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Litigation and locality: the Cambridge university courts, 1560–1640

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ABSTRACT: The importance of legal institutions as mediators of social relations in early modern towns has long been recognized. However, opinion differs over the extent to which early modern courts generated social conflict or resolved it through promoting consensus. This article brings to light a neglected jurisdiction and argues that while the university courts inevitably generated conflict when pursuing their regulative agenda, they nonetheless offered Cambridge inhabitants a considerable resource which was used extensively in both the speedy resolution *and* the vexatious prolongation of a wide range of disputes which tended to cut across rather than deepen town–gown hostilities.

As one of the staples of English local history, legal records have allowed considerable insight into the workings of institutions integral to early modern localities, and provided one of the most valuable windows on to the complexity of social relations in this period.[1] This is similarly true of research which employs a thematic approach within a broader geographical framework, whether focused on the high-pitched extremes of crime and deviance or on the more routine patterns of petty regulation and dispute settlement.[2] However, historians' extensive analysis of court records has by no means produced agreement about either the roles played by legal institutions or the tenor of social relations in the early modern period. Instead, a spectrum of opinion has emerged with emphases on conflict or consensus at its two extremes. On the one hand, courts of law have been characterized as instruments of social control, serving the interests of variously defined elites,[3] while high levels of both civil and

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[1] E.g. M.K. McIntosh, *Controlling Misbehavior in England, 1370–1600* (Cambridge, 1998); A. Wood, *The Politics of Social Conflict: The Peak Country 1520–1770* (Cambridge, 1999).

[2] E.g. J.A. Sharpe, *Crime in Early Modern England 1550–1750* (Harlow, 1984); C. Muldrew, *The Economy of Obligation. The Culture of Credit and Social Relations in Early Modern England* (Basingstoke, 1998).

[3] The classic approach to the law as an instrument of ruling-class oppression is D. Hay, 'Property, authority and the criminal law', in D. Hay *et al.*, *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England* (London, 1975). For a more recent approach to the

criminal litigation have been cited as evidence of an acutely conflict-ridden society.[4] On the other hand, legal institutions, and particularly the borough courts of incorporated towns, have been identified as sites of negotiation and reconciliation, serving to justify and protect traditional community values threatened by an expanding market economy.[5] Finally, a more moderate position has been attempted which approaches courts both as mechanisms of authority *and* as widely drawn upon resources, functioning simultaneously as loci for conflict (in the form of petty regulation and vexatious litigation) *and* consensus (in the form of arbitration and reconciliation), serving the interests both of an expanding state and an increasingly instrumental middling sort.[6]

The common ground occupied by all three approaches lies in the significance they attach to legal institutions as mediators in social relations in early modern England. Given the increasing importance of urban courts as fora for disputes and/or their resolution – it has been estimated that by the 1580s levels of litigation in borough courts amounted to more than one suit per household – we lack detailed studies of the workings of the myriad courts in early modern provincial and market towns which may further illuminate their social functions.[7] The purpose of this article is to bring to light the workings of a neglected urban jurisdiction, that of Cambridge university, as a potential prism through which some of these issues might be explored.

The extensive role of university courts in the early modern period warrants detailed investigation in its own right. Legally anomalous,

links between the law and social conflict, see A. Wood, 'Custom, identity and resistance: English free miners and their law c. 1550–1800', in P. Griffiths, A. Fox and S. Hindle (eds.), *The Experience of Authority in Early Modern England* (Basingstoke, 1996).

[4] See, e.g., L. Stone, 'Interpersonal violence in English society 1300–1980', *Past and Present*, 101 (1983), 22–33; M. Gaskill, *Crime and Mentalities in Early Modern England* (Cambridge, 2000), 65–6.

[5] The predominant proponent of this approach is Craig Muldrew. See his 'Credit and the courts: debt litigation in a seventeenth-century urban community', *Economic History Review*, 46 (1993), 23–38; 'The culture of reconciliation: community and the settlement of economic disputes in early modern England', *Historical Journal*, 39 (1996), 915–42; 'Rural credit, market areas and legal institutions in the countryside in England, 1550–1700', in C.W. Brooks and M. Lobban (eds.), *Communities and Courts in Britain 1150–1900* (London, 1997); 'From a "light cloak" to the "iron cage": an essay on historical changes in the relationship between community and individualism', in A. Shepard and P. Withington (eds.), *Communities in Early Modern England: Networks, Place, Rhetoric* (Manchester, 2000). See also C. Patterson, 'Conflict resolution and patronage in provincial towns, 1590–1640', *Journal of British Studies*, 37 (1998), 1–25.

[6] S. Hindle, 'The keeping of the public peace', in Griffiths *et al.* (eds.), *Experience of Authority.* See also K. Wrightson, 'Two concepts of order: justices, constables and jurymen in seventeenth-century England', in J. Brewer and J. Styles (eds.), *An Ungovernable People: The English and their Law in the Seventeenth and Eighteenth Centuries* (London, 1980).

[7] Muldrew, 'Culture of reconciliation', 916. For a detailed case study, see W.A. Champion, 'Litigation in the boroughs: the Shrewsbury *Curia Parva* 1480–1730', *Journal of Legal History*, 15 (1994), 201–22.

they combined several features of ecclesiastical courts, borough courts, manorial courts and courts of equity, and, because of their civil law procedure, their records contain valuable depositional evidence that was not generated by their borough or manorial counterparts.[8] Curiously, they have been overlooked by legal historians, and have remained largely peripheral to the urban history of the early modern period, as well as to institutional histories of the universities which have tended to focus primarily on political and academic issues. Yet the legal authority of the universities, which were, after all, corporations in their own right, should not be underestimated, especially since it extended far beyond their own membership. This is particularly true of their local impact, which not only highlights a neglected social role performed by the universities themselves, but also sheds new light upon their urban contexts.

The jurisdiction of the university in Cambridge reached its pinnacle during the reign of Elizabeth I.[9] Licensed to instigate *ex officio* (or 'office') proceedings against moral offenders, and to prosecute breaches of the peace, the university also held statutory powers to oversee all weights and measures within the town of Cambridge besides the assizes of bread, ale, beer, wine, candles, hay and firewood. Depending on the nature of the offence, the vice-chancellor could punish guilty parties with imprisonment, discommuning (whereby the offender was banned from trading with any university member or 'scholars' servant'), fines and penance, and in cases involving university members, a guilty verdict could result in a suspended degree, or even expulsion. The vice-chancellor and his commissary were also entitled to hear 'instance' litigation – or civil actions – stemming from personal pleas which did not concern landed property in which a member or employee of the university was involved. Because its jurisdiction extended beyond its members to include those privileged as 'scholars' servants', the university presided over many instance causes involving townspeople. Originating in fourteenth-century trading privileges exempting university suppliers from the duties and charges of the borough, by the later sixteenth century privileged status was claimed by numerous Cambridge inhabitants, from 'he who times the

[8] G. Jacob, *A New Law-Dictionary* (London, 1729), unpaginated.

[9] For the fullest description of the history of the university's jurisdiction in Cambridge, see J.R. Tanner (ed.), *The Historical Register of Cambridge* (Cambridge, 1917), 63–9. Much of this account is drawn from a description of 'the Consistory Courte of the Chancellor' compiled for Sir Robert Cecil in 1601, in C.H. Cooper, *Annals of Cambridge* (Cambridge 1842–1908), vol. II, 608–10. See also H.E. Peek and C.P. Hall, *The Archives of the University of Cambridge: An Historical Introduction* (Cambridge, 1962), chs. 10–11; A. Shepard, 'The meanings of manhood in early modern England, with special reference to Cambridge' (unpublished University of Cambridge Ph.D. thesis, 1998), 244–52. For the Oxford university counterpart, see M. Underwood, 'The structure and operation of the Oxford Chancellor's court, from the sixteenth to the early eighteenth century', *Journal of the Society of Archivists*, 6 (1978); D. Vaisey, 'Court records and the social history of seventeenth-century England', *History Workshop Journal*, 1 (1976).

