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Feudal Constraint and Free Consent in the Making of Marriages in Medieval England: Widows in the King's Gift

Sue Sheridan Walker

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Article abstract

Les documents administratifs et légaux de l'Angleterre médiévale attestent que le seigneur recevait des compensations financières en conséquence des droits qu'il détenait sur le mariage de ses vassaux, de leurs héritiers et de leurs veuves. C'est particulièrement sur le problème du remariage de ces dernières que cet article se penche. L'auteur se demande si ces droits laissaient une place au libre choix de la veuve, si la coutume anglaise a évolué dans le même sens que le droit canon en ce qui a trait au libre consentement des époux, et, si les querelles découlant de ces droits concernaient plus l'aspect de la taxation que celui des droits fondamentaux de la personne.

Il semble bien qu'au cours du treizième siècle, les veuves jouissaient effectivement du droit de choisir leur époux. Evidemment, elles devaient satisfaire aux droits du seigneur mais ces droits étaient maintenant beaucoup plus perçus comme une forme de revenus que comme le privilège de désigner l'époux. Plusieurs veuves, il est vrai, n'achetaient pas leur droit au libre choix et continuaient de laisser au seigneur le soin de leur attribuer un nouvel époux ; par contre, plusieurs autres se mariaient sans permission quitte à payer ensuite l'amende imposée ; enfin, il arrivait aussi qu'une veuve consente à se faire enlever, peut-être dans le but d'éviter la sanction pécuniaire. Somme toute, les veuves étaient maintenant maîtresses de leur remariage même si elles devaient pour cela offrir une compensation financière. La Grande Charte, en insistant sur le libre consentement, s'harmonisait fort bien avec le droit canon et anticipait ainsi la pratique future.

*Feudal Constraint and Free Consent in the Making of Marriages in Medieval England: Widows in the King's Gift**

SUE SHERIDAN WALKER

The administrative and legal records of medieval England testify that feudal lords, the king paramount among them, received financial satisfaction for their rights to control the marriage of their vassals. With perhaps rare exceptions,[1] the feudal law did not force a widow to marry if she wished to remain single or to marry contrary to her wishes. But did that law sometimes affect personal choice in the matter of choosing a spouse? This paper will be limited to the king's widows, the relicts of tenants-in-chief or of their tenants when their feudal lords' lands were in the king's hands by reason of wardship, escheat, or ecclesiastical vacancy. Their marriage (actually remarriage) was said to be in the king's gift.

Marriage was important for the feudal bond because of the personal nature of feudal contracts. As the thirteenth-century lawyer Bracton wrote, there were penalties for marrying without the assent of the chief lord "lest the lord be forced to take the homage of his chief enemy or other unsuitable person."[2] When the personal element in feudalism declined in the late medieval and Tudor period, the fiscal attractiveness of feudal marriage rights kept them important to feudal lords.[3]

The well-known concessions which had been extracted from John at Runnymede can easily be exaggerated. In the course of the twelfth century, canon law had established the principle that a marriage valid in the eyes of the church must be based on the free consent of both spouses.[4] Forced marriages could indeed be annulled in

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1 D.M. Stenton, *The English Woman in History* (London, 1957), p. 51. Even after issue of the Charter, John could not refrain from giving a young widow as a prize for the mercenary, Captain Faukes de Breaute. Margaret, daughter and co-heiress of Warin fitz Gerold, the king's chamberlain, was the child bride of the earl of Devon. She bitterly resented her marriage, which Lady Stenton terms "forced" and, when her husband rebelled and was exiled in 1224, she obtained an annulment of the marriage from the pope. This was, of course, rather a long time after the marriage was made.

2 Bracton, *On the Laws and Customs of England*, translated with revisions and notes by Samuel E. Thorne, (Cambridge, 1968), II, p. 255 (fol. 88).

3 Joel Hurstfield, *The Queen's Wards* (London, new ed. 1958), pp. 39, 145-8, 213, 242-3.

4 M.M. Sheehan, "Marriage Theory and Practice in Conciliar Legislation and Diocesan Statutes of Medieval England", *Mediaeval Studies*, XL (1978), pp. 408-60, see esp. p. 458.

church courts, but most of the cases discovered to date concern release from marriages dictated not by feudal lords but by families.[5] Did the customs in England concerning the king's widows parallel the development of canon law? Were the quarrels concerning the control of marriages squabbles about taxation or did they involve fundamental personal rights? Evidence from royal records (parallel to the provisions of canon law) shows that the widow who held in chief had gained by the early thirteenth century effective freedom to choose her husband. Thus the control of marriage by the king had become more a revenue raising measure than an attempt to force widows to accept a particular or any husband.

The first direct reference to feudal marriage rights in England occurs in the 1100 Coronation Oath of Henry I. The king promised a nobility sensitive to the significance of jurisdiction over marriage that he would freely grant permission to barons or other tenants of the crown who made a request to give a female in marriage. Heiresses should be married according to the counsel of his barons, while widows with or without children were to receive their respective dowers and marriage portions and were not to be given in marriage unless she herself consents.[6] In the first extant pipe roll of the thirty-first year of Henry's reign, three widows purchased the right to remain single.[7] Does this item support Eleanor Searle's interpretation of the Coronation Charter that the king was to exercise a tight control over feudal marriages?[8] Or does it suggest that even this early the widow with the payment of a tax determined her own destiny?

One is hardly surprised that Henry II, always sharp-eyed for revenue, continued the practice of selling his marriage rights over widows. The pipe rolls throughout the reign record payments for the grants of widows.[9] The recipients may have sought

5 No evidence of feudal or familial constraint is found among the petitions for dissolution discussed in M.M. Sheehan, "The Formation and Stability of Marriage in the Fourteenth Century: Evidence of an Ely Register", *Mediaeval Studies*, XXXIII (1971), pp. 228-63. Similarly in R.H. Helmholz, *Marriage Litigation in Medieval England* (Cambridge, 1974). He does, however, cite a case of a second marriage dissolved because of a brother's threat to deprive a woman of her marriage portion if she did not contract the marriage (*Harvington* v. *Sanvell* (1443), p. 92, note 66).

