INTRODUCTION

The theoretical restrictions and obligations that marriage imposed on wives and husbands throughout most of English history appear relatively clear and unequivocal. Prior to the modern era, husbands enjoyed a monopoly over the management of marital property and an obligation to maintain their wives at a level befitting the couple's social standing and material resources. Wives, meanwhile, could not independently possess and control property, and, without the permission of their husbands, they could not buy or sell goods, enter into contracts, make wills, or be parties to law suits. What is less straightforward, however, is the way individual wives and husbands accepted or resisted these restrictions and obligations in daily life.

The twenty cases in this volume involve husbands and wives suing each other in the Court of Requests in clear defiance of the common law prohibition against litigation between spouses.[1] The suits themselves are therefore exceptional and involve public challenges of the universal rules that religious and secular authorities deemed necessary to govern the marital sphere. Furthermore, a number contain detailed allegations of other breaches of the legal divisions of rights and power within marriage, making them a rich source of attitudes and behaviour running against the tide of orthodox assumptions. As relationships disintegrated, estranged spouses went to elaborate lengths to secure or enlarge their interests, and for a significant minority this path led them into court. Wives sued their husbands to escape physical violence, to protect their property rights, or to compel their spouses to pay them adequate maintenance. In an even more curious upsetting of the patriarchal order, husbands sued their wives, either to recover money due to them under the rules of marital property, or to prevent exploitation of their liability for their wives' debts. That husbands might claim rights over their wives' interests is not unusual, but that they should do so in open court in what amounted to a public admission of impotence, in the sense of a failure of patriarchal power and responsibility, is remarkable.

[1] There is no obvious label for these cases. One possibility is 'spousal litigation', but this might be confused with the spousals preceding marriage; instead, this volume adopts the term 'marital litigation' as convenient shorthand.

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The breakdown of a marriage is rarely a pleasant affair, and to publish pleadings and other legal materials from warring couples is to pry into tragic and personal allegations of abuse, neglect, and exploitation that most participants would have preferred to keep private. Much in the pages that follow can be disturbing to read; however, the bitter exchanges tell us a great deal about a married couple's legal rights and avenues of redress as well as their publicly expressed attitudes to marriage, separation, stepchildren, ideal masculine and feminine behaviour, economic responsibility, adultery, physical correction and abuse, and a host of other subjects. Pleadings and supporting depositions also contain vivid details of these men and women's lives and material possessions, from the nature of medical treatments in one case to the rightful possession of a ring made out of 'unicorn's horn' in another.[2] The resulting documents provide an intimate view of the fabric of marital relations at its stretched and fraying edges. They show how desperate men and women alternately ignored rights or pushed them to their limits, both inside and outside the courtroom, and how, with the help of their legal counsel, they harnessed the rhetoric of church-sponsored visions of marital harmony to emphasize their spouses' shortcomings and to attack their characters. Taken together, these cases supply a checklist of the hopes and aspirations of married couples in sixteenth- and seventeenth-century England and a catalogue of the human failings that could frustrate them.

Coverture

At the heart of marriage lay the principle of coverture, a catch-all term for the legal division of power and property within marriage. For the duration of marriage, a husband's legal identity eclipsed or covered his wife's, transforming her legal status from *feme sole* to *feme covert*. The resulting dilution of a married woman's independence and rights was supposedly for her benefit, intended to remove from the marital union any potential for acrimony or disagreements over property interests, obligations, privileges, and other entitlements. To put it bluntly, according to legal convention the law gave husbands powers and possessions that had belonged to their wives before marriage to diminish the temptation that they might use force to take these powers and possessions from their wives during marriage.

[2] See the *Spragin* and *Garth* cases, numbers **11** and **14** in this volume.

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The effects of coverture were wide-reaching, at times transforming wives into little better than their husbands' wards or agents. On marriage, a husband gained permanent possession of his wife's moveable property – her money, clothing, jewellery, livestock, house wares, tools, and belongings – and possession for the duration of the marriage of her real property – the interests she held in lands, tenements, and other immovable property. This meant that all income a wife might earn, all bequests she might inherit, and all gifts she received while married technically became her husband's. Taken to its extreme, the logic of coverture meant that a husband could not give his wife a gift, because at law he would be giving the gift to himself. A woman could not decide where the couple was to live, and she could not write a will, enter a contract, or buy or sell goods without her husband's express or implied permission. Little wonder, then, that the Widow Blackacre in Wycherley's Restoration comedy *The Plain Dealer* should declare that 'Matrimony, to a woman, [is] worse than excommunication in depriving her of the benefit of the law'. Blackacre feared marriage because it 'put it out of my power' the ability 'to sue in my own name', an effect of coverture that is central to the cases in this volume.[3] Married women could not enter into lawsuits without the consent of their husbands, a consequence of their lack of independent legal status and of their lack of interests in property that might be the subject of a lawsuit, which meant that they could not sue their husbands. Husbands, meanwhile, could not sue their wives because it would effectively mean they were suing themselves. The one clear exception to this prohibition came in the ecclesiastical courts, which allowed married women to bring actions in their own right, as they often did for defamation of character, and wives and husbands to bring separation proceedings against each other. Far less clear was the position taken by the chancellor and masters (or judges) in Chancery and the masters in the Court of Requests, who upheld the principles of coverture most of the time, yet allowed a trickle of exceptions, including the cases in this volume, to slip into their courtrooms.

What gave coverture its abiding force was the strength of the bonds of marriage, which in most instances could be broken only by the death of a spouse. Divorce in the modern sense – a legal dissolution of marriage allowing either or both parties to remarry – was not an option for most individuals before 1857.[4] Unhappy couples could

[3] William Wycherley, *The Plain-Dealer, a Comedy as it is Acted at the Theatre Royal* (London, 1677), p. 91.

[4] Divorce by private act of Parliament, a cumbersome and expensive method usually restricted to the wealthy, only became an option after 1670; see Roderick Phillips, *Putting Asunder: A History of Divorce in Western Society* (Cambridge, 1988), p. 231.

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approach ecclesiastical authorities to gain a 'divorce *a vinculo matrimonii*' (from the bond of marriage) on such grounds as bigamy, pre-contract, consanguinity or affinity, or impotence, but few applications were successful and these were effectively annulments rather than divorces, declarations that marriages had never amounted to valid unions under ecclesiastical rules. The most famous examples are Henry VIII's 'divorces' from Katherine of Aragon and Anne of Cleves and the annulment of his marriage to Anne Boleyn. In each case, rather than authorizing a divorce, church authorities declared the unions invalid *ab initio* because of pre-existing impediments, and therefore annulled.[5] Where marriages were valid, the best that most spouses could hope for was a separation ('divorce *a mensa et thoro*', from bed and board) on the grounds of cruelty or adultery. In practice, a sexual double standard usually applied, so that husbands could separate on the grounds of adultery alone, while wives had to prove cruelty. If successful, a separation *a mensa et thoro* would allow a husband and wife to live apart, but not to remarry while their estranged spouse remained alive. The problem here was that the rules of coverture continued to apply, making it difficult, for example, for a separated wife to earn money and keep it for her own. Ecclesiastical authorities possessed the power to present violent husbands (or wives) before the church courts, but in practice they proved reluctant to interfere in marital disputes in this way, and battered spouses seeking relief appealed instead to local magistrates to have their violent spouses 'bound over' to keep the peace or to good behaviour. Justices of the Peace would compel offending spouses (usually, but not invariably, husbands) to sign bonds and put in sureties making them subject to financial penalties or imprisonment for debt should they be discovered re-offending. Unfortunately this option was fraught with practical difficulties and by its nature was rarely conducive to restoring harmony. However, ecclesiastical annulment or separation and binding over by a Justice of the Peace were not the only options open to disgruntled spouses, and the cases in this volume make reference to a surprising number of other mechanisms designed either to keep troubled marriages together or to help warring spouses to separate.[6]

The theory of coverture was relatively simple; however, the innate instability of the idea that two people's interests could be merged together produced a stream of complexities, contradictions, and exceptions. While most jurists were happy to see a husband assume

[5] *Ibid.*, pp. 71–77.

