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Recommended Citation
Available at: https://scholarship.kentlaw.iit.edu/cklawreview/vol87/iss2/6

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LAW, LAND, IDENTITY: THE CASE OF LADY ANNE CLIFFORD

CARLA SPIVACK*

INTRODUCTION

This article presents a case study from seventeenth century England to illustrate the connection between fully-vested ownership in property and full civic personhood for women. Lady Anne Clifford (1590-1676) spent most of her adult life litigating her rights to ancestral lands her father had willed to his brother rather than to her. Clifford's life and writings1 make clear that the property rights she fought for and won granted her an identity not fully constrained by her culture's gender norms.2 These rights allowed her to take her place in the web of mutual rights and obligations attendant on fully-vested property holding, and thus allowed her to take her place in civil society as a full person, a subject who acted rather than an object who was acted upon. The texts through which Clifford constructed her identi-

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1. Clifford left diaries, autobiographies and family histories; her diary is one of the earliest of the genre by an Englishwoman. See generally Mary Chan & Nancy E. Wright, Marriage, Identity and the Pursuit of Property in Seventeenth Century England: The Cases of Anne Clifford and Elizabeth Wiseman, in WOMEN, PROPERTY AND THE LETTERS OF THE LAW IN EARLY MODERN ENGLAND 162, 163–64 (Nancy E. Wright et al. eds., 2004) (applying Margaret Radin's analysis of alienable and inalienable forms of property to Clifford and Wiseman, arguing that deprivation of estates they considered theirs affected their sense of identity); BARBARA KIEFER LEWALSKI, Claiming Patrimony and Constructing a Self: Anne Clifford and Her Diary, in WRITING WOMEN IN JACOBEAN ENGLAND 125 (1993); Paul Salzman, Early Modern (Aristocratic) Women and Textual Property, in WOMEN, PROPERTY AND THE LETTERS OF THE LAW IN EARLY MODERN ENGLAND supra, at 282 (asserting that Clifford's diary and autobiographies, though ostensibly private, were in fact designed for a particular audience to support her "claim to her estates and titles"); Mihoko Suzuki, Anne Clifford and the Gendering of History, 30 Clio 195, 198 (2001) (asserting that Clifford "stands as a counterexample to the dominant ideology of early modern historiography that largely regarded women not as agents of history, but rather as chaste transmitters of genealogical succession or unruly obstacles to the unfolding of male-centered history").

2. For gender norms in the period, see generally SUZANNE W. HULL, CHASTE SILENT & OBEDIENT: ENGLISH BOOKS FOR WOMEN 1475–1640 (1982) (collecting prescriptive literature for women on proper roles and behavior).
ty—her diaries and autobiography, her building projects, and the art works and monuments she commissioned—show how her fully-vested property rights gave her a sense of full civic personhood, embedded as a subject in history and in the society of her day.3

Scholars have read Clifford's works as expressing an early feminism, a challenge to patriarchal systems of land transmission, but such readings are anachronistic. Indeed, the truth of the matter is much more interesting: rather than claiming gender equality, Clifford saw her property rights as granting her equality under the norms of her day despite her gender. It is only after taking both legal and physical possession of her lands that Clifford begins to assert her rights as a woman. In fact, Clifford's writing itself is anachronistic: she constituted her identity through forms of property ownership that derived from an earlier feudal period and were becoming increasingly unavailable for women during Clifford's lifetime. Absolute property ownership granted her a sense of identity based on recognition as a subject embedded in a network of rights and obligations, a system ultimately traceable to the Norman feudalism brought to England by Clifford's ancestors. It was a system in which women as well as men could carry out feudal obligations because of their ancestry and place in the feudal order, which in turn stemmed from land ownership. Rank could be as important as sex in locating one in the social hierarchy. This understanding of the real nature of Clifford's claims leads to a crucial insight about property rights and the status of women: fully-vested ownership created for Clifford the basis for full civic personhood, and that in turn allowed her to assert her gender-based rights.

Part One of this article outlines Anne Clifford's life. Part Two explains the legal background for Clifford's litigation, showing that it took place in the context of declining female inheritance and declining female participation in the public sphere. Part Three discusses Clifford's writings, arguing that her property interests allowed her to construct a sense of identity apart from her culture's gender-based prescriptions. Part Four analyzes Clifford's self-construction as it is reflected in the many buildings, monuments and self portraits she designed and commissioned, also arguing that they reveal a sense of identity empowered by fully vested property ownership to transcend some of the limi-

tions her culture imposed on her sex. I conclude by suggesting that Clifford’s example has implications for today, in respect to the many ways women’s access to property is still systemically limited to less than fully vested rights.

I. CLIFFORD’S LIFE

Lady Anne Clifford, Countess of Pembroke, Dorset and Montgomery was born on the cusp of the century, in 1590, and died in 1676. Descended from one of the most prominent families of the era, Clifford, the daughter of George, Third Earl of Cumberland (1558-1605) and Margaret Russell (1550-1616), spent most of her life fighting to regain family lands that her father had willed to his brother and his brother’s male heirs instead of to her. Eventually, when her uncle’s male line died out, she won her battle, inheriting the estates in 1643, in the midst of the Civil War. On her death, on March 21, 1676, Clifford left her estates to her daughter Lady Thanet, and to her granddaughter. Clifford wrote at least three autobiographical tracts at different stages in her life, all intended, at least in part, to justify her legal and moral claim to her inheritance.

Her father, George Clifford, Third Earl of Cumberland (hereafter “George”), courtier, explorer, battleship captain and Queen’s Champion, was descended from a line of Barons and Earls that traced its roots

4. The bulk of writing about Clifford has come from humanities scholars, and, while often incisive, it lacks understanding of the legal issues and theoretical debates about property law necessary to analyze the material. Bringing both cultural and legal expertise to bear, I show how Clifford’s legal battles shape a sense of identity neither proto-feminist nor reactionary: one unique to its time and place, but liberating for today. The literature on Anne Clifford includes: Chan & Wright, supra note 1, at 162-63 (applying Margaret Radin’s analysis of alienable and inalienable forms of property to Clifford and Wiseman, arguing that deprivation of estates they considered theirs affected their sense of identity); Lewalski, supra note 1; Salzman, supra note 1, at 282 (asserting that Clifford’s diary and autobiographies, though ostensibly private, were in fact designed for a particular audience to support her “claim to her estates and titles”); Suzuki, supra note 1 (asserting that Clifford “stands as a counterexample to the dominant ideology of early modern historiography that largely regarded women not as agents of history but rather as chaste transmitters of genealogical succession or unruly obstacles to the unfolding of male-centered history”). Studies of Clifford as an early modern landholding woman include: Anastasia B. Crosswhite, Note, Women and Land: Aristocratic Ownership of Property in Early Modern England, 77 N.Y.U. L. REV. 1119 (2002).


to pre-Conquest England. Countess Margaret, her mother, was the youngest daughter of the Earl of Bedford, who had been one of Elizabeth I's Privy Councilors. Anne's two marriages, to Richard Sackville, Third Earl of Dorset and then to Phillip Herbert, Fourth Earl of Pembroke, consolidated her status as a high-ranking peer. Even at fifteen months, she had become the legal heiress of her father's estates: her brother Lord Francis died a few weeks before her birth, and her other brother, Lord Robert, died shortly thereafter. In his will of 1598, however, George left his large estates in Westmorland and Yorkshire to Francis, his brother, providing for Anne as a daughter rather than as heir. This devise struck a blow to Clifford's identity: as we will see in her Diary, she saw herself from an early age as a landed heiress, born into a dense network of social duties and rights; her father's will constituted her as a daughter, defined only by her private familial relation. In effect, the portion George left her was a dowry, an inheritance that constituted her as a valuable object a suitor might desire. The inheritance of the estate, on the other hand, would have made her a subject, recognized by other subjects in the social order.

