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# Arbitration and Elite Honour in Elizabethan England: A Case Study of Bess of Hardwick

Dr. Francis Calvert Boorman\*

## ABSTRACT:

*During the 1580s, Queen Elizabeth I intervened in a marital dispute between two of her foremost subjects, George Talbot, Earl of Shrewsbury and his wife, commonly referred to as Bess of Hardwick. The Queen appointed several of her Privy Councillors to negotiate a reconciliation. These events provide a case study of the use of arbitration and mediation in resolving familial disputes among the elite of Elizabethan England, and their particular application by the Queen and her closest advisers. This article also highlights the importance of contemporary conceptions of gender and honour to dispute resolution.*

## I. INTRODUCTION

One of the most remarkable arbitrations in the Elizabethan period concerned a breakdown of marital relations between Bess of Hardwick<sup>1</sup> and George Talbot, sixth Earl of Shrewsbury. In this episode, one can see the political, social, religious and economic imperatives that made reconciliation so important within the aristocratic families which made up England's elite during the sixteenth century. Family unity was intertwined with a collective sense of honour: disputes could damage family honour, while reconciliations might preserve it.<sup>2</sup> Furthermore, marital and family breakdown "threatened the success of the nuclear unit, and even of the long-term dynastic survival of the house."<sup>3</sup> Yet marital breakdown of varying degrees was not uncommon, estimated at 10 percent amongst the peerage between 1570 and 1659.<sup>4</sup>

Resolving disputes out of court was considered to be a cheaper option. Bess of Hardwick herself lauded the role of arbitration in "appeasing thos troublesome sutes

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\* Dr Boorman is an Associate Research Fellow at the Institute of Advanced Legal Studies. This article arose from work on the Records of Arbitration project, administered by the Institute of Advanced Legal Studies with funding from the Chartered Institute of Arbitrators. Thanks are due to the project directors, Professors William Twining and particularly Derek Roebuck. See DEREK ROEBUCK, *THE GOLDEN AGE OF ARBITRATION: DISPUTE RESOLUTION UNDER ELIZABETH I 165-79* (2015) (an earlier version). Thanks also to David Pashley for lending his palaeographic expertise.

1. Born Elizabeth Talbot, but popularly known as Bess of Hardwick. See Elizabeth Goldring, *Talbot, Elizabeth [Bess of Hardwick], countess of Shrewsbury (1527?-1608)*, OXFORD DICTIONARY OF NATIONAL BIOGRAPHY (Sept. 2004) <http://oxfordindex.oup.com/view/10.1093/ref:odnb/26925>.

2. Courtney Thomas, 'The honour & credite of the whole house,' *family unity and honour in early modern England*, 10 *CULTURAL & SOC. HIST.* 329-45 (2013) [hereinafter *The honour & credite of the whole house*].

3. FELICITY HEAL & CLIVE HOLMES, *THE GENTRY IN ENGLAND AND WALES, 1500-1700*, at 52 (1994).

4. LAWRENCE STONE, *THE CRISIS OF THE ARISTOCRACY, 1558-1641*, at 661 (1965).

by which I think in the end neither parties will gain, but the lawyers enriched.”<sup>5</sup> Yet even more important than ease and cost, arbitration and mediation were (and still are) such useful tools for effecting reconciliation within a family because they responded to wider social pressures and incorporated the individual concerns and emotions of the participants.<sup>6</sup> Those submitting to arbitration had to recognise the reciprocity of their relationship to an arbitrator who was very often their social superior. Looking beyond the law, and encompassing these social and economic contexts, is vital to properly understanding conflicts and their resolution in the early modern period.<sup>7</sup>

The importance of honour to dispute resolution was so longstanding in England that as late as 1773, a newspaper article suggested settling “affronts not cognizable by law” by establishing a Court of Honour as an alternative to duelling, but also “I know of none which might not be settled by arbitration.”<sup>8</sup> Richard Cust has highlighted three ways in which honour was expressed in early modern society: a traditional idea based on pride and wilfulness; a new humanist ideal emphasising wisdom, godliness and restraint; and a sense of service and loyalty to the monarchy, and compliance with the law.<sup>9</sup> All three are in evidence in this case study, the first in terms of slighted honour, but the second and third used more constructively. As Linda Pollock has argued, “[a]rbitrators intervened in disputes in order to achieve some kind of compromise and often brought honor into play . . . . Clinging too obstinately to a position rather than accepting some kind of accommodation or compromise was viewed as demeaning.”<sup>10</sup> Obstinance could be demeaning, but worse it signalled a lack of consideration for the honour of the arbitrator. Parties could emphasise the importance of their own honour, but could also appeal to the honour of the arbitrator, or of one another. Thus honour is shown to be a flexible concept in the negotiation process that could be mobilised in very different ways.

One of the features that makes this series of mediations and arbitrations unique is the personal involvement of the monarch. Queen Elizabeth was a proponent of arbitration and encouraged it as a form of dispute resolution, often in cases involving women and her close associates.<sup>11</sup> However, the Queen’s involvement in a dispute was rarely so personal, long-running and well documented. The Queen was keen that Bess and Shrewsbury should settle their differences and forcefully expressed her desire that the couple’s argument should come to an amicable conclusion. The role of arbitrator was considered a source of honour for elite men, displaying the virtues of fairness, justice and was strongly linked to their “rhetoric of paternalism and benevolent lordship.”<sup>12</sup> The role of arbitrator and its associated

5. Ian Rowney, *Arbitration in Gentry Disputes of the Later Middle Ages*, 67 *HIST.* 367, 376 (1982).

6. DEREK ROEBUCK, *THE GOLDEN AGE OF ARBITRATION: DISPUTE RESOLUTION UNDER ELIZABETH I* 259 (2015).

7. Craig Muldrew, *The culture of reconciliation: community and the settlement of economic disputes in early modern England*, 39 *HIST. J.*, 915, 918 (1996).

8. *To the Printer of the London Chronicle. On Dueling*, *LONDON CHRONICLE*, 14-16 Sept. 1773.

9. Richard Cust, *Honour and politics in early Stuart England: the case of Beaumont v. Hastings*, 149 *PAST & PRESENT* 57, 91 (1995).

10. Linda A. Pollock, *Honor, gender, and reconciliation in elite culture, 1570-1700*, 46 *J. BR. STUD.* 3, 19 (2007).

11. ROEBUCK, *supra* note 6, at 156-180.

12. Courtney Thomas, *Honour and reputation among the early modern English elite, 1530-1630*, at 97 (2012) (unpublished PhD thesis, Yale University) (on file with author) [hereinafter *Honour and reputation*].

virtues were equally well-suited to a queen, placing her as the ultimate upholder of the social order.

The participation of a woman with as much personality and ambition as Bess, make this an opportunity to study the role of gender in early modern mediation and arbitration. In particular, we see how women could effect a positive negotiation of early modern honour culture, skilfully manipulating the porous boundary between public and family life, that has at times been misconceptualised to leave us with a “partial view” of female honour.<sup>13</sup> Shrewsbury displayed a poor appreciation of the importance of self-restraint in masculine honour culture and, contrary to his wife, failed to take the honour of the arbitrators into account. Shrewsbury failed to negotiate the difficult ideal of an early modern married man: keeping his wife subordinated and under control, whilst fostering mutuality and leading by example.<sup>14</sup>

The rich evidence concerning the positions of all parties and the arbitrators themselves, across several different attempts at mediation and arbitration, allow us to understand what contemporaries felt was important about the process of arbitration, how the arbitrators came to a decision and how parties attempted to influence the outcome. This article begins with some background to the dispute between Bess and Shrewsbury, moving on to look in detail at the mediations and arbitrations that were carried out in the hope of reconciling the couple, chiefly between 1583 and 1586. Finally, there will be a discussion of why mediation and arbitration were used in this case, with particular reference to the early modern concept of honour.

## II. TROUBLE AND STRIFE

Bess was born to a fairly modest Derbyshire landowner, sometime around 1527.<sup>15</sup> She is now known chiefly as a builder of houses, including Hardwick Hall in Derbyshire, and of a dynasty.<sup>16</sup> Bess married Shrewsbury, her fourth husband, in 1567.<sup>17</sup> At the time of their marriage, Shrewsbury was one of the richest men in England.<sup>18</sup> He was also a member of the Privy Council and, as Lord Marshal, was ranked fourth in the hierarchy of the Queen’s advisers.<sup>19</sup> Bess already had eight children by her second marriage, six of whom survived into adulthood, and Shrewsbury had seven children by his first wife.<sup>20</sup> Having amassed considerable landholdings during her first three marriages, the match with Shrewsbury made good financial sense for Bess. Not only was Shrewsbury hugely wealthy and influential at court, but a lot of their land, particularly in Derbyshire, shared a border and so could usefully be consolidated by their union.<sup>21</sup> Their legacy was secured by the marriage

13. Garthine Walker, *Expanding the boundaries of female honour in early modern England*, 6 *TRANSACTIONS OF THE ROYAL HISTORICAL SOCIETY* 235, 236 (1996).

