

“Most Hevynesse and Sorowe”: The Presence of Emotions in the Late Medieval and Early Modern Court of Chancery

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the seid John London the fader remembryth well the vnkyndnesse of his seid sone afore reherced towrde hym . . . which was to the seid John London the fader the most hevynesse and sorowe that one myght come to his hert for which cause he would in no wise and no relyss the seid Thomas Hoby of any charite that he hadde born¹

John London’s response to the petition of Thomas Hoby to whom his son was apprenticed communicates a complex mixture of reactions. London drew attention to his son’s wrongdoings and his powerful sense of hurt at the memory of his son’s behavior. In doing so, London drew attention to his emotional state. He felt “most hevynesse” and “sorowe . . . to his hert” when recalling his son’s unkindness, and he blamed these feelings

1. The National Archives (hereafter TNA), Kew, Surrey, C1/61/414 (1480-83).

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on his son's refusing to be "ruled nor gowned by hym," leaving home without his father's permission at the age of 8, and the shame his son's arrest for felony had brought to their kin. In this case, which came to the court of chancery sometime in 1480–83, London was refusing to further reimburse the costs that Hoby had incurred to have London's son released from prison. In his Answer to Hoby's petition, London did not admit that he was under any obligation to further financially assist Hoby, but he made his case through references to his emotions.

This article explores the invocations of emotions such as fear, anger, dread, and sorrow in petitions relating to London-based mercantile activities in the Early Chancery Proceedings (ECP).² Historians of emotions emphasize the extent to which emotional practices and terminology, and perhaps even emotions themselves, are fine-tuned by cultural and social mores, rather than viewing emotions as universal and cross-cultural.³ By accepting that emotional practices and people's terminology for their emotions are manifested in ways tailored to a period's cultural, economic, religious, and social norms, it becomes possible to historicize emotions, including emotions in the law.

Making sense of what role emotions are playing in legal sources requires attention to developments in several cognate areas, including insights arising in the social sciences about what emotions are and what role they play in society and culture.⁴ Increasing interest in understanding the social context in which the law operated is also expanding into analysis of the role

2. The majority of cases examined in this article date between *c.* 1480 and 1540.

3. See, for example, Nicole Eustace, Eugenia Lean, Julie Livingston, Jan Plamper, William M. Reddy, and Barbara H. Rosenwein, "AHR Conversation: The Historical Study of Emotions," *American Historical Review* 117 (2012): 1487–1531; Barbara H. Rosenwein, "Worrying About Emotions in History," *American Historical Review* 107 (2002): 821–45; Jan Plamper, "The History of Emotions: An Interview with William Reddy, Barbara Rosenwein, and Peter Stearns," *History and Theory* 49 (2010): 237–65; and Peter N. Stearns and Carol Z. Stearns, "Emotionology: Clarifying the History of Emotions and Emotional Standards," *American Historical Review* 90 (1985): 813–36.

4. Lisa Feldman Barrett, Michael Lewis, and Jeannette M. Haviland-Jones, eds., *Handbook of Emotions*, 4th ed. (New York: Guilford Publications, 2018); Keith Oatley and Jennifer M. Jenkins, eds., *Understanding Emotions* (Oxford: Blackwell, 1996); W. Gerrod Parrott, "Ur-Emotions and Your Emotions: Reconceptualizing Basic Emotion," *Emotions Review* 2 (2010): 14–21; W. Gerrod Parrott, "Psychological Perspectives on Emotion in Groups," in *Passions, Sympathy and Print Culture: Public Opinion and Emotional Authenticity in Eighteenth-Century Britain*, ed. Heather Kerr, David Lemmings, and Robert Phiddian (London: Palgrave Macmillan, 2016), 20–44; Cristian Tileagă and Jovan Byford, eds., *Psychology and History: Interdisciplinary Explorations* (Cambridge: Cambridge University Press, 2014); and Eustace et. al., "AHR Conversation," 1506.

emotion played in legal arenas.⁵ William Ian Miller, Stephen D. White, Daniel Lord Smail, and Paul Hyams were early advocates of this, engaging with the presence of emotions in European and English law courts.⁶ Recent journal special issues focusing on the study of law and emotions indicate the increasing attention that is being paid to emotions by legal and social historians.⁷

