

WOMEN AND WILLS: STERILITY AND TESTACY IN CATALONIA IN THE ELEVENTH AND TWELFTH CENTURIES

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ABSTRACT

Abundant surviving wills from before 1200 present medieval Catalan women as testators. Existing wills, as well as indirect evidence, including legislation and complaints about the *mals usatges* of *exorquia* (sterility) and *intestia* (intestacy), show the degree to which women enjoyed testamentary freedom even at a humble social level. Approximately twenty percent of pre-thirteenth-century (non-clerical) testaments are by women, though barriers to women's testamentary rights existed that were both traditional (rooted in Roman law) as well as new (the *mals usatges*). Women's wills more frequently indicate them as single (especially as widowed parents) than men's wills, thus supporting a traditional view of women as fiscally less independent than men. While some wills show women acting from positions of relative political strength or social independence (undertaking pilgrimages, even to Jerusalem, on their own initiative), the imposition of various restrictions on testamentary rights in the twelfth century reflects tightening limits of such fiscal independence, especially for rural women of middling means.

One of the *extrainventari* parchments in the Archive of the Crown of Aragon in Barcelona provides a brief glimpse of a certain twelfth-century testatrix of rather humble estate in the village of Pardines in Cerdanya—a woman whose very name is unknown. Sometime in the 1160s, a series of complaints was compiled for the count-king Alfons I concerning the depredations of Ramon de Ribes, a lord who acted as bailiff for the royal domains in the Ribes valley. Among one group of plaintiffs was a peasant named Guillem Alinard, who said that his late

¹ This study is based on research conducted in connection with the author's doctoral dissertation, "The Will and Society in Medieval Catalonia and Languedoc, 800-1200" (Ph.D. diss., Harvard University, 1995), which presents more detailed findings touching both men's and women's wills. Pertinent also is the thorough and thoughtful unpublished study of 115 Catalan women's wills from the period: Nuria Jornet, *Ego femina: les ultimes voluntats: la dona a través dels testaments femenins catalans, 938-1131* (Maîtrise: Université de Toulouse-le Mirail, 1992).

sister (whose name was not recorded) had left a will—properly witnessed, he said; “but because she was sterile, Ramon took [*abstulit*] eight sheep and a cow, a blanket, a chest and a pot . . .”²

Guillem’s complaint and the many similar laments by his neighbors collectively illustrate villainy on the part of the lord Ramon. Similar documents survive to indict other rapacious lords and illuminate the encroachment of fiscal and physical exactions on a tenant population in this period.³ One particular pretext for the encroachment of such lordship on the property and rights of the peasantry is exemplified by the fate of Guillem’s sister and her property: questions about the legitimacy of testamentary rights.

Guillem’s sister was a peasant, and a tenant of the count-king. All that is known of her estate is what was taken by Ramon; her testament (if it was a written one at all) has not survived. It is unknown, for example, whether she held title to any land (either in outright ownership or in any form of tenancy in which she might have had liberty to designate succession). Every single written testamentary document which survives from this period in Catalonia involves some sort of title to land.⁴ It is possible that this universal feature is a function of the selection of surviving documents, if (as seems likely) the only motivation for their preservation might be the evidence they could provide for chain of ownership or control of landed property. Guillem’s sister may have controlled land and dealt with its bequest in her will, or her will may have been of a more simple type—detailing only the transfer of movable goods—of which no examples survive. Whatever her precise socio-economic status, she and her peers all assumed she had the right to make a will and to have her desires for distribution of her property honored.

Yet Ramon confiscated some or all of her movable property. He was employing the questionable exaction known as *exorquia*, the ‘evil custom’

² Barcelona, Arxiu de la Corona d’Aragó (hereafter ACA), Cancelleria, Pergs. Extraintentaris, no. 3433. “Clamat se Guillelmus Alinád de Raimundo de Ribes qe quedam soror sua obiit cum testamento et idoneis testibus; sed quia erat sterilis, abstulit illi .vii. [corrected to .viii. above the line] oves et unum bovem et unam guadengam et unam archam et unum vexel . . .”

