

INVENTING IDIOCY: LAW, LAND AND THE CONSTRUCTION OF
INTELLECTUAL DISABILITY IN LATE MEDIEVAL ENGLAND

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During the late thirteenth century the English Crown claimed the right to take the lands of so-called idiots into its possession, and developed a set of juridical practices to assess whether these individuals were mentally competent enough to rule themselves and their property. This dissertation examines how these developments informed the way society imagined intellectual disability in the Middle Ages and beyond. Since the publication of Foucault's *Madness and Civilization*, scholars have treated insanity as a concept with a cultural history. Less however has been written about the conceptual history of "idiocy." People outside the academy naturally assume that intelligence and its absence are natural categories, while historians who work on the cultural history of intellectual disability tend to locate its emergence in early modern medical discourses. Rejecting both of these claims, *Inventing Idiocy* suggests that intellectual disability was not initially a medical concept, but an invention of medieval jurists and administrators concerned with practical matters of land and inheritance. For while a concept of idiocy existed in the Middle Ages, the idiocy that preoccupied medieval jurists had little to do with a specific idea of intelligence. Rather it was a narrow legal term, used to refer to people who were unable to manage landed wealth.

People outside the legal profession had little idea what idiocy entailed, and no disorder resembling the law's idea of idiocy—or our own—existed in medieval medicine.

Nevertheless hundreds of alleged idiots were called before the courts between the late thirteenth and early fifteenth centuries. Examining records of these inquisitions, I show that qualities associated with idiocy in later medical discourses reflected the idea of mental incompetency that arose in of these contested trials. In doing so, I reject the view that intellectual disability originated when medical discourse supplanted older religious constructions of foolishness, and is indeed medical in origin. Instead, I suggest that a stable and distinctive concept of intellectual disability entered Western thought when a category invented by lawyers to deal with practical problems of inheritance burgeoned beyond the legal sphere, and became assimilated into general culture.

BIOGRAPHICAL SKETCH

Eliza Buhrer graduated from Reed College with a major in Religious Studies in 2006. She was awarded an M.A. in Medieval Studies by the graduate school at Cornell University in 2010, is currently an Assistant Professor of History at Seton Hall University.

Dedicated to my parents, who made great sacrifices for my education, and bragged about me as much as they would have if I had become a “real” doctor.

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interest in working on England or law. Paul's ability to turn what at first glance seemed dross into gold then, should be evident about 5 pages into this dissertation. I also was privileged to work with Duane Corpis and Scott MacDonald. Duane pushed me to think about the theoretical implications of my research in a way that I doubt I would have absent his influence, and offered unflinching encouragement throughout my time at Cornell. Scott patiently listened to my historian's questions about philosophy, and I'd like to think that I'm able to write more cogently about medieval intellectual history as a result. Now that I'm a professor, it is humbling to realize just how much time my mentors gave me, and I can only hope to be as good to my students as they were to me.

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LIST OF ABBREVIATIONS

CCR: *Calendar of the Close Rolls Preserved in the Public Record Office, 1227-1485.* Public Record Office. 45 vols. London: HMSO, 1892-1954

CIM: *Calendar of Inquisitions Miscellaneous (Chancery), Henry III- Henry V.* Public Record Office. 7 vols. London: HMSO, 1916-1968.

CIPM: *Calendar of Inquisitions Post Mortem and other Analogous Documents Preserved in the Public Record Office.* Public Record Office. 20 vols. London: HMSO, 1904-1970.

CPR: *Calendar of the Patent Rolls Preserved in the Public Record Office, 1216-1509.* Public Record Office. 52 vols. London: HMSO, 1891-1901.

PL: *Patrologia Latina.* Edited by J.-P. Migne. 217 vols. Paris, 1844-1864.

TNA: The National Archives in the UK.

CHAPTER 1

INTRODUCTION

What shall I say, moreover, as to the diversity of talent in different souls, and especially the absolute privation of reason in some? This is, indeed, not apparent in the first stages of infancy, but being developed continuously from the beginning of life, it becomes manifest in children, of whom some are so slow and defective in memory [*tam tardi et obliviosi sunt*] that they cannot learn even the letters of the alphabet, and some (commonly called idiots) [*quos moriones vulgo vocant*] so imbecile [*fatuitatis*] that they differ very little from the beasts of the field. Perhaps I am told, in answer to this, that the bodies are the cause of these imperfections. But surely the opinion which we wish to see vindicated from objection does not require us to affirm that the soul chose for itself the body which so impairs it, and, being deceived in the choice, committed a blunder; or that the soul, when it was compelled, as a necessary consequence of being born, to enter into some body, was hindered from finding another by crowds of souls occupying the other bodies before it came, so that, like a man who takes whatever seat may remain vacant for him in a theatre, the soul was guided in taking possession of the imperfect body not by its choice, but by its circumstances. We, of course, cannot say and ought not to believe such things. Tell us, therefore, what we ought to believe and to say in order to vindicate from this difficulty the theory that for each individual body a new soul is specially created.¹

In 415, Augustine of Hippo wrote to Saint Jerome in search of an answer to this question that he claimed had long perplexed him: If man is the ultimate author of his own misfortunes, then why do some people seem to be born with less rational souls than others? In posing this question, Augustine was concerned with preserving a central tenant of his

¹ Augustine of Hippo, “A Treatise on the Origin of the Human Soul” written to Jerome (415), in *The Nicene and Post-Nicene Fathers: First Series Volume I – The Confessions and Letters of Saint Augustine*, ed. Philip Schaff, (New York: Cosimo Inc, 2007), 529. *PL* 22.1132-1133 “quid dicam; quae quidem in parvulis latet, sed ab ipsis exordiis naturalibus ducta, apparet in grandibus, quorum nonnulli tam tardi et obliviosi sunt, ut ne prima quidem discere litterarum elementa potuerint: quidam vero tantae sunt fatuitatis, ut non multum a pecoribus differant; quos moriones vulgo vocant. “

theology from the Pelagian claim that people are awarded bodies in regard to their merits or failures in a previous life. Its relevance however extends well beyond the theological debates of late antiquity. For Augustine's position that man is responsible for the evils that befall him was premised upon one of the foundational ideas in history of Western philosophical, religious, and political thought; that man is born with all the faculties necessary to make informed moral decisions, the most significant of these being a rational soul.

Since Ancient Greece, we have defined our own species by the maxim that man is a rational animal. Reason, although itself a fluid, historically contingent concept, is so integral to how we contrast our own humanity from its absence in non-human animals that modern philosophy, theology, law, medico-biological theory, social policy, and indeed the modern idea of the state, are all premised upon the idea that we are rational subjects, able to freely consent to being governed. Augustine's query then ultimately reflects concern for what modern philosophers refer to as a category error, a false assumption that an object has properties that it cannot or does not have. For if man is by definition a rational animal, then what do we make of those who ought to have a rational soul by virtue of their humanity, but nevertheless do not?

Inventing Idiocy is about the history of how people answered this question before a concept of intellectual disability existed in Western medicine— during the late Middle Ages. As I discuss in this chapter, scholarship on the cultural history of intellectual disability has often overlooked the Middle Ages by implicitly locating intellectual disability's conceptual origins in the Enlightenment, when western medical writers and philosophers first began to investigate questions like those that so perplexed Augustine. Yet, the period between the late

thirteenth and early fifteenth centuries was greatly significant to the cultural, intellectual, and conceptual history of intellectual disability. For, it was then that the State first began to take an interest in identifying individuals whose apparent lack of reason rendered them unfit for self-governance, and began restricting their rights through legal action. Records relating to these developments comprise the earliest systematic mental competency examinations held in Europe, and offer insight into how society imagined intelligence and its absence before their definitions became crystalized in medical, cultural, and legal thought. Taking as a premise that intelligence and intellectual disability are concepts with a cultural and intellectual history, the chapters that follow look to these records to investigate when and why a stable and distinctive concept of intellectual disability first began to emerge in the West, and more narrowly England.²

If the idea that intellectual disability has a cultural history seems unintuitive, it may have something to do with the way intellectual disability is thought about in modern American culture. Today, we have a fairly homogenous understanding of the set of qualities and deficits that make someone more or less intelligent. We need only open the *Diagnostic and Statistical Manual* of the American Psychiatric Association to find the boundaries of human reason clearly defined. Consider for instance the description of “intellectual development disorder” offered by the soon to be released DSM-V;

² My focus on England is partially dictated by time limitations, yet it is also defensible. For while the same set of ancient legal and medical texts informed how jurists and physicians on both sides of the channel understood intelligence’s absence, the English royal courts were the first to develop a standardized set of practices for dealing with the so-called *idiota* and natural fools that are the focus of this study.

Intellectual Developmental Disorder is characterized by deficits in general mental abilities such as reasoning, problem-solving, planning, abstract thinking, judgment, academic learning and learning from experience. Intellectual Developmental Disorder requires a current intellectual deficit of approximately 2 or more standard deviations in Intelligence Quotient (IQ) below the population mean for a person's age and cultural group, which is typically an IQ score of approximately 70 or below, measured on an individualized, standardized, culturally appropriate, psychometrically sound test. AND the deficits in general mental abilities impair functioning in comparison to a person's age and cultural group by limiting and restricting participation and performance in one or more aspects of daily life activities, such as communication, social participation, functioning at school or at work, or personal independence at home or in community settings. The limitations result in the need for ongoing support at school, work, or independent life. AND Onset [is] during the development period.³

We may not realize it, but modern psychiatry's efforts to define intellectual disability have helped create a set of a set of widespread cultural assumptions about intelligence and its absence. Psychologists, educators, and policy makers routinely rely on the DSM-IV's delineation of the various degrees of "mental retardation" when making decisions about medical treatment, whether to place a child in a special education classroom, and to whom the benefits of the welfare state ought to be extended. While the Social Security Disability

³ "Diagnostic and Statistical Manual of Mental Disorders," 5th edition, accessed November 2011, <http://www.dsm5.org/ProposedRevisions/Pages/proposedrevision.aspx?rid=384#>. The current DSM-IV offers a slightly less specific definition. It defines "mental retardation" as "A. Significantly sub-average intellectual functioning: an IQ of approximately 70 or below on an individually administered IQ test (for infants, a clinical judgment of significantly sub-average intellectual functioning); B. Concurrent deficits or impairments in present adaptive functioning (i.e., the person's effectiveness in meeting the standards expected for his or her age by his or her cultural group) in at least two of the following areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety; C. The onset is before age 18 years," defining "mild mental retardation as an IQ level 50–55 to approximately 70, "Moderate Mental retardation" as an IQ level 35–40 to 50–55, "Severe Mental Retardation" as an IQ level 20–25 to 35–40, and "Profound Mental Retardation" as an IQ level below 20 or 25. I use the DSM-V above under the assumption that the revised version will be released before, or soon after, this dissertation is submitted.

Insurance Program might use a slightly different definition of disability when screening for benefits eligibility than judges use in the courtroom, and physicians use in their daily practice, administrative, legal, and medical understandings of intellectual disability inform each other. Courts routinely consult physicians when defendants' competency to stand trial is questionable, and psychiatrists often work closely with state social workers when devising treatment plans for their patients. As a result, while most people may not be acquainted the intricacies of how the medical community defines and measures I.Q., they are likely to have some idea that people on the far left end of the bell curve may live in group homes, have a harder time with math, and be unlikely to understand Hamlet or hold gainful employment.

A brief survey of the modern history of psychiatry and intelligence testing however, reveals that this was not always the case. For, although Augustine's description of children "so slow and defective in memory that they cannot even learn the letters of the alphabet," seems to suggest that the people deemed *idiotia* in late antiquity were very similar to people who might be considered intellectually disabled today, the DSM-V's definition of "intellectual developmental disorder" would have been foreign to physicians and administrators even in the recent past. Looking back only fifty years to the first edition of the *Diagnostic Statistical Manual* we find a different understanding of the set of qualities and deficits that make someone intelligent or intellectually disabled. The writers of the DSM-I defined mental deficiency, the disorder that intellectual development disorder would eventually supplant, as "a defect of intelligence existing since birth, without demonstrated organic brain disease or known prenatal cause," thus identifying it as a condition with no

demonstrable connection to human physiology.⁴ Perhaps because this characterization effectively ruled out the possibility that mental deficiency could be understood in scientific terms, only a few decades later editors of subsequent editions of the DSM rejected the DSM-I's distinction between "organic" and "inorganic" intellectual impairments, subsuming both sets of disorders into the single category of "mental retardation."⁵ If we look back even further we find descriptions of intelligence's absence that have little in common with those accepted by medical professionals today. A legal dictionary published in 1527 for instance, described an idiot as someone;

who knoweth not to accompt of number 20 pence [...] has no manner of understanding of reason, nor government of himself, what is for his profit or disprofit, etc. But if he have soe much knowledge he can reade, or learn to reade by instruction and information of others, *or can measure an elle of cloth* [emphasis added], or name the days of the week, or begetter a childe, sonne or daughter, or such lyke, whereby it may appere that he hath some light of reason, then such a one is noe idiot naturale.⁶

⁴ *Diagnostic and Statistical Manual Mental Disorders, Prepared by the Committee on Nomenclature and Statistics of the American Psychiatric Association* (Washington D.C.: American Psychiatric Association Mental Hospital Service, 1952), 23-4. The writers distinguished this from mental deficiency, a "chronic brain syndrome associated with congenital cranial anomaly, congenital spastic paraplegia, Mongolism, prenatal maternal infectious disease, birth trauma," differentiating between "organic" and "non organic" intellectual impairment in a way that later editors of the DSM would reject. Chronic brain syndrome itself represented a subset of "organic brain disorders, caused by diffuse impairment of brain function" which encompassed all conditions associated with impairments of orientation, memory, judgment, and intellectual functions (defined here as "comprehension, calculation, knowledge, learning, etc."), as well as "lability and shallowness or affect."

⁵ In the second edition of the DSM all of these disorders were subsumed under the category of "Mental Retardation," which referred to "subnormal general intellectual functioning, which originates during the developmental period and is associated with impairment of either learning or social adjustment or maturation or both." The editors took care to note that a diagnosis of mental retardation should not be made on the basis of I.Q. testing alone, "but on an evaluation of the patient's developmental history, present functioning, including academic and vocational achievement, motor skills, and social and emotional-maturity,"—notably subjective qualities. (DSM-II, 14) I cite these to show just how much the way the medical community thinks about intelligence has changed within only one hundred years time.

⁶ John Rastell, *Exposition of Certain Difficulte and Obscure Words and Termes* (originally written in French, but first published in English in 1527.) Originally quoted in "Masculinity and Idiocy," in Patrick McDonagh, *Idiocy: A Cultural History* (Liverpool: Liverpool University Press, 2008), 86.

This dissonance speaks to the fact that while we might intuitively see intellectual disability as a trans-historical, organic disorder, society's ideas about what constitutes normative human intelligence have varied greatly over time, and are to a certain extent, shaped by historical and cultural circumstances.

But perhaps the best illustration of intellectual disability's cultural contingency can be found by examining how society thought about intelligence's absence or "idiocy," before the state took an interest in identifying people whose cognitive abilities rendered them unfit for self governance, and medical practitioners began to see intelligence as their province. For most of the Middle Ages physicians, philosophers, and jurists had little to say about intellectual disability, as we define it today.⁷ As I discuss in the next chapter, no single disorder in the medieval medical lexicon resembled our modern concept of intellectual disability. Likewise, prior to the late thirteenth century, no juridical practices existed to measure whether individuals possessed the intellectual capacity to participate in society, and the English Crown made no attempt to identify and limit the activities of people with inadequate mental abilities. Medieval theologians and philosophers, moreover, viewed "idiocy" as a general state of unknowing, rather than a category error. Ultimately, while people that we would consider intellectually disabled today surely existed at all points in history, a stable and distinctive concept of intellectual disability does not seem to have existed in Western culture until jurists, administrators, and the state, took an interest in defining the boundaries of human reason.

⁷ I used the term idiocy in my discussions of medieval understandings of intelligence's absence, since I believe that a distinctive and stable concept of intellectual disability emerged in England when the royal courts began overseeing individuals referred to as *idiota*. Moreover, this is the term used most frequently in the sources I rely upon in this study.

In reconstructing how people thought about intelligence's absence during this formative period, *Inventing Idiocy* is not merely a historical narrative about individuals who were labeled idiots centuries ago. Instead it is a contribution to a genealogy of "idiocy," which suggests that its conceptual origins are intimately connected to the expansion of the nascent administrative state during the last century of the Middle Ages. By the fourteenth century, a concept of idiocy had begun to emerge in England, albeit one that looked quite different from our own. In the late thirteenth century, the English Crown claimed the right to take the land of so-called idiots into its hands, and jurists and administrators developed a set of practices to assess whether landholders were competent enough to rule themselves and their property. Between the beginning of Edward I's reign in 1272 and the end of Richard II's in 1399, hundreds of individuals referred to as "idiota" and natural fools were brought before the royal courts for assessment, typically after parties hoping to gain access to their land had accused them of being unfit to manage their affairs.⁸ If the Crown found that their allegations were grounded, it would take the so-called idiot and their property into royal custody, where their wardships—custody of their person coupled with the right to manage and profit from their lands—would then be sold to interested parties for a fee.

Records consisting of letters of patent, letters of close, post-mortem inquisitions, exchequer reports, and other miscellaneous inquisitions, document the proceedings of these investigations, as well the relationship between the Crown, the alleged idiots, and claimants to their wardships. These exist today in the British National Archives, as well as in modern

⁸ Due to time limitations I confine this study to the period between beginning with the reign of Edward I, when idiots first began to appear in court, and the end of the reign of Richard II, (1272-1399), as this was the time in which the courts' procedure for assessing idiots became standardized, and a coherent concept of idiocy fomented in English law. I eventually plan to expand the chronological scope of this project to include consideration of idiocy inquisitions held in the fifteenth and sixteenth centuries.

printed calendars, compiled and translated during the nineteenth and twentieth centuries.⁹ They are significant to the histories of disability, law, and medicine, because they constitute the earliest mental competency hearings in Europe involving individuals identified as unfit for self governance, not on account of insanity or any other temporary condition, but because they were thought to lack the intellectual competency to manage their own affairs. Thus, they offer an excellent window into how intelligence and its absence were measured and defined during the period in which the state first became concerned with the minds of its subjects.

Reading these records alongside contemporary medical and philosophical texts, I explore how a fixed idea of what it meant to be an *idiota* emerged in fourteenth century England, and ultimately suggest that the western idea of the rational subject may come from a stranger place than we currently imagine. For while these inquisitions constituted the first legal examinations of mental competence in Europe, the idiocy that preoccupied medieval jurists initially had little to do with a specific idea of intelligence. Rather it was a narrow legal term, used to refer to people deemed unfit to manage landed wealth. People outside the legal profession initially had little idea what idiocy entailed, and no disorder resembling the law's idea of idiocy—or our own—existed in medieval medicine. Yet people referred to as *idiota* and natural fools began to appear in court even while medieval culture as a whole lacked a unified understanding of what idiocy entailed, because people recognized that obtaining the

⁹ In the course of my work on this study I created a database of every inquisition held between the reigns of Edward I-Richard II (1272-1399) that focused on questions of mental incompetence, and that could be found in these modern printed editions. A more thorough explanation of my sources and methods can be found in the appendix. When it seemed necessary due to questions about translation, I consulted the original documents at the British National Archives. After having compared a number of the modern translations to the original records I am fairly confident that *most* of the translations are accurate. However, if a version of this study should one day become a book, I plan to double-check all the records I cite.

wardship of an idiot presented access to landed wealth.

Since the Crown claimed the right to grant the wardships of idiots to whomever it chose, members of the landholding classes soon began to see accusing their relatives of idiocy as a way to circumvent the common law rules of inheritance, which had the unfortunate tendency to place land in the hands of individuals who stood to remove it from their family's control. Some members of the gentry thus sought the wardships of idiots to hold onto landed wealth during a century in which economic pressures, demographic crises, and rising competition from a swiftly growing class of nascent bourgeoisie threatened their traditional role in English society. Others saw it as an opportunity to enhance their standing, by annexing nearby estates. Moreover, by the mid fourteenth century, a class of upwardly mobile professionals who had acquired their fortunes through participation in commercial activity rather than inheritance, began to recognize that obtaining wardships of idiots could provide them with a means to transform accumulated capital into lasting wealth. For, the right to profit from so-called idiots' estates enabled them to access a land market from which they had previously been excluded. Thus, they came to view obtaining the wardship of an idiot as a route to social and economic mobility. Wardships of idiots accordingly became not only an important source of revenue for the Crown, but a means of gaining political support from these various groups during a period of rapidly expanding royal authority.¹⁰

On account of this, medieval inquisitions involving idiots did not reflect a set of crystalized assumptions about the nature of human reason. Rather, they were complicated

¹⁰ Wendy J. Turner has an interesting discussion of how the Crown used the profits from wardship sales to fund military campaigns in her article, "Mental Incapacity and Financing War in Medieval England." *The Hundred Years War, Part II: Different Vistas*, edited by L.J. Andrew Villalon and Donald Kagay (Leiden: Brill, 2008).

and frequently contested, requiring negotiation between the competing fiscal interests of the crown, town, family members of the alleged idiot, and powerful landholders. Yet, despite the fact that these inquisitions had so little to do with intelligence as we understand it today, I nevertheless contend that they would ultimately inform how society defined intelligence's absence, during the Middle Ages, and long after. For as more alleged idiots appeared before the courts, a concept of idiocy reflecting these various interests began to move beyond the law, and eventually came to inform popular assumptions about what it meant to lack intelligence. In the chapters that follow I explore the process through which this occurred, and suggest that many of the qualities associated with idiocy in later medical and political discourses reflected ideas that first emerged in these contested trials.

Inventing Idiocy thus rejects the view that intellectual disability originated when medical discourse supplanted older religious constructions of foolishness, and is indeed medical in origin. Instead, it suggests that a concept of intellectual disability entered Western culture when a category invented by lawyers to deal with practical problems of inheritance—and exploited by individuals hoping to gain or hold onto landed wealth—burgeoned beyond the legal sphere. Ultimately, in exploring how society defined, assessed, and responded to intelligence's absence during the period in question, I am not merely concerned with providing a descriptive account of how people imagined the outward boundaries of human reason in the distant past. Instead, I am interested in understanding how ideas that originated in the medieval English courts informed how intellectual disability would be defined, long after the context in which they first emerged had been forgotten.

Previous Scholarship

This project departs from previous scholarship on the cultural history of intellectual disability in a number of significant ways. Although interest in the history of disability has grown tremendously in the past ten years, particularly among pre-modernists, the cultural history of *intellectual* disability is still understudied.¹¹ Since the late 1960's scholars across fields have readily treated insanity as a concept with a cultural history, assuming that its study can reveal as much about society's beliefs and values, as how it has treated people on its margins. Much less however has been written about the conceptual history of idiocy. People outside the academy intuitively assume that intelligence and its absence are nothing more than unchanging biological realities, resistant to cultural analysis, and scholars across fields have been slow to question this assumption. The historians who do work on the cultural history of intellectual disability however, tend to locate its emergence as a concept in the medical discourses of the seventeenth and eighteenth centuries. Since the first of these claims implies that intellectual disability does not have a history beyond that of how society has treated the people on its margins, and the second implies that if it does have a history, this begins in late-early modernity, there are currently no books or articles on how idiocy was understood during the Middle Ages.

Lack of interest in idiocy is evident in previous scholarship on mental disorder in the

¹¹ For instance, an excellent volume of essays on the history of intellectual disability edited by David Wright and Anne Digby in 1996, opened with the lament that "the social marginality of people with learning disabilities has been mirrored by their academic marginality." While the editors hoped that the book would increase interest in the topic, a large number of the scholars who work on intellectual disability today had essays included in the book fifteen years ago. David Wright and Anne Digby, "Introduction," in *From Idiocy to Mental Deficiency, Historical Perspectives on People with Learning Disabilities*, edited by David Wright and Anne Digby (New York: Routledge, 1996), 1.

Middle Ages. When scholars have written about the set of records with which *Inventing Idiocy* is concerned, they have used them to examine the history of madness and mental disorder in general rather than idiocy. Accordingly, they had left unquestioned the process by which idiocy was constructed in the Middle Ages, or how the activities of the medieval English royal courts might have informed later ideas about intelligence and its absence. The first major work to draw upon the records was Nigel Walker's 1968 *Crime and Insanity in England*. Walker, a lawyer by training, sought to provide a comprehensive overview of the history of mental incompetency law in England from the *Prerogativa Regis*—the thirteenth century statute that granted the Crown jurisdiction over its mental incompetent citizens—to the modern insanity defense.¹² Given this focus, his study concentrated primarily on insanity law, and only briefly touched upon the differences between the medieval Crown's treatment of idiots and the insane.¹³

Contemporaneously, a separate group of scholars, many of whom had backgrounds in psychology, began studying medieval mental competency inquisitions to gain insight into how society historically dealt with the problems presented by people incapable of caring for themselves. Many of these studies tacitly looked to the past for humane alternatives to the modern psychiatry's reliance on institutionalization, a practice deemed increasingly barbaric as books like *The Bell Jar* and *One Flew Over the Cuckoo's Nest* popularized the anti-psychiatry

¹² Nigel Walker, *Crime and Insanity in England* (New York: Columbia University Press, 1968). Prior to Walker's work, similar discussions could be found in law review articles.

¹³ Recently, likeminded scholars have provided useful updates to Walker's exploration of medieval insanity law, using new historical knowledge to correct a points that Walker got wrong. For the most part, however, *Crime and Insanity* remains the standard account of the medieval common law's treatment of insanity. See for instance Gershom Berkson, "Mental Disabilities in Western Civilization: From Ancient Rome to the Prerogativa Regis," *Mental Retardations* 44 (2006): 28-40. Margaret Trenchard-Smith, "Insanity, Exculpation, and Disempowerment in Byzantine Law," in *Madness in Medieval Law and Custom*, ed. Wendy Turner (Leiden: Brill, 2010), 39-56.

movement heralded by the work of Thomas Szasz, Michel Foucault, and R.D. Laing.

Viewing institutionalization as a modern practice that began with the asylum, scholarship from this era typically depicted the Middle Ages as an enlightened time in the history of psychiatry, when care of the mentally ill was left to their families rather than the coercive bureaucratic state.

Exemplifying this is the work of Richard Neugebauer, a neurologist at Columbia, who has written a number of highly cited articles on mental disorder in medieval England, most of which were first published in psychology journals.¹⁴ Most of Neugebauer's articles are descriptive (albeit quite wonderfully so), using the inquisitions, alongside medieval medical writing, to explore how people in the Middle Ages diagnosed and treated mental disorder, but not *why* they did as they did. Nevertheless, Neugebauer had a goal beyond the simple description of past practice; he aimed to show that there was more to medieval responses to mental disorder than trepanning and exorcism. In his 1979, "Medieval and Early Modern Theories of Mental Illness," Neugebauer critiqued the view, then standard in his field, that the Middle Ages and Renaissance were "periods dominated by demonological theories of mental illness," in which "torture and exorcism were the therapeutic modalities of choice."¹⁵ Instead, from close study of medieval idiocy and insanity inquisitions, he argued that medieval treatment of the mentally ill and impaired both humane and rational;

¹⁴ Richard Neugebauer, "Treatment of the Mentally Ill in Medieval and Early Modern England: A Reappraisal," *Journal of the History of Behavioral Sciences* 14 (1978): 158-159; "Medieval and Early Modern Theories of Mental Illness," *Archives of General Psychiatry* 36 (1979):477-483; "Diagnosis, Guardianship, and Residential Care of the Mentally Ill in Medieval and Early Modern England," *The American Journal of Psychiatry* 146 (1989): 1580-1584.

¹⁵ Neugebauer, "Medieval and Early Modern Theories," 477-8. Neugebauer is particularly critical of Gregory Zillboorg's *A History of Medical Psychology* (New York: W. W. Norton and co., 1941), which was the most commonly assigned textbook in history of psychiatry courses at the time he was writing.

The English Crown's legal incompetency jurisdiction was a far cry from Zilboorg's witch-hunting clergy. That jurisdiction was premised on the government's responsibility to protect subjects, who by reason of mental impairment, were unable to protect themselves. The medicological categories of lunacy and idiocy describe these conditions in purely naturalistic terms. Similarly, the questions administered at the inquisitions measured impairment through entirely rational, commonsense tests of orientation, numeracy, and so on. [...] The mental illness of persons brought within the purview of this jurisdiction was attributed to natural, even psychological causes: fever, head injury, grief, and anxiety.¹⁶

Like Walker, Neugebauer does not focus on the distinction between idiocy and insanity inquisitions. He acknowledges that the Crown had different rights and responsibilities over idiots and the insane, and draws attention to the fact that idiocy required more of the courts' attention than insanity by the end of the fourteenth century, when idiocy inquisitions had come to comprise 80% of all court cases dealing with mental disorder. Yet, he never discusses how these differences might have been significant to the historical development of either concept, nor offers any explanation for why idiocy inquisitions might have eclipsed insanity inquisitions. This is because idiocy and insanity are not in themselves Neugebauer's primary objects of inquiry. Neugebauer's interest is in the history of psychiatry, and I suspect he writes little about idiocy's *conceptual* history because from the perspective of a practicing psychiatrist, it does not have one. C. F. Goodey, an early modernist who *does* take intelligence and intellectual disability as his objects of inquiry, offers a similar assessment of Neugebauer's work in *A History of Intelligence and Intellectual Disability*, where he notes that "Neugebauer assumes that the psychological conditions we now classify as intellectually

¹⁶ Ibid., 482.

disabled lay behind the idiot terminology used by those lawyers when actually it was the sudden public currency of the legal terminology that fed, (among other things) into modern psychological conceptualizations of intellectual disability.”¹⁷ I essentially agree with this critique, yet I also see great value in Neugebauer’s work.

Nearly every work written on pre-modern mental disorder during the past thirty years has cited Neugebauer’s articles, particularly “Medieval and Early Modern Theories.” Most of these have reinforced his characterizations of medieval treatment of the “mentally ill” as on one hand surprisingly modern, and on the other comparatively humane. For instance, David and Christine Roffe used case studies from the inquisitions to argue for the possibility of community-based alternatives to the asylum, concluding that people afflicted with mental disorder might have fared better in the Middle Ages than today, when “ultimate decisions [about a subject’s care] rest with the experts, and it is not always possible to associate the local community with the settlement reached.”¹⁸ Wendy J. Turner, who has recently drawn upon the same set of sources for a number of articles, edited volumes, and a forthcoming book, also tends to see the processes the medieval Crown devised to deal with people suffering from mental disorder as beneficial to the mentally incompetent, their relatives, and the state.¹⁹

¹⁷ C. F. Goodey, *A History of Intelligence and Intellectual Disability; the Shaping of Psychology in Early Modern Europe* (Burlington: Ashgate, 2011), 142.

¹⁸ David Roffe and Christine Roffe, “Madness and Care in the Community: A Medieval Perspective” *British Medical Journal* 331 (1995): 25-30. David Roffe also offered similar comments on the Emma de Beston case, which I examine at length in Chapter Five, in his “Perceptions of Insanity in Medieval England,” (paper given at the Mind and Body Seminar, Department of Geriatric Medicine, Keele University, April 1998), <http://www.roffe.co.uk/keele.htm>.

¹⁹ She articulates this most clearly in Wendy J. Turner, “Human Rights, Royal Rights, and the Mentally Disabled in Late Medieval England,” (paper presented at the Compass Interdisciplinary Virtual Conference 2009 with Wiley-Blackwell press on 20 October 2009), <http://compassconference.wordpress.com/2009/10/20/conference-paper-human-rights-royal-rights-and->

These works are uniformly interesting, novel, and well researched. Yet none of the studies discussed above take idiocy as their object of inquiry. The titles of their books and articles alone suggest that their concerns lie primarily in madness—“Madness and Care in the Community”; “Perceptions of Insanity in Medieval England”; *Madness in Medieval Law and Custom*. Their arguments of these works likewise suggest that they are most interested in exploring the affinities and alteriorities between medieval and modern responses to mental disorder. With the possible exception of Neugebauer, all of the scholars gloss over the law’s distinction between idiocy and insanity. Or, when they do discuss the *idiota* who appeared in court, they seem to accept that the idiocy of the past had a one-to-one relationship with intellectual disability as it is understood today. In other words, most scholars who use the records of medieval mental competency inquisitions to examine how people in the pre-modern past understood and responded to mental disorder assume that the object they study is a natural object, and thus treat the history of mental disorder—and by extension idiocy—as a history of how society has treated the people on its margins. In this respect, these works could be read as rejecting aspects of Foucault’s work on madness’ history, despite the fact that many seem to have been motivated by the anti-psychiatry sentiment that Foucault’s works helped popularize.

While the work that has already been done on mental disorder in the Middle Ages is excellent, *Inventing Idiocy* thus constitutes the first full-length study of how idiocy was

[the-mentally-disabled-in-late-medieval-england](#). Here Turner claims, “the mentally incapacitated were neither ill-treated nor excluded from society. Most mentally disabled persons remained active members of society, and beginning in the thirteenth century, those who were feudal landlords received special legal attention and care from the crown.”(1). Also see Wendy J. Turner, “A Comparison of the Treatment of the Mentally disabled in Late Medieval English Common Law and Chartered Boroughs,” in *Madness in Medieval Law and Custom*, ed. Wendy J. Turner, (Leiden: Brill, 2010), 22-31.

constructed in the Middle Ages. It is undeniably exciting to discover an area of history, no matter how small, which has not yet been surveyed. However, this project's primary significance lies not in its novelty within the burgeoning field of medieval disability studies, but rather, in that it charts a new trajectory for thinking about the processes by which intelligence and its absence have been historically constructed. In suggesting that intellectual disability's conceptual origins can be located in the Middle Ages, and more specifically the medieval courtroom, the argument developed in the chapters that follow runs counter to current scholarly consensus about where idiocy's history begins. For I suspect that the main reason that idiocy's history in the Middle Ages has been left unwritten is that trends in the historiography suggest that it is not the province of medievalists.

The Historiography of Reason and its Other

Current work on the cultural history of intellectual disability largely denies idiocy had a history in the Middle Ages. Instead, following the chronology of madness' history proposed in Foucault's *Madness and Civilization*, recent works on the topic typically assert that intellectual disability's history began when medical practitioners began to see intelligence as their province. A well-received view for instance holds that society only began to see idiocy as an organic, congenital, and permanent disorder distinct from insanity, during the Enlightenment, when medical and political philosophers formulated a concept of normative intelligence that reflected a set of epistemological concerns about the nature of human reason, and new anatomical understandings of the brain. For instance, in what could be

considered the first full-length work on the early history of intelligence and intellectual disability, C.F. Goodey recently argued that idiocy’s transition from an “organic, behavioural, and provisional model of foolishness,” to “one that is disembodied, intellectual and permanent,” began during the late seventeenth century when medical and political philosophers attempting to define the rational political subject developed a category against which it could be contrasted.²⁰

Specifically, Goodey suggests that the modern categories of intelligence and intellectual disability derive from Locke’s “proto-psychological theory.” Identifying the publication of Locke’s *Essay on Human Understanding* (1690) as the watershed moment in which Europe’s understanding of intellectual disability began to resemble our own, Goodey writes;

Whenever psychologists are paid to assess someone or to deny social participation—on grounds for example, that this or that person lacks the ability to think abstractly, reason logically, process information, maintain attention, etc.—they are using criteria which Locke, in his seminal refashioning of theological doctrine, also used, and from which he created for such people a separate space in society and therefore nature.²¹

Goodey’s *A History of Intelligence and Intellectual Disability*, represents more than a decade of research into the history of intellectual disability, most of which focused on how Locke and other Enlightenment thinkers conceived of intelligence and its absence.²² However Locke’s

²⁰ Goodey, *Intelligence and Intellectual Disability*, 326.

²¹ Goodey, *Intelligence and Intellectual Disability*, 13. This passage reveals something about Goodey’s assessment of intellectual disability in pre-modernity. Particularly, it indirectly asserts that no separate space existed “in society and therefore in nature” for the intellectually disabled until the enlightenment, also tacitly suggesting that previous ideas about intelligence’s absence were theological in nature.

²²Recent work includes, C.F. Goodey, “Blockheads, roundheads, pointyheads: Intellectual disability and the brain before modern medicine,” *Journal of Behavioral Sciences* 41 (2005): 165-83. “Foolishness” in Early Modern

Essay Concerning Human Understanding, has recently captures the attention of other historians of disability, due in no small part to Goodey's efforts. The same passages Goodey examines in his study are frequently cited in work on the history of madness, and Locke now plays a significant role in the historiography of other disabilities. For instance, a growing number of scholars identify his famous debate with the Irish philosopher Molyneux as a pivotal moment in blindness' transformation from a point on the spectrum of normative human experiences, to a separate, ontologically distinct mode of being.

Locke plays the most prominent role, however, in other recent works on the history of intellectual disability (nearly all of which cite Goodey's earlier publications). In his well-reviewed analysis of Wordsworth's *The Idiot Boy*, and other poems, Alan Bewell influentially characterized the eighteenth century as an era marked by "the philosophical discovery of the idiot." Bewell attributes this to the epistemological debates of the Enlightenment, claiming that it was Locke's description of the human mind as a blank slate at birth in *An Essay Concerning Human Understanding*, that transformed the idiot into "someone worth writing about—an observable approximation of human origins, 'a blank page' or 'tabula rasa'."²³ Following Bewell, at the beginning of *Images of Idiocy: The Idiot Figure in Modern Fiction and Film*, Martin Halliwell asks "where should the cultural history of idiocy begin?" and concludes that its origins can be located in the eighteenth century. Echoing Goodey's characterization of earlier views of idiocy as "organic, behavioral, and provisional," Halliwell suggests that idiocy

Medicine and the Concept of Intellectual Disability," *Medical History*, 48 (2004): 289-310. C.F. Goodey and Tim Stainton, "Intellectual Disability and the Myth of the Changeling Myth," *Journal of the History of the Behavioral Sciences* 37 (2001): 223-40.

²³ Alan Bewell, *Wordsworth and the Enlightenment: Nature, Man, and Society in Experimental Poetry* (New Haven: Yale University Press, 1989), 57. I do not discuss or cite everything that has been written about intellectual disability in the pages that follow. Notably missing from the discussion are works on intellectual disability's fascinating history in the Victorian era, and studies of intellectual disability in the twentieth century.

was first imagined as a “permanent and incurable” disorder distinct from madness, in the late seventeenth century, when Locke wrote *An Essay Concerning Human Understanding*;

There is important work to be done on the prehistory of idiocy and its relation to madness and folly in medieval and Renaissance Europe, but the discussion begins here in the eighteenth century, which for Alan Bewell marked ‘the philosophical discovery of the idiot’ when metaphysical and scientific approaches began to complicate a more general understanding of idiocy. In fact, it is important to go back to the late seventeenth century to consider John Locke’s influential distinction between idiocy and madness[...]. Idiots have a long biblical and secular prehistory, but most critics agree that the modern attitude toward idiocy in Europe was strongly influenced by Locke’s philosophical treatise, *An Essay Concerning Human Understanding* (1690), particularly his attempt to establish the empirical origin of ideas as they emerge from experience.”²⁴

Notably, Halliwell and Goodey both characterize medieval ideas about idiocy or “folly” as vague and indistinct from madness. Indeed, earlier on in his discussion, Halliwell directly states that “madness and idiocy were not categorically distinct” until modernity. Instead, “idiocy was seen as an ill-refined area of insanity, where the sufferers were so profoundly affected that the only potential danger was to themselves.”²⁵ It is no coincidence that Halliwell relies heavily upon Goodey’s work in this discussion.

Even works on the history of intellectual disability that do not claim that it originated with Locke embrace the idea that idiocy was simply an “ill defined area of insanity,” prior to

²⁴ Halliwell, 30.

²⁵ Halliwell, 9. Halliwell attributes the emergence of this distinction to “the refinement of medical discourses in the nineteenth century,” however he still identifies Locke as the catalyst for this transition. See for instance, Halliwell’s claim that, “This equation of madness with extravagant activity and idiocy with docile passivity implies that madness is a temporary affliction that can be countered with good sense while idiocy is permanent and incurable. Although Locke identifies degrees of impairment rather than absolute distinction, this normative level of competence (involving the ability to reason and abstract) dominated Enlightenment classifications of reason, folly, health, and illness.”(Halliwell, 30).

late-early modernity.²⁶ For instance, Patrick MacDonald, in his excellent book on idiocy's cultural and literary history, states that "medieval and early modern folly is difference or deviance, but not exclusively, or even necessarily, an intellectual condition."²⁷ Tim Stainton, who co-authored an article on Locke's changeling myth with Goodey in 2001, similarly argues that intellectual disability was a "Renaissance" invention.²⁸ Specifically, Stainton argues that during the sixteenth century, there was, "a transition from the more general medieval view of folly, an attribute of everyman and represented by the fool in cap and bells, with no direct representation to intellectual or other disability, to a direct representation and association between disability and depravity."²⁹

Finally, Jonathan Andrews, who has written about idiocy, although his work primarily focuses on madness, claims that a meaningful distinction between idiocy and insanity first emerged during the seventeenth century. Framing his argument as a response to the assertion that idiocy and insanity remained indistinct from each other for much longer, Andrews argues that idiocy became recognized as a "congenital condition identifiable in infancy," and "relatively fixed or constant deficiency distinct from madness, which was comprehended as a passing, changeable phase, punctuated often by clear intervals of sanity," during the late seventeenth century when asylum administrators began to exclude idiots from

²⁶ Halliwell 9.

²⁷ Patrick McDonagh, *Idiocy: A Cultural History*, (Liverpool: Liverpool University Press, 2008), 132.

²⁸ C.F. Goodey and Tim Stainton, "Intellectual Disability and the Myth of the Changeling Myth," *Journal of the History of the Behavioral Sciences* 37 (2001): 223-240. Also see Tim Stainton and Patrick McDonagh, "Chasing Shadows: The Historical Construction of Developmental Disability" *Journal on Developmental Disabilities* 9 (2001): ix-xvi; Tim Stainton, "Medieval Charitable Institutions and Intellectual Impairment c.1066-1600." *Journal on Developmental Disabilities* 9 (2001): 19-30.

²⁹ Tim Stainton, "Reason's Other: The Emergence of the Disabled Subject in the Northern Renaissance," *Disability and Society* 19 (2004): 225-43.

public institutions.³⁰ It should be noted that Andrews goal in this article was to refute the claim that madness and idiocy remained indistinct from each other for much longer, a claim that he traces back to Foucault's *Madness and Civilization*, but identifies in the work of contemporary scholars as well. In his introduction, Andrews writes that historians have;

Contended convincingly that the failure to differentiate the insane and the mentally disabled either from each other or from other species of deviance is one explanation for the failure to establish distinct, specialist institutions for them. *Vice Versa*, the setting up of increasingly segregated, purpose-built carceral provision has been interpreted as, to a significant degree, an outcome of the spelling out and enforcement of clearer definitions of, and distinctions between, the disorderly-whether between the poor, the sick, the criminal and the vagrant, or between the mad and the idiotic.³¹

In other words, Andrews asserts that the specialization of the asylum played a pivotal role in severing intellectual disability from other forms of mental deviance. And with that, it now seems fitting to turn our discussion to Foucault.

Foucault's Enduring Influence

Reading these works, it is hard not to notice that the demarcation they posit between the Middle Age's "vague," "theological," and "ill-defined" concept of idiocy, and the eighteenth century's more "modern," medical formulation, bears a strong affinity to Foucault's narrative account of madness' emergence as a diagnostic category in *Madness and*

³⁰ Jonathan Andrews, "Begging the Question of Idiocy: the Definition and Socio-Cultural Meaning of Idiocy in Early Modern Britain: Part 1" *History of Psychiatry* 9 (1998): 65-95; here, 2. I

³¹ *Ibid.*

Civilization. In *Madness and Civilization* Foucault famously argued that madness was not a natural object, but a social construct able to be subjected to the same cultural analysis as any other manmade phenomenon. Based on what many historians now recognize as bad history but good philosophy, Foucault claimed that late medieval and renaissance society did not see madness as a social contagion, but a separate and to some extent, augmented mode of reason that enabled the mad to see the world as it truly was. The mad thus “led an easy wandering life,” and suffered little social exclusion as a result of their condition.³² Gradually however, madness became associated with unreason. In the seventeenth century, the nascent bureaucratic state required a means to regulate the people at its boundaries, and thus began consigning the “mad”, along with prostitutes, vagrants, and other undesirables, to institutions where their movement and behavior could be carefully monitored and controlled. It was then, in this “Age of Great Confinement” that the mad were first put under the gaze of doctors, who would eventually see their condition as a natural object, able to be studied and treated scientifically. Society began to understand madness as a medical disorder then, in the late eighteenth century, when it erected institutions solely committed to therapeutic treatment of the mad.

The English translation and publication of *Madness and Civilization* in 1961 was a watershed moment in the American academy that seemed to usher in a new era of cultural history, and as the first of Foucault’s works to reach the Anglophone world, *Madness’s* impact on the American historical academy cannot be overstated. Twenty years after the English edition’s initial publication an astute reviewer noted that “anyone who writes about the

³² “Les fous alors avaient une existence facilement errante,” (19).

history of insanity in early modern Europe must travel in the spreading wake of Foucault's famous book, *Madness and Civilization*.³³ This claim ultimately proved accurate. Even scholars critical of Foucault's historical method, or overarching thesis must note its historiographical significance. Roy Porter for instance acknowledged that "time has proven *Madness and Civilization* the most penetrating work ever written on the history of psychiatry," while cautioning against embracing Foucault's overarching theories.³⁴ Likewise, while H.C. Eric Midelfort, has (rightly) argued that *Madness*' arguments "fly in the face of empirical evidence, and many of its broadest generalizations are oversimplifications," he has not managed to avoid writing about it at length.³⁵ This study too testifies to Foucault's inescapable influence. I see problems with assuming that idiocy's history followed the chronology proposed in *Madness and Civilization*, and—perhaps more significantly—reject the idea that impairments primarily become disabilities through the process of medicalization. Yet even so, my project in *Inventing Idiocy* is inevitably situated in a post-Foucauldian field of analysis, as writing a genealogy of idiocy would be nearly unthinkable in the absence of Foucault's contributions.

While Foucault never wrote about intellectual disability, his influence is strongly

³³ Gary Gutting, "Foucault and the History of Madness," in *The Cambridge Companion to Foucault*, ed. Gary Gutting (Cambridge: Cambridge University Press, 2005), 49-73; here, 49.