14. ALEXANDRA SHEPARD, *MEANINGS OF MANHOOD IN EARLY MODERN ENGLAND* 80-81 (2003).

15. See Goldring, *supra* note 1; see MARY S. LOVELL, *BESS OF HARDWICK: EMPIRE BUILDER* (Am. ed., 2006) (providing further background); KATE HUBBARD, *A MATERIAL GIRL: BESS OF HARDWICK, 1527-1608* (2001) (same); DAVID N. DURANT, *BESS OF HARDWICK: PORTRAIT OF AN ELIZABETHAN DYNAST* (1999) (same).

16. Elizabeth Goldring, *Talbot, George, sixth earl of Shrewsbury (c.1522–1590)*, *OXFORD DICTIONARY OF NATIONAL BIOGRAPHY* (Sept. 2004) <http://oxfordindex.oup.com/view/10.1093/ref:odnb/26928>.

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

of the two eldest of Bess' children to those of Shrewsbury, ensuring their land could be passed down to subsequent generations without becoming overly fragmented.<sup>22</sup>

Although initially they were a happy couple, the relationship between the Earl and Countess of Shrewsbury was put under considerable stress when Queen Elizabeth enlisted them as jailors of Mary Queen of Scots.<sup>23</sup> This role was not only politically delicate, it was also expensive, as Mary had to be kept at the couple's own estates in a manner that to some extent befitted a queen.<sup>24</sup> Although Queen Elizabeth demanded her strict isolation, the money to pay for Mary's rather luxurious incarceration was not often forthcoming, which was a source of much frustration to Shrewsbury.<sup>25</sup> As Mary's keepers, the strength of the marital bond between Bess and Shrewsbury had an added political significance.<sup>26</sup> Nevertheless, rifts between the couple began to show, first in sniping complaints made in their correspondence in the late 1570s.<sup>27</sup> Nicholas Booth attempted to reconcile the couple in 1580, but without success.<sup>28</sup> Ill feelings grew and began to be manifested in petty skirmishes between their servants during the early 1580s.<sup>29</sup> The explosive mixture of financial pressures and Mary's burdensome presence, mixed up with Bess' dynastic ambitions and her husband's cautiousness and paranoia, eventually escalated matters so that by 1583, the couple was living apart.<sup>30</sup>

By this time more concrete disagreements were emerging, and as with so many marital disputes in the upper echelons of society, financial tensions were at the heart of the matter.<sup>31</sup> The land that Bess had brought to their marriage had been made over to Bess' two sons by her previous husband, William and Charles Cavendish, with Bess retaining a life interest.<sup>32</sup> In return, Shrewsbury had been relieved of paying off Bess' debts and of paying William and Charles large sums of money on their coming of age which were required by their marriage settlement.<sup>33</sup> However, the Earl accused Bess of selling land without his permission, making their original agreement void. He consequently felt he could legitimately charge rent and claim revenues on Bess' land, as he believed it had reverted to his ownership.<sup>34</sup> Bess had also been buying land in Derbyshire in the name of her sons to keep it out of the hands of her husband.<sup>35</sup> Her property was, after all, "a key aspect of her honorable social identity."<sup>36</sup> Shrewsbury felt that Bess was taking advantage of him to create a private empire for herself and her clan, at a time when he was already being squeezed by his expenditure on Mary and debts built up by his sons.<sup>37</sup>

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22. Goldring, *Talbot, George*, *supra* note 16.

23. DURANT, *supra* note 15, at 60-61, *see id.* at 72-88 (regarding Mary's imprisonment).

24. *Id.* at 73.

25. *Id.*

26. *Id.* at 70.

27. LOVELL, *supra* note 15, at 268-72.

28. Thomas, *Honour and reputation*, *supra* note 12, at 226.

29. DURANT, *supra* note 15, at 120.

30. *Id.* at 119.

31. HEAL & HOLMES, *supra* note 3, at 75. DURANT, *supra* note 15, at 117-35 (detailing the dispute from 1580-1584).

32. DURANT, *supra* note 15, at 77.

33. *Id.*

34. *Id.* at 120.

35. *Id.* at 113.

36. Thomas, *Honour and reputation*, *supra* note 12, at 145.

37. DURANT, *supra* note 15, at 108.

Shrewsbury's servants and bailiffs were now aggressively collecting rents from tenants on what had previously been treated as Bess' land, some of whom had already paid Bess and were forced to pay twice, or even had their property relet without being consulted.<sup>38</sup> In July 1584, Shrewsbury himself rode to Chatsworth with 40 men to assert his ownership, but he was denied entry by an armed William Cavendish who was sent to the Fleet Jail for his aggressive defiance of his stepfather and subsequent excursions to Shrewsbury's property to take back some items that had been raided.<sup>39</sup> Throughout this period, Bess was lobbying Queen Elizabeth's closest advisers for help and protection for herself and her sons, displaying her mastery of one particular convention of early modern letter-writing, the letter of petition.<sup>40</sup> In a letter to the Queen's Secretary Francis Walsingham sent in April 1584, Bess apologetically attested that "to unfold my strange miseries shall but trouble you so well knowing them," but stated that she had letters from the Queen showing "I was promised defence from all oppression." Bess asked "that I may know what her majesty is determined in this case."<sup>41</sup>

The situation was not helped by rumours circulating in 1584 that Shrewsbury had been having an affair with Mary Queen of Scots and that they had had illegitimate children together.<sup>42</sup> While Mary and Bess had initially enjoyed a good relationship, they now despised one another, in part because Bess had been busy scheming (unsuccessfully) to bring her granddaughter into the line of succession, whom she hoped might occupy the throne that Mary believed was rightfully her own.<sup>43</sup> Mary alleged that the rumours of an affair had come from Bess and her sons.<sup>44</sup> The rumours were deemed serious enough to require Bess and her sons to appear under oath before the Privy Council, but their denials were believed and they were completely exonerated.<sup>45</sup> However, Shrewsbury remained dissatisfied with this verdict, while Bess felt that if not sexually involved with Mary, Shrewsbury had become overly sympathetic towards her during the many years of her incarceration.<sup>46</sup> Mary was, after all, purported to be very beautiful.<sup>47</sup> These events led Queen Elizabeth to decide in 1585 that some intervention should be made in the couple's dispute. We will now look in more detail at the mediations and arbitrations that occurred between the couple during the 1580s.

### III. EARLY SKIRMISHES AND ARBITRATION I: 1582 – APRIL 1585

In November 1582, Shrewsbury sent a letter to his son Henry Talbot, asking him to show it to the Vice Chamberlain and ask for advice on whether it would

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38. LOVELL, *supra* note 15, at 309.

39. *Id.* at 308-12 (providing detail on the altercation at Chatsworth).

40. READING EARLY MODERN WOMEN: AN ANTHOLOGY OF TEXTS IN MANUSCRIPT AND PRINT, 1550-1700, at 188-89 (Helen Ostovich, Elizabeth Sauer, & Melissa Smith eds., 2004).

41. *Bess of Hardwick to Francis Walsingham (Apr. 6, 1584)*, in BESS OF HARDWICK'S LETTERS: THE COMPLETE CORRESPONDENCE C. 1550-1608, <http://www.bessofhardwick.org/letter.jsp?letter=149> (last visited Mar. 23, 2016). Spelling in some quotations has been modernised at the request of the editors.

42. LOVELL, *supra* note 15, at 303.

43. *Id.* at 306-07.

44. *Id.* at 313.

45. *Id.* at 315-16.

46. DURANT, *supra* note 15, at 133-34. LOVELL, *supra* note 15, at 287-88.

47. *Id.* at 207.

sufficiently convince the Queen of Bess' wrongdoing.<sup>48</sup> Henry conveyed the opinion of the Vice Chamberlain that the letter was excessively sharp in two respects: it sounded far too much like it was condemning the Queen for partiality in Bess' favour and the end of the letter called for the discharge of Shrewsbury's enemies, which seemed to mean nothing less than the complete disgrace of his wife.<sup>49</sup> These two warnings seem particularly prescient given that Shrewsbury would make the same mistakes over and over. He failed to understand a key facet of the negotiation of early modern life: "Honor was not just a concept of entitlement. It was also one of obligation, mandating virtues such as hospitality, arbitration, and reconciliation."<sup>50</sup> In a dispute such as that between Bess and Shrewsbury, the honour of all parties had to be taken into consideration, including anyone attempting to arbitrate or mediate a solution. The reply warned Shrewsbury to tread carefully when dealing "with soe subtle and perilous an adversarie (as your wife)."<sup>51</sup> Subsequent events show that this was excellent advice which went entirely unheeded.

Arbitration between Bess and Shrewsbury was mentioned in July 1583, when the Earl was collecting rents from his wife's land but not paying her the allowance she was due.<sup>52</sup> Shrewsbury wrote a letter saying that his dispute with the Countess was to be settled by arbitration.<sup>53</sup> Bess was lobbying the Queen to have more witnesses examined in the case, whom she had waiting in London, but her request was passed on to the Lord Treasurer and Secretary Walsingham who decided that witnesses would be examined either by two Masters of Chancery, one for each party, "or else by somme poublique examiner."<sup>54</sup> The letter describing this arbitration was from Henry Talbot who often represented his father at Court, and suggested that after evidence had been heard, Shrewsbury could himself decide whether to make any restitution to the Cavendishes.