As it happened, the Earl had to resort to some legal maneuvering to effect his chosen disposition. His estates had been granted by a Charter of Edward II, which specified that they were entailed to the heirs general, which meant the land had to pass to the closest direct heir, whether that person was male or female. (The other possibility, that the lands pass only to the heirs male, would have allowed George to bypass Clifford.) This preference for the direct female heir over the transversal male was, in fact, the common law rule, which dated from the Norman Conquest. George, wishing to dispose of his lands as he saw fit, set out to break this entail, that is, to eliminate the requirement that the land pass to a direct female heir—who would be Clifford—over a transversal male—the Earl's brother. In 1591, Earl George and his lawyers initiated a procedure called a "fine and recovery," involving

8. Spence, supra note 5, at 1.
9. Id.
10. Id.
11. The Diaries Of Lady Anne Clifford 1 (D.J.H. Clifford ed., 1990) [hereinafter Clifford Diaries]. Anne was very clear about what these deaths meant for her: "ever after that time I continuewed to bee the onely Child of my parents, nor had they any other Daughter but myself." Id.
12. Clifford Diaries, supra note 11, at 2. The Earl George's estates were considerable by the time of his death: they comprised a large part of northwest England, as well as several county seats in the south and two properties in London. Id. The total acreage was around 90,000. Chan & Wright, supra note 1, at 164.
a fictitious sale and return of the land in the Court of Common Pleas. This procedure should have eliminated—"broken"—the entail through the legal fiction that the lands were reconveyed back to the Earl in fee simple—i.e., free of restrictions. Relying on this legal maneuver, George proceeded to settle his lands away from his oldest daughter and on his surviving son Robert. When Robert died later that year, George made his brother Francis his heir.

Unfortunately, there was a flaw in all of this, which the Earl's lawyers overlooked, but which Countess Margaret, Clifford's mother (or, rather, her lawyers), eventually discovered. George's barring of the entail turned out to have been ineffective under 32 Henry VIII c. 36, which stipulated that a fine and recovery was inoperative if the reversion of the land was still vested in the crown; as it happened, the reversion of Clifford's estates was in fact still vested in the crown because, by limiting ways the land could pass, King Edward had not granted the Cliffords a fee simple but had retained an interest in it. Based on this statute, then, Anne had a strong argument that the barring of the entail had been invalid, and that, under the original charter, the land should have passed to her, the heir general, as specified in the charter.

George may have had reasons for his disposition other than mere preference for the male line, although Clifford herself implies in her biography of him—written after she came into possession of her lands—that this was the reason, explaining that he "gave away all his lands to his brother and his heirs males [sic] for the preservation of his

14. SPENCE, supra note 5, at 42.
15. Id.
16. Id.
17. After the Act declares all fines and recoveries to be binding, it lists exceptions, among them, in paragraph 4, that those of lands "the reversion wherof at the tyme of the same fyne or fynes so levied being in our said Souveraine Lorde his heires or successours." The exposition of the Statute of Fines, 32 Hen. 8, c. 36, §4 (1540) (Eng).
18. SPENCE, supra note 5, at 42–43. It seems unlikely that Earl's lawyers failed to notice the reversion; it probably simply never occurred to them that it was vested in the King. During this period, it was common for ancient reversions to attach to land, often unbeknownst to the present grantee. "[A] grantee might take land in good faith believing it to be freely alienable as the equivalent of a fee simple only to discover subsequently that the land had been entailed several generations back, that the lineal descendants of a prior grantee had died out, and that now a valid claim might be asserted by the heirs of the reversioner or remainderman under the original grant." George L. Haskins, Extending the Grasp of the Dead Hand: Reflections on the Origins of the Rule Against Perpetuities, 126 U. PA. L. REV. 19, 28 (1977).
19. In overlooking this issue, the Earl's lawyers were undoubtedly at fault, although decades later, Anne's lawyer, Sir Matthew Hale, blamed George, who, he claimed, "as is the use of persons of plentiful estates," had examined the documentary record only as far back as his father's will, which did not disclose the reversion. SPENCE, supra note 5, at 43.
name and house." However, from the George's perspective, the devise might have made sense. As he grew older, he accrued more and more debt as a result of his losses at privateering and his efforts to gain favor at court, and had sold or leased large swaths of his estates to pay it off. He approached death still owing large sums, and may have felt that the only way to pay the amounts owed and to maintain what was left of the estate was to consolidate it with that of Francis, who could then use the combined income from the two properties to remove the debt. Indeed, paying off these debts burdened Francis and his son Henry for the rest of their lives; the estate was cleared only sixty years after George's death. The truth is hard to locate. George faced the dilemma of many English aristocrats of the time: he wanted to pass along his estate intact, and hopefully even augmented and improved, to the next generation. On the other hand, he also wanted—and needed—to use it for marriage portions and for cash to pay off debts.

Ultimately, her father's will left Anne £15,000 as a marriage portion, to be doled out in installments: £3,000 within two years of his death, £3,000 a year later, £4,000 a year after that, and the final £5,000 after her twenty-first birthday. The payments, however, were conditioned on her not contesting the devise to Francis, which she, having chosen her mother as guardian, promptly did. Despite the problems with Anne's inheritance, she had many suitors; on February 25, 1609, she married Richard Sackville, grandson of the Earl of Dorset.

Dorset, like Anne's father, had debts and needed money. As a courtier, his success depended on impressing court and king with lavish dress, entertaining, and games, the latter often involving gambling.

20. ANNE CLIFFORD, LIFE OF HER FATHER 11.
21. HOLMES, supra note 5, at 5. There was an ethical dimension to this: in borrowing money for his ventures, George had implicated his sureties, fellow nobles whose estates would also be at risk if he failed to make good on his loans. SPENCE, supra note 5, at 6.
22. SPENCE, supra note 5, at 6.
24. SPENCE, supra note 5, at 19.
25. Id.
26. CLIFFORD DIARIES, supra note 11, at 15. The originals of Clifford's description of the wedding have been lost, but were transcribed in 1727 and are now in the British Library. She writes: "The 25th day of February in 1609, I was married to my first Lord, Richard Sackville, then but Lord Buckhurst, in my mother's house in her own chamber in Augustine Fryers in London, which was part of a chappell there formerly, she being then present at my marriage." Id.
27. Anne records at one point that "there was... Cock Fighting at the Court where my Lord's Cocks did fight against the King's, altho' this business was somewhat Chargeable [expensive] to my Lord, yet it brought him into great grace and favor with the King as he useth him very kindly and speaketh very often to him than to other man." SPENCE, supra note 5, at 19. The need to spend lavishly in the hopes of obtaining royal favor—in the form of monopolies or licenses over import-
Earning the King's favor was the route to riches: the King could grant his favorites lands and titles, lucrative posts, and licenses for monopolies on a wide variety of goods. But, as Anne's father had discovered before him, Dorset was learning that striving for favorite status was a costly gamble. Ready cash appealed to him much more than his wife's cold and distant—and heavily mortgaged—Northern estates. The dispute over the lands ultimately fractured Anne's marriage. Dorset had no interest in the estates other than as a means to receive a large sum of cash from Earl Francis in settlement of the dispute; indeed, Francis, with the King's backing, offered just this in return for Anne's consent to desist in her efforts. She refused, and her rejection of the offer severely strained her relationship with her husband.

On November 3, 1606, Margaret Russell, Anne Clifford's mother, initiated a claim on Anne's behalf for the estates and the titles that went with them. For the next eleven years, the two women together fought legal battles for the land; when Margaret Russell died in 1616, Anne continued to maintain her right to the inheritance, refusing to sign away her reversion in return for cash settlements or even to recognize decisions as binding, despite intense pressure from both her husbands, many powerful men, and even King James I himself. Clifford's case was first heard in the Court of Common Pleas, where the four judges decided against her, but Anne, having declined to be a party to the suit, refused to accept the judgment or sign the award. Dorset then approached King James, who formally asked the parties if they would agree to abide by whatever judgment he reached. Lord Cumberland, Francis, and Dorset all consented, but Clifford refused. In December of 1619, Clifford had an audience with the King in which his Majesty formally requested that she and the other parties to the legal dispute over Clifford's lands submit to his judgment in the matter. Clifford refused, declaring that "I would never agree to it without..." ed goods—was a source of anxiety, stress, and debt for many courtiers. The dependent position of Renaissance courtiers in this regard is most aptly and fully expressed in Baldesar Castiglione's The Book of the Courtier, translated into English by Sir Thomas Hoby in 1576. Castiglione's courtier "perceive[s] what his Prince likes and...bend[s] himself to this." BALDESAR CASTIGLIONE, THE BOOK OF THE COURTIER 110–11 (Charles S. Singleton trans., Anchor Books 1959) (1576).