³ On these documents of complaint, see T. N. Bisson, *Tormented Voices: Power, Crisis, and Humanity in Rural Catalonia, 1140-1200* (Cambridge, Mass: Harvard University Press, 1998), and his earlier essay, “The Crisis of the Catalanian Franchises (1150-1200),” in *La formació i expansió del feudalisme català*, ed. J. Portella i Comas (Girona: Col·legi Universitari de Girona/Universitat Autònoma de Barcelona, 1986), 153-174.

⁴ Based on examination of over 2500 such documents while researching “The Will and Society.” See Appendix C, ‘Testamentary Documents: Index,’ pp. 357-413.

of confiscating a percentage of the goods of a tenant who had left no children. Guillem Alinard complained about this action, but at the same time he acknowledged Ramon's pretext through his admission of his sister's sterility and the use of the causal conjunction *quia*: Ramon took the goods *because* Guillem's sister was sterile. This picture of ambivalence about a 'cause' which is not a justification is consistent with what Paul Freedman has illuminated of the grudging recognition and frank labeling of such 'evil customs' and their role in the encroachment of serfdom in this period.⁵

The process of *exorquia* devolved upon men as well as women, although the cause of liability for *exorquia* is defined here and in other contemporary texts as *sterilitas*. If sterility were assumed to mean the *inability* to conceive children—a condition blamed classically on women—and not merely the absence of children, then the process of *exorquia* would have been a gendered one explicitly targeting women. However, prescriptive texts and examples make it clear that men as well as women were the victims of *exorquia*.

The heart of *exorquia*, as opposed to the other 'evil customs' which victimized the Catalan peasantry by exploiting fiscal or moral failings, is not merely the skimming of possessions or cash, but more fundamentally the restriction of a basic personal fiscal right—the right freely to dispose of property by testament—previously assumed by an essentially free peasantry of both sexes, confident of ancient law and public order. The related custom of *intestia*, although not strictly depriving anyone of free testacy, also represents a desire to curb traditionally freer informal inheritance customs among the peasantry. In the middle of the twelfth century, this ancient freedom was coming under attack with the implied restrictions of the innovative *mals usatges*.

Around the same time that Guillem Alinard made his complaint, there is other evidence for a reaction to *exorquia* and real or implied testamentary restrictions in the same diocese of Urgell (which included Guillem's village of Pardines in its remotest corner). On 25 June 1165, bishop Bernat Roger made a charter addressing testacy issues for the residents of the city of la Seu d'Urgell:

⁵ On *exorquia*, one of the 'evil customs' which came to define serfdom in Catalonia, see P. Freedman, *The Origins of Peasant Servitude in Catalonia* (Cambridge: Cambridge University Press, 1991), 17, 82-83, 106ff. Note that the Urgell charter (discussed below) seems to suggest that *intestia* was less controversial in the early decades of its spread than *exorquia*.

I, Bernat Roger, by the grace of God bishop of Urgell, moved by the counsel of my brother Ermengol, count of Urgell, and of all the canons of the see, and by the acclamation and most earnest entreaty of all the people of the town [of La Seu d'Urgell], and for the advantage, benefit, and support of this same town, do grant to the men and women of the see, now and in perpetuity, that they have full power to dispose of all their honors, with children or without children, during their lifetimes and after death, excepting clerics and knights, and excepting the *census* owed to me or my successors; let them also have full freedom in perpetuity to dispose of their movable estate.

And from this moment forward let no layman or laywoman in this city be called *sterile*, or in the vernacular *exorch*, by which pretext, according to the evil secular custom, some of their estate is taken from them.⁶

In this grant the bishop explicitly distances his position from that adopted by secular lords like Ramon de Ribes. "Let no layman or laywoman be called sterile." Here, *sterility* is not a medical condition, nor merely the absence of children, but rather a legal status arising from the 'evil secular custom' which brands a tenant by this fiscal oppression. By forbidding the label, the bishop may have sought to prevent its use and the attendant fiscal penalty—but, of course, fertility itself cannot be guaranteed by edict.

