a letter written a few months after the first judgment, Shrewsbury tried to explain his position:

My wife and her children pester the Queen and council with their imaginary griefs, but seldom get to 'particularities which I am able to answer . . . , the like whereof hath not ben offered to a man of my cotte by a woman of so base a parentage and her children.' They should not be heard or believed. I must answer because I am charged with breaking her Majesty's order. ¹⁶⁸

Clearly George felt cornered, for he resorted to attacking his wife because of her "base parentage" and claimed that someone of his status should not be forced to respond to her. Attacking her honor and status appeared to George to be the only way of defending his position.

Nonetheless, Bess convinced the Queen and council of her "imaginary griefs," for the Queen herself reconsidered the evidence and sent out another judgment in 1586: ¹⁶⁹

- (1) That the Earl content himself with the £500 of land assigned him by the Queen's former order.
- (2) That the Earl pay to the Cavendishes the £2000 claimed by them in respect of profits of the lands at variance.
- (3) 'Where it was before ordered that all sute commenced by the sayd Erle against the said Countesses sonnes and servants or any of them should cease; contrary wherunto the said Erle proceded in his sute then dependyng against . . . the said Countesses servant . . . her Majesties pleasure is that the said Erle shall content himself with the judgment only without taking advantage . . .' Nor is he to enter into any action against the Countess etc. for matters past.

¹⁶⁶ Letter from the Earl of Leicester to the Earl of Shrewsbury (Apr. 30, 1585), in Talbot, *supra* note 162, at 55.

¹⁶⁷ Id.

¹⁶⁸ Letter from the Earl of Shrewsbury to Sir Francis Walsingham (Oct. 23, 1585), in Talbot, *supra* note 162, at 62-63.

¹⁶⁹ Durant, *supra* note 124, at 141.

(4) The Earl not to displace any of the Countess's tenants.¹⁷⁰

Bess, as well as her Cavendish sons, certainly won in this settlement. Although Bess only regained what was rightfully hers, it is unusual that so little compensation was granted to her husband. Bess's close friendship with the Queen clearly gave her a powerful ally during this dispute. Even though he had been a successful courtier in earlier days, George's refusal to follow the orders of the first settlement cost him sympathy from both the Queen and the Court officials who drafted it. Bess, on the other hand, never faltered in her devotion to the Queen and treated top royal officials graciously throughout the dispute, making everyone more disposed to help her. In addition, Bess never lashed out against her husband, making her a more sympathetic petitioner. Bess chose both her Court allies and her strategy more wisely than her husband and she benefited accordingly.

Yet even this second order did not stop the determined (and possibly mentally unstable)¹⁷¹ George from complaining loudly about the unfairness of the judgment to Lord Burghley in May 1586 and referring to the 1572 document as the "pretended deed."¹⁷² George was convinced that Bess helped to spread treasonous rumors about him at Court. To George, everyone at Court became an enemy when they sided with Bess. George won no support at Court with his paranoid claims and he was forced to remit to Bess and the Cavendishes all confiscated rents.¹⁷³

Bess took the moral high ground throughout the dispute with her husband. In her letters to him during their estrangement, she claimed to want nothing more than a happy reunion with him. In an undated letter from roughly 1583, she pleaded her case eloquently:

My Lord, the innocency of my own heart is such and my desire so infinite to procure your good conceit as I will leave no ways unsought to attain your favour, which long you have restrained from

¹⁷⁰ Order, Earl of Shrewsbury *versus* The Countess of Shrewsbury (May 8, 1586), in Talbot, *supra* note 162, at 69-70.

¹⁷¹ Durant believes that by the mid-1580s, the Earl was mentally unstable. Durant, *supra* note 124, at 112, 119.

¹⁷² Letter from the Earl of Shrewsbury to Lord Burghley (May 23, 1586), in 3 Salisbury, *supra* note 120, at 142, 143 (

Hopes that neither her Majesty nor Burghley will press him to any further payment than that doth belong to them [the Cavendishes]. Finds Mr. Secretary so much devoted to his [the writer's] wife that he thinks he is fitter to be a witness for her than a judge in these causes. It was never ordered that suits commenced by him should cease against her sons and servants. . . . Which detestable and most horrible speeches and injuries wrought unto him by his wife, her sons, and servants, he hopes all reasonable men will think most odious.).

