

Brian Gastle

Western Carolina University

“The Femme Sole Juridical Subject in *The Book of Margery Kempe* and the Paston Letters”

One of the most significant aspects of late medieval merchants and the systems governing their social and cultural involvement was the opportunity afforded women by trade and merchant activity. For Sylvia Thrupp, one of the first historians to document the roles women played as medieval merchants, women operated in the business realm primarily as an adjunct to family income and harmony, for, “In the merchant class married women’s business activities were less often an economic necessity than an outlet for surplus energy or a means of earning additional money to spend” (Thrupp 170). Thrupp attributes Margery Kempe’s development as a mystic to “extreme nervous tension and breakdown” (Thrupp 174)--a veritable psychotic break caused by the conflicting demands of her mercantile and spousal responsibilities.

But Thrupp’s attribution of the desire to operate a business to a surplus of free time or desire for more money is not entirely plausible given Kempe’s situation. Kempe was after all a member of one of the wealthiest families in Lynn, and I find it hard to believe that a woman raising fourteen children would, as Thrupp states, pursue a career merely “as an outlet for surplus energy” (170). Kempe’s life was inextricably bound up with mercantile concerns and the legal ramifications thereof, and she found that she could use her merchant experience to help define herself, rather than allowing herself to be defined by those routine duties. Similarly, anyone who has read the Paston letters would hardly say the Paston women were pursuing their mercantile activities merely as an outlet for surplus energy. Indeed, for Maragaret Paston especially, her management of the estate was first and foremost an economic necessity for her family, given her husband’s prolonged absences. What I am particularly interested in here is how these two women, who appear to be operating as femme soles, wives conducting business separate and apart from their husbands, exemplify a peculiar form of juridical subject in late medieval textual

environments.

As a recent article by Dominique Bauer on the development of the Juridical Subject in the twelfth century<sup>1</sup> points out, the term *juridical subject* “does not technically refer to the physical or legal person. It is the concept of the individual that operates within the legal system, the concept of individuality and the kind of individual person that is being applied within the current legal order.” It is therefore necessary to historicize and contextualize the juridical subject. But in so doing, we mustn’t neglect the gendered implications of such contextualization, for the legal inscription of identity has historically also been an inscription of gender. As Judith Butler states:

The question of "the subject" is crucial for politics, and for feminist politics in particular, because juridical subjects are invariably produced through certain exclusionary practices that do not "show" once the juridical structure of politics has been established. . . . Feminist critique ought also to understand how the category of "women," the subject of feminism, is produced and restrained by the very structures of power through which emancipation is sought.<sup>2</sup>

What I am seeking to do is to understand how the late medieval English *femme sole* figure not only was produced by legal structures but also to what extent women themselves found such a position liberating or empowering.

The documentary evidence of the urban *femme sole* is abundant, especially from the late fourteenth to the mid fifteenth centuries. But as early as the thirteenth century, the institutionalization of a wife’s power within the mercantile realm was beginning to emerge. For example, around 1230, the charters of Salford, Stockport, and Bolton all contain stipulations as to the power a wife had to conduct familial business without her husband being present

By the fourteenth century, the *femme sole* trope began to emerge as a regular part of

---

<sup>1</sup> Bauer, Dominique. “The Twelfth Century and the Emergence of the Juridical Subject.” *Zeitschrift der Savigny-Siftung für Rechtsgeschichte. Kanonistische Abteilung*, 90 (2004): 207-27.

<sup>2</sup> *Gender Trouble* (2-3)

mercantile legal documentation in England. As a holdover from earlier Anglo-Norman *feme seule*, the term had found a foothold in standard formulaic legal discourse of later law French. Wives operating businesses on their own and wholly separate from their husbands were not only allowed but expected in certain mercantile families. Women most vigorously participated in such situations, giving rise to the clear delineation of those roles in, for example, the following *Liber Albus* passage from 1419:

Uxor Quae Sola Mercandizat. Et lou feme coverte de baroun usee ascun craft deinz la dite citee apar luy soule, dount le baroun se melle rienz, tiele femme serra chargee come femme soule de tout ceo qe touche soun dit craft. Et si le baroun et la femme soient empledez, en tiel cas la femme pledera come femme soule en courte de recorde, et avera sa ley et autres avaunteges par voy du pley come femme soule. Et si elle soit condempnee, elle serra commys a la prisoune tancqes elle eit fait gree; et le baroun ne ses biens ne serrout my en tiel cas chargez nenpeschez.