Soon afterwards, Bess wrote a seemingly pleading letter to Shrewsbury saying that she did not understand his ongoing hatred and insistence upon their separation, no doubt aware of the poor social and financial position most separated wives still suffered, a situation that was only beginning to change in this period.<sup>55</sup> Bess asked that she be allowed to go to him so that she could convince him of her innocence in person.<sup>56</sup> She suggested that the arbitration had come to a conclusion saying that "her Majesty justified you and us, the Lords at the Council, I and my sons clear you."<sup>57</sup> Despite its supplicating tone, this last statement suggests that it was Bess who had shown Shrewsbury forgiveness and not the other way around. The letter is addressed from Chancery Lane and it has been suggested that it may have been

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48. Shrewsbury's initial letter is mentioned in Henry Talbot's reply. See *Henry Talbot to the Earl of Shrewsbury (Nov. 17, 1582)*, in HISTORICAL MANUSCRIPTS COMMISSION 58, MANUSCRIPTS OF THE MARQUESS OF BATH PRESERVED AT LONGLEAT, VOLUME V: TALBOT, DUDLEY AND DEVEREUX PAPERS, 1533-1659, at 39-40 (1980) [hereinafter TALBOT, DUDLEY & DEVEREUX PAPERS].

49. LOVELL, *supra* note 15, at 302-03.

50. Pollock, *supra* note 10, at 28.

51. TALBOT, DUDLEY & DEVEREUX PAPERS, *supra* note 48, at 39-40.

52. LOVELL, *supra* note 15, at 304.

53. *Earl of Shrewsbury to Thomas Baldwin (July, 1583)*, Lambeth Palace Library, Talbot papers, MS.3198, folio 199.

54. *Henry Talbot to the Earl of Shrewsbury (Mar. 5, 1582-83)*, in TALBOT, DUDLEY AND DEVEREUX PAPERS, *supra* note 48, at 41.

55. STONE, *supra* note 4, at 661-62.

56. *Elizabeth, Countess of Shrewsbury to (George, the Earl of Shrewsbury) (Aug. 26, 1583 or prior)*, in TALBOT, DUDLEY AND DEVEREUX PAPERS, *supra* note 48, at 45-46.

57. *Id.* at 46.

drafted with the assistance of a clever lawyer, intent on showing that Bess had been working hard towards reconciliation and giving her advantage in any future disputes.<sup>58</sup> It is vital to recognise the emphasis Bess placed on being allowed to go to Shrewsbury and be by his side, both in her letters to Shrewsbury and when she was lobbying the Queen and her closest advisers, absolving her of any blame for the separation of the couple.

Alison Wall has identified Bess as one of a group of women “who in their rhetoric and behaviour defied the command for submission.”<sup>59</sup> In fact, throughout her dispute with Shrewsbury, Bess consistently used Elizabethan female rhetorical conventions of obedience and submission. She repetitively addressed her husband as “my Lord” or “your Lordship,” to the extent that she might use these monikers several times in a single sentence, in a show of negative politeness that highlighted her deference to her husband, a linguistic device commonly used by wives during this period.<sup>60</sup> Her linguistic restraint is even more striking when set against some of her other correspondence, such as a verbal message sent to Sir Thomas Stanhope declaring that he for his “wickedness become more ugly in shape then the vilest toade in the worlde,” and was an important tactic in allowing Bess secure success.<sup>61</sup> Bess was in a potentially vulnerable position from which she could better achieve her ends by strictly observing social conventions in her letters, a situation and response that were later echoed by her granddaughter, Arbella Stuart.<sup>62</sup>

At this early stage Robert Dudley, the Earl of Leicester, a leading statesman and privy councillor, was unequivocal in his belief that the couple should resolve their differences between themselves, with the implication that theirs was a private dispute. He lamented Shrewsbury’s situation with Bess, praying that God send Shrewsbury comfort, but adding “yt ys not for me or any to enter into those causes betwene you.”<sup>63</sup> There followed the altercation between Shrewsbury and William Cavendish already described, after which Leicester attempted to act as mediator between the couple in June 1584, under orders from the Queen.<sup>64</sup> Physical confrontation and the potential for wider disorder made the dispute a matter for public concern. Leicester still hoped that the dispute might remain a family matter and optimistically wrote to Shrewsbury that “your Lordship ys wyse and can tell how best to order and reforme those causes. They be within the lymytts of your authorityte.”<sup>65</sup> Leicester’s hopes were soon confounded, as Shrewsbury wrote to his wife stating his intention “to proceed by due order of Law with those my adversaries your sons unto the trial of there honesty & my honor.”<sup>66</sup>

58. LOVELL, *supra* note 15, at 304-05.

59. Alison Wall, *Deference and Defiance in Women’s Letters of the Thynne Family: the Rhetoric of Relationships*, in *EARLY MODERN WOMEN’S LETTER WRITING, 1450-1700*, at 77, 81 (James Daybell ed., 2001).

60. GRAHAM T. WILLIAMS, *WOMEN’S EPISTOLARY UTTERANCE: A STUDY OF THE LETTERS OF JOAN AND MARIA THYNNE, 1575-1611*, at 55 (2013).

61. STONE, *supra* note 4 at 224.

62. *THE LETTERS OF ARBELLA STUART* 53 (Sara Jayne Steen ed., 1994).

63. *The Earl of Leicester to the Earl of Shrewsbury (Oct. 22, 1583)*, in TALBOT, DUDLEY, AND DEVEREUX PAPERS, *supra* note 48, at 47.

64. DURANT, *supra* note 15, at 122.

65. *The Earl of Leicester to the Earl of Shrewsbury (Aug. 2, 1584)*, in TALBOT, DUDLEY AND DEVEREUX PAPERS, *supra* note 48, at 51.

66. *George Talbot, Earl of Shrewsbury to Bess of Hardwick (Aug. 4, 1584)*, in *BESS OF HARDWICK’S LETTERS: THE COMPLETE CORRESPONDENCE C. 1550-1608*, <http://www.bessofhardwick.org/letter.jsp?letter=119> (last visited Mar. 23, 2016).



Referring to a previous letter from Bess, Shrewsbury questioned why “so fair and unaccustomed show of dutifulness & humility of spirit comes now so late and so out of season that makes me suspect it to be a Sirens song set for some other purpose than it pretends.”<sup>67</sup> This was one of a long line of attempts by Shrewsbury to undermine Bess’ morality and status, having suggestively referred to her as a prostitute as early as 1577.<sup>68</sup> He continued to attack Bess, using impoliteness in his letters to undermine her as a wife and a mother.<sup>69</sup> Nevertheless, Leicester met Shrewsbury at court and accompanied him to a meeting with the Queen, who in the assessment of the courtier Roger Manners, “dealt with him earnestly to take again his lady, which he utterly refuseth, but for all causes of law I think he will not straightly refuse to be ordered by friends.”<sup>70</sup> Hoping to find a solution to these legal sticking points, the Lord Treasurer William Cecil, Lord Burghley commissioned a lawyer’s views on the causes depending between the couple, with Bess’ ambitions revealed by her complaint that Shrewsbury’s younger sons were to be executors of his will rather than her.<sup>71</sup> Shrewsbury, was under further pressure following the rumours concerning himself and Mary Queen of Scots and infuriated by the Privy Council’s exoneration of Bess and her sons. He brought a suit against Charles and William Cavendish, which was eventually heard on commission from the Privy Council before Lord Chancellor Bromley and the two Chief Justices on 8 February 1585.<sup>72</sup>

Shrewsbury’s main complaint concerned property matters, claiming that he was entitled to the return of lands made over to Bess’ sons in a deed of 1572 in lieu of money owed to Bess after their marriage.<sup>73</sup> He initially claimed this document to be a forgery and when it was found to be genuine, said that he was ill when he signed it.<sup>74</sup> He claimed that Bess had extracted money from him over the years, when he was ill and without his knowledge.<sup>75</sup> This commission made its award in April 1585.<sup>76</sup> Shrewsbury’s case was not backed up by hard evidence and it was recommended, in an award that looks much more like the result of an arbitration, that he should pay Bess £2000 in rent he had collected from her properties that year and welcome her back into his home.<sup>77</sup> In return, Bess was to pay the Earl £500 a year from the land she held that was the Earl’s. Nothing in this award pleased Shrewsbury. Even the annual sum of £500 was no consolation as it brought him yet more dishonour, essentially making him a pensioner of his wife.<sup>78</sup> He soon

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67. *Id.*

68. Thomas, *Honour and reputation*, *supra* note 12, at 227.

69. Graham Williams, *Politeness*, BESS OF HARDWICK’S LETTERS: THE COMPLETE CORRESPONDENCE C. 1550-1608 (April 2013), <https://www.bessofhardwick.org/background.jsp?id=177>.