¹⁷³ Durant, *supra* note 124, at 141.

me, and in all duties of a wife I beseech you not to ruin with a settled condemnation of me; . . . neither is there anything alleged against me that deserves separation If you will say that I or mine have touched you in duty of allegiance, first I protest there is no such thing; . . . or how can it in reason be thought I should forget myself so greatly being your wife, and my daughter wife to your eldest son?¹⁷⁴

Bess continued to claim wifely devotion throughout their estrangement, while at the same time she tenaciously defended her rights to the property listed in the 1572 deed. Much like Elizabeth Manners, Bess used social stereotypes of women, this time the honest and devoted but scorned wife, to her benefit, both with Court officials and her own husband.

Although George and Bess attempted to reconcile several times, they never lived together again for more than a few days.¹⁷⁵ George refused to believe that Bess really wished to reconcile. His letter to her in 1586 highlighted his distrust of her intentions:

[W]here you were defamed and to the world a byword, when you were St. Loo's widow, I covered those imperfections (by my inter-marriage with you), and brought you to all the honour you have, and to the most of that wealth you now enjoy. . . . [I]f you once got anything of me, you cannot be contented to restore it again. . . . One chief cause was, where I had made you my sole executrix you procured me to make a lease in trust to two of your friends for three-score years, minding thereby to have the benefit thereof by the executorship. You caused me in my extremity of sickness to pass my lands by deed enrolled . . . in bargain and sale . . . so that, if I had then died, the same might have been embezzled But when I perceived in what danger I stood, I put you out of my will¹⁷⁶

He still somehow felt cheated out of the lands he granted to Bess for life in the 1572 deed. Bess's alleged duplicity cemented George's belief that Bess only wished to rob him and his rightful heirs out of his remaining property. George again mentioned her lowly station before their marriage, claiming that he had saved her from disgrace and relative poverty. Since Bess had been a royal lady-in-waiting and brought

¹⁷⁴ Letter from Elizabeth, Countess of Shrewsbury to (George, Earl of Shrewsbury) (Aug. 26, (? 1583 or before)), in Talbot, *supra* note 162, at 45-46 (question mark in original). Shrewsbury's eldest son Francis had died in 1582, leaving Gilbert, who was married to Bess's daughter Mary, as his heir.

¹⁷⁵ Durant, *supra* note 124, at 147-48.

¹⁷⁶ Letter from The Earl of Shrewsbury to his Countess (Aug. 5, 1586), in 3 Salisbury, *supra* note 120, at 163-65.

over £1500 a year in property into the marriage, however, his claims seem unfounded.

When George died in 1590, he did not even mention Bess in his will.¹⁷⁷ He did, however, leave his daughter Grace, who was married to Henry Cavendish, one thousand pounds “yf she fortune to survive him [Cavendish], or els she to not take anie proffytt of the legacie.”¹⁷⁸ He clearly did not want anyone connected with Bess or the Cavendishes to benefit from his death. Although not mentioned, Bess received by default one-third of George’s lands as dower for her use for her life, and since George’s two younger sons refused the executorship, Bess briefly replaced them as sole executrix.¹⁷⁹ She did not hold this office long, due to complaints from George’s heirs. Her son-in-law and stepson Gilbert, now the seventh Earl of Shrewsbury, took her place.¹⁸⁰

During this long dispute between Bess and George, Bess’s actions and strategies demonstrated how a married elite woman could maintain control over her inheritance. Bess gained considerable material and nonmaterial resources through her previous marriages that enabled her to battle successfully with her husband for control of property they both claimed. Wealthy from jointures and gifts given to her by previous husbands, Bess had the advantage of entering this marriage with considerable amounts of land and money. She also had gained crucial experience regarding financial matters when she was widowed, an ability to control her own property, and critical connections to the Court. These Court connections, in particular her friendship with the Queen, enabled Bess to gather support for her suits, while her husband proved unable to convince former Court allies of the validity of his claims to the property listed in the 1572 deed. Ultimately, Bess used these assets to place the needs of her children, especially her sons from a previous marriage, ahead of her husband’s wishes.

