# LAW, GOVERNMENT AND AUTHORITY IN MID-TUDOR ENGLAND 1540–1570

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James McComish
Magdalen College

## ABSTRACT

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This thesis investigates legal and political authority in mid-Tudor England, using the operation of the legal system in Oxfordshire and Berkshire in the period from 1540 to 1570 as a case study through which to give context and content to more abstract forms of contemporary political thought. It seeks to address the broad question: how did people experience the civil—as opposed to the criminal—legal system, and what does this tell us about their understanding of authority? In so doing, it aims to shed light on mid-Tudor attitudes towards legality, limited government and the rule of law.

The argument of the thesis is built up piece by piece. First, people in the Thames Valley engaged in a remarkable, and increasing, amount of litigation over the period in question, much of which was based on antecedent commercial transactions. Encountering the law, whether in its litigious or transactional forms, was thus a very common social experience. Second, despite their frequent interaction with the legal system, ordinary people perhaps knew less about the technical law than some historians have suggested. Third, even if technical legal knowledge was not widespread among the population, the complicated map of overlapping jurisdictions and rival legal institutions meant that ordinary people nonetheless cultivated a detailed mental map of their legal world. Boundaries mattered because jurisdiction and legal authority mattered. Fourth, partly because of their own lack of detailed technical knowledge, and partly because of the complicated legal landscape which they had to navigate, people sought out legal advice from professional advisers. Fifth, even if people frequently sought out professional legal advice, many people's experience of the law (and of lawyers) was far more negative than their desire to seek out such advice might suggest. Seen in this light, the social utility of legal institutions was quite separate from their ability to provide an idealised standard of abstract justice.

# LONG ABSTRACT

This thesis investigates legal and political authority in mid-Tudor England, using the operation of the legal system in Oxfordshire and Berkshire in the period from 1540 to 1570 as a case study through which to give context and content to more abstract forms of contemporary political thought. It seeks to address the broad question: how did people experience the civil—as opposed to the criminal—legal system, and what does this tell us about their understanding of authority? In so doing, it aims to shed light on mid-Tudor attitudes towards legality, limited government and the rule of law.

The argument of the thesis is built up piece by piece. First, people in the Thames Valley engaged in a remarkable, and increasing, amount of litigation over the period in question, much of which was based on antecedent commercial transactions. Encountering the law, whether in its litigious or transactional forms, was thus a very common social experience. Second, despite their frequent interaction with the legal system, ordinary people perhaps knew less about the technical law than some historians have suggested. Third, even if technical legal knowledge was not widespread among the population, the complicated map of overlapping jurisdictions and rival legal institutions meant that ordinary people nonetheless cultivated a detailed mental map of their legal world. Boundaries mattered because jurisdiction and legal authority mattered. Fourth, partly because of their own lack of detailed technical knowledge, and partly because of the complicated legal landscape which they had to navigate, people sought out legal advice from professional advisers. Fifth, even if people frequently sought out professional legal advice, many people's experience of the law (and of lawyers) was far more negative than their desire to seek out

such advice might suggest. Seen in this light, the social utility of legal institutions was quite separate from their ability to provide an idealised standard of abstract justice.

In order to give a richly textured sense of people's experience of the legal system in mid-Tudor England—how they understood law, government and authority—this thesis views that experience from a number of different angles. Chapter 2 views it through the records of a single court, namely the Court of Common Pleas. Chapter 3 in turn looks at the experience of a single local community, namely Dorchester on Thames. Chapter 4 takes up a single type of legal problem, namely that of boundary-drawing and jurisdictional disputes. Chapter 5 looks at a single kind of legal relationship, namely that between lawyer and client. Finally, Chapter 6 brings these strands together by looking at the experience of a single litigant, namely St John's College, Oxford. Each chapter aims to add a layer to the one before, thereby building up a cumulative picture in which the whole can appear more clearly.

The first chapter begins with a short introductory case study of the legal travails of Sir Francis Stonor, a wastrel gentleman of Oxfordshire whose troubles arose in part because of his poor navigation of the legal system of his day. The chapter goes on to set the geographic and historical scene by introducing the patterns of settlement, communication and landholding in the Thames Valley; by introducing the leading landowners in Oxfordshire and Berkshire—most notably the Crown and individuals whose wealth and influence were derived from royal service; and by pointing out the traces and connections between legal activity in the region and wider political events in the country as a whole. While there were certainly moments of turbulence in mid-Tudor Oxfordshire and

Berkshire—notably the commotion time of 1549—the continuity and stability among office-holders and landholders was striking.

The chapter then addresses some of the spatial ways in which people experienced the legal system (such as the location of courts and legal institutions, people's mental map of overlapping jurisdictions, and regional patterns of litigation), before turning to a historiographical survey of legal doctrine, legal institutions and legal knowledge in early modern England. In particular, this section emphasises the importance of understanding the doctrinal and institutional context of law when attempting to draw conclusions about the social reality that underlies legal records.

Chapter 2 starts with the story of John Lovett and William Weston, the two Common Pleas attorneys practising in Banbury, who managed to irritate almost everyone in their town, not least each other. In the shifting political and religious context of the mid-Tudor period, their feud illustrates some of the least appealing aspects of the law and the legal system, but it also serves to emphasise the practical importance to the legal system of the Court of Common Pleas and its attorneys.

The heart of this chapter is a comprehensive analysis of Oxfordshire and Berkshire litigation in the Common Pleas in six sampled years between 1547 and 1562. Among other topics, this provides important data on the increasing volume of litigation; the relative proportion of different causes of action; the extent to which lawsuits were pursued to advanced procedural stages; patterns of financial transactions as revealed by litigation; regional differences in type or volume of litigation; and the identity of leading attorneys and their clientele. In particular, the growth in litigation over the period in question was

closely linked to the rise of London-originating debt suits, and not to a rise in litigiousness more generally.

Chapter 3 starts with the story of Luke Beauforest, a legally-trained gentleman of Dorchester on Thames, whose attempts at fraud and forgery shed important light on the extent of legal knowledge among his family and neighbours. The chapter then examines the extent of lay legal knowledge more generally, and takes a sceptical approach to some recent historical writing about 'popular legalism'. It goes on to consider the relevance of literacy to legal understanding through an analysis of the use and readership of manorial court rolls and other legal documents; the role of forgery and deceit in revealing levels of legal knowledge; and the means by which laypeople might obtain redress in the face of legalistic exploitation.

In particular, the evidence for the level of ordinary people's knowledge of legal detail—even about customary law—is less secure than has sometimes been assumed. The unusual dispute in Dorchester about whether '*sibi et suis*' betokened a copyhold of inheritance or a term of three lives allows us to see something of ordinary people's actual knowledge of the law, but it also helps us to see why such a glimpse is a rare opportunity compared with most cases. Nonetheless, legal documents—especially court rolls—had a wider audience than those who could understand the technical details in their entirety. This kind of partial legal literacy was probably the form of legal knowledge that was most useful and important to ordinary people in early modern England.

Chapter 4 features a case study of the coroners' inquest into the suicide of Frideswide Taylor in Walton manor, north of the City of Oxford. Her moment of private despair

became a public spectacle as the tenants of Wolvercote and Walton came to blows with the officers of the City of Oxford over their respective jurisdictional boundaries and the accompanying right to hold an inquest into Frideswide's death. The chapter goes on to consider the importance of boundary-drawing and the assertion of jurisdictional rights, especially in the civic context. It places an emphasis on the role and operation of law courts—especially borough courts—as civic institutions. It then explores the difficulties that ordinary people could face in situations of jurisdictional ambiguity, whether as a result of physical uncertainty about boundaries or legal uncertainty about who had the authority to hold court.

In particular, the assertion of jurisdictional rights was an important part of communal self-definition. Boroughs, manors and other entities often purported to restrict the right of insiders to sue elsewhere, but given the rise of litigation in central courts the practical utility of such regulations (even in fiscal terms) was often less important than their symbolic value. In the case of towns like Oxford, the presence of rival sources of local authority—whether in the form of the University of Oxford or powerful neighbouring landowners like George Owen—made the definition of boundaries and the symbolic assertion of authority all the more important. As a result, ordinary people could find themselves caught in a very delicate situation of interlocking and overlapping spheres of legal and political power.

Chapter 5 begins with a case study of the tangled dispute between Richard Polkyns (an apparently poor and uneducated husbandman) and the local gentleman John Doyley over a small plot of land at Denton (Oxon), which enriches our understanding of the funding of litigation and the use of legal professionals in mid-Tudor England. The chapter examines

the extent of access to professional legal services in Oxfordshire and Berkshire, and the way those services could be funded—especially through collective funding techniques. The chapter then considers the professional services that lawyers could offer their clients, but lest this be thought to create too rosy a portrayal of the legal profession the chapter ends by considering some of the negative aspects of the legal system, notably expense, delay, quarrelsomeness, ineffectiveness on the part of office-holders, as well as more severe forms of misdoing like perjury, bribery, maintenance and corruption.

In particular, a wider spectrum of society sought and valued professional legal advice than had any deep legal knowledge of their own. A fundamental feature of the Tudor legal system was therefore the social value that was placed on obtaining legal advice from others. That is to say, it was a culture that emphasised hiring lawyers, rather than being an amateur lawyer oneself.

The case study at the beginning of the Chapter 6 concerns a much more typical encounter with the legal system than some of the other chapters: namely, routine debt litigation in the Chancellor's Court of Oxford University. The chapter then draws on the remarkable surviving letters between Sir William Cordell, Master of the Rolls, and St John's College, Oxford. These give a rare insight into the view of law, justice and authority taken by a senior judicial figure. In conjunction with financial and other records, they help us to build up an unusually rich picture of the legal affairs of one particular litigant, namely St John's College. The chapter considers Cordell's role as Visitor and patron, and his expectation of reciprocity; the legal and commercial practices of St John's, including their access to legal advice; Cordell's role as a mediator and arbitrator—especially the extent and limitations of

his authority; and the problem of internal order and disharmony in the little commonwealth of St John's.

In particular, as a judge and patron Cordell was well placed to offer practical advantages to St John's in its legal dealings, but his dual role also helps us to see how the rule of law placed real constraints on the ability of judges and other authority figures to benefit their clients. If the facts on the ground were not clearly in the college's favour; if the legal right genuinely lay somewhere else; if a political dispute intersected with a rival network of patronage; or if a legal dispute had simply bypassed the Court of Chancery, then Cordell's ability to help was constrained.

Chapter 7 offers a thematic conclusion of the thesis under the headings of 'law', 'government' and 'authority'.

# PREFACE

This thesis would not have been possible without the assistance, support and encouragement of a great many people and institutions. I am deeply grateful to them all.

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**Figure 1 – Berkshire Record Office in the snow, January 2010**

I am particularly pleased to thank the archivists and librarians of the colleges of the University of Oxford: All Souls' College, Christ Church, Corpus Christi College, Magdalen College, New College, Queen's College, St John's College and Trinity College. This thesis reveals the debt that I owe to these institutions and their staff, but I would especially like to thank Robin Darwall-Smith and Michael Riordan, whose help and encouragement have gone well beyond the call of duty.

Portions of this thesis have been presented at the early modern Britain seminar, legalism seminar and the legal history forum at the University of Oxford; the legal history seminar and legal history colloquium at the University of Cambridge; the British Legal History Conference; and at the Association of Young Legal Historians. I am grateful to all the convenors and participants at those events for the chance to present my work and for the very helpful criticism and suggestions I received.

A move to Cambridge provided me with an unexpected opportunity to teach law and undertake legal and historical research in unusually conducive surroundings. I am therefore very grateful to my new colleagues at Selwyn College and the Faculty of Law at the University of Cambridge.

My interest in early modern British history was first cultivated as an undergraduate at the University of Melbourne by the teaching of Barry Collett. He inspired a whole cohort of students to pursue research in this field, both in Australia and overseas. I am grateful to him and to my fellow students—especially Rayne Allinson—for their inspiration and example.

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# ABBREVIATIONS AND CONVENTIONS

ASCA – All Souls' College Archives
CCA – Christ Church Archives
CCCO – Corpus Christi College, Oxford, Archives
Bodleian – Bodleian Library, University of Oxford
BRO – Berkshire Record Office
LA – Lincolnshire Archives
MCA – Magdalen College Archives
NCA – New College Archives
OHC – Oxfordshire History Centre
OUA – Oxford University Archives
QCA – Queen's College Archives
SJCA – St John's College, Oxford, Archives
TCA – Trinity College, Oxford, Archives

All other manuscript references are to documents in the National Archives, Kew.

CPR – Calendar of Patent Rolls
L & P Hen VIII – Letters and Papers, Foreign and Domestic, Henry VIII
Hist Parl – S.T. Bindoff (ed.), *The History of Parliament: The House of Commons 1509–1558* (3 vols., London, 1982)
HMC – Historical Manuscripts Commission
ODNB – Oxford Dictionary of National Biography
VCH – Victoria County History

Dates are given Old Style, but the year is taken to begin on 1 January.

Counties are referred to by their pre-1974 boundaries.

Spelling and punctuation have been modernised.

# CHAPTER 1

## INTRODUCTION:
## NAVIGATING THE LAW IN MID-TUDOR ENGLAND

In 1553, Sir Francis Stonor was much in need of consolation. His father—knighted at Flodden, sometime JP, MP and Sheriff of Oxfordshire, and Constable of the Tower of London—had been dead for three years, but his 33-year-old son had proved to be a poor steward of his inheritance. In fact, he was so poor a steward that he had landed himself in the Fleet, imprisoned for bad debts of several hundred pounds. At least he had with him his servant John Passy, who tells us that he 'did as it were attend upon him, and read unto him Titus Livius [i.e. Livy] and other writers in the Latin tongue'.[1] Passy's attempts at a more practical resolution of his master's problems ended disastrously. Through various intermediaries, he introduced him to Walter Loveden, a substantial Berkshire landowner, who offered to lend Sir Francis enough to pay his debts, secured—as one would expect—by substantial mortgages.

Sadly, Sir Francis' knowledge of the classics was apparently better than his knowledge of the law, and Walter Loveden succeeded in relieving him of three manors. In an unsuccessful chancery suit attempting to regain them, Sir Francis emphasised his youth and unskilfulness in the law, and that in him, Loveden 'conceiv[ed] that he had a fit bait for his covetous and greedy mind'.[2] Stonor confessed that he made his bargains with Loveden 'without taking any learned counsel therein' since he was 'driven to extreme

[1] BRO D/ELV/L1 fols 22–3.
[2] C3/167/2.

need' as he sought 'deliverance out of prison', and 'mind[ed] the trouble which would ensue to his wife, children and family' because of his predicament.

The travails of Sir Francis Stonor are an unusually colourful microcosm of mid-Tudor England as a whole. Plainly, some people were shrewd operators like Loveden and were able to use legal knowledge to their advantage; others, like Stonor, were by temperament, education or financial situation less able to profit from the law. Given the omnipresence of legal transactions in everyday life and the litigious temper of the age, all of them—sophisticate and simpleton alike—were likely to encounter the legal system at some point. How did they cope? How much did they know? How can we tell? And what might this be able to say about politics and society in the mid-Tudor era more broadly?

This thesis investigates legal and political authority in mid-Tudor England, using the operation of the legal system in Oxfordshire and Berkshire in the period from 1540 to 1570 as a case study through which to give context and content to more abstract forms of contemporary political thought. It seeks to address the broad question: how did people experience the civil—as opposed to the criminal—legal system, and what does this tell us about their understanding of authority? In so doing, it aims to shed light on mid-Tudor attitudes towards legality, limited government and the rule of law.

In order to give a richly textured sense of people's experience of the legal system in mid-Tudor England—how they understood law, government and authority—this thesis views that experience from a number of different angles. Chapter 2 views it through the records of a single court, namely the Court of Common Pleas. Chapter 3 in turn looks at the experience of a single local community, namely Dorchester on Thames. Chapter 4 takes up

a single type of legal problem, namely that of boundary-drawing and jurisdictional disputes. Chapter 5 looks at a single kind of legal relationship, namely that between lawyer and client. Finally, Chapter 6 brings these strands together by looking at the experience of a single litigant, namely St John's College, Oxford. Each chapter aims to add a layer to the one before, thereby building up a cumulative picture in which the whole can appear more clearly.

This thesis tells the story of people like John Lovett and William Weston, the two feuding attorneys of Banbury; of Luke Beauforest, an errant gentleman of Dorchester on Thames; of Frideswide Taylor, whose private despair sparked a legal battle on the edges of Oxford; of Richard Polkyns, a poor but unusually resourceful husbandman of Denton; and of Sir William Cordell, whose legal expertise made him a highly valued patron. It's also about the less flamboyant experiences of ordinary people, such as a certain Stephen Gunn—a servant of the substantial Thames Valley landowner William Belson—who was brought before the Court of Star Chamber after an allegedly riotous entry at Chinnor (Oxon).[3] Gunn stands as an example of so many others: his brush with the legal system—and, importantly, the preservation of the evidence recording it—means that he has not, in fact, been entirely lost to the enormous condescension of posterity.[4]

The argument of the thesis is built up piece by piece. First, people in the Thames Valley engaged in a remarkable, and increasing, amount of litigation over the period in question, much of which was based on antecedent commercial transactions. Encountering the law, whether in its litigious or transactional forms, was thus a very common social experience. Second, despite their frequent interaction with the legal system, ordinary people perhaps

[3] STAC 3/3/70.
[4] Cf E.P. Thompson, *The Making of the English Working Class* (London, 1980), p. 14.

knew less about the technical law than some recent historians have suggested. In particular, much of the surviving evidence is in a form which makes it difficult to recover the voice of any authentically plebeian legal culture. Even so, a wider audience saw, valued, and understood the sense of legal documents than understood either the technical detail or indeed the bulk of those documents' written words.

Third, even if technical legal knowledge was not widespread among the population, the complicated map of overlapping jurisdictions and rival legal institutions meant that ordinary people nonetheless cultivated a detailed mental map of their legal world. Boundaries mattered because jurisdiction mattered; and jurisdiction mattered because the authority of legal institutions mattered, nowhere more so than in the civic context. In particular, the importance placed on the right to hold a court was fundamental to the self-conception of civic authority. Fourth, partly because of their own lack of detailed technical knowledge, and partly because of the complicated legal landscape which they had to navigate, people sought out legal advice from a large number of advisers. Most of these were professionals, albeit of varying degrees of status, education and professional eminence. The greatest indicator of the desire for such services is the willingness of people at all levels of society to pay for them—most notably through the collective funding of litigation.

Fifth, even if people frequently sought out professional legal advice, many people's experience of the law (and of lawyers) was far more negative than their desire to seek out such advice might suggest. Some users of the legal system encountered quarrelsomeness, vexation and sharp practice; others encountered indolence, delay or incompetence on the part of lawyers or office-holders who were meant to act in the common interest; some

justly complained of the expense of the law; and others were the victims of outright fraud or perjury. Seen in this light, the social utility of legal institutions was quite separate from their ability to provide an idealised standard of abstract justice. Not for nothing were most transactions undertaken, and most disputes resolved, without recourse to the ultimate deciding authority of the formal legal system.

The remainder of this chapter aims to introduce the reader to the legal landscape of the Thames Valley as understood by mid-Tudor contemporaries, and then to the historiographical background of sixteenth-century law, politics and society as understood in our own times.

**Legal landscapes in the Thames Valley**

While there is nothing new in treating the landscape as a subject of historical inquiry,[5] in recent years a number of historians have become interested in the ways the landscape can reflect—or be productive of—wider matters of social or cultural interest.[6] If there is a landscape of religious belief or of historical memory, then so too is there a landscape of the

[5] Robert Plot, *The Natural History of Oxford-shire: Being an Essay toward the Natural History of England* (Oxford, 1677). In the less distant past, cf W.G. Hoskins, *The Making of the English Landscape* (London, 1955). Huizinga remarked that '[t]he historian, while investigating the past in all its forms, must … also become familiar with the natural settings, walk across meadows and hills, until he feels that the sun that shines upon him illuminates again the life of old.' J.H. Huizinga, 'The Aesthetic Element in Historical Thought', in *Dutch Civilisation in the Seventeenth Century and Other Essays* (London, 1968), p. 240.

[6] See, e.g. Alexandra Walsham, *The Reformation of the Landscape: Religion, Identity and Memory in Early Modern Britain and Ireland* (Oxford, 2011); Nicola Whyte, *Inhabiting the Landscape: Place, Custom and Memory, 1500–1800* (Oxford, 2009); Andy Wood, *The Memory of the People: Custom and Popular Senses of the Past in Early Modern England* (Cambridge, 2013), ch. 4; Steve Hindle, *On the Parish?: The Micro-Politics of Poor Relief in Rural England c. 1550–1750* (Oxford, 2004), p. 27.

law. Over the course of this thesis, we will encounter the various spatial ways in which the law was experienced, whether through the boundaries of landholding or jurisdictional rights, or through individual reference-points such as the location of a borough court, the scene of a coroners' inquest, or the possession-taking of a particular house.

Geographically, Oxfordshire and Berkshire are defined by a number of features, of which the most prominent is the River Thames.[7] To the west, the region is bounded by the limestone hills of the Cotswolds, and to the east by the chalk hills of the Chilterns, through which the Thames flows at Goring. To the south, the landscape is defined by a series of valleys and chalk downlands, most notably the Vale of White Horse, the Lambourn and Berkshire Downs, and the Kennet valley. In addition to the Thames, the other major rivers are the Kennet, flowing from west to east through Berkshire before joining the Thames at Reading, and the Cherwell, flowing from north to south through Oxfordshire before its confluence with the Thames at Oxford.

Most of the major settlements of the region were on one or other of these rivers. From east to west along the Thames were Windsor, Maidenhead, Henley, Reading, Wallingford, Abingdon and Oxford. Other substantial settlements included Banbury on the Cherwell, Hungerford and Newbury on the River Kennet, and other market towns such as Bicester and Chipping Norton in Oxfordshire, and Didcot and Wantage in Berkshire. Road access between these settlements and further afield was also good.[8] Unlike the notoriously impassable roads of Sussex,[9] good routes of communication in the Thames Valley meant

[7] See generally, Frank Emery, *The Oxfordshire Landscape* (London, 1974); John Stearne, *Oxfordshire* (London, 1996).
[8] Cf Stearne, *Oxfordshire*, ch. 5.
[9] Cynthia B. Herrup, *The Common Peace: Participation and the Criminal Law in Seventeenth-Century England* (Cambridge, 1987), pp. 19–21.

that people, goods and news travelled fast. For example, the birth in August 1552 of a double-headed child in the otherwise obscure Oxfordshire village of Middleton Stoney rapidly became known in London and as far afield as Antwerp, where pamphlets and broadsides publicised—and diarists noted—the marvellous curiosity.[10]




**Figure 2 – Broadside published by John Day (London, 1552) © British Museum**

[10] Broadside of John Day (London, 1552) BM 1928,0310.102; 'Dye descriptie en contrefeytinge vande twee kinderen' (Antwerp, 1552); Bodleian MS Top Oxon d 243. *The Diary of Henry Machyn*, ed. John Gough Nichols (Camden Soc., XLII, 1848), p. 23, *Chronicle of the Grey Friars of London*, ed. John Gough Nichols (Camden Soc., LIII, 1852), p. 75. Froude famously refers to the episode as an ill omen at the start of Mary Tudor's reign, but his chronology is mistaken: the birth was in 1552, not 1553: J.A. Froude, *History of England from the Fall of Wolsey to the Death of Elizabeth*, 3rd edn. (12 vols., London, 1867), vi, 1.

A variety of forms of agriculture were practised in the Thames Valley. Sheep-corn husbandry could be found in the chalk and limestone downlands; mixed farming was practised in the valleys around Oxford and the Vale of White Horse; and the west of Berkshire was pastoral and dairying country. In the south-eastern portion of the two counties, ease of waterborne access to the markets of London was a boon for grain farmers, whereas in the northern portions of Oxfordshire, the lack of river access to such markets meant that farmers focussed on wool, mutton and beef rather than grain.[11] Aside from their function as market centres, a number of the region's towns hosted more specialised industries. Witney, for example, was particularly known for cloth-making, and Banbury had long been famous for its cheeses and cakes.[12]

The Crown itself was the greatest landowner in Oxfordshire and Berkshire. This was most obviously so around Windsor, but there were also prominent royal castles in Wallingford and Oxford, and the palace at Woodstock was famous as the site of Princess Elizabeth's imprisonment in the aftermath of Wyatt's revolt in 1554. Another pervasive token of the Crown's presence was the large proportion of both counties that was royal forest.[13] For much of the period in question, there were no resident noble magnates—the De Vere earls of Oxford were in fact based in Essex, and Sir Richard Fiennes made no attempt to establish his right to the title of Saye and Sele—and a great many of the prominent

[11] Joan Thirsk, 'The Farming Regions of England', in Joan Thirsk (ed.), *The Agrarian History of England and Wales, Volume IV 1500–1640* (Cambridge, 1967), pp. 64–71.
[12] On Witney, see VCH Oxon, vol 14, pp. 77–88, Peter Bowden, *The Wool Trade in Tudor and Stuart England* (London, 1971), p. 45; on Banbury, see VCH Oxon, vol 10, pp. 5–18.
[13] *Oxfordshire Forests, 1246–1609*, ed. Beryl Schumer (Oxfordshire Record Soc., 64, 2004).

landowners in the region (two of whom were subsequently ennobled) owed their position to royal service in one form or another.[14]

In Oxfordshire, John, Lord Williams of Thame was Treasurer of Augmentations and among the largest landowners in the south of the county; his contemporary, George Owen, acquired vast lands in the north of the county through his service as royal physician; and Sir Leonard Chamberlain continued a family tradition of power and influence as a soldier, courtier and lieutenant of Woodstock.[15] Despite his family's large landholding centred on Broughton Castle near Banbury, Sir Richard Fiennes was not prominent in local affairs, but he like Henry, Lord Norris of Rycote saw a revival of his fortune under Elizabeth after disfavour under Mary.[16] In Berkshire, Sir Francis Englefield acquired great wealth and influence as an office-holder in the Court of Wards and as an ascendant courtier under Mary, only to find himself in exile under Elizabeth; and Sir Richard Brydges, another Berkshire-based courtier and administrator, avoided the prospect of a similar fate through a timely death in 1558.[17] Each of these men served their respective counties in Parliament, and all except Owen also served as sheriff.

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[14] On the prominence of the Crown in the absence of magnate landowners, see Christine Carpenter, *The Wars of the Roses: Politics and the Constitution in England c. 1437–1509* (Cambridge, 1997), p. 59. Like Cambridgeshire, Oxfordshire and Berkshire lacked nobles, but unlike that county they did not lack higher gentry: cf Margaret Spufford, *Contrasting Communities: English Villagers in the Sixteenth and Seventeenth Centuries* (Cambridge, 1974), pp. 28–9.

[15] ODNB: Lord Williams of Thame (*c.*1500–1559, ennobled 1554); George Owen (c.1499–1558); Sir Leonard Chamberlain (c. 1504–1561). On Owen as an example of non-factionalised royal preferment under Edward VI, see Alan Bryson, 'Edward VI's "Speciall Men": Crown and Locality in Mid Tudor England', *Historical Research*, 82 (2009), 234. On Williams' career, see Penry Williams, *The Tudor Regime* (Oxford, 1979), pp. 89, 103.

[16] Hist Parl, ii, 132–3: Sir Richard Fiennes (1520–73); ODNB: Henry, Lord Norris (c.1525–1601).

[17] ODNB: Sir Francis Englefield (1522–1596); Sir Richard Brydges (c.1500–1558).

One consequence of the Crown's substantial landholding, the absence of local magnates, and the prominence of institutional landowners (especially the colleges of the University of Oxford), was that a very high proportion of tenants in Oxfordshire and Berkshire had no experience of a locally-resident landlord. This pattern of landholding and the tendency of local elites to be bound together by shared royal service meant that there was comparatively little feuding between landowners in rivalry for local influence as compared with some other parts of the country. Similarly to Suffolk, but unlike Norfolk or parts of Yorkshire, there were few examples of what MacCulloch terms 'set piece struggles in the court of Star Chamber' between members of the Thames Valley elite.[18] The one exception proving the rule was a dispute between George Owen and John, Lord Williams of Thame over the ownership of woods formerly belonging to Abingdon Abbey; a dispute that probably tells us more about the frequent difficulty of establishing title to ex-monastic land than about any interpersonal disagreement between the two men.[19]

These geographic and social features of the landscape also came together in the form of a more specifically *legal* topography, but to get a sense of that legal landscape in the Thames Valley it helps to turn our attention to a more particular setting. Depicted below is Warborough: then as now a small village about 10 miles south east of Oxford. Imagine standing outside the church after Sunday Mass, or Communion, or Mass, or Communion, some time in the period between 1540 and 1570. While the west tower dates from the

[18] Diarmaid MacCulloch, *Suffolk and the Tudors: Politics and Religion in an English County 1500–1600* (Oxford, 1986), pp. 108–115; R.B. Smith, *Land and Politics in the England of Henry VIII: The West Riding of Yorkshire 1530–46* (Oxford, 1970), pp. 144–51.
[19] STAC 4/7/15; cf C1/1390/52–3.

seventeenth century, a sixteenth-century churchgoer is likely to have recognised the rest of scene.[20] What mental picture might they have of their legal world?



**Figure 3 – St Laurence's church, Warborough**

Standing outside church, they might first have thought about ecclesiastical matters and looked west to Dorchester, site of the lately-dissolved Abbey, and the parish of which Warborough was a chapelry. Even after the Abbey's dissolution, its jurisdictional shadow was still cast by the Peculiar of Dorchester, one of a number of Oxfordshire peculiars that persisted until the nineteenth century, and which took Warborough outside the purview of the archdeaconry and later diocesan authorities in the cathedral city of Oxford. Economically, Warborough had natural connections with Oxford but, as with much of the region, the major destination for its grain and other produce was London, to the south east.

[20] Jennifer Sherwood and Nikolaus Pevsner, *The Buildings of England: Oxfordshire* (New Haven, 2002), p. 821.

Much of that grain was taken by land to Henley and then transhipped to London.[21] Henley was also the site of an active borough court which drew in plaintiffs from the surrounding region. Almost due south of Warborough was the major regional centre of royal power: Wallingford Castle and its accompanying royal borough.

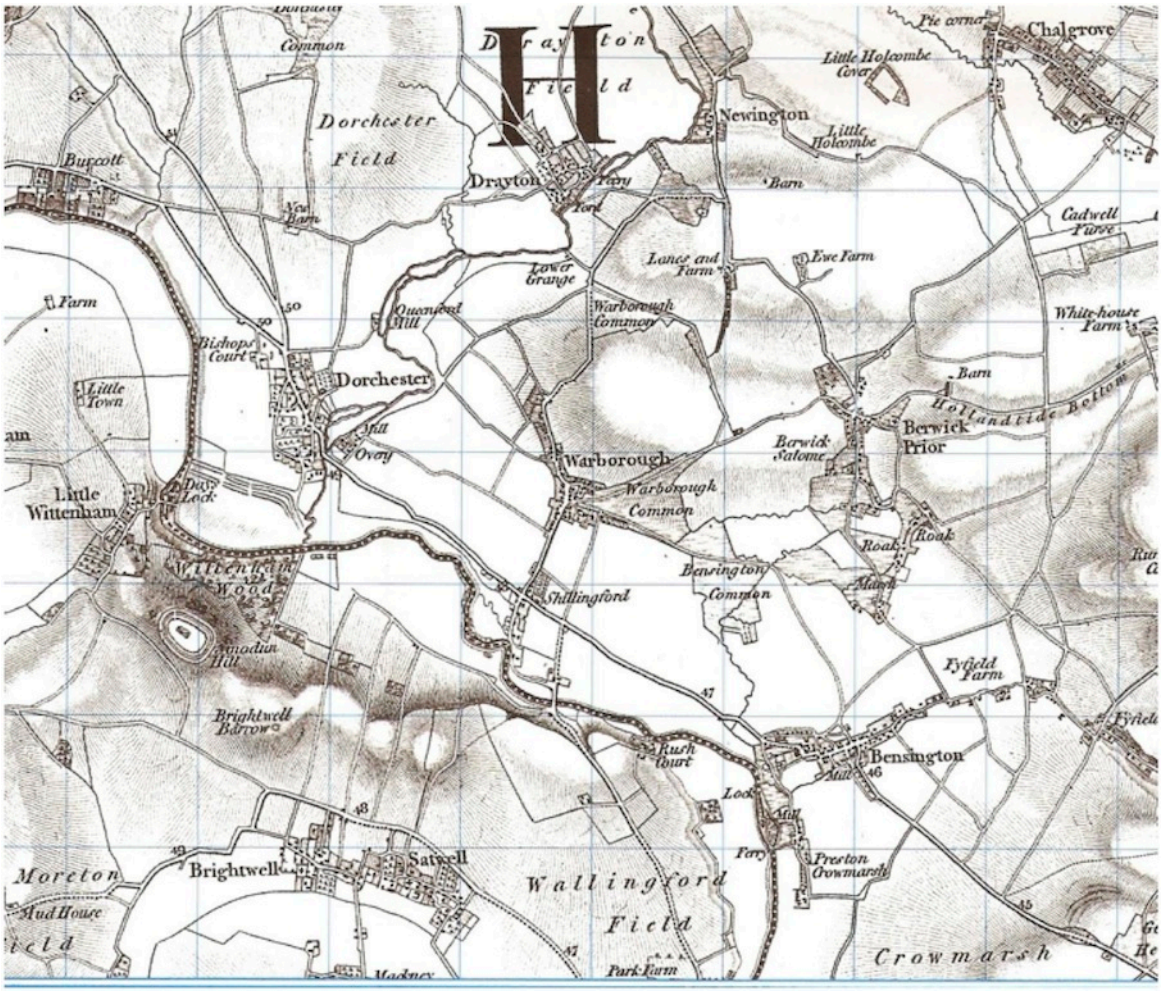


**Figure 4 – Warborough and region – Ordnance Survey 1830–33**

What about the manor of Warborough? In fact, any such manor seems to have had a precarious status indeed. At the dissolution of Dorchester and Godstow Abbeys, Thomas Blanke of London purchased from the Crown what he believed to be the Abbeys' manor of

[21] Simon Townley, *Henley-on-Thames: Town, Trade and River* (London, 2008), pp. 61–72; cf J.A. Chartres, 'Food Consumption and Internal Trade' in A.L. Beier and Roger Finlay (eds.), *The Making of the Metropolis: London 1500–1700* (London, 1986), p. 180; Stearne, *Oxfordshire*, p. 141.

Warborough. He then sold his rights to Sir Thomas White, Lord Mayor of London and founder of St John's College. The College was then endowed with the land, and found itself—like Blanke and White—embroiled in a nearly interminable dispute with its tenants about its claimed rights as lord of the manor including, importantly, the right to hold a manor court. Whether they had any such right remained unclear even in the next century.[22]

In urban centres like Oxford, this kind of overlapping and multipolar jurisdictional landscape can often be seen with greater clarity and in a smaller compass. Even within the one town, the existence of multiple legal institutions created a symbolic legal geography that could be used for demonstrative effect. Take, for example, the travails of one Joan Culver, who was ordered to do penance as a bastard-bearer by the Archdeacon of Oxford's Official in 1540.[23] She was ordered to go from her house 'bare footen' and with a 'with a sheet cast upon her smock' to the Official sitting in St Martin's Church (now Carfax tower, but then the seat of ecclesiastical authority in Oxford before the creation of the diocese), thence to Oxford Castle (the seat of royal power), back to Carfax and then to the Bocardo (the town gaol, and a site of civic authority). The main jurisdictional pieces missing from this description are the city's Guildhall on St Aldates, and the Chancellor's Court of the University, which then sat in St Mary's church.[24]

[22] See Kate Tiller (ed.), *Benson: A Village through its History* (Wallingford, 1999).
[23] LA DIOC/CJ/6 fol 70v.
[24] On the Guildhall, see Robert Tittler, *Architecture and Power: The Town Hall and the English Urban Community, c. 1500–1640* (Oxford, 1991), p. 624. On the Chancellor's Court, see M. Underwood, 'The Structure and Operation of the Oxford Chancellor's Court', *Journal of the Society of Archivists*, VI (1978), 18; Janice Gordon-Kelter and Charles Rice Young, 'The Poor Scholar v. The Able Debtor: Ploughing the Rough Ground of Due Process', *Journal of Medieval History*, 26 (2000), 175.

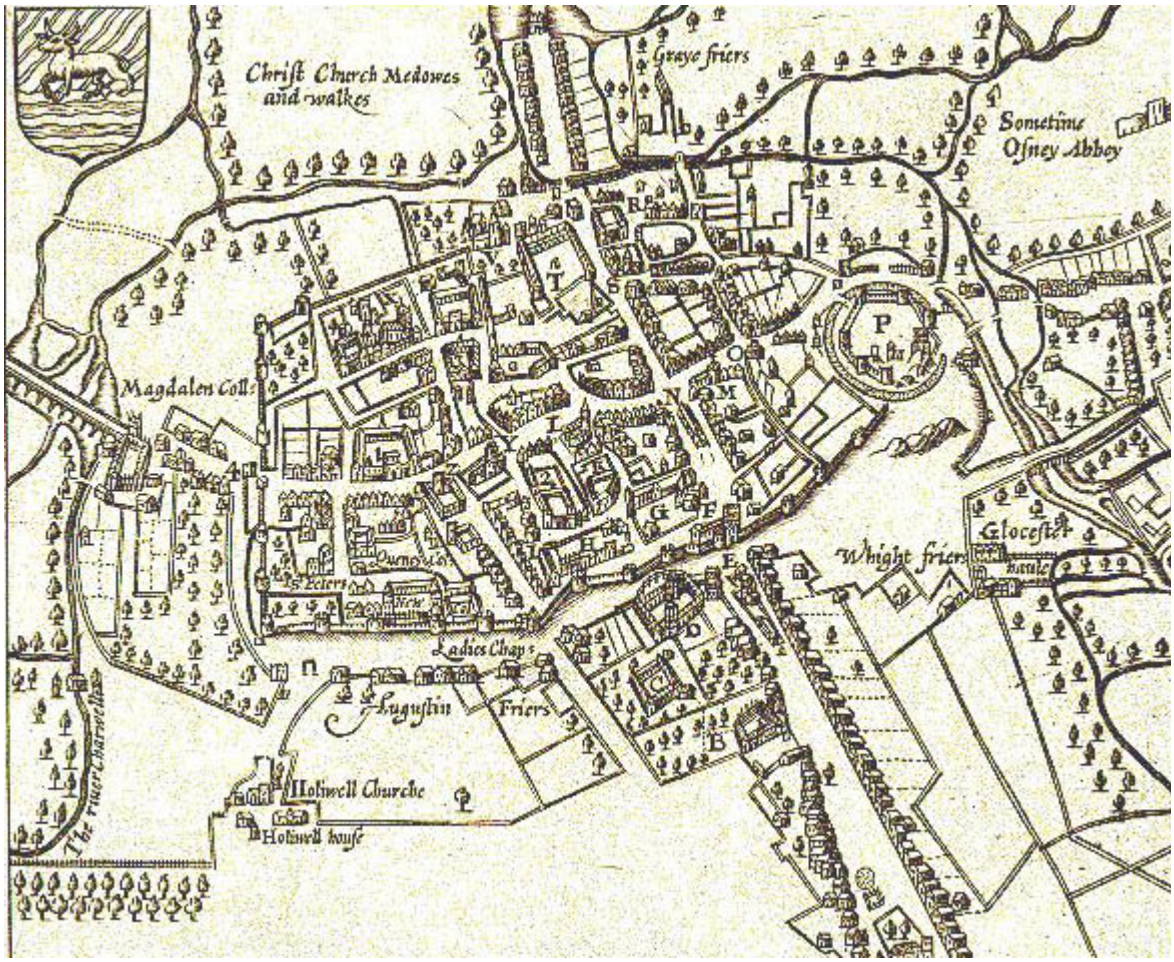



**Figure 5 – John Speed's Map of Oxford 1605**
**North is to the bottom of the map, St Martin's is marked 'M', Oxford Castle is marked 'P', and the Bocardo is between 'E' and 'F'**

As these examples remind us, legal institutions could be found in all sorts of places. The lawday of Hormer Hundred—around Abingdon—was kept annually 'at a certain oak called the Hundred Oak standing in Bagley wood'; and even before its incorporation in 1556 we are told that the town court of Abingdon was kept 'in a certain house standing in the midst of the marketplace erected for that purpose'.[25] Of the physical premises of such institutions in the Thames Valley, only the Tolsey at Burford survives to remind us what they looked like in the sixteenth century;[26] but whether held under an oak, in a guildhall,

[25] BRO D/EP7/141.
[26] Sherwood and Pevsner, *The Buildings of England: Oxfordshire*, p. 509; Antonia Catchpole et. al., *Burford: Buildings and People in a Cotswold Town* (London, 2008), p. 49.

or—as often seems to have been the case—in an inn,[27] law courts were symbolic places which, to use Robert Tittler's words about town halls, embodied 'such intangible concepts as power, authority, and legitimacy within the community.'[28]



**Figure 6 – The Tolsey at Burford**

This pattern of institutional diversity in a landscape overlaid with legal boundaries was by no means unique to England:[29] it can be found in many other European countries in the

[27] Christopher W. Brooks, *Law, Politics and Society in Early Modern England* (Cambridge, 2008), p. 245. On the location of manor courts, see Wood, *Memory of the People*, pp. 103–4.
[28] Tittler, *Architecture and Power*, p. 4.
[29] Houston observes that '[f]ragmented, competing, or overlapping jurisdiction was a very English (and Welsh) problem' and not a Scottish one, for in Scotland 'justice was conceived personally … rather than territorially': R.A. Houston, *Punishing the Dead?: Suicide, Lordship and Community in Britain, 1500–1830* (Oxford, 2010), p. 143.

early modern period.[30] France, too, was characterised by legal heterogeneity.[31] There, one could find a mixture of central and local institutions applying both customary and written law, and which relied upon a blend of royal, seigneurial or civic political power.[32] Especially in the northern *pays de coutume*, the legal landscape would have been quite comprehensible to any English visitor.[33] In contemporary Germany, the effect of political fragmentation was to multiply the number of legal institutions; an effect made more striking by the absence of many central institutions found in France or England. As Gerald Strauss observes, '[l]aw-dominated government and frequent, often bitter, contentions among competing and conflicting jurisdictions' encouraged both the proliferation of legal experts and the continuation of a popular discourse (by no means unique to Germany) of disaffection towards lawyers and the legal system.[34] The situation was no better in Spain, and Richard Kagan characterised Castile as a 'hodgepodge of confused laws and competing jurisdictions that crafty litigants exploited to their own advantage.'[35]

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[30] Alain Wijffels, *Introduction historique au droit: France, Allemagne, Angleterre* (Paris, 2010). On the early accretion of legal boundaries in Europe, see Susan Reynolds, *Kingdoms and Communities in Western Europe, 900–1300*, 2nd edn. (Oxford, 1997).
[31] Arlette Jouana, *La France de la Renaissance*, (Paris, 2009), p. 17; James B. Collins, *The State in Early Modern France*, 2nd edn. (Cambridge, 2009), pp. 10–14.
[32] See, e.g. Benoît Garnot, *Histoire de la justice: France, XVIe–XXIe siècle* (Paris, 2009), pp.191–221; Sylvain Soleil, *Introduction historique aux institutions: IVe–VXIIIe siècle*, 2nd edn. (Paris, 2005); Bernard Guenée, *Tribunaux et gens de justice dans la baillage de Senlis* (Strasbourg, 1963).
[33] John P. Dawson, 'The Codification of the French Customs', *Michigan Law Review*, 38 (1940), 765; Bernard Durand, 'Royal Power and its Legal Instruments in France, 1500–1800', in Antonio Padoa-Schioppa (ed.), *Legislation and Justice* (Oxford, 1997), p. 291.
[34] Gerald Strauss, *Law, Resistance and the State: The Opposition to Roman Law in Reformation Germany* (Princeton, 1986), p. 21.
[35] Richard L. Kagan, *Lawsuits and Litigants in Castille 1500–1700* (Chapel Hill, 1981), p. 31.

**Changing times, changing places**

In England, the kaleidoscopic assemblage of rights and jurisdictions described above was liable to shift and change over time; and especially so after the dissolution of the monasteries. The Dissolution freed towns like Reading and Abingdon from abbatial lordship;[36] and Banbury was freed around the same time from episcopal control. This was of fundamental importance in shaping people's experience of urban jurisdictions in the mid-sixteenth century. Of the 600 or so towns in England, somewhat more than 100 had been under some form of ecclesiastical lordship before 1536 and experienced a change of control by 1547.[37] In some cases, new civic institutions sprang up, but in others seigneurial control was continued under a new, secular, lord.

Abingdon and Banbury were among the great wave of new civic incorporations in the mid-Tudor period.[38] In Banbury in particular, its incorporation was the spur for a major shift in symbolic architecture away from the seat of the bishop's authority in Banbury Castle and into new civic institutions. The borough accounts proudly record the construction of what was termed 'our court' in the new town hall, including payment for the transport of the cage for the prisoners from the Castle to the new hall. They even treated themselves to a new cucking stool and stocks; and to judge by the quantity of wine consumed, the dinners after the new town leets must have been marvellous.[39]

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[36] See Jeanette Martin, 'Leadership and Priorities in Reading during the Reformation', in Patrick Collinson and John Craig (eds.), *The Reformation in English Towns 1500–1640* (Basingstoke, 1998), pp. 113–30.
[37] Tittler, *Architecture and Power*, pp. 77–9.
[38] Robert Tittler, 'The Emergence of Urban Policy, 1536–58' in Jennifer Loach and Robert Tittler (eds.), *The Mid-Tudor Polity c. 1540–1560* (London, 1980), p. 74; Robert Tittler, 'The Incorporation of Boroughs 1540–58', *History*, 62 (1977), 24.
[39] OHC BOR/2/XVII/i/1 fols 169v–170v.

In Abingdon, the sale of ex-monastic property led to the fragmentation of what seems to have been a fairly centralised estate administration. We see evidence of this in Margaret Cox's 1549 complaint to the Court of Requests that she had been denied her widow's estate in land in what she believed to be the manor of Abingdon. She recited the practice of Abingdon manorial courts conducted by the Abbey back to the reign of Edward IV.[40] Her opponent, the local gentleman Thomas Rede, was however correct to point out that there was in fact no such manor: the centralised monastic administration did not create one, and the land in question was in fact part of the manor of Barton.[41] Even so, Margaret's mistake gives us an important insight into how one woman perceived the boundaries of her legal world.

Changes to the legal landscape also occurred on a far more regular but less grandiose scale than at the Dissolution. Each time the lord of the manor changed, so too could the tenants' experience of their little commonwealth, especially when this was accompanied—as often it was—by a change of steward. In the Oxfordshire manor of Hampton Poyle, the marvellous English-language court rolls of James Bury's time reverted to a more mundane Latin once his daughter Jane and her husband Ambrose Dormer became lords upon Bury's death in 1558. No longer did tenants promise, among other things, to 'be a good townsman amongst his neighbours as to be no common wrangler with his tongue, nor vengeable to his neighbours' cattle'.[42] Similarly, when Thomas Essex inherited the Berkshire manor of Ashbury from his father, William, in 1572, he marked his first view of frankpledge and

[40] Req 2/15/84.
[41] VCH Berks, vol 4, pp. 430–51.
[42] Bodleian MS Top Oxon b 86. Cf VCH Oxon, vol 6, pp. 160–8. Under Bury's lordship, tenants also promised to 'be always ready and forward with the first to do and pay his part and duties to the church, the king and queen, to his landlord, and to his neighbours, and to stand to and be obedient to all the orders as well of and in the lord's court as without to be made by the agreement and assent of the nigh part of the neighbours for the use of the fields, commons, ways, ditches and mounds from time to time as case shall require.'

court baron with a particularly fine engrossed court roll in which all the constables and tithingmen had the good sense to report '*omnia bene*', that all was well.[43]



**Figure 7 – Court Roll, Manor of Ashbury, 1572**

While the label of 'crisis' is apt to mislead, the mid-Tudor period was certainly experienced as a turbulent time by many of those who lived through it.[44] Legal documents are replete with references to the changing details of contemporary history and people's own sense of their recent past.[45] In 1547, for example, Sir Henry Neville—a groom of the privy chamber—was unable to defend his claim to a certain fish pond in the manor of

[43] BRO D/EC M127. The Manor of Ashbury came into the Essex family hands after the dissolution of Glastonbury Abbey: VCH Berks, vol 4, pp. 503–12.
[44] Cf Whitney R.D. Jones, *The Mid-Tudor Crisis, 1539–1563* (London, 1973); David Loades, *The Mid-Tudor Crisis, 1545–1565* (London, 1992); Jennifer Loach and Robert Tittler (eds.), *The Mid-Tudor Polity c. 1540–1560* (London, 1980).
[45] Cf Daniel Woolf, *The Social Circulation of the Past: English Historical Culture 1500–1700* (Oxford, 2003).

Wargrave (Berks), 'your subject then being in France in your Majesty's service'. His bailiff, Henry Deane, deposed that the pond in question was indeed Neville's despite various changes of ownership over the past decades, which

> he knoweth for that Margery Deane his mother hath been farmer of the said manor by the space of these 50 years as well in the time of Bishop Fox and the late Cardinal and also of Stephen Gardiner successively bishops of Winchester as also in the time of the said Mr Neville now complainant…[46]

Deponents might also refer to changing economic circumstances, as did Thomas Merton of Warborough in 1552, when he deposed as to the former value of a parsonage and added that 'corn was not then so dear as it hath been ever since'.[47] As those economic circumstances suggest, the 'commotion time' of 1549 was a defining episode that left many legal traces.[48] For example, in a 1550 dispute which we will consider in more detail in Chapter 5, a husbandman from Denton (Oxon) alleged that John Doyley—the noted JP, official of the Augmentations, and Edwardian chantry commissioner—riotously entered his land 'nothing regarding [his] duty to [the King], neither the perilous uproar that lately was in that country to the perilous example of the country'.[49] A later echo could be heard in a dispute about land at Chalgrove (Oxon) in the 1560s, when Thomas Quartermain deposed that the close in question was 'never common, but in commotion time there were certain gaps pulled up which were made up again in short space after'.[50]

Changes of reign were perhaps the most notable political event through which mid-Tudor contemporaries lived. Nonetheless, the everyday significance of these should not be

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[46] STAC 3/1/102.
[47] C 24/26, *Holmes v March*.
[48] Andy Wood, *The 1549 Rebellions and the Making of Early Modern England* (Cambridge, 2007); Katherine Halliday, 'New Light on the "Commotion Time" of 1549: The Oxfordshire Rising', *Historical Research*, 82 (2008), 655.
[49] STAC 3/6/2.
[50] MCA EP/142/3.

overstated: the Vicar of Bray was not the only person in the Thames Valley who was able to move (or stay put) with the times.[51] One trivial example concerns a parsimonious scrivener who, rather than rewriting a bill in the Court of Requests after Edward VI's death, simply cut the top off the parchment and scribbled in a new heading 'To the Queen our Sovereign Lady', leaving the body of the bill replete with references to the 'King' and 'his' council.[52]

More importantly, the change of reigns was no great impediment to continued political influence on the part of leading landowners in Oxfordshire and Berkshire. The transition from Somerset to Northumberland was characterised by continuity among the Crown's local office holders.[53] In turn—and notwithstanding their service to Edward VI—Leonard Chamberlain and Sir John Williams were prominent in raising troops in favour of Mary against Jane Grey, and their loyalty to the new queen was rewarded with a knighthood and a barony respectively.[54] Others, like the royal physician George Owen, continued to hold office locally and at court. In part because of the coincidence of mortality, the accession of Elizabeth posed less of a challenge to the loyalty of Thames Valley elites, but Sir Francis Englefield was very much the exception in preferring exile under Elizabeth after having risen so high under Mary.[55] Conversely, Elizabeth—unlike Mary—found the opportunity to show favour to men like Richard Fiennes (knighted in 1568) and Henry Norris (knighted in 1566 and ennobled in 1572 as Baron Norris of Rycote).[56]

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[51] Wood, *Memory of the People*, p. 80.
[52] Req 2/16/25.
[53] Bryson, 'Edward VI's "Speciall Men"', p. 229.
[54] Eric Ives, *Lady Jane Grey: A Tudor Mystery* (Oxford, 2009), pp. 222–3, 232, 236.
[55] ODNB. A converse, but similarly rare, example of an Edwardian Protestant preferring exile under Mary was Sir Henry Neville: ODNB.
[56] Under Mary, Fiennes had been removed from the Oxfordshire commission of the peace because of his Protestantism, and Norris was in disfavour because of his father's association with the hated Anne Boleyn.

In the legal profession, too, there was a significant continuity of personnel across the period, although notable exceptions proved the rule.[57] Upon Mary's accession, Sir Edward Montague was dismissed as Chief Justice of the Common Pleas for his role in drafting Edward VI's 'devise for the succession': his grovelling petition that he had only done so out of fear of the 'sharp words and angry countenance' of the King was to no avail.[58] The Lord Chief Justice, Sir Roger Cholmley, was also dismissed despite not being directly involved in the plot, but his loyalty cannot have been seriously questioned as he continued to serve in Parliament and on the Middlesex commission of the peace.[59] The situation of another justice of the Common Pleas, Sir James Hales, was more ambiguous. Although he had refused to seal the devise for the succession, he soon earned the ire of Mary by declaring that the Henrician and Edwardian statutes on religious conformity remained in force until repealed by Parliament.[60] While he was described by Foxe as 'favouring true religion', Hales' suicide was more indicative of private despair than principled opposition to Mary's religious policies.[61] Like Hales, the Solicitor-General John Gosnold quickly regretted his involvement in Northumberland's plot, and we are told in the *Vita Mariae Reginae* that he 'repented of his action with remarkable speed'.[62] This did not save him from dismissal by Queen Mary, and the vacancy paved the way for the appointment of Sir

[57] Lewis Abbott, 'Public Office and Private Profit: The Legal Establishment in the Reign of Mary Tudor', in Jennifer Loach and Robert Tittler (eds.), *The Mid-Tudor Polity, c. 1540–1560* (London, 1980), p. 137.
[58] *Report of the Manuscripts of Lord Montagu of Beaulieu* (HMC, London, 1900), p. 5. Ives, *Lady Jane Grey*, pp. 145–9, 245.
[59] ODNB; Hist Parl, i, 644–6.
[60] ODNB.
[61] John Foxe, *Acts and Monuments* (1563 edn), Book 5, pp. 969, 973. Cf *Hales v Petit* (1562) 1 Plowd 253; 75 E.R. 387; *Dyer's Reports*, pp. 46, 72.
[62] Robert Wingfield of Brantham, *Vita Mariae Reginae*, ed. Diarmaid MacCulloch (Camden Soc., 4th ser., 29, 1984), pp 246–8. On Gosnold, see J. H. Baker, *The Men of Court 1440 to 1550: A Prosopography of the Inns of Court and Chancery and the Courts of Law* (2 vols., London, 2012) i, p. 769.

William Cordell, who went on to have a long public career, most notably as Master of the Rolls.[63]

Most judges and practitioners were, by contrast, able to accommodate themselves to the changing times. Sir Edward Griffin, for example, served as Attorney-General from 1552 under Edward VI until his replacement by Gilbert Gerard in 1559.[64] As we shall see, shifting religious policies were ultimately no impediment to the continued careers—and continued rivalries—of the two Common Pleas attorneys resident in Banbury (Chapter 2); nor was recusancy a hindrance to the professional esteem in which the celebrated barrister Edmund Plowden was held (Chapter 5); and strong Marian political and religious ties were no bar to the continuation in office of Sir William Cordell (Chapter 6).

**Legal doctrine, legal institutions, and the experience of law**

Whether or not one has an interest in the history of specific rules of law, doctrinal legal history is an essential foundation for the work of other historians whose interests lie in the social, institutional or political context of law. In blunt terms, one cannot discuss the social and experiential aspects of the legal system unless one has at least some sense of what the law actually *was*. In this regard, while the sixteenth century was once described as the

[63] Abbott, 'Public Office and Private Profit', p. 141.
[64] Baker, *Men of Court*, i, p. 790. Interestingly, Griffin's third wife, Elizabeth, was the mother of the wastrel Sir Francis Stonor by her previous marriage.

'dark age of English legal history',[65] there is now a rich literature based upon early modern legal sources.

Our once rather patchy understanding of legal doctrine has markedly improved, such that the sixteenth century can now be described as witnessing 'the Renaissance of the common law'.[66] To invoke English law and the Renaissance is immediately to call to mind Maitland's famous essay, but the person most responsible for the rebirth of our understanding of sixteenth-century legal doctrine is Professor Sir John Baker.[67] Through an extraordinary body of essays, monographs, prosopographies, editions of reports, and other works, Baker has immeasurably enriched our understanding of sixteenth-century law, both in its doctrine and in its wider context.[68] His work has by no means been a solitary endeavour, and through the effort of other scholars we also have a growing understanding of specific areas of law, such as land law, contract, charity, defamation and the law of obligations.[69]

In the early modern period, however, doctrinal law existed in a very specific institutional context. Substantive law, as Maine famously noted, had the appearance of 'being gradually

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[65] J.H. Baker, 'The Dark Age of English Legal History, 1500–1700' in Dafydd Jenkins (ed.), *Legal History Studies 1972: Papers Presented to the Legal History Conference, Aberystwyth, 18–21 July 1972* (Cardiff, 1975), p. 1.
[66] David Ibbetson, *A Historical Introduction to the Law of Obligations* (Oxford, 1999), p. 95.
[67] F.W. Maitland, *English Law and the Renaissance* (Cambridge, 1901).
[68] See, e.g. J.H. Baker, 'English Law and the Renaissance', *Cambridge Law Journal*, 44 (1985), 46; J.H. Baker, *The Oxford History of the Laws of England: Volume VI 1483–1558* (Oxford, 2003); Baker, *Men of Court*; *The Reports of Sir John Spelman* ed. J.H. Baker (Selden Soc., 93, 1977).
[69] A.W.B. Simpson, *A History of the Land Law*, 2nd edn. (Oxford, 1986); A.W.B. Simpson, *A History of the Common Law of Contract: The Rise of the Action of Assumpsit* (Oxford, 1975); Gareth Jones, *History of the Law of Charity 1532–1872* (Cambridge, 1969); *Select Cases on Defamation to 1600*, ed. R.H. Helmholz (Selden Soc., 101, 1985); Ibbetson, *Historical Introduction*.

secreted in the interstices of procedure',[70] but the procedure in question was always that of a particular court at a particular point in time. Noteworthy institutional developments in the sixteenth century included the establishment of the Court of Augmentations in 1536; the Court of Wards and Liveries in 1540; the subsequent merger of Augmentations into a reformed Court of Exchequer in 1554; the Marian bail statutes of 1555; and the establishment of the Court of Exchequer Chamber in 1585.

Given the importance of this institutional context, we are fortunate to have a number of works on the history and functioning of many of the most important legal institutions of the early modern period. Valuable studies exist for the Courts of Common Pleas,[71] King's Bench,[72] Chancery,[73] Star Chamber,[74] Requests,[75] Augmentations,[76] Wards and Liveries,[77] and Exchequer.[78] Other important works can be found on the ecclesiastical courts,[79] the assizes,[80] trial by jury,[81] and the institutions of the criminal law.[82]

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[70] Henry Maine, *Early Law and Custom* (London, 1890), p. 389.
[71] Margaret Hastings, *The Court of Common Pleas in Fifteenth Century England: A Study of Legal Administration and Procedure* (Ithaca, N.Y., 1947). Cf C.W. Brooks, *Pettyfoggers and Vipers of the Commonwealth: The 'Lower Branch' of the Legal Profession in Early Modern England* (Cambridge, 1986).
[72] Marjorie Blatcher, *The Court of King's Bench, 1450–1550: A Study In Self-Help* (London, 1978).
[73] W.J. Jones, *The Elizabethan Court of Chancery* (Oxford, 1967).
[74] J.A. Guy, *The Cardinal's Court: The Impact of Thomas Wolsey in Star Chamber* (Hassocks, 1977); cf J.A. Guy, *The Court of Star Chamber and its Records to the Reign of Elizabeth I*, Public Record Office Handbooks No. 21 (London, 1985).
[75] D.A. Knox, 'The Court of Requests in the Reign of Edward VI' (Cambridge Univ. Ph.D. thesis, 1974); Tim Stretton, *Women Waging Law in Elizabethan England* (Cambridge, 1998); cf Sir Julius Caesar, *The Ancient State, Authoritie and Proceedings of the Court of Requests*, ed. L.M. Hill (Cambridge, 1975).
[76] Walter C. Richardson, *History of the Court of Augmentations, 1536–1554* (Baton Rouge, 1961).
[77] H.E. Bell, *An Introduction to the History and Records of the Court of Wards and Liveries* (Cambridge, 1953); cf Joel Hurstfield, *The Queen's Wards: Wardship and Marriage under Elizabeth I* (London, 1958).
[78] W.H. Bryson, *The Equity Side of the Exchequer* (Cambridge, 1975).
[79] R.B. Outhwaite, *The Rise and Fall of the English Ecclesiastical Courts, 1500–1860* (Cambridge, 2006); Ralph Houlbrooke, *Church Courts and the People during the English*

Institutional histories of this kind are, in conjunction with the doctrinal histories referred to above, an important bulwark against the kind of decontextualised and ahistorical approach exhibited by some writers when addressing legal topics through the fashionable tropes of literary or cultural theory. References to Foucault, Agamben or Bourdieu are unlikely to make up for a defective understanding of the substance of the law or the institutions through which it was administered.[83] In particular, an undifferentiated treatment of 'custom' is unlikely to be of much use if it does not pay attention to the specific legal and institutional contexts in which it was articulated. As we shall see, it is hardly surprising that much of the evidence of manorial and other custom is preserved in the records of the central equity and conciliar courts;[84] yet it is precisely because the records are preserved in that form that we must exercise great care before assuming that deposition evidence allows us an unvarnished insight into a supposedly plebeian legal culture.

Institutional histories are, of course, extremely valuable in their own right, but if one's interest lies in the interaction of people and institutions, or in the systemic interaction of

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*Reformation, 1520–1570*, (Oxford, 1979); Martin Ingram, *Church Courts, Sex and Marriage in England, 1570–1640* (Cambridge, 1987).

[80] J.S. Cockburn, *A History of English Assizes, 1558–1714* (Cambridge, 1972).

[81] Thomas Andrew Green, *Verdict According to Conscience: Perspectives on the English Criminal Trial Jury 1200–1800* (Chicago, 1985); J.S. Cockburn and Thomas A. Green (eds.), *Twelve Good Men and True: The Criminal Trial Jury in England, 1200–1800* (Princeton, 1988).

[82] John H. Langbein, *The Origins of Adversary Criminal Trial* (Oxford, 2003); John H. Langbein, *Prosecuting Crime in the Renaissance: England, Germany, France* (Cambridge, M.A., 1974); J.A. Sharpe, *Crime in Early Modern England 1550–1750*, 2nd edn (London, 1999); J.S. Cockburn (ed.), *Crime in England 1550–1800* (London, 1977); Joan Kent, *The English Village Constable 1580–1642: A Social and Administrative Study* (Oxford, 1986).

[83] Cf Paul Raffield, *Images and Cultures of Law in Early Modern England: Justice and Political Power, 1558–1660* (Cambridge, 2004), pp. 167–73; Bradin Cormack, *A Power to Do Justice: Jurisdiction, English Literature, and the Rise of Common Law, 1509–1625* (Chicago, 2008), pp. 6–9; Wood, *Memory of the People*, pp. 14, 292.

[84] Cf Wood, *Memory of the People*, p. 33, claiming—with respect, mistakenly—that this is 'one of the ironies of … history'.

multiple institutions, then the historiographical limitations of such works are immediately apparent. Many of them were written in the third quarter of the twentieth century under the influence of Geoffrey Elton's mode of institutional history; most prominently his *Tudor Revolution in Government*.[85] Even at the time, this mode of historical writing was open to criticism, especially in its focus on single institutions (and often single classes of archival documents) at the expense both of the people who made use of them and also of the systemic interaction between institutions. K.B. McFarlane, for example, insisted that institutions had no life of their own apart from 'the life of the men who make them',[86] and Penry Williams, who was likewise concerned with 'processes rather than structure', pointedly contrasted the history of institutions with his own interest in 'the ways in which government actually worked'.[87]

Even for those later historians like Tim Stretton or Maria Cioni who *are* interested in the experiential aspects of the legal system—notably, the experience of women as litigants—their focus on a single institution (the Courts of Requests and Chancery, respectively) risks giving a distorted and necessarily incomplete account of that experience. Take a simple example: Alice Beauforest from Dorchester, whom we will encounter in Chapter 3, is featured in Cioni's work on female litigants in the Court of Chancery.[88] However, Alice's encounter with that court was by no means the most striking aspect of her dealings with the law; and as we shall see, there are reasons to doubt that she herself initiated that Chancery litigation at all. Rather, it is only by piecing together the records of a number of courts and

[85] G.R. Elton, *The Tudor Revolution in Government: Administrative Changes in the Reign of Henry VIII* (Cambridge, 1953).
[86] K.B. McFarlane, *The Nobility of Later Medieval England* (Oxford, 1973), p. 280. On the juxtaposition of Elton and McFarlane, see S.J. Gunn, *Early Tudor Government, 1485–1558* (Houndmills, 1995), pp. 2–12.
[87] Williams, *Tudor Regime*, p. vii.
[88] Maria L. Cioni, 'The Elizabethan Chancery and Women's Rights', in DeLloyd J. Guth and John W. McKenna (eds.), *Tudor Rule and Revolution* (Cambridge, 1982), pp. 165–6.

surviving documentation from a number of other sources that the true state of affairs in Dorchester becomes clear.

Obviously, the sheer scale of surviving material means that it is impossible to give a comprehensive account of people's experience of the legal system at the nationwide level. A county-based or regional focus is necessary to confine the material to a manageable scope. There is a long tradition of such regionally-focussed studies that have gone well beyond the traditional 'county community' model.[89] Thinking only of the sixteenth century, these have valuably addressed topics ranging from local political alignments, religion, patterns of landholding, and the reception of propaganda.[90] In the legal domain, Professor Louis Knafla's 'Kent at Law' project is the most prominent example of a county study, albeit one focussed on the publication of documents and their quantitative (more so than qualitative) analysis.[91]

This thesis confines itself to Oxfordshire and Berkshire for reasons of space and practicality, and not out of any conception that they formed (either individually or together) discrete 'communities'.[92] The good fortune of surviving records—especially those preserved in the archives of the colleges of the University of Oxford—and indeed the distinctive legal role of the University itself, means that the two counties are particularly

[89] A.M. Everitt, *The Community of Kent and the Great Rebellion, 1640–60* (Leicester, 1966); cf J.S. Morrill, *Cheshire 1630–1660: County Government and Society During the English Revolution* (Oxford, 1974).
[90] A. Hassell Smith, *County and Court: Government and Politics in Norfolk, 1558–1603* (Oxford, 1974); MacCulloch, *Suffolk and the Tudors*; Smith, *Land and Politics*; J.P.D. Cooper, *Propaganda and the Tudor State: Political Culture in the Westcountry* (Oxford, 2003).
[91] Louis A. Knafla, *Kent at Law 1602. The County Jurisdiction: Assizes and Sessions of the Peace* (London, 1994).
[92] Cf C. Carpenter, 'Gentry and Community in Medieval England', *Journal of British Studies*, 22 (1994), 341–6.

fruitful as an object of study. As we have seen, from the social and geographic point of view the two counties go together as a natural pair, and indeed they shared a joint shrievalty until 1567. Linkages of these kinds mean that many of the traditional assumptions about bounded communities are particularly inapposite in the case of Oxfordshire and Berkshire. The close links between county and court, and the economic consequences of proximity to London have already been mentioned; and as will become especially clear in Chapter 2, the legal horizons of people in the Thames Valley were by no means confined to their own counties.

The idea of 'community' is usually in need of careful analysis. As Ian Archer points out, social interactions are rarely limited by geographical area or institutional framework in any neat or precise way.[93] Christine Carpenter's warning is therefore well placed: the unthinking invocation of 'community' can indeed suggest 'slack thought' and the avoidance of more precise terminology, as well as an 'implicit hankering for some mythical past' characterised by 'communities' rather than more prosaically-described forms of social organisation.[94] As we shall see over the course of this thesis, the legal context of sixteenth-century England means that those more prosaically-described relationships (such as that between parties to an indenture, between landlord and tenant, patron and client, or borough and inhabitants) and statuses (whether being an heir, burgess, homager, or ward) are often more richly informative about what was actually going on than are vague abstractions about 'communities'.[95]

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[93] Ian Archer, *The Pursuit of Stability: Social Relations in Elizabethan London* (Cambridge, 1991), ch. 3.

[94] Carpenter, 'Gentry and Community', p. 340. Cf Paul Dresch, 'Legalism, Anthropology and History: A View from Part of Anthropology', in Paul Dresch and Hannah Skoda (eds.), *Legalism: Anthropology and History* (Oxford, 2012), p. 29; Reynolds, *Kingdoms and Communities*, p. xi.

[95] Cf Dresch, 'Legalism, Anthropology and History', pp. 14–15.

In any county-focussed research, the number and geographic range of the sampled counties will vary depending on the historian's aims. For example, Warwickshire and Leicestershire were also a joint shrievalty, yet Christine Carpenter's comprehensive attention to people's social, political and economic interrelationships surely justifies her focus on Warwickshire alone.[96] Conversely, Christopher Brooks' desire to achieve a nationally representative sample of the 'lower branch' of the legal profession and its work in the Common Pleas leads naturally to his choice of three contrasting counties (Devon, Hertfordshire and Warwickshire).[97] This thesis falls somewhere between those two poles. On the one hand, given its particular focus on people's experience of the civil legal system, the vagaries of documentary survival mean that it is unlikely that any single county would have sufficient material on point—especially in the form of correspondence, drafts, and other documents more ephemeral than official legal records. On the other hand, given the largely qualitative nature of the task, it does not purport to offer a nationally 'typical' or 'representative' sample, and therefore comparison beyond the two chosen counties is less necessary.

**Law, society and history**

Just about every aspect of life in early modern England was touched by the law. Whether one was buying goods in the marketplace, arranging a marriage, dictating a will, or financing a property transaction, some kind of legal agreement was likely to be involved; possibly one in a written form and the product of some degree of professional advice. Even

[96] Christine Carpenter, *Locality and Polity: A Study of Warwickshire Landed Society 1401–1499* (Cambridge, 1992), p. 366.
[97] Brooks, *Pettyfoggers and Vipers*, p. 8.

in the absence of professional advice, many people came into contact with the law at a variety of levels. Over the course of their lives, men (at least) were likely to serve in a variety of legal offices appropriate to their social status, whether as members of the homage of their manor; as jurors at the assizes; as councillors, aldermen or other civic officials; or as Justices of the Peace. Women, too, had a richer experience and deeper knowledge of the legal system than might once have been supposed. They featured as litigants in all courts, but the common law's restrictive rules about legal capacity meant that they were proportionately more prominent as litigants in equity, conciliar, ecclesiastical and local courts rather than the common law courts of Westminster Hall.[98] In particular, manorial and borough custom was often much more solicitous of women's interests than was the common law.[99]

An increasingly dynamic economy and, especially after the dissolution of the monasteries, an increasingly fluid market for land meant that there was simply much more legal business going on. More legal business meant more litigation, and thanks to the pioneering work of Christopher Brooks and others, we now have a much clearer picture of the sustained increase in the volume of litigation from the mid-sixteenth century until the mid-seventeenth.[100] As Brooks has shown, there was a more than tenfold increase in the number of cases that reached advanced stages in the King's Bench and Common Pleas between 1490 and 1640. There were about 2100 such cases in 1490, about 13,000 in 1580,

[98] On women's legal capacity, see W.S. Holdsworth, *A History of English Law*, 3rd edn. (10 vols., London 1923), ii, 387; iii, 521. On women in other legal venues, see Stretton, *Women Waging Law*; Cioni, 'Elizabethan Chancery and Women's Rights'; Laura Gowing, *Domestic Dangers. Women, Words, and Sex in Early Modern London* (Oxford, 1996).
[99] Cf Wood, *Memory of the People*, pp. 297–315. On the ambiguous situation of women in contemporary French law, see Roland Mousnier, *Les institutions de la France sous la monarchie absolue* (Paris, 1974), pp. 74–82.
[100] Christopher W. Brooks, *Lawyers, Litigation and English Society Since 1450* (London, 1998), ch. 4; *Pettyfoggers and Vipers*, ch. 4.

about 23,000 in 1606 and about 29,000 by 1640.[101] The period between 1560 and 1640 has therefore been described as 'one of the most litigious periods in English history if not the most'.[102] Importantly, those litigants were more socially diverse than one might expect: in 1606, for example, 71% of litigants in the Common Pleas were below the rank of gentleman.[103] Similar patterns of expanding litigation can be found elsewhere in the legal system, especially in the borough courts.[104]

While the details will need to be considered in Chapter 2, one can at once affirm the truth of John Baker's observation that increased litigiousness in the early modern period was a phenomenon largely having 'economic rather than intellectual causes'.[105] One consequence of that boom in litigation was, as we shall see in greater detail in Chapter 5, an increase in the number of dissatisfied litigants who tried to 'blame their legal misfortunes on … bias or corruption … rather than on any inadequacy in their cases or themselves.'[106] Whatever its causes and consequences, 'going to law' was plainly an increasingly widespread social experience.

Law obviously had a social context, but from both a sociological and a historical point of view, it also *was* that social context. Martin Chanock, writing of law in a very different time and place, observes that '"legal" behaviour cannot be separated from the rest of social

[101] Brooks, *Pettyfoggers and Vipers*, p. 51.
[102] Brooks, *Pettyfoggers and Vipers*, p. 79.
[103] Brooks, *Pettyfoggers and Vipers*, p. 61.
[104] Craig Muldrew, *The Economy of Obligation: The Culture of Credit and Social Relations in Early Modern England* (London, 1998); W.A. Champion, 'Litigation in the Boroughs: The Shrewsbury Curia Parva 1480–1730', *Journal of Legal History*, 15 (1994), 201.
[105] Baker, *Oxford History of the Laws of England*, pp. 39–40.
[106] Wilfrid Prest, 'Judicial Corruption in Early Modern England', *Past & Present*, 133 (1991), 77–8.

life, nor yet placed "in context" because it is part of the "context".'[107] To study legal records and the legal system is therefore to enmesh oneself in the full richness of early modern social life. Indeed, 'real life' often intrudes into legal documents in most unexpected ways. Like commonplace books, they can sometimes reveal surprising incidental details of the lifestyle, preoccupations and beliefs of their authors.[108] For example, the substantial landowner William Belson, whom we have already encountered as the master of the alleged rioter Stephen Gunn, kept a notebook in the time of Queen Mary in which he recorded lists of his landholdings, legal dealings and debts owed to him, as well as—more surprisingly—neatly-copied collects from the 1549 Book of Common Prayer.[109]

Likewise, a draft court book from the Berkshire manor of Shrivenham Salop contains not merely the legal jottings of the attorney Henry Snodenham, but also scatological stories from Erasmus and a recipe for 'a medicine for the pestilence set forth by the King'.[110] That medicine was an appealing form of mulled white wine, but rather less appealing was the jar of urine with which the Kentish landowner Richard Engeham accompanied his letter to Richard Master some time in the 1550s. Master was a medical doctor and a fellow of All Souls' College, and Engeham wrote to him about legal matters touching land in Kent in which the College was interested. Engeham was as much troubled by the need to 'to sue

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[107] Martin Chanock, *Law, Custom and Social Order: The Colonial Experience in Malawi and Zambia* (Cambridge, 1985), p. 11.
[108] Cf Kevin Sharpe, *Reading Revolutions: The Politics of Reading in Early Modern England* (New Haven, 2000). On marginalia and annotations in the legal context, see Louis A. Knafla, 'The Law Studies of an Elizabethan Student', *Huntingdon Library Quarterly*, 32 (1969), 221–40.
[109] BRO D/EBT/E42. This notebook is all the more fascinating as it is covered with a reused sheet of parchment which originally formed part of a manuscript copy of Wycliffe's sermon 'The Armour of Heaven'.
[110] BRO D/EEL M68. The recipe instructs one to 'take a handful' of various herbs including sage, then 'stamp them together and strain them together in a fair cloth with a quantity of white wine and then take a quantity'.

out a writ called *dedimus potestatem* (the charge whereof I will bear)' as he was by the 'consumption of the reins' (i.e. kidneys) by which he believed himself to be 'much weakened'. He therefore 'sent [his] water by [his] servant' who carried the letter, through which Master was to gain 'better knowledge' of Engeham's malady.[111]

Interest in the social history of law in early modern England came particularly to the fore in the 1970s. In part under the influence of Marxist ideas, much of the writing of that era tended to view law largely in instrumental terms as a means of social control imposed from above.[112] Overly schematic versions of this approach were obviously open to criticism, and later writers have for example given closer (and perhaps more sympathetic) attention to the shifting attitudes towards the law and legality on the part of the gentry and higher elites.[113] Law thus came to be related to wider social and intellectual currents relating to gentility, altered views of chivalry, the prestige of humanism, and the increasing pervasion of legal knowledge among landed elites.[114] Many of those currents were of direct relevance to the social position of the legal profession itself, which has in turn proved to be a fruitful object of study for historians.[115]

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[111] ASCA 130/97.
[112] Douglas Hay et. al. (eds.), A*lbion's Fatal Tree: Crime and Society in Eighteenth-Century England* (London, 1975); Keith Wrightson and David Levine, *Poverty and Piety in an English Village: Terling, 1525–1700* (New York, 1979); John Brewer and John Styles (eds.), *An Ungovernable People: The English and their Law in the Seventeenth and Eighteenth Centuries* (London, 1980). For a historiographical interpretation, see Brooks, *Lawyers, Litigation and English Society*, ch. 7; cf Hindle, *On the Parish*, pp. 363–5.
[113] Mervyn James, *Society, Politics and Culture* (Cambridge, 1986); Anthony Fletcher and John Stevenson (eds.), *Order and Disorder in Early Modern England* (Cambridge, 1985); cf Christine Carpenter, 'Law, Justice and Landowners in Late Medieval England', *Law and History Review*, 12 (1983), 205.
[114] Brooks, *Law, Politics and Society*, ch. 10.
[115] Wilfrid R. Prest, *The Inns of Court under Elizabeth I and the Early Stuarts, 1590–1640* (London, 1972); Brian P. Levack, *The Civil Lawyers in England 1603–1641: A Political Study* (Oxford, 1973); Wilfrid Prest (ed.), *Lawyers in Early Modern Europe and America*, (London, 1981); E.W. Ives, *The Common Lawyers of Pre-Reformation England: Thomas Kebell, A Case* Study (Cambridge, 1983); Wilfrid R. Prest, *The Rise of the Barristers: A*

More recently, historians of early modern law and society have begun focussing their attention lower down the social spectrum, albeit with greater sensitivity to nuance, motivation and context than was found in some of the earlier more 'instrumentalist' writers. In Craig Muldrew's view, the early modern period saw a 'legalization of social relations' across society.[116] Likewise, Brooks observes that 'law was much more deeply ingrained into everyday life than has until recently been recognised by most historians'; that there were few social relationships that did not take place within a 'legal matrix'; and that there is 'every indication that smallholders were quite familiar with the workings of "professional" law.'[117] That familiarity has been examined by Ethan Shagan in the context of his work on popular politics and the Reformation. The Reformation, he writes 'offered new opportunities for members of the commonalty to co-opt and manipulate [royal] power'. The law courts were a principal forum for that manipulation; making them 'sites of cultural negotiation' where ordinary people were able to make use of the legal process to advance their local political agendas.[118]

These themes have been explored in a more explicitly class-based understanding in the work of historians like Andy Wood who focus on plebeian political culture. Wood draws attention to what he terms a 'deep popular legalism' in England which combined a 'highly legalistic' outlook with politically expressive collective litigation, centred on notions of custom, order and continuity. Both in his work on the articulation of customary rights by miners in Derbyshire's Peak District, and on the co-option of legal forms by the

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*Social History of the English Bar 1590–1640* (Oxford, 1986); Brooks, *Pettyfoggers and Vipers*.