[And where a wife (woman under the protection of a husband) follows any craft within the said city by herself alone, with which the husband does not interfere, such a woman shall be charged as a single woman concerning everything which touches her said craft. And if the husband and the wife are impleaded, in such a case the wife shall plead as a single woman in a court of record, and she shall have her law and other advantages by way of plea like a single woman. And if she is condemned, she shall be committed to prison until she makes appeasement; and neither the husband nor his goods shall be in such a case charged or impleaded.] (*Liber Albus* 204-5)

The attempt to control the roles and powers of women, especially within the mercantile realm, was a project of circumscription. But that did not mean that women could not use that attempt advantageously. Regardless of marital status, medieval businesswomen had “sa ley,” her law, which constructed a form of juridical subjectivity and brought with it both juridical “advantages” and the threat of legal condemnation. This type of sovereignty was critical if women were to conduct business on their own and for themselves. The *Liber Albus* passage uses the term *coverte de baron*, “protected by the husband,” which by 1419 was a very recognizable legal term for a wife, subjugating the wife’s position to that of the husband’s by identifying her as someone “covered (i.e., defined, supervised, or legally protected) by the husband.” But the purpose of the passage is to define the wife’s position as independent of her husband’s

protection, or more appropriately, independent of his goods.

By the time of the production of the *Liber Albus*, women's mercantile activity was sufficiently pronounced to have institutionalized their position in those documents. This trend of female mercantile activity was motivated in part by the changing demands placed upon the workforce. Such an institutionalization moved the power of the woman beyond the domestic into the public spheres, if such terms can be used of a period during which domestic and public production seemed to go hand in hand, and also during which time the patriarchal structure defining the home economy certainly was affected by both women's entry into the workforce as individuals (*sole*) and subsequent legal moves to protect husbands in such a relationship. As a form of defense, *femme sole* status protected the husband from economic and legal repercussions of his wife's activities, but it also institutionalized her power outside the boundaries of patriarchal familial control, or perhaps, more appropriately, moved such control from the dominance of the domestic patriarchy to that of the public patriarchy, the state.

[Mention similar documentary development in texts such as the *RP* and *Customnals*]

I would suggest that the *femme sole* as a form of juridical subjectivity is not limited to such legal texts. Official *femme sole* status apparently required registration of such status, but I have yet to find such records. It is why many legal scholars view the *femme sole* as an urban, specifically a London, construct. I am skeptical of that interpretation, given the similarities I find in literary and documentary evidence from women's narratives outside of London, such as Margery Kempe's or Margaret Paston's .

By April of 1448, Margaret Paston had grown quite proficient as the estate's manager in the absence of her husband. She recounts receipt of the estate's rents to her husband with

complete familiarity, embedded among accounts of friends and family—the marriage of Kateryn Walsam, that “Sym Schepherd js styl wyth Wyly,” and that “Jon of Sparham js so schyttly-wyttyd þat he wyl sett hys gode to morgage to Heydon.” This tone of familiarity and ease is all the more revealing when we consider the fact that, by May of that same year – one month later – Lord Moleyns’s men had superseded her collecting privileges and were collecting the rent instead of Margaret’s men. She must surely have had some knowledge of the impending danger, given her husband’s problems in London establishing a clear legal claim to the lands.