The charter has the tone of a negotiated document, and the bishop admits that it is the result of counsel—perhaps pressure—from the count, the clergy, and all the people of the city. The wording suggests that the gendering of testamentary rights may have been an issue. Twice,

⁶ C. Baraut, "Els documents . . . conservats a l'Arxiu Capitular de la Seu d'Urgell," *Urgellia* 10 (1990-1): no. 1598. See also J. Villanueva, *Viage literario a las iglesias de España*, 22 vols. (Madrid and Valencia: Imprenta de la Real academia de la historia, [1804-1852]), vol. 11, p. 57 and no. 17: "Ego Bernardus Rogerii gratia dei Urgellensis episcopus, rogatu Ermengaudi fratris mei Urgellensis comitis necnon et omnium canonicorum sedis consilio atque omnium hominum ville sedis acclamatione et diutissima efflagitatione seu ville huius adiectione utilitate et sublimatione, dono hominibus sedis dono hominibus sedis et feminis atque concedo qui modo sunt et in antea erunt, quatenus liberam habeant potestatem per omnia tempora de omni honore suo quem habent vel tenent, aut habuerint seu tenerint, facere voluntatem suam cum infante et sine infante, in vita et in morte et post mortem, excepto clerico et milite, salvo mei meorumque successorum censu. De mobili vero liberam et plenam habeant potestatem voluntatem suam in perpetuum faciendi, et numquam in hac villa laicus homo vel femina de ista hora in antea sterilis vocetur, quod vulgo dicitur *exorch*, ut hac occasione maligno seculari modo aliquid de suo amittat." The text goes on to uphold the legality of the bishop's exaction of *intestia*, although explicitly limiting the bishop's part to movable goods.

the bishop is careful to include “all *men* and *women*,” suggesting that naming both sexes is important. While the bishop promises freedom from *exorquia* and the right of all laypersons freely to dispose of their property (landed and movable), he also specifies strict gender equality in these freedoms.⁷ It is tempting to wonder if at this time women were customarily more aggressively targeted as victims of *exorquia*, though the documents do not appear to permit such interpretation.

Any threat to the free testacy of childless women and men—and particularly childless women—had ample precedent in the Roman world, where testamentary rights were extended to various demographic groups only gradually. The *ius liberorum* is the name given to a bundle of statutes originally promulgated to encourage procreation, with legal and financial disincentives for childless couples (or couples with fewer than three or four children), including restrictions on free testacy.⁸ By the fifth century exceptions were made, including one granting to all free married, childless couples that each could designate the surviving spouse as the heir of all their real and movable property in what became one of the most basic forms of a written will.⁹ This was preserved in the *Breviarium Alaricianum* (the Visigothic edition of the Theodosian Code), and it is reflected by several samples of such testaments included in the surviving early Visigothic and Frankish formularies. By the tenth century in Catalonia, the apparent general freedom of both childless and fertile women to make testaments had rendered this explicit privilege of joint conjugal testaments obsolete, although in the eleventh and twelfth centuries

⁷ Discounting, that is, the fact that those whose freedoms are restricted, the *clerici* and *milites* of the see, are only male.

⁸ On the scope of the *ius liberorum*, see M. Kaser, *Roman Private Law*, 4th ed., trans. R. Dannenbring (Pretoria: University of South Africa, 1984), 290-1, which is accessible, with further detail, in his *Das römische Privatrecht*, 2d ed., 2 vols. (Munich: Beck, 1971), 1:320, etc.

⁹ On the decay of these restrictions in general see Francisco Samper, *Sobre el destino del 'ius liberorum' en el tardo derecho romano occidental* (Santiago de Compostela: Universidad de Santiago de Compostela, 1972). The testamentary provision is *Novellae Valentiniani* 21.1, in *Codex Theodosianus*, ed. P. Krueger and T. Mommsen, 2 vols. (Berlin: Weidmann, 1905), 2:108-110, dated to 446. Medieval epitomes stating the law quite baldly are found in the edition of the *Lex romana wisigothorum* of G. Hänel (Leipzig: Teubner, 1849), 278-9 (at *Novellae Valentiniani* 4.1). Several early-medieval formulary examples of such testaments among childless couples, often invoking the *ius liberorum* by name in their rubrics, are found in the *Formulae merovingici et karolini aevi*, ed. K. Zeumer, *MGH Leges* (quarto ser.), 5 (Hanover: Hahn, 1882-1886): *Formulae Andecavenses* 41 (pp. 18-19); *Marculfi Formulae* 2.7-8 (pp. 79-80); *Formulae Turonenses* 17-18 (pp. 144-145); *Formulae Visigothicae* 23-24 (pp. 586-587).

