WORDSCAPE: CHILDREN IN COURT

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Law in early America was based on English common law. Basically, *common law* is not defined by statutes but is derived from what is understood to be the law, modified or clarified by judicial decisions. Because the circumstances in the American colonies were different from those in England, and because individual colonies had differing goals and forms of governance, we fairly quickly saw common law undergoing changes and statutes being passed.

INFANTS, MINORITY, MAJORITY

We think of *infants* as being babies, but legally *infancy* means someone who is not an adult, in other words, under twenty-one at common law, also called *minority* or *nonage*, which ended when *majority* or *full age* was reached.

The legal understanding about children in America was based on English common law, which in turn was based on biblical concepts. Childhood was divided in three sections of seven years each. Under the age of seven, it was considered that a child could not be responsible for his or her actions, specifically criminal acts. Between seven and fourteen, a child generally was still considered not responsible for criminal actions, but that could be argued in court on a case-by-case basis.

Between fourteen and twenty-one, the general interpretation was that with limitations a child could be responsible for his or her own actions, including criminal acts. A fourteen-year-old could legally witness a will or deed (although, quite frankly, this wouldn't have been the preferred choice, but would suffice in a pinch). This consideration of the meaning of reaching the age of fourteen has other implications, as discussed below under guardianships.

A testator could specify an age at which his children could take possession of their property (including different ages for different bequests and different children), in effect changing the age of majority for purposes of receiving property. Sometimes a testator specified ages under twenty-one, but it isn't at all unusual to see a man devising land to a son at age twenty-five.

ORPHANS AND GUARDIANS

We think of an *orphan* as someone who has lost both parents, but from a legal point of view, it can refer to someone who has lost one parent (almost always the father) and through whom there was inherited property. *Guardians* were for persons who had property interests, i.e., an inheritance, not for penniless orphans. Our visualization of a "poor orphan" might have been considered something of a legal oxymoron. (Note that a guardian could be appointed for an adult with an inheritance who was not capable of acting for himself or herself.)

Guardianships are one of the most interesting record types for genealogists, because they can provide age limits for children at both upper and lower levels. A child with property would need a guardian until he or she turned twenty-one. If the child was below fourteen, the guardian had to be *appointed*. Once the child turned fourteen, he or she could *petition* for a specific guardian (girls could, and did, request specific guardians). Think about what this means for our research.

If the court on 6 December 1820 appointed a guardian for Thomas Smith, we know that he was born after 6 December 1799 (because he was under twenty-one) and before 6 December 1820 (the date of the court). Note, however, that we can't say with certainty that Thomas was under fourteen just because he hadn't expressed an interest in a particular guardian. He might not have had a preference.

If, on the other hand, on 6 December 1820 Robert Smith asked that William Wilson be appointed his guardian, we know Robert was born after 6 December 1799 (because he was under twenty-one) and before 6 December 1806 (because he was at least fourteen).

The savvy genealogist will comb guardianship records. A child with an appointed guardian might come back into court later to request his or her guardian. Often this occurred soon after the child's fourteenth birthday.

DIVVYING UP

No, that's not the legal term. The terms of interest are *distribution*, *valuation*, *partition*, and *division*. These occur when personal property is distributed or real estate is valued, partitioned, or divided amongst the heirs. These records may appear in a probate file or in a book of probate or court records. Those involving land might be in any of those places, but are commonly found in deed books.

Often, these events are triggered silently when one of two things happens: either the widow dies or remarries, or the youngest child comes of age. In other words, the record isn't going to tell you why they are doing it at that time. When you find one of these events, reexamine the whole family to see if you can identify the trigger. This may allow you to approximate a probable birth, death, or marriage date.

Next time we'll look at another record involving children—apprenticeships.

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