28. The ruler's power to hand out monopolies on various luxury goods created an important source of income for those courtiers lucky enough to receive one. For a discussion of a particular example, see M.B. DONALD, ELIZABETHAN MONOPOLIES: THE HISTORY OF THE COMPANY OF MINERAL AND BATTERY WORKS FROM 1565 TO 1604 (1961). Indeed, it may have been distress at Queen Elizabeth's refusal to renew the Earl of Essex's monopoly on sweet wines and his resulting financial desperation that contributed to his motivation for his failed 1603 rebellion. SUSAN FRYE, ELIZABETH I: THE COMPETITION FOR REPRESENTATION 135–39 (1993).

Westmorland," at which "the King grew in a great Chaffe."30 Still in the King's presence, she allegedly tore up a letter from the King requiring her to consent to his decision.31 At this, those present, according to Anne, feared that the King would "do me some public disgrace," and Clifford's husband ordered the door unlocked and "went out with me and persuaded me much to yield to the King."32

The King's decision was, in Anne's words, "as ill for me as possible."33 His award ignored the illegality of the barred entail, and decreed that Lady Anne and Dorset should convey the lands to Cumberland with various remainders in return for £20,000, to be paid to Dorset in installments.34 The King further stipulated that if Anne, after her husband's death,35 should disrupt her uncle's quiet enjoyment of the estates with more lawsuits, she should lose the £15,000 left her in her father's will and have to pay back to her uncle the £20,000.36

Anne's mother's death, for a time, changed things. Up until this point, one of Dorset's money-making schemes had been the offer to

30. CLIFFORD DIARIES, supra note 11, at 47.
31. WILLIAMSON, supra note 5, at 108.
32. Clifford was not the first aristocratic woman to harangue the King in his own court: in 1606, despite King James I's efforts to persuade her to settle out of court, Lady Elizabeth Russell brought suit in Star Chamber to recover certain lands to which she laid claim. According to the account in Hawarde's Reports of Star Chamber Cases, the Judges questioned her right to the lands, and moved to adjourn for lunch, "but the Ladye, interruptinge them, desyred to be hearde, & after many denyalls by the Courte, vyolentlye [and] with great audacitie beganne large discourse, [and] woulde not by any meanes be stayed nor interrupted, but wente one for the space of halfe an howre or more." TIM STRETTON, WOMEN WAGING LAW IN ELIZABETHAN ENGLAND 54-55 (1998).
33. WILLIAMSON, supra note 5, at 119.
34. Id. at 119-20.
35. As long as her husband lived, she was a femme covert, a married woman, barred from bringing actions in her own name in most courts. T.E., The Lawes Resolutions of Womens Rights: or, The Lawes Provision for Woemen 205 (1632), in 1 THE EARLY MODERN ENGLISHWOMAN: A FACSIMILE LIBRARY OF ESSENTIAL WORKS: SERIES III, supra, at xxiv (explaining that "having lost her independent agency, the femme covert could no longer . . . sue or be sued in a common-law court").
36. HOLMES, supra note 5, at 87. Anne's intransigence, however, did strain her relationship with her husband: she received a letter from him a month later "by which I perceived how my Lord was clean out with me, [and] how much my Enemies have wrought against me." CLIFFORD DIARIES, supra note 11, at 48. As another expression of his displeasure at this time—and perhaps to free up lands to use as security for loans—Dorset next cancelled Anne's jointure: "my jointure he had made upon me last June when I went into the North, [and] by these proceedings I may see how much my Lord is offended with me, and that my enemies have the upper hand of me." Id. at 56. Dorset's anger and retaliation against her caused her great distress: On Whitsunday of June 1617, she reports, "we all went to church, but my eyes were so blubbered with weeping that I could scarce look up." Id. at 57. On another occasion, she recalls "weeping the most part of the day seeing my enemies had the upper hand of me," again, "[I was] melancholy [and] sad to see things go so ill with me, [and] fearing my Lord would give all his land away from the Child [their daughter, Countess Margaret]." Id. at 59.
arrange, for a price, the ultimate transfer of the lands to the Cliffords; now that Anne's mother's death had automatically returned the lands to the estate, Francis could just move in as the rightful heir. Dorset quickly changed his position, now insisting on his wife's rights in the property and informing the world that he would be taking possession of it her name. For Lady Anne, this "was a thing I little expected, but gave me much contentment." Taking physical possession, however, was of limited help to Dorset, because his real goal was to dispose of the lands for money, and everyone knew they were not his to sell. He thus set about pressuring Anne to deed them to him unconditionally, which she refused to do; finally she assigned a deed conveying them to him if she should die without issue. This preserved her daughter's rights, while giving Dorset some expectation in the estates, which he might be able to use to raise money for himself. This echoes an important aspect of full property rights: the ability to pass property to one's heirs. For Clifford, this right linked her to the generational chain that was so important to her identity: as heir of her father and ancestor to her children, she had a place as an acting subject in history and this identity arose from her rights in land.

Over the next few years, Anne bore a son who died at five months, and another daughter, Isabella; in 1624 Dorset died. In 1630, she married again, this time to Phillip Herbert, Earl of Pembroke, a widower and favorite of the King. The marriage was not happy: Pembroke was famous for his quarrelsome nature and numerous affairs, although the two shared an interest in art and architecture which they put to use in redecorating and building Pembroke's castles. In 1650, Pembroke died. Francis, Earl of Cumberland, died in 1641, leaving the estates in the hands of his son, now the Fifth Earl of Cumberland. If he had been

37. HOLMES, supra note 5, at 56.
38. Id.
39. CLIFFORD DIARIES, supra note 11, at 37.
40. In June 1616, Clifford writes: "I passed (by fine before my Lord Hubbard) the Inheritance of Westmorland to my Lord if I had no heirs of my own Body." Id. at 38.
41. HOLMES, supra note 5, at 124 (supposedly of a "surfeit of potatoes").
42. CLIFFORD DIARIES, supra note 11, at 90, 96.
43. HOLMES, supra note 5, at 126-27.
44. Clifford writes, "the three and twentieth of Januarie following dyed my second Lord, Phillipp Herbert, Earl of Pembroke and Montgomerie in his lodgeings at the Cockpitt nere Whitehall in London." CLIFFORD DIARIES, supra note 11, at 105.
45. After the fact, Clifford writes: "The 21st daie of January 1641 dyed my uncle Francis Earl of Cumberland when he was neare 80 & 2 yeares, in Skipton Castel in Craven. His onlie child Henry, Lord Clifford who succeeded him in ye earldom lived but 2 yeares & some twenty daies after him." Id. at 94. She adds with satisfaction, a quote from the Book of Job: "Is there not an appointed time to man on earth? Are not his days also like the days of a hireling?" Id.
as long lived as his father, or had had male heirs, Anne would have lost all hope of regaining possession of her inheritance. As it happened, however, he died in 1643 with no male heir, and, after 38 years, the estates were finally hers. 46 This victory may have felt hollow: the Civil War was raging and the long journey north was impossible at that time; perhaps to celebrate while she bided her time, she commissioned the great Clifford family triptych discussed below. 47 Finally, in July 1649, she left London for the north to take possession of her estates. 48 From then until her death in 1676, she engaged in a massive program of building and rebuilding her castles and lands, establishing almshouses and hospitals, and managing her holdings. 49 When she died, she left Westmorland to her elder daughter, Margaret, now the Dowager Lady Thanet, and Skipton to the daughter of her younger daughter, Isabella, Isabella having died in 1661.

II. THE LEGAL CONTEXT

Anne's battles over her land perfectly encapsulate a historical trend: Eileen Spring has shown that female heiresses in England steadily lost ground in inheritance between the thirteenth and the eighteenth century. 50 As far back as the thirteenth century, Bracton wrote "in the matter of succession the male sex must always be preferred to the female," 51 but Clifford also found authority for the common law maxim that a daughter was to be preferred over a collateral male heir. In The Lawes Resolution of Women's Rights, a quirky legal manual for women published in 1632 by an author known only as "T.E.," Clifford read that:

A female may be preferred in succession before a male by the time wherein she cometh: as a daughter or daughter's daughter in the right line is preferred before a brother in the transversall line, and

46. Id. at 95. The Earldom, which could only pass to male heirs, became extinct at his death.
47. HOLMES, supra note 5, at 133.
48. CLIFFORD DIARIES, supra note 11, at 100.
49. Id. at 101–02. This was still during the Restoration, and her friends warned her that her massive reconstruction projects might well arouse the wrath of Lord Protector Cromwell. She replied: "Let him [Cromwell] destroy my Castles if he will, as often as he levels them I will rebuild them, so long as he leaves me a shilling in my pocket." Id. at 101.
50. SPRING, supra note 13, at 27. Other major studies of women and inheritance in this period include: Amy Louise Erickson, Women and Property in Early Modern England (examining the day to day experience of women in relation to inheritance in this period) (2004); SUSAN STAVES, MARRIED WOMEN'S SEPARATE PROPERTY IN ENGLAND, 1660–1833 (1990) (emphasizing women's access and lack thereof to separate real property).
51. 2 BRACTON ON THE LAWS AND CUSTOMS OF ENGLAND 190 (Samuel E. Thorne trans., 1968).
that as well in the common generall taile, as in fee simple... also a woman shall bee preferred propter jus sanguinis... land discended must alwaies goe to heires of the blood of the first purchaser, and the case may bee such that a female shall cary away inheritance from a male.52

Thus, both views appeared in the legal sources.