70. *Roger Manners to the Earl of Rutland (Sept. 15, 1584)*, in 12 HISTORICAL MANUSCRIPTS COMMISSION, MANUSCRIPTS OF HIS GRACE THE DUKE OF RUTLAND, G.C.B., PRESERVED AT BELVOIR CASTLE, VOL. I, at 169 (1888).

71. *A View of Causes Depending Betwixt the Earl of Shrewsbury and His Countess, Delivered by Baldwyn* (Oct. 1, 1584) Lansdowne MS 40/41 (on file with British Library).

72. *Sir Francis Walsingham to the Earl of Shrewsbury (Dec. 19, 1584)*, in TALBOT, DUDLEY AND DEVEREUX PAPERS, *supra* note 48, at 53.

73. See generally DURANT, *supra* note 15, at 136-38 (discussing arguments before the commission).

74. LOVELL, *supra* note 15, at 323.

75. DURANT, *supra* note 15, at 137.

76. *Id.*

77. LOVELL, *supra* note 15, at 324.

78. *Id.*

wrote to the Queen complaining about the outcome and completely misrepresenting the balance of evidence.<sup>79</sup>

#### IV. BETWEEN ARBITRATIONS: 1585

A letter from the Earl of Leicester to Shrewsbury in April 1585, a reply on behalf of the Queen to a previous letter from Shrewsbury, gives the clearest exposition of the thinking behind her attempts to negotiate reconciliation. It began by reassuring Shrewsbury of her ongoing recognition of his fidelity to her, but reminded him that as sovereign she must “gyve justyce with equity to all persons.”<sup>80</sup> The Queen identified two “great matters for hir both in honor and equity”: firstly, the separation of man and wife itself which had happened after many years of a loving and *honourable* relationship and had occurred after Bess’ falling out with Mary Queen of Scots.<sup>81</sup> While it may not have been Shrewsbury’s intention, the Queen reminded him that this would work to Mary’s advantage. The Queen recognised

ther be ordynary places and courses for tryalls of such matters betwene party and partye, yet her Majesty hath that regard to you both, being in the best rank of her subjects, your wyfe by your place being cauled therto and making her piteous and lamentable complaint to her Majestie to take the order of this cause into her own gracious hands, whereby she dyd meane to have brought the chiefe and principall point she had most care up to a better pass than yet yt ys, which was to have a godly and crystyen reconcyment betwene you as man and wyfe.<sup>82</sup>

Arbitrating the dispute displayed the high regard she held Bess and Shrewsbury in, confirming—not undermining—their status. It was also a response to Bess’ petitions and the only morally and religiously satisfying course of action.

The second issue concerned the deeds and grants of land that Shrewsbury had made to Bess over the years and which Shrewsbury sought to revoke. The Queen conveyed the message that the commission of the Lord Chancellor and “others her lernyd juges” were unanimous in their understanding that Bess was meant to enjoy the land as gifts “but for want of one only cerymony in exstremyte of lawe, her Majestie dyd think reason to quallyfie with taking notwithstanding so much of my Ladys lyving from her as shuld make upp to your Lordship £500 yerely.”<sup>83</sup> Showing that there was still room for negotiation within this award, Shrewsbury was told that he could amend the list of lands sent to him that had been nominated by Bess for the £500 payment.<sup>84</sup> To this end the Lord Chancellor was brought in to mediate an agreed list of lands.

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79. *The Earl of Shrewsbury to Queen Elizabeth (Feb. 8, 1584-85)* in TALBOT, DUDLEY AND DEVEREUX PAPERS, *supra* note 48, at 54.

80. *The Earl of Leicester to the Earl of Shrewsbury (Apr. 30, 1585)*, in TALBOT, DUDLEY AND DEVEREUX PAPERS, *supra* note 48, at 55.

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.* at 55-56.

Leicester did not think to inform Bess of the settlement until three months later, although he reassuringly added that Shrewsbury should now have ceased any actions brought against her sons and that “I shall not nede to move her Maiestie anye further in your cause findinge her very myndfull thereof.”<sup>85</sup> Bess was at court in the summer and autumn of 1585, a situation which made Shrewsbury deeply suspicious. He wrote to the Queen fearing that Bess was there to discredit him and asked that she be sent home.<sup>86</sup> Come October, discord was once again turning into strife, with Bess complaining that Shrewsbury was maintaining “other men’s suits against her in Derbyshire and Shropshire.”<sup>87</sup>

Shrewsbury then wrote a long letter to the Queen lamenting that the matter “is again called into question.”<sup>88</sup> He argued that he had done everything asked of him, “though it seemed hard.”<sup>89</sup> Shrewsbury worried that his loyalty was being called into question by his wife’s “sclandarous speaches” and once again showed how his sense of wounded honour had transformed arguments about property into a highly emotive issue and therefore made them much harder to settle: “The grief that my wife hath conceived can not be removed nor the acusations thereof taken awaie.”<sup>90</sup> Thomas has argued that the couple contravened the strictures of contemporary moralists writing on marriage by railing against one another in public.<sup>91</sup> In fact, evidence of Bess undermining Shrewsbury is only found in his correspondence, as she meticulously avoided accusations of improper conduct towards her husband. Sent on the same day, Bess received an even longer and more rambling letter, again complaining how hard the original settlement was on Shrewsbury, but that he had met all of its terms anyway. Shrewsbury claimed her words to him, which seemed so beautiful, contained “a hidden poison,” suggesting that he was well aware of the effectiveness of Bess’ rhetorical strategy of submissiveness.<sup>92</sup> Shrewsbury raged bitterly that though she complained about money troubles, Bess was still able to buy land for her sons, perhaps mindful of yet more money he was being asked for by his own son, who was greatly indebted at the time.<sup>93</sup> Shrewsbury went so far as to send a third letter to his fellow Privy Councillor Walsingham that day, saying that Bess was not detailing the particulars of her grievances “which I am able to answere agreeable with my place and honor.”<sup>94</sup> He again denied breaking each point of the Queen’s order, even listing them to leave Walsingham in no doubt.

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85. Robert Dudley, *Earl of Leicester to Bess of Hardwick (July 12, 1585)*, in BESS OF HARDWICK’S LETTERS: THE COMPLETE CORRESPONDENCE C. 1550-1608, <http://www.bessofhardwick.org/letter.jsp?letter=151> (last visited Mar. 23, 2016).

86. *(The Earl of Shrewsbury) to Queen Elizabeth, (Oct. 23, 1585)*, in TALBOT, DUDLEY AND DEVEREUX PAPERS, *supra* note 48, at 54.

87. *Sir Francis Walsingham to the Earl of Shrewsbury (Oct. 12, 1585)*, in TALBOT, DUDLEY AND DEVEREUX PAPERS, *supra* note 48, at 60.

88. *The Earl of Shrewsbury to Queen Elizabeth (Oct. 23, 1585)*, in TALBOT, DUDLEY AND DEVEREUX PAPERS, *supra* note 48, at 60-61.

89. *Id.*

90. *Id.*

91. Thomas, *Honour and reputation*, *supra* note 12, at 269.

92. *The Earl of Shrewsbury to the Countess of Shrewsbury (Oct. 23, 1585)*, in TALBOT, DUDLEY AND DEVEREUX PAPERS, *supra* note 48, at 61-62.

93. *Gilbert, Lord Talbot, to the Earl of Shrewsbury (Sept. 17, 1585)*, in TALBOT, DUDLEY AND DEVEREUX PAPERS, *supra* note 48, at 57-60.

94. *The Earl of Shrewsbury to Sir Francis Walsingham (Oct. 23, 1585)*, in TALBOT, DUDLEY AND DEVEREUX PAPERS, *supra* note 48, at 62.

Clearly concerned about the outcome of any further arbitrations, Shrewsbury's desire for a cessation of outside interference in his relationship with his wife was revealed when Leicester wrote to him saying, "your Lordships request to me for no further dealing in moving reconcyllation betwene my Lady and you, I doe very willingly yeld therto."<sup>95</sup> Leicester said that he never would have "dealt so far as I have done wysing the good end I dyd betwene you but for the honor and love I have long born to your Lordship and your howse."<sup>96</sup> Leicester was soon to leave with an expeditionary force to the Low Countries and so the decision over further intervention would be taken without him. Intervention would in fact be imposed sooner rather than later as Copley, the Earl's bailiff, sent him reports that Bess was making further complaints to the Queen.<sup>97</sup> Bess did in fact complain to Walsingham soon afterwards that Shrewsbury had broken the Queen's previous order and that Copley should be detained at court to answer for his master.<sup>98</sup>

#### V. ARBITRATION 2: 1585-6

Apparently acting upon the advice of Lord Burghley, the Queen decided that it was once again time to manufacture a reconciliation. The calendar of State papers records on 7 December 1585, "Order of agreement taken between the Earl of Shrewsbury and the Countess his wife. Lands to be assured to the two younger sons of the Countess. Commission to be issued to John Manners, Esq., and Sir Francis Willoughby, for proof of the allegations on both sides."<sup>99</sup> Manners was Shrewsbury's brother-in-law by his first marriage, while Willoughby was an old friend of Bess and Sir William Cavendish.<sup>100</sup> The choice of these men was clearly based upon the common principle that each side should choose a representative as arbitrator.<sup>101</sup> The day afterwards, Lord Burghley and Walsingham were appointed to decide upon the petitions of Bess and her younger sons, making them final arbitrators after all the evidence had been examined by Manners and Willoughby, adding the weight of their status to a decision.<sup>102</sup> Bess was in a strong position, as was shown in a letter sent to her on 8 December by her half sister Elizabeth Wingfield, one of a number of women relations whom Bess relied upon for the bulk of her information from court. Wingfield wrote that "your good friend my Lady cheke had Long talk with her majesty lately of my Lord's hard dealing and the queen gave many good words what she would do for your honor."<sup>103</sup> Bess had access to a wide

95. *The Earl of Leicester to the Earl of Shrewsbury (Nov. 15, 1585)*, in TALBOT, DUDLEY AND DEVEREUX PAPERS, *supra* note 48, at 63.