6 D.C. Douglas and G.W. Greenway, eds., *English Historical Documents 1042-1198* (New York, 1953), pp. 40-1. For a Latin text, see William Stubbs, ed., *Select Charters* (Oxford, 1895), pp. 100-1.

7 Joseph Hunter, ed., *Magnum Rotulum Scaccarii vel magnum Rotulum Pipae de Anno tricesimo Primo Regni Henrici Primi* (London, 1833), pp. 67, 88, 94 (marriages of widows with the custody of their children); p. 158 (widow's marriage granted to William, son of Richard); pp. 95, 139, 147 (widow's fine for purchase of their own marriages, so that they would not be constrained to remarry and asked for their dower lands).

8 Eleanor Searle, "Freedom and Marriage in Medieval England: An Alternative Hypothesis", *The Economic History Review* (2nd series), XXIX (1976), pp. 482-96, see esp. p. 485. This article is in comment on Jean Scammell's article and concerns marriage at the manorial level. See further Searle's article, "Merchet in Medieval England", *Past & Present*, LXXXII (1979), pp. 3-43.

9 For example, Pipe Roll 16 Henry II, (*Pipe Roll Society* XV, 1892), p. 37 (hereafter PR and PRS respectively); PR 17 Henry II, (PRS XVI, 1893), p. 62; PR 22 Henry II, (PRS XXV, 1904), p. xxvi, an entry which began in the sixteenth year.

personally the lady in marriage or may have intended only to stand in the place of her feudal lord in regard to her marriage fine. In the 1185 *Rotuli de dominabus et pueris et puellis*, a veritable feast of widows was served up, complete with their approximate ages to facilitate calculation as to their ability to bear children and how long their dower might be enjoyed by a prospective husband.[10] The attraction in marrying a widow was the shared use of her dower—a life interest in one-third of the lands possessed by her late husband. Dower was cumulative: the more previous husbands, the more extensive were the widow's dower lands. Some fines for the widow's hand made special mention of dower,[11] and there are instances when widows who secured their dower lands from Henry II promised to marry with the king's permission.[12]

A fine in the Middle Ages referred both to the payment in advance for the grant of a privilege or to the making of recompense for an offence committed. The latter use of fines was frequent in the pipe rolls of Henry II which record payments for having married a woman without royal licence.[13] Many of these records, however, are not very useful for studying marriage procedures, since often they fail to identify the woman or even to distinguish her as a king's widow instead of an heiress in the king's gift. The marrying either a widow or an heiress without licence was a "trespass" which required payment to recover the "*benevolentia regis*".

When Glanvill discussed the question of whether a woman who has a dower could marry at her pleasure without the consent of her "warrantor" (feudal lord) and with what sanction, he decided that "the woman must marry with the consent of her warrantor or she will lose her dower."[14] The Pipe Roll of 23 Henry II orders land seized because a woman married without licence of the king.[15] This penalty may have been applied in the sixth year of Richard I (1194-95), where account was rendered for £115 4d "from the stock of the Countess of Aumale sold in the king's first year because she refused to marry William de Forz."[16] The evidence here, however, is not clear: according to the *Complete Peerage* she did marry Forz, but he was dead by the

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10 J. Horace Round, ed., *Rotuli de dominabus et pueris et puellis* (PRS XXXV, 1913), see for example pp. 1, 2-3, 4-5, 5, 6, 7, 11, 14(2), 15, 16-7, 17, 17-8, 19, 20, 22-3, 23, 24, 24-5, 25, 25-6, 27, 28, 31, 32, 33. On p. 49, Maud, the ten-year-old widow of John de Bidune, lived on as Maud de Rocheford until 1255, seventy years from the date of the roll as the editor notes on p. xxxvii.

11 PR 27 Henry II, (PRS XXX, 1909), p. 57.

12 PR 32 Henry II, (PRS XXXVI, 1914), p. 106, Hawisa de Archis; PR 34 Henry II, (PRS 38, 1925), p. 86, Matilda Countess of Warwick "*pro habenda terra patris sui et pro recto de dote sua et se nubere ad voluntatem regis.*"

13 PR 24 Henry II, (PRS XXVII, 1906), p. 53; PR 26 Henry II, (PRS XXIX, 1908), p. 41; PR 26 Henry II, p. 72; PR 27 Henry II, p. 21; PR 32 Henry II, p. 9; PR 25 Henry II, (PRS XXVIII, 1907), p. 106. One was definitely a widow, the sister-in-law of the grantee: PR 27 Henry II, p. 47.

14 Glanvill, *Tractatus de Legibus et Consuetudinibus Regni Anglie*, G.D.G. Hall, ed., (London, 1965), VII, pp. 12, 86.

15 PR 33 Henry II, (PRS XXXVII, 1915), p. 146.

16 PR 6 Richard I, (PRS XXXXIII, 1928), cited in the introduction, p. xxxiv.

time of this entry.[17] As Painter has observed, it is no wonder that fines to remain single were common in the reigns of Richard and John.[18]

Holt has written that "one of the first stages in the emancipation of woman is to be traced in the emergence of the proffer that they should not be distrained to marry for a second time without their consent."[19] The fine roll of 1199 illustrates this practice. Nichola de Hermingford, widow of William Ruffus, offered one hundred pounds so that she would not be forced to marry. The offer was accepted on condition that, if she decided to marry again, she should do so with the king's advice.[20] The widow of Ralph de Cornhill offered two hundred marks and three palfreys that she should not be married to Godfrey de Louvain and that she could marry whomsoever she wished while keeping seisin of her lands. It was noted on the roll that she had married her own choice and that the money was to be paid.[21] Sibyl de Tingerie offered two hundred marks for having her lands and for licence to marry whomsoever she wished "of the king's faithful men."[22] Holt cites abundant evidence to indicate that such arrangements were popular in the years before Magna Carta with "ladies great and small" who wished to enjoy their rightful property and avoid "a new marriage into which the king was ever ready to drive them."[23]

The use of the fine to marry according to one's own wishes antedates the reign of John. As early as 23 Henry II (1176-77), widows bought the right to marry on their own authority.[24] Among these early fines is one from Matilda, Countess of Warwick, daughter and co-heiress of William de Percy. She gave seven hundred marks to suit herself about marriage.[25] The Pipe Roll of 2 Richard I (1190) shows five women buying their own marriages.[26] The Pipe Rolls of 8 and 10 Richard I (1196, 1198), for example, both contain a good crop of fines.[27] In the first Pipe Roll of John (1199), the practice continued, with twenty-five women having made fine for their marriages: four not to have to marry, and twenty-one to marry as they wished.[28]

Chapters VII and VIII of Magna Carta removed the overt possibility of forced remarriage:

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17 G.E.C. (okayne), *Complete Peerage* (London, 1916) I, pp. 353-4.

