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City Orphans and Custody Laws in Medieval England

by ELAINE CLARK*

The extent to which English towns protected children during the Middle Ages is known only in broad outline. The historical record first acquires detail in centuries of urban growth, particularly in the twelfth and thirteenth, when customals in all parts of England provided for the wardship of orphans, that is, underage children who had suffered the loss of fathers but not necessarily mothers.¹ The vulnerability of these children occasioned public concern and brought into focus questions of the legal status and competence of the young. By the turn of the thirteenth century, urban officials and commentators alike emphasized the limited capacity of children at law.² During late centuries, too, the legal view prevailed that childhood was a distinct stage of life. Urban law recognized the dependency of the young and spoke not so much of the rights of children but of the needs they had for protection and support. Although the everyday lives of boys and girls generated less interest, the plight of homeless children attracted notice. Yet neither the behavior of orphans and wards, nor the varied problems they faced, can be fully gauged by reading chronicles and customals alone.³ Both address admittedly important issues concerning

* Associate Professor of History, University of Michigan-Dearborn. I am grateful to Maryanne Kowaleski and Richard Wunderli for kindly helping me with the research for this article.

1. Mary Bateson, ed., *Borough Customs* (Selden Society, 1906), 2:145-160.

2. Morley de Wulf Hemmeon, *Burgage Tenure in Medieval England* (Cambridge, 1914), 15-18; E. W. W. Veale, *Burgage Tenure in Medieval Bristol* (Bristol Record Society, 1931), 2:117-119, 145-154. Thomas Stapleton, ed., *De Antiquis Legibus Liber: Cronica Maiorum et Vicecomitum Londoniarum, 1178-1274*, Camden Society, v. 5 (London, 1846), 229. For a detailed bibliography, see Sue Sheridan Walker, "The feudal family and the common law courts: the pleas protecting rights of wardship and marriage, c. 1225-1375," *Journal of Medieval History* 14 (1988): 13-31.

3. For reference to the king's court, see Sue Sheridan Walker, "Widow and Ward: The Feudal Law of Child Custody in Medieval England," in *Women in Medieval Society*, ed. S. M. Stuard (Philadelphia, 1976) 159-172; "Free Consent and the Marriage of Feudal Wards in Medieval England," *Journal of Medieval History* 8 (1982): 123-134. For discussion of the rights of children in church courts, see R. H. Helmholz, "The Roman Law of Guardianship in England, 1300-1600," *Tulane Law Review* 52 (1978): 223-257; "Support Orders, Church Courts, and the Rule of *Filius Nullius*: A Reassessment of the Common Law," *Virginia Law Quarterly* 63 (1977): 431-458; "Legitim in English Legal History," *University of Illinois Law Review* (1984): 659-674. For customary law courts, see Elaine Clark, "The Custody of Children in English Manor Courts," *Law and History Review* 3 (1985): 333-348.

property relations and urban politics but leave largely unexplored the dialectic between private systems of support and family life. The problem here is to learn whether the community and the family actually shared a sense of responsibility for the custody and welfare of dependent children.

The best evidence we have covers the decades before and after the Black Death (1348-50). In fact little quantitative information survives until the fourteenth century when there are court proceedings that describe the custody of orphans but only in London and Bristol.⁴ What makes their records notable is the quality and detail of the testimony they preserve from a wide range of people including city officials, stepparents, and widows. All implied that the welfare of orphans depended in large measure on the concern and involvement of economically privileged adults. This is not to say that urban law was without effect. It certainly defined the parameters of custodial practice in London and Bristol. Yet municipal government aided children indirectly at best. Despite the intervention of courts, it was the household rather than the municipality that constituted the major source of support for city orphans.

I

That London and Bristol regulated wardship in much the same way has long been known.⁵ As early as the 1270s the mayor and aldermen of London sat as a court in the Inner Chamber of the city's guildhall where, among other matters, they discussed and arranged the custody of underage heirs. The mayor of Bristol maintained his authority over minors through hundred courts held in the town's guildhall. In Bristol, as in London, officials made the guardianship of orphans a matter of public concern in order to protect inheritances. The nature of this protection was primarily defined by the liberties that municipal authorities had won from English

4. For Bristol, see the *Register of Recognizances* (hereafter cited as ROR) on deposit in the Bristol Record Office 04422; also the *Great Orphan Book of Wills* in Bristol Record Office 04421. Abstracts of these Bristol wills are printed in T. P. Wadley, *Notes or abstracts of the Wills Contained in the Volume Entitled Great Orphan Book and Book of Wills* (Bristol and Gloucester Archaeological Society, 1886). For London, see Reginald R. Sharpe, ed., *Calendar of Letter Books . . . of the City of London, 1275-1448, Books A to K* (London, 1889-1911); also Reginald R. Sharpe, ed., *Calendar of Wills Proved and Enrolled in the Court of Hustings, London*, 2 vols. (London, 1889). These wills (hereafter cited as CWCH) are discussed and analyzed by Harry A. Miskimin, "The Legacies of London: 1259-1330," in *The Medieval City*, eds. Harry A. Miskimin et al. (New Haven, 1977), 209-227. The classic work on the London evidence is Sylvia L. Thrupp, *The Merchant Class of Medieval London* (1968; reprint, Ann Arbor, 1948). The historiography of the urban family is thoroughly reviewed by Maryanne Kowaleski, "The history of urban families in medieval England," *Journal of Medieval History* 14 (1988): 47-63.