³⁴ Ibid.

³⁵ Midelfort contends that Foucault overlooks older forms of marginalization in order to present the regulation of the mad as a product of the Enlightenment. See for instance H. C. Erik Midelfort, "Madness and Civilization in Early Modern Europe: A Reappraisal of Michel Foucault," in *After the Reformation*, ed. B. Malament (Philadelphia: University of Pennsylvania Press, 1980), 247-85; "Reading and Believing, On the Reappraisal of Michel Foucault," in *Rewriting the History of Madness*, eds. A. Still and I. Velody (London: Routledge, 1992), 105-9. For a review of this historiography see Paromita Chakravarti, "Natural Fools and the Historiography of Renaissance Folly," *Renaissance Studies* 25 (2010): 208-227.

present in all of the works discussed.³⁶ When scholars writing the history of medieval mental disorder decide to focus their attention on madness rather than idiocy while acknowledging that *idiota* appear in the records more frequently than people afflicted with insanity, they testify to Foucault's enduring legacy. They do the same when they fail to distinguish between idiocy and madness in their books and articles, and when they contrast the medieval Crown's "humane" treatment of its mentally impaired subjects to the cruelties of the early modern asylum. For in doing so, they present the Middle Ages as an alternate way of being, a world that has been lost, which nevertheless offers the possibility for redemption from the modern condition by suggesting that currently practices could be otherwise.

Ultimately, while recent studies of mental disorder in the Middle Ages negate Foucault's claim that medieval society cared little about madness, their arguments nevertheless reinforce Foucault's thesis that society only began to stigmatize the maladies of the mind during the "Age of Confinement" when it re-imagined them as medical disorders. Thus, while current scholarship has succeeded in carving out a place for the Middle Ages in the history of disability and psychiatry, its rosy characterizations of medieval responses to mental disorder not only adhere to *Madness and Civilization's* overarching narrative, but also tacitly suggest that if we are to look for the origin of modern ideas about mental disorder we

³⁶ For an even stronger example of Foucault's influence upon how scholars write the history of intellectual disability, see Licia Carlson's "Docile Bodies, Docile Minds, Foucauldian Reflections on Mental Retardation," in *Foucault and the Government of Disability*, ed. Shelley Tremain (Ann Arbor: University of Michigan Press, 2005) 133. Identifying Foucault's analyses in *Madness and Civilization* and *The Birth of the Clinic*, which suggested that "new means of producing knowledge produce distinctly new types of people," as providing a potential conceptual framework for exploring the history of "mental retardation," Carlson claims that "though idiocy was recognized as a condition before the nineteenth century, there were no institutions specifically for people who were defined as "idiots". In the first half of the nineteenth century however a process of differentiation took place in which idiocy was recognized as a distinct condition worthy of separate consideration."137. Ultimately, while she locates idiocy's emergence as category distinct from madness later than Goodey, Stainton, et.al. Carlson's argument is reminiscent of their claims, in its assertion that idiocy only became distinct from other forms of deviance when it became the subject of medical discourse.

will not find them in the Middle Ages.

Early modernists reinforce the same idea when they assert that intellectual disability's history begins with the epistemological politics of the Enlightenment. Not only do their accounts of idiocy's historical development closely follow Foucault's chronology of madness's transformation from a vague concept, indistinct from other forms of deviance, to a medical object; but generally speaking, in asserting that a concept of idiocy emerged from enlightenment medico-philosophical discourses, their arguments seem to reflect an assumption that impairments become disabilities through the process of medicalization—the transform the natural facts of the body into objects of scientific inquiry. This implicitly negates the possibility that a coherent concept of intellectually disability could exist in the Middle Ages. For, as medicine—or at least, the medical gaze—is assumed to have not existed in the Middle Ages, disability necessarily becomes a product of the (early) modernity.

Medievalist Responses

Any critical examination of twentieth century historiography will reveal that early modernists have a predilection for claiming that significant phenomena like state, the individual, science and medicine, long-distance trade, secularization, and now disability, emerged during their period; and medievalists have gotten a fair bit of easy mileage out of refuting these claims. Yet the history of disability is a rare area where medievalists and early modernists agree that the objects they study ought to be understood as products of modernity. During the past decade an active community of medievalists has published work

on disability history and theory, in response to a previous dearth of scholarly literature on disability in the pre-modern past.³⁷ In addition to the works previously discussed, members of this group have written pioneering books on blindness, mental disorder, physical impairment, and disability in general, which have brought to light the significant alterity between the social meaning that society attached to impairments in the Middle Ages and the present. These works have accordingly undermined the medical model of disability by showing the extent to which social practices contribute to the construction of disability.

Yet they have ironically made these important contributions to our understanding of disability by largely denying that disability, defined here as “the social processes through which people with impairments become disabled”, existed in the Middle Ages. . For just as recent work on the cultural history of intellectual disability has asserted that its history began only in the Enlightenment, much of the work currently being done on the history of disability treats the Middle Ages as a blank slate, bereft of the beliefs about the body and beauty, the state and subject, and sickness and health that have historically contributed to the “disabling” of people with impairments.³⁸ Exemplifying this, in the closing paragraph of her

³⁷ A major development in the field was the founding of the Society for the Study of Disability in the Middle Ages in 2008. A comprehensive overview of their contributions can be found in Joshua R. Eyler’s introduction to his recent edited volume on disability in the Middle Ages. Joshua R. Eyler, “Introduction; Breaking Boundaries, Building Bridges,” in *Disability in the Middle Ages, Reconsiderations and Reverberations*, ed. Joshua R. Eyler (Surrey: Ashgate, 2010), 1-10. Also see Shelly Tremain, *Foucault and the Government of Disability*

³⁸ I believe that this perspective extends from their adherence to the social model of disability, which indirectly implies that disability arises from a specific set of beliefs, practices, and institutions that did not yet exist in the Middle Ages. Recently, disability theorists critiqued the social model’s stringent dichotomy between impairment and disability for ignoring the lived experience of corporeal differences. Instead, they have proposed a “cultural model” that, “recognizes disability as a site of phenomenological value that is not purely synonymous with the processes of social disablement.” Sharon L. Snyder and David T. Mitchell, *Cultural Locations of Disability* (Chicago and London: University of Chicago Press, 2006), 6. Originally cited in Joshua Eyler, *Disability in the Middle Ages; Rehabilitations, Reconsiderations, Reverberations* (Burlington: Ashgate, 2010) 6. The cultural model that Snyder and Mitchell propose bears the closest resemblance to the interpretative stance I take in this study. In discussing how intellectual disability has been historically

2006 publication, *Disability in Medieval Europe: Thinking about Disability in the High Middle Ages*, (a work that was then praised as the first and only comprehensive study of disability in the Middle Ages), Irina Metzler claimed that,

“we can only speak of impairment but not disability during the Middle Ages, [...] for although there were as many impaired people proportionally as there were in other societies, there were very few medieval disabled people.”³⁹

In other words, following the arguments made by their early modernist colleagues, scholars who work on medieval disability tend to view disability as a product of medicalization, and thus assert that any nascent concepts of disability that might have existed before modern medicine, the asylum, and the bureaucratic state were vague at best, and less exclusionary than those which would emerge in late early modernity.

It not at all unreasonable to think that cultural ideas about what it meant to be an

constructed, I do not deny that people with conditions that align with the modern concept of intellectual disability existed at all points in history, although I believe that in many cases it is impossible to tell whether the people who participated in medieval idiocy inquisitions fall into this group. But I am ultimately not interested in the question of whether they were intellectually disabled or not. The question I am interested in is how the activities of the medieval court influenced how idiocy has been historically constructed. For a different critique of the social model's concept of impairment see Shelley Tremain, “On the Government of Disability: Foucault, Power and the Subject of Impairment,” in *The Disability Studies Reader*, ed. Lennard Davis, (New York: Routledge, 2006), 185-197.

³⁹ Metzler makes much of the distinction between the social and medical models of disability in her study, which causes her to depict the Middle Ages as a utopian age in which disability did not yet exist. Her ultimate conclusion is problematic due to the fact that she relies upon a limited range of sources, consisting mainly of hagiographies written in England and France between the mid twelfth and late thirteenth centuries. She nevertheless asks her reader to take the attitudes that she finds in these texts as representative of how people thought about impairment between 1100 and 1400, across the entirety of “Western Europe”, which she imagines as “a cultural entity” with “little intercultural variance.” Yet, her study stops right at the beginning of the fourteenth century due to her reliance on hagiography—that is, prior to the inception of the commercial revolution, the Great Plague, the popular revolts of the late Middle Ages, and all of the other phenomena that would have been most likely to set into motion the very change she denies. Metzler justifies focusing mainly on the twelfth and thirteenth centuries on the grounds that “the greatest intellectual output, both in the quantity as well as the quality of medieval writings on theology, (natural) philosophy, and healing miracles falls during that period.” This assertion, however, reflects a now dated view of the fourteenth century.

“idiot” changed when idiocy was reimagined as a medical disorder, particularly when one’s work focuses on a century typically understood as a formative moment in the history of medicine. But just as it is a mistake to assume that idiocy in the past or present is purely a natural category, it is also a mistake to see it as entirely a creation of the medical gaze. It is instead a union of legal, philosophical, religious, and medical attitudes toward personhood and rationality, some of which predated the advent of modern medicine. All of the works discussed so far constitute valuable contributions to an important yet understudied field. However, their adherence to Foucault’s narrative is problematic because it has caused them to overlook evidence that the conceptual origins of intellectual disability may come from a stranger place than we currently imagine.

C.F. Goodey for instance, briefly discusses the development of medieval law related to idiocy in *A History of Intelligence and Intellectual Disability*, and arrives at many of the same conclusions I advance in later chapters.⁴⁰ Under a section heading titled, “Fiscal idiocy; how the law invented incompetency,” he acknowledges that the law of medieval England differentiated between idiocy and madness, despite the fact that he later claims that the distinction began with Locke.⁴¹ Likewise, in his introductory chapter he writes that, the “roots of the cultural concept we are dealing with lie in the initial expansion of social administration and Western European capitalism,” a claim that aligns with my overarching

⁴⁰ Goodey’s *History of Intelligence and Intellectual Disability* was published during the past six months, after I had worked out most of the ideas in this study. Thus, while his points in this small selection of passages are similar to my conclusions, this is coincidental, reflecting the fact that the sources strongly point to this interpretation.

⁴¹ Goodey, *Intelligence and Intellectual Disability*, 144.

argument.⁴² However, in order to present Locke as revolutionary break with the past, as he does in later chapters, Goodey must largely deny that the practices of the medieval courts had any bearing upon later ideas about intelligence and its absence. Thus, with little reference to medieval sources, Goodey claims that the division between idiocy and insanity present in medieval legal treatises “does not seem to have been a legal enactment,” as “the law had no standard writs of idiocy.” This is indeed true, but it overlooks the fact that the Crown had a completely different set of rights over idiots than lunatics, and handled their cases quite differently in practice.⁴³ In the end, he only dedicates four pages in his entire book to medieval understandings of idiocy, with the justification that “if any such concept can be perceived at the start of the period, it is at most a ripple among countless others, and virtually undetected by the people of the time.”⁴⁴

I agree with many of Goodey’s points, but I see the ripple he describes as the beginning of a tidal wave. It is not particularly interesting when medievalists claim phenomena early modernists associate with their period for their own. Nevertheless, there is more at stake than a critique of periodization in the claim that idiocy’s history begins much earlier than currently thought. For in rejecting the view that intellectual disability originated

⁴² Even more to the point, Goodey notes on *Ibid.*, 146: “The writs indicate the extent to which illiteracy had finally become unacceptable among gentry. The point was not that literacy or numeracy in themselves but their importance for the maintenance of status. Being able to count money or remember the names of your father or mother was specific to the inheritance of landed property and the administration of its profits; without such skills, the state might leave the family. Intellectual criteria for competence continued to coexist for some time with older criteria such as a lack of sense for one’s own honorable status.” This is all he says on this matter, but I advance a very similar argument in Chapter Five.

⁴³ *Ibid.*, 141-2. Goodey actually does briefly suggest that the law’s distinction between idiots and lunatics eventually became popularized. However he claims for that this only occurred in the 1590s, when “professional intellectuals around the inns of court were employing such a distinction (that between lunatics and idiots) in their literary publications, as we shall see shortly, and in doing so they helped introduce it to a wider public.” (142).

⁴⁴ *Ibid.*, 11.

when medical discourses supplanted older religious and literary constructions of foolishness, (and is indeed medical in origin), the argument developed in the chapters that follow challenges the theory that medicalization precedes and acts as a necessary catalyst for legal, institutional, and cultural practices that contribute to the marginalization, and ultimately “disabling” of people with impairments. Instead, by suggesting that a concept of intellectual disability was introduced to Western culture when medieval administrators and jurists invented a category to deal with practical problems of inheritance and land distribution, *Inventing Idiocy* argues that idiocy’s eventual transformation from a social fact to a medical disorder was a product of, rather than a catalyst for the development of a legal category of idiocy. In doing so, it ultimately makes a historical claim about the social processes through which human differences are reimagined as disabilities, and aims to complicate current understandings of where some of our ideas about the nature of the rational subject originated.

Chapter Descriptions

The chapters that follow work towards this end, first by demonstrating that a concept of idiocy emerged in legal theory centuries before the medical community began to see intelligence as its province, and then by exploring how this legal concept informed broader understandings of human intelligence, and vice-versa. Chapter Two examines the ideas about intelligence and its absence that existed in theological, medical, and legal discourses during the Middle Ages, and ultimately proposes that the concept of intelligence’s absence was

almost entirely absent in medical thought before a concept of idiocy emerged in English courts. Through close readings of the Bible, patristic and scholastic theology, and medical writing, I confirm that idiocy was largely indistinct from insanity in medieval medical and religious thought—to the extent that it was considered at all. However, I then show that a concept of idiocy had existed in Roman Law since the fifth century B.C.E., and was rediscovered and reinterpreted in England during the late Middle Ages. The implementation of this Roman legal concept created a category of people who could be permanently deprived of the rights of person and property through legal action, as the law held that they lacked the minimum level of reason necessary for consent. In exploring this, Chapter Two suggests that idiocy began to diverge from insanity much earlier than recent scholarship has suggested.

Chapter Three considers the extent to which the legal theories discussed in Chapter Two shaped the actual practices of the English courts, by exploring whether the people who participated in early idiocy inquisitions viewed idiocy and insanity as ontologically and legally distinct disorders. When scholars reject that a concept of idiocy existed in the Middle Ages, it is not because they are ignorant of medieval law's distinction between idiocy and insanity. Rather, it is because they believe that this distinction never moved beyond the erudite discussions of legal scholars. Based on a study of idiocy inquisitions held between 1272 and 1399, I suggest that the public initially remained unaware that idiocy was in any way distinct from insanity, even as the Crown began to oversee inquisitions involving people identified as *idiota* and *fatuus nativitate*. Yet, I then show that people slowly began to see idiocy as something more than a subset of insanity when the Crown's treatment of idiots and the

insane diverged during the late thirteenth century. For while the Crown's responses to its mentally incompetent subjects had initially resembled Roffe's and Neugebauer's characterizations, from the 1290s onward it increasingly treated the wardships of idiots as saleable commodities, granting custody of idiots' person and property to people outside their families for a fee. Although participants in early inquisitions had varying degrees of familiarity with the legal definition of idiocy, they quickly came to recognize that a finding of idiocy had a greater potential to alter their fortunes than a finding of insanity. Accordingly, they began tailor their descriptions of alleged idiots' conditions to support the legal outcomes they desired. In this respect, people began to see idiocy as a stable and distinctive disorder not on account of new medical or philosophical ideas about human intelligence, but because they had an economic incentive to do so.

Chapter Four builds on the conclusions of Chapter Three by examining the factors that informed early idiocy inquisitions other than medical reality or concerns about the nature of human reason. By looking at the demographics of early idiocy inquisitions, I show that people accused of idiocy during the fourteenth century did not represent the full spectrum of individuals who might be identified as intellectually disabled by modern medical standards. Rather, they represented the much smaller set of people who both held land and had acquaintances who recognized that they had something to gain from accusing them of idiocy. Specifically, as the landed elite became aware that the Crown's new rights over idiots created a legal means by which land could be redistributed, they began to use idiocy accusations as a means of removing land from the hands of people they deemed disadvantageous custodians of their family's landed wealth—women, widows, and distant

collateral relatives. In this respect, the values and interests of the landholding classes informed whom the courts identified as an idiot, more than any medical standard of intelligence.

Building upon the conclusions of Chapter Four, Chapter Five suggests that some of qualities associated with idiocy in later medical discourses are actually survivals of the medieval past. I begin by exploring how the functional but vague concept of idiocy developed by jurists in the thirteenth century was adapted to reflect the values and interests of the people who participated in idiocy inquisitions. Specifically, I suggest that as more people who had made their fortunes through commercial activity sought wardships of idiots, idiocy gradually acquired associations with deficits of the particular skills required to function in a proto-market economy. Exemplifying this, by the end of the fourteenth century diagnostic tests for idiocy involved adding and subtracting coins that few people other than merchants had reason to possess and use. Eventually language from these tests was formally codified in law books, and shaped how idiocy was defined—not only in the courts, but in medical practice.

Ultimately, each of these chapters contributes to a growing body of scholarship that suggests that intellectual disability has more than just a medical history. Yet, at the same time, my work also departs from the scholarship discussed in this chapter by suggesting that intellectual disability's divergence from insanity originated in the activities of the medieval courts, rather than the discoveries of early modern physicians.

CHAPTER TWO

REASON'S OTHER IN MEDIEVAL THEOLOGY, MEDICINE, AND LAW

At the end of the fourteenth century, John de Mirfield, a monk with a penchant for medical learning, described a rather exceptional case that he witnessed at the priory of Saint Bartholomew's Smithfield hospital.¹ A canon at the priory had been brought to John's master after he had fallen headfirst off his horse, landing "so heavily upon [the right side of] his head that straightaway he lost sensation and movement of his whole body."² Mirfield's master immediately set himself to treating the man. First, he made the man's friends shave his head, and rubbed it with rose oil and vinegar. He then sprinkled it with a powder and wrapped it in a cloth soaked in the same ointment, which he bound with linen bandages, and covered with lambskin. Everyday thereafter, the master visited the man and rubbed ointment down his spine. The man opened his mouth on the second day, but the master did not allow him to eat until the fourth, when he spoke only with a stammer, and was given a "thin warm drink." On the fifth day, he was allowed a "thin tisane,"—or herbal tea—and later some chicken broth. Eventually, when he was able to move, the master prepared pills to "resolve by evacuation the material accumulated by the fall on his head," but recommended that he only eat "the brains of birds, fowls, and kids," a ghoulish but common prescription for

¹ For a brief biography of Mirfield, see Faye Getz, "Mirfield, John (*d.* 1407)," *Oxford Dictionary of National Biography* (Oxford: Oxford University Press, 2004) accessed 12 June, 2012, <http://www.oxforddnb.com/view/article/18817>.

² Oxford, Pembroke College MS 2. f. 253 a, col. 1. I rely here on the translation in Norman Moore, *The History of the Study of Medicine in the British Isles* (Oxford: Clarendon Press, 1908), 42-43.

people suffering from mania or “insanity” at the time.³ Subsisting on this meager diet, Mirfield claimed that the man was eventually cured, although “he was never of such subtle cleverness or good memory as before.”⁴

Mirfield embodied the medical learning of his century. He eventually became the chaplain of the hospital at Saint Bartholomew’s Smithfield, but he is best known today as the author of the *Breviarium Bartholomei* (Oxford, Pembroke College, MS 2) and the *Florarium Bartholomei* (BL Harley, MS 3), two encyclopedic tomes that compiled the medical knowledge of his time. The *Florarium* was aimed at an ecclesiastical readership, and thus discussed medicine only in the context of the care of the soul. However, Mirfield claimed that he wrote the *Breviarium*—the text in which he recounted the story of the unfortunate prior—for medical practitioners without access to a full library of medical texts. Thus, its contents offer us a rough idea of the medical writing that might have been available to an elite practitioner at the end of the fourteenth century. Historians of medicine have remarked on the accuracy of his observations.⁵ For example, despite the fact that prevailing late medieval medical theory held that the brain was divided from front to back into three cells or “ventricles”, Mirfield nevertheless managed to deduce from this case that an injury on the right side of the head could cause paralysis on the left side of the body, a condition known today as left-sided hemiplegia. Moreover, Mirfield’s acknowledgement that the prior suffered from lasting problems with memory [*memoria*] and “cleverness” [*ingenii*] following his fall seems to suggest

³ Gentile of Foligno for instance held that melancholics should at first only eat “the meat of chickens, hens, capons, partridges, nestlings from the towers with their full feathers, tiny birds, a castrated or lactating animal, and sometimes soft eggs.” Faith Wallace, *Medieval Medicine: A Reader* (Toronto: University of Toronto Press, 2010), 410.

⁴ “Nunquam tamen fuit ita subtilis ingenii et bone memorie sicut prius.”

⁵ Moore, *History of the Study of Medicine*, 42-3.

that he recognized that cognitive impairments could not only be permanent, but also result from physical injuries to the brain, a connection that previous scholarship on the history of intellectual disability asserts was not made until the enlightenment.⁶

Yet, it is equally remarkable that Mirfield seems to have lacked a clinical vocabulary with which to describe the impairments that afflicted the patient after his recovery. The fact that Mirfield relied on qualitative descriptions of the man's newfound deficits, rather than diagnosing him with a specific disorder, (and thus imposing a series of pathological categories on his condition), reflects the fact that he was describing a condition that did not quite fit any of the categories of sickness recognized by the western medical canon. For while Mirfield clearly believed the prior's problems with memory and intellect would plague him for the remainder of his life, as we shall see in this chapter, the very notion of a permanent mental disability had no precedent in the Galenic and Hippocratic traditions, the textual sources from which Mirfield and his contemporaries derived their understanding of all the diseases that could afflict the body and mind.

I began with this example drawn from John de Mirfield's medical compendium *Breviarium Bartholomei*, because it illustrates a central point of my discussion.⁷ Since the medical community took the task of defining and measuring intelligence as its province, it has been remarkably successful at promoting a set of widespread cultural assumptions about what it means to lack intelligence. Today, intelligence and its absence are defined and

⁶ See Chapter one for an overview of this scholarship.

⁷ Many thanks are owed to the graduate school at Cornell and the Oxford-Cornell Brettschneider exchange fund for providing research funding that enabled me to consult Mirfield's manuscripts during the summer of 2011. I am also indebted Lucy Walker, the archivist at Pembroke College, Oxford. I return to Mirfield later in this chapter, and in the conclusion of this study.

measured by institutions and experts, whose evaluations have the power to shape the fate of individuals, and however controversially, to accommodate their cognitive limits.

Government administrators, social workers, medical practitioners, educators, judges and jurists routinely rely on these assessments in the course of their work, tacitly accepting them as accurate descriptions of a natural fact. Thus, it is safe to assume that professionals across fields, as well as the average person on the street, are all referring to roughly the same thing when they speak of intellectual disability. In other words, they share a concept of what C.F. Goodey has termed “a belief that a specific intellectual ability defines the human species.”⁸

In the Middle Ages, however, this was not the case. Instead, theological, medical, and legal discourses promoted different ideas about the nature of human intelligence, and did so for different purposes. Medieval theologians wrote little about cognitive impairment, and used the terms “idiocy” and “foolishness” to refer to a general and reversible state of ignorance, often signifying moral disorder. Their interest in intelligence’s absence lay in what it could reveal about the relationship between merit, the human intellect, and God’s grace, and thus they had little need for medical explanations of mental impairment. Even if they had, they would not have found them in the medical texts of their time. Late antique medical writers and the medieval thinkers they inspired had no concept of an incurable congenital intellectual disability. Instead, they saw defects of intellect and memory like those discussed by Mirfield as symptoms that could accompany many “sicknesses of the head,”—phrenitis (frenzy), mania, amencia, lethargy (referred to as stupor in some texts), epilepsy, and apoplexy—a spectrum of seven progressive, yet ultimately reversible, disorders that

⁸ C.F. Goodey, “Blockheads, Roundhead, and Pointy Heads: Intellectual Disability and the Brain before Modern Medicine,” *Journal of Behavioral Science* 41 (2005): 165-183. Here: 166.

represented all that could go wrong with the mind and brain.⁹

Yet while physicians lacked a vocabulary to describe intellectual impairment, by the second quarter of the thirteenth century, a distinction between insanity and permanent congenital intellectual impairment had begun to emerge in England, not in medicine but in law. One hundred years before Mirfield wrote his *Breviarium Bartholomei*, legal theorists in England began to place limits on the rights of people with physical or mental impairments, based upon proscriptions they discovered in Roman law. Among this group were idiots, whom the jurist Bracton described as, people “without sense and reason [...] not far removed from brutes,” and contrasted to the insane, whose lack of reason was impermanent.¹⁰ Legal scholars’ understanding of idiocy did not derive from contemporary medical theories, and it moreover, did not map entirely onto our own. For while we understand intellectual disability as an organic, medical disorder, the legal concept of idiocy was notable for its focus on practical matters of property and estate. Nevertheless, there were moves in that direction. For jurists—and eventually the English Crown—asserted that so-called idiots were unfit to inherit or alienate property, enter into contracts, plead in court, or be held culpable for any crime, as their lack of reason [*ratio*] deprived them of the ability to consent. In doing so they created a class of people who could be permanently deprived

⁹ Today of course epilepsy and apoplexy (or stroke) would not be placed in the same category as mania or frenzy. The fact that late antique and medieval medical writers did group these disorders together suggests just how much their understandings of mental disorder differed from our own. It thus offers a cautionary reminder against assuming that people in the past were referring to the same disorders that we do today when they used medical terms that are still in use.

¹⁰ Comparisons between the mentally incompetent and “brute animals” can be found in, *Bracton on the Laws and Customs of England*, trans. Samuel E. Thorne (Cambridge: Harvard University Press, 1968), vol. 2, 379; vol 2, 427; vol 4, 292; vol 4, 308. The Bracton author justified limiting these people’s rights on the grounds that one must be able to understand what they acquired, promised, or willed away to truly consent to doing so, and these conditions impeded one’s ability to understand.

of the rights of legal adulthood because they were believed to have minds that lay outside the spectrum of normal human types.

In this chapter, I explore the variety of beliefs about intelligence's absence that existed in medieval religious and medical thought before society-at-large began to think of "idiotcy" as a permanent, congenital condition, distinct from other types of mental disorder. Contrasting the legal concept of idiotcy to contemporary discussions of cognitive impairment in medicine and theology, I argue that English jurists' innovations during the late thirteenth century played a role in shaping not only how people in the late Middle Ages conceptualized human cognitive difference, but also how we understand intellectual disability today. For while we tend to think of intellectual disability as a medical concept with a purely medical history, the ideas about intelligence's absence that existed in medieval medicine bore little resemblance to our own. Instead, it was through English jurists' interpretations of Roman law that idiotcy was first imagined as a categorically distinct disorder, characterized by deficits of pragmatic skills, rather than a general state of unknowing or an ill-defined subset of insanity. In other words, the first traces of a concept of intellectual disability resembling our own did not originate from physicians' responses to a medical reality. Rather, it began in the minds of jurists concerned with the practical problems created by people they deemed unable to fulfill the obligations customary to their rank and status.

Reason Today, and Reason's Other in Medieval Thought

Before looking to the past, let us return briefly to the description of intellectual

development disorder offered by the DSM-V, excerpted in the previous chapter. Reading the DSM-V's description of "intellectual development disorder," it becomes apparent that the American Psychiatric Association associates intelligence with a specific set of capacities, and intelligence's absence with their negation. From the DSM-V we learn that people on the far left end of the bell-curve not only lack skills typically taken as markers of mental acuity—"reasoning, problem-solving, planning, abstract thinking, judgment, academic learning and learning from experience,"—but are also deficient in a number of fluid, culturally contingent proficiencies—"communication, social participation, functioning at school or at work, or personal independence at home or in community settings."¹¹ These criteria suggest that the difference between the intelligent and intellectually disabled lies in the fact that the latter lack the capacities and skills required for full participation in society, and more specifically, the skills required for financial independence. For while less than "average" ability in reasoning, problem solving, planning, and "personal independence" may not hinder someone from being a beloved child, taking joy in a warm summer's day, or performing mechanical labor, someone with such deficits would find it difficult to secure and hold a job in a complex labor market that increasingly devalues physical labor and places a premium on sophisticated analytical skills. In other words, by privileging the capabilities required for independent living and participation in the modern work place, the medical community defines intelligence in a way that reinforces the dominant values of modern American culture and the market

¹¹ In a sense, this definition of intellectual disability seems at odds with the modern understanding of intellectual disability as a static, organic disorder. For while the list of qualities and deficits the APA associates with intelligence and its absence provides us with fairly specific picture of what it means to be intellectually disabled, it is also produces a definition of intelligence that is fluid and culturally contingent, since the skills required to participate in society can change rapidly. To some extent this fluidity complicates the notion that the same people who we identify as intellectually disabled today would be perceived as intellectually disabled in any time, place, or culture.

economy.

Intelligence's absence has not always been so specifically defined. Instead, the belief that intelligence can be reduced to a list of specific culturally contingent skills, and that people who lack these skills possess minds that fall outside the spectrum of normal human types can be traced back to the expansion of royal authority and social administration during the later Middle Ages. In antiquity, and for most of the Middle Ages, no word existed to describe intellectual disability as we understand it today. *Stultus, fatuus, ignarus, ineptus, insensis*—adjectives that denoted foolishness in contemporary writing, could be applied to any person without implying that an innate cognitive difference distinguished them from the rest of humanity. Along these lines, *idiotia*, the term used in the English royal courts from the late thirteenth century onward to describe people the state deemed unfit for self rule, originally had no associations with a specific intelligence. Rather, the word “idiot” derives from the Greek *idiote*, which in its original context simply meant private or one's own. In antiquity, statesmen and philosophers used *idiote* and its Latin derivative *idiotia* to refer to people so inwardly focused and concerned with private affairs that they were unsuited for public life. Thus, “idiocy” signified something very different than it does today. Rather than suggesting an absence of intelligence, as it is currently defined, it instead described a particular set of character traits and negative moral qualities.

By late antiquity the term *idiotia* had lost some of these associations, and had come to simply refer to someone in a state of unknowing or ignorance. Yet a few vestiges of its older meaning remained. Early Christian writers, perhaps not rejecting the transmitted understanding of *idiotia* entirely, occasionally used the term in a way that endowed it with

heightened moral significance. Most notably, when Jerome translated 1 Cor. 14:22-24, and Acts 4:13 into Latin, he identified people (ἰδιῶται) who would doubt the word of Christ as “*idiotae aut infidels*,” forging lasting associations between the state of being an *idiotae* and moral error.¹² The novelty of this additional layer of meaning was not lost on scripture’s early readers. In the early fifth century for instance, the desert monk John Cassian explained that while the Greek term used in Acts and Corinthians had originally referred to people drawn to a private life (*pro eo quod est privatam vitam agere*), it was proper to interpret *idiotae* in the Latin Bible as unlettered, unskilled, and ignorant people (*illiterate, imperita, ignaro*); for following the martyr Festus, idiots were people so unlearned and useless (*indoctus et inutilis*) that it was as if they were useless to everyone but themselves.¹³

Yet it would be a mistake to believe that Christian writers in antiquity were greatly concerned with the problem of intelligence’s absence. The passages from Corinthians and Acts cited above are the only two places in the entire Bible in which the term *idiotae* occurs. References to foolishness by another name (*stultus, fatuos*) are frequent in the Vulgate translation of the Old Testament. Yet these do not present it as a permanent condition. Rather, Psalms, the Proverbs, and other books, depict foolishness as a transitory state acquired by those who doubt the word of God, or turn from him by knowingly breaking his

¹² Si ergo conveniat universa ecclesia in unum et omnes linguis loquantur intrent autem idiotae aut infidels nonne dicent quod insanities [?] si autem omne prophetent intret autem quis infidelis vel idiota convincuntur ab omnibus diudicatus ab omnibus. By the thirteenth century theologians began to differentiate between people in a state of impermanent ignorance, which could result from moral impropriety, and people born with an absence of reason, who were not to be blamed for their condition. See discussion of Aquinas below.

¹³ John Cassian, *Collationes*, PL 49.484C. “*inquit, proprius dicitur; a quo idiotae dicitur indoctus, et inutilis, quasi sibi tantummodo et non pluribus utilis*. While it is clear from this that *idiotae* had come to mean something more specific than it had in the past, it nevertheless does not seem to have referred to a permanent state of cognitive difference, but instead an ignorance potentially remediable with education and faith.

commandments.¹⁴ For instance, in the Vulgate, Deut. 32:6 uses the words *stulte et insipiens* to describe “foolish and senseless” people who sin against God. Kings 13:13 identifies Saul as a fool (*stulte*) for having broken the commandments, and Psalms 13:1—a passage often quoted in the Middle Ages—asserts that “the fool (*stultus*) hath said in his heart: There is no God.” Psalms 91 similarly holds that “a senseless man (*vir insipiens*) will not know, nor a fool (*stultus*) understand the greatness of the works of God.”¹⁵

Scripture then, was not necessarily vague about what foolishness entailed. In fact, it is likely that a medieval reader would have come away with a fairly specific idea of what it meant to be *stultus* or *fatuos* if they read their bible with a critical eye. Beyond the depictions detailed above, a number of passages in the Old and New Testaments characterize foolishness as a condition that leads men to speak without thinking, trust too much in their own wisdom, and act immoderately, letting their passions override their reason. Proverbs 29:11, for example, asserts that “a fool [*stultus*] uttereth all his mind, while a wise man deferreth, and keepeth it till afterwards.” Ecclesiastes 21:19 and 21:29 reinforce this

¹⁴ There are perhaps two exceptional passages that could be read as implying otherwise: Proverbs 16:22 “the instruction of fools is foolishness (*doctrina stultorum fatuitas*), and Proverbs 17:22, “A fool is born to his own disgrace: and even his father shall not rejoice in a fool.” (*natus est stultus in ignominiam suam sed nec pater in fatuo laetabitur*). While these seem to suggest that foolishness could be a congenital disorder, they were rarely (if ever) interpreted in this way during the Middle Ages, even after the courts began to take up the problem of “natural fools.” All English translations of Latin text are taken from the Douai Rheims Bible.

¹⁵ For other passages containing this understanding of foolishness see Exodus 18:18, which refers to Moses’ *stulto labore*; Kings 25:25; Proverbs 1:7, which instructs, “The fear of the Lord is the beginning of wisdom. Fools (*stulti*) despise wisdom and instruction.” (Note that that this passage does not imply that fools lack the capacity for wisdom, but only that they despise it.). Rom 1:21 also characterizes people who turn their thoughts from God as having “foolish hearts” (*insipiens cor*). These are but a few of the passages that refer to fools or foolishness, however they are representative of how the terms were used in the Old Testament. For more on biblical depictions of foolishness, see Barbara Swain, *Fools and Folly During the Middle Ages and Renaissance* (New York: Columbia University Press, 1932), particularly 10-26. Swain aptly notes that from Proverbs, “we learn the most serious result of folly: in addition to rendering a man unfit for life in the social group, witlessness and ignorance made him fail to understand his own spiritual destiny, made him a sinner whose failure was most terrible of all, to save his own soul.” (11)

sentiment, noting that “The talking of a fool (*fatui*) is like a burden in the way: but in the lips of the wise, grace shall be found,” and “the heart of fools (*fatuorum*) is in their mouth: and the mouth of wise men is in their heart.” Proverbs 12:16, gives the impression that these overly loquacious individuals have as much trouble constraining their emotional impulses as their tongues, instructing that “a fool (*stultus*) immediately sheweth his anger,” while the wise take their injuries in stride. And, Proverbs 1:22 suggests that the root of all these problems lies in the fact that “fools (*stulti*) covet those things which are hurtful to themselves,” and are thus unable to act in their self interest. Turning to the New Testament, we learn that foolishness results from intellectual vanity and hubris. Rom. 1:22, for instance, derides people who “professing themselves to be wise, they became fools (*stulti*).”

These represent only a small fraction of scriptural depictions of foolishness, and it is thus easy to imagine that the Bible could have provided medieval people with a template for thinking about intelligence’s absence. Yet in these passages to, foolishness bears little resemblance to how we think of intellectual disability today. It is not a permanent, congenital disorder, but a negative character trait, habituated overtime. While there is no reason to think that the traits ascribed to fools in the Bible could not apply to the intellectually disabled, the fact that scripture depicted foolishness as an acquired condition meant that people only made a connection between these biblical fools and the *idiota natiuitate* of the courtroom long after after the Middle Ages were over. Indeed, even as English jurists were beginning to use the term *idiota* to refer to people who lacked reason from birth, clerics

continued to use the term to describe heretics and people who challenged church authority.¹⁶ For the most part, late medieval thinkers seem to have paid the most attention to passages like 1. Cor 3:18-19, which contrasts man's foolishness to the wisdom of God.¹⁷ Here, Paul urges, "Let no man deceive himself. If any man among you seem wise in the world, let him become a fool, that he may be wise. For the wisdom of the world is foolish with God." As we shall shortly see, rather than inferring anything about people who seemingly lacked reason from this passage, medieval theologians instead concluded from it that human intellectual variance meant little, given the immense gulf between the feeble wisdom of even the wisest men, and the immeasurable knowledge of God.

It could be reasonably speculated that this dearth of biblical idiots impacted the attention allotted to idiocy in medieval religious thought and practice. In *Stumbling Blocks Before the Blind*, Edward Wheatley argues that resemblances exist between the "discursive power of religion in the Middle Ages, and that of medicine in the modern world."¹⁸ Among other things, Wheatley claims that Jesus' healing miracles in the New Testament provided society with a template for thinking about illness, by offering a model for how Christians

¹⁶ Mark D. Johnson, *the Evangelical Rhetoric of Ramon Llull: Lay Learning and Piety: Lay Learning and Piety in the Christian West Around the Year 1300* (Oxford: Oxford University Press, 1996), 8. There is a good argument to be made that English vernacular writers like Langland adhered to the scriptural understanding as well. See, Lawrence M. Hopper, "Idiotae, Viri Apostolici, 'Lunatick Lollares,' and Piers the Plowman," in *Songs of Rechelesnesse: Langland and the Franciscans*, ed. Lawrence M. Hopper (Ann Arbor: University of Michigan Press, 1997, 181-219.

¹⁷ See discussion of Augustine on 50-52 for more on this point.

¹⁸ Edward Wheatley, *Stumbling Blocks before the Blind: Medieval Constructions of a Disability* (Ann Arbor: University of Michigan Press, 2010), 11. Wheatley, in essence, holds that medicalization could not have transformed normal human differences into disabilities during the Middle Ages, because "medical knowledge [...] was too decentralized to wield the institutional and discursive power that it does today." In contrast, however, to previous scholarship, which holds that disability thus did not exist until the advent of modern medicine, Wheatley asserts that the medieval church played much of the same role in the construction of disability in the Middle Ages, as medicine does today (Wheatley, 9).

ought to respond to the diseased and impaired.¹⁹ The miracle stories moreover established a category of physical conditions that merited charitable attention if one wished to be Christ-like. While I do not entirely agree with the claim that the Church maintained sole “control of the discursive terrain of illness and disability,” given the important role legal developments played in the eventual construction of concept of intellectual disability, Wheatley is absolutely correct in arguing that religion—and particularly scripture—played a tremendous role in shaping how medieval society understood human difference. His “religious model of disability,” moreover, offers a model for thinking of how law and other social institutions might have contributed to the construction of disabilities prior to the beginnings of medicalization.

In the Middle Ages, the specific conditions that Christ healed in the New Testament—blindness, deafness, insanity (or phrenitis), epilepsy, paralysis and other permanent physical impairments, leprosy, and dropsy—held a special place in the church’s social teachings.²⁰ When sermon writers urged their audiences to give charity to the poor they frequently associated poverty with this particular set of impairments, and hospital and almshouse charters included specific provisions about the extent to which people afflicted with them ought to be succored.²¹ Theologians debated the extent to which these

¹⁹ Wheatley, *Stumbling Blocks*, 11.

²⁰ See discussion in Paul A Fideler, *Social Welfare in Pre-industrial England: The Old Poor Law Tradition* (Palgrave Macmillan, 2006), 8-36.

²¹In her systematic study of miracle registers in *Surviving Poverty in Medieval Paris: Gender, Ideology, and the Daily Lives of the Poor* (Ithaca: Cornell University Press, 2005), Sharon Farmer indirectly explores how disability overlapped with poverty in the minds of medieval elites. Her argument here is particularly relevant to the point I make above. In terms of hospital charters, the charter of the hospital St. John’s Oxford stipulated that it should not admit “lepers, paralytics, people suffering from dropsy, mad people, those suffering falling sickness, ulcers, or incurable diseases,” as these conditions were untreatable human differences. Miri Rubin, *Charity and Community in Medieval Cambridge* (Cambridge: Cambridge University Press, 1987) 158. The charter

impairments ought to be understood as the result of sin, and these debates eventually informed the church's attitude toward medicine and its practitioners. For instance, we find a discussion of the relationship between sickness and sin in Jacob Bromyard's *Summa Praedicatorum*, one of the most popular preaching manuals in England during the fourteenth century.²² In his entry on sickness (*infirmitas*), Bromyard noted that it is hard to determine whether sickness was the result of sin, since God sometimes sent physical illnesses to sinners in order to bring them back to the Christian faith—as evinced by the gospel accounts of Christ's miraculous healing. Moreover, the symptoms of some of the sicknesses of the body overlap with those that accompany the sicknesses of the soul. For instance, he held that phrenitis was quite similar to demonic possession (*daemoniacis*), for sufferers of either disorder are unwilling to be placed under anyone, or held in chains, and both groups vex and disturb everyone they encounter in their wandering. Likewise, Bromyard held that lethargy resembled the spiritual disorder of the Sodomites, since both led people to death when the body is given over to pleasure.²³

Theologians like Bromyard undoubtedly paid attention to these specific ailments because of their prominent place in the gospels, and as we will see later in this chapter, the conditions Christ healed in the New Testament were nearly identical to those that limited

of St. Bartholomew's Smithfield, on the other hand, specifically noted that the hospital should open its doors to this same group.

²² I consulted many different versions of Bromyard's *Summa* during the early stages of my work on this study in hopes of finding a discussion of *idiotia* in one of the variants. I believe that this transcription and translation is based upon an MS at Cornell University's Kroch library.

²³ In terms of how these debates informed the church's views on medicine, the participants of the Fourth Lateran Council determined that, "Since bodily infirmity is sometimes caused by sin, the Lord, saying to the sick man whom he healed: "Go and sin no more, lest some worse thing happen to thee" (John 5:14), we declare in the present decree and strictly command that when physicians of the body are called to the bedside of the sick, before all else they admonish them to care for the physician of souls, so that after physical health has been restored to them, the application of bodily medicine may be to greater benefit, for the cause being removed, the effect will pass away."

individual property rights under Roman Law. While these two discourses developed autonomously, it is easy to see how this overlap would have reinforced the idea that these disorders were somehow different from other afflictions of the body, perhaps creating what might be thought of as a discursive category of disability.²⁴

The absence of a concept of permanent, congenital intellectual impairment from the Bible, however, meant that it was not included in these discussions. Medieval hospital and almshouse charters made no provisions for the intellectually impaired, and preachers said nothing about their plight when discussing the proper recipients of Christian charity. Patristic and medieval theologians also rarely commented on idiots and fools, content to focus on questions about the nature of human reason, while leaving aside the issues raised by its absence.²⁵ Augustine's letter to Jerome quoted at the beginning of Chapter One was one of only a few texts in the corpus of patristic and scholastic theology that considered the philosophical questions posed by people who seemed to lack the rational soul common to humanity. The few thinkers who did write about reason's negation staunchly rejected the notion that any defects of memory or intellect could be severe enough to deprive those afflicted with them of the ability to participate in the most important activity of temporal life—directing ones actions towards union with God.

Augustine actually set the precedent for this position. For as it turns out, when he

²⁴ This is a point to which I hope to return in the future.

²⁵ I come to this conclusion only after surveying relevant sources, and following an exhaustive search for variants of *idiota* and the other adjectives for foolishness in the *Patrologia Latina*, *Corpus Christianorum*, and other online databases. Beyond the works discussed in the next few pages, only Isidore of Seville seems to have devoted attention to people whom we might think of as intellectually disabled. Isidore briefly discussed folly [*stultitia*] in Book X of the *Etymologies*, where he described a fool as “one whom shame does not incite to sorrow, and who is unconcerned when he is injured,” and “one who through dullness [*stuporem*] remains unmoved.”

queried Jerome about the problem of idiots in 415, he already had an answer to his questions in mind. Three years earlier, in the treatise *On Merit and the Forgiveness of Sins*, he addressed the topic of people “born with faculties akin to brute animals,” who were “so silly as to make a show of their fatuity for the amusement of clever people, even with idiotic gestures,” that common people called them “*Moriones*.” As in his later letter to Saint Jerome, Augustine aimed to refute the Pelagian claim that souls are assigned to bodies with differing capacities in accordance to their actions in their previous lives. To this end, he sought to establish that seemingly innate faculties such as reason and intellect had little relation to God’s favor and grace. Thus, he recounted the story of a certain member of this class who had “grace and merit beyond people of even the most acute intellect”, despite his fatuity. For while this man was “so patient to the degree of strange folly that he would allow any injury to himself,” he was nevertheless so intolerant of insults to the Christian faith that whenever people blasphemed the name of God he would pelt them with stones, regardless of their social position.²⁶

Despite the concern he would later voice for the challenge the existence of idiots posed to Christian moral theology, in denying through this example that a relationship existed between intellect and grace, Augustine suggested that so-called morons were not categorically different from people born with normal mental faculties. For while the Greek philosophical tradition may have held that humanity’s capacity for reason separates us from the beasts, Augustine, having developed a deep skepticism about the power of the human

²⁶ Augustine of Hippo, “A Treatise on the Merits and Forgiveness of Sins, and on the Baptism of Infants,” in *The Nicene and Post-Nicene Fathers: First Series Volume V – St. Augustine: Anti-Pelagian Writings*, trans. And ed. Philip Schaff, (New York: Cosimo Inc, 2007), 15-80; here, 41.

intellect in his youth, believed that man was defined by something higher—the desire for union with God, and ability to receive divine grace.²⁷ Man is, in other words, first a *moral* animal, whose limited intellectual powers only demonstrate the need for grace.

