Invisible Women
Ruth Mazo Karras

Medieval record-keepers wrote down the information they needed for their own purposes, not the information they thought might be useful to people five hundred years later trying to reconstruct their society. A fundamental principle in the use of archival (or any other) documents of practice as evidence is to understand the purpose for which the document was created. Certain types of information may have been included or excluded not because they were not available, not because they were irrelevant in medieval culture, but simply because they were not necessary for the purpose of the record-keeping.

An analysis of why certain information was deemed necessary may help us understand the culture in more depth, but that should not be confused with assuming that whatever is not mentioned is not important. For example, if documents involving property transactions typically give the marital status of women but not that of men, this is likely because women's marital status determined what kinds of rights over property they could have, whereas men's did not. It could also be that a woman's marital status was deemed fundamental to her personal identity in a way that a man's was not, but we cannot draw that conclusion from the fact that it is mentioned in property transactions.

A great many of the archival documents that social historians use to reconstruct medieval society are legal records, because the multiple jurisdictions of medieval Europe produced voluminous surviving records. There has been substantial debate among historians over the validity of using legal records for other than legal purposes.[1] Social, cultural, and economic historians persist in using these records because they are often the best material that we have, and we believe that by using them carefully, yet creatively, we can make them reveal information about topics not envisioned by their creators.[2]

Nevertheless, these sources pose significant problems, some of which are worse for historians of women than for other scholars. One that applies to all users is that court records are often skewed toward the unusual. We need to read between the lines to discover the normal, the everyday, the routine. Take for example the question of what exactly was necessary in practice to constitute a valid marriage: we know about this from records of cases in which a marriage was challenged either by one of the parties or a third party.[3] If both parties were content to consider themselves married to each other, and no previous spouse turned up to challenge the claim, the case would rarely come to court. Similarly, records of the criminal courts cannot be said to include only criminals, because innocent people could have been accused of crimes for any number of reasons; but there were a great many non-

criminals who never turn up in them. It is possible to extract a good deal of information about daily life from English coroners' records, which describe in detail the circumstances of accidental deaths.[4] But the record was written to record highly unusual events, and the historians must read for the normal background to these events. There are, of course, some kinds of legal records that contain routine, day-to-day material rather than disputed or controversial cases: for example, notarial records or court books that recorded property and mercantile transactions, debts, and wills. In addition, some jurisdictions levied fines for various activities (like brewing) that functioned more as licensing fees than as a deterrent. Nevertheless, the nature of legal records is such that the law-abiding propertyless are not likely to turn up in them very often.

A second problem in the use of legal records that affects historians of women in particular is that the people named in litigation are not necessarily the only people involved. If a husband had control over his wife's income and was responsible for her debts, as was the case in a number of jurisdictions, it might be his name that appears in the court records even when it is her activity that is at issue.[5] Women may have had informal, practical control over a good deal more property, cash, and decision-making than they had legal control over, but we cannot determine from legal records just how much. If a person did not have legal standing in a particular jurisdiction or kind of case, that person is invisible in legal documents.

My latest foray into the archives has been an attempt to study a group who have turned out to be invisible women: women living in what I call quasi-marital relationships, long-term sexual and domestic partnerships that were not officially marriages. These might include couples who could not formally marry because one or both partners had taken a vow of celibacy; because they were of different religions; or because one was married to someone else. The latter group could include people whose marriages had not worked out and who had agreed to live separately from their spouses (with or without the church's permission), people whose spouses had abandoned them but had not been proven dead, and people (generally men) who remained with their spouses but formed another relationship in addition. Quasi-marital unions also included those between couples who could legally marry but did not do so, usually because of a disparity in social status. Usually (but not always) the woman would be of lower status—a slave or servant, or simply of less high birth. The man might wish to marry, at some later date, a woman of his own or higher social standing who could bring him a large dowry or whose family could help him and his future children advance in the world. But a couple of equal social standing might also choose not to marry, because they could not afford to or simply did not want to. The problem with studying unions like this is that what distinguishes them is precisely the lack of legal standing (in the eyes of either the church or the secular law).