As Eileen Spring has shown, however, the common law practice of preferring a lineal female to a transversal male was giving way over the sixteenth and seventeenth centuries.53 By means of uses, landowners cut the rate of female inheritance in this period to less than a third of what it would have been if the common law rules had been followed. Clifford's position perfectly illustrates Eileen Spring's thesis that seventeenth century aristocrats used alternatives to the common law to divert inheritances away from potential female heiresses.54 Clifford's writings show us this shift had implications beyond the mere depletion of landed assets in female hands: the loss of fully vested property rights meant that women were less and less able to assert themselves—and be seen—as rights-bearing persons in civil society, able to act as subjects in the public sphere regardless of their gender.

In this light, it is important that Clifford's commitment to her lands stemmed from her aristocratic identity, that is, from her relationship to her ancestors, her lands and her titles, all of which factored at least as much as her gender in her identity. The fundamental organizing principle of the early modern aristocracy was "continuity of house," the desire to pass on undamaged to future generations the five components of the estate: the seat (the residence itself), the land, family heirlooms (records, deeds, portraits, plate and jewels),55 the family name and the hereditary title.56 The passage of these elements of the estate was in effect the ingrained prime directive of aristocrats of this time, and Clifford partook of it no less than a male heir. Whatever arguments she made about gender were subsidiary to this agenda made as a means to effectuate it. Having this inner "prime directive"—having

52. T.E., supra note 35, at 9–10. Inheritance law in England differed according to one's social status: among the aristocracy, primogeniture had come to predominate by this point, although there was, as Clifford insisted, authority for preferring direct female inheritance over lateral male inheritance. BARBARA A. HANAWALT, THE WEALTH OF WIVES 65 (2007). Under borough law, on the other hand, which controlled inheritance by citizens of London, all children, male and female, divided the decedent's estate equally. Id. at 68.
53. See generally SPRING, supra note 13.
54. Id.
56. STONE & STONE, supra note 23, at 72.
fully vested rights in property so she could pass it on to her heirs—allowed her to see herself in ways that were not fully determined by her gender. It allowed her to see herself—and be seen by others—as a rights-bearing subject in society. The next section shows how, from the time she was very young, Clifford used autobiographical writing to construct this fully vested self.57

III. CLIFFORD'S WRITINGS

Clifford composed three types of autobiographical text over the course of her life: diaries, of which the years 1616, 1617 and 1619, and 1676 survive;58 annual summaries, of which 1603 and 1650 through 1675 remain; and biographies of her parents and an autobiography, of which 1652 and 1653 survive. The autobiography, called *Life of Me*, chronicles her life from conception to 1650, after which her annual summaries take over. In addition, Clifford also compiled so-called “Great Books” with the aid of an antiquarian, which recorded her family history and genealogy.59

57. Schroeder, supra note 3.

58. The Diary of Anne Clifford 1616-1619, at 1,14 (Katherine O. Acheson ed., 1995) [hereinafter CLIFFORD, DIARY 1616-1619].

59. Salzman, supra note 1, at 282. These volumes exist only in the original at the Cumbria Record Office. Scholars have read Clifford's self-expression as resistance to patriarchy, or as an "unsetting of gender" because she insists on her status as heiress to her ancestral estates and title, a position generally claimed by and associated with men. Such interpretations, though appealing, are both anachronistic and theoretically flawed. First, they read backwards from today's notions of gender and class, rather than working forward from early modern concepts. Second, such readings assume that an autobiographer can step outside of his or her culture and fashion an identity at odds with it. Such readings partake of the fallacies of "outsider scholarship" discussed by Anne Coughlin in regard to the writings of Patricia Williams, Jerome Culp and Richard Delgado: they assume that an author can escape the premises of the discourse in which he or she writes. See Anne. M. Coughlin, Regulating the Self: Autobiographical Performances In Outsider Scholarship, 81 VA. L. REV. 1229 (1995). To the contrary, as Coughlin and others have shown, the culture in which the author lives and the discourse in which she writes shape the identity the text can present. Coughlin has argued, with respect to "outsider scholars," that "autobiography does not provide a way for the self to step outside of liberal culture.... Rather, [it] is embedded in precisely the same cultural practices... that outsiders suggest their autobiographical acts elude." Id. at 1251. This is not the end of the story, however. In challenging these feminist readings of Clifford, I do make a point about the limits of resistance and the inescapability of the shaping effects of discourse on identity. Employing the same fallacies that Coughlin critiques, feminist scholars, in both law and the humanities, have seen Clifford's writings as allowing her to step outside of her culture and shape a feminist sensibility out of step with its time. Such readings ignore the role of culture and discourse—including legal discourse—in shaping identity. But I counter the implicit pessimism of such a reading by also showing ways in which liberation is possible even within an established discursive framework, a possibility Clifford's writings express. Clifford's writings reveal the possibility of liberation in her insistence on being recognized as a legal subject through the inheritance of her estate and the reciprocal rights and duties it conferred.
Clifford’s writings blur the line between public and private. Although Clifford wrote diaries, a genre we tend to think of as private, and family chronicles, a form we might think of as being limited to family readers, it seems clear that these texts had a wider intended audience. As this article shows, that audience has continued to exist into the twenty-first century. Clifford’s Great Books are clearly family chronicles, created in a presentation format, to preserve for future generations Clifford’s sense of herself as heiress.

Clifford’s various writings reveal the strength of her sense of identity in many ways. She seems to have intended her diary as a record of her struggle over her inheritance ultimately to be incorporated into the chronicles of her life. For example, although the text of the diary itself is a running commentary on private family matters, the wide margins on both sides of the original text contain remarks that she added later that contextualize the personal story in the diary by adding events in the wider world that were taking place at the same time. By so writing, she embedded her personal narrative in a wider historical record, as she embedded her life in the context of her ancestry and her inheritance. Both narratives justify her role and place in the world—and in her estates—as an aristocratic heiress with all the rights and duties attendant thereon. As I show next, Clifford’s writings reveal the process of achieving this place in the public sphere as they record her battles for her estates in diary form, then in historical narrative, and finally, autobiography.

A. Clifford’s Diary

Clifford’s diary begins with a single entry for the year 1603, the year of Elizabeth I’s death. The early part of the year as the population awaited the Queen’s imminent passing—Elizabeth died in March—was a time of great anxiety for the whole country. London especially was abuzz with rumors and fears about possible civil strife at the Queen’s death: on March 22, two days after Elizabeth died, Clifford’s aunt
warned her and her mother “to remove to Austin Friars her House [i.e., out of the city] for fear of some Commotions, then God in His Mercy did deliver us from it.”\(^{65}\) Shortly thereafter, however, the Privy Council proclaimed James VI of Scotland King James I of England, “with great joy and triumph . . . This peaceable coming in of the King was unexpected of all parts of the people.”\(^{66}\)

The succession was a time of personal change and disruption for Clifford as well. She was thirteen in 1603, aware of her ancestry and status, and aware of threats to these parts of her identity. The Queen’s death, for example, robbed her of a position at court; she tells us that “if Queen Elizabeth had lived, my Aunt Warwick [one of the Queen’s Ladies in Waiting] intended to prefer me to be of the Privy Chamber, for at that time there was as much hope and expectation of me as of any other young Ladie whatsoever.” She also chafed at being deemed too young to participate in the state ceremonies surrounding the royal funeral. When the Queen’s body was carried in procession to Westminster for burial, Clifford’s mother and aunt were among the mourners accompanying it, but she “was not allowed to be one because I was not high enough, which did much trouble me then, but yet I stood in the Church at Westminster to see the Solemnities performed.”\(^{67}\) She feels the call of her aristocratic lineage to join the processions and ceremonies, but that call is thwarted by her age and size. She was not “high” enough: not tall enough to be seen and recognized in procession of her peers, and not yet “high” enough in rank to be seen and recognized figuratively as well. Her inheritance and the public recognition it would bring would give her this added height.