Society defines intelligence based upon the values it privileges and the skills it requires for participation. The definition of intellectual development disorder offered by the DSM-V, for instance, reflects that fact that modern American culture places a high premium the ability to communicate with a large range of people and function independently at home and in the workplace. In defining intelligence in this way, the APA ultimately contends that these are instrumental activities of daily living. In contrast, Augustine made intellectual ability a secondary concern in the search for redemption. In a moral universe where the desire to receive grace was the main requirement for meeting one's potential as a human, there was less distance between the foolish and the wise of the world. In other words, At the time Augustine was writing, the fundamental activities of human life were imagined in a way that made room for people with a wider variety of mental capacities on the spectrum of normal human types.

Augustine's argument in *On Merit and Forgiveness of Sins* established a tradition of asserting that little difference existed between the foolish and wise of the world, at least where the ultimate end of human life was concerned. Few theologians and philosophers in the Middle Ages concerned themselves with the topic of idiots, however those who did took Augustine's position as that of authority. Even Thomas Aquinas, whose life's work could be characterized as an attempt carve out space for the Greek philosophical tradition's

²⁷ Augustine details his rejection of Greek philosophy in Book VII of the *Confessions*.

glorification of the human intellect in a largely Augustinian theology, closely aligned himself with Augustine on the topic of idiots. For although Aquinas seemed aware that individuals had different intellectual capacities, so that some “said to be half-witted or foolish” lacked “sufficient knowledge for guidance of life,” he was firmly Augustinian on whether such people were fully able to fulfill the most important function of human life.²⁸

Aquinas only briefly touched upon human intellectual variance in the corpus of his work, and his theology did not acquire the prominence in the Catholic intellectual tradition that it has today until the Tridentine reforms. Nevertheless, in devoting even a few articles of *Summa Theologica* to the topic of people seemingly deprived of the light of natural reason, he afforded more consideration to these individuals than any of his contemporaries. More significantly, while Augustine’s theology of grace limited what he could say about human intellectual variance, in his brief treatments of the topic he differentiated between the temporary insane (*furiosi*) and people who lacked reason from birth (*amentes*), using language similar to that which was being used contemporaneously in legal contexts. Aquinas wrote the *Summa* around the same time English jurists were constructing a concept of idiocy based upon their readings of Roman Law, and the English courts were correspondingly beginning to treat idiocy as a condition that rendered those afflicted with it unable to manage their own affairs. We might then wonder whether Aquinas was aware of such developments (or similar developments on the continent), or whether this affinity reflected a broader cultural understanding of idiocy.²⁹ On account of this, I discuss his work in some detail

²⁸ ST I. Q.23. a.7

²⁹ This is a question I plan to return to in the future. Although I do not examine continental sources in this study, I think it would be quite useful to do so, particularly given affinities like that described above.

below.

Aquinas discussed human intellectual variance in four places in his *Summa*; his discussion of predestination in ST I q. 23, a.7; his discussion of mental blindness and sin in ST II.II q.15, a. 3; his discussion of wisdom and folly in ST II.II q. 46, a. 1 & a. 3; and his discussion of baptism in ST III q. 68 a. 12. At first glance, Aquinas' understanding of "fatuity" in these passages seems to resemble the modern concept of intellectual disability, as he repeatedly depicts it as a permanent disorder, acquired at birth or through illness, with some relation to human physiology.³⁰ For instance, in discussing predestination in ST I q. 23 a. 7, Aquinas acknowledged that while that most people have just enough knowledge "for the guidance of life," some people are *born* without the capacity for self-rule;

The good that is proportionate to the common state of nature is to be found in the majority; and is wanting in the minority.

The good that exceeds the common state of nature is to be found in the minority, and is wanting in the majority. Thus it is clear that the majority of men have a sufficient knowledge for the guidance of life; and those who have not this knowledge are said to be half-witted or foolish [*moriones vel stulti*].³¹

Similarly, when addressing the question of whether folly is contrary to wisdom in ST II.II q.46, a.1 Aquinas suggested some people are completely bereft of the sense required for rational deliberation. Differentiating between fatuity [*fatuitate*] and simply folly [*stultitia*], he asserted that folly is merely "opposed to wisdom as its contrary, while fatuity is opposed to it

³⁰ Part of the reason for this is that Aquinas relies on Isidore's Etymologies for his understanding, and the passages he cites seem to leave room for viewing foolishness [*stultitia*] as a permanent condition, regardless of whether Isidore intended them this way. In ST II.II q. 46 a. 1 for instance, Aquinas cites Isidore's assertions that "a fool is one whom shame does not incite to sorrow, and who is unconcerned when he is injured," as well as one whom "through dullness [*stuporem*] remains unmoved." These can be found in Etym. X, under the letter S.

³¹ ST I, 23.a.7.

as a pure negation; since the fatuous man lacks the sense of judgment, while the fool has the sense, though dulled [*obtusio*], whereas the wise man has the sense acute and penetrating.”³²

In making this set of claims Aquinas acknowledged that fatuity could be understood as something other than the impermanent state of acquired ignorance described in scripture, a position which he reaffirmed in his discussion of *stultitia* and sin in ST II.II q. 46 a. 2. Here, it becomes clear that while he viewed *stultitia* as a state of impermanent folly habituated when one “plunges his senses in to earthly things, whereby his sense is rendered incapable of perceiving divine things,” he also believed in a different kind of folly (*amentia*) that “arise[s] from a natural indisposition,” similar to intellectual disability as it is understood today.³³ In other words, he seemed to acknowledge that some deprivations of natural reason are intrinsic conditions of the body.

Strikingly, the language that Aquinas used to describe folly and fatuity also spoke to this division. Like his contemporaries, Aquinas used the terms that denoted folly in scripture, (such as *stultitia* and *stulti*), when referring to impermanent foolishness acquired through sin. However, in the few places where he discussed inborn fatuity, or foolishness one acquires through no fault of their own, he used terms borrowed from the medieval medical lexicon, such as *amentia*. He did this in ST II.II q. 46 a. 2, as described above, and also in ST II.II q.15, a.1, where he explained that mental blindness [*caecitas mentis*] can occur

³² ST II.II, 46.1. “Et differt stultitia a fatuitate, sicut ibidem dicitur, quia stultitia importat hebetudinem cordis et obtusionem sensuum; fatuitas autem importat totaliter spiritualis sensus privationem. [...] Unde patet quod stultitia opponitur sapientiae sicut contrarium; fatuitas autem sicut pura negatio. Nam fatuus caret sensu iudicandi; stultus autem habet, sed hebetatum; sapiens autem subtilem ac perspicacem.”

³³ In STII.IIae q. 46 a. 2. It is interesting here that the first type of folly Aquinas identifies reinforces the relationship between foolishness and moral depravity found in Corinthians and Acts, but also presents foolishness as a transitory state that one enters into by choice. The associations with sin are only lost when foolishness is reimagined as a permanent, congenital disorder.

when the “light of natural reason [...] is prevented from exercising its proper act, through being hindered by the lower powers which the human intellect needs in order to understand, for instance in the case of the *amentibus* and *furiosis*.”³⁴ In both of these instances, Aquinas used medical terms to differentiate between innate cognitive deficits present at birth or acquired from illness, and the foolishness people fall into through moral depravity. On one hand, this suggests that Aquinas may have had a concept of a permanent, congenital cognitive impairment. But if this is the case, then it also points to the fact that no standard vocabulary existed for referring to congenital intellectual impairment at the time he was writing. The term *furiosis/furore*, used in the passage cited above, was widely used in contemporary legal and medical texts to refer to a violent insanity. Yet, as I shortly discuss, the medieval medical tradition did not present *amentia* as a permanent disorder. Instead, it was seen as a temporary and curable disease, more related to insanity than idiocy.³⁵ In fact, *amentia* did not acquire associations with intellectual impairment in medical thought until the late eighteenth century, when the Scottish physician William Cullen defined it as “imbecility of the judging faculty with inability to perceive and remember,” in his very influential

³⁴ He similarly uses medical terms to describe folly that one acquires through no fault of one’s own, in ST III.Q68.a.12. See discussion on page 19.

³⁵ For instance, as I discuss below, Bartholomeus Anglicus, a leading medical authority in the later Middle Ages, characterized *amentia* as the same condition as *mania*, an “infection of the anterior section of the cerebrum, with loss of imagination.” Aquinas’ use of *amentia* here then, either suggests that he did not intend to describe a permanent, congenital intellectual disability, but simply a mental illness one could not be faulted for (imbecility is a term supplied by modern translators). Alternatively, Aquinas may have wished to distinguish between madness and intellectual impairment, but lacked a vocabulary to do so. Judging from the distinction he makes between the *amentes* and *furiosi* in ST III. Q 68, where he holds that *amentes* [...] sunt a *nativitate* tales, nulla habentes lucida intervalla, in quibus etiam nullus usus rationis apparet,” the latter seems much more likely. Whether he associated congenital mental impairment with a specific idea of intelligence is another matter altogether.

classification of diseases, *Synopsis Nosologiae Methodicae* (1769).³⁶

Regardless, these passages seem to leave open the possibility of viewing this type of fatuity as a state of permanent cognitive difference, located outside the spectrum of normal human types. Yet, it is equally important to note that even if Aquinas did believe that some people were born without the light of natural reason, even his intellectualist account of human agency did not prevent him from viewing such people as fully capable of participating in the central rites of Christian life, and undertaking moral action.³⁷ From his discussion in STI q. 23 a.7, it becomes apparent that Aquinas, like Augustine, believed that fools were not so different from the wise. Here Aquinas explained that since only a very small minority of people were capable of “the profound knowledge of things intelligible,” required for the unaided intellectual vision of God, people born with average intellectual capacities were just as dependent upon God’s grace for their salvation as *moriones* and *stulti*.³⁸

More significantly, in each section of *Summa Theologica* that touched upon foolishness, Aquinas was careful to note that even natural fools were not deprived of rational souls. In his treatment of mental blindness in ST II.II q.15, a.1 for instance, he contended that while some people seemed to be born without the light of natural reason, “such light, since it pertains to the species of the rational soul, is never forfeited from the soul,” but only

³⁶ German E. Berrios, *The History of Mental Symptoms: Descriptive Psychotherapy since the Nineteenth Century* (Cambridge: The Press Syndicate of the University of Cambridge, 1996), 159.

³⁷For an overview of Aquinas’ understanding of the relationship between the intellect and the will, which holds significance for this discussion, see, Bonnie Kent, *The Virtues of the Will: The Transformation of Ethics in the Late Thirteenth Century* (Washington D. C.: Catholic University of America Press, 1995) ch. 4 passim. A more concise discussion of the voluntarist-intellectualist debate in the thirteenth century can be found in Tobias Hoffman, “Intellectualism and Voluntarism,” in *The Cambridge History of Medieval Philosophy*, eds. Robert Pasnau and Christian Van Dyke (Cambridge: Cambridge University Press, 2010), online edition accessed 2 June, 2012, http://histories.cambridge.org/extract?id=chol9780521762168_CHOL9780521762168A032.

³⁸ Aquinas held that most people need grace to obtain salvation because that this capacity, “exceeds the common state of nature, and especially in so far as this is deprived of grace through that corruption of original sin.”

impeded. This position is even more transparent in his discussion of whether imbeciles and madmen [*amentes* and *furiosi*] ought to be baptized in ST III q. 68, a. 12. In each of the initial objections to the *Quaestio*, Aquinas' imaginary interlocutor puts forth variants of the argument that madmen and imbeciles should not be baptized because they lack the use of reason [*rationis*], required to consent.³⁹ Aquinas denies this however, arguing that even *amentes* from birth [*nativitate*], who have no lucid intervals [*lucida intervalla*], and show no signs of reason differ from irrational animals because they only lack reason accidentally “through some impediment in a bodily organ”, i.e. not through something intrinsic to their species. For, they, like all other humans possess a rational soul by virtue of their humanity, and thus receive the same benefits from baptism as children, who also lack the reason to consent.

Ultimately then, Aquinas' conviction that even people who lack reason from birth must have a rational soul by virtue of being human, led him to side firmly with Augustine on the question of whether they were capable of salvation. It is unlikely that the English jurists who first placed restrictions on the rights of idiots ever entertained the question of whether such people had rational souls, since these queries were the province of men like Aquinas rather than Bracton. Indeed, Aquinas' refusal to exclude natural fools from the possibility of salvation, and thus participation in the most important activities of Christian life, stands in sharp contrast to the restrictions that would be placed upon *idiota* under law. Even if Aquinas did believe that some people could be born bereft of reason, such people occupied

³⁹ The objections contain quite a few comparisons between *amentes* and “irrational animals,” perhaps demonstrating one view of idiots that existed during Aquinas' time (although a view Aquinas ultimately rejected). Objection 2 for instance states that “man excels irrational animals in that he has reason. But *furiosi* and *amentes* lack the use of reason, and in some cases we do not expect them ever to have it, as we do in the case of children. It seems, therefore, *amentes* and *furiosi* should not be baptized, just as irrational animals are not.”

a very small place in his work, especially relative to his copious discussions of the foolishness—or ignorance—that people acquire when they turn their minds from God.

In summation, Aquinas' views on fatuity, mental blindness, and imbecility, afford us evidence of his awareness that different individuals had different intellectual capacities. His lack of a coherent vocabulary for describing the cognitive impairment, moreover, suggests that such a vocabulary did not exist in contemporary medicine, in contrast to disorders such as mania, where Aquinas' descriptions mirrored those of his medical contemporaries. Yet while there is an affinity between Aquinas' thought and that of the legal scholars who first defined idiocy as a permanent, congenital disorder, he did not go so far as to assert that fools from birth lacked moral agency. This is due to the fact that his awareness of this spectrum of intellectual ability had no direct impact on the theological issue at the heart of these discussions, that of God's grace. And amongst theologians, Aquinas's views on the potential for permanent intellectual disability were unusually strong. The vast majority of medieval theologians continued to portray foolishness as temporary and reversible state of unknowing or ignorance, with no associations with a specific intelligence. This usage persisted long after so-called idiots began to appear in the English royal courts. As late as 1450 for instance, Nicholas Cusanus wrote his *Idiota de Sapentia et de Mente* in the voice of an *idiota*, or a layman, foolish not before man, but simply before the magnificence of God.

Cognitive Impairment in Medieval Medicine

If the central issue for theologians was to explain away intellectual impairment in an

effort to emphasize all of humanity's need for God's grace, the task for physicians was to describe its physical manifestations. If we follow the most widely accepted account of intellectual disability's conceptual origins, concern for idiots should have only begun to surface in religious and popular discourses once a concept of idiocy had emerged in medical thought. Nevertheless, the medieval medical tradition was overall even more silent than the theologians on the topic of congenital intellectual impairment, or "idiocy."

I use the term "medical tradition" in this study to refer to the set ideas and texts that informed medieval understandings of the body and its ailments, but this should not obscure the immense variety of beliefs and practices that fell under the umbrella of "medicine" during the Middle Ages. Medical knowledge was a blurry category in Western Christendom, rather than a self-contained discourse. Its fluid borders encompassed a syncretic blend of religious belief, folk practices, and transmitted Graeco-Roman medical theories, and its practitioners constituted an equally diverse group. Among their ranks were itinerant healers, barber surgeons whose status was similar to that of other tradesmen, midwives and women trained in herbal lore, and elite clerical writers educated first in monasteries and cathedral schools, and later at the universities of Oxford and Cambridge.⁴⁰ Yet nowhere in the writings of practitioners at any level of society— surgical manuals, herbals, medical compendiums and commentaries, and "encyclopedias of universal knowledge" —does one find discussion of any disorder resembling intellectual disability as we think of it today. For, while medical authorities discussed a wide array of other mental disorders, none of these were seen as

⁴⁰Faye Getz, *Medicine in the English Middle Ages* (Princeton, New Jersey: Princeton University Press, 1998), 3-19. Getz charmingly describes medieval medical practitioners as "brewers who practiced surgery, abbots who delivered babies, friars who wrote medical books, a chancellor of the exchequer who doctored a king, a Cistercian surgeon," Ibid., 19. Also see Ronald C. Finucane, *Miracles and Pilgrims: Popular Beliefs in Medieval England* (New York: St. Martin's Press, 1995), 59-82.

congenital or incurable. I am not the first to note that the medieval medical tradition lacked a concept of intellectual disability. As discussed in Chapter One, similar discussions can be found in the work of Tim Stainton, C.F. Goodey, and Jonathan Andrews. These studies, however, do not directly engage with medieval texts. Thus, cognitive impairment's place in the medieval medical tradition merits further exploration if we are to gain a deeper understanding of intellectual disability's conceptual origins.

Medieval medical writers and practitioners ultimately had little to say about permanent, congenital cognitive disorders because such conditions were deemed outside the scope of medicine. From the eleventh century onward, learned medical practitioners in England and abroad received their ideas about the disorders of the body and mind from abridged compilations of the works of Galen and Hippocrates, which reached the Latin West during the eleventh and twelfth centuries via Arabic translations. The most widely read were Avicenna's *Canon of Medicine*, and Hunayn ibn Ishaq al-'Ibadi's *Isagoge Ionannitii ad Tegni Galeni* (or, the *Articella*, as it was later called), which medical writers in England readily abridged and adapted. Taken together, these works provided their medieval readers with many of the most readily recognized elements of pre-modern medicine; the theory of the four humors, the theory of the four temperaments, and the belief that the brain is divided from front to back into three ventricles, as well as a standard taxonomy of illnesses, their causes, and their cures.⁴¹

These works were not at all silent on the topic of mental disorder. Treatise Four,

⁴¹ Getz, *Medicine in the English Middle Ages*, 35-65 offers a comprehensive overview of the sources for medieval English medical texts. For fuller coverage of Galen's reception in the Latin Middle Ages however, see, Vivian Nutton, "The Fortunes of Galen," in *The Cambridge Companion to Galen*, ed. R.J. Hankinson (Cambridge: Cambridge University Press, 2008) 355-390.

Book III of Avicenna’s immensely influential *Canon of Medicine* had included discussions of lethargy, insomnia, delirium, deterioration of memory, deterioration of the imagination, foolishness (although this category was tellingly omitted from abridgements produced in the Latin West),⁴² various types of mania in including *delirium furibundum*—furious mania—and mania that resulted from the bite of a dog, paranoia, melancholia, “kotrob”—a “melancholy making men fancy themselves wolves and run off howling into the woods,”—obsession, vertigo, nightmare, epilepsy, and apoplexy, under the heading of “head diseases and their most adverse affects.”⁴³ Just as the gospel accounts of Christ’s healing miracles informed how later religious authorities thought about illness and disease, these taxonomies determined which ailments medieval medical writers would concern themselves with when they wrote their own scholarly treatises and practical handbooks. Medical writers in the medieval England typically adhered to the taxonomy detailed above, omitting some disorders at times (most notably foolishness), but for the most part deviating from it only slightly. For instance, Gilbertus Anglicus (c. 1180- c. 1250), one of the most influential writers in the English medical tradition, included discussions of headache, migraine, scotomye, frenzy, mania, lethargy, epilepsy, and apoplexy in his practical medical treatise, *Compendium Medicinae*.⁴⁴

The medical texts that reached the Latin West, moreover, provided their readers with

⁴²This moreover did not refer to *congenital* intellectual impairment in this discussion, since such impairments were deemed outside the scope of medicine.

⁴³ In contrast, Bartholomeus Anglicus, the author of an immensely popular “encyclopedia of university knowledge”, *De Proprietatibus Rerum*, discussed a more limited list of ailments, leaving out everything besides frenzy, amentia, mania, stupor, and lethargy. The original source for all of these taxonomies was Galen, who listed coma, apoplexy, paralysis, cataplesy, vertigo, fainting, epilepsy, and phrenitis, among the disorders that could afflict the mind, notably excluding reference to any condition resembling intellectual disability.

⁴⁴ Faye Getz, *Healing and Society in Medieval England: A Middle English Translation of the Pharmaceutical Writings of Gilbertus Anglicus* (Madison: University of Wisconsin Press, 1991), 16.

vividly detailed accounts of the symptoms that typically accompanied the each affliction of the mind. An early copy of Gerard of Cremona's translation of Avicenna's *Canon*, for instance, noted that melancholy causes men to fear things that do not exist, or things that are not customarily feared;

For certain bodies fear that the sky will fall on them, and others fear that the earth may devour them. Others fear robbers. Others fear lest a wolf approach them. [...] They imagine themselves made kings or wolves or demons or birds or artificial instruments. Further, there are certain kinds of melancholiacs who laugh whenever they imagine something that pleases or delights them, especially those whose melancholy is pure melancholy. There are certain ones who love death. Others abhor it. Melancholy's signs, which are in the brain, are especially an overflowing of thought and a constant melancholic anxiety, and a constant looking at only one thing, and at the earth.⁴⁵

While a number of scholars have suggested that medical practitioners remained unconcerned with madness until early modernity, medieval medical writers were, in fact, quick to adapt these descriptions to better reflect the values of medieval Christian culture.⁴⁶ For instance, in his 1230 *Compendium Medicinæ*, Gilbertus Anglicus omitted fear of robbers from the symptoms of melancholy, and instead noted that people suffering from it sometimes think they see "black devils, or monks that want to slay them."⁴⁷ A decade later, Bartholomeus Anglicus, whose encyclopedic *De Proprietatibus Rerum* became one of the most widely copied

⁴⁵ "From Avicenna, 'On the Signs of Melancholy's Appearance,' in *On Black Bile and Melancholy, from the Canon of Medicine* (ca. 1170-87)," in *The Nature of Melancholy, from Aristotle to Kristeva*, ed. Jennifer Radden (Oxford: Oxford University Press, 2000), 75.

⁴⁶ As discussed in the previous chapter, the most prominent proponent of this view is Foucault, however variants of it can also be found in most histories of madness in early modernity. See for instance, H.C. Eric Midelfort, *A History of Madness in Sixteenth Century Germany* (Palo Alto: Stanford University Press, 1999), or any work on the history of madness by Roy Porter.

⁴⁷ Faye Getz, *Healing and Society in Medieval England: A Middle English Translation of the Pharmaceutical Writings of Gilbertus Anglicus* (Madison: University of Wisconsin Press, 1991), 16.

works in England, opined that the mad sometimes think, “the angel who holds the world is tiring or God is growing old,” and Bartholomeus Anglicus’ contemporary Arnold of Villanova added to this that people suffering from melancholia, “believe that they lie in coffins, or that they have not heads [...] or that they hold the whole world in their fist and that it is subject to them. These additions suggest that medieval medical writers did not simply copy received knowledge, but were instead concerned with making Graeco-Roman understandings of mental disorder resonate with a Christian readership.

That said, one at times gets the sense that men like Bartholomeus, Gilbertus, and Arnold were simply using different language to describe the same object psychiatrists are concerned with today. In *Compendium Medicinæ*, Gilbertus noted that the first signs of melancholy included, “bad judgment, fear without cause, quick anger, delight in solitude, shaking, vertigo, inner clamor, and tingling, especially in the abdomen.”⁴⁸ While some foreign elements exist in this description (few today after all, would associate melancholia with laughter), medieval understandings of melancholy, mania, and frenzy ultimately seem surprisingly similar to our own. This affinity makes the fact that the medieval medical tradition construed intellectual impairment so differently than the medical community does today all the more striking. It moreover suggests that modern medicine is still more affected by the vestiges of the distant past than we might like to imagine, given that these taxonomies reflected the culture in which they were produced, far more than evidence based medical science.

Yet we do not find similar innovations *or* affinities in medieval medical writer’s

⁴⁸ Ibid.

discussions of the disorders associated with cognitive impairment; for from these same works, medieval readers would have gleaned a number of ideas about the nature of the brain, disease, and cognition that precluded them from including a concept of permanent, congenital, intellectual impairment in their taxonomies of mental illness. The first of these was related to the way that Avicenna—and by extension, his medieval translators—presented the relationship between cognition and knowledge in the medical works that reached the Latin West. Medieval natural philosophers followed Avicenna in believing that the brain was divided from the front to the back into three cells, *phantasia*, *cogitatio*, and *memorativa*. The foremost cell closest to the eyes contained the *imaginatio and sensus communis*, which were responsible for receiving and storing the information taken in by the senses. The middle cell contained the *imaginativa* and the *vis aestimativa*—the highest judging power. These two faculties were responsible for using the information presented by the *imaginatio* to make reasoned judgments about the world. As described by Aquinas, the *imaginativa* “combines and divides imaginary forms: as when from the imaginary form of gold, and the imaginary form of a mountain, we compose a golden mountain, which we have never seen.”⁴⁹ The *aestimativa* (which was sometimes also called the *cogitativa* or *ratio particularis*) then uses these forms to deduce general conclusions, and decide how to act.⁵⁰

Medieval commentators all agreed that the middle cell was most clearly connected to reason, and that the *imaginativa* and *vis aestimativa* needed to function properly for a person to make and act upon rational judgments. Yet, medieval philosophers and medical writers were of different opinions about the exact function of the middle cell. Some, including Aquinas,

⁴⁹ Aquinas, ST I, q. 79.

⁵⁰ Ruth E. Harvey, *The Inward Wits* (London: Warburg Institute, 1975), 55.

held that it was responsible for both reason and free choice. In the *Canon of Medicine*, however, Avicenna had promoted the idea that while the middle cell could judge and combine information, a separate incorporeal faculty, was responsible for all of our knowledge, understanding, and ability to construct universal concepts from information we receive from the external world. For following Plato's suspicion of matter, Avicenna wanted knowledge and understanding to be independent of the senses. He thus proposed that an incorporeal agent intellect existed in the soul independent of the body, which was able to reason and construct universal concepts without reference to the information the senses presented to it.⁵¹ The source of human reason is then located outside the human body. Ultimately, even if the medieval medical tradition had been concerned with permanent, incurable disorders, any medical practitioner or writer who followed Avicenna would have still placed human reason and its defects outside the scope of medical knowledge.

The primary reason medieval medical writers excluded a concept of intellectual disability from their taxonomies of mental illness, however, was related to the fact that they understood mental disorder, and disease in general, differently than we do today. We tend to think of the various disorders that can afflict the mind as ontologically distinct categories. When a psychiatrist diagnoses a child with ADHD, for instance, it is assumed that they will always have ADHD—they will not “recover” from it, nor will it progress into bipolar disorder, or any other mental ailments detailed in the DSM-IV. The works that reached the medical faculties of the medieval Latin West, however, did not depict the various disorders

⁵¹ Contrary to this, Aquinas believed that a human was by definition a composite of soul and body, and the soul was thus unable to be separated from the matter that contained it. Aquinas addresses this at length in ST I.II q. 84 a. 1, and my summary here is indebted to Harvey, *Inward Wits*.

they described as distinct from each other, but rather as fluid points on a progressive spectrum of human health and sickness. *The Canon of Medicine*, the *Articella*, and other canonical works in the medieval medical tradition placed all recognized mental disorders under the general umbrella of “sicknesses” of the head, a category that encompassed disorders ranging from lethargy to phrenitis, and medieval physicians replicated this in their own writing. These texts were careful to point out the different symptoms by which these disorders could be distinguished from each other. For instance, in his influential *On Acute and Chronic Disease*, Caelius Aurelianus took care to note that mania and phrenitis differed in that “in mania the madness precedes fever, [...]in phrenitis however, the fever always precedes the madness.”⁵² Nevertheless, they maintained that the diseases were ultimately progressive; mania could develop into phrenitis, and phrenitis into lethargy if left untreated.

This understanding of disease ultimately left no room for the distinction between intellectual impairment and insanity required for a concept of permanent, congenital intellectual disability. For the division between idiocy and insanity that eventually emerged in medieval law relied upon the premise that idiocy was congenital and permanent, while insanity was a transitory state marked by lucid intervals; but if all diseases are progressive by nature, then they are also temporary, and curable. This assumption was so strongly present in the Middle Ages that even disorders in the medieval medical lexicon that seemed to resemble intellectual disability were not construed as permanent. Stupor, lethargy, and oblivion, overlapping conditions, whose symptoms included, loss of memory and excessive sleep, seem to be the best candidates for a concept in medieval medicine resembling

⁵² Caelius Aurelianus, *On Acute and Chronic Diseases*, ed. Israel Edward Drabkin (Chicago: University of Chicago Press, 1950), 537.

intellectual disability as it is understood today.⁵³ Over a two hundred year period, medical writers in England described these synonymous impairments in a way that implied that they deprived those afflicted with them of sensation and reason. Gilbertus Anglicus, for instance, described lethargy as “a sickness that makes man so forgetful that when he does a thing he has no memory that he did it.”⁵⁴ Bartholomeus Anglicus likewise described lethargy or stupor (*stupore sive litargia*) as “a blindness of reason, as if he who has it were asleep with their eyes closed.”⁵⁵ Even as writers took pains to adapt the descriptions of insanity they found in medical texts to better reflect their culture, these characterizations remained largely unchanged. During the late fourteenth century, John Mirfield, whom we encountered at the beginning of this chapter described oblivion or lethargy as “a passion of the posterior cell of the brain (celebrui) causing a corruption of memory.”⁵⁶ In a different text, he described *stupor*, as “a sleep of the imagination.”⁵⁷

Yet none of the writers believed that stupor, lethargy, and oblivion were permanent, or even associated them with the part of the brain that most closely connected to the human intellect. (Note that all the conditions in the medieval lexicon that seem to resemble intellectual disability did not affect the middle cell of the brain, where the *aestimativa* was housed, but rather the posterior cell that contained the *memorativa*.) Instead, they held that all

⁵³ Many writers in the English medical tradition used these terms interchangeably. Mirfield for instance even noted that “lethargy [*litargia*] is called oblivion with sleep,” and characterized it as “oblivio mentis quae fit ex flemate replente partem cerebri superiorem.”

⁵⁴ Getz, *Healing and Society*, 16. Anglicus also said of lethargy that, “it makes men not answer when they are called, not close their mouths when they are open, sleep deeply and heavily.”

⁵⁵ Bartholomeus Anglicus, *On the Properties of Things: John Trevisa's Translation of Bartholomeus Anglicus De Proprietatibus Rerum: A Critical Text*, ed. John Trevisa et. al. (Oxford: Clarendon Press, 1975), 350. Anglicus also characterizes stupor or lethargy as a “disease of the soul,” that makes men not discern sensible things.

⁵⁶ In his discussion of lethargy Mirfield noted that it puts men into a false sleep, so that “if they are made to speak they will hardly respond, and if he should respond he will say nothing beyond what he is told.”

⁵⁷In the same place he noted that, “Stupor est disposition mentis quando intrumenta sensuum ad sensum parata animale sensu privantur vel sic.”

of these conditions might be cured with the right treatment, or alternatively, progress into other “sicknesses of the head” with the wrong one. Gilbertus Anglicus, for instance, noted that “if lethargy commeth to a frenlike man, it is a token of death but if frenzy comes to him that hath lethargy it is a good token,” and we can find similar statements in Bartholomeus Anglicus and Mirfield.⁵⁸ Medieval physicians and learned medical writers were thus unconcerned with anything resembling intellectual disability as it is understood today, because its status as a permanent, incurable disorder placed it outside the scope of medicine.

Idiocy in the Law

The absence of a concept of permanent, congenital intellectual disability in medieval medicine and theology seems to support to previous scholarship’s claim that the modern concept of idiocy did not exist until the introduction of new medical theories in the seventeenth and eighteenth centuries. However in asserting that no concept of intellectual disability existed prior to the enlightenment, other scholars have overlooked the conceptualization of reason’s absence in a third, distinct discourse. I now move the debate into the realm of law.⁵⁹

The law had long possessed that language for referring to permanent congenital cognitive impairment that physicians like Mirfield lacked. In 451 BCE, the Twelve Tables, the earliest codification of the personal rights and legal procedures at the foundation of the constitution of the Roman Republic, stipulated that the insane (*furiosi*)

⁵⁸ Faye Getz, *Healing and Society*, 13.

⁵⁹ See review of scholarship in Chapter One.

and prodigals (*prodigi*) should be entrusted to the custody of their paternal relatives, if they were not under the care of anyone else.⁶⁰ This was the first legal enactment to place limitations on the rights of people deemed mentally impaired, and it eventually became the basis for an expanded discussion of the law of guardianship in the introduction to the topic of mental incompetence from Book I, 23 of Justinian's *Institutes*, the elementary textbook of all who studied Roman law during the Middle Ages. Here, it was noted that;

Madmen [*furiosi*] and prodigals [*prodigi*], although past the age of twenty-five [the age after which minors were able to act on their own behalf without guardians], are yet placed under the curatorship of their *agnati* by the law of the Twelve Tables. But, ordinarily, curators are appointed for them, at Rome, by the prefect of the city or the praetor: in the provinces, by the *praesides*, after inquiry into the circumstances has been made. Persons who are of unsound mind [*mente captis*], or who are deaf, mute, or subject to perpetual maladies, *since they are unable to manage their own affairs* [emphasis added], must be placed under curators.⁶¹

The *Institutes* also specified that “women, persons under the age of puberty, slaves, madmen, dumb persons, deaf persons, prodigals,” could not have property in their

⁶⁰ Specifically, we first find this prescription in Law VII, Table V of the Twelve Tables. It is interesting that the mentally impaired were to be entrusted to their *paternal* relatives under the law of the Twelve Tables, because while this was done at the time to ensure that any land they might hold would end up in the hands of people who shared their interests, the law in medieval England specifically noted that the mentally impaired *should not* be entrusted to the custody of close relatives, since this could result in their abuse and disinheritance. I discuss this in greater detail in the next chapter.

⁶¹ *Justinian's Institutes*, ed. Paul Krueger, trans. Peter Burkes and Grant McLeod (Ithaca, Cornell University Press, 1987), Book I, 24,3-4. Elsewhere (Digest 27.10.1 pr.) Justinian offered a more specific definition of *prodigus*, noting that the term denoted “one who does not regard time or limit in his expenditures, but lavishes (*profundere*) his property by dissipating and squandering it.” Similarly, in the Digest (D. 50.17.5) he described *furiosi* as people “who cannot make any transaction because [they] do not understand what [they] are doing.” Adolf Berger, *Encyclopedic Dictionary of Roman Law* (New Jersey: The Lawbook Exchange, 2004), vol. 43, Pt. 2, 1953, 655, and 420.

power, make wills, or act as witnesses in court.⁶² Mental incompetence was thus just one of several factors that excluded people from dealing with their own property and demanded a curator. These curators were entrusted with the management of most aspects of their wards' financial and public lives until they came of age, or recovered from their condition. Beyond this, the *Corpus Iuris Civilis* [CIC] had relatively little to say about the civic limitations of the mentally incompetent. Instead, the texts that comprised it devoted considerably more attention to explaining why insane people are incapable of deliberate attempt to harm, and thus should not be subject to criminal prosecution.⁶³ Nevertheless, the *Institutes* eventually acted as a prime source for subsequent laws limiting the rights of the mentally incompetent in England and on the Continent, and so it is with them that the history of intellectual disability in the West must begin.

Medieval England was fully aware of Roman law as a model of the way human law ought to be, though it imbibed less of its actual rules and doctrine than was the case in most of Continental Europe.⁶⁴ Yet until the later Middle Ages, discussions of the mentally incompetent were absent from English legal treatises, and the laws of England did not designate a separate space in society for this class of people. In the late twelfth century for instance, the *Treatise on the Laws and Customs of the Kingdom of England* that goes by the name of Ranulph de Glanvill omitted any consideration of people who lacked the

⁶² *Institutes*, Book II, 10.

⁶³ The Digest was the first text to make this claim, which is now the basis of the modern insanity defense in England and America. See Walker, *Crime and Insanity in England*. The terms used in law texts to describe the insane were *furor*, *demens*, *mente captus*, *caevissimus furor*, *non sanae*, and *non compos mentis*, of which only *furor* overlaps with terms found in contemporary medical texts.

⁶⁴ For a discussion of the CIC's transmission during the early Middle Ages see Charles Radding and Antonio Ciaralli, *The Corpus Iuris Civilis in the Middle Ages: Manuscript Transmission from the Sixth Century to the Juristic Revival* (Leiden: Brill, 2007), 35-64. A less specialized discussion can also be found in James A. Brundage, *The Medieval Origins of the Legal Profession: Canonists, Civilians, and Courts* (Chicago: University of Chicago Press, 2008), 56-61.

intellectual capacity to manage lands despite being of the legal age to do so from his discussions of guardianship and wardship. Instead, the sections of the treatise that dealt with these issues took their cue mostly from Western French and English custom to focus on questions about legal majority, outlining the ages at which people from various social classes could marry, inherit, and make contracts and wills.⁶⁵ Glanvill's silence on mental incompetency suggests that when laws did eventually emerge in England to deal with people deemed mentally incompetent, they did not originate in English custom.

By Glanvill's day however, quite a number of English jurists and some practicing lawyers had read the CIC, and received its lessons in a form dictated by the standard glosses added in the Continental schools. For during the late eleventh century Western Europe had experienced a widespread revival of interest in Roman Law, following the rediscovery of a manuscript of Justinian's *Digest* in Italy. We do not know exactly what provoked medieval jurists to study Roman Law after centuries of relative neglect (for while the *Digest* had been lost, manuscripts of the *Institutes* and *Codex* had remained in circulation); however some scholars have speculated that it was related to the need for a system of laws better suited to the issues that would arise in a market economy following the expansion of commercial activity in Europe after 1050. Specifically, proponents of this view hypothesize that a rise in urban populations and expansion of long distance trade in the two centuries following 1050 created a need for a body of laws better suited to addressing issues related to "commercial contracts, credit and banking, property

⁶⁵ These rules clearly reflected customary practice. For instance, when discussing the age of legal majority he held that the son of a knight reached it at twenty-one, a stockman at fifteen, and the son of a burgess only after, "he has discretion to count money and measure cloth in like manner to manage his father's other concerns."

transfers, insurance, corporations, municipal government, and [...] the increasing centralization of royal governments,” than those derived from Germanic custom.⁶⁶ Regardless, the *CIC* was soon taught in the University of Bologna, which became the site of the first European law school shortly thereafter. From there, it eventually reached the rest of Europe via the commentaries of Bolognese glossators.⁶⁷

While the revival of Roman law transformed the theory and practice of law on the continent, England never fully embraced it, possibly due to the fact that it had developed a more coherent legal system than its continental counterparts by the time it was reintroduced. However, shortly after the *Corpus Iuris Civilis* crossed the channel by way of glossators, English jurists began to place limits on the rights of people deemed mentally impaired based upon the proscriptions they discovered in the *CIC*. The next great English legal treatise, the *De Legibus Consuetudinibus Angliae* (*On the Laws and Customs of England*), that has gone under the name of Bracton, initially appeared in the 1220s—only three decades after the Glanvill treatise. Yet, departing from his predecessor, Bracton closely followed the *Institutes* when constructing the list of people who ought to be excluded from rights of person and property. Echoing Book II, Chapter 10 of the *Institutes* for instance, Bracton, dictated that fools, idiots, madmen, and “people without sense and reason [...] not far removed from brutes,” were unfit to inherit, acquire or alienate property, enter into contracts, stipulate on their own behalf or that of others, nor be held culpable for any crime, as their lack of understanding [*ratio*] deprived them

⁶⁶ For an overview of the relevant scholarship, see Brundage, *Medieval Origins of the Legal Profession*, 75-125.

⁶⁷ For more on Roman law as it pertained to mental incompetency, see Gershom Berkson, “Mental Disabilities in Western Civilization: From Ancient Rome to the Prerogativa Regis,” *Mental Retardation* 44 (2006) 28-40.

of the ability to consent.⁶⁸ The treatises that followed “Bracton” at the end of the century, *Fleta*, *Britton*, and the *Mirror of Justices*, largely reiterated these proscriptions.⁶⁹

As an astute reader may have noted, for reasons that still elude modern scholars, Bracton, and later legal treatises, used the term *idiota* where Justinian had used *prodigi*. This innovation is somewhat ironic, given that when the Twelve Tables had initially counted prodigals—or spendthrifts—among the group of people unable to manage their own affairs, the term *idiota* had meant almost exactly the opposite of prodigality; as discussed earlier, it referred to people excessively preoccupied with their own affairs, rather than oblivious to them. Nevertheless, in using *idiota* in place of *prodigi*, English jurists fused the religious idea of someone in a state of innocent ignorance with Roman law’s concept of someone unable to manage their own financial affairs, ultimately creating an understanding of what it meant to be an idiot that would last far beyond the Middle Ages.⁷⁰

For in contrast to the *Corpus Iuris Civilis*, which associated the same set of legal restrictions with all of the disorders that limited property rights under Roman law, by the end of the thirteenth century English jurists would draw large qualitative and legal

⁶⁸ *Laws and Customs of England*, vol. 2, 286; vol. 4, 292; vol. 4, 350-351; vol. 4, 309; vol. 2, 135.

⁶⁹ Relevant discussions can be found in *Britton*, Book I, Ch. 14.3; Book I, Ch. 23.1; Book II, Ch. 10.1; Book II, Ch. 21.11; Book II, Ch. 5.2; Book II, Ch.2:20, and H G Richardson and G O Sales, eds., *Fleta*, (London: B Quaritch, 1955-84), vol. 1, xi, 168. For a discussion of the Crown’s authority in matters pertaining to the mentally incompetent, also see James R. King, “The Mysterious Case of the “Mad” Rector of Bletchington: The Treatment of Mentally Ill Clergy in Late Thirteenth Century England,” in *Madness in Medieval Custom and Law*, ed. Wendy J. Turner (Boston: Brill, 2010), 58-80; here, 73-76. Richard Neugebauer has a similar discussion in “Mental Handicap in Medieval England,” 24-27.

⁷⁰ One hypothesis I have about why jurists used *idiota* in place of prodigal, is that they may have wanted to contrast the legal capacity of idiots/prodigals, who generally appeared in the English courts in a civil context, to that of madmen whose condition was almost always brought to the court’s attention by people hoping to save them from execution by a pardon after they had been convicted of a violent crime.

distinctions between *idiotae* and *furiosi*. In the 1220s, the Bracton treatise had simply followed the *Corpus Iuris Civilis* in locating idiocy among the set of conditions that limited one's ability to consent, and thus possess or alienate property. It had not however addressed whether the Crown had any particular claim to idiots' lands, nor whether the rights of idiots differed from those of people who suffered from more temporary conditions.⁷¹ During the last quarter of the thirteenth century however the *Prerogativa Regis*, a summary of the monarch's customary rights and privileges described the Crown's rights over idiots in a way that went far beyond anything in Bracton or Roman Law, and in the 1290s *Fleta* and *Britton* did the same.

The *Prerogativa Regis* asserted the Crown's right to take the persons and property of its mentally incompetent subjects into its custody, and specified that the Crown had different rights over the mad and idiots. As madness was a temporary disorder, it could not permanently deprive those afflicted with it of the rights of person and property. Idiots on the other hand, could never enjoy the rights and responsibilities associated with legal adulthood, because their lack of reason was permanent. I quote the relevant sections in full below.

⁷¹ I wonder whether this is because the Bracton author based his understanding of the laws of guardianship on Roman Law, which presumed the existence of a system of personal guardianship, under which custody of the mentally incompetent would have gone to their near relatives or perhaps, in medieval England, their lords. I have to this point found no evidence that lords claimed the right to custody of *idiotae* before the Crown began to assert its rights over their lands in the last quarter of the thirteenth century. This does not necessarily imply that they did not claim the right to appoint guardians for their mentally impaired tenants. Rather, I believe that it reflects the fact that the category of idiocy had not yet been devised, since the idea that certain mental and physical conditions could bar people from holding property, making contracts, and consenting in general, was borrowed from Roman Law, and does not appear in legal writing in England prior to Bracton. Similarly, although lords and burgesses would later claim that the Crown intruded upon their rights when it took idiots' lands into its hands, I have not been able to find any records that suggest that they explicitly claimed this right before the Crown did, and find it more likely that they claimed this after the fact. That said, I plan to look into this further at a later date.

Section eleven of the *Prerogativa Regis* specified that the king had the right to hold the lands of “natural fools” for the duration of their lives, and take profits from them;

the King shall have custody of the lands of natural fools [*fatuorum naturalium*], taking the profits of them without waste or destruction, and shall find them their necessaries from whose fee soever the lands be holden; and after the death of such idiots he should render [it] to the rightful heirs, so that such fools [*fatuos*] shall not alien, nor their heirs be disinherited.⁷²

Section twelve however placed significantly more restrictions on what the Crown could do with the property of people suffering from *temporary* mental incompetence;

Also, the King shall provide, when anyone who previously had memory and understanding [*memoriam & intellectum*], should become of unsound mind [*non fuerit compos mentis sue*],⁷³ as certain people are through lucid intervals [*lucida intervalla*], that their lands and tenements may be safely protected, without waste and destruction, and that they and their household [*familia*] may live and be reasonably sustained from the profits of the same, and the residue beyond their sustenance be preserved for their use, to be delivered to them when they regain their memory [*memoriam*]; so that such lands and tenements shall in no way be aliened within the aforesaid time; The king should not take anything from the profits for his own use, and if the party should die in such a state, then the residue should be distributed

⁷² Alexander Luders, Sir Thomas Edlyne Tomlins, et. al., eds., *The Statutes of the Realm*, (London: Record Commission, 1810-1822), vol. I, 226. The *Prerogativa Regis* appears here due to the fact that it was mistakenly classified as a statute until the twentieth century. This misclassification may be part of the reason that it became influential during the Middle Ages. The Latin reads (with abbreviations expanded), “Rex habet custodiam terrarum fatuorum naturalium, capiendo exitus earundem sine vasto & destructione & inveniet eis necessaria sua, de cuiuscunque, feodo terre ille fuerint, & post mortem eorum reddat eas rectis heredibus, ita quod nullatenus per eosdem fatuos alienent vel eorum heredes exheredentur.” I have quoted the translation in the modern edition, except I use the term “fool” rather than “idiot” where the Latin uses *fatuos*.

⁷³ A more literal translation would read, “should not be in possession of their mind,” however in later legal writing *non compos mentis* is simply translated as mentally incompetence.

for his soul, at the advice of an ordinary.⁷⁴

The *Prerogativa Regis*, in other words, differentiated between natural foolishness and mental incompetence on the grounds that the former was congenital and incurable, while the later was temporary and marked by “lucid intervals.”⁷⁵ These limitations, so defined, provided the basis for the Crown’s rights over the property of each subset of people. For, since the condition of idiots was permanent by definition, the Crown claimed the right to take profits from their land. Insanity’s impermanence, on the other hand, inhibited the Crown from doing the same, lest it be an accomplice to precisely what the law sought to prevent.