The first section of this article addresses the recent interest in emotions and the law and how both law-centered and cultural history approaches can be used to understand emotions' role in legal arenas. I focus on the long-standing debate about authenticity and voice in legal sources, and suggest that we redeploy existing scholarship on "authentic voices" to the new issue of legal emotional authenticity. The second section then provides a brief outline of chancery's process and the surviving source material in the ECP. In the third section I introduce three case studies taken from the ECP. There is no single way to think about emotions in chancery cases, so the case studies demonstrate three methodologies that historians

5. Early commentaries on the expanding social interest in legal history are: Alan Hunt, "The New Legal History: Prospects and Perspectives," *Contemporary Crises* 10 (1986): 201–8; and Michael Grossberg, "Social History Update: 'Fighting Faiths' and the Challenges of Legal History," *Journal of Social History* 25 (1991): 191–201. On contemporary law and society, see Terry A. Maroney, "Law and Emotion: A Proposed Taxonomy of an Emerging Field," *Law and Human Behavior* 30 (2006): 119–43; Susan A. Bandes, "Centennial Address: Emotion, Reason, and the Progress of Law," *DePaul Law Review* 62 (2013): 921–30; and Kathryn Abrams and Hila Keren, "Who's Afraid of Law and the Emotions?" *Minnesota Law Review* 94 (2010): 1997–2074.

6. William Ian Miller, *Humiliation: And Other Essays on Honour, Social Discomfort, and Violence* (New York: Cornell University Press, 1993); Stephen D. White, *Feuding and Peacemaking in Eleventh-Century France* (Aldershot: Ashgate, 2005); Paul R. Hyams, *Rancor and Reconciliation in Medieval England* (New York: Cornell University Press, 2003); Daniel Lord Smail, "Hatred as a Social Institution in Late-Medieval Society," *Speculum* 76 (2001): 90–126; Daniel Lord Smail, *Consumption of Justice: Emotions, Publicity, and Legal Culture in Marseille, 1264–1423* (New York: Cornell University Press, 2003); and John Bossy, ed., *Disputes and Settlements: Law and Human Relations in the West* (Cambridge: Cambridge University Press, 1983, repr. 2003). Amanda Capern has argued that chancery suits involving wills are related to the emotional lives of people. Amanda L. Capern, "Emotions, Gender Expectations and the Social Role of Chancery, 1550–1650," in *Authority, Gender and Emotions in Late Medieval and Early Modern England*, ed. Susan Broomhall (Basingstoke: Palgrave Macmillan, 2015), 187–209. Capern has an interesting discussion about the (negative) emotions aroused by chancery and aimed toward the court, particularly in later centuries. Capern, "Emotions, Gender Expectations."

7. See the recent special issues on law and emotions, Merridee L. Bailey and Kimberley-Joy Knight, eds., "Emotions in Legal History," *The Journal of Legal History* 38 (2017): 117–227; and Rachel E Holmes and Toria Johnson, eds., "In Pursuit of Truth: Law and Emotion in Early Modern Europe," *Forum for Modern Language Studies* 54 (2018): 1–114.

can employ to conduct emotion-centered research. The final section then discusses why we find emotions in the petitions, how emotional language formed a technique of persuasiveness, and which emotions petitioners, respondents, and counsel could legitimately air.

Emotion-Centered Legal History

Emotions were not systematically incorporated into medieval legal doctrine, nor was their place in explaining motivations fully or consistently understood by courts. Yet emotions were cited across common law and equity jurisdictions. For example, anger exculpated homicide cases in some circumstances, although not in others. Elizabeth Papp Kamali shows that distinctions in medieval felony cases could be drawn between sudden anger, which could be partly exculpatory, and malice aforethought.⁸ These distinctions predated the early modern provocation doctrine. Duress (i.e., fear) in entering a contract was accepted in some courts as invalidating certain actions, for example in the court of chancery or in local customary courts dealing with covenants for service, although common law upheld the contract regardless of duress.⁹ Elaine Clarke has also shown that fourteenth-century labor laws differentiated between the mistreatment of a covenanted servant if there was evidence of physical harm but that fearing ill-treatment, or fear caused by ill-treatment, was insufficient cause for leaving.¹⁰ Derek G. Neal's work on late medieval defamation suits also shows that although words spoken in anger were not legitimate bases of a suit, which rather had to demonstrate repeated and premeditated rumor-mongering, angry words were nevertheless used as evidence in cases.¹¹ John Hudson has recently argued that medieval law was attempting to counter excessive or inappropriate emotion as opposed to emotion itself, fostering emotional environments in which some but not all emotion was acceptable.¹² What we lack for the Middle

