For the Love of a Child: The Care and Protection of Feudal Wards in Medieval England

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Orphans fascinate. The tragic story of an orphaned child somehow always captures our attention and sympathy. Whether this has always been the case throughout history remains a debate, particularly when modern scholars analyze the Middle Ages. Some historians like Philippe Ariès, most prominently, believe that pre-modern society did not have a concept of childhood, and that it therefore did not differentiate the treatment of children as opposed to adults.[2] Considering that legal concepts such as "the best interest of the child" were not in place for most of pre-modern Western history, including medieval England (circa 1066-1485 AD) it is possible to see how Ariès argued his theory. However, just because the legal concept of "the best interest of the child" was not in place in medieval England does not necessarily mean that orphans as feudal wards were not cared for or loved by the society around them. Feudal wards had the general compassion of society and were provided for through legislation customs of the time; this support shows that medieval English society did, in fact, have a deep and invested concern in the care of its wards.

In medieval English society family life was not a simple matter, and tossing the issue of wardship into the mix did not help with the complications. Wardship in the feudal system was an institution that, in the event of the death of the lord of an estate (the father), delivered the heir (his child, or "orphan") of the estate to the guardian named by the family for protection and support, or guardianship.[3] According to Peter Fleming, the intention of feudal wardship was to support and protect fatherless children and their inheritances. Using primary sources such as royal rolls and secondary sources on feudal wardship in medieval England, he discusses that, from about the twelfth century onward, the crown operated a market of sorts for the dealings of wardships, since wardships could also be bought and sold. It would be difficult for the wardship to be sold (legally), however, to a guardian who was not connected to the child's family or did not have the family's interests as a primary concern, because the wardship usually went to a family friend. The possibility of profit from a wardship actually made guardianship a privilege rather than a burden, so it was usually not difficult to find a suitable guardian for the ward. The inheritance of the ward, in this respect, secured his or her well-being.

The other children who were not heirs were sent to live with family friends and relatives (even the mother), keeping them as close to the family was possible.[4] In this respect, the children's best interests were at heart because of the general way that the wardship system worked. Within family life as well, as Barbara Hanawalt argues, social networks from familial ties and higher-ranking godparents supported the child from birth.[5] She also discusses the care of poor orphans as well as wealthier ones, saying that the laws of the city provided for even the poorest child. She writes, "No citizen's child, therefore, should have been without a home," which shows the high level of investment and care the city of London showed for its orphans and wards.[6] Her work focuses on city wards of London, which is a somewhat different political situation than that of feudalism, so her research cannot necessarily be entirely applied to feudal wards. However, it seems quite probable that family life in the feudal system operated in a similar manner in regards to the compassion for children and orphans.

Unfortunately, the care of fatherless children was very common in medieval England because high mortality rates from illness and warfare caused many children to experience the loss of a parent in feudal society.[7] The frequency of orphans and wards in medieval England made it almost inevitable for society to create a means to support the fatherless children. However, many scholars have argued against the idea stating that, because death was a much more common occurrence in the Middle Ages, the intensity of its impact on the people was much

less, and therefore that there was less emphasis on providing for orphaned children. Shulamith Shahar argues against this understanding, writing that medieval society did have a large degree of empathy for the orphaned child.[8] The death of a parent could be just as traumatic for a child living in medieval England as it can be today; the frequency of death did not have the impact some believe it did on their emotions.

The people living in the Middle Ages knew that losing a parent could be profoundly affecting, and therefore made many provisions and concessions for the orphaned child so that he or she could be comforted and supported for a period of time before he or she became an adult. Shahar writes that "The very mention of the fact that a boy or girl was orphaned at an early age (*patre orbatus, matre orbatus*) [in medieval biographies]...shows that the author considered this event to be significant, and not only when, in consequence, the child was condemned to poverty and want."[9] Poor orphans as well as orphans in the aristocracy, then, had the compassion and support of society in their situation, much like Hanawalt's argument. These children were considered to be under the protection of the law and the Church because the death of a parent could completely turn a child's world upside-down, as many adults in medieval England no doubt knew.

Because wardship was such a frequently-handled issue, there were many legal institutions in place as well that enabled the orphaned child to grow up in not just a supportive, but in a caring environment. In the aristocracy, where wardship largely figured, feudal wards received a greater level of support from the laws than just from compassion of society and in social networks. The feudal system that they were involved in had many legal concessions for the child who had lost a father. In feudal society, the family was a very complex issue at times because of the deaths of military fathers, and with the deaths of fathers came a need to manage the affairs of the heirs of the estate that he had managed.[10] If the heir was still a minor and could not inherit the estate, other provisions needed to be made in order to properly care for the land and the affairs tied to the estate. Since women could not be the official guardians of the heir, there was a need to provide a male guardian for the child before he could claim his or her inheritance.[11] Thus, wardship came into play; a male guardian would come into the wardship of the child if the parents named him so. There were very many complications that came with wards and inheritance as well; there was no single age listed as the age of majority or responsibility, and the ward was subject to be taken advantage of because of the inheritance he or she held.