That particular letter to John opens with a long description of a discussion Margaret Paston held with Lady Morley, to whom John Paston owed money, and Margery states that “sythyn þat 3e wyl make none end wyth here sche wyl sew þer-fore as law wyl.” Margaret, pleading John’s case, was unable to plead a cessation in the suit, for Lady Morley

had sett 3w so many days to a-kord wyth here and 3e had broke þem þat sche was ryth wery þer-of; and sche seyde sche was but a woman, sche must don be here cownseyl, and here cwnseyle had avysyd here to don so, and so sche seyde sche wyld do. (128)

Lady Morley ceases to plead directly with John Paston, for those pleas have fallen upon deaf ears. She must follow her “cownseyl,” a term loaded with legal and mercantile implications, and press for a binding legal resolution. But such an implication becomes immediately gendered, a linking of legal and woman’s counsel, for she is not merely (“but”) a woman, but *Lady Morley*, a woman with clear legal rights.

The temporary resolution of this matter comes **not** from Lady Morley’s correspondence with John Paston, but rather through the personal involvement of two women of the Paston family: Margaret and her mother. Margaret Paston is unable to achieve postponement of the suit, but her mother, upon visiting Lady Morley, “dede here devere ryth feythfully þer-jn . . . and sche gete grawnt of my seyde lady þat þer xuld nowth ben don a3ens 3w þer-in . . . be-twyx þis tym

and Trinyte Sunday.” Paston’s mother negotiates a deferral of the payment of the debt. A solution to the economic straits in which the Paston’s find themselves, or at least the postponement of the threatened suit, depends upon the relationship fostered among the women of the respective families apart from their husbands; which is to say, it depends upon the functioning of the legal status of the *femme sole*, upon businesswomen’s ability to rely upon one another’s understanding of their mutual position and to negotiate agreements in good faith.

[Mention search for similar instances in other letters – no time to discuss]

Whereas Margaret Paston’s juridical identity is articulated in a contract negotiation between women, Margery Kempe’s is manifest in her spiritual negotiations with God. Just prior to the chapter wherein she negotiates a spiritual marriage with her husband, we see Kempe negotiate with her spiritual *potestas* using the tropes generally reserved for secular testamentary law. During one of her many visionary conversations with the Virgin Mary and “hyr blyssed Sone,” Mary asks Kempe whom she will have with her as a companion in Heaven. Kempe’s response, “my gostly fadyr Maystyr R.,” surprises Mary, who seems to expect her to choose her own father or husband. But Kempe recognizes a debt she owes to her confessor, “For I may neuyr qwyte hym the goodness þat he hath don to me & þe gracyows labowrys þat he hath had a-bowt me in heryng of my confessyon” (20.25-28). Kempe posits her relationship with the priest in terms which commodify that spiritual relationship. She calls his function as her confessor his “labowrys,” work which she feels she must pay for, “qwyte,” in some way. Her remuneration reflects the spiritual nature of his work. Not only is she paying him for that office, but she is paying him in kind, otherworldly payment for otherworldly work. But for Kempe, positing spiritual labor as a pliable trade is not limited to temporal figures. After she has been assured by

God that her confessor, as well as her husband, her father, and all her sons will join her in heaven—a very Dantesque moment of salvation for personal acquaintances—she then goes on to figure the deity himself in her life’s work:

Lord, sythen þow hast for- ouyn me myn synne, I make þe myn executor of all þe god werkys, þat þow werkyst in me. In praying, in thynkyng, in wepyng, in pylgrimage goyng, in fastyng, er in any good word spekyng, it is fully my wyl þat þow eue Maystyr R. halfyndel to encres of hys meryte as yf he dede hem hys owyn self. And þe oþer haluendel, Lord, sprede on þi frendys & þi enmys & on my frendys & myn enmys, for I wyl haue but þi-self for my mede. (20.31-21.4)

This is a fairly intricate contract, given Kempe’s juridical position in late medieval English law.

Kempe makes the Lord her “executor.” Kempe figures all her good works as her personal property in this spiritual testament. These actions, good works separate and apart from her husband’s, become commodities on which she can draw or to which she can refer as articles of property. God’s claim upon those goods is presumably absolute already, like a husband’s control over dowry within a marriage; but when good works become goods worked, she may act upon them as a *femme sole* trader, as she says that it is “fully my wyl,” in the spiritual rather than legal sense, that they be disbursed accordingly. She gives half of those “goods” to her confessor and the other half to, in effect, the rest of the world, leaving herself destitute but for one form of recompense, God himself.