96. *Id.*

97. *Christopher Copley to the Earl of Shrewsbury (Nov. 30, 1585)*, in TALBOT, DUDLEY AND DEVEREUX PAPERS, *supra* note 48, at 64.

98. *Bess of Hardwick to Sir Francis Walsingham (Dec. 2, 1585)*, in BESS OF HARDWICK'S LETTERS: THE COMPLETE CORRESPONDENCE C. 1550-1608, <http://www.bessofhardwick.org/letter.jsp?letter=153> (last visited Mar. 23, 2016).

99. *Queen Elizabeth - Volume 185: December 1585*, in CALENDAR OF STATE PAPERS DOMESTIC: ELIZABETH, 1581-90, at 289-94 (1865), <https://www.british-history.ac.uk/cal-state-papers/domestic/edw-eliz/1581-90/pp289-294> (last visited Sept. 3, 2013).

100. LOVELL, *supra* note 15, at 328.

101. ROEBUCK, *supra* note 6, at 89.

102. *Queen Elizabeth - Volume 185: December 1585*, *supra* note 99.

103. *Elizabeth Wingfield to Bess of Hardwick (Dec. 8, 1585)*, in BESS OF HARDWICK'S LETTERS: THE COMPLETE CORRESPONDENCE C. 1550-1608, <http://www.bessofhardwick.org/letter.jsp?letter=098> (last visited Mar. 23, 2016).

range of correspondents, and the network of women she cultivated opened up a channel of news to her which was not available to Shrewsbury.<sup>104</sup> This letter leaves us in no doubt that honour was an equally important concept to women, although it sometimes carried different connotations and could be mobilised in different ways. However, there was no simple dichotomy between male and female honour in the period.<sup>105</sup> Bess often played the peacemaker but she always did so in a way that protected her self-interest and it seems fair to suggest that she was equally assertive about defending her honour.

Witnesses were examined by Manners and Willoughby on 12 January 1586 with instructions from Burghley and Walsingham and a commission from the Chancery, reporting some arguments from the parties on exactly how to proceed.<sup>106</sup> While the evidence was being digested, the Queen took advantage of the lull in active dispute to write to Shrewsbury personally and explain the advantage of mediation, in an attempt to persuade him to drop the suits he was still pursuing against Bess' tenant Beresford and her son William Cavendish.<sup>107</sup> Shrewsbury agreed to postpone the suit against William Cavendish, but insisted on prosecuting the suit against Beresford as it touched his "honor and credit."<sup>108</sup>

The action against Beresford was for nothing short of "*scandalum magnatum*," the crime of dishonouring someone of noble rank.<sup>109</sup> Resort to *scandalum magnatum* was often encouraged by the Crown as an alternative to aristocratic violence, but more importantly "became a way of reinforcing—albeit artificially—old and weakening social boundaries."<sup>110</sup> Actions were generally brought by those born into established families and against utterances "impugning the honour and dignity of peers."<sup>111</sup> Shrewsbury alleged that Beresford had accused him of attempting to raise an army of 20,000 men against the Queen. The charges were almost certainly trumped up, but Shrewsbury pursued them remorselessly as a way to punish Bess by proxy.<sup>112</sup> He worked to ensure Beresford's guilt by manipulating the case at the York assizes, even going so far as to hire all available counsel so that the defendant could not be properly defended.<sup>113</sup> This sideshow was important in mediating between the couple as Shrewsbury continued to link the action to his honour.

The Queen was undeterred and explicit in her belief in mediation instead of a legal remedy:

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104. James Daybell, 'Suche newes as on the Quenes hye ways we have mett: ' *the News and Intelligence Networks of Elizabeth Talbot, Countess of Shrewsbury (c.1527-1608)*, in *WOMEN AND POLITICS IN EARLY MODERN ENGLAND, 1450-1700*, at 122 (James Daybell ed., 2004).

105. Thomas, *The honour & credite of the whole house*, *supra* note 2, at 334.

106. *John Manners and Sir Francis Willoughby to Lord Burghley and Sir Francis Walsingham (Jan. 12, 1585-86)*, in *TALBOT, DUDLEY AND DEVEREUX PAPERS*, *supra* note 48, at 66.

107. *Queen Elizabeth to the Earl of Shrewsbury (Mar. 5, 1585-86)*, in *TALBOT, DUDLEY AND DEVEREUX PAPERS*, *supra* note 48, at 67.

108. *Queen Elizabeth - Volume 187: March 1586*, in *CALENDAR OF STATE PAPERS DOMESTIC: ELIZABETH*, *supra* note 99, at 309-17, <https://www.british-history.ac.uk/cal-state-papers/domestic/edweliz/1581-90/pp309-317> (last visited Jan. 18, 2015).

109. John C. Lassiter, *Defamation of Peers: The Rise and Decline of the Action for Scandalum Magnatum*, 1497-1773, 22 *AM. J. LEGAL HIST.* 216, 216 (1978).

110. *Id.* at 220.

111. *Id.*

112. DURANT, *supra* note 15, at 139-40.

113. *Hercules Clay to Bess of Hardwick (Mar. 19, 1586)*, in *BESS OF HARDWICK'S LETTERS: THE COMPLETE CORRESPONDENCE C. 1550-1608*, <http://www.bessofhardwick.org/letter.jsp?letter=235> (last visited Mar. 23, 2016).

We have long desired, for your owne good and quiet, that all matters of difference between the Countesse your wife, her sonnes and you, might be brought to some good composition; for which purpose we have appointed the L. Thresorer and the Secretary to do their best endeavor for the accomplishing of the same, so as we would be loth that anie thing should faule out, by presenting of matters in coorse of lawe, that might any way interrupted our good intent and meaning in that behalf. And therefore whereas the last yere, when we toke the mediation of the cause in controversy betwin you into our handes, we did order that there should be a staie made of all proceedings in lawe against the said Countesses servants and sonnes... we cannot but pray you again, as a thing we looke you will performe, that you do staie your proceeding against them, for that we would be glad that all causes of controversie betwin you should receive some end rather by way of mediation then by sute of law, assuring you that we wishe yt cheefely for your good, without any intent or meaning that by this staie your credit should be any way towchid, wherof we are no lesse carefull then of our owne.<sup>114</sup>

Shrewsbury continued to lobby the arbitrators, for the most part attempting to keep control of the matters under consideration by them and prevent any issues not specifically covered by the Queen's order being decided upon.<sup>115</sup> His correspondence reads very much like an attempt at damage limitation. Meanwhile, Bess was advertising her compliance by offering a number of different options for Shrewsbury to choose as settlement, communicated to him by Leicester.<sup>116</sup>

A decision was finally reached on 8 May 1586, ordered by Queen Elizabeth and recommended by Burghley, Walsingham and Sir Thomas Bromley, the Lord Chancellor.<sup>117</sup> The orders set down were very plain and for the most part reaffirmed earlier decisions. The Earl was to content himself with the £500 of land assigned to him, while he was ordered to pay the £2000 that he was still withholding, to cease any outstanding actions nor bring any further actions against the Countess and her sons and servants and not to displace any of her tenants.<sup>118</sup> The one concession made to Shrewsbury was that his suit against Bess' tenant Beresford, which had been won by underhand means, could proceed to judgement, as long as any damages received did not profit Shrewsbury and that afterwards he considered the matter completely closed.<sup>119</sup> This concession was made not because the Queen in anyway believed the cause to be just, but because she recognised the importance of the Earl's claim "that his honour was interested in the cause."<sup>120</sup>

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114. *Queen Elizabeth to the Earl of Shrewsbury (Mar. 5, 1585-86)*, in TALBOT, DUDLEY AND DEVEREUX PAPERS, *supra* note 48, at 67.

115. *Instructions from the Earl of Shrewsbury to Henry Talbot, to be shown to the Lord Treasurer and Secretary Walsingham (Mar. 18, 1585-86)*, in TALBOT, DUDLEY AND DEVEREUX PAPERS, *supra* note 48, at 67-68.

116. *The Earl of Leicester to the Earl of Shrewsbury (May 1, 1586)*, in TALBOT, DUDLEY AND DEVEREUX PAPERS, *supra* note 48, at 69.