18 Sidney Painter, "History of the English Barony", *Johns Hopkins Studies in History and Political Science* (Baltimore, 1943), p. 67.

19 J.C. Holt, *Magna Carta* (Cambridge, 1965), p. 46.

20 Thomas Duffus Hardy, ed., *Rotuli de oblatis et finibus in turri Londinensi asservati, tempore Johannis* (Record Comm., 1835), p. 29.

21 *Ibid.*, p. 37.

22 *Ibid.*, p. 2.

23 Holt, *Magna Carta*, pp. 113-4.

24 PR 23 Henry II, (PRS XXVI, 1905), p. 5; PR 26 Henry II, (PRS XXIX, 1908), p. 140.

25 PR 31 Henry II, (PRS XXXIV, 1913), p. xxx; PR 32 Henry II, (PRS XXXVI, 1914), p. 93. See p. 106 for the fine of another widow.

26 PR 2 Richard I, (PRS XXXIX, 1925), pp. 17, 21, 61, 108, 111, 126 (2).

27 PR 8 Richard I, (PRS XIV, 1930), pp. 52, 72, 105, 108, 131, 218, 237; PR 10 Richard I, (PRS XLVII, 1932), pp. 43, 82, 114, 124, 126, 173, 231.

28 PR 1 John, (PRS XLVIII, 1933), pp. 49, 121, 174, 274; pp. 12, 50, 82, 98, 110, 121(5), 156(3), 162, 178, 207, 224, 237, 248, 259, 274.

> No widow shall be compelled to marry so long as she wishes to live without a husband, provided that she gives security that she will not marry without our consent if she holds of us, or without the consent of the lord of who she holds, if she holds of another.[29]

The exact words of Magna Carta were used by the courts subsequently to establish the rights of the kings and "other lords" to sell the widow a licence to remarry. In the manual of pattern pleadings, *Novae Narrationes*, the precedent against a widow who had remarried without her lord's permission was based on Chapter VIII of the Charter.[30]

Several widows in the reign of Henry III seemed to have doubted the efficaciousness of the Charter.[31] As late as 1358 Alesia, the widow of John de Nevill of Essex, received a grant stating that "she shall not be compelled to marry against her will."[32] The determination of a widow to remain single would cost the crown money, but there was no way to compel her to marry.

Thirteenth- and fourteenth-century administrative documents establish that, if Magna Carta and canonical precept saved widows from forced remarriage, they still had to secure their overlord's licence to remarry or they would be penalized. Three courses appear to have been open to them: first, to fine for the privilege of marrying as they wished; second, to allow the king to grant their marriages to a purchaser or award it as a political boon and take their chances on the suitability of this match or buy licence from the grantee if they did not wish to marry him; or third, to flout the law and marry without licence—a course pursued by a surprisingly large number of widows who, with their new husbands, fined to get back into the king's good graces.

With some kind of payment a widow could obtain a grant which would allow her to marry whomsoever she would "of the king's allegiance or fealty."[33] The amount of

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29 Holt, *Magna Carta*, pp. 318-21; see also articles c 17, 1225 c 7. See remarks of Rogeri de Wendover, *Flores Historiarum* Rolls Series, LXXXIV (2), p. 121.

30 Elsie Shanks and S.F.C. Milsom, eds., *Novae Narrationes*, Selden Society, LXXX (London, 1963), p. 271, c 228 and c 229.

31 *Calendar of Patent Rolls*, 1225-32, p. 269 (hereinafter CPR), for Margaret de Reveres that she would not be distrained to marry against her will; in the Pipe Roll of 1230 two ladies fine to remain single: PR 14 Henry III, (PRS XLII, 1927), pp. 255, 259; in 1233 Hubert de Burgo gave three hundred marks that his niece Maude de Mubray, widow of Nigel, could marry as she wished or remain single if she did not wish to be married: CPR, 1225-32, p. 429; similar entries in CPR, 1232-47, pp. 10, 475; in 1255 Alice Bertram fined twenty marks that "she shall not be compelled to marry, and if she wished to marry it shall be of her own will": CPR, 1247-58, p. 408.

32 CPR, 1358-61, p. 93.

33 For example, CPR, 1225-32, p. 124; CPR, 1258-66, p. 323; CPR, 1266-72, pp. 115, 245, 316, 665; CPR, 1272-81, p. 314, order to receive fines from widows holding £20 - £30 yearly dowers to marry whom they will of the king's allegiance; CPR, 1281-92, pp. 8, 185; *Calendar of Fine Rolls*, 1272-1307, pp. 199, 202, 218, 231 (hereafter CFR); *Calendar of Close Rolls*, 1288-96, pp. 63-4 "provided that he was a subject of the king" (hereafter CCR); CPR, 1272-81, pp. 57, 72, 67, 111, 356, 376, 396, 403; CPR, 1321-24, pp. 203, 284, 418; CPR, 1327-30, pp. 33, 41, 126, 127, 250, 254, 268, 304, 319, 399, 454; CPR, 1334-38, pp. 47, 490, 559.