D. Round Two: Bess vs. Gilbert, Earl of Shrewsbury

Immediately after George’s death, a new dispute broke out between Bess and the new Earl Gilbert, who refused to give Bess control

¹⁷⁷ The Will of George, 6th Earl of Shrewsbury (Dec. 23, 1590), in 121 *The Publications of the Surtees Society* 148-50 (1912).

¹⁷⁸ *Id.* at 148-49.

¹⁷⁹ Durant, *supra* note 124, at 151. He states that Bess got these lands due to a marriage settlement, but since no such contract survives and Bess claimed one-third of her husband’s lands, it appears that she claimed her dower-right.

¹⁸⁰ *Id.*

of her dower lands.¹⁸¹ But after several years of wrangling and intervention by the supervisor of the will, Lord Burghley, Bess got the dower lands.¹⁸² In the 1590s, Bess's gross annual receipts averaged £8300; about £3000 came from her dower lands.¹⁸³ By the year 1600, that total probably had risen to £10,000 a year, making Bess one of the wealthiest women in England.¹⁸⁴

Bess continued to fight with Gilbert into the seventeenth century on behalf of her two Cavendish sons, William and Charles. Although Gilbert had been Bess's ally against his own father in the dispute over the deed, possibly because of his marriage to Bess's daughter Mary, once he came into his inheritance he wanted to hold onto every piece of property himself.¹⁸⁵ Apparently, Gilbert continued his father's fight against the transfer of lands (from the 1572 deed) to the younger Cavendish sons.¹⁸⁶ Henry, Bess's eldest son and not a favorite with her since he had sided with his stepfather in their marital dispute,¹⁸⁷ sold some Cavendish lands to the Talbots¹⁸⁸ without his mother's prior knowledge. Gilbert quickly responded to a courtier's inquiries about the second transaction, replying that "his dear good mother-in-law means quite to overthrow him in the late purchase he made, wherein he is resolved to stand, so far as he may justify in honour, conscience, and law."¹⁸⁹ It is unclear how this dispute was resolved, but considering the wealth and status of Bess's younger sons Charles and William Cavendish, they ultimately must have retained the land that Bess had arranged for them to receive in the 1572 deed. Although Gilbert and Bess had been close allies, the ties between them broke down rapidly

¹⁸¹ *Id.*

¹⁸² *Id.* at 152.

¹⁸³ *Id.* at 182.

¹⁸⁴ *Id.*

¹⁸⁵ Durant suggests that it was Gilbert's close friendship with Charles Cavendish that made him side with Bess against his father, but Durant offers no evidence to support this claim. See *id.* at 115-16.

¹⁸⁶ In 1600, Bess begged Sir Robert Cecil for "favour in her cause. The Earl of Shrewsbury [Gilbert], under pretence of a grant of concealed lands, goes about to overthrow the estate of some lands formerly conveyed to her children, and dearly obtained by her, and upon great considerations." Letter from the Countess Dowager of Shrewsbury to Sir Robert Cecil (June 2, 1600), in 10 *Salisbury*, *supra* note 120, at 172.

¹⁸⁷ There is no evidence to explain exactly why Bess and Henry did not get along. Durant claims that Henry was always in debt and in general an unsavory character, and that he took the Earl's side "to snipe back at his mother." Durant, *supra* note 124, at 116.

¹⁸⁸ Letter from Elizabeth, Countess Dowager of Shrewsbury to Sir Robert Cecil (Oct. 6, 1600), in 10 *Salisbury*, *supra* note 120, at 342. When Bess found out, she wrote an important royal official to pray "that such lands of her son Henry Cavendish as were passed lately under the great seal by the Earl of Shrewsbury . . . most unconscionably and unnaturally, may be reassured by them to the right owners." *Id.*

¹⁸⁹ *Id.* at 366.

once both wanted control of the same properties. The relationship between stepmother and stepson could not withstand a dispute over land, because they placed their own financial needs above those of relatives by marriage.