117. *The Earl of Shrewsbury versus the Countess of Shrewsbury (May 8, 1586)*, in TALBOT, DUDLEY AND DEVEREUX PAPERS, *supra* note 48, at 69-70.

118. *Id.*

119. *Id.*

120. *Id.*

Following the decision, the Queen wrote to Shrewsbury again saying that she had always hoped to see the dispute between the couple “by our mediation brought some good end and accorde, both in respecte of the place we holde, whiche requireth at our handes that we should not suffer in our realme two-personnes of your degree and qualitie to live in suche a kinde of divided sort.”<sup>121</sup> Once again, the status of the couple was emphasised. The Queen was remarkably kind in her tone, saying that she realised her first attempt at mediation had not given Shrewsbury repose or quietness of mind, recognising the centrality of emotion and not property rights to the case.<sup>122</sup> The Queen explained the choice of her mediators, which somewhat contradicts the evidence concerning this particular arbitration and so probably refers to the previous commission, followed by this case of 1585-6: the Lord Chancellor, because he had presided over their case previously, and Leicester were asked to deal between Shrewsbury and Bess’ family to perfect and execute a formal order.<sup>123</sup> Burghley and Walsingham were then brought in to deal with Shrewsbury’s negotiators (his son Henry and his Bailiff Copley) because her former order had not brought things to a quiet end. Making absolutely clear that the Queen considered herself final arbitrator in this matter, she said she had weighed up the reports and opinions of her four advisers, added her own long experience of the case, and was personally endorsing the current order which it was her pleasure Shrewsbury should abide by.<sup>124</sup>

## VI. ARBITRATION 3: 1586

Still, Shrewsbury would not let the matter rest. Soon afterwards on 23 May 1586, he wrote an angry letter to Lord Burghley hoping that neither he nor the Queen would press him into paying any more money than that which truly belonged to the Cavendishes.<sup>125</sup> He stated that he had been given no order to cease suits against the Cavendishes or their servants, in direct contradiction to the events of less than two weeks before.<sup>126</sup> Shrewsbury added that it would have been an injustice to let Beresford go unpunished and that surely by defending him, Bess was clearly showing her wish to overthrow “me and my house.”<sup>127</sup> Expanding his circle of enemies, Shrewsbury even “Finds Mr. Secretary [Walsingham] so much devoted to his wife that he thinks he is fitter to be a witness for her than a judge in these causes.”<sup>128</sup> Such intemperance was doubtless harmful to Shrewsbury’s cause, calling into question Walsingham’s honourable conduct and failing to display the masculine virtues of “wisdom, reason, discretion, moderation.”<sup>129</sup>

In yet another letter to Shrewsbury, pleading her innocence and still asking to be allowed to go to him even at the very height of their dispute, Bess ended by

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121. *Queen Elizabeth to the Earl of Shrewsbury (May 12, 1586)*, in TALBOT, DUDLEY AND DEVEREUX PAPERS, *supra* note 48, at 70.

122. *Id.*

123. *Id.*

124. *Id.*

125. *The Earl of Shrewsbury to Lord Burghley (May 23, 1586)*, in CALENDAR OF THE CECIL PAPERS IN HATFIELD HOUSE, VOLUME 3: 1583-1589, at 141-143 (1889), available at <https://www.british-history.ac.uk/cal-cecil-papers/vol3/pp141-143>.

126. *Id.*

127. *Id.*

128. *Id.*

129. SHEPARD, *supra* note 14, at 75.

sending her “wonted bounden prayers for your Lordshipes moste perfyte healt, honour & longe lyffe.”<sup>130</sup> Bess also wrote to Burghley, once again detailing the misery of her situation, asking for his protection and appealing to his goodness and, of course, his honour.<sup>131</sup> Like many Elizabethan women, Bess emphasised her vulnerability as a way of defending her interests.<sup>132</sup> Furthermore, by involving Burghley’s honour in her cause, Bess quietly introduced the possibility that his honour might be damaged if he could not help her, a strategy later used on the same man by Arbella Stuart, who seems to have learned her negotiating skills from her grandmother.<sup>133</sup> Shrewsbury remained unmoved and refused to be reconciled with his wife.<sup>134</sup>

By this time, Shrewsbury’s failure to negotiate a decisive agreement and seeming indecisiveness about honourable practice was gaining him opprobrium in wider society. Roger Manners wrote to his brother John Manners saying of Shrewsbury that if the latest peace “be not to his honor and lyking, ther is none to blame but himself, for it is don by his owne accord.”<sup>135</sup> Yet Shrewsbury’s son Gilbert gave further evidence of his father’s continuing anger and intransigence by writing to Burghley, asking for advice on how to respond to his raging, which partly stemmed from the belief that Gilbert had aided Bess in securing “this late nobell and godly act of her Majestie on my mother-in-lawes behalfe.”<sup>136</sup> Shrewsbury continued to write to the long-suffering arbitrators in his cause, setting out to Burghley the terms on which he felt he was obliged to welcome his wife back into his home.<sup>137</sup>

As Shrewsbury remembered them, the Queen’s orders included a year’s probationary period, his right to defray Bess’ living expenses with her own income and that he could deny her children the right to visit her.<sup>138</sup> While he said the Queen had granted him these conditions, he brazenly added that her Majesty wished him to welcome Charles Cavendish to him, but he had denied her request.<sup>139</sup> Misremembering the Queen’s orders, whether mistakenly or on purpose, was bad enough. Openly defying them was deeply ill-advised. Walsingham had also received one of Shrewsbury’s missives asking him to confirm Shrewsbury’s interpretation of the

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130. *Bess of Hardwick to George Talbot, sixth Earl of Shrewsbury, (June 9, 1586)*, in BESS OF HARDWICK’S LETTERS: THE COMPLETE CORRESPONDENCE C. 1550-1608, <http://www.bessofhardwick.org/letter.jsp?letter=176> (last visited (Mar. 24, 2016)).

131. *Bess of Hardwick to Lord Burghley (June 13, 1586)*, in BESS OF HARDWICK’S LETTERS: THE COMPLETE CORRESPONDENCE C. 1550-1608, <http://www.bessofhardwick.org/letter.jsp?letter=230> (last visited (Mar. 24, 2016)).

132. See Felicity Heal, *Reputation and Honour in Court and Country: Lady Elizabeth Russell and Sir Thomas Hoby*, 6 *TRANSACTIONS OF THE ROYAL HIST. SOC’Y* 161, 164 (1996).

133. *LETTERS OF LADY ARBELLA STUART*, *supra* note 62, at 54.

134. *Roger Manners to his brother, John Manners (June 17, 1586)*, in 12 *HISTORICAL MANUSCRIPTS COMMISSION, MANUSCRIPTS OF HIS GRACE THE DUKE OF RUTLAND, G.C.B., PRESERVED AT BELVOIR CASTLE, VOL. I*, at 195 (1888).

135. *Roger Manners to his brother, John Manners, at Haddon (July 20, 1586)*, in 12 *HISTORICAL MANUSCRIPTS COMMISSION, MANUSCRIPTS OF HIS GRACE THE DUKE OF RUTLAND, G.C.B., PRESERVED AT BELVOIR CASTLE, VOL. I*, at 200 (1888).

136. *Gilbert, Lord Talbot, to Lord Burghley (July 24, 1586)*, in TALBOT, DUDLEY AND DEVEREUX PAPERS, *supra* note 48, at 71.

137. *The Earl of Shrewsbury to Lord Burghley (July 27, 1586)*, in *CALENDAR OF THE CECIL PAPERS IN HATFIELD HOUSE, VOLUME 3: 1583-1589*, at 148-55 (1889), available at <https://www.british-history.ac.uk/cal-cecil-papers/vol3/pp148-155>.

138. *Id.*

139. *Id.*



Queen's order.<sup>140</sup> Walsingham cautiously replied that he did not wish to place interpretations on the Queen's words without her knowledge. Walsingham added that he might not remember the finer points of the issue, witheringly explaining that he had little recollection of the Queen mentioning the grievances which Shrewsbury now raised.

The beginning of August 1586 brought yet another attempt to find a solution, this time with both parties at Court. Shrewsbury involved Burghley in a demand for the return of some silver plate by Bess. To call the list exhaustive is an understatement; it included everything from four spoons to two chamber basins.<sup>141</sup> Bess offered a point-by-point rebuttal of the claims and then dismissed as a whole the list of "small trifles," which the wife of any nobleman might expect to be given over the course of a 19-year marriage.<sup>142</sup> The couple went on to argue over a list of articles that were broadly the same as those settled in previous attempts at mediation-arbitration, though Bess now asked that the Queen appoint an eyewitness to live in her house and observe, then report back, her good behaviour towards her husband and "beseecheth her Majesty to conclude this her honourable Godly work."<sup>143</sup> Shrewsbury next laid out a hugely unrealistic set of accounts, showing what he felt he was owed. Bess wrote him a letter which continued to be conciliatory and asked whether she could go to him, but his reply rambled and raged even by his own significant standards, dredging up all aspects of their dispute and showing him at his most unreasonable, claiming that by marrying Bess he "brought you to all the honour you have" and asking, "Is it fit that you should gage my plate, and mine arms upon it? Can you do me greater dishonour?"<sup>144</sup>

The Queen must have been sick of this dispute and a final set of eight articles was decided upon to bring the matter to a close.<sup>145</sup> The articles specified that the Countess and Earl would spend some time together, after which they should cohabit regularly.<sup>146</sup> A specific provision was made for the Earl to defray some of the Countess' living costs.<sup>147</sup> The Earl was to accept the land worth £500 per annum and the Countess hold on to the rest of her living. She would, "upon her honour," keep all the extant silver plate for her own use (returning a salt of silver to Sir H. Tirrell), but it would revert to her ownership if the Earl died.<sup>148</sup> Assurances would later be sought from the Earl and his three sons about the Countess' jointure. William and Charles Cavendish were found to have misused the Earl, particularly citing the stand-off at Chatsworth, and were ordered to submit to him on their knees, saying

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140. *Letter from Sir Francis Walsingham to the Earl of Shrewsbury (July 28, 1586)*, in TALBOT, DUDLEY AND DEVEREUX PAPERS, *supra* note 48, at 72.