8. Elizabeth Papp Kamali, "The Devil's Daughter of Hell Fire: Anger's Role in Medieval English Felony Cases," *Law and History Review* 35 (2017): 155–200.

9. A. W. Brian Simpson, *A History of the Common Law of Contract: The Rise of the Action of Assumpsit* (Oxford: Oxford University Press, 1975), 100, 538; and Elaine Clark, "Medieval Labor Law and English Local Courts," *American Journal of Legal History* 330 (1983): 330–53.

10. Clark, "Medieval Labor Law," 339.

11. Derek G. Neal, *The Masculine Self in Late Medieval England* (Chicago: University of Chicago Press, 2008), 31.

12. John Hudson, "Emotions in the Early Common Law (c. 1166–1215)," in Merridee L. Bailey and Kimberley-Joy Knight, eds., "Emotions in Legal History," *The Journal of Legal History* 38 (2017): 130–54.

Ages and early modern period is a theoretical statement about how the law viewed emotions. Nonetheless, emotions are present in sources and can be investigated to understand the social history of law as well as the social history of the period in which the sources were produced.

The complication caused by looking for emotions in courts that did not request emotional evidence tests how far we can take the study of legal sources and how we introduce theories (e.g., from psychology or cognitive sciences) which have developed outside the contemporary perspectives of the time into our interpretations of them. Pushing against established disciplinary boundaries has resulted in significant advances in other areas of sociolegal history, notably the field of women’s legal history, in which considerable insights have been gained into women’s use of medieval and early modern courts.¹³ The success of this warns us against shying away from reading legal sources in initially provocative ways.¹⁴

Emotional Authenticity and Emotional Voice

How we apply emotion-centered research to the study of legal sources requires careful thought. In particular, we need to address the matter of the emotional voice and emotional authenticity which appears to be accessible in some sources. Approaches to legal sources that emphasize mediation, filtration, or storytelling, have helped historians clarify what court sources can, and cannot, be used to do, although different interpretations have raised their own problems.¹⁵ Almost three decades ago, Thomas Kuehn argued that we should read legal sources not to uncover “the

13. The social expectations people brought to the courts have been a particularly fruitful area of research in the field of gendered relationships; see Natalie Zemon Davis, *Fiction in the Archives: Pardon Tales and their Tellers in Sixteenth-Century France* (Stanford, CA: Stanford University Press, 1987); Laura Gowing, “Gender and the Language of Insult in Early Modern London,” *History Workshop Journal* 35 (1993): 1–21; Laura Gowing, *Domestic Dangers: Women, Words, and Sex in Early Modern London* (Oxford: Clarendon Press, 1996); Tim Stretton, *Women Waging Law in Elizabethan England* (Cambridge: Cambridge University Press, 1998); Emma Hawkes, “[S]he will . . . protect and defend her rights boldly by law and reason. . .”: Women’s Knowledge of Common Law and Equity Courts in Late-Medieval England,” in *Medieval Women and the Law*, ed. Noel James Menuge (Woodbridge: Boydell Press, 2000), 145–61; and Sara M. Butler, “The Law as a Weapon in Marital Disputes: Evidence from the Late Medieval Court of Chancery, 1424–1529,” *Journal of British Studies* 43 (2004): 291–316.

14. A similar disciplinary gulf lay between medicine and the law. See Wendy J. Turner and Sara M. Butler, eds., *Medicine and the Law in the Middle Ages*, (Leiden: Brill, 2014).