the fine offered for this privilege is not always shown, but it appears that the price roughly was proportionate to the widow's holding, though a rather high sum was taken in 1328 from a pathetically small holding when the widow Alice was fined "1/2 mark because her dower [sic] does not exceed 5s."[34] The amounts for the right to please oneself about remarriage varied. The Fine Rolls of Edward I, for example, record fines for marriages of widows ranging from four to two hundred marks.[35]

Most widows should have been able to afford the licence, especially since the grants often provided for payment by instalment.[36] But how high must a tax be before it began to control personal choice? The only way to determine this would be to find evidence of at least some of the widows' holdings and compare these holdings to the amount of the fine. This extensive undertaking awaits the historian; it must be done from manuscripts, for too often the material in the volumes of Inquisitions Post Mortem merely states that the extent of dower was given, but does not print it. The value of the king's rights over widows' remarriages lay in volume since most of the licences went for fines much less than the two hundred marks which Margaret, the widow of Geoffrey de Nevill, paid in 1293.[37]

Some licences were given as political favors.[38] Others were granted as a matter of beneficence, like that to Juliana, the widow of Thomas de Clare, "in order that she may better rule and keep herself, her lands and goods"; or to Christina, late the wife of Richard de Emeldon, "on account of the good service done by the said Richard in his lifetime."[39] Occasionally a fine to determine one's marriage was refused on the ground that the widow's marriage had already been granted. Timing, therefore, was important if the widow were to arrange her marriage. One widow was refused because the marriage had been assigned to the queen.[40] The fine addressed to the queen probably would have been accepted.

A considerable number of the widows in the king's gift were granted to prospective suitors. It is not known if the suitors were already known to the widows

34 CPR, 1327-30, p. 268.

35 £100 fine Beatrice de Bello Campo: CFR, 1272-1307, p. 54; thirty marks from Sibyl de Longo Campo: p. 69; twenty marks from Joan de Oxton: p. 72; £30 from Joan late the wife of John de Hardreshull: p. 84; five marks from Joan de Hockeleye: p. 114; fifty marks from Hawise, late the wife of Robert de Kaynes: p. 218; sixty marks from Cecily, widow of Thomas de Bekeringy: p. 231; 100s from Isabel, the widow of Griffin Warren: p. 234; two hundred marks from Agnes, late the wife of Robert de Muscegros: p. 235; four marks from Juliana, the widow of Hugh de Wyndesore: p. 268.

36 For example, CPR, 1247-58, pp. 65, 95.

37 CPR, 1292-1301, p. 42. Sometimes the amount of the fine is not shown as in CFR, 1272-1307, p. 30; CPR, 1292-1301, p. 61; CPR, 1301-07, p. 110. CPR 1301-07, pp. 260 and 390 merely say "in consideration of a fine."

38 A licence for Sarah at the request of the Bishop of Durham: CPR, 1272-81, p. 61; for Agnes at the request of Thomas Wake, the king's kinsman: CPR, 1313-15, p. 57; for Amice at the request of Roger de Swynnerton: CPR, 1327-30, p. 41.

39 CPR, 1281-92, p. 463; CPR, 1330-34, p. 477; or Clementia, the Widow of Richard, son of Robert de Eylesbiry, received her licence to control her own marriage "because it has been testified that she had only 10 marks a year in her dower": CFR, 1272-1307, p. 250.

40 CFR, 1272-1307, p. 250.

and had therefore some prior hope of acceptance. Some probably purchased the grants in speculation and would have come as a surprise to the widow when they appeared licence in hand to sue for her favour. Thus many of these grants certainly envisioned the widow refusing the recipient as in the grant to:

> Theobald de Englechevill of the marriage of Phillipa de Fay late the wife of John Denys (Daci) and of what pertains to the king of the said marriage, to wit, that if she will not marry the said Theobald, and makes a fine to marry whom she will, such fine shall belong to him.[41]

Sometimes a prospective groom changed his mind and lost his grant, as did William de Berkele who had been awarded the two hundred mark marriage of Alice, widow of Richard Luvel; when William afterwards took another wife, the widow Alice was granted on the same terms to Nicholas de Haversham. It is impossible to tell what Alice thought of it all or if she even knew of her first suitor's defection.[42]

Grantees were expected to try to persuade the widow in question:

> If Thomas le Blont, steward of the Household could not convince Juliana late the wife of John de Hastinges, tenant in chief, to marry him her marriage was then reserved to King Edward II as the grant to Thomas is said to be out of affection.[43]

This relict was being subjected to royal pressure and may well have had a difficult time in getting a licence to control her own marriage. Similarly Simon de Mountbreton received, for good service to Edward II, the marriage of Isabel, widow of William de Brewosa, on condition that "if she will not she shall remain the king's widow, in the state wherein she is now and may not marry any other without his licence."[44] Widows of prominent feudatories, their dowers often strategic properties, were important to the king's political management. Pressure on these ladies to marry royal grantees could have been intense. When that strong-minded widow, Countess Joan in the Marches, refused, Edward I seized Glamorgan.[45]

Throughout the reign of the three Edwards, licences were granted to marry a certain widow "if she will have him."[46] Some represented mutual planning. The licence to William Bagot for his good service read "for Eleanor late the wife of William de Douglas to marry him whenever she will".[47] John de Waylond was not so

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41 CPR, 1232-47, p. 326; see also CPR, 1247-58, pp. 104, 121, 217.

42 CPR, 1247-58, pp. 503-4.

43 CPR, 1324-27, p. 153, similarly p. 200.

44 *Ibid.*, p. 267.

45 See R.R. Davies, *Lordship and Society in the March of Wales 1282-1400* (Oxford, 1978), p. 268, citing CCR, 1296-1302, pp. 34-9. On p. 281 Davies discusses royal grant of the marriage of the dowager countess of Pembroke. When Edward II granted the hands of the two widowed sisters of the earl of Gloucester to Hugh Audely and Roger Amory, he thereby raised two of his household knights to the front rank of the English baronage: *Ibid.*, p. 283. Isabella Countess of Aumale's determined widowhood of forty years must have been a great affront to the crown: Stenton, *English Women in History*, pp. 55-6.