5. E. W. W. Veale, *Burgage Tenure*, 145-146. Lucy Toulmin Smith, ed., *The Maire of Bristowe is Kalendar by Robert Ricart*, Camden Society, new series, n. 5 (London, 1872) includes in part six a copy, made in the late fifteenth century, of the constitutions of the city of London; see in particular "De garde dez orphanyns," 99-100.

kings. According to Bristol's charter of 1331, the mayor had the right to appoint guardians for all underage heirs and the authority to receive the bonds and recognizances needed to safeguard the inheritances of orphans.⁶ In London, too, guardians had to provide surety and follow directives set by the mayor and his court. Together they claimed that the custody of the persons and property of orphans belonged to the city.⁷

Courts in London and Bristol decided questions of inheritance and tenure along similar lines. The point to be kept in mind is that the wardship of property held in burgage tenure bore no connection to the "wardship of feudalism."⁸ The essential characteristic of burgage tenure, and what set it apart from common law, was "the power of devise by will."⁹ In London and Bristol burgesses could redistribute landed resources through testamentary bequests and freely alienate tenements not only by devise but by gift and sale as well. The devolution and wardship of property consequently had a discrete history that brought into focus the correspondence between intergenerational transfers of wealth and the privileges of burgage tenure. Given the complexity of this relationship, the demands of property played an important part in the way courts viewed underage heirs.

Orphans never constituted an undifferentiated group in urban society. Only the children of free men and women came under the jurisdiction of municipal courts. Neither London nor Bristol protected the orphans of the poor and the propertyless. Instead city officials agreed to supervise the sons and daughters of householders who had chattels, land, and cash to bequeath. In this way local courts represented the interests of the deceased no less than the concerns of the orphaned. The former had been people of property and rank with carefully defined legal rights. Most had accumulated wealth. Many had completed an apprenticeship; others had taken part in town government. All had enjoyed the status that full membership in the urban community conferred. For these burgesses, the court of orphans was not a charity.¹⁰ Rather it comprised an integral part of municipal government wherein the very officials who ran the court were, when necessary, its customers.

From the court's point of view orphans were "heirs underage" as well as children forced by circumstance to mourn the recently dead, whether a mother and father together or, less tragically, one parent alone. Although

6. N. Dermott Harding, ed., *Bristol Charters 1155-1373* (Bristol Record Society, 1930), 1:72-77.

7. Charles Carlton, *The Court of Orphans* (Leicester, 1974), 15.

8. M. de W. Hemmeon, *Burgage Tenure*, 15.

9. E. W. W. Veale, *Burgage Tenure*, 41.

10. C. Carlton, *Court of Orphans*, 10.

uncles, grandparents, and family friends bequeathed property to minors, few heirs with parents warranted the concern that "city orphans" did.¹¹ What troubled municipal authorities was the vulnerability of children with no parental alliance. Orphans were powerless and unprotected; their property was liable to misuse. Even the king had this concern, saying in 1331 that he understood how inheritances in Bristol had been "wasted and lost in many ways, to the manifest damage and impoverishment of orphans."¹² Like-minded burgesses spoke of small children easily "cheated" of the rents and chattels bequeathed them by the deceased.¹³ Royal writs reminded London's mayor of the dangers posed by guardians able to profit financially by an orphan's death.¹⁴

Municipal authorities often knew the details of the children's wealth. An orphan's inheritance became official knowledge once the executors of the deceased probated his will, making its bequests of money and goods a matter of public record. Insofar as land was concerned, the testamentary bequest of property held in burgage tenure was enforceable if proved in court. In Bristol probate required the sanction of the mayor and at least two "honest" men drawn from the ranks of the town's bailiffs and sheriffs.¹⁵ They summoned to court witnesses able to testify to the day of the making of the will and whether the testator appeared of sound mind. When the mayor was satisfied that neither family nor friends had wrongfully obtained legacies from the dying, the will was proclaimed in full court and enrolled in its proceedings. Afterwards the mayor and respected men of the town reviewed the bequests of the deceased and determined the value of any moveable goods left to minors.

The evidence of these evaluations, as illustrated in Table 1, shows orphans in Bristol receiving legacies that totalled hundreds of pounds in almost every decade of the fourteenth century. Professor Carlton in his book on the court of orphans has shown that equally generous sums were bequeathed children in London.¹⁶ During the fifteenth century the city's mayors approved bequests which, when tabulated, ran from one hundred to sixteen hundred pounds per decade. And this was not all. In London and Bristol orphans' estates included shops, houses, market stalls, garden plots, tenements, and rents.

11. *Calendar of Letter Book H*, 410. The court decreed, in 1394, that two girls, who had inherited 40 li. from their uncle, "are not city orphans, their father and mother being alive."

12. *Bristol Charters*, 1:75.

13. *Borough Customs*, 2:156.

14. *Calendar of Letter Book E*, 47; and *Book I*, 223-224.

15. E. W. W. Veale, *Burgage Tenure*, 41-45, 66-69.

16. C. Carlton, *Court of Orphans*, 83 and Table 9.

TABLE 1

BRISTOL: Bequests to Orphans in Cash and/or Moveable Goods, 1333-1409*

Bequests	1333-1349 %	1350-1369 %	1370-1389 %	1390-1409 %
0-19 li.	66.6	61.7	37.8	43.7
20-39 li.	28.9	26.5	27.0	35.4
40-59 li.	4.4	2.9	8.1	10.4
60-79 li.	—	1.5	13.5	8.3
80-99 li.	—	—	—	—
100-119 li.	—	7.3	13.5	2.1
N of Bequests	45	68	37	48
Value	645 li.	1387 li.	1322 li.	1185 li.