15. See Joanne Bailey, “Voices in Court: Lawyers’ or Litigants’?” *Historical Research* 74 (2001): 392–408; Gowing, *Domestic Dangers*; and Marjorie Keniston McIntosh, *Working Women in English Society, 1300–1620* (Cambridge: Cambridge University Press, 2005).

narrative of an antecedent relationship, but the narrative of a trial.”¹⁶ Understanding legal documents as highly narrativized is now standard practice. Historians including Natalie Zemon Davis, Laura Gowing, and Tim Stretton have argued that the storytelling nature of legal sources does not eliminate their value. Both Davis and Gowing have emphasized how the construction of testimony reveals the mental habitus of people.¹⁷ For Mark Ormrod, the decision to see medieval petitions as “artful constructs designed to get something done” is the first step toward appreciating how they can be used to measure different norms. Ormrod refers to social, cultural, legal, and political norms, and to this list I would add emotional norms.¹⁸

Existing work on mediation, voice, and authenticity has obvious resonance with emotion-centered research. Petitioners and counsel selected and mobilized certain emotions in petitions, particularly dread, sorrow, fear, anger, and envy, and less frequently, kindness and love to convey messages to the court about normative emotional and community values in order to secure the court’s help. Whereas the problem of truthfulness has long been recognized in the scholarship on legal sources, the emotional truthfulness of petitioners and respondents has rarely been raised.¹⁹ Given the source material that is available I find it is impossible to know to my own satisfaction if the petitioner or respondent felt the fear he or she described to legal counsel, let alone prove this, and so I avoid making claims about what the people who were involved in chancery were really feeling. It is clear from the infrequent cases in which a bill of complaint and answer survive that many were plainly lying. The historian seeking to uncover the emotional truth of petitioners’ and respondents’ statements swims against a tide of accusations, counteraccusations, and unclear recollections of events. The most productive approach to thinking about emotions in chancery is to investigate when and where emotional language was employed, what this tells us about the emotional norms of

16. T. Kuehn, “Reading Microhistory: The Example of Giovanni and Lusanna,” *Journal of Modern History* 61 (1989): 512–35, at 533.

17. On the differences between “story-tellers” and “translators,” see Bailey’s “Voices in Court.” See also Davis, *Fiction in the Archives*; Gowing, “Gender and the Language of Insult”; Gowing, *Domestic Dangers*; Stretton, *Women Waging Law*; and Tim Stretton, “Social Historians and the Records of Litigation,” in *Fact, Fiction and Forensic Evidence*, ed. Sølvi Sogner (Oslo: Skriftserie fra Historisk Institutt, Universitetet i Oslo, 1997), 15–34.

18. Mark Ormrod, “Introduction: Medieval Petitions in Context,” in *Medieval Petitions: Grace and Grievance*, ed. W. Mark Ormrod, Gwilym Dodd, and Anthony Musson (York: York Medieval Press, 2009), 1–11, at 11.

19. On truthfulness in legal records, see Bailey, “Voices in Court.”

the period, and why invoking certain emotions was perceived to help the petitioner.²⁰

When petitioners and counsel included evidence about emotions in their petitions they were also shaping collective memories. People try to control how they will be perceived through the words that they use, a principle that can be extended to seeing petitioners, respondents, witnesses, and counsel, as collaborating in an active process of emotional memory-making and memory-shaping through their recollection of events.²¹ In choosing to emphasize certain emotions, petitioners and counsel created and reinforced selective memories of past situations and relationships. To return to Kuehn, we are not reading the emotions as they were but as how they were later perceived to be or how the petitioners and counsel wanted them to be communicated. Emotional management develops through the act of communicating this to others and by committing a single version of emotions to the written page. Returning to the example with which I began, it was through London and his counsel's decision to identify London's emotions that London's relationship with his son, and London's memories of his emotions, were given an active place in the case and became an established emotional memory.