16

They therefore do not tend to show up in legal records. When women turn up in any sort of legal document they are often described according to marital status, but a woman in a non-marital union was technically single.[6]

When one partner claims that a relationship was a marriage and the other denies it, these cases do turn up in the courts. Helmholz's classic *Marriage Litigation in Medieval England* contains a number of such cases; they exist from other regions of Europe as well.[7] But these records, of course, only contain the cases where the parties disagreed about the nature of the union. The very rich York church court documents ("cause papers") that Helmholz uses, which include depositions by witnesses, relate to "instance" cases, those brought by one of the parties, as opposed to "ex officio" cases, those brought by the church officials as a result of their own investigations. Where both partners agreed that their union was not a marriage, the matter would never have come to court (they might have been accused *ex officio* of fornication, but the record there would not distinguish a long-term union from a temporary one). The witness's statements, of course, raise other evidentiary problems as well. Although Helmholz's work gives us a wealth of information about marriage, as the title indicates he is writing a history of marriage litigation, not of marriage itself. The statements of witnesses supporting one side or the other are tailored to the needs of the litigation at hand and may not reflect the actual nature of the union as the parties

lived it. (These records have been used very successfully by Jeremy Goldberg as a source of demographic information, since witnesses gave their ages and marital status; this information, since it was incidental, is less likely to have been shaped by the witness than the details about the marriage or non-marriage.[8])

Stable relationships may not appear in court, but they do turn up in some other kinds of records, like wills. However, it is often very difficult to determine from a will exactly what the relationship was. A look at the surviving records of wills from Lübeck from the fourteenth century, for example, reveals many bequests to women who are not identified as relatives.[9] Some of them could be women with whom the testator was in a sexual relationship, but it is not possible to know which ones. They could be friends, widows of business partners, or affines; they could be blood relations but not labeled as such. (Women, too, leave bequests to other women, presumably in the same kinds of relationships). Some bequests are to servants. Although it must often have been the case (in what society has it not been?) that a man would have a long-term sexual, even quasi-marital union with his servant, we cannot conclude this from any given bequest. There are bequests to male servants as well, and even when one female servant receives more than others, this need not mean sexual involvement. She could, for example, have been the testator's nurse when he was a child. Some bequests are more suggestive: "four marks to a lady whose name is known to my business partner," "to

17

Margaret my parti-colored tunic with buckles and hood, and let her keep any other things of mine that she has."[10] However, most of the examples where we can say for sure that there was a sexual relationship involved are those where children are mentioned: "to my *amica* Vredeke and her child," "to my maid Elisabeth and her son and mine, Hennekin," "to Copekin, the son of my maid Alheyd" (although this last does not prove that the boy was the testator's son as well).[11] Even here they tell us very little about the nature of the relationship. The women are named, but that is all, and if no children resulted they would be entirely invisible.

Other sorts of legal documents involving offspring can also provide clues to the status of the parents' unions. Ludwig Schmugge has studied 37,916 papal dispensations allowing people of illegitimate birth to enter orders between 1449 and 1533. These often give the status of the parents. 42% of the fathers and 98% of the mothers were lay people. 3,071 of the petitions were from people who also had a sibling seeking a dispensation; most of these were full rather than half-siblings. Relationships that engendered more than one child were clearly long-term. And this number must be seen as a minimum: these were only the cases in which more than one sibling sought a dispensation; there must have been many other examples of siblings who did not wish to become clerics, and of course many unions in which none of the children did.[12]

Identifying quasi-marital unions by looking for their children in legal records has its drawbacks, notably that it will find only those unions that resulted in children who survived infancy. Particularly if the man was not in need of an heir, because he had a legal marriage in addition to the union, or was a cleric, one might expect that partners in these relationships might be likely to practice birth control. Contraception in the Middle Ages may not have been extremely effective, but it was effective enough to decrease the birth rate somewhat.[13] It is not just childless quasi-marital relationships between men and women that become invisible: it is also same-sex unions, which in an era without reproductive technologies or legal adoption were by definition childless. Whether or not one accepts that there was a liturgy for such unions, as suggested by John Boswell, they surely must have existed, but from a social-historical point of view they are nearly untraceable.[14] Judith Bennett suggests that when we find records of women living together they are part of the history of lesbianism, and indeed many such unions may have been what I am calling quasi-marital, but we have no way of knowing in any given case.[15]

And finally, an archive story. For the project on quasi-marital relationships I thought Prussia in the later Middle Ages might be an interesting place to look. I was particularly interested in cross-ethnic partnerships, and with so many other scholars working on these issues in the Mediterranean region I thought the Baltic might be fruitful. The population of Prussia included ethnic Prussians (a Baltic-speaking people), Poles, and Germans, in

varying proportions depending upon region. However, there are unfortunately no large collections of wills surviving from any of the Prussian towns. There are a number of court books, most of which involve mainly acknowledgements of debts and their satisfaction.[16]

