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The Denis Bethell Prize Essay

Kin and the Courts: Testimony of Kinship in Lawsuits of Angevin England

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'The whole neighborhood knows this': the problem

A fragment of a plea from the court of the archbishop of Canterbury, remanded from the vacant see of Chichester around the year 1200, summarizes the collection of testimony in a marriage suit. The surviving *inquisitio* reads in part:

> [The witnesses] all say the same thing about the affinity, to wit, that Agnes, the wife of Stephen, was formerly the wife of Elias, a cook. And Isabel, once the concubine of Stephen, was the daughter of Elias' mother's sister.[1]

Thirteen people affirm this, states the record, which goes on to assert: 'The whole neighborhood testifies to this, and it is well known to all.'[2] Finally, many of the witnesses recall in detail how Isabel, at the request of her cousin Elias, became godmother to Elias and Agnes' son, taking him from the sacred font following his baptism on the Sunday just after the feast of All Saints some years earlier.[3]

While no other details of the filing or outcome of this suit survive, the issues – affinity as a potential impediment to a valid marriage – are clear enough. Let us turn to a second suit, in a different venue entirely: the court of the king at

1 *Omnes isti de affinitate idem dicunt, videlicet quod Agnes uxor Stephani fuit uxor Helie coci, et Ysabel quondam concubina St. fuit filia matertere ipsius Helie. Idem attestatur tota vicinia et est omnibus notissimum.* See n. 2, below.

2 *Select Pleas from the Ecclesiastical Court of Canterbury*, ed. Norma Adams and Charles Donahue, Jr., Selden Society 95 (London, 1981) [hereafter *Select Pleas*] case A.8, 28–30, dated to '*c.* 1200'. It has no fixed date; paleography suggests it belongs among the documents now in this scrapbook from Hubert Walter's pontificate, and legally (though there is some ambiguity) it antedates the Fourth Lateran Council, which reduced potential affinity impediments along with consanguinity degrees: see p. 29 and no. 7. This case is also featured in the appendix to R.H. Helmholz, *Marriage Litigation in Medieval England* (Cambridge, 1974), 214–15.

3 Figure 1 shows these relationships as declared in the *inquisitio*.

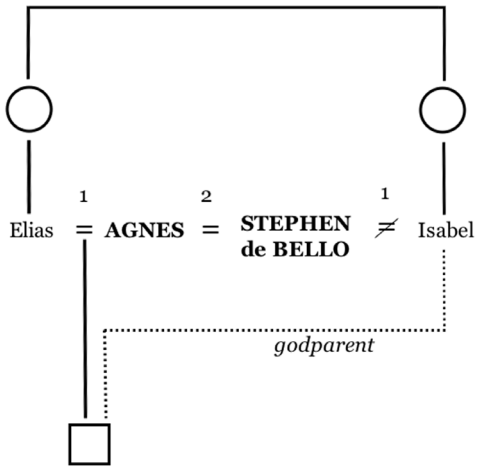

Fig. 1: Stephen de Bello & Agnes.
Source: *Select Pleas* A.8, c. 1200.

Westminster, six years later and sixty miles away, in the third week after Michaelmas in the eighth year of the reign of King John:[4]

> William de Stodham was directed to get homage from Herman, son of Ralf Faber, for a tenement which he held of him in Stodham; yet William came [to the assize] and said that he could not secure homage, because Herman was a villein. And he produced a group of people [*secta*], that is, Simon and Walter, who were the sons of William, the son of Ailward: and this Ailward was brother of Baldwin, grandfather of the said Herman. And he also produced Gilbert son of Edith – this Edith being sister of Emma mother of Herman. And he produced Hamo son of Alviva, who was daughter of Godith; and this Godith was sister of Seghive, maternal grandmother of the said Herman. And he produced Levric son of Edith, who was maternal aunt of Emma mother of Herman. Who all admitted to be villeins and accustomed to villein service [*consuetudinarii*]. But Herman came and denied his villeinage: he said that these people were not related to him in the way they said. His grandfather was named Anketil and not Baldwin! So he denied that they were related to him as stated; and he placed himself on the law of the land.[5]

Two different types of proceeding existed in two different court systems, concerning different points of law, different methods of court procedure, and

4 *Cur. Reg. R.* 4:259, Michaelmas Term. The case is incomplete: there are two lines left blank for annotation of a later resolution (summoned for the octave of Martinmas), but the published rolls preserve no further mention of the case.

5 *Willelmus de Stodham, summonitus ad capiendum homagium Hermanni filii Radulfi Fabri de liber tenemento suo quod de eo tenet in Stodham, venit et dicit quod non debet homagium suum capere, quia ipse villanus est; et inde producit sectam, scilicet Simonem et Walterum filios Willelmi filii Ailwardi, qui Ailwardus fuit frater Baldewini avi ipsius Herman. Producit etiam Gillebertum filium Edith, que Edith fuit soror Emme matris ipsius Herman; et producit Hamonem filium Alvive, que fuit filia Godith, que Godith fuit soror Seghive avie predicti Herman ex parte matris sue; et producit Levricum filium Edith, que Editha fuit matertera Emme matris Herman; qui omnes cognoscunt se villanos et consuetudinarios. Herman [venit] et defendit villenagium; et dicit quod non sunt ita consanguinei eius sicut ipse ei imponit; et dicit quod avus suus vocabatur Anketillus et non Baldewinus; et defendit quod non sunt ita consanguinei eius sicut predictum est; et ponit se super legalem iuratam patrie.* Figure 2 shows the genealogy constructed by the plaintiff's witnesses. Figure 3 shows the scope of the defendant's denials.

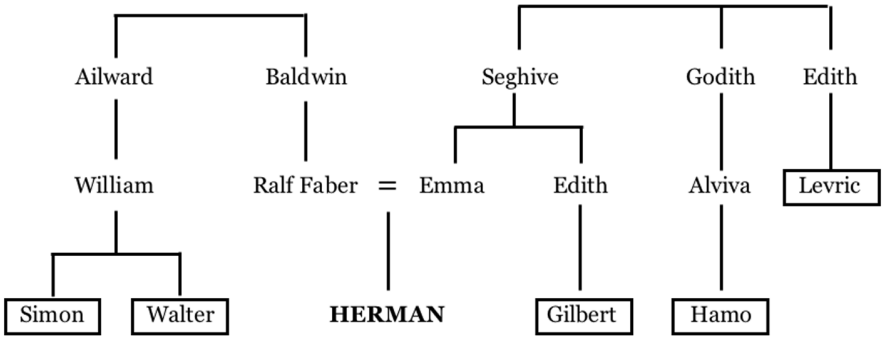

Fig. 2: Herman, son of Ralf Faber (claimant's case). Source: *Cur. Reg. R.* 4:259, 1206. Witnesses appear in boxes.