University clock' to butchers, bakers, laundresses and plumbers, as well their families and household servants.[10]

The university therefore presided over a great deal of litigation that would have otherwise been brought before the borough court. Indeed, the university courts probably competed for business with the mayor's court in Cambridge, although the levels of competition or the degree of overlap between them is impossible to discern since the borough court records for this period have not survived. In addition, the university courts heard certain cases – particularly defamation suits – which elsewhere were the preserve of the church courts, and which were also brought before the Ely Consistory which often sat in Cambridge. While defamation cases in the Ely diocesan courts primarily concerned sexual slander, the cases brought before the university courts involved a far broader range of insults, suggesting that they provided a more open forum for such disputes than the church courts.[11] Although only one of three legal fora, therefore, the university courts enjoyed jurisdiction over a comparatively expansive range of business in Cambridge, with a greater range of sanctions than either their borough or ecclesiastical rivals. Furthermore, the university courts were spared the threat of prohibitions by common law courts which plagued the church courts during the sixteenth and seventeenth centuries, since their right to hear a case depended primarily on the status of the litigants, rather than on the substance of the action.[12]

Billed as 'the Townesmen['s] scourge' in a petition of 1596, the Cambridge university courts may not, however, seem the most auspicious subject for an exploration of the role of urban courts in containing social conflict.[13] Such formal complaints on behalf of the town were part of the perennial tensions between the university and the town over their jurisdictional boundaries which spawned numerous high-pitched exchanges by both the town and the university corporations with the Privy Council. Yet the rhetorical flourishes penned by both sides should mask neither the degree of routine town–gown co-operation in the pursuit of urban stability, nor the mutual interest of both authorities in at least some of the regulative and mediatory roles performed by the university courts.[14]

[10] Cooper, *Annals*, vol. II, 473–5. According to a town complaint of 1596, 'eleaven score' inhabitants of Cambridge were privileged by the university, Cooper, *Annals*, vol. II, 561. A list of privileged persons compiled in 1586 records a more conservative total of 147 households, approximately 12% of the town's population. Cambridge University Archives (CUA), Matr.1, 512.

[11] Cf. M. Ingram, *Church Courts, Sex and Marriage in England, 1570–1640* (Cambridge, 1987), 300–2; A. Shepard, *Meanings of Manhood in Early Modern England* (Oxford, 2003), ch. 6.

[12] For varied accounts of the fate of the ecclesiastical courts at the hands of the common law during this period, see R.A. Marchant, *The Church under the Law* (Cambridge, 1969); R. Houlbrooke, *Church Courts and the People during the English Reformation, 1520–1570* (Oxford, 1979); B. Levack, *The Civil Lawyers in England 1603–1641* (Oxford, 1973); R.H. Helmholz, *Roman Canon Law in Reformation England* (Cambridge, 1990).

[13] Cooper, *Annals*, vol. II, 559.

[14] This is more fully discussed in my 'Contesting communities? "Town" and "gown" in Cambridge, *c*. 1560–1640', in Shepard and Withington (eds.), *Communities*.

It should also be remembered that such highly politicized complaints were far removed from the daily workings of the courts which warrant assessment in their own right.

Like other provincial towns, Cambridge underwent rapid expansion in the later sixteenth and early seventeenth centuries. Its population trebled between the 1560s and 1620s, largely as a consequence of immigration, generating acute concerns about over-crowding, poverty and plague.[15] At the same time the university population was burgeoning, peaking in the 1630s at levels that would be unmatched again until the nineteenth century, and comprising roughly a third of the overall population of Cambridge.[16] This produced a distorted sex-ratio, a greater-than-usual preponderance of youths and a further dimension to the social polarization characteristic of the period. Yet it also ensured a growing demand for goods and services which enhanced the prosperity of well-placed Cambridge inhabitants. Townspeople were not solely dependent on the university for their livelihoods, however. As a 'second-ranking' town – one of the 'good', if not the 'great', urban centres of early modern England – it functioned as an important hub of trade situated at the meeting point of major highways and served by the river Cam.[17] Linked to London, King's Lynn, York, Coventry, Newmarket and Huntingdon, and with a favourable agricultural hinterland, it was a regional centre for the exchange of grain, fish, coal, hogs and horses, and host to two annual fairs of regional and national importance.[18]

As overseers of the market, as mediators in trading disputes and as arbiters in conflicts over credit and reputation in a period of dramatic socio-economic transition, the university courts were highly instrumental in the lives of many Cambridge inhabitants. Rather than simply fuelling town–gown tensions, they served a complex variety of functions and interests along sometimes predictable and sometimes surprising lines. Even in such a potentially contested environment, where the coexistence of the two corporations of town and university provided ample opportunity for friction, the university courts could and did function as a useful resource for the inhabitants of Cambridge in ways which may shed further light on

[15] N. Goose, 'Household size and structure in early Stuart Cambridge', *Social History*, 5 (1980), 347–85; P. Griffiths *et al.*, 'Population and disease, estrangement and belonging 1540–1700', in Peter Clark (ed.), *The Cambridge Urban History of Britain*, vol. II: *1540–1840* (Cambridge, 2000).

[16] L. Stone, 'The educational revolution in England, 1560–1640', *Past and Present*, 28 (1964), 41–80.

[17] P. Clark and P. Slack (eds.), *English Towns in Transition 1500–1700* (Oxford, 1976), 25–32; P. Slack, 'Great and good towns 1540–1700', in Clark (ed.), *The Cambridge Urban History*, vol. II.

[18] M.C. Siraut, 'Some aspects of the economic and social history of Cambridge under Elizabeth I' (unpublished University of Cambridge M.Litt. thesis, 1978); N. Goose, 'Economic and social aspects of provincial towns: a comparative study of Cambridge, Colchester and Reading, *c.* 1500–1700' (unpublished University of Cambridge Ph.D. dissertation, 1984).

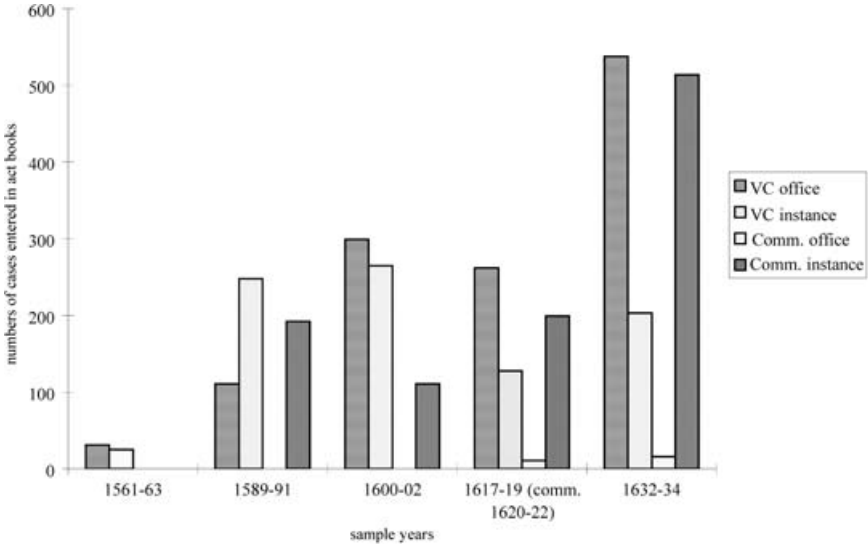

Figure 1: Volume of litigation in the Cambridge university courts, 1561–1634

the nature of disputes and the processes of their resolution in early modern English towns.

The act books of both the vice-chancellor's and commissary's courts are testimony to the increasing volume of wide-ranging litigation that occupied the university courts during this period. The following survey is largely based on five two-year samples taken from the act books of both courts, supplemented by additional information contained in the *exhibita* files and deposition books. The sample years selected are roughly 10–15 years apart. When possible, years for which continuous records of both courts survive have been chosen, the exceptions being 1561–63 and 1617–19 when only the vice-chancellor's court act books survive. No commissary court records prior to 1579 survive. For the closest possible comparison with the vice-chancellor's court act books of 1617–19, the commissary court act books have been consulted for 1620–22.