46 CPR, 1292-1301, p. 595; CPR, 1301-07, pp. 22, 134(2), 154; CPR, 1307-13, p. 407(2); CPR 1327-30, p. 339; CPR 1334-38, pp. 167, 197-8, 241-324, 462; CPR 1338-40, p. 264.

47 CPR, 1301-07, p. 328.

confident and the two knights who came into chancery on his behalf to get a licence to marry Joan, late the wife of Robert le fitz Wauter, declared that, if the lady were not willing, they would bring the licence back for cancellation.[48] Widows did indeed refuse. The many refusals seem to assume the degree of freedom of choice found in canon law. For example, Millicent, the widow of Hugh de Plecy, refused the grantee in 1338 and married another, without the royal licence. The king gave the disappointed suitor the forfeiture, which Millicent and her new husband were obliged to pay.[49] Many grants of a specific widow's marriage contained a "consolation" clause whereby, if the widow were unobtainable, then the grantee was to receive the fine or forfeiture which she would pay in marrying to please herself.[50]

Most of the widows who took their chances in the feudal marriage market were not being offered husbands, but a substitute lord who would sell them a licence to marry or would enjoy their forfeiture if they married without licence. The patent specified in the case of Isabel, Countess of Arundel, that if she made fine to marry whom she would, the son of the Count of Geneva was to have that fine.[51] Peter de Chauvent was granted in 1254: "the fine which Margery late the wife of Robert son of Richard will make for marrying whom she will or if she have promised to marry, the fine which she will make for that trespass."[52]

The crown, because of the clarity of its claim to control the remarriage of widows[53] and the efficiency of its routine surveillance by administrators such as the

48 CPR, 1327-30, p. 339.

49 CPR, 1338-40, p. 47 (grant); p. 81: the pardon to Millicent and Richard de Stonleye for intermarrying without licence.

50 CPR, 1232-47, p. 285; CPR, 1258-66, pp. 22, 185, 447; CPR, 1266-72, p. 546. The sheriff seized the land of Elizabeth, late the wife of John de Monemuth, because of her marriage, even though she had satisfied Baldwin de Villa the recipient of her marriage fine. The lands were returned upon testimony of the queen to this effect: CCR, 1272-79, p. 84.

51 CPR, 1232-47, p. 377; for persons of lesser rank, see CPR, 1247-58, pp. 126, 134, 180, 420, 505, 536, 614, 622.

52 CPR, 1247-58, p. 337. For grants of the fine or forfeiture, see CPR, 1266-72, pp. 116, 332(2), 333, 346, 438, 459-60, 461, 489, 504, 505 (in king's hand due to the voidance of archbishopric of Canterbury), 527, 603, 644, 650, 680, 684(2); CPR, 1272-81, pp. 162, 197, 215, 266; CPR, 1292-1301, pp. 72, 249, 349, 350, 400, 436, 534; CPR, 1307-13, pp. 68, 72, 133, 136, 179; CPR, 1334-38, pp. 95, 322, 348, 497; CPR 1345-48, pp. 26, 37, 69, 74, 128, 197, 198, 199.

53 The justices in eyre offered at least intermittent surveillance over the marriages of widows in the king's gift. For the articles of the great inquest of 1274-75, see W. Illingworth, ed., *Rotuli hundredorum temp Hen III et Edw I* . . . (Record Comm., 1812-18), I, pp. 13-4. In Michael Clanchy, *Berkshire Eyre of 1248*, Selden Society, XC (London, 1973), only one lady was presented and her land was worthy only 7 1/2 £ a year (#753). Public Record Office (hereafter PRO), Justices Itinerant 1/9 m. 35 (1275-76) where jurors say a widow married without licence (hereafter Just 1/); likewise Just 1/1005 (pt. 2) m 145 d (1280-81); Just 1/245 m 2d (1284-85); Just 1/930 m 12 d (1287-88) and m 17 where Isabella de Mortuo Mari, an heiress as well as a widow, married without licence; lesser widows in the same situation added at the end of the entry. After a lapse of eighteen years: *The Eyre of Kent 6 and 7 Edward II AD 1313-14*, Selden Society, XXIV (London, 1910), Article No. 5, p. 28; No. 101 and No. 103, p. 39.

escheator,[54] rarely found it necessary to sue in the common law courts to recover from widows who married without licence. But it did join its grantees in suing widows who so married.[55] Other lords made greater use of the courts to enforce their rights over widows in their gift.[56]

A large number of widows married without licence. Was this a testimony to the prevalence of such sudden and overwhelming passion among these generally adult brides that it was impossible to send to chancery for a licence? It is difficult to determine the time required to secure a licence to marry a certain person. The request for such a licence undoubtedly became scrap at the chancery and there is no way of telling if long delays in issuing such a licence were common. Few widows received a licence to marry a named person and most of those issued concerned prominent

54 For example, PRO Exchequer, Escheator's Account E 136/3/7 m 3 (1294-97); E 136/3/10 m 4 (1304-08); E 136/3/18 (Westmorland) (one membrane). For widow's forfeitures see PRO, Exchequer Memoranda Rolls E 159/3 m 8 d (1219); E 159/61 m 2 d: Hugh Despenser fines for marrying Isabella, late the wife of Patrick de Cadureis, without licence (1287-88); E 159/79 m 14 d: re Despenser widow: E 159/72 m 42 d: Irish widow's trespass in marrying Reginald de Russell (1298-99); E 159/80 m 41 (1306-07), PRO Exch King's Remembrancer E 368/65 m 49 (Cumb), and 40 d (staff) E 159/5 m 2 (Cornub and Devon) (1221-22); E 159/8 m 1, 6 d and 8 d (1225-26): re three widows; E 159/22, m 11 (1244-45), and E 159/72 m 69 (1298-99): re two widows; E 159/70 m 57 d (1296-97); E 368/63 m 18 d; E 368/68 m 15 r, 53 d, 30 d; E 368/69 m 63 d: re two widows: E 368/74 m 20 d. The Pipe Rolls continue to record fines for widows to marry as they wish or who marry without licence; see for example PRO Exchequer, PR 27 Edward I (1298-99) m 3 and m 7 d.