141. *Answer to the Demand of Plate by Made by the Earl of Shrewsbury (Aug. 4, 1586)*, in CALENDAR OF THE CECIL PAPERS IN HATFIELD HOUSE, VOLUME 3: 1583-1589, at 155-70 (1889), available at <https://www.british-history.ac.uk/cal-cecil-papers/vol3/pp155-170>.

142. *Id.* at *Articles for the Earl and Countess of Shrewsbury (Aug. 1, 1586)*; *Id.* at *Answer to the Demand of Plate made by the Earl of Shrewsbury (Aug. 4, 1586)*.

143. *Id.* at *Answer to the Earl of Shrewsbury's Articles, which his Lordship wisheth might be set down for her Majesty's order (Aug. 4, 1586)*.

144. *Id.* at *The Earl of Shrewsbury to his Countess (Aug. 5, 1586)*.

145. *Agreement between the Earl of Shrewsbury and his Countess (Aug. 7, 1586)*, in CALENDAR OF THE MANUSCRIPTS OF THE MOST HON. THE MARQUIS OF SALISBURY, PRESERVED AT HATFIELD HOUSE, HERTFORDSHIRE, VOL. 3: 1583-1589, at 165-67 (1889).

146. *Id.*

147. *Id.*

148. *Id.*

that they were ready to serve the Earl and would cause him no further offence.<sup>149</sup> The brothers could then see their mother that day and go to the family houses at Chatsworth and Wingfield at their pleasure.<sup>150</sup> Testimony was also given that Bess and her sons had never spread rumours about the Earl's loyalty to the Queen.<sup>151</sup>

The Queen, was told the outcome by Lords Bromley and Burghley, and then called Bess and Shrewsbury to her to express her gladness at the reconciliation, thanking him

for that she knew he had conformed himself to this good act for her sake and at her request, adding, that she took it to tend much to her honour that by her mediation they both were thus accorded.

And with many good comfortable speeches required them both to proceed and persevere in this godly act of recoucement [sic]. And so they both shewed themselves very well content with her Majesty's speeches, and in good sort departed together, very comfortable to the sight of all their friends, both lords and ladies, and many others of the best sort.<sup>152</sup>

It is interesting to note that even the Queen felt her honour enhanced by this so-called mediation. The departure of the couple before an audience of their peers added an extra theatricality to the occasion and provided ritual confirmation of the reconciliation of Bess and Shrewsbury. Harmony between the couple lasted about a week, but their arguments had to be set aside as a more important matter loomed into view. The trial and subsequent execution of Mary Queen of Scots was personally traumatic for Shrewsbury: as Earl Marshal he was present at both and had to give the signal to the executioner.<sup>153</sup>

Still Shrewsbury wrote to Walsingham the next January that unless his wife made "some publicke submission and retractation . . . I shall thinke my honor not repayred."<sup>154</sup> In April 1587, the Queen again returned to the matter of the Earl and Countess, who were both in London at the time. After fractious negotiations involving Bess' daughter (and Shrewsbury's step-daughter) Mary, the Queen spoke to Shrewsbury for an hour.<sup>155</sup> He agreed to arrange for Bess' "honourable conveyance" to their house at Wingfield where he would join her, time and health permitting. He also undertook to provide her with £300 annually and some extra for housekeeping. The next term, Walsingham, the Lord Treasurer and the Lord Chancellor would decide "the questions between them as to money, cattle, statutes, bonds, and devises in law."<sup>156</sup> After spending at least some time together, Bess complained again to Burghley in October 1587 that Shrewsbury had not visited her

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149. *Id.*

150. *Id.*

151. *Agreement between the Earl of Shrewsbury and his Countess*, *supra* note 145, at 165-67.

152. *Id.* at 166.

153. LOVELL, *supra* note 15, at 346-48.

154. *Earl of Shrewsbury to Walsingham (Jan. 31, 1587)*, Calendar of State Papers, Domestic Series 12/207, folio 3.

155. *Gilbert, Lord Talbot to His Uncle (Apr. 6, 1587)*, in 12 HISTORICAL MANUSCRIPTS COMMISSION, MANUSCRIPTS OF HIS GRACE THE DUKE OF RUTLAND, G.C.B., PRESERVED AT BELVOIR CASTLE, VOL. I, at 212-13 (1888).

156. *Id.* at 213.

more than three times and had ceased providing for her, even denying her “sufficient fire.”<sup>157</sup>

The Queen took no further action, presumably distracted by the small matter of the Spanish Armada. Shrewsbury died in 1590, without letting Bess come to see him, despite one final admonition from the Bishop of Lichfield and Coventry.<sup>158</sup> Shrewsbury’s experiences do not seem to have turned him against arbitration. His will nominated four supervisors and arbitrators, among them Lord Burghley, with each to receive £100.<sup>159</sup> During the 1590s, Bess supervised the completion of a piece of embroidery depicting Diana and Actaeon, the story representing her “own disdain toward the male gaze,” and perhaps that of her late husband in particular.<sup>160</sup>

## VII. ARBITRATION AND HONOR

This final irony of Shrewsbury’s life points to the first reason why arbitration and mediation were used in this case: their ubiquity in Elizabethan life.<sup>161</sup> Mediation and arbitration would certainly have been familiar to the couple, and in particular Shrewsbury. Before the marriage of his son Francis in 1562, negotiations for the marriage settlement were carried out with the Master of the Rolls acting as arbitrator, whom Shrewsbury wrote to, offering a choice of two residences for the young couple as part of the terms.<sup>162</sup> Shrewsbury had himself acted as an arbitrator alongside the Lord Chief Justice in 1580 to determine the boundaries of several manors, which represented the inheritances of two men and that were near his own landholdings.<sup>163</sup> Acting as mediator or arbitrator in local disputes was increasingly seen as favourable to the honour of landowners.<sup>164</sup> In another example, Shrewsbury received a letter saying two men from Derbyshire were willing to submit to arbitration over various controversies if the Earl would appoint the arbitrators.<sup>165</sup> Although it seems certain that Bess would have had earlier experience of arbitration in her own land dealings than the following case in 1595, she may not have been named, as the property would have been legally owned by her husband. Widowed by the death of Shrewsbury in 1590, Bess presumably had a freer hand to conduct her own negotiations in her own name. Bess and her tenants were involved in a dispute with another woman Millicent Woolhouse and her tenants, concerning common use of a piece of land.<sup>166</sup> The arbitrators decided that Bess’ tenants would have

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157. *Queen Elizabeth - Volume 207: Miscellaneous*, in CALENDAR OF STATE PAPERS DOMESTIC: ELIZABETH, *supra* note 99, at 450, <http://www.british-history.ac.uk/cal-state-papers/domestic/edw-eliz/1581-90/p450> (last visited Jan. 18, 2016).

158. DURANT, *supra* note 15, at 146-50.

159. *Will of George, Earl of Shrewsbury (May 24, 1590)*, Nottinghamshire Archives, DD/4P/46/1.

160. READING EARLY MODERN WOMEN: AN ANTHOLOGY OF TEXTS IN MANUSCRIPT AND PRINT, 1550-1700, *supra* note 40, at 475.

161. Muldrew, *supra* note 7, at 918.

162. *Earl of Shrewsbury to the Master of the Rolls (Nov. 17, 1561)*, Lambeth Palace Library, Talbot papers, MS.3206, folio 393.

163. *Award by George, Earl of Shrewsbury and Sir Chris. Wraye, Lord Chief Justice (Mar. 30, 1580)*, Nottinghamshire Archives, DD/FJ/4/8/8.

164. Thomas, *The honour & credite of the whole house*, *supra* note 2, at 330.

165. *Robert Whythall to the Earl of Shrewsbury (Mar. 6, 1586)*, Lambeth Palace Library, Shrewsbury papers, MS.706, folio 172.