Many of the entries in these books involve inheritance: a child or brother acknowledges before the court having received his or her share of the decedent's property, a man and his stepchildren record their division of the deceased wife/mother's inheritance. I wondered whether these records could be used to determine whether, as was the case in Reval (Talinn) in Estonia, there was evidence for German men either marrying or entering into non-marital unions with non-German women.[17] It turned out, however, to be impossible to identify ethnicity from the town records. The records themselves are in German, and it is not possible to tell which of the names are German and which are Germanicized forms (and of course, even if we knew it was a Polish or Prussian name, that would not necessarily tell us, by the later Middle Ages, anything about the ancestry, let alone subjective identity, of the holder). There are some people called "Polen" or "Preusse," but these seem to be used more as surnames (since they are used of all members of the same family) than as ethnic identifiers. And in any case they are never used of women.

If I could not determine anything about ancestry, could I at least identify some non-marital unions in the records? Could I find half-siblings sharing an inheritance? Yes, indeed,

but sometimes it was clear that they came from two different marriages and sometimes it was simply not stated; there was hardly anyone who was clearly illegitimate. Some women are referred to as "elich wip" (legal wife) and others are not; but so many are not that it is not possible to say that anyone who is not so labeled must not be formally married. Indeed, the term is sometimes applied and sometimes not applied to the same woman; there seems to be no system in it. Nor does the absence of the term "eliche" referring to the children of a union seem to mean anything. The non-marital unions, the out-of-wedlock children, are undoubtedly there but they are invisible.

I know they are there because in the Book of Aldermen (Schöppenbuch) of Bartenstein (now Bartoszyce), a new scribe took over in 1458, and all of a sudden "natural children" begin to appear. Nicolas Diselaw, for example, appears as guardian for "the natural children of Hans Vollmann, namely Kathryn, Barbara, and Orthey" in a matter involving their stepfather Symon Lyndenam.[18] Presumably the latter had married their mother, who had previously been in a non-marital union. There are seven other entries that mention natural children. It is always possible that "natural" here is being used not to mean "illegitimate" but rather blood relation as opposed to step-relation or in-law; this happens in some medieval sources.[19] However, that seems unlikely. Step-siblings and siblings-in-law are referred to with phrases like "the children of his father's wife" or "the husband of his

sister," indicating that they are not really seen as siblings. Stepfathers and stepchildren are occasionally labeled as such but more often "the son of his wife," "the husband of his mother."

None of these examples are especially useful for my purposes, as they do not reveal anything about the nature of the parents' relationship or the status (or even name) of the mother. But they do indicate that whether or not a detail like legitimacy of birth appears in the town records may have been due to differing habits from one scribe to another rather than town custom. They hint that the few "natural children" who do appear in the records are the tip of the iceberg. The rest, like their mothers, remain invisible.

University of Minnesota

NOTES

[1] For critiques of two very different uses of court records, see: Zvi Razi, Richard M. Smith, and L.R. Poos, "The Population History of Medieval English Villages: A Debate on the Use of Manorial Court Records," in *Medieval Society and the Manor Court*, ed. Zvi Razi and Richard Smith (Oxford: Oxford UP, 1996): 298-368; Thomas Kuehn, "Reading Microhistory: The Example of Giovanni and Lusanna," *Journal of Modern History* 61 (1989): 512-534.

[2] Examples of recent successful (prizewinning) work based on various kinds of court records include Daniel Lord Smail, *Imaginary Cartographies: Possession and Identity in Late Medieval Marseille* (Ithaca: Cornell UP, 1999); Judith M. Bennett, *Ale, Beer, and Brewsters in England: Women's Work in a Changing World* (New York: Oxford UP, 1996).

[3] For England see R.H. Helmholz, *Marriage Litigation in Medieval England* (Cambridge: Cambridge UP, 1974).

[4] This is done to great effect in Barbara Hanawalt, *The Ties that Bound: Peasant Families in Medieval England* (New York: Oxford UP, 1989).

[5] See Marjorie McIntosh, "Femme Sole Status in England, 1300-1630," forthcoming (2005) in *Journal of British Studies*, for ways in which the husband's responsibility, or lack thereof, for his wife's debts could be manipulated.

[6] On the legal status of singlewomen see Judith M. Bennett and Amy M. Froide, "A Singular Past," in *Singlewomen in the European Past*, ed. Bennett and Froide (Philadelphia: U of Pennsylvania P, 1999), pp. 1-37.