55 In 1247 Osbert, son of Walter de Avenbyrl, and Basilia, his wife, came to answer the king and Walter de Eamchenesy for marrying without licence; Osbert acknowledged his obligation: Just 1/273 m 12 (Glouc). The king by his attorney and Bertrand de Beynill sued William de Stutevill and Ermentrude his wife (she was the widow of Stephen de Cressy) for forfeiture of marriage: PRO Court of Curia Regis KB 26/177 m 6 d (Hoting) continued on KB 26/178 m 1 d (1266-1267) (KB 26/). Elizabeth, the widow of Hugh de Meriet, was sued by the king and his grantee for espousing herself without licence: KB 26/181 m 1 d (Soms) (1267). Terence le Alemand sued describing himself as a *vallettus* of the king for the forefeiture due from Lucia, who was the wife of William de la Launde who was the king's gift; Terence claimed to receive her marriage by the king's letters patent: KB 26/201 m 8 d (1271). Suit was waged against Isabel, the widow of David, earl of Argyll, (?) (Ms: Count of Agisles), whose marriage had been given by the king to Philip de Albinaco because she had married herself to Alexander de Balliol without satisfying Philip for her marriage: PRO, Mss Court of King's Bench, KB 27/9 m 3 (1274) (Kent) (KB 27/). The king sued Ralph de Hangelton for marrying Olivia, the wife of Rolland de Ocstede; the defendant claimed he did not marry her and she was not joined in the defence with her putative spouse: KB 27/65 m 25 d (Sussex) 1281. The king also sued John de Bray for his trespass in marrying Cecilia, the widow of Thomas de Bekinigge, as well as arranging the ward's marriage without licence: PRO, Exch of Pleas E 13/16 m 5 (Linc) (1291) (E 13/). Mabel, the widow of William de Bradeshalle attached to respond to Edward III and John de Lancaster, denied that her trespasses made her a king's widow: E 13/61 m 7 (Lanc); and for another widow's forfeiture: m 12 (Glouc) (1333-35).

56 For example, Isabella de Fortibus, countess of Albermarle, always jealous of her feudal rights, sued William de Aker and Amice, his wife, for a wardship and marriage and the widow's remarriage without licence: E 13/10 m 2 d (Ebor) (1281-83); and for other lords' suing: E 13/24 m 37 (Salop/Staff) (1299-1301); E 13/61 m 12 (Glouc) (1333-35).

people.[57] Perhaps the behavior of those who married without licence was linked to the equally puzzling phenomenon of widespread clandestine marriages, despite strong ecclesiastical prohibitions.[58] Widows like couples who exchanged vows without the required publicity may have wished to marry quickly, either to thwart familial demands as to the choice of a mate or to preclude a suitor to whom the crown had granted the marriage. This is not to say that all widows who married without licence formed clandestine unions—there is no way of knowing this—but both practices were widespread. The crown accepted fines for marriages made after the fact and many couples undoubtedly hoped to get back into the king's favor before any forfeiture of property occurred.[59] In the case of great magnates, the fines could be very high[60] but, with the present state of knowledge, there is no way of being sure that the price of

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57 One such patent in the reign of Edward I suggests reluctance: "licence notwithstanding the custom that the marriage of relicts who hold in chief appertains to the king, for Robert de Nevill to marry Ingreda, late the wife of William de Botiler of Wemme, tenant in chief": CPR, 1281-92, p. 173. Licence for royal ward, Thomas de Ros, and the widow of the earl of Desmond, in which both of their marriages are described as belonging to the king: CPR, 1358-61, p. 143. Roger de Mortuo Mari and Mary, the widow of Aymer de Valence, earl of Pembroke: CPR, 1327-30, p. 166. For some other licences to intermarry, see CPR, 1247-58, p. 23; CPR, 1272-81, p. 373; CPR, 1292-1301, p. 485; CPR, 1307-13, p. 319; CPR, 1330-34, p. 114; CPR, 1345-48, p. 87.

58 Charles Donahue, Jr., "The Policy of Alexander the Third's Consent Theory of Marriage", Stephan Kuttner, ed., *Proceedings of the Fourth International Congress of Medieval Canon Law* (Vatican City, 1976), pp. 251-81, see esp. pp. 266-75. See also M.M. Sheehan's forthcoming article "Choice of Marriage Partners in the Middle Ages: Development and Mode of Application of a Theory of Marriage", pp. 14-5 in typescript.

59 A typical entry is "Pardon for a fine of 200 marks, to John de Eyvill of his trespass in intermarrying without licence Maud late the wife of James de Audeleye, tenant in chief": CFR, 1272-1307, p. 65; or CCR, 1288-96, p. 80; *Ibid.*, p. 151, provided instalment payments of fifty marks a year; or CPR, 1281-92, p. 111.

60 Hugh de Despenser paid two thousand marks for marrying Isabella, the widow of Patrick de Caduricis: CCR, 1279-88, p. 462; or Ralph de Monte Hermerii paid one thousand marks for marrying Isabella, widow of John de Hastynges: CPR, 1317-21, p. 387 (also entered upon the *Foedera*). More examples in *Excerpta e Rotulis Finium*, I, pp. 43-4 (1220), one hundred marks (Ralph Musard and widow of John Nevill); II, p. 149 (AD 1253), (payment only five marks gold in place of three marks fine) (earl of Winchester and widow of William de Vallibus); CPR, 1247-58, p. 172; *Ibid.*, p. 495, (Robert Agaylun and widow of John de Mohun); CCR, 1279-88, p. 255 (John de Deyvile and widow of James de Audeleye); CPR, 1272-81, p. 134 (John de la Mare and widow of Robert de Monte Forti); CPR, 1313-17, p. 389 (Thomas de Veer and widow of Payn Tybetot—he paid in troops for Scottish war); CPR, 1343-45, p. 477 (Thomas de Musgrave and late wife of Robert de Clifford); CPR, 1348-50, p. 404 (John Chastiloun and widow of John de Wolverton); CFR, 1356-68, p. 79 (Gerard de Insula and widow of Edmund de Sancto Johanne); CCR, 1354-60, p. 379 (Peter de Malo Lacu and widow of John Darcy); CCR, 1374-77 (earl of Suffolk and widow of John Lestrange). Many pardons of lesser couples are said to be at the instance of prominent figures, for example, CPR, 1258-66, p. 174 (The Bishop of London); CFR, 1307-19, p. 272 (Hugh de Despenser); CPR, 1307-13, p. 340; CPR 1334-38, p. 10 (Earl of Surrey). There is a wide range of smaller fines, some as little as thirty or fifty shillings: CPR, 1317-21, p. 598; CFR, 1319-27, p. 253; CPR, 1334-38, p. 240. Escheators are instructed periodically to sell wardships and marriages of smaller values: CPR, 1272-81, p.314.