* SOURCE: Bristol Record Office 04422: Register of Recognizances.

The real estate bequeathed orphans, along with the household goods, the jewelry, the clothing and cash, drew attention to boys and girls privileged by their wealth. These were not children destined to lives of poverty and want. Yet the very wealth of orphans subjected the children to civic regulation. Municipal authorities claimed the right to intervene in the affairs of the young whenever the use of property was in question. Should an orphan marry, seek an inheritance, make a will, or die underage, the mayor and alderman had a say, reminding all concerned of the limitations imposed on the persons and property of minors. London fined and threatened to imprison anyone allowing an orphan younger than twenty-one to take a spouse without the mayor's approval.¹⁷ Bristol also cautioned orphans under twenty-one not to marry until "friends" and the mayor assented.¹⁸ Children could neither alienate the land they had inherited, nor devise it by will.¹⁹ Any deathbed settlements a minor did in fact arrange were restricted to moveable goods.²⁰ When an orphan died intestate, only the mayor and aldermen were entitled to distribute the child's estate.²¹ Simply put, children lacked the freedom to utilize their patrimony, as they alone chose, before reaching legal age.²² Even then, courts insisted, an orphan had to appear mature and in control, fully capable of caring for himself and,

17. *Calendar of Letter Book C*, 81; *Book G*, 163-164; *Book H*, 186; and *Book I*, 141.18. For example, ROR: court of 8 December 1336. *Si predicta Johanna (Fairmay) per amicos suos dispensata fuit et per assensum majoris.*19. E. W. W. Veale, *Burgage Tenure*, 73.20. For reference to orphans' wills, see *Calendar of Letter Book H*, 17; ROR: court of 1 August 1347.21. ROR: court of 8 December 1336. Also, see *Calendar of Letter Book H*, 49.22. *Calendar of Letter Book H*, 15.

in the opinion of neighbors, able to make informed choices.²³ Until such a time orphans required guardians.

The requirement was long standing and everywhere involved family and kin in the care of children. Twelfth-century customs encouraged boroughs to entrust orphans to "near relatives" unable at law to inherit the children's property.²⁴ By the thirteenth century urban officials as well as parents near death urged families to cooperate in protecting the young.²⁵ Mothers generally became the guardians of boys and girls orphaned by their father's death. The father or his next of kin acted as guardians in the event of the mother's demise. Other relatives and friends of the deceased became guardians if so named in wills. Among neighbors and kin the custom of mutual help limited the need to turn to urban officials for help in finding caretakers for the young. Of course much depended on the actual circumstances of family life. If both parents were dead, if no kinsman wanted the child, if the wardship fell into dispute, then it was practical for mayors and aldermen to intervene. Indeed many burgesses believed that the protection and welfare of orphans required the municipal supervision of guardians.

What then were the guidelines? Initially the directives were child-oriented and prescriptive, counseling guardians to nurture the young, to clothe, feed, and educate them, and when wards came of age not to disparage them by arranging marriages with unsuitable spouses. Just as importantly the economic security of orphans required guardians to preserve the children's estates, to waste nothing, nor deplete the legacies entrusted to their care. To abuse this trust, to leave houses unrepaired, or rents uncollected, placed guardians at risk. They had to account for wardships and were obliged to surrender property to children of legal age. The obligation was sufficiently serious to make urban officials circumspect. They refused to trust the bare word of guardians. Instead municipal authorities compelled guardians to appear in court and in the presence of the mayor to acknowledge the money and goods due the young. This acknowledgment or recognizance of a debt had the force of law. Consequently, when orphans came of age, neither they nor their attorneys had, of necessity, to bring a costly suit for the recovery of an estate. The recognizance was equivalent to a judgment. In the case of default, bailiffs and sheriffs collected the debt from the guardian's property or that of his sureties. No exceptions were made. Even pregnant widows had to appear in court and publicly promise to keep the inheritances of unborn children safe.²⁶

Municipal interest in guardians, although always pronounced, intensified during the fourteenth century. Yet this interest should not be taken to mean that family ties in the urban community were correspondingly weak.

23. *Calendar of Letter Book G*, 38-29; and *Book I*, 239.

24. *Borough Customs*, 2:145.

25. Henry Thomas Riley, ed., *Liber Albus* (London, 1859) I, 108-109.

26. *Calendar of Letter Book H*, 49.

Rather municipal government, like other governments in the later Middle Ages, grew increasingly complex. The bureaucracy expanded; officials multiplied; and "systems of control" tightened.²⁷ Where public policy towards orphans changed was in the assignment of guardians. Their appointment gradually became a function of city administration. In London, as early as 1307, the mayor and aldermen claimed the right to name guardians and to dispose of an orphan's property at will.²⁸ This right, they insisted, was theirs "according to the custom of the city" and, as such, superceded the claims of kinship. Even when a mother or father remained alive, the property of underage heirs came under the control of the mayor and aldermen.²⁹ They alone had the authority to entrust the inheritances of minors to suitable guardians. Although the usual procedure still involved families and "near friends" in the custody of children, the mayor acted as the ultimate guardian of orphans at law. This was also the case in Bristol where, in 1331, the king expressly committed the inheritances of orphans to the mayor, then empowered him to appoint caretakers for the young.³⁰ Thereafter every guardian received the custody of a child from the hands of the mayor.