This does not mean that the ward was not protected by the laws, however. Laws pertaining to inheritance and marriage generally supported the best interest of the child, without explicitly stating so in such direct terms. Legislation protected wards' inheritances and their well-being with their guardian to ensure that their future would be secure in inheritance, in support from a marriage partner, and in the guidance of a father-figure from the guardian. There were common practices laid out in the laws for the procedure of ward inheritance; moreover, these "Customs were by definition very regularly followed" according to the court cases of the time, so there is legitimate evidence that the laws generally reflected the reality of the procedures in the courts of medieval England.[12]

Legal sources are consistent when they discuss customs of feudal wardship in medieval England, which were in common practice by the twelfth century. These laws generally stated that if a child's father were to die, the property and the child both went into the custody of the liege, or superior, lord, and the child inherited when he came of age (if it was a boy) or when she married (if it was a girl).[13] According to a treatise on the laws and customs of England (the first textbook of the common law) written by Ranulf Glanvill in the twelfth century, when "lords take into their hands both fee and heir, it ought to be done so gently that they do no disseisin to the heirs."[14] This law provides that the inheritance in question cannot be wrongfully removed from the heir who has rightful possession and possibly given to another contestant. Thus, the law had concern for the heir and his or her inheritance, and had measures in place to protect the heir's inheritance to the greatest extent possible. There was great concern for preserving the ward's inheritance because it was essentially the means of livelihood for the rest of their life. When abuses of the wardship system became a controversial matter during the reign of King John (1199-1216), his opponents added clauses about wardship to the Magna Carta. According to the Magna Carta, "If... the heir of any one of the aforesaid has been under age and in wardship, let him have his inheritance without relief and without fine when he comes of age."[15] This shows the protection of the inheritance

the law provided for and the standards the inheritance must be kept to until the ward came of age to inherit. Also, by limiting the inheritance age to the age of majority, this custom ensured that the ward would not be burdened with the responsibility of controlling the affairs of his or her estate at too young an age. This left the estate in the protection and management of the guardian, who, as an adult, generally had better experience in running affairs of an estate, and so kept affairs in good order for the ward to inherit.

Also, the law required the guardian to keep the land and affairs of the estate in good condition for the ward to inherit when he or she came of age. If the guardian did not do so, the wardship could be taken away from the guardian. In sections four and five of the Magna Carta, it is written that "The guardian of the land of an heir who is thus under age, shall take from the land of the heir nothing but reasonable produce, reasonable customs, and reasonable services, and that without destruction or waste of men or goods."[16] Also, "The guardian, moreover, so long as he has wardship of the land, shall keep up the houses, parks, fishponds, stanks, mills, and other things pertaining to the land, out of the issues of the same land," showing the concern for the ward's estate.[17] Glanvill writes to the same accord, saying that "Guardians must restore inheritances to heirs in good condition and free of debts, in proportion to the duration of the wardship and size of the inheritance."[18] These laws clearly show an interest in the child's welfare and in the protection of his or her inheritance, which was the basis for the ward's life in the future.

The law also protected the ward in terms of having a guardian who would look out for the child's best interests, and not his own. Glanvill writes, "For, by law, wardship of a person never goes to anyone who might be suspected of being able, or of wishing, to claim any right in the inheritance."[19] If the ward had a guardian who could possibly also claim the inheritance that rightfully belonged to the child, there was a possibility of the guardian harming the ward in order to acquire the inheritance. A famous incident pertaining to this abuse of wardship is of King Richard III and his nephews in 1483, when Richard was charged with the guardianship of his boy nephews after their father (King Edward IV) passed away. There was a question of who had rightful claim to the throne between Richard and Edward's eldest son, and the boys were placed in the Tower of London for safekeeping. Whilst in the Tower, they mysteriously disappeared, leaving Richard with a clear path to inherit the throne of England. Whether Richard was guilty of their murder or not, this circumstance shows how the guardian had the potential to harm heirs for their inheritance. The law prevented incidents such as this from happening and more fully secured wards' well-being and inheritance for their future use when they could inherit.

In return for all of the services that a guardian provided for the ward, the law required the ward to do services to his or her guardian. In fact, according to Glanvill, "the lord of the fee has no right to wardship of the heir or of the inheritance until he has received homage of the heir."[20] The purpose of this custom was to establish a good and stable relationship between the guardian and the ward, since the ward no doubt needed a father figure to look up to with the absence of his or her own father. Glanvill writes, "The bond of trust arising from lordship and homage should be mutual, so that the lord owes as much to the man on account of lordship as the man owes to the lord on account of homage, save only reverence [to the crown]."[21] Thus, the laws even show a concern for the ward in providing and establishing a good relationship with his or her guardian, which was most likely done in order to lessen the impact of the traumatizing event of the death of a parent.