[116] Muldrew, *Economy of Obligation*, p. 194.

[117] Brooks, *Law, Politics and Society*, pp. 307, 275.

[118] Ethan H. Shagan, *Popular Politics and the English Reformation* (Cambridge, 2003), p. 273.

commotion time rebels of 1549, he sees 'clear confirmation of the significance of law within early modern plebeian political culture.'[119] More generally, Wood characterises the early modern lower classes as having a 'highly legalistic mind-set in which understandings of custom occupied a central place.'[120]

For other historians such as Steve Hindle, whose focus is on the development of the early modern state, the growth of litigation in central law courts is an 'index of the growth of government' and a marker of public engagement with legal institutions.[121] In that context, law was an 'incorporative force', creating links within and across society, and resulting in the 'gradual embedding of the state deeper into the social order' through the 'widespread diffusion of a legalistic sense of order'.[122] Likewise, in Michael Braddick's account, the law was a 'means of government' in which the 'high degree of participation' in its administration was 'crucial to its use as a means of social discipline'.[123] Legal authority was a social and political resource that could be drawn upon, and each instance of resorting to the law 'sanctioned its power' and in so doing 'extend[ed] the authority of the state'.[124]

[119] Wood, *1549 Rebellions*, pp. 154–5; Andy Wood, *The Politics of Social Conflict: The Peak Country 1520–1770* (Cambridge, 1999), ch. 6.
[120] A. Wood, 'Custom and the Social Organization of Writing in Early Modern England', *Transactions of the Royal Historical Society*, 6th ser., 9 (1999), 264.
[121] Steve Hindle, *The State and Social Change in Early Modern England c. 1550–1640* (Houndmills, 2000), p. 13.
[122] Hindle, *State and Social Change*, 89.
[123] Michael J. Braddick, *State Formation in Early Modern England c. 1550–1700* (Cambridge, 2000), pp. 136, 139.
[124] Braddick, *State Formation*, p. 163.

**Law, politics and anthropology**

The connection between the law and the state means that law has an obvious political context. However, as a number of the writers mentioned in the last section indicate, the 'high' context of central government was not the only political context in which the law operated, and historians have long realised that the law was, to use Philippa Maddern's phrase, 'as much a tool of local politics as an instrument of royal power'.[125] There are many ways in which the political context of law can be discussed, but if local politics is about understanding the dynamics of power in a defined social group, it may be appropriate to use different techniques and modes of analysis than would be the case when discussing politics as practised at a higher or more central level. As we shall see, this is an area which has provoked a lively methodological debate.

The integration of legal history into the history of politics and political culture is particularly well developed for the seventeenth century. Whether in the form of studies of the politics of the judiciary, the political ramifications of jurisdictional disagreements, *causes célèbres* like the Ship Money, or more generally in terms of a 'constitutionalist revolution', the interrelationship of law and politics has received serious attention in multiple contexts.[126] This close attention is understandable given the evident relationship between legal and political events in the first half of the seventeenth century, in much the

[125] Philippa C. Maddern, *Violence and Social Order: East Anglia 1422–1442* (Oxford, 1992), p. 16.
[126] Louis A. Knafla, *Law and Politics in Jacobean England* (Cambridge, 1977); W.J. Jones, *Politics and the Bench: The Judges and the Origins of the English Civil War* (London, 1971); Brooks, *Law, Politics and Society*, chs. 6–8; Alan Cromartie, *The Constitutionalist Revolution: An Essay on the History of England 1450–1642* (Cambridge, 2006).

same way as the turmoil of the fifteenth century has also generated interest in constitutional aspects of legal history.[127]

So far as the sixteenth century is concerned, these constitutional themes have been somewhat less prominent, in part because of the influential Eltonian tendency towards institutional history.[128] Nonetheless, there are prominent examples of works tracing, for example, the political genesis of important legal changes, or the involvement of particular political figures in specific legal institutions.[129] Perhaps more characteristic of the sixteenth-century historiography, though, has been the steady expansion of the definition of what counts as 'political', along with an expanding social range of those who might be thought to be involved in politics however defined.

Contemporary historians have moved beyond Sir Thomas Smith's characterisation of the lower orders as being those 'which do not rule' and who have 'no voice nor authority in our commonwealth'.[130] Whether seen in terms of the 'politics of the parish', the 'two concepts of order', or the 'moral economy of the crowd', social historians have found many attractive encapsulations of the political agency of people outside the elites in early

[127] S.B. Chrimes, *English Constitutional Ideas in the Fifteenth Century* (Cambridge, 1936); Norman Doe, *Fundamental Authority in Late Medieval English Law* (Cambridge, 1990); John Watts, *Henry VI and the Politics of Kingship* (Cambridge, 1996); John Watts, 'Ideas, Principles and Politics', in A.J. Pollard, ed., *The Wars of the Roses* (Basingstoke, 1995), p. 110; Carpenter, *The Wars of the Roses*.
[128] Cf Gunn, *Early Tudor Government*, pp. 2–8.
[129] See, e.g., E.W. Ives, 'The Genesis of the Statute of Uses', *English Historical Review*, 82 (1967), 673; M.L. Bush, 'Protector Somerset and Requests', *Historical Journal*, 17 (1974), 451; M.L. Bush, *The Government Policy of Protector Somerset* (London, 1975), pp. 56–7. Another example, perhaps closer to the 'institutionalist' model is Guy, *Cardinal's Court*.
[130] Sir Thomas Smith, *De Republica Anglorum*, ed. Mary Dewar (Cambridge, 1982), p. 76.

modern England.[131] This broadened concept of politics has also been one motivation behind a revival of interest in a legal institution which had previously been neglected by early modern (as opposed to mediaeval) historians, namely the manor court. This has now been reappraised both as an essential element in the structure of government, and also as a valuable forum for local political agency.[132]

However, both the breadth of the concept of politics and the scope of non-elites' political agency have limits, and we might exercise caution when historical work pushes too close to those boundaries. To take one example, Kevin Sharpe characterises reading as a 'political performance' and therefore part of the wider history of politics.[133] However, such a conclusion is perhaps more easily reached in the case of his particular reader—Sir William Drake, a Buckinghamshire gentleman and local office-holder with a strong interest in legal matters—than in the case of readers more generally. Likewise, an approach to politics that sees power as being 'negotiated' between elites and non-elites can run the risk of anachronism and over-theorisation.[134] Illiterate agricultural labourers of the sixteenth century did not conduct themselves or view their world as would university

[131] Keith Wrightson, 'The Politics of the Parish in Early Modern England', in Paul Griffiths, Adam Fox and Steve Hindle (eds.), *The Experience of Authority in Early Modern England* (London, 1996), p.10; Keith Wrightson, 'Two Concepts of Order: Justices, Constables and Jurymen in Seventeenth-Century England', in John Brewer and John Styles (eds.), *An Ungovernable People: The English and Their Law in the Seventeenth and Eighteenth Centuries* (London, 1980), p. 21; E.P. Thompson, 'The Moral Economy of the English Crowd in the Eighteenth Century', *Past & Present,* 50 (1971), 76.
[132] Brooks, *Law, Politics and Society*, ch. 9; Christopher Harrison, 'Manor Courts and the Governance of Tudor England', in C.W. Brooks and M. Lobban (eds.), *Communities and Courts in Britain, 1150–1900* (London, 1997), p. 43; Brodie Waddell, 'Governing England Through the Manor Courts, 1550–1850', *Historical Journal*, 55 (2012), 279; Matthew Griffith, 'Kirtlington Manor Court, 1500–1650', *Oxoniensia*, 45 (1980), 260.
[133] Sharpe, *Reading Revolutions*, p. 342.
[134] Cf Michael J. Braddick and John Walter (ed.), *Negotiating Power in Early Modern Society: Order, Hierarchy and Subordination in Britain and Ireland* (Cambridge, 2001). The measured enthusiasm of the editors towards the theoretical value of 'negotiated' power in general (and James C. Scott's 'hidden transcript' in particular) is perhaps greater than that of their contributors.

lecturers of the twenty-first. As Kesselring points out, to pay attention to communal participation in legal and political ordering is one thing, but to view that ordering as always being the product of negotiation is quite another. Sometimes, law and politics were about 'brute, not negotiated, power.'[135]

If we view politics as 'the pursuit, maintenance and control of power',[136] then the history of people's experience of the legal system is very much a part of the history of politics. The extent of the gap between the twin domains of high or 'metropolitan' politics on the one hand, and local 'politics of the parish' on the other has been much diminished—or at least de-emphasised—in recent writing.[137] Yet, to the extent that a gap remains, there is much wisdom in Brooks' observation that the two domains are 'more readily bridged through legal materials than almost any other kind of source.'[138]

Similarly, even if we are not content with this tendency to move social history into the hesitant borderlands of political history, legal records offer an unusually good insight into social history itself. Elton, in reviewing Gerald Strauss' work on law and politics in early modern Germany, remarked that

> the law offers the surest way to an understanding of the social history of any age, at least before the French Revolution, a surer way than all the non-applicable refinements of modern sociology or social anthropology.[139]

[135] K.J. Kesselring, *Mercy and Authority in the Tudor State* (Cambridge, 2003), pp. 203–4.
[136] Hindle, *State and Social Change*, p. 205.
[137] A notable example being Shagan, *Popular Politics*.
[138] Brooks, *Law, Politics and Society*, p. 241.
[139] G.R. Elton, 'Gerald Strauss, *Law, Resistance and the State*', *Continuity & Change*, 2 (1987), 199. Cf R.A. Houston, 'Custom in Context: Medieval and Early Modern England and Scotland', *Past & Present*, 211 (2011), 35.

However, not all historians have been so sceptical of the 'refinements' of social anthropology when applied to legal historical topics.[140] For some, this has meant the explicit adoption of particular anthropological frameworks, such as the 'processual analysis' applied by Chris Wickham in his work on legal disputation in twelfth-century Tuscany.[141] For others, the reference to anthropological concepts is more sporadic and incidental.[142]

Nonetheless, as some anthropologists themselves warn, care must be taken when applying these concepts—especially in their more structural or abstract forms—to historical work. The focus in some anthropological literature on structures and institutions means, in Martin Chanock's view, that it has 'failed to come to grips with historical questions', most notably the change of societies over time.[143] Likewise, Paul Dresch notes that anthropologists have 'less to offer than one might have hoped' on the topic of law in society, especially in its historical context, and points to the tendency of much anthropological work on legal themes to fall within the well-ploughed furrows of 'dispute resolution' or 'legal pluralism'.[144]

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[140] Cf John Bossy (ed.), *Disputes and Settlements: Law and Human Relations in the West* (Cambridge, 1983).
[141] Chris Wickham, *Courts and Conflict in Twelfth-Century Tuscany* (Oxford, 2003), p. 303.
[142] Cf Wood, *1549 Rebellions*, p. 121.
[143] Chanock, *Law, Custom and Social Order*, pp. 41–2.
[144] Dresch, 'Legalism, Anthropology and History', pp. 2–6. Patrick Wormald tartly observed that 'a model of … law on loan to historians from analysts of Third World societies where authority historically had little power is unlikely to hold all the answers': *The Making of English Law: King Alfred to the Twelfth Century* (Oxford, 1999), p. x.

From a legal historical point of view, the anthropological lens of 'dispute resolution' tends to downplay the noteworthiness of *legal* aspects of disputes or their resolution.[145] This is especially ironic because, as Brooks points out, 'so much of our evidence about social relations in the past comes from court records'; specifically those relating to *legal* means of conflict resolution.[146] This evidentiary context is also crucial when appraising the value of 'legal pluralist' approaches.[147] Much of this literature—and especially that concerned with the interaction of state and non-state law—is of doubtful historical and conceptual utility when applied to periods before the mid-nineteenth century. So far as the sixteenth century is concerned, the idea of a unified 'state law' is plainly anachronistic; and when removed from its usual nineteenth-century colonial context, the idea of 'non-state law' can be over-inclusive and lacking in specificity.[148]

The one anthropological—or perhaps more correctly, ethnographic—technique that has proved enduringly influential among historians is the 'thick description' most closely associated with Clifford Geertz. For Geertz, cultural analysis is about the 'explication' of 'social expressions' that are 'on their surface enigmatical'.[149] To that end, thick description aims to build up a tentative picture of the layers of cultural meaning inherent in social activities:

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[145] Cf Sally Falk Moore, *Law as Process: An Anthropological Approach* (London, 1978); Paul Bohannan (ed.), *Law and Warfare: Studies in the Anthropology of Conflict* (New York, 1967).
[146] Brooks, *Lawyers, Litigation and English Society*, p. 65.
[147] Cf Franz von Benda-Beckmann, 'Who's Afraid of Legal Pluralism?', *Journal of Legal Pluralism*, 47 (2002), 37; S. Roberts, 'Against Legal Pluralism: Some Reflections on the Contemporary Enlargement of the Legal Domain', *Journal of Legal Pluralism*, 42 (1998), 95.
[148] On the absence of a procedurally unified 'legal system', see Brooks, *Pettyfoggers and Vipers*, p. 12.
[149] Clifford Geertz, *The Interpretation of Cultures* (New York, 1973), p. 5. As Geertz acknowledges, the concept of 'thick description' originates with the philosopher Gilbert Ryle.

> The aim is to draw large conclusions from small, but very densely textured facts; to support broad assertions about the role of culture in the construction of collective life by engaging them exactly with complex specifics…[150]

This technique has been very influential in the work of American microhistorians, most notably Natalie Zemon Davis and Robert Darnton.[151] It is, however, important to note that not all microhistorians have been so explicitly influenced by Geertz' work, and indeed nor does all microhistory concern cultural history. In particular, Italian microhistorians such as Carlo Ginzburg or Giovanni Levi have been shaped by quite different priorities, methods and influences.[152]

Nonetheless, in whichever particular form or national style it takes, microhistory has had a complicated relationship with other forms of historical writing. The problem is often one of scale.[153] Long before current historiographical labels became fashionable, Johan Huizinga perceived that good history requires a proper balance between the general and the particular. 'In particular facts great contexts are recognized', he wrote, but without

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[150] Geertz, *Interpretation of Cultures*, p. 28.
[151] Natalie Zemon Davis, 'Remembering Clifford Geertz', *History Workshop Journal*, 65 (2008), 188; Natalie Zemon Davis, *Society and Culture in Early Modern France* (Stanford, 1975); Natalie Zemon Davis, *The Return of Martin Guerre* (Cambridge, M.A., 1983); Robert Darnton, *The Great Cat Massacre and Other Episodes in French Cultural History* (New York, 1984).
[152] Edward Muir, 'Introduction: Observing Trifles' in Edward Muir and Guido Ruggiero (eds.), *Microhistory and the Lost Peoples of Europe* (Baltimore, 1991), p. vii. Carlo Ginzburg, 'Clues: Morelli, Freud and Sherlock Holmes', in Umberto Eco and Thomas A. Sebeok (eds.), *The Sign of Three: Dupin, Holmes, Peirce* (Bloomington, 1983), p. 81; Giovanni Levi, 'On Microhistory,' in Peter Burke (ed.), *New Perspectives on Historical Writing* (Cambridge, 1991), p. 93. On Geertz specifically, see Giovanni Levi, 'I pericoli del geertzismo', *Quaderni Storici*, 58 (1985), 269.
[153] On scale, see Jacques Revel (ed.), *Jeux d'échelle: La micro-analyse à l'expérience* (Paris, 1996). For a recent assessment, referring especially to the American historical context, see Anthony Grafton, 'History's Postmodern Fates', *Daedalus*, 135(2) (2006), 62–9.

knowledge of the particular, 'general phenomena become dry and lifeless'.[154] In modern terms, microhistory has been described as looking for the 'exceptional typical', yet it is precisely the typicality of the chosen case study that is most often open to question.[155] This is particularly true in societies lacking a 'shared' or homogeneous set of cultural expectations.[156]

For Geertz, the point of thick description was that it enabled one to ask *questions* that were of general interest, without necessarily implying either that the chosen case study was a microcosm or a 'natural experiment' of some wider factual context.[157] This thesis certainly aims to ask questions of general interest, but it also aims to avoid some of the pitfalls of more limited forms of microhistory by investigating multiple case studies and taking into account multiple factual contexts. A thesis which looked *only* at one court, or one community, or one kind of legal problem, or one sort of legal relationship, or a single litigant, might indeed seem rather thinly described. However, as was explained at the outset of this chapter, this thesis aims to build up a far more comprehensive picture by looking at the problem from more than one vantage point. Through those multiple points of view, and by 'focus[sing] carefully on what people seem to have thought they were doing',[158] one can also begin to see the normative, rather than the normal, in people's experience of the law. That is, by looking at how people justify their actions, how they

[154] J. Huizinga, 'The Idea of History', in Fritz Stern (ed.), *The Varieties of History*, 2nd edn. (New York, 1972), p. 298. Not all historians, then, are exclusively parachutists or truffle-hunters.
[155] Matti Peltonen, 'Clues, Margins, and Monads: The Micro-Macro Link in Historical Research', *History and Theory*, 40 (2001), 347. The phrase originated with Edoardo Grendi, 'Micro-analisi e storia sociale', *Quaderni Storici*, 12 (1977), 506.
[156] Andy Wood justifiably criticises the tendency of some Geertzian analysis to portray early modern English culture as 'unified, homogeneous and hierarchical': *Memory of the People*, p. 17.
[157] Geertz, *Interpretation of Cultures*, pp. 21–2.
[158] Carpenter, *Wars of the Roses*, p. 267.

express their expectations, how they react to the actions of others, 'the norms of their social group, however wide or narrow it may have been, can be perceived'.[159]

**Law and legal knowledge**

As we have seen, the topics of law, government and authority in early modern England have been touched on in a vast range of literature which represents a wide variety of preoccupations and methodologies. The challenge which this thesis takes up is to bring some of these strands together so as to form a more coherent picture of people's experience of the civil legal system. To do that, though, we must first gain a clearer sense of what people actually knew about the law and the legal system, and what evidence might help us towards such an understanding.

In other words, the challenge is to go beyond the now well-known statistics of the increase in the volume of litigation, the diversity of legal advisers' clientele, and the political importance of legal institutions, in order to make sense of the underlying social reality.[160] Steve Hindle speaks ambitiously of a social history approach to the increase in litigation which attempts to 'reconstruct the economic attitudes, social values and cultural priorities with which litigation was informed.'[161] That, as all historians acknowledge, is a very difficult task, and Christopher Brooks himself points to the difficulty of trying to assess

[159] Maddern, *Violence and Social Order*, p. 25.
[160] Brooks, *Pettyfoggers and Vipers*, pp. 59–63.
[161] Hindle, *State and Social Change*, p. 79.

'how juristic values resonated in provincial England', emphasising that 'direct evidence of the reception of legal language is limited.'[162]

As in all areas of history, one must avoid overstating that which the historical record contains, just as one must avoid overlooking or underestimating that which is omitted, but the need is perhaps especially acute in the field of legal history, where interpretative problems are created both by the silent evidence of mute compliance with the law and also by the all-too-visible evidence of flamboyant disorders and disputatiousness. On the one hand, as Shagan notes, 'obedience to the law leaves few records';[163] yet as K.B. McFarlane justifiably observes, '[i]f history is written from the preambles to statutes, the denunciations of moralists and reformers, and the ex parte statements of those engaged in litigation, there is every chance that it will be a record of bloodshed and injustice.'[164] This, in Clanchy's view, is perhaps a particular 'occupational hazard' for legal historians who, in trying to make sense of the morass of surviving legal documents, 'lose a sense of proportion and … see things from too lawyer-like and anachronistic a point of view,' especially when 'the most important things were probably not written down at all.'[165]

Even when things *were* written down, the form in which this was done can often be quite opaque to the untrained modern reader. Such opacity is especially characteristic of the common law courts at Westminster, which were by volume of business by far the most prominent jurisdictions. These are records which, to use Carpenter's phrase, tell us more

[162] Brooks, *Law, Politics and Society*, p. 241.
[163] Shagan, *Popular Politics*, p. 48.
[164] McFarlane, *Nobility of Later Medieval England*, p. 115.
[165] Michael Clanchy, 'Law and Love in the Middle Ages', in John Bossy (ed.), *Disputes and Settlements: Law and Human Relations in the West* (Cambridge, 1983), p. 65. On the importance of things which were not written down, see J.H. Baker, *The Law's Two Bodies: Some Evidential Problems in English Legal History* (Oxford, 2001).

'about law and lawyers rather than about consumers'.[166] Clanchy colourfully observes that the common law lacks the kind of detailed inquisitorial records that exist for Continental Europe precisely 'because the judges were not inquisitors meticulously searching out the truth but operators of a slot machine intended to produce decisions every few minutes.'[167] While we shall see in Chapter 2 that hardly any cases were in fact resolved by a judge's decision, Clanchy's broader point is certainly true.

Thus, when the Reading man John Turner sued Edward Porter in the Common Pleas for detinue, we cannot know whether the loss of his copy of Fitzherbert's *Justice of the Peace* was more galling than the loss of his quilted nightcap; both taken from his house on the same occasion in March 1547.[168] Likewise, it would be fascinating to know what Joan Barton thought she was doing when, as a *feme sole*, she allegedly trespassed on Edmund Powell's land at Littlemore (Oxon) and carried away, among other things, four doors, three hanging gates, 94 joists, 14 locks with their keys, and an iron bar: once again, the plea rolls simply do not tell us.[169] The records of local institutions are similarly opaque. Beyond the fact that he wished to secure payment of his debt, the surviving records cannot tell us, for example, what motivated John Cull to sue Thomas Somer in the Lord's Court at Henley for a 12s debt arising out of an accounting had between them in 1572.[170]

Faced with these kinds of gaps, it is little wonder that social historians have been more attracted to the records of the equity and conciliar courts, whose English bills and

[166] Carpenter, 'Law, Justice and Landowners', p. 209.
[167] Clanchy, 'Law and Love in the Middle Ages', p. 57. He refers, for example, to the kind of records used in works like Emmanuel Leroy Ladurie's *Montaillou: Cathars and Catholics in a French Village, 1294–1324* (London, 1974).
[168] CP40/1155 m 1252.
[169] CP40/1154 m 441.
[170] OHC BOR/3/B/IV/BW/38/13.

depositions provide rich, but potentially misleading, evidence. Sometimes, the records do indeed offer helpful glimpses. Thus, when the chantry priest Eustace Grene of Rycote (Oxon) complained in Star Chamber about a forcible entry upon his house in 1535 by a mob who took and carried away 'diverse specialties whereby diverse persons stood bounded unto [him] in the sum of three score and seventeen pounds', we may reasonably assume that his assailants understood the legal significance of the documents they seized, and targeted them as such—or, at the very least, that Grene could plausibly allege that they did.[171]

However, if our preoccupation is with a specifically *plebeian* legal culture, these records may be less informative than some have supposed. As Roger Manning's work on Star Chamber shows, a very large proportion of such cases arose out of the machinations of rival landlords, rather than springing authentically from a plebeian legalism. Of the Henrician and Edwardian enclosure riots studied by Manning, only about 16% can clearly be identified as having been instigated by people of the level of yeomanry and below.[172]

Likewise, while much has been written about the importance of orality and local memory in the context of manorial custom,[173] caution is needed before we transform this understanding into a clear endorsement of a specifically *popular* legal culture. In that regard, it is indeed quite common to find venerable deponents in their 70s or 80s deposing about the custom of their manor. Take, for example, a dispute between Sir Walter Stonor—

[171] STAC 2/16 fol 235.
[172] Roger B. Manning, *Village Revolts: Social Protest and Popular Disturbances in England 1509–1640* (Oxford, 1988), pp. 38–9; Roger B. Manning, 'Patterns of Violence in Early Tudor Enclosure Riots', *Albion*, 6 (1974), 120.
[173] M.T. Clanchy, 'Remembering the Past and the Good Old Law', *History*, 55 (1970), 172; Wood, 'Custom and the Social Organization of Writing', p. 257; Adam Fox, *Oral and Literate Culture in England: 1500–1700* (Oxford, 2000), ch. 5.

father of the wastrel Sir Francis—and his tenants over rights of common in the manor of Didcot (Berks). The case ended up in the Star Chamber in late Henrician times. Thomas Brook of Eynsham, aged 80, deposed that he had known the manor for 59 years, and that 'he never heard say by the old men that were of the town of Didcot or [the surrounding] country but that the [lands in dispute] were common'.[174] That testimony would have had a compelling authenticity but for the fact that nine other witnesses all gave the same evidence verbatim, only the names and ages changing.[175] Obviously, it is quite possible that this was the result of scribal shorthand rather than collusion, but from the distance of 500 years it is very hard to tell which is which.

The doubtful veracity of many statements of this kind has occasionally led historians to a somewhat defensive scepticism. For example, in the introduction to his *Star Chamber Stories*, Elton remarked that '[i]f an element of fiction or improbability seems sometimes to creep in, the fault is not mine: either the lawyers of the time were given to writing fiction, or our preconceptions are wrong.'[176] More recent historians, though, have realised that these alternatives are not mutually exclusive, and that the 'fictional' aspects of legal sources can themselves be revealing. This, for example, is Natalie Zemon Davis' approach towards *lettres de remission*—in effect, requests for pardon—in sixteenth-century France. By contrast with other legal records that are 'dominated by notarial sequences and formulae', Zemon Davis argues that letters of remission were a genre of legal writing that encouraged the expression of ostensibly truthful—or at very least plausible—narratives on behalf of the pardon-seeker.[177] Although the documents were drafted by lawyers and then

[174] STAC 2/13 fol 106r.
[175] STAC 2/13 fols 105–117.
[176] G.R. Elton, *Star Chamber Stories* (London, 1958), p. 10.
[177] Natalie Zemon Davis, *Fiction in the Archives: Pardon Tales and Their Tellers in Sixteenth-Century France* (Cambridge, 1987), p. 5.

by royal notaries, the genre makes it easier to discern the voice of the suppliant behind the hand of the notary.[178]

By contrast, few English legal documents of the same period could claim to have such an intimate and direct connection with the authorial voice of an individual storyteller. Even the lengthy depositions given in church courts were, as Laura Gowing notes, a 'much less coherent narrative project.'[179] Nor could it be said that the features of any particular genre of legal document encouraged authentic truth-telling: certainly, no equivalents to the *lettres de remission* survive in any significant number or in any common form.[180] English common law legal records are notoriously terse and formulaic, but even in the ostensibly freer structure of the records of the equity and prerogative courts it is rare to recognise authentic voices unmediated by formula and typecasting. *Pace* Andy Wood, the authentic voice of the people is therefore unlikely to spring from the page unaided.[181] To adapt a phrase of Cynthia Herrup's, legal writing exists within, rather than above, the demands of genre,[182] and equity and conciliar bills were in the view of one unusually expressive late Elizabethan barrister a genre more often filled with 'flourishes and glorious paintings' than with the unvarnished truth.[183] If, as Kesselring points out, historians are now '[r]ightly sceptical of public statements of members of the elite', so too must we 'avoid reading

[178] Davis, *Fiction in the Archives*, p. 25. See also Robert Muchembled, *La violence au village: sociabilité et comportements populaires en Artois du XVe au XVIIIe siècle* (Turnhout, 1989), pp. 15–23.
[179] Gowing, *Domestic Dangers*, p. 52.
[180] Kesselring, *Mercy and Authority*, p. 112.
[181] Wood, *Memory of the People*, pp. 33–8.
[182] Cynthia B. Herrup, *A House in Gross Disorder: Sex, Law and the 2nd Earl of Castlehaven* (Oxford, 1999), p. 6.
[183] E112/36/47.

those of the marginal as transparently true.'[184] As with all historical sources, the records of the equity and conciliar courts must therefore be treated with care.

It is well known that a great many Star Chamber pleadings were essentially about private disputes about title to land, and that the attendant verbiage about riot and assault are standardised formulae used to invoke that court's jurisdiction.[185] However, typecasting in the Star Chamber could also work in the opposite direction, leading the records preserved in the archives to be more bland than the actual state of affairs. This was true, for example, of the long title dispute between Richard Polkyns and John Doyley which we will explore further in Chapter 5.[186] An even more graphic example concerns the dispute between Christ Church and Magdalen College over a small parcel of land in Deddington (Oxon), which ended up in Star Chamber in 1549. The surviving pleadings give every indication of a mundane title dispute overlaid with the usual Star Chamber formulae,[187] but in fact the dispute was so violent that Christ Church spent 10s in 1548 on a physician 'for curing of [Thomas] Swift our tenant and hurt in defence of our right, being with him 3 days at Deddington'.[188] Hardly any trace of that real violence appears in the Star Chamber bill.

This evidentiary problem helps us to contextualise Lord Keeper Williams' remark in 1626 that 'in ancient time' Star Chamber cases were 'filled with battles and riots so outrageous' compared with the bland work of his own time.[189] While we would do well to remember that not all sixteenth-century Star Chamber cases concerned outrageous battles, at least

[184] Kesselring, *Mercy and Authority*, p. 207.
[185] Thomas G. Barnes, 'Due Process and Slow Process in the Late Elizabethan–Early Stuart Star Chamber', *American Journal of Legal History*, 6 (1962), 221; Thomas G. Barnes, 'Star Chamber Mythology', *American Journal of Legal History*, 5 (1961), 1.
[186] STAC 3/6/2; QCA 4M 12.
[187] STAC 3/7/33.
[188] CCA Disbursements 1548 fol 12r.
[189] Hindle, *State and Social Change*, p. 78, quoting BL MS Lansdowne 620 fols 1–2v.

some of them actually did. Since the process of legal drafting led to factual or legal nuances being suppressed in favour of a smoother and more regularised final product, we ourselves risk losing sight of those nuances. That is, if Star Chamber formularies led to *every* entry onto land being labelled as a riotous assault—as was alleged, for example, against William Belson and his servant Stephen Gunn—it becomes more difficult to discern which of those entries was in fact a riotous assault; and if legal drafters sought to emphasise the familiar and plausible, we may often have to dig deeper to find the true individuality of the matter.[190]

Quite aside from these problems of formula and legal convention, a large bulk of apparently authentic testimony from the people who, in Elton's words, 'got involved with the law and thus preserved themselves for posterity',[191] concerns relatively banal factual matters. It is only by the most heavy-duty source mining that one can produce chapters full of perspicuous—and uniformly rueful—observations by early modern deponents about their sense of the past.[192] Moreover, in Oxfordshire and Berkshire at least, local geographic and economic circumstances did not create the same kind of distinctive testimony about legal rights that can be found among early modern inhabitants of more distinctive terrains like the Peak District.[193] As such, discerning levels of popular legal knowledge is difficult, even in those equity and conciliar cases most closely identified with the genre of 'popular legalism'.

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[190] One can entirely agree with Andy Wood's observation that '[r]hetoric matters' because it spoke to a 'wider set of norms and values': Wood, *Memory of the People*, p. 159. However, one must ask: *whose* rhetoric, *whose* norms and values, and what was rhetoric as opposed to fact? Depositions on their own cannot answer those questions.

[191] Elton, *Star Chamber Stories*, p. 9.

[192] Cf Wood, *Memory of the People*, especially ch. 1.

[193] Wood, *Politics of Social Conflict*. The fenland is another example: see C. Holmes, 'Drainers and Fenmen: The Problem of Popular Political Consciousness in the Seventeenth Century', in Anthony Fletcher and John Stevenson (eds.), *Order and Disorder in Early Modern England* (Cambridge, 1985), p. 166.

The task is difficult but not impossible. As with the example of Sir Francis Stonor with which this chapter opened, some people did indeed leave clues about their degree of legal sophistication—or at least clues about how they wished to be perceived by others so far as their legal knowledge was concerned. This raises large methodological questions to which we will need to return, most particularly in Chapter 3. Before we can do that, though, we must pay heed to Brooks' insight that without 'quantitative signposts' it is difficult to talk meaningfully about how 'law-minded' or litigious a given society was.[194] What follows in Chapter 2 on litigants and lawyers in the Court of Common Pleas therefore sets the scene for the later chapters. Like Halliday's work, this thesis is 'quietly undergirded rather than driven by the numbers', but from this quantitative foundation we can then return with greater confidence to a qualitative analysis of people's experience of law, government and authority in mid-Tudor England.[195]

[194] Brooks, *Pettyfoggers and Vipers*, p. 9.
[195] Paul D. Halliday, *Habeas Corpus: From England to Empire* (Cambridge M.A., 2010), p. 5.

# CHAPTER 2

## A VIEW FROM THE COMMON PLEAS: THE FEUDING ATTORNEYS OF BANBURY

John Lovett was one of two Common Pleas attorneys practising in Banbury, a market town to the north of Oxford.[1] He became Town Steward after Banbury's incorporation as a borough in 1554, but his tenure as steward was not, alas, a happy one. The main source of his discomfiture was his professional rival: the other Common Pleas attorney working in Banbury, William Weston.[2] Judging by the plea rolls of the Court of Common Pleas, each had a modest, regionally-focussed practice among the second rank of Oxfordshire attorneys. What set them apart from their peers was the longstanding feud between them, in which their clients' private disputes were enlisted in a proxy war between the two men.

A surprising number of defamation suits concerning the attorneys seems to betoken a combination of local ill will towards them, and a touchiness on their part about their professional and personal reputations. While a defamation suit could be a powerful way of vindicating one's reputation, when the plaintiffs were lawyers this form of litigation was hardly likely to raise the defendants' opinion of the legal profession. In that regard, the two Banbury attorneys seem to have been particularly good at irritating other people—and especially each other. In 1562, Lovett sued Philip Forman of the City of Oxford over Forman's complaint that 'John Lovett did conspire my death and Amy my wife and he

[1] See Baker, *Men of Court*, ii, p. 1031.
[2] Weston lived in Neithrop, just to the west of Banbury; Lovett was a few miles to the south in Adderbury.

with his own hand did make an indictment of felony against us'.[3] This episode, which concerned a sitting of the Quarter Sessions held at the Guildhall in Oxford in 1558, also led to a falling-out between Lovett and his own servant, Henry More of Adderbury, whom Lovett also sued for defamation.[4]

In the same year as Lovett's defamation suit, Ottwell Fitz Richards of Banbury uttered an unusually long slander against William Weston:

> This hear ye, constable and tithingmen of Neithrop, that William Weston and his two men have taken my gelding this morning before day out of my brother's close and put him in the castle which is felony, wherefore ye being the Queen's officers I command you arrest them of felony and bring them before a Justice, for I will lay felony to their charges, and teach Weston a trick of the law for his learning…[5]

If some of the suits that were successfully brought by others against Weston are anything to go by, it seems that this ambitious young lawyer had an unsavoury fondness for sharp practice and legal stratagems.[6] Evidently, to judge by the amount of litigation in Banbury initiated by or against Weston, Ottwell Fitz Richards was not the only person there who wanted to teach him a 'trick of the law'.

As is often the case in the period, religious disagreement was a large part of the dispute between Weston and Lovett: Weston and his father were evangelicals, whereas Lovett was a traditionalist. Another component was professional rivalry, as the two men competed for

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[3] CP40/1210 m 870.
[4] CP40/1204 m 379v.
[5] CP40/1204 m 381v.
[6] Req 2/20/149 (suit of Richard Trust and Mary his wife about land in Cropredy); C1/1474/20, C78/12/50 (suit of John Southcote about land in Banbury). Katherine Halliday points to King's Bench indictments against Weston (KB9/590/51–2), but as Ottwell Fitz Richards' defamation indicates, these are more suggestive of disputed land transactions than actual violent disorder: 'Local Engagement with the Early English Reformation' (Oxford Univ. D.Phil. thesis, 2006), p. 167.

clients of a similar social background in a similar region; and in that context Lovett seems to have been particularly sensitive about aspersions cast on his professional competence.

Lovett evidently saw the combination of the religious policies of Mary Tudor and his own civic office in the newly-incorporated borough as a chance to best his opponent once and for all. However, Lovett had no confidence that the civic courts of Banbury were the venue in which to achieve this. Importantly, Lovett's position as steward was not so dominant or intimidating as to dissuade the Westons from making use of the Banbury courts for their own purposes, and the borough accounts record the Westons (like other litigants) making payments for writs and other process.[7] If he were to get redress, Lovett would have to look elsewhere, and it was to Star Chamber that he turned. As an attorney, Lovett would have been well aware of the intimidating reputation of this institution and its coercive process, and he was certainly better placed than laypeople to turn this to his own account.

Lovett's Bill of about 1556 is a fascinating document. He began by saying that being

> toward the law … it appertaineth to his duty being Steward so to obey to your [majesties'] proceedings and follow the same, as other of your subjects by the example of [his] doing might the sooner be contented to follow in like obedience…[8]

He declared that William Weston and his father, who were also 'towards the law',[9] were 'new learned men in the scriptures' who refused to go to Mass and who libelled Lovett as a 'popish and Mass-monger villain'. He also claimed that they wrote a letter to the town council claiming that Lovett was 'unlearned in the laws … to the intent that the same

[7] OHC BOR/2/XVII/i/1 fols 168v–169r.
[8] STAC 4/6/67.
[9] Being 'towards the law' normally implied professional involvement in the law, but apart from Lovett's claim there is little evidence that this was true of Weston senior (as opposed to his son).

Town should have [him] in discredit and evil opinion, and to put him from his office.' This claim is radically removed from the normal jurisdiction of Star Chamber. There was no allegation of riot or disturbance, not even of the usual pretextual kind regarding a land dispute. Rather, Lovett was evidently taking advantage of a preferred venue and its procedures almost in spite of the substance of the suit.

As a trained lawyer, Lovett was well placed to navigate the legal system, but he had no way of guaranteeing that the contours of national political life would continue to bend in his favour. Even in Marian times, William Weston's brush with Star Chamber seems to have done him little harm, and he continued to practice unmolested as a Common Pleas attorney during the reign. Elizabeth's accession presented fresh opportunities for Weston and renewed frustrations for Lovett, and the two continued their feud until Weston's death in the Black Assize of Oxford in July 1577,[10] when much of the Oxfordshire legal profession including a judge and the sheriff died of the gaol fever spread by a pestilential prisoner. So, perhaps Lovett got some poetic justice after all.

**The Court of Common Pleas**

By volume of records, the Common Pleas was the most prolific of the common law courts in the sixteenth century, and its plea rolls are the most comprehensive record of the claims and defences that were heard there. They survive in enormous parchment rolls sewn Exchequer-fashion of about 1000 membranes each. There were typically two volumes for each of the four terms of the year. This chapter is based on a study of six years of plea

[10] See Weston's will: PROB 11/59/630.

rolls, sampled at three year intervals starting in Michaelmas 1547: that is, 1547, 1550, 1553, 1556, 1559 and 1562. Those sampled years represent two years in each of the reigns of Edward VI, Philip and Mary, and Elizabeth. All told, those 24 law terms cover some 49,432 sides of parchment, and contain nearly 2449 entries with a margination (i.e. a note in the left-hand margin) of Oxfordshire and Berkshire. Such a margination can be seen in the figure below, which depicts a very typical entry in a debt case. In this example from 1547, Maurice Smart, a tanner from Shaw in Berkshire is suing William Greenway, a butcher of Wokefield for a debt of £20.[11]

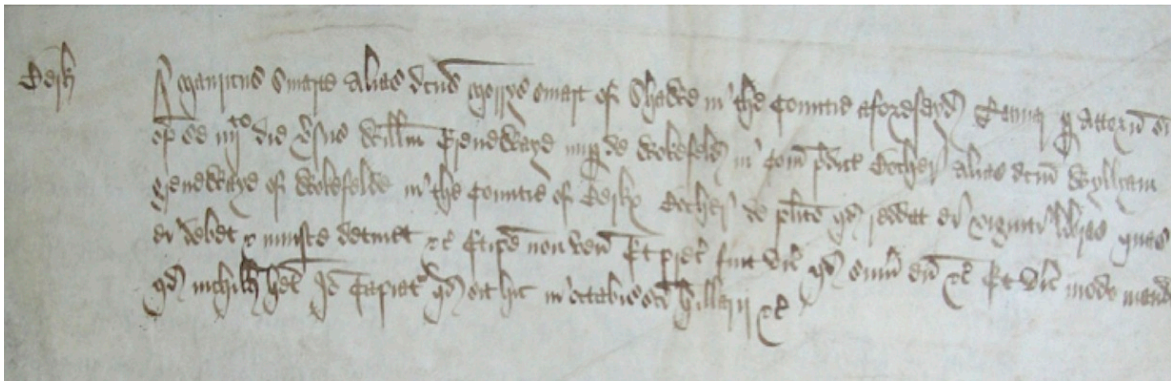


**Figure 8 – Berkshire margination**

It is important to realise that counting entries like this in the plea roll is not the same as counting individual cases. A single case was likely to generate a number of entries in the plea rolls as it progressed through the procedural stages of litigation. Moreover, the social disputes that lay behind the desire to bring litigation might well be ventilated through more than one lawsuit. For example, a discrete dispute about land ownership might be ventilated by both a real action and a suit for trespass. For the moment, though, it will suffice to say that the number of plea roll entries is a useful proxy for the volume of legal business in a given county in a given term.[12]

[11] CP40/1134 m 49.
[12] Similar difficulties with 'counting cases' also exist in France: Garnot, *Histoire de la justice*, pp. 24–5, 175–6.

Set out in tabular form, those 24 sampled terms are as follows.

| Term | Total | Oxon | Berks |
|---|---|---|---|
| MT 1547 | 92 | 52 | 42 |
| HT 1548 | 79 | 42 | 36 |
| ET 1548 | 65 | 44 | 21 |
| TT 1548 | 47 | 26 | 21 |
| MT 1550 | 117 | 55 | 62 |
| HT 1551 | 105 | 61 | 45 |
| ET 1551 | 96 | 54 | 43 |
| ***TT 1551*** | *34* | *19* | *15* |
| MT 1553 | 115 | 63 | 53 |
| HT 1554 | 95 | 42 | 52 |
| ET 1554 | 88 | 45 | 43 |
| TT 1554 | 106 | 47 | 60 |

| Term | Total | Oxon | Berks |
|---|---|---|---|
| MT 1556 | 141 | 77 | 64 |
| HT 1557 | 121 | 59 | 66 |
| ET 1557 | 94 | 54 | 41 |
| TT 1557 | 121 | 60 | 63 |
| MT 1559 | 97 | 36 | 61 |
| HT 1560 | 110 | 60 | 52 |
| ET 1560 | 89 | 49 | 41 |
| ***TT 1560*** | *37* | *14* | *23* |
| MT 1562 | 139 | 92 | 47 |
| HT 1563 | 174 | 94 | 81 |
| ET 1563 | 135 | 80 | 58 |
| TT 1563 | 152 | 104 | 54 |
| **TOTAL** | **2449** | **1329** | **1144** |

**Table 1 – Number of plea roll entries by term**

Two terms stand out immediately: Trinity Term 1551 and Trinity Term 1560. Both have an unusually small number of entries. In each case, the term had been adjourned early: in 1551 this was because of the sweating sickness, and 1560 was also a year of plague and demographic crisis.[13] The patterns become clearer when represented in a graph.

[13] E.A. Wrigley and R.S. Schofield, *The Population History of England 1541–1871: A Reconstruction* (London, 1981), pp. 334–7, 666. On the sweating sickness, see A. Dyer, 'The English Sweating Sickness of 1551: An Epidemic Anatomized', *Medical History*, 41 (1997), 362. On the 1560 adjournment, see *Dyer's Reports*, p. 44.

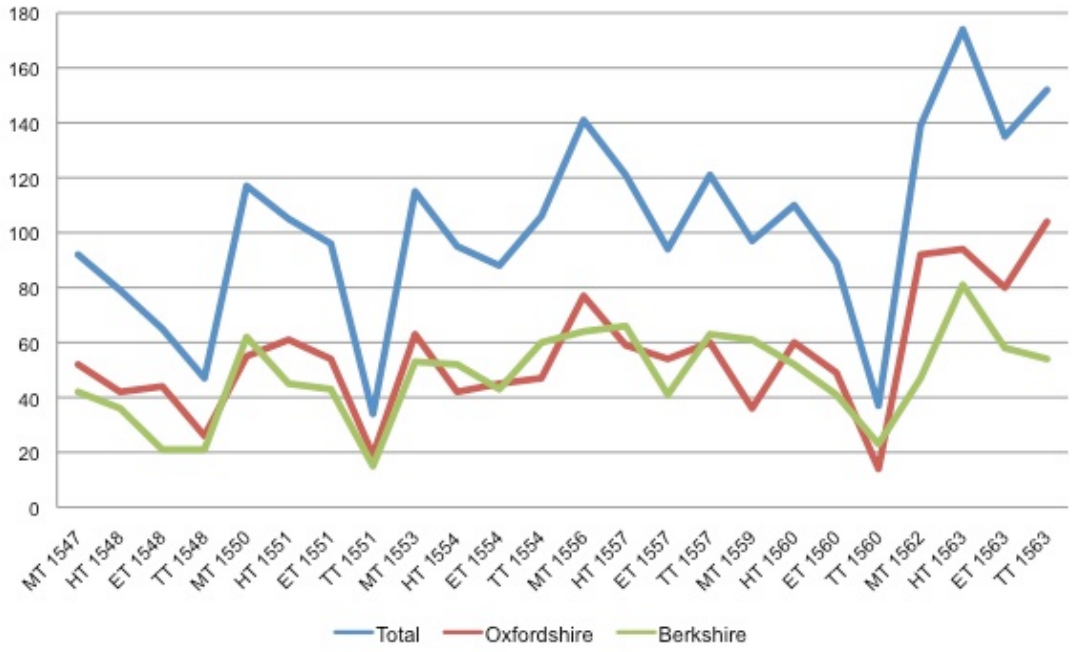



**Figure 9 – Number of plea roll entries by term**

Each point on the above graph represents a term, but one must bear in mind the gap between sampled years. The effect of the adjourned terms in 1551 and 1560 is very clear. One can also see that Michaelmas term is typically the busiest each year: this was both start of the legal year and also the longest term. Oxfordshire usually had a slightly higher volume of business than Berkshire.

At this point it is necessary to say a little more about the margination of 'Berkshire' or 'Oxfordshire'. The complicating factor is that this refers to the place where the cause of action accrued, and not to the actual residence of the parties.[14] In cases of trespass, most of the time the cause of action was likely to arise relatively near the parties' residence.[15] However, the same is not true of cases of debt, since debts were frequently incurred in

[14] Hastings, *Court of Common Pleas*, p. 159.
[15] Gentry and other elite proprietors may have had widespread landholdings away from their principal residence, but in Oxfordshire and Berkshire at least, suits against distant non-resident landowners seem not to have been common.

commercial centres away from home, and as a transitory action the debt did not have to been sued upon in one's home county.[16]

The actual residence of the defendant became important if, like most defendants, they did not appear in response to the sheriff's writ. By far the most common return is '*non est inventus*'. In most cases, this was probably not literally true. For example, the sheriff of Oxfordshire was evidently not looking very diligently when he made such a return in Francis Quarles' suit against Sir Richard Brydges in Easter term 1557. After all, the man the sheriff Thomas Brydges had to find was not only his own cousin but also his predecessor in office as sheriff.[17] The whole procedural system depended on the efficiency and diligence of these officers and their legally-trained deputies—the undersheriffs—but there is ample evidence that delay, corruption and partiality were a frequently-occurring problem.[18]

The next step after such a return of '*non est inventus*' was the issue of further writs to secure the defendant's appearance: first a writ of *capias ad respondendum*, then *sicut prius capias*, and if that were unsuccessful, *sicut pluries capias*.[19] Ultimately, this process led to outlawry. Since the writs of *capias* were directed to the defendant's actual county of residence, they were marginated with *both* the county where the cause of action originated and where the defendant was resident (if those were in fact different places). An example

[16] For later authority on this point, see William Blackstone, *Commentaries on the Laws of England*, 1st edn. (4 vols., Oxford, 1768), iii, p. 294. On jury procedure in trespass cases, see Ibbetson, *Historical Introduction*, pp. 49–51.
[17] CP40/1170 m 674v.
[18] Hastings, *Court of Common Pleas*, pp. 162–4; Christine Carpenter, 'Law, Justice and Landowners', p. 209.
[19] Hastings, *Court of Common Pleas*, p. 175. This describes process by arrest, which had over the fifteenth century come to supplant process by distraint.

can be seen in the figure below, which shows a suit originating in London in which the writs were then directed to Oxfordshire as the place of the defendant's actual residence.

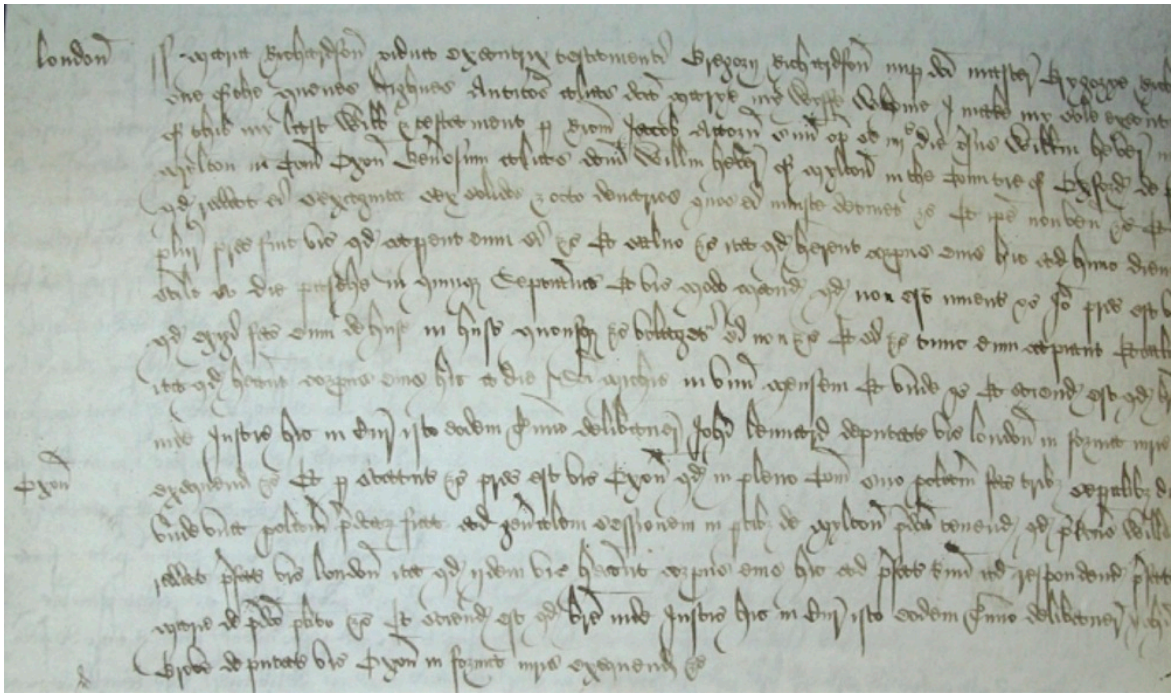



**Figure 10 – Double margination: London and Oxfordshire**

Doubly-marginated entries of this kind are extremely important because they point us to the existence of a very large number of entries in the plea rolls for suits concerning people from Oxfordshire and Berkshire which, because they are not marginated as such, do not appear in the table of entries set out above. If a writ of *capias* is directed at a defendant from Berkshire in a suit originating in that county, two entries in the plea rolls will appear in the table (namely the original writ and the writ of *capias* after the defendant's non-appearance, both of which will be marginated 'Berk'). Conversely, if a writ of *capias* is directed at a defendant from Oxfordshire in a suit originating in London, only *one* entry in the plea rolls (the writ of *capias* marginated 'London / Oxon') will appear in the table. There is therefore a risk that a simple counting of marginations will understate the true amount of litigation concerning people from Oxfordshire and Berkshire.

The total number of such London-originating writs of *capias* directed at people from Oxfordshire and Berkshire (and a breakdown by county) is set out in the following figure. Obviously, there are entries of this kind for Oxfordshire and Berkshire defendants in suits originating in a variety of counties, but the overwhelming bulk of them concern debt claims originating in London. Note the very substantial upward trend, and note the peak each Hilary term. Plaintiffs were most likely to initiate a claim in Michaelmas, so the recording of the initial negative response ('*non est inventus*') and the issue of *capias* was most likely to happen in the second term of the year.

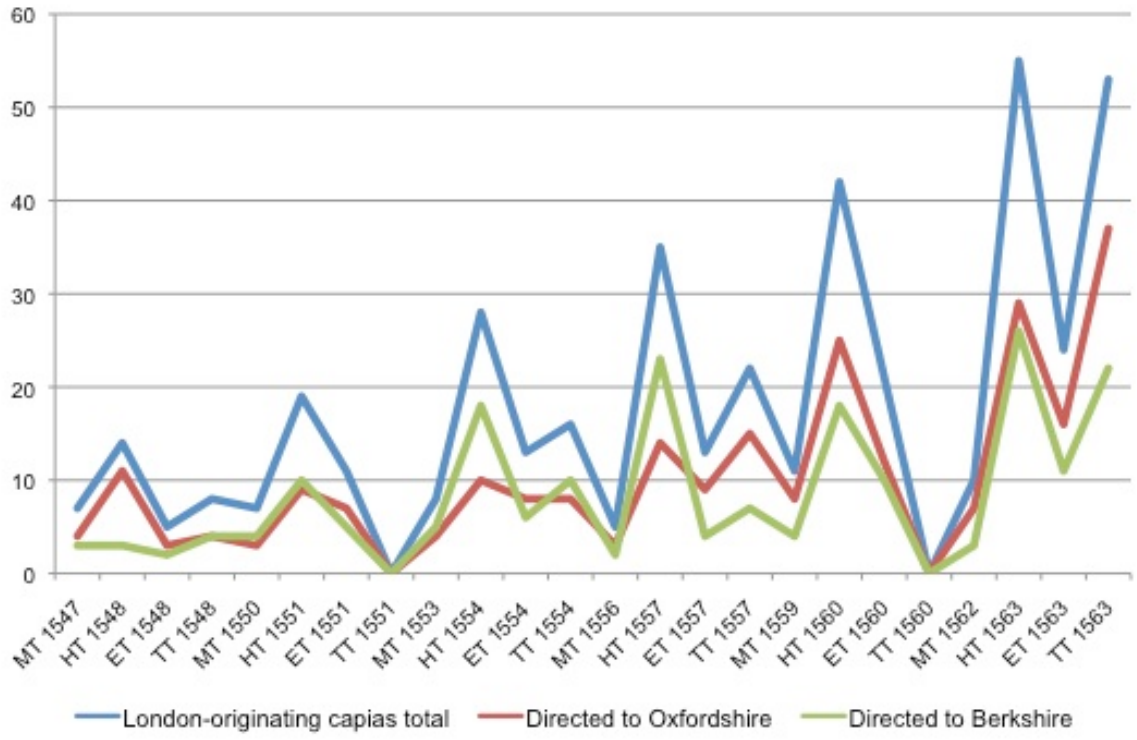



**Figure 11 – London-originating litigation indicated by *capias* entries**

One can also see how significant this London litigation is when one compares the *capias* entries for litigation originating in London featuring people from Oxfordshire or Berkshire with the equivalent entries for such litigation originating in all other counties (including, of course, Oxfordshire or Berkshire themselves). What one sees is that in rough terms, the amount of litigation featuring Berkshire and Oxfordshire people that originates in London

is equivalent to the amount of litigation featuring such people originating in every other county in the land. It must be emphasised, however, that of these suits originating elsewhere than London, the overwhelming bulk originate in Berkshire and Oxfordshire themselves.

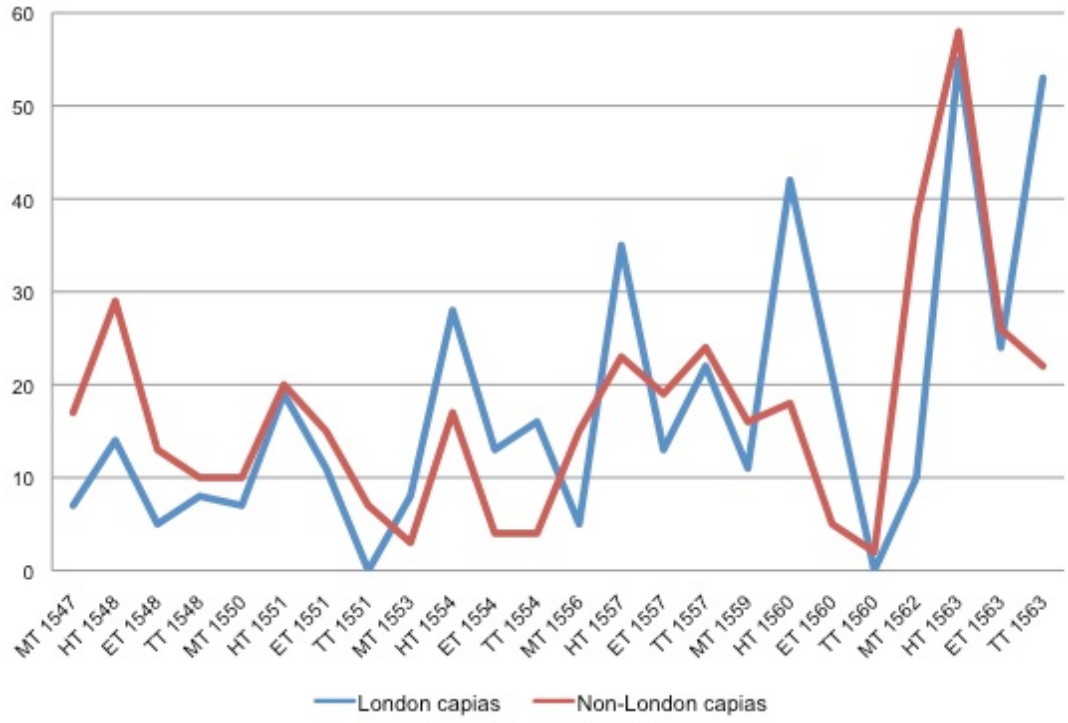



**Figure 12 – Writs of *capias* in litigation originating in London and elsewhere**

If for a moment we are content to ignore this litigation originating in London, it is possible to give a rough indication of how many 'new' suits there were in a given year that originated in Oxfordshire and Berkshire alone. One can do this by taking the total number of plea roll entries, and then subtracting the combined number of *non est inventus* returns, defences, summonings of a jury, entry of judgments, and non-contentious entries such as the feet of fines. Across the period in question, there were an average of 38 new cases per term originating in Oxfordshire and Berkshire, but as the graph below reveals, Michaelmas was almost invariably the busiest term of the year for new suits.

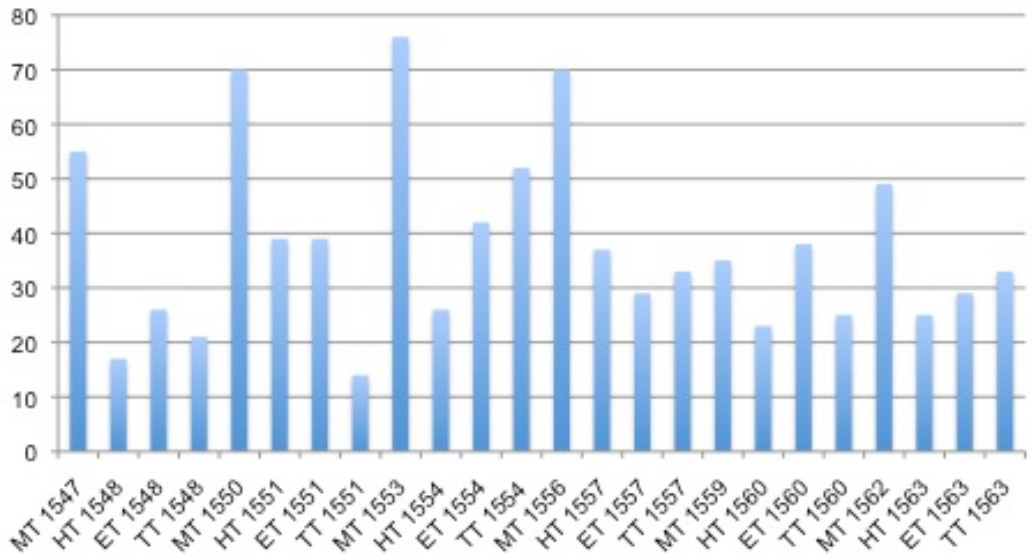



**Figure 13 – Number of suits initiated by term**

When grouped by year, one sees more clearly a very remarkable fact: namely, the *absence* of the systemic increase in litigation over time that was revealed in some of our earlier charts.

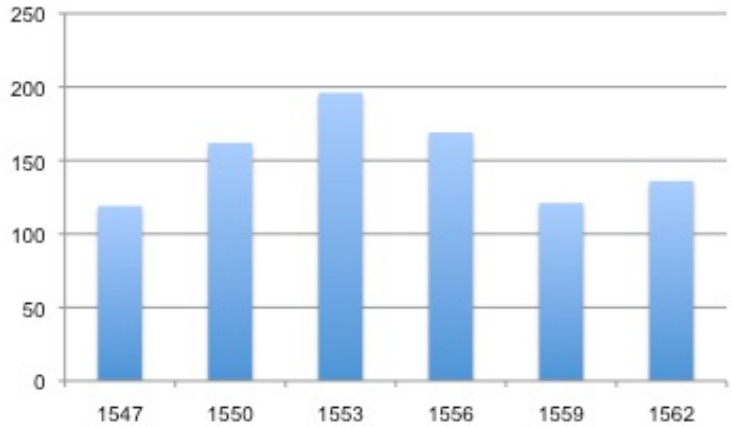



**Figure 14 – Number of suits initiated by year**

What this shows is that when one takes London-originating suits out of the equation in order to focus on those suits originating in Oxfordshire and Berkshire, one sees nothing of the massive boom in litigation that took place over the years in question. Here, then, is real

evidence of the fundamental importance of the growth of London-originating litigation in explaining the wider growth of litigation in the period in question.

Short of reading every London-marginated plea roll entry initiating a suit to see whether it features Oxfordshire and Berkshire people, the simplest form of rough estimation is to work backwards from the known number of *capias* entries to the number of initial entries in the plea rolls. We can do this for litigation originating in Oxfordshire and Berkshire by taking the total number of new suits and then comparing this with the number of *capias* entries that do not involve London. While the ratio varies from term to term, on average there are 2.18 initial pleadings per *capias*. If we apply this average to the known figure of London *capias* entries, one can see in the graph below that this 'dark figure' of unmarginated litigation originating in London is very substantial.

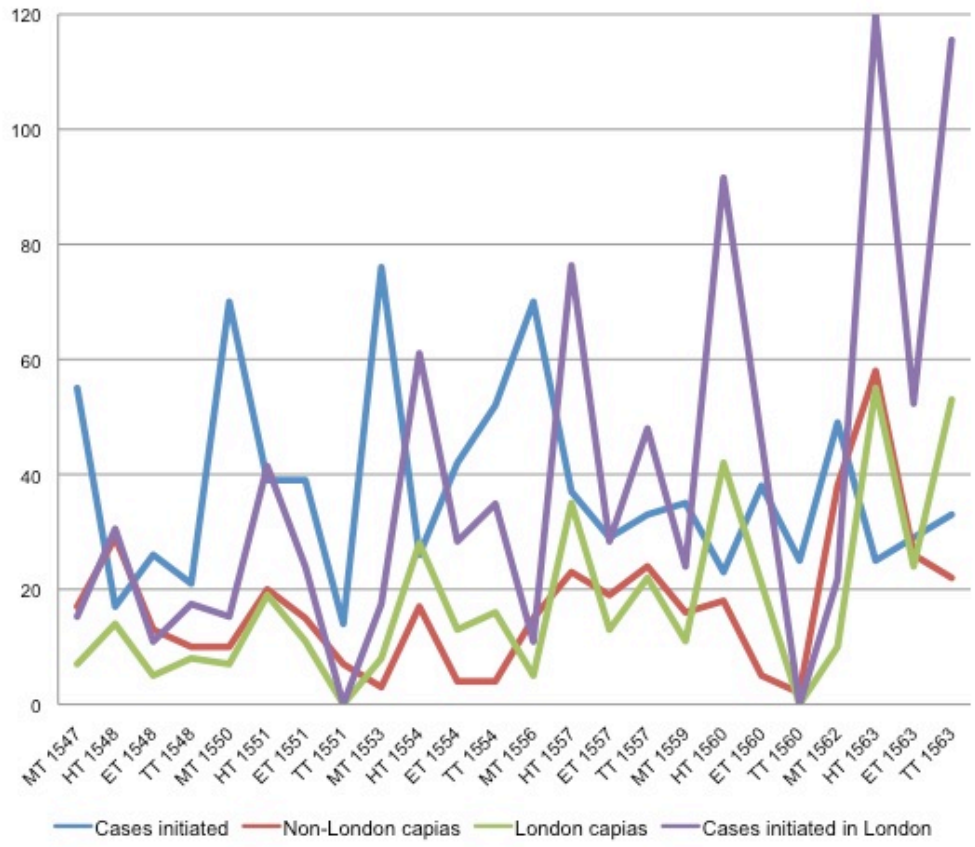



**Figure 15 – Estimated number of cases originating in London concerning Oxfordshire and Berkshire**

Obviously, the graph is a very rough approximation, but the short point is this: a comprehensive estimate of the total volume of Oxfordshire and Berkshire business in the Court of Common Pleas is very difficult to obtain, principally because of the large (and increasing) volume of London-originating litigation. That sort of litigation fell into essentially two categories: either it was genuinely connected with London (such as a London merchant suing a provincial client for an unpaid trade debt), or it was in reality between two provincial parties who were taking advantage of the fact that mesne process moved faster in the capital.[20] As we shall see, the increasing integration of Oxfordshire and Berkshire into a London-focussed national economy is likely to have heightened the salience of both these motivations for suits originating in London.

**Types of Cases**

What kinds of cases did people in the Thames Valley take to court? In the graph below, one can see the number plea roll entries by year and by cause of action.

[20] Brooks, *Pettyfoggers and Vipers*, pp. 64–5. On mesne process, see Baker, *History of the Laws of England*, pp. 328–31; Hastings, *Court of Common Pleas*, pp. 169–83.

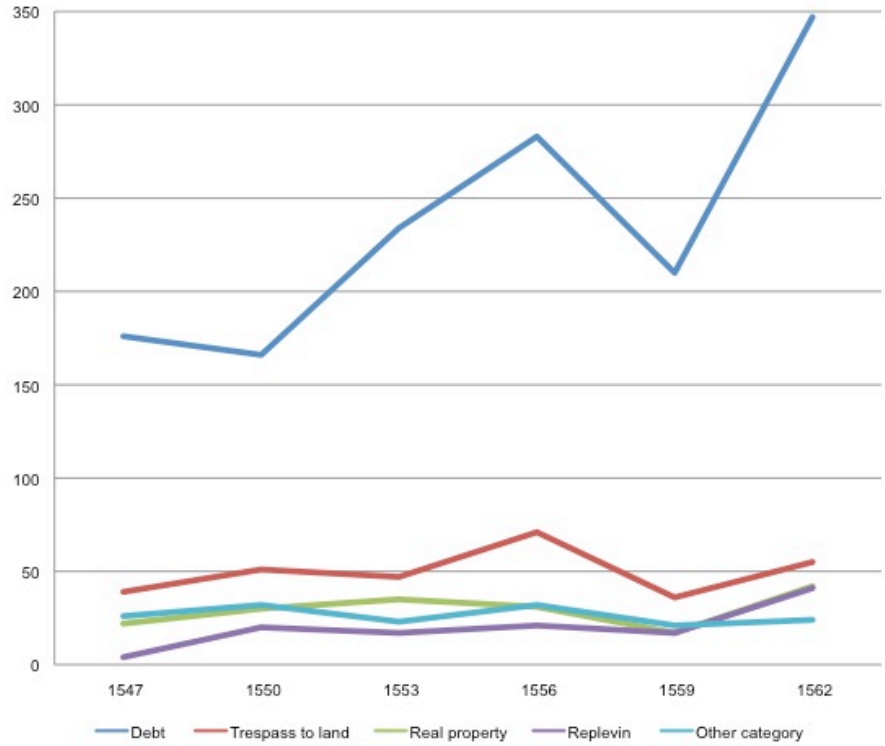



**Figure 16 – Number of plea roll entries by cause of action per year**

The very large number of debt claims tends to obscure the number and proportion of the less frequently-brought causes of action. The graph below shows these rarer actions more clearly. Even so, it is very apparent that actions for, say, false imprisonment were hardly the bread and butter of the Common Pleas' work.

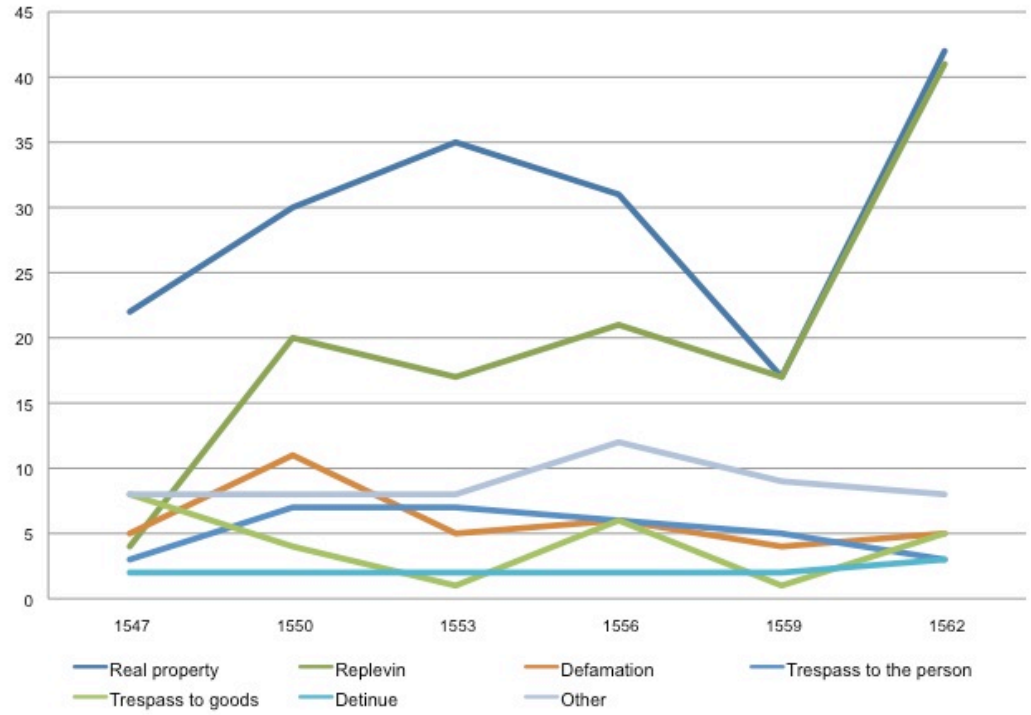



**Figure 17 – Number of entries by year – less frequent claims**

The various causes of action can also be expressed as a percentage of the total entries on the plea rolls by year.[21]

| | 1547 | 1550 | 1553 | 1556 | 1559 | 1562 | Average |
|---|---|---|---|---|---|---|---|
| **Debt** | 65.9 % | 55.5 % | 65.7 % | 64.6 % | 69.8 % | 68.2 % | 65.0 % |
| **Trespass to land** | 14.6 % | 17.1 % | 13.2 % | 16.2 % | 12.0 % | 10.8 % | 14.0 % |
| **Real property** | 8.2 % | 10.0 % | 9.8 % | 7.1 % | 5.6 % | 8.3 % | 8.2 % |
| **Replevin** | 1.5 % | 6.7 % | 4.8 % | 4.8 % | 5.6 % | 8.1 % | 5.2 % |
| **Defamation** | 1.9 % | 3.7 % | 1.4 % | 1.4 % | 1.3 % | 1.0 % | 1.8 % |
| **Trespass to the person** | 1.1 % | 2.3 % | 2.0 % | 1.4 % | 1.7 % | 0.6 % | 1.5 % |
| **Trespass to goods** | 3.0 % | 1.3 % | 0.3 % | 1.4 % | 0.3 % | 1.0% | 1.2 % |
| **Detinue** | 0.7 % | 0.7 % | 0.6 % | 0.5 % | 0.7 % | 0.6 % | 0.6 % |
| **Other** | 3.0 % | 2.7 % | 2.2 % | 2.7 % | 3.0 % | 1.6 % | 2.5 % |

**Table 2 – Percentage of plea roll entries by cause of action**

[21] Non-trespass claims relating to real property are grouped together as 'real property'.

As one can see, the largest number of plea roll entries—about two-thirds in every year—concerned debt. The non-trespass actions concerning real property are only a very small proportion of cases; never mind more exotic actions like defamation. These figures are consistent with Brooks' study of the Common Pleas in 1560, in which 67% of actions concerned debt and 16% concerned trespass.[22] Conversely, they also confirm Baker's suspicion that London was indeed atypical in having so high a proportion of debt suits (95% of the London total in his sampled term in 1535) and so few trespasses.[23]

If we look more closely at debt suits in Oxfordshire and Berkshire, it becomes clear that not all debts were alike. In the graph below, the distinction drawn between 'even' and 'odd' debt is a factual rather than a legal matter, but it helps us to interpret the rising use of conditional bonds. A debt expressed in a simple round 'even' figure (including a round figure in marks) like £40 or £13 6s 8d (i.e. 20 marks) almost invariably betokened the existence of a conditional bond, whatever the actual value of the underlying transaction. By contrast, while some suits for 'odd' amounts did indeed concern bonds (such as one for £3 11s 4d made in 1547 by Richard Bennett of New Windsor),[24] they more typically represented the actual sum of money owed. A third category of debt suits was that for the value of chattels, rather than for a money sum simpliciter.[25]

[22] Brooks, *Pettyfoggers and Vipers*, p. 69. Brooks also points to the 'persistent growth in the absolute and relative frequencies of actions of debt', in contrast with a proportionate decline in actions for trespass: p. 70.
[23] Baker, *Oxford History of the Laws of England*, p. 143.
[24] CP40/1135 m 155. Bonds like Bennett's are classed as 'even' for the purposes of this study.
[25] For debt suits relating to chattels, see Ibbetson, *Historical Introduction*, pp. 31–6.

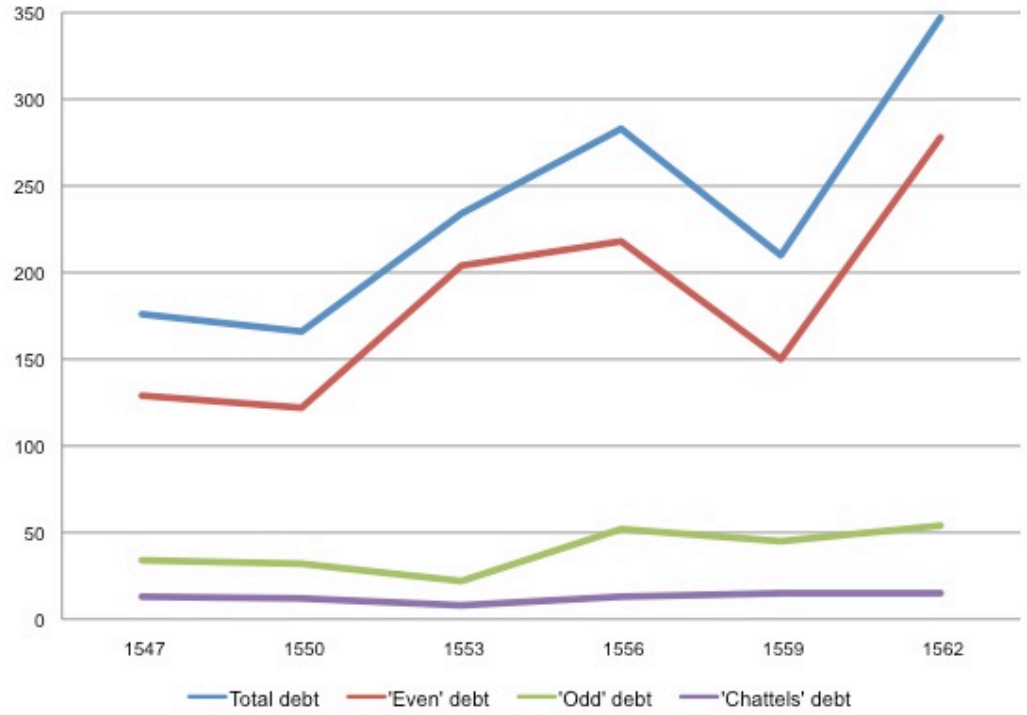



**Figure 18 – Number of plea roll entries concerning debt by year**

It is very noticeable how the proportion of these ‘even’ (that is, typically bond-based) debt claims rose over time. The radical upswing in bond-based debt claims is especially striking when compared with the far more modest increase in all other causes of action, including debt suits for ‘odd’ amounts or for the value of chattels. The dip in 1559 is due to the adjourned Trinity term that year.