Although there was relatively little litigation heard by the university courts in the 1560s, by the 1590s there was a steadily increasing stream of cases, and by the 1630s (after a small decline in the late 1610s and early 1620s) the two courts combined were hearing over 600 cases each year (Figure 1). Throughout the period the vice-chancellor's court heard a majority of the total cases brought before the university courts, although the extent of this majority was declining in the second quarter of the seventeenth century. That the vice-chancellor exercised the university's criminal jurisdiction almost solely is evident in the distribution of *ex officio*

Table 1: Ex officio *causes heard by the vice-chancellor, 1600–02 and 1617–19*

	1600–02		1617–19	
	No. of cases	%	No. of cases	%
Unlicensed victualling/flesh-dressing	104	34.8	150	57.0
Incorrect weights and measures/prices	70	23.4	51	19.4
Disorder	45	15.0	11	4.2
Entertaining scholars	5	1.7	20	7.6
Engrossing, regrating or forestalling	9	3.0	9	3.4
Probate	14	4.7	0	0.0
Unidentified	52	17.4	22	8.4
Total	299	100	263	100

Sources: CUL, CUA, V.C.Ct.I.5, 6 & 9.

cases between the courts, with the commissary hearing no more than 4 per cent of office causes in any sample period. Conversely, instance causes were more evenly distributed between the courts, although as the vice-chancellor's court was increasingly busied by office litigation (538 cases in 1632–34) the commissary's court handled a larger proportion of instance suits. Over the course of the period, therefore, the vice-chancellor's court became increasingly busied by its regulative agenda. In 1589–91 only 39.9 per cent of its business was generated by office suits, steadily increasing from 53 per cent in 1600–02 to 72.6 per cent in 1632–34.

The vast majority of *ex officio* business dealt with offences against the university's statutory economic powers. A breakdown of office cases prosecuted in the vice-chancellor's court is possible for the years 1600–02 and 1617–19, during which the substance of most offences was carefully noted in the act books' margins (Table 1). The most common offence was unlicensed victualling. This took two main forms: selling ale or food in the town without a licence, or selling or preparing meat (dressing 'flesh') during the restricted periods of Lent and Advent. 'Flesh-dressing' was therefore prosecuted in regular cycles in the weeks preceding Easter and Christmas, forming the core of the vice-chancellor's court's prosecutions during these months. If condemned for dressing or selling meat, the defendant was liable to fines ranging from a few shillings to £5 for each offence, as well as the costs of litigation. Unlicensed victualling was met with a variety of measures, ranging from fines and bonds to prevent further offences to incarceration in the Tolbooth or town gaol.[19]

Although less prevalent than unlicensed victualling, a nonetheless substantial proportion of *ex officio* business involved offences by bakers, brewers, chandlers, vintners and colliers against the weights, measures and

[19] E.g. CUA, V.C.Ct.I.5, fols. 81v, 89; V.C.Ct.I.9, fol. 82v (flesh-dressing); V.C.Ct.I.5, fols. 24v, 116, 147 (unlicensed victualling).

prices fixed and monitored by the university. Most frequently prosecuted were bakers and brewers, who were regularly fined for baking defective bread or for selling beer above price. Of the 21 bakers prosecuted by the vice-chancellor between 1600 and 1602, only 6 appeared just once. Prosecutions against brewers seem to have been similarly routine. Offences for over-priced ale were an annual occurrence, and the same defendants appeared regularly. Thomas Cropley, for example, was condemned in early March 1601 for having sold 250 barrels of ale above the set price, and again in late February 1602 for a further 60 barrels. On both occasions he was fined 6*s* per barrel and charged with the costs of litigation.[20] It has been suggested that such measures were administered by the university as an additional tax on victualling rather than being expressly punitive, which is a plausible explanation given the increasing numbers of office suits and the high levels of repeat offences.[21]

Many forms of disorder were prosecuted by the vice-chancellor, with the bulk of the offenders drawn from the town rather than the university.[22] Typical were the charges against one Thomas Jenkenson of Cambridge, who, it was alleged, 'did very much disorder, & misdemeane himselfe . . . in scandalous words, & iniurious deeds, & allsoe for drinkinge & playeing all the Sabboth daye in an Alehowse' in addition to attacking a university official with a spit.[23] Jenkenson narrowly escaped imprisonment for his offence. One Woodward was whipped for his similarly disrespectful attitude to the university in keeping scholars' gowns and 'wearing of them upp & downe the Towne'.[24] Townsmen – often in the company of scholars – were flogged for playing football, and men and women were whipped and banished from the town for fornication (ranging from pre-marital sex to prostitution). Bloodshed was punished with fines and bonds enforcing good behaviour, and 'jetters', stool-ball players and stone-throwers were likewise condemned.[25]

A hybrid form of disorder (crossed with unlicensed victualling) was the offence of 'entertaining scholars'. Such entertainments took a variety of forms. In April 1618, the vice-chancellor condemned George Pike for

[20] CUA, V.C.Ct.I.5, fols. 84, 228v.

[21] Siraut, 'Some aspects of the economic and social history of Cambridge', 30–7. This would obviously depend on the extent of the discrepancy between the number of barrels being over-sold and the number of barrels for which each brewer was fined, as well as the extent of the illegal price increase, since a fine of 6*s* per barrel was pretty hefty, given that the assize of ale in 1601 decreed that a barrel of single beer should be sold at 3*s* 4*d*. CUA, V.C.Ct.I.5, fol. 101. For comparable regularity of fines for similar offences, see J. Boulton, *Neighbourhood and Society: A London Suburb in the Seventeenth Century* (Cambridge, 1987), 75–7.

[22] In five of the six act book samples, university members defended less than 2% of all office prosecutions.

[23] CUA, V.C.Ct.I.9, fol. 74.

[24] CUA, V.C.Ct.I.9, fol. 85.

[25] For examples of such offences, see CUA, V.C.Ct.I.9, fols. 75, 78v, 84v (football); fols. 17, 38v–39 (fornication); V.C.Ct.I.5, fol. 116v (bloodshed); V.C.Ct.I.6, fols. 30v, 36 (jetting); V.C.Ct.I.5, fol. 247 (stool-ball); fol. 222v (stone-throwing).

setting up a cockpit in his yard where he 'suffered div[er]s schollers to remayne ydly spending ther tyme in sermon tyme'. Later in the year, Christopher Lowe of Barnwell was fined £5 for taking 40 scholars into his house where he 'did . . . suffer them to staye at a Playe', and Francis Carowe, a victualler, was accused of allowing a scholar 'to staye drinking ydly w[i]th a suspicious woman' on his premises. 'Entertaining scholars' could also include the provision of a gambling venue, as in a case of 1619 against Timothy Haynes for allowing several scholars 'to stay in his howse . . . playeing at shovell boarde untill 12 of the Clocke in the night drinking'.[26] Guilty parties were fined 40*s* for each scholar they had entertained in such ways – a penalty which many victuallers were prepared to risk in return for the lucrative trade supplied by wayward students.

Behind such regulative initiatives lay the university's desire to limit the illicit activities of its charges by keeping them as far removed as possible from the temptations beyond college walls. This involved something of a double standard, which, in office cases at least, almost invariably laid the blame for their misbehaviour at the door of the town. In response to Charles I's concern that 'the ancient discipline of the two Universities famous for good Literature and manners . . . hath much declined in these latter yeares', an additional weekly session was mounted by the vice-chancellor in 1626 to restore good government within the university, which involved a similarly aggressive stance against Cambridge's purveyors of alcohol and tobacco.[27] Further anxieties that students dishonoured the university's reputation by undertaking 'contracts of marriage with women of mean estate and of no good fame' lay behind an additional set of orders issued by Charles I to prevent taverners and victuallers from allowing 'any daughter or other woman in his house to whome there shall resort any scholars . . . to mispend their time or otherwise to misbehave themselves'.[28] So in 1636 Nicholas Twelves was admonished to keep his daughter from the town, having been presented for allowing her to keep company with scholars in the miller Thomas Dissington's house, a consequence of which it was suspected that she was 'mayntayned in apparrell above her condic[i]on & fathers hability'.[29] The scholars concerned appear to have gone unpunished.