forgiveness would have been much higher than a simple licence to marry by one's choice.[61]

An oath not to marry without licence had made its appearance in the middle of the thirteenth century; the assignment of dower came to be contingent upon the widow taking that oath.[62] The normal penalty was the loss of the dower[63] and the administrative records are filled with orders to seize the lands of widows who had ignored the law[64] or with orders to restore dower on payment of the fine.[65] The so-called statute of "*Prerogativa Regis*" sums up this practice: "And if they marry without licence then the king shall take into his hands all such lands and tenements as

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61 J.M.W. Bean's discussion in Chapter II of *The Decline of English Feudalism* (Manchester, 1968), is helpful here: he shows that tenants-in-chief (except earls and such) gained an effective freedom of alienation when it was agreed that licences to alienate should not be denied them, but given at reasonable fines. See esp. pp. 97-8.

62 The policy was not uniform in the reign of Henry III: in 1232 the widow of William de Escoteny put up security not to marry without licence while just below on the roll the widow of Robert de Crec was for her "sustenance" granted dower without reference to her remarriage: CCR, 1231-34, p. 40. In the 1250s, however, the oath not to remarry without licence made its appearance and this oath would be part of the common practice to the end of the period: CCR, 1268-72, pp. 51, 57, 183, 465; CCR 1272-79, pp. 15, 69, 81, 87, 91, 211, 145, 147, 149, 165, 273, 287, 313, 321, 324, 396, 525, 527, 555 (last has interesting features as the woman also promises not to marry heir in her keeping without king's licence); CCR, 1330-33, pp. 4, 6, 20, 36, 39, 223, 466, 493; CCR, 1369-74, pp. 4, 51, 56(2), 62, 63, 125(2), 133, 140, 141, 156, 159, 268, 358, 367, 368, 396-7. The assignment of dower comes to be contingent upon the widow taking the oath not to marry without licence, though there are some later references to the taking of security: CCR, 1256-59, p. 450; CCR, 1268-72, p. 354; CCR, 1272-79, p. 29; CFR, 1272-1307, p. 38; CCR, 1279-88, p. 388 (tenant of vacant archbishopric of York). But there are at least a few exceptions to this rule, for a Tyneside widow in 1298 received her dower although she refused to take the oath on the ground that it was "not the custom in those parts that wives of those who held of the king in chief should take oath after the death of their husbands that they will not marry *without the king's licence.*" CCR, 1288-96, p. 226.

63 An entry of 1253 states the penalty for marriage without licence to be "the loss of her whole inheritance": CCR, 1251-53, p. 452. As early as 1246, all the lands and tenements of Dionisia, the former wife of Ralph le Poher, were seized because she married without licence: CCR, 1242-47, pp. 441-2. In 1255 Isabel, the widow of Ralph de Haya, made fine for her intermarriage without licence and recovered her lands and those of her new husband, Thomas de Audeham, whose lands had also been seized: CCR, 1254-56, pp. 67-8. Bracton, *Laws and Customs of England*, fol. 88, states that "[t]hough in former times she would have lost her dower because of such an action, she will not do so"—perhaps he merely means that it will be taken from her only until she fines for pardon.

64 CCR, 1268-72, pp. 557-8 (widow is also an heiress); CFR, 1272-1307, pp. 24, 171, 178, 534; CFR 1307-19, pp. 36, 209, 210, 268, 328, 348, 380; CFR, 1337-47, p. 332; CCR, 1346-49, p. 313; CFR, 1368-77, pp. 219, 381, 399.

65 See, for example, CCR, 1227-31, pp. 83-4; CPR, 1258-66, p. 216 (refers to distraint of her lands and chattels); CCR, 1254-56, pp. 67, 68; CFR 1272-1307, p. 5 (lands termed dower), p. 97 (man's land was seized); p. 149; CCR, 1279-88, pp. 251, 315, 449; CFR, 1272-1307, pp. 226, 260, 222 (replevy dower lands); CFR, 1319-27, pp. 127, 133; CPR, 1340-43, p. 563.

they hold of him in dower until he be satisfied at his own will."[66] If the king could have really caused a widow to lose her dower, then the king would have had the power to control her marriage. But the king could no more bring about the permanent forfeiture of dower than he could prevent the free alienation of feudal tenures. That dower was recoverable lessened the harshness of this penalty and gave widows greater freedom to please themselves. How the strictures in Glanvill—that a widow who married without licence would lose her dower—were softened in practice is a complex subject (which the present author intends to treat elsewhere).

Bizarre courtship practices meant that a number of widows were abducted by their prospective husbands. Adam de Staneye was pardoned at the instance of the keeper of the wardrobe in 1306 for the "rape" of Elizabeth, widow of Richard de Loges, "before the king had granted him the marriage."[67] ("Rape"—*rapuit*—often signified simply abduction, not necessarily accompanied by sexual violence.) Edward de Sancto Johanne and a large band of men abducted Eva, widow of William Paynel, "she being willing and assenting thereto and the said Edward, without the king's licence married her." The whole group was indicted for the abduction of Eva and her goods, but thanks to her willingness and at the request of the Earl of Arundel all were pardoned.[68] Some of the "abductions" of consenting widows may have been designed to escape from family plans for the women—perhaps an anticipation of the carrying heiresses off to Gretna Green. Not all widows were willing, or at least some claimed they were the victims of ravishment—an offense against both themselves and their overlords.[69] The surviving evidence is ambiguous: the "victim" may well have been attempting to avoid a fine.[70]

66 *Statutes of the Realm*, I, p. 226. For a better text used here, see Samuel Thorne, *Prerogativa Regis: Tertia Lectura Roberti Constable de Lyncolnis Inne Anno 11 H 7* (New Haven, 1949), Appendix No. 4. pp. 159-60.