What was the typical value of a debt suit in the Common Pleas? Determining the average (mean) value is difficult and not especially informative, but finding the most frequently-occurring values of debts (mode) is both easier and more informative. The table below sets out the frequency of occurrence in the plea rolls of debts of the specified amounts.

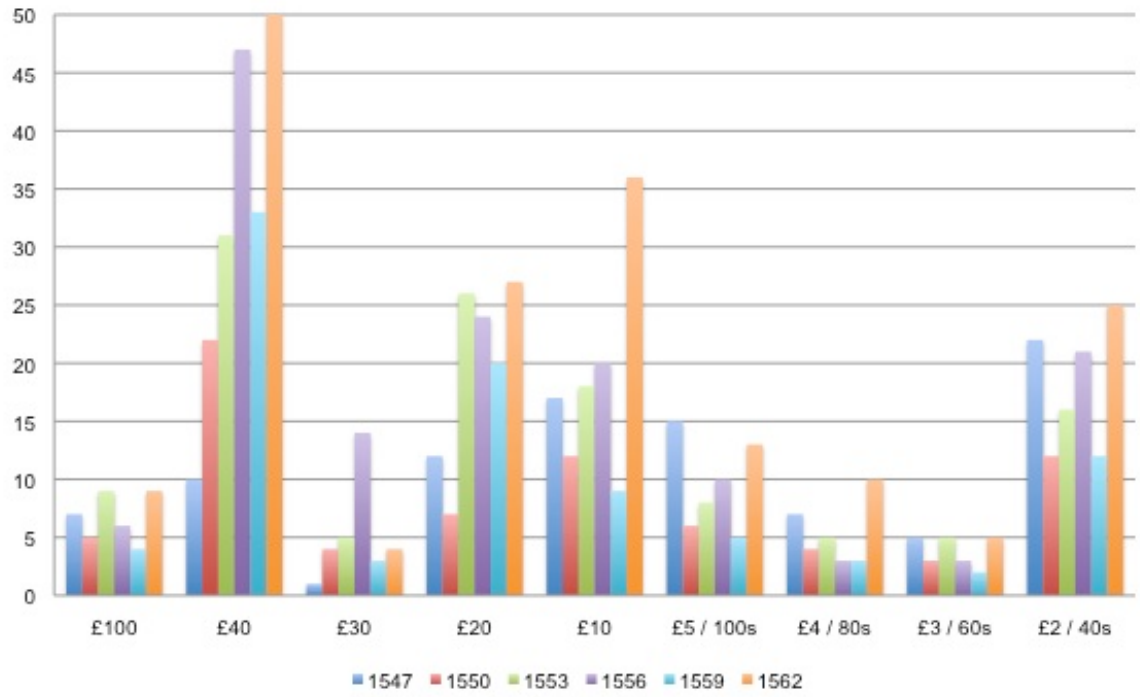



**Figure 19 – Most frequently-occurring debt values by year**

Two features of this chart stand out immediately. The first is the extraordinary increase in the number of £40 debts. In all years except 1547, £40 was the value that occurred most frequently in the plea rolls, growing from 10 plea roll entries in 1547 to 50 in 1562. This was not simply a product of the increasing number of debt cases generally: between 1547 and 1562, 'even' debt cases expanded by a factor of 2.2, yet the number of £40 debts rose fivefold. Since no other 'amount' of debt grew in such a consistent way, this data seems to show that the £40 bond increasingly became a standard technique for arranging finance or enforcing bargains.

The second noteworthy feature is the persistence of a large number of 40s debts. In other words, there was a sustained volume of work at the lowest end of the court's jurisdiction. Given the effects of inflation, there are two ways of viewing this data. First, inflation meant that a lower value of dispute now fell within the court's jurisdiction, thereby increasing the court's potential clientele. A transaction worth 40s in 1562 would have been

worth around 25s a few years before in 1547, and so a debt action which would once have been heard in a borough court could now be heard in a central court. Second, for suits of the same economic value, inflation does *not* seem to have led to any movement over time into higher price brackets. A transaction worth 40s in 1547 was worth around 60s in 1562, yet there was no perceptible increase in the number of 60s suits in the sampled years. Thus, so far as low-value debts were concerned, it seems that the court gained a new clientele without its existing clientele moving into higher-value suits.

At the upper end of the spectrum, however, there is some evidence of an increase in the general value of suits. The highest-value debts in the sampled years are set out below.

| Year | Highest Value |
|---|---|
| **1547** | £110 |
| **1550** | £200 |
| **1553** | £300 |
| **1556** | £300 |
| **1559** | £200 |
| **1562** | £1,000 |

**Table 3 – Highest-value debt by year**

A similar glimpse comes through the number of debt suits worth £100 or above: these increased from 10 in 1547 to 17 in 1562, via a high point of 20 in 1556. Again, as with the increase in £40 obligations, these sums give a rough impression of the increasing value of debt litigation in the Common Pleas. To some extent, this must have been a product of the increasing value of underlying commercial transactions, but the penal aspect of such bonds also rose sharply in value—witness, for example, the £1,000 bond in 1562. Exorbitant clauses of this kind were perhaps increasingly acceptable to debtors, who could comfort

themselves with the knowledge that relief was often available to them in the Court of Chancery.[26]

The distinction between the rate of increase in bond-based debt claims and that of other causes of action is profoundly important. Over the course of the period in question, people did not become more litigious in any generic sense. They did not, for example, care more passionately about suing trespassers in 1562 than they did in 1547. This is particularly striking because the effect of inflation on lawyers' fees meant that *all* kinds of suits were more affordable by the end of our period than at the beginning. Since the standard termly fee for an attorney remained fixed at 3s 4d over the period in question, going to law obviously became very much more affordable to modest clients. Certainly, by the end of the sixteenth century, attorneys made their money by volume of business, and not by the value of the margin they charged.[27] That increasing volume of business was, as we have seen, channelled in very particular directions.

What is even more striking, though, is the correlation between the increase in litigation concerning bonds and the increase in London-originating litigation (as estimated by the relevant *capias* writs).

[26] Baker, *Oxford History of the Laws of England*, p. 123.
[27] Brooks, *Pettyfoggers and Vipers*, pp. 101–6, 235–239. This might be contrasted with the more static legal market of the fifteenth century, in which both the number of suits and the number of lawyers competing for them were lower: cf Ives, *Common Lawyers*, chs. 9, 13.

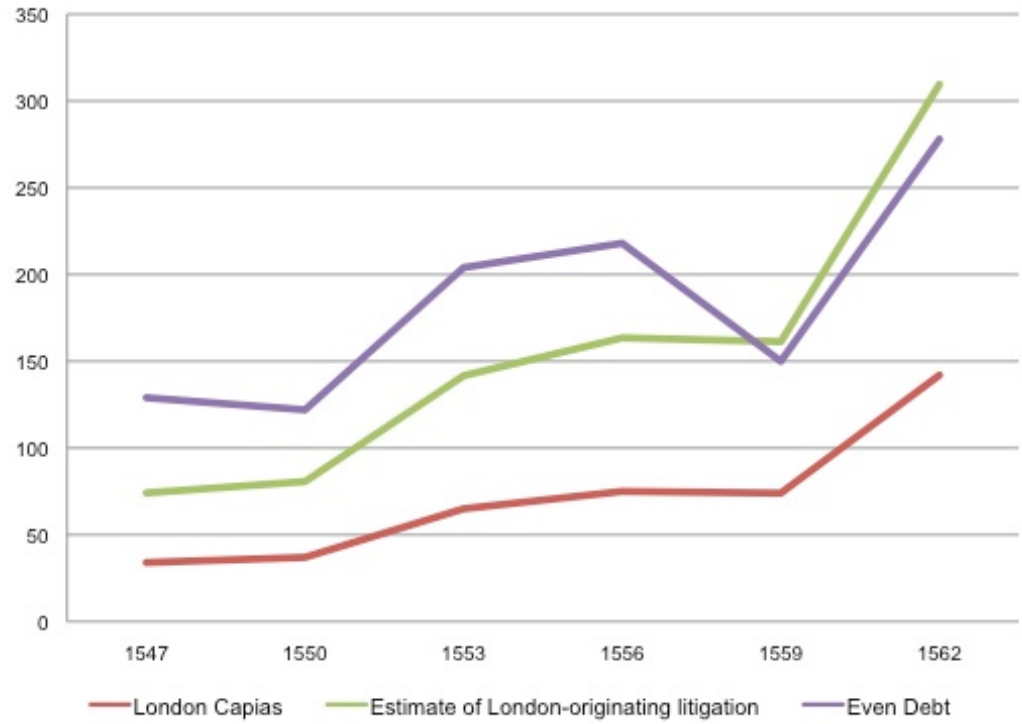



**Figure 20 – Comparison of even debt and London-originating *capias***

While some of this increase in London-originating litigation was due to the procedural convenience of faster-moving process in London, the increase of bond-based debt litigation was also a sign of Oxfordshire and Berkshire being drawn ever more closely into a London-focussed national economy. This was especially true of the grain trade,[28] but other forms of river-based commerce also showed how even small Thames Valley settlements 'were directly linked to London through a chain of one or two traders.'[29] Indeed, the nature of the underlying commercial relationship is sometimes revealed in the plea roll entry, as was the case in 1553 when the London leatherseller Robert Warren sued

[28] F.J. Fisher, 'The Development of the London Food Market, 1540–1640', in P.J. Corfield and N.B. Harte (eds.), *London and the English Economy, 1500–1700* (London, 1990), p. 61.

[29] Muldrew, *Economy of Obligation*, p. 53. Mary Prior, 'The Accounts of Thomas West of Wallingford, a Sixteenth-Century Trader on the Thames', *Oxoniensia*, 41 (1981), 73. The extension of credit could also take the more direct form of money-lending, as to which see Marjorie K. McIntosh, 'Money Lending on the Periphery of London, 1300–1600', *Albion*, 20 (1988), 557. For a French perspective on this English economic development, see Emmanuel Le Roy Ladurie, *L'État royal, 1460–1620* (Paris, 2009), p. 34.

William Downet, a parchment-maker from Burghfield (Berks) for £40.[30] Other cases reveal London's role as a financial hub for those in the provinces, as when the Oxfordshire gentleman John Doyley sued the Buckinghamshire gentleman Anthony Cave in 1553 for £50 which he had promised to repay 'at the font in St Paul's Cathedral'.[31] Importantly, the increase in this kind of London-focussed litigation was not the result of suits being transferred out of local London courts into the Common Pleas. Rather, it seems that rates of litigation increased *both* in local London venues and in the central courts.[32]

**Defences**

Thus far, we have largely focussed on the types of cases plaintiffs brought, and on the fact that defendants most commonly did not appear. We will now turn to the cases in which the defendant *did* appear and put on a defence. The number of these defences is set out in the table below. As one can see, there is a substantial variation from year to year, and from cause of action to cause of action. In all but one year, the largest number of defences concerned debt claims, and the smallest number concerned defamation.

[30] CP40/1156 m 397.
[31] CP40/1158 m 899.
[32] Penny Tucker, *Law Courts and Lawyers in the City of London: 1300–1550* (Cambridge, 2007), p. 5; Penny Tucker, 'London's Courts of Law in the Fifteenth Century', in Christopher Brooks and Michael Lobban (eds.), *Communities and Courts in Britain, 1150–1900* **(**London, 1997), p. 27. For the interaction of local and London litigation in other communities, see Muldrew, *Economy of Obligation*, pp. 244–5.

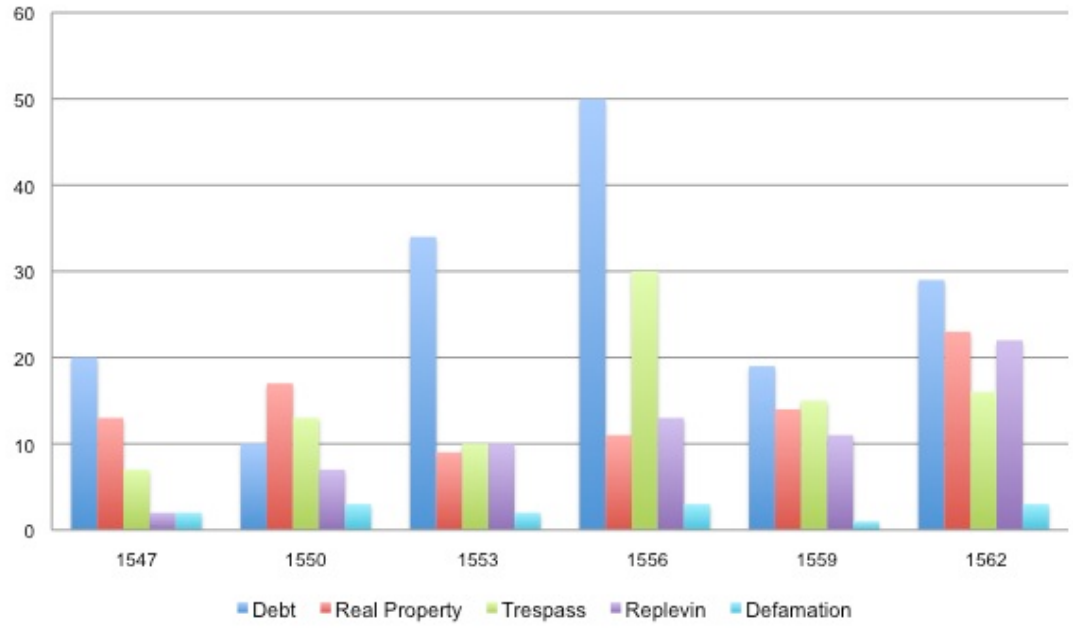



**Figure 21 – Number of defences by year and cause of action**

In the next table, defences are considered as a percentage of the plea roll entries concerning that cause of action. This gives a good sense of how often on average a defendant turned up to answer a complaint, although a defence does not always correlate to a complaint in that same sampled year. Also, recall that there can be more than one writ of *capias* per case: therefore, the ratio of defences to plea roll entries is an artefact not merely of the frequency with which a defendant put on a defence at all, but also of the number of writs that were needed to get them to appear in the first place.

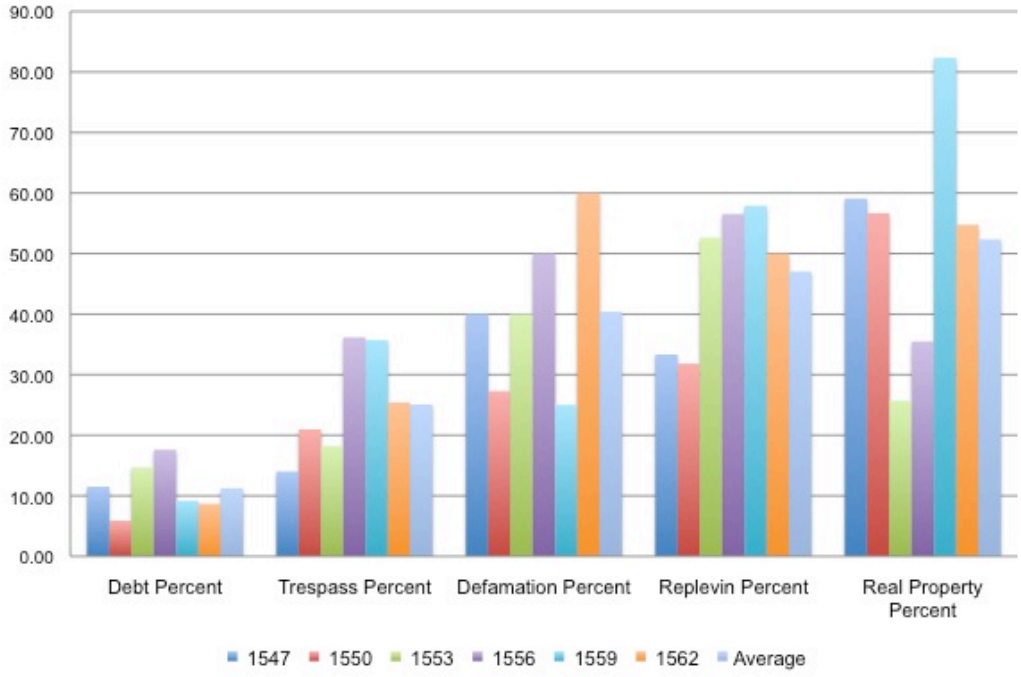



**Figure 22 – Defences as a percentage of plea roll entries by cause of action**

Bearing all this in mind, one sees that the vast number of debt claims initiated by plaintiffs means that the percentage of them that are defended is actually quite small (on average, 11.25%). By contrast, the relatively rare non-trespass actions concerning real property are defended in over half (52.35%) of all cases. Interestingly, trespass (wrongful entry onto land) is a more frequently-commenced action than replevin (typically a claim to retrieve one's animals that someone has seized and impounded), but an action for replevin is substantially more likely to be defended than is trespass (47.03% versus 25.07%). This is likely to be because an action for replevin was not merely about getting one's animals back: it was also about negating the defendant's claim to have the authority to make the seizure in the first place—a theme to which we will return in Chapter 4.

**Summoning the Jury**

Of the vast number of cases instituted in the Common Pleas, how many actually resulted in a jury trial? As one might imagine, the answer is very few indeed. In 1553 for example, there were 196 new suits originating in Oxfordshire and Berkshire (i.e. excluding suits originating in London); 65 defences were put on (for Oxfordshire and Berkshire suits wherever originating); and yet the plea rolls record the summoning of only 32 juries by the writ of *habeas corpora juratorum* —the highest number in the sampled years. That writ compelled the attendance of the jury at the appropriate assize after they (notionally) failed to respond to the earlier writ of *venire facias* commanding them to attend at the Court of Common Pleas itself. Part of the reason for this two-step process was that it enabled the parties to see the names of the jurors in advance, thereby enabling them to prepare any challenges.[33] The number of juries summoned by year is set out below.

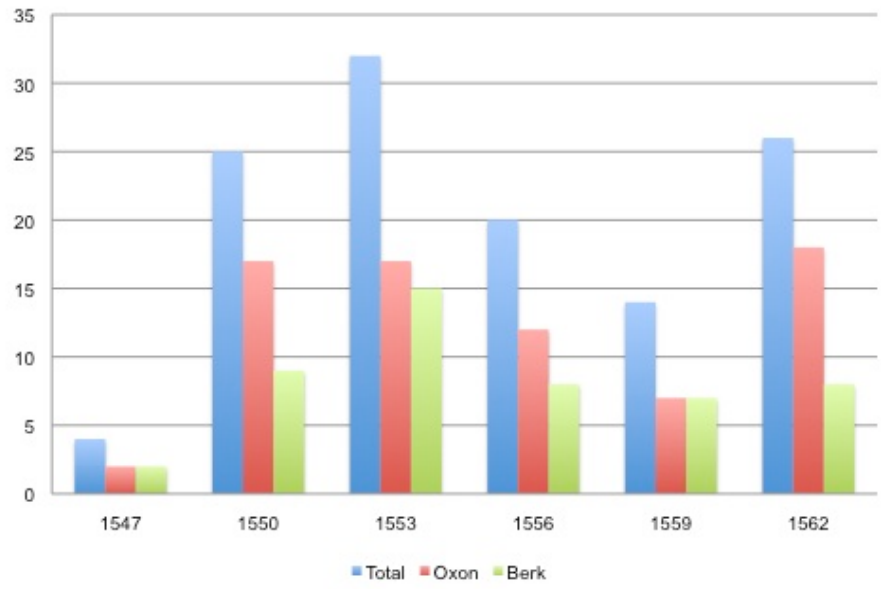



**Figure 23 – Juries summoned by year**

[33] Hastings, *Court of Common Pleas*, pp. 200–2.

Viewed by term rather than year, one sees that juries were usually summoned in Hilary and Trinity terms—no doubt because of the Lent and Summer Assizes. An obvious curiosity is the low level of plea roll entries indicating juries summoned in 1547, for which there is no ready explanation.

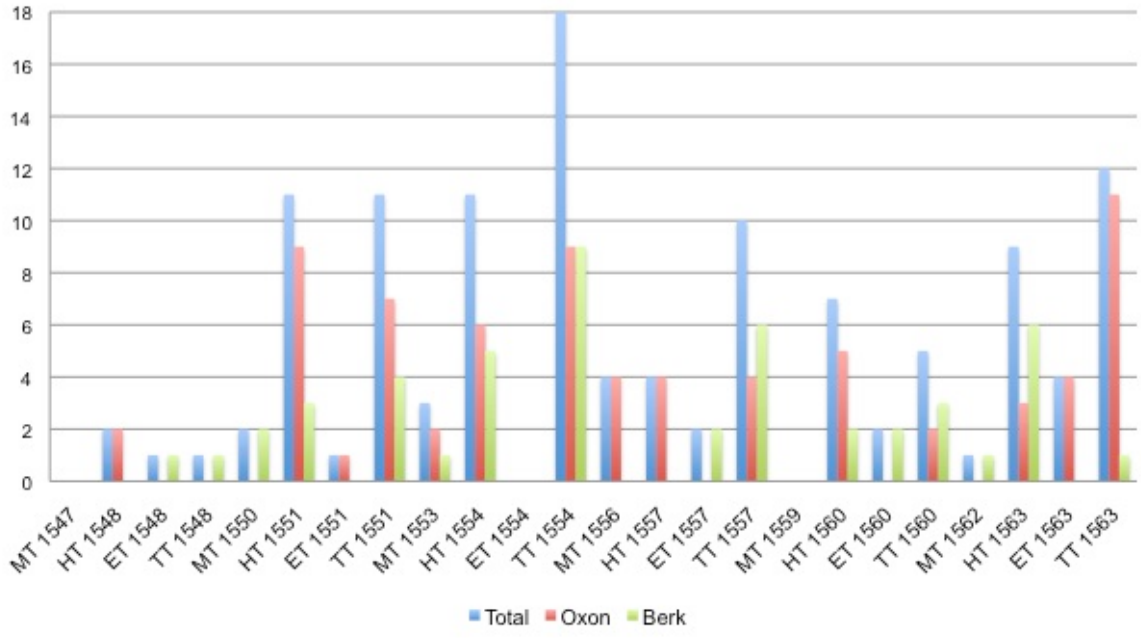



**Figure 24 – Juries summoned by term**

What proportion of defended cases went to jury trial? On average, slightly fewer than 30 per cent of suits in which the defendant put on a defence actually had a jury summoned, as is set out in the table below. When viewed in the context of the number of suits which were defended at all, these figures certainly bear out Baker's estimation that only 5–10% of suits ever proceeded to judgment.[34] We will have more to say in Chapter 5 about the ways in which people might resolve those suits that did *not* proceed to judgment, but the essential point is that the formal adjudication through the legal system was very much the exception rather than the rule.

[34] Baker, *Oxford History of the Laws of England*, p. 142.

| Year | Juries total | Oxon | Berks | Defences total | Juries as % of defences |
|---|---|---|---|---|---|
| **1547** | 4 | 2 | 2 | 44 | 9.1 % |
| **1550** | 25 | 17 | 9 | 50 | 50.0 % |
| **1553** | 32 | 17 | 15 | 65 | 49.2 % |
| **1556** | 20 | 12 | 8 | 107 | 18.7 % |
| **1559** | 14 | 7 | 7 | 60 | 23.3 % |
| **1562** | 26 | 18 | 8 | 93 | 28.0 % |
| **Average** | 20.2 | 12.2 | 8.2 | 69.8 | 29.7 % |

**Table 4 – Juries and defences by year**

## Comparison with the Court of King's Bench

To get a sense of the comparative workload of the two central common law courts, we can turn to the docket rolls of the Court of King's Bench.[35] These record the number of cases that were finalised after reaching an advanced procedural stage—albeit not necessarily after a jury was summoned.[36]

| Year | Total | Oxon | Berks |
|---|---|---|---|
| **1547** | 11 | 3 | 8 |
| **1550** | 15 | 12 | 3 |
| **1553** | 14 | 5 | 9 |
| **1556** | 22 | 11 | 11 |
| **1559** | 24 | 7 | 17 |
| **1562** | 28 | 19 | 9 |

**Table 5 – Number of cases in the King's Bench docket roll by year**

[35] IND1/1337; IND1/1338; IND1/1339.
[36] On the docket rolls, see Brooks, *Pettyfoggers and Vipers*, p. 50; Ives, *Common Lawyers*, pp. 200–6; Baker, *Oxford History of the Laws of England*, pp. 149–50.

Interestingly, the trend of increasing litigation over time appears much more clearly in the docket rolls than in the Common Pleas jury returns. One explanation for the absence of such a clear pattern in the Common Pleas may relate to the amount of London-based debt litigation. Although this sort of litigation was the greatest source of increased work in the Common Pleas, debt claims were highly likely to settle before trial, and were therefore unlikely to show up among the suits for which a jury was summoned.

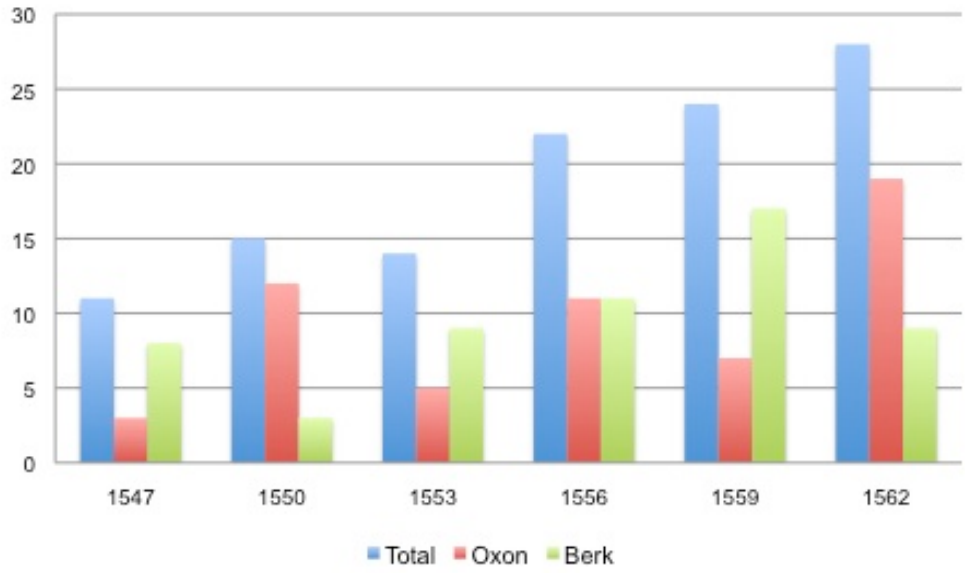



**Figure 25 – King's Bench Docket Roll by year**

## Local Patterns – Conditional Bonds

The wealth of data recorded in the plea rolls can help us to obtain a more localised view of people's experience of the legal system. One consequence of putting on a defence was that the accompanying plea roll entry gives us not merely the details of that defence, but also more information about the plaintiff's original claim. This is especially significant in the case of debts based on a conditional bond because the accompanying entry will usually reveal not merely the existence of an underlying bond, but also the date and place where it

was made. In many cases, we will also find out the condition contained in the bond, as it is often pleaded by way of defence.[37]

The figures below show what a bond looks like. It concerns Luke Beauforest, a legally-trained gentleman of Dorchester about whom we will find out much more in Chapter 3. The front contains the appropriate Latin formula, and the dorse contains the English-language condition of that particular bond. This one concerns the redelivery of manor court rolls that Luke was unlawfully detaining from the Bishop of Lincoln.[38]

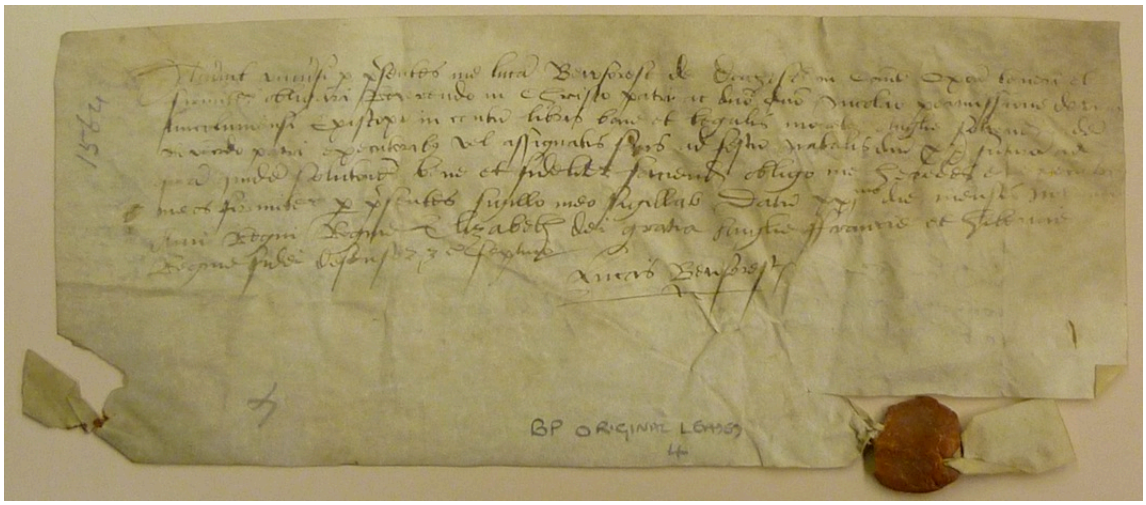


**Figure 26 – Front of a conditional bond**

[37] On the development of the conditional bond, see Joseph Biancalana, 'The Development of the Penal Bond with Conditional Defeasance', *Journal of Legal History*, 26 (2005), 103; Simpson, *History of the Common Law of Contract*, pp. 90–8.
[38] LA DIOC/BP/LEASES/4.

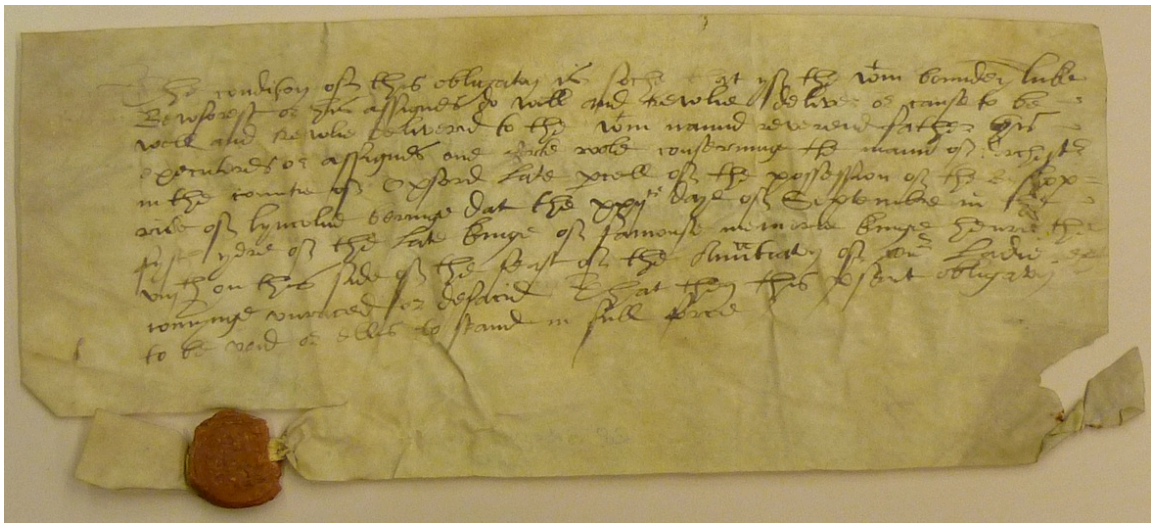


**Figure 27 – Dorse of a conditional bond**

Documents of this kind were regularly pleaded in defences in the plea rolls. A typical example comes from Easter term 1557: Edmund Streetley, a gentleman of Whitfield (Oxon) appeared by Michael Nash his attorney in response to the suit of Thomas Woolley, cooper of Henley upon Thames. Thomas sued Edmund for £40 upon a conditional bond they signed at Henley on 22 September 1553. Edmund claimed that the obligation was conditional on his delivering 21 quarters of barley to Woolley's house at Henley; that he had in fact fulfilled that condition; and therefore that he had a good defence to Thomas' claim.[39]

Even a short case of this kind reveals some very interesting details. We will focus on just one: the place where people entered into these bonds. The graph below sets out the number of bonds made by place.

[39] CP40/1170 m 971.

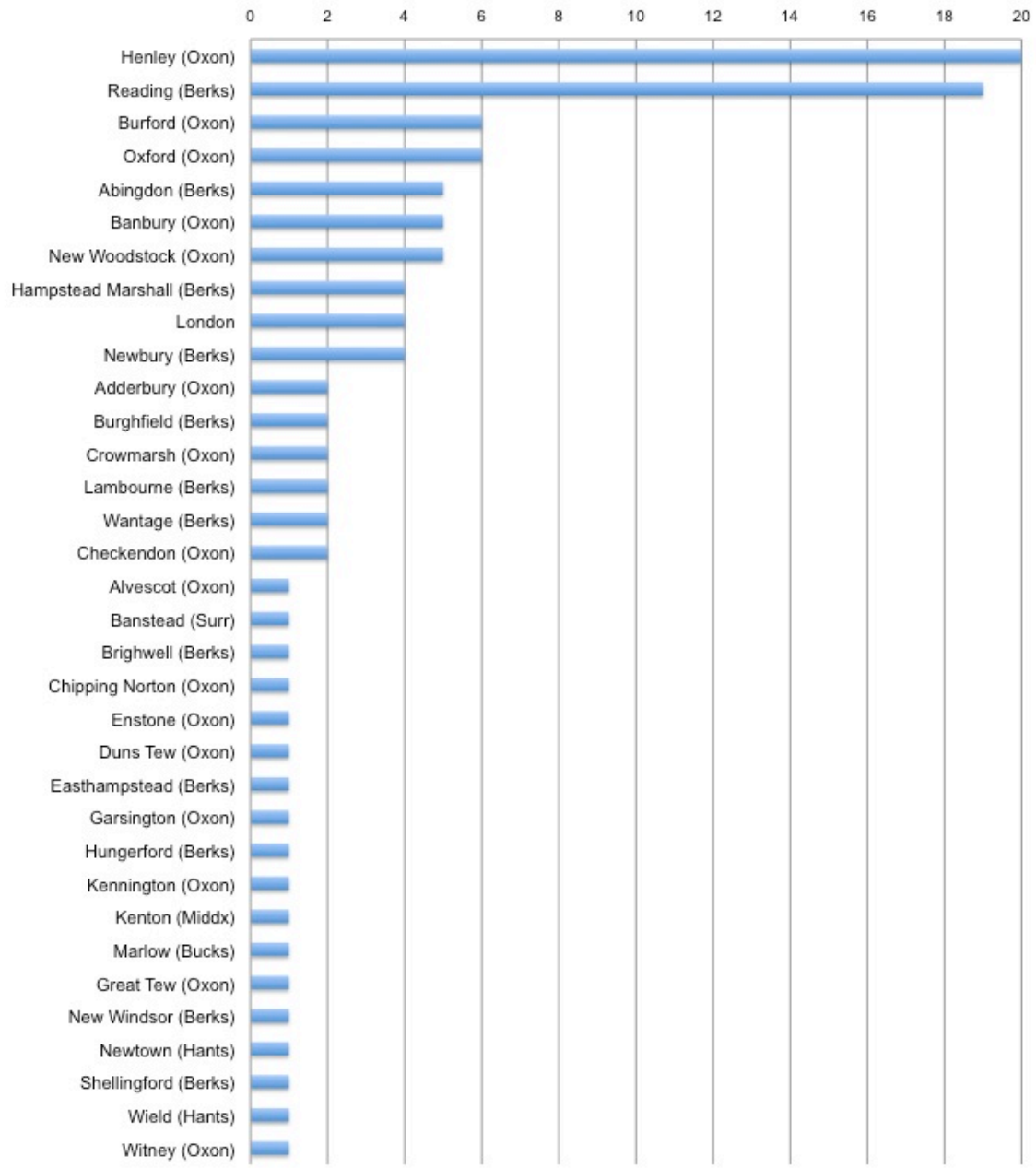



**Figure 28 – Number of bonds by place of making**

As one can see, Henley and Reading are far and away the most frequent places in which business of this kind was done (20 and 19 bonds mentioned in the plea rolls respectively). Burford, Oxford, Abingdon, Banbury and New Woodstock were also substantial boroughs, but perhaps the most striking feature is the long tail at the bottom of the graph, which includes some truly obscure places in which people were nonetheless able to find a scrivener or an attorney to draw up their legal documents. Remember, though, that we only

know about this because the defendant has appeared and put on a defence. Undefended debt claims—and successful transactions that never ended up in court—leave no such trace in the records.

As with all litigation, the raw statistics can sometime conceal important points of difference. It was true that Reading and Henley were both major commercial centres, but if one digs a little deeper into these debt obligations, one sees that unlike the diversity of litigants at Reading, a large bulk of the Henley litigation was brought by just one man: Thomas Woolley, one of whose bonds we have just mentioned. Woolley was also an active plaintiff in the Henley Guildhall court,[40] and on one occasion before that institution, a victim of Woolley's litigiousness, Henry Deane, made an exasperated utterance 'in the presence of a great sort of the town' about the 'wench by whom [Woolley] had a child whose name is Maud or Cicely or Joan'. As one might guess, we only know about this episode because Woolley then sued Deane for defamation in the Oxford diocesan courts.[41]

**Local Patterns – Defamation**

Defamation, which was a major part of the work of ecclesiastical courts, was also a small but important part of the workload of the Common Pleas. It provides another way by which we can get inside the local legal worldview. To judge by the number of cases, it seems to have been something that Oxfordshire people complained about more than those in Berkshire. There was a wide variety in the form of defamatory utterances—there was no written defamation in the sampled years—but they are hardly Ciceronian oratory. When

[40] OHC BOR3/B/IV/BW/38/1; BOR3/B/IV/BW/38/7.
[41] OHC DIOC/2/B/1/1 fol 32v.

George Wright said to Robert Ockham at Old Windsor 'Thou art a false knave, and a very false knave, and a very false perjured knave', he gave an example of anaphora.[42] That, however, is about the full extent of classical rhetoric among slanderers in the Thames Valley.

Some Common Pleas defamations had rather an ecclesiastical ring to them: 'Nicholas Radish is a false harlot';[43] or 'Agnes Harry had a child before she was married in Gloucestershire and that I will prove'.[44] In general, however, 'thief' was the Common Pleas equivalent of 'whore' in the ecclesiastical courts as the most frequent and generic slander, as for example when John Chare sued John Rudd in 1556 for saying '[t]hou thief, thou hast stolen my purse at Drayton'.[45]

The kind of slanders that led to suits by men in the common law courts—usually specific allegations about probity in business dealings, social rank and status—were, as Ingram observes, 'a fair reflection of the central issues around which male reputation revolved.'[46] These might be contrasted with the 'high proportion of very unspecific slanders' alleged by and against women in church courts, which were a product of social double standards and of contemporary beliefs that assigned women to a 'passive, dependent, home-based' role in which 'sexual reputation was more central to the female persona'.[47]

Like some ecclesiastical cases, Common Pleas actions for defamation often concealed a more material subtext: both the defamatory utterance and the ensuing legal action were

[42] CP40/1171 m 1093.
[43] CP40/1145 m 357.
[44] CP40/1145 m 596v.
[45] CP40/1169 m 238.
[46] Ingram, *Church Courts, Sex and Marriage*, p. 303.
[47] Ingram, *Church Courts, Sex and Marriage*, p. 302.

often motivated by an underlying dispute. Thomas Hore's claim that 'Sir John Browne is an extortioner and doth undo us and all the country' was, for example, just one iteration of a wider dispute between the lord and tenants of Headington (Oxon).[48] Likewise, the subtext of this next utterance is quite clear: 'Roger Hatchman, thou art a thief, for that thou wast privy to the stealing of horses, oxen and sheep, and a common maintainer of thieves'.[49] Hatchman, of course, was a gentleman landowner involved in a number of property disputes who directed his servants to impound cattle straying onto property he claimed to be his.[50]

A large group of slanders concern proceedings before local courts or legal institutions, typically presentments or other allegations of theft, trespass and wrongdoing which were dismissed by the local court. This was the experience of the Wheatley (Oxon) innholder William Howell, who is said to have announced 'Edward King thou art a false polling knave and that I will prove before the King's commissioners'.[51] Evidently he did not, for otherwise no defamation claim would have been brought.[52]

Lawyers and the legal system could also be impugned more directly, and cases of this kind give us an important insight into popular disaffection with the law. Edmund Cooke from Newbury (Berks) was alleged to have said that 'Thomas Hull is an arrant thief and a murderer, for he robbed my father of his evidences and was the death of my father'.[53] In

[48] CP40/1134 m 49. Cf STAC 2/21/75.
[49] CP40/1146 m 174v.
[50] Cf C24/26, *Hatchman v Penney*; C1/1179/1–3; C1/1252/27; C1/1356/31; KB27/1183 m 64.
[51] CP40/1135 m 619v.
[52] Phrases like 'and that I will prove' also served to satisfy the requirement that the defamation be malicious, i.e. that it was seriously intended: Helmholz, *Select Cases on Defamation*, pp. xxiii, cxi.
[53] CP40/1184 m 5050.

Kidlington (Oxon), William Hayworth said to Henry Wise 'Thou, Henry, and thy brother William be false knaves, for you have forged a false obligation, and thou, Henry Wise, art falsely forsworn'.[54] Evidently, the two attorneys of Banbury were not the only lawyers to generate dissatisfaction with the legal system.

**Mapping Local Patterns**

One way of making sense of these kinds of localised experiences of the legal system is to analyse where plaintiffs and defendants came from so that we can see the geographic patterns involved. The plea rolls usually give a specific place of residence for the parties (or at least a specific place for one of them and a county for the other), and sifting through this place-specific data yields some suggestive if incomplete results.

In order to give a cross section of some of the larger and smaller towns in the two counties, this study collates the number of suits involving residents of Reading, Oxford, Henley, Abingdon, Banbury, New Woodstock, Chipping Norton, Witney and Wantage. The number of plea roll entries per town ranges from 111 in Reading, to 20 in Wantage.

[54] CP40/1186 m 277.

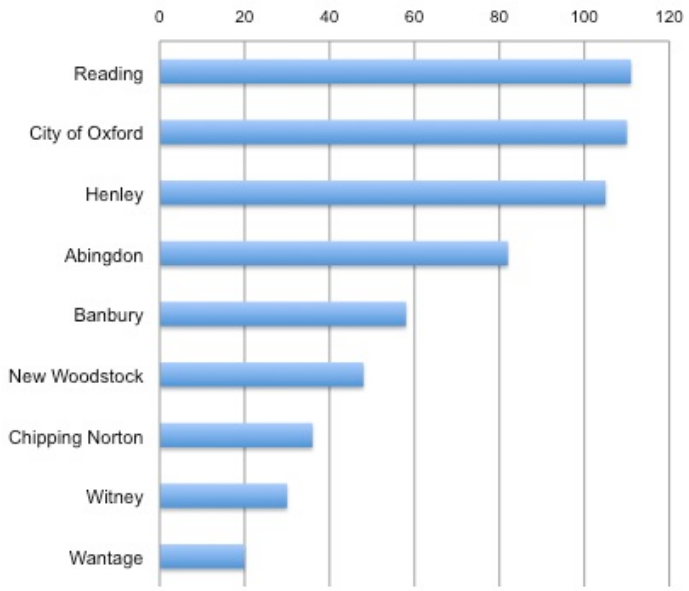



**Figure 29 – Number of plea roll entries by town**

The next chart shows the percentage of litigation in our sampled towns that concerns two people from the same town; and the proportion of litigation from that town connected with London.

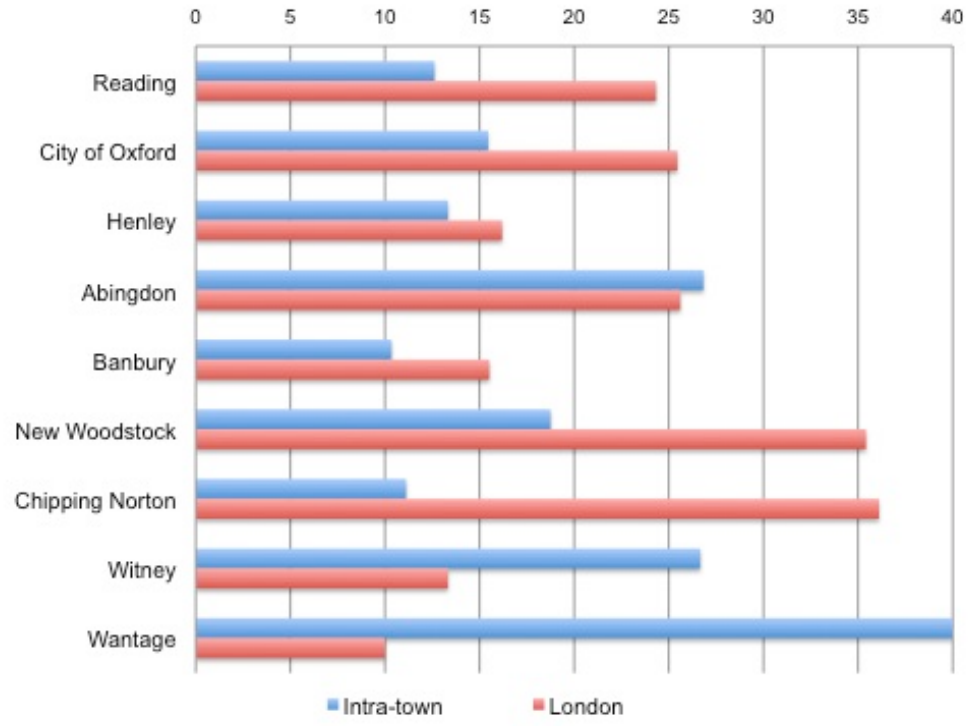



**Figure 30 – Percentage of litigation intra-town or with London**

Notice how Abingdon has an unusually elevated proportion of intra-town litigation, which is reminiscent of the proportions in Witney and Wantage (small towns with a small sample size, and with relatively less economic and social connection to London). This seems to accord with what we know about mid-sixteenth century Abingdon more generally, namely that it was a fractious and turbulent place.[55] The large number of trespass suits in the Common Pleas concerning urban land in Abingdon is indicative both of a level of urban unrest and also of the inability of the young civic institutions in Abingdon to resolve disputes within the town.

Lying behind those figures is, however, a much more specific reason for the unusually high proportion of intra-Abingdon and intra-Witney cases in the Common Pleas. Namely, in both these boroughs, the local court for civil claims was held before subordinate officials of the town (the bailiffs), rather than before the mayor himself. These institutions seem to have been considered unsatisfactory by local litigants, in part because they lacked local institutional gravitas. In each town, efforts were made to improve the situation, and we will explore those efforts in greater detail in Chapter 4. For the moment, it suffices to note that the unsatisfactory status of the court in Abingdon was a prime motivation for the grant of a new civic charter in 1565.[56]

The high levels of London-connected litigation in New Woodstock and Chipping Norton are also striking. Woodstock was of course a major centre of royal power in north

[55] Manfred Brod, *Abingdon in Context: Small-Town Politics in Early Modern England 1547–1688* (Peterborough, 2010).
[56] *Selections from the Municipal Chronicles of the Borough of Abingdon*, ed. Bromley Challenor (Abingdon, 1898), pp. 18, 39–40.

Oxfordshire with strong connections to the court and to London.[57] By contrast, although Chipping Norton was a substantial market town, it had no particular geographic or political connection to London, but the wool trade probably provided the relevant economic link.[58]

Whichever town one looks at, this data confirms the broader observation of Craig Muldrew that local economic circumstances and the efficacy of local institutions made a real difference to rates of litigation in central courts. Unlike the people of Abingdon, for example, the people of King's Lynn were not great frequenters of the central courts, and apparently felt that their needs were well met by local institutions.[59]

Turning aside from London and intra-town litigation, we can also see which other places are involved in litigation with each of our sampled communities. The nature of the plea rolls means that a large proportion of suits cannot be identified any more precisely than by county. Compare, however, the proportion of Berkshire suits in Reading and Abingdon respectively: Abingdon seems all the more self-absorbed as a result. Notice too the sizeable amount of Oxford litigation that concerned Godstow. This was a manifestation of a long-running dispute between the City and George Owen and his tenants which we will consider in more detail in Chapter 4.

In the smaller settlements, one can see that the decreasing sample size and the narrower regional focus of those places means that litigation concerning those towns is grouped around a smaller number of other settlements. For example, while litigation concerning the

[57] It benefited from these connections in 1576, when a statute liberalised the wool market there for the benefit of the town which was 'chiefly supported by access of the Queen's noble progenitors unto their manor of Woodstock': 18 Eliz I c. 21.
[58] Bowden, *Wool Trade*, pp. 45, 88.
[59] Muldrew, *Economy of Obligation*, pp. 244–5.

City of Oxford touched 34 other settlements or counties, litigation concerning Wantage touched only seven other places.

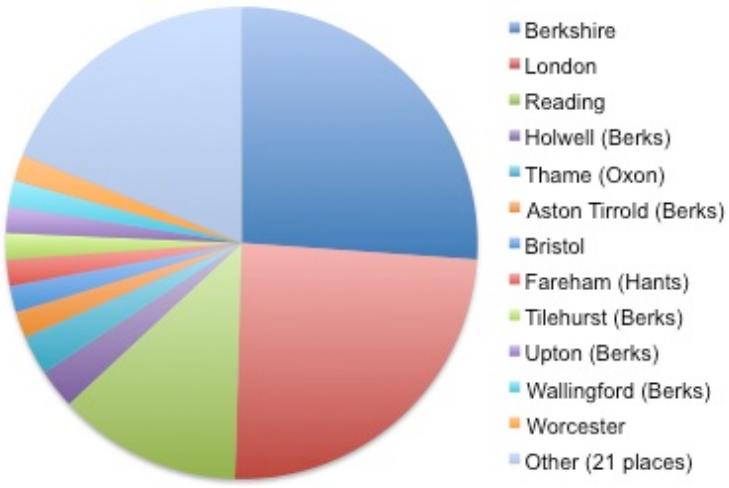



**Figure 31 – Litigation concerning Reading**

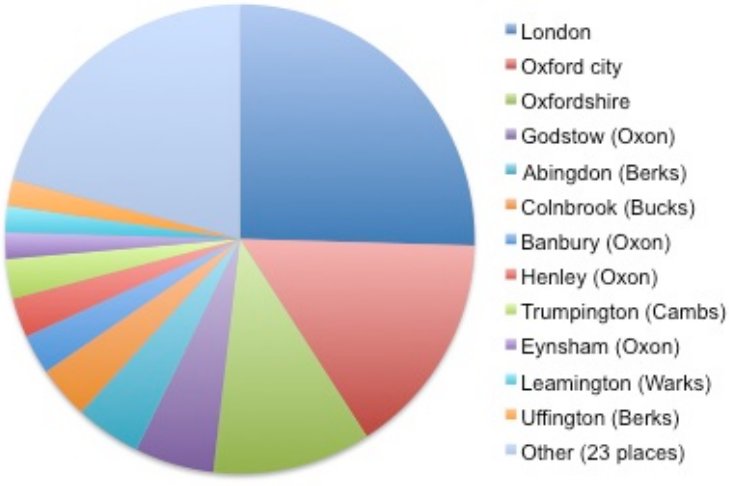



**Figure 32 – Litigation concerning Oxford**

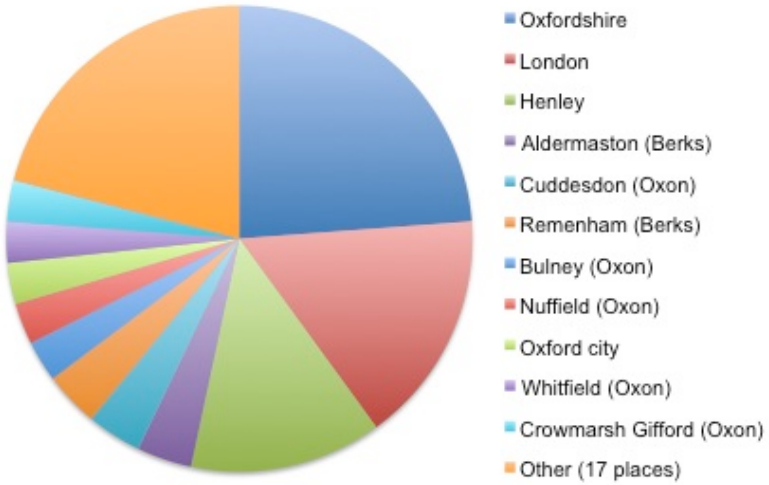



**Figure 33 – Litigation concerning Henley on Thames**

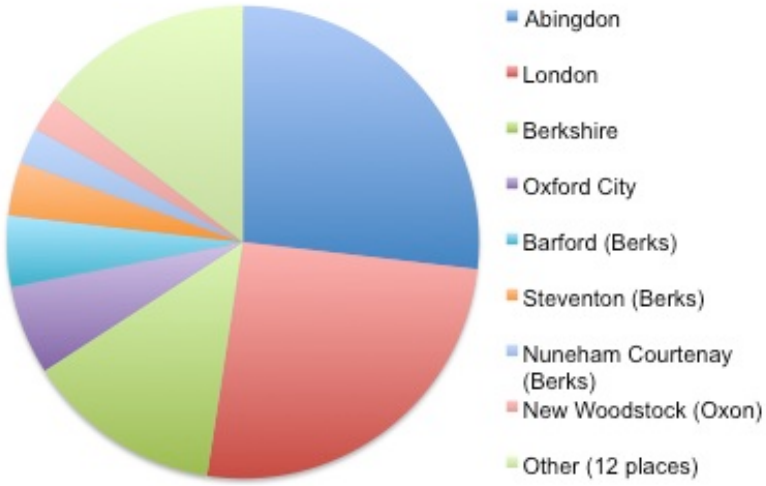



**Figure 34 – Litigation concerning Abingdon**

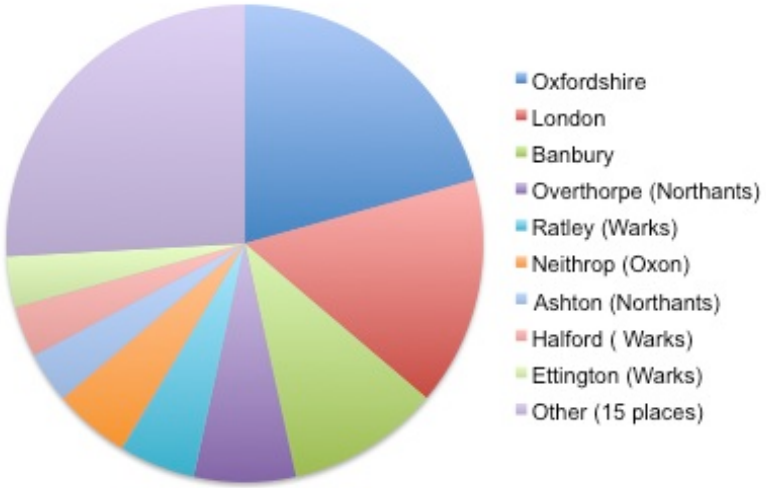



**Figure 35 – Litigation concerning Banbury**

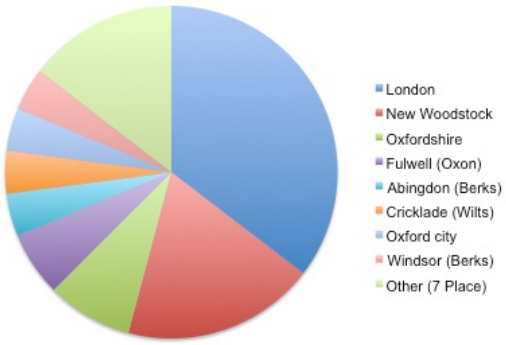



**Figure 36 – Litigation concerning New Woodstock**

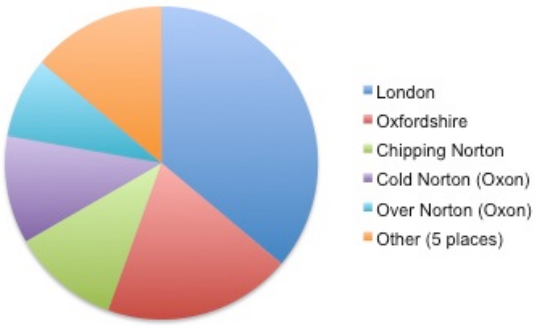



**Figure 37 – Litigation concerning Chipping Norton**

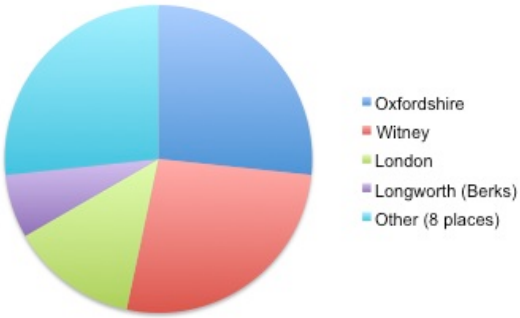



**Figure 38 – Litigation concerning Witney**

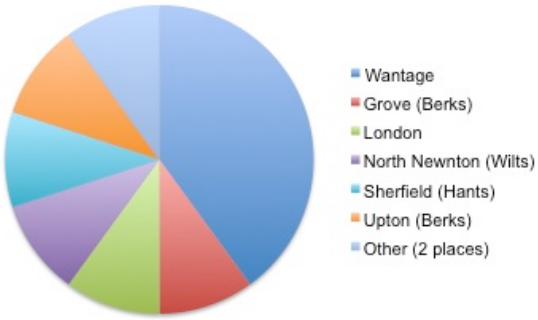



**Figure 39 – Litigation concerning Wantage**

If we think geographically about these results, we can gain another insight into people's litigious experience. Take, for example, litigation concerning Banbury. In the map below, the thickness of the arrow represents the number of suits. One must bear in mind that this data represents all litigation touching Banbury, not just suits by Banbury plaintiffs: the arrowhead therefore points to the other settlement involved, without implying that every suit originated in Banbury.

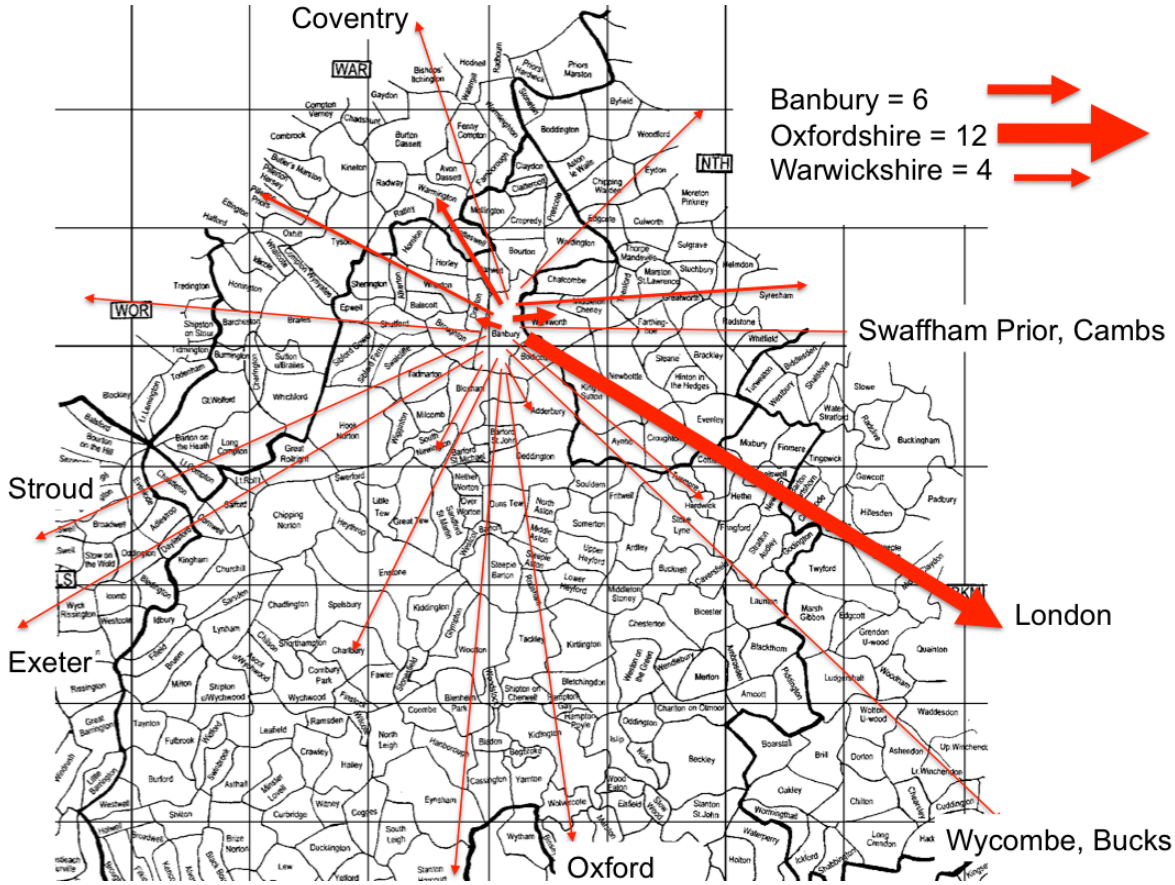



**Figure 40 – Map of litigation concerning Banbury**

One can see very clearly that there is a regional focus in the area around the town, but importantly we see how easily legal interactions crossed county lines: there is a particularly strong connection with Warwickshire and Northamptonshire, which is not to deny that there are also longer-range points of contact as far afield as Exeter and Cambridgeshire. For people living in Banbury, litigation was more likely to follow geographic and economic landscapes rather than those of county or borough boundaries.

What about Abingdon? One sees very clearly that the Thames was a means of intercourse rather than a barrier to it, and that Abingdon had more legal links to Oxford than it did to, say, Reading despite their being in the same county.

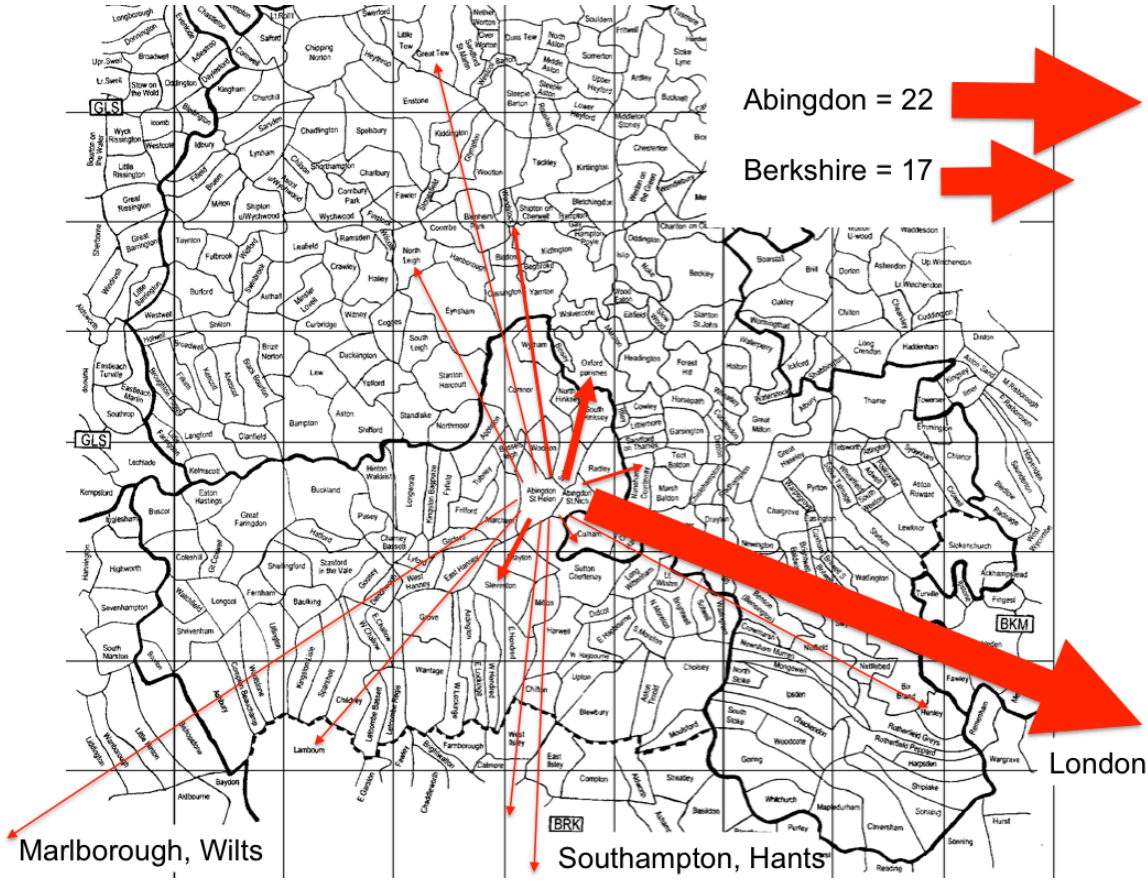



**Figure 41 – Map of litigation concerning Abingdon**

The most important thing to note is the surprisingly large number of suits brought by one Abingdon person against another: both absolutely and as a proportion of total litigation, this was the largest number of suits between fellow townsfolk in our sampled towns. If we compare that to the picture that emerges from Reading, we immediately notice how much less internal Reading litigation there is. One can see something of a focus on up-river trade as well as a strong connection to London, which is exactly what one would expect from a substantial trading centre on the River Thames.

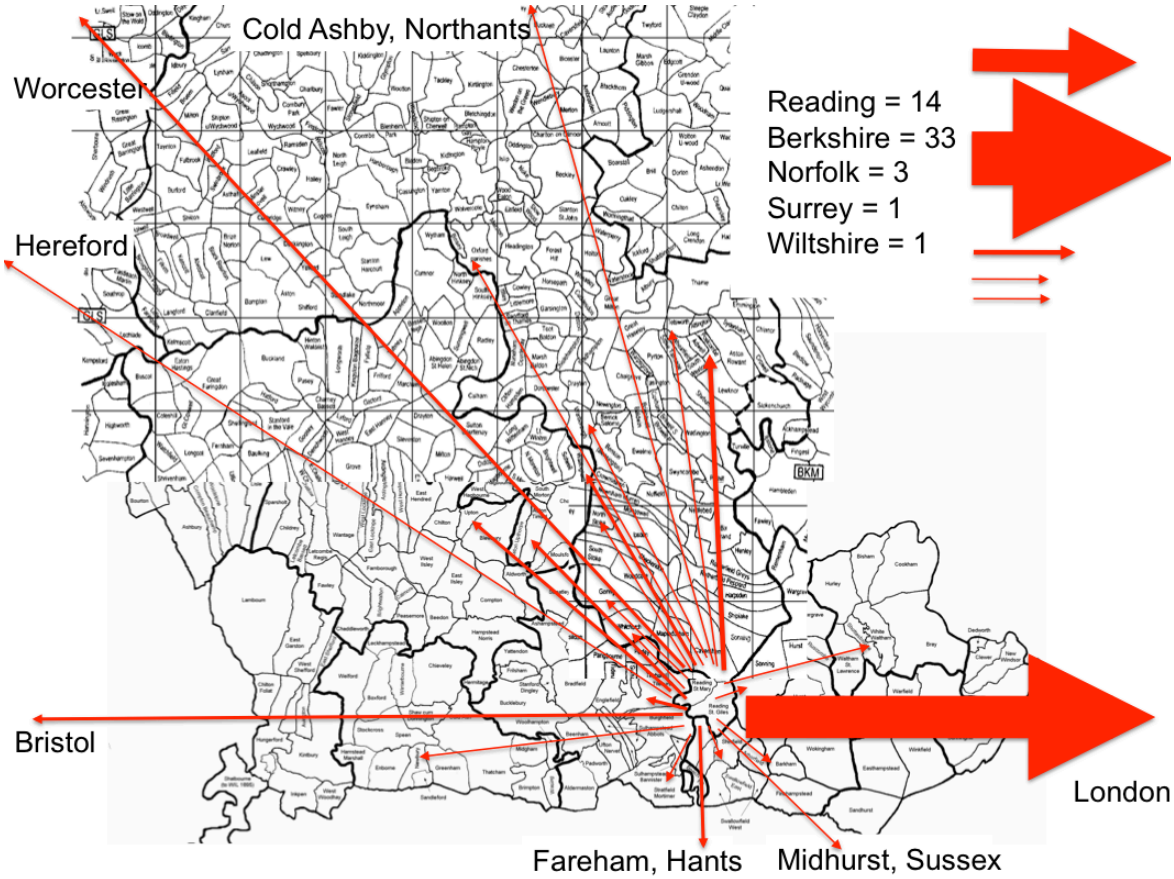



**Figure 42 – Map of litigation concerning Reading**

The volume and geography of litigation in a smaller place like Witney is fairly much what one would expect for a market town which was substantial without being a major centre. But even in a town like Witney, people could have wide horizons, evidenced, for example, by the 1550 suit of Edward Wilmott, merchant stapler of Calais against Thomas Taylor, mercer of Witney, for a debt of £6 3s, perhaps relating to goods shipped from France.[60]

[60] CP40/1146 m 606v.

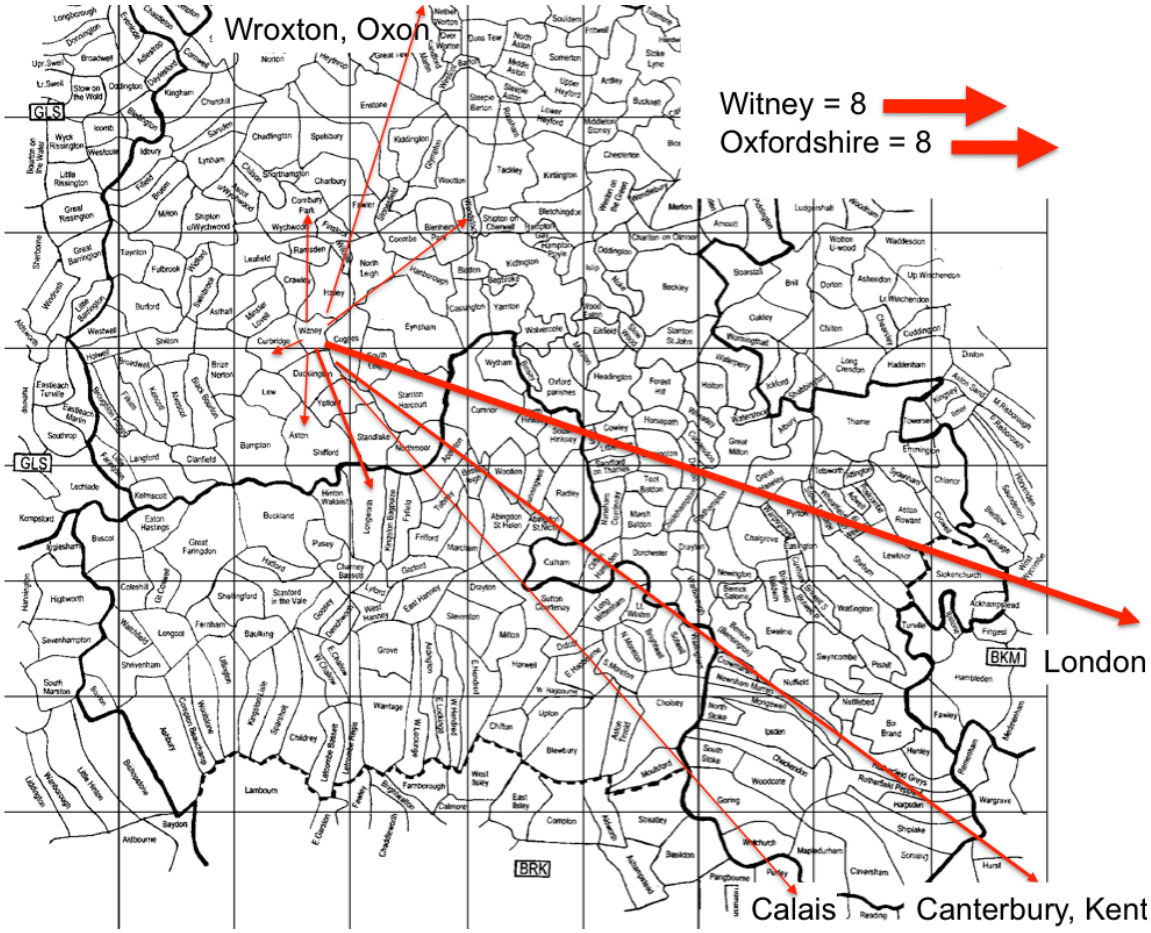



**Figure 43 – Map of litigation concerning Witney**

## Attorneys in the Common Pleas

In his suit against Taylor, Edward Wilmott appeared by an attorney, John Grey. In so doing, he was typical of the vast bulk of litigants in early modern England. Indeed, one striking fact revealed by the plea rolls is that however poor they were, almost no laypeople appeared for themselves in the Common Pleas.[61] Alice Martin, a widow of Southmoor (Oxon) who appeared for herself against Henry Banting in 1562 was therefore quite exceptional, whereas her opponent, who appeared by Michael Nash—a prominent

[61] The same was true in equivalent courts in France, where plaintiffs likewise appeared almost invariably by attorney (*procureur*) and counsel (*avocat*): Guenée, *Tribunaux et gens de justice*, pp. 185–6, 202–4.

Oxfordshire attorney—was typical of the norm.[62] In fact, most appearances in person were by lawyers—Michael Nash did so himself on a number of occasions—but many lawyers nonetheless preferred to be represented by someone else, as for example did the distinguished Oxfordshire serjeant John Pollard when he pursued a £10 debt against one Humphrey Willoughby in 1551.[63]

What sort of people appeared as attorneys in the Common Pleas? And how did the feuding attorneys of Banbury compare with their colleagues? As attorneys whose practices had a connection with Oxfordshire and Berkshire, William Weston and John Lovett were hardly alone. Indeed, no fewer than 230 individuals are listed in the plea rolls as having appeared as an attorney in an Oxfordshire or Berkshire case at some point in the sampled years.[64] However, of those 230 attorneys, 101 appeared in the plea rolls only once, and a further 94 appeared in fewer than 10 instances. Obviously, not all those 230 individuals appeared in each of the sampled years: 43 named attorneys appeared in 1547, 48 in 1550, 80 in 1553, 67 in 1559, and 96 in 1562. To put those numbers in context, Brooks estimates that there were in total about 180 attorneys in the whole kingdom in 1560, rising to some 313 in 1580, and then to around 800 by 1606.[65]

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[62] CP40/1207 m 151v.
[63] See, e.g. CP40/1169 m 79 v (1556); CP40/1208 m 764v (1562). On Pollard, CP40/1147A m 253.
[64] It must be remembered that not all these attorneys were representing a party from Oxfordshire or Berkshire.
[65] Brooks, *Pettyfoggers and Vipers*, p. 113. Direct comparisons with France are difficult, but by way of illustration there were 50 *procureurs* practicing before the Parlement of Rouen in the late sixteenth century, and 30 before the Parlement of Aix: Jonathan Dewald, *The Formation of a Provincial Nobility: The Magistrates of the Parlement of Rouen 1499–1610* (Princeton, 1980), p. 17; Clare Dolan, *Les procureurs du Midi sous l'ancien régime* (Rennes, 2012), p. 109.