Inheritance was not the only wardship issue that the laws and customs of medieval England included. Marriage was also an important aspect of a ward's life that needed to be taken care of in the absence of a parent; with marriage came increased security for the rest of the ward's life. This was due to the fact that marriage generally provided more connections in the familial network and it was the foundation for the ward's future family. So, it was a very important matter that needed to be handled delicately. By law and custom, the ward's guardian arranged the ward's marriage in place of a parent, who would have usually arranged the marriage.[22] Also, female wards could only inherit if they married, so marriage had an even greater significance for them. To prevent abuses in the arrangement of wards' marriages, laws were set in place to ensure that the ward did get married (if they did not choose a religious vocation), and to prevent any possible disadvantageous marriages set up by the guardian. The marriage of wards was also addressed in the Magna Carta which stated that "Heirs shall be married without disparagement, yet so that before

the marriage takes place the nearest in blood to that heir shall have notice."[23] This protected the wards from being married to a social station beneath them (which was highly undesirable), and allowed their families as well as their guardians to approve of the marriage before it actually took place. In securing a profitable marriage for the ward, the law secured means for the ward to build a stable future.

Glanvill also writes on the matter of marriage, but he explicitly mentions marriage pertaining to the protection of female wards, writing, "when [female wards] have come of age their lord is bound to marry them off, each with her reasonable share."[24] This law protected the heiresses from losing part of their dowry (quite a valuable bargaining chip in a marriage negotiation) to a claim made by another family member or even the guardian. Glanvill also writes that, in the case of female heirs' marriages, "the woman can be married freely on the advice of her father and at her pleasure, even against the will of the lord."[25] Female heirs, then, including wards, could have a say in their own marriage, and even prevent a marriage from happening that they did not believe was suitable. While also showing that women's opinions were, in fact, respected in medieval England, these laws show that female wards were very well-protected by the laws and customs set in place. By securing a good marriage for them, the laws secured a sound future.

In addition, the law gave female wards reasonable protection against exploitation by the her guardian. While the female ward was unmarried, the guardian would keep control of all her lands and wealth until she became married. The guardian could take advantage of this situation and keep control of her lands and wealth by keeping her unmarried for as long as he pleased. In doing so, he would keep control of her land and wealth for an indefinite period of time. Laws like the Statute of Westminster in 1275 "provided that the guardian would lose his right to his female ward's marriage if he had not married her off by her sixteenth birthday," according to Peter Fleming.[26] This prevented the occurrence of a guardian claiming a female ward's wealth as his own, and ensured that the heiress would, in fact, come into her inheritance by marrying. The law did not entirely prevent the abuse of wards' marriages in this way, but there was certainly legislation in place that gave them provisions in marriage and inheritance.

Secular laws were not the only means by which a ward's marriage could be protected and secured. The greatest support of the ward in matters such as these came from the Church, which was very powerful at the time, especially when it came to child marriage. Nicholas Orme cited the *Decretum* of Gratian, a handbook of canon law, which says that "'Where there is no consent by both parties... there is no marriage,'" demonstating great concern for the children who might be unwillingly forced into marriage at such a young age.[27] Noel James Menuge also references the *Decretum* in her essay on female wards, writing that this canon allowed a ward to bring his or her guardian to court (royal courts would refer cases such as this to Church courts) if there was anymatter in doubt about the marriage, and that the canon law allowed for the ward's refusal to the marriage the guardian had arranged.[28] This shows the Church also had concern for wards' marriages, and it was careful in passing measures that prevented abuse of the guardian's rights of arranging the ward's marriage. Thus, in both Church and secular law of the time, there were provisions in place to protect the ward's interests in both inheritance and marriage, the foundations of their secure future.

In the larger study of childhood, medieval English wards only provide a cursory glance of the lives of children in the pre-modern world. The fascination with the many aspects of the study of children (including their history) has led to the emergence of new fields of study, such as adoption studies. Although adoption itself is a modern legal construct that was not explicitly in place until the mid-nineteenth century, feudal wardship in the Middle Ages can be included in the field of adoption studies because it shows the foundation of modern adoption laws and practices, and how they initially began to take shape. By studying and interpreting the ways that wards were treated in medieval England, one gains a better sense of how the legal concept of adoption emerged as customary practice in modern times. It is difficult to imagine a world that did not love its children enough to provide for them in their dire hour of need. Even though there was no legal concept of adoption in place in medieval England, this did not automatically condemn every child without a parent to be left to the streets without any means of support. The past and the present, then, are not so dissimilar as one would initially suspect; the emotions that modern people feel today were just as real to the people living in the Middle Ages. The emotions felt by wards and the compassion society had for them are

no exception.