It appears that Bess never forgave either Gilbert or Henry. The only son she mentioned in her 1601 will was William Cavendish, whom she made "the true and only Executor of this my last Will and Testament."¹⁹⁰ She gave him "all her Plate, Furniture, &c. at her house at *Hardwick* . . . ; also all her Funiture, &c. her house at *Oldcoates*," as well as "all the Deeds, Writings, and Evidences, in her possession, which any Ways contain any of the Mannors, Lands, &c."¹⁹¹ Bess even excluded Charles, previously her favorite son, from her will, supposedly due to his close friendship with Gilbert.¹⁹² She did "omit all Wrongs and Injuries which [Gilbert, his wife, and Charles had] done against [her]" and did "pray God to bless them" but she refused to will them a single pound.¹⁹³ In a later codicil, she disinherited her son Henry, declaring that he "shall [not] have any Benefit by any such Gift of Legacy."¹⁹⁴ In a final codicil, she bequeathed four thousand marks to the sons of Charles Cavendish, but never gave Charles himself anything.¹⁹⁵ Bess wanted to create a Cavendish dynasty and she chose William as the heir to that dynasty. Bess's choice of legatee is interesting in two related yet slightly contradictory ways. Bess did not follow primogeniture as she chose a younger son, so she clearly felt capable of breaking custom and selecting the child she wanted to become one of the richest people in England. Yet, Bess still chose a son and thus created another patrilineal dynasty that would prefer male over female heirs in the succeeding generations.

Marriages between elite families did not always create lasting alliances, for the wealth these unions brought together often became the source of conflict.¹⁹⁶ Bess's relationships with her children and stepchildren were far from peaceful or perfect and they quickly disintegrated if a dispute over land arose. Intermarriage did not prevent fights between Bess and her Talbot stepchildren. Furthermore, even some of Bess's own sons, for whom she provided handsomely with

¹⁹⁰ Collins, *supra* note 130, at 17.

¹⁹¹ *Id.* at 16-17.

¹⁹² Durant, *supra* note 124, at 220.

¹⁹³ Collins, *supra* note 130, at 17.

¹⁹⁴ *Id.* at 18.

¹⁹⁵ *Id.* Although there are no documents which mention her grandchildren, Bess must have felt affection toward them and wanted them to receive an inheritance from her.

¹⁹⁶ It should be noted, however, that Gilbert and Charles remained friends throughout their lives. Durant, *supra* note 124, at 115.

land and estates, chose to side with Gilbert once he became Earl of Shrewsbury.

Bess of Hardwick used her property, and the wealth and influence it granted her, to establish her children financially and to create a Cavendish dynasty. Bess identified most closely with her children's father, Sir William Cavendish, and she wanted his name and lineage to continue and prosper. She demonstrated her affection for her second husband through her request to be buried with him at her death in 1608.¹⁹⁷ Bess's connection to her second husband and their Cavendish children placed her into direct conflict with her fourth husband, the Earl George, for she consistently placed the welfare of these children ahead of him or his concerns. Bess tenaciously fought anyone who attempted to keep property out of her or her sons' control. Bess's three previous marriages gave her the assets that made her successful in her dispute with her husband: wealth, Court connections and financial and legal experience as a widow.

Although George presumably possessed these three assets, his claims regarding the property and Bess's actions clearly conflicted with the evidence. He also refused to bargain and quickly resorted to accusing his former allies of collusion with his wife, thereby losing critical support at Court. Bess played her role as an unfairly scorned and abandoned wife perfectly, and she managed to become one of England's richest and most influential women in the process. Yet Bess defined herself through her second husband, their sons, and the property she was able to purchase for and grant to them. Bess provided for her daughters as well, but only in the form of advantageous marriages. Thus, even though Bess challenged one patriarch, her last husband, she created another patriarch in her son William. In so doing, Bess perhaps thought she could best ensure the preservation of the wealth she amassed.

CONCLUSION

Focusing solely on the legal restrictions constraining women in early modern England, it would be easy to conclude that aristocratic women rarely controlled or owned property. Based on the analysis of legal tracts and documents, historians agree with this assessment of women's ability to own land.¹⁹⁸ These historians neglect, however, to consider the actions of individual men and women regarding property and inheritance. They also fail to understand that law as doctrine did not always translate into law as social practice. Discovering how ac-

¹⁹⁷ Complete Peerage, *supra* note 106, at 713-14.