Twenty-four attorneys could be said to have had a substantial practice connected to Oxfordshire or Berkshire (15 or more instances in the sampled years). These are set out in the table below.

| Name | Residence (if known) | Total | Total Oxon | Total Berks | 1547 | 1550 | 1553 | 1556 | 1559 | 1562 |
|---|---|---|---|---|---|---|---|---|---|---|
| Thomas Davis [66] | London | 114 | 45 | 69 | 17 | 24 | 17 | 56 | 0 | 0 |
| Michael Nash [67] | Old Woodstock (Oxon) | 96 | 78 | 18 | 1 | 5 | 16 | 22 | 9 | 43 |
| John Grove | | 70 | 32 | 38 | 0 | 0 | 0 | 14 | 31 | 25 |
| William Pyreson [68] | London | 42 | 25 | 17 | 1 | 2 | 7 | 9 | 14 | 9 |
| Henry Snodenham [69] | Stanford in the Vale (Berks) | 40 | 20 | 20 | 12 | 6 | 14 | 8 | 0 | 0 |
| Richard Malthus | | 39 | 27 | 12 | 0 | 0 | 0 | 0 | 0 | 39 |
| Richard Cliff [70] | Holborn (Middx) | 38 | 26 | 12 | 1 | 3 | 8 | 13 | 6 | 7 |
| John Poley [71] | | 36 | 13 | 23 | 9 | 13 | 13 | 1 | 0 | 0 |
| Richard Archedale [72] | (London / Oxon) | 31 | 17 | 14 | 0 | 4 | 11 | 11 | 4 | 1 |
| Thomas Chalfont [73] | Wycombe (Bucks) | 30 | 22 | 8 | 4 | 8 | 11 | 0 | 1 | 6 |
| Robert Woodleff [74] | Aylesbury (Bucks) | 29 | 14 | 15 | 5 | 5 | 6 | 7 | 4 | 2 |
| John Ockham [75] | Reading (Berks) | 27 | 5 | 22 | 0 | 0 | 9 | 10 | 8 | 0 |
| Thomas Gold [76] | Hayes (Middx) | 25 | 19 | 6 | 5 | 17 | 3 | 0 | 0 | 0 |
| William Weston | Neithrop (Oxon) | 25 | 25 | 0 | 0 | 0 | 1 | 12 | 7 | 5 |
| John Eston [77] | Southwark (Surr) | 22 | 6 | 16 | 3 | 0 | 0 | 10 | 6 | 3 |
| John Danby [78] | (London / Kent) | 19 | 8 | 11 | 0 | 0 | 1 | 0 | 1 | 17 |
| Thomas Cobbe [79] | | 19 | 14 | 5 | 0 | 0 | 4 | 0 | 6 | 9 |
| George Harrison [80] | London | 18 | 9 | 9 | 0 | 2 | 2 | 0 | 6 | 8 |

[66] Baker, *Men of Court* i, p. 578.
[67] Baker, *Men of Court* ii, p. 1031.
[68] Baker, *Men of Court* ii, p. 1221.
[69] Baker, *Men of Court* ii, p. 1424.
[70] Baker, *Men of Court* i, p. 486.
[71] Baker, *Men of Court* ii, p. 1241.
[72] Baker, *Men of Court* ii, p. 1243.
[73] Baker, *Men of Court* i, p. 449.
[74] Baker, *Men of Court* ii, p. 1694.
[75] Baker, *Men of Court* ii, p. 1173.
[76] Baker, *Men of Court* i, p. 762.
[77] Baker, *Men of Court* i, p. 646.
[78] Baker, *Men of Court* i, p. 563.
[79] Baker, *Men of Court* i, p. 487.
[80] Baker, *Men of Court* i, p. 826.

| Name | Residence (if known) | Total | Total Oxon | Total Berks | 1547 | 1550 | 1553 | 1556 | 1559 | 1562 |
|---|---|---|---|---|---|---|---|---|---|---|
| John Knight [81] | Newbury (Berks) | 17 | 0 | 17 | 17 | 0 | 0 | 0 | 0 | 0 |
| John Lovett [82] | Adderbury (Oxon) | 16 | 16 | 0 | 1 | 0 | 3 | 5 | 3 | 4 |
| John Bill [83] | Ashwell (Herts) | 15 | 12 | 3 | 0 | 4 | 5 | 6 | 0 | 0 |
| John Cupper [84] | Glympton (Oxon) | 15 | 15 | 0 | 6 | 4 | 2 | 3 | 0 | 0 |
| William Forest [85] | London | 15 | 8 | 7 | 0 | 1 | 0 | 5 | 7 | 2 |
| William Rede [86] | Bristol? | 15 | 5 | 10 | 0 | 0 | 9 | 4 | 1 | 1 |

**Table 6 – Attorneys' appearances in the plea rolls**

When viewed graphically, the varying size of these attorneys' practices—and the proportion as between the two counties in a given attorney's practice—becomes more apparent.

[81] Baker, *Men of Court*, ii, p. 974.
[82] Baker, *Men of Court*, ii, p. 1031.
[83] Baker, *Men of Court* i, p. 310.
[84] Baker, *Men of Court* i, p. 551.
[85] Baker, *Men of Court* i, p. 693.
[86] Baker, *Men of Court* ii, p. 1296.

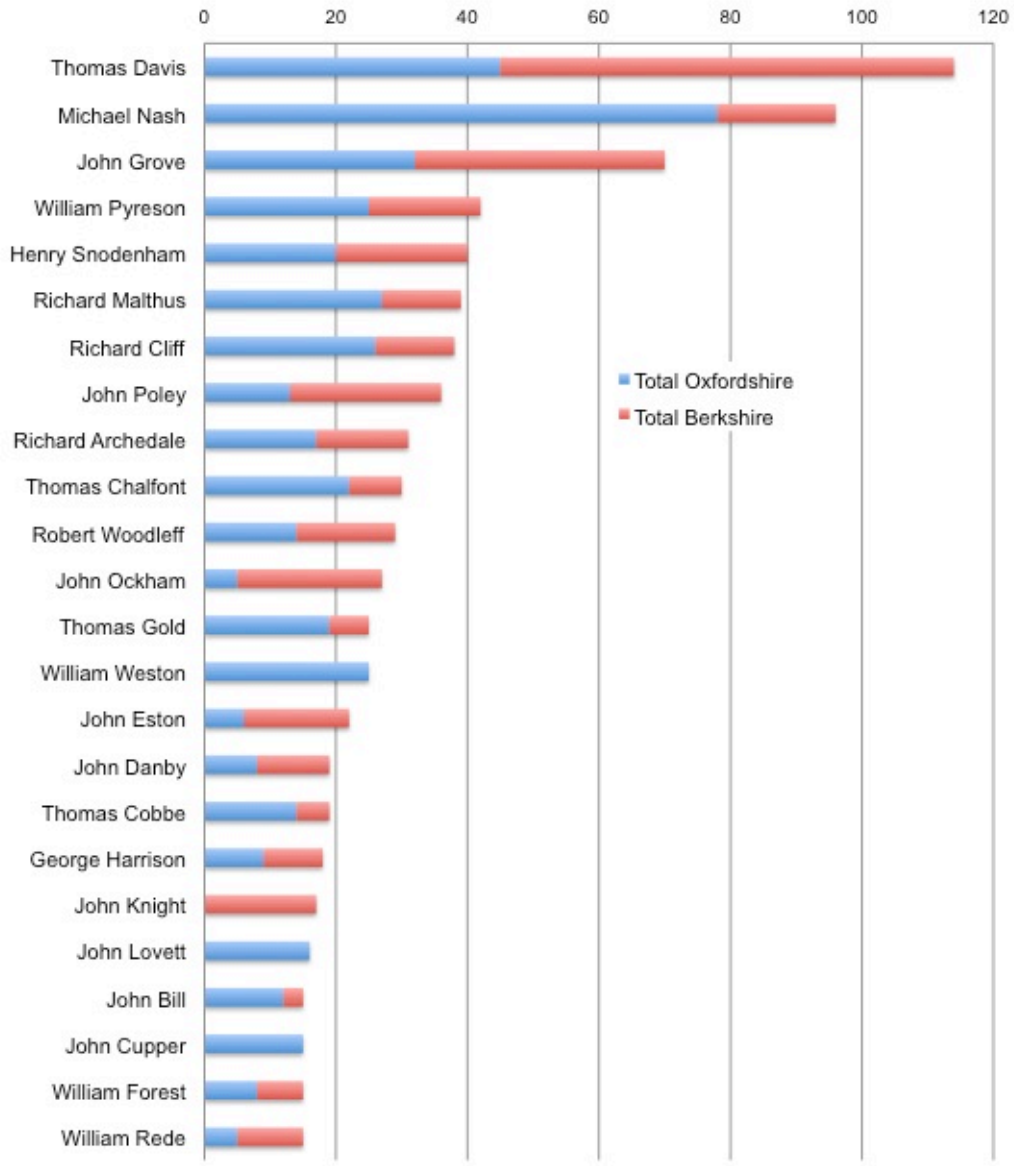



**Figure 44 – Attorneys' appearances in the plea rolls by county**

Before analysing this data, it must again be emphasised that the plea rolls are an imperfect source of information. For example, the most frequently-occurring entry in the plea rolls—the initial entry of a case—lists the fact that the plaintiff appears by attorney, but not that attorney's name. The name only appears on the rolls after the sheriff's return of *non est inventus* when the plaintiff applies for a writ of *capias* to secure the defendant's appearance, and at more advanced procedural stages. The figures under discussion therefore give a rough but very incomplete sense of the type of practice that an attorney

had. It is possible, for example, that the numbers flatter those attorneys who did procedurally more sophisticated work, or whose cases proceeded further towards judgment; and conversely that they underestimate the numerical significance of attorneys who did simple debt collection work.

Unlike the rolls of warrants of attorneys studied by Brooks, which record a single appearance for each plaintiff and defendant once a suit had reached an advanced stage,[87] the plea rolls may refer to the same suit and the same attorney on more than one occasion as the case progressed. While this may create a risk of double counting, it also allows us at least a rough sense of how busy a given attorney's practice was, and how frequently they were involved in advanced stages of litigation.

With those warnings in mind, the most fundamental point to emphasise is the number of attorneys whose professional services could be drawn upon. We will have more to say about the lawyer-client relationship in Chapter 5, but we can see already that litigation in the Thames Valley was by no means the preserve of a narrow, geographically-concentrated cartel. On the other hand, only eight of the listed attorneys can be securely identified as being resident in Oxfordshire or Berkshire. Would-be litigants almost all managed to find their way to a Common Pleas attorney, but for most of them this was not as a result of knowing such an attorney in their immediate neighbourhood.[88] This points to the existence of wider networks of information about the availability of legal professional services, both from the recommendation of friends or neighbours but also from a tier of more modest

[87] Brooks, *Pettyfoggers and Vipers*, pp. 57–9.
[88] Obviously, at least some of these attorneys were 'local' to litigants outside the Thames Valley who wanted to sue someone within it.

legal practitioners such as scriveners and court-keepers who were able to channel more sophisticated work towards their more eminent colleagues in the Common Pleas.[89]

Even if we concentrate only on the top two dozen attorneys, we can see that, first, these busy lawyers had differing practices and differing clienteles. William Pyreson, for example, practised almost exclusively for London-based clients suing Oxfordshire and Berkshire defendants over commercial debts. William Weston and John Lovett had practices that did not range much beyond their home area of North Oxfordshire surrounding Banbury. By contrast, more distinguished figures like Thomas Davis or Michael Nash had a wide-ranging clientele across the Thames Valley.

Second, the leading attorneys changed over time. The blunt fact of mortality meant there was always room for younger men, and busy practices could be built up quickly. When John Knight died in 1550, it seems that both Thomas Davis and John Poley picked up some of his workload. In turn, when Davis, Poley and John Bill died around 1558, it is hardly a coincidence that people like John Danby, John Grove and Michael Nash saw a rise in their practices.[90] Even more strikingly, Richard Malthus appears in only the last of the sampled years, and yet rapidly became the sixth most prolific attorney of the whole period.

Third, attorneys had different kinds of connection to the region. Some, like Pyreson, had none at all: Oxfordshire and Berkshire cases were just a small portion of a wider London-focussed practice. Robert Woodleff and Thomas Chalfont owed their connection to

[89] Brooks, *Pettyfoggers and Vipers*, pp. 44–7.
[90] Grove seems to have had a particularly notable rise to prominence by 1560: see Brooks, *Lawyers, Litigation and English Society*, p. 21.

residence in a neighbouring county. Others, like Michael Nash or Henry Snodenham were not only locally resident but were also well connected across the Thames Valley and beyond it; whereas smaller-scale practitioners like John Cupper or John Knight were more locally focussed.

Sometimes, office-holding was the key: while John Lovett's stewardship of Banbury seems not to have been a great boost to his Common Pleas practice, his equivalent in Reading—John Ockham—had greater success in transforming local office into wider professional accomplishment. Indeed, office-holding in the Court of Common Pleas itself was the explanation for the interest of Thomas Davis and John Danby in the region: both men were filazers (legal clerks) for the grouped counties of Bedfordshire, Buckinghamshire, Berkshire and Oxfordshire, and therefore had a significant entrée into work in that region.[91] John Poley, too, held office in the Common Pleas: he held the more senior role of Prothonotary thanks to the patronage of Chief Justice Montague.[92]

The other office which was commonly a stepping stone for attorneys was that of undersheriff; that is, the legally-trained deputy to the sheriff.[93] Oxfordshire and Berkshire were a joint shrievalty until 1567, and the sampled plea rolls reveal that the following individuals held the office of undersheriff.

[91] On the filazers' practice as attorneys, see Brooks, *Pettyfoggers and Vipers*, p. 23; Hastings, *Court of Common Pleas*, p. 41.
[92] Baker, *Oxford History of the Laws of England*, p. 131.
[93] See Sharpe, *Crime in Early Modern England*, pp. 44–7; Brooks, *Pettyfoggers and Vipers*, pp. 206–9.

| Name | Known years in office |
|---|---|
| Richard Bidwell | 1547, 1548, 1550 |
| John Poley | 1547, 1548, 1550 |
| John Bill | 1548 |
| William Dawson | 1553 |
| John Ockham | 1553 |
| Richard Cliff | 1556 |
| William Weston | 1555 |
| Michael Nash | 1559 |
| John Grove | 1559, 1562 |
| John Danby | 1562 |
| Francis Fulke | 1562 |

**Table 7 – Undersheriffs of Oxfordshire and Berkshire**

All but two of these individuals appear among the top 24 Common Pleas attorneys. The exceptions are William Dawson (who as the 28th-ranked attorney fell just outside the main table) and the Oxfordshire lawyer Richard Bidwell (who seems, perhaps surprisingly, never to have appeared as an attorney in any of the sampled years).

Perhaps the most interesting inclusion among the undersheriffs is William Weston, whose brush with Star Chamber evidently did not preclude his holding public office in Marian times. He was undersheriff to Sir William Rainsford, who became sheriff for the second time in 1555 after previously serving in that office in 1547. Evidently, Weston's service was not wholly uncontroversial, for Rainsford's executors sued him in 1559 for breach of a £100 obligation he signed before taking up office. The condition in that obligation gives a good sense of the role of undersheriff and its relationship with the shrievalty—and as it happens it is the longest and most complex of the conditions pleaded in the sampled years:

> The condition of this obligation is such that if the above bounden William Weston do well and truly execute the office of the undersheriff of the County of Berk for and during the time that the abovenamed William Rainsford shall be Sheriff of the said County in all things that shall appertain to the said office and well and truly collect and gather all manner of sums leviable within the said shire wherewith the said Sir William shall be or may be charged withal by reason of his said office as summons of pipe, certainties, greenwaxes, knight fee and also do truly and justly serve all process as shall come to his hands and thereof do justly and truly from the beginning of his year to the ending to yield account of his said office in every part of the same and thereof discharge the said Sir William Rainsford his heirs and executors and also if the said William do defend and save harmless the said Sir William from all manner of indemnities and amercements and other casuals whatsoever shall come or grow by the negligence of the said Weston and at the end of his said year to make account of the costs and charges of the same Sir William that then this obligation to be void…[94]

William claimed in his defence that he 'well and faithfully exercised the said office', and that Rainsford released Weston from his bond and exonerated him of the office.

While the outcome of the suit is unclear, it is likely to have been less traumatic for Weston than his brush with Star Chamber at the behest of John Lovett. But, as we have seen, even that encounter seems not to have dented his practice. William Weston, like most lawyers, seems to have navigated the changing political fortunes of mid-Tudor England with relative ease.

**Conclusion**

In this chapter, we have seen something of the shape and feel of people's experience of the legal system in early modern England as viewed from the Court of Common Pleas. The records of that court—and especially the plea rolls—are a treasure trove of information.

[94] CP40/1183 m 1215.

While care must be taken when analysing these documents, they nonetheless reveal many things that range well beyond narrowly legal concerns. First, we have seen how important London-based debt litigation is to understanding the boom in Common Pleas litigation. On the basis of the evidence of the plea rolls, we can see how the well-known increase in litigation that occurred over our period was not the product of any general increase in litigiousness, but rather of the increase in a very specific category of debt suits.

Second, the data on local patterns of litigation has given us a richer picture of the legal world of at least a handful of communities. Importantly, that data tends to undermine some of the older assumptions about self-contained county communities. As Cavill observes with reference to Christine Carpenter's work, 'patterns of landholding, lordship and kinship cut across county boundaries'.[95] And as a result of the data we have explored in this chapter, we can add 'patterns of litigation' to that list as well.

Finally, we have seen how far the market for legal services extended through Oxfordshire and Berkshire society. People in even some very obscure parts of the country were able to find trained assistance with their legal requirements; and some of the more outspoken of them found to their peril that lawyers could be very adept indeed in navigating this litigious world.

[95] P.R. Cavill, *The English Parliaments of Henry VII 1485–1504* (Oxford, 2009), p. 132, referring to Carpenter, 'Gentry and Community', p. 340.

# CHAPTER 3

## LAYPEOPLE AND LEGAL KNOWLEDGE: LAW AND FRAUD IN DORCHESTER ON THAMES

Some time around 1562, Anthony Banister, husbandman of Drayton St Leonard (Oxon), came upon Richard Clement riding towards London from Dorchester on Thames. In their 'talk by the way', Clement told Banister that he 'marvelled' how the inhabitants of Drayton 'made so much of' Luke Beauforest, a gentleman of Dorchester, and 'esteem[ed] so well of him'. Banister played dumb, saying that he 'did not know but that the said Luke was an honest man'. Clement had no such desire to be discreet, and called Luke an 'arrant thief' who had stolen his own mother's silver plate two or so years before. This was a striking claim in itself, one made more striking by the fact that Clement was both Luke's former servant and now married to his sister. Banister was shrewd enough to note that if Luke were involved in a theft, Clement—then Luke's servant—was likely to have been involved as well. 'Indeed so I was', replied Clement, 'but my mother [in law] hath forgiven me, but she will not forgive him.'[1]

Luke Beauforest was something worse than an unfilial son and disturber of the community's peace: he was a trained lawyer, and he left a trail of destruction that can be traced across the extant records of at least 10 separate courts.[2] Luke was plainly an exceptional individual, but his utterly dysfunctional relations with both kin and neighbours nonetheless give us an extraordinary insight into his—and their—knowledge of the law.

[1] *Liber Albus Civitatis Oxoniensis*, ed. H.E. Salter (Oxford, 1909), p. 124.
[2] King's Bench; Common Pleas; Exchequer; Chancery; Requests; Star Chamber; Mayor's Court of Oxford; Oxford Diocesan Courts; Chancellor's Court of the University of Oxford; manorial court of Dorchester.

How could it be that a man whom his own mother could not forgive was nonetheless so esteemed by at least some of his neighbours? This chapter sets out to explain the paradox, and in so doing to explain something of the relationship between laypeople and legal knowledge in mid-Tudor England.

**Popular legalism and the opacity of legal records**

As we saw in Chapter 1, the theme of 'popular legalism' has been addressed by a number of historians. However one defines that concept, the broader interpretative picture depends on two fundamental propositions: first, that ordinary people did make use of the legal system in a substantial way; and second, that they had enough knowledge about how the system worked for their engagement with it to take on the particular political and cultural significance that historians have attributed to it. The first of these points is now well established—especially so far as litigation is concerned—but it is the second that perhaps gives one more pause for thought. Because of the nature of the available evidence—and especially the understandable prevalence of stereotyped and self-interested testimony—discerning levels of popular legal knowledge is more difficult than some historians have assumed, even in those equity and conciliar cases most closely identified with the genre of 'popular legalism'.

The task is difficult, but not impossible. If we approach the records with more modest ambitions, they can offer rewarding information about the kinds of things about which people had little motive to be deceitful, especially so if the witnesses go 'off script'. Take, for example, the evidence of William West, a 44-year-old carpenter of Dorchester, who

was a deponent in a Chancery suit between Roger Hatchman and George Penny in 1548. Hatchman was the assertive landowner we briefly encountered in Chapter 2, and West gave evidence on his behalf concerning the disputed ownership of land formerly held by one Jeffrey Jeffrey in Warborough, just to the east of Dorchester. West deposed that he knew that Jeffrey sold the land to Hatchman,

> for this deponent was present when that Hatchman took possession … about 16 years now past, insomuch that Henry Pokyn being named in a deed did deliver him possession by the delivery of a clod of earth in a close parcel of the premises into the hands of the said Hatchman, being then and there present this deponent, Thomas Jacobe and many others being now deceased…[3]

What West described was a livery of seisin: that is, the ceremonial transfer of ownership of land held in fee simple.[4] West was probably mistaken about what he witnessed, and quite possibly he perjured himself. Hatchman never claimed to have had the fee simple transferred to him: rather, his claim was that the land was enfeoffed to his use, and that he was then seised of it by force of the *Statute of Uses*.[5]

This difference in legal form is quite technical, but it allows us to discover a great deal about William West's knowledge of the law and, possibly, his appreciation of strategy in litigation. Someone taking possession of the land in such circumstances would not have received the clod of earth as in a livery of seisin; but to a layperson the ceremonial aspects of a taking of possession might have looked and sounded quite similar. Here is a 1543

[3] C 24/26, *Hatchman v Penny*.
[4] On livery of seisin see Holdsworth, *History of English Law*, iii, pp. 221–5.
[5] N.G. Jones, 'Trusts in England after the Statute of Uses: A View from the 16th Century' in Richard Helmholz and Reinhard Zimmermann (eds.), *Itinera Fiduciae: Trust and Treuhand in Historical Perspective* (Berlin, 1998), p. 173; N.G. Jones, 'Uses and "Automatic" Resulting Trusts of Freehold', *Cambridge Law Journal* [2013], 91; Baker, *Oxford History of the Laws of England*, pp. 672–86.

description of a taking of possession, which began with the purchaser declaring that 'I am come to take possession of this house and lands, which I have bought of you',

> whereupon the [vendor] went out of the said door and commanded them out, and the said [vendor] took the ring of the door afore noon of the same day in his hand and said [to the feoffee] 'Cousin Thomas Everard, here I deliver you possession of this house and lands, for you and your heirs forever'.[6]

As we shall see in Chapter 5, there are reasons to doubt the truth of the particular transaction that this deponent claimed to witness, but there is no doubt that this is an authentic description of the general pattern of such ceremonies, especially the expectation that they should be memorable public spectacles that would be recalled many years in the future. In 1532, for example, Magdalen College made a note of the 20 witnesses 'at the possession-taking of John Berwick … to the use of Mr Standish, bedell, and Robert Parrett, of Oxford both', including six boys of Warborough who were paid a penny each for their trouble on the expectation that they would be able to recall the event even after the death of the adult participants.[7]

Returning to the case of William West, one way of interpreting his evidence is simply that he was mistaken about what he saw: recalling a memorable ceremony, he mistook it for a livery of seisin rather than a taking of possession. There is, however, an additional intriguing but perhaps unprovable possibility, namely that West was deliberately embellishing his evidence for the benefit of his patron, Hatchman. On this view, West had enough understanding of the law and of Hatchman's litigious aims to feel able to tailor his

[6] QCA 4M 2e.
[7] MCA Chalgrove 114 M Oxon V 233. On the role of children as witnesses to such symbolically important acts, see Steve Hindle, 'Beating the Bounds of the Parish: Order, Memory and Identity in the English Local Community, c. 1500–1700', in Michael J. Halvorson and Karen E. Spierling (eds.), *Defining Community in Early Modern Europe* (Aldershot, 2008), p. 219.

evidence to match them. Since West recognised that Hatchman wanted to assert his title to the land, West gave evidence supporting the most secure claim to title he knew, namely a livery of seisin. Importantly, since Hatchman and his lawyers knew that a livery of seisin was inconsistent with their claimed statutory conveyance by the *Statute of Uses*, the impetus for West to give this specific—but untrue—evidence cannot have come from Hatchman or his legal advisers, but must have originated with West himself. Untangling the truth of the matter is difficult, but we can at least be sure that West knew enough about the law to recognise the significance of an important ceremony when he saw one; and potentially, that he knew enough about litigation strategy to think of the kind of evidence that would most bolster his patron's case.

**Introducing Dorchester**

Whatever interpretation is placed upon it, the tale of William West and Roger Hatchman is just one skein that contributed to a tangled and unusually dense tapestry of litigation that was woven in Dorchester in the mid-sixteenth century. Chief among its instigators was Luke Beauforest, whom we encountered by reputation at the outset of this chapter. The remainder of this chapter largely concerns his deeds and his neighbours' responses to them.

Notwithstanding its distinguished Roman origins and former status as a See city, in mid-Tudor times the town of Dorchester was neither a large nor especially prosperous place. After his visit in 1542, John Leland recorded his impression that 'of old time it was much

larger in building than it is now'.[8] A 1538 survey of the manor indicated the presence of 77 customary tenants (19 within the town of Dorchester itself).[9] While such a survey naturally excludes non-customary tenants, as well as the household and under-tenants of customary tenants, a rough extrapolation might suggest a population around 360.[10] By contrast, the chantry certificates of 1547 recorded that there were 80 'houseling people' within the parish of Dorchester.[11] While this figure seems likely to be an understated guesstimate, the broader picture—namely that Dorchester was at the upper end of rural Oxfordshire parishes, but well short of the large market towns—gives some useful demographic context.

For its inhabitants, Dorchester presented a jurisdictional web of striking, but not wholly exceptional, complexity. Dorchester's Augustinian abbey church of Sts Peter and Paul served both monastic and parochial needs, with the canons occupying the chancel while the parishioners worshipped in the nave.[12] Organisationally, the parish comprised several chapelries, each of which had a complicated relationship with both the abbatial and parochial administration at Dorchester, with rights and responsibilities appertaining to the Abbot and churchwardens respectively. After the Dissolution, this jurisdictional confusion of abbey and parish led to a number of disputes in the Court of Augmentations and elsewhere as these tangled threads were gradually untwined.[13] Dorchester and its surrounds also formed part of a wider spiritual jurisdiction, initially as part of the Diocese of Lincoln

[8] *The Itinerary of John Leland*, ed. L. Toulmin Smith, (5 vols., London, 1907), i, 117.
[9] Reproduced in John Henry Parker, *The History of Dorchester* (Oxford, 1882), pp. 153–9.
[10] Cf an average household of 4.75 persons: Peter Laslett, *The World We Have Lost*, 2nd edn. (London, 1971), p. 93.
[11] *Chantry Certificates and Edwardian Inventories of Church Goods*, ed. Rose Graham (Oxfordshire Record Soc., 1, 1919), p. 26.
[12] E.A. Freeman, 'On the Architecture of the Abbey Church of Dorchester', in John Henry Parker, *The History of Dorchester* (Oxford, 1882) pp. 82–3.
[13] See E321/34/18 (concerning Stodham); Req 2/17/88 (concerning Drayton).

and then within the Diocese of Oxford after its formation in 1541. Although Dorchester people made use of the diocesan church courts at Oxford, the parish and its former chapelries were in fact a peculiar jurisdiction; a relic of monastic times that persisted into the nineteenth century.[14]

The principal manor of Dorchester was perhaps surprisingly never owned by the Abbey, nor did it ever come into the hands of the leading family in Dorchester, the Beauforests. Instead, it was held by the Bishop of Lincoln (in whose diocese it then lay) until its grant to the Crown by Bishop Henry Holbeach in September 1547.[15] The manor then remained in royal hands until its grant in January 1575 to Henry, Lord Norris.[16]

For Tudor contemporaries, Dorchester was noteworthy for two reasons. The first was that it was a significant staging post on the road from London to Oxford and the west, as well as being a calling point for river trade along the Thames.[17] The town contained a number of inns including the Bull, kept in Henrician times by Richard Green,[18] and another inn kept by Simon Betterton. The geographical spread of the inns' clientele and their importance in networks of communications may be seen from a 1538 episode in which two 'light persons' from Gloucestershire were imprisoned in Thornbury for spreading a rumour that the king was dead. They claimed that they were only repeating a tale told them by a stranger in Betterton's inn in Dorchester as they journeyed home from London, and that

[14] An Act Book survives from 1581: OHC ARCH/1/A/3/E/1. See *Churchwardens' Presentments for the Oxfordshire Peculiars of Dorchester, Thame and Banbury*, ed. S.A. Peyton (Oxfordshire Record Soc., 10, 1928); Leslie Wood, 'The Dorchester Peculiar 1536–1837', *Oxfordshire Local History*, 1(5) (1982), 2.
[15] *Chapter Acts of the Cathedral Church of St Mary of Lincoln A.D. 1547–1559*, ed. R.E.G. Cole (Lincoln Record Soc., 15, 1920), 1–2. Cf CPR Edw VI, i, p. 153.
[16] CPR Eliz 1, vi, p. 499.
[17] cf Prior, 'Accounts of Thomas West', p. 73.
[18] See Req 2/12/176.

the civic-minded Betterton had confronted the stranger, saying 'thou naughty knave, why sayest thou so? And if thou were in some places thou wouldest be set by the heels.'[19] Dorchester, evidently, was not such a place.

The second point of note was Dorchester's Augustinian abbey church, which had been a minor place of pilgrimage before the Reformation, housing the relics of St Birinus, the first bishop of Dorchester.[20] The Abbey was, alas, one of the most notoriously dysfunctional monasteries of the pre-Reformation church, and David Knowles labelled it as 'one of the black spots of the religious world'.[21] At the Dissolution, the monastery's lands were dispersed to a number of new owners including Corpus Christi College, the local gentlemen Edmund Ashfield and Roger Hatchman, and the London haberdasher Thomas Blanke (who, as we saw in Chapter 1, discovered that the manor of Warborough was a rather more complex bundle of rights than he might at first have supposed).[22]

**The Dissolution and the Beauforests of Dorchester**

The most significant acquisition of ex-monastic property at Dorchester was, however, the purchase of the chancel of the abbey for the sum of £140 by Richard Beauforest (1487–1554), thanks to whose generosity the abbey church has been preserved intact to the present day.[23] The Beauforests were a family of Gloucestershire origin with longstanding

[19] L & P Hen VIII, vol. 13 pt. 1 p. 19 n. 58.
[20] James Bond and Kate Tiller, 'Cathedral and Abbey, 635–1536' in Kate Tiller (ed.) *Dorchester Abbey: Church and People 635–2005* (Witney, 2005), p. 34.
[21] David Knowles, *The Religious Orders in England* (3 vols., Cambridge, 1959), iii, 66.
[22] Blanke in turn sold his interest to Sir Thomas White, who used it to endow his foundation of St John's College, Oxford.
[23] PROB 11/46/166; Henry Addington, *Some Account of the Abbey Church of St Peter and St Paul at Dorchester* (Oxford, 1845), p. 92.

ecclesiastical and secular connections to Dorchester.[24] Memorial brasses still exist in the Abbey church to Richard Beauforest (c. 1510), one of the last abbots of Dorchester, and to Margaret Beauforest and her two husbands (c. 1523).[25] By the 1540s, their kinsman Richard Beauforest—rightly described by Leland as 'a great rich man'—was the wealthiest man in the town and hundred of Dorchester, being assessed at £50 in goods in the subsidy of 1549.[26] His wife Alice, née Pates, was the daughter of a Gloucestershire gentleman, and together they had five children: Luke (b. 1530), Richard junior (b. 1535), Ann, Elizabeth and Helen.[27]

The elder Richard Beauforest was a cousin of Bishop John Longland (himself an Oxfordshire man from Henley who had studied at Magdalen College)[28] and he seems to have been adept at using his ecclesiastical connections to obtain preferment. His greatest coup came in 1545 when he obtained for himself, his wife, and their sons Luke and Richard 'and to the longest liver of them' a 60-year lease of the 'house called the Bishop's Court in the same town of Dorchester with these dominical or demesne lands' for an annual rent of £19 9s 4d.[29] In substance, this was (with some reservations to the bishop) the whole manor of Dorchester.

Longland's motivation for making such a favourable deal seems to have been twofold. First, even so advantageous a lease would have brought, through the entry fine, ready

[24] Addington, *Account of the Abbey Church*, p. 99.
[25] See Jerome Bertram, 'Medieval Inscriptions in Oxfordshire', *Oxoniensia*, 68 (2004), 31–6, 39.
[26] E179/162/288; *Itinerary of John Leland*, i, 117; Addington, *Account of the Abbey Church*, p. 100.
[27] *Publications of the Harleian Society*, 5 (1871), 126–7.
[28] Margaret Bowker, *The Henrician Reformation: The Diocese of Lincoln under John Longland 1521–1547* (Cambridge, 1981), p. 8.
[29] *Chapter Acts of the Cathedral Church of St Mary of Lincoln A.D. 1536–1547*, ed. R.E.G. Cole (Lincoln Record Soc., 13, 1917), pp. 108–11.

money into the diocese's coffers at a time of tight liquidity.[30] Second, a religiously conservative political motivation was in play, as the granting of offices or long leases to trusted tenants was a form of insurance in turbulent times. As Bowker notes, the effect of such long leases was that there was little immediate gain to be had if the land were confiscated from the diocese.[31] Viewed in that light, the grant to Richard Beauforest is a strong indicator of the trust in which he was held by Longland as a reliable traditionalist in religious matters; an impression that is reinforced when one considers that other beneficiaries of such grants included Richard Pate, archdeacon and nephew of Longland.[32]

In a similar way, Beauforest's purchase of his parish church can be seen as a way of safeguarding the traditional religion that (however imperfectly) had been celebrated in Dorchester since the time of St Birinus. Given its abbatial past, Dorchester had a particularly rich complement of liturgical paraphernalia, which at the time of the 1552 inventory comprised 94 enumerated items.[33] By the next year, those had been reduced to a mere four.[34] The fate of the missing items is unclear—they had ostensibly been entrusted to the safekeeping of the churchwardens Richard Hyde and William Frewen—but it is quite likely that in a traditionally-minded place like Dorchester items were hidden away to await better days.[35]

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[30] Bowker, *Henrician Reformation*, pp. 81–3.
[31] Bowker, *Henrician Reformation*, pp. 98–9.
[32] Bowker, *Henrician Reformation*, pp. 80, 100. On Pate, see Tracey Sowerby, 'Richard Pate, the Royal Supremacy, and Reformation Diplomacy', *Historical Journal*, 54 (2011), 265.
[33] *Chantry Certificates*, pp. 101–2.
[34] *Chantry Certificates*, p. 119.
[35] *Chantry Certificates*, pp. 101, 119. Cf Eamon Duffy, *The Stripping of the Altars: Traditional Religion in England 1400–1580* (New Haven, 1992), pp. 490–2; Shagan, *Popular Politics*, p. 251.

For Richard Beauforest, those better days came with the accession of Mary Tudor, into whose reign he briefly survived. On his deathbed in July 1554, he bequeathed 'the Abbey church of Dorchester which I have bought, and the implements thereof' to the parish on the condition that the parishioners 'shall not sell, alter or alienate the same church implements or any part or parcel thereof without the consent of my heirs and executors.'[36] Clearly, such a stipulation would have had little meaning unless those 'church implements' had been very rapidly reinstated in the brief window between Mary's accession in July 1553 and Beauforest's death a year later; whether by his own generosity, or by the return of previously-hidden items. Given the notorious state of Dorchester Abbey before the dissolution, Richard Beauforest is unlikely to have had any sentimental attachment to monastic religion; but having lived through the Edwardian period, his desire to preserve the integrity of what was in the most literal sense *his* parish church is easily understood.

In secular matters, Richard Beauforest was no sentimentalist. His assertive enclosure of land led to suits in Chancery, Common Pleas, King's Bench and Star Chamber; the last suit being revived after his death by his widow Alice.[37] In each case, his opponent was Richard Hyde—the churchwarden of Edwardian times—who led an apparently vehement local opposition to Beauforest's gating of land called Walley, in which Hyde and his supporters claimed to have common rights. The local political alignments behind the dispute are difficult to gauge, but it is tempting to see Hyde as a Somerset-esque defender of the

[36] PROB 11/46/166.
[37] C4/144/97; CP40/1158 m 288; KB27/1172 m 62; C4/144/97; STAC 4/9/53. The documents preserved in C4/144/97 present something of a puzzle: they comprise a defence and replication apparently dating to Richard Beauforest's lifetime, and a series of depositions taken after his death before commissioners 'which we certify into the High Court of the Star Chamber'. These may well be papers from Richard Beauforest's initial Star Chamber suit (the one revived by Alice in STAC 4/9/53) which have been misplaced among the files of the Court of Chancery.

commons against the assertive gentry,[38] especially when one recalls that Beauforest's lease from the Bishop of Lincoln specifically forbade him to convert any of the leased land from tillage to pasture.[39] While the ground at Walley was already pasture (and was thus not directly implicated by the covenant in the lease), the suggestive concern over enclosure touches on the sorts of local memories of the commotion time of 1549 that were mentioned in Chapter 1.

Richard's practicality and desire for familial advancement naturally extended to his plans for the education of his eldest son, Luke, who was admitted to the clerks' commons of the Middle Temple in November 1552.[40] It must have been an especially dreary time to arrive, as earlier that month the Middle Temple had cancelled the solemn keeping of Christmas '[o]n account of scarcity and dearness'.[41] The instigator of Luke's admission, John Southcote, was of a Devon family and became an undersheriff of London, a Middlesex JP, and subsequently a justice of the King's Bench under Elizabeth.[42] His connection to Dorchester and to the Beauforests is attested to by the marriage of his daughter to Sir Francis Stonor (1553-1625), son of the wastrel we met in Chapter 1, and subsequently sheriff of the county.[43] Forging a link with the circle of such a family would have been highly attractive to a religious conservative like Richard Beauforest, perhaps especially so because the founder of the Stonor dynasty—the fourteenth century judge Sir John Stonor—lay in effigy in Dorchester Abbey.

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[38] Shagan, *Popular Politics*, pp. 272–3.
[39] *Chapter Acts 1536–1547*, p. 109.
[40] *Middle Temple Records*, ed. Charles Trice Martin (London, 1904), i, p. 90.
[41] *Middle Temple Records*, i, p. 88.
[42] ODNB. He was also, as was mentioned in Chapter 2, a successful plaintiff against the attorney William Weston.
[43] Norman Jones, *The English Reformation: Religion and Cultural Adaptation* (Oxford, 2002), p. 141.

**Luke Beauforest's fraud**

Unlike his friend, near contemporary at the Middle Temple and future brother-in-law Richard Archedale, Luke seems never to have practised as a barrister. Instead, he returned to Dorchester and ostensibly lived the life of a country gentleman, holding such offices as High Constable of the Hundred.[44] However, his newfound legal training when combined with an unusually disputatious personality and an evidently dysfunctional relationship with his family created a perfect storm of deceit, sharp practice and legalistic oppression. Luke's behaviour is a classic illustration of how legalised dispute resolution did not always reduce tension in a community,[45] but his trail of lawsuits and disputes has left rich documentary evidence for historians.

One of these disputes allows us an unusually good insight into the legal knowledge of Luke's relatives and neighbours, largely through a combination of Luke's fraud and the tendency of witnesses for both sides to go remarkably 'off script'. This dispute concerned manorial custom and the inheritance of copyhold land in the hamlet of Stodham, north of Dorchester and in the same manor.[46] It seems to have arisen around 1554, when after his father's death Luke became the wealthiest inhabitant of the manor. For self-interested reasons, Luke managed to convince a number of the tenants that they (and he) ought by rights to have had a copyhold of inheritance, rather than one for a term of three lives. Luke

[44] *Liber Albus*, p. 123.
[45] M.J. Ingram, 'Communities and Courts: Law and Disorder in Early-Seventeenth-Century Wiltshire' in J.S. Cockburn (ed.), *Crime in England 1550–1800* (London, 1977), p. 110.
[46] The name of the village is now usually spelled 'Stadhampton': Margaret Gelling, *The Place-Names of Oxfordshire* (Cambridge, 1953), p. 154.

and his client tenants were opposed by the steward and other tenants who insisted—justly, it would seem—that the claimed custom of inheritance was a recent fabrication.

Disputes over landholding and customary rights were, of course, hardly unusual in mid-Tudor England. In Dorchester, the dispute turned on claims made by rival groups of tenants, but in many other communities such disputes about customary rights were more often framed between tenants collectively and their lord. In these more typical confrontations over customary rights, Andy Wood rightly stresses the tenantry's 'obvious interest in projecting a united front' against their lord, thereby leading '[d]ifferences and contradictions in knowledge about the history and past use' of land, or the nature of the tenure by which it was held, to 'lie concealed beneath the surface' of the surviving records.[47] By contrast, in the case of Dorchester those differences and contradictions are remarkably patent, and are little touched by the power dynamics of the landlord–tenant relationship.

The spur for the Dorchester litigation was a disputed inheritance of copyhold land in the hamlet of Stodham. The plaintiff, Thomas Whiting, claimed to be entitled to inherit the copyhold from his brother George, who had died without issue after inheriting the land from their father John. However, Thomas' right of inheritance was contested by John Wilmott, and the former's claim to be admitted as tenant was refused by Leonard Parrett, sitting as the deputy steward of the manor court of Dorchester, known as the Holymoot Court. Leonard deputised for his brother, Simon, who lived in Oxford and had no direct involvement in the affairs of the manor.[48] Both brothers owed their positions to the

[47] Wood, 'Custom and the Social Organization of Writing', pp. 261–2.
[48] On stewards of royal manors acting through deputies, see David Thomas, 'The Elizabethan Crown Lands: Their Purposes and Problems', in R.W. Hoyle (ed.), *The Estates*

patronage of their father, Robert Parrett, the one-time *Informator Choristarum* of Magdalen College who was mentioned at the beginning of this chapter as a person to whose use a possession-taking was made. Leonard Parrett's refusal prompted Whiting to seek legal relief in Queen Mary's reign, apparently leading to the issue of a commission to Edmund Ashfield, John Yates and Robert Bedell to inquire into the facts.[49] The result of that enquiry is unclear, but Dorchester being a royal manor after its 1547 transfer from the Bishop of Lincoln, the case ended up in the equity side of Exchequer, where the dispute was ventilated more fully in Elizabethan times.[50]

It was a striking feature of English law that, in contrast to Scotland for example, oral testimony was admissible not merely to establish matters of fact, but also in certain cases to establish the content of the law.[51] As Houston observes, '[t]he question of what the law is, at the level of the English copyhold tenant, is (unlike the common law) a matter of proof.'[52] Here, then, was what E.P. Thompson called the 'sharply defined' and legally enforceable aspect of custom; 'the business of the court roll, the manorial courts, the recitation of customs, the survey and of village by-laws.'[53]

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*of the English Crown, 1558–1640* (Cambridge, 1992), p. 71; Madeleine Gray, 'Power, Patronage and Politics', in R.W. Hoyle (ed.), *The Estates of the English Crown, 1558–1640* (Cambridge, 1992), pp. 152–5.

[49] E133/1/10.

[50] Cf Bryson, *Equity Side of the Exchequer*.

[51] A contrast might also be drawn with the royal courts of France, which claimed not only a role in making—rather than declaring—the law, but also in superintending written redaction of local customary law: Collins, *State in Early Modern France*, p. 17; Dawson, 'Codification of the French Customs', pp. 777–80. On custom in French law, see Albert Rigaudière, *Histoire du droit et des institutions dans la France médiévale et moderne*, 4th edn. (Paris, 2010), pp. 210–16, 426–42.

[52] Houston, 'Custom in Context', p. 51.

[53] E.P. Thompson, *Customs in Common* (London, 1991), p. 98.

Thus, on 9 May 1562, the then 44-year-old Anthony Banister of Dorchester gave evidence on Whiting's behalf before George Freville, Baron of the Exchequer.[54] This was the same Anthony Banister we encountered at the outset of the chapter, giving evidence 12 years later in the Mayor's Court of Oxford. Back in 1562, though, in response to the second of the interrogatories to which he deposed, he said that 'he doth not well understand this word "seised" in the said interrogatory mentioned' but said that 'he doth well know and freshly remembers' that John Whiting 'lawfully had and did hold' the land in question. Despite his hiccup over the meaning of 'seised', Banister was able to go on to depose that Whiting senior died

> possessed or seised of an estate to him and to his heirs according to the custom of the said manor, and further saith that it hath from time to time and at all times sithens he hath known the said manor of Dorchester been given in charge to the homage or tenants of the said manor to inquire after the decease of those that had copies with these words 'to have and to hold *sibi et suis*' contained in them, who were their next heirs of the lands specified in such copies, and that the said homage did always present the heir of such that had such copies if they had any heir; and that the said heir so presented did by force thereof enjoy it all, were three lives spent or more.[55]

When it came to the eighth interrogatory, Banister stumbled again:

> he saith that he well knoweth not what these words 'fee simple' signifieth, but he saith that he well witteth that by the custom of the said manor of Dorchester these words *sibi et suis* being in the copy of the taker do make an estate of inheritance in the taker to him and to his heirs and not for three lives …

As examples of such inheritances, he instanced his own inheritance from his grandfather Andrew Banister, as well as the inheritances of John Minson, Richard Lorkin and Thomas Gesco.

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[54] In reality, the evidence was most likely taken by an examiner acting in the judge's name, rather than before the judge personally: Bryson, *Equity Side of the Exchequer*, p. 137.
[55] E133/1/5.

Banister's evidence was then endorsed without any elaboration by Edmund Cole, Thomas Banister and Thomas Spyre. Judging by their crossed marks rather than signatures, it appears that neither Anthony nor these other deponents were literate.[56] On either the same day or perhaps a subsequent occasion, Anthony's evidence was affirmed by Thomas Davy, Bermin Lawrence, Richard Banister, John Hatchman and John Minson himself, who oddly had nothing to add to Anthony Banister's patchy account of Minson's own inheritance, 'saving that he hath known the manor of Dorchester longer, for he saith he hath well known [it] these forty years'.[57]

The next deponent was Luke Beauforest himself, then aged 32, who could depose

> of his knowledge that he hath seen the same copy [of Whiting's] and did read the same copy; and saith also that he hath seen the record or court roll when the same copy was granted; and did concord and agree with the words of the said copy made *sibi et suis*…[58]

Unlike the previous deponents, Luke was certainly literate but, as we shall see, this did not make him a more reliable witness about the actual content of the court rolls.

Two years later in 1564, the case again came before George Freville, this time sitting in the Middle Temple rather than at the Exchequer. There, Thomas Stacy, 54-year-old husbandman of Stodham gave evidence on Wilmott's behalf that flatly contradicted the previous evidence about the custom of Dorchester:

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[56] All were apparently unable to sign their depositions otherwise than with a cross: E133/1/7. We should perhaps avoid making too much of this, for even in the twentieth century there were those in rural Oxfordshire who 'could write their own name quite well [but] would make a cross as signature to a document out of nervousness or modesty': Flora Thompson, *Lark Rise to Candleford* (London, 2008), p. 80.
[57] E133/1/6.
[58] E133/1/5.

> he saith of his common knowledge, that by the custom of the same manor these words *sibi et suis* being expressed within the copy of the taker have always been taken to extend to the taker, his wife and to his eldest child for term of their three lives successively and was no inheritance, but he saith that after the death of the taker and of his wife the custom hath been such also that the eldest child might come into the court and by the same custom take the land of the Queen's Majesty's again to him, his wife and to his eldest child for term of their three lives successively…[59]

Notwithstanding this apparently confident assertion of the state of manorial custom in Dorchester, the weaknesses in Stacy's legal knowledge became apparent later that year in a subsequent deposition he made before Thomas Pymme, another of the Barons of the Exchequer. Stacy was quite able to depose that Whiting's father died seised of his lands in Stodham 'by reason of these words *sibi* and *suis* in his copy', but 'to say that he died seised of [the land] in his demesne as of fee by reason of these words *sibi* and *suis*, he knoweth not the meaning thereof'.[60] As with Anthony Banister before him, these concepts were a mystery to Stacy.[61]

The main witnesses on each side of the case therefore demonstrated a noteworthily imperfect understanding of relatively common legal terms, while nonetheless being able to make quite elaborate claims about the actual practice and custom of Dorchester's manorial court. Banister did not understand the meaning of seisin or fee simple, and Stacy appears not to have understood the concept of being seised of land in one's demesne as of fee. Each of these were legal terms in common use, referring to well-known patterns of land-holding, and which seem not to have caused difficulty to the overwhelming majority of deponents in the mid-Tudor era. The other Dorchester deponents—with the exception of

[59] E133/1/10.
[60] E133/1/10.
[61] In fairness to these witnesses, even in the central courts the treatment of copyhold cases was not always clear or straightforward: Charles M. Gray, *Copyhold, Equity and the Common Law* (Cambridge, MA, 1963).

Luke Beauforest—are unlikely to have had a more perfect understanding than Banister and Stacy. Given the general practice of the most knowledgeable witness for each side giving the first deposition, and given the willingness of the other Dorchester deponents to tailor their evidence in light of their own knowledge and personal circumstances (notably, the length of time they had known the manor), we may be able to infer that they had no better knowledge of the law than did Banister and Stacy.

The greatest curiosity, however, is that we know of these deponents' ignorance at all. It is in itself noteworthy that the scribe taking down the depositions thought fit to record the deponents' hesitation over these common legal terms.[62] For understandable reasons, deponents commonly confessed their ignorance of factual matters—particularly so given the practice of each side preparing a single set of interrogatories and asking deponents to answer all of them even if they had knowledge of only one or two points. Thus, one encounters deponents like John Hockerby, a saddler of Southwark, who responded to three articles in an Edwardian Star Chamber interrogatory by remarking that 'these articles concern not him, and he knoweth not of the contents thereof'.[63] Confessions of *legal* ignorance, by contrast, were exceedingly rare.

Why was there so much confusion about legal terms in Dorchester, and why was it worth noting it down? The answers become clear as we continue reading Stacy's 1564 deposition. He went on to depose that

> one Luke Beauforest did show unto the tenants of the said manor a book like a court roll declaring unto them that *sibi* and *suis* made a state of inheritance in their copyholds; and where the same court rolls be presently in his custody he knoweth

[62] On the process of recording Exchequer depositions, see Bryson, *Equity Side of the Exchequer*, pp. 64, 136–41.
[63] STAC 3/3/23.

> not; and he thinketh in his conscience that Thomas Whiting would never have showed in this matter had not Beauforest so declared it unto the tenants at Dorchester….[64]

Interrogatories on the part of Michael Causewell, surveyor of the manor, and Leonard Parrett, deputy steward, also make clear their belief that Luke was to blame for the discord. When their deponents were asked 'whether the tenants there have not claimed a further estate of inheritance than for three lives by the procurement of Lucas Beauforest, one of the copyholders of the same manor, where they ought to claim but for 3 lives', it was clear that the expected answer was that they *had* made such a claim by Luke's procurement.[65]

The nature of that 'procurement' and the false documents described by Stacy was ultimately revealed by Richard Beauforest, Luke's younger brother, who deposed that seven years beforehand (i.e. around 1557) 'in his mother's house at Dorchester … [Luke] in a kitchen there did hang up certain rolls of parchment very like unto court rolls'.[66] Another deponent, Richard Clement—Luke and Richard Beauforest's brother-in-law and, as we mentioned at the outset of the chapter, Luke's former servant—added that this was done 'in a secret place in his mother's kitchen where she accustomed to hang her bacon'.[67] Richard Beauforest then asked Luke 'to what intent he did hang them there', to which Luke replied that 'he would have them look old'. Richard then deposed that Luke then 'willed me to carry one other like roll of parchment in my hand a certain space for that the same roll might also seem old'; seemingly an instruction to crumple or smudge the newly-forged roll.

[64] E133/1/10.
[65] E178/1816.
[66] E133/1/13.
[67] E133/1/13.

As one may imagine, Richard Beauforest was anxious to distance himself from Luke's designs, and during the taking of the deposition he twice protested his ignorance about the content of the forged rolls. Indeed, his concluding plea was that he 'is unlearned and knoweth not the matter contained in the same rolls'.[68] Richard deposed that he learned from his father that copyholds in Dorchester were for a term of three lives; but notwithstanding that 'the said Luke Beauforest his brother doth claim to have a full estate of inheritance in the said copyholds.'[69]

In light of this compelling evidence, it is hardly surprising that on 28 November 1564 the Court of Exchequer ordered that

> these words *sibi et suis* mentioned or to be mentioned in and of the said copies granted or to be granted … shall be taken and expounded to be no greater estate than for three lives successively at the uttermost…[70]

As we shall see, though, a substantial number of people in Dorchester never reconciled themselves to this apparently definitive judgment.

### *Sibi et suis* – legal context

Why was Luke so anxious to prove that the words *sibi et suis* granted a copyhold of inheritance? And why did he stoop to forgery in order to convince people of it? We need both to get closer to the technical legal detail, and also to step back to see the broader

[68] E133/1/13. The same was true of Richard Clement, who deposed that 'he hath seen the same Luke Beauforest hang up certain rolls of parchment like unto court rolls but the writings contained in them he doth not know'.
[69] E133/1/13.
[70] cf E112/36/47.

picture of people's legal understanding. This section attempts to do the first of these, and the next section will deal with the second.

Among his other landholdings, Luke Beauforest was himself a copyholder in the manor of Dorchester, as was his father before him. In order to comprehend Luke's actions, we need to understand the variety of manorial customs concerning copyhold land. In a number of manors, the phrase *sibi et suis* did in fact connote a custom of inheritance, such as in Great Horwood (Bucks), or Launton (Oxon); and many manors had a custom of inheritance whether or not the words *sibi et suis* were used.[71] Two well-studied examples of the latter are Havering (Essex) and Chippenham (Cambs).[72] The existence of a custom of inheritance provided at least some copyholders with a security of tenure and freedom of disposition that was equal to that of freeholders; and in the case of some communities that security and freedom was instrumental in shaping the entrepreneurial and individualistic attitude of its members.[73] Indeed, in some areas like Norfolk, copyholds of inheritance gave tenants a secure and valuable tenure that was (at least for the wealthier sort) an impetus for agrarian capitalism—which certainly complicates our understanding of a county previously associated with seigneurial rapacity and illiberal customary norms.[74]

[71] Matthew Tompkins, '"Let's Kill All the Lawyers": Did Fifteenth-Century Peasants Employ Lawyers when they Conveyed Customary Land?', in Linda Clark (ed.), *Identity and Insurgency in the Late Middle Ages* (Woodbridge, 2006), p. 77; Barbara Harvey, *Westminster Abbey and its Estates in the Middle Ages* (Oxford, 1977), pp. 323–5.
[72] Marjorie McIntosh, *Autonomy and Community: The Royal Manor of Havering 1200–1500* (Cambridge, 1986), p. 117; Spufford, *Contrasting Communities*, p. 75.
[73] McIntosh, *Autonomy and Community*, pp. 117–19.
[74] Jane Whittle, 'Lords and Tenants in Kett's Rebellion 1549', *Past & Present*, 207 (2010), 7, 47–8. Cf Wood, *1549 Rebellions*, pp. 170–1; Diarmaid MacCulloch, 'Bondmen under the Tudors' in Claire Cross et. al. (eds.) *Law and Government under the Tudors* (Cambridge, 1988), p. 91.

In other manors by contrast, a copyhold *sibi et suis* granted only an estate for a term of lives; most commonly for the three lives of a husband, his wife, and their son (or eldest child). This was an extremely common form of copyhold in Oxfordshire and the west of England.[75] Contrary to the suggestion of some writers, a copyhold for three lives did not mean a 99-year period of three successive lifetimes.[76] Rather, the 'three lives' were the lifetimes of the original grantees—the husband during his life, then the wife during her widowhood, and then their child during his or her life; a period assumed by contemporaries to be roughly equivalent to the 21 years for which leases of Crown land were typically granted.[77]

Quite aside from the wishful thinking of tenants, the scope for confusion between the two types of custom is readily apparent, since even nearby manors owned by the same lord in the same county could have differing customs. The North Oxfordshire manors of Islip and Launton are a case in point: both were owned by Westminster Abbey before the Dissolution, yet estates for life prevailed at the former, while tenants at the latter benefited from estates in inheritance.[78] Plainly an estate of inheritance was a far more desirable form of landholding than an interest for a term of lives only, especially as there was no legal obligation to regrant the land to the heir of the last life tenant. While it seems to have been a common social practice for landowners and their stewards to regrant the land in such a

[75] R.W. Hoyle, 'Tenure and the Land Market in Early Modern England: Or a Late Contribution to the Brenner Debate', *Economic History Review*, 43 (1990), 6; Joseph Bettey, '"Ancient Custom Time Out of Mind": Copyhold Tenure in the West Country in the Sixteenth and Seventeenth Centuries', *The Antiquaries Journal*, 89 (2009), 307.
[76] Hindle, *State and Social Change*, p. 43.
[77] David Thomas, 'Leases of Crown Lands in the Reign of Elizabeth I' in R.W. Hoyle (ed.), *The Estates of the English Crown 1558–1640* (Cambridge, 1992), pp. 176–7.
[78] Harvey, *Westminster Abbey and its Estates*, pp. 323–5.

fashion, the absence of a legal obligation to do so left stewards in the words of Richard Hoyle with an 'extraordinary discretion and opportunity for partiality and corruption.'[79]

For reasons like this, it is hardly surprising that the claim that *sibi et suis* led to an estate in inheritance could be hotly contested, perhaps nowhere more extravagantly than in Elmley Lovett (Worcs), where the tenantry kept up a tenacious and violent dispute over several decades.[80] A similar but less heated dispute also riled the Berkshire manor of Hurley in Edwardian and Marian times, but the evidence given on each side was noteworthily tentative. One side claimed that 'the custom of the manor is to let copies for three lives and not in fee *so far as this deponent knoweth*'; and the other said that '*the most part* of the copyholds are letten to the man, the woman and their child and to the heirs'.[81]

In Dorchester, by contrast, before Luke Beauforest's intervention there was near-uniform acceptance that the words *sibi et suis* amounted to a grant for a term of three lives.[82] In a late Henrician dispute in the Court of Augmentations in which the nature of the copyhold was not in question, the husbandman John Holmes and Mabel his wife were content to claim that they 'took and held of John March late abbot of Dorchester … by copy of court roll after the custom of the manor of Dorchester for term of [their] lives … and the longest liver of them'.[83] The most telling evidence against Luke's claims, though, came from his own father, whose counsel in a dispute in the Court of Augmentations over the ownership of certain mills and pasture claimed that:

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[79] Richard Hoyle, '"Shearing the Hog": The Reform of the Estates c. 1598–1640', in R.W. Hoyle (ed.), *The Estates of the English Crown 1558–1640* (Cambridge, 1992), p. 210.
[80] Manning, *Village Revolts*, p. 138.
[81] STAC 3/4/30; STAC 4/10/71: depositions of Thomas Davy and Thomas Bowe respectively (emphasis added).
[82] C1/1455/20.
[83] E321/2/36.

> there is not any copyhold land of inheritance within the said manor of Dorchester, but such copyholds as are there have always time out of mind been used and accustomed to be demised and letten but only for particular interests for term of three lives at the most and not otherwise. And … the custom of the said manor is and always hath been that after the decease of every copy holder then the person that is next named in the copy and thereafter should have such copy hold should within one year and one day next after he is entitled to have the same come in to the court there and desire to be admitted tenant to the same…[84]

These claims could easily be confirmed or refuted by the text of the court rolls themselves, but unfortunately only two court rolls survive from Tudor Dorchester. These documents from May 1538 and September 1539 and are paper drafts preserved by chance in the St John's College archives.[85] Very significantly, *none* of the land transfers recorded in these rolls use the actual phrase *sibi et suis*: rather, transfers are made to named individuals (usually husband, wife and son) for the term of their lives. One typical transfer concerns the Ferry House at Shillingford which was granted to Roger Hatchman—a major landowner in Dorchester and sometime bailiff of the manor—on 3 May 1539. The grant was made to have and to hold to him, to Margaret his wife, and to Richard their son, for the term of their lives.[86]

These surviving court rolls therefore complicate our understanding of the Dorchester deponents' evidence in the Court of Exchequer. While all the deponents seemed to agree that manorial transfers in Dorchester contained the words *sibi et suis*, these precise words are absent from the actual rolls. On the other hand, the surviving rolls do confirm the gist of the evidence of the witnesses arrayed against Luke Beauforest, namely that copyhold in Dorchester was for a term of lives.

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[84] E315/519/60.
[85] SJCA MUN XI.9.34 (1538); MUN XI.9.36 (1539). Their survival in the St John's archive is anomalous, as St John's never owned the manor of Dorchester.
[86] SJCA MUN XI.9.34 v.

While it is possible that the literal words *sibi et suis* were included in court rolls after 1539, on one view Luke's behaviour is more explicable if those were never actually present. Since Luke's claim about the custom of inheritance at Dorchester could only be substantiated if the court rolls did in fact contain the ambiguous words *sibi et suis*, his forgeries may have been designed to insert these words into otherwise plausible rolls containing—one imagines—grants of copyhold with which the inhabitants of Dorchester would have been familiar. Alternatively, his forgery may have been to create an ancient court roll in which the claimed interpretation of *sibi et suis* as a custom of inheritance was supposedly established. We will come back to the details of Luke's fraud, but for the moment the important point is simply to note that he required an audience that was familiar with local circumstances in Dorchester and had some modicum of knowledge about legal documents and legal terminology.

**Deponents and local knowledge – how did they know what they knew?**

Thus far, we have seen how Luke's neighbours displayed a noteworthily imperfect knowledge of the law. In order to make sense of this evidence—in particular, trying to find out what Luke's family and neighbours knew about the law—we need to ask more generally how deponents knew what they claimed to know. Very often, they themselves give an explanation.

The tendency to seek evidence—especially regarding custom—from the eldest residents of an area is well known, and it is hardly surprising that one of the most frequent explanations

for a deponent's knowledge is simply the fact of their long residence there.[87] In a dispute over land in Warborough, John Wise, a 50-year-old husbandman, deposed that he was 'privy by reason he having dwelled in Warborough aforesaid by the space of 16 years now past, and … he dwelled within the Abbey of Dorchester before that time'.[88] Sometimes a deponent could invoke a more sophisticated knowledge of local boundaries, as did Richard Bishop, 45-year-old husbandman of Dorchester, in the same Warborough dispute. He knew about the antagonists' landholding 'by reason that the Manor of Warborough lieth within the parish of Dorchester aforesaid where this deponent dwelleth'.[89] Conversely, a short period of residence might be invoked to explain a deponent's ignorance, as was the case with the labourer John Wagge who in 1554 excused his ignorance of the state of affairs in the Berkshire manor of Hurley 'because he hath been but a while within the lordship'.[90]

Local office-holding, service as a juror, or indeed domestic service could also buttress the truthfulness of one's recollection.[91] Thomas Mayne's 'perfect knowledge' of Warborough came 'by reason that he was as of the 12 men that inquired upon the said lands immediately for the King, immediately after the suppression of [Dorchester] abbey';[92] and William West gave evidence in the same case 'which he [knew was] true for he was an under Bailiff of the said manor after it was comen into the King's hands'.[93] Service of the more routine kind was also a common explanation, and Thomas Merton explained in a separate Warborough dispute that he knew the value of the parsonage of Warborough

[87] Fox, *Oral and Literate Culture*, p. 261.
[88] C24/41 *Blank v Braybrook*.
[89] C24/41 *Blank v Braybrook*.
[90] STAC 4/10/71.
[91] Of course, such evidence might also be aimed at justifying a result (albeit not by fabrication) rather than purporting to be an objective act of memory.
[92] C24/41 *Blank v Braybrook*.
[93] C24/41 *Blank v Braybrook*.

because he 'was servant and tasker to one Mr Eton who had the said parsonage in farm before the said testator had it'.[94]

Very frequently, though, deponents based their evidence not on their own experience but on what they had heard from others. In some cases, this was decidedly a second best option, and deponents occasionally explained why they did not have better knowledge of their own. Edmund Cole of Drayton, for example, 'heard his neighbours report' on the payment of heriots at a Dorchester court baron, 'at the payment whereof this deponent was sick and so deposeth not as of his own knowledge'.[95] Sometimes, hearsay evidence was a matter of reporting direct speech from a named individual, as in a 1552 dispute in the Court of Requests about land in New Windsor (Berks) which turned on the question of whether Edward Green was Alice Machyn's son. Anne White of London deposed that her late friend Alice would 'often times report and declare to [her that] Edward was a bastard' and that she 'could never favour or love him but for fear of her husband because he was a bastard'. Alice, her friend tells us, was 'a very honest woman' who had the misfortune of being married to a man who 'would sometime be busy with women'. In bitter moments, Alice 'sometime would name who was the said Edward's mother, but now [Anne] doth not remember her name.'[96]

Deponents could attempt to create a plausible air of local authenticity even without the speech of a named individual. Thus, in a 1572 dispute about the mills of Wallingford (Berks), Thomas Wrigglesworth deposed in that 'he hath heard sundry of the inhabitants of Moreton, Mackney and other villages curse the said mills because they caused the water

[94] C24/26, *Holmes v March*.
[95] E134/13&14Eliz/Mich5.
[96] Req 2/17/56; cf OHC E1/11/1D/4.

much to annoy their grounds'.[97] Likewise, the voice of a specific individual could be buttressed with a more general expression of consensus. Thus, Thomas Cabell, a husbandman aged 72, testified in 1549 that 'he hath heard his mother say, and the voice of the whole country' was that Magdalen College owned a certain field in Deddington (Oxon).[98] Sometimes, the sentiment of the 'country' seems to have had more in common with gossip than with local consensus. One might refer to something 'as the report doth go in the country';[99] or that something was 'commonly known'[100] or 'commonly reported' in the country;[101] or that a person's reputation was such as the 'common fame of that country' might 'avouch'.[102] Even more tenuously, one might just 'suppose in [one's] conscience' that something was the case.[103]

By contrast, while documents were a fundamentally important source of deponents' knowledge, it is striking how rarely they refer to their own reading of them: the appearance of a document and its being read aloud were usually more important. Indeed, the physicality of a document could be emphasised in a remarkably tactile way. Thus, in a case about a disputed will, William Symondes of Salisbury deposed that he 'did touch and see the said will made in writing, and read in the court' at Cookham (Berks). Not only that, Symondes also 'held it in his hands and well perceived the same to be sealed and the probation written on the back side of the said will.' [104]

[97] E134/16Eliz/East2.
[98] MCA EP/100/17 fol 1.
[99] C24/26, *Holmes v March*.
[100] CCA MS Estates 69 fol 117.
[101] BRO D/ELV/L1 fol 32.
[102] E112/36/47.
[103] C 24/26, *Holmes v March*.
[104] Req 2/14/114.

In a similar way, producing a document could have a memorable symbolic importance even if the audience had no recollection or understanding of its contents.[105] Indeed, if some deponents are to be believed, documents could have an almost magical power to resolve disputes. Thus, in the case between Magdalen College and Christ Church over land at Deddington, mentioned above, Thomas Galway described an earlier 'contention and variance' between Magdalen and its tenant Anthony Bustard:

> a day was appointed for the showing of evidence for the same, at what day this deponent saith he was present and there amongst other evidence the same Anthony brought forth an indenture declaring what closes the same Magdalen College had in Ilbury, and so upon the sight of the same indenture the parties were at a agreement and departed…[106]

For many deponents, 'reading' was an aural rather than visual process.[107] Take, for example, Edmund Godston of Oxford, testifying in 1567 in the Chancellor's Court of Oxford University in a case brought by Richard Harrison concerning the lease of a house. Godston said that he

> hath seen the indenture made, also heard read the same so made between … Lincoln College in Oxon and Richard Harrison, and also that this indenture exhibited is the very same which this deponent hath seen and read…[108]

This focus on aural comprehension could also explain why other deponents could be more hesitant than Godston was when identifying documents. Thomas Ryle, being examined in Chancery in 1549, could only say that 'he supposeth in his conscience the deed being shewed unto him at this his present examination is the very deed' produced in earlier proceedings.[109] It is rare to see the issue of illiteracy being raised directly, but in one case

[105] Fox, *Oral and Literate Culture*, pp. 284–8.
[106] CCA MS Estates 69 fol 125.
[107] Cf Wood, *Memory of the People*, ch. 5.
[108] OUA Hyp/B/1 fol 17r.
[109] C24/24, *Christopherson v Cupper*.

about a deed of doubtful authenticity, the witnesses were asked 'whether the [alleged signatory] to your knowledge can write, and whether you did ever see him write his name at any time and upon what occasions'.[110]

Such examples help to build up a picture of the world that Luke Beauforest and his neighbours inhabited. Documents were powerful sources of authority, and many more people could witness their text or hear their contents than could read them fluently by themselves. This was especially true of manorial court rolls: they were ubiquitous and of fundamental socio-legal importance, but few tenants would have been able to read the terse Latin unaided. As we shall see, ordinary people had various ways of working with and making sense of these documents, such that there is 'evidence of a greater skill and sophistication in the general populace' than historians have sometimes supposed.[111]

In that context, many tenants would have relied more on what they were told and shown than on what they could themselves read; a circumstance that increased the prestige and power of literate gatekeepers of legal knowledge.[112] These themes appear very clearly from a 1572 deposition of Agnes Greene, a widow of Burcot near Dorchester. The case arose out of a disputed copyhold that John Molyneux claimed was granted to his late father. Agnes gave evidence supporting Molyneux' case. At the time of the alleged grant, her late husband John Bowyer was deputy to Simon Parrett as steward of the manor. On the day in question, Agnes tells us, Bowyer 'did keep a court' at Dorchester,

> and at his return home did declare to [her] that at the law court John Molyneux, father to the plaintiff, did desire and require to be admitted tenant of the premises in

[110] C24/24, *Christopherson v Cupper*.
[111] Harrison, 'Manor Courts', p. 45.
[112] Cf Wood, *Memory of the People*, pp. 45–6; Fox, *Oral and Literate Culture*, p. 284; Holmes, 'Drainers and Fenmen', pp. 191–2.

> controversy according to the custom of the said manor, and having the court roll in his hand did say that the said John Molyneux was therein entered tenant and that the said Bowyer would at the next court make out his copy…[113]

Unfortunately, Bowyer died before the next court, and thus never 'made out' the intended copy to Molyneux; hence his son's suit in the Exchequer. For present purposes, the truthfulness of Agnes' recollection is less important than the light it sheds on the way the authority of a court roll could nonetheless be signalled to, and perceived by, someone who was unable to read it herself. John Bowyer's act of holding out the court roll and describing its contents was, in Agnes' telling at least, a powerful indication of the truth of the matter.

There was, however, an important intermediate position between the full comprehension of the terse Latin of court rolls and a mere visual sense of their symbolic importance. This can be seen in a little remarked-upon aspect of the linguistic diversity of the English legal system, namely the incidental use of English in manorial court rolls. Although wholly English-language rolls do exist—an example from Hampton Poyle (Oxon) has been mentioned in Chapter 1—court rolls were predominantly kept in highly abbreviated Latin. In some respects, this may have presented less of a barrier to comprehension than one might at first think. As Steven Justice points out, the ability to recognise one's name and a dozen or so Latin words was probably the 'literacy that mattered' in pre-modern rural communities, as it sufficed to enable one to find and understand references to one's land in court rolls, charters and the like. This was the kind of literacy that, in the context of the Peasants' Revolt, gave people 'their sense of familiarity with documentary culture and their determination to make it theirs'.[114] In this respect, the linguistic diversity of the

[113] E134/13&14Eliz/Mich5.
[114] Steven Justice, *Writing and Rebellion: England in 1381* (Berkeley, 1994) pp. 34–5.

English legal system—especially the disjuncture between the written language of legal records and the likely oral language of court proceedings—may not always have been an insurmountable barrier to comprehension.[115]

For sixteenth-century audiences—as indeed for earlier generations—the intermittent use of English aided that comprehension. In most cases, the use of English occurred not because of a lack of Latin skills on the part of the steward or his scribe—they were more than capable of resorting to pidgin Latin when necessary—but rather to expand the audience capable of understanding the text in question. Taking a simple but common example first, English was an obvious aid to the wider comprehension of manorial ordinances, such as a 1575 ordinance from New College's manor of Kingham (Oxon) that 'every man mark his mounds yearly' following a route 'from the six leas to church bridge mead and from the nether end of the hay hedge to the brook'.[116] Elsewhere, English was used with a more targeted audience in mind. In 1568, for example, it was 'ordained and agreed by the homage' of All Souls' College's manor of Crendon (Bucks) that one Nicholas Burke should remain Hayward 'until the next usual court' and that thereafter 'the homage by the advice of the steward and the Lords shall choose and appoint an Hayward.'[117] In this case, one might surmise that the steward had the rival claimants for this local office in mind when deciding to use English.

[115] M.T. Clanchy, *From Memory to Written Record: England 1066–1307*, 2nd edn. (Oxford, 1993), pp. 207–9; Anthony Musson, 'Social Exclusivity or Justice for All? Access to Justice in Fourteenth-Century England' in Rosemary Horrox and Sarah Rees Jones (eds.), *Pragmatic Utopias: Ideals and Communities, 1200–1630* (Cambridge, 2001), p. 136.
[116] NCA 3799.
[117] ASCA 22/66 fol 9v.

Specificity of this kind might be contrasted with the less focussed audience for the homage's presentment concerning a dispute in the same manor. Thus, in a 1564 dispute between Thomas Cope and one Mistress Arundell, the jury did

> say concerning the foresaid moor by evidence unto them given hath gone before this time with the fallow and so do all the rest of the moors there as it is likewise given by evidence, but whether of right it ought to be or not they do not certainly present or find.[118]

Importantly, political motivations could come together to explain the use of English to reach an audience that was simultaneously wide but also explicitly targeted. Take, for example, the presentments of the jury of Walton Manor (just north of the City of Oxford) in 1554, which were part of a wider dispute to which we will return in Chapter 4. After making a number of presentments recorded in Latin, the roll went on to record the following English-language presentment: 'the Mayor and Burgesses of Oxford by right and title of their City should have no common of pasture in Saint Giles Field or Burgess Mead' and that 'the same jury and homage doth find and present that the way going to Port Mead new made is a way to drive cattle only and no common cartway'.[119] As we shall see in the next chapter, it was of fundamental importance that this jurisdictional claim be known and endorsed by as wide an audience as possible within and outside the manor, and the use of English was plainly intended to bring that about.

There was also another, sharper, edge to this local political context in Walton Manor. The Mayor of Oxford, Edmund Irish, happened to own copyhold land within the manor. His presence as a homager must have made that meeting of the manorial court unusually tense. Certainly, the use of English would have conveyed to him in the bluntest possible terms

[118] ASCA 22/66 fol 2r.
[119] SJCA MUN XI.9 doc 64.

that he and his civic brethren had no jurisdictional rights there. Whether the audience were large or small, this incidental usage of English is important because it helps us to see more clearly the ways that court rolls were read and used in the community. Evidently, court rolls had an audience and readership that extended well beyond those who were versed in the technical details of copyhold or manorial administration.

Since the handling and displaying of court rolls was a powerful sign of legitimacy and authority, it was in the interest of those to whom they belonged to take good care of them and keep them firmly under control.[120] Thus, in the 1540 lease of his Oxfordshire manors of Deddington, Clifton and Hampton, Sir Thomas Pope insisted that the lessee, John Edmonds of Deddington, keep the manor courts at his own expense, and should 'cause the court rolls of the same courts to be engrossed in parchment and every three years shall deliver true copies of the same court rolls to the said Sir Thomas Pope his heirs or assigns if they be required'.[121] For obvious reasons, the safe transfer of possession of court rolls was a serious matter, as can be seen in a signed and sealed receipt of 1572 relating to the same manor of Deddington (then owned by Christ Church) by which John Bignell of Ardley, yeoman, and Anthony Coper, servant to Anthony Bustard, swore that they had 'received of Mr Palmer of Christ Church in Oxford, gent, all and singular such court rolls in paper of the manor … as the said William Palmer hath or had'.[122]

In Dorchester, this concern for the security of documents ran up against Luke Beauforest's unusually covetous and controlling personality, thereby creating a combustible situation that illustrated both the power of such documents and the risk of their authority being

[120] On the symbolic and practical importance of controlling access to documents, see Wood, *Memory of the People*, pp. 262–7; Thompson, *Customs in Common*, p. 159.
[121] CCA MS Estates 69 fol 98.
[122] CCA MS Estates 69 fol 217.

misused. Despite the Beauforest family never having been either lords of the manor or its stewards, Luke kept a number of court rolls in his possession, and evidently displayed them to his neighbours as being documents legitimately under his control. The artful way Luke used the forged court rolls to manipulate his neighbours has already been mentioned, but his improper possession of *legitimate* court rolls created similar trouble both with the unlearned lay audience to which Luke seems to have shown the rolls, and with the local elites who sought to safeguard the Crown's interests—and their own—in the face of Luke's provocations.[123]

In October of 1564, the deputy steward Leonard Parrett deposed in Star Chamber proceedings that he knew Luke to have 'diverse court rolls and precedents' from the manor which he refused to hand over. Dorchester being a royal manor, Parrett wrote to the Lord Treasurer requesting his intervention, but nothing came of that request. A second approach, this time alleging that land called the Tan House was 'concealed and kept away from the Queen's Majesty' by Luke drew a more proactive response. The Lord Treasurer instructed the local JPs Thomas Wynchcombe and John Doyley to investigate, 'whereupon they made search and in two baskets unlocked found four or five of the Queen's Majesty's court rolls, and one ancient rent roll of the said manor' which they delivered to Parrett.[124] Around the same time—and probably as a result of the same investigation—the Bishop of Lincoln obliged Luke to enter a £100 bond in 1564 for the safe delivery of a Dorchester court roll dating from 1509 'late parcel of the possession of the Bishopric of Lincoln'.[125] Evidently, Luke's penchant for forgery was a matter of some notoriety, and it was known to the

[123] See Thomas, 'Elizabethan Crown Lands', pp. 64–9.
[124] STAC 5/C3/14.
[125] LA DIOC/BP/LEASES/4.

Bishop of Lincoln or his officers who were careful to insist that the court roll in question be returned to them 'unerased nor defaced'.