A few paragraphs later, Clifford assuages her anxiety about her identity—for the time being, at least. She recounts a quarrel between her father and Lord Burleigh, Elizabeth I’s Secretary of State, as to who should carry the Sword of State in King James’ progress from Scotland to London, reporting that “it was adjudged on my Father’s side because it was an office by inheritance,” adding “and so [it] lineally descended to me.”\(^{68}\) Here she resolves the contradiction between the adult de-

\(^{65}\) CLIFFORD DIARIES, supra note 11, at 21.

\(^{66}\) Id.

\(^{67}\) Id. at 22. The discomfort and disjointedness of all the changes of the day are vividly embodied in the sudden lack of cleanliness at court: when Anne and her mother travelled to Theobalds, a lodge on the border of Middlesex, to see the new King, “we all saw a great change between the fashion of the Court as it is now and that in the Queen’s time, for we were all lousy for sitting in the chamber of Sir Thomas Erskine.” Id.

\(^{68}\) Id.
mands of her ancestral role and her youth by re-identifying herself as the lineal descendant who would in future inherit the honors and titles of her father, regardless of her gender. This new formulation serves to paper over and explain the previously disturbing contradictions: she is at the moment too young to fulfill her adult role, but by the same token, she is the lineal descendant who will grow by right into that role. This is the first of many episodes recorded in the Diary when Clifford's sense of rights-bearing personhood is threatened and she reasserts it by reference to her lineage and land. Here, she does so by claiming the right to a position that would publicly affirm her place in the aristocratic order—again, regardless of her gender.

We hear Clifford's assertion of her personhood again in an entry about her temporarily taking possession, after her mother's death, of her mother's jointure lands. She journeys north to take charge and plunges into battle through her tenants against the competing claims of her uncle's tenants:

Upon the 17th [of July 1616] I rid into Whingfield Park, [and] there I willed the tenants that were carrying of hay... that they should keep the money in their own Hands till it were known who had a right to it.

Upon the 25th I signed a Warrant for the killing of a Stag... being the 1st I ever had signed of that kind.

Upon the 29th I sent my Folks into the Park to make Hay where they being interrupted by my Unkle Cumberland's people, 2 of my Unkle's people were hurt... whereupon complaint was made to the Judges... [and] a Warrant sent forth for the apprehending of all my Folks that were in the Field at that time, to put in surety to appear at the... Assizes.69

Here, Clifford's servants literally come to blows with her uncle's servants over her rights in the lands in response to Clifford's self assertion as landlord. She "wills" the tenants to keep the money they owed for the communal hay until her and her uncle's relative rights over it had been determined; she signs a warrant for the killing of a stag—the stag being the property of the lord. Cliffords' identity as heiress and estate head is dominant here: she protects her tenants' rights, allocates the resources of the estate, and has her underlings take sides in both physical and legal battles on her behalf. This is the same Clifford who would carry the sword of state in coronation processions, and stand in mourning at royal funerals, occupying her place in the civic order. The-

69. Id. at 39.
se were all parts of the role of the heir to the estate, regardless of gender.

Throughout her diary, Clifford locates herself across single moments in time and across historical time as well. This placing of herself in the historical moment is related to her struggle for her lands and the identity they conferred on her. For example, she tells us that news of Queen Elizabeth’s death “was delivered to my Mother [and] me in the same chamber where afterwards I was married.” The footnote she added later embeds her more deeply in both time and place: “I was at Q. Elizabeth’s death 13 years [and] 2 months old, [and] Mr. R. Sackville was 14, he being then at Dorset House with his Grandfather [and] that great family. At the death of this worthy Queen my Mother [and] I lay at Austin Friars in the same chamber.” A few days later she tells us that “my Aunt of Warwick, my Mother [and] I... lay at Dr. Challoners... which house my G. Father of Bedford used to lie much at.” At other times, she mentions a historical event in the main narrative and uses a footnote to locate herself in relation to it: at one point she tells us she saw the Spanish Ambassador who “was then new come to England about the Peace,” while her marginal note narrates the course of her travels at that time. Later, she writes that she spent New Year’s of 1616 privately in her chamber, but her marginal note, added later, reconnects her isolation to the public sphere: “the 1st day Sir Geo. Villiers was made Master of the Horse [and] my Lord of Worcester Privy Seal.” Similarly, she writes of November 1, 1615, “I rose by times in the morning and went up to the Pagan Tower [at Appleby?] to my prayers [and] saw the sun rise. Upon the 4th I sat in the Drawing Chamber all the day at my work.” The marginal note she added later places this private memory in its public context:

Upon the 4th Prince Charles was created Prince of Wales in the Great Hall at Whitehall where he had been created Duke of York about 13 years before. There was banners and running at the ring, but it was not half so great a Pomp as was at the creation of Prince Henry. Not long after this Lord Chancellor was created Viscount Brakely and my Lord Knollys, Viscount Wallingford. My Lord Cork was displaced, and Montague made Lord Chief Justice in his stead.

70. Id. at 21.
71. Id.
72. Id. at 24.
73. Id. at 26.
74. Id. at 28.
75. Id. at 41.
76. Id.
By putting herself in a public and historical context, Clifford asserts her civic personhood in public and private, past, present and future. It is her sense of her property rights that gives her a sense of location in history, in the public sphere as well as the private.

As the dispute between Anne and her husband intensified, Clifford continued to assert her sense of self. An entry from February 1616—a time when they were at odds about her estate—reflects this conflict. It reads:

Upon the 26th going from Litchfield to Croxall [and] about a mile from Croxall, my Lord [and] I parted, he returning to Litchfield [and] I going into Derby. I came to my Lodgings with a Heavy Heart considering how many things stood between my Lord [and] I. I had in my Company 10 persons and 13 horses.77

The last line, oddly, it seems, breaks off an emotional account of the distressing parting with her husband to provide a count of household retainers and horses. What this break reveals, however, is the reassertion of her status as rights-bearing subject in the face of a threat. It reconnects her to her retinue and, through their presence, to her independent identity.

A similar instance occurs in April 1615, when Dorset, in London, sent an order to Anne, at her mother's Manchester estate, that all his servants and horses were to return to him immediately, without her. This was probably an attempt on his part to effect a separation: by removing his servants, he effected a clean division of households.78 Anne's reaction was to draft a document as a public record to assert that she was not sending his servants back to him of her own will, an act which might have led to charges that she had deserted the marriage and taken refuge with her mother.79 The "paper" reads as follows:

1st April 1616. A memoranda that I, Anne, Countess of Dorset, sole daughter and heir to George, late Earl of Cumberland, doth take witness of all these gentlemen present, that I both desire and offer myself to go up to London with my men and horses, but they, having received a contrary commandment from my Lord, my husband, will by no means consent nor permit me to go with them. Now my desire is that all the world may know that this stay of mine proceeds only from my husband's command, contrary to my consent or agreement, whereof I have gotten these names underwritten to testify the same.80

77. Id at 30.
78. CLIFFORD, DIARY 1616-1619, supra note 58, at 145 n.2.
79. Id.
Forced to obey her husband, Anne nevertheless reasserts her autonomy by identifying herself as Lady Dorset—i.e., a wife—but also as her father’s heir—indeed, “sole heir,” a phrase that reasserts her claim to the inheritance despite her gender, as set out by the common law. The document does not merely protect her in relation to her husband, it asserts an identity separate from his and linked to her father’s bloodline, an identity that existed in the public and civic world even while her identity as Dorset’s wife resonated only in private, in coverture. The voice that describes her actions as “contrary to my consent or agreement” is the voice of a rights-bearing subject who is being denied recognition.

Clifford’s repeated linking of bodies to places also played a significant role in steadying her sense of her identity, and offers further evidence of how her connection to her property created her sense of self. When her mother died, Clifford’s grief was augmented by the stipulation in her mother’s will that her body should not be buried at Skipton, the family seat, which Anne took “as a sign that I should be dispossessed of the Inheritance.”81 Burial in the heart of the family’s holdings was an important part of the continuity of aristocratic identity in early modern England, and Clifford’s concern with it underlines the connection she felt between body and place. The identification between body and land involved the living as well as the dead: when Clifford’s former tutor, Samuel Daniel, who was also a playwright, wrote a masque to celebrate Prince Henry’s creation as Prince of Wales in which the court ladies were dressed to represent the river nymphs of England, he cast Anne Clifford as the nymph of Aire, the river flowing past her birthplace at Skipton Castle.82 This identification with her lands expresses her claim to possessing that which will allow her to be recognized as a rights-bearing subject: her lands are the material expression of that status.