The result of these policies was to bring children into closer contact with urban officials. In Bristol the bailiff and undersheriff, along with the mayor, had responsibility for the wardship of the young. In London the common serjeant served as an attorney for orphans, while the chamberlain took charge of the persons and property of homeless orphans until guardians were found.³¹ Both officials joined the city's aldermen in swearing oaths "to save and mayntayne" the rights of orphaned heirs.³² The mayor resumed his custody of the young whenever guardians fell ill, or died suddenly and without a will.³³ He did so, again, whenever guardians misused a ward's property, failed to educate the child, or simply wished to

27. Susan Reynolds, *An Introduction to the History of English Medieval Towns* (Oxford, 1977), 171.

28. *Borough Customs*, 2:147-148.

29. *Calendar of Letter Book E*, 199; and *Book I*, 220-222.

30. *Bristol Charters*, 1:75.

31. *Calendar of Letter Book E*, 122, 135, 266-267; and *Book G*, 114, 122, 230.

32. *Calendar of Letter Book D*, 197-198; *Liber Albus*, I, 307-309. For Bristol, see Toulmin Smith, ed., *English Gilds: Original Ordinances of the Fourteenth and Fifteenth Centuries*, Early English Text Society n. 40 (London, 1870) 416 at which it is noted that the mayor swore to "keep, maintain and defend the widows and orphans of (Bristol) safely in their rights by my power."

33. *Calendar of Letter Book E*, 212; and *Book I*, 345. CWCH, 1:582-583. Note will of Isabella Godchop who, in 1349, names guardians for her grandson, then in the event of their death arranged for the mayor, the recorder, and the chamberlain of the guildhall to take their place.

be quit of the burdens imposed by wardship.³⁴ No matter what problem arose, London and Bristol urged city officials to intercede on an orphan's behalf. Admittedly this interest in children derived in part from a concern to enhance municipal power through the surveillance of guardians. Bailiffs summoned orphans into court to learn firsthand what guardians had done. The court wanted to know whether an orphan had received the care he was due; to learn, too, if a mother had coerced her daughter to marry, or a stepfather his ward.³⁵ If, as occasionally happened, "near friends" and kin bitterly disputed the guardianship of an orphan, the mayor asked the child where he preferred to live.³⁶

The lesson that mayors meant to impart was that orphans had the court's protection. Any injury done to them wronged the mayor and his court. If a guardian acted "in contempt" of their will, he risked penalty. As a result, a guardian's consent never enabled an orphan to do what he otherwise could not have done.³⁷ Should a ward "pray delivery of his goods and chattels," his guardian's compliance depended on the court's assent; even then a guardian had to prohibit his ward from selling his property before he reached legal age.³⁸ When orphans finally attained majority, set procedures came into play. Guardians were quit, their obligations cancelled and their sureties released, only at the court's discretion. What courts in London and Bristol required was the assurance that orphans had been fairly treated. It was, then, in the presence of the mayor that a guardian was discharged.

If, at this time, any doubt arose about an inheritance, or the orphan's actual age, the mayor relied on the community for advice. At his request auditors investigated the misuse of property; executors rechecked wills; widows reported the last wishes of the deceased.³⁹ Neighbors came forward, in groups of five to twelve, to testify to an orphan's age. They spoke of his character and, when asked, mentioned where he had been baptized and the parish where he lived.⁴⁰ The mayor's concern to have his fellow burgesses in court reflected and enhanced the community's interest in the lives of the young. This interest was hardly surprising given an urban tradition as enduring and widespread as the wardship of orphans. The children, after all, were raised in the households of burgesses, and they did not isolate the young from the old or shield children from the life of the

34. *Calendar of Letter Book G*, 122; and *Book I*, 220-222. For Bristol example, see ROR: courts of 12 March 1360, 21 August 1347, 6 May 1355.

35. *Calendar of Letter Book D*, 180; *Letter Book E*, 47; *Book I*, 55.

36. *Calendar of Letter Book E*, 266-267.

37. For further discussion, see F. Pollock and F. W. Maitland, *The History of English Law*, 2d. ed. (Cambridge, 1968), 2:445.

38. *Calendar of Letter Book H*, 15.

39. *Calendar of Letter Book G*, 39, 181; and *Book I*, 239.

40. *Calendar of Letter Book H*, 187, 256-257.

town. Nevertheless burgesses all knew that wardship could not be completely understood apart from questions of age and the circumstances of family life.

II.

In English towns, as elsewhere, the death of a parent raised the question of what lay in store for the young, although the deaths of fathers mattered most for the custody of orphans. In London and Bristol the practice of wardship closely corresponded to the instructions included in the wills of fathers near death. They determined the substance and range of custody. They set its conditions and decided its terms. Of course wardship was not only an issue of concern to fathers. It involved mothers and widows in many ways. It had, too, a legal base. The very definition of what childhood was and how children could act was set down by age-graded law. Urban families recognized the legal disabilities of children and, as Table 2 shows, paid attention to the question of age whenever boys and girls inherited property. What partially informed this interest was the presumption of the child's incapacity. Throughout the fourteenth century two out of three orphans, when they became wards, were younger than ten; nearly twenty-one percent were no older than three. Yet urban householders invoked the law's definition of minority to draw attention to the dependency of wards no matter what their actual capabilities. As long as the orphaned were neither twenty-one nor married, they were viewed as children in need of support.