This does not mean, however, that scholars were beyond rebuke, or even severe penalties, for their actions. Scholars were not absent from the sessions of the Monday courts or the vice-chancellor's court, and the university pursued any seditious or doctrinally suspect preachers amongst its members especially vigorously.[30] The bulk of disciplinary action against students took place in the colleges, as only the most serious cases would

[26] CUA, V.C.Ct.I.9, fol. 33v; V.C.Ct.I.9, fol. 42; V.C.Ct.I.9, fol. 92v; V.C.Ct.I.9, fol. 135v.
[27] Cooper, *Annals*, vol. III, 182.
[28] *Ibid.*, 221.
[29] CUA, Comm.Ct.I.18, fol. 144v. See also fols. 108v, 109, 137, 145.
[30] For offending sermons brought to the attention of the vice-chancellor's court, see D.M. Hoyle, '"Near popery yet no popery": theological debate in Cambridge 1590–1644' (unpublished University of Cambridge Ph.D. thesis, 1991).

have been brought to the attention of the vice-chancellor.[31] It would be a mistake, therefore, to place the university courts' *ex officio* business exclusively within a framework of town–gown antagonism, especially since a great deal of it was aimed at preventing fraternization and the consolidation of town–gown networks that were deemed threatening to urban stability. It was in the interests of both corporations to limit the types of disorder associated with a disproportionately large population of single young men, and much of the regulative activity of the university against disorder was designed to *limit* town–gown links rather than respond to town–gown conflict.

The vice-chancellor was nonetheless at times confronted by tangible hostility in the consistory from those summoned to court in office proceedings. In 1618, one James Priest was committed to safe custody for having sat in the place reserved for Masters of Arts during sermon-time at Great St Mary's, and for refusing to move when asked. He responded to the vice-chancellor's sanctions by saying 'his bloud bee uppon him, or they must awnswere for it, yf he were Committed to prison or trobled for that offence . . . sayeing that they would committ him to hell yf they could'.[32] Another act of insubordination in the consistory actually provoked the vice-chancellor to bring an action against the offending party, who had refused to remove his hat in court, allegedly saying 'I will putt on my hatt . . . in a better Court then this is.'[33] However, such incidents seem to have been exceptional rather than routine, and were more likely to have been expressions of the inevitable tensions generated in any court-room, rather than attributable to particular grievances against the university courts.[34] Hostility to such regulative intervention cannot have been exclusive to Cambridge, although it may have been exacerbated by the fact that it was administered by university members, and therefore was unmitigated by any participatory role of freemen acting as officials in the process. While tensions inevitably surfaced along town–gown lines, therefore, they were not all peculiar to this jurisdiction and, more importantly, they do not seem to have impinged on the daily running of the university courts.

That the university courts were not merely a site for town–gown tensions is most apparent from the instance litigation brought by townspeople in rapidly increasing numbers from the later sixteenth century. Townspeople would not have used the courts in such increasingly large numbers had they not served a valuable function. In the sample years 1632–34,

[31] See, e.g., Emmanuel College, Cambridge, Admonitions Book, 1586–1775, CHA1.4A; Trinity College, Cambridge, Admissions and Admonitions, 1566–79; and St John's College, Cambridge, Orders and Admonitions, 1627–1780, C5.1.

[32] CUA, V.C.Ct.I.9, fol. 75.

[33] CUA, V.C.Ct.III.24, fol. 26.

[34] For a comparable court-room refusal to doff a hat, see P.J. Corfield, 'Dress for deference and dissent: hats and the decline of hat honour', *Costume*, 23 (1989), 64–79, at 64. See also Ingram, *Church Courts*, 369–70.

over 700 cases were entered in the university court act books involving approximately 450 Cambridge households, which amounted to almost a quarter of the town's population. Given that the university courts were one of three local courts open to Cambridge residents, such levels of litigation were hardly insignificant, and were part of the unprecedented rise in litigation during this period.[35]

The instance litigation heard in the university courts was dominated by actions for debt and for injury. In the few sample years during which the registrar regularly noted the substance of a case it appears that actions for debt made up the bulk of litigation initiated in the university courts. In the commissary's court between 1589 and 1591 and between 1600 and 1602, for example, over 70 per cent of the instance cases entered in the act books were for debt. In the main, debt suits had their origins in trading disputes over the settling of accounts and sales credit. The sums concerned ranged from a few pence to several hundred pounds, since the university courts were not restricted – like most borough courts – from hearing debt cases involving sums of more than 40*s*. The smallest debt entered in the act book samples was 10*d*, while the largest sum in dispute was £1,674 16*s* 7*d*.[36]

The majority of actions for debt stemmed from broken oral agreements rather than written obligatory bonds. Of the debt cases entered in the act books of the vice-chancellor's court between 1600 and 1602, only 21 (13.6 per cent) were the result of broken bonds. Likewise, in the commissary's court between 1589 and 1591 only 18 debt cases (13 per cent) had their origins in defaults from formal, written bonds. The university courts did not employ the common law distinction between debt (requiring formal written evidence) and *assumpsit* (based on a broken oral promise).[37] Nonetheless, debt litigation in the university courts seems to have placed the emphasis on breach of faith rather than on written contracts. This is in line with the university courts' links with the ecclesiastical courts, which until the mid-sixteenth century routinely heard breach of faith suits.[38] Furthermore, it reinforces Craig Muldrew's conclusions regarding the importance of trust as a binding force within communities, and the mediating role of the courts underpinning the ever increasing number of market transactions, not yet formalized in writing, in early modern England.[39]

[35] A. Macfarlane, *Reconstructing Historical Communities* (Cambridge, 1977), 183; J.A. Sharpe, 'The people and the law', in B. Reay (ed.), *Popular Culture in Seventeenth-Century England* (London, 1985), 247–9; C.W. Brooks, *Pettyfoggers and Vipers of the Commonwealth: The 'Lower Branch' of the Legal Profession in Early Modern England* (Cambridge, 1986), ch. 4; Muldrew, *Economy of Obligation*; *idem*, 'The culture of reconciliation', 915–16; *idem*, 'Rural credit, market areas and legal institutions'.

[36] CUA, V.C.Ct.I.5, fol. 42v; V.C.Ct.III.11, fol. 77a.

[37] See R.H. Helmholz, 'Assumpsit and *Fidei Laesio*', *Law Quarterly Review*, 91 (1975).

[38] *Ibid.* See also R.M. Wunderli, *London Church Courts and Society on the Eve of the Reformation* (Cambridge, MA, 1981), ch. 5.

[39] Muldrew, *Economy of Obligation*, chs. 8–9; *idem*, 'Interpreting the market: the ethics of credit and community relations in early modern England', *Social History*, 18 (1993), 163–83.

Table 2: *Litigants in the university courts' act books, by sex*

		VC INSTANCE			COMM. INSTANCE		
		Total litigants (%)	P (%)	D (%)	Total litigants (%)	P (%)	D (%)
1561–63	Male	90	88	92	–	–	–
	Female	4	4	4	–	–	–
	Joint	6	8	4	–	–	–
1589–91	Male	93.6	92.8	94.4	90.0	90.6	89.5
	Female	3.4	3.6	3.2	7.9	7.8	7.9
	Joint	3.0	3.6	2.4	2.1	1.6	2.6
1600–02	Male	88.2	93.2	83.3	93.7	94.6	92.8
	Female	11.2	5.7	16.7	5.9	5.4	6.3
	Joint	0.6	1.1	0.0	0.4	0.0	0.9
1617–19/ 1620–22	Male	90.1	92.9	87.4	89.8	88.3	91.3
	Female	7.9	5.5	10.2	8.9	10.2	7.7
	Joint	2.0	1.6	2.4	1.3	1.5	1.0
1632–34	Male	84.9	82.0	87.8	80.7	78.9	82.5
	Female	9.0	10.1	8.0	17.8	19.3	16.3
	Joint	6.1	7.9	4.2	1.5	1.8	1.2

P = plaintiffs.
D = defendants.

Injury suits largely fell into two general categories: defamation and assault (although very occasionally they also concerned trespass and wrongful arrest).[40] The act books rarely noted the substance of injury suits, and so do not reveal the ratios of defamation and assault cases. If the depositional evidence is an accurate gauge, just over half the injury suits heard in the vice-chancellor's court and nearly three-quarters of those heard by the commissary alleged verbal abuse. Due to the comparatively small number of cases for which depositions survive, it is impossible to tell whether the ratio between injury suits for defamation and for assault was changing over time. However, the evidence suggests that defamation dominated actions for injury throughout the period under consideration.