joint testaments for couples with and without children were still sometimes employed.¹⁰ The spread of *exorquia* and related testacy restrictions is particularly ironic in light of this tradition. Initially, at least, *exorquia* was regarded by some as a nefarious detraction from the legal custom and privilege of a testamentary system with ancient roots and a tradition of (at least theoretical) equality of access for both men and women.

Wills themselves provide the richest and most nuanced evidence for testamentary behavior of both women and men in this period. While Guillem's sister's will may be lost to us, thousands of others do survive. Catalan wills from the pre-notarial age still exist in numbers unmatched in other provinces. These wills provide plenty of evidence for freedom of testacy exercised by women and men, with and without children, in many levels of Catalan society, in the twelfth century and earlier. While some early medieval wills (and women's wills) have long been known and studied from other parts of Western Europe, it is instructive to consider some aspects of the role of women as testators in the unmatched surviving corpus of early Catalan wills.¹¹

In a tabulation of approximately 2400 Catalan testamentary documents from between 865 and 1200, women make up just around 20 percent of the non-clerical testators.¹² In addition, about 50 women appear in joint testaments of husband-and-wife pairs, and several other women speak up and make brief statements which appear as appended clauses in wills written by their husbands.¹³ There are no sharp changes in the gender ratio over time in this sample. Apparently, despite the possible gendering of *exorquia* or the implications of the bishop of Urgell's

¹⁰ One hundred seven documents are noted in "The Will and Society," 158, although half of these fall either outside Catalonia proper or before the eleventh century, or constitute para-testamentary acts not considered in the present paper's sample.

¹¹ There are about 3000 wills from Catalonia that antedate 1200 AD. For a general discussion of this testamentary corpus, see the introduction of "The Will and Society," 4-22. One recent study showcasing a single woman's will, from outside Catalonia, was done by Janet L. Nelson, "The wary widow," in *Property and Power in the Early Middle Ages*, ed. Wendy Davies and Paul Fouracre (Cambridge: Cambridge University Press, 1995), 82-113. A similar work focusing on a corpus of Italian women's wills was done by Patricia Skinner, "Women, wills and wealth in medieval southern Italy," *Early Medieval Europe* 2 (1993): 133-152.

¹² Three hundred fifty-two out of 1830 non-clerical testators in the full corpus (assembled for "The Will and Society"), or 203 out of 1008 in the smaller corpus cited in the above table.

¹³ The whole corpus includes quasi-testamentary dispositions and ancillary documents, such as executors' acts, which reveal the presence of testators and some information about them (useful for statistical purposes), but do not always memorialize a complete set of desires for disposition of property after the death of the testator.

concessions in 1165, women's testacy rights do not seem to have been more aggressively quashed than those of men at any time in the later twelfth century, although this may have changed in the thirteenth century and later.¹⁴

But how do women's wills differ from those of men? One basic difference hinges on the shape of the testator's family. Of men's wills and women's wills, exactly the same percentage indicate that the testator had children (61 percent of both men's and women's wills—see the accompanying table). However, rather more men's wills than women's mention the existence of living spouses (57 percent of men's wills versus 40 percent of women's wills). While a higher proportion of men than women noted neither spouse nor children (27 percent of men, 19 percent of women), a higher proportion of women had children but no spouse (31 percent of women's wills, 15 percent of men's). Interestingly, the proportion of women's wills in this category remained constant over time, but the proportion of men's wills with children but no named spouse increased steadily through the twelfth century, suggesting not so much an increase of widowerhood, but rather a potentially growing propensity for men to ignore their wives altogether in their wills: it is by no means certain that a man's will which names no spouse means that the man is unmarried. Assuming that spouses are increasingly omitted from wills does not necessarily mean that customary provision for widows is being ignored or curtailed, though the question is certainly raised. But it is certainly possible that widows, left out of their husbands' wills, may have become more dependent, in the later twelfth century, on the son