This support derived as much from the law's demands as from communal expectations about the care of the young. Many burgesses shared the view that children did not prosper when treated as adults. Instead what orphans required was a sense of protection and the security of family life. Under these circumstances, mothers were thought the most capable of nurturing the young. Borough customals never advocated removing small children from the care of a mother, nor did mayors place little boys and girls in the custody of neighbors without her consent.⁴¹ Municipal officials recognized the needs of mothers as did urban courts. Both enabled the women, when husbands died, to exercise authority over the young. In various ways townsmen also urged children to honor and obey mothers, to submit to their counsel and heed their advice.⁴² Many fathers, too, expected mothers to "guide and govern" the young and, when possible, to become the guardians of orphans at law.⁴³

Perhaps, then, we should ask why so many more men than women held wardships in London and Bristol (see Table 3). Part of the answer clearly involved the conventions of marriage. Social custom being what it

41. *Calendar of Letter Book E*, 192; *Book G*, 196, 252; and *Book I*, 201.

42. S. L. Thrupp, *The Merchant Class*, 173.

43. The London wills, included in CWCH, show mothers as the guardians for 133 (56 percent) of the wards named by testators between 1300 and 1369.

TABLE 2

Ages of Wards Named in London and Bristol Courts, 1300-1409*

Ages	1300-1329		1330-1349		1350-1369		1370-1389		1390-1409	
	London	%	London	%	London	%	London	%	Bristol	%
0-3		23.0	17.1	21.7	5.9	26.6	6.1	38.1		30.1
0-6		38.4	31.4	32.6	26.8	50.6	24.4	61.8		55.5
0-9		66.1	54.2	45.6	56.7	70.6	57.1	74.5		74.6
0-12		81.5	80.0	60.8	76.1	85.3	73.4	83.6		90.4
0-15		87.6	94.2	78.2	85.0	94.6	89.7	90.9		98.4
0-20		100.0	100.0	100.0	100.0	100.0	100.0	100.0		100.0
N =		65	35	46	67	75	49	55		63

* SOURCES: Bristol Record Office 04422; Register of Recognizances. For London, *Calendar of Letter Books*, A-1.

was in the urban community, mothers were subject to constraint whenever they remarried. The marriage of a widow was a matter of consequence both to her family and to the community, since it put the use of property in doubt. Stepfathers had no implicit rights in the inheritance of orphans. When burgesses entrusted property to the custody of widows they did so on the understanding that mothers and children would share equitably in the estates of the deceased. To this end fathers had several ways to protect the young. At times a man made his wife's custody conditional on her remaining a "chaste and honest" widow.⁴⁴ Alternatively he asked an executor or close friend to hold the guardianship of his children should their mother "die or remarry."⁴⁵ In any event the question of marriage was not left as a private matter which could be arranged without any concern for the orphaned. In London and Bristol many widows, when they married, renegotiated the legal terms of their custody of the young.⁴⁶ In these instances the guardianship fell to the mayor and his court; together they acted on behalf of the fatherless child, holding an inheritance "safe" until a widow's second husband obliged his own "lands, rents, goods, and chattels" to cover the property due orphans when they came of age or married.

TABLE 3

Male and Female Guardians in Urban Courts, 1330-1424*

Guardianships Held By:

	Men		Women		Couples	
	London %	Bristol %	London %	Bristol %	London %	Bristol %
1300-1329	49.0	—	32.2	—	18.7	—
1330-1349	51.7	34.4	32.7	56.8	15.5	8.6
1350-1369	77.8	74.7	10.0	23.1	12.1	2.1
1370-1389	57.9	63.7	21.4	32.7	20.6	3.4
1390-1409	89.8	82.8	7.2	17.1	2.8	0.0
1410-1424	73.6	—	8.7	—	17.5	—
N=	417	181	123	85	99	9

* SOURCES: Bristol Record Office 04422: Register of Recognizances. For London, *Calendar of Letter Books, A-K*.

By the fourteenth century this procedure was standard practice and called for stepfathers to provide sureties and personal pledges to secure an orphan's inheritance. As such the practice resembled the precautions that

44. CWCH, I: 405, 610, 660. *Calendar of Letter Book G*, 40.

45. CWCH, I: 92, 427; T. P. Wadley, *Wills*, no. 143; *Calendars of Letter Book F*, 104.

46. For procedure, see ROR: court of 15 August 1341; *Calendar of Letter Book K*, 96.

townsmen had earlier taken in wills. When a London baker settled property on his children in 1283, he warned his widow that should she remarry, his executors had the authority to intervene. To them her new husband must give “good security for the safe custody and due surrender of the children’s portion.”⁴⁷ Under similar circumstances William le Horner bequeathed land to his widow in 1303, only to threaten her with eviction were she to remarry and fail to support his youngest daughter.⁴⁸ During later years burgesses were no less demanding. They expected widows to maintain homes for their late husband’s heirs and to inform the mayor’s court if they remarried.⁴⁹ Whether surety was to be provided by the “second husband” alone, or jointly with his wife, the dying wanted the assurance that children had the protection of courts. The boys and girls, as Table 4 suggests, were simply too young to manage property on their own. Most had not reached the age of ten when their mothers remarried; fully half were younger than six. Consequently many children could expect to remain in the custody of stepfathers for as long as ten to fifteen years. Even so, few people thought a man selfless in marrying a widow with little children. All guardianships were profitable. This any mother knew, and it was on her sufferance that a second husband held the wardship of orphans; in himself he had no valid claims. Legally speaking the status of a stepfather was ambiguous in towns. He had no more than a temporary right to the wardship he administered; yet he remained the guardian of stepchildren after his wife died. If the children died underage, he was required to relinquish their property. Were he to refuse, or in any way misuse a legacy, he risked prosecution and was subject to sanction.

TABLE 4

Ages of Wards When Stepfathers Became Guardians, 1300-1399*

Ages	Wards %
0-3	22.9
0-6	52.7
0-9	79.7
0-12	91.8
0-15	95.9
0-18	100.0
N =	74

* SOURCES: See Table 2.