Such emotional memories were constructed collaboratively. It is now generally acknowledged that legal counsel—in the early court of chancery this was probably part of the work of the six clerks of chancery along with independent lawyers—absorbed the petitioners' words and re-crafted these to suit the court's needs.²² Precisely how this happened, how proactive or reactive the counsel might have been, and what relationship the two had with each other (supportive, combative, or otherwise) is presumed rather than known.²³ Barbara Hanawalt assumed that recording the petitioner's case in vernacular English (usual from 1443 onwards) meant that we are

20. Davis's discussion of French pardon narratives shows that we do better to reposition our questions to see how legal documents reveal the contemporary representation of the events in question. Davis, *Fiction in the Archives*. See also Stretton, "Social Historians and the Records of Litigation," 27–34.

21. On language and self-identity, see Frances E. Dolan, *True Relations: Reading, Literature, and Evidence in Seventeenth-Century England* (Philadelphia: University of Pennsylvania Press, 2013), 1.

22. On independent lawyers, see Timothy S. Haskett, "Country Lawyers: The Composers of English Chancery Bills," in *The Life of the Law: Proceedings of the Tenth British Legal History Conference, Oxford, 1991*, ed. Peter Birks (London: Hambledon Press, 1993), 9–23.

23. Penny Tucker, "The Early History of the Court of Chancery: A Comparative Study," *The English Historical Review* 115 (2000): 791–811, at 796. P.J.P. Goldberg addresses this in *Communal Discord, Child Abduction and Rape in Late Medieval England* (New York: Palgrave Macmillan, 2007). See also Dolan, *True Relations*, 114–20.

closer to hearing “the way people narrated their own pathetic tales.”²⁴ Cordelia Beattie, however, has written more sensitively about the interplay between chancery lawyer and the “speaking subject.” The petitioner “would tell her story to the lawyer, not necessarily unprompted. The lawyer would structure and reword certain aspects of the story to fit the formula of a chancery petition but ensure that it was tailored to the individual petitioner.”²⁵ Nevertheless, petitioners had to stand by their words as the case progressed, meaning that they had to be fully informed and knowledgeable about the content of the petitions drafted by legal counsel.²⁶ Because chancery bills were a product of negotiation and discussion, I refer jointly to petitioners, or respondents, with their counsel, and stress that we are reading the alleged emotional states provided through these collaborations.

Chancery Process

Before it gained its poor reputation, epitomized in Charles Dickens’s *Bleak House*, chancery was a highly popular court which seems to have worked well at its main task of delivering swift and relatively inexpensive justice to any who approached it, including women.²⁷ By at least the fourteenth century, chancery’s jurisdiction had extended to hearing financial disputes related to mortgages, inheritance, uses, marriage settlements, contracts,

24. Barbara A. Hanawalt, *Growing Up in Medieval London: The Experience of Childhood in History* (New York: Oxford University Press, 1993), 15.

25. Cordelia Beattie, “Single Women, Work and Family: The Chancery Dispute of Jane Wynde and Margaret Clerk,” in *Voices from the Bench: The Narratives of Lesser Folk in Medieval Trials*, ed. Michael Goodich (Basingstoke: Palgrave Macmillan, 2006), 177–202, at 180. On slips in the bill-writer’s voice where the petitioner’s words seem to emerge more directly, see Cordelia Beattie, “Your Oratrice: Women’s Petitions to the Late Medieval Court of Chancery,” in *Women, Agency and the Law, 1300–1700*, ed. Bronach Kane and Fiona Williams (London: Palgrave Macmillan, 2013), 1, 7–29. This can be contrasted with older views on “authentic voices.” See, for example, Lawrence Stone, *The Past and the Present Revisited* (London: Routledge, 1987), 241; and Bailey, “Voices in Court.” Capern discusses the gendered nature of pleadings in “Emotions, Gender Expectations.” Dodd also discusses the levels of expertise involved in writing private petitions to the crown, which he argues grew in the fifteenth century. Gwilym Dodd, *Justice and Grace: Private Petitioning and the English Parliament in the Late Middle Ages* (Oxford: Oxford University Press, 2007), 304.