¹⁴ Thirteenth-century and later notarial registers examined by several colleagues in the course of various ongoing projects, in Catalonia and elsewhere in the Mediterranean (from Languedoc to Slovenia), often show much closer parity of female and male testators, or even more women than men. S. Epstein, *Wills and Wealth in Medieval Genoa, 1150-1250* (Cambridge, Mass.: Harvard University Press, 1984), 38, finds parity in the late twelfth and early thirteenth century. S. Cohn, *Death and Property in Siena, 1205-1800* (Baltimore: Johns Hopkins University Press, 1988), 199, finds one-third women, rising towards parity during the Counter-Reformation. The earliest notarial registers of the Slovene town of Piran (late thirteenth century) contain far more women than men as testators: *Najstarejša Piranska notarska knjiga (1281-1287/89)*, ed. Darja Mihelič (Ljubljana: Slovenska akademija znanosti in umetnosti, 1984). This begs the question: did women's wills from the pre-notarial age (in Catalonia and elsewhere) survive much less often than those of their male counterparts, or do the ratios of surviving wills also reflect the ratio with which wills were made? The demographic shift in clientele between pre-notarial and notarial charters (in regions where such a contrast can be made) is an issue not yet satisfactorily addressed.

Table: Testators, Children and Spouses (Eleventh-Twelfth Centuries)

| | WOMEN (n = 203)* | | | MEN (n = 306)* | | | total |
|----------------------|--------------------|-----------------------|-----------------|--------------------|-----------------------|-----------------|-------|
| | children mentioned | no children mentioned | total | children mentioned | no children mentioned | total | |
| spouse mentioned | 64 (31%) | 38 (19%) | 102 (50%) | 143 (47%) | 36 (12%) | 179 (58%) | |
| <i>[as alive]</i> | (48) (24%) | (32) (16%) | (80) (40%) | (139) (45%) | (35) (11%) | (174) (57%) | |
| <i>[as deceased]</i> | (16) (7%) | (6) (3%) | (22) (10%) | (4) (1%) | (1) (0%) | (5) (2%) | |
| no spouse mentioned | 62 (31%) | 39 (19%) | 101 (50%) | 45 (15%) | 82 (27%) | 127 (42%) | |
| Total | 126 62% | 77 38% | 203 100% | 188 61% | 118 39% | 306 100% | |

* Sample: selected Catalan testaments (excluding fragmentary testaments, multiple testaments for a single testator, and testaments of clerics), dated before 1200, drawn from a variety of major printed collections and manuscript fonds, condensed from material examined for "The Will and Society in Medieval Catalonia and Languedoc, 800-1200" (Ph.D. diss., Harvard University, 1995). The pool of testaments of both genders fulfilling these requirements is actually n = 1008, yielding a gender ratio of 4:1 or just over 20% female; the men's pool of 805 documents was reduced arbitrarily to a more manageable sample (n = 306) for analysis alongside the complete women's sample of n = 203.

and heir, while earlier they had customarily enjoyed written testamentary settlements.¹⁵

On the other hand, the preponderance of admissions of widowhood among women as opposed to among men, and the significantly greater proportion of mention of fatherless children in women's wills in general, suggest that women were more likely to be writing wills as widows than as wives. But further interpretation is ambiguous: did widowhood confer security of status, or did it bring a certain anxiety, concerns pervasive enough to encourage the writing of wills? Either way, widows' power over their own property—and, to an extent, the patrimony of their children—was respected.