47. CWCH, 1: 61.

48. CWCH, 1: 158

49. CWCH, 2: 13, 47.

Although supervised by courts, stepfathers and guardians were not without choices in raising the young. Bristol and London permitted guardians to transfer, sell, or bequeath wardships, albeit with the court's approval. In some instances a burgess brought his ward into court and, in the presence of the mayor, handed the child to his new caretaker.⁵⁰ At other times guardians drew up an indenture.⁵¹ In either case the reasons for relinquishing a wardship were straightforward. When the money which guardians held in trust was, in their view, insufficient, they had the option of returning wards to the custody of the court.⁵² There was, too, the matter of the heir's marriage. This in itself was a saleable right which profited guardians, although they were bound not to disparage wards and had, of necessity, to inform the mayor and his court of the marriage. So, too, did the husband of any girl married underage. Once he received her patrimony he was expected to petition the court to acquit her guardians and discharge their pledges.⁵³ Finally there was the issue of wills. Fathers near death influenced the practice of wardship whenever they directed guardians to serve at fixed terms then withdraw once minor heirs turned seventeen or eighteen.⁵⁴ In this way testators arranged for children to achieve independence before the age of majority and thus escape incompatible guardians and stepfathers.

To sum up: we must not see the practice of wardship as inflexible and unresponsive to the changing circumstances of urban life. Wardship was both a family matter and a public institution. It brought the persons and property of fatherless children under the jurisdiction of courts but still involved the participation and approval of neighbors and kin. Bristol and London endorsed the exchange of orphans among households, and as Table 5 implies, actively encouraged the practice during postplague years when many children suffered the loss of mothers as well as fathers. Between 1350-1369, courts show a parent acting as guardian in only one-quarter of the cases on record in Bristol, and one-third in London. By the early fifteenth century the proportions were reversed, with almost eighty percent of wards in Bristol, sixty percent in London, living with mothers and stepfathers. In the early 1300s one-half to two-thirds of wards had resided among kin. Throughout the fourteenth century, then, urban courts accommodated problems of change by bringing the institution of wardship into correspondence with the death of parents, the remarriage of widows, and the changing relations of stepfamilies and kin. All these matters affected

50. ROR: court of 12 March 1360; *Calendar of Letter Book D*, 181-182.

51. *Calendar of Letter Book F*, 17-18; and *Book G*, 196.

52. *Calendar of Book F*, 17-18.

53. Marriage with the mayor's approval put an end to the woman's wardship. See, ROR: courts of 1 May 1350 and 2 February 1358. For discussion of marriage partners and age at marriage, see S. L. Thrupp, *The Merchant Class*, 28-29, 192-193, 196 and n. 10 which cites Bristol evidence.

54. CWCH, 2: 47, 79.

the welfare and security of orphans, although certainly none more so than shifts in demographic rates particularly in mortality.⁵⁵

III

Throughout the fourteenth century urban householders influenced the experience of childhood by imposing on the institution of wardship their own expectations and requirements for the young. The demands of the older generation initially affected orphans in the context of family life. Brothers and sisters remained together, or lived apart, at the discretion of adults. No rule compelled guardians to keep siblings in the same household; nor did parents expect relatives to raise all the children of the deceased. Fathers and mothers alike endorsed the practice of what may be called shared or divided custody. When John le Draper of Bristol was dying in 1337 he had four small children for whom to find homes.⁵⁶ He entrusted his eight year old daughter, along with ten pounds in silver, to a fellow burgess. John then placed his two sons, aged seven and five, with a Bristol draper, also giving him custody of twenty pounds and a shop valued at twenty-four shillings a year. As for his youngest child, a two year girl, John entrusted her to the care of a widow on the understanding that she hold for his daughter a shop valued annually at twenty-six shillings, eight pence. Similar arrangements are found in London and Bristol throughout the fourteenth century, as are settlements wherein widowed mothers held the wardship of children younger than four but sent older boys and girls to live in the households of kin and family friends.⁵⁷

What remained an issue in all these arrangements was the age of the children involved. Neighbors and friends willingly undertook the care of brothers and sisters old enough to make themselves useful, to help in shops and tend to domestic chores. But the younger the children were, the greater were their needs, and the harder it became to keep brothers and sisters together. This was as much a problem in the countryside as the city.⁵⁸ During the first years of life children required considerable care simply to survive. In any town these were the orphans at greatest risk. If their inheritance seemed insufficient to offset the long-term costs of their care, urban officials intervened. They took charge of the children's estates, sold what the law permitted, and arranged for guardians to have maintenance

55. This was also the case in the countryside; see E. Clark, "The Custody of Children", 342.

56. ROR: court of 2 February 1337.

57. CWCH, 1: 567-568, 599-600. 616; CWCH 2: 165. ROR: courts of 8 September 1333, 11 June 1359, 23 April 1368, 30 November 1378, 14 September 1381, 12 March 1389, *Calendar of Letter Book C*, 92; *Book E*, 230-231; *Book F*, 181-201; and *Book G*, 120.

58. For comparative material, see Micheline Braulant, "The Scattered Family: Another Aspect of Seventeenth-Century Demography," trans. R. M. Ranum in *Family and Society: Selections from the Annales Economies, Societies, Civilisations*, eds. R. Foster and O. Ranum (Baltimore, 1976), 104-116.