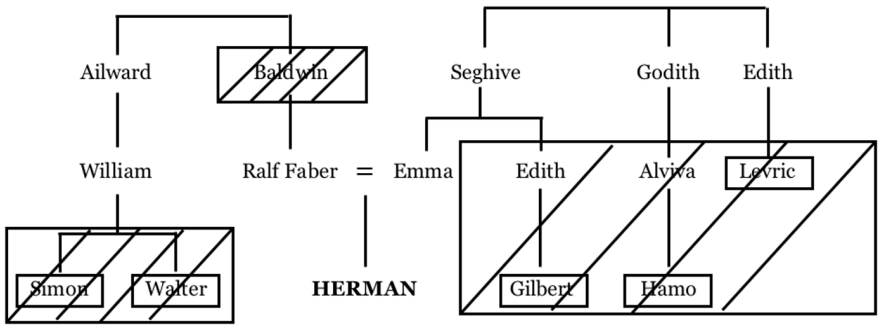

Fig. 3: Herman, son of Ralf Faber (defendant's case). Source: *Cur. Reg. R.* 4:259, 1206. Witnesses appear in boxes. Cancelled areas show kinship denied by defendant.

different collections of facts. Yet both cases hinge on genealogy; that is, they both depend on the collection, evaluation, and retention of genealogical testimony as a key to a dispute of fact or law.

Both these cases come to us from the first decade of surviving plea records from their respective courts. It is no coincidence that the beginning of the thirteenth century saw the acceleration of record-keeping in these courts, now staffed by literate men with a professional legal outlook imported directly or indirectly from Bologna. The *curia regis*, in its first years of surviving rolls under Richard and John, was busily subsuming all the jurisdiction it could in its rôle as the hub of the Angevin campaign to nationalize justice. Among the early plea rolls are many cases, like this one, of disputed villein status – obviously of paramount importance for the fiscal outlook and juridical privileges of the king's tenants and their serfs. On the ecclesiastical side, the court of Canterbury sat atop its own hierarchy, acting on appeals or in vacancies throughout the ecclesiastical province of

England.[6] In its earliest extant cases, unfortunately surviving only haphazardly from throughout the thirteenth century, we see a smaller sampling, but one which still includes (as one would expect) several disputes over that exasperating medieval hybrid, the sacramental marriage.

In these precocious secular and ecclesiastical courts of Angevin England one finds, for the first time anywhere in Western Europe, genealogical narrative expressed within an increasingly formalized framework of judicial testimony. In reviewing the variety of cases and proceedings from the era, one can discern three broad categories of lawsuit which hinge on genealogical testimony: marriage litigation, suits involving the inheritance of property, and suits challenging the inherited legal status of villeins. The present paper is limited to a review of the two more clearly defined types of litigation: marriage and villeinage.[7] This preliminary qualitative study is based on a small sample of published cases from the *Curia Regis Rolls* in the reign of King John (for suits involving villeinage) and from the *Select Pleas of the Court of Canterbury* covering the whole thirteenth century (for marriage litigation), with additional reference to comparative material from other sources. After reviewing each type of case in turn, we will suggest common and divergent elements and note questions and directions for future research.

Genealogical testimony in marriage litigation

Modern analysis of medieval genealogical writing dates to the 1960s, with the work of Georges Duby and his contemporaries in elucidating the princely genealogies of the post-Carolingian era as a key to the mentalities of the 'Feudal Revolution'.[8] Since then others have taken the study of kinship, and kinship testimony, in

6 On the growth and jurisdiction of the court of Canterbury see Charles Donahue, Jr., ed., *The Records of the Medieval Ecclesiastical Courts: Reports of the Working Group on Church Court Records*, 2 vols. (Berlin, 1989–94), esp. vol. 2, and the preface to *Select Pleas* (above, n. 2).

7 Genealogical testimony in cases on the descent of property is less well defined, given the variety of relevant courts, and the variety of forms of tenure and related suits in use at the time. Among many relevant actions one might single out cases involving tenure by parage, in which the relationships of parties and their descent from a common ancestor determine the validity and nature of the tenure. On 'Norman' parage, for example, see F. Pollock and F.W. Maitland, *The History of English Law before the Time of Edward I*, 2nd edn. (Cambridge, 1968), ii, 263–4, 276, etc. This was customarily thought only to be valid among descendants to the fourth degree, after which point the nature of the tenure must change. I have not yet searched for any extant court actions which may hinge on such determination of distance of kinship or descent, though they must surely exist from the time of Glanvill or at least from the early thirteenth century.

8 One begins with Georges Duby, 'Remarques sur la litterature généalogique en France aux XIe et XIIe siècles', in *Comptes rendus des séances de l'année 1967 de l'Académie des Inscriptions et Belles-Lettres* (Paris, 1967), translated as 'French Genealogical Literature', in *The Chivalrous Society*, trans. Cynthia Postan (Berkeley, 1980), 149–57. The best general orientation to the genre of genealogical writing remains Léopold Genicot's entry, 'Les Généalogies' in the *Typologie des sources du Moyen Âge occidental*, fasc. 15 (Tournai, 1975) supplemented with a 'Mise à jour' (1985).

new directions, both in analyzing different kinds of source testimony (as with Karl Schmid on the *Libri memoriales* or Stephen White on the *laudatio parentum*)[9] and expounding theoretically on genealogical and historical consciousness.[10] Through all this work, the general assumption persists that normative genealogical expression concerns the elites: saints, rulers, patrons, and aristocrats. Social historians, such as Constance Bouchard and Martin Aurell, have also studied these elites and their genealogies in the context of dynastic kinship structures and marriage politics.[11] Bouchard focused specifically on the question, first raised by Duby, of how to interpret the Church's development of restrictive oversight of aristocratic marriage in the eleventh and twelfth centuries by identifying, and then interpreting, known intervention in cases of incestuous aristocratic marriage in the eleventh century, an age of the circulation of canonist ideas that would coalesce after Gratian into a normative, functioning canon law.