67 CPR, 1301-07, p. 418; more pardons for rape of widows: CPR, 1313-17, pp. 3 and 105; CPR, 1334-38, p. 492; pardon for abducting widow; one of many entries absolving persons from guilt in ravishing Margery, late the wife of Nicholas de La Beche, CCR, 1346-49, p. 410.

68 CPR, 1317-21, pp. 559-60. CPR, 1354-58, pp. 418-9 for a similar case.

69 A widow abducted in 1241 was said to have been married contrary to the wishes of the recipient of her marriage: CCR, 1242-47, pp. 500-1. The patent roll of 1352 records a pardon "of special grace" of what pertains to the king's suit in an indictment that three years earlier he had "ravished by force Agnes late the wife of William de Michelhalgh at Barton, and brought her against her will, after he had espoused her, wither he would": CPR, 1350-54, p. 347. A Scottish widow, Joan de Clare, countess of Fife, complained in 1299 that while she was staying in the king's castle and under his protection and being about to come to England with her household, Herbert de Morham of Scotland "notwithstanding that she was in the king's fealty and marriage, carried her off (*rapuit*) with her household goods to the house of his brother . . . and imprisoned her there, because under her oath not to marry without the king's licence she would not consent to a marriage with him." Herbert also detained her jewels, horses, robes, and other goods to the value of £2000, these and other "enormities to the scandal of the countess and the king's contempt". While a local jury was summoned, judgment was reserved to the king: CPR, 1292-1301, p. 466. In 1322, the sheriff, bailiff, and others of the county of Lincoln were ordered to be of aid to Alice, widow of Thomas, earl of Lancaster, "with the *posse* of the county if necessary, the king having heard that certain men with armed force are marching to where she is staying awaiting an opportunity to abduct her": CPR, 1321-24, p. 215, cont.

70 In 1321, there was an order to seize the lands of Joan, widow of Thomas de Lodelowe,

If some stalwart males did employ force against widows, it happened rarely and, on the whole, the widows appear to have controlled their own marriages, even though they had to pay fines, which could be described as a kind of feudal marriage tax. Magna Carta, in stressing free consent, harmonized with canon law. Charles Donahue, in delineating the development of Alexandrine theories of consent in canon law, has boldly drawn attention to the confluence of these canonical theories with the rise of the ideal of courtly love, which applied even to the marriage relationship.[71] The many licences for widows to make their own marriage choices as well as the widows' trespassory marriages without licence reinforce the impression of independence, which both canon law and literature suggest. That women could fine to determine their own marriages before or after the fact demonstrates that in England in the High Middle Ages feudal overlordship, in so far as the marriage relationship was concerned, must be regarded more as a tax than an interference with freedom of choice.

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because she married without licence. She must have defended herself because fifteen days later there was a mandate to the effect, that as the widow was ravished and married against the king's will, to call the justices and others of the council to "look at the statute made upon such ravishment and ordain such a remedy for the king as law and reason can suffer." *Calendar of Chancery Warrants*, I, p. 524. Commission of oyer and terminer regarding another widow ravished and her goods plundered: CPR, 1343-45, p. 575.

71 Donahue, "Consent Theory of Marriage", pp. 277-9. See also the panel on "Marriage in the Middle Ages", *Viator*, IV (1973), pp. 413-501. Leyerle wrote (p. 413) in his introduction in the first paper, "Power to Choose", that John T. Noonan, Jr., "has isolated a significant moment in history when thinking on freedom of choice in marriage had a watershed when Gratian enunciated his doctrine that a woman cannot be validly married without her consent." In discussing Henry Ansgar Kelly's paper, "Clandestine Marriage and Chaucer's *Troilus*", in which Troilus and Criseyde are said to have contracted a clandestine marriage, Leyerle notes that "many of the couples behaving according to the vague precepts of courtly love clearly contract with each other a clandestine marriage, not a clandestine affair." *Ibid.*, p. 414.

Résumé

Les documents administratifs et légaux de l'Angleterre médiévale attestent que le seigneur recevait des compensations finnancières en conséquence des droits qu'il détenait sur le mariage de ses vassaux, de leurs héritiers et de leurs veuves. C'est particulièrement sur le prolème du remariage de ces dernières que cet article se penche. L'auteur se demande si ces droits laissaient une place au libre choix de la veuve, si la coutume anglaise a évolué dans le même sens que le droit canon en ce qui a trait au libre consentement des époux, et, si les querelles découlant de ces droits concernaient plus l'aspect de la taxation que celui des droits fondamentaux de la personne.

Il semble bien qu'au cours du treizième siècle, les veuves jouissaient effectivement du droit de choisir leur époux. Evidemment, elles devaient satisfaire aux droits du seigneur mais ces droits étaient maintenant beaucoup plus perçus comme une forme

de revenus que comme le privilège de désigner l'époux. Plusieurs veuves, il est vrai, n'achetaient pas leur droit au libre choix et continuaient de laisser au seigneur le soin de leur attribuer un nouvel époux; par contre, plusieurs autres se mariaient sans permission quitte à payer ensuite l'amende imposée; enfin, il arrivait aussi qu'une veuve consente à se faire enlever, peut-être dans le but d'éviter la sanction pécuniaire. Somme toute, les veuves étaient maintenant maîtresses de leur remariage même si elles devaient pour cela offrir une compensation financière. La Grande Charte, en insistant sur le libre consentement, s'harmonisait fort bien avec le droit canon et anticipait ainsi la pratique future.