B. The Great Books

Clifford composed the “Great Books,” as she called them, her family chronicles, after she took possession of her lands. Having come into possession of her estates, she continues to narrate herself into history, building her civic identity as she rebuilds her castles. The first two volumes compile her genealogy as a way of placing her into her fami-

81. Id. at 36.
82. SAMUEL DANIEL, SELECTED POETRY AND A DEFENSE OF RHYME (Geoffrey G. Hiller & Peter L. Groves eds., 1998).
ly's history, while the third volume turns to her own life. These works use Clifford's family tree as a way of buttressing her claim to her property: the first two volumes build the tree limb by limb, and the third lodges her in its branches. Interestingly, the third volume, which summarizes the years 1650 to 1675 with endless accounts of visits by children, grandchildren, and other relatives, with detailed explanations of how each one is related to Clifford, is written in the third person. It seems likely, as Salzman argues, that the records were intended as a "public statement" reiterating Clifford's rights and claims of ownership. In fact, the Great Books did circulate within controlled boundaries as a statement of Clifford's lineage and rights to her inheritance: her lawyer, Matthew Hale, kept a copy at Lincoln's Inn, and her grandson, Thomas, Earl of Thanet, used them two generations later in asserting his claim to the title of Lord Clifford.

In the first book, called "The Claim and Title of Lady Anne Clifford to the Baronies of Westmorland and Vescy with pedigrees, documents and precedents relative thereto," Clifford assembles from the documents her mother had collected her own legal record to confirm her claim to her estate. It is here for the first time that she explicitly takes on the issue of her gender and the role it may have played in depriving her of her inheritance. The date on the title page places the manuscript in the year 1650, the year after she finally took possession. The title page contains the following:

The Title of the Lady Anne Clifford sole daughter and heire generall to the late right hon[ora]ble George Earl of Cumberland Lo[rd] Clifford Westmerland & Vescy to ye stile and title of the said other baronies... The said lady tendreth and [unreadable] groundeth the same upon the ancient [laws and customs] of this Realme of England... with the customs and usage of other Realmes and Dominions adjoining thereunto wheare Women are capable of Foedalls [i.e., feudal rights and obligations]..."

The table of contents designates folio 6:10 to folio 10:9 as providing "allegations of the usuall Customs of this and other Countries... with other reasons for proove that such titles and dignities have and ought to descend to the Females being next heires and to their issue."

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83. Salzman, supra note 1, at 284.
84. Id. at 285.
85. 1 ANNE CLIFFORD, GREAT BOOKS, CLAIM AND TITLE (also part of the Hothfield Manuscripts, on file with the Cumbria Record Office, Kendal Archive Center) [hereinafter CLIFFORD, GREAT BOOKS].
86. CLIFFORD DIARIES, supra note 11, at xii.
87. CLIFFORD, GREAT BOOKS, supra note 85.
88. Id. Clifford claimed both the land and titles her father had held. These were potentially separate claims: land and titles could descend apart from each other, and the descent of titles, like
Folio 11 to Folio 19, we learn a few paragraphs later, will give us "Sundrie examples and presidents [precedents] of such as have been Barons of this Realme in the right of their wives, mothers, Grandmothers, and Great-Grandmothers w[hi]ch have been lineall & next heires to Barons summoned by writs to the Parliament."89

For the substance of her argument, Clifford gathers law, history and logic to cement her case. In doing so, she lays claim to full participation in civil society, for the first time, as a woman. One of the arguments against women inheriting titles was that they were not equipped to advise the King, and therefore would be useless when summoned to Parliament for this purpose. Having shown that women did inherit titles, however, Clifford declares it "absurd that the dignities should be transferred to the heire female for the original Occasion [?] was for advise and counsell in the Parliament a place denied to that sex it is enforced."90 In other words, it makes no sense to say that women cannot give counsel—and indeed enter Parliament—because we now know that they did inherit the offices that required them to do so. Moreover, "though man in his sex be more excellent than Woman, yet in qualitie we see often Women excel Men therefore no reason to bar them of their rights especially when no detriment thereon ensueth to the Commonwealth as in this case it doth not."91

Significantly, it is now that she is in possession of her lands that Clifford makes the legal case that her gender should not be an impediment to her inheritance—that is, to her full civic personhood. Her dia-

that of land, depended on the wording of the letters patent that had granted them in the first place. The wording determined whether the titles passed in tail male or in tail general, the latter of which would allow them to pass to a daughter. While the Earldom of Cumberland had been created in such a way that it descended only through the male line, the Baronies of Clifford, Westmorland and Vesev had not: they had been created by writ and thus constituted fees simple, which could pass to female heirs. Shortly after George died, the Countess Margaret hired a researcher to compile evidence as to Anne's right to inherit the Baronies—i.e., the titles. Clifford's claim to these titles also conflicted with her gender. Objections to female inheritance of titles arose from the notion that it was absurd to expect women to fulfill the baronial role advising the King in Parliament, a body from which women were excluded, and that women were unable to perform the military duties required of barons. As for the requirement of knight service, Anne argued, women holding titles could perform military duties through brothers, husbands and sons, as was, in fact, allowed by law. And with respect to giving counsel, while she conceded that "man in his sex be more excellent than woman, yet in quality wee see often women excell men." Id. What is important to understand is that her claims to her land and the titles were inextricably linked for Clifford and for her culture: having full possession of her ancestral lands embedded her in the web of duties and rights that in turn allowed her to be recognized as a legal subject. Fully-vested rights work the same way for women—and everyone—in civil society today.

89. CLIFFORD, GREAT BOOKS, supra note 85.
90. Id. at 9.
91. Id.
ries, though they are full of her experiences and disappointments as she litigated her cause, and replete with expressions of her distress at losing case after case, contain no arguments about the role of her gender in the affair. Now, however, she addresses directly and robustly the idea of her gender as an impediment to her status. She is able to do this now because the possession of her lands and the recognition of her civic personhood that came with it allowed her to assert her place as a woman in the public realm. This is an important insight because it suggests that what enabled Clifford to address the gender issues was the fully vested ownership of her property, and that the process was not the other way around—that is, it was not assertions of gender-based rights that gave her the psychic wherewithal to fight for her estates, but rather, the fight for her estates that positioned her to discuss gender.

The Great Books also contain biographies of Clifford’s parents in which she refers to herself in the third person: narrating her birth, she writes:

Their third and youngest child, who was their only daughter, the Lady Anne Clifford, was born in Skypton Castle in Craven, the 30th day of January, being Fryday, in 1590, as the year begins on New Year’s Day. And she was christened in the church there, the 22nd of the month following; which lady continued to be their only child to her parents eve after the death of her brother, Robert, Lord Clifford, at whose death she was a year and four months old.92

In contrast to the first person “I” of the Diaries, which expresses a personal, private construction of selfhood in progress, the third person of the Great Books seems to reflect a fully-formed historical self which can now be expressed in relation to the lives of her parents—that is, as the historical continuation of their line. The historical self is a third person self because it can now be spoken about as part of a history that is greater—“higher” if we recall the thirteen year old Clifford’s complaint—than the private self. Clifford attained this historical self through acquiring full rights to her lands: she is now a fully recognized subject and part of history because she can leave her mark on her property (as I discuss infra) and give it to her descendants. Having attained these rights, she can now see herself as a part of history, a player in the public sphere her private “I” can write about from a distance.