By the end of the twelfth century, marriage was firmly ensconced both as a sacrament and as a canon-law construct, and it is then that one can begin to examine the canon law of marriage outside the rarefied context of the aristocracy, beyond the fortuitous references to celebrity scandals like Louis VII's divorce from Eleanor of Aquitaine, or other judgments or inquiries found by hazard in the correspondence of prelates.[12] In the next generation the professionalized episcopal courts begin systematically to review marriage questions either on third-party initiative, or in response to suits brought by a spouse (or hopeful spouse). At the same time, from the reign of Innocent III forward, the popes greatly increased personal intervention through the granting of dispensations for

9 Stephen D. White, *Custom, Kinship and Gifts to Saints: the Laudatio Parentum in Western France, 1050–1150* (Chapel Hill, 1988), and the various volumes of the two series of MGH, *Libri memoriales et necrologia* (1970; 1979–).

10 For example, see Christiane Klapisch-Zuber, 'La genèse de l'arbre généalogique', in *L'Arbre: Histoire naturelle et symbolique de l'arbre, du bois et du fruit au Moyen Age* (Paris, 1993), 41–81; and now her *L'ombre des ancêtres: essai sur l'imaginaire médiéval de la parenté* (Paris, 2000). Other important works include Gerd Althoff, 'Genealogische Fiktionen und die historiographische Gattung der Genealogie im hohen Mittelalter', in *Staaten, Wappen, Dynastien: 18. internationaler Kongress für Genealogie und Heraldik* (Innsbruck, 1988), 67–79; R. Howard Bloch, *Etymologies and Genealogies: A Literary Anthropology of the French Middle Ages* (Chicago, 1983). See also Dominique Barthélémy, 'Kinship', in *A History of Private Life*, vol. 2, *Revelations of the Medieval World*, ed. Georges Duby, trans. Arthur Goldhammer (Cambridge, MA, 1988), 85–155. The most recent synthesis of genealogical literature and historiography is that of Leah Shopkow, 'Dynastic History', in *Historiography in the Middle Ages*, ed. Deborah Mauskopf Deliyannis (Leiden, 2003).

11 This approach, pioneered by Duby, was taken up in several contributions to Georges Duby and Jacques Le Goff, ed., *Famille et parenté dans l'Occident médiéval: actes du colloque de Paris, 6–8 juin 1974* (Rome, 1977). Subsequent examples include Constance Bouchard, 'Family Structure and Family Consciousness among the Aristocracy in the Ninth to Eleventh Centuries', *Francia* 14 (1986), 639–58; or Martin Aurell, *Les noces du comte: mariage et pouvoir en Catalogne, 785–1213* (Paris, 1995).

12 On this case see now Constance Bouchard, 'Eleanor's Divorce from Louis VII: The Uses of Consanguinity', in *Eleanor of Aquitaine, Lord and Lady*, ed. Bonnie Wheeler and John Carmi Parsons (New York, 2003), 223–36.

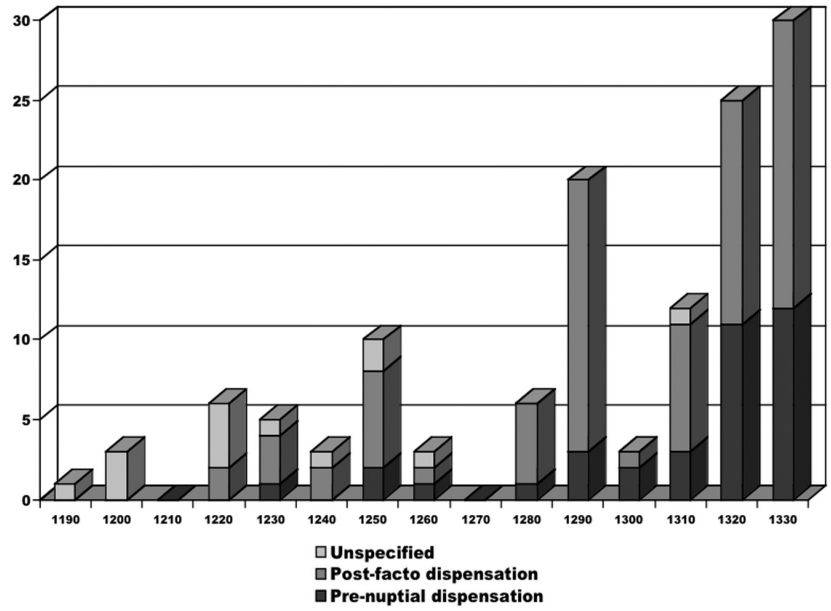

Fig. 4: Marriage dispensations in Britain, 1190–1340. Source: *Calendar of Papal Letters* . . ., vols. 1 & 2.

otherwise forbidden unions.[13] Such dispensations differ from lawsuits in that they are not judicial resolutions of a question of marriage under law, but apostolic exceptions to the law, gestures of God's grace. They remain disproportionately celebrity documents, secured at the behest of the powerful.

Papal marriage dispensations are instructive in orienting us toward our main theme. Consistently, the great majority of marriage dispensations were given after the parties had already married.[14] Such post-facto dispensations routinely state that the parties had married without knowledge of the prohibitive relationship. This leads to the question: how much did marriage partners usually know about their kinship or affinity to their spouses? There are two mutually exclusive views on this: sincere ignorance on one hand, or deliberate silence on the other, with cynics assuming that one or both parties would retain this essential knowledge as an escape hatch for later use.[15] Since affinity through prior sexual activity

[13] On these developments in general see James Brundage, *Law, Sex, and Christian Society in Medieval Europe* (Chicago, 1987); James Brundage, *Medieval Canon Law* (London, 1995).

[14] See figure 4. The chart in figure 4 is tabulated from *Calendar of Entries in the Papal Registers Relating to Great Britain and Ireland: Papal Letters*, ed. W.H. Bliss (London, 1898–), vols. 1–2 (1198–1342).

[15] The third possibility exists that the relationship was known to the parties yet they were unaware that it precluded a canonical marriage. This last is less likely to be true as ecclesiastical courts are firmly established in the course of the thirteenth century, though the matter deserves more comparative study in later pleas.

with a spouse's kin was an important element of prohibitive ties, can we assume that sexual histories were routinely traded by prospective spouses as well? Finally, did a community, defined as neighbors, kin and associates, retain sufficient genealogical knowledge to resolve potential marriage litigation among its members? A very small set of surviving thirteenth-century marriage suits in which genealogical testimony is entered as evidence allows us to consider these questions.