The *Prerogativa Regis* is an odd document, for scholars are both unsure of how to date it, and the extent to which it informed or reflected legal practice at the time it was written.⁷⁶ Nevertheless, in the 1290s, *Fleta* and *Britton*, two legal treatises whose accounts of

⁷⁴ *Statutes*, I 226. I rely on the translation provided by Luders & Tomlins here, however I have slightly amended it to more closely reflect the original language of the text, particularly the terms used for mental capacities (memoriam, intellectum, lucida intervalla, etc.). The original Latin reads; Item habet providere quando aliquis qui prius habens memoriam & intellectum, non fuerit compos mentis sue, sicut quidam sunt per lucida intervalla; quod terre & tenementa eorumdem solvo custodiuntur, sine vasto & destructione, & quod ipse & familia sua de exitibus eorumdem vivant & sustineantur competenter & residuum ultra sustentacionem eorumdem rationabilem custodiuntur ad opus ipsorum liberand eis quando memoriam recuperaverint; Ita quod predictae terre & tenementa, infra predictae tempus, non alienentur; Nec Rex de exitibus aliquid percipiat ad opus suum & si obierit in tali statu, tunc, illud residuum distribuatur per anima eiusdem, per consilium ordinarium.

⁷⁵ Because the term *idiota* was used far more frequently in legal practice than “natural fool”, I refer from here on to the law’s distinction between idiocy and insanity, rather than foolishness and mental incompetency. By the late thirteenth century writs documenting competency inquisitions would use these terms interchangeably.

⁷⁶ The earliest extant manuscripts of the *Prerogativa Regis* date from the fifteenth century and give little evidence of its point of origin. As a result scholars remain divided upon how to date it, with some arguing that it was written in the late thirteenth century, and others that it was written in the 1324. Regardless, while the *Prerogativa Regis* contained the most detailed contemporary description of the Crown’s rights and responsibilities to its mentally incompetent subjects, the fact that restrictions on the rights of “*idiota*” “natural fools” and the “*non compos mentis*” can be found in earlier legal writing suggests that jurists in England were thinking about these issues in the second quarter of the thirteenth century. Moreover, since the Crown

the law typically adhered closely to what Bracton had stated half a century prior, reinforced the claims we find in the *Prerogativa Regis*. For they not only asserted that the Crown had the right to profit from the land of idiots for the duration of their lives (while it could take nothing from lunatics), but elaborated upon this right. As I discuss in greater detail in the next chapter, *Fleta* justified what had by then become legal practice, by explaining that the king had first begun to take idiots' lands into his hands because their heirs had suffered from disinheritance under previous custom, which entrusted idiots to *tutores*. More significant to the discussion at hand, however, *Fleta* noted that the king only had these rights over idiots from birth (*a nativitate fuerint idiotae et stulti*), while lords still retained rights over people who developed their conditions later in life, articulating a distinction between congenital and acquired mental impairment like that promoted by the *Prerogativa Regis* (whenever it was written).⁷⁷

Britton also differentiated between the king's rights over idiots and "those who become insane by sickness," likewise noting that the king's right to the land of idiots supersedes that of their lords in the case of the former category of people, but not the latter;

As whereas it sometimes happens that the heir is an idiot from birth whereby he is incapable of taking care of his inheritance, we will that such heirs, of whomsoever they hold, and whether they be male or female, remain in our custody, with all their inheritances, saving to every lord all other services belonging to him for lands held of him, so that they remain in our wardship as long as they continue in their idiocy. But this rule shall not hold with those who

asserted its authority in inquisitions involving people described as lunatics, *non compos mentis*, and insane during the second half of the thirteenth century, I find the earlier dating more persuasive.

⁷⁷ *Fleta*, B. 1, c. 11. a. 10. Cited in John Shapland Stock, *A Practical Treatise Concerning the Law of Non Compos Mentis, or Persons of Unsound Mind* (London: Saunders and Benning, 1838), 81.

become insane by any sickness.⁷⁸

Fleta and *Britton* reflected law as it was prescribed and—to varying extents—practiced at the time they were written, and—as I show in the following chapter—this is evident in the records of idiocy inquisitions held during the last decade of the thirteenth century and beyond. What we can ultimately infer from these texts is that the distinction between insanity and idiocy that underlay the development of a concept of permanent, congenital, intellectual disability was ultimately a legal rather than medical construct, created by thirteenth century jurists reading Roman Law, rather than learned from Galen or Hippocrates. By itself, the existence of such a distinction seems to negate previous claims that intellectual disability’s history did not begin until early modernity. But this is not all. Additionally, the idea that idiocy can be understood as a dearth of specific practical capacities is, equally, owed to medieval law.

For while the *Corpus Iuris Civilis* had said little about exactly what it meant to be a *furiosus* or *prodigus*, English jurists like the Bracton author offered descriptions of mental incompetency that went far beyond what they found in Justinian. For instance, comparing fools, “not far removed from brutes who lack reason,” to the insane, the Bracton author wrote;

⁷⁸ *Britton*, Book III, Chapter II, a. 20. This sentiment is reiterated in various passages throughout the treatise. Book I, Chapter V, a. 13 for instance notes in the case of idiots from birth, “the lord loses his wardship and the farmer his term until it be otherwise ordained, at least during the life of the idiot.” *Britton* claims that this rule originated with Robert Walraund, a justicar of Henry III. I find this somewhat unlikely since I would imagine the law evolved more organically, however Chancery records attest that Walraund had an idiot heir, who also had an idiot heir. It could be speculated that Walraund wished his heir’s lands to go into the hand of the king rather than his lord because Walraund’s involvement with Henry’s administration alienated the nobility, but these questions are ultimately beyond my area of expertise.

But what is to be said of a fool? A fool [*fatuus*] may acquire, provided he has understanding in some matters. To such a curator is also given, unless he expressly renounces, because one does not acquire against one's express will, as happened coram rege with respect to the brother and heir of Herbert son of Peter who publically renounced his inheritance, so that his younger brother Reginald succeeded him. But if he is a fool *who cannot distinguish between tenements or between rights* [emphasis added], he does not acquire because he does not consent. But the decision on an exception of this kind is left to the discretion of the judge.⁷⁹

This characterization of the rights of fools built upon the idea that idiots should not be able to acquire or alienate property since they could not fully understand what these actions entailed enough to consent to them.⁸⁰ In a way, the Bracton author's thinking here also reflects the philosophical zeitgeist of the mid thirteenth century, when scholastic philosophers like Aquinas believed that the ability to reason was a prerequisite for moral culpability, since one could not truly consent to acts that they did not comprehend.⁸¹

What is truly interesting about this passage is the extent to which the definition of mental competency it promoted referenced a specific set of capabilities that mostly pertained to economic matters, particularly the ability to “distinguish between tenements or between rights.” At the time the Bracton treatise was written, this understanding of mental competency was appropriate, because the Crown's prerogative right over the lands of idiots and the insane only extended to its tenants-in-chief, a group consisting of nobility and people who managed large estates, for whom these skills were likely vital. However, in the

⁷⁹ *Laws and Customs of England*, IV, 308-9.

⁸⁰ Ibid. Indeed, Bracton begins this section by noting that such people are “not far removed from brute beasts who lack reason.”

⁸¹ Aquinas held that freedom in human action came from the intellect's ability to choose between competing goods, rather than the will. Following this, if the intellect were to be corrupted then a person would not be able to act freely. Aquinas draws out his views on this in ST.II, articles 6, 9, 17, 75 and 88.

chapters that follow I suggest that the Crown's authority over the mentally incompetent expanded to include not only the people who held land from it directly but their tenants as well.⁸² As this occurred, this understanding of idiocy, elaborated upon as more idiots appeared in court, began to marginalize people who had less reason to acquire these skills; women, and people with little land or involvement in the market economy.

In other words, in expanding upon the prescriptions limiting the rights of the mentally impaired they had discovered in Roman Law, medieval English jurists created a category of people who could be indefinitely deprived of the rights of personhood and property, and defined this group in reference to the civic and economic obligations of elite landholders. Their ideas were slow to move beyond the law; once devised by jurists, it was more than two centuries before a similar concept of idiocy began to appear in medical or theological writing. However, regardless of whether the people who appeared in the royal courts of medieval England had minds that would have aligned with current

⁸² We can see the beginnings of the Crown's expanding authority in *Fleta* and *Britton's* assertions that the king's right over the land of idiots supersedes that of their lords. However, it is also clearly evident in later idiocy inquisitions. In inquisitions held during the late thirteenth and early fourteenth centuries, the Crown had taken care to ensure that it limited its reach to its tenants-in-chief (although the local officials charged with overseeing idiocy inquisitions did not always get the memo!). For instance, in 1327 the Crown ordered the escheator this side of Trent to remove John Haddock's lands from the king's hand, "since the king had learned that John held at his death no lands in chief of the late king by reason whereof the custody of his lands ought to pertain to the king, but that he held at his death divers lands of John de Appeton by various services." (*Calendar of Close Rolls*, Edw. III, Vol. 1). It had ordered the same moreover in 1309, when it discovered that Agnes Beaumeys, an *fatua et idiota*, "held nothing in chief at her death." (CCR, Edw. II, Vol. 1, 90.) Yet by the fourteenth century's end the Crown oversaw inquisitions involving its tenants' tenants (much to the displeasure of their lords), the citizens of free burgages, and people who held lands directly from the Church. For instance, an inquisition take after the death of Agnes atte Bergh in 1376 noted that "Agnes, being an idiot, at her death held no lands in that county in chief in her demesne as of fee, but that the premises, which are not held of the king, came to the king's hands by reason of her idiocy and are yet in his hand." (CCR, Edw. III, Vol. 14, 305). Likewise, in 1367, it took the lands of Eustachia der Percy into its hands, although these were held not only from the king, but from "diverse lords." See *Calendar of Inquisitions Postmortem*, Vol. 12, no. 149 (henceforth, CIPM). I refrain from saying much more about this matter in this study, although I would like to return to it in the future since I believe it suggests that the Crown increasingly saw wardships as a saleable commodity as the fourteenth century progressed. However, I discuss a number of cases involving individuals who did not hold land from the king directly in Chapters 4 and 5.

understandings of intellectual disability, if we were to look for the origin of institutional practices that contributed to the marginalization of human cognitive difference, we would find it in the medieval courtroom.

CHAPTER THREE

“BUT WHAT MAY BE SAID OF A FOOL?”; POPULAR AWARENESS OF THE LAW IN EARLY IDIOCY INQUISITIONS

As the legal developments discussed in the previous chapter were taking place, individuals described as idiots [*idiota, ydeote, ydiota*] and natural fools [*fatuus nativitate*] began to appear in the records of the English royal courts. For instance, in 1283 at the request of a writ sent by the King’s Chancellor, the justices of the Eyre of Essex examined John son of Richard de Hispania, and found that he was “from his birth an idiot, and not sufficient to manage himself and his lands.” They came to this conclusion after discovering that he had alienated a messuage (a small dwelling), 140 acres of land, 60 acres of wood, a meadow and pasture, a windmill, and other properties worth 10 shillings in annual rent in exchange for a horse. This, moreover, was not the full extent of his folly, for he had also alienated another house, 120 acres, enough pasture for 200 sheep, a meadow, properties worth 30 shillings in annual rents, and the service of a villein worth four shillings, to William de Montecasino in exchange for nothing but the promise of sustenance for life (which he had never received).¹ In the same year, the sheriff of Norfolk deemed that John, son of Eustace Noth of Kyneburle, had been an idiot [*fatuus*] from his earliest age, despite the fact he held lands from multiple lords in exchange for various fees, and scutage.² Similarly, in 1285 the Crown

¹ CIPM, Vol. 2, no. 610.

² CIPM, Vol. 2, no. 542. Scutage was a payment in lieu of service that effectively allowed a landholder to discharge their military obligations to the Crown (or their lord, in the case of subinfeudated tenants) in exchange for a fixed annual fee. It is interesting that John did not hold his land directly from the Crown because the Crown’s jurisdiction over its mentally impaired subjects only extended—at least initially—to its tenants-in-chief. This, at least, is the conventionally held interpretation.

reopened the case of Andrew de Merk, who had been entrusted to the custody of Adenet de Bidik, the king's tailor, in 1277 after the king's steward had judged that he was *non compos mentis*.³ The English courts had overseen inquisitions involving individuals identified as *non compos mentis* for at least half a century before Andrew's inquisition, and the term seems to have initially embodied a variety of conditions that could render people mentally incompetent. Yet, once so-called idiots began to appear in court, *non compos mentis* was primarily used to denote *temporary* mental disorder. Nevertheless, the king ordered the justices of the Eyre in Essex to reexamine Andrew in 1285, because he had heard that Andrew was, "an idiot of unsound mind [*sui inmemor*], so that he is incapable of administering his lands and goods." If they found that he had "been an idiot from birth and is still," they were to deliver him back to the custody of the tailor, "so that he may cause suitable necessities to be administered to Andrew, *his wife, and his household* [emphasis added]."⁴

By the end of the fourteenth century, royal officials would examine hundreds of individuals like John, John, and Andrew. Yet, at the time these inquisitions were held, so-called idiots were still a rarity in court. For while the Crown had claimed prerogative right over idiots and their lands by the 1270's, for nearly half a century after the first inquisition involving an *idiot*, the royal courts remained far more preoccupied with people suffering from conditions that fit into recognizable medical categories [See Appendix, Figure

³ *Calendar of Patent Rolls*, Edward I, Vol. 1, pg 188. (Henceforth, CPR)

⁴ *Calendar of Close Rolls*, Edward I, Vol. 2, pg 343-344. (Henceforth, CCR)

1].⁵ During this period we find scores of “lunatics,” (*insanis* or *lunaticos*) “madmen” (*furore*), and people who took their lives in “fits of frenzy” (*frenesia*) or went off “raving into the woods” after criminal misdeeds in the records of the thirteenth century royal courts. For instance, in a representative inquisition held in 1276, Richard Blofot of Cheddestan was pardoned for having murdered his wife and children six years prior, when the Sheriff of Norfolk found that he had been “seized with a fit of frenzy,” at the time of the killings.⁶ Similarly, in 1284 the Crown pardoned Matilda, the wife of Walter Levyng of Buriton for the death of her children when the justices of the Eyre in Berkshire determined that she had killed them “in a state of fever and madness.”⁷

Yet despite the fact that the Crown used the same rationale to justify its rights over idiots as lunatics and madmen, the royal courts oversaw relatively few inquisitions involving idiots during this same period. Many of those that it did oversee, moreover, involved crimes allegedly committed against so-called idiots, rather than questions about their mental capacities—particularly their ability to manage their own estates and affairs. For instance, in 1275 a “simple and ignorant” twelve year old boy fled after intruders

⁵ I use the term “royal courts” throughout this study to reflect the fact that officials from a variety of royal offices had a role in administering idiocy inquisitions and the land transfers that resulted from them, and writs and other records related to idiots thus appear in the exchequers rolls, patent rolls, close rolls, as well as the records of the office of Chancery. By the second quarter of the fourteenth century, however, most cases involving idiots fell under the jurisdiction of the office of Chancery, which developed during this same period into a “court of conscience,” focused on issues of equity and natural law, (perhaps due to the fact that the early Chancellors had backgrounds in ecclesiastical law rather than civil law). Anthony Musson, *Medieval Law in Context: The Growth of Legal Consciousness from Magna Carta to the Peasants Revolt* (Manchester: Manchester University Press, 2001) 15. During the period in question the court of Common Pleas oversaw most land and debt cases, and the King’s Bench had a similar monopoly over criminal cases and trespasses. Nevertheless, Chancery administered the *vast* majority of inquisitions involving mentally incompetent individuals, whether they focused on land as in those involving alleged idiots, or questions of guilt and innocence as in those involving “lunatics” and “madmen.”

⁶ Walker, *Crime and Insanity in England*, 23.

⁷ CPR, Edw. I, Vol. 2, pg.146.

broke into his house and killed his father. According to the records documenting the boy's case, the men responsible for his father's death falsely accused him of murder because they assumed that he lacked the mental capacity to defend himself.⁸ As the fourteenth century progressed however, the royal courts began to oversee more inquisitions involving so-called idiots, so that by the beginning of Henry IV's reign, the Crown had involved itself in hundreds of disputes related to idiots and their property [See Appendix, figure 2].⁹ This trend continued throughout the fifteenth century, to the extent that when Henry VIII established the Court of Wards in 1540, 80 percent of all cases it oversaw involved idiots.¹⁰

Regardless of whether the people accused of idiocy in late medieval England had minds that fit the modern definition of intellectual disability, such a profusion of idiots seems to refute the claim that a concept of intellectual disability did not emerge in western thought until the late early modernity, when political philosophers took it upon themselves

⁸ CIM, vol.1, no. 2191. Similarly, in a case that began in 1313 (CIM Vol.2 no. 153), and came to the crown's attention again in 1323 (CIM Vol. 2 no. 583), three men allegedly broke into the manor of a recently deceased noble, and seized his daughter Sybil, whom the records describe as "deaf and dumb." When the individuals in questions appeared in court again in 1323, Sybil had been married to one of them, and the court ruled that he had the right to administer and take profit from her land. I return to the events surrounding Sybil's inquisition at length in Chapter Four.

⁹ Other historians have also noted a sharp rise in the number inquisitions involving alleged "idiots" administered by Chancery during the fourteenth century. Richard Neugebauer has claimed that hearings involving the "mentally handicapped" constituted 80% of all "officially examined cases of mental disability," between 1301 to 1392. Richard Neugebauer, "Mental Handicap in Medieval England," in *From Idiocy to Mental Deficiency: Historical Perspectives on People with Learning Disabilities*, ed. David Wright and Anne Digby, (London: Routledge, 2001), 32. Wendy Turner also remarked upon this increase talk given at Cornell University in September of 2010, "The Mentally Disabled in Medieval England: Treatment and Understanding." Figure 2 in the Appendix illustrates this increase, based on a limited, but representative set of records.

¹⁰ Patrick McDonagh, *Idiocy: A Cultural History* (Liverpool: Liverpool University Press, 2008) 88. The imbalance between idiocy and insanity inquisitions quickly leveled off, however. McDonagh, citing Neugebauer, notes that by 1630 idiots only comprised 30 percent of the grants made by the court of wards, perhaps because families sought to avoid verdicts of idiocy to maintain greater control over their finances. As in the Middle Ages, the people who held the wardships of lunatics or minor heirs had to account to their families for the profits their estates produced while they remained in their custody, while they were free to keep profits from the estates of idiots.

to unravel the mysteries of human reason, and physicians began to see intelligence as a valid object of scientific inquiry.¹¹ Yet when historians have made variants of this argument, it is not because they are unaware of medieval law's distinction between insanity and idiocy, or the numerous idiots in the records of the English royal courts. Instead, as previously discussed, it is because they assume that the distinction between idiocy and insanity devised by thirteenth century legal scholars had little bearing on juridical practice. C.F. Goodey for instance recently claimed that the distinction between idiocy and insanity articulated in the *Prerogativa Regis*, "does not seem to have been a legal enactment," as "the law had no standard writs of idiocy, much less separate ones for idiocy and lunacy before Henry VIII set up the court of wards."¹² Following this argument, since the legal concept of idiocy did not resonate enough beyond discussions of learned scholars to inform broader understandings of intelligence and its absence, the modern concept of intellectual disability instead originated from a parallel and autonomous discourse about human reason in early modern philosophy and medicine.

These claims are not without merit. For the fact that the royal courts began to oversee more cases involving people referred to as idiots and natural fools during the fourteenth century does not tell us what the participants in these cases took those terms to mean, or the extent to which the general populace was aware that the law differentiated between idiocy and insanity. As discussed in the previous chapter, idiocy was far less well defined in the Middle Ages than it is today, and the concept of idiocy constructed by thirteenth century jurists did not reflect any ideas about mental disorder that previously

¹¹ See discussion in Chapter One for an overview of previous scholarship.

¹² C.F. Goodey, *Intelligence and Intellectual Disability*, 141-2.

existed in medicine, theology, and popular culture. Thus, it is quite likely that when the Crown first became concerned with idiots and their land, few people other than legal scholars would have been aware that the law defined idiocy as a congenital and permanent disorder, while it held that insanity was temporary and marked by lucid intervals. The records of the earliest idiocy inquisitions support this interpretation, for while people undoubtedly had varying degrees of familiarity with the law, even the royal officials charged with investigating allegations of idiocy seem to have had only a vague notion that idiocy was in any way distinct from insanity—a point to which I will shortly return. Moreover, there is no evidence that they gave any thought to whether the alleged idiots who came under their purview lacked a specific intelligence.

Yet, while legal theorists and Chancery officials may have initially been the only people who used the terms *idiota* and *fatuus* to refer to a congenital and incurable disorder, in the pages—and chapters—that follow, I suggest that by the end of the fourteenth century most people who participated in idiocy inquisitions were not only aware that idiocy and insanity were legally distinct disorders, but played an inadvertent role in shaping how idiocy would be defined in the Middle Ages and beyond. For as people with some claim to or interest in an alleged idiot's lands became aware that the outcomes of idiocy inquisitions had a greater potential to alter their fortunes than those involving the insane, they took advantage of the fact that the boundary between idiocy and insanity had been imprecisely drawn in practice while idiocy was still a novel legal concept, and endeavored to define idiocy in a way that advanced their interests. On account of their efforts, a concept of idiocy gradually emerged that reflected not only thirteenth century legal scholars' readings of

Roman law, but the values and interests of the various groups that had a stake in the outcome of idiocy inquisitions. As we shall soon see, idiocy inquisitions involved people drawn from many levels of English society, allowing juridical notions of idiocy to percolate more widely into medieval culture.¹³ In delineating the process through which this occurred, I show that counter to the claims of previous scholars, people in late medieval England did eventually come to see idiocy as something more than just a vague subset of insanity. But more importantly, I suggest that the earliest ideas about what it meant to be an idiot were ultimately shaped by the interests of the people who participated in the earliest idiocy inquisitions—rather than physicians’ responses to a medical reality, or philosophers’ abstract concerns about the nature of human reason.

Knowledge of the Law in Early Idiocy Inquisitions

When the Crown first began to take an interest in idiots and their land, what did people know about idiocy? At the time of the earliest inquisitions, royal officials seem to have had a clear understanding of what *furor*, *insanis*, *frenesia*, and *mania* entailed, perhaps because these terms were used in both medical and legal contexts, and officials could thus draw upon medical theory when evaluating the allegedly insane. For instance the Sheriff of Norfolk was reluctant to release Richard Blofot from prison even after he was pardoned for killing his wife, because he worried that, “although the same Richard is well enough; [...] it cannot safely be said that he is so restored to soundness of mind

¹³ While I briefly touch upon how the interests of the participants in idiocy inquisitions shaped how idiocy was *defined*, I explore this at much greater length in Chapters Four and Five.

that there would not be danger in setting him free, especially when the heat of summer is increasing, lest worse befall.”¹⁴ The sheriff’s anxieties about the heat of summer aggravating Richard’s dormant insanity were clearly informed by the contemporary medical belief that the insane suffered from an imbalance of yellow bile, the hot humor. A writ sent to Chancery in 1277, summarizing the findings of an investigation concerning an alleged suicide, provides further evidence that medical understandings of mental illness informed how local officials acting on the behalf of the Crown viewed the people they were tasked with evaluating. Here, the sheriff of Northumberland noted that William de Erdeston killed himself, while “afflicted with an *infirmity* called frenesis [emphasis added].”¹⁵

There is much in the records of the earliest idiocy inquisitions, however, to support the claim that the law’s distinction between idiocy and insanity had little resonance beyond the thought of jurists, judges, and central administrators. Consider for instance the meaning ascribed to the term *idiota* in one of the first inquisitions involving a so-called idiot. On February 18th 1265 the Crown granted a rather remarkable request for clemency. At the petition of Thomas de Ferrariis earlier that year, royal officials had reexamined the circumstances surrounding the apparent murder of Augustine le Fevere of Maunnecester [Manchester] at the hands of William Pilche of Sonky. According to Thomas, the testimony of the coroner of Lancaster, and “other trustworthy persons,” William—an *idiota*—had never intended to kill Augustine. Rather;

¹⁴ The Sheriff noted that “The Walker, *Crime and Insanity*, 23.

¹⁵ CIPM vol. 2 no. 282. It is interesting that medieval understandings of insanity seem to have been much more organic, and developed with closer reference to the physiology, than understandings of idiocy, given that today we are much more willing to consider that mental illness might be socially constructed than mental disability.

William was passing along the high road by night, when he was met by the said Augustine, in the disguise of a terrible monster, uttering groans and refusing to speak, though adjured in God's name, on account of which the said William rushed upon him as a monster and killed him.¹⁶

The Crown ultimately accepted this defense, and fully pardoned William. His name was not mentioned again in the records until his death in 1278, when his brother sued a woman named Emma for the right to a messuage and ten acres of land that William had held prior to his demise.¹⁷

It is somewhat curious that William possessed this land, given that by the time of his death, English law prohibited idiots from holding property.¹⁸ Yet, perhaps it was reasonable that William was allowed to keep his estate after his earlier run in with the law, for the description of his condition in the 1265 Letter of Patent that absolved him of Augustine's death bore no relation to how idiocy would be understood a century later. Nothing in the records documenting William's case suggests that the royal officials overseeing his inquisition enquired into his ability to manage his own affairs, or questioned whether he may have foolishly alienated property or entered into disadvantageous contracts when assessing his condition, as would become standard in later idiocy inquisitions.

¹⁶ CPR, Henry III, Vol. 5, pg 407.

¹⁷ *A Calendar of the Lancashire Assize Rolls Preserved in the Public Record Office, London*, Vol. 47, pg 163.

¹⁸ It is difficult to pinpoint exactly when the Crown began to assert its claim to the lands of idiots since the dating of the *Prerogativa Regis* remains uncertain, and while the Bracton treatise barred idiots from holding land, it never explicitly stated that the Crown was entitled to manage their estates and select their guardians. Nevertheless, evidence suggests that the Crown had begun to do so by the 1270s, when we find writs ordering various escheators to seize an alleged idiot's land for the Crown, letters of patent, letters of close, exchequer records and summaries of post-mortem inquisitions, documenting the land transfers that resulted from these orders. At the very latest, the Crown must have begun to assert its claim by the 1290s, when the treatises *Fleta* and *Britton* were written, because they contain detailed explanations of the Crown's rights over idiots, and descriptions of procedure. I discuss this point in more detail in the second half of this chapter. Also, see the relevant discussion at the end of Chapter Two.

Instead, the fact that the Crown pardoned William on the grounds that he only killed Augustine because he mistook him for a monster suggests that even as legal scholars were developing a category of idiocy based on the proscriptions they discovered in Roman Law, the officials charged with overseeing the earliest inquisitions may have still relied on older popular understandings of the term to guide their inquiries. Even the circumstances that brought William to court resembled those in contemporary inquisitions involving the insane more than those in later idiocy inquisitions. In medieval insanity hearings—much like today—questions about a person’s mental competency generally arose when people acting on their behalf made a last-ditch attempt to save them from imprisonment or execution after they had been convicted of a violent crime. Like the defendants in these cases, Thomas brought William’s alleged idiocy to the courts attention in hopes of *restoring* his rights rather than depriving him of them.

William’s initial entanglement with the law began slightly before legal scholars codified the Crown’s rights over its mentally incompetent subjects in the *Prerogativa Regis*, *Fleta*, and *Britton*, and a few years before the royal courts began taking the land of idiots into the king’s hand. Thus, it is plausible that the officials overseeing his case used the term *idiota* to refer to a general state of unknowing simply because it had not yet acquired associations with congenital mental impairment.¹⁹ Yet, even decades after a distinction between idiocy and insanity had appeared in written law, many of the people who participated in idiocy inquisitions seem to have remained unaware of these developments, and continued to treat idiocy as a vague subset of insanity rather than an ontologically distinct disorder with

¹⁹ Complicating this explanation, the Bracton treatise had identified idiocy as one of the conditions that limited property rights decades before William’s inquisition.

different legal consequences. It is not necessarily surprising that common people would have lacked familiarity with erudite legal ideas, written down in Latin or French, in texts largely unavailable for public consumption. Nevertheless, the fact that the public's ignorance of the law's finer points meant that they had little idea what being an *idiot* entailed—even as they were asked to oversee idiocy inquisitions—suggests that the law's definition of idiocy did not arise organically from popular understandings of intelligence's absence. Instead, the concept of idiocy we find in medieval legal theory and practice was at least initially an invention of learned scholars, imposed on the public from the top down, during a period of expanding royal authority.

The writs documenting early idiocy inquisitions attest to this. For instance, individuals describing a potentially incompetent person's mental state often used terms that denoted idiocy in contemporary legal texts (*idiot*, *fatuus*) interchangeably with terms for transitory mental illnesses (*furore*, variants of *frenesia*, *non compos mentis*, *insania*), without any acknowledgement that these disorders had different legal statuses. A 1286 writ, for instance, described Peter de Seyvill, as both *freneticus* and an idiot, despite the fact that frenzy was a recognized medical condition during the later Middle Ages, a violent and *temporary* insanity, frequently attributed to people who killed their children and spouses while mentally ill.²⁰ Likewise, in 1316, the escheator beyond Trent claimed that Joan de la Chaumbre had

²⁰ CIPM, vol. 2, no. 611, 373. For instance, in 1283 the courts pardoned Roger de Ekkeles for killing Catherine Skut after finding that he was “a lunatic and liable to frenzy, and killed Catherine in such a frenzy.” (CPR, Edw. I, vol. 2, 88); It issued a similar pardon to Robert de Bramwyth for the death of his sister, Dionysa, (CIPM Edw. I, vol. 3, 81), and decided that Bertinus de Ughtredsate should not be punished for rescuing Robert Bates of Dundra, a murderer awaiting execution, from the Carlisle gaol, since he had been in a “state of lunatic frenzy” when he committed the rescue. In a 1277 writ sent to Chancery the sheriff of Northumberland described how he had determined that William de Erdeston killed himself, while “*afflicted with an infirmity called frenesis*” CIPM vol. 2, no. 282.

appeared to be “an idiot and a mad woman” when he examined her.²¹ In 1315 Chancery sent a writ to the justices of the assize of Sussex describing John Wacelyn as a “madman and an idiot from birth,” noting that his lands had been entrusted to Margery de Penecestre “*on account of his madness.*”²² And in 1327 Chancery sent similar writ to the escheator this side of Trent describing John Haddock as an “idiot and madman.”²³ As a final example, in 1278 the king’s steward found that Margery de Anlauby “fell ill a fortnight before the Purification last and is so infirm she is not of sound mind.”²⁴ Yet in 1288, an inquisition conducted after the death of her guardian, determined that she was not an “idiot from birth, but had been so continuously from the death of her husband,” nine years prior.²⁵

These writs suggest that the people charged with reporting on alleged idiots’ conditions to the Crown were not always aware that idiocy differed from insanity, or that the law conferred dramatically different statuses on idiots and the insane. Reflecting this, Peter de Seyvill and Margery de Anlauby were entrusted to the custody of near relatives after their inquisitions—a custom that jurists would strongly discourage in cases involving idiots by the 1290s. More significant, however, is the fact that most people identified as idiots in these early inquisitions did not fit the law’s definition of idiocy in numerous other ways. For while the law held that idiocy could be distinguished from other mental disorders by the fact that it was congenital and permanent, and indeed took idiocy’s permanence as justification for the

²¹CCR Edw. II, vol. 2, 373

²² CCR Edw. II, vol. 2, 146.

²³ CCR, Edw. III, vol. 1. Interestingly, the Crown ordered the escheator to remove the king’s hand from Johns lands, because it was discovered that he held nothing in chief from the king. This suggests that at the time of his inquisitions the Crown still limited its reach to idiots who held land from it directly, even though *Fleta* and *Britton* both stated that the Crown’s rights to idiots’ lands superseded those of their lords.

²⁴ CIPM, vol. 2, no. 333.

²⁵ CIPM, vol. 2, no. 728.

Crown's *perpetual* claim to idiots' lands, most people accused of idiocy in the early part of the fourteenth century seem to have fully participated in adult life prior to their inquisitions.

Contrary to the definition of idiocy as a congenital disorder, some so-called idiots only acquired their condition after injury or illness. For instance, in an inquisition taken at Marlisford in 1309, officials acting on behalf of the Crown found that Bartholomew de Sakevill had been an "idiot from his eighteenth year, when he fell into an acute fever."²⁶ Similarly, in 1320 royal officials in Lincoln determined Henry le Pjmdr had the right to sell lands he had received from Agnes de Gousle; for although she was currently an idiot, she had not always been. Instead, "she was of good memory for twenty-five years from her birth," and had only acquired her condition two years after she alienated her land to Henry, when "by an illness that came upon her, the said Agnes became an idiot and remained so for eighteen years."²⁷ In 1332, the escheator of Northumberland reported to the Crown that Robert, son of Hugh, son of Ascelin de Corbrigge was an idiot, "but not from birth." Rather, Robert had left Corbrigge for Oxford "of sound mind and memory" seventeen years prior, but when he returned only one year after that, he "had become an idiot"; higher education has always had its critics!²⁸

Many idiots also had spouses and children. Margery Anlauby had a husband and a son, and Andrew de Merk, who we encountered at the beginning of this chapter, had a wife. Likewise, Peter Seyvill, the aforementioned *freneticus idiota*, seems to have had a family as well, for the Crown required that his would-be-guardian make sure that "his wife and children

²⁶ CIPM, vol. 5, no. 149.

²⁷ CIPM, vol. 6, no. 246.

²⁸ CIPM, vol. 7, no. 491.

shall be maintained,” out of the annual profits of his estate.²⁹ Ultimately, more alleged idiots than not had families during the first half of the fourteenth century, and we continue to find references to spouses and children in the records even as people seem to have become more aware that the law defined idiocy as a condition acquired at birth. In the middle of the fourteenth century for instance, the wife of John Brewes, an alleged idiot, complained twice to the Crown that the man who held her husband’s wardship, John de Cobham, had not “ministered anything to her, John, or her children for the time that he [...] held the wardship.”³⁰ In response, the king threatened that he would take Brewes’ wardship from Cobham, if he did not pay John’s wife according to the terms of the initial grant. Nevertheless, seven years after her initial petition, John’s wife complained once again that she had not received anything from John’s estate, and had “no means of livelihood unless the king come to her aid.”³¹

The fact that so many idiots had spouses and children suggests that people were slow to adopt the law’s definition of idiocy as a congenital, permanent disorder, given that the law held that idiots could not manage property because they lacked the reason to consent.³² Indeed, the idea that an idiot could contract a valid marriage was so at odds with how the law defined idiocy that in the early sixteenth century, once the legal concept of idiocy had

²⁹ CIPM, vol. 2, no. 611.

³⁰ CCR, Edw. III, vol. 3, 472.

³¹ CCR, Edw. III, vol. 12, 97.

³² It also highlights the extent to which idiocy, as it was understood at the time of inquisitions just discussed, must have differed from intellectual disability, as it is understood today. For in order to marry in the late Middle Ages, one needed to secure not only the consent of one’s future spouse, but—ideally if not legally—the blessing of their family. If the married idiots who appear in the records of the late medieval royal courts had truly been intellectually disabled from birth, then it is hard to imagine that their spouses would have consented to marry them, if idiocy corresponded to the same disorder in the late thirteenth and fourteenth centuries as intellectual disability does today.

seeped into the popular imagination, the writer of a legal dictionary felt compelled to clarify that if an individual could “begette a childe, sonne or daughter, or such lyke, whereby it may appere that he hath some light of reason, then such a one is noe idiot naturale,” and the common law eventually came to hold the same.³³

Ultimately then, while the law held that idiocy was an inborn disorder, the alleged idiots examined by royal officials during the late thirteenth and early fourteenth centuries were predominantly middle aged men, who had previously enjoyed the rights associated with legal adulthood, and thus seemed to fit the law’s definition of insanity more than idiocy. This seems to confirm that the people who participated in, and conducted idiocy inquisitions were largely unaware of the law’s finer distinctions between idiocy and insanity. One could perhaps argue that the fact that so many alleged idiots had acquired their conditions later in life does not suggest that the participants in early inquisitions were ignorant of how the law defined idiocy, but rather that late medieval society never fully accepted the law’s classification of idiocy as a *congenital* impairment. After all, much like in these early inquisitions, people today can acquire cognitive deficits following a sickness or a head injury, and it is possible that in recognizing this, the participants in the inquisitions simply relied upon an understanding of idiocy that was more organic and reflective of medical reality than the concept of idiocy devised by legal scholars. Yet, contrary to this interpretation, other features of early writs furnish further evidence that the people overseeing idiocy inquisitions lacked awareness, rather than respect, for the law.

³³ John Rastell, *Exposition of Certain Difficulte and Obscure Words and Termes*, originally quoted in “Masculinity and Idiocy,” in Patrick McDonagh, *Idiocy: A Cultural History*, 86. McDonagh has an excellent discussion of idiocy and masculinity in Early Modern Europe in Chapter 4 of *Idiocy: A Cultural History*.

Some writs further muddled the law's distinction between idiocy and insanity, by hinting at an alleged idiot's potential for recovery. For instance, the 1285 writ that ordered the justices of the Eyre of Essex to reexamine Andrew de Merk specified that they should assess whether he was "an idiot from birth and *still is* [emphasis added]," suggesting that his idiocy could be impermanent though inborn. The 1286 writ ordering the sheriff of Essex to take John de Hispannia's lands into the king's hand noted the same.³⁴ Likewise in 1303, the Crown granted the wardship of William Berchet (alias Berchaud), an alleged idiot, to Adam de Skyrewyth, "for the duration of William's life, or *until he returns to sanity*."³⁵

Moreover, writs sent from Chancery to sheriffs, escheators, and other local officials present further evidence that the people charged with overseeing idiocy inquisitions did not necessarily disagree with how the law defined idiocy, but simply lacked awareness of what idiocy, as it was defined by the law, entailed. In some early writs, the Crown explicitly articulated its prerogative rights over the land of idiots, in order, we might speculate, to educate the writ's intended recipient about how its rights over idiots differed from its responsibilities toward people suffering from acquired and impermanent mental disorder. In 1286 for instance, after the justices of the Eyre of Essex determined that John de Hispannia was an idiot from birth, Chancery sent a writ to the sheriff of Essex ordering him to deliver John's lands to the Queen.³⁶ There was nothing particularly exceptional about this request,

³⁴ *Calendar of Patent Rolls*, Edward I, vol. 1, 188; In John's case the writ noted that the king had learned that he "has been entirely an idiot from birth and is still." CCR E1 vol. 2, 381-2.

³⁵ CPR Edw. I, vol. 3, 123.

³⁶ *Calendar of Close Rolls*, Edward I, vol. 2, 381-2. A 1358 writ ordering the justiciar of Ireland to examine an alleged idiot used similar language to explain the Crown's prerogative, stating, "it pertains to the king to provide for the good governance of the lands of idiots, that they may not be wasted or alienated." (CCR E3 vol 10, 465.) As I shortly discuss, awareness of the law had increased by this time, but we might speculate that

however the Chancery official who wrote the writ took care to defend and define royal authority, explaining that on account of John's idiocy, "government of his lands ought to pertain to the king so that his heirs may not incur the risk of disinheritance, in accordance with the custom *heretofore used in this realm* [emphasis added]."

It is easy to imagine that the writer chose to include this language because he doubted the sheriff's familiarity with the law.³⁷ Indeed, the writ's suggestion that the Crown's authority over idiots and their lands extended from the fact that previous custom had not adequately safeguarded against their disinheritance at the hands of opportunistic relatives echoed justifications of royal prerogative in contemporary legal texts. For instance, *Fleta*, c. 1290, explained that idiots and their lands had once been placed under the custody of *tutores*, a term used elsewhere in the treatise to describe a minor's close relatives.³⁸ However, "since many people were suffering disinheritance from this custom, it was provided by common consent (*provisum fuit et communiter concessum*) that the king should obtain perpetual custody of the lands and bodies of these kinds of idiots and fools," in order to protect their interests.³⁹

royal official who wrote the writ felt the need to clarify the Crown's rights at a time when relations between the Irish nobility and the Crown were strained.

³⁷ It is, of course, also possible that the writer included this language simply to give the authority by which the order was sent. However, this language does not appear in latter writs, whose intended recipients would have likely been more familiar with the law pertaining to idiots than their predecessors. Moreover, the writ's writer would not have needed to *justify* royal authority if he merely wished to indicate that the order came from the king.

³⁸ The author of *Fleta* likely used the term *tutores* here because it was used in Roman Law. However, we might take it to refer either to the relatives of the so-called idiots, or alternatively their lords. The first interpretation seems more probable, since the writer uses the same term to refer to relatives of a minor elsewhere in the treatise; however, if the second interpretation is correct, then this would suggest that by the time *Fleta* was written the Crown was already beginning to expand its jurisdiction over idiots to include not just its tenants-in-chief, but their tenants as well.

³⁹ "Solent enim tutores terras idiotarum et stultorum cum corporibus eorum custodire sub perpetuo, quod licitum fuit et permissum, eo quod seipsos regere non noverunt: nam semper judicabantur infra aetatem vel

Nineteenth century legal historians speculated that the phrase *provisum fuit et communiter concessum* here referred to a fictional Act of Parliament devised to bolster a contested royal prerogative.⁴⁰ If this was indeed the case, then the fact that contemporary writs reiterated this legal fable implies something about how the legal concept of idiocy, and procedure for handling idiocy inquisitions, were devised and transmitted. Specifically, coupled with evidence that the people charged with examining alleged idiots often had only a hazy idea of what idiocy entailed, it supports the point made in earlier chapters, that the law's distinction between idiocy and insanity was at least initially an invention of a learned elite, formulated without reference to popular understandings of mental disorder.

This apparent gulf between learned and lay understandings of idiocy ultimately resulted in a disconnect between procedure and process, which Chancery officials attempted to remedy through instructions like those contained in the 1286 writ instigating John de Hispania's inquisition.⁴¹ In other words, even though the people who investigated allegations of idiocy were sheriffs, escheators, and other relevant local officials, rather than jurists and judges, at the time of the earliest idiocy inquisitions the people who dealt with the

quasi verum quia plures per hujusmodi custodiam exheredationem compatiabantur, *provisum fuit et communiter concessum* quod rex corporum et haereditatum hujusmodi idiotarum et stultorum sub perpetuo custodiam obtineret, dum tamen a nativitate fuerint idiotae et stulti, secus autem si tarde, a quocunque domino tenerent et ipsos maritaret et ex omni exhaereditatione salvaret." *Fleta*, B. 1, c. 11. a. 10. Cited in John Shapland Stock, *A Practical Treatise Concerning the Law of Non Compos Mentis, or Persons of Unsound Mind* (London: Saunders and Benning, Law Booksellers, 43 Fleet Street, 1838), 81.

⁴⁰ Shapland Stock, *A Practical Treatise*, pg. 48. Also see, "Notes and Documents," *The English Historical Review* 6 (1891), 369.

⁴¹ I draw here upon Kate Parkin's very useful characterization of process and procedure in, "Tales of Idiots, Signifying Something: Evidence of Process in the Inquisitions Postmortem," in *The Fifteenth Century Inquisitions Post-Mortem: A Companion*, ed. Michael Hicks (Suffolk: The Boydell Press, 2012) 79-97; here, 95. Noting that procedure and process diverged in fifteenth inquisitions involving idiots, Parkin describes procedure as "something proscribed," and process as "something understood," Parkin writes that in idiocy inquisitions "procedure essentially belongs to authority, whereas process is negotiated by the participants, evolving according to the need, and thereby reflecting current structures and expectations. [...] process is the framework of possibilities which shaped decision making and action."

day-to-day business of administering idiocy inquisitions played little part in determining how idiocy was defined, and had little understanding of what it entailed. Given that they seem to have had a much clearer idea of what it meant to be insane, we might speculate that local officials' ignorance here was related to the fact that the legal concept of idiocy did not resemble any disorder in the medieval medical lexicon, the Bible, or popular miracle stories, and legal inventions take time to be transmitted once devised.

The Growth of Legal Awareness

Everything discussed so far seems to confirm previous scholars' claims that people in the Middle Ages failed to differentiate between idiocy and insanity, notwithstanding how idiocy was defined in a few legal treatises. Yet popular awareness of the legal concept of idiocy must have increased as time progressed, because had it not, people accused of idiocy could never have become a commonplace in court, as they did by the end of the fourteenth century. For the Crown's involvement in matters related to idiots typically began not at the instigation of royal officials, but when people with an interest in an idiot's land petitioned the Crown to declare them incompetent.⁴² If the Crown acquiesced, (which it generally did if the petitioners could present just cause, and perhaps more importantly, pay the appropriate administrative fees) Chancery would send a writ to the sheriff, escheator, or other relevant official in the town where the alleged idiot resided, ordering them to investigate whether the

⁴² The procedure described here mirrored that used in other matters of private prosecution. My summary here reflects the content of my sources, but I am also indebted to Anthony Musson's discussion of private litigation in, *Medieval Law in Context*, 154-157.

petitioner's allegations were founded. On receipt of the writ, the person charged with overseeing the inquisition would examine the accused in person, or if they were for some reason unavailable, merely consult people who claimed knowledge of their condition—not infrequently including the person who accused them of idiocy in the first place. They would then send a summary of their judgment back to Chancery. If the person who conducted the inquisition believed that the accused was indeed an idiot, the Chancellor could order the escheator in the idiot's county to take the person and property into the king's hand, after which the Crown would typically sell their wardship to interested parties (again, often the people who originally brought the so-called idiot to the Crown's attention). Alternatively, the Chancellor could opt to investigate the matter further, if parties with a stake in the outcome of the inquisition rejected the sheriff or escheator's judgment.

As has perhaps become clear, the idiots who came to the attention of the royal courts during the later Middle Ages most likely represented the subset of people in England whose relatives and acquaintances recognized they had something to gain by accusing them of idiocy, rather than the full set of people with minds that might have aligned with intellectual disability as it is understood today. For idiocy inquisitions to run smoothly, sheriffs and escheators needed to be sufficiently familiar with the legal concept of idiocy to know what they were looking for when they examined alleged idiots. But above all else, people outside of legal circles needed to know that they could accuse their relatives and neighbors of idiocy, and have some incentive to do so, before more idiots could come under the purview of the royal courts. During the late thirteenth century this requirement seems not to have been met, if we take into account the evidence outlined above, and consider that inquisitions involving

insanity far outnumbered those involving idiocy during this period.⁴³ Yet although previous scholars were correct in noting that there were no separate writs for idiocy and lunacy, records of later idiocy inquisitions suggest that people became increasingly aware that idiocy and insanity were legally distinct disorders, with different legal consequences, as the fourteenth century progressed.