The social profile of litigants in instance suits suggests that they were generally representative of a wide cross-section of Cambridge inhabitants, although labourers and certain groups of women were distinctly under-represented. The act books show women to have made up between 3.4 per cent and 11.2 per cent of litigants in the vice-chancellor's court, and between 5.9 per cent and 17.8 per cent in the commissary's court (Table 2). Women's activity as litigants appears to have increased during the period, although not always steadily. Furthermore, some married women were

[40] E.g. CUA, Comm.Ct.II.16, fols. 84, 86–90v; Comm.Ct.II.21, fols. 7v–10.

additionally involved in joint suits with their husbands in up to 6 per cent of the overall instance litigation entered in the act books. By the 1630s it appears that women were becoming increasingly active as plaintiffs, rather than appearing in court predominantly as defendants. Although the act books suggest that men undoubtedly dominated litigation in the university courts, women's involvement as litigants was far from negligible. By the 1630s almost one fifth of the total litigants in the commissary's court were women, and in injury suits women made up over a quarter of all plaintiffs and over a third of all defendants.

The gender distribution of litigants therefore not only varied from court to court, but also according to the substance of a case. The contrasting gender profile of litigants in debt and injury suits was most stark in the commissary's court: women were involved in only 9.2 per cent of the debt cases for which depositions survive, whereas they constituted over one third of all litigants in actions for injury. This impression is supported by information from the act book samples. For instance, in the commissary's court between 1589 and 1591 men accounted for 94.2 per cent of all litigants in actions for debt, while women were involved in 22.9 per cent of the actions for injury. Likewise, in the vice-chancellor's court between 1600 and 1602, nearly 14 per cent of litigants in injury suits were female, while only 7.6 per cent of debt suits involved women. However, it should be noted that this trend was sometimes overturned, as in the vice-chancellor's court between 1617 and 1619, when there were marginally more women litigating for debt than injury, which reinforces the impression of the vice-chancellor's court as the more important forum for women's debt litigation – possibly owing to associations with testamentary disputes (largely heard by the vice-chancellor), given the numbers of cases brought by executrices settling their late husband's estate.[41]

Such gender variation according to the nature of a case is further illustrated by the different proportions of men and women involved in injury litigation for defamation and assault (Table 3). Women were almost entirely absent from suits in the vice-chancellor's court alleging assault, and were only ever active as plaintiffs in assault cases when suing jointly with their husbands. In defamation suits on the other hand, women accounted for one third of litigants in the commissary's court, and (if joint suits are included) they appeared in nearly one fifth of cases heard by the vice-chancellor. Although the proportions of women suing for defamation were lower than those found in the church courts, they nonetheless support

[41] Women made up 8% of litigants in debt suits, and 7.9% of litigants in actions for injury, although it should also be noted that these figures are questionable as a result of the high number of unidentified cases (20%). While this sample seems to be exceptional, the overall proportions of debt suits involving women were nonetheless marginally higher than those calculated for the Guildhall Court in King's Lynn, when between 1683 and 1686, only 9% of plaintiffs were female, and 6% of defendants. Muldrew, *The Economy of Obligation*, 246.

Table 3: *Litigants in injury suits for which depositions survive, 1580–1640, by sex and town–gown status*

		VC			COMM.		
		Total litigants (%)	P (%)	D (%)	Total litigants (%)	P (%)	D (%)
Defamation	Men (town)	55.5	50.0	61.1	59.9	60.6	59.2
	Men (gown)	26.4	33.3	19.4	5.1	7.3	2.9
	Men (total)	81.9	83.3	80.5	65.0	67.9	62.1
	Women	13.2	11.1	15.3	33.2	29.2	37.2
	Joint	4.9	5.6	4.2	1.8	2.9	0.7
Assault	Men (town)	57.1	57.1	57.1	92.8	95.2	90.5
	Men (gown)	42.9	42.9	42.9	0.0	0.0	0.0
	Men (total)	100.0	100.0	100.0	92.8	95.2	90.5
	Women	0.0	0.0	0.0	4.8	0.0	9.5
	Joint	0.0	0.0	0.0	2.4	4.8	0.0
Defamation and assault	Men (town)	70.0	73.3	66.7	53.8	46.1	61.5
	Men (gown)	23.3	20.0	26.6	0.0	0.0	0.0
	Men (total)	93.3	93.3	93.3	53.8	46.1	61.5
	Women	3.3	0.0	6.7	42.3	53.9	30.8
	Joint	3.4	6.7	0.0	3.8	0.0	7.7

P = plaintiffs.
D = defendants.

the repeatedly observed connection between women and slander litigation in early modern England.[42]

That smaller proportions of women were involved in debt litigation than in injury suits was largely determined by the greater restrictions on women's marital status in actions for debt, almost all of which involved widows. Many such cases, particularly in the vice-chancellor's court, involved the administration of a late husband's estate by the numerous widows named as executrices. Others were a direct result of a widow's own business dealings, such as the several suits involving Alice Holmes who ran a large-scale brewing operation for at least twenty years.[43] Married women on the other hand, while able both to bring and defend injury suits in the university courts, were excluded from pursuing debt cases except in actions brought jointly with their husbands. Joint actions for debt involving both husband and wife frequently concerned credit or property

[42] L. Gowing, *Domestic Dangers: Women, Words and Sex in Early Modern London* (Oxford, 1996), ch. 2; J.A. Sharpe, *Defamation and Sexual Slander in Early Modern England: The Church Courts at York*, Borthwick Papers, 58 (1980); Ingram, *Church Courts*, ch. 10. The lower ratios of women in the university courts is possibly explained by their admission of a far broader range of insults as defamatory.

[43] E.g. CUA, Comm.Ct.II.13, fol. 108; V.C.Ct.II.14, fol. 60v; Comm.Ct.II.18, fol. 50v.

recently brought by a widowed woman into a new marriage, reflecting her transition from an independent and legally recognized economic agent to a *feme couvert*, whose economic interests were (legally) indistinguishable from, and subsumed by, those of her husband. With only two exceptions (who were both defendants),[44] individual married women were almost entirely absent from debt litigation, whereas they were the most active group of women in injury suits. This was in contrast to the situation allowed by the Cambridge borough court which granted 'where a woman covert . . . useth any craft within the sayd Burroughe by her sole with the which the husband medleth not that woman shalbe charged as a woman sole of all that which toucheth her craft', which suggests that married women seeking resolution of disputes over debt may have turned to the borough rather than the university.[45]

Women's activity as litigants in the university courts was therefore highly varied, according to three main determinants: the court in which they sued; the substance of the case; and their marital status. Even when these determinants had their least inhibitive impact, women never made up more than a third of all litigants. Yet this was nonetheless a significant proportion, demonstrating the ways in which the university courts could indeed function as a resource for women, particularly in the maintenance and defence of reputation (a valuable commodity in itself, especially it would seem for married women) and, in the case of widows, in the administration of their late husband's estate and in their own business pursuits. Furthermore, as suggested by the borough court provision, women's relative absence from debt litigation, particularly in the university courts, did not necessarily signify their absence from business dealings and the market place.[46] The restrictions on their access to justice did not preclude women's legal canniness – indeed, it may even have heightened it. This is suggested by incidental evidence of attempts to safeguard property from husbands both with and without their knowledge. Joan Corbet, for example, in the presence of several witnesses told her future husband 'yf I doe matche w[i]th yowe . . . I doe geve to my brother Robert . . . the lease of this my house reservinge to myselfe this Chamber, for th[a]t I cannot tell what nede I shall haue hereafter'. Ann Barriker, the wife of a rough mason, deposed that she had advised Joan to 'doe yt nowe whilst you are a widowe for afterwards you cannot doe yt', and that she (Ann) had gone to Gilbert Corbet to inform him that Joan 'will not have the[e], excepte she maie gyve disher the lease of her howse', a condition to which Gilbert apparently agreed.[47]

[44] CUA, Comm.Ct.II.3, fols. 90v, 95, 100v, 106; Comm.Ct.I.3, fol. 196v.
[45] Downing College, Cambridge, Bowtell MS 11 (Metcalfe's Thesaurus), fol. 157v.
[46] A. Shepard, 'Manhood, credit and patriarchy in early modern England *c.* 1580–1640', *Past and Present*, 167 (2000), 90–5.
[47] CUA, Comm.Ct.II.2, fols. 29, 32r–v. For a similar, yet more clandestine set of arrangements, see Comm.Ct.II.8, fols. 2–4. See also A.L. Erickson, *Women and Property in Early Modern England* (London, 1993), part III.