We have already seen the case of Stephen and Agnes, the earliest extant marriage case in England.[16] Although we do not know who brought the action, the issue before the court was whether the prior relationships between the two spouses invalidated their marriage. The genealogical testimony, on which 'the whole neighborhood agrees', was laid out by the witnesses (or by the scribe) as a narrative chain connecting Agnes to Stephen incrementally via the kinship of her first husband and Stephen's (former) mistress Isabel through two routes: spouse → cousin → lover, and co-godparent → lover. The narrative follows a path from one protagonist to the other, as each link in the genealogical chain is named in turn, in much the same fashion as canonists were trained to calculate consanguinity through the use of consanguinity charts, following squares, roundels, or arcaded arches like pieces on a gaming board, using a conceptual framework dating back to Roman law.[17] In this case, the relationship of Stephen and Isabel seems to have been known and accepted by all parties. Was it therefore no initial impediment to the marriage? Unfortunately the testimony stands by itself and we have no other details of the context of the case or of further questioning of the witnesses (if any took place). It is only later that the pleas preserve telling details about how the genealogy is retained in the witnesses' memory and elicited by the questioners.

Three pleas have been published from the later thirteenth century (1270s to 1290s), which may be compared to the unique earlier case of Stephen and Agnes. In two of them, a woman sued to force the recognition of a contracted marriage, in the face of the man's reluctance.[18] In both of these cases the court collected detailed and corroborated testimony about both the blood relationships of the principals, and the sexual relations which created additional bonds of affinity. The timing of the other sexual liaisons relative to the alleged marriage contract determined the existence of an impediment, so the witnesses were questioned closely about the details of witnessed sexual activity, in these cases, picturesque fornication in rural haylofts (by Richard de Bosco) and in London public baths (by Elias de Suffolk). With the sex as well as with the genealogy, the witnesses'

16 See figure 1.

17 A useful primer on the divergent systems of counting degrees under Roman law and Canon law is found in Constance Bouchard, 'Consanguinity and Noble Marriages in the Tenth and Eleventh Centuries', *Speculum* 56 (1981), 268–87, especially at 269–71. On the consanguinity charts, see below, n. 24.

18 *Select Pleas* C.1 (1269–71): Joan de Clapton v. Richard de Bosco; and *Select Pleas* D.2 (1292–3), Alice la Marescal v. Elias de Suffolk. See figures 5 and 6.

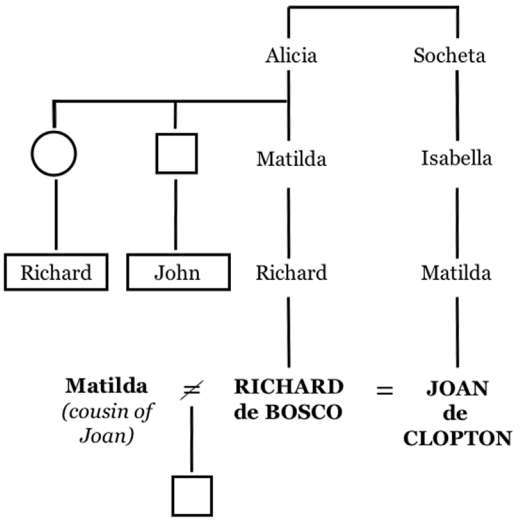

Fig. 5: Richard de Bosco & Joan. Source: *Select Pleas* C.1, 1269. Witnesses appear in boxes.

testimony has an air of unanimity which suggests that, indeed, 'the whole neighborhood' seems to have known both the genealogies and the sex lives of its members. To be sure, in both these cases, the witnesses also testified to their own kinship to the principals, as a way to validate their testimony.[19] Given these cases, and especially the airy claims of the Stephen and Agnes brief, can one generalize a sort of 'Miss Marple principle': that in any village, one could place implicit trust in the sexual gossip as well as the common genealogical memory of its denizens?

A fourth published marriage suit, from the end of the thirteenth century (1294), belies the idea of unanimity of genealogical memory, if not of sexual gossip (alas there is no fornication here). This is a suit over the validity of a proposed marriage between Henry de Tangerton and the widow Joan, of Whitestaple, Kent.[20] Henry and Joan sought to marry, but one man objected at the time of the publication of the banns, pointing out that Joan's late husband was cousin to Henry. He and another witness, when examined, corroborate a genealogy deriving the two men from a common ancestor:

> He said that there was a certain Cristina, the *stipes*, who had two daughters by two different husbands:
> *stipes*, from whom Godelva, from whom Henry, from whom Joan, from whom Henry who is the party in question;[21] *stipes*, from whom Margery, from whom Simeon, who was the husband of the said Joan, who is the [other] party in question.

[19] The related witnesses are shown in boxes in figures 5 and 6.

[20] Henry de Tangerton and Joan, widow of Simon le Smelt, from Canterbury, Ecclesiastical Suit Rolls, no. 188, published in part in Helmholz, *Marriage Litigation*, appendix, 215–17. This case is not in *Select Pleas*, which only publishes some of the cases from the 1292–94 period, covered by the Ecclesiastical Suit Rolls.

[21] These two lines, commencing with '*stipes*', are set off from the rest of the text in Helmholz's transcription.

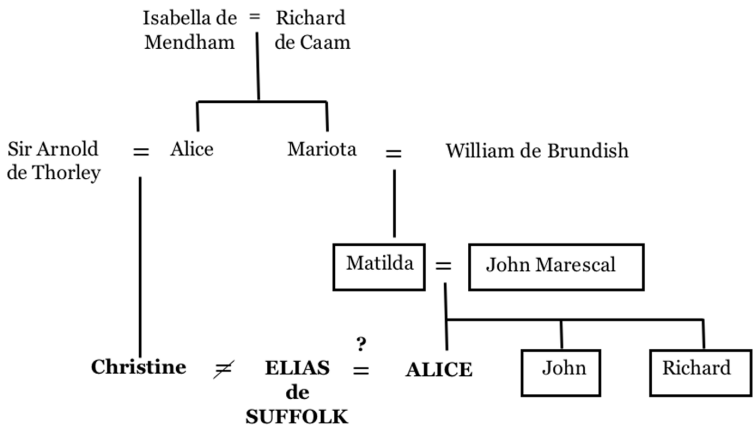

Fig. 6: Elias de Suffolk & Alice. Source: *Select Pleas* D.2, 1290. Witnesses appear in boxes.