26. Beattie, “Single Women,” 182.

27. Timothy S. Haskett, “The Medieval English Court of Chancery,” *Law and History Review* 14 (1996): 245–313; and Beattie, “Your Oratrice,” 17–29.

and some property matters.²⁸ Cases based on social order and disorder, particularly sexual slander, were heard in other courts such as the periodic county Sessions of the Peace, borough courts, and ecclesiastical courts.²⁹ Consequently, little emerges from chancery about sexual activity, panics, religious attitudes, or disorderly conduct, all of which undeniably contained emotional content.³⁰ These caveats aside, chancery's remit was particularly wide, making it one of England's most attractive, and one of its busiest, secular courts.

Cases came into chancery when complainants believed that they would not receive remedy at common law, usually because of the defendant's higher status or because the case was based on an argument of unfairness or unjustness, arguments that common law did not recognize. In cases of debt, the chancellor might seek to differentiate between deliberate and malicious fraud and situations in which innocent people had intended to pay but were prevented from doing so. In a debt action heard in common law, circumstances were irrelevant. W.T. Barbour has argued that because chancellors were almost exclusively clerics, their ecclesiastical principles were brought into the court, developing the principle of conscience from which chancery derived its name as a "court of conscience."³¹ According to A. W. Brian Simpson, chancellors were concerned with the state of the respondent's (i.e., the wrongdoer's) soul, "It [the law of conscience] connoted what we now call the moral law *as it applied to particular individuals for the avoidance of perit to the soul through mortal sin.*"³² Simpson goes on to make the point that other considerations played a part in the chancellor's judgments, notably sympathy, or what he terms

28. J.H. Baker, *An Introduction to English Legal History*, 4th ed. (Oxford: Oxford University Press 2007), 104–5. For a detailed discussion of chancery practice, see Timothy S. Haskett, "The Curteys Women in Chancery: The Legacy of Henry and Rye Brown," in *Women, Family, and Marriage in Medieval Christendom: Essays in Memory of Michael M. Sheehan*, ed. Joel T. Rosenthal and Constance M. Rousseau (Kalamazoo: Medieval Institute Publications, Western Michigan University, 1998), 349–98, esp. 351–56; and Haskett, "The Medieval English Court of Chancery."

29. See, for example, Marjorie K. McIntosh, *Controlling Misbehaviour in England, 1370–1600* (Cambridge: Cambridge University Press, 1998); and Gowing, *Domestic Dangers*.

30. Although emotional language was not the focus of Butler's work on marital disputes in chancery, several of her examples show emotions in the petitions. For example she writes that: "Reading Margery of Longford's words to the chancellor that 'she was sore aferd of hyr sayde husband' . . . we are given an opportunity to hear the victim's side of the story" (TNA C1/6/318 1424–25). Butler, "The Law as a Weapon," 296, 311–12, 314.

31. W.T. Barbour, "The History of Contract in Early English Equity," in *Oxford Studies in Social and Legal History*, Vol. IV, ed. Paul Vinogradoff (Oxford: Clarendon Press, 1914), 163.

32. Simpson, *History of the Common Law of Contract*, 399–400. Italics in original.

“solicitude for petitioners who were without remedy.” However, it was a concern with morality and souls that animated the chancellor’s decisions. The importance of conscience and morality to the court will be discussed throughout the rest of this article, and their alignment with emotions explored.

A bill addressed to the chancellor instigated proceedings in the court and thus presented the side of the complainant. A formal hearing only occurred if the matter was not resolved informally and if the chancellor decided that the case required further investigation. If a case progressed beyond the initial bill, defendants would produce a written answer, to which the original petitioner could make a replication. This could be followed by the defendant’s rejoinder. Oral depositions took place only when witnesses were called later in the proceedings. The lack of a jury meant that there was no trial, and no place for petitioners to orally articulate conflict and express their expectations for justice. The written documents stood in for this. Regrettably, there are few enrolled proceedings of the court, making it difficult to trace a case’s outcome.³³

Chancery Material and Methodology

This article draws on petitions held as part of the ECP. Because the material in the ECP is so extensive, I have focused on mercantile disputes for evidence of described emotions in petitions.³⁴ Mercantile cases have