[6] Tim Stretton, 'Marriage, separation and the common law in England, 1540–1660', in Helen Berry and Elizabeth Foyster, eds., *The Family in Early Modern England* (Cambridge, 2007).

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possession of his wife's property interests, they were loath to see him assume responsibility for all of his wife's criminal acts. No one demanded, for example, that a man should be hanged if his wife was convicted of horse theft or murder. As a result, legal authorities regarded couples as being a single entity for some matters and two distinct entities for others, a decision that produced still further uncertainty about men and women's legal status within marriage. Many individuals were unaware of these complexities and some lived their lives in ignorance of coverture's key principles, with wives claiming property as their own, accepting gifts, and buying and selling goods without reference to their husbands. Others, by contrast, showed themselves sufficiently well versed in the doctrine to play on its uncertainties and to exploit the varying approaches that judges in different jurisdictions took when deciding whether or not to enforce coverture's rules. As is well known, some intending brides and their families sought to escape a wholesale surrender of property rights at marriage by transferring specific interests into uses or trusts. By passing legal ownership to a third party, such as a trustee or a 'feoffee to a use', women could divest themselves of interests that could pass to their husbands, yet retain equitable rights over those interests that would persist throughout marriage and beyond. If anyone challenged these arrangements, which clearly went against the spirit of coverture, the injured party usually sought assistance in Chancery and Requests, the main English courts run according to principles of equity, rather than in courts of common law.

As cases in this volume confirm, disgruntled spouses also tended to go to Requests when complications arose following settlements made in the church courts. The difficulty here was that, while ecclesiastical authorities ignored coverture by allowing spouses to sue each other, the doctrine continued to exert its influence in other ways. It could operate to strip married women of the independent resources necessary to fund ecclesiastical court actions, or to compromise their property interests once separated. Husbands, for example, could manipulate coverture to dispossess their wives of wages earned and other assets inherited or accumulated while the two were living apart. Wives, meanwhile, could accept maintenance payments connected with a separation order yet also claim maintenance at common law by running up debts that their husbands were obliged to settle. Further problems resulted from the difficulties that ecclesiastical authorities faced in enforcing their orders. Church court officials could excommunicate defaulting defendants or order them to do penance, but they could not fine, arrest, or otherwise compel them to meet the terms of separation orders. A common solution was to incorporate the terms of settlements into conditional bonds. If the conditions in a bond were not

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satisfied, the defaulter would be liable at common law for the monetary penalty attaching to non-performance. But who would bring the suit? Coverture prevented a separated wife from putting a bond in suit against her husband, and guarantors, trustees, and sureties could not always be relied upon to do so, particularly in cases where they had died and their executors or administrators either felt reluctant to act or else had agreed to end a husband's liability in return for a cash payment.

In each of these situations, masters in Requests, like the chancellor in Chancery, proved more willing than their common law counterparts to entertain allegations of immoral or untoward behaviour within marriages and, if allegations were substantiated, to provide remedies for the resulting injustices. In ordinary circumstances, masters of Requests enforced the rules of coverture. They demanded that wives appear only with their husbands and they were reluctant to hear cases fought between spouses. However, the principles of equity that underpinned the Requests jurisdiction encouraged a willingness to be flexible and to consider compromises that was largely alien to common law minds. Where common lawyers looked exclusively at the matter in dispute in each case, masters and lawyers in courts of equity looked at the specific circumstances of the individuals involved. Common law judges saw legal consistency as the best means of preventing injustice in the future, by providing clear and equivalent conditions for all participants, and therefore tended to follow rules to the letter. Equity judges were more concerned with preventing or mitigating injustice in the present, and were therefore suspicious of the potential that strict interpretations of rules had for causing, rather than preventing, injustice. As a result they paid more attention to the underlying principles of coverture, which aimed to keep marriages together, than to the rules of coverture. Hence their willingness to make exceptions, particularly in situations where marriages had already broken down, or in instances where individuals were attempting to enrich themselves by invoking coverture in ways that, while technically legal, were clearly unethical or immoral. The problem these judges faced was deciding when to observe the rules of coverture, and when to override them, in situations where they often had little to guide them except one spouse's word against another.

Requests and Chancery both gained reputations for hearing suits between married women and men, but the complications involved in breaking supposedly universal rules meant that these cases remained extremely rare. Coverture as an underlying principle was therefore never seriously threatened by these exceptions, and the enduring force of marriage laws that rejected the option of full divorce ensured the doctrine's continued influence and power.

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The Court of Requests

The precise origins of the Court of Requests are obscure, largely because it began life not as a court but as a committee of King's councillors (or counsellors) charged with dealing with personal requests to the monarch for justice.[7] These councillors later became known as masters of Requests and personally attended upon the monarch, accepting petitions and pleas for justice from suitors and advising them how best to proceed.[8] Over time, the quantity of petitions increased and the masters began hearing cases themselves, thereby creating an itinerant court that sat wherever the royal court was in residence.[9] Under Henry VIII, the court was given a fixed address in Westminster in the White Hall, a 'great chamber' or 'wide place' located 'upp the staires one way beyound the Kinges Bench court in Westminster Hall, and hath a goinge downe an other waye into the old pallace yard'.[10] One or more masters sat in the White Hall hearing cases during, and occasionally outside, the law terms, but another continued to attend the monarch and accept petitions in person.[11] When Queen Elizabeth drew attention to the smell of the boots of an attending master, Walter Haddon, he is said to have replied, 'I believe, madam, it is not my new boots which stink, but the old petitions which have been so long in my bag unopened'.[12] A few years later, King James expressed concern when no master was available to attend him, and his complaint reveals the perceived role of Requests masters. As Sir Thomas Lake explained in a letter to the Earl

[7] Commentators have attempted to date the foundation of the court as early as 1348, but the earliest entry in the surviving court books was made in 1493 and modern historians agree that the court took on a recognizable institutional form during the reigns of Henry VII and Henry VIII: see Baker, *Oxford History of the Laws*, p. 203; Leadam, *Select Cases*, ix–xvi; A.F. Pollard, 'The growth of the Court of Requests', *The English Historical Review*, 56 (1941), pp. 300–303.

[8] The title 'Master of Requests' appears not to have been used before 1541, and the court itself had a number of different names: Baker, *Oxford History of the Laws*, p. 205; Stretton, *Women Waging Law*, p. 71.