We will need to come back to untangle the precise circumstances of these dealings, but for the moment it is sufficient to emphasise two points. First, as Luke Beauforest found to his profit, the expressive power of written legal documents was well understood by contemporaries, both elite and plebeian. The form and content—and indeed the mere possession—of legal documents were manipulated by Luke to enable him to claim an authority that was as alluring to his plebeian supporters as it was disturbing to his elite opponents. Second, as Leonard Parrett discovered, local political troubles more readily caught the ear of central authorities if they were couched in terms which coincided with central political preoccupations. Thus, the Elizabethan campaign against concealed lands provided a more tempting inducement for action by Lord Treasurer Paulet than did the mere quelling of local discord. Here, then, was a classic illustration of the use of elite political themes in local (if not always plebeian) politics.[126]

**Forgery**

As we have seen, the legitimate use of, and audience for, court rolls can tell us a great deal about public understanding of the law in mid-Tudor England. In addition, the fraudulent use of such documents is also informative, both about the forger and his intended audience. Although Luke Beauforest's fraudulent actions were unusually transparent, Daniel Woolf

[126] Cf Shagan, *Popular Politics*, p. 273; cf C.J. Kitching, 'The Quest for Concealed Lands in the Reign of Elizabeth I', *Transactions of the Royal Historical Society,* 5th Ser., 24 (1974), 63.

justly observes that the true extent of such forgeries is 'ultimately unknowable', as we only have evidence (for the most part) of those documents which *failed* to convince at least some contemporaries of their authenticity.[127]

Luke's fraud was an unusual but not unique type of forgery. Hawarde's reports of Star Chamber cases, for example, include the case of one Sute, a former servant to Lord Treasurer Burghley, who forged *sibi et suis* court rolls in almost identical circumstances.[128] By contrast, a much more typical example of simple and opportunistic forgery in the Dorchester area was that alleged against John Bond the elder and his son of the same name. Around 1557, Hugh Lewes claimed that they tampered with a lease of land in Burcot (Oxon) made to their predecessor in title in the time of Henry VIII, in which they 'subtlety and craftily erased and put out this letter "i" between the two "x"es containing the number of years of the reign of the said late king', so that the lease which ended in 1528 (i.e. the XIX$^{th}$ year of his reign) was altered to end in 1529 (i.e. the XX$^{th}$ year).[129] In effect, said Lewes, they falsely claimed an interest in the land for a year after their lease had expired. Forgeries of this kind required no great sophistication either on the part of forger or their intended audience. Almost anyone could 'put out' part of the text of a deed; and even the illiterate could recognise the value of an extra year's leasehold.

Evidently, crude forgeries of this kind were something of a fact of life for those involved in mid-Tudor legal disputes. John Cornelius, master smith of the King's ironworks and resident of the Tower of London, recounted one such episode in Edwardian times concerning the ownership of houses in Southwark. Cornelius happened to be in the

[127] Woolf, *Social Circulation of the Past*, p. 288.
[128] John Hawarde, *Reports of Cases in Star Chamber*, ed. William Paley Baildon (London, 1894), p. 64; cf Woolf, *Social Circulation of the Past*, p. 288.
[129] C1/1447/28.

Common Pleas when the barrister John Eston tendered in evidence two deeds of doubtful validity. His opponents objected to them, and asked the judges to test the authenticity of the deeds. Justice Anthony Browne took a pin from 'one Hawkins' then in court, poked at the suspicious seals of the deeds, and 'thereupon said that he liked it not'. The two opposing counsel then told the Justices that 'they would give their hands from their bodies if [the deeds] were not forged'. The next morning, Cornelius chanced upon Eston on Fleet Street, and remarked that

> he marvelled that the said Eston would wade so far in this matter upon such suspicious evidence; the said Eston answering again said 'if I should say truth I think there was forged evidence on both sides…'[130]

In Dorchester as elsewhere, forged documents were not the only type of fraud, nor the only way that imperfect recollections might come to influence others. As we saw with William West and the livery of seisin, an oral culture of memory was subject to the imperfections of recollection and the possibility of deceit. However, the much more elaborate mischiefs perpetrated by Luke Beauforest fully justify Adam Fox's observation that 'written culture was probably more culpable than oral in the fabrication and perpetuation of distorted, exaggerated, and spurious versions of the past.'[131] Daniel Woolf also refers to the role of forgery in perpetuating a 'residual suspicion of the supplanting of oral culture by [the] written'.[132]

Forgery is a topic about which the modern historian must take particular care to avoid anachronism. The importance of preserving the authenticity and accuracy of written

[130] STAC 3/3/23. On Cornelius, *see* Hist Parl, i, 703–4; On Eston, see Baker, *Men of Court*, i, p. 646.
[131] Fox, *Oral and Literate Culture*, p. 228.
[132] Woolf, *Social Circulation of the Past*, p. 287. On the relative prestige of oral and written evidence in France, see Mousnier, *Institutions de la France*, pp. 952–9. In Germany, see Strauss, *Law, Resistance and the State*, p. 108.

records now almost goes without saying, and the modern law provides numerous statutory provisions on the subject. However, the first comprehensive legislative prohibition on forgery only came in 1563 (5 Eliz c 5), and that before that time tampering with documents was largely unregulated by the common law—although the Star Chamber did intervene from time to time, even before 1563.[133] In their oath of 1391, for example, the scriveners of London promised not to write any document

> bearing a date a long time before the making of the same, nor a long time after, nor a blank charter, nor other deed sealed before the writing thereof, nor closed letters of a date far distant, nor of long time where through any falsehood may be perceived in my conscience…[134]

The implication was clear: ante- and post-dated documents were perfectly acceptable as long as the date was not 'far distant' or 'a long time' from the present.

Regulations of this kind help to contextualise the honest but anachronistic mediaeval forgers described by Clanchy, whose concern was to produce written records that would be plausible for the intended audience at the time they were made. Ex hypothesi, those documents embodied genuine rights, or at least sincerely-held beliefs about those rights, for as Clanchy notes,

> [f]orgery was necessary because contemporaries had no historical sense. A good oral tradition or an authentic charter of an early Anglo-Saxon king might be rejected by a court of law because it seemed strange, whereas a forged charter

[133] Nigel Ramsay, 'Forgery and the Rise of the London Scriveners' Company', in Robin Myers and Michael Harris (eds.), *Fakes and Frauds: Varieties of Deception in Print and Manuscript* (Winchester, 1989), p. 99. On Star Chamber's jurisdiction before 1563, see Baker, 'Introduction', *Dyer's Reports*, p. xci. On common law actions for deceit, see Baker, *Oxford History of the Laws of England*, pp. 771–3.
[134] Reproduced in Francis W. Steer, *A History of the Worshipful Company of Scriveners of London* (London, 1973), i, pp. 30–1.

> would be acceptable because it suited contemporary notions of what an ancient charter should be like. [135]

In some respects, Luke Beauforest's behaviour follows this model. Like the 'honest' forgers, he was concerned with verisimilitude. In a very tangible sense, the physicality of his fraud was centred on his understanding of contemporary expectations about what an old court roll 'should be like'. Likewise, in a more abstract sense, he relied on contemporary understandings about what could plausibly be claimed as manorial custom. Unlike the honest forgers, however, Luke's dishonesty extended to the underlying rights that his documents purported to embody. That is to say, Luke fabricated not merely documents but the content of manorial custom itself; and that was a transgression of grave significance in an era in which the supposed immutability of manorial law was a bedrock of the legal system. As Coke observed in his *Complete Copyholder*, the lord of a manor 'is an instrument', since in disposing of manorial lands 'he is bound to observe the custom precisely in every point, and can neither in estate nor tenure bring in any alteration, in this respect the law accounts him custom's instrument.'[136] It was for this reason that Luke's actions were so subversive.

**Luke's other victims**

Thus far, we have focussed on Luke's fraud as a means of gaining some understanding of the legal knowledge (at least concerning customary rights) of some of his more plebeian neighbours. As it happens, the community at Dorchester might have been quite relieved if

[135] Clanchy, *From Memory to Written Record*, p. 318; cf the situation in Germany: Strauss, *Law, Resistance and the State*, p. 106.
[136] Edward Coke, *The Complete Copyholder*, quoted in Holdsworth, *History of English Law*, vii, p. 305.

Luke were only a manipulator of manorial custom and a forger of court rolls. Luke's taste for fraud and sharp practice in fact went much further, and took even more socially transgressive forms. At the end of his exchequer deposition relating to the court rolls, Richard Beauforest deposed, almost as an afterthought, that

> his brother Luke Beauforest did forge a deed of gift of all his mother's goods and that upon suit had between this examinant and his mother and her son Luke Beauforest in the Chancery it doth well appear and the same suit is not yet fully determined …[137]

That suit arose out of Luke's actions in June 1556, when he promised his mother that in return for £80 he would procure for her a lease of certain land in Dorchester. Alice handed over the money 'giving credit to the faithful promise of the said Luke Beauforest, and especially because he was her natural son', but never saw the lease. Instead, she alleged that Luke conspired to grant it to Thomas Wayte—one of the gentlemen of the Chapel Royal—and then ultimately took the lease 'in his own name and to his own use' without repaying her the £80.[138] More seriously, Alice alleged that Luke defrauded her out of several acres of her farm at Dorchester called Bishopcourt, which was part of the original grant to her husband Richard Beauforest by the Bishop of Lincoln. In her Chancery bill, Alice claimed that Luke

> further degenerating unnaturally to deceive and utterly undo your said oratrix his mother, procured one Roger Hatchman of Ewelme … by a confederacy between them made to pretend title unto a parcel of the said farm called Tenpenny Land … and by false allegation much abused your said oratrix and persuaded her that it was a very dangerous matter to defend the pretence of the said Roger Hatchman, but if she would grant her interest in the said six acres to the said Luke Beauforest and Richard Beauforest his brother they, being toward the law, would find means to

[137] E133/1/13.

[138] Wayte was a gentleman of the Chapel Royal under both Edward VI and Mary: W.H. Grattan Flood, 'Queen Mary's Chapel Royal', *English Historical Review*, 33 (1918), 86. His connection to Luke Beauforest is unclear, but it may have come through the Parrett family: Robert Parrett had been Informator Choristarum of Magdalen College, and his successor John Sheppard was a contemporary of Wayte's in the Chapel Royal.

> avoid the said Roger Hatchman, whereunto your said oratrix assented, willing the said Luke to make a deed or indenture of the said six acres of land called Tenpenny Land and promised to seal it, which the said Luke did accordingly…[139]

That exploitation would have been bad enough, but Luke then amplified his deceit by preparing not just the agreed indentures but also 'one other pair of indentures like in proportion', which in fact conveyed the whole of Alice's interest in Bishopcourt to him. At the signing of the indenture—witnessed among others by Sir William Edlyngstone, curate of Dorchester, and John Kayse—Luke switched the indentures. He 'secretly misconveyed' them and

> brought forth the other Indenture of like proportion the one part whereof your said oratrix not mistrusting any deceit at his request sealed and delivered as her deed and received the other part; thinking that it had been the Indenture of the said six acres…

In the result, Alice was 'miserably and unnaturally by the craft and subtlety of her unnatural son defrauded of all the said farm.'

Luke's answer does not survive, but some taste of it appears in Alice's replication. He seems to have claimed that both alleged property transactions arose out of a debt of £120 he owed—we are not told to whom—for the repayment of which he was 'enforced to borrow the said hundred and twenty pounds of diverse and sundry persons', and for which he was 'troubled and arrested for the said hundred and twenty pounds to his great discredit and hindrance'.[140] Part of that debt seems to have been £40 owed to an enterprising woman, Elizabeth Robins, who took to money lending in her widowhood. When she remarried, her husband Robert Harcott seems to have had a less indulgent attitude to bad debts and had Luke arrested for non-payment.

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[139] C3/22/22.
[140] C3/14/30.

The precise connection between this debt and the fraudulent conveyance of Bishopcourt is unclear, but Luke seems to have justified the conveyance of it to himself 'in consideration of manifold travails costs and troubles sustained by [Luke] about [his mother's] affairs', and claimed that the correct deed was 'truly read and delivered to the defendant in the presence of diverse honest and credible persons'.[141] In his rejoinder, Luke then ended with the rather unfilial remark that his mother was 'a woman of reasonable good wealth and the said defendant being as he is much impoverished by such unjust suits and troubles as have been commenced and prosecuted against him.'[142]

While Luke and Alice were battling in the Court of Chancery, Luke also found time to bamboozle Alice's under-tenants. The episode arose because the rival tenants of Alice and Luke needed to know who was entitled to the land and the crops growing thereon while the Chancery litigation was pending. As was common in such suits, the parties undertook to the court to maintain the status quo, and to have their tenants sign conditional bonds to reimburse the eventual victor. Richard Arnutt, one of Alice's tenants, alleged in Chancery that Luke 'very craftily caused a bond to be made quite contrary to the said order' and that Luke pressured him into signing it for fear that he would never get access to his grain.[143] Luke's response was typical: the 'obligation and condition before the sealing and delivery thereof was simply and plainly drawn in paper seen perused and examined by the plaintiff and others whose advice he took therein'. Quite whose advice the plaintiff is supposed to have received is not wholly clear, but it is possible that it was lay advice, as Luke was likely to have drawn attention to any professional legal advice received by Arnutt. The

[141] C3/14/30.
[142] C3/14/30.
[143] C2/Eliz/A9/19.

episode is an important reminder that lying beneath Luke's direct conflicts with his family were a large number of other people affected by his antics, each of whom was in need of at least some modicum of legal skill to make sense of the situation in which they found themselves.

While the suit between Luke and his mother seems ultimately to have been resolved in Alice's favour by order of the Court of Chancery in 1572,[144] Luke's other legal dealings with his family suggest an equally sharp-elbowed exploitation of his legal knowledge. In a 1569 suit in the Court of Requests brought by Luke against his brother Richard, Luke claimed that at some point in 1566, Richard broke into his house and took away both money and documents. Luke had been indebted to one Henry Bishop of London to the tune of £200, and claimed that he 'would have justly satisfied to the said Bishop at his day if the said Richard Beauforest had not spoiled, taken away and withholden the said goods and chattels'. Not only was Luke then unable to pay his debts, but Richard 'for more cruel revenge' arranged to buy the debt from Bishop and therefore prevent Luke reaching a compromise with his creditor, since Richard was 'most desirous to accomplish his malicious mind with the imprisonment' of Luke. Richard plausibly denied all this: his entry into Luke's house was authorised by an injunction from Star Chamber (perhaps related to the Lord Treasurer's concern about stray manorial documents), and Luke's antics were all aimed at delaying any enforcement of other people's rights against him. Luke, Richard tells us,

> hath absented himself and is not of ability whereby it may be levied of his lands or goods the writs of execution were not nor could be served, by means whereof the

[144] C78/44/30. See Cioni, 'Elizabethan Chancery and Women's Rights', pp. 165–6. A royal grant to Alice and Richard Beauforest in 1570 of a lease of lands in the manor of Dorchester may also have been part of righting Luke's wrongs: CPR Eliz I, v, p 249.

> execution have been continued from time to time with great costs charges and expenses and yet the said complainant by this suit hopeth to delay it longer…[145]

A further example of Luke's sharp elbows emerges from the Oxford diocesan court records in 1570, concerning Luke's brother-in-law Ralph Flaxney, a former Mayor of Oxford. Flaxney revealed that he and Luke were co-executors of his wife's father's estate. Ralph claimed that his administration was so impeded by Luke's obstructionism and his taking away of the deceased's goods that he surrendered the administration to Luke and his other brother-in-law, the barrister Richard Archedale, in return for the promised payment of £5 of which he had received only 15s.[146]

A final episode concerns the manor of Cuddesdon (Oxon) in which Luke's sister Agnes had a one-third interest as dower after the decease of her first husband, Robert Joyner. The manor descended to their son Richard Joyner, and Agnes took William Tylcock as her second husband. Luke seems to have exploited his guardianship of Richard Joyner, his sister's son—'of whom [Luke] had then the custody'—in order to lend money with William Tylcock (his sister's second husband; step-father of Richard Joyner) to distressed tenants of Richard's manor of Cuddesdon. Agnes Boydon (the mother of the plaintiff Gabriel Fowler) was one of those tenants, and Gabriel borrowed £6 from Luke and William to pay her arrears of rent owed to Richard. Gabriel then entered into a bond for the sum of £6 6s 8d to secure its repayment. Gabriel claimed to have repaid the money, and complained in Chancery that Luke had failed to cancel the bond despite having promised to do so, and was now suing Fowler 'craftily and untruly' at common law upon the obligation.[147]

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[145] Req 2/176/35.
[146] OHC DIOC/2/B/2/1 fols 7v–8v, 88v, 90–96.
[147] C3/67/85.

Something of the flavour of conversation in Luke's household can be gathered from a 1571 defamation case brought by Agnes Kayse in the Oxford Archdeacon's court against Simon Pridden.[148] Henry Beauforest, a kinsman of Luke's resident in Wokingham (Berks) testified that Pridden had told him in Luke's house that Agnes was 'a naughty woman' who once tried to entreat him into her parlour with a promise to show him how she earned the four pieces of gold that she had just shown him. Fearing a trap, Pridden resisted her entreaties, but not before helping himself to one of the coins. He then made it clear to the assembled company in Luke's house that he believed that Agnes and a certain Alice Kayse had earned the money horizontally. An argument then ensued between Pridden and Henry Beauforest, with the latter responding that 'it is no marvel thing thou slander me, seeing that thou cannot say well of thy next neighbours, who I think in my conscience are more honest than thou art'. Simon then responded that 'he had said nothing but that he would say again: try me when thou like'. The record then indicates that Henry 'told Agnes Kayse what evil words the said Simon had spoken by her, and after that she procured process of action against him'. The substance of this evidence was then vouched for by Luke and his wife, and it does not stretch credulity to believe that it was Luke who procured the bringing of the action against Pridden. After all, Agnes was identified as a kinswoman of John Kayse—one of the men Luke trusted enough to witness the signing of the fraudulent conveyance relating to his mother's house at Bishopcourt.

As with so much of the litigation emerging from Dorchester, this case is far more interesting for what it appears to reveal about Luke's modus operandi than for anything it says about the honesty and reputation of Agnes Kayse. The off-colour conversation and

[148] OHC DIOC/2/B/2/1 fols 144v, 145.

argumentative, disreputable company in Luke's house certainly seems to fit with the other information we have about him. Given what we know about Luke and his aggressively legalistic attitude, it seems highly likely that it was he who goaded Henry into telling Agnes what Pridden had said, and who then prompted Agnes into bringing suit. After all, neither Henry nor Agnes seem to have had any other notable experience of litigation, and Henry did not even live within the jurisdiction of the Oxford church courts.

**Responding to Luke's frauds – finding a way out of the mess**

Luke Beauforest was clearly an unusually disputatious individual, but his story would be less interesting were it not for the willingness of his family and neighbours to take up legal arms against him. After all, if Luke's frauds and stratagems were suffered without formal complaint by his victims, historians would now be largely unaware of their existence. How, then, did Luke's family, neighbours and victims respond to his legal provocations?

It seems that there was a gradual escalation up the social hierarchy and up the chain of available legal institutions, culminating in two Star Chamber proceedings brought against Luke. One, brought in Richard Clement's name, was evidently a community effort, and everyone from labourers and husbandmen to the constable, tithingman, bailiffs, steward and JPs gave damning evidence against Luke. A second suit was then brought against Luke by his mother Alice. One real curiosity about these two proceedings is that the first, despite being brought in Clement's name, mainly concerned Luke's actions towards his mother Alice; yet the second, brought in Alice's name, mainly concerned Clement.[149] Clearly

[149] STAC 5/C3/14; cf STAC 5/B26/34.

something odd was going on, since the ostensible plaintiffs were not, it seems, the originators of their own suits. While Alice was no stranger to litigation,[150] in both sets of Star Chamber proceedings it is very difficult to discern her voice. The one moment we expect to hear her speak (when she proceeded against Luke at the Dorchester quarter sessions), there is only the formulaic—but obviously true—statement that she had made a 'pitiful complaint' before the justices.

That complaint related to the theft of plate from her house, which had been facilitated by Luke's removal of his mother's pet spaniel, lest its yapping raise the alarm. Alice laid an information before the local JPs John Doyley and Thomas Winchcombe at the next quarter sessions held at Dorchester, and they bound Luke to keep the peace. At that point, Luke is said to have fled on horseback; the justices ordered that hue and cry be made; and the constable John Golding claimed that he 'followed the said Luke so near that he found his horse but not himself.'[151] Luke was then gone for at least five days, but his indignation found a typically legalistic outlet, namely a King's Bench defamation action against almost everyone concerned (his brother, sisters, brothers-in-law, the steward and the JPs) for daring to allege that he 'hath stolen his mother's plate' and that 'my brother Luke hath forged a false deed of gift of all his mother's goods'.[152] Luke seems also to have made an unsuccessful attempt to prosecute the Dorchester officials at the Oxford assizes.[153]

As the abortive proceedings at quarter sessions attested, the holders of official positions in and around Dorchester seem to have had little success at controlling Luke. The deputy

[150] Aside from her suits against Luke, she was a litigant in her own right in the Common Pleas (CP40/1169 m 92v; CP40/1183 m 1327v) and Star Chamber (STAC 4/9/53).
[151] *Liber Albus*, p. 123.
[152] KB27/1211 fols 172, 199.
[153] STAC 5/C3/14.

steward, Leonard Parrett, was apparently increasingly concerned about the perversion of the manorial system, and especially Luke's hoarding of court documents. That resulted, as we have seen, in his petitioning the Lord Treasurer, who eventually sent letters of instruction for the seizure of Luke's hoard and (although the circumstances are murky) for his committal to ward in Oxford Castle. That confinement does not seem to have lasted long, for we are informed in the Star Chamber proceedings that Luke was soon back at liberty in Dorchester.[154]

Most prominent among the local justices of the peace was the former Augmentations official John Doyley, who certainly did not lack experience of public administration and legal institutions. While others described him as being 'toward the law',[155] it is striking that when Luke was brought before the bench at quarter sessions, Doyley preferred to defer to his brother justice Michael Moleyns (Molyneux), whom Doyley described as 'being toward the law [and] whose advice [he] followed'.[156]

The most interesting responses, though, came from Luke's brothers-in-law Richard Clement and William Tylcock. As we saw at the outset of this chapter, Clement was formerly Luke's servant, and was a household servant of Alice's at the time of the robbery and the forging of the court rolls. He later married her daughter, and was (along with Richard Beauforest) something of a *pentito* after having confessed his former complicity in Luke's misdeeds. When he gave evidence about the forgery, Clement was described as 'yeoman' and was apparently illiterate. He seems to have had no notable wealth, education

[154] STAC 5/C3/14.
[155] QCA 4M 23d.
[156] STAC 5/C3/14.

or political connections, and yet he was apparently able to bring multiple proceedings in Chancery and Star Chamber in his own name.

Unlike Clement, William Tylcock was independently wealthy. He made his fortune as a brewer in Oxford, and was assessed at £20 16s 8d in goods in 1568, making him the richest person in Dorchester after Alice Beauforest, and the third richest in the hundred, after John Doyley. He was by then an ex-Mayor of Oxford, yet still connected to Oxford civic networks and with experience of litigation in his civic capacity. It was he who recognised the significance of Luke's actions when Alice was defrauded, and rode to Oxford to implore Simon Parrett (the steward) not to grant Luke any copyholds on the basis of the fraudulent deeds. Tylcock offered Parret an angel, to which the steward is said to have answered 'I will not be bribed, but I promise you the copy shall not be delivered except I have a sufficient bond to her use, or certain word from herself'.[157] Likewise, it was Tylcock who arranged—after the failed proceedings at quarter session and at assize—for action to be taken against Luke in the Mayor's Court at Oxford for the robbery of Alice's plate.

Most importantly, it seems that it was Tylcock who lay behind Alice's chancery suits to recover her land. In his depositions in Richard Clement's Star Chamber suit, Tylcock said that he 'thinketh that he is well able to prove, and hath already proved in the Court of Chancery that the said Luke hath forged and made a deed of all his mother's lands'. So far as the surviving evidence allows us to tell, no such Chancery suit was ever brought in Tylcock's name: rather, the suit he describes was the one that Alice ostensibly brought in her own name. Tylcock's remark does not make much sense unless it were in substance *his*

[157] STAC 5/C3/14.

suit, and not hers.[158] If that is so, it sheds important light on the anomalous titling of the Star Chamber suits, leading one to suspect that William Tylcock was probably the instigator of them too.

For the reasons mentioned above, Richard Clement seems to have been an unlikely legal strategist, but it seems probable that the suit was brought in his name because Tylcock was not directly affected by Luke's fraud. If true, this would mean that William Tylcock was a maintainer: namely, someone who aided another's litigation without having a legal interest in it personally. However, this sort of maintenance seems to have been much more socially constructive than the pejorative examples found in other Dorchester litigation. Edmund Ashfield, for example, complained that John and Mabel Holmes were instigated to sue him in the Court of Augmentations 'only by the … perverse counsel of one Roger Hatchman',[159] and John March pointed to one Richard Bishop as the 'very wilful, troublous and unquiet person, much given to unlawful suit and vexation of the law' who lay behind several suits against him.[160] When one's opponent was Luke Beauforest—a wilful, troublous and unquiet person if ever there was—it seems that the community at Dorchester had little objection to maintenance.

This context helps to explain the 1573 proceedings brought by Tylcock against Luke in the Mayor's Court at Oxford about the robbery of plate from Alice's house. What is intriguing about Tylcock's suit is that it took place some 12 years after the alleged robbery, and well after the same issue had been ventilated not only at quarter sessions but also in Star Chamber, to little apparent effect. Needless to say, other than Tylcock's personal

[158] Cf Cioni, 'Elizabethan Chancery and Women's Rights', pp. 165–6.
[159] E321/2/36.
[160] Req 2/17/83.

involvement (and, perhaps, that of Ralph Flaxney) there was little connection between the goings-on in Dorchester and the jurisdiction of the Mayor's Court at Oxford. The reality, one infers, was that Tylcock was giving the dice a final roll. Having witnessed the impotence of other legal institutions, he sought out the jurisdiction of the one institution over which he, as a civic officer of Oxford, had personal control. Luke's legal training and his connections in London would—Tylcock evidently hoped—be of no use to him there.

On the face of it, Tylcock's attempt to bring Luke Beauforest to account before the Mayor's Court was a dismal failure. Luke successfully managed to evade that court's jurisdiction by becoming one of the first mature-age students of Balliol College, matriculating in 1575 at the age of 41 in an era when most would have matriculated in their early teens.[161] The pretextual nature of Luke's deed is clear: by becoming a privileged person of the University, Luke immunised himself from the civic jurisdictions of Oxford. In turn, however, he opened himself to the rigours of the Chancellor's Court of the University, in which the reader will be glad to know he was exposed to a number of claims by creditors and other victims of his sharp practices.[162] In that sense at least, William Tylcock's efforts were not in vain.

[161] Joseph Foster, *Alumni Oxonienses* (Oxford, 1891), p. 97. On other pretextual attempts to become a privileged person of the University, see Carl I. Hammer Jr., 'Some Social and Institutional Aspects of Town-Gown Relations in Late Medieval and Tudor Oxford' (Toronto Univ. Ph.D. thesis, 1973), p. 419.

[162] See, e.g. *Thomas Wolley v Luke Beauforest* (case no. 1577/18) OUA Hyp/A/72 fols 22v-25v; *Lionel Bostocke v Luke Beauforest* (case nos. 1577/19 and 1578/3) OUA Hyp/A/72, fols 22v-25v; OUA Hyp/A/8 fols 1r-10r.

**The persistence of memory**

Perhaps the ultimate mark of Luke's dubious success was that the seed sown by his forgeries continued to flourish for at least fifty years thereafter, and for the remainder of the century many people in Dorchester were led to believe—and continued to assert with apparent sincerity—that the words *sibi et suis* connoted an estate of inheritance. Given the opportunistic reasons why one would prefer such an estate to a term of three lives, it is no surprise that the decree of the Court of Exchequer in 1564 did not finally quell the dispute. The combination of self-interest and wishful thinking was a very powerful sustainer of popular belief about the law; a belief that seems not to have been eradicated despite several suits and judgments on the point.

In 1564, Luke was the central figure in the dispute, but by 1588, the memory of the earlier dispute had become the memory of 'diverse controversies debates and strifes rising between the customary tenants of the said manor and Michael Causewell then surveyor and … John Parrett gent then steward'. The protagonists of the 1588 dispute, Alice More and her husband John, had obvious reasons to minimise Luke's involvement in the earlier wranglings. For them, the decree of 1564 was a nullity, based on evidence elicited by commissioners who were 'rather factious wresters of the cause than indifferent commissioners to examine the truth'. In their view, the current dispute was, as their counsel put it:

> in the judgment of those persons inhabiting thereabouts and have knowledge and experience of those matters, the tenants are but secondary causers thereof, if they be any at all, and the nearness of somebody that (peradventure notwithstanding their birth of gentry) would be glad to dwell in these defendants' messuage, have stirred up this strife and is guilty of those debates in that manor as the common fame of that country doth avouch…[163]

In a dispute of 1594, some tenants were still claiming a copyhold of inheritance, and alleged that the original exchequer decree was of no worth, because the original suit was only between 'some few of the poorer sort of tenant, not exceeding the number of two or three.'[164]

Even in these later cases, the deputy steward Leonard Parrett was a central figure. In a suit some time before 1575, John Molyneux complained that

> the entry and order of the court rolls being used contrary to the custom and authority of the parties by stewards of the said manor [who are] not only ignorant and unlearned in the laws, abusing the Queen, her tenants, for their own private lucre and gain…

Parrett resisted Molyneux' claim of a copyhold of inheritance, saying that 'certain of the tenants and especially one Richard Lorkyn would by usurped custom have made the Queen's Majesty's lands their own'. More sinisterly, he added that the complainant 'thinketh by his maintainers and procurers and [the] suborned action of witnesses to darken and blind the truth'. [165] Indeed, so disturbingly persistent was the memory of Luke's fraud, and so pervasive was that attempt to 'darken and blind the truth' that Leonard Parrett could not rid himself of concern for it even on his deathbed. In his will of 1593, Parrett sought to right the historical record, and insistently documented that the words *sibi et suis* are 'expounded by the custom of the manor of Dorchester [as a grant] to the taker and his wife

[163] E112/36/47.
[164] E112/36/76.
[165] E112/36/2.

being sole and chaste, and to the eldest son of the taker, and for lack of a son to the eldest daughter'.[166]

Perhaps the last word on the matter should go to the rather loquacious lawyer for the then-steward of Dorchester in the case from 1588, who remarked ruefully that

> so long as a man that professeth practice towards the law will be contented and desirous to go to an alehouse and there out of the most disordered tenants and worst affected, and most given to strifes and wranglings, will go about to draw matters of controversy to work upon, the manor will not, by all likelihood, be void of contentions…[167]

After all, a little knowledge of the law was often a very dangerous thing.

**Conclusion**

Over the course of this chapter, we have seen a variety of exemplars displaying varying degrees of legal knowledge in mid-Tudor England, and a variety of ways in which the people of Dorchester applied this knowledge to the circumstances in which they found themselves. We have already seen how popular legalism has become an important historiographical theme in early modern England, but that there are methodological difficulties to establishing its nature and extent. A great many legal sources tell us very little about the mentality or motivation of those involved in the legal process; and those sources which do seem to tell us about those things must often be read with caution. In the case of Dorchester, we have seen how a great many people knew enough about the law to get by day-to-day in an extremely complex legal environment, while nonetheless being

[166] PROB 11//84/1.
[167] E112/36/47.

ignorant of at least some important legal concepts. Importantly, few knew enough about the law to prevent themselves becoming victims of Luke Beauforest's frauds.

Among the colourful cast of characters, we saw how reputations for legal knowledge (or legal ignorance) could be put to use. At the one extreme lay the husbandmen of Stodham, whose apparently confident assertions about manorial custom were the product of manipulation, and whose misunderstandings of relatively well-known common law concepts were very telling. At the opposite, we saw how Roger Hatchman's reputation for legal sophistication was exploited by Luke Beauforest as the threat by which he coerced his mother to sign forged deeds. Somewhere in between these points was Luke's brother Richard. He was described as being 'toward the law' despite apparently lacking formal training, but he also knew when to make strategic claims to ignorance—as was the case when the forgery of the court rolls was revealed. Likewise, while Leonard Parrett—the unusually conscientious deputy steward—may also have lacked formal legal training, he nonetheless took a leading role in protecting the Crown's interest in a strikingly dysfunctional manor.

So far as the manipulation of manorial custom was concerned, the example of Dorchester provides a useful corrective to certain claims of E.P. Thompson and his disciples. An 'oral tradition' and a 'customary consciousness' need not have anything to do with collective rights or communal identity, nor need they be invoked by or on behalf of 'plebeians'.[168] Likewise, since claims about alleged customary rights were as likely to be self-interested as any other claims brought before the central courts, we should hardly be surprised that

[168] Thompson, *Customs in Common*, p. 179.

some of those claims were indeed fraudulent. Thompson's dismissive criticism of Eric Kerridge on this account therefore seems misplaced.[169]

Why were people in Dorchester vulnerable to Luke's frauds? Quite aside from Luke's unusually forceful personality, it was partly a matter of lacking technical legal knowledge; partly a result of wishful thinking (especially regarding manorial custom); and partly it was a simple matter of illiteracy. As we have seen, though, legal literacy could take many forms and was often a matter of degree. In that context, fraud and forgery are a useful way of gaining an insight into the way legal documents were seen and used by people who might not have had a full understanding of their technical contents. In particular, the incidental use of English in court rolls shows how these documents had an audience that extended far beyond those capable of understanding Latin legal technicalities.

How representative, though, were the experiences detailed in this chapter, and to what extent can we generalise from them? The evidence we have been able to glean from mid-Tudor Dorchester is in many respects exceptional: the rarity of confessions of legal ignorance has already been mentioned, and Luke Beauforest would plainly be an extraordinary individual in any era. Many of the troubles at Dorchester were quite specific to his querulous, overbearing, and deceitful personality. While it is obviously difficult to engage in psychological analysis at the distance of 500 years, there was obviously something profoundly dysfunctional in his family relationships, especially with his mother;

[169] Thompson, *Customs in Common*, p. 129; cf Eric Kerridge, *Agrarian Problems in the Sixteenth Century and After* (London, 1969), p. 67.

and when coupled with his legal training and his strong sense of entitlement it was a recipe for disaster.[170]

Despite these peculiarities, Luke nonetheless represents some more common strands of early modern social life. The gentry son sent to the Inns of Court for an edifying education and the landowner with an assertive attitude towards litigation and estate management were by no means rare: one need only think of the pattern set by Luke's father Richard. Likewise, Luke's victims were much more typical: Alice, vulnerable in her widowhood; Richard, an initially-impressionable younger son made good; the copyholders, easily persuaded by a favourable interpretation of their tenure; and indeed the under-tenants, often-forgotten pawns in the disputes of others.

Whatever their levels of technical legal knowledge, the people of Dorchester were not, ultimately, passive in the face of Luke's frauds, since many of them knew where to find professional or lay legal help. After all, there were a good many people willing to support Luke's victims in gaining redress, motivated by a mixture of public duty (John Doyley), officiousness (Leonard Parrett), or sympathy born of family ties (William Tylcock). We will need to come back to this point in Chapter 5, but for the moment it suffices to observe that the willingness of litigants from across the social spectrum to entrust their legal affairs into the hands of others is itself a striking cultural artefact; and for that reason, the true extent of popular legal knowledge in the period might perhaps best be measured by the ease with which ordinary people found advisers to speak and act on their behalf. Seen in

[170] On the modern-day psychological aspects of assertive litigiousness, see Paul E. Mullen and Grant Lester, 'Vexatious Litigants and Unusually Persistent Complainants and Petitioners: From Querulous Paranoia to Querulous Behaviour', *Behavioural Sciences and the Law*, 24 (2006), 333.

that light, the personal knowledge of Tudor litigants—including those in Dorchester—may be a less important marker of contemporary legal culture than their readiness to engage professional legal advisers.

# CHAPTER 4

## BOUNDARY-DRAWING, COURTS AND JURISDICTIONS: FRIDESWIDE TAYLOR AND THE CORONERS OF OXFORD

On a late summer's day in 1555, Frideswide Taylor took her life by hanging herself in an upper room of her farmhouse at Walton in the suburbs to the north of the City of Oxford. She placed a halter around her neck, tied its end to a roof beam, and cast herself off from the basket upon which she was standing.[1] What began as a moment of private despair soon became a very public spectacle. Attracted by news of Frideswide's demise, the coroners of the City of Oxford rushed up to Walton to conduct an inquest, only to have a riotous mob come into the house where the coroners sat in 'exertion of their said office'. Indeed, the mob came up to the very 'place where the said dead body lay'.[2]

That place seems to have become a local tourist attraction, drawing 'diverse scholars of the University of Oxford [who] entered into the said manor house to see the said dead body', along with a 'multitude of people assembled there'.[3] Although the City denied that there were any such crowds,[4] the rioter Baldwin Nede claimed that 200 people had 'come thither to see and gaze', and Richard Collins estimated that there were some 300 spectators.[5]

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[1] KB9/588/237. On suicide more generally, see Michael MacDonald and Terence R. Murphy, *Sleepless Souls: Suicide in Early Modern England* (Oxford, 1991); Houston, *Punishing the Dead*, chs. 2, 6.
[2] STAC 4/7/14.
[3] STAC 4/7/14.
[4] This was denied in the city's replication, which is curiously absent from the STAC bundle. A copy remaining in the possession of the City is transcribed in *Records of the City of Oxford*, ed. William H. Turner (Oxford, 1880), p. 252.
[5] STAC 4/7/14. See Terence R. Murphy, '"Woful Childe of Parents Rage": Suicide of Children and Adolescents in Early Modern England, 1507–1710', *Sixteenth Century Journal*, 17 (1986), 269, referring in passing to the claimed attendance of spectators.

Indeed, the spectacle was so notorious that the Vice-Chancellor of the University, Richard Smyth, referred to it two months later in his sermon at the burning of Latimer and Ridley, listing the examples of 'Judas, and of a woman in Oxford that of late hanged herself' as being among those who were damned for 'desperately sunder[ing] their lives from their bodies'.[6]

Once at Walton, the rioters 'would not permit the said coroners neither to make inquiry thereof nor yet to bury the said dead body', but rather 'kept themselves together in manner of an insurrection' for two days and a night, which led the civic officers of Oxford to fear 'civil peril, insurrection and jeopardy of murder and other great and horrible mischiefs'. The rioters, we are told, 'hurled down the table whereat the coroners sat', 'pulled down a pair of stairs going up to the chamber', and threw the coroners out of the house.[7]

Thus humiliated, the coroners retreated to Oxford, and calling together the mayor, aldermen and other of the 'gravest and sagest minds of the said City' resolved to return to restore order. They did so the next day, 25 August, 'having borne before them the mace of the said City engraved with the arms of our most dear sovereign lady the Queen'. Unfortunately, things did not improve upon their second visit to Walton. Although the mayor made proclamation 'according to the tenor of the statute of unlawful assembly in such case provided in time of your most noble reign that every person there riotously assembled should quietly depart home', the assembly remained for 12 hours, and instead 'mocked and despitefully scorned' the proclamations and 'even besides that cast stones

[6] Foxe, *Acts and Monuments*, Book 5, p. 1446. On Smyth, see J. Andreas Löwe, *Richard Smyth and the Language of Orthodoxy: Re-Imagining Tudor Catholic Polemicism* (Leiden, 2003).
[7] STAC 4/7/14.

and old shoes at the mayor, aldermen and commonalty assembled there'.[8] Worse, one of the rioters laid hands upon Thomas Cartwright, mace-bearer, and in the struggle 'broke and tore all to pieces the said mace being of silver and took a great piece thereof away in contempt of your Highnesses' crown, proclamation and dignities and to the great danger of all your subjects'.[9] The City's accounts do indeed record payments that year for the repair of two maces, at 6s and 2s 4d respectively.[10]

Such a flamboyant public disorder was hardly likely to be resolved by local legal institutions even at the best of times; and all the less so when one set of disputants vehemently rejected the authority and jurisdiction of the very institutions in question. The disorder went well beyond any 'acceptable amalgam of public authority and private violence'.[11] The suppression of violent disorder was, of course, the heartland of the Court of Star Chamber's work, and it was to that court that the City of Oxford complained. In its Star Chamber bill, the City laid its cards on the table: from the outset, the case was about political authority and the 'diverse and sundry franchises privileges and liberties to be used had and kept' within the City, which were granted to it by the Queen's 'noble progenitor king Edward the Fourth late king of England and of diverse other of your most noble progenitors kings of this Realm of England'.[12] Quite clearly, though, it was that very claim of jurisdiction and authority that was most in dispute.

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[8] STAC 4/7/14. The statute referred to was 3 & 4 Edw VI c. 5, re-enacted in amended form by 1 Mar c. 12; 1 & 2 Ph & M c. 16; 2 & 3 Ph & M c. 21; and 4 & 5 Ph & M c. 9. See Andy Wood, *Riot, Rebellion and Popular Politics in Early Modern England* (Basingstoke, 2002), pp. 40–1.
[9] STAC 4/7/14.
[10] *Records of the City of Oxford*, p. 226 (Chamberlains' accounts of Thomas Smallpage and Harry Bolton, 1 & 2 Ph & M).
[11] Carpenter, *Wars of the Roses*, p. 60.
[12] STAC 4/7/14.

**George Owen and his tenants**

Who were the rioters? They were 'servants and tenants' of George Owen, lord of the manor of Wolvercote, who was also lord of the manor of Walton. Owen, whose lordship of those manors was a reward from Henry VIII for his service as royal physician, was the inheritor of a long-running local dispute that seems to have simmered from the time of the Abbesses of Godstow, the former proprietors of Wolvercote.[13] He was successively physician to Henry VIII, Edward VI and Mary Tudor.[14] He was also physician to Jane Seymour; a fact that adds piquancy to Jennifer Loach's observation about the quality of medical care offered to her during Edward VI's birth.[15] In short, Owen was both a wealthy and well-connected member of court with a skill for political survival, and also a substantial and assertive figure in the shires, who in the course of his royal service acquired a vast landholding in Oxfordshire and Berkshire and a network of retainers to match. His son Richard married the daughter of Sir Leonard Chamberlain—one of Mary's leading supporters in Oxfordshire—and became a recusant in Elizabethan times.[16] Among those with whom Owen did business over real estate was also John Doyley, whom we encountered in the last chapter as the resident JP nearest Dorchester.[17]

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[13] Disputes between Oxford and Wolvercote over the Port Meadow recurred from the thirteenth to the twentieth century: VCH Oxon, vol. 4, p. 281. On fifteenth century disputes over the Port Meadow, see OHC P6/1L/1. Cf *The English Register of Godstow Nunnery*, ed. Andrew Clark (Early English Text Soc., 129, 1905), 29.
[14] See SP11/5 f.44v (*Liber Pacis*, 1555). Owen first became a JP in 1547: ODNB. SP15/4 f.145 (Patent granting coat of arms, 1553).
[15] Jennifer Loach, *Edward VI* (London, 1999), p. 7; Elizabeth Lane Furdell, *The Royal Doctors 1485–1714: Medical Personnel at the Tudor and Stuart Courts* (Rochester N.Y., 2001), pp. 24, 30.
[16] VCH Oxon, vol. 12, p. 323.
[17] SJCA V.B.4.

Of Owen's 'servants and tenants', 21 were named by the City in its bill of complaint in Star Chamber. From the depositions, we learn that John Collins was steward of the manor of Wolvercote, and that John Smith was 'bailey to Mr George Owen' (and perhaps also bailiff of the hundred).[18] Of the others at Wolvercote, it is striking that of Owen's 25 tenants listed in 1552, eight were named as defendants in the City of Oxford's suit.[19] Hugh Weller, miller of the Wolvercote mill,[20] was a tenant at Wolvercote long before Owen's arrival, and is mentioned as such in the deed from Henry VIII granting Owen his lands.[21] From what one can gather from rental and taxation records, Weller was the most substantial tenant at Wolvercote. His name and that of Baldwin Nede recur in the subsidies or reliefs of the 1540s. In 1559, Richard Owen (son of George), Nicholas Day and Richard Collins each made their first appearance as taxpayers. [22] It was a mark of George Owen's local influence—and of the depth of local feeling about the underlying conflict—that each of these taxpayers (or their close relatives) were defendants in the suit regarding Frideswide Taylor.

Being tenants and servants of the lord of the manor, the alleged rioters said that they knew the house 'to be without the liberties and jurisdiction of the said City', and that the City had no authority to 'exercise the jurisdiction of coroners' at that place. In their defence, they stated that their actions took place in 'the hundred without the north gate of Oxford

[18] STAC 4/7/14.
[19] The tenants are listed in Letters Patent of 16 June 1561 containing an exemplification of the rents of Wolvercote and Walton manors in 1552: *Royal Letters Addressed to Oxford*, ed. Octavius Ogle (Oxford, 1892), p. 189. The eight named as defendant were Baldwin Nede, Robert Cary, Hugh Weller, William Parson, Robert Harper, John Smith, William Burditt and Harry Colley.
[20] His description as 'husbandman', and Nicholas Day's (the next deponent) as 'miller' was a mistaken substitution on the part of the scribe: STAC 4/7/14.
[21] *Royal Letters Addressed to Oxford*, p. 151; L & P Hen VIII, vol. 15, p. 178.
[22] E179/162/253; E179/162/253; E179/162/321. George Owen, being a member of the royal household, was not assessed by the commissioners for the shire: R.W. Hoyle, *Tudor Taxation Records* (London, 1994), pp. 10–12.

being distant from the said City of Oxford by the space of a quarter of a mile and more, and not within the liberties and franchises of the said City of Oxford as in the said bill is surmised'. Rather, they claimed that Frideswide's inquest fell within the jurisdiction of the coroners of the Shire, whom they summoned to conduct the view.[23] Their defence was not a denial that a disturbance took place: rather, they joined issue with the City, and enlarged the scope of the dispute from the specific focus of Frideswide's inquest to the much broader question of civic and local jurisdiction more generally.

Thus, it was clear that the rioters focussed their attention on the symbolic authority of the City, just as the City consciously emphasised the link between its authority and that of the Crown. For example, the mace broken in two by the rioters was not merely a symbol of the City's authority, as it was 'engraved with the arms of our most dear sovereign lady the Queen'. As such, the symbolic authority of the City was linked both to a physical emblem and to the authority of the Crown. It was therefore a grave injury to the City and a 'contempt of your highnesses' crown, proclamation and dignities and to the great danger of all your subjects' when the mace was broken.

Likewise, the cloth set upon the table at which the coroners held court was a symbolic target of the rioters. After verbally contesting the authority of the coroners, John Collins, the steward of the manor, 'did take up the cloth that lay on the table before them'. The City alleged that the rioters then 'hurled down the table whereat the said coroners sat', but in Richard Collins' telling, the bailiff of the hundred 'did forbid them there to sit and took up the cloth from the table before them and so there they rose and in their rising the table fell down'. This account of the falling down of the table was probably disingenuous, but the

[23] STAC 4/7/14.

important point is that the rioters consciously struck at the symbol of the coroners' authority, namely their cloth of office. Notably, in the Court of Star Chamber itself, the laying down of a green tablecloth or carpet was a sign of its judicial authority when the court was in session,[24] and it seems that the rioters of Wolvercote were similarly aware of the symbolic power of such tokens of office. Equivalent observations might be made about the treatment of the proclamation in the King's and Queen's name. The rioters were very careful to distinguish between actual royal authority and its illicit co-option by the civic authorities. Thus, according to the rioters, the proclamation was made not by virtue of the statute but rather 'by colour of authority where in very deed they had none'.[25]

Through evidence like this, one begins to see that the disputed events at Frideswide's inquest were not mere mindless violence, but were instead the product of a sophisticated and targeted understanding of legal and political authority. Put another way, the disturbance was the means by which the rioters, to use Roger Manning's words, 'dramatized their own concept of justice.'[26] As in the last chapter, we must take care because historical fact is mediated through the legal form of the surviving records, for as Stretton notes, '[i]n any adversary legal system, where conflict and debate are at the heart of the setting of disputes, the truth can be an elusive commodity', especially when reality is forced into 'conventional frameworks of legal argument'.[27] However, unlike an enclosure riot—or indeed the forgery of manorial records—the riotous disruption of a coroner's court was not a well-established legal genre that would invite formulaic typecasting beyond that

[24] Guy, *Court of Star Chamber*, p. 2. By contrast, a red tablecloth indicated that the Privy Council was in session.
[25] STAC 4/7/14.
[26] Manning, *Village Revolts*, p. 27.
[27] Stretton, *Women Waging Law*, pp. 14, 16.

which was common to all legal proceedings.[28] Thus, while we can be fairly sure that the Wolvercote rioters did not literally carry 'bows bills swords daggers staves [and] handguns' as was alleged at the start of the City's Star Chamber bill, we can also be fairly sure that they did utter words and commit acts aimed at undermining the jurisdictional claims of the civic authorities of Oxford.

**Pretext and context – the Port Meadow**

What made the rioters care so passionately about the jurisdiction of the City coroners at Walton manor? On the other side of the coin, why were the coroners of Oxford so keen to assert their rights? In light of all the potential reasons for delay, inefficiency or distraction in the exercise of coroners' duties,[29] what made the view of the body of Frideswide Taylor so urgently important to the City of Oxford? Certainly, there is much that appears to be disingenuous or pretextual about the respective claims of the City and the rioters. The City's replication, for example, that 25 August was not in fact a market day makes it difficult to believe the defendants' claim that they came to the house as they were merely passing by on their way to market.[30] Hugh Weller, at least, was candid that he was there 'as one summoned by the … bailey' of the manor.[31]

The answer is that Frideswide Taylor was, so to speak, collateral damage in a long-running dispute between George Owen and the community of Wolvercote on the one hand, and the

[28] Manning, *Village Revolts*, pp. 53–4.
[29] See S.J. Stevenson, 'The Rise of Suicide Verdicts in South-East England, 1530–1590: The Legal Process', *Continuity and Change*, 2 (1987), 41.
[30] *Records of the City of Oxford*, p. 252. STAC 4/7/14.
[31] STAC 4/7/14.

City of Oxford on the other, over their respective rights to the Port Meadow—an open stretch of land to the north of Oxford—and their competing claims to exercise jurisdiction in extra-urban areas of Oxford like Walton.[32] While the origins of the dispute over the Port Meadow were longstanding, it appears that enclosures made by the City Council around 1553 were the spark for a new outburst. Lurking behind the jurisdictional conflict was an economic dispute about resource allocation, as common grounds like the Port Meadow were both a valuable resource and an important point of connection between the urban environment and the agricultural economy.[33]

Oxford was scarcely unique in having disputes over such resources.[34] The 1548 enclosure commission, for example, reported on the contentious use of similar land at Cambridge; a dispute which then erupted into one of the many rebellions of 1549.[35] In Oxford, by contrast, the Port Meadow dispute was noteworthy for producing a welter of litigation rather than the more classic forms of physical disturbance of the enclosure riot. This included suits in the Oxford city leet,[36] the quarter sessions,[37] a jury trial at the Assizes,[38] and actions in the Court of Requests,[39] Chancery[40] and Star Chamber;[41] this last case being concerned with the riot at the Frideswide Taylor inquest. Owen's claim in the Court of Requests was that Port Meadow was 'parcel of the said manor of Wolvercote', whose

[32] On these outlying liberties, see VCH Oxon, vol. 4, pp. 274–6.
[33] Peter Clark and Paul Slack, *English Towns in Transition 1500-1700* (Oxford, 1976), p. 27.
[34] On towns and rights of common on surrounding land, see Thompson, *Customs in Common*, pp. 122–6.
[35] See R.H. Tawney and Eileen Power (eds.), *Tudor Economic Documents* (3 vols., London, 1924), i, pp. 44–6; Wood, *1549 Rebellions*, pp. 13, 60, 63, 170; Wood, *Memory of the People*, pp. 117–18.
[36] Referred to in C1/1346/16. See also *Records of the City of Oxford*, p. 215.
[37] *Records of the City of Oxford*, p. 282.
[38] Referred to in STAC 4/7/14.
[39] Req 2/24/116.
[40] C1/1346/16–18; C1/1371/9–11; C1/1395/15.
[41] STAC 4/7/14.

tenants 'hath had the same for their cattle without let or disturbance' until the City of Oxford's recent and precipitate actions.[42] For its part, the City claimed that Port Meadow was 'parcel of their inheritance and fee farm aforesaid which Portmede is and time out of mind hath been within the liberties' of the City.

Ultimately, what is important for our purposes is the way in which the vexed coroners' inquest into Frideswide Taylor was a microcosm of the wider political dispute. Were the people in Walton Manor and the suburbs north of the City of Oxford subject to the authority of the City at all? To which political community did they belong? Testing the limits of the city coroners' jurisdiction—and their claim to have the exclusive right to hold inquests—was a good way to find out. In Oxford, the effect of this longstanding and politically-tinged dispute was to corrupt and undermine many of the usual means by which social disagreements might be resolved. Any attempt to bring the Wolvercote rioters before the local justices of the peace would have been complicated by the fact that their master George Owen was himself a justice of the peace; a classic illustration of the strong potential for conflict of interest or undue influence since local officers like sheriffs and JPs were all local landowners, 'wrapped up in the system they were supposed to be administering'.[43]

Likewise, the partiality of the City courts led Nicholas Day (one of Owen's tenants) to seek relief from Chancery in 1553—the year of the enclosure—to extract himself from their clutches. He explained that such

> strife and debate hath risen and grown between the said George Owen and the said mayor bailiffs and commonalty of the said City of Oxford for the right and title [to

[42] Req 2/24/116.
[43] Carpenter, *Wars of the Roses*, p. 48.

> Port Meadow] by reason whereof your said orator being tenant unto the said George Owen … can gain no indifferent justice there to him ministered before the mayor and bailiffs and is like to be condemned in the said actions being only grounded upon malice without any just cause.[44]

As the travails of Nicholas Day show, the inhabitants of Wolvercote were not mere pawns in a seigneurial design imposed by George Owen: many of Owen's tenants were involved in their own litigation and had strong ideas about their own legal rights. The dispute was a classic case of a territorial conflict in which 'networks of affiliation … cut obliquely across socio-economic divides.'[45] Hugh Weller, for example, was a tenant and miller at Wolvercote long before Owen's arrival, and had his own personal and commercial reasons for participating in litigation—notably, preserving and enlarging the clientele of his mill.[46] And Nicholas Day seems to have had a pugnacity towards the city authorities that was quite of his own. In 1553, he was arrested by the bailiffs of Oxford for fishing in the common waters despite not being a freeman; an incident apparently separate from those about which he complained in Chancery. His insolent demeanour led the bailiffs to respond that 'he was no freeman, nor should not be used like any freeman, and therewith took away from him both his net and his fish; they then had him also to the Bocardo, and did set him in the stock house otherwise than freemen are wont to be used'.[47] An appeal for clemency to Mayor Flaxney (whom we encountered in the last chapter as the victim of one of Luke Beauforest's inheritance frauds) was denied; hardly a surprising response given the tensions at the time between Mayor Flaxney and Day's master over the use of Port Meadow.

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[44] C1/1346/16.
[45] Whyte, *Inhabiting the Landscape*, p. 120.
[46] One element of the dispute involved competing claims about obstruction to the watercourses of the City's mills downstream of Wolvercote: Req 2/24/116; C1/1346/16. On the potential of mills as legal flashpoints, see Wickham, *Courts and Conflict*, p. 192.
[47] *Records of the City Oxford*, p. 215.

The forms of evidence used in these various disputes are instructive, especially the light that they shed on our understanding of orality, memory and writing. While we know that Owen engaged counsel to manage his legal affairs,[48] much of the litigation emerging from the community of Wolvercote seems to draw upon a wider and more popular culture of legality. In his suit in Requests concerning the Port Meadow, George Owen claimed that the City's usurpation of his and his tenants' rights was done 'by the colour of having … charters evidences and writings'. Owen's own evidence, by contrast, lay in 'custom and manner of the usage used time out of memory', and in the recollections of men like William Forrest of Marston, husbandman of the age of 81 years, who were able to testify to the condition of the Port Meadow in the days of their youth.[49]

This aspect of the dispute amplifies two important points that were touched on in the last chapter. The first is that the language of custom was by no means exclusively plebeian, and nor did the articulation of custom necessarily imply a power imbalance between those asserting or denying the alleged custom.[50] Indeed, in the case of lawyers' own expectations about how the legal system worked at the time, Baker notes that '[r]eason and inherited wisdom were still more important as sources of law than the mere existence of precedent.'[51] While the custom of Peak District miners may well have 'codified relations

[48] See Anthony Wood, *Survey of the Antiquities of the City of Oxford*, ed. Andrew Clark (Oxford Historical Soc., 17, 1890), p. 242.
[49] Req 2/24/116.
[50] Cf Wood, *Politics of Social Conflict*, pp. 136–7, 143–5. On the one hand, Wood states that custom is 'not inherently plebeian' (p. 136), but his subsequent discussion of custom might at times be thought to elide the distinction between the specific circumstances of the Peak miners and the position of custom at law more generally. The same ambivalence is present in his *Memory of the People*: we are told that '[c]ustom, perhaps more than any other early modern concept, was the epitome of [a] vernacular, country mentality' in contrast with the gentry and elites who 'affected to despise it' (p. 13); yet we are also told that custom was 'not inherently plebeian' and that 'it would be wrong to insist upon the uniform hostility of elite groups to custom' (pp.127–8).
[51] Baker, *Oxford History of the Laws of England*, pp. 50–1.

of subordination and exploitation, drawing a "line of right", which continued to shift in tune with balances of power',[52] it would be difficult to make a similar claim about the relations between the tenants (and lords) of Wolvercote and the City of Oxford. Indeed, it seems that the customary rights of the inhabitants of Wolvercote were articulated more vigorously when they were led by an assertive and well-connected secular landlord than was the case under a less influential ecclesiastical one.[53]

The second point concerns the nature of orality. The sixteenth century witnessed a move towards a 'general climate in which written testimony was privileged over oral report', but one in which the ascendancy of writing was 'never complete nor absolute'.[54] The very nature of custom was such that its 'defining conditions included current, consistent and uninterrupted usage to which those directly involved could best attest', and especially in the case of complicated common rights 'the best guide to their antiquity, certainty and continuance was usually the oral tradition of the eldest inhabitants.'[55] George Owen was not one of those 'eldest inhabitants', being only relatively recently seised of the manor, so his knowledge of the customary rights of the manor was dependent on the instruction of his tenants and neighbours. Like the young people noted in Wood's study of the Peak District, Owen was likely to have 'learnt custom through the instruction of [his] elders';[56] a revealing reversal of the usual order of power and influence at Wolvercote.

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[52] Wood, *Politics of Social Conflict*, p. 137.
[53] One cannot assume, however, that ecclesiastical landlords were necessarily peaceable ones: see Manning, *Village Revolts*, p. 45.
[54] Adam Fox, 'Custom, Memory and the Authority of Writing', in Paul Griffiths, Adam Fox and Steve Hindle (eds.), *The Experience of Authority in Early Modern England* (London, 1996), pp. 91, 92.
[55] Fox, 'Custom, Memory and the Authority of Writing', pp. 96, 102.
[56] Wood, *Politics of Social Conflict*, p. 134. Cf Wood, *Memory of the People*, p. 131: 'Customary law could be, to the gentleman, a dark and murky business, full of curious complexities that were only apparent to the locally bred plebeian insider.' It must be

How was the dispute at Walton and Wolvercote ultimately resolved? So far as Frideswide's immediate case is concerned, the answer is that the coroners of the shire—not the City—ultimately conducted the inquest, the records of which are preserved to this day.[57] Those records also provide another insight into the local political alignments behind the dispute: the coroner of the shire happened to be Robert Huckvale, a local lawyer who was a longstanding retainer of George Owen's, who served as his steward in Walton manor and elsewhere. Evidently, the vehemence of the dispute reflected not merely longstanding disagreements between the City and those living on its fringes over jurisdictional authority and resource use, but also represented a test of Owen's power as a patron.

What of the wider dispute over the Port Meadow and related jurisdictional rights? Even after George Owen's death, his son Richard continued to ventilate the dispute in the Common Pleas.[58] As we shall see in Chapter 5, the litigation imposed a heavy financial burden on the City, and both parties eventually grew tired of lawsuits. The 'appeasing and pacifying' of the dispute between them was eventually achieved in 1562 not by judicial process or political fiat, but 'by mediation of friends of both parties' and by the partition of the land and rights in question.[59] The resulting division between Wolvercote Common and Port Meadow endures to this day.

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emphasised, though, that not all Owen's informants about local matters were in fact plebeian.

[57] KB9/588/237. Nothing survives of any records made by the City coroners. On the survival of coroners' records more generally, see Stevenson, 'Rise of Suicide Verdicts', p. 52.

[58] CP40/1186 m 273v; CP40/1211 m 1202. George Owen's funeral in October 1558 at St Stephen Walbrook is recorded in the *Diary of Henry Machyn*, p. 177.

[59] *Royal Letters Addressed to Oxford*, p. 202; *Records of the City of Oxford*, p. 294.

**Civic authority and jurisdictional exclusivity**

Frideswide Taylor's case was about a claim to have an exclusive right to hold coroners' inquests in a given area, but institutional claims to exclusivity could arise in a number of different contexts. George Owen and the inhabitants of Wolvercote were not the only people in mid-Tudor Oxford to have run into legal disagreement with the City. Institutional or jurisdictional disputes of that kind could also exist on a smaller scale, as people like John Lewes—baker and freeman of Oxford—found out to their cost. In 1545, Lewes complained that the town millers at the Castle Mills in Oxford consistently took an excessive toll. In response, Lewes took his corn to be ground elsewhere 'where he hath been and is better served'. The bailiffs of Oxford objected to this practice and seized Lewes' flour for having been milled contrary to the civic monopoly at the Castle Mills. Edward Hunt, a baker of Kidlington, joined Lewes' complaint, saying that the bailiffs also seized his flour outside the liberties of the city, saying 'he should well know and find what a false harlot he was to the said City of Oxford and privilege, for grinding of his corn from the said Castle Mills.' As a result, Hunt said he was 'compelled to forsake the said town of Oxford to his utter undoing', unless the Court of Requests granted a remedy.[60]

The bailiffs, Thomas Malleson and William Tylcock—who later became mayor and, as we saw in the last chapter, the hero of Dorchester—answered that the action was triable in Oxford before the mayor

[60] *Select Cases in the Court of Requests*, ed. I.S. Leadam, (Selden Soc., 12, 1898), pp. 173, 181. Part of the reason for Lewes' petitioning the Court of Requests was that he would otherwise have been imprisoned 'for his perjury upon his oath made to the guild of the same City' (presumably, in relation to his freeman's promise to use only the City's mills): *Records of the City of Oxford*, p. 180.

> where all actions as well real as personal and all other kinds within the said City of Oxford ought as well by the ancient liberties of the said City as by ancient usage time out of mind used … be heard and determined and not elsewhere.

In addition, they declared that the civic monopoly on grinding corn at the Castle Mills was part of the ancient privileges and franchises of the City. [61]

When it came time for depositions to be taken before William Fermor and James Bury in Oxford, the commissioners reported that the witnesses for John Lewes

> durst not tarry there to be examined by reason of great opprobrious words and threats given there unto them by the citizens, saying they were but false harles,[62] with other rebukeful words … whereupon some departed from thence unexamined and would not be found no more that day, and other persons there were that afeared to come before us within the City, desiring us then to [ap]point some other indifferent place out of the City and they would come before us, whereupon we then appointed to sit at Islip, and so did … howbeit the day of our commission was then expired…

The riotous disruption of the coroners inquest into Frideswide Taylor was thus not the first recent instance of an attempt to disrupt the legal process in Oxford in a dispute concerning the City's rights; and nor was it the first case in which the underlying dispute was resolved by political compromise. Indeed, the resolution of Lewes' complaint has a touch of the judgment of Solomon about it, for both the City and Lewes were vindicated to some degree. Lewes was indeed compelled to use the town mills, but he was empowered to employ an honest miller of his own choosing.[63]

A major part of the context of the City's trenchant position in the Frideswide Taylor and John Lewes disputes was its quite separate jurisdictional battles with the University of

[61] *Select Cases in the Court of Requests*, ed. I. S Leadam, (Selden Soc., 12, 1898), pp. 181–2.
[62] Apparently an Oxfordshire word for 'hounds'.
[63] *Select Cases in the Court of Requests*, p. lxxvii.

Oxford. The disputes between the University and City about privilege and jurisdiction are well known, including disputes over such matters as the assize of bread and ale.[64] Pressed on one side by the University, it is little surprise that the City sought to assert its jurisdictional authority all the more vehemently against non-University opponents. The situation was similar in Cambridge where, as Withington observes, the University and its colleges constituted 'rival communities at once wealthier and better equipped politically' than the town, and in whose shadow the burgesses lacked 'magisterial authority', especially in economic and regulatory matters.[65]

One of the more curious manifestations of this kind of jurisdictional battle in Oxford concerned the right to hold a court leet. The city's leets—of which evidence survives, curiously, in the University's archives—concerned the usual range of matters typical in such jurisdictions. In 1515, for example, along with the usual range of complaints about unscoured drains and obstructed thoroughfares, one William Hutton was presented with others for their use of unauthorised bowling alleys; and Michael Plowde and Richard Andrews were presented for 'keep[ing] tennis plays contrary to the statute'.[66] Of more interest for present purposes, though, was the way that presentments were framed for rhetorical effect so as to emphasis the connection between civic and royal power. Merton College's poor upkeep of the present-day Merton St was 'to the great annoyance of the King's liege people'; not merely an inconvenience to the inhabitants of Oxford. Likewise, the encroachment of Rewley Abbey onto land abutting the watercourse of the civic Castle

[64] See C. Hammer, 'Oxford Town and Oxford University', in J. K. McConica (ed.), *The History of the University of Oxford, III: The Collegiate University* (Oxford, 1986), pp. 69–116; Hammer, 'Some Social and Institutional Aspects of Town-Gown Relations', pp. 18–22.
[65] Phil Withington, *The Politics of Commonwealth: Citizens and Freemen in Early Modern England* (Cambridge, 2005), p. 90.
[66] OUA WPβ/P/7/4.

Mills—famous from the John Lewes case—caused the 'exheridation of the King and great prejudice and harm unto the Mayor, Bailiffs, Burgesses and commonalty of the same town and against the king's peace'. A 100s fine was the inevitable penalty.

The University's insistence on its right to hold such a court in the Guildhall was an obvious encroachment upon civic sensibilities. While the surviving records are sparse, it seems that the University leet never made any substantial impact on life in Oxford. Viewed from the perspective of efficient judicial administration, the University leet 'scarcely seems to merit the time and trouble lavished upon it.'[67] That, however, was not the point of the University's efforts: rather, the assertion of jurisdictional rights was valuable in and of itself, as those rights were symbolic of wider (and more practically important) aspects of the University's local political authority.

In many towns—Oxford included—one way in which this local political authority was asserted was through ordinances preventing recourse to non-local courts, at least for certain categories of litigants and certain types of litigation. In London, the city charters provided that no freeman could sue or be sued in any court outside the city except in actions concerning matters like property external to the city. This prohibition was reinforced by city ordinances that forbade any freeman to sue another elsewhere over a matter that could be sued within the city, upon pain of loss of the freedom, imprisonment and a fine. In each case, the mayor and aldermen could—and often did—grant their licence to sue elsewhere, but as Penny Tucker observes of the period before 1550, the grant of such requests to

[67] I.G. Philip, 'The Court Leet of the University of Oxford', *Oxoniensia*, XV (1950), 81.

litigate elsewhere and the imposition of punishments for doing so without permission 'testify to the continuing enforcement' of the restrictions.[68]

Elsewhere, restrictions were imposed more widely than simply upon freemen. Given the Cinque Ports' jurisdictional distinctiveness, it is hardly a surprise that a 1437 ordinance provided that no resident of the Ports should sue any other resident in any court outside the Ports, upon pain of forfeiting £10.[69] In Leicester, an ordinance of 1575 provided that none of the inhabitants of the town should sue one another without first seeking mediation by the mayor or an alderman, who was obliged 'to take order with them and agree them without suit of law'. If that failed, the would-be suitor nonetheless required the mayor's licence, upon penalty of forfeiting 6s 8d.[70]

In Oxford, by contrast, the prohibition on external suits was less emphatic, and did not extend to all inhabitants. An ordinance of 1528 prevented *freemen* from suing outside Oxford, but only if the case concerned a 'convention made within the town of Oxford'—a limitation that seems to have been overlooked in the John Lewes case.[71] Burgesses were prevented from suing each other—but not non-burgesses—outside Oxford by an ordinance of 1535, upon penalty of being 'disenfranchised openly at Carfax'.[72] Likewise, in Bristol suits in foreign courts were not forbidden, but an ordinance of 1463 obliged those making

[68] Tucker, *Law Courts and Lawyers*, p. 45.
[69] *A Calendar of the White and Black Books of the Cinque Ports, 1432–1955* ed. Felix Hull, (Kent Records, 19, 1966), p. 10.
[70] *Records of the Borough of Leicester*, ed. Mary Bateson (3 vols., Cambridge, 1905), iii, pp. 155–6.
[71] *Records of the City of Oxford*, p. 57.
[72] *Records of the City of Oxford*, p. 132.

a plea—whether locally or 'foreign'—by which the civic courts 'should be put out of jurisdiction' to swear 'upon a Book that his plea … be good and true'.[73]

The 1558 ordinances of the recently-incorporated Borough of Banbury were unusual in explicitly including 'any the King and the Queen's Majesties' courts' as being among the prohibited external venues. In the case of aldermen, the prohibition extended only to those cases 'that may be determined amongst themselves' and in which the Bailey's [i.e mayor's] licence had not been granted. In the case of ordinary inhabitants of the town, the prohibition was only 'as long as they may have undelayed right and speedy justice within the said Town, and their matter determined there'—which, by implication, was hardly a glowing endorsement of the efficiency of the new civic legal institutions over which John Lovett presided as steward.[74]

Regulations of this kind could also be found at the manorial level. There, either custom or ordinances could prohibit tenants from bringing suits courts other than those of the manor, whether generally or in particular categories of litigation. A typical example is the manor of Boxford (Berks), where the custumal of 1563 provided that

> no tenant shall sue, vex or trouble one another in any foreign court for debt or trespass, the debt being under 40s, but in the Lord's Court, except he have licence given in the Court.[75]

Likewise, in the Oxfordshire manors of Bloxham Beaucham and Bloxham Fiennes, a custumal of 1552 records that

[73] *The Great Red Book of Bristol*, ed. E.W.W. Veale (Bristol Record Soc., 8, 1938), p. 63.
[74] OHC BOR/2/XVII/i/1 fol 199r.
[75] BRO D/EAH/M49.

> the tenants within the said lordship shall not sue one another for any title or right of land lying and being within the Lordship aforesaid in any other court than in the Lord's Court beforesaid holden and kept within the town and lordship of Bloxham aforesaid, according to the custom there, upon pain of forfeiting his estate unless it by writ of right close.[76]

Given the increasing involvement of the Westminster courts even in copyhold cases, this was on its face a non-trivial obligation,[77] but as with the civic ordinances mentioned above, regulation of this kind seems only to have had a marginal effect on rates of civil litigation in local courts.

More often than not, such regulations had an expressive value from the point of view of civic or communal harmony, but at base were often a device for revenue raising. Lordship brought with it jurisdictional rights, and those rights in turn brought the prospect of financial advantage. Some sense of this can be gleaned from the accounts of the Bishop of Lincoln, who was until the mid 1540s a very substantial landholder in northern and eastern Oxfordshire. The bishop's interests were focused on Thame, Dorchester and Banbury, and surviving accounts from 1511 paint a rich picture of the extent and diversity of the associated jurisdictional rights and the income they generated. Together with subsidiary courts held in places like Great Milton, Little Milton and Waterstock, the lordship of Thame brought the bishop's coffers £4 7s 6d. In Thame itself, the Halmote manor court brought in 10s 4d, coupled with 10s of exactions and 4d in other perquisites; the 'ancient custom' of Luke's pence added a further 2s 6d; the separate Hundred court generated 7s 4d, with 3s 4d in 'other perquisites'; and the Portmoot raised 3s 8d.[78] In Dorchester, the courts of the manor, bailiwick and Hundred (the 'Great Hundred court') brought in £5 6s

[76] OHC Saye I/i/1.
[77] Gray, *Copyhold, Equity and the Common Law*; A. Savine, 'Copyhold Cases in the Early Chancery Proceedings', *English Historical Review*, xvii (1902), 296–303.
[78] LA DIOC/BP/ACCOUNTS/8 fol 17v.

8d.[79] Finally, Banbury and its borough generated £6 5s 8d through its Portmoot;[80] the separate jurisdictional rights of the bailiwick and Hundred added a further £7 12s 10d;[81] and a 'Halmote court' held at Banbury, Cropredy and Wardington added 7s 8d.[82]

Although the prevalence of regulations attempting to enforce the exclusivity of local jurisdictions might suggest that such institutions were unpopular venues that would otherwise have been avoided by Tudor litigants in their rush towards the central courts in Westminster, such an interpretation is misplaced. Civic and manorial courts were, and remained for some time, an essential element in the structure of government, and were a valuable forum for litigation and other forms of local self-regulation.[83] The emphasis in earlier historical writing of a policy in favour of suppressing local jurisdictions may well be exaggerated.[84] In particular, while disputes originating in local courts could often find their way into central or higher courts, it would be wrong to think of the relationship between such courts (in terms of their social purpose) as a rigid hierarchy. Likewise, it would be wrong to think that the lower courts outlived their usefulness to the protagonists once a dispute had entered a 'higher' venue.

Take, for instance, the aptly-named Nicholas Wild, a husbandman of Ipsden (Oxon) against whom the local landowner Walter Barton brought a trespass suit in the Common

[79] LA DIOC/BP/ACCOUNTS/8 fol 18v.
[80] LA DIOC/BP/ACCOUNTS/8 fol 20r.
[81] LA DIOC/BP/ACCOUNTS/8 fol 21v.
[82] LA DIOC/BP/ACCOUNTS/8 fol 22r.
[83] Harrison, 'Manor Courts and the Governance of Tudor England', pp. 43–59; Waddell, 'Governing England Through the Manor Courts', pp. 279–315.
[84] Baker, *Oxford History of the Laws of England*, p. 119. For earlier views, see H.M. Cam, *Liberties and Communities* (Cambridge, 1944), pp. 215–18; Elton, *Tudor Constitution*, pp. 32, 155–6.

Pleas in Michaelmas term 1556.[85] Three years later, Wild was presented in the court of the manors of Ipsden Basset and Ipsden Huntercombe for a smorgasbord of offences, including unlawfully taking wheat; unlawfully erecting a pig pound; damaging the garden of John Holt; and various trespasses.[86] While we cannot be sure how closely the manorial proceedings were connected to the dispute with Robert Barton, the essential point remains: local legal institutions did not cease to be useful to disputants simply because central institutions were also available and had previously been invoked.

**The work of borough courts**

Of local legal institutions in the urban context, by far the most important by volume of litigation were the borough courts. Unlike the central courts at Westminster, the jurisdiction of borough courts was necessarily limited in a territorial sense. To fall within its jurisdiction, a case had to concern either a wrong committed within the borough, or else a transaction entered into there. One can see the first category at work in a 1575 plea in the Lord's Court at Henley on Thames (Oxon) in which Thomas Elery complained that 'at Henley within the jurisdiction of this court' Richard Hamlen committed trespass with his bullocks and pigs, which 'did spoil and devour and eat up the said pl[aintiff]'s garden herbs with onions, garlic, leeks and orange trees, rosemary, with parsnips, carrots and radish roots', causing damage worth 39s 11d.[87] The second category can be seen in a 1574 suit in the same court in which William Bramley 'in Henley within the jurisdiction of this court' borrowed from John Bennett 'three yards and a half of motley [i.e. multicoloured

[85] CP40/1168 m 1252.
[86] Bodleian MS Rolls Oxon 31.

cloth] price 9s 4d to be paid to the said P[laintiff] when and where the same should be required'. His failure to do so then led to Bennett's action for debt.[88]

Of course, these jurisdictional limitations referred to transactions and events within the town's limits, not necessarily to the residence of the parties involved.[89] In the period 1538–1610, for example, some 21% of litigants in the borough of Witney (Oxon) were outsiders, and 6% of actions had no apparent personal connection to the borough.[90] By contrast in the smaller Oxfordshire borough of New Woodstock later in the century, only 38% of litigants in the Portmoot were inhabitants of the borough; and 42% of actions concerned a plaintiff and defendant who were both outsiders. Only 21% of actions involved parties who were both inhabitants of the borough (roughly the inverse of the situation in Witney).[91] Indeed, some 7% of individual litigants had to come further than 10 miles to get to New Woodstock at all.[92] To put that figure in context, the average 'catchment area' of a borough court had a 12 mile radius, although the bulk of a court's clientele was obviously most likely to be found at the centre rather than the periphery of that area.[93]

One consequence of this high rate of 'outsider' litigation in towns, in conjunction with the continued vitality of admittedly small-scale civil litigation in manorial courts is that, as Craig Muldrew emphasises, it is wrong to consider towns as 'active commercial islands in

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[87] OHC BOR3/8/IV/BW/38/27. Elery's claimed sum looks suspiciously like one designed to fall within the court's jurisdictional limit, rather than being the actual cost of Hamlen's wrong.
[88] OHC BOR3/8/IV/BW/38/28.
[89] Champion, 'Litigation in the Boroughs', p. 203.
[90] *Calendar of the Court Books of the Borough of Witney 1538–1610*, ed. James L. Bolton and Marjorie Maslen (Oxfordshire Record Soc., 54, 1985), p. xxxviii.
[91] *Calendar of the Court Books of the Borough of New Woodstock 1588–1595* ed. Royston F. Taylor (Oxfordshire Record Soc., 63, 2002), p. xxiv.
[92] *Court Books of the Borough of New Woodstock*, p. xxx.
[93] Muldrew, *Economy of Obligation*, p. 211.

a slower more bucolic world of agrarian village life'.[94] The countryside had its own commercial life, leading to legal dealings of some complexity; some of which were ventilated in nearby town courts. The higher jurisdictional limit and coercive powers of borough courts were an important benefit to townsfolk in their credit dealings, as they 'could more easily sue over a very much broader range of transactions, which simply could not have been taken to rural institutions where the transaction took place.' Muldrew speculates that in rural areas 'it might have been more efficient to wait for neighbourly sanctions or arbitration to take effect, whereas in a town making a plaint was much easier.'[95] Quite simply, the physical proximity of townsfolk to their local borough court was an important commercial advantage.