> Asked whether he personally saw all those people whom he named, he said yes, and they considered themselves to be related. Asked from whom he learned the genealogy, he said from himself, because he knew all those people. Asked if he was related by blood or affinity to the parties, he said no. Asked how long ago he had come to learn this genealogy, he said sixty years ago and more . . .[22]

A third witness, however, claims no knowledge of the consanguinity, and even doubts it, 'because no one else had objected to the banns'. Ultimately, the affinity is found to be insufficiently proved, and the couple allowed to marry, but one suspects that the easygoing judges were finding a convenient way to allow a marriage to which there were no pragmatic moral objections, rather than subjecting the couple to the time, expense, and uncertain result of a request for a dispensation.[23]

Apart from this last case, where the testimony seems to be impugned simply to provide a pretext for allowing the marriage without recourse to a dispensation, there seems to be little or no actual dispute over genealogical relationships in the marriage pleas. As we shall see, this contrasts sharply with the testimony in villeinage suits.

[22] Helmholz, 216: *dicit quod duedam fuit Cristina stipes, que habuit duas filias per duos diversos viros: stipes, de qua Godeleva, de qua Henricus, de quo Johannes, de quo Henricus de quo agitur; stipes* [here in the text lines are drawn back to the first word *stipes*] *de qua Margeria, de qua Symon, qui fuit maritus dicte Johanne de qua agitur. Requisitus si vidit omnes quos nominavit, dicit quod sic, et gerebant se pro consanguineis. Requisitus a quibus didicit sic distingere gradus, dicit quod a se ipso, quia vidit omnes ut premittitur. Requisitus si sit de consanguinitate vel affinitate partium predictorum, dicit quod non. Requisitus quantum tempus est elapsum quod sic scivit distingere gradus, dicit quod sexaginta anni sunt elapsa et amplius*. See figure 7.

[23] Each witness is also asked whether he or she would personally object to the marriage being held. Even the initial objector, an old man (since his knowledge of the related parties is said to go back over sixty years), admitted that he would prefer that the couple be allowed to marry.

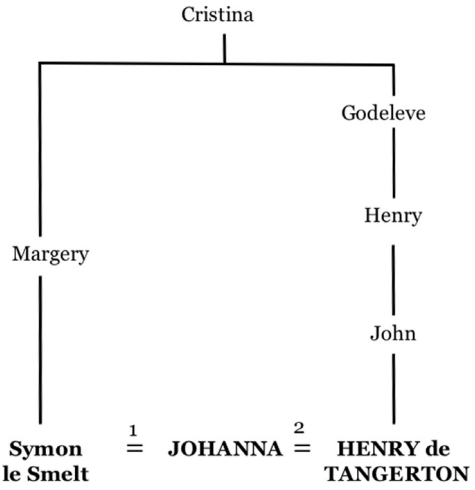

Fig. 7: Henry de Tangerton & Joan. Source: Canterbury Ecclesiastical Suits 188, 1294 (Helmholz, 215–17)

Other formal characteristics of the marriage testimony are also worth noting. The later cases, as exemplified by the testimony from the Henry and Joan plea, preserve more procedural details: the examiners seek corroboration, question the sources of the witnesses' knowledge, and probe what sorts of interest might be unduly influencing the testimony. The pleas also show alternative organizing principles at work in the composition of the genealogical narrative itself. The genealogy in the Stephen and Agnes case had followed an 'up, over and down' or 'party-to-party' model to trace a kinship from one party, back through affinal or blood links and down to the other party. This structure closely matches the old Roman system for counting degrees of kinship, as found in the Institutes of Gaius embedded in the Theodosian Code. In the later pleas one can also find an alternative format, beginning a narrative with the identification of a common ancestor (Latin *stipes*), from whom descends one party in one line, and the other party in a second, parallel line. In the case of Joan and Henry, quoted above, the narrative strictly follows this '*stipes*-first' structure, even interrupting the syntax of the indirect discourse with two stylized, terse genealogical lists of descent from the *stipes*, suggesting, perhaps, that the scribe has summarized and transposed the witness's more circumstantial account into this concise format.

But one should not make too much of this dichotomy of format. Both genealogical narrative principles follow the conceptual patterns of calculating kinship used by canonists, perhaps most readily seen in the ubiquitous graphic calculation tables for affinity and consanguinity that circulated so widely from the later twelfth century onward, especially after the Fourth Lateran Council of 1215 when, although the scope of prohibited relationship was significantly reduced, systematic investigation and enforcement became much more widespread.[24] The

[24] The authoritative work on these diagrams is Hermann Schadt, *Die Darstellungen der Arbores*

orderly thinking of the canonists, as represented in the classic diagrammatic *Arbor consanguinitatis*, is still not too far removed from the directional structure of witnesses' unfiltered narratives – though in the case of affinity brought about by a purely sexual liaison, the witnesses may also be asked to describe exactly when they last saw the groom and his lover naked in the hayloft (to fix the temporal priority of the impediment), as well as exactly how they knew that the lover's mother was great-aunt to the bride (to gauge the nearness of the affinity).

Genealogies in villeinage actions

Canon law was obviously concerned with kinship because of the incest prohibitions, but where do we see similar concerns in the secular courts? There, the two most important contexts for genealogical testimony were first the obvious one, the descent of property, and second, a more surprising theme: determination of the legal status of serfs by investigating their inheritance of that status – hence, their genealogies.

The first context is universal in any society with even a pretense of heritable land tenure or ownership. From the late twelfth century onward we see ubiquitous inheritance clarifications or challenges in which the identification of nearest heirs is the backbone of the investigation (non-adversarial investigations of this nature become the routine *inquisitiones post mortem* of later generations). Property suits have long been mined as the raw material which fueled the genealogical reconstruction of the baronage, from Dugdale's day in the seventeenth century, to that of Horace Round in the nineteenth and that of Katharine Keats-Rohan and her Institute for Prosopographical Research in the twenty-first.[25] In contrast, the genealogies of serfs, entered into evidence, show the inheritance not of any asset or privilege, but of the stigma of villeinage. 'Suit of kin' is Paul Hyams' term for the custom of advancing a claim of someone's servitude by the production in court of a group of the alleged villein's servile kin as living proof of the status.[26] As seen in the opening example of the villein Herman from the *Curia Regis Rolls*, individual witnesses are brought forward to assert their own status and testify to their kinship to a defendant, who might then be forced to accept servitude by court order.[27] Cases like Herman's are found regularly even in the first years of the

Consanguinitatis und der Arbores Affinitatis: Bildschemata in juristischen Handschriften (Tübingen, 1982).