¹⁹⁸ See *supra* notes 5, 7 and accompanying text.

tual aristocratic men and women behaved is a much more difficult task than studying the legal doctrines of the period, for it entails piecing together lives with fragmentary evidence. This research is important, however, for it tells us much more about inheritance and ownership patterns among elite women.

There are three findings that can be gleaned, at least tentatively, from the stories of the Manners women and Bess of Hardwick. First, it appears that the patriarchal system of property inheritance and distribution contained contradictory elements. As was shown in the Manners family, jointures and dowers caused serious financial hardship on the Earldom by separating large amounts of land from the patriline for long periods of time. These distributions for the benefit of widows and daughters sowed the seeds of discord within the Manners family. This discord was heightened considerably by the addition of an heiress that sucked another large quantity of land and wealth out of the Earldom. Yet these events were built into the system of inheritance and family property distribution.

Second, aristocratic women, and often men as well, consistently placed their children's needs ahead of the patriline. None of the women studied was concerned primarily about the land attached to the family; rather, they wanted their children to be provided for properly, even if it impoverished the estate of the heir. Fathers also did not wish to leave their estates intact to their male heirs if it meant excluding daughters. Thus, although the laws regarding real property were created to keep estates intact, individual property owners used alternative legal strategies and systems to divide their property among many children. When added to the problems that could be caused by the functioning of the system as it was intended, many gaps were created for women to gain control of property and dispose of it as they pleased.

Finally, this Note finds that when an elite woman was given the chance to dispose of a vast, land-based fortune, she chose to create another patriarchal dynasty by willing her estate to her favorite son. Specifically, while Bess of Hardwick's dynasty was not typical in that she skipped over elder sons whom she thought unfit or disloyal, she did not appear to consider leaving her land to a daughter or creating a trust or settlement that would ensure that her estate would pass through the female line, like the Roos Barony. Even after her startling victories over her fourth husband and shrewd accumulation of land over the years, Bess still saw the world through a patriarchal lens and put all of her life's work into creating a dynasty in the name of her second husband rather than her own.

The historical problem of aristocratic women and property inheritance is a complex issue, and much more research must be done to confirm the conclusions ventured on the evidence in this Note. Yet the detailed study of individual aristocratic families is an illuminating way of discovering how, when, and why women gained control of property, for it studies women within the context of familial strategies regarding land. This approach also shows that English legal and familial institutions, conventionally considered rigid in their enforcement of patriarchy, display more flexibility in individual cases. Finally, it demonstrates that neither men nor women strictly followed the patriarchal rules of law and custom regarding the ownership of property. Rather, they molded those institutions to benefit themselves and their children.

APPENDIX

GENEALOGY OF THE MANNERS EARLS OF RUTLAND

Sir Robert Manners = Eleanor, sister & co-heiress of Edmund Lord Roos

George, Lord Roos (d. 1513) = Anne d. & heiress of Sir Thomas St. Leger (d. 1526)

1. **Thomas** (d. 1543) = (i) Elizabeth d. of Sir Robert Lovel (d. 1513)
(ii) Eleanor d. of Sir William Paston (d. 1551)

2. Henry (d. 1563)	= (i) Margaret d. of Ralph Earl of Westmorland (d. 1559) (ii) Bridget d. of John Lord Hussey (d. 1601)	Roger Manners	Thomas Manners	Sir John Manners (grandfather of 8th Earl)
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3. Edward (d. 1587)	= Isabel d. of Sir Thomas (d. 1587) Holcroft (d. 1606)	4. John = Elizabeth d. of Francis Charlton (d. 1595)
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Elizabeth = William, son of
Lady Roos | Sir Thomas Cecil
(d. 1591) | future Earl of Exeter

William Lord Roos (d. 1618)

Bridget	5. Roger = Elizabeth (d. 1612) d. & heiress of Sir Philip Sydney (d. 1612)	6. Francis = (i) Frances d. (d. 1632) & co-heiress of Sir Henry Knyvett (d. 1605) (ii) Cecily d. of Sir John Tufton (d. 1653) (had sons who died in 1613 and 1620)	7. George = Frances Sir Oliver (d. 1641) d. of Sir (d. 1613) Edward Cary (d. 1656)
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Katherine = George Villiers, Duke of Buckingham
(d. 1649) (d. 1628)