[9] Early Star Chamber proceedings are endorsed '*comparuit apud Westmonasterium*', while early Requests proceedings are marked '*comparuit coram Consilio*'.

[10] Richard Robinson, *A Briefe Collection of the Queenes Majesties Most High and Most Honourable Courtes of Recordes*, ed. R.L. Rickard, *Camden Miscellany*, vol. 20 (London, 1953), p. 24. The chronicler Hall suggested that this move took place in 8 Henry VIII (1516 or 1517), although Sir Julius Caesar believed that it happened in 1496: Leadam, *Select Cases*, xii. The White Hall also housed the Court of Wards and Liveries: William Lambarde, *Archion, Or a Commentary Upon the High Courts of Justice in England* (London, 1635), p. 228; *Stow's Survey of London* (London, 1956), p. 418.

[11] Leadam, *Select Cases*, xiii.

[12] Thompson Cooper, 'Haddon, Walter', in *DNB*.

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of Salisbury in 1606, the king felt that 'nothing was more necessary' than that a master should attend him,

> for that being officers of justice and known so in the commonwealth, his majesty might by them give ease to many poor suitors that follow him continually wheresoever he goes for reliefs by way of equity, in whose suits, though he conceive most of them to be of that nature that if he never came to the place where they are exhibited they would never be offered to him, yet it is a contentment to his people to receive an answer.[13]

The number of the Requests bench fluctuated over time, from large committees of councillors under Henry VII and Henry VIII to just two masters at the accession of Elizabeth I. In response to growing levels of business, Elizabeth swelled their ranks by appointing two 'masters extraordinary' to assist the 'masters in ordinary'.[14] Delays in appointing successors meant that, between 1594 and 1598, the court once again had only two masters, but for most of its remaining history four or more masters served in Requests, assisted by an expanding staff of attorneys, clerks, recorders, messengers, and other personnel. As will become clear in a moment, the make-up of the bench also changed over time, as the presence of bishops on the early committees declined, giving way to a shifting mix of common lawyers and civilians (men with university training in civil law).

One effect of the curious and uncertain origins of the Court of Requests was that the legitimacy and extent of its masters' powers to dispense justice remained a matter of controversy throughout the court's life. Unlike Star Chamber, Requests lacked any statutory confirmation of its authority, relying instead on its proximity to the monarch and its continued existence 'time out of memory of man'.[15] William Lambarde and Julius Caesar, the court's most eminent Elizabethan master, argued that Requests masters had always been attached to the King's (or Queen's) council, later the Privy Council, so that the power they exercised was a clear and direct extension of the monarch's prerogative right, either in person or through his or her counsellors, to hear and determine subjects' complaints.[16] Edward Coke disagreed, arguing that the masters of Requests were not members of the Privy Council and therefore fell outside the reach of the royal prerogative, and that the court's relatively short

[13] HMC *Salisbury*, vol. 18, pp. 324–325.

[14] Masters in ordinary received an annuity, £100 *per annum* under Elizabeth, while masters extraordinary received little except for an expectation that they might later become masters in ordinary.

[15] The statute legitimating Star Chamber is 3 HVII cap. 2.

[16] Lambarde, *Archion*, pp. 225–228; Caesar, *The Ancient State*.

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lifespan precluded any claim of existence from time immemorial.[17] Debates about the court's legitimacy and jurisdiction came to a head in the 1590s, when common lawyers vented their anger at the masters' growing use of injunctions staying (or interrupting) common law proceedings. They convinced justices in Common Pleas to issue prohibitions against Requests cases, nullifying the masters' orders in particular cases and undermining their authority and credibility.[18] The most damaging of these prohibitions came in the wake of one of the cases in this volume, *Anne Lloyd* v. *Humfrey Lloyd*.[19] Business in the court contracted in the late 1590s as this controversy raged but, contrary to the opinion of later historians, such as George Spence, the court soon recovered from this temporary setback.[20] Caseloads expanded steadily under James I and rose to unprecedented levels under Charles I. A sense of the dramatic increase in business can be gained from the number of final decrees entered in the court's surviving decree and order books.[21] In 1562, the masters issued 37 final decrees, rising to 206 in 1603 and 313 in 1623. These increases broadly match the expansion in business experienced in other Westminster courts over these decades. However, in 1637 the masters issued a staggering 1,184 final decrees. By this time, Requests was under the leadership of the Lord Privy Seal, Sir Henry Montague, and anecdotal evidence suggests that, during his tenure, Requests came to rival or even exceed Chancery in terms of the number of litigants who passed through its doors.[22] The Lord Privy Seal had long been *ex-officio* or titular head of the court but, under Charles I, lords of the privy seal actually sat as masters, and it was in this capacity that Montague, a former chief justice of King's Bench, oversaw the most dramatic period of growth in the court's lifetime.[23] The court was therefore flourishing at the time of its sudden demise in 1642, when the privy seal followed the king to

[17] Edward Coke, *The Fourth Part of the Institutes of the Laws of England* (London, 1817), pp. 96–97.

[18] Caesar, *The Ancient State*, ix–xi, xiv–xvi.

[19] Stretton, *Women Waging Law*, pp. 72–73, 148–149; Coke, *Fourth Institutes*, p. 97.

[20] George Spence, *Equitable Jurisdictions in Chancery* (London, 1846), p. 351.

[21] These figures provide only a crude measure of levels of activity, as they do not distinguish cases mentioned more than once or take account of changes in court procedure or scribal practice, but the trajectory of change seems unmistakable.

[22] A.K.R. Kiralfy, ed., *Potter's Historical Introduction to English Law and its Institutions* (fourth edition, London, 1958), p. 169.

[23] In 1620, Charles bid the Lord Privy Seal, the Earl of Worcester, to sit in the Court of Requests, in Camden's words 'as if it were undignified that such a magistrate not have a place in the judiciary' (*quasi indignum esset, ut tantus magistratus Judicaturæ locum non haberet*): William Camden, *Epistolæ*, ed. Thomas Smith (London, 1691), Sig. Mmm. See also G.R. Elton, *The Tudor Revolution in Government: administrative changes in the reign of Henry VIII* (Cambridge, 1969), pp. 134–135.