Men's litigation, on the other hand, was not so obviously subject to such restrictions. However, it is possible that men's marital and occupational status did have an impact on their ability to sue in the university courts. Since the records rarely state the marital status of men, it is impossible to gauge how this might have affected their activities as litigants. However, it is worth noting that the litigation involving townsmen differed considerably from that pursued by university members, which suggests that marital status, age and position did also affect men's patterns of litigation. University men were far more active in injury cases than in the debt litigation that preoccupied townsmen, and in defamation litigation university men were more likely to sue over sexual slander than townsmen.[48]

Table 4 lists the occupational range of male litigants in the university courts. Information on occupational status is very limited. The act books rarely recorded the occupation of litigants in instance suits, and the deposition books only included such information sporadically. Some biographical details can be gleaned about individual litigants if they reappeared at any time as a witness in another suit, and so it is possible to reconstruct some details about their social status. However, the occupational status of over a third of the male litigants in cases for which depositions survive nonetheless remains unidentifiable. Furthermore, a litigant's office (such as constable, bedell, taxor) was often recorded in place of his occupation, especially when a suit arose from his execution of that office. Even when an occupation was listed, it was not necessarily the sole or primary means of income for the litigant concerned, since many townspeople's employment by the university was supplementary and of secondary importance. Moreover, since depositional evidence was a product of the lengthier cases, it may well have been biased towards wealthier litigants who were perhaps less likely to settle a case in order to avoid the expense of calling witnesses. Too many conclusions cannot therefore be drawn from the information contained in Table 4, although some apparent trends should be noted.

University members combined (ranging from undergraduates to Doctors of Divinity, and including cases involving the governing bodies of colleges) made up the greatest proportion of male plaintiffs, although their presence was (predictably) more prominent in the vice-chancellor's court than before the commissary.[49] The bulk of their actions were for injury rather than debt; they were also more likely to appear as plaintiffs than as defendants, and were therefore more active in pursuing claims

[48] See Shepard, *Meanings of Manhood*, 79–81.

[49] Of the male litigants, university members made up 19.6% of the plaintiffs and 18.8% of the defendants before the vice-chancellor's court, whereas in the commissary's court they only provided 6.6% of the plaintiffs and 3.1% of the defendants. This was due to the vice-chancellor's jurisdiction over all cases involving those above the status of Master of Arts.

Table 4: *Occupational range of litigants in cases for which depositions survive, 1581–1640*

	PLAINTIFFS			DEFENDANTS			
Occupation	Nos.	Nos. of cases	% of cases	Nos.	Nos. of cases	% of cases	% of all cases
University members	77	90	18.3	64	67	14.9	16.7
Draper/tailor/upholsterer	42	81	16.5	35	47	10.5	13.6
Brewer/maltster/vintner	20	31	6.3	23	30	6.7	6.5
Apothecary/barber-surgeon	21	28	5.7	15	24	5.4	5.5
MA (town)	12	21	4.3	9	9	2.0	3.2
Butcher/baker/miller	18	21	4.3	26	33	7.4	5.8
Yeoman	15	20	4.1	10	11	2.4	3.3
Bookbinder/stationer	13	20	4.1	15	16	3.6	3.8
Builder/bricklayer/mason/ glazier/slater/joiner	12	20	4.1	17	17	3.8	3.9
Innholder/alehousekeeper/ tapster	16	20	4.1	19	20	4.5	4.3
Registrar/notary public/ scrivener	14	19	3.9	5	6	1.3	2.7
Butler/cook/launderer	15	17	3.4	17	20	4.5	3.9
Merchant/grocer/chandler/ haberdasher	13	17	3.4	15	19	4.2	3.8
Apprentice/servant	14	15	3.0	9	9	2.0	2.6
Gent	14	15	3.0	14	24	5.4	4.2
Cordwainer/glover/hosier	11	12	2.4	16	21	4.7	3.5
Official	10	11	2.2	19	19	4.2	3.2
Pewterer/smith/farrier	6	9	1.8	6	8	1.8	1.8
Carrier/carter/waterman	7	7	1.4	9	16	3.6	2.5
Cooper/capper/cutler/ sherman/limeburner	6	6	1.2	2	3	0.7	1.0
Skinner/tanner/saddler	5	6	1.2	11	14	3.1	2.1
Musician/chapman	2	2	0.4	3	3	0.7	0.5
Teacher/clergyman	2	2	0.4	4	4	0.9	0.6
Weaver/clothworker	1	1	0.2	2	2	0.4	0.3
Husbandman/labourer	1	1	0.2	6	6	1.3	0.7
Total	367	492	100	371	448	100	100

against others than in defending charges against themselves. A similarly aggressive role was played by drapers and tailors, who made up the second largest category of male plaintiffs, and who were nearly a third again as likely to appear as plaintiffs than as defendants. Other occupational groups who were apparently more likely to sue than to be sued were yeomen, scribes and notaries, and apothecaries and barbers. On the other hand, various groups seem to have appeared more regularly as

defendants – most notably husbandmen and labourers, who between them only mounted one case in the university courts for which depositions survive between 1580 and 1640. Of such imbalances between numbers of cases fought and defended, the easiest to explain is the high number of constables, bedells and other disciplinary and administrative officials appearing as defendants, since their duties were frequently contested and often provoked counter-claims.[50]

In assessing how the range of litigants shown in Table 4 related to the occupational structure of Cambridge as a whole in this period, the most striking feature is the under-representation of university members themselves in the university courts, thus suggesting the courts' greater external significance to inhabitants of the town than internal institutional importance. A paper drawn up in 1597 outlining a scheme for a general subscription for relief of poor students estimated the university population at roughly 2,500, which was approximately a third of the overall town and gown population combined.[51] Yet university members were involved in only 16.7 per cent of the cases heard by the university courts between 1580 and 1640. Even if university graduates resident in Cambridge are included in the 'gown' category, university members still only appeared in under a fifth of all cases. This suggests that the university courts were disproportionately occupied with business from the town rather than cases involving its own members.

When the occupations of male litigants from the town are compared with Nigel Goose's estimate of the town's occupational structure for 1580–1640, there is little significant deviation between the proportions litigating and their representation in town, although several small biases are evident.[52] Gentlemen were over-represented as litigants, suggesting an elite bias in the university courts (although it should be noted that they appeared in roughly the same numbers as both plaintiffs and defendants). However, this hypothesis is somewhat countered by the apparent under-representation of the professional, merchant and retail categories – all important sectors of Cambridge's upper echelons. Those deriving their living from food and drink, service and transport, and the clothing trade were all over-represented as litigants in the university courts. This is not surprising, given their intense and extensive activities in provisioning the university and its members. Many tailors were doubly employed as retainers to heads of houses and professors which also partly accounts for their prominence as litigants. Scholars' servants were also most likely to fall into these categories, and, since their consequent privileged status entitled them to sue and be sued in the university courts, it is unsurprising that they were over-represented.

[50] E.g. CUA, V.C.Ct.II.30, fols. 38r–v, 41v, 47r–v, 54.
[51] Cooper, *Annals*, vol. II, 568. For the estimates of the town's population used to calculate the town/gown ratio, see Goose, 'Household size', 353.
[52] Goose, 'Household size', 361.

Conversely, those less likely to enjoy privileged status, such as craftsmen, labourers and rural workers, were under-represented as litigants in the university courts. Labourers were the most under-represented of these groups, especially if the bias against them in Goose's figures is taken into account.[53] However, caution should be exercised before assuming that the university courts were exceptionally biased towards elite litigants or were inaccessible to humbler occupants of the town. Although husbandmen and labourers seem to have been rare amongst plaintiffs, it should be noted that servants and apprentices fought a greater number of cases than they defended, and that they were as numerous amongst plaintiffs as those who styled themselves gentlemen. Those of lower social status were not therefore denied legal redress in the university courts, and could often be found litigating to their advantage.