Kempe’s language of merchandising, turning God into her wares, may seem heretical, but it is in some ways quite touching. For a medieval businesswoman like Margery Kempe, all forms of restitution depend upon a certain level of equivalency. More a contract for the fair exchange of goods than a testament leaving her property to heirs, this statement regarding her place in heaven posits God himself as her ultimate reward. It is the reference to His person as her *meede* which is most interesting. But *meede* is also explicitly monetary reward, posited in this passage as good deeds rather than sycophantic behavior. Kempe states that it is his self, “þi-

self,” that she will have for her reward, a reward that is calculated and referred to as payment.

What seems to be echoed here is a merchandising of the body itself, or rather the transformation of a spiritual body into a manifest body for the purpose of both secular and sacred exchange, a process which transgresses the medieval boundaries of body and spirit, and yet rests upon her ability to distribute those testamentary goods as a *femme sole*.

Kempe is not alone in using an economic discourse of spirituality; contemporary penitential manuals, and even Aquinas, used similar language to talk about spirituality. But Kempe’s passage foregrounds the contemporary influence of such issues as distribution of goods when a wife conducts business on her own. As in the subsequent negotiations with her husband, Kempe erases the boundaries between the secular and the sacred by using material wealth and possessions to gain spiritual happiness—and by writing her relationship with God as if it were a contemporary merchant marriage.

Kempe’s reliance on mercantile codification of spirituality pays off in this particular episode. Retaining the legal metaphor of her initial position, God responds to Kempe’s offer with an agreement to do her “will” in these matters:

Dowtyr, I xal be a trew executor to þe & fulfyllan all þi wylle, & for þi gret charyte þat þow hast to comfortyn þin euen-cristen þu schalt haue dubbyl reward in Heuyn. (21.4-8)

It is a strange case, for those goods which He will be in charge of as executor—not to mention legally within His rights to possess as her spiritual husband, or “baron”—are already His goods worked through her. Assuming that Kempe understands the limitations of medieval English testamentary law (a reasonable assumption given her familial environment), assigning those good deeds to her “wylle” both gives her the power to distribute that wealth, almost indiscriminately, and to place those deeds and actions in the realm of “real” property, figuring her actions as lands and estates which are linked to the autonomy of the realm.

Agreeing to be her executor in a situation of “wylle,” playing upon both her desires and her legal status, God gives her a level of legal autonomy to which women's access is otherwise very restricted. Her investment in charity on behalf of God receives a “dubbyl reward in Heuyn,” a good return on investment in any market. It may seem mercenary to figure Christian charity in market terms, almost oxymoronic, but I do not see Kempe’s activities in the same light as, say, the Wife of Bath’s, who, if any went before her to the church offering, was “out of alle charitee.” Rather, for Kempe, this mercantile way of classifying her relationship with God is an integral part of that relationship and one which closely resembles the doctrine of unity that defines marital obligations. From a relationship with a husband whose carnal demands interfere with her autonomous activity, Kempe escapes by material business negotiations, only to enter into relationship with a husband who will give her autonomy: God allows her to administer her own estate. That estate is also his estate, the “goods” which he has given into her keeping: like the Wife of Bath’s beloved Jankyn, and like Paston’s husband John, this loving and trusting husband allows Kempe to do her will, to manage her property, and to write her own story.

[Mention the font episode of Chapter 25 as a similar instance but no time to discuss]

For both of these narratives, Kempe’s and Paston’s, the femme sole as a manifest juridical subject plays an important role in defining female mercantile autonomy. These women, as far as we know, did not register or refer to themselves as femme sole, and yet their activities were certainly akin to those covered by the legal dictates defining a femme sole, such as evidenced by the *Liber Albus*. These literary texts offer us glimpses into the problems and opportunities offered both literary and historical figures of merchants and merchant marriages.