33. Penny Tucker has argued that in the fourteenth century, petitioners made initial oral complaints to the chancellor, but that by the second half of the fifteenth century, this was increasingly done through a written petition or bill of complaint in English. However, this does not explain the number of fourteenth-century written petitions that survive. On the early processes of the court, including taking oral testimony, see Tucker, “Early History”; Timothy S. Haskett, “Conscience, Justice and Authority in Late-Medieval English Court of Chancery,” in *Expectations of the Law in the Middle Ages*, ed. Anthony Musson (Woodbridge: Boydell Press, 2001), 151–63, at 155, fn 13; Baker, *English Legal History*, 103. The “Latin” side of chancery dealt with crown property matters and internal decisions within the court; see Haskett, “The Medieval English Court of Chancery,” 248; and John H. Fisher, “Chancery and the Emergence of Standard Witten English in the Fifteenth Century,” *Speculum* 52 (1977): 870–99, at 888. Before the 1530s, no decrees or orders were routinely kept, meaning that it is difficult to know the outcome of a case or how far it progressed. Haskett, “The Medieval English Court of Chancery,” 281.

34. Mark Beilby, “The Profits of Expertise: The Rise of the Civil Lawyers and Chancery Equity,” in *Profit, Piety and the Professions in Later Medieval England*, ed. Michael A. Hicks (Gloucester: Sutton Publishing, 1990), 72–90, at 78–80. See also N. Pronay, “The Chancellor, the Chancery, and the Council at the End of the Fifteenth Century,” in *British Government and Administration: Studies Presented to S. B. Chrimes*, ed. Henry Header and H.R. Loyn (Cardiff: University of Wales Press, 1974), 87–103 (88–9, 93–9); Tucker, “Early History,” 798–99; and Baker, *English Legal History*, 105.

been drawn from bundles 1–1519 for which I used the occupational term “apprentice” to ensure that a range of mercantile matters across guilds were captured. From the bundles I then read 228 cases in depth; 24% of the petitions (fifty-four petitions) provided evidence of emotional language.³⁵ Although some cases deal specifically with apprenticeship indentures, most are broader in their scope, involving disputes over debts, bonds and broken contracts. Two of the three case studies, and several of the examples, are therefore the product of London master–apprentice relationships.

I approach the petition’s emotional vocabulary in three ways. My first method is the most direct. I began by looking for words that were, and still are, consonant with emotions, such as fear, dread, love, hatred, and envy. Although emotional practices are culturally contingent, this approach assumes a degree of commonality in how certain tropes around vulnerability, fear, and unfairness elicit much the same response then as they do now. In petitions, specific emotions associated with impeding moral actions, or conscience, tend toward the aversive such as malice, greed, and fear—including fear of competition, fear of gossip, and fear of physical harm or death—as well as envy, selfishness, and cruelty (e.g., her “cruell and malicious mind”).³⁶ It is not surprising that aversive emotions relate to actions in legal cases in which we are, by default, reading about disputes and the breakdown of relationships. Furthermore, because chancery was a court that dealt with moral faults and offenses against conscience, emotions such as these could underline how wrongdoers were imperiling their souls. Other emotions were also legitimate in petitions. Dread, particularly identified as a dread of prison, is a common statement, as are references to appeals for sympathy (perhaps the most common phrase across all chancery petitions) and fearfulness.³⁷ After incurring gambling debts, one apprentice spoke of being “in fear of murthering” while also fearing to return to his master’s house.³⁸ Emotions that appear in a more irregular fashion are vulnerability, sorrow, love, kindness, and unkindness.³⁹

The often-slippery nature of any culture’s emotional vocabulary makes it difficult to identify categories of what to include or discount as evidence of

35. Cases were selected from the *List of Early Chancery Proceedings Preserved in the Public Record Office*, 10 vols (London: H.M. Stationery Office, 1901–38), supplemented by TNA online catalogue. Information in the lists includes petitioner and defendant names, location, date, and subject matter.