C. Life of Me

Clifford's autobiography, Life of Me, which comes after the Lives of her parents in the Great Books, constructs her identity along diachronic lines, as a continuation of her family line, spinning the generations into a single thread. She returns here to the first person, telling us that she was born "sole Daughter and Heir to my Illustrious Father," George Clifford, Earl of Cumberland, and Lady Margaret Russell.93 Having written the history from which she emerged, she can now speak as herself. She even records, on her mother's authority, the date and place of her conception—"the Lord Wharton's house in Channell Row in Westminster"—to reinforce the notion of her legitimacy (at this point in her life) as her father's only surviving child.94 As if to emphasize the fact that her family lines both came together in herself, she relates that "never was there child more equally resembling both father and mother than myself."95

About eight o'clock at night into the chamber where I then lay, and wherein I was born into the world, and I then kissed them all with much joy and comfort, it being the first time that I saw my Daughter at Thanet, or these four younger Sonnes of hers in Skipton Castle, or in Craven, for it was the first time they had ever come into Craven. Holmes.96

Clifford's movement toward reclaiming her inheritance re-embeds her in this network to the extent that her removal from it had disrupted it: retracing a journey to visit her daughters, she observes "so as those counties where my mother lived as a stranger and pilgrim and in some discontents are now the settled abode and habitation of both her grandchildren."97 When she finally arrives at Skipton Castle, she says "I was never in any part of that castle since I was nine or ten weeks old."98 We may also recall that it was at that castle when she was eight weeks old that her father saw her for the first time, in a sense recognizing her as part of his lineage.

Again, from 1660:

I did remove from thence to Barden Tower which was the first time that I did ever lye [there], having lately repaired it to my great cost and charges, when it was then a most ruinated, decayed place. For

93. Lewalski, supra note 1, at 126.
94. Anne Clifford, Life of Me, in The Lives of Lady Anne Clifford, Countess of Dorset, Pembroke and Montgomery and of Her Parents, Summarized by Herself, supra note 92, at 33.
95. Id. at 35.
96. Id. at 160.
97. Id. at 53.
98. Id. at 53.
my mother had never lain in it since she was with child with me, nor
my father in a good while, neither did my uncle of Cumberland, or
my cosin his son ever lye in it, after they came to the estate in Cra-
ven.99

After she repairs another of her castles, this one in Brough, she
remarks with satisfaction “it was so well repaired by me that *** I lay
there for three nights together, which none of my ancestors had done
in 149 years before till now.”100 After she has her castle of Pendragon
in Westmoreland repaired, she “lay there for three nights together,
which none of my ancestors had done since Idonea de Veteripont lay in
it, who dyed the 8th of Edward the 3d without issue.”101 And so on:

[I]t being a strange and miraculous Providence of God, that I should
at this great age of 73 come to lye again in the same chamber where I
had not layn since I was a child of eight weeks old ....102

[T]his being the first time that either he or any grandchild of mine
ever lay in that castle of mine, which was lately repaired by me.103
I came up through the great Chamber and Painted Chamber and the
little passage room into my own chamber, where I formerly used to
lye, and where my noble father was born and where my blessed
mother dyed.104

Clifford now uses this identification with property to revise a met-
aphor of coverture from The Lawes Resolution of Womens Rights. The
Lawes Resolution explains:

When a small brooke or little river incorporateth with Rhodanus,
Humber, or the Thames, the poore Rivulet loseth her name, it is car-
ried and recarried with new associate, it beareth no sway, it
possesseth nothing during coverture. A woman as soone as she is
married is called covert, in Latine nupta, that is, vailed, as it were,
clouded and overshadowed.105

Now, in Life of Me, Clifford writes:

[A] wise man that knew the insides of my fortune would often say
that I lived in both these my lords' great familys as the river of Roan
or Rodamus runs through the lake of Geneva without mingling any
part of its streams with that lake; for I gave myself wholly to
retiredness, as much as I could, in both those great families, and
made good books and virtuous thoughts my companions ...106

99. Id. at 88.
100. Id. at 89.
101. Id. at 89.
102. Id. at 103.
103. Id. at 103.
104. Id. at 147.
106. ANNE CLIFFORD, LIFE OF ME, supra note 94, at 40.
As we recall, the poet Samuel Daniel had identified Clifford in one of his court masques with a river that flowed past her birthplace, Skipton. It seem significant, therefore, that she uses this connection much later in life to assert her resistance to the legal anonymity of marriage. It makes clear how much her separate identity flowed, so to speak, from her connection to her family’s lands and to her legal rights, giving her a place to stand outside of her marital status as well as her culture’s prescriptions for women.107

IV. SELF PORTRAIT AND MONUMENTS

Once in possession of her lands, Clifford set about “enjoying” them—that is, leaving her mark on them—in a big way, commissioning numerous portraits and monuments to commemorate herself as full owner. For example in 1646, she commissioned a portrait of herself and her family, called the Appleby Portrait, to commemorate her accession to her titles and estates; it now hangs in Appleby Castle in Westmorland.108 The work is a triptych that shows Clifford at three stages of her life: in utero in the middle panel,109 at age fifteen when she believed she had legally inherited her father’s estates, and at age fifty-six, when she came into physical possession. There is no known precedent for this type of portrait—i.e., the three stages of life in the

107. It is also worthy of note that Clifford put these sentiments into the mouth of a man, presumably a close acquaintance, who knew her story from the “inside.” Although scholars have speculated about this man’s identity, there is some logic for the conclusion that Clifford simply displaced her own sentiments in this way. Having a male express these thoughts may have added legitimacy by expressing them in a voice of authority. Perhaps, too, at some level, Anne Clifford was echoing another male voice of authority: that of her childhood tutor, Daniel, who acknowledged her connection to her birthplace.

108. For discussions of this portrait, see Alice T. Friedman, Constructing an Identity in Prose, Plaster and Paint: Lady Anne Clifford as Writer and Patron of the Arts, in 5 ASHGATE CRITICAL ESSAYS ON WOMEN WRITERS IN ENGLAND, 1550–1700: ANNE CLIFFORD AND LUCY HUTCHINSON,103 (Mihoko Suzuki ed., 2009); Mary Ellen Lamb, The Agency of the Split Subject: Lady Anne Clifford and the Uses of Reading, in 22 ENGLISH LITERARY RENAISSANCE 347, 350–54 (1992); Lewalski, supra note 1; Graham Parry, The Great Picture of Lady Anne Clifford, in ART AND PATRONAGE IN THE CAROLINE COURTS 202 (David Howarth ed., 1993). The triptych is now at Appleby Castle in Westmorland. See Friedman, supra at 106. It is actually made of copies of earlier paintings of Clifford and her family and may have been painted by Jan van Belkamp, a copyist who had been the keeper of Charles I’s pictures since 1640. Susan Wiseman, Knowing Her Place: Anne Clifford and the Politics of Retreat, in 5 ASHGATE CRITICAL ESSAYS ON WOMEN WRITERS IN ENGLAND, 1550–1700: ANNE CLIFFORD AND LUCY HUTCHINSON, supra, at 179, 190, 210.

109. The older brother in the middle panel holds an inscription that describes the mother as “conceived with Child the first of May, Ano Dom 1589, with hir onely daughter the Lady Anne Clifford, whoe was borne the 30th of January following, in Skipton Castle in Craven, in Yorkshir, shee afterwards being the onely Child of hir Parents and is now Countess of Pembroke.” See Friedman, supra note 108, at 109. Graham Parry also notes, “she has an embryonic existence in the painting.” Parry, supra note 108, at 121, 127.
three panels—in English art, and it seems likely that Clifford designed it herself. It shows similarities, however, to a dynastic portrait of Henry VIII and his family from the mid-1540s: Henry's triptych shows the King with Jane Seymour and their son, Edward, in the middle section, Princes Mary in the left and Princess Elizabeth at the right, in the same position in this triptych as Anne Clifford in hers. This placement suggests an identification with Elizabeth, as an example of female succession, but what does so even more poignantly is that in Clifford's triptych, the female line has taken over all three panels: she is in her mother's womb in the middle, a young girl on the left and a mature heiress on the right. This triple depiction of herself across a period of time is a way of insisting on her visibility in the public sphere and her role in it which began even before her birth. As a public, civic person, she exists in history and has an impact on it.

Finally, Clifford's self portrait in the Appleby triptych is worth comparing to the famous Rainbow Portrait of Queen Elizabeth. Probably painted about 1600 by Isaac Oliver, it depicts Elizabeth in a gown decorated with English wildflowers and a cloak embroidered with pictures of eyes and ears, holding in her right hand a rainbow beneath an inscription reading "No rainbow without the sun." Clearly, one aspect of the symbolism is that the Queen is the sun, the source of light, to be reflected by those around her, as the rainbow reminds us. The thumb of the Queen's left hand is tucked into the folds of her cloak, while her fingers are gently intertwined with the material in what Louis Montrose has called "masturbatory self-sufficiency." The symbols in this portrait, the rainbow and the enfolded hand, although dramatically different from the symbolism of the Appleby painting, communicate a similar message: both depict a female who is not only self-contained, but who is the origin from which the forces of life emanate. Elizabeth appears as the source of light in which everything else is made visible; Clifford's triptych presents her as the fountainhead of her ancestral line, both carrying it on and regenerating it. Present in all three panels, Clifford stands at the beginning and end of the historical continuum: her fetal presence in the middle panel unites her legal possession, as she saw it, at the age of fifteen on the left, with her physical possession on the left. Both portraits depict females who are subjects of history, not its objects.