Even at the time of the earliest inquisitions, a small number of people with closer connections to legal and administrative culture seem to have had at least some idea that idiocy entailed something different than insanity, even if they were not sure precisely what this was. For instance, Peter de Seyvill, was found to be *freneticus idiota* after he was examined by men from the wapentakes of Osgotecros, Stayncros, and Aggebrigg at the Crown's request; and it was these men who identified him as *freneticus* in the writ returned to Chancery. The Crown first became interested in Peter's condition, however, after the escheator of York refused to entrust his brother-in-law John Dychton—also alleged to be an *idiota*—to his custody following his assessment of his (Peter's) mental state.⁴⁴ While the men of the wapentakes were likely unaware that the *Prerogativa Regis* recognized idiocy and frenzy as distinct disorders, the escheator used technical language when describing Dychton's condition. In the writ he sent to Chancery explaining his failure to deliver John to Peter, he wrote that Dychton was “incapable in tenements and goods, and weak in knowledge and reason,” language which echoed the Bracton treatise's statement that idiots were people unable to differentiate between tenements and rights.

More importantly, we should not assume that one needed to be aware of the law's

⁴³ See Appendix, Figure 1.

⁴⁴ CIPM vol. 2, no. 611, 373.

finer points in order to have some idea that the law distinguished idiocy from insanity. Even during the late thirteenth century, a small number of people with an interest in an alleged idiot's land seem to have recognized that idiocy and insanity were legally distinct disorders, and that one diagnosis could alter their fortunes more than the other—even if they were still not quite sure what idiocy entailed. For example, Bartholomew de Sakeville first came under the royal courts' purview in 1290, when officials acting at the request of Chancery determined that he was an idiot, and granted his wardship to Jordan de Evermuwe for two years.⁴⁵ In 1291 however, the Crown entrusted Bartholomew to his brothers after they argued that he was not an idiot, but “had been rendered *insane* from by a blow to the head.”⁴⁶ It seems quite likely that they claimed he was insane rather than an idiot in order to prevent his land from entering the king's hands and leaving their family, although the records do not state this explicitly.

Bartholomew's case did not end here.⁴⁷ Instead, Bartholomew came to the Crown's attention again in 1309, when a new inquisition determined that “he had been an idiot from his eighteenth year when he fell into an acute fever.”⁴⁸ Upon hearing this, the King sent a writ to his Chancellor asking him to grant Bartholomew's wardship to his yeomen, Thomas de Verlay and William Balliol, if he discovered that “without injury to anyone the king may

⁴⁵ CPR Edw. 1, vol. 2, 361.

⁴⁶ CPR, Edw. I, vol. 2, 446.

⁴⁷ It is interesting to note that Bartholomew probably would have been considered intellectually disabled rather than insane following his blow to the head if assessed by today's medical standards, although his condition aligned much more with insanity than idiocy as they were defined in medieval law. This highlights just how much medieval law's concept of idiocy differed from modern medical understandings of intellectual disability.

⁴⁸ CIPM, vol. 5, no. 149.

grant the custody of the said Bartholomew's lands to whom he pleases."⁴⁹ Bartholomew's brothers took action before this could be set in motion however, and once again came before Chancery and argued that Bartholomew was not an idiot, but insane from a blow to his head. They moreover exhibited the letters of patent that the Crown had issued to them nearly twenty years prior, "praying that nothing might be done therein to their prejudice without calling them."⁵⁰

I cited Bartholomew's case previously as evidence that the local officials who oversaw early idiocy inquisitions were often unaware that the law defined idiocy as a congenital disorder (given that they were willing to identify Bartholomew as an idiot even though his condition was acquired later in life). I cite it now, however, to suggest that this was not necessarily relevant to whether the people who participated in the inquisitions recognized that idiocy was distinct from insanity, legally if not ontologically. For although Bartholomew's brothers may not have known what idiocy—as it was defined by the law—entailed, they were able to recognize that their family's fortunes would differ significantly depending on whether Bartholomew was an idiot or a lunatic, and thus presented his condition to the Crown in a way that promoted their interests. In other words, people did not need to have a concept of a permanent, congenital, intellectual disability before they could begin to see idiocy as categorically distinguishable from insanity. Instead, the Crown simply needed to treat idiocy and insanity as legally distinct disorders.

Shifting Royal Policy

⁴⁹ CIPM, vol. 5, no. 149.

⁵⁰ Ibid.

This requirement seems to have been met right around the time of Bartholomew's first entanglement with the royal courts. It is typically accepted that when the Crown first began to assert its right over its mentally incompetent subjects, it selected guardians for the so-called idiots that entered its custody according to the conventions that governed a robust pre-existent wardship market.⁵¹ Long before the first *idiota* appeared in court, the Crown had claimed the right to select appropriate curators for the heirs of its tenants-in-chief when they came into inheritance before they reached the age of legal majority.⁵² These curators were charged with managing their wards' estates, providing for their care and upbringing, arranging suitable marriages for them when they came of age (except in the case of idiots), and ensuring that they were not taken advantage of by opportunistic relatives or adjacent landholders—all the duties that accompanied parenthood in the Middle Ages. In exchange, they were granted the right to the annual profits of their ward's estate.⁵³ Yet unlike today

⁵¹ Noel James Menuge, *Medieval English Wardship in Romance and Law* (Cambridge: D.S. Brewer, 2001), 1-9. See the account of Scott Waugh, *The Lordship of England: Royal Wardships and Marriages in English Society and Politics, 1217-1327* (Princeton: Princeton University Press, 1988), in particular the description beginning on 155. Waugh tends to emphasize the positive aspects of this system; however his study ends in 1327, while wardships became increasingly commercial as the fourteenth century progressed. It is interesting to note that scholars who work on the history of law (with the exception of Waugh) tend to admit that this system left much room for abuse, and was not always favored by the families of minor heirs, while scholars who work on the history of mental disorder in the Middle Ages tend to portray it as a compassionate alternative to the early modern asylum.

⁵² Both Menuge and Sue Sheridan Walker (whose opinion Menuge cites) believe that the wardship system can be traced back to at least 1100, when it was developed to address the problems that arose when an underage heir was unable to perform feudal obligation. Prior to Magna Carta, the king had right to the wardships of all its subjects, but after 1215 its prerogative only extended to people who held lands from it directly. Menuge, *Wardship in Romance and Law*, 1.

⁵³ The extent to which wardship holders were permitted to profit from the lands of their wards depended on whether the land in question was held in exchange for military service or socage (services other than military). If the former, the wardship holder could profit from the land without having to account for its profits or losses to the ward. If the latter, the case was murkier. Nevertheless, after Magna Carta, the royal prerogative only (in theory) extended to the lands of heirs held by military service, so wardships granted by the king were almost always profitable to those who held them, and rife with the potential for abuse. Perhaps alluding to

when custody of orphaned children typically falls to their parents' closest relatives, individuals capable of inheriting the ward's estate were seen as less than ideal guardians for their family members due to the fact that they had an obvious interest in preventing them from ever coming into their inheritance. Thus, in order to safeguard against abuse, the Crown—at least in theory—granted the wardships of minor heirs to other landholders inside their family's social network; typically nobles of similar rank, status, and “territorial interests.”

Had the Crown looked to this system when selecting guardians for the idiots in royal wardship, idiots ought to have typically ended up in the custody of people outside their near family. Yet while the *Prerogativa Regis* outlined how the Crown's rights over idiots differed from its responsibilities toward lunatics during the 1270s, for most of the thirteenth century the Crown seems to have not only conflated idiocy with insanity in the writs it sent to sheriffs and escheators (and vice-versa), but also treated the wardships of the idiots who came into its custody no differently than those of the insane.⁵⁴ In inquisitions held prior to the last decade of the thirteenth century, the Crown frequently entrusted *both* idiots and lunatics to the care of their relatives. For instance, Peter de Seyvill, the *freneticus idiota*, and John Dychton, his brother-in-law (who was just an idiot, not *freneticus*) ultimately ended up in the custody of Placencia, Peter's sister and Dychton's wife.⁵⁵ Likewise, in 1290 the Crown

this, the *Glanvill* treatise (written in 1188), spelled out that “Guardians must restore inheritances to heirs in good condition and free of debts, in proportion to the duration of the wardship and the size of the inheritance.” (Glanvill, VII, 9. pg 83.)

⁵⁴ As previously discussed, some contemporary scholars believe that the *Prerogativa Regis* was written in the 1270s, while legal scholars in the nineteenth and early twentieth centuries held that it was written in the 1330s. I continue to assume, as before, that the *Prerogativa Regis* belongs to the 1270s, but this dating does not affect my argument either way.

⁵⁵ CIPM vol. 2, no. 611, 373

granted the wardship of Henry son of John Holewell, an idiot from birth, to his mother, and it granted custody of John Styne to his mother as well in 1309.⁵⁶

More significantly, although the law eventually asserted that the Crown—and by extension the people to whom it granted idiots' wardships—had the right to profit from their estates for the duration of their lives, the Crown seems to have rarely taken advantage of this privilege when it first began to take idiots' lands into its hands. In contrast to later wardship grants, which typically required grantees to pay annual fees to the Crown from the profits of their wards' estates, extant records of wardship grants from the thirteenth century rarely asked anything of the grantees. Instead, in the few instances when the Crown chose not to entrust an idiot to their relatives, the writs typically noted that the grant was made, “in the king's gift,” or “at the king's pleasure,” allowing the grantee to hold the wardship at no expense. However, the terms of these grants frequently limited the amount the grantee could profit from their wards' lands by requiring them to render a considerable portion of the estates' profits to the idiots' families, following the conventions governing guardianship arrangements for the insane at the time.⁵⁷

For instance, in 1292 the Crown granted a portion of the idiot John Danethorp's estate to Adam de Skypwyth, the king's former watchman.⁵⁸ The lands in question were

⁵⁶ CIPM vol. 2, no. 339; CCR Edw. II, vol. 2, 67 & 115.

⁵⁷ The *Prerogativa Regis* again held that the guardians of people who suffered from temporary mental impairment needed to ensure that “their lands and tenements may be safely protected, without waste and destruction, and that they and their household [*familia*] may live and be reasonably sustained from the profits of the same, and the residue beyond their sustenance be preserved for their use, to be delivered to them when they regain their memory [emphasis added], so that such lands and tenements shall in no way be aliened within the aforesaid time; The king should not take anything from the profits for his own use, and if the party should die in such a state, then the residue should be distributed for his soul, at the advice of an ordinary.” *Statutes of the Realm*, vol. 1, 226.

⁵⁸ CIPM, Edw. I, vol. 3, no. 128. Although it seems rather exceptional that the Crown would grant the wardship of a knight to someone of such modest means, this was not atypical during the late thirteenth and

worth 52/7*d*, in annual rents less 5*s* owed to a chief lord, which surely would have amounted to a windfall for someone from Adam's station in life. Yet Adam would have profited little from the arrangement, because the terms of his grant stipulated that he "pay 40*s* a year for his [John's] maintenance to the kinsman of the idiot, who, by consent of his friends, shall have the custody of him."⁵⁹ Ultimately then, Adam would have only seen 7*s* 7*d* of the estates' profits, although he would have presumably been able to live in a small house on the property.⁶⁰ Similarly, when the guardian appointed to Margery Anlauby died in 1288, a postmortem inquest found that he used the profits from her estate (worth 25*s* 5*d* in annual rents) to provide for Margery and her children, and pay 10*s* yearly to the convent where her sister lived, obligations that would have left little profit for his own use.⁶¹

In short, in the few instances when the Crown chose to entrust idiots to people outside their families during the thirteenth century, the terms of the grants ensured that neither they nor the Crown profited excessively from these arrangements, despite the fact that the law would eventually assert the Crown's right to do so. Instead, when so-called

early fourteenth centuries. When the Crown did entrust idiots to people outside their families, it typically did so to reward service in an economy that still privileged gift exchange, occasionally entrusting idiots to the church or the king's servants—tailors, clerks, yeomen, vitners, and watchmen. For instance, in 1290 the Crown granted custody of an insane woman, Catherine de Rippers to the king's yeoman until she recovered. The record refers to the yeoman as her "keeper," suggesting that his role was that of a guardian as much as an estate manager. No mention was made of her land (CPR Edw.I, vol. 2, 338). Likewise, it granted custody of Margery Anlauby to the king's clerk, William de Beverlaco. (CPR vol. 2, 449). In 1309 it granted custody of John, son of William Dun to the king's yeoman, despite the fact that John's mother protested this arrangement. (CIPM vol. 5, no. 329). It also attempted to grant Bartholmew de Sakevill's estate to two yeomen before his brothers appealed the escheator's finding of idiocy.

⁵⁹ CIPM, Edw. I, vol. 3, no. 128.

⁶⁰ I suspect this was the reason the king granted the wardship to Adam. For Adam had no property of his own, and later, after the lands briefly reverted to John's heir after his death, Adam ended up living at a hospital due to age and poverty. He was moreover, only was able to gain a bed there after the king wrote to the chaplain requesting that he admit him. I return briefly to Adam and William toward the end of this chapter.

⁶¹ CIPM, Edw. I, vol. 2, no. 728.

idiots first began to appear in court, the Crown seems to have selected guardians for *all* of its mentally incompetent subjects with the same goal in mind; to protect their heirs from disinheritance.⁶² There is little evidence that the people who held the wardships of idiots in these early cases gained more from them than the guardians of lunatics, and in most cases they seem to have understood that the privilege of holding a wardship was closely connected to the responsibility of guardianship, to the extent that one man who seized an alleged idiot's property without the king's permission in 1298, nevertheless brought him up ("*in nutritura*") and enfeoffed him to his lands when he came of age.⁶³ Ultimately, if the local officials charged with overseeing the earliest idiocy inquisitions failed to distinguish between idiocy and insanity, it may have been because the Crown failed to as well.

As long as the Crown relied on the same criteria when selecting guardians for idiots and the insane, people with an interest in alleged idiots' land had little reason to contest the outcomes of inquisitions, or acquire knowledge of the law's distinction between idiocy and insanity. Indeed, with but two exceptions, the families of people accused of idiocy during the

⁶² Confirming this, the Crown seems to have taken great care to ensure that idiots' estates returned to their rightful heirs after their deaths. For instance, in 1297 Richard Arden, an idiot who had been in the custody of Alan de Walkingham since 1280, died, and his heirs entered his estate. The escheator in his county however, believing the lands were still in the king's hands, seized the lands and ejected the heirs, because "it did not appear to him how the lands had come to the hands of Philip and Margery [the heir] after they had been taken into the king's hands upon the death of Alan de Walkingham[...]" To this the King responded that he had rendered the lands to Margery and Philip after Richard's death, and asked the escheator to intermeddle no further and take no more lands into his hand without "reasonable cause", because he considered "such seizures unreasonable and unjust, [...] as many persons of his realm are much injured contrary to the law and custody of the realm, by reason whereof he may be frequently solicited and moved by complaints made to him concerning such undue seizures." CCR Edw. I, vol. 4, 72.

⁶³ CIPM, vol. 3, no. 550.

late thirteenth century did not protest the Crown's judgments, although it would have been in their interests to do so had the law been followed to its letter. The Crown's practices relating to idiots began to change toward the very end of the thirteenth century, however, right around the time Bartholomew de Sakevill's brothers argued that he was insane rather than an idiot before Chancery. While the Crown continued entrusting people suffering from impermanent mental disorder to their friends and relatives for the duration of the fourteenth century, from the 1290s onward it seems to have increasingly eschewed placing idiots in the custody of their near relatives, and instead looked to the rules that governed the general system of wardship when choosing their guardians, effectively placing idiots in the custody of people to whom they had little relation in exchange for annual fees. In other words, the Crown began treating the wardships of idiots as a saleable commodity.

Legal writing from this period reflected these changes. As discussed at the end of Chapter Two, during the 1290s *Fleta* and *Britton* elaborated upon how the king's rights over idiots differed from his responsibilities to the insane, clarifying that king's rights to the lands of idiots from birth superseded those of their lords.⁶⁴ Moreover, this trend is plainly evident in the records of inquisitions held during the late thirteenth, and fourteenth centuries.⁶⁵ Not only do we seldom find idiots entrusted to near relatives by the fourteenth century's end, but

⁶⁴ See discussion at the end of Chapter Two. *Fleta*, B. 1, c. 11. a. 10. Cited in John Shapland Stock, *A Practical Treatise Concerning the Law of Non Compotes Mentis, or Persons of Unsound Mind*, (London: Saunders and Benning, Law Booksellers, 43 Fleet Street, 1838), 81. Also see *Britton*, Book III, Chapter II, a. 20.

⁶⁵ The evidence for this is so overwhelming that citing cases would result in a multi-page footnote, and since I will describe a number of these inquisitions in the next two chapters I wait to substantiate this claim further until then. It is worth noting here though that we can see this shift in some of the writs already discussed. For example, when the Crown asserted its rights to the land of John de Hispania in the writ it sent to the justices of the Eyre of Essex, it did so because it planned to grant his land to the Queen. Likewise, Bartholomew Sakeville's brothers argued that he was insane rather than an idiot after the Crown granted his wardship to someone outside his family.

the Crown's tone in the writs it sent to sheriffs and escheators became increasingly proprietary as the century progressed.

As we saw in the 1286 case of John de Hispannia, around the time the Crown began granting wardships of idiots to people outside their families, Chancery officials took care to define and defend the Crown's authority over idiots in the writs it sent to sheriffs and escheators.⁶⁶ Initially, these explanations emphasized the Crown's duty to protect its subjects from disinheritance during periods of mental instability. For instance, when the Crown explained its reasons for taking John's lands into its hands in the writ sent to the sheriff charged with delivering John's lands to the Queen, it cited its responsibility to safeguard John's estate from those who would take advantage of his condition. As the fourteenth century progressed however, explanations of royal prerogative increasingly emphasized the Crown's financial claim to idiots' lands. The Crown explicitly mentioned its rights to the profits from idiots' estates in a majority of writs issued after the first quarter of the fourteenth century.⁶⁷ It also accused individuals who assumed custody of an alleged idiot following their legal guardian's death of depriving the king of his rightful profits. For instance, in 1361 the Crown noted that men occupying the estate of Robert de Tothale had "intruded on the king's seisin of the manor, [and] take[n] issues and profits thereof," to "the

⁶⁶ See discussion beginning on page 93.

⁶⁷ For instance, in 1371 the Crown noted that Gilbert Blackehamme had "dissipated a great part of his goods to his own disherison *and the king's prejudice* [emphasis added]," in his idiocy (CIPM, vol. 13, no. 143), and it used the same language in the writ it sent to officials in Lincoln regarding the alleged idiocy of John Brewes (CPR, Edw. III, vol. 10, 235-6). Likewise, when Geoffrey Dautre died in 1380, leaving an idiot son, the Crown claimed that by reason of his idiocy, "profit of the premises belongs to the king," (CIPM, vol. 15, no. 164), and, when it was determined that Elizabeth Polglas was an idiot from birth in 1396, it similarly noted that custody of her lands thus ought to belong to the king. (CIPM, vol. 17, no. 1396.) Ultimately, more writs from later inquisitions use this language than not.

king's disherison."⁶⁸ Likewise, 1391 the Crown granted the wardship of Ralph Beseville to Thomas Alnewyk, a serjeant of the butlery, after "*lands belonging to the king on account of the said Ralph's idiocy* [emphasis added], but concealed, [were] acquired only by the aid of the said Thomas."⁶⁹ (The Crown revoked the Letters of Patent in the following year, after Ralph appealed this decision, and was found not to be an idiot after being examined in person at Chancery.) Moreover, by the second quarter of the fourteenth century the Crown had all but ceased granting wardships "in the king's gift," and instead took care to specify the various fees and services the wardship grantee owed to the Crown in exchange for their right to profit from the idiot's estate.

Evidence suggests then, that as the fourteenth century progressed, the Crown increasingly viewed its right to select guardians for the idiots in its custody as a means to bolster its coffers, rather than a service provided to protect its subjects from disinheritance. As a result its treatment of idiots diverged from its treatment of the insane. I develop this claim in greater detail in the chapters that follow. For the purposes of our discussion however, the most significant result to arise from these changes was that as the Crown began to attribute very different legal consequences to idiocy and insanity, it developed fixed criteria for distinguishing between idiots and people suffering from temporary mental disorders. Over the course of the fourteenth century, the writs sent to the sheriffs and escheators frequently asked them to inquire whether alleged idiots were afflicted with their condition from birth, or had lucid intervals. In 1365 for instance, an inquisition taken in Chichester at the Crown's request determined that William Eyhot was "an idiot from birth,

⁶⁸ CPR Edw. III, vol. 12, 69.

⁶⁹ CPR Ric. II, vol. 4, 232.

quite incapable of managing his affairs because he does not enjoy lucid intervals.”⁷⁰ On January 30th 1386, the Crown asked the escheator in Westminster to enquire whether Lucy daughter of Geoffrey atte Brygge of Wytchechirche had been an idiot since birth “so that the custody of her lands in Whytechurch ought to pertain to the king, or whether she has fallen into such infirmity by misfortune or otherwise,” implying that her lands would only belong to the king if her condition was congenital.⁷¹ And likewise, in 1394 the Crown asked the sheriff of Gloucester and three local men to examine whether Joan the widow of Richard Hayme was “an idiot of unsound mind,” or “whether she enjoys lucid intervals.”⁷²

In all these inquisitions it was clear that the individual under examination would have very different rights depending on whether they had been afflicted with their condition from birth, and whether they had moments of lucidity. After a previous inquisition had found that Lucy was “no an idiot from birth [...] but not of sound mind,” for instance, the Crown ordered her guardian to grant her livery of her lands, despite acknowledging that she was not quite sane.⁷³ Ultimately, in ordering sheriffs and escheators to ask these questions when examining alleged idiots, the Crown firmly grounded the distinction between idiocy and insanity that had previously been confined to written law, in juridical practice, to the extent that legal texts were still defining idiocy as a congenital disorder centuries later. During the

⁷⁰ CIPM, vol. 12, no. 42.

⁷¹ CIPM, vol. 15, no. 909. This marked the last of a long series of inquisitions involving Lucy, all of which dealt with the question of whether she was an idiot from birth, or someone in possession of lucid intervals who had become insane through sickness. On June 14, 1385 for the Crown asked three local officials to assess whether Lucy, the daughter of Geoffrey ate Brygge of Whytchechirche was an idiot, by examining “whether she was *non compos*, and since when, and if she has lucid intervals.” The Crown made this request after the escheator in her county had found that she was “no idiot, [...]but not of sound mind,” in the previous year, and entrusted her estate to Roger Inyot.⁷¹ The officials charged with examining her this second time determined that she was sane, and the Crown ordered Roger to give her livery of her lands. Roger protested this however, so the Crown ordered the inquisitions described above. CCR, Ric. 2, vol. 3, 44.

⁷² CIPM, vol. 17, no. 276.

⁷³ CCR, Ric. 2, vol. 3, 44.

mid eighteenth century for instance, Blackstone's *Commentary on the Laws of England* stated that "an idiot or natural fool is one that hath no understanding from his nativity; and thus is considered never likely to obtain any," while noting that "a lunatic, or *non compos mentis* is one who hath had understanding, but by disease, grief, or some other accident hath lost the use of his reason."⁷⁴ The fact that this understanding was embedded not only in medieval law, but in the juridical practices of the royal courts, seems to refute the claim that people failed to see idiocy as anything more than a vague subset of insanity until early modernity.

Popular Responses

These changes were, I believe, why people other than legal scholars and royal administrators first began to see idiocy as something other than an ill-defined subset of insanity. For as the Crown increasingly treated idiocy and insanity as legally distinct disorders, people with an interest in alleged idiots' lands seem to have quickly become aware that a finding of idiocy would impact their fortunes more than a finding of insanity, and developed strategies to tilt the Crown's judgment in their favor. Although people with an interest in seeing that an alleged idiot's lands remained in their family's control ought to have found these changes acceptable in theory, for the most part, they did not respond positively to the Crown's extended reach.⁷⁵

⁷⁴ Sir William Blackstone, *Commentary on the Laws of England in Four Books*, (Philadelphia: J. P. Lippincott & Co., 1875), Book I, Chapter XVIII. Blackstone further noted that a lunatic is "properly one who hath lucid intervals; sometimes enjoying his senses and sometimes not, and that frequently upon the changes of the moon." I say more about the legacy of medieval understandings of idiocy in Chapter Five.

⁷⁵ Beyond the fact that the Crown claimed that it only took idiots' lands into its hands to protect their heirs from disinheritance, some scholars believe that the wardship system benefited the families of wards more

While the wardship system may have worked well when families knew that their heirs would age out of it when they reached the age of legal majority, the fact that idiots remained in wardship for the duration of their lives posed several problems to families who wished to retain control over their land. Each right associated with wardship presented the person holding it with the opportunity for financial and political gain. Beyond the obvious advantages that came with being able to profit from wards' estates, wardship holders could also sell or give away the wardship to anyone whom they pleased as long as the new grantee rendered the same fees and services to the Crown. At least in theory this meant that an idiot could end up in the custody of someone to whom they had no relation, and who had little interest in seeing their land preserved or returned to their heirs upon their death.⁷⁶ In a case I discuss in the following chapter for instance, the rights to the wardship of a knight's daughter were sold so many times that although the Crown had initially granted her wardship to the Earl of Cornwall, she ended up in the custody of a farmer who had been her

than it harmed them. For while modern readers will likely bristle at the thought of the state asserting control over decisions as personal as selecting guardians for children in the event of their parents' untimely deaths, at least until the end of Edward II's reign noble families seem to have not only tolerated the Crown's regulation of the general wardship market, but welcomed it. As Scott Waugh explains, although the Crown's selection of guardians for minor wards "temporarily redistributed wealth among the nobility," it also "reinforced a sense of mutual responsibility within the elite, for control of another's lands and heirs was constantly circulating among them," and created opportunities to build alliances, acquire, and preserve property. Thus, while the Crown's involvement did temporarily transfer control of wards' lands from their families to their guardians, as long as the Crown limited its authority to its tenants-in-chief, the wardship system ultimately reinforced the upper class' preference for social endogamy, strengthening financial and social bonds between wealthy families, while creating networks of patronage between the Crown and its tenants. Waugh, *Lordship in England*, 8; See discussion beginning on 221 for a more detailed description of how guardians benefited from these arrangements.

⁷⁶ There are many examples of this in the records of fourteenth century idiocy inquisitions. Consider the case of John Brewes cited earlier in this chapter, in which John's guardian refused to use the profits of his estate to provide for his wife and children, to the extent that the king warned him that he would terminate the grant "if he is lacking in that payment at any of the terms [...]." (CPR, Edw. III, vol. 10, 472). Likewise, in 1359 the Crown pardoned Robert fitz Neel, an idiot, of "all accounts due by reason of his lands, or the issues thereof, and whatever pertains to the king on account of wastes or other trespasses," committed by his guardian. (CPR, Edw. III, vol. 11, 273.)

father's tenant prior to his death.⁷⁷

The fact that the Crown now stood to profit much more from findings of idiocy than insanity, further threatened people who hoped to see alleged idiots retain possession of their land. For as the fourteenth century progressed the people who brought idiots to the Crown's attention seem to have increasingly recognized that the Crown's right to grant their wardships to whomever it wished created a new legal means by which land could be redistributed at a time when the nobility's preference for social endogamy meant that land typically changed hands only through marriage and inheritance. This gave people who hoped to obtain an individual's lands a powerful incentive to accuse them of idiocy, if there was even a small chance that their condition could be construed as idiocy within the parameters of the law.

We can see evidence of this in records of idiocy inquisitions held during the later half of the fourteenth century. The most common reason people suspected of mental impairment came to the Crown's attention during the thirteenth century was that they had alienated land while allegedly incompetent. For instance, the Crown ordered the justices of the Eyre of Essex to examine the aforementioned Richard de Hispania after he alienated his estates for a horse, and an unfulfilled promise of sustenance for life. Likewise, in circumstances representative of inquisitions held at the time, in 1284 the Crown investigated whether William de Kyndale was of sound mind after he alienated his entire estate to his second son, effectively disinheriting his first born. "Softly weeping" when examined, Kyndale admitted that he was "not of sound mind, nor knew how his son William entered

⁷⁷ *Calendar of Inquisitions Miscellaneous*, vol. 2, no. 153 and no. 583. (Henceforth, CIM)

his manor of Kildale, nor how he himself was ejected, but begged peace from them, and that they would not stop him from returning to his manor of Kildale.”⁷⁸ In other words, early inquisitions generally began after concerned parties asked the Crown to nullify fraudulent land transfers that an alleged idiot had made to people seeking to take advantage of their condition.

Idiocy inquisitions held toward the end of the fourteenth century, however, typically began after the person accused of idiocy had experienced a major life event (marriage, remarriage, reaching the age of majority and coming into an inheritance), which had the potential to take land out of the hands of the party who brought their condition to the Crown’s attention. Men frequently accused their brothers’ widows of idiocy when they were about to remarry and take their dower with them; wardship holders accused their wards of idiocy when they were about to reach the age of majority and come into their inheritance; and the uncles of young heiresses in wardship due to their minority accused their nieces of idiocy when their guardians arranged marriages for them that would be to their family’s disadvantage. In other words, the profits associated with obtaining the wardship of an idiot gave people many reasons to accuse others of idiocy beyond concern for their well-being.⁷⁹

This would not have been excessively problematic if the Crown had based its decisions in idiocy inquisitions solely upon alleged idiots’ mental states. However, idiocy was still a fluid category for most of the Middle Ages—even while the legal distinction between idiocy and insanity was becoming increasingly crystalized in juridical practice—and the fact

⁷⁸ CIPM, vol. 2, no. 584.

⁷⁹ I do not substantiate these claims here for the sake of brevity, but they are central to Chapters Four and Five, and will be discussed in depth there.

that the Crown stood to profit from selling idiots' wardships gave it an incentive to side with their accusers. Although the Crown did not treat idiots' wardships as saleable commodities during the late thirteenth and early fourteenth centuries to quite the extent that it would by the fourteenth century's end, we can already see this prejudice in some early inquisitions.

In an inquisition held in 1301 for instance, the escheator charged with evaluating an alleged idiot seems to have *intentionally* overlooked the fact that his condition fit the legal criteria for insanity more than idiocy, so the Crown could grant his lands to one of the king's favored servants. In that year, Adam le Gayte of Skyrwyrth, the king's former night-watchman, requested that the Crown examine William de Berchaud, on suspicion of idiocy, and grant him his wardship if he was found incompetent. When Adam made this request he was in dire straits. For he had previously held the wardship of William's uncle, John Danethorp, also an idiot, and had lived in a small house on his estate.⁸⁰ When John had died a year earlier however, Adam was forced to vacate his lands after they had passed to William, Danethorp's heir. Having no lands of his own, Adam was then reduced to relying upon charity for food and shelter. Shortly after Danethorp's death, the king sent a letter to the abbot of Croyland, requesting that he take Adam, "who had long and faithfully served the king," into his house, and "grant him all the necessities required for the rest of his life,"—a common practice at the time when someone had become too impoverished or infirm to care for themselves.⁸¹ Perhaps on account of this, in his petition to the Crown, Adam noted that he needed William's wardship because, "what he had of his uncle, the other fool, had been

⁸⁰ See discussion on page 103.

⁸¹ We know that Adam had no property because four years before the Crown granted him wardship of Danethorp, he had come before the king with his wife to formally surrender land that had been seized after they defaulted on payment owed to a recent widow. (CR, 1286-9, 54.)

loyally expended in the king's service, and *he cannot otherwise maintain his estate* [emphasis added].”⁸²

The escheator complied with Adam's request. Nevertheless, he noted that he had heard upon making inquiries to William's neighbors that William “at lunations is worse, and is vacant with savage madness,” (*aliquando per lunaciones deterius se habet et crudelis furore vacatur*)—language that echoed that used in other contemporary inquisitions to describe insanity, rather than idiocy. As already discussed, *furore* was a medical term that frequently appeared in inquisitions related to criminal insanity. For example, in an inquisition nearly contemporaneous to William Berchaund's, William Gray was pardoned for the death of Walter Scot of Stanford on the grounds that he had killed him in a fit of *furore*. An inquisition held not long after this investigated allegations that Robert Barre had repeatedly attacked his son in a state of *furore*, while supposedly possessed by an evil spirit. Likewise, the claim that William's condition deteriorated with lunations, reflected the contemporary belief that madness was connected to the lunar cycle.⁸³ The discrepancy between William's diagnosis and the escheator's description of his symptoms thus suggests that the escheator was aware that William fit the definition of lunacy more than idiocy, but willing to misrepresent his condition in order to ensure that the king's trusted servant could receive his wardship. For had the escheator found William to be a lunatic rather than an idiot, the Crown would not have been able to grant his land to Adam, since it was required to protect,

⁸² CIPM Edw. I, no. 118.

⁸³ Other inquisitions reflect this. For instance, in 1318 Chancery requested that Alexander Tothe be delivered to his mother, because although it had previously been determined that Alexander was an idiot and madman from birth, upon further inquisition it was found that he was not an idiot, but “enjoys lucid intervals (*lucidis intervallis*) in the new moon, and holds lands in Middelton of diverse lords by various services, and that he des not hold of the king.” CCR Edw. 2, vol. 3, 22.

but unable to profit from the land of people suffering from temporary mental illness. By identifying William as an idiot however, the Crown was able to grant his land and the profits it produced to anyone it pleased.

Cases like this became more common as the fourteenth century progressed, and as a result the odds were very much stacked against those who wished to keep an alleged idiot's land in their possession. On account of this, just as the Crown's right to profit from the lands of idiots but not the insane gave people who hoped to obtain an individual's land an incentive to accuse them of idiocy, people with an interest in ensuring that an alleged idiot retained possession of their lands had an incentive to exploit any ambiguity in their condition to keep them from entering royal wardship.⁸⁴ We can see this in the records of inquisitions from the fourteenth century. For as the Crown began to treat idiocy and insanity as legally distinct categories, people employed a variety of strategies to keep alleged idiots' lands out of the king's hand. Some with an heir whom they feared might be deemed an *idiota* attempted to make arrangements in advance of their deaths to ensure that their estate would descend to someone else in their family. For instance, an inquisition held in 1340 found that Robert de Scorburch had granted his manor and all of his lands to his sons Roger and William prior to his death, due to the fact that his eldest son and legal heir, Thomas, was "an idiot from birth,

⁸⁴ Cases involving individuals who falsely accused others of idiocy to gain access to their land are central to chapters 4 and 5, so I limit my discussion here. However, to not leave this claim entirely unsubstantiated, consider this small selection of cases: In 1330, the Crown ordered the escheator this side of Trent to remove Walter le Vencour's lands from the king's hand, after it was found that he had taken the lands, "*pretending* that William son and heir of Walter le Vencour is an idiot," while it was discovered that he never was when he was examined in Chancery. (CCR, Edw. III, vol. 2, 1). In 1391, the Crown revoked letters of patent granting the wardship of Ralph Beseville to Thomas Alnewyk, (who had brought Ralph's idiocy to the Crown's attention in the previous year), after Ralph was "found on examination in Chancery before the council and in the presence of the chancellor, justices, serjeants-at-law and others, not to be an idiot. (CPR, Ric. II, vol. 2, 290.) Likewise in 1383 a woman whom I discuss at length in Chapter 5 claimed that her uncle accused her of idiocy because he needed the profits from her estate to pay his debts. (CPR, Ric. II, vol. 2, 305.)

whereby custody of the manor and lands ought to pertain to the king.”⁸⁵ Others attempted to hide alleged idiots from the officials charged with examining them. In 1320 for example, the Crown ordered Richard Rodeneye, the escheator this side of Trent, to remove John atte Wode’s lands from the king’s hand, after it was discovered that he had determined that John was an idiot without examining him in person because his tenants had hidden him to prevent the examination from taking place.⁸⁶ Others still contested the Crown’s authority; for instance, in a case I discuss in great detail in Chapter Five, in 1386 the mayor of Bishop’s Lenn (modern day King’s Lynn) argued that the king had no right to take the lands of an alleged idiot into his hands, because Lenn was a free borough.

However, by far the most common response was to contest the accusation of idiocy itself. For although the results of idiocy inquisitions had rarely been appealed during the late thirteenth century, by the end of the fourteenth century people disputed the Crown’s findings in one third of all idiocy inquisitions, and over half of those involving women [See Appendix, Figures 2, 3, 6 and 7].⁸⁷ Just as Bartholomew de Sakevill’s brothers had argued that he was insane rather than an idiot to keep his lands out of royal wardship in 1301, during the later half of the fourteenth century people with an interest in making sure the land of accused idiots did not end up in the king’s hand often contested the findings of inquisitions by arguing that their relatives, spouses, landlords, and tenants could not be idiots

⁸⁵ CCR Edw. III, vol. 5, 400.

⁸⁶ CCR, Edw. II, vol. 3, 248. After Richard took the lands into the king’s hand, the same tenants seem to have requested Chancery to examine him. Chancery complied, and discovered that he was “not an idiot nor a madman.” We can find other examples of people hiding an alleged idiot to evade royal authority in a number of cases from the later fourteenth century. For instance, in 1371, the Crown ordered the king’s serjeant at arms to fine Roger Stanlake, an alleged idiot, and bring him to court, as “John Marreys has eloigned Roger and keeps him in secret places, utterly refusing to have him before the king as ordered.” CPR, Edw. III, vol. 15, 175. I discuss a number of these cases in Chapters Four and Five.

⁸⁷ I discuss the reasons for this discrepancy in the following chapter.

since they had acquired their condition later in life rather than at birth, enjoyed lucid intervals, or could measure cloth, count coins, read and write, or even knew the difference between good and evil, and evil and good. In making these arguments, they were not only embracing the law's criteria for idiocy, but also inadvertently associating traits with intelligence and its absence, beyond those supplied by the legal theorists.

For instance, in 1345 John atte Berton attempted to regain control of his lands after a previous inquisition had determined that he was “an idiot so that he is not sufficient to rule himself or his lands from his nativity.”⁸⁸ John argued, however, that “he was of sound mind and was so before the taking of the inquisition,” but;

by great grief and terror at the death of his father [...] ha[d] lost much of his memory and has remained almost without memory for three years, although he enjoys certain lucid intervals, so that he was reputed an idiot at that time, but afterwards he regained his health and has preserved a good memory for more than the last five years and is at present of sound mind and not an idiot.⁸⁹

The fact that John emphasized that his condition was acquired later in life, and that he enjoyed lucid intervals even during it, suggests familiarity with the law's criteria for distinguishing between idiocy and insanity.

Similarly, in 1378 the parson of the church of Brandon who held lands directly from Margery Colle, argued that he was “unlawfully thrust [out of her lands] by color of an inquisition,” since Margery was not “a natural idiot [...] as he is ready to prove,” suggesting

⁸⁸ CPR, Edw. III, vol. 10, 44.

⁸⁹ Ibid.

awareness of the fact that the law defined idiocy as a condition acquired at birth.⁹⁰ In 1375 people with an interest in Margery de Layburn's land argued that she was not an idiot because she enjoyed lucid intervals.⁹¹ Employing a different strategy, in 1373 parties acting on behalf Roger Stanlak argued that he could not be "an idiot from birth", because he had gone to school before he left home at the age of fifteen, and had learned to read.⁹² In other words, people with a stake in the outcomes of later idiocy inquisitions not only recognized that the Crown defined idiocy as a congenital, permanent condition and used this fact to their advantage, but as the law provided no other indication what idiocy entailed beyond that, they began to associate other qualities with intelligence and its absence that reflected the values of late medieval society.

The following chapters are primarily concerned with how these attempts shaped the way that idiocy would come to be defined during the Middle Ages and beyond. Since I discuss a number of these cases in great detail hereafter, I will refrain from saying more here. The greater significance of the changes I have discussed thus far, however, lies in the fact that they suggest that changes in the law caused people to begin to see idiocy as a permanent, congenital disorder, distinct from insanity, long before any such concept emerged in medical thought. For even at the end of the fourteenth century, medical texts continued to omit discussions of anything resembling idiocy as it was defined in medieval law, or intellectual disability, as it is defined today.⁹³ Similarly, one is hard pressed to find references to idiots and fools in English vernacular literature, amidst reference to "lunatic

⁹⁰ CCR, Ric. II, vol. 1, 150.

⁹¹ CPR, Edw. III, vol. 16, 150-1.

⁹² CIPM, vol. 13, no. 296.

⁹³ See discussion in Chapter Two.

lollers and wanderers, mad more or less, according as the moon sitteth,” and popular sermons and hospital charters remained silent on the plight of people who might be considered intellectually disabled in their discussions of charity.⁹⁴ In other words, people began to see idiocy as something distinct from insanity because the law compelled them to do so, long before any cultural concepts had emerged to inform their understanding. The conceptual history of intellectual disability thus begins in the medieval courtroom rather than the physician’s chambers.

⁹⁴ William Langland, *Piers Plowman*, Passus IX, 110. A few notable exceptions exist to this; for instance, Chaucer speaks of a “Seynt Idiot, lord of these foles alles,” in reference to the follies of love, in *Troilus and Criseyde*, Book I, 910.

CHAPTER 4

A FOOL AND (HER) MONEY ARE SOON PARTED: IDIOCY AND INHERITANCE IN THE FOURTEENTH CENTURY

The previous chapter suggested that people in late medieval England were not only aware of the law's dichotomy between idiocy and insanity, but also played an inadvertent role in shaping how idiocy would be defined both within courtroom and beyond, through their participation in idiocy inquisitions. So far, I have explored the first point at length, however I have said little about the second. Thus, the next two chapters are devoted to explaining how the interests of the various participants in idiocy inquisitions—the alleged idiots' relatives, acquaintances, guardians, and the individuals who sought their wardships and land—informed how idiocy would be understood and defined once the concept devised by thirteenth century legal scholars moved beyond legal theory into practice. Chapter Five describes how specific deficits came to be associated with idiocy as the criteria the Crown used to assess mental competency began to reflect the values of a new professional class that oversaw alleged idiots' inquisitions, and sought their wardships as a means of gaining access to landed wealth. In this chapter, however, I first discuss more broadly how the interests of the landholding classes of later medieval England helped determine which groups of people would be deemed more and less rational, as rationality was increasingly defined as the ability to manage landed wealth.

We have now seen that idiocy was a novel concept when the courts first began to

oversee inquisitions involving so-called *idiota* and *fatuus nativitate*. It was not a medical category, but a legal invention, allegedly devised to protect the Crown's mentally incompetent subjects from foolishly alienating property to the disinheritance of their relatives. Yet, the legal texts that established the Crown's right to profit from idiots' estates said little about what idiocy entailed beyond the fact that it was congenital and permanent (and practice, moreover did not always reflect this distinction). Thus, at the time of earliest idiocy inquisitions, no firm criteria existed to determine who fell into this category and could thus be deprived of their rights to property and self-governance through legal action. On account of this, we are left with the vital question; just who was an idiot in late medieval England, and what set of qualities distinguished them from the rest of their countrymen?

In this chapter I examine how the answer to this question changed over the course of the fourteenth century. As we saw in Chapter Three, most people accused of idiocy in the late thirteenth and early fourteenth centuries were middle aged or elderly men, who typically held land worth at least a knight's fee in annual rents. Through an analysis of long-term trends and select cases however, I suggest that as the fourteenth century progressed the demographic backgrounds of alleged idiots shifted, so that individuals whom the upper classes considered disadvantageous custodians of landed wealth—including women, widows, and distant collateral relatives—were accused of idiocy at higher rates than the rest of the population relative to the percentage of England's land that they held. These changes were not related to medical reality, epidemiology, or changing ideas about the nature of reason. Instead, they were connected to the upper classes' desire to retain access to landed wealth at a time when demographic pressure and social change made this increasingly difficult. For

since the law had little to say about people who were both mentally incompetent *and* lacked landed wealth, the alleged idiots who came under the purview of the royal courts during this period were not necessarily the same set of people who would have fit the modern medical criteria for intellectual disability. Instead, alleged idiots constituted the much smaller group of people who possessed land and were for whatever reason deemed unfit to manage it by their accusers.¹ Ultimately, as the concept of idiocy devised by thirteenth century legal scholars took root in English culture, members of England's land-holding elite who wished to keep landed wealth from descending to undesirable heirs began to accuse their relatives of idiocy in order to circumvent otherwise rigid rules of inheritance. Since early understandings of idiocy were at least in part shaped by the arguments and strategies employed in these inquisitions, medieval ideas about who constituted a rational subject within a legal context, were thus more closely connected to the values of the English nobility and gentry, than any trans-historical medical reality.

Deafness, Inheritance, and Women's Agency: The Case of Sybil Caroun

To understand how these trends emerged developed requires some background on the upper classes' attitudes toward land, and the economic history of the fourteenth century. First, however, I would like to begin with a story. In February 1313, the King's Chancellor

¹ As noted in Chapter Two, medieval law's concept of idiocy was derived from the more specific definition of *prodigus* Justinian provided in Digest 27.10.1, which defined a *prodigus*, as "one who does not regard time or limit in his expenditures, but lavishes (*profundere*) his property by dissipating and squandering it." Adolf Berger, *Encyclopedic Dictionary of Roman Law* (New Jersey: The Lawbook Exchange, 2004), vol. 43, Pt. 2, 1953, 655, and 420. Thus, medieval understandings of idiocy had associations with financial incompetency from their inception.

sent a writ to John Abel the escheator of Trent, ordering him to look into the circumstances surrounding the lands and custody of Sibyl Caroun, a young heiress in wardship.² A week later, Abel sent a writ back to Chancery describing the abuse of a powerless young woman by powerful men.³ According to Abel, Sibyl was the rightful heir to her father Roger's estate, which consisted of a manor in Sherington held of the king in chief by service of two knight's fees.⁴ Yet since she had not yet reached the age of majority when he had died in 1301, the manor came into the king's hands to be managed and safeguarded until she came of age.⁵ Edward I promptly granted "wardship of the manor and the marriage of the said Sibyl," to Edmund the Earl of Cornwall. However, Edmund died shortly after Roger Caroun, so the estate and wardship soon passed back to the Crown.⁶ After this, Sibyl's wardship changed hands a number of times until it ended up in the possession of Roger de Patteschulle, the rector of the nearby parish of Blettescho, and two farmers, Richard Golde and his brother

² *Calendar of Fine Rolls*, vol. 2, (1307-1319), 161. (henceforth CFR). Among other things, the Crown ordered Abel to "make an inquisition touching the names of the evil doers who have forcibly entered diverse lands late of Roger de Carom, tenant in chief of Edward I, in the king's hand by reason of the minority of his heir in Sherington co. Buckingham, and detain the same to the heir's disherision." This suggests that Sibyl's guardians had informed the Crown that she had been abducted when they requested it intervene in the matter.