TABLE 5

Guardianships in London and Bristol Courts, 1300-1424*

	1300-1329 London	1330-1349 London	Bristol	1350-1369 London	Bristol	1370-1389 London	Bristol	1390-1409 London	Bristol	1410-1424 London	Bristol
Guardianships Held by	%	%	%	%	%	%	%	%	%	%	%
Mother	30.9	27.5	56.8	5.7	18.9	19.0	32.7	7.2	17.1	8.7	21.4
Mother or Stepfather	48.3	41.3	58.6	15.0	20.0	53.9	36.2	65.2	57.8	61.5	78.5
Parent, Step- parent, or kin	52.9	48.2	65.5	29.2	26.3	55.5	36.2	73.9	57.8	65.9	78.5
Non-kin	47.1	51.8	34.5	70.8	73.7	44.5	63.8	26.1	42.2	34.1	21.5
N =	155	58	58	140	95	126	58	69	64	91	14

* SOURCES: See Table 3.

allowances. In this way the widow of John Nywelond of Bristol received a twenty-shilling advance against expenses calculated at three pence per week for supporting (*pro sustenancio*) the one-year old daughter of Henry Westram.⁵⁹ When he died in 1355, his little girl's estate included goods and chattels appraised at eight pounds by court personnel.

Orphans and wards lived in a highly circumscribed world. The money and goods they had inherited entitled them to the protection of courts but, at the same time, compelled the children to rely on guardians to handle property and to administer estates. When most boys and girls became wards, they lacked the maturity and knowledge to solve problems on their own. These orphans, no matter what their legacies, had little choice but to defer to the authority of adults. This situation afforded guardians the opportunity to manipulate children, to benefit from their labor and profit from their wealth. There was, then, the potential for conflict and the danger that orphans might fare little better than servants and maids. Urban courts acknowledged the problem and urged guardians to educate wards or, failing this, to find fellow townsmen to instruct the young. Under these circumstances Avicia Horwode, in 1354, told London's aldermen of how she had entrusted her ward to a local pewterer since "neither she nor her husband exercised any trade or craft to teach the boy."⁶⁰ Yet few guardians spoke as forthrightly in court unless the terms of their office expressly required them to help orphans secure an apprenticeship, attend school, or learn a specific trade.⁶¹

This is not to say that urban orphans suffered neglect or that they were more exploited than helped. There can be no mistaking the privilege of children educated at Oxford and the Inns of Court.⁶² Nor is it easy to overlook the role played by urban households in the practical learning of orphans and wards. Their upbringing invariably reflected the preferences and society of politically advantaged adults. Indeed there was no real difference between the behavior demanded of orphans and a burgess' own children. Both were expected to honor superiors, to achieve self control, and practice restraint. Although the orphans and other children who lived together might be of different ages, of disparate wealth and rank, for all of them the household provided a school in the conventions of the urban elite. Theirs was a world which stressed the legal incapacity of children but nevertheless expected the sons and daughters of burgesses to acquire the

59. ROR: court of 8 December 1355.

60. *Calendar of Letter Book G*, 32.

61. ROR: courts of 1 August 1351 and 24 August 1388. *Calendar of Letter Book G*, 308; and *Book H*, 7.

62. *Calendar of Letter Book K*, 143. E. M. Carus-Wilson, "The Overseas Trade of Bristol in the Fifteenth Century," chap. in *Medieval Merchant Venturers* (London, 1954; reprint, 1967), 80-81. A. H. Thomas, ed., *Calendar of Plea and Memoranda Rolls of the City of London* (Cambridge, 1926), 2:175.

experience and skills necessary to ensure survival and success in the city. While they were dependents, the young had to learn how to conserve and make prudent use of resources, particularly the money they would eventually inherit. When arranging bequests, the older generation spoke against waste and left legacies to children on condition that they become ambitious yet discreet, sober, and honest adults.⁶³

The effectiveness of this advice is not difficult to judge if we rely on the testimony of wards. When they came of age, the complaints they made against guardians usually involved questions of money.⁶⁴ Orphans confronted guardians to allege the misuse of estates and demand a public accounting of how legacies had been spent. What these wards sought was the restitution of disputed funds and, failing this, they wanted guardians to admit to the profit and interest they had earned on monies not actually theirs. Orphans could do little more. Custody laws required guardians to preserve an orphan's inheritance but did not prevent the men from using an estate to benefit themselves.⁶⁵ Indeed urban officials expected as much and throughout the fourteenth century allowed guardians to put legacies to use in business and trade.⁶⁶

From this it was a simple step for the mayor and alderman of London to justify borrowing the money of orphans to serve municipal needs. In 1393 the city's chamberlain held in trust the legacies of six orphaned boys whose inheritances totalled four hundred pounds. This money the chamberlain loaned to a goldsmith for a term of six months to buy grain from overseas "for the use of the commonality" in times of dearth.⁶⁷ During the years that followed the chamberlain controlled an increasing number of legacies so that by the late fifteenth century London's court of orphans had the means to utilize these funds in commercial loans.⁶⁸ Whether Bristol immediately followed suit is not clear, but there can be no doubt that throughout the Middle Ages Bristol, like London, evinced and cultivated a proprietary interest in the inheritances of orphans.

IV.

By any measure, London and Bristol gradually gained considerable experience in the custody and care of orphans' estates. By the early fifteenth century over nine hundred boys and girls had come to the attention of municipal authorities (see Table 6). Although these children remained under the supervision of courts, the legal decisions made on their behalf paralleled the wishes of parents and kin. They expected and asked fellow

63. S.L. Thrupp, *The Merchant Class*, 166.

64. For example, *Calendar of Letter Book C*, 182; *Book G*, 38-39.

65. CWCH, 1:631.

66. CWCH, 1:326, 637, 657; *Calendar of Letter Book D*, 189-190.

67. *Calendar of Letter Book H*, 361-362.