What other features mark the women's voices in wills? Nuria Jornet (see n. 1) has explored the construction of a woman's identity as she appears in testamentary protocols. The customary formal identification for a female testator in her will is simply her name, with the qualifier *femina* serving as a more common apposition than any indication of rank (such as the elective *domina*, or even a fiscal title such as *vicecomitissa*, which often is not used even when known to have been true). A woman's husband's name (or that of her father) did not usually appear beside her own in the protocols; husbands are rather only to be found named among the executors or among the legatees.¹⁶ While it is customary to think of medieval women as having been defined, socially and legally, with reference to their fathers, husbands, or other male members of the household into which they were integrated, the protocols of women's testaments (and of other contemporary women's transactions) show them acting very much as independent individuals.

Some social independence is suggested by the evidence of pilgrimage testaments. Imminent pilgrimage—a hazardous and uncertain undertaking—was one of the common motivations for writing a will in medieval Catalonia. While fewer women seem to have written pilgrimage wills than men (under 3 percent of women's wills as opposed to 18 percent of men's), women did undertake pilgrimages to Santiago, Le Puy, Conques, as far away as Rome and, in the twelfth century, Jerusalem.¹⁷

¹⁵ This parallels a growing tendency for other ancillary bequests (to younger children, collateral relatives, or to the Church) to be placed in the hands of the principal heir. See "The Will and Society," 99-103, for this trend in connection with the confirmation of pious legacies.

¹⁶ See L. Martínez i Teixidó's study, *Les famílies nobles del Pallars en els segles XI i XII* (Lleida; Pagès, 1991), 40-41, 70 (chart 6), for a useful analysis of patterns of women's naming and family identification in charters.

¹⁷ See "The Will and Society," 208-9, and a graphic tabulation of pilgrimage destinations

The opportunities of such salutary but hazardous travel were not available only to widows and the unattached: in some instances living husbands and families were apparently left behind, as when Ermengarde, widow of Berenguer de Guardiola, named her second husband as one of her executors upon departing for the Holy Land in 1168.¹⁸

While we do not know the exact date, it is probable that the unnamed peasant woman of Pardines, Guillem Alinard's sister, made her will at just about the same time as the wealthy pilgrim Ermengarde de Guardiola. At the heart of this brief exploration lies the fact that women of such diverse statures as Ermengarde de Guardiola and Guillem Alinard's sister could both employ the same legal institution, the Catalan will. The statistics reviewed here show that women testators seem to have had a somewhat distinct profile from men in their testaments, but these distinctions are fairly static throughout the eleventh and twelfth centuries.

Some of the observations made here were prompted by wondering how a growth of testamentary restrictions and customs like *exorquia*, in the twelfth century, affected both the traditional testamentary system and the profiles of those who could participate in it. These encroachments do not seem to have affected the balance of gender and family status in surviving wills. Nonetheless, the rising amount of documentation available from the end of the twelfth century disguises the possibility that the middling-to-lower stratum of society, a formerly free peasant class, found itself cut off from a testamentary tradition of which it had long made use. At this time, too, Catalan legal culture as a whole was about to be altered by the revitalization of royal administration and the penetration of a new professional notariate, and the testamentary system would never be the same. It is the humbler rural folk, of both sexes, whose voices grow fainter after the turn of the thirteenth century, when the weighty registers of the urban notariate begin to drown out the scarcer charters of monastic and parish scribes in the archives of Catalonia.

on page 328. While there are a substantial number of men's pilgrimages to Jerusalem attested in wills before the First Crusade, Catalan women's pilgrimages to Jerusalem first appear in wills in 1109. P. Bonnassie, *Catalunya mil anys enrera: creixement econòmic i adveniment del feudalisme a Catalunya, de mitjan segle X al final del segle XI*, 2 vols. (Barcelona: Edicions 62, 1979), 2:370-374, lists a smaller corpus of pilgrimage wills from the tenth and eleventh centuries. For two tenth-century narratives of Saxon aristocratic widows traveling to Rome (one in 969 and the other around 955/85), considered in the context of their independence, identity and power, see K. J. Leyser, *Rule and Conflict in an Early Medieval Society: Ottonian Saxony* (Bloomington: Indiana University Press, 1979), 58 and n. 77.

¹⁸ ACA, Ords. Mils., Pergs., Armari 28, no. 283.