³ *Calendar of Inquisitions Miscellaneous*, vol. 2, no. 153. (henceforth, CIM).

⁴ The manor's title and location are spelled a variety of ways in the records documenting Sybil's case, so I used the modern spelling in my discussion to avoid confusion. A wealth of information on the history of both can be found in: in 'Parishes: Sherington, A History of the County of Buckingham: Volume 4 (1927), pp. 451-458. URL: <http://www.british-history.ac.uk/report.aspx?compid=62613> Date accessed: 05 September 2011. A.C. Chibnall, also offers an impressive chronological account of the village's history, based upon an extensive survey of documents in the Public Records Office and local archives in, A.C. Chibnall, *Sherington Fiefs and Fields of a Buckinghamshire Village*, (Cambridge: Cambridge University Press, 1965). In this study, Chibnall traces the Caroun family's fortune from the conquest to well into early modernity. I thus rely on Chibnall's account for much of my background on the family's socio-economic position at various points during the later Middle Ages.

⁵ Abel did not supply the date of Roger's death in the writ sent back to Chancery, but a post-mortem inquisition held in 1301 (CIPM, Edw. I, vol. 4, no. 33) noted that he had died shortly before all saints day in the previous year.

⁶ The fact that the Crown granted Sybil's wardship to Edmund suggests that it had already begun to treat these wardships as a way to bolster its coffers, repay debts, or court favor. In other words, it had begun to see them as a saleable commodity.

Thomas, both of whom had previously been tenants of Sibyl's father. They held her wardship without incident until 1311, but then things took a turn for the worse. According to Abel's writ, on the Monday after the Ascension, John de Burgo, William de Barton and others had "forcibly entered the manor, broke door and windows, and took goods to the value of 20 marks." John and William had then seized Sybil and carried her off into the county of Leicester, before eventually returning to the manor, which John still occupied at the time of the inquisition, two years after the events described. Moreover, John detained Sybil, whom Abel noted in his closing, was "deaf and dumb."

Reading John's writ 700 years later, it is hard not to feel sympathy for poor Sybil. Even leaving aside the issue of her alleged abduction, the events recounted in Abel's writ are very much at odds with how contemporary scholarship has characterized medieval responses to mental incompetency. Rather than embodying a compassionate community care model of mental health management, the criteria by which the Crown chose Sybil's guardians reflected cold economic principles.⁷ Although he was not long lived, Edmund was not at all an ideal guardian for Sybil even while he was alive. First, he resided hundreds of miles away from Sherington, and thus would have been unable to involve himself in attending to Sybil's upbringing, or managing her estate.⁸ Moreover, when he received her wardship in 1300, he was already in such bad health that the Crown had granted him permission to draft his will

⁷ See Chapter One for overview of this scholarship.

⁸ Sherington manor was located in Buckinghamshire, near modern day Newport Pagnell, approximately 300 miles from the administrative center of Cornwall. While being an earl of specific county may not have normally precluded living elsewhere, Edmund was the High Sheriff of Cornwall from 1289 until his death in 1300, which would have necessitated that he live in the region. This is not so say that he had no connection to Buckinghamshire. Among other things, he founded an oratory at Hambledon in, the birthplace of St Thomas of Hereford, but nevertheless, his duties in Cornwall would have made it impossible for him to play an active role in Sybil's upbringing. *Parishes: Sherington', A History of the County of Buckingham: Vol. 4 (1927)*, 451-458. URL: <http://www.british-history.ac.uk/report.aspx?compid=62613> Date accessed: 05 September 2011.

three years prior.⁹ The fact that the Crown chose to grant Sybil's wardship to him in full knowledge of these facts suggests that it was more interested in using wardships to court favor at a time of expanding royal authority, than ensuring that Sybil end up in capable hands.¹⁰ This seems especially to be the case given that her mother Joan (Roger's widow) was still alive and continued to hold one third of the manor by dower until the middle of the fourteenth century.¹¹ Likewise, the number of times her wardship changed hands between people to whom she had no clear relationship following Edmund's death suggests that the profits associated with managing the manor and the power to one day decide who Sybil would marry motivated her would-be-guardians more than concern for her care. If we consider no other details, the events related in the writ seem to present a clear-cut case of the abuse of a disabled person for the financial gain of others. When cast in this light, it would be easy to attribute John de Burgo and his companions' actions in 1311 to simple economic opportunism, just as John Abel did 700 years ago.

Yet, there are a number of features of the events surrounding Sybil's alleged abduction that are at odds with Abel's portrayal of them. Abel's accusations against John and William hinged on Sybil actually being deaf and dumb, as this assertion served not only to elicit sympathy for her and cast aspersions on her abductors, but also legally solidified her inability to consent. For at the time of Sybil's alleged abduction, English law conferred the

⁹ Nicholas Vincent, 'Edmund of Almain, second earl of Cornwall (1249–1300)', *Oxford Dictionary of National Biography*, Oxford University Press, 2004; online ed., Jan 2008 [http://www.oxforddnb.com/view/article/8505, accessed 4 Sept 2011.]

¹⁰ Lending support to this interpretation, the Crown was deeply in debt to Edmund when it granted him Sybil's wardship. Edmund had lent the Crown money from his own inherited wealth during the 1290's to support the recoinage, and Edward I had little hope of repaying the debt with royal finances flagging. Vincent, "Edmund of Almain," *ibid.*

¹¹ Joan appeared in litigation related to disputes over the ownership of the manor through the first quarter of the fourteenth century. CCR, Edw. I, vol. 4, 460.

same set of restrictions upon the deaf and dumb as it did upon idiots—barring them from possessing or alienating property, entering into contracts (and by association, marrying), making wills, or testifying on their own behalf or that of others, since it was believed that their inability to hear the words of a contract impeded their ability to consent to its terms.¹² Bracton for instance noted that “one naturally deaf and dumb cannot acquire because he cannot consent, because he is completely unable to hear the words of the stipulator and since he cannot hear or speak at all, he cannot express his will and consent either by words or sings,” (although, Bracton qualified this, added that these restrictions were not applicable if one was “simply hard of hearing or his speech has a minor impediment.”)¹³ Indeed, the deaf remained constrained by the law into the late nineteenth century; Helen Keller even lamented in 1903 that until very recently “English jurists had said that the deaf-blind were idiots in the eyes of the law.”¹⁴

Moreover, deafness had broad associations with unreason in Christian theology and culture. In Romans 10:17, Paul had made the benign comment that “Faith then cometh by

¹² In the Middle Ages, people believed that people born deaf were naturally mute as well, since we acquire language through hearing.

¹³ Bracton, vol. 4, 309. This discussion directly follows Bracton’s explanation of why idiots cannot inherit, excerpted at the end of Chapter Two. Bracton offered the same explanation for why “deaf mutes” could not stipulate [enter into a contract], although this explanation admitted the possibility that a deaf person could validly stipulate if they did so “by a nod or writing,” since “that a stipulation and obligation may be created by a writing is obvious, because if it is written in an instrument that a person has promised, it is treated exactly as if an answer had been made to some preceding question” (Bracton, Vol. 2, 286). Interestingly, this suggests that deafness might have proved less of a barrier to enjoying the rights associated with adult life as society transitioned from an oral culture to a print culture. Perhaps reflecting this, *Fleta* and *Britton* had less to say about deafness in the 1290s than Bracton had during the 1220s-40s, adding nothing to Bracton, other than clarifying that curators of deaf individuals had no right to alienate their estates. (*Fleta*, Book VI, Ch. 40, a.2)

¹⁴ Helen Keller, *Optimism, An Essay*, (New York: Crowell, 1903), 56. Here, referring to recent changes in the education of the deaf-blind, Keller wrote “English jurists had said that the deaf blind were idiots in the eyes of the law. Behold what an optimist does. He converts a hard legal axiom; he looks beyond the dull impassive clay and sees a human soul in bondage, and quietly, resolutely sets about its deliverance. His efforts are victorious. He creates intelligence out of idiocy and proves to the law that the deaf blind man is a responsible being.”

hearing; and hearing by the word of Christ.” Although Paul said nothing about deafness here, his words nevertheless established deafness as a condition that completely deprived people of the ability to reason, will, consent, or even participate in Christian life.¹⁵ For later Christian thinkers took this passage to mean that the deaf were unable to learn or access the central truths of Christianity. Augustine of Hippo for instance referred to deafness as a “defect which hinders faith itself.”¹⁶ As a result, it is possible that deaf people occupied the same space in society that idiots would come to by the end of the fourteenth century, even before a category of idiocy existed in medieval law.¹⁷ Thus, by identifying Sybil as deaf and dumb, John portrayed her as bereft of agency, removing any doubt that she might have freely consented to live with Burgo.

This conclusion offered obvious advantages for Sybil’s guardians, Pateschulle and the Goldes. For while they would have lost the right to select Sybil’s marriage partner if she was

¹⁵ In addition to Paul, medieval thinkers’ attitudes toward deafness were also shaped by Aristotle, who wrote in *De Sensu et Sensibili* that “by accident hearing contributes to a greater share of prudent. For discussion, being audible is a cause of learning, not in itself, but by accident; for it consists of words, and each of these words is a symbol. Hence of those deprived from birth of one of two senses, the blind are wiser than the deaf-mutes.” Later thinkers, including Aquinas, glossed this passage to mean that everyone who is deaf is also mute, for “he cannot learn to form the signifying words that signify by conversation, and so he stands in relation to the speech of the whole human race as one who has never heard a particular language stands in relation to that language.”

¹⁶ “We acknowledge, indeed, how much pertains to our own transgressions, from what source of culpability does it come that the innocent ones deserve to be born sometimes blind, sometimes deaf, which defect hinders faith itself, by witnesses of the Apostle, who says, ‘Faith comes by hearing’ (Rom. X, 17). Now, truly, what bears out the assertion that the soul of the innocent is in the image of God, inasmuch as the liberations of the one born foolish is by his rich gift, if not that the bad merited by the parents is transmitted to the children?” *PL* 10.10.

¹⁷ This assertion builds upon what recent scholarship on deafness in the Middle Ages and Early Modernity, including Emily Cockayne, “the Experiences of the Deaf in Early Modern England,” *The Historical Journal* 46 (2003): 493-510, and Susan Plann, *Deaf Education in Spain, 1550-1835* (Berkeley: University of California Press, 1997). Oddly, however, very few deaf people appear in the records of the English royal courts. The few inquisitions that are documented today deal with women, who like Sibyl, were accused of deafness to forestall or nullify their marriage to men whom their families deemed unsuitable. We might speculate that deaf people did appear in court, but simply by another name—perhaps they were included among the ranks of *idiota* even! Alternatively, deaf people might have never appeared in court because their condition was so noticeable in childhood that they never obtained the rights of legal adulthood to being with.

deaf and dumb, since the law effectively barred deaf mutes from marrying,¹⁸ they would have gained the right to profit from her estate for the rest of her life since it could now never descend to her.¹⁹ Such a change in Sybil's legal status would have proved particularly valuable to Pateschulle and the Goldes in 1313, when John Abel undertook his investigation. For while the summary Abel sent back to Chancery did not state how old Sybil had been at the time of her alleged abduction, a postmortem inquisition held in 1301 noted that she had been one year old at the time of her father's death on All Saint's Day in the previous year.²⁰ Thus, she would have been approaching the age at which she could marry—and if married, inherit—around the time of the inquisition. While the legal age of majority in medieval England varied depending upon one's gender and social status, a woman could typically inherit land at sixteen if she was single, but fourteen if she was married.²¹ Sybil's age then might have been a factor in John Burgo's decision to (allegedly) abduct her, but it could also explain why Pateschulle and the Goldes were eager to see her declared deaf and dumb, even if this meant losing the rights to her marriage.

For through Sybil's wardship, Pateschulle and the Goldes had come to possess an amount of landed wealth that farmers and village rectors could typically never dream of holding, and they stood to lose it all once she reached the age of majority and came into her

¹⁸ Legal texts from this period (*Bracton*, *Fleta*, and *Britton*) do not explicitly state that the deaf and idiots could not marry. However, we can infer this from later inquisitions where men accused female relatives of idiocy or deafness in order to prevent them from marrying people they deemed unsuitable, or annul a marriage that had already take place. I discuss a number of these cases shortly.

¹⁹ At the time of Sybil's inquisitions, English law held that while *proprietas* could descend to the deaf (as it could idiots), they could not acquire possession. See, for instance, *Bracton*, vol. 4, 351.

²⁰ CIPM, Edw. I, vol. 4, no. 33.

²¹ Bailey, Bernard, Carrier, Elliott, Langdon, Leishman, Mylnarz, Mykhed, Sidders, "Coming of Age and the Family in Medieval England," *Journal of Family History* 33 (2008): 41-60; here, 43.

inheritance.²² The right to select her marriage partner when that day arrived was valuable in itself, since marriages could be used to create alliances, consolidate land, and elevate individuals of (slightly) lower statuses. However, English law limited the extent to which the Goldes and Pateschulle could use their rights to her marriage to advance *their own* positions, by prohibiting them from marrying her to anyone who would have enabled them to retain some control over her estate. For, precisely in anticipation of the fact that a knight's daughter might be forced to marry a farmer if the rights to her wardship changed hands enough times, Magna Carta had explicitly forbidden that wards be married "disparagingly," and later legal treatises reinforced this.²³ The statute of Merton (1236) elaborated that disparaging matches included villeins and burgesses—the very classes to which Pateschulle and the Goldes belonged. It further asserted that a ward could marry freely if they paid a fee to the person who held their wardship equal to the amount for which their marriage could have been sold.²⁴ Bracton took this one step further, stating that a female ward could not be married to someone without her *lord's* consent, "lest the lord be forced to take homage of his chief enemy or some other unsuitable person."²⁵ And, Britton went so far as to hold that if a pairing between a ward and a villein did occur before the ward reached the age at which she could freely reject the match, "the lord who gave her away shall be punished by

²² Chibnall, through his meticulous reconstruction of Sherington's history, offers us a sense of just how meager the Goldes' means were. For it seems that the Goldes were actually *tenants* on Roger's estate, holding one messuage and a croft of land for 1 *d* in annual rent. Chibnall, *Sherington, Fiefs and Fields*, 97.

²³ Magna Carta, Chapter 6.

²⁴ Sue Sheridan Walker, "Free Consent and the Marriage of Feudal Wards in Medieval England," *Journal of Medieval History* 8 (1982): 123-34. here; 123-5. Walker argues that since the forcible marriage of wards violated the canon law of free consent, wardship holders' right to select marriage partners for their wards actually amounted to a form of indirect taxation. Further discussion of marriage law as it pertained to wardship, can be found in Noel James Menuge, *Medieval English Wardship in Romance and Law*, (New York: Boydell and Brewer, 2001); and Conor McCarthy, *Marriage in Medieval England; Law, Literature and Practice*, (New York: Boydell and Brewer, 2004), particularly, 63, 173, and 476.

²⁵ Bracton, Vol. II, 225.

imprisonment until due amends be made by appointment of the kindred of the wife; and such persons shall afterwards be put to ransom for the malice.”²⁶ In short, Pateshulle and the Goldes’ opportunities to advance their own positions through their rights to Sybil’s marriage were limited.

Yet as convenient as it might have been for her guardians if Sybil had been deaf, dumb, and incapable of consent, an abundance of evidence in the writs documenting her inquisition suggests that this was not the case. First, Abel probably never examined her in person, given his claim that John de Burgo detained her at the time of the inquisition. Instead, his assessment of her condition most likely reflected what her guardians had reported to Chancery when they requested that the Crown investigate the circumstances surrounding her alleged abduction—and for reasons discussed, they had an obvious incentive to portray Sybil as incapable of consent. We can only speculate what Abel may have gained from distorting the facts of her case, however the records of later idiocy inquisitions suggest that it was not unheard of for escheators and sheriffs to allow bribes sway their judgment. For instance, in a case I discuss in Chapter Five, a woman alleged that the escheator charged with examining her for idiocy had been promised part of the profits from her estate by her would-be-guardian, if he identified her as an idiot²⁷

Moreover, it would not have been the only time Abel misrepresented—or at least

²⁶ Britton, Book II, Chapter 3, article 5.

²⁷CIM, vol. 4, no. 127. Other inquisitions implied similar wrongdoing on the part of escheators. For instance, in 1330 the Crown ordered Simon de Bereford, escheator this side of Trent, to intermeddle no further with land belonging to William le Vencour, as *he* [Simon] had taken it into the king’s hands “pretending that William [...] is an idiot,” and had subsequently taken profits from William’s estate. A subsequent inquisition had revealed however that William “is not an idiot, and was not an idiot from birth”(CCR, Edw. III, Vol. 2, 1.). Likewise, in 1390, the Crown revoked letters of patent granting the wardship of Ralph Beville to Thomas Alnewyk, a serjeant of the butlery, after discovering that Thomas had misrepresented Ralph’s condition in the previous year in order to gain access to his property (CPR, Ric. II, Vol. 4, 232 & 290.).

misconstrued—an allegedly incompetent individual’s condition. For in 1316, three years after Sybil’s examination, the Crown removed its hand from Joan de la Chaumbre’s lands, after discovering that Abel had acted fraudulently when taking them into the king’s hands:

They [Joan’s lands] were taken into the king’s hands by John Abel, late escheator beyond Trent, who delivered them to the present escheator, pretending that they were in the king’s hands by reason of the madness of Joan, as it appeared by inquisition taken by John Abel that she was an idiot and mad woman, the present escheator having returned that he had gone in person, by virtue of the king’s order, to her place of residence, and that he had seen and examined her, and that he found that she was not an idiot and had not been at any time from her birth.²⁸

Indeed, as we shall shortly see, Abel seems to have found himself on both sides of the law at least once in the course of his life. But more tellingly, had Sybil truly been deaf and dumb, the Crown could not have granted her marriage to the Earl of Cornwall when her estate entered the king’s hands following her father’s death, and Pateschulle and the Goldes should certainly not have come to hold “the said wardship and *the marriage*” through “subsequent sales.”²⁹

It is the events that transpired after Abel sent his report to Chancery in 1313, however, that furnish the strongest evidence that Sybil was not in fact deaf and dumb. Ultimately, Pateschulle’s complaints against Burgo went nowhere. In 1314 the Crown ordered John Abel to intermeddle no further with the case, and

Cause John de Burgo and his *wife* Sybil [emphasis added], daughter and heiress of Roger de Carom of Shirington, a tenant and chief of

²⁸ CCR, Edw. II, Vol. 2, no. 373.

²⁹ CIM, Vol. 2, no. 153.

the late king, to have seisin of the said Roger's lands, since she has provided her age before the same escheator and *the king has taken fealty of her husband for the above lands* [emphasis added].³⁰

The writ did not mention Sybil's alleged deafness, nor did any subsequent records from the royal courts, although Pateshulle unsuccessfully petitioned the Crown to intervene on his behalf again in 1315, this time alleging that Burgo had "married her [Sibyl] against *his* will" after breaking into the manor—a claim that seems to have been for the most part true, although moot nonetheless since all that was required for a valid marriage was the consent of husband and wife.³¹ John de Burgo died sometime shortly after 1323, and Sybil quickly remarried a man named Richard de Linford, who came from a well-to-do family that had "gained knightly rank during the reign of Edward I."³² No one attempted to prevent the marriage, and Sybil and Richard seem to have lived peacefully on what was left of the manor.³³ Local records from Sherington suggest that Richard took part in community life, and Sybil had two sons by him, before they both died from the plague in 1349.³⁴ Aside from his last ditch protest against John and Sybil's marriage, Pateshulle was never mentioned again

³⁰ CCR, Edward II, Vol. 7, 37.

³¹ CPR, Edw. II, Vol. 2, 251-252. Nothing came of this new suit, except John was fined one mark, interestingly the same fee that Sybil's own mother Joan had to pay the Crown at a later date in order to choose her own marriage partner. The record of this transaction can be found in *Calendar of the Fine Rolls Preserved in the Public Record Office: Edward II, 1307-1327*, 35.

³² Chibnall, *Sherington Fiefs and Fields*, 121.

³³ Prior to this, the only further reference to the events of 1311-1313 in the printed calendars, and other sources referenced in Chibnall's exhaustive study, occurred in 1323 when John de Burgo brought a suit before Chancery alleging that Sybil's grandmother, Margery Chamberleyn, had unlawfully sold part of the manor worth 25s yearly to Ralph Basset of Drayton and his wife Joan, while Sybil was under age and in the king's wardship. John claimed that the land ought to have belonged to Sybil, but when she reached the age of majority, Roger de Wellesworth, an escheator, unlawfully seized the land in question into the king's hand, "pretending that it was held of the king," but not removing Ralph and Joan. Sometime after John took the land by commission from the exchequer, but Ralph and Joan continued to occupy it and carry away its profits. CIM, Vol. 2, no. 583. At that point Sybil's mother Joan still held 1/3 of the property by dower. In 1333 Sybil and Richard sued her for destruction of the property, and were awarded 7*l*, 8s. (CPR, Edw. III, 303.)

³⁴ Chibnall, *Sherington*, *ibid*.

in the records of the royal courts. Richard Golde only returned to the Crown's attention in 1341, when the Crown accused him, John Abel (the escheator who had presided over Sybil's initial inquisition), and Simon Chamberlayn (the brother of Sybil's grandmother's husband), of violently breaking into and occupying the estate of John Thorp in the rectory of Flamstead.³⁵

I have treated Sybil as if she were not deaf and dumb, though of course it is ultimately impossible to know the medical history of an obscure person who died nearly seven hundred years ago. Nevertheless, at the time that the Crown became interested in Sybil, deafness was understood as a condition that completely deprived people of the ability to reason, will, consent, or even access the truths of Christianity. Whether Sybil could hear or not, her life does not conform to this model. For although she remained voiceless in the records related to her inquisition, the fact that she remarried without incident, and that later records from the royal courts say nothing about her condition, suggest that even if she was deaf and dumb, this did not limit her ability to function in her day-to-day life, run her household, or raise her children. Pateshull's allegations in Sybil's inquisition built upon cultural tropes about deafness, using deafness as part of a rhetorical strategy to portray her as someone lacking agency. In short, Abel and Pateshulle highlighted Sybil's "deafness" in order to illegitimate her marriage to Burgo. Indeed, since the law held that the deaf and dumb could not plead in court, once deprived of her agency by the law, it would have been quite hard to regain it.

³⁵CCR, Edw. III, Vol. 6, 108.

Land, Marriage, and Inheritance

I have spent so long discussing Sybil's case, even though she was not technically identified as an idiot, because the strategies Pateshull and the Goldes employed in their efforts to hold onto her wardship were very similar to those that individuals would later use in idiocy inquisitions when they wished to retain control over women's lands. And so too were the circumstances that motivated their actions. For at the heart of their conflict over Sybil, was concern about women's agency, and particularly women's ability to transfer land from one party to another through their marriages.

The common law rules of inheritance made women like Sybil particularly problematic figures at the time of her inquisition. During the late Middle Ages, land remained the primary source of wealth and status for the gentry and aristocracy, even as commercial expansion, urbanization, and the rise of professions increased the number of avenues through which industrious individuals might accumulate capital. For the size and value of a family's estate still determined their relationship to other members of the landholding classes and to the Crown (at least before *defacto* rents began to replace feudal services during the later half of the fourteenth century).³⁶ Accordingly, members of the landholding classes were greatly concerned with keeping land in their family's possession as it passed between generations. They rarely relinquished it freely, and typically took great care to arrange advantageous marriages for their offspring in hopes of ensuring that it would

³⁶ The classical study of the landholding classes is K. B. McFarlane *The Nobility of Later Medieval England* (Oxford : Clarendon Press, 1973.) McFarlane's lecture on the nobility and land is particularly relevant to my discussion in this chapter. Since McFarlane was primarily concerned with the upper nobility however, Chris Given-Wilson's broader study of the landholding classes offers a useful update. Chris Given-Wilson, *The English Nobility in the Late Middle Ages* (New York: Routledge, 1996).

descend to someone in their patrilineal line upon their deaths. This, coupled with the nobility's preference for social endogamy, meant that people outside the landed classes had few opportunities to acquire land, at least until the various demographic crises of the fourteenth century upended the traditional social order that enabled the gentry to maintain wealth without labor.³⁷

Yet one factor frustrated landholders' efforts to keep their estates intact, and at the same time created limited opportunities for people outside the gentry to move into the landed classes: the problem of heiresses and widows.³⁸ From the Norman Conquest until 1925, the common law held that if a landholder died without a son, their estate would descend to their eldest daughter before it could pass to other male relatives—the heiress' uncles, cousins, and nephews. If a deceased landholder had more than one daughter, moreover, they would split his estate equally.³⁹ These rules all but ensured that land would leave a family's possession if a landholder died without a son, since any wealth a woman inherited would pass to her husband when she inevitably married (although should he predecease her, she would typically be entitled to one third of his estate, and her new status as a widow would thus

³⁷ S. J. Payling, "Social Mobility, Demographic Change, and Landed Society in Late Medieval England," *The Economic History Review*, New Series 45 (1992): 51-72.

³⁸ My argument in the following pages is informed by Eileen Spring, *Law, Land, and Family: Aristocratic Inheritance in England, 1300-1800* (Chapel Hill: The University of North Carolina Press, 1997). In this study Spring argued that the history of inheritance in the English gentry and aristocracy should be understood as an effort to circumvent the common law rules that lead land to end up in the possession of women to the detriment of their male relatives. I note my indebtedness to Spring's argument because while *Law, Land, and Family* received excellent reviews, it is one of a number of competing interpretations, and has been challenged by other scholars who work on the same topic. S.J. Payling for instance has been particularly critical of Spring's central thesis, in "The Economics of Marriage, A Reply to Spring," *Economic History Review* New Series, 56 (2003):351-4, as well as other articles. Nevertheless, I find Spring's argument compelling, and it reflects trends I see in my own sources.

³⁹ Eileen Spring, "The Heiress at Law: English Real Property Law from a New Point of View," *Law and History Review* 8 (1990): 273-296. King Lear's division of his kingdom between his three daughter's husbands in Act I of the play offers what is perhaps one of the best literary examples of the problems that could arise when this dictate was followed.

create the same problems for her *husband's* family—at least for the duration of her life—as her status as an heiress had created for her own).⁴⁰ The economic historian S.J. Payling has accordingly identified marriage as a primary tracer of social mobility during the later Middle Ages, noting that

On one hand families that survived in the male line over several generations added to their estates by marriage into those families that did not, a process that promoted the concentration of estates into the hands of fewer families. On the other hand, the land market, the level of activity of which tended to vary with the rate of family failure in the male line, ensured that the landed class remained permeable by allowing for the conversion of non-landed wealth into land.⁴¹

Securing marriage to an heiress was thus one of only a few ways that second sons and “new men,”—merchants, craftsmen, and administrators who had accumulated capital through commercial activity—could hope to acquire landed wealth, and the law provided families with few ways to prevent these matches. For while social and familial pressure could undoubtedly encourage a woman to marry one suitor and reject another, canonists had concluded during the twelfth century that a couple only needed to be of age, willing, and not related to each other by more than four degrees to contract a legitimate marriage.⁴² While the church continued to frown on clandestine marriages, it refused to condemn them altogether, and women were thus at least technically free to marry whomever they chose. Pateshull, and the Goldes clearly recognized this when they implicitly contested Sybil’s ability to marry by

⁴⁰ Eileen Spring, “The Widow,” in Eileen Spring, *Law, Land, and Family*, 39-65.

⁴¹ S. J. Payling, “Social Mobility, Demographic Change, and Landed Society,” 51. Payling also discusses the economics of marriage in fourteenth century England in “The Economics of Marriage in Late Medieval England: The Marriage of Heiresses,” *Economic History Review*, 3 (2001): 413-429.

⁴² James A. Brundage, *Law, Sex, and Christian Society in Medieval Europe*, (Chicago: University of Chicago Press, 1987) 417-486

identifying her as deaf and dumb, and Burgo did as well when he (allegedly) abducted Sybil right before she came into her inheritance. Moreover, the fact that land ended up in Sybil's hands in the first place speaks in itself to the problems that the law's governing inheritance could create for noble families.

The landed classes were accordingly quite anxious about the possibility that land might leave their family's control through descent to an heiress, with the circumstances that befell Sybil perhaps representing the worst of their fears. In the words of Noel J. Menuge,

The putative autonomy of the heiress puts feudal/patriarchal authority under pressure because of her ability to marry an 'unsuitable person.' Her marriage effectively removes her patrimony into the hands of another, thereby increasing his, and reducing hers. She is not male; she cannot hope to increase her family's holdings, and nor can she really hope to retain her own. Therefore her marriage must be contained.⁴³

When land did descend to an heiress, the canon law theory of consent left families without a legal means to "contain" their marriages, and thus prevent them from marrying a man who would deprive their family of landed wealth.⁴⁴ This seems to have been the case, at least until the upper classes began to realize that the Crown's right to take the lands of idiots into its hands presented a potential solution to these problems. For just as Pateshulle and the Goldes recognized that they could challenge Sybil's agency by telling the Crown that she was deaf and dumb, as the fourteenth century progressed, people with an interest in retaining

⁴³ Menuge, 83.

⁴⁴ This is not to downplay the significance of the fee tail, or entail, which came into widespread use in the second half of the fourteenth century—if not before. However, I rarely find evidence of its use in my records. Typically, when a will placed restrictions on who an estate could pass to, a postmortem inquisition would note that the land should descend to the "heirs of their body," rather than their heir. Only a few idiocy inquisitions from my sources contain this language.

access to women's lands when their inheritance, marriage, or remarriage threatened to removed them from their control, seem to have increasingly realized that they might accomplish this by accusing them of idiocy.

We can already see this strategy employed in a small number of inquisitions dating from the first quarter of the fourteenth century, when idiocy inquisitions were still fairly uncommon. For instance, in 1323 the Crown sent a private letter to the escheator of Trent requesting that he ignore a previous writ ordering him to examine whether Christiana Lumene, the recent widow of Edmund de Wylyngton, was an idiot from birth. For while the king had been led to believe that she was an idiot by parties left unnamed in the letter, he had recently discovered documents indicating that Christiana had come before the justices of the king's bench with Edmund in 1299, to acknowledge that certain manors belonged to Juliana, the wife of Edmund's brother. As a result, the king had determined that "Christiana, after such an acknowledgement made and accepted before the said justices cannot be henceforth reputed an idiot."⁴⁵

This conclusion seems sensible enough, given that by the law's own definition of idiocy, Christiana could not have made decisions involving land that would have met the approval of the king's justices, nor been married to Edmund, if she had been an idiot from birth. Yet only one year after this, the Crown issued a letter of safe conduct for John de Leycester, its serjeant of arms, so he could seek out and bring to the king various men who

⁴⁵ CCR, Edw. II, vol. 4, 39. A summary of the event that took place in 1299, written after the fact, can be found in CCR, Edw. II, vol. 3, 59. It explained that "Edmund and Christiana acknowledged the manors to be the right of Juliana, and granted, for themselves and the heirs of Christiana, that the manors that Robert de Pudele and Margery his wife held in dower of the said Margery of Christiana's inheritance, should remain after Margery's death to the aforesaid Juliana and her heirs[...]."

had allegedly abducted Christiana.⁴⁶ Christiana was notably referred to in the letter as “an idiot from birth, whereby the custody of her lands ought to belong to the king.”⁴⁷ A letter sent to the sheriff of Cornwall shortly after this also identified her as an idiot from birth, when ordering the sheriff to apprehend the same men, who had now not only abducted Christiana, but attacked John de Leycester “by force and arms,” after he attempted to collect her.⁴⁸

Given that the Crown had been certain enough of Christiana’s mental competency to cancel an inquisition that it had ordered only one year prior to these events, it seems quite unlikely that she was actually “an idiot from birth,” at least by modern medical definitions. The evidence presented in the 1323 letter of close seems to suggest that she was not an idiot by the law’s definition either. Instead, Christiana’s alleged idiocy seems to have served the same function in 1324 as Sybil’s alleged deafness had ten years prior; it vilified her presumed abductors, and made it clear that she never could have consented to consort with them. In other words, whether Christiana was actually abducted or not, in identifying her as an idiot, the Crown portrayed her as someone who could not have entered the situation she was in through any agency of her own.⁴⁹

As interesting as they are, cases like Christiana’s and Sybil’s were rare during the early

⁴⁶ Gwen Seabourne briefly discusses Christiana’s case, and a few others involving abducted female idiots, in *Imprisoning Medieval Women, The Non-Judicial Confinement and Abduction of Women in England, c. 1170-1509*. (Burlington: Ashgate Publishing Company, 2011), 55-60. While Seabourne also sees idiocy accusations as a means of controlling women, she seems less skeptical about whether the accusations actually were founded than I am.

⁴⁷ CCR, Edw. II, vol. 4, 396

⁴⁸ CCR, Edw. II, vol. 4, 65.

⁴⁹ I refrain from offering an opinion about whether the men actually abducted Christiana, although I imagine that more research into the identities of her alleged abductors could reveal something. Nevertheless, it is interesting to think that if Christiana had freely consented to travel with the men in question, the allegations of her idiocy might have actually preserved her reputation.

fourteenth century, when most alleged idiots were men like the aforementioned Bartholomew de Sakeville, who came to the Crown's attention after he had received a blow to the head, or John atte Halle of Navenby, who had "become not of good memory (the jury knows not how this happened save by the grace of God)," in 1291 "due to a great sickness, and want of custody, and hunger, and misery lasting a quarter of a year."⁵⁰ In other words, early idiocy inquisitions typically concerned male landholders who had acquired cognitive deficits through illness or injury, which probably did impede their ability to manage their estates.⁵¹ This in part reflects the fact that men held upwards of 80 per cent of land in England during periods of demographic stability, as well as that the public at large was still not entirely aware that the law distinguished between idiocy and insanity and defined the former as congenital.⁵² However, it also suggests that, with but a few exceptions, the people who brought alleged idiots to the Crown's attention had not yet realized that they potentially had something to gain in accusing people of idiocy, whether they were mentally competent or not. To put this another way, they did not yet see that they could use allegations of idiocy to circumvent the common law rules of inheritance. This began to change, however, in the middle of the fourteenth century, when plague and war altered the demographic landscape of England in ways that undermined even the most meticulous estate planning efforts.

Plague, War, and a Preponderance of Female Idiots

⁵⁰ CIPM, Edw. I, vol. 2, no. 446; CIPM, Edw. I, vol. 2, no. 816.

⁵¹ Reflective of this—as well as the fact that the Crown had not begun to treat the wardships of idiots as a saleable commodity to quite the extent that it would as the fourteenth century progressed—the outcomes of early idiocy inquisitions were rarely contested. See discussion in Chapter Three.

⁵² Payling, "Social Mobility," 54-55.

Historians estimate that the Great Pestilence, as it was called in contemporary accounts, killed anywhere between forty and sixty percent of the population in England after it crossed the channel on a merchant ship in June of 1348. A second plague also killed around twenty percent of the population in 1361-2.⁵³ While the upper classes generally had a lower mortality rate than the rest of the population, the plague still placed landed wealth in the hands of an unprecedented number of widows, heiresses, second sons, and collateral relatives who were never expected to inherit. S. J. Payling and Eileen Spring both broadly agree that the percentage of estates descending to daughters increased from less than twenty percent during the first half of the fourteenth century, to more than thirty percent in the second half, with upwards of forty percent falling to heiresses in the decades when the plague's demographic aftershocks were most strongly felt.⁵⁴ While medieval historical demography is notoriously imprecise, Payling further suggests that the number of landholders leaving their land to male heirs decreased from 72 percent prior to the plague, to 52 percent in the half century that followed it. The number of landholders leaving land to heiresses increased from 10 percent to 15 percent during the same period, with a staggering 32.5 percent of inheritances descending to women between 1370-7.⁵⁵

If the idiocy that preoccupied the medieval royal courts had been a natural category, corresponding to a trans-historical medical reality, then we might expect that the number of

⁵³ Ole Jørgen Benedictow, *The Black Death: The Complete History*, (Suffolk: Boydell and Brewer, 2004), 337. Here, Benedictow summarizes previous scholarship. A more expansive overview of past and current scholarly views can be found introduction to part three of Rosemary Horrox, ed., and trans., *The Black Death*, (Manchester: Manchester University Press, 1994), 227-247.

⁵⁴ Payling, "Economics of Marriage in Late Medieval England," 414; Spring, *Law, Land, and Family*, 11-12.

⁵⁵ Payling, "Social Mobility, Demographic Change and Landed Society in Late Medieval England," 54-6. Payling bases these estimates off the *Calendar of Inquisitions Post-Mortem, Henry III to Henry IV*, I, VI-XVIII; *Henry VII*, I, which means that they focus on the same segments of society I consider in this study.

inquisitions involving idiots would have risen in the second half of the fourteenth century, as wounded men returned from war and plague survivors became afflicted with cognitive deficits following high fevers. Indeed, Wendy Turner has recently suggested that the courts may have overseen more inquisitions involving mental disorder during this period due to the toll the Scottish and French Wars exacted on the mental and physical health of the men who fought in them.⁵⁶ Yet while the number of idiocy inquisitions overseen by the royal courts did rise substantially during the second half of the fourteenth century (although this may simply reflect an increase in litigation *in general* during this same period), this does not seem to have had any relation to increased rates of “intellectual disability” in the general population.

First, cases involving individuals who acquired cognitive impairments following injury or illness were far less common during the second half of the fourteenth century than they had been during the first, as the public became increasingly aware that the law defined idiocy as a congenital disorder. We find no references to military service, or even head wounds, in the records of later idiocy inquisitions. Chancery, moreover, all but ceased overseeing cases involving the allegedly *insane* after the second quarter of the fourteenth century, when we might expect that a larger portion of the population would have suffered from mental afflictions after enduring the psychic traumas of plague and war [See Appendix, Figure 1]. Moreover, if we take the inquisitions recorded in the *Calendar of Inquisitions Miscellaneous*, the *Calendar of Inquisitions Post-Mortem*, *The Close Rolls*, the *Patent Rolls*, and the *Fine Rolls*, as a representative sample, we can infer that the courts did not oversee more inquisitions

⁵⁶ Wendy J. Turner, “Mental Incapacity and the Financing of War in Medieval England,” in *The Hundred Years War (Part II), Different Vistas*. ed. Andrew Villalon and Donald J. Kagay (Leiden: Brill, 2008) 387- 402.

involving idiots during the 1340s and 1350s, when the epidemiological impact of the plague and war would have been most acutely felt. Instead, more idiots came to the attention of the royal courts during the 1360s, 70s, and 80s, when the demographic changes wrought by the plague would have had the greatest influence on the rate at which land descended to women, at least according to Payling's estimates[See Appendix, Figure 2]⁵⁷ Finally, an unprecedented number of heiresses and widows were accused of idiocy during these decades, and this accounted for much of the overall increase in idiocy inquisitions [See Appendix, Figures 4 and 5].⁵⁸

In other words, idiocy inquisitions may have increased during the second half of the fourteenth century because men required a legal means to keep land in their family's control at a time when the demographic fallout of plague and war had placed a greater proportion of landed wealth in the hands of women; and they recognized that they could circumvent the common law's rules of inheritance by accusing widows and heiresses of idiocy. Supporting this interpretation, women were typically accused of idiocy when they were about to remove land from their family's control, either by reaching the age of majority and coming into an inheritance, marrying, remarrying after a spouse's death, or—in a few instances—granting

⁵⁷ In fact, the decades when the court oversaw the greatest number of inquisitions involving idiots were the same decades that an unusually high percentage of inheritances descended to heiresses. Payling, "Social Mobility," 53-5.

⁵⁸ Since men held most of the land in England at the beginning of the fourteenth century, and the Crown was only concerned with people who were both mentally incompetent *and* in possession of landed wealth, men were accused of idiocy more frequently than women during the later Middle Ages. At the beginning of the fourteenth century the courts oversaw four inquisitions involving male defendants for every one involving a woman. However, by the last decade of the reign of Richard II this gender gap had narrowed from 4:1 to 2:1[See Appendix, Fig. 5], just as a greater proportion of inheritances were descending to women. Inquisitions involving women also produced nearly the same amount of records as those involving men during this period, despite the fact that men were still accused of idiocy approximately twice as often as women [See Appendix, Figures 4 - 7]. I base these estimates off the records of idiocy inquisitions in the *Calendar of Inquisitions Postmortem*, *Calendar of Inquisitions Miscellaneous*, *Close Rolls*, and *Patent Rolls*, which I take as a representative sample for reasons detailed in the appendix.

inherited land to the church. Moreover, almost half of the Crown's initial rulings in these cases were contested, and nearly one third of women accused of idiocy during the second half of the fourteenth century were found to be of sound mind when examined in person. For instance, in a representative inquisition held in 1384, a twenty-six year old woman, Lucy atte Brygge of Whytechirche, was accused of being an idiot from birth immediately after she inherited lands worth 10 s yearly following her father's death. When the escheator of Dorset examined her in person, he found that these allegations were unfounded, since "she has always been sensible and of sound mind."⁵⁹ Nevertheless, she was examined once again in Chancery in the following year and found to be an idiot despite what the previous escheator had said.⁶⁰ Ultimately, she was made to endure three more inquisitions before the Crown finally confirmed that the escheator charged with examining her in 1384 had been right in his assessment. In the mean time though, custody of her lands had changed hands three times.⁶¹

The fact that many women accused of idiocy during the second half of the fourteenth century were found to be of sound mind upon examination further suggests that the parties that brought their conditions to the Crown's attention were primarily concerned with retaining access to their land, rather than protecting the rights of people with cognitive impairments—the law's ostensible function at the time it was devised. Further supporting this, in a number of instances, women were accused of having been idiots *from birth* after they

⁵⁹ CIPM, vol. 15, no. 909. Interestingly, the record states that Lucy held the lands directly from the Earl of March by service of 6d yearly, and yearly suit to the court of his manor of Merschwode. This may support my hypothesis that the Crown began to extend its authority over idiots and their land beyond its tenants in chief as the fourteenth century progressed. Alternatively, the Earl was in royal wardship at the time, so the Crown's interest in Lucy might have stemmed from the fact that she was a tenant of an estate it was managing. I find the former interpretation more likely however, because the writ ordering her inquisitions explicitly stated that if she was an idiot "custody of her lands in Whytechirche ought to pertain to the king."

⁶⁰ CPR, Ric. II, vol. 2, 388.

⁶¹ CPR, Ric. II, vol. 2, 600; CPR, Ric. II, vol. 3, 44; CIPM vol. 15, no. 909.

had already been married for years in order to invalidate any claim they might have had to their deceased husband's estate. Joan Hayme for instance was accused of being an idiot immediately following her husband's death in 1394, yet the jury charged with examining her found that "she has never been an idiot, nor is she one at present. From her earliest age she has been of sound mind, and still is."⁶²

Likewise, Joan, the daughter of John Jordan, a well-to-do London merchant, was accused of idiocy three times over a fifteen year period beginning at the end of the fourteenth century and ending in the second decade of the fifteenth. Suspiciously, each of these accusations immediately followed the death of one of her husbands—first William Spencer, a citizen of London; then Thomas Lincoln, a London fishmonger; and finally Henry Cambrugge. Her condition, moreover, changed repeatedly in the records documenting her case.⁶³ The Crown determined that she was an idiot in 1397, following the death of her last husband. Yet, in 1402 her former tenants petitioned parliament protesting that they had been wrongly evicted from their estates, since Joan was "claimed to be a lifelong idiot, although this is not true."⁶⁴ In contrast to both of these claims, after she died in 1415, a letter detailing matters pertaining to her estate, noted that she had not been an idiot at all, but "fell into a sudden frenzy and became a lunatic," upon Henry's death.⁶⁵ During this entire period, John de Katerinton a London clerk, and Petronilla his wife, had enjoyed custody of her estate and profited handsomely from it, since her lands in London

⁶² CIPM, vol. 17, no. 276.

⁶³ CCR, vol. 6, 239; CCR, vol. 6, 119; CIPM, vol. 17, no. 1315; NRA/PRO, SC 8/148/7367; CPR Hen. V, vol.1, 304-6. Joan's case is uniquely well documented, and I plan to write more about it at some point in the future.

⁶⁴ CCR, vol. 6, 239; NRA, SC 8/148/7367;

⁶⁵ CPR Henry V, vol.1 pg 304-6; 321

alone were worth 20 marks yearly.

Similarly, Margaret, daughter of Adam Colle was accused of being an idiot from birth in 1378, following the death of her husband John Chapman. She was brought to the Crown's attention after she released all her rights to a close containing 22 acres of pasture to William, parson of the church of Brandon, although John had alienated the same land to him fifteen years prior.⁶⁶ Granting land to the church following a loved one's death was not uncommon during the Middle Ages. In fact, *Fleta* had even noted that profits from the lands of the *non compos mentis* ought to be distributed *pro anima* at the advice of an ordinary if they died before their senses were restored.⁶⁷ Nevertheless, John Hethe, the escheator in Brandon found that Margaret "was a natural idiot at the time of her marriage, and at the time of the said release," and accordingly took the lands she had relinquished to William into the king's hand.⁶⁸ William contested this finding however, and it was subsequently determined that Margaret was not an idiot after she was examined in Chancery "in the presence of the justices and others of the council."⁶⁹ It is worth noting that the strategies employed in Margaret's inquisition, though unsuccessful, were similar to those employed in Sybil's and Christiana's decades earlier. For, by claiming that Margaret was a "natural idiot" at the time of her marriage, her accusers not only contested her ability to relinquish the lands in question, but also cast doubt upon the legitimacy of her marriage to Chapman.

Ultimately, the fact that none of these women seem to have met medieval law's criteria for idiocy, or indeed modern medicine's criteria for intellectual disability, suggests

⁶⁶ CPR, Ric. II, vol. 2, 130. Interestingly, the writs accusing Margaret of idiocy refer to John as her fiancé, while the writs declaring her to be of sound mind acknowledge that he was her husband.