Poorer litigants whose goods were valued at below 40*s* could request to be admitted as a litigant *in forma pauperis*, which effectively waived their court fees, although the act books recorded such instances only occasionally.[54] The cost of litigation (borne by the vast majority of litigants) varied dramatically. According to a book recording bills of expenses in 111 cases between 1623 and 1627, the average cost of a suit was £2 18*s* 8*d*, with the greatest sum spent by any litigant on one case during this period being £20 11*s* 4*d*.[55] Cost was primarily determined by the length of a suit, but also depended heavily on whether or not a proctor was employed to represent the case in court, and from which stage of the suit this occurred.[56] Of actions which proceeded to a sentence, the simplest possible case cost a minimum of 22*d*: 1*s* for the decree; 4*d* for the act; and 6*d* for the sentence.[57] Amounting to roughly two days' wages, this kind of outlay was not unimaginable for a seventeenth-century labourer, although it would hardly have been taken on lightly given the sporadic employment of many labouring people and the uncertain outcome of litigation. Nonetheless, it is worth emphasizing that for straightforward cases (which the majority of suits entered in the act books seem to have been), reasonably priced justice was available in the university courts. The costs of litigation before the vice-chancellor in the 1620s were in line with Whitgift's standard fees drawn up in 1597, and seem to have compared favourably with ecclesiastical courts elsewhere.[58] Given that these fees appear to have remained constant until the mid-seventeenth century (during a period of high inflation), in real terms litigation was effectively becoming cheaper which possibly explains the

[53] According to five parish listings of the 1620s, labourers made up over 27% of the town's population (although it should be noted that the sample parishes are themselves biased towards the rural population). Goose, 'Household size', 359–61.
[54] E.g. CUA, Comm.Ct.I.3, fols. 223, 368B; V.C.Ct.I.9, fol. 135v.
[55] CUA, V.C.Ct.V.2, unfoliated.
[56] For the role of proctors in the university courts, see A. Shepard, 'Legal learning and the Cambridge University Courts, c. 1560–1640', *Journal of Legal History*, 19 (1998), 62–74.
[57] E.g. CUA, V.C.Ct.I.27, fol. 37.
[58] Ingram, *Church Courts*, 56.

threefold increase in suits between the 1590s and 1630s.[59] Litigation in the university courts was not therefore prohibitively expensive, and it appears that the vice-chancellor and commissary's judgment was widely purchased by men and women throughout the social scale in early modern Cambridge.

Evidence of such litigiousness has given rise to detailed examination of the functions performed by the multitude of courts in early modern England in settling the inevitable disputes which were a product of economic expansion, and the increasing numbers of personal injury suits. Rather than reading high levels of litigation as indicative of a breakdown in social relations, recent work has emphasized the roles played by courts as mediators and arbitrators facilitating harmonious community relations.[60] Contemporary rhetoric which associated the rise in lawsuits with malice and vexation has been tempered by evidence of the courts' increasingly indispensable instrumentality in resolving conflict. Such arguments have focused on the high proportion of cases which were settled long before sentencing.[61] In line with such trends, large numbers of suits entered in the university courts' act books were either abandoned or settled out of court. From the late 1580s, this occurred in over two-thirds of all cases, and this proportion steadily increased to nearly 90 per cent in the 1630s, suggesting that the university in Cambridge played a significant role in tempering the many tensions that gave rise to legal disputes in this particular urban context, presumably in ways which may also have offset some of the sources of town–gown hostility.

Prolonged or superfluous litigation seems to have been avoided where at all possible. Although formal arbitration played a minor role in the university courts' proscriptions, lawsuits were expected to have been preceded by informal mediation and arbitration as part of neighbourly responsibilities to resolve and contain conflict.[62] Many witnesses talked in disapproving terms of unnecessary or potentially ruinous legal action,

[59] C.W. Brooks argues that the comparable rise in litigation in the Court of Common Pleas and King's Bench between 1560 and 1640 was partially explained by the increasing affordability of litigation, *Pettyfoggers and Vipers*, 101–6.

[60] M. Ingram, 'Communities and the courts: law and disorder in early-seventeenth-century Wiltshire', in J.S. Cockburn (ed.), *Crime in England 1550–1800* (London, 1977); J.A. Sharpe, '"Such disagreement betwyx neighbours": litigation and human relations in early modern England', in J. Bossy (ed.), *Disputes and Settlements: Law and Human Relations in the West* (Cambridge, 1983); M. Knight, 'Litigants and litigation in the seventeenth century Palatinate of Durham' (unpublished University of Cambridge Ph.D. thesis, 1990), 447–60; and the work of C. Muldrew, cited in n. 5 above.

[61] For example, in a sample of suits from the court of the Dean and Chapter in York between 1596 and 1598, only 5 out of 27 suits initiated for defamation continued to a decision, Sharpe, 'Such disagreement', 172–3; and in King's Lynn only 16% of suits went beyond an initial complaint in court, and only 4% reached a final judgment, Muldrew, 'Culture of reconciliation', 939.

[62] For the pattern of events leading up to litigation and the role of community in containing conflict, see Muldrew, 'Culture of reconciliation'.

such as the apothecary Peter Scarlett who told a plaintiff that he took 'a wrong course to goe to lawe w[i]th a poore man'.[63] Often the motive to avoid litigation focused more on the preservation of one's own resources than those of an opponent, and in many cases issuing a libel was enough to induce a quick settlement for pecuniary reasons. While on their way to court at the early stages of a suit, for example, Henry Flamson (an innkeeper) was overheard saying to the haberdasher Ralph Hide, 'lett us make an end of this sute & trouble betwene us, let us not goe to lawe & spend o[u]r monye'.[64]

It appears that similar attitudes were adopted in the university courts in an attempt to discourage unnecessary litigation. In 1601, when the saddler Mungye Withers complained of an assault by a fellow saddler, the vice-chancellor restored amicable relations between the two men and dismissed the case.[65] It appears that attempts to divert suits through reconciliation were standard practice, if not always successful. Hence William Barricker, a bricklayer, deposed that about two or three hours after Thomas Crowforth and Edward Wardall had fallen out, he and another witness to their quarrel had gone with them to the vice-chancellor who 'did cause the said Crowforthe to forgive . . . Wardall . . . uppon condic[i]on th[a]t wardall shoulde not after that time misuse the said Crowforthe by worde or deed, & caused them to shake hands the one w[i]th thother in signe & token of frindshippe'.[66] In this instance, however, the restored friendship did not prevent Crowforthe from subsequently entering a suit against Wardall, which is why we have this description. However, the conciliatory role played by the university courts is evident in the frequent use of the word *pax* in the later act books to indicate that a suit had been concluded before sentencing was necessary.[67]

Few details survive of the specific patterns of settlements, since most cases which did not reach a formal conclusion simply disappeared from the act books. However, the few examples that do survive seem to suggest that settlement often involved some degree of compromise. In a case pursued by the brewer John Sherman against William Smith for a debt of 50*s* 10*d* owing for beer delivered to Smith, the defendant offered to settle the suit for 40*s*, proffering 20*s* on the spot and promising to pay the remaining 20*s* by the following Easter. John Sherman agreed to these terms and Smith was

[63] CUA, V.C.Ct.II.6, fols. 5v–6. For another entreaty to bring an injury suit to 'a frendly ende', see V.C.Ct.II.22, fol. 51v; and for informal efforts to settle a long-term debt 'to save the poore fellowes chardges', see Comm.Ct.II.3, fol. 12v.

[64] CUA, Comm.Ct.II.4, fol. 192v. See also Comm.Ct.II.3, fol. 10r–v.

[65] CUA, V.C.Ct.I.5, fol. 146v.

[66] CUA, Comm.Ct.II.2, fol. 62v. For a vice-chancellor's lengthy description of his attempts to reconcile Henry Cotton and William Windle, see Comm.Ct.II.11, fol. 47, and for details of a successful resolution achieved by the same vice-chancellor's mediation, see V.C.Ct.II.14, fol. 32.

[67] E.g. CUA, Comm.Ct.I.24, fols. 19v, 26.

accordingly acquitted.[68] As with decisions about whether to instigate or pursue a case in the first place, such agreements were made in the context of extensive mediation by neighbours and friends,[69] and it appears that the university courts likewise continued to seek reconciliation between parties.