As with Brooks' work on litigation in the central courts, Muldrew and other scholars have traced a similar pattern of expansion in the volume of borough court litigation over the course of the sixteenth and early seventeenth century, followed by a decline thereafter. In Shrewsbury in the 1540s, a population of 3,300 generated 853 new actions in the decade, rising to 2,047 actions in the 1580s for a population of 5,500.[96] In Great Yarmouth, 536 actions were generated by a population of 3,600 in the 1550s, rising to 1,141 for a population of 3,400 in the 1580s.[97] By contrast, in Witney, there were about 300 cases per decade between 1560 and the end of the century; a surprisingly small number given the

[94] Craig Muldrew, 'Rural Credit, Market Areas and Legal Institutions in the Countryside in England, 1550–1700', in C.W. Brooks and Michael Lobban, (eds.), *Communities and Courts: Proceedings of the Twelfth British Legal History Conference* (Hambledon, 1997), p. 156.
[95] Muldrew, 'Rural Credit', p. 175.
[96] Muldrew, *Economy of Obligation*, p. 231, drawing on Champion, 'Litigation in the Boroughs'.
[97] Muldrew, *Economy of Obligation*, p. 230, drawing on A.R. Michell, 'The Port and Town of Great Yarmouth and its Economic and Social Relationships with its Neighbours' (Cambridge Univ. Ph.D. thesis, 1978).

size of the town (c. 2000 people) and the high rates of contemporary civil litigation in other venues.[98]

Partly as a result of this increasing volume of litigation, over time civic legal institutions grew in sophistication and complexity. In Abingdon, the leet court and view of frankpledge had been held in the old market hall since at least the fourteenth century, but the modest hall was inadequate for the new borough, and in 1560 the town purchased from William Blacknall (who in turn had purchased from Crown) the former chapel and hospital of St John the Baptist, which was then converted into the 'new' Guildhall.[99] The royal charter of 1556 had passed the former manorial institutions into civic hands, along with a new court of record for debt claims, the latter being held before the bailiffs of the town rather than the mayor. The borough court of Witney (Oxon) was also held before the bailiffs and not the mayor, and a local effort to secure the attendance of ex-officers and local worthies was thought necessary to 'help reinforce the bailiffs' authority'.[100] In Abingdon, by contrast, the situation proved to be so unsatisfactory that in the charter of 1565 the court of record was transformed into an institution held before the mayor himself, with the same jurisdictional rights as accorded with the 'law and custom of our realm of England, or … the liberties, privileges and customs of our … City of London'.[101]

As we saw in Chapter 2, in both Abingdon and Witney an unusually high proportion of disputes between two people from the same town made their way into the Common Pleas, as compared with disputes between people from the same town elsewhere in the region. Certainly in the case of Abingdon, the unsatisfactory state of the court of record before

[98] *Court Books of the Borough of Witney*, p. xxxvi; Muldrew, 'Rural Credit', p. 168.
[99] Tittler, *Architecture and Power*, p. 89.
[100] *Court Books of the Borough of Witney*, p. xx.
[101] *Municipal Chronicles of the Borough of Abingdon*, pp. 18, 39–40.

1565—held as it was before subordinate officials of the town—may well be the explanation for that pattern. As the examples of Abingdon and Witney show, if local institutions were not up to the job, it is quite plausible that people sought a central venue for disputes that could have been heard locally if a more attractive venue were available.

Even in the absence of an upgraded grant of jurisdictional rights, those in charge of such civic institutions grew more adept at profiting from their office through an increasing range of fees charged for legal tasks. The Borough of Reading provides a good example. From 1557, the town steward was John Ockham, who as we saw in Chapter 2 was a noteworthy Common Pleas attorney.[102] He and his predecessors owed a basic obligation to 'to be present at every court' (either in person or by a sufficient deputy) and to 'see justice indifferently ministered to all persons'. In return, the steward was to be paid 40 shillings in two instalments, plus specified charges for particular services.

In 1552, there were eight such services:

- entering an action – 1d for locals; 2d for outsiders
- putting in of declarations in actions of 40d or over – 1d for locals; 2d for outsiders
- making a *distringas* – 1d for locals; 2d for outsiders
- making a levy – 4d
- appraising the value of goods and registering gages of 40d or over – 4d
- making a warrant of the peace – 4d
- making a recognisance – 20d
- registering the name of a burgess – 4d.[103]

By 1584, the effect of growing institutional sophistication in Reading on the range of fee-earning services can be clearly seen; as can the effect of inflation on the value of the fees (and the value of the underlying claims). Nineteen items were now listed:

[102] *Reading Records*, ed. J.M. Guilding (London, 1892), p. 253.
[103] BRO R/AZ 3/2 fols 3–4. Cf *Reading Records*, i, p. 224–8.

- entering an action upon the case or for a debt over 40s – 4d
- entering an action in debt under 40s – 2d for locals; 4d for outsiders
- filing a declaration that the damages are 40s or upwards, and for 'every other pleading' – 12d
- writs of execution – 4d or 12d, depending on type
- allowing a writ – 2s
- entering a *nihil dicit* – 10d
- entering verdict and judgment – 6d
- filing a declaration under 40s – 4d
- copying a plea under 40s – 4d per sheet
- copying a plea over 40s – 8d per sheet
- for an attachment, *venire facias* etc. – 4d
- entering the issue – 4d
- for a warrant of attorney – 4d
- for process *ad testificandum* – 4d
- for a *dies datus* – 2d
- for a ruling for the defendant to answer – 2d
- taking a jury by default – 6d
- for a *replegiare* – 2s 4d
- for a *non debet* – 4d or 12d, depending on type.[104]

This second, more complicated, list is roughly equivalent to the range of activities for which fees were charged in Abingdon from 1557.[105] It is difficult to determine, though, whether this indicates any greater precocity or sophistication on the part of the latter town.

Such fees should be put in context: 4d was the price of an orange or a pound of beef, and 1s was the equivalent of a day's wage for a skilled worker. *Initiating* litigation in local courts was therefore reasonably affordable, and was undertaken across the social spectrum. By contrast, the total cost of pursuing a suit to judgment (ranging from £1 10s to £3 in seventeenth-century King's Lynn) would have been beyond the reach of many.[106]

[104] BRO R/JB 1/1 fol 2.
[105] BRO D/EP7/84 fols 1–4.
[106] Muldrew, *Economy of Obligation*, p. 257. On wage fluctuation in the sixteenth century, see Keith Wrightson, *Earthly Necessities: Economic Lives in Early Modern Britain 1470–1750* (London, 2002), pp. 145–9.

The types of action brought in borough courts were roughly equivalent in kind and proportion to those in the central common law courts. In New Woodstock (Oxon) for example, between 1588 and 1595, 40% of actions in the Portmoot were for debt, 31% for trespass, and 6% for assumpsit.[107] In King's Lynn, some 85% of actions concerned credit (whether for sales, services rendered or work done): by 1592, 57% of all suits were debt actions, and 40% were actions on the case.[108]

To illustrate how these kinds of courts worked in practice, we will turn to the borough of Wallingford (Berks).[109] There, the work of the borough court (the Court of Pleas) encompassed a range of causes of action and a procedural style that would have been quite familiar to users of the common law courts at Westminster. Aside from its judicial function, the holding of the court was also an occasion for other symbolic displays of civic and legal authority. For example, at the Court of Pleas held on 31 July 1554, the alderman Ralph Pollington made a public presentation of 20 documents described as rare writings and charters, delivering them to his fellow alderman Robert Cockes, and declaring that they were to be held to the use of the town and to be kept in its great chest.[110]

Civil actions in Wallingford were commenced by an English-language paper bill—as was the case in Henley and many other boroughs.[111] The action then proceeded before a court comprised of the mayor and three aldermen, attended by a recorder, a chamberlain, two

[107] *Court Books of the Borough of New Woodstock*, p. xxii.
[108] Muldrew, *Economy of Obligation*, pp. 204, 208.
[109] On the procedure of borough courts more generally, see Muldrew, *Economy of Obligation*, pp. 205–9; Baker, *Oxford History of the Laws of England*, pp. 303–11.
[110] BRO W/JBC/27 fol 12r. On the symbolic authority of documents in the civic context, see Wood, *Memory of the People*, pp. 259–62.
[111] Baker, *Oxford History of the Laws of England*, p. 310.

bailiffs, two constables, and two serjeants at mace. These last two acted as the parties' attorneys in court, apparently having an exclusive right to do so.[112]

A number of paper bills survive, such as the one young Elizabeth Wyngate of Aston Tirrold (Berks) brought against Thomas Williamson, a shoemaker of Dorchester. Elizabeth appeared by her attorney John Donett, and claimed that Thomas breached his covenant and owed her 2s for a month's service along with 'a kirtle whole made as good as which she wore, a petticoat and double of all overwearing gear which belongeth a servant to have'. Through an intermediary—her 'kinsman and friend' George Pottes—Elizabeth demanded the payment of 2s and the delivery of the requisite clothing, but Thomas only offered payment of the 2s. George Pottes refused this and 'said he would not receive it without he might have all the whole covenant': in other words, delivery of the clothing as well. Thomas' refusal to uphold the whole bargain was 'against all right and good conscience to her cost and damage'. [113]

The functioning of the court can be illustrated by the tale of Richard Wintleton, Richard Cheyney and their lame horse. On 5 March 1554, Wintleton brought a plea of deceit in Wallingford against Cheyney, alleging that a few days beforehand on 1 March he bargained his white horse for a grey one offered by Cheyney. Wintleton made an examination of the white horse and saw that it had a packsaddle upon its back, and not thinking anything of it gave 2d 'in le earnest' with the remaining 6s to follow. Alas, contrary to the bargain, the grey horse was in fact injured and soon died, and the plaintiff had been led into the bargain by the defendant's deceit.[114] Thereafter followed the

[112] On urban attorneys generally, see Brooks, *Pettyfoggers and Vipers*, pp. 41–3.
[113] BRO W/JBC/34.
[114] This was the standard form of pleading for breach of warranty.

obligatory statement that this all took place at Wallingford, within the jurisdiction of the court.[115] Like most litigants in Wallingford, Wintleton appeared in court by his attorney, Thomas Herbert, one of the two serjeants at mace.[116]

In the same session of the court, the defendant Richard Cheyney commenced an action of his own against Wintleton in debt, apparently for the unpaid purchase price. At the next court, held on 11 March, the two men entered appearances as defendant in the other's suit.[117] They each appeared again on 19 March, and on 2 April Cheyney was assigned the court date on which he would wage law. Thus, on 14 May, Cheyney came into court to wage law by himself and two hands (i.e. two other people willing to swear oaths on his behalf) against Wintleton on his plea of deceit.[118] Here, then, was a classic illustration of the continued use of compurgation in borough courts even as jury trial gradually came to supplant it in royal courts.[119]

It is not clear how that particular wager of law turned out: other wagers left a more emphatic impression, at least as can be deduced from the surviving records. In November 1553, for example, we read that:

> This day cometh William Reading into the court with three hands and himself, that is to say Thomas Broadkirk, William Hawthorne and Michael Woodward, and there deposeth by their oaths that the said William Reading oweth no part nor parcel of debt unto John Bryan more than he hath already paid before Master Purden then mayor and all his brethren as appeareth in the court rolls.[120]

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[115] BRO W/JBC/27 fol 10v.
[116] Parties occasionally appeared 'in propria persona', as did Thomas Benner when he responded to a plea brought against him in 1530 for a 20s debt: BRO W/JBC/32.
[117] BRO W/JBC/27 fol 9v
[118] BRO W/JBC/27 fols 8v, 7r, 7v, 6r.
[119] Holdsworth, *History of English Law*, ii, p. 389; Baker, *Oxford History of the Laws of England*, pp. 835–7. Indeed, compurgation would not have been available to Cheyney had the claim been heard at common law.
[120] BRO W/JBC/27 fol 19r.

Perhaps Wintleton's story about the lame horse was believed, for on 28 May 1554 Cheyney commenced his own action in deceit against Wintleton, appearing by the attorney William Broadsheaf (the other serjeant at mace). In that suit, Cheyney alleged that Wintleton had substituted the lame horse for the original grey horse, to the deception of the plaintiff and the loss of his own horse worth 40s.[121] About a month later, on 25 June Wintleton appeared in response to Cheyney's suit.[122] The parties appear again on 23 July, 6 August and 23 September, at which point the record ends.[123]

If indeed the case proceeded no further, it would be typical of litigation in Wallingford. As in the Court of Common Pleas itself, most litigation in Wallingford and other boroughs concerned debt, most was concluded by a negotiated settlement, and it was exceptionally rare for a Wallingford case to proceed to judgment. In King's Lynn, for example, only 4% of plaints in Muldrew's sample ever reached judgment.[124]

Most civic officers lacked legal training, and when sitting on the bench the extent to which they acted on their own initiative in legal matters is unclear. It may be that they acted more commonly as arbitrators rather than as judges.[125] In Wallingford at least, the civic officers seemed to draw a distinction between these two roles, and a substantial number of cases were explicitly referred to arbitral, rather than judicial, resolution. In September 1553, for example, Edward Tyler and Robert Dolynson sought the arbitration of Ralph Pollington,

[121] BRO W/JBC/27 fol 5r.
[122] BRO W/JBC/27 fol 4r.
[123] BRO W/JBC/27 fols 3r, 2r, 1r.
[124] Muldrew, *Economy of Obligation*, p. 255.
[125] Cf Baker, *Oxford History of the Laws of England*, p. 307.

John a Deane and Robert Cockson (the two alderman and the mayor, respectively).[126] A month later, William Cutler and Thomas Pope agreed to the arbitration of the aldermen John Purden and John a Deane concerning a disputed sale of wheat, so that there should be 'amity and peace between the parties'.[127] The result of such an arbitration could also be inscribed in the records of the court, as occurred in November that year when it was 'agreed' (not adjudged) in court 'that John Matthew, weaver, shall pay unto Agnes Wrigglesworth the sum of 23s at certain days' by instalments.[128] By way of comparison, in New Woodstock (Oxon), it seems that about 3% of actions ended in arbitration or a compounded settlement of this kind.[129]

As we have seen, the various forms of regulatory prohibition on litigation outside the borough were motivated by a mixture of pragmatic fiscal rent-seeking and communitarian idealism. However, the realities of operating a busy borough court with its endless stream of commercial debt litigation tended to emphasise pragmatism over the ideal of community harmony. As Muldrew observes, the mediaeval ideal of community as a 'positive expression of social unity' gradually gave way over the early modern period:

> in a world of such a large number of continually conflicting desires … [i]ncreasingly, the preservation of these [civic] virtues came to be seen to depend on the coercive presence of the authority of the civil law.[130]

[126] BRO W/JBC/27 fol 22r.
[127] BRO W/JBC/27 fol 20r.
[128] BRO W/JBC/27 fol 19r.
[129] *Court Books of the Borough of New Woodstock*, p. xxiii.
[130] Muldrew, *Economy of Obligation*, p. 203.

**Jurisdictional ambiguity – disputing the right to hold court**

The ability to harness the 'coercive presence' and 'authority' of the civil law was a powerful motivator in many political disputes in mid-Tudor England. Obviously, few jurisdictional disputes were manifested so floridly as the one in which Frideswide Taylor was an unwilling participant, but the basic question about how far a given institution's authority stretched arose very frequently. Ordinary people could frequently be caught up in the disputes of others. Did one, or did one not, owe homage to a particuar manorial court? Had the disputed transaction taken place within the territorial limits of a particular borough? Whose coroners had the authority to conduct an inquest? In each such situation, one had to act with great care. By appearing before the given court, one appeared to give credence to its jurisdictional authority; and if one failed to appear, one might be giving ammunition to a powerful political opponent.

While jurisdictional disputes could occur between parties with separate institutional claims (e.g. the City of Oxford against the University; or the City against the tenants of Walton and Wolvercote), they could also occur when opponents sought control of the same institution. This could be particularly delicate in the case of manorial institutions, where rival claimants to the same manor might use the evocative power of court-holding to establish their control of the territory in dispute. This was particularly true in the wake of the Dissolution, when a number of cases arose in which the precise nature of the purchaser's jurisdictional rights was in dispute. If someone claimed to own a manor, the keeping of manorial courts on the land was a powerful substantiation of their rights. Precisely because of these jurisdictional rights, to be a lord of a manor was, as Christine

Carpenter observes, to be marked out both as a landowner and as a 'carrier of royal power, on however small a scale'.[131]

One dispute of that kind entangled Edmund Ashfield, the Oxfordshire gentleman whom we encountered briefly in the previous chapter. The confusion arose because there were *two* adjoining manors of Dorchester: one originally held by the bishop of Lincoln and later subject to Luke Beauforest's frauds; and another smaller one held by the abbot of Dorchester.[132] The dispute came to a head over the harvesting of crops allegedly belonging to the parsonage of Drayton St Leonards, which was owned by Ashfield's opponent, Christ Church in Oxford, which resisted Ashfield's claims on the basis that the second manor of Dorchester did not exist. The crucial issue was whether the manor existed at all, and the main evidence in support of that was the holding of manorial courts upon the land in question. William Cherrill deposed that 'he thinketh the said land purchased … by the said Edmund to be a manor, for he hath known courts kept upon the same by the Abbot's time and sithens'. Richard Thomson likewise testified that 'the land that the said Edmund hath purchased of the King in Dorchester is a manor for he saith he hath known courts … both in the Abbot's time and sithens upon the same land'.[133]

A more unusual example of the demonstrative power of court-keeping occurred in 1557, when the Marian restoration of monasticism came up against the economic interests of local landed elites.[134] Richard Taverner sued the recently-restored abbot of Westminster

[131] Carpenter, *Locality and Polity,* p. 43.
[132] VCH Oxon, vol 7, pp. 39–64.
[133] Req 2/17/88.
[134] On the restoration of religious houses under Mary, see Charles Knighton, 'Westminster Abbey Restored' in Eamon Duffy and David Loades (eds.), *The Church of Mary Tudor* (Aldershot, 2006), pp. 77–123.

for a trespass on land at Islip (Oxon) that occurred in May the previous year.[135] The manor of Islip was formerly owned by Westminster Abbey, and Taverner was a notable acquirer of ex-monastic land at the Dissolution, so it is hardly surprising that the re-establishment of the abbey led to local tension.[136] The noteworthy fact that sets this trespass case apart from countless others is the identity of the defendants: while we would expect to see the abbot and two fellow monks named, the giveaway of the true nature of the case is the appearance of 'John Baughe of the Town of Westminster in the county of Middlesex, courtkeeper', along with two 'gentlemen' from Westminster, most likely lawyers. Evidently, the entry that gave rise to the trespass was for the purpose of holding a manorial court on the land—and it was to this assertion of jurisdiction, rather than the loss of grass worth 40s, that Taverner objected.

In the Islip case, the court-keeper was one of a number of defendants, but it was also possible to proceed against a wrongful court-keeper individually. This occurred in 1564 in the manor of Blackthorn, near Bicester (Oxon). The manor had been in royal hands after the Dissolution until its grant to John Denton in 1564.[137] The royal steward was none other than Leonard Parrett—of Dorchester fame—again sitting as deputy for his brother John. As at Dorchester, Parrett's services were no longer desired once the manor entered private hands, yet it seems that for a time Parrett continued to exercise his functions as steward. This led to a suit in Chancery as Denton sought to recover both manorial documents and the fines and perquisites to which he (as lord) was entitled. Parrett, Denton alleged,

> entered into the said manor and kept a court and made diverse and sundry estates by copy of court roll unto diverse of the tenants of the said manor, and left diverse

[135] CP40/1171 m 814.
[136] Harvey, *Westminster Abbey and its Estates*, p. 279; L & P Hen VIII, vol 20 pt 2 p 215 no 496(7) (grant of land formerly belonging to Dorchester Abbey).
[137] VCH Oxon, vol 5, pp. 15–30.

> sums of money for and in consideration of their fines for the same … by which sinister and indirect means, practice and dealing your said orator hath not only been greatly hindered for the loss of the said fines which were due unto him … but is like to be disherited of his said customs to his great loss and hindrance…[138]

Aside from the alleged detention of manorial documents, the most damaging allegation was that Parrett antedated grants of copyhold, thereby depriving Denton of the entry fine. In his defence, Parrett alleged that he did nothing inconsistent with the royal grant to Denton, and if there had been any carelessness with the dating of grants of copyhold, 'the same was done by ignorance and not wittingly or by any … sinister and indirect means'. His detention of manorial documents also had an apparently honourable explanation, which seems to fit with Parrett's role as the preserver of authentic customary norms at Dorchester:

> the said defendant forasmuch as he understandeth that [Denton] doth mind to infringe the customs and copies of the said manor, and he being requested therefore by the tenants to write onto the said court rolls and keep copies thereof for the preservation of their interests, he will copy out the same and after immediately deliver the same to this honourable court, and as to the copies aforesaid he received them of the tenants, and they do concern the estate and interest of diverse the said copyholders there for the preservation of their inheritance and copies forasmuch as [Denton] doth seek rather to infringe the interest of the said customary tenants and the said copyhold custom …

Denton, said Parrett, 'doth slander him' about his court-keeping and the copying of court rolls 'in sinister wise' but, to the contrary, Parrett's only interest was

> the help of the tenants for the preservation of their interest to copy out the rolls aforesaid, and also to keep the said copies at the special request of the tenants of the said manor for the intent and purpose aforesaid and for no other …

Parrett's actions point in perhaps slightly an anachronistic way to the political importance of the steward on crown estates. As Carpenter observes of the fifteenth century, the holder

[138] C3/53/60.

of the stewardship of a royal manor was in a position to use its manpower 'whether on his own or the king's behalf'; a powerful position indeed in an era in which the 'public governmental authority of the king was based on private force which he himself did not directly control'.[139] A century later, such a stewardship was perhaps more 'a minor form of patronage' conveying local prestige and functioning a 'point of contact' between crown and locality.[140] Even so, in the absence of a resident landlord, the steward of a crown estate could become totemic either (or both) as a local leader and rallying-point, or conversely as a hate-figure and target for grievances that could not be expressed against the royal landlord directly. In Dorchester and Blackthorn, Leonard Parrett seems uncomfortably to have straddled both roles.

Thus far, we have focussed on the positions of lords and court-keepers, but if indeed there were multiple claimants to the right to hold a given court, ordinary people living within the jurisdiction could find themselves in an invidious position. It is little wonder, then, that people sought legal advice about their rights, particularly when their collective interests were at risk. Almost none of that advice survives, but one particularly sophisticated and evocative example can be found concerning the manor of Wargrave (Berks). A dispute arose after the death of the lord of the manor, Sir Henry Neville, in 1593. Neville's widow Elizabeth claimed the manor as her jointure, but his son (also called Henry) claimed the manor by descent. This led to a suit in Chancery,[141] but the tenants of the manor were faced with a more immediate problem: of the two rival lords of the manor, whose lawday should they attend, and to whom should they do homage? It was on these questions that

[139] Carpenter, *Wars of the Roses*, p. 35.
[140] Thomas, 'Elizabethan Crown Lands', p. 78; Richard Hoyle, 'Introduction: Aspects of the Crown's Estate c. 1558–1640' in R.W. Hoyle (ed.), *The Estates of the English Crown, 1558–1640* (Cambridge, 1992), p. 1. On the situation of seigneurial judges in France, see Garnot, *Histoire de la justice*, pp. 196–7.
[141] C3/246/6.

they sought legal advice. The answer they received is sufficiently interesting—and sufficiently rare a survival—to merit reproduction in its entirety:[142]

> Copyholders of Wargrave commanded of late to be at Law Day upon Friday next and to bring in your copies and rents, see to three things:
>
> 1 – First, that you inform yourselves who caused that court to be warned.
>
> 2 – Secondly, that you do not your service to that person who hath no right for it.
>
> 3 – Thirdly and chiefly that you look to the keeping of your ancient customs and allow not the least breach thereof, for the pulling down of one pale may let out all the deer of your park.
>
> If Mr Neville called the court, you know it is famous that his father's wife hath her jointure of Wargrave and so may you be deceived by him.
>
> If she (his mother in law) warned it you know that his descent and estate by the law is far more evident than her conveyance. Therefore it behoveth you to be well resolved of the state of her title by good advice, for if the court be not soundly passed to her you by doing your service thereto may overthrow your whole estates.
>
> If upon this or the like commandment you bring in your copies, you are more than mad for they are all the evidence you have of your livings, and what know you will become of the court rolls or your copies when they be out of your fingers; and was there ever any such commandment before in that manor within any of your memories?
>
> Even so standeth the case for your rents, for although this be the time for the payment of them yet there ever hath been and by the custom ought to be a reeve or collector who ought reasonably to demand and gather each man's rent, and no tenant is to be forced to pay his rent (in that manor anywhere but at in or upon his hold and that to the reeve or collector orderly requiring the same).
>
> Seeing therefore this unjust measure of commanding you to bring in your copies and rent is offered you at this beginning look the better to yourselves lest you repent at leisure and too late.
>
> In reason and equity each of them (Master Neville or his mother in law keeping this court) ought either to give you respite to be satisfied touching the lawfulness or insufficiency of their power to hold this court or else to resolve you therein presently by such means as you know you may least unto if they will not so do you have just cause to suspect some ill meaning towards you.[143]

[142] On the rarity of surviving evidence of lawyers' advice, see Baker, *Law's Two Bodies*, pp. 69–70, 89.
[143] BRO D/EN/M9.

We will return to some of the mechanics of collective litigation and advice-seeking in the next chapter, but a few points are of immediate importance. First, as we saw in the last chapter, tenants had a fundamental interest in preserving the integrity of their customary rights (the 'deer' of the tenants' 'park'), but given the complex legal circumstances in which ostensibly unsophisticated people found themselves this could be very difficult. Second, the lawday (or other exercise of jurisdictional rights) was a potential flashpoint in political disputes in which the tenants were not themselves the protagonists. The holding of a court could oblige ordinary people to 'take sides', as it were, whether as homagers, jurors, litigants or mere spectators. Third, the 'lawfulness or insufficiency' of the protagonists' 'power' was not a mere abstraction, but had physical manifestations within a geographically defined space. Activities such as warning the court, gathering rents, and handling copies of court rolls were richly demonstrative of the lord's putative authority, and from the point of view of the tenants, each was illegitimate, even dangerous, if done by the wrong hands.[144] Finally, notwithstanding the situations of legal and political delicacy in which they could find themselves, tenants could expect no great privacy in the advice they received. In the case of Wargrave, we know of the advice only because a copy found its way into the hands of one or other of the Nevilles, who preserved it in the family estate papers.

**Territorial ambiguity – knowing where to draw the line**

Even if it were perfectly clear who was entitled to exercise a given jurisdiction, it might still be unclear whether one fell within its territorial limits or not. In France, too, there were

[144] On the symbolic power of such actions as 'customary proofs', see Wickham, *Courts and Conflict*, p. 284.

multiple overlapping jurisdictions, and the territorial boundaries of those jurisdictions could be vague and uncertain. However, as Guenée points out, it was rarely a mere geographical uncertainty—as opposed to a more substantial point of legal or political friction—that gave rise to disputes.[145] The same was true in England, where Hindle observes that it is 'at the margins where communities are most regularly tested and new social identities most intensively forged.'[146]

In the case of Frideswide Taylor, we saw that these territorial disputes about jurisdiction could be very physical indeed, but this need not always have been so. In the case of more individualised disputes about the exercise of jurisdictional rights—and especially those involving legally sophisticated parties—sometimes communication between lawyers could attempt to avoid a public confrontation at the lawday itself. This occurred in 1572, when the attorney Robert Ockham of New Windsor wrote on behalf of a client to Walter Davis, the understeward of the royal manors of Cookham and Bray (Berks). Ockham's client objected to being summoned to the lawday at Bray, where he was not resident

> for that he doth his Suit Royal as a resident at the lawday holden at Shottesbrooke as aforesaid and for that he is not to be charged to one suit as a resident at two places. These therefore are to advertise you that you will cease any further to trouble him to do his suit as a resident of Bray lawday because he is not to be called to the same lawday, and further desiring you to show unto him [such] lawful friendship in this behalf as in the like you shall not fail to have me to show you the like pleasure, as knoweth God to whom I commit you.[147]

While the name of Ockham's client unfortunately does not survive, we can infer that he was someone of considerable wealth and sophistication, given his property-holding in

[145] Guenée, *Tribunaux et gens de justice*, pp. 73–7.
[146] Hindle, 'Beating the Bounds', p. 225.
[147] BRO D/ESk/M185A/10. A tear to the letter has removed the client's name. On Ockham, see Baker, *Men of Court*, ii, p. 1173. A defamation uttered against Ockham was mentioned in Chapter 2.

multiple locations, and his engagement of a prominent and successful attorney as his representative.

Writing of fifteenth century Warwickshire, Christine Carpenter notes a pervasive 'tension between administrative, political and tenurial boundaries' in what was even by the standards of the time a 'peculiarly fragmented county'.[148] A century later, Oxfordshire and Berkshire may not have been particularly fragmented, and 'tension' might be too strong a word to describe the interaction of these social and political boundaries, but the physical and mental landscape of the region was nonetheless inscribed with a complex pattern of overlapping landholdings, jurisdictional rights and areas of political influence.[149] As Hindle points out, communal identity—and one might add, civic identity—was 'invariably forged in opposition to the perceived interests of strangers and outsiders.'[150] Moreover, as we have seen, it was very often *legal* boundaries that most closely defined who counted as a stranger or an outsider.

It is here that we start to see the connection between customary law discussed in the last chapter and the ideas about jurisdiction, boundary-drawing and institutional self-definition now under discussion. In a culture that was itself a complex admixture of oral and literate elements, legal claims could depend partly on written and partly on unwritten sources of authority. It was therefore beneficial to substantiate such claims through tangible and public demonstration, especially given the rarity of authoritative local maps. Indeed, it

[148] Carpenter, *Locality and Polity,* p. 10.
[149] Tension over boundaries between neighbouring communities was by no means a uniquely English phenomenon: see Muchembled, *La violence au village*, p. 101; Mousnier, *Les institutions de la France*, pp. 821–5.
[150] Hindle, 'Beating the Bounds', p. 221.

seems that the Frideswide Taylor boundary dispute was the impetus for the City of Oxford to spend 5s in 1556–7 'for making the map of the whole franchise'.[151]

Even if such maps were available, rituals to confirm and maintain the existence of customary law were particularly important, whether in the form of beating the bounds of the parish, perambulating the manor, or confirming the bounds of the common field.[152] In the civic context, this could take on a particularly institutionalised form. For example, Abingdon's charter of 1556 set out the boundaries of the borough and declared that it was lawful for the mayor and civic officers 'to make perambulation … thereof for the true and better knowledge thereof to be had as often as it shall please them'.[153] An ordinance of 1559 provided for perambulations to be held every three years at a time chosen by the mayor, 'calling thereto all the burgesses and freemen of the borough', and imposing fines for non-attendance without licence of 3s 4d for the principal burgesses, 20d for secondary burgesses, and 12d for freemen.[154] By 1562, however, the fine had risen to 3s 4d for all concerned, which might betoken an increased emphasis on the importance of the perambulation, perhaps as a response to past laxity in attendance.[155]

People's experience of the landscape as a physical space was, as Nicola Whyte sees it, indivisible from the way that space demarcated local social and economic relations. Put another way, a network of physical markers—both natural and constructed—was integrated into a 'material landscape of jurisdiction and right.'[156] This is hardly surprising: Andy Woods' work on the miners of the Peak District is eloquent testimony to the fact that

[151] *Records of the City of Oxford*, p. 267.
[152] Fox, *Oral and Literate Culture*, p. 268; Hindle, 'Beating the Bounds', p. 216–21.
[153] *Municipal Chronicles of the Borough of Abingdon*, p. 4.
[154] *Municipal Chronicles of the Borough of Abingdon*, p. 123.
[155] *Municipal Chronicles of the Borough of Abingdon*, p. 125.
[156] Whyte, *Inhabiting the Landscape*, p. 2.

even modest people had a sophisticated awareness of spatial and symbolic authority, with legal spaces 'defin[ing] the public authority of custom within the physical landscape of [the] town'.[157] As with the miners of the Peak country, the inhabitants of Wolvercote and Walton, for example, were highly attuned to changes in their local landscape to the north of Oxford. They too had a 'sensitivity to changes in landscape and land use' that suggests 'how deeply enmeshed were senses of local law within the material environment.'[158]

**Conclusion**

This chapter has charted a number of pathways through which the symbolic and ostensive aspects of legal authority can be traced in the urban context. A rioter tramples the civic mace of Oxford under foot; an alderman of Wallingford makes a public deposit of ancient documents into the town chest; a borough enacts sterner penalties to enforce the perambulation of its boundaries; a lawyer makes discreet representations on behalf of a client seeking to avoid the clutches of a neighbouring court—each of these gestures point toward the territorial limits of legal authority.

Delineations of this kind (whether symbolic or literal) mattered because boundaries mattered; and boundaries mattered because jurisdiction (in the sense of authority to decide) mattered; and jurisdiction mattered because political authority was constantly channelled through legal forms. In this way, the dense network of physical and mental boundaries strewn across the local landscape reflected the complex interplay of different forms—and different experiences—of political authority in early modern England.

[157] Wood, *Politics of Social Conflict*, pp. 170–1.
[158] Wood, *Politics of Social Conflict*, p. 135.

If, as was argued in the last chapter, people in mid-Tudor England may have known less about the technical detail of the law than we might like to believe, they indisputably lived in a world that was characterised by the omnipresence of legal institutions, and hence the omnipresence of legal boundaries. Knowing where to draw the line was thus of crucial practical and political importance.

# CHAPTER 5

## WORKING WITH THE LEGAL PROFESSION: RICHARD POLKYNS' UNQUIET TITLE

Richard Polkyns was a poor husbandman of Cuddesdon (Oxon) who leased a messuage and two yardlands in the adjoining hamlet of Denton. One version of the story he told goes like this. Polkyns leased the lands from Queen's College Oxford for 20 years without disturbance until some time in 1550, when John Doyley—the Oxfordshire JP we have previously encountered—wrongfully entered the land and impounded Polkyns' cattle. Polkyns then commenced suit for 'two or three replevins' (to free the distrained cattle) and 'sundry several actions in the Hundred Court' which were removed to the Common Pleas by the writ of *accedas ad curiam*. Doyley did not appear in that action, and 'of his perverse mind' continued to detain Polkyns' cattle and harvested his corn and hay 'by strong hands', which would be the 'utter undoing of [Polkyns] for ever, being a very poor man'. Thus, Polkyns sought an injunction in the Court of Chancery against Doyley pending the outcome of a trial in the Common Pleas or in the Star Chamber where Polkyns had also 'exhibited his plaint for outrageous acts' by Doyley.[1]

That later 'plaint' did not quite tell the same story. This version of the tale goes as follows: Polkyns and his father before him held the land in Denton of one William Dunche, clerk, 'for term of one year and so from year to year', until Doyley ('a man of great standing and power in the said county') came with two henchmen to seize Polkyns' cow. Allegations of violence in Star Chamber complaints were often pretextual, but Polkyns' claim was tenuous in the extreme: Polkyns, 'being a simple man', was put 'in very great fear of

[1] C1/1256/41. Cf QCA 4M 16.

beating and maiming that albeit he did see [Doyley and his men] yet he durst not approach unto them'. Doyley was then alleged to have uttered 'many menacing words' threatening to distrain other cattle in future, leaving Polkyns 'in great fear' of Doyley and his 'perverse and froward mind'.[2]

Meanwhile, John Doyley had not been idle in enforcing his own rights, and another layer of the story can be discerned in the records of the Common Pleas. In Hilary Term 1551, Doyley brought two suits against Polkyns: the first for trespass upon Doyley's land at Denton and the taking of grass to the value of 100s; and the second for a debt of 66s 8d, which looks suspiciously like a claim for unpaid rent.[3]

Clearly, something rather complicated was going on. Who was this poor husbandman who was able to support a welter of litigation against one of the wealthiest men in Oxfordshire? Why did Polkyns' opponent care so much about so small a tenancy? And why was it Polkyns, and not his landlord, that took the leading role? The answers can be found in the archives of Polkyns' landlord, Queen's College. These documents reveal a much more complicated story about the risks and rewards of working with the legal profession. In the course of a long litigious dispute, the land in question found its way into the successive hands of not one but two entrepreneurial lawyers. Indeed, the length and cost of the dispute was in no small part due to the ambiguous role they played.

This chapter explores the experience of working with the legal profession in mid-Tudor England. After putting the Denton dispute into context, it addresses the cost of legal services by looking at the legal expenses of two kinds of client: the colleges of the

[2] STAC 3/6/2.
[3] CP40/1146 m 177v. Cf QCA 4M 7, 10.

University of Oxford, and the boroughs of the Thames Valley. It then addresses the actual cost of lawsuits and the creative ways these might be funded (especially collectively). Next, it turns to the working patterns of early modern lawyers: dealing with written evidence; assessing witnesses and their credibility; drafting documents; and engaging in arbitration, negotiation and settlement. Lest it be thought that this gives too rosy a picture of the legal profession or the legal system more generally, the chapter closes with a discussion of corruption and other negative experiences of the law.

**The dispute at Denton**

To make sense of the story at Denton, we need to go back a generation before the disputes between Polkyns and Doyley. Some time around 1515, the land in Denton was in dispute between one Thomas Welles and one John Welles. Thomas Welles made an agreement with his barrister Thomas Everard 'then being learned in the law', that Everard should be granted (and pay for) a life estate in the lands and 'should also defend the title of the said Thomas Welles against the said John Welles'. Everard, contrary to the agreement, sold the land to John Pantre (then Provost of Queen's College), who in turn 'by the sinister labour made to him by one John Polkyns' sold the land to John Doyley, to the disherison of Alice Ford and her sister Joan Buck, who were the daughters of Thomas Welles.[4]

Untangling the various strands of the dispute is far from easy, but in essence there were two major complaints, each focussed on the two lawyers in question—Everard and Doyley. The first turned on nature of the transaction between Welles and Everard. Was it a

[4] QCA 4M 2a; 4M 2b.

mortgage? An outright sale? Some more temporary arrangement? According to Welles' heirs, Everard never obtained good title, and was therefore in no position to give title to those who claimed under him. They were remarkably persistent in asserting this claim against each of John Pantre, William Pantre (John's heir), John Doyley (the Pantres' lawyer, to whom they allegedly transferred the land) William Denison (also a Provost of Queen's College, who claimed under a rival transfer from John Pantre), and against Queen's College itself.

The second complaint was, if anything, more complex. What was the nature of Doyley's right to the land? As with the Everard transaction, there was a legal ambiguity about what was intended; an ambiguity that was exacerbated by the rival arguments in the four-way tussle over the land between Doyley, William Denison (and through him, Queen's College), the heirs of John Pantre, and the heirs of Thomas Welles.

The nature of the transaction between Thomas Welles and Everard was addressed by deponents in a 1541 Chancery suit. The lawyer Everard was granted an interest in the land as security for payment of his fees, and also, it seems, to place a more fearsome adversary in the way of John Welles' suit—a technique reminiscent of that fraudulently used by Luke Beauforest in the dispute concerning his mother Alice and Roger Hatchman. Henry Higgins of Cuddesdon deposed that two years before his death, Thomas Welles granted the land to Everard 'then being his kinsman and learned in the law, only to bear out the suit of the law and to defend his right and title against the said John Welles'. John White of Sutton Courtenay said that Thomas Welles granted a life estate in the land to Everard 'to bear the charges of the suit in the law against John Welles', and for which Everard 'did content and pay to the hands of this said deponent then being servant to the said Thomas

Welles six pounds sterling'. In another deposition given on the heirs' behalf, John Myston of Blechingdon (Oxon) deposed that he was formerly Thomas Everard's servant, and that his master

> had the keeping of Thomas Welles' evidences before he sold the land, and was of Thomas Welles' counsel in the law, and this deponent did bear Thomas Welles' evidences into his master's chamber by his master's commandment

including one piece of which Everard's wife later remarked that 'when that her husband was dead and after the land was sold, that she had one piece of evidence that would do Thomas Welles' heirs good'.[5] In other words, according to the heirs the parties intended the grant of a security interest, not an outright transfer.

It seems that this evidence was not believed by the court, and other witnesses testified that Everard obtained possession otherwise than as a security interest. The matter came back before the Court of Chancery in 1543 in a suit between the heirs of Thomas Welles and William Pantre (John Pantre's heir). Depositions were taken at Wheatley before none other than John Doyley—apparently not yet personally involved in the dispute—and his fellow justice John Vachell. It was there that Richard Polkyns gave the description of the taking of possession mentioned in Chapter 3: 'Cousin Thomas Everard, here I deliver you possession of this house and lands, for you and your heirs forever'.[6] The purpose of this testimony was, of course, to undermine the claim of Welles' heirs and to substantiate the claim of those who (like the Pantres and Polkyns himself) derived their title from Everard.

Whether it was true or not, Polkyns' description of the possession-taking would not readily distinguish the grant of a mortgage (or indeed an enfeoffment to use) from an outright

[5] QCA 4M 2c.
[6] QCA 4M 2e.

transfer. Welles' heirs continued to assert that only a mortgage was intended, and William Symes of Cuddesdon (aged 32), Thomas Crock and John Bayle all said that

> one Helen Bayle said in their hearing that one Thomas Welles came to her about 28 years past or thereabouts and borrowed upon a piece of plate of silver 40s of the said Helen, saying that he had laid his land to mortgage, and at the 2 years' end he paid her 40s again, saying to her that he had put his lands to his cousin Thomas Everard whom he trusted well, she bade him beware for her husband was beguiled so once; he said he did not mistrust Everard.[7]

William Symes must have been four years old at the time, so we might doubt how much he really understood about the law of mortgages. However, this was by no means the weakest evidence in the case. If Welles' heirs were to be believed, in order to substantiate Pantre's claim to the land, at least some witnesses on his behalf perjured themselves in the earlier proceedings. William Somes heard his father Robert 'say diverse times afore the death of Pantre the Provost that he would not say so much in the matter depending between Pantre and Ford but that he was hired thereunto'; and Robert Poctir likewise deposed that the elder Somes told him 'in his house and shop in Cuddesdon that he the said Robert Somes was hired with money to say with Pantre for the matter in variance for land lying in Denton'.[8]

In light of the evidence of William Somes (and Robert Poctir) about his father's deceit, one can imagine that the examining justices would have been very interested to hear what the old man had to say. They found the 74-year-old Robert Somes 'lying bedrid' but 'of perfect remembrance', and had him 'first secretly examined by Sir Thomas Wilcox curate of Cuddesdon for the discharge of [his] conscience'. The elder Somes 'afterwards …

[7] QCA 4M 2e.
[8] QCA 4M 2e.

openly swore upon a book' before the justices, and insisted that what 'he hath before said is true', and that

> he will live and die in that opinion, and that he hath said so diverse and sundry times before the most part of the parish, and that he was never hired so to say, although that some hath reported that he was hired and waged, and saith that no man can prove that he ever received 1d or pennyworth to say with any man in this matter, but he saith he hath many enemies and many would see him hanged for saying the truth.[9]

Given that it was Somes' own son who accused him of perjury, this was an explosive revelation even by the trenchant standards of intra-familial litigation in Tudor England. The justices took care to record the witnesses to this extraordinary statement:

> William Somes being son to the said Robert Somes, accusing his father of perjury, he [was] brought before his father which did deny the saying that he had reported, these men before rehearsed being present for true certificate of the same hereto they set their hands …

Eight men signed, including Doyley and the curate who heard the elder Somes' confession.

In parallel with the heirs' suit against Pantre, there was a related action by them against William Denison, then Provost of Queen's, who claimed the land ought to have come to him by Pantre's will. This led to the issue of a Chancery commission in 1542. The commissioners, John Pollard, Robert Morwen and William Frye, found that the facts lay in Denison's favour.[10] Then, in November 1543, the Privy Council, sitting at St Albans, made an order in favour of William Pantre against the 'pretended title' of the heirs.[11]

[9] QCA 4M 2e.
[10] QCA 4M 4a, b.
[11] QCA 4M 3.

How then did John Doyley get involved in this sorry dispute? Doyley claimed his interest pursuant to an indenture of bargain and sale of the land made between himself and John Pantre on 20 October 1538 at Chiselhampton (Oxon). In a Chancery suit against Doyley in 1552, William Denison claimed that the conveyance was in fact made 'upon an especial trust and confidence' because Doyly had had 'a great part of his education' under John Pantre at the college, upon condition that Doyly reconvey the property to Pantre or his heirs upon their request.[12] John Pantre was said to have entered into a bond to that effect, yet 'by a coven and craft between' Doyley and William Pantre (said to be 'a very poor man'), Doyley ended up with the land outright when in a collusive action in the Common Pleas in 1551 William Pantre confessed Doyley's action, thereby binding his fellow executors and negating Denison's claim to have been bequeathed the land.[13]

In his defence to that suit, Doyley denied being enfeoffed to any use, and asserted that the 1538 transaction was an outright sale. He asserted that Denison only claimed to be entitled to the land 'by colour of a deed of enfeoffment' made to him several years after Pantre's death (purportedly made by Pantre's sisters and heirs), but nothing passed by that enfeoffment because the land had previously been sold to Doyley. So far as the action in the Common Pleas was concerned, William Pantre

> upon just cause, having no sufficient matter to minister to the said John Doyley in bar confessed the action… to be true as well and lawful it was for him to do, whereupon [Doyley] had his lawful judgment to record accordingly…[14]

Denison's interrogatories help to flesh out the nature of his complaint against Doyley. During John Pantre's life, the heirs 'did pretend title to the premises and trouble [him] for

[12] QCA 4M 23a.
[13] QCA 4M 17.
[14] QCA 4M 23b.

the same', and Pantre 'being an aged man only for his own quietness and to avoid trouble' bargained and sold the land to Doyley 'then being a student in Gray's Inn in London'.[15] He did this because Doyley was 'before that time been much brought up in discipline and learning under … Pantre in the same college'; and Pantre made bargain and sale upon trust 'to the intent that sithens the said Doyley was towards the law that [the heirs] should the rather surrender and give over [their] pretensed title to the premises.' Doyley entered into a bond to reconvey the land once the heirs' suit was defeated, but then 'did make especial labour' to have the executor William Pantre cancel the bond in a collusive suit.[16] Here, then, was a nearly precise mirror of the situation a quarter of a century before when Thomas Welles bargained and sold the land to his lawyer Thomas Everard in the hope of thwarting his kinsman's claim. Unlike the transaction with Everard, though, there was no suggestion that the sale to Doyley was connected with the payment of his legal fees.

We will return to the Denton dispute later in this chapter, but for the moment it is important to note a number of points. First is the tenacity of Polkyns' status as tenant notwithstanding the rivalrous machinations above him of a sequence of wealthy, educated and socially well-connected landowners. Second is the shadowy institutional presence of Queen's College lurking behind the personal involvement of John Pantre and William Denison (and indeed John Doyley). Third is the deeply ambiguous role of lawyers as both professional advisers and as protagonists in their own right. Fourth is the perennial question of how the disputants could afford extensive legal manoeuvres of this kind. It is to this last question that we now turn.

[15] This was indeed the case: see Baker, *Men of Court*, i, p. 603.
[16] QCA 4M 23d.

**The cost of legal services – colleges**

How much did it cost to engage the services of the legal profession? Reconstructing the incomes of lawyers in early modern England is a matter of notorious difficulty, particularly because they drew their income from a range of activities including office-holding as much as work for private clients.[17] Brooks observes that '[s]ystematic evidence about the incomes of attorneys is not very plentiful', especially in the absence of surviving account books; and Prest notes that an analysis of the economic status of barristers is 'much easier said than done'.[18] However, it is easier to piece together what at least some of their *clients* spent on legal services. In Oxfordshire and Berkshire, few accounts survive from private individuals,[19] but several institutions have left valuable records: namely the colleges of the University of Oxford and a number of boroughs. The fellows of Oxford colleges were no doubt skilled in their own fields, but they were as much in need of professional legal advice as anyone else: as the Warden of All Souls' College wrote to the college's lawyer in 1562, '[o]ur men be but scholars and ignorant in law matters'.[20]

The way these organisations accounted for their legal expenses—and indeed, the kind of expenses they incurred—varied greatly. Typical categories of expenditure included retainers paid to individual lawyers, the additional costs of specific lawsuits or transactions, the cost of travel while on legal business, and the costs of the legal aspects of estate management such as the conduct of manorial courts. The last-mentioned category

[17] Cf Brooks, *Pettyfoggers and Vipers*, ch 11; Ives, *Common Lawyers*, ch 14; Prest*, Rise of the Barristers*, ch 5.
[18] Brooks, *Pettyfoggers and Vipers*, p. 233; Prest, *Rise of the Barristers*, p. 148.
[19] A rare exception is the account book of Thomas West, but this records no expenditure on legal matters: Prior, 'Accounts of Thomas West'.
[20] ASCA 232/225.

was sometimes subsumed within a larger category of estate administration that included non-legal expenses.

At Queen's and New College, for example, legal expenses were comprehensively listed year by year under a single heading, 'custus forinsecorum' or 'custus pro litibus' respectively.[21] By contrast, at All Souls expenses were divided between 'feodii' (retainers paid to named lawyers) and a residual category of 'various' expenses (which included many non-legal costs). The situation at Corpus Christi College was more complex, and legal expenses were divided into a number of categories. The most obvious were retainers paid to named lawyers ('impense feodorum') and the costs of litigation ('impense placitorum'), but legal costs could also be found as 'external' expenses ('impense externe'), or as part of the costs of estate management ('impense forinseca').[22] This last category was more amorphous than its Latin name would suggest, for it was under this heading that the college accounted for the cost of night watchmen during the commotion time of 1549.[23]

At Magdalen, legal expenses were also divided across a number of categories but in such a way as to preclude any ready comparison of legal costs from one year to the next. The cost of travelling on legal business (usually to London) was generally accounted for under the heading of 'custus equitantium'. This category seems to have included at least some non-travel legal expenditures incurred in London, but it also included travel on the college's non-legal business. Specifically litigious expenses were generally accounted as 'custus placitorum' or as 'solutio forinseca'. Other legal expenses were sometimes counted among

[21] NCA 7513 et seq.
[22] CCCO C/1/1/3 Libri Magni.
[23] CCCO C/1/1/3 fol 66. Cf Halliday, 'New Light on the "Commotion Time"', p. 674.

the general 'external' costs of the college.[24] At St John's, legal expenses were also grouped under the heading of riding expenses ('expensae equitantium'), but usually with a more explicit description of what was spent than at Magdalen.[25]

A quick glance at the expenses of two colleges which accounted for their mainstream legal expenses in a relatively consistent way—Corpus Christi and New College—shows that the actual expenditure could vary greatly from year to year, and could vary greatly as between a large establishment like New College and a smaller one like Corpus Christi. Obviously, the presence or absence of major litigation in a given year was the main explanation for the variance in costs, but even a large landowner like New College would not expect to have such litigation on foot in every year.

| | **1547/8** | **1548/9** | **1549/50** | **1550/1** | **1551/2** | **1552/3** | **1553/4** |
|---|---|---|---|---|---|---|---|
| **Corpus Christi**[26] | £3 13s 4d | £3 13s 4d | £2 13s 4d | £2 13s 4d | £2 13s 4d | £1 8s 4d | £2 13s 4d |
| Pleas[27] | £18 4s 10d | £13 8s | 22s | 37s 10d | [none] | 29s | [none] |
| **New College**[28] | £18 14s 5d ob | £12 1s 9d | £30 14s 11d | £12 14s 10d | £83 17s 10d ob | £44 14s 10d ob | £32 9s |

| | **1554/5** | **1555/6** | **1556/7** | **1557/8** | **1558/9** | **1559/60** |
|---|---|---|---|---|---|---|
| **Corpus Christi** | £2 16s 8d | £2 6s 8d | £2 6s 8d | £2 6s 8d | £3 | £3 |
| Pleas | [none] | [none] | [none] | [none] | [none] | [none] |
| **New College** | £84 2s 4d ob | £22 19s 4d | £6 5s 4d | £18 16s 6d ob | £4 67s 8d | £31 9s 11d |

**Table 8 – Legal expenses, Corpus Christi College and New College**

Even if regular quantitative comparison is difficult, college accounts reveal a wealth of qualitative material about the market for legal services. We will take St John's College as

[24] MCA LCE/5 Libri Computi.
[25] SJCA ACC I.A.1–4.
[26] 'Impense feodorum'.
[27] 'Impense placitorum'.
[28] 'Custus pro litibus'.

an example, partly in order to make better sense of the material to be discussed in Chapter 6. As we shall see, St John's greatest source of legal advice was the Master of the Rolls, Sir William Cordell, but it acquired most of its advice in the usual way, namely by paying attorneys, barristers, and other less exalted personages to undertake its legal work. The college accounts, which survive from 1569, give us valuable information, but trying to make sense of St John's legal expenses in London and Westminster is difficult because the cost of most metropolitan lawyers was accounted for as part of the riding expenses of the college officer who made the trip to London each term, thus making it almost impossible to determine who was paid how much and for what work.

In this period it was typically Francis Willis (first as a fellow, and then as President) who made the trip to represent St John's in London. Matters are also complicated by the absence of uniform accounting practices. After 1580, there seems to be a distinction drawn between the cost of visiting London (for example, £4 12s 2d in Hilary Term 1581) and the cost of legal services incurred there (£3 10s 8d that term).[29] Before that point, it is often difficult to distinguish the one from the other: legal expenses might or might not be included in the lump sum of £9 5s spent on riding to London in Michaelmas 1578,[30] and the 20s spent in Easter Term 1571 might represent legal expenses rather than the full cost of getting to London.[31]

We know, however, that the distinguished barrister Edmund Plowden was a frequent source of advice, as in 1578 when the college sought advice about its action in *quare impedit* regarding the vicarage of Cumnor, Cordell told them to 'do therein as you shall be

[29] SJCA ACC I.A.2 fol 75.
[30] SJCA ACC I.A.2 fol 34.
[31] SJCA ACC I.A.1 fol 14.

advised by Mr Plowden'.[32] Given his local residence at Shiplake (Oxon), it is easier to trace interactions with Plowden through the college accounts than with other lawyers because trips to visit him at Shiplake or elsewhere in the region were accounted for individually. Thus, in Easter term 1570, Francis Willis was paid 16d for the cost of going 'to Mr Plowden's house the first time to appoint a day and place to meet about the case of Burylands'.[33] The next term he was paid 5s 8d for going to Plowden's house 'three several times' about the same case.[34] Plowden was himself the beneficiary that term of part of the £4 5s 2d expended 'for Mr President, Mr Champion's, Mr Willis' and Mr Plowden's charges at Henley when they met to determine the case of Bury Land'.[35] In 1571, Willis was paid 6s for riding to Reading to meet 'Mr Plowden counsel of Henley',[36] and in 1583 a similar trip cost the President 10s.[37] Plowden was also the only individual lawyer to whom gifts were recorded as having been given: three pairs of gloves costing 10s were given to him and his clerk in 1583.[38]

Because of this greater specificity of local detail in its accounts, we know a fair deal about St John's involvement in local legal institutions, whether in the 2s spent in 1569 for 'copies of such process as were against us' obtained from the sheriff of Oxfordshire,[39] or the 20s 'given to our counsel at the Assizes in Oxon for their advice touching the

[32] SJCA MUN LII.59. Among other accomplishments, Plowden was the author of the eponymous *Reports*, and was described by no less than Edward Coke as a 'sage of the law': ODNB.
[33] SJCA ACC I.A.1 fol 7. This concerned the long-running dispute about land in Warborough.
[34] SJCA ACC I.A.1 fol 8.
[35] SJCA ACC I.A.1 fol 8.
[36] SJCA ACC I.A.1 fol 25.
[37] SJCA ACC I.A.4 fol 19r .
[38] SJCA ACC I.A.4 fol 18r. Nobles, judges and other office-holders were frequent recipients of such gifts, as were more innominate groups such as 'honourable and worshipful friends'.
[39] SJCA ACC I.A.1 fol 6.

freeholders of St Giles' in 1583.[40] We also see the cost of attending, for example, the Assizes in Abingdon,[41] or the expenses (or bribes) that might need to be paid to witnesses, such as the 8d spent on 'a poor man which went with Mr President to Abingdon as witness against Dandridge' in 1578.[42]

In addition to the use of celebrated barristers like Plowden, the college also engaged the services of less esteemed members of the legal profession. The college used messengers and process servers like one Parsons who was paid 3s 4d (equivalent to an attorney's termly fee) 'for serving the writ upon Heicrofte and Clintche' in 1578.[43] Curiously, the accounts do not record the payment of identifiable attorneys' fees—this might be because the work was undertaken by the college's Clerk of Accounts, who was the noted Oxfordshire attorney Michael Nash—but the college certainly used the services of attorneys, along with those of scriveners such as one Perse who was paid 12d 'for writing out certain evidences for drawing a letter of attorney to Mr Hutchinson for the better conveyance' of certain land;[44] or 2s spent 'drawing and engrossing 3 bonds'.[45] All of these documents needed to be written on something, so we find for example a 1570 entry recording payment for 'a ream of parchment for the certificate sent up to the M[aste]r of the Rolls'.[46]

Like any landowner, St John's was assiduous about keeping its own manorial courts; a task that cost them 59s 2d in 1569 for 'Mr President's, Mr Campion's and the Bursars' charges

[40] SJCA ACC I.A.3 fol 21v.
[41] SJCA ACC I.A.1 fol 19.
[42] SJCA ACC I.A.2 fol 38.
[43] SJCA ACC I.A.2 fol 37.
[44] SJCA ACC I.A.1 fol 14; ACC I.A.2 fol 69.
[45] SJCA ACC I.A.3 fol 19v.
[46] SJCA ACC I.A.1 fol 8.

in keeping the courts with the steward's fees'.[47] In 1571, the equivalent expense 'for court keeping and the steward's fee' was 45s 9d.[48] Modest sums were expended on more menial tasks of manorial administration: 6d was the going rate for 'a poor scholar for going to Wantage for court rolls', or 'a boy for going to the steward's',[49] or to one 'Robin the Welshman' who warned the tenants of Long Wittenham to 'bring in their rents'.[50] Routine expenditure of this kind is an important reminder that St John's College was in many ways a typical landowner and litigant, which made use of the same kind of legal services and sought the same kinds of advice as did thousands of other landowners up and down the country.

**The cost of legal services – boroughs**

Notwithstanding some of the flamboyant disputes recounted in the last chapter, boroughs in Oxfordshire and Berkshire were in general involved in fewer external legal dealings than were the colleges, and therefore had less need to allocate legal expenses to any particular category within their accounts. In large part, this was because the boroughs—unlike the colleges—were rarely substantial landowners outside the borough, and were therefore less likely to be engaged in litigious property disputes. They were also less likely to be engaged in commercial transactions that could not be resolved within the borough's own institutions, and were therefore less likely to be litigants in debt or other commercial disputes in the central courts. Boroughs could be involved in central court litigation in defence of their jurisdictional rights, whether in response to a writ of error from the King's

[47] SJCA ACC I.A.1 fol 8.
[48] SJCA ACC I.A.1 fol 20.
[49] SJCA ACC I.A.2 fol 37.
[50] SJCA ACC I.A.2 fol 38.

Bench or otherwise, but the financial impact of this category of litigation is not readily apparent in the surviving records.[51]

In Reading, legal expenses were classified among the 'extraordinary' expenses of the town (as opposed to 'ordinary' expenses like the civic officers' fees). The most frequent legally-related expenses concerned hospitality shown towards the justices at the Assize, such as the 17s 6d for 'a salmon given to the Judges' in 1587.[52] Reading incurred few expenses in external litigation, and the £9 2s given in 1585 'to Mr Steward for charges about Mr Alford's suit' was distinctly unusual.[53] In Abingdon too, corporate hospitality was more prominent than litigious expenses,[54] but in Banbury there were a number of interesting payments for legal and quasi-legal advice during the early days of its incorporation, such as 2s paid in 1554 'to Mr Gregory for his counsel in the corporation' (this being Thomas Gregory, the experienced town clerk of nearby Coventry); 3s 4d 'to Mr Barham a counsellor of Gray's Inn for his counsel to the corporation'; or 40s 'to Mr Kenneswell for his good toward us for the [town] charter'.[55]

The attorneys engaged by such towns for their London legal business were an obvious conduit of legal information. In 1547, for example, the Borough of New Windsor paid the attorney and town clerk Thomas Butler 6s 8d for expenses incurred in a suit about local lands and for a copy of 'the last statutes'.[56] Likewise in 1554, the borough paid William

[51] On writs of error, see Baker, *Oxford History of the Laws of England*, pp. 310–11, 403–7.
[52] BRO R/FA2/75 fol 6. On civic officers and hospitality, see Felicity Heal, *Hospitality in Early Modern England* (Oxford, 1990), ch. 8.
[53] BRO R/FA2/74 fol 8.
[54] BRO D/EP7/83.
[55] OHC BOR/2/XVII/i/1fols171r, 170r, 170v. On Thomas Gregory, see Thomas Carter, 'The Civic Reformation in Coventry, 1530–1580' (Oxford Univ. DPhil Thesis, 2011), pp. 11–12, 51 ,101, 112–13, 181.
[56] BRO WI/FA1/1 fol 52.

Wilson 10d 'for the Statue Book of the first Parliament' of Queen Mary.[57] In 1558, Banbury paid slightly more for its 'book of statutes', namely 12d.[58] In Abingdon, Banbury and elsewhere, such attorneys were also financial intermediaries, acting as a conduit for loans from London merchants whether to the corporation itself or to individual borrowers in the town. For example, the 1557 Abingdon accounts list four sums of 'money paid that was borrowed at London by Master Pudsey at Easter Term and Trinity Term' totalling £5 13s 4d.[59] John Pudsey was both town clerk and a common pleas attorney. In 1555, John Lovett of Banbury was paid 40s for 'money that he lent to Richard Feyrfield and Stephen Wigat at London'.[60]

One thing revealed very clearly by the borough accounts is the way in which early modern lawyers earned their income from a number of sources, and for a variety of tasks even for the one client. Unlike modern barristers or solicitors, private legal practice was rarely the exclusive source of these individuals' income. Very typically, London-focussed legal work was combined with service in one's home county in manorial or estate administration, as a town clerk or recorder, as an undersheriff or other office-holder.[61] As one might imagine, positions of these kinds could be quite lucrative and were a good way of tapping into local and national political networks.

Thomas Butler, the Berkshire attorney, may stand as an example.[62] He was an attorney in the Common Pleas, but did not appear frequently as such in the plea rolls.[63] As Town

[57] BRO WI/FA1/1 fol 60v.
[58] OHC BOR/2/XVII/i/1fol 175v.
[59] BRO D/EP7/83 fol 8.
[60] OHC BOR/2/XVII/i/1fol 170r.
[61] Ives, *Common Lawyers*, pp. 115–146; Brooks, *Pettyfoggers and Vipers of the Commonwealth*, pp. 183–226.
[62] Baker, *Men of Court*, i, p. 412; Hist Parl, i, 558–9.

Clerk of New Windsor, he earned 6s 8d a year (equivalent to an attorney's fee for two terms' work on a single case), but much more lucrative was the chance to represent the town on other legal business. He was paid 20s in 1553 'for soliciting our cause concerning our charter in the Exchequer', along with a further 40s 'for charges in the Exchequer for our liberties'. The next year, in addition to his fee he was paid another 6s 8d 'in reward', as well as 30s for his charges 'in the time of Parliament' where he represented the borough.[64] That payment 'in reward' was continued thereafter, but his greatest opportunity for profit came when he was elected mayor in 1557. He continued to draw his fee (now 13s 4d) as Town Clerk, in addition to 40s as 'his allowance being mayor', and in 1558 his 'reward' was increased to £1 6s 4d.[65]

So far as one can tell from the surviving accounts, boroughs were generally able to pay their legal expenses out of their ordinary revenues. The signal exception was Oxford, where a welter of litigation—and not merely the disputes described in the last chapter—put the town under enormous financial strain. The long-running disputes with the University and with neighbouring landowners like George Owen were both time-consuming and costly. In 1530, for example, the dispute with the University required an exceptional requisition from Dame Margaret Northen's coffer (which was normally used to fund loans to freemen).[66] At the time of the suit against Owen, the town's situation was even more necessitous, and in February 1555 it instituted a special weekly tax 'upon consideration for the maintenance of the said suit, that every person being free of the Guild of the City shall weekly pay such sum of money as hereafter is mentioned', namely 6d each for the mayor

[63] In the years sampled, Butler appears by name about once a year. The nature of the plea rolls means that he must in fact have appeared somewhat more frequently than that.
[64] BRO WI/FA1/1 fols 58v–60r.
[65] BRO WI/FA1/1 fols 67v, 70r.
[66] *Records of the City of Oxford*, p. 68.

and aldermen, 4d for the bailiff, 3d for the chamberlain, 2d for common councillors, and 1d for other burgesses.[67] Even this was not enough, and in October 1555 the town urgently sold land (apparently at Cutteslowe) to pay for its expenses.[68]

The sheer number of suits—not all of which concerned Owen or the University—also required a division of labour as to who would give instructions and attend to the practical needs of the litigation. In February 1555, it was agreed that Masters Taylor, Wayte, and Cogan were to 'follow the suit of the *quo warranto* and the mortmain'; and that they and William Tylcock 'shall proceed in the suit concerning Port Meadow'.[69] That June, it was agreed that Thomas Mallison 'shall ride to London to make answer to the *quo warranto* and to follow other suits', but by October it was decided that the mayor and William Pantre 'shall have full authority … to proceed in the suits of the *quo warranto*, the attaint and all others now depending'.[70] A few years later, in February 1560 it was agreed that William Tylcock and Richard Edgys be 'appointed to follow the matter against Mr [Richard] Owen for Port Meade'.[71] Clearly, this litigation was not merely expensive but also a great intrusion into the civic officers' time and attention. The final resolution of the dispute over Port Meadow in 1562 must therefore have come as a great relief.

[67] *Records of the City of Oxford*, p. 223.
[68] *Records of the City of Oxford*, pp. 227–8.
[69] *Records of the City of Oxford*, p. 223.
[70] *Records of the City of Oxford*, p. 228.
[71] *Records of the City of Oxford*, p. 278.

**The cost of legal services – paying for a suit**

As we saw in Chapter 2, rates of litigation increased remarkably in sixteenth and seventeenth-century England, and as we saw in Chapter 4, early modern England was a world of great jurisdictional complexity with many overlapping legal boundaries. Yet as we saw in Chapter 3, we cannot be quite as confident about the extent of ordinary people's legal knowledge as might sometimes be supposed. Taken together, these factors—increasing litigation, vast legal complexity, and lack of personal expertise—point to a fundamental feature of the Tudor legal system, namely the social value placed on obtaining legal advice from *others*. That is to say, it was a culture that emphasised hiring lawyers, rather than being an amateur lawyer oneself. As in Germany, '[l]awyers did not invent the work they were prepared to do':[72] they did so at the behest of a willing, paying clientele.

How, though, did people fund that kind of professional legal advice? The actual costs of litigation (or of advice in the non-litigious context) were less than one might suppose. Brooks has estimated that a suit in Common Pleas or King's Bench for a debt of £100 might be expected to cost somewhere between £6 and £8.[73] Similar sums might be incurred in litigation in Chancery or the conciliar courts.[74] Take, for example, the expenses incurred by Robert Lucas against William Horley, the vicar of Minster Lovell (Oxon), in his 1556 chancery suit concerning the tithes of that parish. The tithes were worth a little over £43, and the suit cost Lucas a total of £3 7s 6d, in which his own travelling expenses were substantially more costly than his attorney's fees. His itemised expenses were as follows:

[72] Strauss, *Law, Resistance and the State*, p. 169.
[73] Brooks, *Pettyfoggers and Vipers*, pp. 101–3.
[74] See Guy, *Cardinal's Court*, pp. 114–15 on the similar scale of costs in Star Chamber.

- for the charges of his commission and injunction – 22s
- his counsel's fee – 6s 8d
- his clerk for the interrogatories –16d
- his attorney's fee – 3s 4d
- for the examining of the [defendant] and the writing thereof – 6s
- for the entering of the order –2s
- for his expenses going from Minster Lovell to London for 13 days –13s
- for the attorney's fee in Easter term last – 3s 4d
- for an attachment at the said Easter term against the [defendant] – 2s 10d
- for the sheriff – 2s
- for his expenses going from Minster Lovell to London for another 5 days – 5s [75]

Compared with the value of the tithes in dispute, one can see that the rate of return, so to speak, was much more favourable to the client than that encountered in most present-day commercial litigation.

Importantly, the costs expended on simpler matters in local courts were much lower: an attorney's fee might be as low as 8d, and the clerk's fee for procedural steps might be as low as 2d to 4d.[76] To some extent, these differences in cost scales were reflected in the status of the lawyers practising in each jurisdiction. Turning back to a few of the examples of legal opacity mentioned in Chapter 1, the creditor of Henley, John Cull found representation in Francis Buck, one of three local attorneys who apparently monopolised work in the Borough Court of Henley in early Elizabethan times.[77] In Reading, John Turner—of quilted nightcap fame—secured the services of Thomas Davis, who as we saw in Chapter 2 was the most sought-after common pleas attorney in Berkshire, as judged by the size, geographic range and social diversity of his practice.[78]

[75] C24/37, *Lucas v Horley*.
[76] Baker, *Oxford History of the Laws of England*, pp.118, 123–4.
[77] OHC BOR/3/B/IV/BW/38/13.
[78] CP40/1155 m 1252.

None of this is to say that cases were never expensive, or that legal expenses did not mount up. Indeed, one's poverty—or at least the claim that one was impoverished—could be a ground for bringing one's suit in the equity courts, as did one Catherine Hull of Oxford in 1548. She claimed that she was 'a very poor woman not of ability ne power to pursue the long tract of the common law for her remedy in this behalf, [for] she shall never be able to recover [her] premises unless your Grace's lawful aid and succour be unto her shewed.'[79]

Initiating a case might not have cost much, but pursuing it through multiple procedural steps could take time, patience and money. This was especially true if political complications—and particularly the entangling of rival power networks—got in the way of the usual process of negotiated resolution of legal disputes. The extraordinary suit brought by All Souls' College over the manor of Whadborough in Leicestershire (formerly belonging to Launde Abbey) is a case in point. The rival claimant was Lord Cromwell (son of Thomas Cromwell) and his various successors. The chain of documents preserved in the college archives starts in the 1540s, but at the accession of James I in 1603 the college petitioned the king that they had 'now been in suit 46 years' and had spent the astonishing sum of £3000 on legal expenses, 'to the great impoverishment of the college'.[80] While that sum might well have been inflated for rhetorical purposes, it certainly represents a highpoint in the zealous pursuit of one's legal rights. Nonetheless, it was not completely unrepresentative of the increasing cost and delay of litigation (especially Chancery litigation) in the first half of the seventeenth century.[81]

[79] Req 2/18/14.
[80] ASCA 232/252.
[81] Jones, *Elizabethan Court of Chancery*; Jones, 'Due Process and Slow Process' pp. 123–50.

**The cost of legal services – modes of collective funding**

In the case of wealthy institutional litigants like the colleges and boroughs considered above, the expense of litigation, whether in the central courts or locally, was in general no great cause for concern. For other more modestly-placed litigants—and especially for those wishing to protect a collective interest—the shared funding of litigation or advice was a way to spread the burden. One important manifestation of this was the use of the common purse or 'commonwealth' to fund legal action on the part of a local community.[82] Although this practice has been of understandable interest to historians of popular politics, their emphasis has been on the collective and political nature of the action, rather than what is perhaps the more basic point: namely that outside professional advice was welcomed and desired even in plebeian circles. This seems, for example, to be quite different to the contemporary situation in Germany, where the professionalisation of law was apparently met with deep resistance by ordinary people.[83]

The complex English legal system may indeed have been an 'asymmetric terrain between gentry and commons',[84] but it was access to collectively-funded professional legal advice—and not social solidarity on its own—that enabled ordinary people to uphold their rights. As Manning points out, although a statute of Henry VII allowed suits *in forma pauperis*, tenants, copyholders and other modestly-placed litigants almost always preferred to pay good money for legal representation of their own choice.[85] For this reason, it is emphatically *not* 'one of the ironies of … history' that much of the evidence of customary law, and of the legal agency of ordinary people, is preserved in the records of the central

[82] See Wood, *Memory of the People*, pp. 172–5.
[83] See generally Strauss, *Law, Resistance and the State*.
[84] Wood, *Memory of the People*, p. 172.
[85] 11 Hen VII c 12; Manning, *Village Revolts*, p. 77.

courts.[86] Ordinary people *themselves* sought out—and paid for—professionally-assisted access to those courts.

So, in 1543 when Richard Westbury of Swalcliffe (Oxon) became involved in a dispute with his parish priest over tithes, his fellow villagers took up a collection to pay his legal fees, agreeing 'between them to pay for every yardland that they have in the field 4d toward the cost and charge made and to be made in the suit'.[87] The services paid for were not always exclusively litigious, as the fascinating letter of advice—mentioned in the last chapter—to the tenants of Wargrave (Berks) shows. In some places, the common fund was an ongoing institution, as was the case in Hampton Poyle (Oxon), where ordinances of 1549 provided for a 'common box' which could be drawn upon by the constable and tithingmen to fund the maintenance of local gates, bridges and the pound.[88] Whether advisory or litigious, the sums raised could be substantial indeed, such as the £20 common purse of tenants of Finedon (Northants) to spend on lawsuits against John Mulsho in the mid-sixteenth century or the extraordinary £400 raised in 1617 by the tenants of Moreby Grange (Yorks) to resist their landlord's enclosure.[89]

By the mid-sixteenth century, maintenance—that great Tudor bugbear—was hardly likely to be practised in the form of outright intimidation of judicial officers or the subornation of juries. Much more common, though, was maintenance in its modern sense: namely the funding of other people's litigation by outsiders.[90] Maintenance, indeed, is the answer to one of the fundamental questions posed at the outset of this chapter. The reason the poor

[86] Wood, *Memory of the People*, p. 33.
[87] Shagan, *Popular Politics*, p. 139.
[88] Bodleian MS Top Oxon b 86 fol 10v.
[89] Manning, *Village Revolts*, p. 45; Hindle, *State and Social Change*, p. 80.
[90] Gunn, *Early Tudor Government*, pp. 98–9; McFarlane, *Nobility of Later Medieval England*, pp. 114–18.

husbandman of Denton, Richard Polkyns, was both so tactically sophisticated and also able to afford so much litigation was because Queen's College was paying the bill, and was engaging on his behalf the finest lawyers in England. The college's shadowy role was probably as much a result of concerns about mortmain as about its rather shaky claim to title. Simply as an evidential matter, Polkyns' status as tenant was probably more secure than the college's status as landlord, but there might also have been political reasons why the college did not want to proceed against John Doyley directly.

As the college accounts lay bare, the dispute at Denton was as clear and shameless a case of maintenance as could be imagined: unusually, Polkyns is listed by name in the accounts as the beneficiary of the college's largesse. In 1550/1, the college's legal expenses were divided between the Denton matter and a troublesome dispute in Southampton concerning its ownership of land formerly belonging to God's House. Polkyns' actions for replevin in the Hundred Court cost the college 11s 8d, and the writs of *accedas ad curiam* cost 2s 8d. That year, the accounts record that the college engaged the services of six barristers (John Walsh, Richard Archedale, Robert Huckvale, Henry Bradshaw, William Harris, and one Brookes) and two attorneys (George Bramley and Thomas Gold).[91]

In 1551/2, the college's legal budget seems to have been entirely devoted to the Denton matter. In addition to the attorney Thomas Gold, the college now engaged Edmund Plowden as counsel, paying him £1 5s for his services, and paying Richard Archedale £3 4s 3d in fees and expenses. Smaller sums were also paid to Huckvale, Bradshaw and one Morgan.[92] A year later, Plowden received £4 3s 3d in fees and expenses, and Richard Archedale 8s; along with disbursements to five other named lawyers for a total legal

[91] QCA 2P 140.
[92] QCA 2P 141.

expenditure of £41 12s 8d.[93] This seems to have marked a high point both in the Denton dispute and in the college's legal expenditure, for the next years were far less expensive: £16 13d in 1554/5; £11 10s 8d in 1555/6; and a bare £4 19s 10d in 1556/7.[94]

While it is rare to come across this kind of financial detail, maintenance of this sort was evidently a widespread practice, and an allegation of maintenance could be used to undermine the legitimacy of an otherwise apparently justified complaint. Take, for example the tenants of Worminghall (Bucks), who enjoyed rights of common across the county border in Thomley (Oxon). In 1537 they sued their lord, Sir John Brome, who in 1532 had enclosed the common and proceeded to impound their cattle. Brome demanded a fine of 5d per day for each beast, but the impoverished tenants (who claimed to labour for scarcely a halfpenny a day) were obliged to 'sell such goods and chattels as they had to their neighbours to make money to loose their cattle'. They were also so fearful of Brome that they had rather 'lose their cattle and forsake the country and come out of it … than sue him for them' because of his 'extort power' and his being 'a man of great lands and great substance of kin and allied to most of the worshipful men of the said Shire'.[95]

Brome's response was not so much to deny the truth of these claims, but to deny that they proceeded on a lawful basis. If indeed the tenants were so poor, how could they afford Star Chamber litigation? Brome's answer was that they were being maintained by John Ffachell, and by Richard and Gregory Curson 'who conspired to do the said Sir John as many displeasures as they can devise'. It was these men who 'enticed, procured and threatened' the tenants 'to trouble, vex, disrupt and make exclamations' upon Brome. The

[93] QCA 2P 142.
[94] QCA 2P 143; 2P 144; 2P 145.
[95] STAC 2/31/149.

tenants would 'be glad to leave their suit' but for this enticement, including the fact that the maintainers 'hath borne the charges of the most part in the said matter'.

In his deposition, John Ffachell denied this, saying that even without his involvement 'there would have come up hither diverse of the said tenants with their metes and shares to have complained to the King's Highness of the said Sir John Brome for the said common'. Likewise, he said that 'the charges about the same suit hath been borne amongst the said tenants', saving that he did pay for the tenants to go to Woodstock 'to give evidence for the King [in the Court of Exchequer] of and for the enclosure of the said common and conversion of the land there from tillage to pasture … as lawful was for him to do'.