68. S. L. Thrupp, *The Merchant Class*, 107.

burgesses to share the task of raising the young. During the course of the fourteenth century almost half of the wards in London and Bristol found homes with neighbors and family friends. This arrangement was far from arbitrary, for in the usual case a guardian had professional or occupational ties with the father of the children he sheltered. Association in business and community affairs encouraged cooperation and a sense of mutual aid that extended to children, affording orphans a place in the households of merchants, artisans, tradesmen, and city officials. Apprentices, if orphaned, continued in the service of masters and saw their authority enhanced whenever courts made these men the orphans' guardians at law.⁶⁹ By the end of the fourteenth century the involvement of guardians in the lives of the young belied any assumption that parents alone bore responsibility for what happened to children in towns.

TABLE 6

Boys and Girls Placed in Custody by London and Bristol Courts, 1300-1424.*

WARDS	1300-1329		1330-1349		1350-1389		1390-1424	
	London %	London %	Bristol %	London %	Bristol %	London %	Bristol %	
Boys	60.6	63.8	50.0	56.3	53.6	56.9	55.1	
Girls	39.4	36.2	50.0	43.7	46.4	43.1	44.9	
N=	155	58	58	268	153	160	78	

* SOURCES: See Table 3.

Everywhere the authority and influence of guardians appeared to have a paternal quality. This appearance persisted because of the considerable number of men holding the wardships of orphans in London and Bristol. By the fifteenth century three of every four wards had been assigned a male guardian. As a result the court of orphans came to have its closest relationship with a particular segment of the community, not only in part a population of the young, but also one defined mainly by men and requiring them to honor the bequests and concerns of the recently dead. The remedies the court proposed to protect children reflected the priorities and the particular biases of these householders of property and rank. Their view of the custody of orphans was not based upon a conception of neutrality or indifference to the children's problems, but bespoke an understanding of how the demands of property impinged on the social relations of both guardians and wards. In this context few burgesses underestimated the influence of women, for when mothers and widows with property remarried they helped to create the stepfamilies in which one quarter of the wards in London and Bristol eventually lived.

Indeed it is difficult to overlook the shifting membership of urban households and the extent to which they sheltered and supported orphans

69. *Calendar of Letter Book I*, 39, 182. ROR: court of 24 August 1388.

and wards. In the course of time fully half of these children came to live either with mothers or in the custody of grandparents, uncles, aunts, and brothers of legal age. Such arrangements afforded boys and girls the continuing guidance of older kin and the company of siblings, stepbrothers, stepsisters, and cousins. To be sure, not all wards experienced childhood in exactly this way. The demands of urban life, no less than the chance workings of death and remarriage, required the young to defer to the decisions of the old, to depart a guardian's household when asked, and provide companionship to a widow living alone or help to a townsman without children of his own.⁷⁰ As a result boys and girls did not necessarily have the same guardian throughout their minority. In 1355, when Robert de Makeseye married Agnes Merwe, the widow of a London skinner, she surrendered the custody and care of her two sons to Walter Pye, also a skinner; he, in turn, kept one boy but sent the other, aged eight, to live with a fellow skinner. This man served as the child's guardian for the next ten years, then relinquished the boy and his wardship to yet another London skinner.⁷¹

By the later Middle Ages this exchange of children by urban households was sufficiently commonplace to sustain a system of custodial care that neither removed nor isolated the young from community life. In fact there was a sense in which the community became part of the court of orphans, imposing upon the institution the requirements that it honor the bequests of parents near death, safeguard legacies, and facilitate the orderly transmission of wealth from one generation to the next. Of course this is a false picture if applied to the children of the urban poor. The court's services were never available to them; nor did public policy address their needs, emphasizing instead the administrative problems posed by children inheriting property. In London and Bristol these problems were discussed and resolved in such a way as to involve the court of orphans in procedures that were political as well as conservative in nature. The court protected the inheritance claims of minors, although behind this concern to protect children there was the creative intent to augment and enhance municipal authority. Mayors and aldermen supervised guardians no less closely than wards and in this way afforded the young an alternative to dependence on guardians alone.

All the same, municipal governance was not so strong that it overshadowed the place of the household in the lives of the young. By the close of the fourteenth century many youths lived apart from parents in the company of employers, tradesmen, and kin. The household structured the work-related experiences of urban apprentices and servants no less care-

70. ROR: courts of 14 September 1349, 12 March 1359, 25 March 1359.

71. CWCH, 1:659-660. Also see *Calendar of Letter Book G*, courts for 19 May 1355 and 25 December 1365.

fully than the domestic ties of orphans and wards.⁷² Although tension and ambivalence between the generations were, as always, a part of family life, burgesses never shifted responsibility for the young away from the household. Instead burgesses viewed the custody of children as part of an extensive network of relationships formed within the household but regulated and linked to the wider world by municipal law. Not only did this law influence the social reality in which orphans lived, it reflected and sanctioned the values and familial concerns of the urban elite. For these householders the needs of orphans were best served by bringing the children into continuing contact with city officials, neighbors, family friends, and kin. Together they ensured that the orphans of burgesses were not a forgotten minority.

72. Barbara Hanawalt, "Coming of Age: Apprenticeship in Medieval London" (Paper delivered at 22nd International Congress on Medieval Studies, Kalamazoo, Michigan: 1987).