110. See Friedman, supra note 108, at 106.
Clifford also engaged in massive building and restoration projects on her estates, all of which contributed to the material manifestation of her identity. She rebuilt her five castles—Skipton, Appleby, Brough, Brougham and Pendragon—and built numerous churches, almshouses and monuments on her estates as well. She had each building inscribed with her inherited titles, her claims to the land on which it stood, and her role in building it. These projects were a way of imprinting herself on the land and they underline the basis of her identification with it. They also are material embodiments of her right to “enjoy” it in the legal sense, to shape it, change it, mark it—a right flowing from, and expressing, absolute ownership.

Clifford’s chosen architectural style was out of date, and intentionally so: she rejected the new style of Inigo Jones popular at the Jacobean Court in favor of the Gothic style of an earlier time. Critics have puzzled over this choice, and one has suggested that she “wanted her buildings to look out-of-date; these ancient architectural foundations were meant to prove her own ancestral ones.” I add another reason: the Gothic style hearkened back to a time when her legal claims arose, when the claims of daughters to inherit titles and estates were less anomalous, and when women holding titles and performing feudal duties was not as unheard of as in Clifford’s day.

Clifford’s inscriptions on her buildings underscore her physical identification with the land. The engraving on Barden Tower is representative:

This Barden Tower was Repayred
By the Ladie Anne Clifford Counte
Sse Dowager of Pembroke Dorsett
And Montgomery Baronness Clifford
Westermerland and Vessie Lady of the
Honor of Skipton in Craven and High

112. For a discussion of Clifford’s building and its relationship to the construction of her identity, see Anne M. Meyers, Construction Sites: The Architecture of Anne Clifford’s Diaries, in 5 ASHGATE CRITICAL ESSAYS ON WOMEN WRITERS IN ENGLAND, 1550–1700: ANNE CLIFFORD AND LUCY HUTCHINSON supra note 108, at 219, 220 (arguing that Clifford’s writings and monuments need to be read as cross referencing each other as a unified project to “create a record of legal ownership which did not exist solely on paper but was authoritatively inscribed on the properties themselves”). See also Thomas Cocke, Classical or Gothic? Lady Anne Clifford Reconsidered, in COUNTRY LIFE 167 (1980) (giving an art historical interpretation of Clifford’s architecture); John Charlton, The Lady Anne Clifford (1590–1676), in ANCIENT MONUMENTS AND THEIR INTERPRETATION 310 (M.R. Apted et al. eds., 1977) (describing Clifford’s autocratic attitude toward the total rebuilding of her Northern properties). Clifford’s biographers also describe her building projects in great detail. See sources cited supra note 5.

113. Meyers, supra note 112, at 220.
Sheriffesse by Inheritance of the Countie of Westmerland in the Yeares 1658 and 1659 After itt Had Layne RuinUous Ever Since About 1539 When Her mother then Lay in itt and was GreatE With Child With Her till Nowe That Itt Was Repayred By The Sayd Lady Isa[iah] Chap. 58 Ver. 12 Gods Name Be Praised114

This inscribing of her ownership also expresses the enjoyment of her property. Clifford took enormous pleasure in literally carving her mark in stone on her creations, leaving her mark, emphasizing the fact that her rebuilt castles, churches, almshouses and monuments were her way of taking possession of and shaping her land. Every building and every inscription commemorated her right to the property, both literally, by stating it, and symbolically, by standing on it, a silent materialization of Clifford’s subjective self. When she exercised her right to pass the estates on to her daughters, Clifford partook of the final stage of property possession, alienation—here, in the form of a testamentary devise.

V. Clifford’s Funeral Sermon

I conclude my discussion of Clifford by looking at her funeral sermon, turning from her own writing to a text written about her by one of her contemporaries. Preached by Bishop Edward Rainbow in 1676, it praised Clifford as the Wise Woman of Proverbs who “buildeth her house.” On its face, this seems appropriate: as discussed, Clifford built not one house, but many great castles, monuments, churches and almshouses. But the Wise Woman of Proverbs is a domestic creature whose part, according to Rainbow, “will be most within the house: while the husband is “more commonly abroad.” Indeed, Rainbow continues, a woman “abroad is out of her territories; she is as a ruler out of his jurisdiction.” To build, for the virtuous woman, he concludes, is to maintain the family, the children and the servants. Bishop Rainbow thus revises Clifford’s massive estate construction and governance as housekeeping. This is a striking revision, given recent scholarship about her significant political presence in the North as challenging to the landed Restoration gentry. Moreover, Rainbow isolates her from

114. Id. at 223.
her lineage in a way counter to Clifford's lifelong self-representation. He acknowledges that "her blood flowed from the veins of three anciently ennobled families," but goes on to insist that he will praise her only for "what was purely her own achievements," as is appropriate when praising noble women. By cutting her off from her ancestry in this way, Rainbow undermines the identity Clifford had struggled throughout her life to maintain: he cuts her off from a selfhood embedded in a network of legal rights and obligations that she inherited from her ancestry and isolates her "within the house." This is exactly the trend of the time with respect to women: as they lost rights to inheritance and property, they also lost access to public roles. Clifford's story offers a case study of the connection between these two trends and what they meant for women's identity.

Toward the end of the sermon, Rainbow tells us "[n]one disliked what she did, or was, because she was like herself in all things: sibi constans, semper eadem, the Great, Wise Queen's motto." The "great, wise Queen" was Elizabeth I, and her motto, semper eadem referred to her self referentiality and self sufficiency—that is, her status as rights bearing subject. Clifford's funeral sermon shows that her lifetime spanned a period when an autonomous discourse, at least for aristocratic women, was giving way as their claims to land were being undermined. Clifford was able to resist this trend, for herself at least, by tirelessly litigating her rights and then by enjoying her lands with a vengeance, indelibly marking them with her name.

CONCLUSION: PROPERTY AND GENDER TODAY

None of the foregoing is meant to express nostalgia for a time when life expectancy was thirty-five, twenty percent of mothers died in childbirth, and women were derided as a source of "shame to the body, and danger to the soule." This was no "Golden Age of equality between men and women." I do, however, believe that Clifford's story sheds light on the link between property rights and gender. It shows how women's access to absolute property ownership is linked to their

115. JOSEPH SWETNAM, THE ARRaignMENT OF LEWD, IDLE, FrowARD, AND UNCONST ANT WOMEN 16 (The Cicero Press 1989) (1615). As Patricia Crawford remarks of the period from 1500-1750, "it is fascinating to observe that although the reasons for women's necessary subordination might change, the axiomatic inferiority of women remained." Patricia Crawford, From the Woman's View: Pre-Industrial England, 1500-1750, in EXPLORING WOMEN'S PAST 63 (Patricia Crawford ed., 1984).

116. STRETTON, supra note 32, at 22 (noting that women in England have traditionally enjoyed "fewer rights, fewer privileges, less wealth, less influence in spheres of power and less control over domestic affairs, than English men").
full civic personhood, and reveals it in what Peter Laslett famously called one of the “voices we have lost.” Neither proto-feminist nor ahead of its time, Clifford’s voice throws into sharp relief what earlier social forms can sometimes teach.

Clifford’s resistance to the tide of law and history failed to preserve the estates for future generations of women: a descendant of Clifford’s first husband, Vita Sackville West, most famously the model for the androgynous heroine of Virginia Woolf’s Orlando, grew up at Knole House, part of Clifford’s estate in Kent, but lost it when the laws of primogeniture prevented her inheritance. To her great grief, it passed to her mother’s cousin, who turned it over to the National Trust in 1946. About this transfer, Vita wrote “the signing… nearly broke my heart, putting my signature to what I regarded as a betrayal of all the tradition of my ancestors and the house I loved.” Clifford’s story sheds light on what such losses mean beyond the realm of sentiment.

The struggle to re-forge the ink between property rights and personhood continues today. Women who litigate their right to marital property in fee simple rather than in the form of life estates, for example, continue this struggle for civic personhood. As this article has shown, these struggles are not about financial worth alone; rather, they express the striving for material expression of full civic status that absolute possession confers.