The tenants, too, made allegations of maintenance against Brome. They claimed that their failure in the Court of Exchequer was because of Brome's 'sinister labour unto the same jury to the intent they should not find the truth'. Brome answered that

> he sent one of his servants … down to Wheatley to drink with the part of the jury, and saith that to his knowledge there was no money paid there for their costs before the verdict, but saith that after the verdict given there was money paid for the costs but by whom or how much money he doth not now remember…
>
> he saith he was not privy to the return of the jury, and saith there was no sinister labour for the hindrance of the truth made unto the said jury neither by him nor by other persons by his procurement, but only for to have appearance[?] of the jury and for the finding of the truth …

'Labouring' a jury was not in itself thought to be improper: it 'meant not so much seeking to exert improper pressure on them as ensuring that they were familiar with the case of either party', but the possibility of this shading into unlawful influence was obvious.[96] Whatever the truth of the allegations in Worminghall, the desirability of maintenance in a

[96] Carpenter, *Locality and Polity*, p. 356.

given case obviously depended on where one stood. As Manning observes, '[e]ven where one landlord incited a rival's tenants for purely selfish reasons, his rival's tenants might still possess legitimate grievances.'[97] To modern eyes many actions in Star Chamber look pretextual and contrived, but it is not clear that contemporaries would have viewed them as being vexatious. As Steve Hindle points out, '[t]he cynical abuse of the law was probably as symptomatic of the state of the English legal system as of ethical and economic fissures within local communities', and therefore there is a risk of mischaracterising such litigation if we rely too much on modern perceptions of normal procedural behaviour.[98]

As the Worminghall case suggests, there was no neat line between 'plebeian' use of common funds and 'elite' use of maintenance: the techniques of collective funding could be adapted to suit varied circumstances. Such a blending was clearly at work in a dispute in which Magdalen College and its tenants were embroiled with the Quartermain family over land at Chalgrove (Oxon) in the 1560s and 70s. Evidently, the college, the tenants and possibly other parties besides came to an agreement about how the costs of the dispute were to be apportioned, for in 1567 the college's accounts record 3s 4d paid to Michael Nash, attorney for the tenants of Chalgrove 'pro rata' for the college's 'portion'.[99] The nature of that 'portion' becomes clearer in light of an unusually detailed entry in the next year's accounts, according to which the college contributed 36s 2d in 1568 towards the cost of defending the tenants of Chalgrove, in addition to 43s spent by the tenants themselves and 26s contributed by other (perhaps neighbouring) lords of the manor.[100] That year, the college also made proportionate contributions towards a commission out of the Chancery, and for attorneys in the Common Pleas (Michael Nash), King's Bench (one

[97] Manning, *Village Revolts*, p. 65.
[98] Hindle, *State and Social Change*, p. 83.
[99] MCA LCE/5 Liber Computus 1567.
[100] MCA LCE/5 Liber Computus 1568.

Mr Hanbury) and Star Chamber (one Mr Good). The next year, expenses are incurred in relation to Chalgrove but without any reference to the college's proportionate contribution. In 1570, though, a detailed listing is offered:[101]

- for the exemplification of diverse books and other records of the Chancery in the Tower of London in the cause of Chalgrove, the college's portion being – 50s 6d
- for the exemplification of records in the Royal Exchequer in the same cause, the college's portion being – 17s 2d
- to Mr Manning, attorney in the King's Bench for the cause of Chalgrove, the college's portion – 2s 4d
- for writs of subpoena to testify in the cause of Chalgrove, the college's portion – 5s
- for two actions against Mr Winchcombe in the cause of Chalgrove, the college's portion – 11s 9d
- for a fine given to the Queen for attainder and for writs of attainder, the college's portion – 10s

So far as the tenants of Chalgrove were concerned, the support of a wealthy institution like Magdalen College can have been no bad thing. Whatever the technical detail of the statutes against maintenance, the law's vagueness and the social utility—at least on some occasions—of breaching it were, as Carpenter points out, 'unlikely to foster a clear-cut sense of right and wrong in the use of personal influence' in legal affairs.[102]

**Working with the legal profession – documents**

However their services were funded, lawyers spent most of their time working with documents. Litigation—and especially litigation about property—depended very much on the quality of the written evidence that each party could summon in its favour. For obvious reasons, this was also essential in the context of conveyancing. In the case of both types of legal work, the reality on the ground could sometimes be hard to grasp through the morass

[101] MCA LCE/5 Liber Computus 1570.
[102] Carpenter, 'Law, Justice and Landowners', p. 215.

of conflicting documentation. As one lawyer ruefully noted, 'it is seldom seen that the jury [actually see the] ground, but [rather they] be informed by the evidences, as blind men'.[103] Nonetheless, as with the court rolls considered in Chapter 3, the display of written evidence could have a powerful demonstrative effect. This potential was used by Richard Engeham in his dispute with All Souls' College over marshland in Newland (Kent). He wrote to the Warden, Dr Woodward, some time in the period 1526–33:

> I neither doubt nor fear my title thereof to be good also according to your request the deeds of the premises of the same I have sent unto you, the which you have seen, and if I had feared my title I would not have showed you mine evidence…[104]

Such a disclosure by one's opponent was unusual, but in both the litigious or transactional contexts an important aspect of the relationship between client and legal adviser was the transmission of documents: from client to lawyer, from lawyer to court, and back again, which obviously involved a great deal of care and the need for accurate record-keeping. This aspect of the lawyer-client relationship has left few traces in the historical record, but one exception is a remarkable register surviving in the archives of Trinity College, Oxford. In the volume called the *Liber Cautionum*, a sequence of seven folios is labelled the *Liber Sigilli*.[105] As the name suggests, this recorded the College's 'seals' (i.e. deeds, but also other valuable documents) as they were removed from, and then returned to, the College's custody in the period from 1560 to 1565.[106] These brief notes are surprisingly rich in incidental detail, and help us to build up a picture of Trinity's legal dealings. The deeds were kept in Trinity's 'Treasure House', and were to be removed only in the presence—and with the authorisation—of the President or Vice-President. The deeds themselves were

[103] ASCA 130/99.
[104] ASCA 130/96.
[105] TCA 111.C/1.
[106] After 1565, the register records the borrowing of money, not documents, from the College's 'treasure house', but some marginal annotations indicate that some documents borrowed in the 1560s were not returned (or alternatively were reborrowed) until 1573.

kept in a large locked chest, inside various smaller boxes of apparently very distinctive appearance. We read, for example, of a 'broad box', a 'high thick box', a 'little square box', a 'thick square box', a 'high square box with the lid that openenth in the midst', and a 'little box with the cloven lid'.[107]

Over the period in question, Trinity College was involved in a number of legal disputes, most of which it seems not to have created itself, but rather were inherited from the former Durham College or from the lands endowed by Sir Thomas Pope. These included disputes in relation to the parsonages of Stopsley (Beds), Navestock (Essex), and the manors of Wroxton and Balscote (Oxon). The best sense, however, of the complexity and delay of mid-sixteenth century litigation can be gleaned from the entries concerning Much Waltham (i.e. Great Waltham, Essex), which were the subject of an especially lively suit brought against the college by Richard, Lord Rich. Some of these entries give quite circumstantial detail of the documents removed, the person to whom they were entrusted, and the purpose to which they were put, as was the case in June 1563:

> Memorandum: taken forth of the treasure house the 10th day of June by Mr Vice President and the other officers to be sent to London by Mr Burwyke about our matter in the law against my Lord Rich, these writings following…[108]

Most of the time, the entries were less descriptive, but they give a good sense of the dilatory pace and extensive paper shuffling that characterised much early modern litigation. Thus, in the first entry concerning Much Waltham, we read that on 1 June 1560 'such writings as followeth in number five' were removed, namely:

[107] TCA 111.C/1 fols 18r, 19r.
[108] TCA 111.C/1 fol 19r.

- certain recognisances sealed with wax;
- the 'exemplification of Much Waltham';
- the indenture of the bargain and sale of Much Waltham;
- the indenture concerning the manor and grange of Sewell and Dunthorp and the parsonage of Much Waltham;
- 'a deed whereby the vicar of Much Waltham is bound to keep a dirige'; and
- 'one obligation wherein Sir Thomas Pope standeth bound to us in a thousand pounds.'[109]

Four months later, on 30 September, the college removed 'the indenture concerning the sale of the parsonage of Much Waltham'.[110] A week later, the college also removed 'the exemplification of the parsonage of Much Waltham' with the explanation that it was 'sent to Mr President by Mr Wotton of Corpus Christi College going to London the said 7 days'.[111] On the same day, one of the documents removed on 1 June (the bargain and sale of Much Waltham) was 'laid in again by the President and officers'.[112] The next month, on 3 November five more documents were removed by the Vice President 'to be sent to Mr President in London'; and on 5 December 'all the same writings were restored'. Later that month, on 29 December the President again removed the 'seven writings last mentioned to be carried to London again concerning our business with my Lord Rich'. They were in turn restored on 3 March 1561, only to be removed again on 21 April, before being finally returned on 25 July.[113]

The next year, on 21 January 1562 was 'taken out of the treasure house to London a certification of Much Waltham', and a week later on 27 January so too was 'the bargain and sale of the parsonage of Much Waltham'. That document had already been sent down to London and back twice in the previous two years. On 28 February 1562, a number of

[109] TCA 111.C/1 fol 16r.
[110] TCA 111.C/1 fol 16v.
[111] TCA 111.C/1 fol 16v.
[112] TCA 111.C/1 fol 16v.
[113] TCA 111.C/1 fol 17v.

deeds were removed 'in the sight of the President and other officials', including 'a grant of Durham College made to Sir Thomas Pope knight out of [the] Much Waltham box', as were 'two writings [about] the bargain and sale of the parsonage of Much Waltham' from 'the box of [the] licence for the erection [of the College]'.[114] They were returned on 9 March 'in the sight of the President and other officials'.[115] Another batch of Much Waltham documents were returned on 19 March 1562, 'except the copies of the two pleas which are in London in the hands of Mr Creswell our attorney in the Exchequer'.[116]

An 'exemplification of Much Waltham' was removed on 17 April 1562, and after that the pace of dealings slowed somewhat. Three documents were removed in June 1563 (mentioned above), and things then went quiet for two years until 31 May 1565 when 'the recognisance of my Lord Rich for Much Waltham' was removed; and two months later on 17 July 'the recognisance against my Lord Rich for the parsonage of Much Waltham' was removed—presumably a different document from the first-mentioned recognisance.[117] The last entry concerning Much Waltham was an 'indenture of the bargain and sale of the parsonage and rectory of Much Waltham from my Lord Rich', removed on 7 November 1565.

This might all seem like undifferentiated paper-shuffling, but a number of important points emerge from this evidence. The first and most obvious is that the documentation was so precious that accurate records needed to be kept about its location, removal and return. In the case of Much Waltham, this record keeping was so punctilious that a note was made of the removal of even so much as a *list* of the removed documents, as was the case when a

[114] TCA 111.C/1 fol 18v.
[115] TCA 111.C/1 fol 18v.
[116] TCA 111.C/1 fol 19r.
[117] TCA 111.C/1 fol 20v.

'bill declaring … all such writings, charters etc. taken out of Much Waltham box' was itself removed on 2 March 1562.[118] Second, property litigation was very document-heavy: over a dozen separate records are identifiable in the Much Waltham case alone. Third, litigation and the seeking of legal advice meant that the college was without its most valuable documents for months at a time. Fourth, in addition to being time consuming, the usage of those documents was sometimes inconclusive: a number of documents went back and forth to London on more than one occasion in rapid succession. Fifth, a very large proportion of the President's time must have been taken up with attending to legal affairs in London: since the President was so often in London, it was very frequently the Vice President who was tasked with supervising the removal of the documents in question.

Obviously, legal advisers were ultimately responsible for instructing their clients about which documents needed to be sent where and when. An example of this kind of instruction survives from All Souls' College's dispute about land in Padbury (Bucks). Their Common Pleas attorney, William Blackwell, wrote to the Warden of the college in 1542:

> I pray you to use some diligence in the searching out of your evidence concerning this matter, and that I may have them or at the least hear from you the next week. The evidence whereby you hold the land first given unto you is most necessary; and none other to be sent up or seen at this time but only that it shall be necessary to inquire whether ever ye paid rent to the said More or to any other sith ye hold it or not…[119]

Twenty years later, Warden John Warner responded to another letter of this kind from the college's attorney:

[118] TCA 111.C/1 fol 19r.
[119] ASCA 94/282.

> I have sought up all the writings necessary for you and laid them ready for the Subwarden to take order either to deliver them unto you when you send for them, or else to send them to Leicester, and therefore you must write [a] letter to certify the day of the assizes, and because our men be without experience you must tell them how many days before the assizes that you will have one come thither.[120]

Once they had obtained the requisite documentation, legal advisers needed to be able to assess its credibility and effect. All Souls' travails over the unpromising marshland in Kent that had been in dispute with Richard Engeham (mentioned above) provide a particularly interesting example. The original dispute with Engeham had been resolved by an arbitrated settlement, but some time later the same claims that had originally been made by Engeham were reiterated by one William Eppes, who relied on the same documents as had Engeham before him. This placed the college in a very delicate position, and Stephen Thornhurst wrote a long and informative letter to Warden Holland in 1556. He began by setting out the history of the dispute and its reactivation, before turning to the written evidence in question:

> Sir, upon the sight of their evidences many times reading them over … I protest unto your Mastership (God to be my witness) than in opening this matter I mean nothing to deprave their Worships unto whose order these causes of controversy were committed [in the arbitration] knowing therein that three of them were singularly learned in the common laws of this realm, which argueth unto me that some of these your Founder's said evidences hereafter ensuing never came unto their knowledge, because the same evidences of Engeham's show unto my simple reason and judgment to be of no more force … than those evidences of the said Engeham's brought forth by the same William Eppes at the present …
>
> And here [in Kent] the common people brabble and talk. Engeham's title and claim, say they, was good … as appeared then unto learned men, for that by their award the College paid Engeham above £80; and why would not the college agree with the same Eppes now, for some of their evidences whereby the said Richard obtained the money … are now the self-same evidences that … are claimed by the said Eppes …

[120] ASCA 232/225.

What Thornhurst then did was to transcribe and comment upon each of the documents in question brought forth by Eppes. On the first, he said '[h]ere you see how this fine being the foundation of the same deed maketh no mention either of the Saltmarsh [or the land] in Midley'. On the second, he said '[h]ere is to be noted much untruth in this evidence' and that 'it is to be marvelled' how it could have sustained Engeham's or Eppes' claims. On the third, he said '[t]his deed maketh nothing for the said Engeham, but rather against him'. In each case, his opening comment was followed by patient analysis and commentary, which he undertook for eight such documents.[121]

**Working with the legal profession – witnesses**

However authentic and credible they were, documents on their own were never enough to win a case: witnesses were needed as well. A large part of the legal profession's work therefore concerned the marshalling of witnesses and the interpretation of their testimony; bolstering the credibility of their own side and undermining that of their opponents. In Trinity College's dispute about Much Waltham, John Milwarde, the steward of the manor, wrote to President Arthur Yeldard in December 1560:

> And for that the chiefest evidence or matter to make for your benefit that can be showed is the depositions of such persons as Sorrell your farmer can and will bring to depose touching the same, my master hath not only directed his letters unto your said Sorrell requiring him forthwith to send him the names and sayings of such as can and would depose for the matter to the intent process may be sent forth for to cause them to appear at such day as the said matter shall be determined and such other matters done as by learned counsel shall be thought meet upon view of their sayings…[122]

[121] ASCA 130/98.
[122] TCA Estates VII Waltham Magna.

In this context, absentee or institutional landlords—especially new landlords like Trinity College—could find themselves in a position of double disadvantage. First, they often lacked the intimate knowledge of the 'facts on the ground' that a local opponent might enjoy.[123] Second, they were reliant on local people for the defence of their rights, and perhaps had little choice when it came to the character and reliability of those on whom they relied.

In its dispute with Magdalen College over land at Chalgrove, the Quartermain family attempted to turn each of these weaknesses to its advantage. In a fascinating document preserved at Magdalen, the college was skewered for its reliance on witnesses of doubtful integrity, in contrast to the upstanding witnesses testifying on the Quartermains' behalf. Among Magdalen's witnesses, we are told that Ralph Eyers alias Hutchins was

> a very common suer of process and a lawyer among [the] simple and of so good living that he was [arrested] for getting his own daughter with child and in great trouble for the same, and yet not discharged for it was proved that diverse times he lay with her.

William Wildgoose was 'a very poor man and simple of wit and yet not two years resident there.' Thomas Beale was 'a common drunkard and whoremaster, and never dwelt in the parish.' Richard Ironmonger was 'a young man of a small countenance there', and one Bloxham was nothing but 'a poor labourer and a busybody'.

By contrast, the Quartermains' witnesses were described as people of real integrity. Robert Lambert was 'a man of good virtue for his honesty and a plough holder.' Thomas Beard was 'an honest old man being a carpenter and a millwright.' Thomas Burnham was 'an ancient tenant and a plough holder born and remained a long time in Chalgrove.' Peter

[123] Cf Manning, *Village Revolts*, p. 73.

Cave was 'born in Chalgrove and continuing there and of honest fame.'[124] Obviously, the truth of these descriptions must be taken with a grain of salt, but they stand for an important point: local credibility mattered.

Such concerns about credibility took on an extra importance outside the common law courts. In the Church courts, canonical modes of proof—and especially the rule that facts had to be proved by the testimony of two trustworthy witnesses—meant that greater attention was given to the judicial evaluation of witnesses' testimony than was possible in a jury trial.[125] In inquisitorial cases the concept of 'public voice and fame' (*fama publica*) drew attention to an individual's reputation 'both [as] a means of initiating a criminal trial and [as] a protection against abusive prosecution.'[126]

Similar—but not completely identical—modes of proof and ideas about credibility prevailed in the equity courts.[127] In Chapter 3, we saw how invocations of 'common fame' or 'common voice' could be rhetorically very powerful in the context of identifying how deponents claimed to know what they knew about customary legal rights. The parallel with the kind of argumentation in church courts is by no means coincidental, and Andy Wood is surely correct to note that '[j]ust as accepted communal opinion could be used to damn somebody's sexual or moral reputation at the consistory court, so it could also be presented as a common assumption of rights.'[128]

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[124] MCA EP/97/16.
[125] R.H. Helmholz, *Roman Canon Law in Reformation England* (Cambridge, 1990), pp. 22, 179–80. On the mode of proof in church courts, see especially R.H. Helmholz, *Oxford History of the Laws of England: Volume I, Canon Law and Ecclesiastical Jurisdiction from 597 to the 1640s* (Oxford, 2004), ch. 5.
[126] Helmholz, *Oxford History of the Laws of England*, p. 609.
[127] Michael R.T. Macnair, *The Law of Proof in Early Modern Equity* (Berlin, 1999), p. 33. On the assessment of witnesses' credibility in equity, see ibid ch. 8.
[128] Wood, 'Custom and the Social Organization of Writing', p. 260.

In both ecclesiastical courts and in the courts of equity, the examination of witnesses was done on the basis of written questions, and their testimony was likewise reduced to written form. The fact that this was usually undertaken by delegates, and not by (or before) the judge himself, means that demeanour (and credibility) under examination cannot have been as important as it is in modern procedure.[129] In civilian practice, the assessment of credibility 'depended on the circumstantial details elicited in taking the deposition', and particularly how the witness knew what they claimed to know.[130] In this context, it seems that these courts were particularly concerned with the weight that could be placed on a witness's oath. Thus, establishing the repute of the witness and their freedom from bias were more important, for instance, than precluding the admission of hearsay evidence.[131] As Laura Gowing points out, early modern ideas about credit were highly gendered, but the 'conditions which most imperilled credit', namely 'poverty, youth, previous involvement in court cases, or a reputation for neighbourly disharmony' could apply to men and women alike.[132]

Quite aside from the question of proof and the reliability of a witness's testimony, reputation could matter in other, more specific, legal contexts. In the equity and conciliar courts, the English-language narrative bill lent itself to what Steve Hindle terms the 'strategic undermining of reputation'.[133] The stereotypically lurid claims of riotous disorder in Star Chamber are a case in point, but not every negative aspersion cast in these courts concerned violence. For example, as we saw in Chapter 3, John Bishop was labelled

[129] Helmholz, *Oxford History of the Laws of England*, p. 339; Macnair, *Law of Proof*, p. 247; Bryson, *Equity Side of the Exchequer*, pp. 63–4.
[130] Macnair, *Law of Proof*, p. 258.
[131] Macnair, *Law of Proof*, p. 260.
[132] Gowing, *Domestic Dangers*, pp. 50, 239–42.
[133] Hindle, *State and Social Change*, p. 82.

by his opponents in their Requests suit as a 'very wilful, troublous and unquiet person, much given to unlawful suit and vexation of the law'.[134] Likewise, the power and bearing of one's opponent was a classic justification for a suit outside the common law courts. In Oxfordshire and Berkshire at least, claims that one's opponent was powerful were usually sincere and justified, but whether this power ever truly led to the undermining of legal process through the ordinary courts is more doubtful. For example, George Penny was surely right to claim that the assertive gentleman Roger Hatchman was 'greatly friended'; but whether Hatchman manipulated the ordinary courts because of the 'great power and bearing which he hath in the … county of Oxford' is more open to question.[135] Likewise, it was certainly true that Edmund Ashfield was 'a gentleman of great possessions and substance, and greatly friended, esteemed and allied' in Oxfordshire; but Christ Church's suit against him in the Requests could hardly be explained by that institution's poverty or lack of political connections.[136]

More directly, actions for slander in the church courts were an important means by which one might defend or restore one's reputation.[137] As Martin Ingram observes, such suits 'sprang from a society in which sexual reputation, "credit" or "honesty" was of considerable and probably growing practical importance and a major touchstone of respectability.'[138] The vindication of reputation was, of course, by no means the only purpose served by such suits. They could be the product of underlying personal quarrels; of the need to secure collateral advantage in other litigation; or of an increasingly litigious

[134] Req 2/17/83.
[135] Req 2/17/87.
[136] Req 2/17/88.
[137] Cf J.A. Sharpe, *Defamation and Sexual Slander in Early Modern England: The Church Courts at York* (York, 1980).
[138] Ingram, *Church Courts, Sex and Marriage*, pp. 292, 313.

culture generally.[139] Indeed, one motivation for bringing a slander action in the ecclesiastical courts was a fear that the slander 'would lower their credit and hence damage their chances in other court proceedings or arbitration settlements'. Ingram observes that some 30 per cent of a sample of Wiltshire slander cases of 1615–29 could be correlated to 'actual or seriously projected' proceedings in other courts.[140]

As these cases suggest, reputation had legal, economic as well as social repercussions. Craig Muldrew points out that 'credit in social terms', in the sense of a reputation for fair and honest dealing, 'became the currency of lending and borrowing.'[141] In that way, credit in the economic sense 'became synonymous with reputation', and it is therefore anachronistic to separate economic from social aspects of credit.[142] As with so many other aspects of litigation, Luke Beauforest provides an example of this melding of social and economic credit. In one of his many suits and countersuits, Luke alleged that his mother Alice procured the assignment to herself of a £120 debt owed by Luke, and then had Luke 'troubled and arrested for the [debt] to his great discredit and hindrance'. This, said the astonishingly impudent Luke, was especially shameful as his mother was 'a woman of reasonable good wealth' whereas he was 'much impoverished by such unjust suits and troubles as have been commenced and prosecuted against him'.[143]

Whatever their credibility, or their economic or sexual reputation, once witnesses had given their testimony lawyers needed to attempt to make some sense of it. Particularly in the case of large-scale property disputes, the combination of long interrogatories and large

[139] Cf Ingram, *Church Courts, Sex and Marriage*, pp. 314–19.
[140] Ingram, *Church Courts, Sex and Marriage*, p. 308.
[141] Muldrew, *Economy of Obligation*, p. 148.
[142] Muldrew, *Economy of Obligation*, p. 148.
[143] C3/14/30.

numbers of witnesses could easily lead to unmanageable amounts of evidence. Legal advisers therefore needed to spend much time sifting through the available evidence in order to make sense of it. One of the chief ways in which they did so was by digesting it into a tabular form; much in the same way they might digest the substantive law itself, which was a familiar activity for law students.[144] This was done, for example, by the lawyers for Christ Church in its suit against Magdalen College over land in Deddington. They labelled it 'A brief declaration of the sayings of witnesses examined on the behalf of the Dean and Chapter of Christ's Church in Oxford', and across 10 large pages they gave an extensive summary of the witnesses' evidence, with marginal annotations including a reference to the interrogatories to which the individual witnesses responded.[145]

[144] Cf Knafla, 'Law Studies of an Elizabethan Student', p. 228; Wilfrid Prest, 'Legal Education of the Gentry at the Inns of Court, 1560–1640', *Past & Present*, No. 38 (1967), 24.
[145] CCA MS Estates 69 fol 161 et seq.

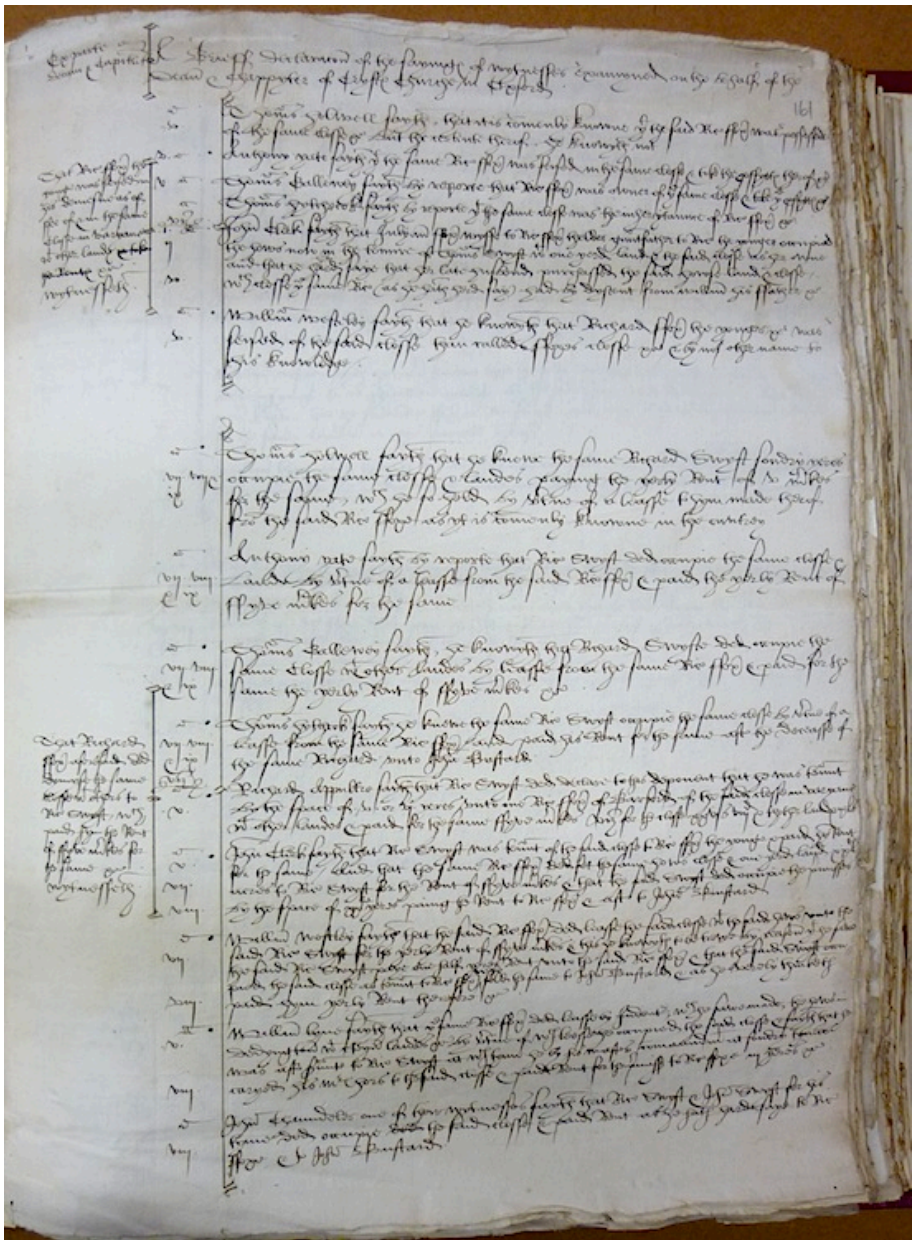


**Figure 45 – 'A brief declaration of the sayings of witnesses'**

## Working with the legal profession – drafting

One task with which the legal profession was intimately concerned was the drafting of legal documents. Deeds, indentures, conditional bonds, bills, pleadings and a whole variety of written material was prepared by an equally wide range of legal professionals, ranging from the most illustrious serjeants and barristers from London to the lowliest provincial scrivener. While mid-sixteenth century lawyers could certainly be prolix, and legal

documentation could indeed be voluminous, things were rarely as bad as they became later in the century. In the extraordinary 1596 case of *Mylward v Weldon*, a replication pleaded in Chancery covered 120 sheets of paper, the gist of which 'might have been well contrived in sixteen sheets'. Its draftsman was punished by being paraded through Westminster Hall with the offending document around his neck; a hole having been cut through it for this purpose.[146]

A more typical Chancery dispute from 1548 helps to show how a simple deed might come to be written. In essence, the dispute was whether one Edmond Lydiard had entered into a deed with his brother William and sister-in-law Jane 'for assurance of certain land in Glynton to the yearly value of 20 nobles to be made by sufficient deed in law to the said Jane or to her use'. Thomas Whitton, a gentleman of Lewknor (Oxon), recounted how

> Edmond said 'let your sister Jane put you or your brother Christopher in trust to devise a deed with such counsel as they shall get to make for a deed for her assurance and I will seal unto it'. At which time it was agreed by all the friends of the said Jane that John Christopherson should do it at London when he the said Christopherson should go thither next…[147]

John Sowter had an unhappy experience when he went to have an obligation drafted in Boxford near Newbury (Berks). His experience casts light on the long list of obscure places that we saw in Chapter 2 where people were nonetheless able to have legal documents drafted. Sowter originally had a bond for £40 with Thomas Welles, but Welles could not repay on time, so Sowter entered into a new bond for £40 with Welles and two sureties (Thomas Turner and Richard Blatcher). The two sureties did not care to be jointly

[146] *Mylward v Weldon* (1596) Tothill 102; 21 ER 136; Jones, *Elizabethan Court of Chancery*, pp. 220–1.
[147] C24/24, *Christopherson v Cupper*.

liable for the full £40, and Sowter was induced to deliver up that obligation in return for two several obligations for £20. Sowter and the sureties then

> went unto one Osborne in Boxford for the making of the said single obligations for your said orator, and as the said Osborne was about the making of the said obligations the said Turner desired your said orator to hear that first obligation read, whereupon your said orator not mistrusting the said Turner delivered the said obligation unto the said Osborne to read, and as the said Osborne was reading of it, the said Turner plucked away the seals from the said obligation and rent it, and bade [Sowter] take his vantage against him whither he could, for he would make him no other obligation contrary to his said promise … to the great loss and hindrance of [Sowter]…[148]

Very rarely, the draftsman might be called on in later proceedings to give evidence about his handiwork. This happened, for example, to Edward Grafton, a scrivener of Missenden (Bucks), who recounted how

> John Lovett and John Duff … came to [him] and declaring to [him] that they had reached a bargain and sale between themselves of certain woods … thereby desired [him] to draw a pair of indentures between them touching that bargain and as the same parties then said five pounds was the price agreed between them …
>
> … he saith that by such request as aforesaid [he] did draw the draft of a pair of indentures between the said parties touching the said bargain, but the same were never engrossed by [him] or any other to his knowledge, and the same draft should have been engrossed and sealed at or before the day of payment of the money as he remembreth…[149]

Evidently, the quality of such scriveners' services could be variable. In 1542, All Souls' College's attorney William Blackwell wrote to the Warden about a dispute over land in Padbury (Bucks). He had just received copies of the documents relied upon by the college's opponents, and he remarked to the Warden that '[t]he substance of their title and matter appeareth therein, albeit there be false Latin in the beginning thereof'.[150] The use of formularies as an aid to drafting was universal, but sometimes an unskilful lawyer could

[148] C1/1380/47.
[149] STAC 5/L24/15.
[150] ASCA 94/282.

turn into a mindless copyist. This was unfortunately the case for Margaret Cox of Abingdon—whom we encountered in Chapter 1—who in 1549 'according to *his* bounden duty' promised to pray for the 'prosperous estate' of Edward VI.[151] Evidently, her lawyer had not the wit to vary the standard closing of a bill in the Court of Requests for his female client. Slips of that kind must frequently have been corrected before a final formal document was produced, but tracing that drafting process is difficult as relatively few rough copies survive.

Given the rarity of such surviving drafts, one particularly fascinating document from the Polkyns case about the land at Denton is a draft copy of his Star Chamber bill.[152] This document is an especially clear demonstration of the fact that legal drafting was often an iterative and collaborative process. The document is in two hands: one which reflected the initial drafting of a lawyer who perhaps lacked much experience of Star Chamber pleadings, and the other which reflected the work of a more experienced practitioner who had the insight to know what sort of clarifications and amplifications were required, as well as which redundant or infelicitous phrases should be deleted. Judging by the college's legal expenses in the relevant years, the senior lawyer is most likely to be Edmund Plowden, and the junior was likely to be Richard Archedale, whom we met in Chapter 3 as Luke Beauforest's brother-in-law and near contemporary as a student at the Middle Temple.

Whatever their identities, the work of two individuals is readily apparent. For example, the phrase 'as tenant at will' was deleted and replaced with the more precise 'for term of one year and so from year to year as long as the same parties may agree'; the vague chronology

[151] Req 2/15/84.
[152] QCA 4M 12. On pleadings in Star Chamber, see Guy, *Cardinal's Court*, pp. 79–91.

of 'lately' was replaced with 'the said 26th day of February'; the claim of 'force and arms' was amplified by the addition 'that is to wit with staves and swords'; and the plainly mistaken request for a 'writ of injunction' was replaced by the standard request for a 'writ of subpoena'.[153]

One particular area of difficulty for the more junior lawyer was how to describe Polkyns' action for replevin to recover his distrained cow. The original paragraph began by stating that Doyley impounded the cow

> in Denton aforesaid, giving straight command that the said cow should not whereupon your said poor suppliant ~~sued for replevin~~ <was driven to sue replevin> by <the same> replevin had the same cow to him redelivered in which replevin the said William Dennis hath proceed against the same John Doyley and hath recovered the same by *recordare* into the Common Place where he intendeth to follow earnestly according to the law for trial of the title of the said premises…

The more senior lawyer struck this out in its entirety and replaced it with the following:

> and daily maketh so many forcible and riotous entries into the premises and doth severally vex your orator by distraining and expulsing of his cattle from and out of the premises so that your said poor subject cannot take, perceive ne farm the profits of the premises but is daily by the said defendant destroyed thereof to his utter undoing in case your Highness of your pity and justice do not shortly provide remedy in this behalf …

What is interesting about this substitution is that the original version, wordy though it may have been, was actually more informative about the procedural history of the case, whereas the later version conceals that history behind the bland and generic (but more professional) language of a typical Star Chamber complaint. This reiterates a point made in Chapter 1, namely that the bland façade of legal language can conceal social reality—even if that

[153] On subpoenas, see Guy, *Cardinal's Court*, pp. 83–5.

social reality might be nothing more exciting than the existence of prior litigation in other venues.

Another example of how the process of drafting could refine and sharpen legal arguments can be seen in a 1573 draft document concerning All Souls' College. Rather than being a pleading as such, this written 'case' concerned a disputed bequest to the college in the will of Edward Napper, who died at his home in Holywell, Oxford, in August 1558. At stake was land at Wheatley in Oxfordshire and at South Petherton in Somerset—the former purchased, as it happens, from George Owen of Godstow, whom we encountered in the last chapter. Napper intended the profits of the land to be used by the college for various educational and religious purposes.[154]

To the Warden and Fellows, it was clear that the will envisaged the gift of the land itself, and not merely the administration of its profits, but the truth of the matter was that Napper's drafting was not unambiguous; and the ambiguity was compounded by the infelicitous drafting of the Marian religious legislation. One of the witnesses to the making of Napper's will, Richard Perry, a Student of Christ Church, deposed in 1562 before the Mayor of Oxford and feodary of Oxfordshire that he queried the sufficiency of Napper's words at the time Napper made the will, and that 'he thought his meaning therein to the said Warden and College did not in words fully appear'; to which Napper is said to have answered defensively that 'it needed not to be amended in any word, for that he thought that there would no man expound his meaning and gift therein otherwise than that he meant it to the Warden and society of the said college'.[155] This exchange bears all the

[154] ASCA 237/3.
[155] ASCA 187/14 fols 6–7.

hallmarks of wisdom after the event, and was more plausible as a justification for the college's belief about its rights than a verbatim transcript of a deathbed conversation.

The technical legal problems with Napper's intended bequests were twofold. First, Napper's informality meant that his gift of property (and the charitable uses to which it was to be put) was not made in the formal corporate name of the college ('The Warden and College of All Souls…'), but rather at various points to 'All Soul's College church', 'the Warden of the same College', 'the clerks, choristers and servants' of the College, and to 'the Warden, fellows and their successors'.[156] The second problem concerned the awkward interaction of the statute of 1 Mar c 2 restoring Catholic religion; the 1540 Statute of Wills (32 Hen VIII c 1); and the old common law rule that property could not be left by will at all.

These difficulties are captured in a draft memorandum of advice to the college prepared in 1573 by Edmund Plowden and one 'Master Thornton'.[157] Napper's landholding at first is described as 'lands in fee not devisable by custom'. Once again, the senior lawyer adds detail and precision: 'lands in fee simple in Wheatley held in socage and South Petherton not devisable by custom'. Likewise, the wording of the bequest is corrected from 'the College of All Souls' to 'the Warden and College of All Souls': this was a crucial point, given that the legal efficacy of the bequest turned on whether this wording was adequate. Similarly, 'to certain godly uses so and for ever' became 'to certain godly uses and purposes expressed in the will for ever'. Likewise on the second point, the original draft awkwardly began:

[156] ASCA 237/3.
[157] ASCA 187/23.

> and forasmuch as by the order of the common law no land was devisable but borough land by custom and therefore by the common law remaineth against this devise, [whether they] be able to receive by devise by means of the said statute of King Philip and Queen Mary or not…

This was amended to read:

> and whereas by the order of the common law no land was devisable and therefore the common law prohibiteth this devise, and by the statute of King Henry the Eight of Wills bodies politic be excepted, therefore whether they be able to receive by devise by means of the said statute of King Philip and Queen Mary or not…[158]

As one can see, the process of drafting—and particularly the input of an experienced lawyer like Plowden—was one which refined and clarified the text.

**Working with the legal profession – arbitration, negotiation and settlement**

Even with the assistance of the likes of Edmund Plowden, few ordinary people wanted to be involved in litigation. Among the victims of the dispute between All Souls' College and Napper's heirs was the college's tenant at South Petherton. Francis Sandys, who was feeling the consequences of the heirs' legal opportunism, wrote to Warden Hoveden in October 1575 to solicit his help in avoiding their suit:

> I have well hoped that you should have agreed without law in taking some good end whereby I might have continued your tenant quietly without trouble, which I would have been very glad of, and so would yet if it might be brought to pass, for law is tedious and costly, if any good end may be had to keep your land quietly refuse it not, but rather put to your helping hand.[159]

[158] ASCA 187/22.
[159] ASCA 187/31.

The desire to avoid the tedium and cost of the law was not unique to those caught up in it involuntarily. Sir William Cordell, for example, wrote to St John's College 'lik[ing] very well' of the negotiated agreement between the college and its tenants at Warborough 'touching such suits and controversies as have long depended between you and them'. He urged them to 'hearken unto it, and to conform yourselves to any reasonable order rather than to continue the trouble and charges of law.'[160]

As we saw in Chapter 2, almost no disputes were resolved by actual judgment of a court, and a continuum existed between informal negotiations on the one hand and the judicial resolution of legal claims on the other. The use of arbitration was nothing new,[161] but a striking feature of the early modern English legal system was the tendency of central courts at Westminster to refer disputed matters to commissions of laymen, rather than proceeding to final judgment themselves.[162] This was especially true of the equity and conciliar courts: Hindle observes that by making use of the 'judgment, influence and practical morality of responsible laymen' in the administration of justice, the use of commissions widened the influence of the state and brought to the fore the 'importance of arbitration as a technique of Tudor judicial administration.'[163]

However, this is not to deny that the judges of the central courts were themselves involved in arbitration. To the contrary, they were deeply involved, and a leading figure like Sir

[160] SCJA MUN LII.52.
[161] E. Powell, 'Settlement of Disputes by Arbitration in Fifteenth-Century England', *Law and History Review*, 2 (1984), 21.
[162] On arbitration in the period more generally, see Craig Muldrew, 'The Culture of Reconciliation: Community and the Settlement of Economic Disputes in Early Modern England', *Historical Journal*, 39 (1996), 915.
[163] Hindle, *State and Social Change*, p. 5.

James Dyer even included his own arbitral awards among his reported cases.[164] As we shall see in the next chapter, Dyer was also the broker behind the settlement of a troublesome dispute involving St John's College. More importantly, that chapter will also show how judges like Sir William Cordell were able to act as arbitrators as well as more informal powerbrokers when exercising the role of patron and Visitor.

The actual conduct of negotiation in Tudor England is not easy to recover, and we would do well not to romanticise a process that was likely to have been as blunt and self-interested as it is in our own times.[165] Sometimes, even when litigation was merited, a shrewd party could induce the other to avoid a suit. This was apparently the experience of Edward Glynton, the manciple of St Bernard's College, Oxford, who sued Arnold Guy alias Buckfast, clerk, for his failure to pay four years' worth of weekly commons and board at the college. Although recorded in the college's 'commons book', the debt could not be pursued at common law in the courts outside Oxford. Guy, with

> gentle and fair words trifled with your said orator these three or four years past, when your said orator by mediation of friends deferred to sue any action of debt against him in the town of Oxford aforesaid where he might easily [have] attained the same debt of £16 and where also the said book is pleadable.[166]

Where did negotiations take place? Many seem to have taken place at an inn, such as the Bell in Abingdon, where Richard Montgomery, Oliver Hyde and Thomas Ford negotiated in the 1540s;[167] or 'in a chamber … called the Lord's Loft' at Hagbourne where Edmund Busby and his soon-to-be wife Eleanor negotiated a marriage settlement in front of witnesses whom they 'specially desired to be present with them at the said day

[164] Baker, 'Introduction', lxxxv; *Dyer's Reports*, p. 71.
[165] Roberts, 'The Study of Dispute', p. 15.
[166] C1/1125/15.
[167] Req 2/16/47.

appointed';[168] or at 'an inn called the Buck in Maidenhead' where Richard Hardwick witnessed Cecily Noke 'bargain and sell all her estate and tenure in the premises for the sum of 20 nobles'.[169]

How might such a negotiation proceed? A 1567 deposition in the Chancellor's Court of the University of Oxford suggests how the mediation of an authority figure might bring the disputants to peace. Michael Stocker recounted that the Principal of Broadgate Hall

> perceiving much strife and often falling out in this house betwixt Sir Perse and Robert Mousehurst thought good to attempt to make agreement between them, and to that end requested this deponent to come to his chamber, … then the said Principal did fetch … Sir Perse and the said Mousehurst to his chamber, and being come [the Principal] mended them both to unity and concord and to agreement one with the other, whom after a little talk together, one uttering to the other each other's injuries were very well willing to agree to the other, and did of their own accord for themselves to take oath and to say one to the other, who then and there immediately upon the foresaid talk, did both swear upon the Holy Evangiles each to remit the other of all injuries, reports, slanders and evils passed betwixt them…[170]

Clearly, the atmosphere at negotiations must have depended very much on the character and motivations of those involved. It also depended on properly identifying one's opponent and his motivations. In All Souls' long-running dispute with the Lords Cromwell over the lands of Launde Abbey at Whadborough, the college's perceptive attorney noted that 'the new Lord Cromwell's brother' was 'a greater adversary to you than my Lord himself'; and that it was therefore the brother, not Lord Cromwell, who was the greatest impediment to negotiation.[171]

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[168] C24/39, *Busby v Kete*.
[169] C24/28, *Noke v Peck*.
[170] OUA Hyp/B/1 fol 20r.
[171] ASCA 232/236.

The college also faced a very tense discussion with an intractable opponent in its dispute over the marshland in Kent. Stephen Thornhurst, writing to the Warden, recorded an outburst from the college's opponent: '[a]nd if I had not meddled in this matter, Eppes saith boldly unto me that the College and he had agreed long ago, but I am so covetous and so without conscience that I will have all…'. The atmosphere seems to have been truly dismal:

> Indeed, I must confess much folly to be in me, for truly I did never opine this matter under none of the awardsmen because mine only study was how to make the number of acres according unto the payments of the nottes[?] and my wits was otherwise occupied upon the ground studying on Eppes' evidences when I heard them read. And also it mizzled rain with such stormy weather that we could read no evidence abroad otherwise than in the barn of the College, and … many times both Godfrey, Wilcox and Eppes baited me at their pleasure, which things were painful unto me to bridle my nature then.

Given the poisonous atmosphere, it was hardly surprising that the attempt at negotiation failed. Thornhurst recounts how Eppes declared that

> he would not go thwart the way for any man's evidence in this case, for the law should try his as they were, and wished he had done the same, before he showed his evidences, otherwise than to say Mr Engeham bought so many acres lying there in the College land. And so his counsel advised him to do.[172]

Sometimes, more tractable opponents could be brought to agreement with an attractive and concrete proposal for resolving the dispute. This was true, for example, in Magdalen College's long running dispute with Christ Church over land in Deddington. Then as now, Magdalen did things in style: in an earlier phase of the dispute they asserted their rights by building a cabin on the land and installing watchmen who lit a bonfire and irritated the neighbours by 'blowing of horns in the night time'.[173] After the taking of depositions for

[172] ASCA 130/99.
[173] MCA EP/100/26; CCA MS Estates 69 fol 115.

suits in the Star Chamber and elsewhere, the ambiguity of the factual situation induced the college to propose a series of compromise solutions:

> Sithens the matter is so doubtful, and the depositions so contrary, and the Justices knoweth not in which party the right resteth.
>
> We will give [ ] pounds so ye absolutely relinquish your title under [your] seal of Christ Church.[174]
>
> Whereas Anthony Bustard standeth bounden to Sir Thomas Pope his heirs and assigns to pay him or them £20 in case St John's Close were evicted from them to Magdalen College, we will permit you (notwithstanding this arbitrament) to have against the said Anthony the benefit the law will give you, upon condition aforesaid and beside that 20 marks in money.
>
> Or else: Besides your advantage to be had at Bustard's hands we will give you upon condition the release you wish under your common seal, 20 nobles and the lease of the ground for term of 20 years, paying yearly 4 nobles.
>
> Or else: 20 marks and half the lease for so many years as be aforesaid.
>
> Or else: 20 marks and the whole lease for 20 years for sum aforesaid, so ye absolutely relinquish your title under your seal, not taking advantage of Bustard.
>
> Or else: the benefit of Bustard's obligation of £20 aforesaid made to … the obligation of ten wherein he standeth bound to Magdalen College (not to make any undertenant of any parcel to him demised, whereof St John's Close is express parcel) …
>
> Or else: ye shall pay us 4 nobles, we have the release of the close with authority to distrain for the same, and you to have the same, and Bustard's obligation of ten pounds made to us.
>
> Or else: divide the close.[175]

The rare survival of such a compendious set of negotiating points is itself noteworthy. Evidently, a lawyer had a substantial involvement in its drafting, and needless to say, lawyers did not broker such settlements for free. Edmund Plowden, for example, was paid

[174] The actual sum is unclear.
[175] MCA EP/100/20.

6s for writing a 'composition' of a dispute between Magdalen College and the City of Oxford in 1564.[176]

As we saw in the case of Magdalen and the land at Chalgrove, a complex multipartite situation might require the shared funding of legal services. It might also require a more complex negotiated settlement. This was the case, for example, in Crendon (Bucks), where the Chapel Royal at Windsor, All Souls' College and William Dormer were collectively the lords of the manor. They and their tenants had been in a dispute about customary rights, and yet it was ultimately 'compounded, concluded, determined and fully agreed' between the various parties in 1553 what those customary rights were; for example that a tenant was to pay as heriot 'his best quick beast', and if he had none then 'his best good'.[177]

**Corruption and negative experiences of the legal profession**

Over the course of this chapter and earlier in this thesis, we have seen how the legal profession offered a desirable range of useful services to a large and socially diverse clientele. The ideal of lawyers' conduct was set out, for example, in the oath whereby attorneys in the Common Pleas promised to

> do no falsehood nor consent to any to be done within this court, and if you shall know of any to be done you shall give knowledge thereof to my Lord Chief Justice or other my masters his brethren, that it may be reformed. You shall delay no man for lucre or for malice. You shall increase no fees, but be content with the fees accustomed. You shall plead no foreign pleas nor sue any foreign suits unlawfully to hurt any man, but such as shall stand with the order of the law and your

[176] MCA LCE/5 Liber Computus 1564.
[177] ASCA 21/52.

> conscience. You shall seal all such process as you shall sue out of this court with the seal thereof or see the Queen's Majesty or my Lord Chief Justice satisfied for the same. Also, you shall not wittingly or willingly sue or procure any false suit, nor give aid or counsel to the same, on pain to be expelled from this court for ever. And further use your self in the office of an attorney within this court according to your learning and discretion.[178]

Likewise, so far as litigants and witnesses were concerned, the ideal was represented by a group of inhabitants of Whitchurch (Oxon) who in 1558 declared that 'it is meritorious and a deed of charity to testify and record the truth in all things of ambiguity and doubtfulness', and therewith appended their names to a statement setting out the boundary of a particular parcel of woodland.[179]

As we have seen, however, the reality did not always live up to this ideal of honesty and diligence. Working with the legal profession was not a wholly positive experience for many people: we have already encountered enough examples of delay, expense, vexation, perjury, paper-shuffling and incompetence to belie any overly rosy view of the legal profession and its work. Clearly, many people in early modern England made use of the legal system, but few treated it with unctuous respect.

An example of the depth of hostile feeling the system could generate comes from a 1567 Exchequer case, brought by James Langrake against Christopher Heath and Henry Beauforest. Langrake was a notorious professional informer, who brought proceedings in the Exchequer against Heath in 1565 for 'keeping of a tavern and uttering of wine by retail'. Heath did not appear, so Langrake had his servant Richard Bevan attempt to serve a subpoena on him in Wokingham (Berks). Heath would have none of it, and 'in most

[178] *Dyer's Report*s, pp. 176–7. This seems to have formed the pattern for the oath of attorneys in local courts such as those in the Borough of Reading: *Reading Records*, p. 269.
[179] OHC E1/8/1D/3.

arrogant manner' did 'with violence cast the same writ out a window into the street saying these words, viz, "Thou art a knave and a vagabond, and as I do regard thee so I do regard the writ".' Heath then sent for the constable of Wokingham, Henry Beauforest—whom we encountered in Chapter 3 as the kinsman of Luke and the teller of salacious tales about Agnes Kayse. Heath allegedly detained Bevan for two and a half days, and Beauforest then

> threatened to whip the said Richard Bevan as a vagabond with other disordered usage of your orator's servant to the great encouragement and evil example of a great number of evil disposed persons despising the Queen's Highness' laws and statutes and such of her highness' subjects as do travail and truly prosecute the same.[180]

Common informants were hardly likely to engender popularity even at the best of times, and they drew attention to what many perceived as negative aspects of the legal system.[181] The jurist William Lambarde characterised informers as 'flies that feed upon the sores of diseased cattle', yet as Kesselring notes, they too formed part of the 'broad participatory base of the early modern state [that] helped legitimate its power as authority.'[182]

That broad participatory base also opened many opportunities for another source of the legal system's unpopularity, namely corruption. Since the legal process involved so many people—judges, clerks, sheriffs, undersheriffs, barristers, attorneys, scriveners, process servers and the like—who were motivated by an admixture of public service and private profit, the opportunities for partiality and corruption were rife. It is important, though, to avoid the risk of ahistorical misinterpretation: as Carpenter points out, the 'larger role that private relationships … played within the body politic' was not itself seen as corrupt, especially as the increasingly bureaucratic legal system was

[180] E112/2/37.
[181] Cf Williams, *Tudor Regime*, pp. 149–52.
[182] K.J. Kesselring, 'Felony Forfeiture and the Profits of Crime in Early Modern England', *Historical Journal*, 53 (2010), 286.

> only a very recent intruder into a web of private relationships that not only remained a more powerful, because more permanently present, element in people's lives, but was also absolutely essential to the running of the king's government.[183]

As we saw in Chapter 2, the sheriff—or perhaps especially the undersheriff—was a particular weak point in the procedural system. The opportunities for delay or corruption were well known, and yet the whole system depended on the efficiency and honesty of these men.[184] One victim of maladministration who, unusually, sought legal redress against the officer in question was John Laundes, a Kentish yeoman, who sued William Egerton, the undersheriff of Berkshire. The basis of Laundes' suit in Chancery (in the time of Chancellor Wriothesley) was that Egerton entered a false return of *non est inventus* to a writ of *capias* that Launde sought against a debtor, one William Fairbairn, who owed him £30 upon an indenture 'for certain chattels of him bought'.[185] Fairbairn refused to pay, and Laundes 'of very necessity was constrained' to sue in the Common Pleas. Fairbairn, 'having knowledge of the said process fled out of the said Berkshire into the County of Oxford', where Egerton was also the undersheriff. Egerton then

> affirmed himself to be undersheriff both of Oxfordshire and … Berkshire and said that if your said orator would give him a reward he would amend the said writ and make it to serve for both shires, and after he [e]rased the said writ and put in both Berkshire and Oxfordshire and so told your said orator how that he had made it a double writ and then and there at the same time caused your said orator to give unto him for mending of the said writ 3s 6d…

Alas, that money was poorly spent, for although the bailiff of the Hundred Henry Deane managed to locate Fairbairn, he was released on bail to appear on the first day of the next term, at which day 'the said sheriff made default, making a false return which he returned *non est inventus*.' Even worse, 'by reason of the said false return made by the said sheriff

[183] Carpenter, *Locality and Polity*, p. 282.
[184] See Hastings, *Court of Common Pleas*, pp. 162–4.
[185] C1/1138/19.

the said defendant is fled over the sea' where the King's writ did not run. The undersheriff 'standeth charged to answer' for the loss of Laundes' ability to recover the £30, especially as Laundes was 'a poor man and hath neither bills especialty ne obligation of the said sheriff to show ne to pursue against him for the same, he is without remedy by the order of the common law'.

Egerton's taking a 'fee' might seem untoward to modern eyes, but it was nothing exceptional in a society in which office-holders earned their income by such means, and in which in any event 'illicit profits were a not uncommon thing.'[186] Outside the legal context—at least as seen from the point of view of the recipient—the 'scramble for rewards of office' was in A.J. Slavin's description an 'honourable part of public life'.[187] *Within* the legal context, the picture was much more ambiguous. As we saw from the accounts discussed earlier in this chapter, gift-giving—whether of small symbolic things like gloves, or in the form of more valuable hospitality—was an accepted part of Tudor legal life. Nonetheless, there came a point at which social courtesy and reciprocity for patronage or good lordship shaded into outright corruption of an unacceptable kind.[188] Wilfrid Prest observes that

> If both sides to a dispute customarily gave gifts and mobilized whatever influence they might command with judges, jury and court officials, such practices may often have had little net impact on the eventual legal outcome, although whether this consideration placated the losing party is another matter.[189]

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[186] Smith, *Land and Politics*, p. 153. On corruption more generally, see J. Hurstfield, *Freedom, Corruption and Government in Elizabethan England* (London, 1973).
[187] A.J. Slavin, *Politics and Profit: A Study of Sir Ralph Sadler, 1507–1547* (Cambridge, 1966), p. 158.
[188] Joseph S. Block, 'Political Corruption in Henrician England', in Charles Carlton (ed.), *State, Sovereigns and Society in Early Modern England* (Stroud, 1998), pp. 49–51.
[189] Wilfrid Prest, 'Judicial Corruption in Early Modern England', *Past & Present*, 133 (1991), 73.

Attorneys were unlikely to want to replicate the experience of John Peycok, the undersheriff of Berkshire who was removed from office in 1507 for his corrupt interference in the process of the Common Pleas.[190] So far as the judiciary itself was concerned, the sixteenth century saw a number of spectacular falls from grace on account of corruption. John Beaumont was dismissed as Master of the Rolls in 1552 for his corrupt and champertous manipulation of a case concerning Lady Anne Powis.[191] Later in the century, Sir Roger Manwood, Chief Baron of the Exchequer, managed to avoid the ill consequences of his own corruption by dying in office in 1592. Incidents of this kind contributed to a cultural context in which 'exemplary instances of unjust judges past and present came readily to mind, and where many routine judicial practices hardly allayed misgivings'.[192] None of this was likely to raise the public esteem in which the legal profession was held.

Individual lawyers cared about their good name and, if an office-holder, also for their reputation for competence and impartiality. The steward of Shinfield (Berks) obviously had this in mind when he sued John Green for uttering the slander 'Christopher Lytcott the steward is a false and unjust steward'.[193] And as we saw in Chapter 3, Leonard Parrett was unusually concerned to preserve his reputation as a just arbiter in the troubled manor of Dorchester. Parrett was dismissed from his office once the manor was granted by the Crown to Lord Norris, but this did not prevent him bringing a suit against his replacement, George Calforde, whom he accused of being

[190] Baker, *Oxford History of the Laws of England*, p. 329; CP40/980 m 403v.
[191] *The Chronicle and Political Papers of Kind Edward VI*, ed. W.K. Jordan (London, 1966), pp. 109, 128–9; Baker, *Men of Court*, i, pp. 287–8.
[192] Prest, 'Judicial Corruption', p. 78.
[193] CP40/1159 m 213.

> a very busy and troublesome man, and no indifferent steward between the lord and tenants, picking quarrels daily to the tenants' copies and leases heretofore granted by the Queen's Majesty and her officers long before the [grant to Lord Norris], and thereby he is a causer of more trouble between the said [Lord Norris] and the tenants…[194]

Whatever the truth of these aspersions on Calforde's character, it was certainly true that many contemporaries considered lawyers to be 'causer[s] of … trouble'. This, indeed, included fellow lawyers.

**Conclusion**

Over the course of this chapter, we have seen examples of the diversity of lawyers' work, and of the variety of interactions that they had with—or on behalf of—their clients. Faced with an opponent as difficult and intransigent as William Eppes, for example, it is little wonder that the fellows of All Souls' College preferred to send their lawyer to negotiate with him in the mizzling rain rather than doing so themselves.

While few people were likely to feel warm sentiments towards professionals who profited from the disputes and dissentions of their neighbours, we would do well to remember that litigation was only one part of legal practice. The less ostentatious aspects of transactional work—drafting conveyances, drawing up conditional bonds, reviewing documents, arranging finance, giving advice—did not tend to generate a vast literature of social complaint.

Whether in the transactional or litigious field, though, the best indication of the value that people in mid-Tudor England placed on professional legal services was the assiduity with

[194] E112/36/14.

which they spent money to acquire them. Both the wealthiest institutions and the most lowly tenants thought that it was worth their bother paying for lawyers to work on their behalf. In the case of colleges and boroughs, the surviving financial records give us an insight into what kind of legal services they required, and from what kind of lawyers they acquired them. In the case of more modestly-placed individuals, we have seen how the techniques of collective funding and, in some instances, the judicious use of maintenance allowed people to assert or defend their legal rights even against well-funded adversaries.

# CHAPTER 6

## LAW AND POLITICS IN THE LITTLE COMMONWEALTH: SIR WILLIAM CORDELL AND ST JOHN'S COLLEGE, OXFORD

This chapter begins not with an extravagant story of riotous disruption or colourful feuding, but with a much more typical scene from the Tudor legal world, namely litigation about a small debt in a local court. In 1566, St John's College found itself haled before the Chancellor's Court of the University of Oxford by William Horloppe, an Oxford butcher, who complained that the college had failed to pay its bills. Horloppe said that the former manciple of the college, John Gye, bought meat from him on credit—as did most merchants and customers—and that he was paid in cash upon a periodic reckoning, the last iteration of which had failed to take place. The college's officers denied that any debt was owed at all, and claimed that Horloppe had always been paid in cash.

The Bursar of the college testified that his predecessors had disbursed cash for all such purchases, and added that 'for the better testimony of the truth' he could show Gye's handwriting 'in his books for the receipt of diverse sums of money received by him' from past bursars. A fellow of the college, Francis Willis, went one further, saying that Gye

> hath had a commandment of the President and fellows of the college aforesaid, but also of the founder of the same, not to buy or take any victuals for the said college of any man upon credit or trust, but to pay ready money, and this commandment was given by the founder about 2 or 3 years past and by the said President and fellows from time to time by the space of 3 or 4 years past [and] that upon this commandment given, this deponent did refer to go to the market with [Gye] and Everard, being sometime steward of the college at that time, the same manciple having money to lay out…[1]

[1] OUA Hyp/B/1 fol 3.

After that commandment was given, the President himself 'often times for goodwill' went to Horloppe and

> required him [not] so to credit the said Gye, manciple, and if he did he should hazard his money, because the President and fellows would not account themselves debtors to him, and the said Horloppe upon this warning refused to come to the said President and fellows being requested by this deponent of friendship to show them that the said John Gye did owe him anything at all…

Horloppe plausibly denied all of this. Not only did the college regularly buy on credit—the bursars would send for him when they wished to settle the account for the 'money that the college did owe him then for meat'—Horloppe even claimed that Sir Thomas White himself was aware of the practice. One time when Horloppe was summoned to receive his due, 'when he came, one whose name this respondent doth not know did tell White their founder that the butcher was come for money, then said [that] he paid him.'[2]

Perhaps Sir Thomas White was not in truth personally concerned with the payment of a butcher's bill, but in many other ways this small episode is an authentic microcosm of a familiar bigger picture. As a small suit about a trade debt, it was utterly typical of litigation in the mid-Tudor period more generally: each year, thousands of creditors decided that enough was enough with an outstanding account for goods bought. It was also quite typical of the work of the Chancellor's Court, which for the most part concerned trade disputes and the other kinds of civil litigation familiar to local courts across the country, and in which the likes of William Horloppe were typical litigants.[3] Of course, the Chancellor's Court differed somewhat from the borough courts of equivalent towns: its civilian

[2] OUA Hyp/B/1 fol 4r.
[3] Underwood, 'Structure and Operation of the Oxford Chancellor's Court', p. 18. Cf equivalent institutions in Cambridge: Alexandra Shepard, 'Legal Learning and the Cambridge University Courts, c.1560–1640', *Journal of Legal History*, 19 (1998), 62; Alexandra Shepard, 'Litigation and Locality: The Cambridge University Courts, 1560–1640', *Urban History*, 31 (2004), 5.

procedures mean that we have depositions that do not survive for other local civil courts; and it is hardly a typical debt case that sees Sir Thomas White purportedly worrying about a butcher's bill.

St John's College, though, was far from being a typical client of the legal system. As a corporation, it differed from the vast bulk of individual litigants, but it was scarcely alone among the large number of colleges, towns, cathedral chapters, livery companies and the like that made use of the legal system. The real source of its difference lay in the patronage of Sir William Cordell, Master of the Rolls, whose letters to the college have survived. From these, in conjunction with other archival sources, we can reconstruct a very rich picture of St John's involvement in the legal system over a number of years, in which the tensions and opportunities of law and politics in the little commonwealth are fully revealed.

**Sir William Cordell and his correspondence**

Sir William Cordell was born in 1522 to John Cordell, principal servant to Sir William Clopton (d. 1531) of Kentwell in Long Melford, Suffolk, and Lincoln's Inn. Through the influence of his father's employer, the young Cordell entered the same Inn as a 16-year-old student in 1538. He was called to the Bar in 1544 and became a bencher in 1553.[4] He received preferment under Queen Mary, becoming her Solicitor-General in 1553 and then Master of the Rolls in 1557, a post he held until his death in 1581. Like many lawyers,

[4] ODNB; Jones, *Elizabethan Court of Chancery*, pp. 58–60.

Cordell also sat in Parliament, doing so on five occasions between 1545 and 1571, and serving as Speaker in 1558—an unusual position for a judicial officer.[5]

Cordell held traditionalist religious views: he was an executor of the wills of Queen Mary and Cadinal Pole, and remained a noted Catholic in Elizabethan times.[6] Indeed, it was these religiously conservative inclinations that led to his becoming Visitor of the college. At the time of its foundation in 1555, Sir Thomas White envisaged St John's as a place for the building up of Catholic religion. Following the model of Corpus Christi and Magdalen Colleges, the college statutes as written in 1562 appointed the Bishop of Winchester as Visitor, but the unsympathetic religious outlook of the first Elizabethan incumbent of that office, Robert Horne, seems to have led Sir Thomas White to appoint Cordell and William Roper as Visitors for life in the statutes of 1566.[7] After White's death in 1567, this inevitably led to disputes and litigation which were resolved—in Cordell's favour—only in 1571.[8]

The surviving correspondence from Cordell to the college consists of 82 letters which fully justify the claim that 'there has never been a Visitor of any college that showed such diligence, care and patience.'[9] The letters commence in 1570, just at the tail-end of an

[5] Hist Parl, i, 702–4. Judicial officers usually sat in the House of Lords, summoned by writs of assistance: E.R. Adair and F.M. Greir Evans, 'Writs of Assistance, 1558–1700', *English Historical Review*, 36 (1921), 364.
[6] Michael Questier, *Catholicism and Community in Early Modern England: Politics, Aristocratic Patronage and Religion, c. 1550–1640* (Cambridge, 2006), pp. 154–5.
[7] W.H. Stevenson and H.E. Salter, *The Early History of St John's College, Oxford* (Oxford, 1929), pp. 156–7.
[8] CSP Domestic Eliz, 80, p. 417 nos. 11–13. Roper never acted as Visitor, and entrusted the duties wholly to Cordell: Stevenson and Salter, *Early History of St John's*, p. 160.
[9] VCH Oxon, vol 3, p. 254.

unseemly dispute between the college and its founder's widow, Lady White,[10] and last until March 1581—a few months before Cordell's own death.[11] Cordell usually wrote from the Rolls at London, although he also wrote on occasion from his estate at Melford Hall in Suffolk, or from Shacklewell in Middlesex.[12] The surviving letters from Cordell were addressed in two ways: either to the President individually (49 letters), or to the President and fellows as a whole (33 letters).

With only a couple of exceptions, nothing of the correspondence from the college to Cordell survives, although its gist can often be inferred from Cordell's own letters. Also lost to us are the oral reports or instructions passing between Cordell and the college, to which he made frequent reference in his letters. It seems that Cordell could be very frank indeed in these conversations, especially when college discipline was concerned—a topic to which we shall return. In August 1579, Cordell commented on the long delay in receiving correspondence from the President, and speculated that this was a result of the strong 'speeches' he had given to the President at his last visit concerning college affairs, the tone of which must have 'seemed very hard and strange unto [him]'. Cordell made no apologies for his bluntness:

> [S]uch hath been my care of that house, in respect of the trust your founder committed unto me, that I cannot hear of anything which toucheth the same, either in good name or profit, but I must forthwith impart it to those to whom the care of that government concerneth. And I must confess that my nature is to tell it somewhat sharply to those in whom I have any interest, as I think you do account I have of you, so far forth as I may do you any good…[13]

[10] SJCA MUN LII.21. On the dispute with Lady White, see VCH Oxon, vol 3, p. 253; Stevenson and Salter, *Early History of St John's*, pp. 153–5.
[11] Cordell died at the Rolls on 17 May 1581: ODNB.
[12] Shacklewell was the home of Sir Henry Rowe, son of Sir Thomas Rowe. Both father and son were Lord Mayors of London. The Rolls House in Chancery Lane was the Master of the Rolls' official residence: Jones, *Elizabethan Court of Chancery*, p. 52.
[13] SJCA MUN LII.66.

**Land and commerce**

Cordell's correspondence is rich in practical details of the college's legal and business affairs. As he noted in February 1578, the pressure on his own time and his desire to be useful meant that he preferred not to write unless he 'might send you some prosecuting and perfecting of your college causes'.[14] Because of Cordell's position, the news of that 'prosecuting and perfecting' is often very interesting indeed; and it stands as an important reminder that the pursuit of 'good lordship' was not always antithetical to the ideal of 'order, legality and rationality' in a legal system or in society as a whole.[15]

As one might imagine, the buying and selling of land formed a very large portion of the college's legal and commercial dealings, and in Cordell the college had both a shrewd negotiator and a ready source of practical legal advice.[16] Thus, Cordell was pleased to secure a good deal for the college when it purchased the parsonage of Crenley from one Thompson: 'though the price may seem great unto you, yet I assure you, he might have had more for it—if there be any truth or honesty in him—by one hundred pounds.'[17] Likewise, when it came time to sell one of the college's London houses, one can sense Cordell's slightly smug confidence when he asserted that 'it is not in my opinion the worst

[14] SJCA MUN LII.51.
[15] Cf Muldrew, *Economy of Obligation*, p. 133, referring to James, *Society, Politics and Culture*, pp. 9–11, 274–5.
[16] In addition to his assistance to St John's, Cordell was a noted purchaser of property on his own account: Abbott, 'Public Office and Private Profit', p. 155. See also *Ponynges v Cordell and Griffin*, *Dyer's Reports*, p. 146.
[17] SJCA MUN LII.24.

bargain you have made, for I have gotten of [the purchaser] £50 more than any other man would yield for it'.[18]

One example helps to illustrate the trajectory of a simple deal successfully accomplished. As a result of its founder's bequest, St John's held a number of central London properties, including houses in St Nicholas Shambles, which—as the street name suggests—were mainly occupied by butchers. At the end of January 1580, Cordell wrote to the college that he had been negotiating with potential purchasers and hoped to obtain a price of £140 'or more if I can get it' for one of the college's houses, despite its being 'an old ruinous thing'.[19] Cordell must have been a persuasive salesman, for a week later he wrote that he had secured £150 for it from an 'honest chapman'.[20] Other suitors were also interested in the house at that price, but Cordell 'liked not so well of them' because they did not offer the higher price 'until they were drawn unto it' by higher bidders, and because they did not intend to use the premises themselves, 'being no butchers for whom the house is most meet'. [21] Then, towards the end of February—not even a month after opening negotiations—Cordell circulated a draft conveyance; reported that the 'honest chapman' was 'one Green, a butcher' who already lived on the Shambles; and congratulated himself on concluding the deal 'to the good satisfaction of all parties, which I think is a beneficial bargain for you.'[22]

Naturally, not all deals were as simple or proceeded as smoothly, and in such cases Cordell's legal expertise was invaluable. The commercial advantages of a proposal were

[18] SJCA MUN LII.58.
[19] SJCA MUN LII.71.
[20] SJCA MUN LII.72.
[21] SJCA MUN LII.72.
[22] SJCA MUN LII.78.

often intertwined with legal questions, usually relating to title. Just as a good title could justify a high purchase price, a doubtful title could negate the value of an otherwise attractive deal. Thus, in one proposed purchase of 1580, the vendor Sir John Arundell insisted on a higher price than Cordell had hoped for, but Cordell was nonetheless optimistic about the deal because the land in question 'lieth very commodiously for you' and 'the gentleman is well able to make you as good assurance as can be devised by law'.[23] The converse was true in 1577, when the college was thinking about buying three parsonages in Dinton (Bucks). Cordell had been 'in good hope' to proceed with the deal, but he was 'now otherwise altered' as a result of his investigations, 'by reason that after I had used some conference with Mr Duncombe, I found the title of those lands, not to be so sound and good as I durst adventure to proceed in that bargain.'[24] Faced with such advice, the college proceeded no further with the deal.

Perhaps as a result of their commercial inexperience, the fellows of the college were sometimes overly optimistic about proposed transactions, leading Cordell gently to pour cold water on their enthusiasm. One such proposal came from a Mr Fisher of Southmoor (Berks), who proposed to sell land to the college at a high price and then have the college lease it back to him at an especially favourable rent. Cordell was sceptical about the offer:

> I cannot presently like so well of it, as peradventure I may hereafter have cause to do, for … it will be hard to reserve a rent of £20 per annum, and more hard to give the sum of £400 for it; and where he offereth to become your farmer for that rent, I cannot blame him, considering he would have the use of £400 in money, and the occupation of his own land, yielding only £20 a year.[25]

[23] SJCA MUN LII.76.
[24] SJCA MUN LII.39.
[25] SJCA MUN LII.44.

Still, if the college were determined to proceed, he insisted that they at least take an accurate survey of the land to show him when they next visited London.[26] The subsequent course of negotiations seems to have justified Cordell's hesitation. On the one hand, further investigation in the next month bolstered the college's initial enthusiasm, and Cordell came to see the deal as one 'very commodious and profitable for you and your tenants' which 'sufficiently induce[d]' him to negotiate 'earnestly and effectually in that behalf'.[27] But by the next year Fisher's 'credit and honesty hath been touched', and Cordell felt 'the less devotion for my part to deal with the man'.[28]

In all such transactions, being able to tell the difference between a good and a bad deal was the key. Old-fashioned legal research was essential, and in this Cordell was especially well placed. He was able to send a servant — 'my man Dugdale' — to make search of records in the Vice Chamberlain's office,[29] or to 'have caused search to be made amongst the records [of the Treasury] to find the certainty of' a matter in doubt regarding the college lands.[30] More modern practices like surveying were also useful, as was true in Southmoor and elsewhere—for example, a survey of Long Wittenham (Berks) cost the college 3s 8d in 1580.[31] Even so, a survey on its own was no guarantee of a good deal, especially in the case of unfamiliar land. Thus, in a 1578 negotiation Cordell wished that the college 'should (by the advice of some of your wise friends there) be well informed of the commodity of the said parsonage, or whether it agreeth with the said survey or no'.[32] Then as now, local knowledge was often the surest guide.

[26] SJCA MUN LII.44.
[27] SJCA MUN LII.45.
[28] SJCA MUN LII.54.
[29] SJCA MUN LII.67.
[30] SJCA MUN LII.40.
[31] SJCA ACC I.A.2 fol 75.
[32] SJCA MUN LII.52.

## Conveyancing and documentary practice

Once agreement had been reached about the commercial basis of a transaction, appropriate legal documentation had to be produced to bring about the sale. In the case of St John's, we know from Cordell's letters that a 'particular' of the commercial deal would be written 'to the end you may resort with it to your counsel' for the drawing of a formal contract of sale.[33] As may be expected, the college engaged counsel to 'draw and peruse' its conveyances, with the aim of producing a draft conveyance in the form of a 'book'—a task which cost 30s for one transaction in 1580.[34] Such books were often shown to Cordell for his advice before being sent to the other party for their approval. Once the final form of the conveyance was settled—that is, when the book was 'fully agreed upon'—an indenture was 'put to engrossing' and sealed.[35] The enrolment (described as 'registering') of such indentures cost money—3s in 1570, 12d for a different transaction in 1580[36]—as did the taking of possession of the land itself: 12d was spent at More for this purpose in 1569.[37]

Sometimes, conveyancing needed to be done in haste, which required an experienced lawyer who knew the college's practices and therefore avoided the need to reinvent the wheel. Such an occasion arose in 1580, when Sir John Arundell proposed an advantageous sale of land to the college. Arundell's health was poor—his brother acted as his agent for

[33] Cf SCJA MUN LII.81.
[34] SJCA ACC I.A.2 fol 69. Cf SJCA MUN LII.58.
[35] Cf SJCA MUN LII.83.
[36] SJCA ACC I.A.1 fol 14.
[37] SJCA ACC I.A.1 fol 8.

that reason—and the details of the deal were at risk of changing at short notice.[38] Cordell recommended that the college should take the advice of Edmund Plowden

> or of some other man that have been acquainted with your purchases before this time, and to cause a book to be drawn with as much speed as you may, for I find the indisposition of his health and the weakness of his body to be such, as I think he cannot long continue…[39]

Quite aside from the personal recollections of the college's counsel, the history of the college's legal dealings was also recorded in a 'Register Book' or 'College Book' which was kept under the care of the President for the recording of important legal dealings—leases, conveyances, grants of offices and the like. This proved to be of use on occasions such as the sale of the tenement in St Nicholas Shambles, when Cordell sent the college a draft book of the conveyance:

> I would have you compare it, with a counterpane of some of the former sales made by you in the like cases, and if it doth accord therewith (as I am informed it doth, *mutatis mutandis*) then return it unto me again and it shall be engrossed accordingly …[40]

Cordell's letters hint that the orderly keeping of this Register was not always a matter of course, and prompting was sometimes needed to get the college officers to make proper use of it.[41]

Similar care needed to be exercised when safeguarding the college's common seal and title deeds so that they could be found readily when needed and were preserved from neglect, misuse or fraud. Again, it seems that St John's was not always diligent about such matters,

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[38] SJCA MUN LII.85.
[39] SJCA MUN LII.79.
[40] SCJA MUN LII.81.
[41] SJCA MUN LII.39 (Recording John Glover's admission to the fellowship); SJCA MUN LII.40 (referring to the delivery of a lease 'so that you would cause an order to be set down of your common consent [to it] in your register book').

apparently to such an alarming extent that it was noticed by well-wishing outsiders who 'diverse times' informed Cordell about their concerns. Cordell wrote to the college in anxious terms upon hearing that

> your common seal, and the evidence of your lands and livings, are not bestowed in that safety and order as the statutes of your house do appoint. The said seal and writings being the special treasure that appertains unto you. Look unto it (for God's sake) and remember that your college may suffer more hurt by one hour's negligence therein than all you can do in good during your lives.[42]

The subtext of those remarks was, it seems, Cordell's wider concern about maladministration by college officers during the time of President Toby Matthew; but standing on their own they are an elegantly pithy encapsulation of an important contemporary commonplace of good estate administration.