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Oxford, making it impossible for masters in the White Hall in London to issue process.[24]

Procedure in Requests was by English bill, similar in most respects to procedure in Chancery, except that suitors addressed their complaints directly to the monarch, not to the chancellor or the masters, and the court issued process under the privy seal not the great seal.[25] To initiate process, a complainant entered a bill of complaint into the court, engrossed on parchment and signed by a counsellor. Surviving bills begin by identifying the complaining parties and explaining their eligibility to sue in Requests. To gain entry to the court, complainants had to claim that they were too poor to sue elsewhere, that they were members of the royal household or engaged in crown business, or that they were unable to gain justice at common law, due to a lack of necessary proofs or other evidence, the power and influence of their opponents, or their inability to afford the costs of litigation. The main body of most bills is then devoted to descriptions of grievances, often at considerable length, followed by pleas for suitable remedies. The most common request was for a writ of privy seal demanding the appearance of opponents to answer the complaints made against them. Alternatively, complainants asked the masters to assist with the recovery of evidence required to bring or answer suits at common law, to issue injunctions against defendants halting or preventing offending behaviour, or to establish commissions of *oyer* and *terminer* to hear and determine disputes locally. If the masters were satisfied with a petitioners' complaint, they issued the appropriate process under the privy seal, and the complainant or one of the messengers of the court served it on the named defendants. Defendants called to make answer had to appear in person, or else explain why they could not appear. Some argued that they were otherwise occupied with crown business, others that they could not make the journey to Westminster because they lived too far away, or were incapacitated by pregnancy, old age, or illness. In these cases, the masters could empower commissioners (by a writ or commission of *dedimus potestatem*[26]) to take defendants' answers in their localities. Whether in Westminster or before local commissioners, defendants answered on oath, an aspect of civil court

[24] The final entries in the court's books date from 1643 and, although the office of Master of Requests persisted during the interregnum and beyond, unlike Chancery, Requests was not resuscitated after Charles II's Restoration: see D.A. Knox, 'The Court of Requests in the reign of Edward VI, 1547–1553', unpublished PhD thesis, University of Cambridge, 1974, pp. 6–9.

[25] G.R. Elton, ed., *The Tudor Constitution: documents and commentary* (second edition, Cambridge, 1982), pp. 187–190. For procedure in Chancery, see W.J. Jones, *The Elizabethan Chancery* (Oxford, 1967).

[26] 'We have given the power'.

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procedure that was unavailable at common law (largely because it infringed rules about self-incrimination) and that many complainants found attractive. A minority of defendants who felt that they had nothing to answer for, or that Requests lacked the jurisdiction to hear their case, entered a demurrer, but the masters rarely accepted these without ordering demurring defendants to provide a full answer to the complaints made against them.[27]

Complainants who wished to respond to defendants' answers did so by entering a replication. Defendants, in turn, could respond to replications by entering a rejoinder. Once this exchange of accusations, denials, and counter-accusations was complete, parties were free to gather proofs and to call deponents or witnesses. Deponents appeared before the court's recorder in Westminster, or before commissioners in their community, and gave their answers in private to prepared interrogatories. Litigants did not know the questions their opponents planned to ask, but they did get to learn the names of the deponents they planned to call. Depositions taken outside London were usually engrossed on parchment, while those in London were written on paper, but in either case the recording official read each deponent's answers back to them to ensure their accuracy, and the deponents signed them or made their marks.[28] On receipt of the completed depositions, the masters set a date for publication, when the available evidence in a case was made accessible to opposing parties. The final stage was a hearing in the White Hall, at the conclusion of which the presiding master or masters passed judgment and issued a final set of orders or decrees.

This was the ideal course, but surprisingly few actions proceeded according to this plan. Many litigants stopped pursuing litigation after the initial stages, because of costs or because they had achieved some sort of settlement with their adversaries. The masters encouraged early settlements, either by arranging formal or informal arbitration, or by empowering commissioners to utilize local knowledge to find workable solutions to disputes. They seem to have been particularly keen to avoid final court hearings in cases fought between family members, including, of course, husbands and wives. Few cases, then, proceeded far enough to receive a final court decree and, when the masters issued decrees, they faced problems having those decrees enforced. The courts' affidavit books bristle with reports of defendants assaulting process servers and evading or ignoring Requests orders

[27] See, for example, **12.** *Anne Lloyd* v. *Humfrey Lloyd and John Bradshaw*, in this volume.

[28] Paper depositions bear original signatures or marks on each page of a deponent's answers, while parchment depositions are usually signed or marked only at the end (and the signature or mark is often a copy rather than an original).

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and decrees. To combat recalcitrance, the masters issued writs of attachment ordering sheriffs to arrest offenders, and if this failed they issued proclamations, and if necessary commissions, of rebellion to locate defendants and compel them to appear. In the later sixteenth century, the masters began making orders for sheriffs to amerce or sequester defendants' property to fund settlements for complainants, but their efforts still failed to tame the defiance of dogged individuals.[29] In 1582, Edward Hales told a process server that 'whatsoever was decreed in this courte, or by the lorde chancellor, was not lawe'. He acknowledged that the masters might imprison him for his contempt, but this meant only 'kissing or lying in the fleet', which he said he would 'happily do'.[30] In the same year, Christopher Bettinson told an adversary suing him in Requests 'Tushe tushe, I care not for this. I had one suche the laste terme. I will deliver no possession, yt shall coste you as muche as the house ys worthe before you gett possession thereof.'[31] As cases in this volume confirm, married women could face particular challenges in having Requests orders enforced, because those orders were so often out of step with coverture and the common law.

Despite the difficulty of enforcing decrees, a problem not unique to Requests, the court prospered. It offered process that was generally cheaper, faster, and less rule-bound than in other central courts. It also offered redress for litigants who were unhappy with treatment they received in other courts. Court and crown officials did not envisage Requests as a court of appeal, but a surprising amount of its business was the subject of previous or ongoing litigation in manorial courts, church courts, or local or central courts of common law. The court also went out of its way to provide justice to litigants enduring the burdens of poverty. The genuinely poor rarely possessed property or interests worthy of litigating in a civil action, but large numbers of people from the middle and lower ranks of English society lacked the resources to fund court actions and they found a welcome ally in a court that was known as 'the court for poor man's causes' years before it was called the Court of Requests. The court was never exclusively a court for the poor, and a succession of wealthy litigants made use of its services, from archbishops of Canterbury, solicitors-general, and lords of the privy seal to prominent individuals such as Fulke Greville, Francis Walsingham, Thomas Egerton, Lady Elizabeth Pawlett, and

[29] See, for example, **12**. *Anne Lloyd* v. *Humfrey Lloyd and John Bradshaw*, in this volume.

[30] REQ 1/107, p. 881. The 'fleet' refers to the prison off Farringdon Road, on the east bank of the River Fleet.

[31] REQ 1/107, p. 971.

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the Countess of Rutland.[32] Nevertheless, litigants too poor to pay legal costs could, and many did, petition the masters to gain entry to Requests *in forma pauperis*, by claiming they earned income worth less than 40 shillings a year or owned lands worth less than £5.[33] The masters usually granted these requests, which meant that litigants did not have to pay court costs and were supplied with the services of one of the court's attorneys and of a legal counsellor free of charge.

A select group of attorneys in Requests, appointed by the court's registrar or clerk of the privy seal and usually numbering three, held a monopoly over managing court procedure and ensuring cases met the court's requirements.[34] It was independent legal counsel, however, who prepared pleadings on behalf of litigants, and appeared before the masters to request hearings and to make arguments on their clients' behalf. Litigants could, but did not always have to, appear in person in Requests. As already indicated, in normal circumstances defendants served with process under privy seal had to appear in person and swear that their answer was true.[35] They were then expected to stay in the vicinity of Westminster for the duration of litigation, but the costs that this might entail could be crippling and prove inconvenient not just to litigants but also to their families, employers, and patrons.[36] As a result, many defendants made an initial appearance but then relied on their legal counsel to act on their behalf, or sought to be excused personal attendance in Westminster altogether.[37]

No one has yet undertaken a detailed study of the Requests bar to determine who practised in the court and how often they appeared. Most pleadings bear the signature of counsel and entries in surviving court books often mention them by surname at least, so it is possible to determine that the overwhelming majority of the lawyers who plied their business in Requests were common lawyers belonging to the Inns of Court, rather than civilians trained in civil law. Neither the court nor the crown compensated the lawyers appointed to represent 'pauper' litigants for free, and as a result these men tended to be

[32] REQ 1/65 (unpaginated), 4 May; REQ 1/18, pp. 123, 183; REQ 1/35A, fo. 54; REQ 1/20, p. 773; REQ 1/17, p. 320; REQ 1/18, p. 566.