That the university courts were concerned to limit the effects of a dispute is also evident in their sentencing practices. This was most obvious in debt suits involving conditional bonds, which had a high sentencing rate. Of 21 such cases entered in the vice-chancellor's court act books between 1600 and 1602, 19 ended with judgments in favour of the plaintiff, and only two were settled. In at least half of the cases which proceeded to judgment, the sentence was mitigated so that the defendant was not compelled to pay the penal sum, but only the amount owing and any losses accrued as a result of its non-payment (and the costs of the case). An example is a case of 1602 between Robert Oliver and John Sampson. Sampson had defaulted on his promise to pay Oliver 58*s* 10*d*, for which default he had bound himself liable to pay £6. The vice-chancellor initially condemned Sampson to pay the full sum of £6 and expenses (2*s* 2*d*), reserving the right to modify the sentence, which he subsequently did, reducing Sampson's penalty to the original sum due (58*s* 10*d*).[70] Unlike common law courts in this respect, the university courts' judgments in debt cases (based on establishing a fair solution, rather than proving a single issue) were akin to sentencing strategies in equitable jurisdictions such as the palatinate courts.

Patterns of sentencing in injury suits involved similar compromises. It was extremely rare for either the vice-chancellor or the commissary to award the full damages estimated by the plaintiff. The monetary damages awarded in the few cases which did proceed to judgment were usually no more than a third of the plaintiff's estimate, and often considerably lower. In a case brought against Katherine Dodson by Richard Senhouse, the commissary condemned Dodson to pay 6*s* 8*d* and costs, despite Senhouse's estimate of his injury at £100, suggesting that estimated damages functioned more as an inflated index to the value of an individual's reputation than as a realistic expectation of an award in an action for injury.[71] In assessing damages, it appears that the vice-chancellor and commissary were more concerned with the defendants' means than with the price-tag attached to the plaintiff's honour. Hence, sentencing was

[68] CUA, V.C.Ct.I.5, fol. 164. For other examples of varied settlements, see V.C.Ct.I.5, fol. 28; V.C.Ct.I.6, fols. 77v, 86; Comm.Ct.I.3, fols. 402v, 405; Comm.Ct.I.6, fols. 136, 137v; Comm.Ct.I.7, fols. 12v, 20.

[69] See, e.g., CUA, Comm.Ct.II.4, fols. 143r–v, 144v.

[70] CUA, V.C.Ct.I.6, fol. 69r–v. See also V.C.Ct.I.5, fol. 76v; V.C.Ct.I.5, fol. 112; V.C.Ct.I.5, fols. 171v–172.

[71] CUA, V.C.Ct.I.5, fol. 93v. For other examples of discrepancies between damages estimated and awarded, see Comm.Ct.I.3, fols. 202, 212v, 228v, 232v; V.C.Ct.I.5, fol. 150.

often accompanied by a payment scheme, which clearly took into account what the guilty party was able to pay.[72]

Despite having the opportunity to sue for damages (unlike in ecclesiastical courts), it seems that for most litigants in the university courts monetary compensation was not the goal of actions for injury. A witness describing a financial settlement between Nicholas and Parnell Algate and Mary Bland said that Parnell Algate (the plaintiff) was initially reluctant to consent to the agreement, saying 'yt is a hard matter for me to put up this, & not toe trye my selfe either an honest woman, or otherwise'.[73] The university courts therefore functioned like ecclesiastical courts in offering a public forum where lost reputation could be restored.[74] Many cases were ended once a formal apology had been offered in court by the defendant.[75] A witness in a case between Thomas Smart and Toby Wood told the vice-chancellor's court that Smart would have dropped the suit 'yf Toby Wood would come into the courte & there acknowledg his fault & saye he was sorye th[a]t he had soe wronged him'.[76]

In this case, Smart did not get his apology, which is why we have a deponent's account of events, and it would indeed be misleading to suggest that the university courts consistently functioned as a peaceful haven for harmonious reconciliation. The extent of vexatious litigation should not be underestimated; going to law could generate as much conflict as it resolved, and although it might induce humble contrition from a defendant, it could also involve greater public exposure for the plaintiff and thereby further humiliation. This is particularly evident in the defamation litigation heard by the university courts. Occasional glimpses afforded by incidental evidence suggest that many actions for slander were the product of complex animosities which could be hidden behind nominal insults which were actionable at law. Disputes over straying animals, dirt-sweeping, rent payments, outstanding debts and non-payment of wages could all be extended into court through defamation litigation.[77] In a twenty-year sample of defamation suits heard in the university courts between 1594 and 1614, many cases appear to have had vexatious

[72] E.g. CUA, V.C.Ct.I.6, fols. 47, 58v; Comm.Ct.I.3, fols. 197, 278v, 295v.

[73] CUA, Comm.Ct.II.2, fol. 86.

[74] Helmholz, 'Canonical defamation'; C.A. Haigh, 'Slander and the church courts in the sixteenth century', *Transactions of the Lancashire and Cheshire Antiquarian Society*, 78 (1975), 1–13; Ingram, *Church Courts*, ch. 13; Sharpe, *Defamation and Sexual Slander*, 15. See also G. Walker, 'Expanding the boundaries of female honour in early modern England', *Transactions of the Royal Historical Society*, 6th ser., 6 (1996), 235–45, at 243.

[75] E.g. CUA, V.C.Ct.I.5, fol. 144r–v; V.C.Ct.I.5, fol. 209v.

[76] CUA, V.C.Ct.II.22, fol. 51v. See also V.C.Ct.II.8, fol. 15v; V.C.Ct.II.6, fol. 5, when an arbitrator deposed that if the injurious party stood for '3 severall market dayes at the bull [ring] w[i]th a paper on her backe' it would be sufficient compensation in lieu of a monetary award of £5.

[77] E.g. CUA, Comm.Ct.II.16, fols. 84, 86–94; Comm.Ct.II.13, fols. 40–9; Comm.Ct.II.13, fol. 24r–v; V.C.Ct.II.22, fol. 117; Comm.Ct.II.13, fol. 95r–v. Cf. C. Churches, 'False friends, spiteful enemies: a community at law in early modern England', *Historical Research*, 71 (1998), 52–74; J. Bailey, 'Voices in court: lawyers' or litigants'?', *Historical Research*, 74 (2001), 392–408.

undertones. Nearly half (45.5 per cent) of the injury cases for which depositions survive during this period were linked in some way to other litigation, either through counter-suits or previous or subsequent actions. Many injury suits were entered alongside cases for debt, and seem to have been connected. For example when William Spicer entered an action for injury against John Scott in 1613 for being called 'a foole and a knave, and a base Rascall and a Roage and the vilest and dishonestest man living' he was in the process of being sued by Scott over an outstanding debt.[78] Furthermore, it is clear from the 1594–1614 sample that at least eight actions for slander were begun as a direct result of proceedings in the consistory. The extent of this kind of vexatious litigation has perhaps been underestimated because of the problems ordinarily posed by linking defamation litigation (the bulk of which was heard by the church courts) with the hundreds of debt cases entered in the borough courts.

Such practices seem to cast doubt on the contention that the courts of early modern England functioned purely as agents of harmonious reconciliation. In this light, the university courts appear less like measured arenas of conciliation and closer to fierce and fraught battlegrounds. Appeals to the law for justice have perhaps been over-simplistically presented as alternatives to – rather than expressions of – vengeance, and it is possible that the university courts offered opportunities for the escalation of tensions as well as their diffusion; vexation and reconciliation were not mutually exclusive. What is perhaps most striking, however, is that the most potent hostilities were played out between inhabitants of the town rather than articulated along town–gown lines.

In the final assessment of the roles played by the university courts within the town of Cambridge, we should therefore not be lured into an over-idealistic appraisal of their peace-making capacities. They were certainly not free of vexatious litigants, and were sites which saw the generation of new hostilities as well as the resolution of old ones. Nonetheless, this should not be allowed to obscure the fact that the university courts did offer a useful forum for litigants from the town to settle a broad range of disputes with relative speed and economy, and their increasing use alone attests to as much, even if at times they were also used as much to prolong rather than resolve tensions. In this guise, the university courts provided the institutional authority and opportunities for legal recourse which were an increasingly integral part of urban social relations. In this way, the university courts functioned as a resource for a relatively wide cross-section of the town's population, and catered to a variety of interests beyond those of the university itself, which served to cut across rather than deepen town–gown tensions. Far from an insignificant legal anomaly, the university courts were an integral and instrumental element of social relations in early modern Cambridge.

[78] CUA, V.C.Ct.III.18, fol. 44. See also Comm.Ct.II.17, fol. 94 and Comm.Ct.II.17, fol. 94v.