25 See, for example, the publications of the database project 'Continental Origins of English Landholders', undertaken by Katharine S.B. Keats-Rohan of the Institute for Prosopographical Research at Linacre College, Oxford: *Domesday People: A Prosopography of Persons Appearing in English Documents, 1066–1166* (Woodbridge, 1999) and *Domesday Descendants: A Prosopography of Persons Appearing in English Documents, 1066–1166* (Woodbridge, 2002).

26 Paul Hyams, 'Proof of Villein Status in the Common Law', *EHR* 89 (1974), 721–49; and also his *King, Lords and Peasants in Medieval England: The Common Law of Villeinage in the Twelfth and Thirteenth Centuries* (Oxford, 1980), 173.

27 See figure 2.

Curia Regis Rolls under King John, so it is from the first half of John's reign that examples are drawn for the current study.

In a legal primer on 'suit of kin' in 1974, Paul Hyams reviewed different legal and procedural connotations in the action over time from its first appearances under Richard and John through the thirteenth century. As Hyams showed, this is an action with Continental parallels going back to Carolingian customs, which may have been borrowed or shared across the Channel at an early date. As a very specific litigation strategy, 'suit of kin' raises many questions, not least among them the curious legal situation in which the summoned witnesses (the *secta* or kin-group) are at once the physical evidence (exhibits, as it were) and the givers of testimony about that evidence. As seen also with the marriage suits, the genealogical testimony of people produced in 'suit of kin' evolves into a standard procedural and narrative format in the early years of the surviving case records. Each produced man states his condition (servile or free) and then states his relationship to the alleged villein, beginning with himself and proceeding up and then back down a family tree, describing an arc as if counting degrees of consanguinity in the old Roman method (the 'party-to-party' model) for a marriage case. By charting the kinship traced by each member of the *secta*, one can develop a collective snapshot of the immediate ancestors and near collateral kin of the alleged villein.

The principal difference between the 'suit of kin' testimony and marriage case testimony in that the starting point of each genealogical testimony in a 'suit of kin' is a different witness, while the endpoint remains the same (the alleged villein). In contrast each witness in a marriage suit is tracing a path between the same two persons (the prospective spouses), hence reinforcing a single relationship through corroborating testimony. (Of course, many witnesses in marriage suits were also kin to the parties, but their own place in the genealogy had only supportive, not probative value.) The legal weakness of 'suit of kin' is therefore that each produced witness may be the only witness to his particular relationship, without corroboration near the witness's end of the genealogical chain (unless a brother is also testifying). Under the old Roman principle *testis unius, testis nullius*, it would be possible to impugn the testimony of a *secta* by challenging individual witnesses, and this was in fact often done.[28]

As Paul Hyams found, early suits of kin indiscriminately follow both male and female lines linking alleged villeins to the witnesses, though the majority seemed to hint that villeinage was most commonly understood to be transmitted in the male line.[29] What is also striking in the early pleas is the relative chaos and divergence of various lines linking a single alleged villein to the various servile witnesses.[30] A more watertight paradigm for proving villeinage through 'suit of

[28] See figures 3, 9, and 11.

[29] See Hyams, 'Proof of Villein Status', 730–39, on the prescriptive sources for the presumption of agnate inheritance of villeinage.

[30] The earliest relevant pleas, from the 1190s, do not even specify the kin individually, but lump them together, as 'plures de eius progenie' (with 'progenies' used for kin, not descendants): *Cur. Reg. R.*1:22 (1196); compare *Cur. Reg. R.* 1:45 (1198).

kin' appears to have coalesced only toward the middle of the thirteenth century: to focus on a single identified ancestor who had also been a serf, and from whom the status is acknowledged to be inherited, the *stipes* or common ancestor also found in later thirteenth-century marriage litigation.[31] All relevant witnesses, then, would have to share kinship with the defendant only through that single common ancestor, thus the testimony would be mutually corroborative and genealogically simpler. Though this was by no means the rule in the early thirteenth-century villeinage pleas, it was the organizing principle of an important French example of litigation over servitude, from the abbey court of Saint-Germain des Prés (Paris) in 1162.

The Saint-Germain suit is far more comprehensive than any known English examples, both in the size of the *secta* and in its logical organization around a *stipes* (though it does not use this term). The case was to compel the admission of serfdom by one Guy de Suresnes, a *maior*, or monastic representative in one of the monastery's villages. Over fifty of Guy's relatives appeared in court (though the text does not state whether their presence was compelled by the claimant or invited by the defendant). While no text of any genealogical questioning or actual testimony is preserved, a genealogy was produced and written down on the back of a leaf recording the court appearance. The genealogy boasts 102 individuals, tracing common descent from three siblings, serfs of the monastery, five generations previously.[32] This makes it, quite simply, the largest genealogical narrative of *any* kind, princely or servile, that survives from twelfth-century Continental Europe.[33]

In contrast, none of the earliest English villeinage suits identifies a single villein ancestor (*stipes*) common to all witnesses and the defendant. This distinction from the paradigm of the Saint-Germain suit may result from the distinct legal goals which distinguish the suits before the Angevin royal courts from those in proprietary or manorial courts. Rather than a specific owner (e.g. Saint-Germain) proving rights over its own alleged serf in its own court, the king's court was only concerned that a person's status be resolved as either free or villein. Perhaps a case could be made merely on the 'sufficient' evidence of a

31 Hyams dates the shift to *c*. 1240: 'Proof of Villein Status', 744–5, and associates it with the crystallization of the 'parentelic' paradigm of inheritance custom outlined by Pollock and Maitland, *History of English Law*, 2:296ff.

32 I have written elsewhere on the structural and onomastic properties of this document. Nathaniel L. Taylor, 'Monasteries and Servile Genealogies: Guy of Suresnes and Saint-Germain-des-Prés in the Twelfth Century', in *Genèse médiévale de l'anthroponymie moderne*, tome 5.1: *Serfs et dépendants au moyen âge*, ed. Monique Bourin and Pascal Chareille (Tours, 2002), 249–68.

33 The one European exception to this surprising fact fingers another ignored branch of the genealogical canon: the Irish texts of the twelfth century. See Donnchadh Ó Corráin, 'Creating the Past: The Early Irish Genealogical Tradition, Carroll Lecture, 1992', *Chronicon* 1 (1997), article no. 2, accessed online at http://www.ucc.ie/chronicon/ocorrfra.htm. *Chronicon* is an online history journal of the University College, Cork: http://www.ucc.ie/chronicon/. According to Ó Corráin, 'The published genealogies of the twelfth century and before contain the names of about 12,000 individuals . . . If we add the materials in unpublished tracts the total should come to about 20,000.'

preponderance of close kindred, in any line, of a particular status. In other words, the particular 'ownership' of the villein was not explicitly at issue, merely the fact of villeinage. On the other hand Saint-Germain, in its greed to prove title to all of Guy's kin, went beyond the scope of any similar suits in England.