[33] These thresholds remained constant throughout the period, despite the ravages of inflation, but the masters did not diligently enforce them. See REQ 1/65, 4 May (Greville case).

[34] A fourth attorney practised briefly towards the end of Elizabeth's reign: see HMC *Salisbury*, vol. 16, pp. 55–56; REQ 1/19, p. 707. For an example of the special knowledge that Requests attorneys possessed, see REQ 1/17, p. 8.

[35] Elton, *Tudor Constitution*, pp. 194–195.

[36] *CSPD 1598–1601*, p. 326; *CSPD Addenda 1566–1579*, p. 447. A number of influential employers or patrons sought to have cases in Requests involving their servants or clients dealt with expeditiously: see *ibid*., pp. 454, 501, 540–541; *CSPD Addenda 1580–1625*, p. 45.

[37] *CSPD Addenda 1566–1579*, pp. 208, 509–510.

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wealthier and more experienced members of the profession. In 1558, senior judges urged that counsel appearing in Requests (or Chancery) should be barristers who had spent at least ten years studying the law.[38] In practice, a significant proportion of counsel were serjeants-at-law, men with exclusive right to plead in Common Pleas.[39] Court book entries for Hilary Term 1592, for example, mention legal counsel 170 times by name, referring to ninety-four separate individuals.[40] Serjeant John Glanville is named eight times, appearing twice on behalf of complainants and four times on behalf of defendants, and he and fellow serjeants Harris, Owen, Snagge, and Yelverton are identified a total of nineteen times. The Attorney-General, Thomas Egerton, is another notable legal figure who appeared in Requests during this term, acting once for a complainant and once for a defendant. Most counsels' names appear three times or fewer, with only eight mentioned four times or more, precluding the possibility of a narrow, specialized bar.[41]

The nature of the Requests jurisdiction and the varied backgrounds of its litigants make its archives a fascinating repository of information for historians. The emphasis that the masters placed on individuals' particular circumstances encouraged litigants and their counsel to produce elaborate descriptions of those circumstances in pleadings that are often full of rich detail and colourful language. Decree book entries show who 'won' certain cases, and therefore provide an indication of the masters' views of the integrity of litigants and witnesses. In addition, many court books include initial letters at the beginning of each sitting indicating which master or masters were in attendance, which can be helpful in investigating or comparing the attitudes of individual judges. However, the entries themselves

[38] J.H. Baker, *The Common Law Tradition: Lawyers, Books and the Law* (London and Rio Grande, 2000), p. 84.

[39] According to Lambarde, serjeants had to represent litigants admitted *in forma pauperis*. In his words, 'And the Kings sergeant to be sworne to give councell without fee to such as shal be accepted for poore, upon paine to be discharged of their offices' (Lambarde, *Archion*, p. 173).

[40] REQ 1/17, ignoring two references to 'attorney' without identification, one to 'Mr [*Blank*]', and one reference to Christopher Coates, who is expressly identified as one of the attorneys of Requests, but including John Warter and Thomas Cryppes, both described as solicitors 'in this court': REQ 1/17, pp. 17, 18, 22, 48, 57. Senior figures appeared as counsel in the court in other decades: for example, Solicitor-General Sir Edward Littleton appeared on behalf of a complainant in Easter Term 1637: REQ 1/35A, fo. 54.

[41] The eight are Blake (ten), Glanville (eight), Winter (six), Scott (six), Tows (four), Thavesbie (four), Lewes (four), and Foster (four). In other periods, it is possible to find individuals, such as Thomas Caesar, appearing again and again in Requests, but these men were the exceptions rather than the norm. For the make-up of the Requests bar during the early Tudor period, see Baker, *Oxford History of the Laws*, p. 206.

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contain little clear detail of the precise reasoning behind the masters' decision-making. This is usually obscured behind phrases such as 'upon consideration it seemed to the court that . . .'. Modern readers therefore face the same problem that the court's masters confronted, namely deciding whose accounts to believe and when to believe them, given the disagreements between parties and the levels of exaggeration that this adversarial system inevitably produced. This is true even where a case proceeded as far as a final decision, and where that decision is known. Readers would therefore do well to cultivate a lawyer's scepticism about the truth of statements in pleadings and even in depositions, unless these statements can be corroborated.[42]

Locating and Selecting Cases

The voluminous archive of the Court of Requests is housed in the National Archives at Kew, divided into four classes of documents. REQ 1 contains books created by court officials recording decrees and orders, the names of witnesses, the issuing and serving of affidavits, and so on. There are 191 piece numbers in this class, containing almost 100,000 pages of information. Many volumes are in excellent condition, but others are so decayed that they are largely unreadable. REQ 2 includes the bulk of surviving pleadings gathered in 829 bundles, each bundle containing around one hundred piece numbers or case files. Some piece numbers consist of a single membrane, while others contain fifty or a hundred pages of pleadings, witness depositions, and supporting proofs. Unfortunately, pleadings and other documents from a case are not always bound together under a single piece number, and in the sorting of the archive their original chronological order was lost, making it difficult to reassemble the surviving materials for selected cases. REQ 3 is made up of forty-four boxes of unsorted and unidentified documents, many of them fragmentary and not all of them belonging to Requests. The final class, REQ 4, contains a handful of 'documents of interest to Shakespearean scholars', from cases in which Shakespeare was named or appeared as a deponent.

Searching this archive for suits fought between wives and husbands is no easy task, given the sheer quantity of surviving material and

[42] On the problems associated with using court records as evidence, see Tim Stretton, 'Social historians and the records of litigation', in Sølvi Sogner, ed., *Fact, Fiction and Forensic Evidence* (Oslo, 1997), pp. 15–34; Joanne Bailey, 'Voices in court: lawyers' or litigants'?', *Historical Research* 74 (2001), pp. 392–408.