166. *Arbitration between Elizabeth Countess of Shrewsbury and Millicent Woolhouse (1595)*, Derbyshire Record Office, D187/2/68.

no right to common usage, but in return Millicent and her heirs would have to pay Bess and her heirs five shillings annually.<sup>167</sup>

Yet the dispute between Bess and Shrewsbury was anything but routine. What made the Queen decide that a combination of mediation and arbitration involving her closest advisers and her personal attention over the course of four long years was necessary, even at a time of instability in matters of state and foreign affairs? And what lay behind the tactics used by the parties involved, particularly Shrewsbury's approach of complete intransigence? Firstly, Elizabeth recognised that this high-profile couple were much talked about and their situation could be used as an example of how such issues should be dealt with. The Queen obviously felt that negotiating a settlement was the honourable response for a monarch when her subjects were feuding. Christian reconciliation was an important principle for the Queen, although more practical considerations were involved. The family unit was not just based around love and affection but was also an economic reality.<sup>168</sup>

The Queen recognised the value of what the Earl and Countess of Shrewsbury had done for her in imprisoning Mary. Reconciliation via mediation and arbitration fitted with the "issues of trust and personal intimacy with the monarch, backed by social and familial networks, which defined Elizabethan politics, not institutions or institutional status."<sup>169</sup> For her allegiance to the Queen, Bess was given unfailing support in her causes; Shrewsbury's reward for his many years of financial and political service as both jailor and member of the Privy Council was more dubious but arguably more valuable. His refusal to comply with the Queen's orders was met with tolerance and even kindness, rather than the brutal coercion which almost anyone else would have experienced after such disobedience.<sup>170</sup> The Queen's aims are in fact encapsulated by one historian's summary of the meaning of honour: "Honour can be said to mediate between the aspirations of the individual and the judgement of society."<sup>171</sup> And the disparity between aspirations and judgement was much wider in Shrewsbury's case.

There have been suggestions that Shrewsbury was increasingly suffering from mental illness during this period and was therefore in no fit state for any rational process of negotiation.<sup>172</sup> However, alleged mental illness should not be used as an excuse to dismiss, or even overshadow, the importance of Shrewsbury's reasons for acting as he did. Shrewsbury repeatedly advertised his hot-headedness in the numerous and lengthy rants he sent by letter. Such loss of control would have been detrimental to his reputation, as the ability to control one's temper was considered to be an important quality of leadership.<sup>173</sup> Nevertheless, there is extensive evidence of elite members of society carrying on disputes with family members, where they felt their personal reputation had been slighted to the extent that family honour

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167. *Id.*

168. Pollock, *supra* note 10, at 14.

169. NATALIE MEARS, QUEENSHIP AND POLITICAL DISCOURSE IN THE ELIZABETHAN REALMS 71 (2005).

170. Comparison with Raleigh's imprisonment and banishment from court for marrying the wrong woman is just one example. See Mark Nicholls, Penry Williams, *Raleigh, Sir Walter (1554–1618)*, OXFORD DICTIONARY OF NATIONAL BIOGRAPHY, <http://0-www.oxforddnb.com.catalogue.oxforddnb.com/view/article/230> (last accessed Jan. 16, 2016).

171. Cust, *supra* note 9, at 59.

172. Lovell, *supra* note 15, at 320–21.

173. Pollock, *supra* note 10, at 14.

no longer took precedence.<sup>174</sup> Even with the religious pressures of the strongly Protestant court and society in which he lived, and the personal intervention of the Queen, Shrewsbury would not be cajoled into taking back his wife, as he regarded the settlement being pressed upon him to be detrimental to his own rather old-fashioned sense of honour, which he was “very touchy” about.<sup>175</sup>

Shrewsbury clearly valued his loyalty to the monarch, and his faithful and honourable service, particularly concerning Mary Queen of Scots, was acknowledged by the Queen’s continuing concern for his honour and peace of mind during his dispute with Bess. However, his inability to balance restraint and pride was detrimental to his standing with respect to his wife when submitted to the judgment of his peers. He would certainly have fallen foul of Lord Burghley’s “belief that personal honour had to yield to public necessity.”<sup>176</sup> He was unwilling or unable to take into account the honour of the arbitrators, which was also at stake. The arbitrators in this case consisted of the handful of people in England that could be considered Bess and Shrewsbury’s superiors, and Bess was much more successful at bearing this fact, and the arbitrators’ honour, in mind.<sup>177</sup>

Honour has previously been conceptualised as a highly individual and gendered value: “a man’s honour depended on the reliability of his spoken word; a woman’s honour on her reputation for chastity.”<sup>178</sup> More recent reconsideration of honour as a collective exercise has shown women to be far more important in the framing and performance of elite honour culture.<sup>179</sup> The importance of peace-making to honour has been made very clear throughout this series of arbitrations.<sup>180</sup> And although the impetus to bring peace through arbitration and reconciliation flowed from Queen Elizabeth, it was also a vital component of male honour that was understood and then practised by the Queen’s advisers.<sup>181</sup> Honour was clearly an important consideration for Bess as well. As early as 1580, Leicester related in a letter to Shrewsbury how Bess had told him “of dyvers hard dealings that had bin used toward hir, as one was, that she had byn as yt were slyted before your servauntes.”<sup>182</sup> Bess too had a sense of pride, but she understood better than Shrewsbury those other facets of supposedly male honour.<sup>183</sup> Bess’ success in her cause was as much down to her ability to juggle all these different ideas of honour, as it was to the law being on her side.

While it is possible Bess’ letters to Shrewsbury protesting her innocence and asking to be allowed to go back to him may have been out of genuine love for him, she understood that showing her appreciation of certain values, including a belief in the sanctity of marriage shared with the Queen, would put her in good stead for

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174. Thomas, *The honour & credite of the whole house*, *supra* note 2, at 340.

175. DURANT, *supra* note 15, at 105.

176. Heal, *supra* note 132, at 162.

177. See *Bess of Hardwick to Lord Burghley (June 13, 1586)*, in BESS OF HARDWICK’S LETTERS: THE COMPLETE CORRESPONDENCE C. 1550-1608, <http://www.bessofhardwick.org/letter.jsp?letter=230> (last visited Mar. 24, 2016).

178. LAWRENCE STONE, *THE FAMILY, SEX AND MARRIAGE IN ENGLAND 1500-1800*, at 90, 503 (1977).

179. Pollock, *supra* note 10, at 21.

180. *Id.* at 26.

181. As we have seen, Leicester, Burleigh, Bromley and Walsingham all acted as mediators and/or arbitrators.

182. *The Earl of Leicester to the Earl of Shrewsbury (June 26, 1580)*, in TALBOT, DUDLEY AND DEVEREUX PAPERS, *supra* note 48, at 26.

183. See Cust, *supra* note 9, at 91.

any ensuing arbitrations.<sup>184</sup> Pollock points out that “To possess honor in daily life meant living up to the values of forbearance, moderation, obligation, harmony, and reconciliation.”<sup>185</sup> Bess realised that in the world of the early modern English nobility, one sometimes had to put family honour before personal honour, particularly if trying to gain favourable judgement from one’s peers. On the issue of forbearance, it is worth quoting Pollock at some length:

A wife’s ability to endure the faults of her husband has been conventionally portrayed as a passive virtue and evidence of the inferior position of women vis-a`-vis men. Elite Englishwomen were undoubtedly normally the weaker half of the marital partnership, but, in light of the cultural prominence accorded peacemaking activities, we need to revise our understanding of toleration and accommodation. Being patient was not an avoidance of activity; it was a strenuous exercise in itself—that of living in charity with others—and one that brought honor to the individual.<sup>186</sup>

Bess may have been the weaker half of her partnership in a legal sense, but in terms of her emotional control and her ability to negotiate a situation to her advantage, she appears very much stronger.<sup>187</sup> Bess recognised that steely forbearance, particularly when set down in writing, would display both her own honourable conduct and her attempts to preserve the honour and togetherness of her family.<sup>188</sup> This could be useful evidence in any ongoing disputes that would impress the arbitrators she dealt with, who were clearly persuaded that Bess’ notion of honour was consonant with their own.

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184. See E. CARLTON WILLIAMS, BESS OF HARDWICK 168-69 (1959); *Elizabeth, Countess of Shrewsbury to (George, Earl of Shrewsbury), (Aug. 26, 1583 or prior)*, in TALBOT, DUDLEY AND DEVEREUX PAPERS, *supra* note 48, at 45-46; discussion *supra* p. 28.

185. Pollock, *supra* note 10, at 29.

186. *Id.* at 26.

187. See *Bess of Hardwick to Lord Burghley (June 13, 1586)*, in BESS OF HARDWICK’S LETTERS: THE COMPLETE CORRESPONDENCE C. 1550-1608, <http://www.bessofhardwick.org/letter.jsp?letter=230> (last visited Mar. 24, 2016). Bess’ lobbying of various members of the Privy Council and the Queen are evidence of her skill. *Id.*

188. See e.g., *Bess of Hardwick to Lord Burghley (June 9, 1586)*, in BESS OF HARDWICK’S LETTERS: THE COMPLETE CORRESPONDENCE C. 1550-1608, <http://www.bessofhardwick.org/letter.jsp?letter=176> (last visited Mar. 24, 2016) (providing an example of Bess’ repeated attempts to seek reconciliation with Shrewsbury).