Bibliography

Ariès, Philippe. *Centuries of Childhood*. Translated by Robert Baldick. New York: Alfred A. Knopf, 1962.

Davies, Reginald Trevor, ed. *Documents Illustrating the History of Civilization in Medieval England (1066-1500)*. 1926. Reprint, New York: Barnes & Noble, Inc., 1969.

Fleming, Peter. *Family and Household in Medieval England*. New York: Palgrave, 2001.

Glanvill, Ranulf de. *The Treatise on the Laws and Customs of the Realm of England Commonly Called Glanvill*. Edited and translated by G. D. G. Hall. 1965. Reprint, Holmes Beach: W. W. Gaunt, 1983.

Hanawalt, Barbara A. *Growing Up in Medieval London: The Experience of Childhood in History*. New York: Oxford University Press, 1993.

Menuge, Noel James. "Female Wards and Marriage in Romance and Law: A Question of Consent." In *Young Medieval Women,* edited by Katherine J. Lewis, Noel James Menuge, and Kim M. Phillips, 153-171. New York: St. Martin's Press, 1999.

Milsom, S.F.C., "The Origin of Prerogative Wardship." In *Law and Government in Medieval England and Normandy*, edited by George Garnett and John Hudson, 223-244. New York: Cambridge University Press, 1994.

Orme, Nicholas. *Medieval Children*. New Haven: Yale University Press, 2001.

Shahar, Shulamith. *Childhood in the Middle Ages*. New York: Routledge, 1990.

Walker, Sue Sheridan. "Widow and Ward: The Feudal Law of Child Custody in Medieval England." *Feminist Studies* 3, no. 3/4 (Spring-Summer, 1976): 104-116.

Endnotes

1 Philippe Ariès, *Centuries of Childhood,* trans. Robert Baldick (New York: Alfred A. Knopf, 1962), 9-11.

2 Feudalism was a political system that involved a liege lord and his vassals, who owed their homage and certain services to him in exchange for protection.

3 Peter Fleming, *Family and Household in Medieval England* (New York: Palgrave, 2001), 102-110.

4 Barbara A. Hanawalt, *Growing Up in Medieval London: The Experience of Childhood in History* (New York: Oxford University Press, 1993), 48.

5 Ibid., 97.

6 Fleming, *Family and Household in Medieval England*, 102.

7 Shulamith Shahar, *Childhood in the Middle Ages* (New York: Routledge, 1990), 155.

8 Ibid.,156.

9 Sue Sheridan Walker, "Widow and Ward: The Feudal Law of Child Custody in Medieval England," *Feminist Studies* 3, no. 3/4 (Spring-Summer, 1976): 104.

10 Ibid., 105. Also, although women could not be "official" guardians of their children, their children sometimes stayed with them instead of their guardian, and younger children who were not heirs often did stay with the mother until the age of majority.

11 S.F.C. Milsom, "The Origin of Prerogative Wardship," in *Law and Government in Medieval England and Normandy*, ed. George Garnett and John Hudson (New York: Cambridge University Press, 1994), 244.

12 Nicholas Orme, *Medieval Children* (New Haven: Yale University Press, 2001), 326 and Ranulf de Glanvill, *The Treatise on the Laws and Customs of the Realm of England Commonly Called Glanvill,* ed. and trans. by G. D. G. Hall (1965; repr., Holmes Beach: W. W. Gaunt, 1983), 82.

13 Glanvill, *The Treatise on the Laws and Customs of the Realm of England Commonly Called Glanvill,* 82. Disseisin is defined as the wrongful dispossession of a freehold interest in land (in this case, this would be the land of the heir).

14 Reginald Trevor Davies, ed., *Documents Illustrating the History of Civilization in Medieval England (1066-1500)* (1926; repr., New York: Barnes & Noble, Inc., 1969), 40-41.

[15] Ibid., 41.

[16] Ibid.

[17] Glanvill, *The Treatise on the Laws and Customs of the Realm of England Commonly Called Glanvill,* 83.

[18] Ibid., 84-85.

[19] Ibid., 107.

[20] Ibid.

[21] Orme, *Medieval Children,* 334-5.

[22] Davies*, Documents Illustrating the History of Civilization in Medieval England (1066-1500),* 41.

[23] Glanvill, *The Treatise on the Laws and Customs of the Realm of England Commonly Called Glanvill,* 85.

[24] Ibid.

[25] Fleming, *Family and Household in Medieval England,* 107.

[26] Orme, *Medieval Children*, 335.

[27] Noel James Menuge, "Female Wards and Marriage in Romance and Law: A Question of Consent," in *Young Medieval Women,* ed. Katherine J. Lewis, Noel James Menuge, and Kim M. Phillips (New York: St. Martin's Press, 1999), 155.