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the dearth of indexes and other finding aids. No calendars currently exist, for example, for the latter half of the reign of James I and all of the reign of Charles I, representing well over half of all surviving pleadings. Furthermore, the calendars that do exist for the reigns of Henry VIII, Edward VI, Mary, and Elizabeth are of inconsistent quality. Many provide no more than litigant names and the locations of suits, without mentioning the subject of litigation, and the indexes to calendars rarely indicate the relationships of warring parties. A comprehensive examination of the archive would take hundreds of human hours, and for little return, given the rarity of cases fought between spouses. Consequently, the contents of this volume are the fruits of an exhausting, but not an exhaustive, targeted search of particular primary and secondary resources, beginning with the decree and order books that survive from the period 1542 to 1642. These books retain their original chronology and, in many cases, their original bindings. The court's registers, called 'fayre' or fair books, are arranged by law term and usually divided into groupings of procedural orders, followed by final orders and decrees.[43] For the years after 1581 these are supplemented by draft books, in which scribes often crossed out entries and marked 'In' in the margin as they transferred them to the 'fayre' books.[44] Many of these books have covers and page edges blackened with dirt and age, and contain scribbled notes on scraps of paper and parchment as well as fragments of wax seals and the remains of quills. However, as the original record of proceedings they provide a helpful sense of the commotion that characterized the court's day-to-day operation and they also contain original signatures that are merely copied in the final books. Twenty-six of these draft books were searched, covering periods for which no final decree or order books survive, along with thirty-one good copy books, making up a total of over 29,000 pages of procedural orders and final decrees.[45] To locate pleadings, interrogatories, depositions, and other documents from identified cases, and to uncover additional cases not mentioned in surviving court books, the curious assortment of available nineteenth- and twentieth-century finding aids proved invaluable. In addition to the four volumes of published calendars and

[43] In a draft book from 1641, a scribe noted 'this order is not in the fayre booke': REQ 1/96, p. 163.

[44] These books contain memoranda of the payment of fines and monies with original signatures or marks of litigants and witnesses, and original letters relating to cases, which do not appear in the 'fayre' books.

[45] REQ 1/7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35A, 35B, 36A, 36B, 37, 38, 39, 40, 55, 56, 58, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 82, 83, 87, 88, 90, 92A, 92B, 93, 94, 95, 96, 97. REQ 1/12 is currently unavailable for consultation because of its poor state of repair.

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indexes produced by the List and Indexes Society, there are almost a dozen volumes of unpublished manuscript calendars prepared by a number of different hands and currently housed in the Map Room at the National Archives.[46] Time constraints prevented a search of the 405 boxes of pleadings that are currently uncalendared.[47]

This search through thousands of pages of court books and through all of the surviving calendars for litigation between wives and husbands unearthed just thirty-three cases (fought by thirty-one couples) in the years from 1542 to 1642.[48] This makes an average of less than one case every three years, in a court that heard hundreds of cases a year. The twenty cases selected for inclusion represent a cross-section across time, subject matter, and documentation. Selecting only those cases that have left a full array of pleadings, interrogatories, depositions, and court orders, culminating with a final decree, would present a distorted and unrepresentative view, both of the nature of the original litigation and of the state of the archive, in which almost a third of all cases produced only an initial bill of complaint. It would also limit space, since the documentation from the largest case contains over 50,000 words of text.[49] In consequence, a number of cases included here are tantalizing and incomplete, either because they did not progress beyond the initial stages of litigation or because they have fallen victim to the vagaries of document survival in a large and jumbled archive. The selections therefore seek to represent not just the range of matters at the centre of marital litigation but also the condition of the surviving archive in its current form. In keeping with this desire to represent the archive as well as the cases, all available pleadings, petitions, interrogatories, depositions, orders, and decrees are reproduced here in their entirety. Entries in order books, for example, have not been edited or excised, even where they contain details that are repetitive.[50]

[46] The published calendars are: *List of Proceedings in the Court of Requests preserved in the Public Record Office*, List and Index Society vol. 21 (London, 1906, reprinted New York, 1963); *Proceedings in the Court of Requests*, List and Index Society Supplement no. 7, (4 vols, New York, 1964–1966).

[47] It is possible that pleadings from the Dunford case, no. **20** in this volume (and the Searle, Tresham, and Tuttle cases listed in Appendix 1), may survive within these boxes.

[48] Two cases are countersuits in which defendants became complainants. The archive contains evidence of a thirty-fourth case, but it is an undated petition addressed to the Privy Council and carries no endorsements by Requests masters or clerks: *Johan Morgan als Andrewes* v. *John Andrewes*, REQ 2/166/129.

[49] Documents from the longest case in this volume, **11**. *Joan Spragin* v. *Martin Spragin et al.*, contain over 19,000 words of text.

[50] The only materials not to be included are entries from affidavit and witness books, and draft orders and decrees in instances where the final copies have survived.

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The Distribution of Cases

It is impossible to draw a definitive picture of the distribution of marital litigation in Requests based on a partial search of an incomplete archive. Indeed, while it is almost inevitable that more cases will come to light in the future when the pleadings are comprehensively indexed, the full extent of marital litigation in the court may never be known. Nevertheless, the uneven frequency of the cases currently identified makes it tempting to speculate about why this type of litigation appears to have been more common in some decades than in others. The earlier period saw a slow but steady trickle of cases: two in the 1540s, two in the 1550s, and three in the 1560s (see Appendix 1). No cases have been identified between 1567 and 1588; however, this may just be a trick of the archive, a result of decision and order books not surviving for the years 1567 to 1582 and the inconsistent calendaring of pleadings for this period.[51] In the 1590s, the number of cases rose noticeably to an average of almost one a year and remained at this level until around 1609, before falling away to one case in the 1620s, two in the 1630s, and then one in 1640.[52]

The increase in marital litigation in the 1590s in part reflects the general rise in litigation during this decade. Cases of every kind were on the increase, so it is not surprising that cases involving husband and wife should have become more prevalent; however, the scale of the rise is too great to be explained by this factor alone. A simple correlation between marital suits and general levels of court business is also complicated by the sharp drop in suits after 1615, one which lasted until the court's demise in 1642, during years when court business was expanding to record levels. It is more likely that explanations for the fluctuation in the number of marital suits lie with the masters who permitted these suits to enter Requests, and with changes in the judicial culture of the court. In any justice system, exceptions tend to breed exceptions, thanks to the logic of precedent and custom, so that the clustering of cases is not unusual. What is striking in Requests is how many marital cases coincided with the mastership of one man, Julius Caesar. Caesar served on the Requests bench for fifteen years, as extraordinary master from 1591 and then as master in ordinary from 1598 until 1606, and almost half of all

[51] REQ 1/12 covers the years 1568 and 1569 but, as mentioned above, it is in such poor condition that it is currently unavailable for consultation. The List and Index Society calendar that covers these years (see n. 46 above) contains little information, compared with the manuscript calendars for later periods, about the marital status of litigants or the subjects of actions.

[52] It is possible that these numbers are artificially low due to the absence of calendars of pleadings for these years, but the lack of references in court books is nevertheless striking.

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the identified marital suits (fifteen out of thirty-three) came before the court during this time. Caesar was trained as a civilian, with degrees in civil law from the universities of Paris and Oxford, although he also had respect for the common law and was a member of the Inner Temple.[53] In a rare break with tradition, he was admitted to practise in the *Parlement de Paris*, and although he never exercised this privilege it is likely that he was aware of the relatively high numbers of separation suits that that court entertained.[54] This strong background in the civil tradition may help explain his willingness to assist married women (and married men) who were suffering under the strictures of coverture, and, in addition to his formal interventions in cases before Requests, he also acted as private mediator in marriage settlement negotiations. Evidence in court books shows that he was present at procedural and final hearings involving all of the marital cases heard during his time as master, and his particular stake in these exceptional cases can be sensed from an order made on one of the rare occasions when he was absent. In the case of *Whetenhall* v. *Whetenhall*, the attending masters ordered that 'the matter shall remayne in court as it now doeth unles Sir Julius Caesar, one of his majesties Counsaill in this court who formerly appointed this day for the hearing of the said cause, shall otherwise determine thereof'.[55]

Caesar was not the only master known for making interventions in cases involving married litigants. In a petition to the Privy Council from the Fleet Prison in 1585, Richard Puttenham complained of being personally hounded and physically assaulted by Thomas Seckford (Master 1558–1587), while unsuccessfully defending a suit that his wife, Mary, brought against him in Requests.[56] Other Requests masters, especially those who practised in the Court of Arches, had particular interests and expertise in the laws relating to marriage. In 1529, Sir John Tregonwell and Sir William Petre assisted in Henry VIII's 'divorce' from Katherine of Aragon.[57] William May (Master 1550–*c.*1553) served on two commissions appointed to hear 'divorce' appeals in the late 1540s.[58] Walter Haddon (Master 1558–1571) had served

[53] For details of Caesar's career, see L.M. Hill, *Bench and Bureaucracy: The Public Career of Sir Julius Caesar, 1580–1636* (Stanford, CA, 1988).