[7] E.g. *Matrimonialium consiliorum tomi duo quorum prior superioribus annis per Ioan. Baptistam Zilettum, I.C. Venetum, ex divdersis excellentissimorum iureconsultorum Italiae, Consiliis collectus, & primum in lucem editus, Posterior autem nunc recens ex clarissimorum germaniae jurisconsultorum Responsis, per eximium J.C.D. Nicolaum Ruckerum, Patritium Francofortensem, singulari diligentia congestus: atque in iustum Voluminis corpus utrique Tomi redacti* (Frankfurt am Main: Sigismund. Feyrabend, 1580), p. 222, for an Italian case.

[8] P.J.P. Goldberg, "Marriage, Migration, Servanthood, and Life Cycle in Yorkshire Towns of the Later Middle Ages: Some York Cause Paper Evidence," *Continuity and Change* 1(1986): 141-69.

[9] The wills from Lübeck themselves were destroyed in World War II, but they were calendared before the war. *Regesten der Lübecker Bürgertestamente des Mittelalters*, ed. A. von Brandt [on the basis of notes by Eduard Hach, Fritz

Rörig et al.], *Veröffentlichungen zur Geschichte der Hansestadt Lübeck*, vols. 18 and 24 (Lübeck: M. Schmidt-Römhild, 1964).

[10]*Ibid.*, pp. 34, 80.

[11]*Ibid.*, pp. 23, 107, 172.

[12]Ludwig Schmugge, Kinder, Kirche, Karrieren: *Päpstliche Dispense von der unehelichen Geburt im Spätmittelalter* (Zurich: Artemis & Winkler, 1995), numbers at pp. 33, 183, 192.

[13]Peter Biller, *The Measure of Multitude: Population in Medieval Thought* (New York: Oxford UP, 2000), pp. 135-57.

[14]John Boswell, *Same-Sex Unions in Pre-Modern Europe* (New York: Villard, 1994).

[15]Judith M. Bennett, "'Lesbian-Like' and the Social History of Lesbianisms," *Journal of the History of Sexuality*, 9(2000): 1-24. I am here making the assumption, which some would consider heterosexist, that practically all cases of men and women living together were sexual as well as domestic partnerships, and that not all cases of two women living together were. I do not think this is an unwarranted assumption, but we are unlikely ever to have definitive evidence. In what way it is historically relevant whether two people living together are a couple or just roommates is another debate entirely.

[16]These books include: in manuscript in the *Geheime Staatsarchive Preussischer Kulturbesitz*, Berlin, XIV Rep 322A nr. 8, *Liber Scabinorum libertatis civitatis Colmensis 1421-1456*; XX O.F. 85, *Schöppenbuch der Stadt Bartenstein 1385-1470*; XX O.F. 86, Schöppenbuch des Landgerichts Bartenstein 1391-1493; and in print, *Das Elbinger Stadtbuch*, Hans W. Hoppe, 2 vols., *Zeitschrift für die Geschichte und Altertumskunde Ermlands*, Beiheft 3 and 5 (Bonn: Institut für ostdeutsche Kirchen- und Kulturgeschichte, 1976 and 1986); *Das Kulmer Gerichtsbuch 1330-1430. Liber memorialis Colmensis civitatis*, ed. Carl August Lückerath and Friedrich Benninghoven, Veröffentlichungen aus den Archiven Preussischer Kulturbesitz, 44 (Köln: Böhlau, 1999); *Liber scabinorum veteris civitatis thoruniensis 1363-1438*, ed. Kazimierz Kaczmarczyk, Toswarzystwo naukowe w toruniu Fontes 29 (Toruń: Nakładem towarzystwa naukowego w toruniu, 1936); *Liber scabinorum veteris civitatis thoruniensis (1428-1456) / Księga Ławnicza starego miasta torunia (1428-1456)*, 2 vols., ed. Karola Csiesielska and Janusz Tandecki, Toswarzystwo naukowe w toruniu Fontes 75 (Toruń: Nakładem towarzystwa naukowego w toruniu, 1992 and 1993).

[17]Paul Johansen and Heinz von zur Mühlen, *Deutsch und Undeutsch im mittelalterlichen and frühneuzeitlichen Reval* (Cologne: Böhlau, 1973), pp. 417-21.

[18]*Geheime Staatsarchiv Preussischer Kulturbesitz*, Berlin, XX O.F. 85, fol. 103r.

[19]In canon and Roman law, a natural child was one whose parents could legally have married, as opposed to a spurious child, born of adultery or incest. However, "natural" could also be used as in the phrase "legitimate and natural" to stress the strength of a bond. See e.g. *Consilia, tractatus et quaestiones Panormitani* (Lyons, 1527), 1:86, fol. 60v.