To defend against such a suit, a person might take three principal courses. First, he could produce his own *secta*, or kin-group, proffering a selection of kin who were free, of equal or greater proximity, relevance, or social value than the group produced by the claimant. Indeed, we find some suits which have the alleged villein as the initiator of a plea, bringing suit against a would-be lord for some injustice, such as wrongful imprisonment, by producing a kin-group to attest to the plaintiff's free status.[34] In addition an alleged villein could directly challenge the claimant's witnesses, both by denying that the witness was related as claimed, and by rejecting the relevance of a witness's servile status (self-assumed servitude, or servitude inherited from another side of the witness's family, for example).

These defenses could be used separately or combined, with interesting implications for the genealogical testimony. Herman son of Ralf Faber did not need to impugn the villein status of individuals among testifying kin: he boldly claimed that none of the produced witnesses was his relative, and went on to deny the witnesses' identification of his own grandfather.[35] With such starkly contradictory testimony it is difficult to decide whether the plaintiff and his witnesses could have been so sorely misinformed, or whether they were lying, or whether indeed the defendant was lying. At any rate, the presence of such bald contradiction undercuts the unanimity of the genealogical testimony found in the early marriage pleas. How can such abuses or errors occur in communities where such genealogies are 'well known to all'?

Another typical early villeinage suit shows the potential complexity of a produced *secta*, and the intricacies of a defense against such a suit.[36] Radulf son of Segar is singled out with the testimony of five cousins who are villeins, three (who are siblings to one another) on his mother's side and two (who are cousins) through his father. While admitting that the witnesses on the mother's side may indeed be villeins, the defendant aggressively impugns the relevance of the status of his paternal cousins who are villeins: one, he says, is a villein only because his mother had been illegitimate and had debased herself by marrying a villein. The defendant then produces, by way of defense, three free men, more distantly related, but who also form part of his agnatic kin.[37] So while admitting that some of the cousins are villeins, the defendant hoped to succeed by showing the preponderance of his male-line kin to be free, and specifically, aboriginally free. In contrast Matilda de Godinewde, daughter of Ernisius, impugns not the status of the witnesses but the fact of relation: of the three villein cousins produced against

34 For example, see *Cur. Reg. R.* 4:305–6 (1206).
35 See figure 2.
36 *Cur. Reg. R.* 4:22–3, 34 (1205). See figures 8 and 9.
37 See figure 9.

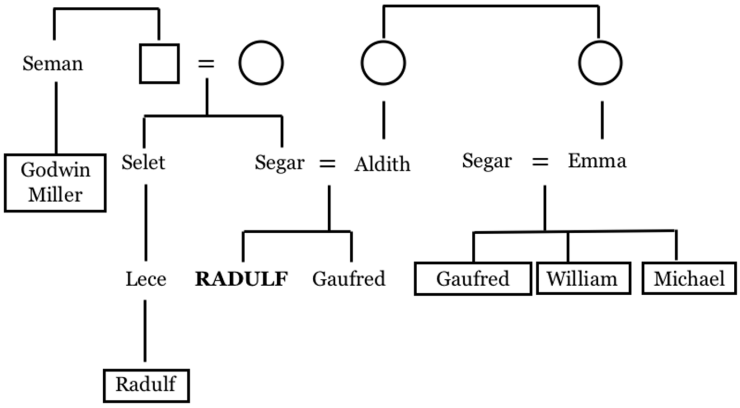

Fig. 8: Radulf, son of Segar (claimant's case). Source: *Cur. Reg. R.* 4:22, 1205. Witnesses appear in boxes.

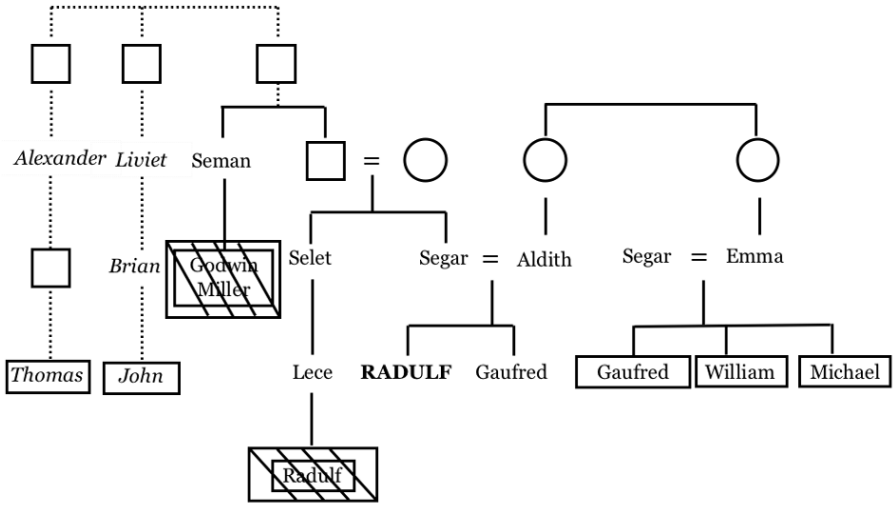

Fig. 9: Radulf, son of Segar (defendant's case). Source: *Cur. Reg. R.* 4:22, 1205. Witnesses appear in boxes. Reverse-cancelled areas show witnesses whose villeinage was claimed to be not inherited, hence irrelevant to defendant. Dotted lines and italic type show kin produced by defendant.

her, she accepts only one to be her relative as stated.[38] Then Matilda produces three paternal relatives who assert their freedom, even though (and this is an unusual lapse) the witnesses' exact relationship to her is not spelled out.[39]

[38] *Cur. Reg. R.* 4:234 (1206). See figure 10.
[39] See figure 11.