⁶⁷ *Fleta*, Chapter 10.

⁶⁸ CPR, Ric. II, vol. 1, 252.

⁶⁹ CCR, Ric. II, vol. 1, 150 & 182.

that by the last quarter of the fourteenth century accusing a woman of idiocy had simply come to be seen as one of several legal strategies one could employ to prevent land from descending to someone who would remove it from their family's control. If we need further evidence for this, we can consider the case of Eustachia de Percy, who was only accused of being an idiot from birth *after her death* in 1367, when her son Walter tried to recover lands that Eustachia had alienated to a knight and two other men following her husband's death.⁷⁰ This tale proved too much for even the Crown to swallow, however, and shortly after Walter gained possession of the lands, Chancery reversed this decision, noting, "idiocy may not by the law and custom of the realm be proved and examined after the death of the idiot."⁷¹ Like the other inquisitions surveyed in this chapter, Eustachia's case seems to suggest that the people who accused women of idiocy in the decades following the plague did so primarily in hopes of regaining control of landed wealth after it had fallen into undesirable hands. Accordingly, there is no evidence that they gave any thought to whether the women in question were afflicted with a condition resembling intellectual disability as we think of it today.

Conclusion

The developments I have discussed in this chapter had broader implications for the history of idiocy. Although the inquisitions I have surveyed thus far were not concerned

⁷⁰ CIPM, vol. 12, no. 149.

⁷¹ CCR, Edw. III, vol. 12, no. 337. I find no other direct evidence for this rule in my sources. Yet, I also find no other people who were accused of idiocy for the first time after they had already died.

with anything resembling intellectual disability as we think of it today, they nevertheless impacted later understandings of intelligence and its absence. For not only the was distinction between idiocy and insanity now deeply entrenched in modern psychiatry solidified through the activities of the medieval courts, but the fact that men increasingly accused women of idiocy to forestall their involvement with men whose interests were opposed to their own, helped forge lasting associations between idiocy and feminine promiscuity. While the poor choice of a spouse or partner had previously been seen as symptomatic of allowing the passions overrule one's better judgment, it could now also be taken as evidence for a profound lack of reason in the eyes of the law. These associations endured beyond the Middle Ages.

I do not suggest that a direct link existed between the phenomena I discuss in this chapter and later medical discourses, however, we can see similarities between them and depictions of idiocy in the centuries that followed.⁷² In Victorian and Edwardian England, for instance, promiscuity was seen not simply seen as an outward symptom of idiocy, but rather idiocy was used to *explain* the sexual behavior of women of “vagrant classes.”⁷³ Likewise, medical treatises and textbooks from the sixteenth to nineteenth centuries characterized female idiots as hypersexual, and cited this as one of the greatest difficulties confronting the physicians who managed their care. For instance, in a textbook used in East Coast medical schools during the nineteenth century, Etienne Esquirol remarked that

⁷² Recent works have discussed a discernable association between female promiscuity and idiocy in Victorian and Edwardian England. See, Mark Jackson, *The borderland of imbecility: medicine, society and the fabrication of the feeble mind in late Victorian and Edwardian England*, (Manchester University Press ND, 2000), 106-130. Patrick MacDonagh, “Diminished men and dangerous women: representations of gender and learning disability in early and mid-nineteenth century Britain,” *British Journal of Learning Disabilities*, 28: 49-53.

⁷³ Pamela Cox, “Girls, deficiency, and delinquency,” in *From Idiocy to Mental Deficiency: Historical Perspectives on People with Learning Disabilities*, ed. David Wright and Anne Digby, (New York: Routledge, 1996), 184-206.

“[Idiot] Girls become coquettes, and are often brought to hospitals between the ages of fourteen and eighteen years, who, having attained to puberty, pursue men, are intractable, regardless of the commands of their parents.” Elsewhere in the same text, he described how idiot women were so fond of tobacco that they thought little of trading sexual favors for it.⁷⁴

In all these examples, a poor choice of partner was a symptom of cognitive deficiency, a view that would have been familiar to many of the men who accused their female relatives of idiocy during the fourteenth century. And if these medical notions owe any debt to legal and cultural concepts from the Middle Ages, they provide further evidence that medieval juridical practices played a vital role in shaping how society thinks about intelligence and its absence. It is true that the earliest idiocy inquisitions were concerned with the blunt practical matters of land and wealth, rather than abstract questions about human reason. Nevertheless, these concerns shaped how idiocy was understood within the courtroom, and—later—beyond it. In other words, aspects of what we currently think of as natural, medical categories, may have actually been shaped by the self-interest of participants in medieval disputes over land distribution and succession, after pestilence and wars had upended the traditional social order.

⁷⁴ Etienne Esquirol, *Mental Maladies; a treatise on insanity*, (Philadelphia: Lea and Blanchard, 1845), 453.

CHAPTER 5

A PROFUSION OF IDIOTS; MERCHANTS, MARKETS, AND MENTAL DISORDER ON THE CUSP OF MODERNITY

In 1839, John Elliotson, a phrenologist, mesmerist, dean of the faculty of medicine at University College London, and then president of the Royal Medical and Chiurgical Society, lamented what he saw as an unfortunate tendency amongst his colleagues in the psychiatric profession; they had largely adopted an understanding of idiocy that originated in English law. At the root of Elliotson's discontent was the fact that the fact that the law's requirements for idiocy did not conform to the clinical reality witnessed in medical practice. For, the law held;

The individual, in order to be constituted an idiot, must be unable to number to twenty, or to tell his age, or to answer any common question; by which it may plainly appear, that the person has not reason sufficient to discern what is for his advantage or disadvantage.¹

Yet, Eliottson had found that idiots could often differentiate between numbers, size, distance, and even count above twenty, “notwithstanding what the law says.”

Meanwhile other people could, “never be made to calculate; and some persons can

¹ John Elliotson, MD, Cantab.; FR, *The Principles of Practical Medicine; Founded on the Most Extensive Experience in Public Hospitals and Private Practice and developed in a Course of Lectures Delivered at University College London* (London: Joseph Butler, Medical Bookseller and Publisher, 4 St Thomas' Street, Southwark. 1839), 599. Elliotson's discussion here echoed a paper he read years earlier at the meeting of the London phrenological society. In 1824, a summary of the meeting in the medical journal *The Lancet* noted that Elliotson had “read an interesting paper on idiocy and Insanity; in which he showed that the definition of idiocy, as sanctioned by the law, to be incorrect.” *The Lancet London: A Journal of British and Foreign Medicine*, 5 (1984): 207.

scarcely keep their own accounts, though otherwise they are reflecting and very clear-headed persons.”²

Ironically—given his concern that psychiatry be preserved from outside influence—around the time his thoughts on idiocy appeared in print, Elliotson was forced to give up his offices at the University College London and the University College Hospital due to his excessive enthusiasm for mesmerism and other practices his colleagues rejected as pseudo science.³ I return to Elliotson later in this chapter, however I cite him here because his concerns reflect a point that I have endeavored to make throughout this study. The modern medical concept of intellectual disability does not have a purely medical history, but instead reflects a union of medical, legal, philosophical, and theological attitudes about rationality and mental competence, some of which originated in the juridical practices of the medieval English royal courts.

It should not necessarily surprise us that legal and medical understandings of mental incompetence do not entirely align with each other, as Elliotson suggested 173 years ago. Anyone who followed the news in America between 2011 and 2012 will remember the high profile case of Jared Lee Loughner, who shot a congresswoman and killed six other people while in a state that uncontroversially fit the medical criteria for psychosis and schizophrenia, but nevertheless failed to meet the law’s criteria for the insanity defense. In other words, the modern legal definition of mental incompetency is too narrow to encompass all the states of mind that render people incapable of rational

² *ibid.*

³ Alison Winter, *Mesmerized: Powers of the Mind in Victorian Britain* (Chicago: University of Chicago Press, 2000), 59.

deliberation (just as medieval law's insistence that idiocy must be congenital does not reflect modern understandings of intellectual disability). Nevertheless, we tend to think that where areas of affinity do exist between law and medicine, it is medicine that shapes law, and not the other way around. Law, after all, reflects social facts as much as it creates them. Accordingly, the thought that it could inform medical understandings of mental illness is at odds with the idea that medical knowledge is trans-historical and natural.

Yet, as we saw in previous chapters, a concept of idiocy emerged in English law long before it entered medical thought, and the earliest understandings of idiocy were shaped by the gentry's desire to hold onto landed wealth more than any medical standard of rationality. Thus, if the developments discussed so far had any influence upon later understandings of human intelligence, then it is cause to reexamine whether our own ideas about intelligence and its absence are purely medical in origin. It is possible that later medical understandings of intellectual disability emerged from a parallel and autonomous discourse about the nature of human reason in early modern political and natural philosophy—as others have recently asserted. However, it seems quite unlikely that later thinkers would have completely escaped the law's influence, given that so-called idiots had been appearing in court for more than three centuries when medical writers in England coined the term *neurology*, and set out to provide a medical explanation for why some people seem to be born with less rational souls than

others.⁴

Nevertheless, while I have shown that the division between idiocy and insanity ingrained in modern psychiatry first arose in medieval law, nothing else discussed in this study has suggested that any connection exists between the idiocy that concerned the medieval courts and the modern medical concept of intellectual disability. To the contrary, the previous chapters have largely shown that medieval ideas about intelligence were quite different from our own! This chapter remedies this omission by proposing that some of the modern associations between intelligence, calculative rationality, and financial proficiency discussed in Chapter One—and indeed, the understanding of idiocy cited in Elliotson’s lament—can be traced back to ideas that emerged in juridical practice during the last decades of the fourteenth century.

When people identified as idiots first began to appear before the English royal courts, the officials charged with assessing their conditions largely relied upon the definition of idiocy devised by thirteenth century jurists. Specifically, accepting that idiocy differed from insanity in that it was congenital and permanent, they sought to determine whether the individuals in question had been afflicted with their conditions from birth, and whether they had ever possessed lucid intervals. Later on, even as the landed classes began to see accusing their relatives of idiocy as a convenient way to

⁴ I refer here to the physician Thomas Willis, who coined the term *neurology* in his 1664 treatise, *Cerebri Anatome*. Willis plays a prominent role in recent scholarship on the history of disability because his 1672 medico-philosophical treatise, *On the Souls of Brutes*, is considered to be one of the first works to treat intellectual impairment as a medical object.

circumvent the laws of inheritance, the questions officials focused on in idiocy inquisitions remained largely unchanged. By the end of the fourteenth century however, new criteria had emerged for determining whether someone was an idiot, and these were much more specific than those used in the past. Rather than simply inquiring whether alleged idiots had ever possessed reason, officials began to ask them to count coins, measure cloth, and do arithmetic. In other words, they asked questions that equated mental competency with possessing the skills required to participate in a market economy, just as Elliotson's colleagues would five-hundred years later.

The legal concept of idiocy had been connected to economic proficiency from its inception in the thirteenth century, since the Crown's interest in idiots initially arose from a desire to keep landed wealth out of the hands of people unable to manage it. Nevertheless, these changes marked a significant point of transition in the conceptual history of intellectual disability. For, it was through them that idiocy became something more than a permanent, congenital—but otherwise indistinct—form of insanity. Long after the Middle Ages ended, insanity remained understood as a disorder that interfered with moral reasoning, by impeding one's ability to discern between good and evil, right and wrong. Indeed, in 1843, Queen Victoria ordered a panel of twelve judges to clarify the circumstances in which the insanity defense might be used, after a jury acquitted the assassin of a British civil servant because he suffered from "insane delusion."⁵ Drawing upon precedent, the judges determined that,

⁵ United Kingdom House of Lords Decisions "Daniel M'Naghten's Case. May 26, June 19, 1843." 8 ER 718, [1843] UKHL J16.

To establish a defense on the ground of insanity it must be clearly proved, that, at the time of committing the act, the party accused was labouring under such a defect of reason from disease of the mind, as not to know the nature and quality of the act he was doing, or if he did know it, that he did not know that what he was doing was wrong.⁶

These criteria, which are known as the M’Naghten rules after the allegedly insane assassin, became the foundation for subsequent common law rules concerning criminal liability. In many respects, the M’Naghten rules would have been familiar to a medieval jurist. For, like criteria the medieval royal courts used in inquisitions involving the allegedly insane, they focused on whether defendants were able to recognize the wrongfulness of their actions at the time of their crimes.

As discussed, medieval law said little about what idiocy entailed, other than that its status as an incurable inborn disorder differentiated it from insanity. In practice, inquisitions involving idiots almost always involved landed wealth, while those involving the insane concerned questions of criminal liability. Nevertheless, a person whose understanding of idiocy came only from written law during the thirteenth and fourteenth centuries would have likely understood it as simply a more permanent form of insanity. Yet, even as insanity continued to be characterized as a disorder that impeded moral reasoning, between the late fourteenth and sixteenth centuries, idiocy gradually became associated with deficits of specific skills, possessed and valued by certain segments of society, but largely irrelevant to the lives of others. In this chapter, I explore these changes, and discuss how they impacted later understandings of

⁶ Ibid.

intelligence's absence, through a close analysis of one remarkable idiocy inquisition held at the end of the fourteenth century. I ultimately suggest that they were closely connected to England's transition to a monetized market economy during the later Middle Ages, and in this regard capitalism played a role in shaping western understandings of the rational subject.

More Money, More Problems: Merchants, Markets and the Invention of Idiocy

I would like to begin by describing a previously unmentioned, but significant aspect of the cultural context in which late medieval idiocy inquisitions took place. Between the late thirteenth and fourteenth centuries, Europe supposedly underwent the first of a series of “great transformations,” instigated by the changing role of commercial activity in peoples' lives. During this time, Western Europe ceased to be an economic backwater, as commerce, in the words of Martha C. Howell, “left the margins of the European economy where it had been confined for centuries.”⁷ While a small class of merchants had been engaged in long distance trade with the East well before the late Middle Ages, prior to the emergence of the earliest trading companies they had led a peripatetic existence, and their activities had taken place on the peripheries of European society.⁸ During the fourteenth century however, commercial activity began to move towards the center of western culture; urbanized commercial centers began to dot the European landscape, monetization took place across large swaths of the countryside,

⁷ Martha C. Howell, *Commerce before Capitalism, 1300-1500*, (Cambridge: Cambridge University Press, 2010), 1.

⁸ Peter Spufford, *Power and Profit: The Merchant in Medieval Europe*, (New York: Thames and Hudson, 2003), 22.

credit expanded, and movements were underway to standardize currency at a national level.⁹ Unique economic cultures soon emerged in these commercial centers. As a result merchants became a dominant sociopolitical class in England and abroad, and society accordingly came to adopt some of their values.¹⁰ As commercial activity became increasingly embedded in day-to-day life, people began to privilege skills such as calculation, quantification, and the keeping of account books, which had previously only been appreciated by the small sub-group of people involved in long distance trade. Merchants' cultural influence and political power, in other words, began to rival that of the landed elite, as the cultural center of English life shifted from the countryside to the city.

Historians have written at length about the various cultural implications of this transformation; changes to property law, marriage practices, community cohesion, and gift exchange have all been attributed to the socio-cultural upheaval wrought by the expansion of commercial activity.¹¹ But no one has yet discussed how this shift towards a commercialized state and society impacted how idiocy was dealt with and defined in the later Middle Ages. In the following pages, I suggest that its effects were profound. For much like today where American children who qualify for Medicaid are *four* times more likely to be prescribed anti-psychotic drugs than their more affluent counterparts,

⁹ Spufford, *Power and Profit*, 12. According to Spufford, by 1319 over 800 tons of silver were in circulation as coined money in England. This represented a 24 fold increase from mid twelfth century levels. The amount of currency in circulation dropped off substantially by the mid fourteenth century however, as Europe as a whole experienced a bullion crisis. This crisis will be significant to my discussion in the pages that follow. By the end of Queen Elizabeth I's reign only 500 tons of silver *and* gold were in circulation as coined money.

¹⁰ Alexander Murray discusses this at length in *Reason and Society in Medieval Europe* (Oxford: Clarendon Press, 1978).

¹¹ Lester K Little, *Religious Poverty and the Profit Economy in Medieval Europe*, (Ithaca: Cornell University Press, 1983) particularly, 18 and 19.

dominant cultural norms impact not just how society defines reason and unreason, but whom it deems to be rational and irrational.¹² Accordingly, as the values and normative practices of merchants came to occupy an increasingly prominent place in English culture, they began to gradually redefine what it meant to be a rational human being. For, as society came to value the skills needed to participate in an increasingly commercial society, it also began to hold in esteem the people who possessed those skills. As Alexander Murray has noted in his magisterial *Reason and Society in the Middle Ages*, by the late Middle Ages acquiring numerical skills had become one of the surest paths to social mobility, and the people who became mathematically adept during the fourteenth through sixteenth centuries were those with the most social ground to gain.¹³ This seems to have been the case in late fourteenth century England. Beginning with the reign of Edward III, the Crown progressively sought out people with professional or legal backgrounds for coveted government posts.¹⁴ In fact, many of the royal officials

¹² Duff Wilson, "Poor Children likelier to get Antipsychotics," *The New York Times*, Dec 11, 2009, <http://www.nytimes.com/2009/12/12/health/12medicaid.html>, accessed December 2010. In this study, a team of researchers from Rutgers and Columbia found that children from poor families were prescribed anti-psychotic medication at rates far greater than the estimated prevalence of mental disorders among this subgroup. The researchers found that psychiatrists prescribed anti-psychotics to Medicaid patients for less severe mental and behavioral conditions such as ADHD, perhaps because the drugs are cheaper than therapeutic intervention. One must conclude that children who qualify for Medicaid are often given medication intended to treat severe mental disorders due to cultural associations between poverty and mental disorder, and economic pressures, rather than their minds.

¹³ Murray, *Reason and Society*, Murray notes that only one of the five men (Alcuin, Gerbert, Bede, Fibonacci, Paccioli) whose mathematical talents were among the most renowned in Europe was born into nobility, however all had personal relationships with kings. In later chapters, I discuss how gaining wardships over idiots became one of the strategies merchants used to gain access to land markets from which they had traditionally been excluded.

¹⁴ William J. Courtenay, makes this point in one of the later chapters of *Schools and Scholars in Fourteenth Century England*, (Princeton: Princeton University Press, 1987). More specifically, this trend can be seen if we examine how the backgrounds of escheators changed between the fourteenth and fifteenth centuries. In the early thirteenth century, escheators were typically drawn from the landed elite. Over time however, their status declined. In 1368 the Crown issued a statute requiring escheators to have landed income of £20 per year, which was likely a preventative measure, as people with less wealth began to seek out the office. This

who oversaw idiocy inquisitions during the later fourteenth century came from commercial backgrounds. Ultimately, as numbers were assumed to be more objective than words, society came to see people who had mastered the language of numbers as more rational than those who had not.¹⁵

The flip side of this is that society began to take a dim view—and eventually regard as mentally aberrant—people who did not possess these skills. This devaluation is directly connected to the histories of both poverty and disability, and indeed serves as a thread that unites the two. For, The poor, women, peasants, and even middling rural land-holders, were far less likely than the wealthy to possess (or have reason to possess) the particular set of skills valued in an increasingly commercial society. After all, many of the skills required to participate in a market economy during the later Middle Ages—the ability to calculate profit and loss, handle money and count coins, read and write a contract, and reckon time according to the civil calendar—would have been unnecessary for success in most of the professions of the laboring classes.¹⁶ Yet as rationality came to be defined in the language of the market, the segments of society that accepted these

requirement was not long lived however, because by the fifteenth century, escheators typically had little landed wealth, making them quite susceptible to bribery and threats. The social status of tax-collectors, coroners, and sheriffs officers also declined during the same period, making these positions attractive to “new men,” who wished to improve their standing in English society. Gerald Harris, *Shaping the Nation: England 1360-1461*, (Oxford: Oxford University Press, 2005), 166.

¹⁵ Patricia Cline Cohen, and Ted Porter have put forth variants of this argument in reference to Early Modern and nineteenth century America. Cline Cohen and Porter have argued for the existence of strong links between trust in numbers and early modern statecraft, and in doing so thrown into question the implicit relationship between numbers and objectivity. Both scholars have influenced my own thinking about the past, and I believe that many of their arguments are applicable to the Middle Ages despite the fact that they tend to see numeracy as an early modern phenomena. Patricia Cline Cohen, *A Calculating People: The Spread of Numeracy in Early America* (London: Routledge, 1999). Theodore M. Porter, *Trust in Numbers: The Pursuit of Objectivity and the Science of Public Life* (Princeton: Princeton University Press, 1996).

¹⁶ This is one of the main reasons that historians have speculated that the vast majority of people in medieval and early modern Europe were innumerate. See, Keith Thomas, “Numeracy in Early Modern England,” *Transactions of the Royal Historical Society*, 37 (1987) 103-132.

new understandings of reason eventually came to regard people with less reason to participate in commercial life—and thus acquire the skills required for participation—as mentally lacking.¹⁷ The movement of commercial activity from the periphery to the center of European life during the later Middle Ages not only upended established social hierarchies, but also informed how intelligence and its absence would be understood in the centuries that followed.

The “Commercial Revolution” and Changing Criteria for Assessment: The Curious Case of Emma de Beston

Evidence of these changes can be seen in idiocy inquisitions held during the late fourteenth and fifteenth centuries, both in the questions royal officials asked when evaluating claims of idiocy, and the social status of the alleged idiots and the individuals who sought their wardships. When the Crown first began overseeing idiocy inquisitions in the late thirteenth century, wardships of idiots typically went to the landed elite, since the wardship market had begun so the Crown could respond to the issues that arose when its tenants-in-chief died before their heirs reached the age of legal majority. As people outside the gentry began to acquire capital however, wardships ceased to simply be a means through which the gentry could hold onto landed wealth, and instead

¹⁷ The culmination of this can perhaps best be seen in the seventeenth century physician Thomas Willis' *On the Souls of Brutes*. In *On the Souls of Brutes*, Willis promotes a correlation between poverty and congenital intellectual impairment by noting repeatedly that “rustic” people and peasants are more likely to suffer from idiocy than their wealthier counterparts. Willis built this correlation into his delineation of the “degrees of stupidity,” where he noted that there are some idiots, although incapable of the liberal and mechanical arts, are able to comprehend agriculture and “country affairs.” Willis even believed that peasants’ brains had different textures than gentlemen, claiming that, “To this gross texture of the brain some born of rustics are frequently obnoxious, so that in some families looking back up on many generations, you will scarcely find one wise or witty man.” A N Williams, “Of Stupidity or Folly: Thomas Willis’ Perspective on Mental Retardation,” *Arch Dis Child* 87 (2002): 555-558.

presented an opportunity for “new men” to improve their positions in life. Toward the end of the fourteenth century, we find more alleged idiots whose wealth lay primarily in urban tenements and shops rather than manors and parcels of land in the countryside, and more individuals outside the nobility and upper gentry seeking their wardships. For instance, an inquisition dating from 1399 concerned an heiress who had sold a brewhouse in London, tenements in the parish of St. Michael Crookedlane, and shops in the parish of St. Margaret Briggest, while allegedly of unsound mind.¹⁸ Another, held in 1362, concerned 5 messuages and 19 shops in the parish of St. Sepulcre in London, which had ended up in the possession of a “hostiler”—or innkeeper—after had they descended to a man who was allegedly *non compos mentis*.¹⁹ Similar issues arose in the 1386 inquisition of Alice Shirloke, an alleged idiot from birth who alienated a single messuage worth 13s, 4d to a “draper,”²⁰ and again in 1384, when the Crown accused a “marchant” from York of taking profits from the estates of an idiot from birth without license, cutting down oak trees within his woods, and selling them for his own gain.²¹ While the majority of idiocy inquisitions held during the later Middle Ages continued to involve the gentry, cases like these became more common over time.

More significant than these changes though, is how commercial activity’s increasingly prominent role English life reshaped how individuals thought about what it meant to be an idiot, as the legal concept of idiocy began to move beyond law into culture at large. Of all the fourteenth century inquisitions involving alleged idiots, none

¹⁸ CIPM, vol. 17, no. 1315.

¹⁹ CIPM, vol. 2, no. 108

²⁰ CCR, Ric. II, vol. 3, 180.

²¹ CCR, Ric. II, vol. 2, 503.

speaks to this better than that of Emma de Beston. Emma, who lived at the time of her inquisitions in the same town as Margery of Kempe, has attracted considerable interest from historians of mental impairment, because her case remains one of the most detailed idiocy inquisitions held prior to the establishment of the Court of Wards. When other historians have written about Emma, they have been largely interested in what her case can tell us about the nature of communal arrangements for the care of people with mental impairments prior to the rise of the early modern asylum. For instance, in their article, “Madness and Care in the Community,” David and Christina Roffe use Emma’s case to argue that truly public provisions existed for the care of mentally impaired individuals in the Middle Ages, and indeed that Emma might have fared better than she would today, when “ultimate decisions [about a subject’s care] rest with the experts, and it is not always possible to associate the local community with the settlement reached.”²² Richard Neugebauer has also looked favorably upon the criteria by which Emma was assessed, and used her inquisition to argue that examinations administered by the Court of Wards during the seventeenth century, which seem “remarkably modern in method and tone,” relied on a procedural format that had been in place since the Middle Ages, “rather than announcing the enlightened perspective of a new age.”²³ Finally, Wendy Turner uses Emma’s inquisition to explore the tensions that could arise between the Crown and free boroughs when the king claimed to jurisdiction over cases

²² David Roffe and Christine Roffe, “Madness and Care in the Community: A Medieval Perspective” *British Medical Journal*, vol. 331:7021 (1995), 25-30. David Roffe also offered similar comments on the Emma de Beston case in “Perceptions of Insanity in Medieval England,” (paper given at the Mind and Body Seminar, Department of Geriatric Medicine, Keele University, April 1998). <http://www.roffe.co.uk/keele.html>

²³ Neugebauer, “Mental Handicap in Medieval England,” 28-29. Neugebauer is correct in this assertion, however his purpose in making it is similar to that of the Roffes. See discussion of Neugebauer’s work in Chapter One.

involving mentally incompetent individuals, which would otherwise be handled at a local level. Taking a positive view of the Crown's involvement, Turner interprets Emma's case as an example of how the Crown protected its subjects from corrupt members of their community who would seek to take advantage of their condition when they could not protect themselves due to mental incapacity or illness.²⁴

While I admire their work, my interest in Emma's inquisition is rather different from that of previous commentators. None of the scholars mentioned above question the reality of Emma's "idiocy"—or in other words, that Emma would be recognized as intellectually disabled if she were examined today. Instead, they focus on the final outcome of her case, particularly the arrangements made for her care. I, on the other hand, am interested in both the criteria that Chancery used to assess Emma's mental competence, and a disagreement that arose between town and Crown over their validity. Both reveal a great deal about how elite and popular understandings of what it meant to be an idiot developed and diverged during this early state in idiocy's conceptual history. Emma's case presents clear evidence of a conflict between older, pre-mercantile understandings of intelligence and its absence, and newer understandings that emphasized "calculative rationality" and other qualities valued in a swiftly changing economy. It also provides insight into the confusion and tension that may have arisen when the Crown adopted these newer definitions before they became universally accepted, and how individuals and communities may have resisted its jurisdiction as it

²⁴ Wendy J. Turner, "Town and Country: A Comparison of the Treatment of the Mentally Disabled in Late Medieval English Common Law and Chartered Boroughs," in *Madness in Medieval Law and Custom*, ed. Wendy J. Turner (Leiden: Brill, 2010), 17-38.

began to expand its authority over idiots to cases involving individuals other than its tenants-in-chief. Finally it suggests that there may have been confusion about what exactly it meant for someone to be an idiot, while the concept of idiocy in the process of being constructed.

In July of 1383 in Bishop's Lynn, a chartered borough in Norfolk County settled at the mouth of the great river Ouse and nestled between the sandy banks of the Purfleet and Milfleet rivers, Emma de Beston was called before a jury at the orders of Chancery to determine whether she was an idiot. In May of that year John Rede, the escheator of Norfolk, had carried out an inquisition into Emma's mental competence at the order of the King's Chancellor, who had been made aware of Emma when her uncle Phillip Wyth requested that the Crown appoint him as her guardian.²⁵ At this time, the escheator had found that while Emma had "not been an idiot from birth," she had become one four years prior, when her reason was "snatched by the snares of evil spirits," to the extent that she "lacked lucid intervals altogether," at the time of her examination.²⁶ The escheator determined that Emma was unable to care for herself or her property, and the Crown entrusted her land and goods—which consisted of relatively modest holdings of a tenement in Jeweslane worth an estimated 2 marks yearly, a messuage in Websterwe worth 20 shillings yearly, plus a tenement in Wyngate worth 20 shillings yearly—to her uncle for as long as she remained impaired.²⁷

²⁵ Based on the records contained in the *Red Book of King's Lynn*, we can determine that Phillip was at different times in his life, an unsuccessful merchant, a tax collector for the Crown, and a local administrator of Lynn.

²⁶ CIM, vol. 4, no. 127.

²⁷ A fifteenth century map of Lynn shows that Webster Row and Jeweslane were relatively unpopulated areas on the outskirts of town, away from the market and rivers. Skinners were the main inhabitants of Webster Row, where Emma presumably lived, which suggests that it was a fairly low rent area. We can surmise that

Emma however resisted this verdict. When the time came to deliver her into Phillip's custody, the escheator found her house vacant, the doors locked, and Emma nowhere in sight. The escheator noted that he believed that the residents of the town were harboring Emma, but no one in Bishop's Lynn—including Henry Betle, the town's mayor—would reveal to him where she was or whom she was with. In fact, the escheator claimed that Henry Betle had warned Lawrence de Elyngham, with whom Emma allegedly lived, of his arrival so that he could hide her. The escheator thus left with his mission unaccomplished. Emma was safe for now, but her entanglement with Phillip, the escheator, and the royal Chancery was only just beginning. In a petition sent to the court shortly thereafter, Emma claimed that she had hidden because Phillip had only sought to have her declared incompetent so he could use her goods to pay off debts owed to business partners and Emma herself. In the petition, Emma described these debts as so large that, "he [Phillip] had not means of payment out of his goods, but only out of hers, whereby she is like to be brought to naught and her goods wasted and destroyed."²⁸ She further claimed that Phillip had promised the escheator part of her goods in exchange for judging her to be incompetent.²⁹

Emma would have been physically removed from the social and commercial center of her community. Moreover, although real income levels during the Middle Ages are notoriously hard to pin down, if we follow the commonly accepted assumption that a plowman made between 2 and 3 shillings a week during the post-plague period, it becomes clear that the value of the property in question was relatively modest in value.

²⁸ CIM, Vol. 4, no. 127.

²⁹ While local records from Lynn neither confirm nor deny this claim, information recorded in the Red Register of King's Lynn—a contemporary collection of local records kept by the merchant's guild—backs up Emma's claim about Phillip's debt, and suggests that he was already disliked by his community at the time the inquisition took place. The inquisition seems to have made matters worse for him; on March 15 1384 Phillip was fined 66s 8d "as much for his disobedience as for divers trespasses committed by him against the mayor and commonality." Lynn's antipathy towards him may have had something to do with the fact that he had been briefly employed as a tax collector for the Crown a few years earlier, at a time when tensions between the Crown and Lynn were at an all time high due to increased demands for taxation. *Red Register of King's Lynn*,

Let us pause for a moment before continuing with Emma's story. Emma's case is fascinating, not only because it is the most detailed extant record of a medieval mental competency hearing, but also because it illuminates how the people who were the subject of these hearings may have responded to the Crown's intrusion into their affairs, the tensions that could emerge between Crown and town over the jurisdiction of mentally incompetent subjects, and the relationships between alleged idiots and their would-be guardians. Already, Emma's rejection of the escheator's verdict, her allegations that he had accepted bribes from Phillip, and her assertion that Phillip's intentions were less than honorable, stand in contrast to the positive picture of the procedural format of these hearings and the custody arrangements that resulted from them that the Roffes, Neugebauer, and Turner present in their analyses of the case. While Emma's inquisition is certainly extraordinary, she was not the only person to resist a verdict of mental incompetency handed down by the Crown.

As discussed in previous chapters, people had a variety of reasons to accuse their relatives of idiocy other than concern for their well being, and many alleged idiots were found upon reexamination to be of sound mind. An inquisition recorded in 1402, for instance, offers some clues as to why a competent individual might be accused of idiocy around the turn of the century. On July 7th of that year, Chancery ordered the escheator of Gloucestershire to "remove the king's hand and meddle no further," into the affairs or property of William de Aston, who was accused of idiocy "in a malicious suit of certain enemies," but found to be "of sound mind and discretion," when examined in

person at Chancery.³⁰ It was no more unheard of in the Middle Ages than it is in modern disputes over inheritance, for people to seek to have their relatives declared incompetent in order to gain control over their estates. Moreover, while the Crown generally granted custody of lunatics and *idiotae* to their relatives or neighbors in late thirteenth century, as we saw in Chapter, as the fourteenth century progressed it increasingly sold wardships of the *idiotae, fatui, stulti, and non compos mentis* who appeared in the Chancery inquisitions to unrelated nobles—and later people who had accumulated wealth through commercial activity rather than inherited land.³¹

We already saw this in the 1301 case of William Berchaund. Here, Adam le Gayte, the king's night watchman, requested that the Crown examine William Berchaund on suspicion of idiocy. Adam had previously been granted custody of William's uncle John Danthorp, also an idiot, and he now requested that the Crown grant him William's wardship as well, on the grounds that "what he had of his uncle, the other fool, had been loyally expended in the king's service, and *he cannot otherwise maintain his estate* [emphasis added]."³² The escheator duly granted Adam's request. Nevertheless, he noted that he had heard upon making inquiries to William's neighbors that William "at lunations is worse, and raves with madness,"—language that echoes that used in other contemporary inquisitions to describe insanity, rather than idiocy. The discrepancy between William's diagnosis and the escheator's description of his symptoms demonstrates that the Crown may have been willing to stretch its own definitions of

³⁰ Calendar of Close Rolls 1399-1402, no. 543.

³¹ I examine how the notion of idiocy became commodified and saleable in subsequent chapters.

³² CIPM E I, 78-79 # 118.

reason and unreason to serve the interests of the powerful. For had the escheator found William to be a lunatic rather than an idiot, the Crown would not have been able to grant his land to Adam, since it was required to protect, but unable to profit from the land of lunatics. By identifying William as an idiot however, the Crown was able to grant his land and the profits it produced to anyone it pleased. William's inquisitions not only reflects the aforementioned shift in how and to whom the Crown granted guardianships, but also speaks to how the definition of idiocy used in Chancery inquisitions could be bent to fit the needs of the Crown and its allies.

Even the earliest inquisitions point to this fluidity. In 1279 a writ of *Certiorari* to the king's steward detailed how a "now insane" woman from York named Margery Anlauby, had lost her mind directly following the death of her husband. Making an already tragic case even more so, a noble named Robert de Stotevyll had allegedly kidnapped her young son John, and continued to unjustly detain him at the time the writ was sent. Margery and her son dropped out of the records for nine years, until another writ of *Certiorari* announced her death. Amazingly, this new record did not mention Margery's son, or her *insanity*. Instead, it noted that Margery had been an *idiot*, not from birth, but only for the nine years since the death of her husband and, presumably, the kidnapping of her son.³³ The Crown had therefore appointed an unrelated guardian by the name of William de Beverlaco to Margery, and endowed him with the authority to

³³ This in itself demonstrates how flexible the Crown's definition of idiocy was, since one of the main ways idiocy was supposed to be distinct from insanity was that the former was congenital while the later was acquired and impermanent.

take, and—upon her death—retain, profits from her estate.³⁴ Each of these three inquisitions speaks to the subjectivity with which Chancery officials responded to allegations of idiocy, a point that became central to Emma’s case. Let us now return to what happened after Emma brought her appeal.

The Crown seems to have taken Emma’s troubling accusations against the escheator seriously. On December 8th, Chancery issued a writ ordering Phillip to bring Emma into Chancery at Westminster on the 5th of January so that she could be “examined before the council and dealt with according to law and reason,” as the king himself had been informed that she was “of sound mind.” In many respects, this was a remarkable request. Bishop’s Lynn lies 97 miles north of London. Even if Phillip had been able to travel by river, a trip of this distance would have represented a fairly significant financial burden, especially relative to the modest amount of money to be gained from Emma’s estate. It is also astounding that a case such as Emma’s would have attracted so much attention from Chancery. Phillip did not produce Emma however. Rather, he endorsed and returned the writ claiming that he could not comply with the court’s order because Emma had never been delivered to him.

At this point, the Crown seems to have lost sympathy for Emma’s appeal. In a writ issued on January 31 to Henry Betle (the mayor of Lynn), Lawrence de Elyngham (the man with whom Emma had allegedly lived before she absconded), and John Paxman and Robert Brisley (executors of Emma’s husband’s), Chancery reiterated the escheator’s initial verdict about Emma’s mental state, and ordered them to deliver

³⁴ CIPM v II.# 333, C Edw. I. File 3 (18), and CIPM E I, v II. #728, C *Edw I* 54 (12)

Emma's person and goods to Phillip without delay under the penalty of a fine of 300£, or present Chancery with good case for not complying by Monday of the second week in Lent. This exorbitant sum warrants comment. As noted, Emma's property was not worth much. Between her tenement in Jeweslane worth 2 marks yearly, the messuage in Websterwe worth 20s yearly, and the tenement in Wyngate worth 20s yearly, her entire estate had an annual value of less than three pounds in yearly rents. The fact that the Crown threatened the town with a penalty of more than 100 times the annual value of the property in question suggests that the case was quickly spiraling out of control. It had become a space in which pre-existing tensions between the Burgesses of Lynn and royal authority could be played out, and Emma, as we shall soon see, was caught in the crossfire.

Bishop's Lynn, which is now tellingly known as King's Lynn, was a chartered borough, a special type of town that the Crown granted rights and privileges it otherwise reserved for itself. These included, the right to hold markets, elect representatives, collect taxes from its citizens, and administer its own affairs in most judicial matters.³⁵ Lynn had begun as a small settlement on the manor of Gayswood, but by the time of Emma's inquisition, it had swelled considerably in both size and importance as the result of rapid economic development. Lynn had long prospered due to the Purfleet and the

³⁵ The charter given to Lynn by King John in 1204 granted Lynn the "same liberties and customs typical of free boroughs." A complimentary charter subsequently issued by the Bishop of Norfolk added to this, stating that Lynn's liberties should be modeled upon Oxfords, which held that in matters of legal jurisdiction, "If they have any doubts or differences of opinion concerning any judgment that they have to render, they may send messengers to London on the matter, and whatever the Londoners judge to be correct they may take as established. If any charge is brought against them outside the city, they need not answer it, no matter what plea is made against them, they may prove their case according to the laws and customs of London and not otherwise, for they and the citizens of London are of one and the same custom, law and liberty."

Milfleet rivers; both were deep enough to accommodate ships, and the salt marshes that formed on their banks provided Lynn's residents with a valuable commodity. Thanks in part to its position between the rivers, by the mid-fourteenth century Lynn had become the third largest port in England.³⁶ Nevertheless, by the time of Emma's inquisition a number of economic factors had strained its relationship with the Crown.

The Crown needed to raise taxes to support its military actions abroad, and this had placed a large financial burden on the town during the 1360s and 70s, at exactly the wrong time. For although Lynn appeared prosperous, trouble was brewing on the horizon; East Anglia as a whole had reached the limits of its agricultural expansion during these years, and Lynn was beginning to see competition from market towns that had formed in response to the need to find new sources of income. Moreover, viable long distance trade was now a reality, bringing to market cheaper salt from Portugal and Spain. Finally, Hanse towns were beginning to dominate trade in the North Sea. It should not be surprising then, that increasing taxation from the Crown created tension between town officials and royal authority. Popular resistance to the Crown's intrusion into Lynn's self governance seems to have reached a boiling point in 1374 when Lynn's burgesses were passed an ordinance that stated that "if anyone speaks ill of tax-collectors because of the tax assessed on them, or arranges anything to happen whereby they are harmed or obstructed, he shall pay twice as much tax that year."³⁷

Henry Betle's response to Chancery's demand that he surrender Emma to Phillip

³⁶ Stephen Alford, "History of Medieval Lynn," <http://users.trytel.com/~tristan/towns/lynn1.html>, accessed November 5, 2010. While conventions may indicate that I should cite a more "scholarly" source, Alford's site is excellent and he deserves credit where it is due.

³⁷ Ibid. <http://users.trytel.com/~tristan/towns/lynn7.html>. This came on the coat-tails of similar ordinances issued in 1366 and 1372.

betrays these tensions. Rather than producing Emma as per the writ's request, Henry and the others named attempted to furnish reasonable cause for their unwillingness to hand her over. In the letter sent to Chancery shortly after the receipt of the writ, they justified their disobedience by arguing (among other things) that the case was outside the Crown's jurisdiction, and framed their initial decision to hide Emma in the context of local rights to self-rule. After claiming that that they did not know where Emma was, and that more importantly, she had no land or goods that could be delivered to Philip, they argued the following:

The present king and his progenitors have made our town of Lenn a free borough by their charters and have granted firmly and permanently (*firmum et stabilem*) to the mayor and burgesses that they may have and use all such liberties and customs as the city of Oxford uses. On this point, Henry Betele, mayor of Lenn, though unworthy signifies that if any burgess or the wife, son or daughter of a burgess within the town is an idiot from birth or from a certain time, or is overwhelmed by disease of old age, or is of unsound mind so as to be unable to manage himself, his lands or chattels, the mayor and aldermen for the time being, together with the sufferer's nearest friends and relations, have been wont since time immemorial to provide for his management, guardianship and maintenance, without intervention of the king, his progenitors or any person within the liberties of the town of Lenn.³⁸

Turner has used the fact that Henry and the others represented in this letter framed their decision to hide Emma in the context of local rights of self rule, as evidence that chartered boroughs would often disregard the Crown's custodial rights over its mentally incompetent subjects if they stood to lose enough income from the lands passing into

³⁸ CIM, vol. 3, no. 283.

royal custody.³⁹ She is right in doing so. However, I believe that Henry and the others who hid Emma were motivated by more than base material concerns. Other important features of Henry's argument overlooked in previous scholarship suggest that his rejection of the escheator's initial findings, and subsequent refusal to obey the Crown's demands were not only about a clash between local government and central authority over the limits of royal jurisdiction. Rather, Henry's resistance speaks to a rejection of the criteria the Crown used to assess Emma's alleged idiocy, and disagreement over who had the right to define the boundaries of reason.

Before presenting the argument quoted above, Henry and the others represented in the letter took issue with the escheator's initial findings. Emma, they claimed, "was not an idiot, but of sound mind, knowing good from evil and evil from good, and enjoys lucid intervals." This claim is remarkable, because in making it Henry and the others relied upon older definitions of mental competency—those that had been used in the Chancery inquisitions involving matters of criminal insanity for more than a century prior to Emma's examination—to inform their assessment of her mental fitness. First, the fact that he emphasized Emma's lucid intervals was undoubtedly intended to reference the legal definition of insanity, since the presence of lucid intervals was the main criteria that distinguished the *non compos mentis* individuals described in Section 9 of the *Prerogativa Regis* from the natural fools described in Section 10. What is more interesting though, is what the claim that Emma knew good from evil, and evil from good reveals about Henry's understanding of mental competency.

³⁹ Turner, "Town and Country," 31-35.

Recall that during the previous century inquisitions involving individuals with mental disorders had typically focused on whether they had been suffering from mental illness at the time they committed a crime. A finding of insanity in these cases had the potential to free a person from being outlawed or worse, and to prevent the disinheritance of their heirs in cases of suicides.⁴⁰ For instance, in a fairly representative case that took place in 1278, Chancery officials sought to determine whether Hugh de Mysyn of Selverton had hanged his daughter Cecily “feloniously or in frenzy.” The commission duly determined that he did so while in a state of frenzy and was thus not culpable.⁴¹ The fact that mentally ill individuals were understood to have impaired volition, and thus could not be held culpable for their actions, provided the legal basis for these inquisitions.⁴² Henry’s claim that Emma was “of sound mind, because she knew good from evil and evil from good,” seems to reflect this understanding of mental competency. The language used in Henry’s letter then, suggests a familiarity with the legal definitions of insanity that were used in the majority of inquisitions involving mentally impaired individuals a few generations prior, before large numbers of alleged idiots began to appear in court. It also suggests that he still saw mental disorder as an impairment of moral acuity rather than intellectual ability, and lacked experience with the newer definitions of mental competency employed in inquisitions involving

⁴⁰ During the Middle Ages, as today, suicide was a criminal offense, and could thus bar one’s heirs from inheriting. Nevertheless, if it could be proven that an individual committed suicide while they were mentally unstable, they would not be held legally liable for their actions, and their heirs could inherit. For more information on this, Alexander Murray offers a magisterial account of medieval laws and attitudes related to suicide in his three volume study, *Suicide in the Middle Ages*.

⁴¹ CIM, vol. 1, no. 2220.

⁴² There is an excellent discussion of the origins of this in Roman law in Margaret Trenchard-Smith, “Insanity, Exculpation, and Disempowerment in Byzantine Law,” in *Madness in Medieval Law and Custom*, ed. Turner, 39-56; here 40-50.

supposed “idiots.” Indeed, Henry was not the only person in the records of the royal courts who characterized idiocy as a moral disorder, rather than a deficit of pragmatic skills. In 1404, a relative of Christina, daughter of Thomas Gologreve alleged that she was an “idiot from birth, unable to distinguish good from evil and evil from good,” in hopes of gaining access to her estate.⁴³ The stark contrast between the criteria the Crown ultimately used to assess Emma’s mental fitness and those articulated in Henry’s letter brings this into focus.