[54] Caesar, *The Ancient State*, xxiii. I am indebted to Charles Donohue for his observations about marital litigation in the *Parlement de Paris*.

[55] REQ 1/23, p. 65; and see p. 218 below.

[56] SP 12/183/66. In contrast to Caesar, Seckford (or Sackford) was a common lawyer, not a civilian: see Appendix 2; Stretton, *Women Waging Law*, pp. 146–147; and the Puttenham case, no. **6** in this volume.

[57] Anthony N. Shaw, 'Tregonwell, Sir John', in *Oxford DNB*; C.S. Knighton, 'Petre, Sir William', in *Oxford DNB*; D.F. Corcos, 'Petre, Sir William', in *History of Parliament 1509–1558*.

[58] Norman L. Jones, 'May, William', in *Oxford DNB*.

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on Henry VIII's committee charged with reforming ecclesiastical law. In 1542, this committee recommended that full divorce with the possibility of remarriage should be permitted on the grounds of desertion, adultery, or cruelty, although this suggestion never became law.[59] Thomas Wilson (Master 1561–1577) acted as advocate in Rome for John Chetwood in his matrimonial dispute with Charles Tyrell concerning Agnes Woodhull.[60] In the 1570s, William Aubrey (Master 1590–1595) joined other doctors of civil law in writing an opinion on the extent of the property rights of married women who divorced or separated from husbands found guilty of criminal offences.[61] Daniel Dunn (Master 1598–1616)[62] was Dean of the Court of Arches from 1598 and such an authority on the law of marriage that he was called on to write an opinion on the 'prosecution of the nullity between the Earl of Essex and his wife, the Lady Frances Howard'.[63]

If the particular distribution of cases in Requests indeed reflects the influence of individual masters, and not simply shifts in the number of spouses who complained to the court in different decades, this may provide the key to understanding the apparent drop in the number of cases in the seventeenth century. Caesar's colleagues as masters, including fellow civilian Daniel Dunn, continued to admit marital cases after his departure in 1606, hearing three in 1609 (one a counter suit) and three more between 1614 and 1615. However, only three additional cases have so far been identified for the twenty-seven years after 1616, a year which saw abrupt changes in the court's personnel. In the space of less than nine months, James I appointed three new masters: Sir Sydney Montague in Easter Term 1616; Sir Robert Naunton in Michaelmas Term 1616; and Sir Lionel Cranfield in Hilary Term 1617. This turnover of masters alone could have disturbed an institutional culture previously accustomed to allowing spouses to sue each other, by dramatically shortening the collective memory of the presiding masters. Yet, taken together, these appointments also embody a significant shift in crown policy regarding Requests. Where Elizabeth I had maintained a balance of civilians and common lawyers within the court, James I appears to have appointed no civilians among the dozen new masters that he named during his reign.[64] James showed

[59] C.L. Powell, *English Domestic Relations, 1487–1653* (New York, NY, 1917), p. 63.

[60] Susan Doran and Jonathan Woolfson, 'Wilson, Thomas', in *Oxford DNB*; P.W. Hasler, 'Wilson, Thomas', in *History of Parliament 1558–1603*.

[61] *CSPD 1547–1580*, p. 473. See also *CSPD 1591–1594*, pp. 281–282.

[62] Leadam, *Select Cases*, and the entry in the *DNB* suggest that he was sworn master in 1598, but he does not appear in the court books until 1603.

[63] W.J. Jones, 'Dunn, Daniel', in *History of Parliament 1558–1603*.

[64] Evidence in the court books suggests that James appointed Dr Daniel Dunn in 1603, but Leadam, *Select Cases*, and the author of the entry in the *DNB* disagree (see n. 62 above).

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himself sympathetic to civil law principles throughout his life; yet, perhaps to placate those who feared the undermining of common law institutions and authority, particularly given his declaration in 1616 of the supremacy of Chancery over the courts of common law, he shied away from appointing civilian masters.[65] Even if the appointments owed more to the politics of patronage than to the ideology of law, the resulting concentration of common law minds in Requests could well have worked to discourage exceptions to established legal principles such as coverture. The general shift in policy did not go unnoticed and, on 13 December 1633, the Archbishop of Canterbury raised it in a meeting of the Privy Council, reporting how King Charles had acknowledged that 'all convenient meanes should be used for the breeding upp of able and sufficient professors of the civill and common lawes' to do service 'not onely in sundry courts of justice and other places at home, but also abroad in treaties with foraigne princes and states'. Existing opportunities within the ecclesiastical courts were insufficient for this purpose, and Charles 'according to the intencion of his father' had 'resolved hereafter hee will have all places that shall become vacant of masters of Requests to his majestie and likewise eight of the eleven places of the masters of the Chancerie shall be supplied with men of those professions of the civill and common lawes onely'.[66] The concern here was not just with the dearth of civilians but also with the controversial appointments of men such as Lionel Cranfield, a successful merchant who had no formal legal background at the time he became a master. Nevertheless, the three masters Charles appointed after 1633 were all civilians, although only one of them, Dr Robert Mason appointed in 1640, actually sat in the court of Requests before its demise in 1642.[67]

The influence of the common law may have played a part, but it was not the only factor at work in the treatment of married women or men seeking equitable relief for problems arising from their crumbling marriages. The seventeenth century also witnessed a general hardening of procedure within equity courts, most visible

[65] For details of the conflict between Chancery and the common law, see J.H. Baker, 'The common lawyers and the Chancery: 1616', *The Irish Jurist*, 4 (1969), pp. 368–392.

[66] Guildhall MS 213, pp. 71–72. A document in the Alford papers dating from the early 1620s, entitled 'Heades to be Considered of concerning the Chancerye', suggested that 'ther be no more masters of the Chancery but six wherof three of the temporall law, 3 of the Civill law'; see Wallace Notestein et al., eds, *Commons Debates 1621* (New Haven, CT, 1935), vol. 7, p. 587.

[67] The other civilians were Arthur Ducke, sworn master in ordinary at Oxford on 31 August 1643, and Edmund Peirce, sworn master extraordinary 1 December 1644: *Privy Council Registers Preserved in the Public Record Office: Reproduced in Facsimile*, 12 vols (London, 1967–1968), vol. 12, pp. 215, 231.