Legal documents were passed between the college and Cordell in 'the box with the writings therein',[43] and in 1569, the college accounts record a payment of 8d to 'the carrier for the carriage of boxes sent to the M[aste]r of the Rolls'.[44] Ten years later, it cost the college 12d for the 'carriage of boxes of writing from London'.[45] Some of this traffic was unnecessary, and Cordell could be blunt when he felt that his time was being wasted. Thus, in 1573 when the college was negotiating the purchase of Walton manor from Richard Owen—son of George Owen—Cordell expressed his frustration that the college delegates burdened him with legal paperwork for no good reason, with the risk of delaying the transaction back in Oxford:

> I did and do mislike, that Mr Russell and Mr Shannon would needs carry down the book that is drawn between you and Mr Owen which is more hindrance to the

[42] SJCA MUN LII.32.
[43] SJCA MUN LII.97.
[44] SJCA ACC I.A.1 fol 8.
[45] SJCA ACC I.A.2 fol 46.

> expedition of the cause that it can be profitable any ways unto you, if you have not some other reason to show me than they could, which was only that it was your order to bring it down.[46]

He concluded by warning them: '*mora trahit periculum*'.[47]

On other occasions the exchange of documents was both necessary and fruitful. In 1578, when a dispute arose over those same lands recently purchased from Owen, Cordell requested a copy of the indenture of sale to determine whether there was any truth to the claim made by Giles Swett that he held a leasehold of some of that land in Walton manor, so that Cordell could 'examine the validity of his said lease, as also (if his interest be good) to do what I can to compound with him for the same, so as you may reap the present fruit of it for your provisions'. [48] This seems to have been a useful endeavour, for Cordell soon found Swett 'reasonable to be compounded with'.[49]

[46] SJCA MUN LII.24.
[47] SJCA MUN LII.24.
[48] SJCA MUN LII.53. This seems likely to have concerned the same land over which Swett went to law in 1562: CP40/1204 ms 902, 1313.
[49] SJCA MUN LII.54. Swett had been the college's bailiff since 1572 (and a privileged person of the University), and thus the more remarkable thing is that the dispute could not be resolved amicably in-house before Cordell's intervention: see *Register of the University of Oxford: 1571–1622*, ed. Andrew Clark (Oxfordshire Historical Soc., vol II, 1887), p. 388. Swett was disenfranchised by the Mayor and Council of Oxford in 1583 for suing another freeman of Oxford in the Chancellor's Court without the Mayor's permission: *Oxford Council Acts: 1583–1626*, ed. H.E. Salter (Oxfordshire Historical Soc., 87, 1928), p. 5.

**Litigation and access to legal advice**

Naturally, as the episode with Swett attests, the purchase of land led to the risk of litigious disputes. The perils of disputatiousness were a common theme in Cordell's letters, as in 1573 when he wrote of his sadness at hearing that

> there hath fallen out to your grief and charges more troubles touching your possessions and lands than which your late founder thought of, or you looked for, so I trust (if it please God to spare my life) I shall shortly so quiet them that they shall have a better ending, than they have had a beginning.[50]

The college received a similar commiseration in 1576 when Cordell was 'very sorry that you are so much troubled by the dealing of the undersheriff of Oxford had with you' in respect of a recent land purchase.[51] Legal ignorance was to be found even amongst undersheriffs—a post normally held by legally trained men:

> If he had well understood and considered the contents of the writ, he would not so much have terrified you with the execution thereof as he hath done, but I think his want of experience made you more afraid, than (I thank God) there is cause.

Cordell was well placed to be thankful, as he procured a *supersedeas* with 'the help of [the college's] friends' in order to restrain the sheriff from 'meddling with the possession of your lands, or for molesting your tenants'. It seems that the case was somewhat complex (and, one infers, that the undersheriff's confusion was more understandable), for Cordell confessed that

> [u]pon the first perusing of your letter, I was somewhat perplexed with the case until I called to remembrance that at such time as you purchased the lands of the said Hearle, I did see an Act of Parliament made in the 31 year of H VIII by the which the land was assured to the said King his heirs and successors from Thomas then Duke of Norfolk and his heirs; a copy of which Act I advised Mr Willis to take

[50] SJCA MUN LII.24.
[51] SJCA MUN LII.31.

> out of the Rolls, which being showed unto Mr Fanshawe thereupon the *supersedeas* was granted. I have advised him to carry the said copy down with him to show you, and being brought up the next Term, as Mr Attorney being here, I hope to get the matter so discharged in the Exchequer that you shall never be troubled for it again.[52]

This episode neatly illustrates one of the chief advantages flowing from Cordell's patronage. Everyone in Tudor England was in need of good legal advice—corporations included—and through Cordell's intervention the college gained privileged access to the judiciary at Westminster and to the London legal profession. Cordell's first surviving letter to the college, for example, concerns the tail end of an unseemly dispute between the college and its founder's family. Cordell had procured a release from the Whites, but in order 'to resolve [a] doubt and scruple' before the college signed on the dotted line, he instructed its delegate, Francis Willis, to seek 'the opinions of Mr Plowden and Mr Fermour, men as you know well learned in the laws of this realm and well affected to do your house good'.[53]

Indeed, Cordell's position as Master of the Rolls meant that good advice could be had simply from those who happened to be passing through his office at the Rolls: even as Willis was bringing back word from Plowden and Fermour 'it chanced Mr Serjeant Manwood to be with me so when I opened the case and doubt as you conceived thereof and his resolution and judgment was [as] clear as' theirs was.[54] In another episode, Cordell advised the college to 'suspend your proceedings … until I have spoken with Sir George

[52] SJCA MUN LII.31. 'Mr Fanshawe' was Thomas Fanshawe, the Queen's Remembrancer of the Exchequer: ODNB. The statute is likely to have been 32 Hen VIII c 80, the exchange of lands between the King and the Duke of Norfolk.
[53] SJCA MUN LII.21. 'Mr Fermour' was most probably Thomas Fermour, a bencher of the Middle Temple: Baker, *Men of Court*, i, p. 664.
[54] SJCA MUN LII.21.

Peckham, by whom, and from whom, my answer to the same dependeth, which I will procure as shortly as I can'.[55]

Cordell was also well placed to assist the college with the advice of those experienced in civil and canon law. On a number of occasions, he sought the advice of Dr David Lewis (judge of the High Court of Admiralty and a noted civilian), the Deans of St Paul's and Westminster, and 'some others of the Arches' who offered 'good and grave advice'.[56] Cordell's proximity to Lewis was also useful when the college wished to buy or sell legal texts, including advice about the appropriate price for a 'course of the civil laws' which the President was to provide to Cordell's nephew, William Gager: Dr Lewis and 'others who can skill thereof' said that such a work would cost 'under the price of £4'.[57] Cordell added as a postscript:

> Mr Doctor Lewis being present with me before the sealing hereof informeth me that he might have bought in Paul's Church yard for courses of the civil laws of the last best edition the one for the price of £3, the other for five marks.[58]

Cordell's proximity to court was another distinct advantage. In the summer of 1577, the President of the college was evidently anxious about some aspect of a petition to the Queen regarding leases and rents reserved out of the college lands. Cordell declared that he was 'not unmindful of it, but ha[d] caused search to be made amongst the records to find the certainty of it'. More importantly, he was able to advise the college that it was an inopportune time to press their suit,

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[55] SJCA MUN LII.40. Sir George Peckham (d. 1608) was a noted Catholic, a former sheriff of Buckinghamshire, and a proponent of Elizabethan colonial expansion: ODNB.
[56] SJCA MUN LII.83. Cf SJCA MUN LII.98 (Dean of St Paul's); SJCA MUN LII.61 (Deans of St Paul's and Westminster); SJCA MUN LII.26 (Dr Lewis). David Lewis (c.1520–1584) was among other things the first principal of Jesus College, Oxford: ODNB.
[57] On Gager, see C.F. Tucker Brooke, 'The Life and Times of William Gager (1555–1622)', *Proceedings of the American Philosophical Society*, 95 (1951), 401.
[58] SJCA MUN LII.94.

> for that her Majesty is removing from time to time, and that the presence of my L[ord] Treasurer (who is now gone to Buxton) is specially requisite for the obtaining of this suit, I think it no good opportunity to move it until her Majesty be settled in a standing house, and that his L[ordship] be returned.[59]

Aside from access to people, other advantages flowed from Cordell's position such as privileged access to accurate printed legal information. Cordell's ready access to statutes and other documentation at the Rolls was by no means a trivial benefit to the college: after all, not many people were as well equipped to lay a ready hand on a convenient copy of an obscure Henrician statute about the land of the Duke of Norfolk. Likewise, the various deeds and releases entered into by the college—such as that with Lady White—could easily be 'enrolled here in my office',[60] and previously-enrolled documents could be searched. Even material in other offices could be retrieved by Cordell's servants, such as the records in the Vice Chamberlain's office searched by 'my man Dugdale', who evidently earned his 10s a term by undertaking such errands.[61]

**Mediation and arbitration**

Perhaps the greatest benefit of Cordell's patronage—certainly, the benefit that sheds the most interesting light on the operation of the legal system at the time—was his role as mediator and arbitrator in disputes involving the college.[62] Cordell was by no means a blind partisan for resort to the law over other forms of dispute resolution, and his encouragement of suits was based on a realistic appraisal of their likely success: the

[59] SJCA MUN LII.40.
[60] SJCA MUN LII.21.
[61] SJCA MUN LII.67.
[62] On the role of arbitration more generally, see, eg, Muldrew, 'Culture of Reconciliation', p. 915.

'trouble and charges of law' were greatly to be avoided.[63] Thus, when he was informed of a 1580 dispute ventilated by one Mistress Moyne against Henry Russell, he urged the President to be a mediator between the parties so that Russell 'might grow to some end therein'. Scrutinising Russell's claim, Cordell doubted 'what good success it shall receive by suit in law', and hoped that Russell might be brought to 'some reasonable composition and agreement' with his antagonist.[64]

One of the major successes of Cordell's mediation—and an illustration of his closeness with civilian lawyers—was the May 1574 agreement he brokered concerning the Merchant Taylors' rights to the election of fellows, scholars and choristers of the college.[65] The parties had 'submitted themselves to [Cordell's] order, arbitrament rule and judgment which they have promised to allow, confirm and stand unto for ever' – in which arbitration, Cordell sought the 'advice, assistance, counsel and judgment of my good and worshipful friend Mr Lewes, doctor in the civil law and judge of the Court of Admiralty'.[66] Through Cordell's mediation, the Merchant Taylors agreed not to insist on their full rights of election in view of the college's poverty, at least until such time as the college was more financially secure.

Other episodes show Cordell as an honest broker encouraging a negotiated end to a litigious dispute. This was the case, for example, in a 1579 episode in which two rival claimants had entangled the college in their dispute over rights to the parsonage of Crick (Northants), in which Cordell was able to act both as mediator and arbitrator:

[63] SJCA MUN LII.52.
[64] SJCA MUN LII.101.
[65] SJCA MUN LII.26.
[66] SJCA MUN LII.26.

> Mr Stock [the claimant][67] is at the last arrived here, and hath opened unto me the state of his case, and his adversary hath likewise been here and submitted himself to any reasonable order I should move between them, whereupon it is agreed between them that the whole differences shall be committed to the hearing and order of two doctors in the civil law, and of two learned in the common laws to be indifferently chosen by either side, and the said arbitrators are fully to end and determine the same…[68]

Stock, it emerged, had not been a shrewd guardian of his own interests, and Cordell later reported to the college that Stock had 'dealt very fondly therein, and that through his negligence and folly the matter is like to fall out against him'.[69] The ultimate resolution of the matter was not ostensibly instigated by Cordell, but rather by the 'mediation of some friends for the ending of the controversy between them'.[70] Interestingly, that mediation turned on the outcome of proceedings in the ecclesiastical courts concerning the parsonage, such that 'if sentence fall out for [the rival claimant Sharrock] against Stock in the Spiritual Court', Sharrock was to pay Stock £100, part of which was 'in respect of the poverty of the said Stock' to be put towards the satisfaction of his debts to the college and others.[71]

Cordell's personal authority, as well as his access to other forms of legal authority, could be brought to bear indirectly: a useful technique in delicate cases. Thus, when Robert Garrett was 'vehemently suspected' of embezzlement from the college, Cordell proposed that the Dean of Christ Church be brought in to tell the malefactor that Cordell would either

[67] William Stock, formerly a fellow and President of St John's, then Principal of Gloucester Hall. See Stevenson and Salter, *Early History of St John's*, pp. 330–1.
[68] SJCA MUN LII. 69.
[69] SJCA MUN LII.70.
[70] SJCA MUN LII.78.
[71] SJCA MUN LII.70.

> publish his name to those that have authority to … punish him for it, or else … will proceed against him by ordinary course of the law and bring him to his trial, which will touch him deeply, and [bring about] his very decay…[72]

If the Dean were unavailable as a mediator, the alternative plan was for the fellows of the college to write to Garrett themselves. As with the correspondence with the Merchant Taylors, Cordell was careful to suggest how such delicate matters should be phrased (especially, it would seem, so as not to fall foul of the law of defamation):

> temper your writing unto the said Garrett, not directly charging him with the said fact, but always by the way of information given unto you, and that you trust it be not so and that you hope he can sufficiently discharge himself of the same as he may take no advantage of any words against you, which you know he is apt enough to do. And that … good will unto him hath moved you to write this much to him, rather than he should be brought to any public examination thereof, which would be greatly to his discredit…[73]

In some cases, the potential tension between Cordell's role as impartial judge and partisan visitor was readily apparent. Most of the time, it was his partisan loyalty to St John's that was the more evident. This was certainly true of his involvement in a 1579 dispute over a pension owed by the college to one Sharrock. While Cordell was able to persuade the claimant to agree to his arbitration, he promised the college that he would 'provide so reasonably for the college, as the revenues of it shall not be impaired, so long as I shall be able by justice or equity to help it'. [74] It seems significant that the words 'reasonably' and 'by justice or equity' were only added as interlineated afterthoughts: his initial ideal was to provide for the college as much as he could help it, and with the least detriment to its revenues.

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[72] SJCA MUN LII.44. Garrett was the Reader in Rhetoric, and formerly of Christ Church: Stevenson and Salter, *Early History of St John's*, pp. 345–6.
[73] SJCA MUN LII.44.
[74] SJCA MUN LII.69.

A fuller and perhaps more flattering portrait of Cordell as arbitrator comes from one of the most prolonged suits with which the college was entangled. This concerned the manor of Warborough (Oxon), in which a long-running suit between tenant and landlord ensnared the college once it became lord of the manor upon the founding bequest of Sir Thomas White.[75] As is so often the case, the details of the suit are murky, but it worked its way through various legal venues before coming into Chancery, and thus to Cordell's attention. In November 1577, the tenants came to the Rolls where 'one Mr Braybrook … entreated for them'. Cordell reported to the President that the tenants were 'all contented to abide my order in their causes', and that a day or two before the upcoming Hilary term the college and its tenants should appear before him because he had 'promised to travail to make some good end between you and them, as I trust I shall without any further trouble or charges to either party'.[76] Braybrook had been a spokesman for the tenants in earlier cases,[77] and Cordell found him to be an amenable negotiator who

> hath taken upon him that you tenants shall conform themselves to any reasonable order that I will take, And therefore I was the more willing to send them home again without any more charges unto them here.[78]

Whatever Cordell's role as an honest broker between landlord and tenant, his sympathy to the college was readily apparent, and he advised the President upon his coming to London 'to bring with you all such writings and other matters as you have, to prove your title to the things in question between you'.[79] Those writings seem to have been put to good use, for Hilary Term 1578 was indeed a propitious time for mediation. Cordell reported at the end

[75] The manor was part of the founding gift of Sir Thomas White. The gist of the suit concerned the existence of the manor itself: it was for a long time unclear whether there was indeed a separate manor or whether (as turned out to be the case) it remained part of the Honour of Wallingford: see Tiller, *Benson*.
[76] SJCA MUN LII.49.
[77] C24/41 *Blank v Braybrook*.
[78] SJCA MUN LII.49.
[79] SJCA MUN LII.49.

of Term that a number of college suits—including Warborough—seemed to have reached a resolution:

> I like very well of the composition and agreement taken between you and your tenants of Warborough the last Term, and of the motion made by some of the Justices in Berkshire for your tenants of [Long Wittenham] and the freeholders of Kennington, touching such suits and controversies as have long depended between you and them. And I would wish you to hearken unto it, and to conform yourselves to any reasonable order rather than to continue the trouble and charges of law.[80]

Good preparation was essential for any successful mediation, and Cordell's willingness to lay the legal groundwork for St John's—or at least to direct how the groundwork ought to be laid—highlights an important difference in attitudes towards a judge's office then and now. This can be seen especially clearly in 1578 when Cordell attempted to forestall a dispute with John Hearle, from whom the college purchased the manor of Hardwick (near Witney, Oxon) in 1569, and who had been the source of legal difficulties in 1576.[81] Cordell reassured the college that 'I trust your fear is greater than you shall have cause', but in order that the college

> might be well and quietly settled in your possessions, and myself well satisfied of this scruple, I have here enclosed sent you a letter directed to the said Mr Hearle requiring him thereby to repair unto me in the beginning of the next Term, at which time you are likewise to be here and then (God willing) I will examine this cause, and take such order therein, as may be chiefly for the benefit and safety of your house…[82]

Promised protection of that kind must have been a great relief to the college, but the feelings of the Hearle family evidently differed, for in 1580 the dispute flared up again. Cordell wrote anxiously to the college that he had heard rumour 'which I trust will not prove true' that there had been 'some speech given out of some suspicion of the title' to the

[80] SJCA MUN LII.52.
[81] SJCA ACC I.A.1 fol 20; cf SJCA MUN LII.31. Hearle's court rolls for his manor survive: SJCA MUN XI.9 docs 58, 69, 73, 75, 77, 80, 83, 85–91, 94, 95.
[82] SJCA MUN LII.54.

lands brought from the now-deceased Mr Hearle. Cordell asked the college to inform him 'so shortly as you can' if there were 'any overture or show made thereof by his heir, or by any other that pretend title thereunto by entry or otherwise'. Cordell's anxiety was magnified because he was informed that Hearle's heir and widow were in London, perhaps planning some legal complot. He reassured the college:

> howsoever the matter falleth out I intend God willing that you shall enforce them both upon their oaths in the Chancery, to show if they have any right to the said land or whether they have made any secret entry thereunto, and under what colour and pretence they have done it.[83]

A little over a week later, Cordell's approach bore fruit. He managed to speak to Hearle's widow and brother (but not to the son and heir) 'who have promised me the next Term to bring up such conveyances and assurances as he hath in his custody; to prove what estate [Hearle] had'. His advice to the college 'for the better understanding of the truth of the cause' was that they

> should have a subpoena against young Hearle, returnable in the Chancery the first or the second return of the next Term; and there upon his oath he shall declare and prove what title he hath to the said land; and then order shall be taken with him accordingly.[84]

The college did indeed pursue legal remedies against Hearle, paying 2s to the undersheriff of Oxford 'for opening an attachment of Mr Hearle' in Easter Term 1580, and the land thereafter remained in the college's secure possession.[85]

[83] SJCA MUN LII.99.
[84] SJCA MUN LII.100.
[85] SJCA ACC I.A.2 fol 76.

As a sideline before leaving the Hearle dispute, one should observe the interesting light it sheds on the process of composing a bill of complaint in Chancery. Cordell noted that if the college did ultimately choose to proceed in Chancery against Hearle's heir,

> I would wish that you Mr President should be here 3 or 4 days before the term, to devise by your counsel the Bill that is to be put in against the said Hearle, so that upon his appearance he may find a Bill to charge him with, or else he shall have costs against you …[86]

A few practical things can be noted about this. First is the personal role of the client (represented here by its President) in framing the bill: it was the client who 'devised' the bill, by the agency of their counsel. Second is the temporal aspect of proceedings: the writ of subpoena was to be obtained *in advance* of the settling of the bill which would set out the claim justifying the intervention of Chancery; and the bill was, it seems, to be settled barely a few days before the term in which the subpoena was returnable. Third is the ever-present concern about legal costs, especially the adverse costs consequences of missteps in litigation.

**Limitations on Cordell's influence**

Notwithstanding these evident benefits of Cordell's patronage, even so well-placed a figure as Cordell was not omnipotent—even within his own Court of Chancery. When Cordell came to investigate Swett's claimed leasehold arising out of the college's transaction with Richard Owen, he found it

> so intricate by reason of the contention depending presently between him and Napper, that until their title be decided in her Majesty's Court of Chancery, where

[86] SJCA MUN LII.100.

> it now hangeth, I shall not be able to make that order therein, which I am in hope then to do, and therefore I have deferred that cause to be ordered according as it shall fall out upon hearing.[87]

Likewise, in 1579, the college became embroiled in a 'long and tedious suit' in the Exchequer concerning land in Southmoor which was entangled with the interests of Lady White; the outcome of which was 'such an accident as hath troubled your college friends and such as followed your causes contrary to the expectation of your learned counsel'.[88] Cordell could do little in the Court of Exchequer itself, but he attempted to remedy the situation as best as he could. In his view, the problem arose because of a misstep of the college's counsel who had neglected to obtain a licence of alienation, mistakenly thinking that it was unnecessary in the circumstances.[89] Cordell reassured the fellows that he had 'taken order with Mr President for the finishing of the said suit accordingly, who hath by himself and other your friends brought the same near unto an end', and that he had 'taken so reasonable an order with the officers, her Majesty's patents, for the fine of the said alienation, as shall not be very burdensome unto your college (if it light upon you) which I hope should not'.[90]

Taken together, these episodes illustrate an important limitation to the extent to which Cordell's authority could be exerted on the college's behalf. Where a matter could be resolved by negotiation, Cordell's natural authority as an influential office-holder was a potent weapon wielded on the college's behalf; and where an action came before the Court of Chancery Cordell was obviously well-placed to help. But Cordell had only limited

[87] SJCA MUN LII.55.
[88] SJCA MUN LII.65.
[89] A licence of alienation was required for the alienation of land held of the Crown. In 1576, the establishment of the Alienations Office formalised the administration of a longstanding aspect of fiscal feudalism: J.H. Baker, *An Introduction to English Legal History*, 4th edn. (London, 2002), pp. 239, 253.
[90] SJCA MUN LII.65.

ability to influence the outcome of a matter proceeding to judgment before another court, or which depended on the good will of another office-holder. Obviously, then, the college placed a premium on its ability to have disputes resolved by Cordell himself, or by those whom he favoured.

This dynamic can be seen in the resolution of another tangle that, along with the Hearle and Swett matters, the college had inherited from Richard Owen: namely a dispute with Lord Norris over the vicarage of Cumnor (Berks). Much to Cordell's disappointment, an attempt in September 1578 at mediation through the agency of Edmund Plowden failed, but the prospect of a judicial resolution remained:

> I am sorry that Mr Plowden could not so well resolve his L[ordship] therein as I had thought he would have done, or at the least to have moved some good end in that matter. But since it is deferred until the next Term, to be then decided by the said Mr Plowden and me, I will for my part be glad to do you the best pleasure therein that I lawfully may, hoping therein all to finish this controversy without any further trouble or charges unto you…[91]

There was also a prospect that a royal grant could also resolve the matter, but Cordell could 'presently do no good in it' for he was not at court and was in any event not 'accustomed to attempt the like suit heretofore, nor have anyone to whom I can commit the fidelity to obtain it in such sort (without charges) as I wish it unto you'.[92] Cordell was most definitely accustomed to the resolution of matters in court, and it was in the Court of Chancery that the college placed its hopes.

In all of this, one must keep a sense of perspective: St John's was not the only litigant in England, William Cordell was not the only judge, and there were of course limits to the

[91] SJCA MUN LII.59.
[92] SJCA MUN LII.59.

extent of Cordell's influence even in legal circles. One such limit was the existence of rival networks of patronage which petitioners might seek to activate. In a non-legal setting, one graphic example of the potential for conflict between patronage networks came in 1580, when Cordell's intervention secured the principalship of Gloucester Hall for Christopher Bagshaw, a former student of St John's (and later a Catholic priest). This earned the ire of the Earl of Leicester, who preferred the candidacy of his own protégé and considered himself 'very evil used' in the affair.[93] Peace was restored only upon Bagshaw's induced resignation in April 1581.[94]

In the legal context, such rival networks may explain at least part of the story behind a troublesome saga involving the college's lands in Long Wittenham and Fyfield (Berks), of which John Byrde sought a grant of copyhold apparently on the basis of a promised gift of Sir Thomas White. In 1572, Byrde petitioned James Dyer, Chief Justice of the Common Pleas, who offered his support. This resulted in a rather begrudging promise from the college to grant 'the first copyhold that shall be any way void in Long Wittenham or Fyfield according unto the meaning of the deed indented which he seemeth to claim by', and an undertaking not to insist on the 'strict understanding of that his grant whereby perhaps we might either further delay him, or utterly put him from the benefit he seeketh', but instead 'willingly at your Lordship's instance' the college 'contented [Byrde's] own desire'.[95] The college's letter to the Chief Justice indicates the ambivalence of their position. While they were duty-bound to acknowledge their deference to a highly-placed patron, they could not resist drawing attention to their reluctance to part with college property:

[93] Cordell divulged Leicester's ire by copying Leicester's letter at the end of his own letter to President Willis: SJCA MUN LII.98. Cf SJCA MUN LII.96.
[94] Stevenson and Salter, *Early History of St John's*, p. 222.
[95] SJCA MUN LX.2.

> we have found your Lordship good and favourable … unto our poor college in many and diverse suits, which we have had before your Honour, so we would in no wise commit that by our unmindfulness and neglect of duty your Lordship should either repent your goodness heretofore shewed us, or hereafter have cause not to continue the same, and so stand our good Lord in such our college causes, as in which either by wrong we be kept from our right, or by molestation vexed and troubled in the possession of our own.[96]

Evidently, Byrde was dissatisfied with the college's performance of its promise, and about seven years later he was again petitioning Cordell about the matter—perhaps as a result of realising that Cordell's voice had more sway with the college than Dyer's. In February 1580, Cordell wrote to the college in support of Byrde's claims.[97] Cordell's subsequent letters reveal that Byrde had petitioned both him and Dyer about the matter, but Cordell found the college's resistance of the claims to be based on 'reasonable considerations (of weight sufficient)' as to 'fully satisfy' him of the justice of the college's position. He imagined that the Chief Justice would come to the same view:

> I doubt not, but I shall do the like to my L[ord] Chief Justice, upon his return for in all college causes, how earnestly soever I do recommend them unto you (take it for a rule) that if they concern the same in public profit, or touch you in private oath, I am no further a suitor unto you therein than shall stand with the best preferment of the one, and keep the other from violating any jot of your founder's statutes.[98]

In other words, Cordell would never ask the college to breach its statutes or to act against its common good; the subtext being that Byrde's request fell into either or both of these categories, at least as the college perceived it.

There was, however, more to the story. Cordell and Sir James Dyer subsequently wrote to the college in a letter whose style indicates that it did not originate with Cordell, to the

[96] SJCA MUN LX.2.
[97] SJCA MUN LII.75.
[98] SJCA MUN LII.79.

effect that the college should make the requested grants so as to satisfy the intentions of 'your worthy founder Sir Thomas White'.[99] Perhaps the evocation of the founder's memory was enough to prompt action on the college's behalf, for in April 1580 Byrd and the college reached a 'composition' under which Byrd was to receive £40 in (it seems) £10 instalments.[100]

Of course, sources of patronage could be complementary rather than conflicting, and the generosity of one patron could secure access to the beneficence of another. Although there is less information in Cordell's correspondence about this kind of situation, an episode of 1579 indicates that mediated access to noble protection did occur. In that year, Cordell was pleased to report that the college's tenants 'were lately delivered from the hands of the purveyors' through political intervention of Privy Councillors including Leicester, who through Cordell's intervention promised their 'honourable protection of you from henceforth, in all your honest and lawful suits.'[101]

Looked at globally, St John's experience of Cordell as a mediator and arbitrator—both in the extent and the limitations of his authority—begins to reveal a powerful motivation behind the contemporary preference for negotiated outcomes to legal disputes, and the corresponding rarity of matters proceeding to judgment. Compared with the ease of influencing one's counterpart in a negotiation, or an arbitrator, or a juror, it was much more difficult to influence a judge on the bench—unless, of course, that judge was one's own longstanding patron. As St John's found to its profit, that was a good fortune shared by very few litigants.

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[99] SJCA MUN LII.89.
[100] SJCA ACC I.A.2 fol 72–3.
[101] SJCA MUN LII.64. Stevenson and Salter, *Early History of St John's*, p. 219.

**The Poverty of St John's – debts and litigation**

As it happens, the benefit of Cordell's patronage was one of the few profitable things that stood to the college's credit in its early days, for in the sixteenth century St John's was by no means the wealthy institution that it is today. Unlike the college's legal dealings relating to property—the conveyancing and litigation discussed in the previous sections—its dealings in relation to debt reveal a very different side of its legal persona, and a very different side of its relationship with Cordell.

In the examples considered so far in this chapter, St John's College was more frequently a defendant in litigation instigated by others—and therefore a reactive seeker of advice—than an instigator of litigation of its own. In the case of debt litigation, however, the college's striking reluctance to enforce its rights proactively was an ongoing source of concern for Cordell, and was a noteworthy illustration of the lengths to which some people and institutions would go before resorting to the law. The particular context for this was the poverty and indebtedness of the newly-founded college, along with the apparent inexperience of some of its office-holders in secular administration. In summary, so far as debts were concerned, St John's was a disorganised and reluctant litigant; ill-adept at managing its affairs; riven with internal dissent; and often only goaded into action by the blunt promptings of an increasingly frustrated Cordell.

For most of its early decades, the college's financial position was indeed parlous. This unedifying situation was a product of the college's meagre income and its apparent

inability to secure payment of debts owed to it. The other side of the coin, of course, was expenditure, which struck Cordell as being excessive in some areas. He had a particular concern for the college's riding expenses, which 'do yearly amount to a great sum by reason that upon every trifling occasion you send out commissioners when fewer might better execute your business with less charges'.[102] This observation is particularly significant given the college's practice of accounting for most of its London legal costs as an undifferentiated part of the riding expense of the trip to the capital—indeed, these legal trips were usually the college's largest riding expense in any given term.

Even modest expenditure on routine supplies—victuals, for example—seems to have caused problems, as the litigation before the Oxford Chancellor's Court referred to at the beginning of this chapter attests. Being haled into court was clearly embarrassing, but there were other ways in which reputational and financial concerns could coincide. Upon the vacancy in a college readership or like office, Cordell was always anxious that an internal candidate be appointed. As he explained in 1580, if an external candidate were chosen, 'thereby the world shall take knowledge how weakly your house is furnished with students capable of preferment', but moreover the charges to the college 'will be greatly increased by drawing in a stranger'.[103]

At the time, part of the difficulty lay in getting accurate information about the college's financial position, particularly because compiling the college accounts was something of a labour. It thus came as a relief to Cordell in November 1577 that the President 'passed

[102] SJCA MUN LII.32. Three years later, Cordell marvelled at the cost of horses, and was 'loath to make it so heavy a burden as I hear you college hath heretofore sustained', and suggested £10–£14 a year as a 'convenient rate to burden the college': SJCA MUN LII.99.
[103] SCJA MUN LII.81.

your college accounts so well as you have done';[104] and again in December 1578 he 'perceive[d] what pains you have taken in passing your late accounts and am glad to hear that you did it, in so good and quiet order as you did'.[105] Perhaps those years were aberrations, for in 1579 he wrote of his disappointment that he had not yet 'heard that your audit had received a quiet end', and that the college was unable to give him 'a brief view and declaration of the state of your house, that thereby I might have known your good husbandry for the year past, and whether your college be in surplusage or in arrearage'.[106] This state of affairs left him wary that earlier misgovernment had returned:

> The delay of your accounts (I must confess) hath bred some mote of suspicion in me that it doth proceed either of some want of Mr President's good governance or of some lack of duty in some of you of the due observance of your said statutes, which I would be loath to find in any of you …[107]

A few years earlier in 1575 Cordell had written the first of a long list of action-plans to remedy the college's financial misfortunes and to shorten its long list of debtors. He wrote of his anxiety about the 'present waste and decay of your college, tending to the particular detriment of you all, and the note of infamy to your whole house' unless 'speedy and due reformation' were undertaken.[108] In order to avoid 'present ruin', Cordell accordingly proposed a six-point plan. The first concerned debts owed to the college, which Cordell classified according to the type of debtor and the appropriate forum in which to seek remedy:

> such as are in the college presently should be called upon if they be behind and assurance made by the same for the time to come; and such as be not for the college and yet under the Vice Chancellor's jurisdiction should be called before him and caused to pay that which they owe; and that process be sent forth for them which

[104] SJCA MUN LII.49.
[105] SJCA MUN LII.62.
[106] SJCA MUN LII.71.
[107] SJCA MUN LII.71.
[108] SJCA MUN LII.29.

> are behind not being of the university and that they come before the Lord Keeper into the Court of Requests to answer the same.[109]

The second point emphasised the prompt payment of battels, and urged the college to refuse credit to those who were behind more than a quarter. Third, the college should not expand in numbers 'until such time as the college be brought unto a better stay', and savings could be made by dismissing a number of clerks and choristers who 'either cannot discharge the duty or may be spared until the college be in better estate'. Fourth, the college should charge each man in advance for a set number of meals, so that 'if he be absent at his meals from the house or if he be forth of town that his commons go to the profit of the college'. Fifth, that the college should refinance its urgent debts with a £100 loan from Richard Warren, the founder's stepson, whose generosity had been 'entreated' by Cordell.

The sixth and final point sheds interesting light on the college's travails before the Chancellor's Court:

> Item, that whereas they must provide money to go to market, he thinketh good they give care to Mr Mayor who hath moved him to have his favour to the renewing of his lease of Walton; and if he will surrender his years that he hath and give a reasonable fine for 20 years that he be preferred before another and that money put to that use to serve the market; and for such order be taken with commoners for money before hand to go to market for their commons that every one upon sufficient warning deliver money to the Bursar ever for a quarter beforehand.[110]

The mayor of Oxford in question, Edmund Irish, had been a customary tenant of Walton Manor at least since the days of George Owen—and as we saw in Chapter 3, he witnessed the blunt negation by the homage of the City of Oxford's rights in Port Meadow.[111] The

[109] SJCA MUN LII.30.
[110] SJCA MUN LII.30.
[111] SJCA MUN XI.9 docs 64, 66.

transaction with Irish along with the proposal that commoners pay their battels in advance (rather than arrears) would, as Cordell explained, free up ready money to be spent on food at the market. The implication is that the college was ill-placed to buy food on credit, and that the indulgence of victuallers like William Horloppe—the butcher who took the college to the Chancellor's Court—had been worn thin.

Despite Cordell's plan, St John's reluctance to go to law to recover its debts continued for another several years, for in March 1577 Cordell reprimanded the college when he found its debts continued to 'be very great'.[112] He was unsparing in his criticism,

> blaming you Mr President [Toby Matthew] very much that you did not in all this time seek some means by statute or some other lawful ways to recover the said debts, but suffer your college to endure the burden of it to the common misery of you all and specially to them of the poorer sort.[113]

The remedy was clear and simple:

> My advice and straight charge is that you do undelayedly seek some remedy for this mischief; and those debts which you cannot of yourselves procure unto the college, let me be made acquainted with them, and I will put my helping hand to recover the same according to law and justice, but suffer not this matter to linger any longer, considering what detriment your house hath already sustained thereby.[114]

Even so, a change in President and senior office-holders—discussed in the next section—seems not to have resolved the problem, and in November 1577 as an afterthought to his advice about the Warborough suit, Cordell urged the new President, Francis Willis, to 'think upon the ways and means to call in those debts due to your house.'[115] Matters were not improved the next year, despite Cordell's happiness that the college 'standeth in so

[112] SJCA MUN LII.32.
[113] SJCA MUN LII.32.
[114] SJCA MUN LII.32.
[115] VCH Oxon, vol 3, p. 254; SJCA MUN LII.49.

good quiet as it doth', because 'some of your debtors be very slow in paying their credit'.[116] The college's reluctance to pursue its remedies at law was becoming conspicuous: 'I am sorry you look not down process for such as be in that predicament, and if they make not satisfaction between this and the next Term, I would wish you then to do it'.[117]

Evidently, a more blunt approach was in order, and in September 1578 Cordell reprised the technique of his 1575 six-point plan. Having received from the college a list of the bad debts owed to it, he wrote:

> This order I have taken for them, viz. that process shall be made and sent down unto you, returnable the last return save one in the next Term for all such as owe you any money and of whom you have neither bond nor specialty; and for those two mentioned in your said note, of whom you have obligations, my advice is that you should send up the said obligations unto me that I may take order to have them put in suit at the common law. I have not followed your mind in the return of your process, because if they were returnable the last return of the Term, then you should do nothing in your suits before the beginning of the Term then following …[118]

It is not wholly clear why St John's was so strikingly diffident about enforcing its rights, and it is a theme that runs through Cordell's letters across many years. In a few cases—especially those relating to the ex-Presidents Stock and Matthew—local political sensitivities clearly played a part. However, for the most part it was institutional inertia and dysfunctional administration that seem largely to blame. It is to this theme that we now turn, especially because of the significant light Cordell's letters shed on his ideas about good institutional administration more generally.

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[116] SJCA MUN LII.59.
[117] SJCA MUN LII.59.
[118] SJCA MUN LII.60.

**Disharmony and internal order at St John's**

When things went well, Cordell found much to praise about the administration of St John's. In 1572, he reported his 'singular comfort and joy' at hearing of the 'great unity and quietness amongst you, and of the good exercise you have of learning, and of other virtues, to the great worship of your house and to your good fame and commendation.'[119] In Cordell's view, the ideal administration of a college was no different from the ideal administration of any other small commonwealth, and he made frequent use of common metaphors of good government in which unity and quietness were praised. In 1579, he wrote that:

> above all things you are … to remember how you stand tied by oath to keep your said statutes inviolable. And I wish that the head and members of that house may continually be so united, as every one and all in general may do their office and function as to his duties appertaineth…[120]

The same metaphor could be used in its negative form, and in 1580 Cordell perceived that 'the head, body, and whole society, are not so firmly conjoined in that unity and perfect love which your late good founder so often recommended unto you'.[121]

The importance of diligently fulfilling one's office was central. After he became Visitor in 1571, Cordell drew explicit links between his own role in resolving the college's legal difficulties, and the importance of each other member of college fulfilling his role with equal diligence for the common good. Writing in 1580 about his resolution of 'college causes', Cordell emphasised that:

[119] SJCA MUN LII.22.
[120] SJCA MUN LII.70.
[121] SJCA MUN LII.83.

> for my part … I have been as careful as the causes required, and have I trust (as your Visitor) discharged therein my function, so that there resteth for every of you to do his particular office and duty as well in your private causes at home, as in your common government, and let every member serve the head, that the head may well guide the whole body. Beware of privy dissentions, nourish them not, but use all the good means and ways you can to root them out. The late examples of your troubles should make you (in my opinion) to be afraid to enter into the like again.[122]

Cordell's praise of unity and harmony was, however, put in sharp relief by his far more frequent admonitory references to disorder and faction. The 'troubles' to which Cordell referred were a strikingly recurrent theme in his letters: maladministration, misrule, faction and personal rivalries were all a source of internal disharmony at St John's, with a correspondingly deleterious effect on the finances and public reputation of the college.

Relations seem to have been particularly strained with President Toby Matthew, which led to (or was in part the result of) an apparent breakdown of communication on Matthew's behalf. Matters evidently came to a head in 1577: President Matthew resigned, and Francis Willis was elected in his stead, with Henry Russell as Vice President.[123] Cordell diplomatically thanked the departing President 'for his resignation and manner of doing of it', and urged him to bless the college's subsequent decisions 'with his friendly and fatherly advice'.[124] At the same time, Cordell wrote separately to the new President counselling him 'above all things' to seek

> amity with all the company, and to give no just occasion of offence to either side, but to bear yourself so indifferently to them all, as your old friends may increase

[122] SJCA MUN LII.71.
[123] The episode seems to reflect more poorly on the College than on Matthew himself, and his career was by no means harmed: upon his resignation, he became Dean of Christ Church and was later Archbishop of York: ODNB. Part of the problem seems to have been that Matthew was frequently away from the College during his presidency: VCH Oxon, vol 3, p. 254.
[124] SJCA MUN LII.33.

> their good wills, and the adverse parties (now your reconciled friends) may be confirmed towards you.[125]

Given the poisonous atmosphere of faction and opportunism, the need for diplomacy and tact was extreme. Cordell warned that Willis 'must remember that many eyes will attend upon your doings, some for love, some for fear, but most, to take advantage against you'.[126]

This advice seems to have been heeded, and a month later in his letter to the President and fellows Cordell was able to draw a link between the college's newfound political stability and the prospect of consequent improvement in its financial affairs. He was 'right glad to understand' the mutual consent and harmony in the college, which, he thought, 'no doubt do promise a future restoration of your decayed estate'.[127] A few months later, Cordell privately praised Willis' leadership as being such that 'every member doth execute his office, in far better order, than they had wont to be'.[128]

Even so, the college was not free of strife under President Willis. Sometimes, internal and external sources of tension were combined. In 1578, Mary Matthew—the sister of Sir Thomas White and a tenant of the college—was a source of irritation in refusing to redeliver a bond to the college in a dispute over the term of her lease.[129] Despite the college's accession to her wishes, Cordell 'marvelled' that she 'deal[t] so hardly with the college, having obtained her desire'. He suspected that William Leach, a fellow allied with the former regime, was 'her only instrument in these causes', and that at the next

[125] SJCA MUN LII.35.
[126] SJCA MUN LII.35.
[127] SJCA MUN LII.38.
[128] SJCA MUN LII.47.
[129] On Mary Matthew, see Stevenson and Salter, *Early History of St John's*, p. 393.

opportunity Cordell would 'let him understand, how far I mislike his doings therein.'[130] That attempt bore fruit, for Leach returned from his meeting with Cordell having assented on Matthew's behalf to Cordell's proposed simultaneous renewal of her lease and redelivery of the disputed bond. 'Thus', Cordell concluded, 'I trust I have (to the satisfaction both of the college and of her) made an end of this matter'.[131]

In a striking number of cases it was John Reade—the unsuccessful candidate for the vice presidency—who was the prime instigator of discord.[132] In 1578, a dispute arose between Reade and the college over a prebend he sought. Cordell proposed to summon the Judge of the Admiralty and the Deans of Paul's and Westminster to consider the college statutes, but 'mind[ed] not privately to meddle with it' any further than that.[133] Cordell advised the President to give Reade 'no speeches that may breed any quarrel or unkindness', and to conduct himself with such dignity that Reade could not 'make any heaving or shoving as he learnt it in that house, except it turn to is own lack and discredit'.[134]

Eighteen months later, though, Reade's demands and behaviour appear to have precipitated a more serious disagreement within the college, leading the President to seek Cordell's intervention. Cordell reported to the President that Reade came to visit him and that Cordell

> very sharply reproved him as the nourisher and principal author of those seditious attempts within the house. But he hath so earnestly purged himself thereof, protesting his innocency therein, and that he hath acquainted you from time to time, before any broils fell out, and hath many ways (as he saith) sought the continuance

[130] SJCA MUN LII.54.
[131] SJCA MUN LII.56.
[132] On Reade, see Stevenson and Salter, *Early History of St John's*, pp. 202 ('always a quarrelsome and jealous man'), 335–6.
[133] SJCA MUN LII.61.
[134] SJCA MUN LII.61.

> of quiet government there, as I could not but think that there is some other impediment, than by him alone. For if I may believe him, he neither hath nor will be any obstacle to the common quiet of that house, and hath faithfully promised to submit himself to my direction therein, and hath offered any condition (yea if it were to remove from the house if I would require it) rather than to dwell in my ill opinion for that matter…[135]

This leniency seems to have displeased the President, for Cordell later wrote to reassure him that he would

> by no means nourish any factious person in that house, nor give any countenance to any man that violateth the statutes of the same, but rather seek to punish him or them, so far forth as my authority there will warrant me to do.[136]

Nonetheless, Cordell reprimanded Reade for his faults (while finding that he was by no means solely responsible for the discord), and he found Reade to be genuinely penitent. His wish was that the President would

> bury the former controversies, and to embrace this his reconciliation, which I trust he will confirm with good and quiet conversation accordingly. You know how slanderous it is for two of your profession, specially being both (as you are) governors of an house, to encounter one with another in any disordered matter, if any other means may be wrought for quietness' sake as you can, lest it grow to some offence to those, that be benefactors to that college …[137]

The 'private unkindness' between the two men seems not to have relented, and Cordell found it necessary to write again, hoping that 'time and experience will teach you both to seek your own quietness, for I would be loath to raise a broil in your house for any private man's cause'.[138]

[135] SJCA MUN LII.73.
[136] SJCA MUN LII.77.
[137] SJCA MUN LII.77.
[138] SJCA MUN LII.80.

Cordell's loathness to 'raise a broil' shows that there were limits to his willingness to intervene in internal college affairs. The primary responsibility for the exercise of authority and the enforcement of college statutes, he insisted, lay within the college itself. An illustration of this from February 1580 concerned the allegedly neglectful and incompetent Rhetoric lecturer. Cordell declined to intervene, marvelling to the President that

> you would move me to that purpose, for if it be true, that he that hath it be not fit for it, or doth not his duty as he ought to do, you and your company may according to the statutes of your house proceed against him without my authority, and so I wish you should.[139]

Cordell emphasised the point in his letter to the President and Fellows later that month:

> in God's name (without all favour or affection to any private friend) proceed to the punishment thereof according to statute, which if you shall spare to do, then I must be enforced to look into your actions, and to proceed against him, and consequently against you, so far forth as by your said statutes I am warranted to do, whereof (be you assured) I will have good regard.[140]

Personal sentiment and official duty were two quite separate things, as Cordell made clear in his contemporaneous private letter to the President: '[t]hough I utterly mislike of the man for his negligence, and do well favour the other whom you recommended unto me: yet I must proceed in both those causes as I may' in accordance with the statutes.[141] In a subsequent letter, Cordell pointed out that one consequence of the premature or inopportune exercise of his power as Visitor was, of course, the aspersion it would cast on the President's own authority within the college. Cordell expressed his deep regret and disappointment at hearing from the President that 'you cannot (without my assistance) decide your college causes at home'.[142]

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[139] SJCA MUN LII.77.
[140] SJCA MUN LII.79.
[141] SJCA MUN LII.80.
[142] SJCA MUN LII.82.

In July 1580, dissention was still endemic, and was revealed in part by rival letters sent to Cordell by different groupings of college fellows.[143] Cordell travailed for the 'reformation of such things as are amiss to the end the government of that house may be quieted and established according to your late good founder's meaning and statutes.' He realised, however, that other sources of authority might need to be called upon, and his own offer of assistance was cast as something of an ultimatum:

> I trust to do some good therein, or else I will leave it to be decided by them that shall use some other authority over that place, for I am sorry to hear that the exercise of learning should be hindered by the evil dissention of any private person. Well, upon the due examination of your griefs on both sides, I hope to take order, that all matters shall be quietly set…[144]

The resulting 'examination' strongly endorsed President Willis' side of the argument, for Cordell wrote to him:

> assure yourself that my good will, liking and affection unto you is much increased by the discovery of your enemy's malice towards you; and your wise, grave, and good answers to his frivolous and malicious objections hath much advanced your credit with me and others that were the hearers thereof, and done you as much good, as his malice meant to do you hurt.[145]

Unfortunately, the state of disharmony at St John's means that it is unclear precisely which enemy was intended, but it seems certain to have been Reade or one of his partisans.

Taken as a whole, these episodes demonstrate that even in St John's internal affairs, there were limits to Cordell's authority—some of which were self-imposed—and that rules

[143] SJCA MUN LII.83; LII.84: 'the receiving of your several common letters this week, whereof the one was not underwritten by you and some others, do imply a discord amongst you, through it be covertly handled'.
[144] SJCA MUN LII.92.
[145] SJCA MUN LII.94.

governed the circumstances in which that authority could properly be invoked. As in the wider world, the ideal of the harmonious, well-governed little commonwealth was a powerful motivating theme, made all the more attractive by its frequent absence in reality.

**Conclusion**

In Sir William Cordell, St John's College was blessed with a uniquely attentive patron and friend, but many aspects of its experience of law and politics in Tudor England are typical of the age and are familiar from other examples we have encountered. The college's experience was reflective of wider patterns and preoccupations, but the difference is that Cordell's letters help us to see the details of them with much greater clarity.

All legally active individuals and institutions in mid-Tudor England sought out professional advice and valued ready access to legal information; and those with frequent legal dealings valued the simplifying force of repetition and familiarity. In real estate transactions security of title and the economic advantageousness of a deal were of central importance, and in most cases sound local knowledge was the key to making a wise decision. In the case of debt litigation—usually a reluctantly-undertaken pursuit, albeit a common one—St John's seems to have been remarkable for its diffidence in pursuing its rights.

In previous chapters, we have seen that the ideal of internal order and harmony—whether in a town, a manor, a college, or even within an individual family—was very often marred by the reality of dissention, especially when internal sources of authority were weak or

unavailing. The same was true of St John's. Likewise, the college was by no means the only community faced with the difficulty that the exertion of external sources of authority risked further undermining internal ones.

Unlike some of the disputants we have come across in previous chapters, St John's did in fact benefit from the existence of an external referee and circuit breaker, namely its Visitor. Through William Cordell's letters, we see again the importance of duty and office, but also the patron's expectation of reciprocity. Thanks to Cordell's own position as Master of the Rolls, we have a unique insight not only into the authority of a judge as arbitrator and mediator, but also of the limits to the authority of even so powerful a figure.

The early years of St John's were hardly an edifying high point in the college's history. Reduced in number because of poverty, plagued with faction and internal unrest, and beset by external legal problems, the fellowship of St John's muddled through as best it could, guided by the steady hand of Sir William Cordell. It was a manifestly imperfect institution, but even in the face of such faults the college nonetheless represented an ideal and a hope for better things. This sentiment seems to have been an important motivation for Cordell's own care and diligence on the college's behalf, and is powerfully articulated in a letter of 1572:

> I had a very good desire to have seen you and your university this last summer in my return from Killingworth [i.e. Kenilworth], but I was letted thereof by occasion of business I had with my friend Sir John Spencer, who hath bought of me the wardship of the marriage of your Mr Packington. And since that time, when I with other noble men and honourable personages was there with you, I wished myself present then to join with you in the receiving of them, and to have been your steward and borne your charges of the meals you would have bestowed upon them. And as I promised his L[ordship – i.e. Leicester] I would not see mine own house until I had seen Killingworth, which I have performed: so I now will promise you, not to return to mine own house until I have been (God willing) at yours, except

> other occasion happeneth than I look for. My love and affection to your house, and to you that be particular members of the same doth now (oftener than ever it did) put me in remembrance, to take some time to see you and to live amongst you two or three days as one incorporated in that society.[146]

This vision of a society harmoniously incorporating all its members had a resonance beyond the limited confines of St John's College, and spoke of the ideals and experiences of Tudor society more generally. In a similar way, the experience of law and politics in this little commonwealth stands as an example of much wider significance.

[146] SJCA MUN LII.22.

# CHAPTER 7

# CONCLUSION

## Law

Over the course of this thesis, we have encountered a number of different understandings of 'law'. There was the kind of professional, technical law that the attorney John Ockham practised from his book-lined study in Reading (Chapter 2),[1] and about which Edmund Plowden gave advice to clients when they consulted him at Shiplake (Chapter 5). There was also the kind of half-misunderstood wishful thinking of the tenants of Dorchester (Chapter 3); or the blunt and untheorised jurisdictional claims of the tenants of Walton manor (Chapter 4). On the face of it, few of the case studies considered in this thesis involved much substantive law. We have seen a large amount of litigation, and a great deal of jockeying for procedural advantage, but very little evidence of substantive arguments about legal rights. One can point to many historical or anthropological examples of 'law' without 'laws',[2] but in early modern England this absence has a more specific explanation: the procedural orientation of English law was not typically conducive to the identification or articulation of specific substantive rules.[3]

Of the examples considered in this thesis, one of the most persistently articulated claims about substantive legal rights was, in fact, false: namely, the allegation in Dorchester that *sibi et suis* connoted a copyhold of inheritance. However, even a false claim can, to use

[1] In his will, Ockham left 'all my law books and other books and things whatsoever in my study' to his son Richard: PROB 11/58 (12 December 1576).
[2] Dresch, 'Legalism, Anthropology and History', p. 26.
[3] S.F.C. Milsom, *A Natural History of the Common Law* (New York, 2003).

Chanock's words, reveal 'important material and moral claims about a society'.[4] The persistence of self-interested but false understandings of the law is hardly unique to sixteenth-century Dorchester. In his famous study of Californian cattle ranchers and their mistaken beliefs about the law of trespass, Robert Ellickson found that Californian ranchers actively resisted absorbing information that was 'inconsistent with their folklore'—rather as the copyholders of Dorchester ignored the repeated orders of the Court of Exchequer.[5] In Shasta County, most people knew little about private law: their experience told them that 'the basic rules that govern ordinary interpersonal affairs [were] not in the law books anyway.[6] While we might add that in Tudor England there were many *legal* norms and practices that were 'not in the law books',[7] it is certainly true that in most societies 'legal consciousness' is 'simply an aspect of general culture'.[8]

There was, however, an important difference between California in the twentieth century and the Thames Valley in the sixteenth. In California, Ellickson found that conflicts about trespass were generally 'resolved not *in* "the shadow of the law" but, rather, *beyond* that shadow.' Ranchers were committed to the value of neighbourly co-operation and adopted a non-legal norm assigning blameworthiness that 'seem[ed] wholly independent of formal legal entitlements' and which was almost never ventilated through litigation.[9] By contrast, in mid-Tudor Oxfordshire and Berkshire, we have seen how frequently litigation and legal norms were invoked. As Laura Gowing points out, even if few cases were pursued to

[4] Chanock, *Law, Custom and Social Order*, p. 66.
[5] Robert C. Ellickson, *Order Without Law: How Neighbours Settle Disputes* (Cambridge, M.A., 1991), p. 115.
[6] Ellickson, *Order Without Law*, p. 146.
[7] Baker, *Law's Two Bodies*, p. v.
[8] Paul R. Hyams, 'What did Edwardian Villagers Understand by "Law"?', in Zvi Razi and Richard Smith (ed.) *Medieval Society and the Manor Court* (Oxford, 1996), p. 88.
[9] Ellickson, *Order Without Law*, p. 115.

judgment, the 'familiar threats of the law' loomed large in people's imaginations, and gave the legal process a real significance in everyday discourse.[10]

The first and most obvious point to make about the rise in litigation over the early modern period is that people frequently went to law. We should hardly be surprised that ordinary people knew little about legal technicalities, but it is striking indeed that they so frequently knew how—and from whom—to seek redress through the formal legal system. What this points to is that 'legalism' or 'law-mindedness' was largely procedural, not substantive. That is to say, the legal knowledge that mattered to ordinary people was how best to navigate the procedural system of a complicated jurisdictional web; not how best to understand their substantive rights.

From the historian's point of view, the importance of this is that it highlights the degree to which our evidence of ordinary people's legal knowledge is strongly filtered through the written documentation and conceptual apparatus of professional law. As long ago as 1904, Savine wrote that so far as customary tenure was concerned, the central court system 'looks for truth, not in the *Rechtsbewusstsein* [i.e. sense of justice] of the local population, but in the dust of the manorial records'.[11] Likewise, a consequence of the professionalisation of law is that legal concepts became increasingly distant from the social reality that might once have generated them. In the domain of land law, for example, Simpson points to the way in which concepts like seisin were 'elaborated to serve the

[10] Gowing, *Domestic Dangers*, p. 136.
[11] A. Savine, 'English Customary Tenure in the Tudor Period', *Quarterly Journal of Economics*, 19 (1904), 69. The point here is not to deny the relevance of oral evidence or local sentiment, but rather to emphasise how they are often masked behind the written forms of professional law. Cf Fox, *Oral and Literate Culture*, Ch. 5.

needs of policy and justice', thereby becoming distinct from the lay concept from which they were developed.[12]

If, then, we might need to qualify our understanding of what 'legalism' might mean so as to emphasise procedure over substance, so too must we avoid downplaying the ways in which the law was indeed culturally resonant. Writing of the eighteenth century, E.P. Thompson claimed that while the law had supplanted other social institutions in providing the 'controlling instruments and images of hegemony', it did not—unlike the church or monarchy—'enter into cottages, find mention in the widow's prayers, decorate the wall with icons, or inform a view of life.'[13] While we must not romanticise people's experience of the law and the extent of their technical knowledge about it, the law was certainly not a 'brooding omnipresence in the sky' for people in early modern England.[14] As a shared system of belief, sixteenth-century law was scarcely likely to rival religion, but it did indeed enter into cottages when a 'commonwealth' was assembled to fund collective litigation; widows like Alice Beauforest did indeed look to the law for deliverance; legal documents did form a 'decoration' of sorts in most houses; and in important respects it did indeed inform the view of life of a great many people—and not merely lawyers or vexatious litigants.

[12] Simpson, *History of the Land Law*, p. 41.
[13] Thompson, *Customs in Common*, p. 9.
[14] *Southern Pacific Company v Jensen* 244 U.S. 205, 222 (1917) (Holmes J).

**Government**

Few people in mid-Tudor England ever met the monarch, attended Parliament or came to the attention of the Privy Council. Almost everyone, though, encountered a law court—whether as a litigant, witness, juror, or mere spectator. Contact with the law was therefore one of the most common points of contact with an institution of government. Crucially, when people experienced government through the operation of a law court, they experienced a governmental authority that was both law-bound and limited in its competence. The complex patchwork of overlapping jurisdictions with which sixteenth-century contemporaries had to cope was a good reflection of the complexity and multivalence of early modern government more generally. As in France, this pattern of multiplicity and overlap was in fact a 'rational adaptation to the practical realities of the early modern state.'[15]

Law courts in early modern England varied in scale, location and clientele, but there was a remarkably unified sense of the kind of justice that such institutions were meant to achieve, and of the centrality of that justice to the task of governance more generally. Some sense of that rhetoric of justice can be seen in a speech given by the steward of All Souls' College before the holding of a manorial court some time around the 1540s:

> It is most truly said that no kingdom or commonwealth can be either well ruled or … kept in a happy estate without divine and human justice, [for] human justice is that which knitteth us … one unto another by mercy and humanity, so as the foundation of all justice is grounded upon that honour and service which we owe to God inducing us thereby first to be dutiful unto him, then to do honour to our king and be obedient and conformable to his laws which are the nerves and sinews of our commonwealth…[16]

[15] Collins, *State in Early Modern France*, p. 26.
[16] ASCA 271/299.

Of particular importance here is the role of law in knitting together the community into a 'commonwealth'—a word replete with powerful resonances in the mid-Tudor period.[17] In the civic context and elsewhere, we have seen how important legal institutions were to communal self-identity. Whether in the shifting symbolic architecture of a newly-incorporated borough like Banbury, or in the proud assertion of jurisdiction by a long-established town like Oxford, local legal institutions were a fundamental part of the government of Tudor England. As Brooks notes, '[l]egal institutions were so imbricated in the fabric of local life that they provided a vehicle for those with some proprietary interest in their communities to have a role in governing them'.[18]

From the manorial level upwards, law and government were also closely entwined in the person of local office-holders. As the example of the eloquent steward of All Souls' College shows, such office-holders had a prominent role in articulating ideas about government and legitimacy. They were also a crucial point of contact between the governed and the various layers of local and national government; perhaps especially so in the case of a royal manor like Dorchester with an officious steward like Leonard Parrett. In boroughs, civic office gave individual lawyers both a role in local government and also important professional opportunities. While the stewardship of Banbury was hardly an untroubled sinecure for John Lovett, other lawyers like John Ockham in Reading or Thomas Butler in New Windsor found to their profit that local office-holding could go hand in hand with private professional success.

[17] Whitney Jones, *The Tudor Commonwealth* (London, 1970); Shagan, *Popular Politics* pp. 273–6.
[18] Brooks, *Law, Politics and Society*, p. 277.

The vast expansion of litigation in central courts was a marker of the increasing contact that ordinary people had with professional law. Importantly, it was also a marker of their increasing contact with government. The second point to make about the growth of litigation in central venues is therefore that it was fundamental to the process of state formation. As Clive Holmes observes, the use of the central courts on this scale by litigants of all social classes 'implied recognition of the authority of the state, and the erosion of ties to local focuses of allegiance or to the supra-national authority of the Church.'[19] Nonetheless, we must be careful before concluding too readily that Tudor contemporaries consciously understood that process of state formation, or indeed saw it in particularly 'legal' terms. Their system of law and government relied extensively on personal networks of patronage and power which, as we have seen, provided many opportunities for partiality and corruption.

The absence of a large, centralised bureaucratic apparatus meant that there was an interlinking of official and unofficial chains of authority.[20] As we have seen, though, Oxfordshire and Berkshire lacked many features of the traditional 'county community', especially given the Crown's dominant position as landowner. There were few examples of feuding among the gentry, and there is little evidence that litigation or disputatiousness was thought of as a 'failure' on the part of the counties' leading figures.[21] However, it is conspicuous that of the disputes discussed in this thesis many of the most lengthy and elaborate were insoluble precisely because informal networks of authority could not provide a circuit-breaker outside the formal process of litigation. The disputes between the City of Oxford and the University; between the City and the tenants of Walton and

[19] Clive Holmes, 'The Legal Instruments of Power and the State in Early Modern England', in Antonio Padoa-Schioppa (ed), *Legislation and Justice* (Oxford, 1997), p. 274.
[20] Carpenter, *Locality and Polity*, p. 347.
[21] Cf MacCullogh, *Suffolk and the Tudors*, p. 108.

Wolvercote; between All Souls' College and the Lords Cromwell over Whadborough; and indeed the disputes generated by Luke Beauforest, all seem to have been unusually resistant to private reconciliation and were therefore ventilated in legal forums to an unusually prominent extent.

**Authority**

The fact that legal relationships were often mediated through private networks meant that the authority of law was never simply about the public authority of governmental institutions. Earlier debates about the rule of law in Tudor England, which tended to focus on the interaction of Crown and Parliament, and the question of whether Tudor monarchy was 'despotic',[22] therefore tell only part of the story.[23] Nonetheless, Geoffrey Elton was certainly correct to resist the temptation to judge the rule of law in Tudor England by—or to see it as a prefiguration of—the standards of the modern liberal democratic state. As Kesselring notes, sixteenth-century England did indeed see the development of practices and institutions that in some ways anticipated the modern state, but 'seeing these as the roots or foundations of something else obscures the distinctive character and experience of power in the Tudor years.'[24]

[22] William H. Dunham, Jr., 'Regal Power and the Rule of Law: A Tudor Paradox', *Journal of British Studies*, 3 (1964), 24; J. Hurstfield, 'Was There a Tudor Despotism After All', *Transactions of the Royal Historical Society*, 5th ser., 17 (1967), 83; G.R. Elton, 'The Rule of Law in Sixteenth-Century England', in *Studies in Tudor and Stuart Politics and Government* (4 vols., Cambridge, 1974–92), i, 260.
[23] See Brian Z. Tamanaha, *On the Rule of Law: History Politics, Theory* (Cambridge, 2004), pp. 3–5.
[24] Kesselring, *Mercy and Authority*, p. 207.

The most basic aspect of the rule of law in sixteenth-century England is perhaps the most important: namely, that if ordinary people went to court, they had a realistic expectation that they would receive justice according to law.[25] This expectation is part of what sociolegal writers have described as the 'positive myth' of the rule of law. Where that myth is strong, 'the very fact that it exists is sufficient in itself to create an expectation that the law will prevail.'[26] The positive myth thereby 'establishes a social price for deviation', and encourages conformity 'both in the specific sense of abiding by the law and in the looser sense of keeping up with what [people] believe others to be doing.'[27] Such expectations are extremely powerful, and the process by which ideals shape behaviour—and behaviours shape themselves to ideals—is by no means unique to the legal context.[28]

The best evidence of the deep cultural resonance of this 'positive myth' of the rule of law is the money and time that ordinary people invested in litigation in defence of their rights—often collectively. As E.P. Thompson points out,

> For as long as it remained possible, the ruled—if they could find a purse and a lawyer—could actually fight for their rights by means of law … When it ceased to be possible to continue to fight at law, men still felt a sense of legal wrong: the propertied had obtained their power by illegitimate means.[29]

Lawyers were good salesmen, but they could hardly have persuaded people to pay for their services if justice were never done, or if force were always more effective than law. Here,

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[25] Cf Joseph Raz, *The Authority of Law*, 2nd edn. (Oxford, 2009), pp. 216–17.
[26] Marina Kurkchiyan, 'The Illegitimacy of Law in Post-Soviet Societies', in Denis J Galligan and Marina Kurkchiyan (eds.), *Law and Informal Practices: The Post-Communist Experience* (Oxford, 2003), p. 33.
[27] Kurkchiyan, 'Illegitimacy of Law', p. 34.
[28] Quentin Skinner, *The Foundations of Modern Political Thought* (2 vols., Cambridge, 1978), i, pp. xii–xiii.
[29] Thompson, *Whigs and Hunters: The Origin of the Black Act* (Harmondsworth, 1977), pp. 260–1. The risk of partiality and class interest among judges was scarcely unique to England: Mousnier, *Les institutions de la France*, pp. 972–6.

as in so many other legal contexts, 'actions convey[ed] ideas as well as—perhaps better than—words'.[30] The boom in early modern litigation is therefore susceptible to a third interpretation, namely as a reflection of a deeply-rooted expectation that if one went to law, justice would be done. People were unlikely to spend hard-earned money on lawyers if they believed that litigation were always fruitless; and if they lost, they were hardly likely to express indignation if justice were not a reasonable expectation to begin with.

This is what might be termed the 'external aspect' of the rule of law: namely, that people behaved in a certain way because they had a justifiable expectation that judges and other legal officials would in fact do justice. However, there was another, internal, aspect to the rule of law: namely the self-discipline exercised by people who believed the law to be a genuine constraint on their own behaviour.[31] Precisely because of its 'internal' nature, direct evidence of this conscious self-restraint is hard to find, but two episodes from the early days of Trinity College help to illustrate the point. The first illustrates the idea of self-interested norm-adherence: that is, if one wished others to obey legal rules, it was in one's own interest to obey the rules oneself. Sir Thomas Pope, the founder of Trinity, had at one point sought to appoint his wife's brother to a college post despite his not being eligible under Pope's own statutes.[32] In the end, Pope decided that norm-adherence was more important than family patronage, and in 1557 he declared to the college President that

[30] Halliday, *Habeas Corpus*, p. 4.
[31] On the 'external' and 'internal' aspects of law, see H.L.A. Hart, *The Concept of Law* (Oxford, 1961), pp. 55–6.
[32] TCA Register A fol 2/6.

> from henceforth I will for no man's pleasure living break my statutes neither in that nor in any other point, for when I shall go about to break my statutes in my own time, how may I hope to have them kept after I am gone?[33]

This was not to say that Pope—or other people in sixteenth century England—always obeyed the rules. What is striking is that when they did not, they felt the need to excuse and justify their breach. A second episode therefore shows how the value of norm-adherence could be emphasised even in cases of non-compliance.

In 1556, two fellows breached the college statute against climbing the walls in order to gain access after the curfew. According to the statutes they ought to have been expelled for doing so, but the embarrassment of expelling two fellows so soon after the college's foundation was obviously far greater than the original embarrassment of them clambering over the walls.[34] Thomas Pope therefore disregarded the statute about expulsion, but claimed that his hand was forced by the stern entreaties of his wife and the then Princess Elizabeth:

> Albeit Simpson and Rudde have committed such an offence as whereby they have intently deserved not only forever to be expulsed out of my college, … nevertheless at the desire, or rather commandment, of my Lady Elizabeth her grace, and at my wife's request … I am content to remit their faults and to dispense with them touching the same.

They were ordered to pay a fine and to make a full confession before the rest of the college, which was to be

> recorded in some book, wherein I will have mention made that for this fault they were clean expelled the college, and at my Lady Elizabeth's her grace's desire and at my wife's request they were received into the house again; signifying that if any shall hereafter commit the like offence I am fully resolved there shall no creature

[33] TCA Register A fol 8/19. Clare Hopkins, *Trinity: 450 Years of an Oxford College Community* (Oxford, 2005), pp. 40–1.
[34] Hopkins, *Trinity*, p. 35.

> living (the Queen's Majesty except who may command me) cause me to dispense withal; assuring you I never did any thing more against my heart than to remit this matter.[35]

The point here is not to ask whether Mrs Pope or Princess Elizabeth were in fact terrifying authority figures, but rather to notice that even so powerful a figure as Sir Thomas Pope, dealing with the administration of his own college, felt the need to affirm the value of legal rules by clothing his breach with a fig-leaf of justification. If one were going to break the rules, one needed an excuse, because the authority of legal norms could not simply be sidestepped or ignored.

These insights about the rule of law in early modern England have important consequences when it comes to assessing some of the claims made by historians in the context of popular politics. As has been stressed throughout this thesis, one must first of all be realistic about the extent to which the surviving evidence reflects plebeian political agency at all. The legal documents most characteristic of 'plebeian' politics were drafted by lawyers, not by laypeople—and certainly not by plebeian laypeople. Second, one must be realistic about the extent to which these political themes swayed the courts from the path of ordinary justice. Invoking royal prestige or aligning oneself with the political aims of central government was no guarantee of legal success.

To take but two examples from earlier chapters, John Lovett's invocation of Marian religious and political themes was not enough to secure any lasting legal victory over his local professional rival in Banbury; and the City of Oxford gained very little legal mileage from its use of royal symbolism in its dispute with George Owen's tenants. Whether or not the desire to invoke political themes in litigation was authentically 'plebeian', the

[35] TCA Register A fol 7.

invocation of such themes is conceptually separate from their efficacy as legal bargaining tools. A discussion of popular politics in the legal context that leaves out the very real constraints of the rule of law is therefore seriously incomplete.

Whatever value they may have placed on the rule of law, early modern contemporaries by no means perceived the increase in legalised disputation as an unalloyed good. While legal records 'seldom yield unambiguous statements about the nature and extent of goodwill or conflict,'[36] we have seen enough examples to realise that going to law did not always aid dispute resolution; that legal knowledge could be used to oppress as much as to liberate; and that the reality of legal institutions and legal office-holders did not always match up to the ideal. Plainly, people's experience of law, government and authority in mid-Tudor England was as complex and varied as it is in our own times.

[36] McIntosh, *Autonomy and Community*, p. 183.

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| Clifton and Deddington 19a, M Oxon IV | Estate papers, Chalgrove (Oxon), 1549 |
| Golder 41c, M Oxon VI | Estate papers, Golder (Oxon), 1570 |
| Headington 31a M Oxon VIII | Account of expenses relating to King's Mill Close (Oxon), c. 1529 |
| LCE/5 Libri Computi | Accounts, 1547–70 |

**New College, Oxford**

| | |
|---|---|
| 3779 | Court rolls, manor of Adderbury Rectory (Oxon), 1467–1636 |
| 3798 | Court rolls, manor of Kingham (Oxon), 1462–1557 |
| 3799 | Court rolls, manor of Kingham (Oxon), 1559–1647 |
| 3826 | Court rolls, manor of Heyford Warren (Oxon), 1510–55 |
| 3827 | Court rolls, manor of Heyford Warren (Oxon), 1556–1647 |
| 4039 | Court rolls, manor of West Drayton (Berks), 1554–8 |
| 4062 | Court rolls, manor of West Hanney (Berks), 1554–1602 |
| 7000 | Court rolls, manor of Shipton-on-Cherwell (Oxon), 1555–8 |
| 7513 | Accounts, 1547–8 |
| 7514 | Accounts, 1548–9 |
| 7515 | Accounts, 1549–50 |
| 7518 | Accounts, 1550–1 |
| 7520 | Accounts, 1551–2 |
| 7522 | Accounts, 1552–3 |
| 7523 | Accounts, 1553–4 |
| 7525 | Accounts, 1554–5 |
| 7526 | Accounts, 1555–6 |
| 7528 | Accounts, 1556–7 |
| 7529 | Accounts, 1557–8 |

| | |
|---|---|
| 7530 | Accounts, 1558–9 |
| 7533 | Accounts, 1559–60 |
| 7538 | Accounts, 1563–4 |
| 7540 | Accounts, 1564–5 |
| 7545 | Accounts, 1565–6 |

**National Archives, Kew**

| | |
|---|---|
| C 1 | Court of Chancery, early proceedings, 1540–58 |
| C 3 | Court of Chancery, pleadings, 1558–70 |
| C 4 | Court of Chancery, pleadings, 1540–70 |
| C 24 | Court of Chancery, town depositions, 1534–70 |
| C 78 | Court of Chancery, decree rolls, 1540–70 |
| CP 40 | Court of Common Pleas, plea rolls, 1547–62 |
| E 112 | Court of Exchequer, pleadings, 1558–70 |
| E 133 | Court of Exchequer, Barons' depositions, 1558–70 |
| E 134 | Court of Exchequer, commission depositions, 1558–70 |
| E 178 | Court of Exchequer, special commissions of inquiry, 1558–70 |
| E 315 | Court of Augmentations, miscellaneous books, 1509–58 |
| E 321 | Court of Augmentations, proceedings, 1509–58 |
| E 179 | Exchequer, taxation records, 1540–70 |
| KB 9 | Court of King's Bench, indictments, 1540–70 |
| KB 27 | Court of King's Bench, plea rolls, 1547–62 |
| IND 1/1337-9 | Court of King's Bench, docket rolls, 1540–70 |
| PROB 11 | Prerogative Court of Canterbury, wills, 1540–70 |
| Req 2 | Court of Requests, pleadings, 1540–70 |
| SP 11 | State Papers domestic, Mary I |
| SP 15 | State Papers domestic, Edward VI – James I addenda |
| STAC 2 | Court of Star Chamber proceedings, Henry VIII |
| STAC 3 | Court of Star Chamber proceedings, Edward VI |
| STAC 4 | Court of Star Chamber proceedings, Philip and Mary |
| STAC 5 | Court of Star Chamber proceedings, Elizabeth I |

**Oxfordshire History Centre, Oxford**

| | |
|---|---|
| ARCH/1/A | Act book, archdeacon's court, 1567–9 |
| BOR/2/I | Banbury borough proclamation, 1554 |
| BOR/2/XVII | Banbury borough town book, 1554–1741 |
| BOR/3/B/I | Henley borough records, 1557 |
| BOR/3/B/IV | Bills from the Lord's court, Henley, 1561–79 |
| DIOC/2/B/2 | Deposition book, archdeacon's court, 1570–4 |
| DL 41 | Certificate of the inhabitants of Witney, 1533 |
| E1/8/1D | Declaration of the inhabitants of Whitchurch, 1558 |
| E1/11/1D | Copy of depositions, Lybbe v Machyn, 1552 |
| E1/M1/CR | Court rolls, manor of Elvedon (Oxon), 1558–66 |
| E1/M2/CR | Court rolls, manor of Goring (Oxon), 1559–68 |
| E1/M3/E | Terrier, manor of Whitchurch (Oxon), 1562 |
| E4/1/D | Annuity granted to Robert Norwich, 1525 |

| | |
|---|---|
| E4/3/D2 | Letter Patent of Elizabeth I regarding Wolvercote, 1574 |
| E24/9/L | Forest assize at Woodstock, 1520 |
| E26/1/1D | Documents relating to land at Stanton St John (Oxon), c. 1580 |
| E206/02/D | Deeds relating to land at Shutford (Oxon), 1563 |
| P6/1L/1 | Documents relating to Port Meadow (Oxon), 1493 |

| | |
|---|---|
| Bloxham II/13 | Custumal, manors of Bloxam Beauchamp and Fiennes (Oxon), 1547 |
| Gibbs/X | Deeds relating to land at Clifton Hampden (Oxon), 1563 |
| Hey/X | Deeds relating to land at Holwell (Oxon), 1578 |
| Lee V/1 | Order of Swanimore court, 1569 |
| Saye I/i/1 | Custumal, manor of Bloxam (Oxon), 1552 |
| Wills Oxon 183 | Wills proved in the diocesan courts of Oxford |

**Oxford University Archives**

| | |
|---|---|
| Hyp/A/7 | Act book, Chancellor's Court, 1561–7 |
| Hyp/A/8 | Act book, Chancellor's Court, 1567–78 |
| Hyp/A/72 | Miscellaneous court register, 1576–1775 |
| Hyp/B/1 | Deposition book, Chancellor's Court, 1567–78 |
| WPβ/P/7/4 | Oxford town leet, 1515 |

**Queen's College, Oxford**

| | |
|---|---|
| 2P 137–151 | Long roll accounts, 1547–65 |
| 2U | Papers relating to the University and City, c. 1553–90 |
| 2Y | Papers relating to the University and City, c. 1553–90 |
| 4M | Estate papers, Denton (Oxon), c. 1541–53 |
| 40 | Fetiplace estate papers, c. 1506–41 |
| 3E1 | Lease relating to land at Denton (Oxon), 1559 |
| E | Deeds relating to land at Wendlebury (Oxon), 1559 |
| LR 140–1 | Long roll accounts, 1567–70 |

**St John's College, Oxford**

| | |
|---|---|
| ACC I.A.1 | Accounts, 1569–71 |
| ACC I.A.2 | Accounts, 1578–80 |
| ACC I.A.3 | Accounts, 1581–2 |
| ACC I.A.4 | Accounts, 1583 |
| MUN III | Estate papers, Warborough (Oxon), c. 1532–87 |
| MUN V.B | Estate papers, Godstow, Walton and Wolvercote (Oxon), 1511–89 |
| MUN XI.9 | Court rolls, manors of Warborough (Oxon), Walton (Oxon), Longworth (Berks), Hardwick (Oxon), 1542–71 |
| MUN LII | Letter book, 1570–81 |
| MUN LX.2 | Miscellaneous correspondence, 1572 |

**Trinity College, Oxford**

| | |
|---|---|
| 111.C/1 Liber Cautionum | Book of cautions, including Liber Sigilli, 1560–72 |
| Computus 1 | Accounts, 1556–64 |
| Miscellaneous Vol 1 | Correspondence, 1556–60 |
| Register A | Correspondence, 1556–61 |
| Estates VII Waltham Magna | Estate papers, Great Waltham (Essex), 1556–70 |
| Estates Wroxton and Balscot Miscellaneous | Estate papers, Wroxton and Balscot (Oxon), 1556–70 |

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