The defense put forth in Henry’s letter seems to have only provoked the Crown to step up its response. On June 24, a writ of *non omittas* was sent to the sheriff of Norfolk, which ordered him to take Robert, Lawrence and John Lok into custody, and to bring them into Chancery at Westminster to answer for disregarding the previous writ. But the sheriff was unable to produce them, and noted in a reply to the writ that while Jon Lok had appointed John Mareschall, Lawrence Tussebu and James Billynford as his attorneys, Lawrence and Robert were nowhere to be found. By this point, Emma had become but a secondary character in the story being told by the legal records, however her tale had sadly not reached its end. Emma was eventually re-examined by a jury of three men appointed by Chancery. During the inquisition, she was asked among other things, what day of the month Friday was, how many days there were in a week—to which she answered seven, but she could not count them—and perhaps most notably “*how many shillings were in forty pence and whether she would rather have twenty silver groats (grossos)*”

⁴³ CIPM vol. 18, no. 1012.

than forty pence."⁴⁴ Failing to provide satisfactory answers to these questions, the jury found Emma to be an idiot, and entrusted her to Phillip's custody. Sadly, the records of an inquisition post-mortem held two years later suggests that she was right in her misgivings about Phillip; Emma died shortly after she entered into his custody, but not before her lands had been wasted.⁴⁵

The questions by which Emma's intelligence was assessed focused largely on whether she was capable of acting in her economic self interest. They were thus a far cry from the moral criteria for mental competence that Henry Betle referenced in his letter to Chancery, and the simpler understanding of idiocy as a congenital, incurable form of insanity relied upon in earlier inquisitions. Moreover, they do not reflect any procedural forms offered by medieval jurists, or the definitions of mental disorder put forth in late medieval medical writing. There exists perhaps one exception to this; the twelfth century legal treatise known as Glanvill stated that while the age of legal majority for a knight was set at 21, and a stockman at age 15, the son of a burgess would only reach the age of majority "when he has discretion to count money and measure cloth in like manner to manage his father's other concerns."⁴⁶ Burgesses, at least by Emma's time, were officials of market towns and free boroughs like Lynn, and tended to come from mercantile backgrounds. It makes sense then that the ability to count coins and measure cloth would be used as measures of their majority since these tasks were essential to their

⁴⁴ My emphasis.

⁴⁵ CIMP vol. VIII, no. 284.

⁴⁶ Ranulph de Glanvill, *The Treatise on the Laws and Customs of the Realm of England Commonly Called Glanvill*, ed. and trans. G.D.G. Hall, (Oxford: Oxford University Press, 1965), 82.

livelihood.⁴⁷ However, the fact that these tests came to be used in cases involving young heiresses, widows, rural land-holders, and people whose particular professions would not require them, suggests that a set of skills that had once marked participation in an elite class was in the process of becoming a prerequisite for mental competency.

A small set of extant records suggest these criteria were employed beyond Emma's case. For instance, Thomas de Grenestede was ultimately found to be of "good mind and sound memory," when the escheator who was sent to examine him found him "counting money and measuring cloth."⁴⁸ Similarly, in 1374, Roger de Stanlak was found to not be an idiot on the grounds that he went to school and was able to read by the age of 15.⁴⁹ Moreover, although most records from medieval idiocy inquisitions say little about procedure, we can infer that these practices eventually became widespread, because numeracy tests and the ability to count coins were standard features of mental competency hearings in Early Modern England. In 1615 for instance, Thomas Pope, an Elizabethan actor, was asked to count and recognize various coins in his mental competency examination. He was found to be of sound mind after he demonstrated that he was, "very well able to discern and know the differences of all pieces of silver of the Queen's coin and the perfect value of them from xiid to a half-penny."⁵⁰ Likewise, a legal dictionary dating from 1527 described an idiot as someone;

who knoweth not to accompt of number 20 pence [...] has

⁴⁷ CPR, Ric. 2, vol. 2, 212.

⁴⁸ CIPM, vol. 7, no. 284.

⁴⁹ CIPM vol. 13, no. 296. That literacy should be a sign of intelligence seems obvious, but at a time when literacy was not widespread, this record suggests that it was nevertheless coming to be seen as a marker of reason. This suggests just how much intelligence had come to be defined by the values of the bourgeoisie.

⁵⁰ Richard Neugebauer, "Mental Handicap in Medieval England," 29.

no manner of understanding of reason, nor government of himself, what is for his profit or disprofit, etc. But if he have soe much knowledge he can reade, or learn to reade by instruction and information of others, *or can measure an elle of cloth* [emphasis added], or name the days of the week, or begetter a childe, sonne or daughter, or such lyke, whereby it may appere that he hath some light of reason, then such a one is noe idiot naturale.⁵¹

Note that the criteria articulated here are almost exactly the same as those used in Emma's trial. What these commonalities suggest is that the definition of idiocy—and indeed intelligence—that emerged in the late fourteenth century remained stable for a remarkably long period of time. The popularization of diagnostic tests once reserved only for burgesses and other members of the upper classes ultimately indicates that the definitions of reason and unreason held by people who used money in their day to day lives were entering mainstream culture, and in doing so reshaping the way mental disorder was both defined and diagnosed.

Accounting for Rationality with Imaginary Numbers

This becomes clearer when we consider the extent to which a person in Emma's position would have been able to answer the questions asked during her examination. At first glance, the ability to count coins, list the days of the week, and count backwards to figure out what day in the month some past Friday had fallen upon, seem like fairly objective measures of mental competence. Who today would not be able to name the

⁵¹ John Rastell, *Exposition of Certain Difficulte and Obscure Words and Termes* (originally written in French, but first published in English in 1527.) Originally quoted in "Masculinity and Idiocy," in Patrick McDonagh, *Idiocy: A Cultural History*, (Liverpool: Liverpool University Press, 2008), 86.

days of the week and know that seven quarters are less than two dollars? Nevertheless, when considered within the context of life in fourteenth century England, it becomes clear that many of the questions royal officials asked Emma during her examination were not things someone in her socio-economic position would have needed to know. It seems striking that Emma could not name the days of the week or state her exact age; however, Robert Bartlett has demonstrated that medieval estimates of age were often unreliable, because in a world without clocks, people did not measure time by the passage of days or weeks, but by significant events, like the loss of an estate, the beginning of marriage, or a child's death.⁵² Thus, the fact that Emma could not answer these questions may simply indicate that her perception of time was governed by the Church's calendar of holy days and Saint's feasts rather than the astronomical clock.

The question about shillings, pence, and groats, is even more noteworthy in this respect. There are twelve pence to a shilling, and thus 3 and 1/3 shillings in forty pence. The groat, which was first minted in England in 1341, was technically worth 4 pence, although it never actually contained enough silver to equal 4 pennyweights, and became progressively lighter over the course of the fourteenth and fifteenth centuries.⁵³ Nevertheless, assuming one ignored these discrepancies (which it may have been hard to do in a town like Bishop's Lynn, where money would have needed to be valued against the currency brought in by foreign traders), it should have been obvious that twenty

⁵² Robert Bartlett, *The Hanged Man; A Story of Miracle, Memory and Colonialism in the Middle Ages*, (New Jersey: Princeton University Press, 2004), 114-15.

⁵³ The English groat should have contained 4 penny weights, or 96 grains of silver, however even when it was first issued, it only contained 89 grains. It only got lighter over time; during the reign of Edward III it had been reduced to 72 grains, it fell to 60 grains under Henry IV, and 48 grains under Edward IV. Despite these devaluations, the crown insisted that its value relative to the shilling and pound remain unchanged.

groats were worth twice as much as forty pence, right? If you are mathematically inept like me, you are probably beginning to feel sympathy for Emma. Of course, Emma had the advantage of living at a time when these coins were supposedly in circulation. Nevertheless, I would like to argue that Emma's inability to correctly answer this question was not a symptom of intellectual disability. Instead, it was more likely indicative of the fact that few people other than merchants or wealthy landholders possessed the numerical skills and familiarity with currency necessary to answer simple mathematical questions.

Despite the fact that rapid growth of both long distance trade and commercial activity during the fourteenth century would have made the ability to add and subtract sums of money vital to successful participation in the new economy, historians such as Keith Thomas, Patricia Cline Cohen, and Theodore Porter have speculated that Western Europe was largely innumerate until the sixteenth or seventeenth century.⁵⁴ Moreover, some of the coins Emma was asked to count were not even in circulation at the time of her inquisition. The shilling was not minted for the first time until 1481, and groats only circulated to a very limited extent.⁵⁵ In 1383, both shillings and pounds were what economic historians refer to as "ghost moneys" or "moneys of account," fictitious denominations that existed solely for the purpose of reckoning, in the minds of

⁵⁴ Keith Thomas, "Numeracy in Early Modern England: The Prothero Lecture," *Transactions of the Royal Historical Society* 37 (1987). Patricia Cline Cohen, *A Calculating People: The Spread of Numeracy in Early America* (London: Routledge, 1999). Theodore M. Porter, *Trust in Numbers: The Pursuit of Objectivity and the Science of Public Life* (Princeton: Princeton University Press, 1996).

⁵⁵ Thomas J. Sargent and Francois R. Velde, *The Big Problem of Small Change*, (Princeton: Princeton University Press, 2002), 126-138. Also, James L Bolton, "What is Money? What is a Money Economy? When did a Money Economy Emerge in Medieval England," in *Medieval Money Matters*, ed. Dianna Wood, (Oxford: Oxbow Books, 2004) 1-16; here 5.

merchants, and the registers of their account books.⁵⁶ Based upon this, it seems quite reasonable that Emma would have been stumped by questions involving shillings. While the English groat was issued successfully in 1341 after a failed issue in 1279, it is likely that Emma, along with anyone else with little involvement in commercial activity, would have had only slightly more experience with groats than shillings or pounds. In the late fourteenth and early fifteenth centuries, Western Europe experienced a “bullion crisis” or “silver famine” that severely diminished the amount of currency in circulation, and made it quite unlikely that most people would have used groats as a currency of day-to-day exchange.⁵⁷ Rather, rent records, wills, and other minutiae recorded in the Red Register of King’s Lynn suggest that even people involved in the market economy continued to settle their debts and obligations with movable goods into the fourteenth century.

Further complicating the matter, the Crown’s response to the bullion crisis added to uncertainty about the purchasing power of coins. During the mid to late fourteenth century, the Crown strategically decreased the weight of silver in its newly minted coins, and cities often debased the coins that reached their coffers. Fears about the illegal debasement of coins already in circulation created widespread doubt about the true value of money, to which the Crown responded by instituting Draconian punishments for coin-clipping.⁵⁸ During her examination, Emma had erroneously claimed that twenty

⁵⁶ Peter Spufford, “Money of Account,” *Money and its Uses in Medieval Europe*, (Cambridge: Cambridge University Press, 1998), 411-14.

⁵⁷ Spufford, *Money and its Uses*, 319-363.

⁵⁸ Coin clipping was reclassified as a crime of treason during this period and thus became one of the only crimes punishable by drawing and quartering. By guaranteeing the weight and measure of coins, the crown reinforced its own authority by designating itself as the universal arbitrator of value at a time of uncertainty.

groats were worth the same as forty pence. Interestingly enough, due to these strategic debasements, the coins would have been much closer to each other in real value at the time of Emma's trial than they had been at the time of the groat's first issue. If each groat contained 60 grains of silver at most by the 1380s, 20 groats would have contained 1200 grains of silver, while 40 pennies would have contained 960 grains. While 20 groats still would have been worth more than 40 pennies, these fluctuations in value certainly would have complicated the question, had Emma been aware of them. Moreover, the groat was only introduced in England after a French groat—which had a different value—had been in circulation for a few decades. Given that Lynn was an important trading center, it is not unlikely that the French groat may have been in circulation there as well.

The money that was in circulation during Emma's life then, was hard to find, difficult to value, and people outside the upper classes would have had few reasons to use it. Rather than being a neutral medium of exchange and a perfect vessel by which to hold value, money was—in the words of a fourteenth century bishop—"a very mysterious thing."⁵⁹ It was both subjective and impersonal, and it would have added a layer of confusion rather than clarity to exchange. This makes the fact that the Crown began to use the ability to correctly value, add and subtract sums of money as markers of mental competence at a time when there was great uncertainty about its value very perplexing, unless the people who introduced these criteria found money less

Accordingly, doubts about the value of coins would have undermined this authority. Bolton, "What is Money,"9.

⁵⁹ Originally quoted in Martha C. Howell, *Commerce Before Capitalism*, 17

mysterious.⁶⁰ It is ultimately impossible to know whether Emma, and the hundreds of other people Chancery classified as “idiots” during the late Middle Ages had minds that would have aligned with modern definitions of intellectual disability. Nevertheless, from Emma’s trial we do know that the skills that Chancery privileged in its inquisitions had begun to resemble those that we privilege today.

Afterword

Let us return to John Elliotson, whom we encountered at the beginning of this chapter. Rereading Elliotson’s complaint that psychiatrists had begun to rely on the legal precept that;

The individual, in order to be constituted an idiot, must be unable to number to twenty, or to tell his age, or to answer any common question; by which it may plainly appear, that the person has not reason sufficient to discern what is for his advantage or disadvantage.

It is difficult not to notice the affinity between the law’s criteria for idiocy in the nineteenth century, and the questions that Chancery officials posed to Emma during her inquisition more than 500 years prior.⁶¹ It is perhaps not surprising that the juridical practices of the late medieval Chancery were eventually generalized and codified. For common law in the nineteenth century assigned a high value to precedent, and we have already seen that the fourteenth century royal courts’ concept of idiocy endured for

⁶⁰ As noted, many of the Crown’s escheators in these inquisitions came from commercial backgrounds, and nearly all had a greater familiarity with money than the people they assessed. This is not a claim I have investigated thoroughly, but I plan to should this study ever become a book.

⁶¹ John Elliotson, *The Principles of Practical Medicine*, 599.

centuries in legal discourse. In the nineteenth century, legal scholars were still citing the definition of idiocy that Anthony Fitzherbert had put forth in *La Nouvelle Natura Brevium* in 1534, which itself reflected the procedure developed at the time of Emma's trial. For instance, a treatise on idiocy written by a barrister of the middle temple in 1833 cited Fitzherbert's claim that an idiot, "cannot count or number twenty pence, nor tell who was his father or mother, nor how old he is, &c, so as it may appear that he hath no understanding of reason what shall be for his profit, or what for his loss."⁶²

What *is* noteworthy about Elliotson's complaint, however, is what it implies about the relationship between legal and medical understandings of intellectual disability. The fact that nineteenth century psychiatrists had evidently accepted an understanding of idiocy that originated in the practices of the fourteenth century Chancery, suggests that medieval juridical understandings of "idiocy" did not remain confined to law and administration. Rather, what originated as a narrow legal concept devised by jurists attempting to adapt Roman Law to the problems of their time, eventually came to inform how medical writers and practitioners thought about, defined, and treated what we might think of today as intellectual disability.

We can see moves in this direction not too long after Emma's inquisition. John Lydgates' 1426 translation of Guillaume de Deguileville's *Pilgrimage of the Life of Man*, for instance, seems to synthesize the legal definition of idiocy with older theological understandings of foolishness. Here, Lydgate offers the following description of fools;

⁶² Leonard Shelford, esq. of the middle temple, barrister at Law, *A Practical Treatise on the Law concerning Idiots and Persons of Unsound mind* (London: S. Sweet Chancery Lane; and Stevens and Sons, Bell Yard, Law booksellers and Publishers, Milliken & Son, Dublin; and T Clarke, Edinburgh, 1833) pg 3.

Thorgh ygnoraunce they be so blent,
 And as a blynde man, so they werke,
 Stumblynge away in the derke.
Good from evel they kan not chese,
Nor whot nat where to save or lese [emphasis added],
 Redy to hyndren & to deere,
 Swyche sholde no swerdys beer,
 That kan not knowen evel fro good,
 Nor what ys tyme of letyng blood;
 Nor kan nat dyscerne A-rygh—
 ffor ygnorance & lack of syht—
 At-wexen helthe & malladye;
 Nor, a-twen the meselrye
 Gretttest, smallest, and the mene;
 He kan no dyfference atwene
 Newe syknesss nor the olde.⁶³

Interestingly Lydgate notes that fools are incapable of both discerning between good and evil, and of knowing what is for their profit and loss (“where to save or lese”), and in this sense, he seems to conflate biblical understandings of foolishness, legal understandings of insanity, and new understandings of idiocy. While *Pilgrimage on the Life of Man* is derived from an older French source, Lydgate’s version is not a close translation. Instead, Lydgate added between 7000 and 8000 new lines to the poem “by amplifications in the wording, introduction of details and explanations, and by the use

⁶³ *The Pilgrimage of the Life of Man, Englished by John Lydgate A.D. 1426 from the French of Guillaume de Deguileville A.D. 1335*, ed. F.J. Furnivall for the Early English Texts Society (London: Kegan Paul, Trench, Trubner & Co., 1899),65. To offer a rough literal translation, “Through ignorance they be so blind, and as blind men so they worke, Stumbling away in the dark. *Good from evil they cannot chose, Nor what nor where to save or lose, [...]* such should no sword bear, that cannot know evil from good, nor what is the time of letting blood, nor discern what is right, for ignorance and lack of sight, [and cannot discern] between health and sickness, nor leprosy, nor [between the] greatest, smallest, and the mean. He can [discern] no difference between new sicknesses and the old.

of literary devises.”⁶⁴ It seems likely that these verses contain at least some additions, and if this is the case then it suggests that the legal concept of idiocy began to move into broader culture as early as the fifteenth century.⁶⁵

In a more general sense, we can see the legacy of the Middle Ages in the fact that nineteenth century psychiatrists—like the royal administrators who oversaw Emma’s inquisition—privileged what we might refer to as calculative rationality when they accepted the law’s requirement that one be able to know what is for one’s profit and what is for one’s disprofit in order to be judged competent. It is easy to imagine that these associations have always existed. After all, the ability to count is a prerequisite for participation in modern society as much as literacy, and it has become a commonplace in modern American political discourse that our country’s future depends on its citizens acquiring greater proficiency with numbers. Yet, society first began to privilege these abilities during the late Middle Ages, as the European economy became increasingly commercialized, and merchants began to occupy a more prominent role in society. Shortly these ideas emerged in the medieval courtroom however, they began to inform broader discourses concerning intelligence and rationality.

When early modern political theorists first began to think about the relationship between individuals and the state, they largely defined the rational subject, i.e. one

⁶⁴ F.J. Furnivall, “Introduction,” in *The Pilgrimage of the Life of Man, Englished by John Lydgate A.D. 1426 from the French of Guillaume de Deguileville A.D. 1335*, ed. F.J. Furnivall for the Early English Texts Society (London: Kegan Paul, Trench, Trubner & Co., 1899), xiii.

⁶⁵ This point is admittedly speculative. Unfortunately, no there is no modern edition of *Deguileville’s* text. I base my suggestion here then, off the fact that the verses italicized above stand out amidst characterizations otherwise drawn from biblical depictions of foolishness. That said, if I ever transform this study into a book, I will need to consult a manuscript of the French text to see if my hunch is correct. I include the poem here, because the similarities between Lydgate’s understanding of foolishness and that of the courts were too interesting to ignore, even if it turns out that I am wrong about their origin.

worthy of citizenship and all the rights it entailed, as one who possessed the skills and knowledge necessary to participate in a market economy. In the sixteenth century the Dominican bishop Bartholomeus de Las Casas, (whom some modern scholars view as the father of international human rights), noted that in contrast to people capable of reason and self-rule, “barbarians” or “natural slaves” did not participate in commercial activity; “They do not buy, they do not sell, they do not hire, they do not lease, they do not make contracts, they do not deposit, they do not borrow, they do not lend.”⁶⁶ Notably, these were the exact set of activities that medieval law prohibited idiots from enjoying.

Early modern literature reflects this understanding of rationality as well. For instance, in the early seventeenth century, the English poet Thomas Randolph wrote

Liberality in some circumstances may be allow'd;
As when it has no end but honesty;
With a respect of person, quantity,
Quality, time, place: but this profuse,
Vain, injudicious spending makes him an idiot.⁶⁷

We need not look back that far, however, to find associations between intelligence and calculative rationality that echo the criteria by which the courts of fourteenth century England measured mental competency.⁶⁸ Conforming to Elliotson’s characterization of

⁶⁶ Bartholome de Las Casas, *In Defense of the Indians*, trans. Stanford Poole, C.M. (Illinois: Northern Illinois University Press, 1992), 33.

⁶⁷ Thomas Randolph, *The Muses’ Looking-Glass*, accessed July 10, 2012.

http://www.archive.org/stream/poeticalanddrama01randuoft/poeticalanddrama01randuoft_djvu.txt.

⁶⁸ Indeed, we can even find echoes of the questions Emma was asked in early twentieth century debates about immigration. In 1910 for instance, a report to congress on the state of immigration at Ellis Island noted that “Many immigrants, aside from being illiterate, are ignorant beyond belief. Often they do not know the days of the week, the months of the year, their own ages, or the name of any country in Europe outside

his colleagues as slavish disciples of the common law, nearly every case study cited in *A Manual for the Classification of the Feeble Minded, Imbecile & Idiotic*, a diagnostic guide published in 1866 for use in clinics and medical schools, highlighted so-called idiots' inability to count money.⁶⁹ Like Emma 500 years earlier, one "idiot" allegedly had "little memory and attention," and thus did not know the days of the week and could not count." Another could not "recall the time when, or distinguish between yesterday and a month ago, or a year since, " and had only "a slight idea of the value of coins or money"; and another, who was "born in possession of all his faculties," but robbed of them by epilepsy, had "a faint idea of the value of money," but his "arithmetical powers [were] few and ill developed." In slight contrast, a fifteen-year old girl in the asylum did "not know the idea of money, [but had] an idea of multiplication, [knew] her own things, and [could] compare."⁷⁰

One the basis of these observations, the authors of the manual came to the general conclusion that for most idiots;

the power of comparison exists, the identification of familiar toys and articles, such as clothes and toys, is generally noticed, *but the power of money, positively or relatively, is very rarely possible of comprehension* [emphasis added]. Addition sums are often done, but any involved arithmetic is almost always impossible.⁷¹

of their own."—a claim that was likely untrue, but reflects the lasting influence of medieval understandings of idiocy.

⁶⁹ P. Martin Duncan, M.B. LOND., F.G.S., F.A.S.L. and William Millard, *A Manual for the Classification of the Feeble Minded, Imbecile & Idiotic* (London: Longmans, Green, and Co., 1866) Duncan was the honorary consulting surgeon to the eastern counties asylum for idiots and imbeciles, while Millard was the superintendent of the Eastern counties asylum for idiots and imbeciles.

⁷⁰ Duncan, *Classification of the Feeble Minded*, 44,54, 40,

⁷¹ *ibid.* 33.

What is most interesting about this description is that it assigns more value to understanding money than the ability to add and subtract, despite the fact that the latter seems to require a specific sort of cognitive ability, while the former requires specialized knowledge. Indeed, the authors emphasized money's importance throughout the manual, noting in the introduction that only the highest functioning among the "feeble minded" might be able to "compare, to distinguish personal property, to estimate by numbers, and to learn the value of money." In other words, they used competency with money to demarcate between high and low functioning "idiocy."⁷²

These criteria were undoubtedly more appropriate in the nineteenth century, when money was ubiquitous, than in the fourteenth when money was still relatively hard to come by. Yet, the fact that no clear consensus existed about how intelligence's absence ought to be defined at the time of the earliest idiocy inquisitions suggests that these associations are not trans-historical, but have a distinct point of origin. I have attempted to pinpoint one of the historical moments at which they began to emerge in order to better understand the cultural circumstances that informed their development. Emma's inquisition and others like it, suggest that the understanding of idiocy as a deficit of a particular set of skills did not originate natural philosophers' dispassionate inquiries into the mysteries of the human mind. Instead, it came from the minds of medieval administrators, concerned with the problems created by people who could not fulfill the obligations customary to their ranks and status, as commercial expansion was beginning to dramatically redefine the skills needed to participate in society. Economic change during

⁷² *ibid.*,10.

the late Middle Ages thus played a significant and previously overlooked role in the early history of idiocy, informing ideas about intelligence's absence that still persist today. Accordingly, the story of how a concept of idiocy emerged in Western culture, is not just a medical history of a modern disorder, but one of how seemingly positive social and economic progress can profoundly marginalize certain types of people.

CONCLUSION

What I have written is not a medical history of a modern disorder. Instead, this dissertation has contributed to a growing body of scholarship suggesting that intellectual disability has a cultural, intellectual, and conceptual history. For in exploring how the activities of the medieval courts informed early ideas about what it meant to be an “idiot,” my work has demonstrated that legal developments and social conflict played as much a role in determining whom society considered intelligent and intellectually disabled when intellectual disability was still a novel concept, as any medical standard of rationality. In this respect, I hope to have complicated current understandings of intellectual disability’s early history, and suggested that some of Western culture’s ideas about the nature of the rational subject may have come from a stranger place than we currently imagine.

Yet, my conclusions have also departed from this same body of scholarship by proposing that intellectual disability’s early history did not begin in the physician’s chambers but the medieval courtroom. For while recent studies have located intellectual disability’s conceptual origins in erudite considerations of Enlightenment physicians and philosophers, my work has suggested that medieval law played a significant role in idiocy’s transformation from an ill-defined subset of insanity to a stable and distinctive disorder. This is not to say that medieval jurists and administrators single-handedly “invented” the modern concept of intellectual disability, as this ultimately reflects a synthesis of legal, philosophical, and medical ideas about human intelligence and mental competency. Nevertheless, my work has shown that law played a greater role in defining the discursive terrain of disability during the Middle Ages than previously acknowledged.

In doing so, I have made a broader argument about the process through which impairments were reimagined as disabilities in the distant past. Specifically, disability is not solely a product of medicalization or “the Great Confinement.” Instead, law and other social institutions influenced how society thought about human variance long before medical practitioners began to see incurable, permanent conditions like intellectual deficiency as valid objects of medical inquiry. We can see this in the fact that the Gospel accounts of Christ’s healing miracles determined which specific disorders would receive special attention in the medieval church’s social teachings, and in the fact that jurists in thirteenth century England limited the property rights of the same categories of people that Roman law identified as incompetent in the fifteenth century BCE. In other words, the natural facts of the body were construed as disabilities long before the rise of the early modern asylum or the advent of modern medicine, and disability certainly existed in the Middle Ages. Moreover, since the legal, institutional, and cultural practices that contributed to the stigmatization of human intellectual variance existed before a concept of intellectual disability emerged in western medicine, it is possible that they informed idiocy’s eventual transformation from a social fact to a medical disorder in the centuries that followed.

More work still needs to be done on this last point. Although I have identified some areas of continuity between medieval law and later medical discourses, the extent to which the former informed the latter remains murky and largely unexamined. It is quite possible that later medical understandings of intellectual disability emerged from a parallel and autonomous discourse that began in the seventeenth century with the neurological explorations of men like Thomas Willis. Yet, it is also hard to imagine that early modern

physicians were entirely unaware of the legal concept of idiocy, which had been enshrined in English legal practice for nearly three centuries when they began to investigate the workings of the brain. Ultimately, having a better sense of where modern criteria for intelligence and competency come from would be useful in a world where falling on the far left side of the bell curve on an intelligence test can determine an individual's educational, social, and developmental path from their moment of diagnosis. Thus, this is a question I hope to return to in the future.

APPENDIX

The following graphs are based upon the full set of inquisitions and related records involving people identified as idiots, natural fools, *non compos mentis*, insane, and a variety of other terms for mental disorder during the reigns of Edward I, II, III, and Richard II, in the *Calendar of Inquisitions Postmortem, Close Rolls, and Patent Rolls*. I created an electronic database of these records, and relied upon it when producing the figures that follow. I also consulted the *Calendar of Inquisitions Miscellaneous* extensively, and found that they reflect the trends pictured below. However, I did not include them in the set of records from which my totals are drawn due to time limitations.

Most of the original documents transcribed and translated in the calendars are catalogued with the inquisitions post-mortem in C132-142 in the British National Archives, and I consulted many of these during the spring of 2010 and summer of 2011. These sources represent what is likely only a snapshot of the total number of interactions between alleged idiots, their accusers, and the Crown during this period. Nevertheless, the fact that all legal proceedings involving alleged idiots and their land fell under the jurisdiction of Chancery during the thirteenth and fourteenth centuries allows us to safely infer that we would find few “legal idiots” hiding in the records of the King’s Bench or other courts if these were examined closely. Thus, I take the graphs below as fairly representative depiction of long-term trends.

Figure 1: Individuals suffering from disorders other than idiocy in the CIPM, CPR, and CCR

Total Records: Other Mental Disorder

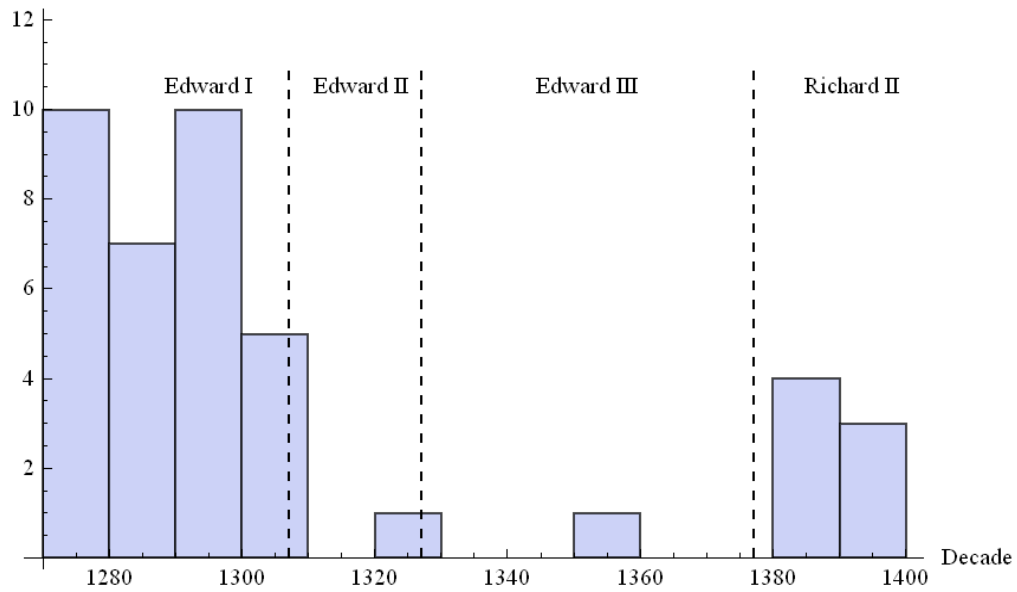
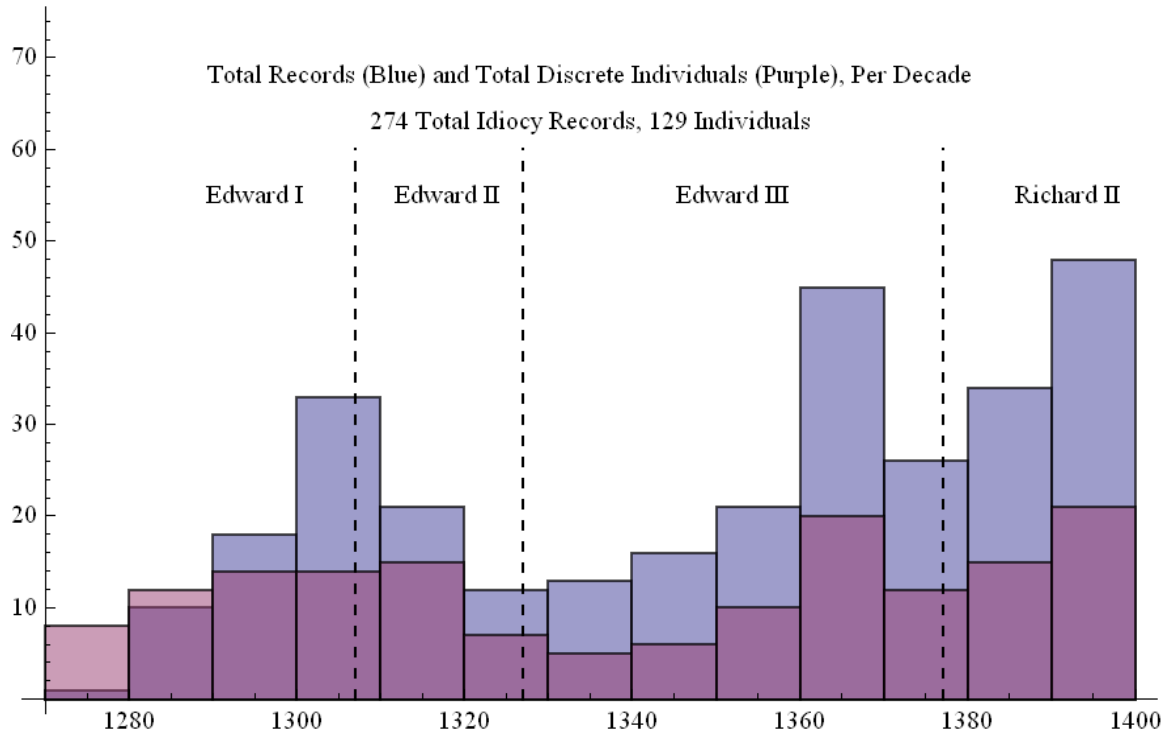
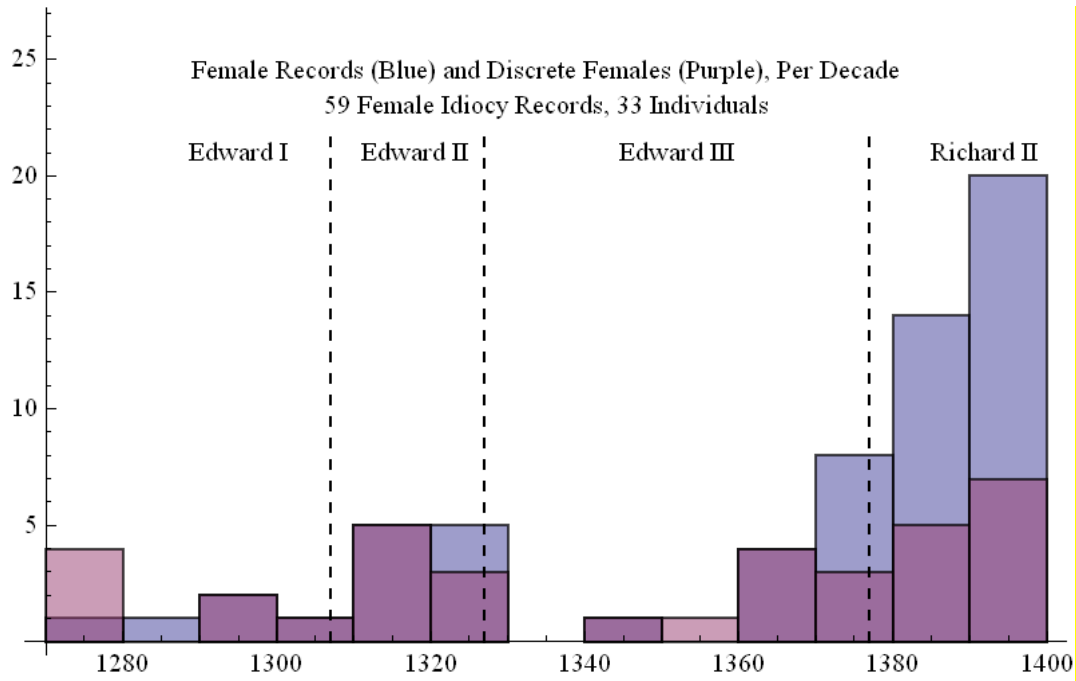


Figure 2: Individuals Accused of Idiocy and Documents Related to their Cases by Decade



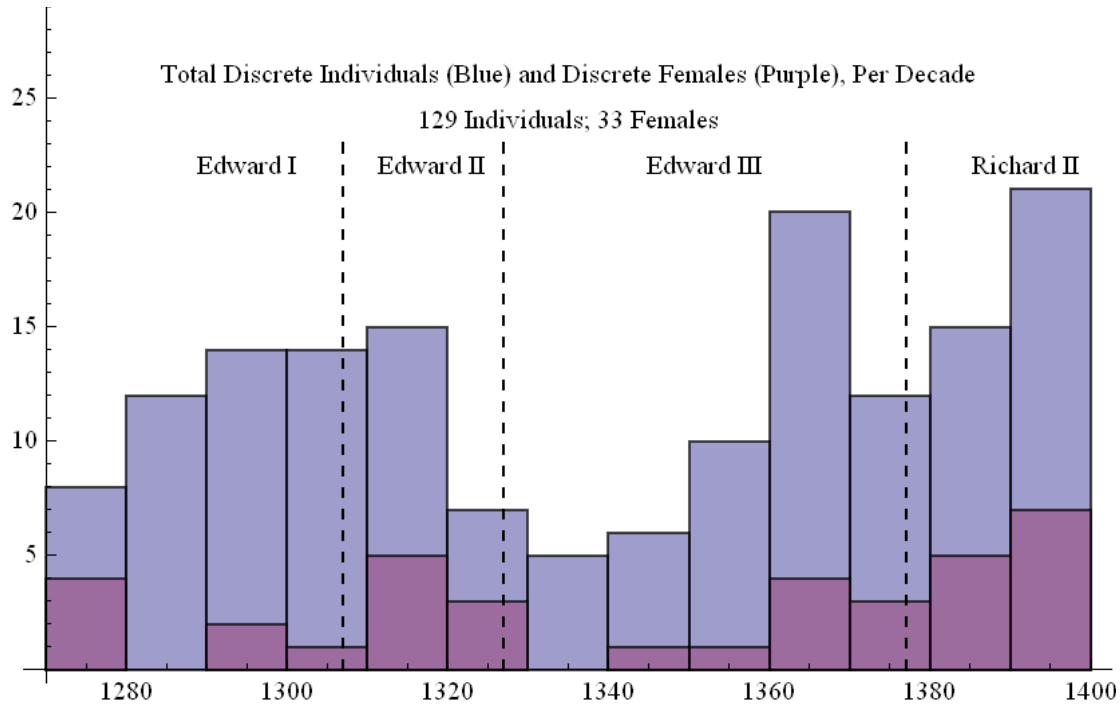
It looks as if the courts oversaw a number of inquisitions involving idiots during first decade of the fourteenth century, but most of these cases focused upon individuals whose conditions were described ambiguously—people who were identified as idiots despite the fact that they had only lost their senses after illness or injury, or people whose diagnosis changed between records. In other words, they fit the legal category for insanity as much as idiocy, and the treatment they received in court reflected this.

Figure 3: Women Accused of Idiocy, and the Records their Cases Produced, by Decade



Typically, the more records a case produced, the more contested it was. As this figure illustrates, cases involving women became particularly contentious between 1380 and 1400. I believe that this was related to the phenomena discussed in Chapter Four.

Figure 4: Gender Breakdown of Alleged Idiots by Decade



As noted above, most of the cases involving women during the last decades of the thirteenth century and early decades of the fourteenth concerned individuals who could have just as easily been identified as insane. Thus, the image above is slightly misleading.

Figure 5: Records Involving Women as a Share of the Total Number of Records, by Decade

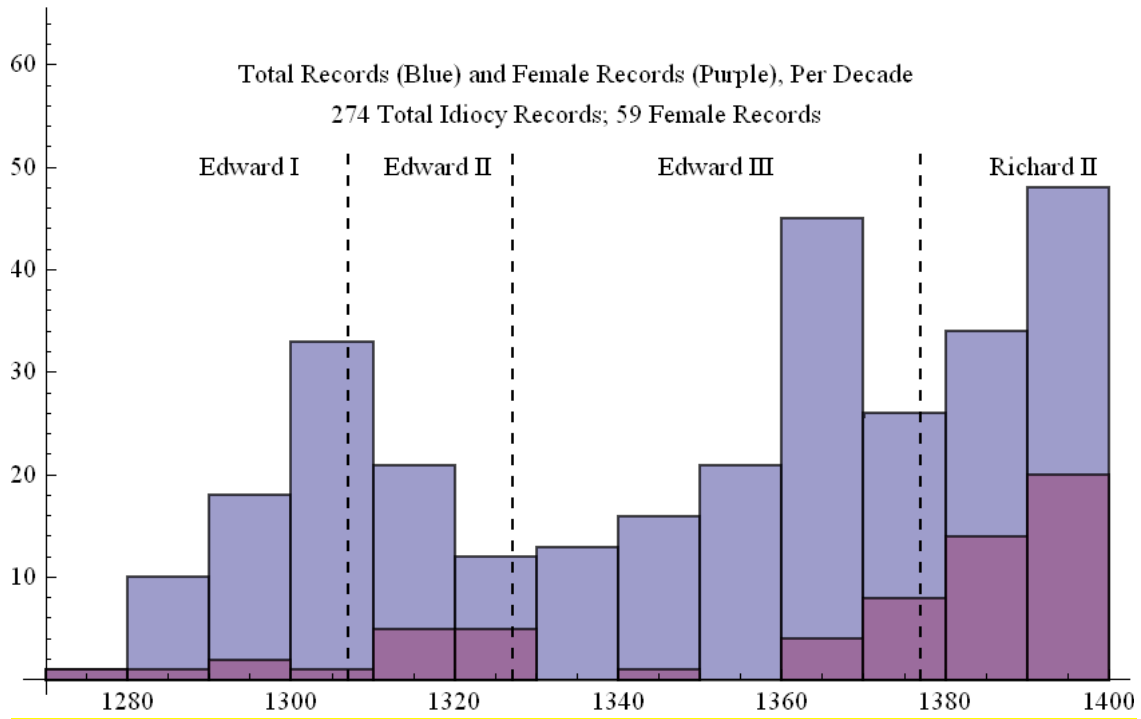


Figure 6: Men Accused of Idiocy and Records Relating to their Cases, by Decade

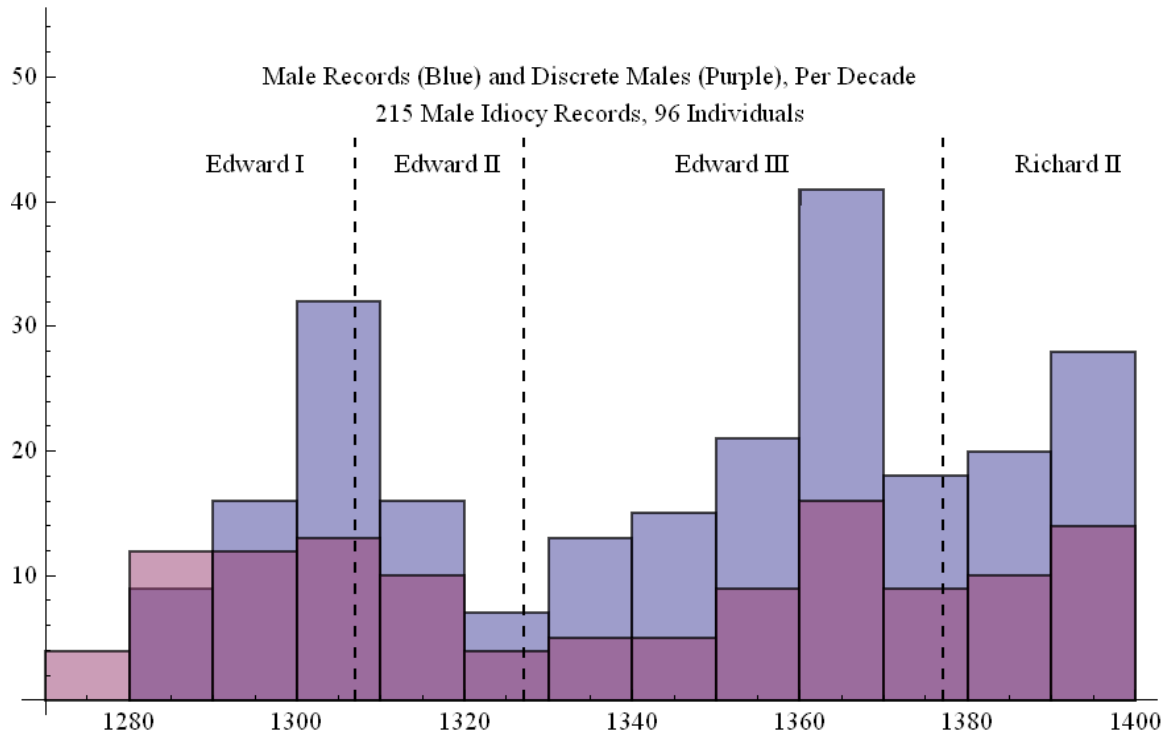
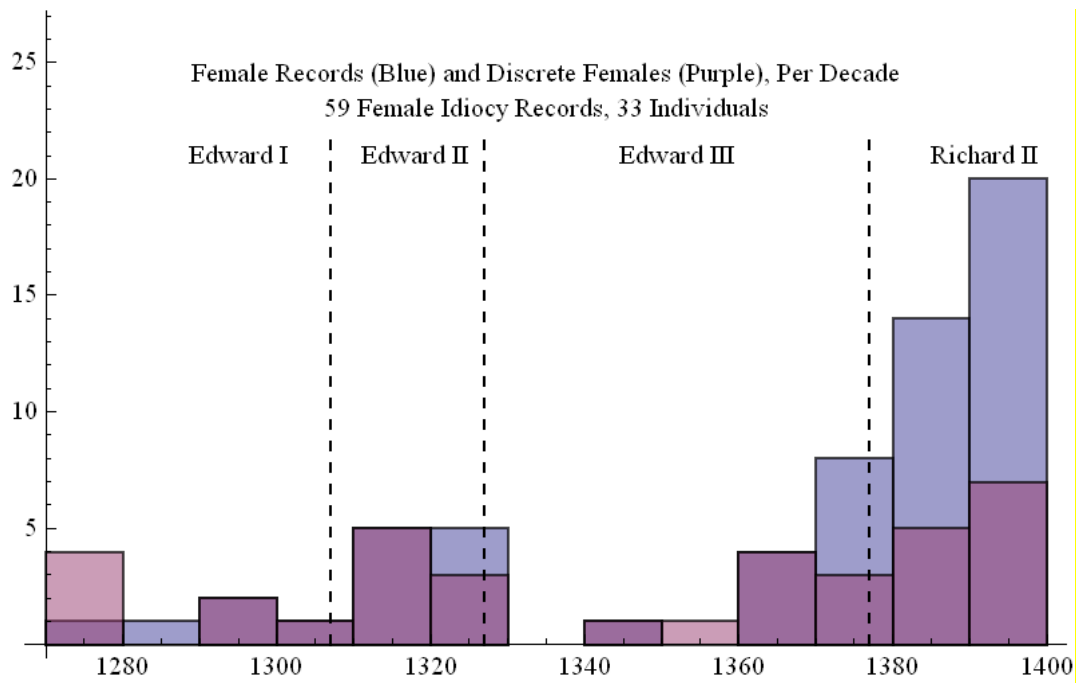


Figure 7: Women Accused of Idiocy and Records Relating to their Cases by Decade



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