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in the administrative reforms of Chancery under Lord Nottingham later in the century, but also apparent in incremental changes that flowed from the growing circulation of law reports and what might be termed the professionalization of legal institutions and practitioners more generally. For example, where Julius Caesar regularly sat alone in the White Hall in the later 1590s, by the 1620s it was rare for fewer than three masters to preside over any sitting, and this fact, along with the other possible changes mentioned here, could explain why the Stuart court issued fewer *ad hoc* or exceptional orders than its Tudor predecessor.

Indirect confirmation of a growing reluctance to break common law principles can be sensed in the emergence of a new kind of case in which married women did not sue in their own name but third parties sued on their behalf. In January 1632, the draft order books record details of a suit that Sir John Bodenham brought 'in the behalf of Lucy Lamley wife of James Lamley esquire & her children' against 'the said James Lamley'.[68] In June of the same year, Thomas Baldwin and others entered a bill on behalf of Ann Reade and her children against Ann's husband Nicholas.[69] Another example is *Dame Theodosia Tresham* v. *Sir William Tresham*, one of the marital litigation cases listed in Appendix 1. Court book entries show that Dame Theodosia sued her husband in her own name in 1635, but subsequent entries from 1638 are headed 'Sir John Rowse and others on the behalfe of Dame Theodosia Tresham the wife of Sir William Tresham v. Sir William Tresham'.[70] In each of these cases, the masters were able to hear marital causes and provide relief for offended parties, but without pitting husband against wife in direct public conflict.

An earlier case signalling this kind of change entered the court in 1609, when Margaret, Countess dowager of Cumberland and William Gascoigne entered a bill of complaint against John Gascoigne and William Harvey 'for & on the behalf of Jane Gascoigne now wief of John Gascoigne'. The difference here was that Jane was named as a co-complainant, and the suit was a counter suit inspired by the Requests action that John Gascoigne had been pursuing against her since 1603 (see Appendix 1).[71] A preference for wives relying on trustees or other confidants may also help to explain a case of a slightly different nature from June 1632, in which Margaret, the wife of William Harcourt, brought an action without naming her husband as co-complainant. Within days, her case was taken over and pursued by Ambrose Saunders 'for & on the behalf of Margaret Harcourt, wife

[68] REQ 1/61, 23 January.
[69] REQ 1/61, 13 June.
[70] REQ 1/68, pp. 180, 186; REQ 1/72, p. 87.
[71] REQ 1/28, p. 528.

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of William Harcourt, gentleman, & her children, being a trustee for them'.[72] A final example comes from one of the court's own masters, Sir Edward Powell, whose marriage to Dame Mary ended in one of the hardest fought separation battles of the 1630s and 1640s.[73] It is open to speculation whether or not Powell's own marriage break-up influenced him as a master, but what is clear is that, when disputes over Dame Mary's property rights inspired litigation in Requests, Chancery, and Exchequer, in each instance it was Dame Mary's trustee, Thomas Crompton, not Mary herself, who prosecuted or defended the suits in his own name.[74] The existence of these different cases suggests that the ability of wives to seek redress against their husbands did not diminish entirely after 1615, but it took on a new form that was less defiant and less threatening to the status quo. What remains to be seen is the effect that this change had on husbands, both those who attempted to exploit the rules of coverture and those who felt exploited themselves but who no longer had easy access to litigation: how easy or common was it for them to sue their wives' trustees?

The numbers of marital suits entering Requests fluctuated over time, but at no point did they become common. The overall rarity of these actions suggests that, even in the case of Julius Caesar, it is unlikely that the masters saw themselves as mavericks consistently defending wives, or the occasional husband, against the injustices of an unfair doctrine. It is even conceivable that they were the very opposite – conservatives intent on upholding coverture, who bent the rules only to prevent the structures that coverture's rules supported from shattering. Nevertheless, these exceptional cases contain vital and fascinating details about how individual men and women negotiated the legal constrictions that marriage imposed on them and how society as a whole dealt with the rules of marriage in instances where marriages had broken down.

Notes on Transcriptions and Dates

The period spanning the years 1542 to 1642 is a particularly interesting one in the evolution of the English language. For that reason, among others, transcriptions have been kept as close as possible to the original text, subject to the following changes made for ease of comprehension.

[72] REQ 1/61, 18 June, 21 June, 27 June, 26 November, 28 November; REQ 1/64, 18 November.

[73] SP 16/403, pp. 59, 60, 215.

[74] *CSPD 1636/7*, p. 272; *CSPD 1638/9*, pp. 612–613; *CSPD Addenda 1625–49*, p. 618; SP 539/9. Dame Mary did, however, petition the House of Lords, the Lord Keeper, the Lord Privy Seal, the Archbishop of Canterbury, and King Charles in her own name: *CSPD 1637/8*, pp. 436, 575–576; SP 16/280, p. 53; *CSPD 1638/9*, pp. 612–613; *CSPD 1640*, p. 605.

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Abbreviations have been silently expanded and original spelling has been retained throughout, except that the letters u and v and i and j, and the dipthong y, have all been modernized. Punctuation has also been modernized, although without the addition of quotation marks, apostrophes, or question marks. Where original spelling might confuse, letters in square brackets have been added, for example 'to[o] much' or 'thre[e] yeres'. Capitalization has been made consistent and, to avoid potential confusion, 'Counsaill' – meaning the Court of Requests (referring to the King's or Queen's Council 'in this court') – has been capitalized to better distinguish it from 'counsel', the lawyers who acted on behalf of litigants. Broken words have been joined ('a sunder' becoming 'asunder', 'him selff' becoming 'himselff') and elisions have been separated ('thannunciation' becoming 'th[e] Annunciation', 'shalbe' becoming 'shal be', 'thands' becoming 'th[e] hands'). To avoid beginning a sentence with an ampersand, '[And]' occasionally replaces '&'. Repeated words have been omitted: for example, in depositions taken by commission, where deponents signed the bottom of each membrane, only their final signature is recorded here. Original endorsements on the backs of documents have been included, but not inconsequential later additions (such as the routine printing of the names of litigants on the backs of files to aid in cataloguing and retrieval). Similarly, inconsequential marginal endorsements in draft order books (such as those indicating that scribes had copied entries into the fair copy books) are also omitted. Following Camden Series conventions, superscript characters have been kept to a minimum. Those found in original documents are either presented as normal characters ('xx^{li}' becomes 'xx *li*') or have been omitted ('xxiij^{tie}' – for 'three and twenty' – becomes 'xxiij'). The exception is multiple numbers (for example, 'v^{c} marks' for 500 marks).

Supplied dates are Old Style, except that the year is taken as beginning on 1 January. It is worth reminding readers that most dates on documents refer to the date when court officials endorsed them, not when they were written. In the calculation of dates, extensive use has been made of C.R. Cheney, ed., *A Handbook of Dates for Students of British History*, second edition revised by Michael Jones (Cambridge, 2000). Finally, while attempts have been made to identify legal counsel, and Appendix 2 provides information about the masters of Requests active between 1542 and 1642, this volume does not contain extensive biographical information about the litigants and witnesses involved in the selected suits. That task, which demands months of work in more than a dozen local record offices and archives, awaits future students inspired to learn more about the men and women whose lives these cases reveal.

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