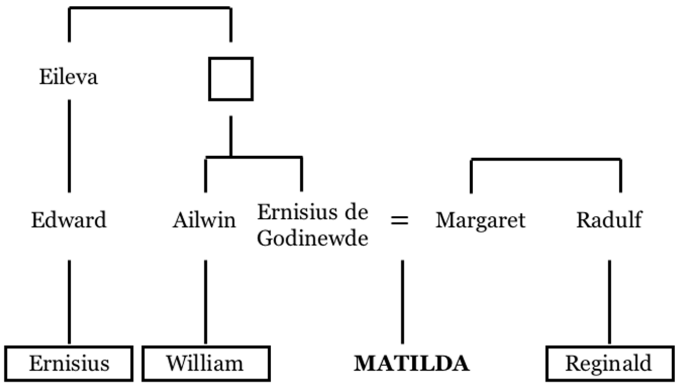

Fig. 10: Matilda 'de Godinewde' (claimant's case). Source: *Cur. Reg. R.* 4:234, 1206. Witnesses appear in boxes.

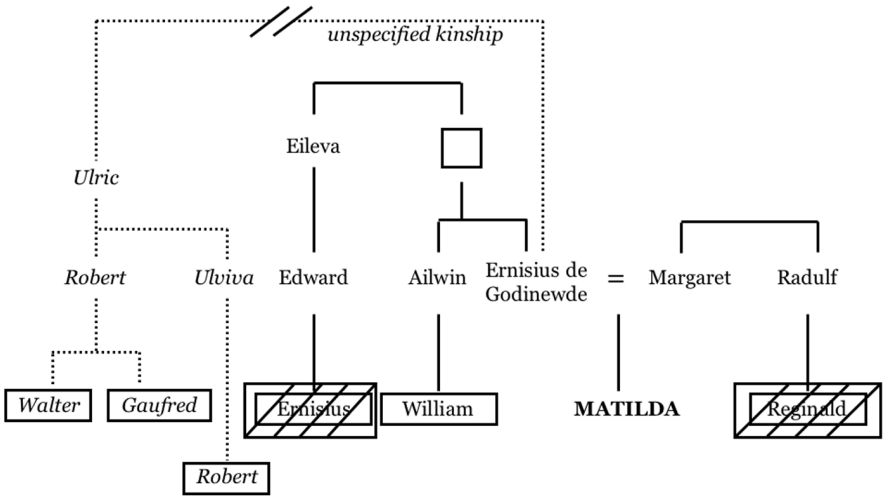

Fig. 11: Matilda 'de Godinewde' (defendant's case). Source: *Cur. Reg. R.* 4:234, 1206. Witnesses appear in boxes. Cancelled boxes show kinship denied by defendant. Dotted lines and italic type show kin produced by defendant.

So from the early years of the *curia regis*, at least, we see an odd state of affairs: suits are routinely brought with genealogies and witnesses which ignore gender, though at the same time vigorous defenses are sometimes made based on the gender of the kinship. This ambivalence to gender complements the unsettling nature of the vigorous contradictions in the genealogies: kin are alleged and denied almost recklessly. Over the course of the thirteenth century, however, as Hyams has shown, the gender ambiguity is ironed out, along with the chaotic

diversity of common ancestors, in favor of an agnatic, *stipes*-based focus for genealogical proofs of villeinage. In this honing of genealogical and legal principle, as well as the development of the forms and care with which the testimony is recorded, the genealogies in villeinage suits parallel the evolution of genealogies in marriage litigation, though in other respects curious differences remain.

Conclusions

This preliminary review of the forms of genealogical testimony leaves many questions unanswered, but it is sufficient to underscore certain key observations and pose questions for further study. It is appropriate to focus on the common ground in these early testimony documents, shared characteristics which seat them firmly in a broader spectrum of non-commemorative genealogical narrative of the twelfth and thirteenth centuries.

First, the form of the narrative: the earliest examples of genealogical testimony seem to fall almost universally into a linear, quantum narrative, linking an 'ego' (a witness or proposed spouse) incrementally to a second party (a proposed spouse or alleged villein) generation by generation. This indicates, despite the imposition of legal discourse, a closer affinity to oral genealogy than one often sees in the learned micro-genealogies embedded in charters or chronicles of the era. Later in the thirteenth century, once the narrative forms of the testimony are more constrained by the discourse and questionnaires of trained jurists, one sees another reckoning system: two persons (prospective spouses, or witness and defendant in a villeinage suit) are traced in parallel, beginning with an alleged common ancestor, or *stipes*.[40] The length of the genealogical chains so described is important in marriage pleas, but less so in villeinage pleas, where there is no clear consensus as to the number of useful witnesses, or the appropriate maximum distance of the relation between witness and defendant.

Second, women and men begin with equal relevance as both common ancestors or connective tissue in villeinage suits as well as marriage litigation. Paul Hyams noted that this refutes the idea that villeinage was traditionally held to be specifically male or female in its heritability. This is true in France as well as England; I have elsewhere noted the absolute gender equality of the Saint-Germain des Prés serfdom suit.[41] It should be reiterated that this gender neutrality distances these juridical narratives from the normative genre of commemorative dynastic genealogy, held up since Duby's time as the paradigm of genealogical thinking in the twelfth-century West. At least among common folk and villeins, the exclusively male *lignage* was still an alien, or at least irrelevant, concept in the early thirteenth century.

[40] Despite this element of narrative structure, it should be noted that when a degree of kinship is mentioned, it is always calculated using the canon-law model (counting down from *stipes*), even if the narrative follows the original Roman model (counting both up and down).

[41] Taylor, 'Monasteries and Servile Genealogies', 254–5 (see n. 32 above).

Third, these narratives show a curious mix of unanimity, assailability, and fallibility. By their very nature within a litigious framework, these genealogies could be contradicted or denied. With the villeinage suits, one sees frequent bold contradictions over specific alleged relationships, though such challenges were wholly absent from contemporary marriage suits. Could one's neighbors (and cousins) be so wrong about one's genealogy? The chaotic nature of the contested genealogies in the villeinage suits is at odds with the placid norm of unanimity ('the whole neighborhood knows this . . .') found in the marriage suits. Quibbling over genealogy in villeinage suits may suggest the same systemic ignorance as found in the language of post-facto marriage dispensations, yet in both scenarios we may doubt the sincerity of the parties.

Finally, taken together these two kinds of legal genealogies show a parallel function and value. Given this perplexingly divergent testimony, we may be no nearer to answering the old sociological question: how much did average people know about their families? Nevertheless we can see clearly an answer to one ancillary question: what did they do with that knowledge? Through the combined influence of canon law (and canon lawyers), and the imposition of a professional judicial framework on an old oral culture, genealogy became an important defensive discourse in the new legal climate initiated by the Angevins. Genealogical testimony in court, when examined against in the context of other forms of genealogical narrative, will ultimately help to illuminate the function and value of genealogy and kinship more generally in the minds and lives of everyday people of the twelfth and thirteenth centuries.