36. TNA C 1/1037/39 (1538–44), TNA C 1/245/38 (1500–1501), TNA C 1/908/4 (1533–38).

37. TNA C 1/124/34 (1486–1493, or 1504–1515).

38. TNA C1/819/1 (1533–38).

39. TNA C1/711/36 (1532–38), TNA C1 235/71 (1493–1529).

emotion. What strikes me as emotional language may not strike someone else as such and vice versa. Barbara Rosenwein has suggested that we count emotion words to create a vocabulary for a period, although Ute Frevert's work on "lost" emotions suggests that we frequently lose or misunderstand the historically and culturally contingent nature of emotions and language.⁴⁰ Nevertheless, drawing on contextual evidence about emotions in the period can help to reveal words that had emotional valence at the time. Fear is a particularly telling illustration of this. Aleyn Martyn claimed in a petition that fear led him to pay half of a £20 obligation to mercer John Abbot even though he argued that there was no legal obligation to do so: "your sed besecher was bounde for his seid brother in an obligacon of xx li wherof be [by] gret feer he hath payed to hym [Abbot] x li".⁴¹ Other petitions cast the emotional reaction of fear onto others. Richard Clyfford wanted the chancellor to know that he thought that eight of the jurors who had been called to hear a case against him in another court experienced "drede of their lives" when four of their fellow jurors physically threatened them, beating their heads and putting "sond and dust in their mowthes".⁴²

Second, I expanded my reading outwards to include cases in which the petitioner, respondent, and their counsel made particular appeals for sympathy by referring in detail to beatings, mistreatment, alleged vulnerability, youthfulness, or harm. Petitioners and counsel always based complaints to the chancellor through language of unjust actions, but one of the techniques noticeable across the fifty-four cases is the extent to which the injustice is dwelt upon. Petitioners and counsel framed their evidence with superlatives to elicit sympathy. This approach infers emotions from the excessive detail of unpleasant or immoral actions. I support this by exploring contemporary contextual beliefs about the relationship that emotions had to excessive behavior. In some cases it is the accumulation of emotional evidence rather than discrete emotion words that deserve attention. Thomas Bettes' petition, which is examined later in depth, is one such example, whereas John Marler and his counsel launched their petition against Thomas and John Barnes with animated expressions that built a sense of persecution from the outset and that were not contained to the recital, or main body of the text. In this petition, Marler was identified as someone suffering "grett loss & impovysshment" (rather than the

40. Barbara H. Rosenwein, *Emotional Communities in the Early Middle Ages* (Ithaca, NY: Cornell University Press, 2006), 26–29. For examples of various word tables in Rosenwein, see 40, 52, and 74. Ute Frevert, *Emotions in History—Lost and Found* (Budapest: Central European University Press, 2011); and Ute Frevert, Pascal Eitler, Monique Scheer, Bettina Hitzer, and Anne Schmidt, *Emotional Lexicons, Continuity and Change in the Vocabulary of Feeling 1700–2000* (Oxford: Oxford University Press, 2014).

41. TNA, C1/72/66 (1386–1486).

42. TNA, C1/124/34 (1486–93 or 1504–15).

general "poor orator") whereas Thomas Barnes was evocatively said to have a "devyllsye mynd" in planning to flee overseas.

My third approach is to create a specialist emotional lexicon relevant to chancery. This is challenging because it takes words outside the stated legal domains in which they were created. However, if we want to explore how embedded legal documents were in wider social thinking we need to take certain legal phrases and words seriously as having extralegal emotional context. Anthony Musson has argued that ordinary people knew and understood the law. He draws on evidence from court attendance and office-holding to argue that by the late fourteenth century, men and women understood legal processes and concepts and knowingly utilized different courts and jurisdictions to their advantage.⁴³ Frances Dolan focuses more directly on the implications that this knowledge had in terms of language usage, arguing that it would be a mistake to assume that petition writers imposed unfamiliar legal terminology on petitioners, respondents, and witnesses. Medieval and early modern people were familiar with a legal vocabulary and were active in using legal terms to comprehend their disputes and circumstances.⁴⁴ Two examples from chancery bear fruit for this type of re-evaluation. These are the commonly occurring phrase "in good conscience" and the word "malice." Both had legal meanings that were relevant to chancery's jurisdiction in adjudicating unconscionable acts, and have been extensively analyzed in terms of their legal, theological, and spiritual meanings.⁴⁵ But a close analysis of the contexts in which they sometimes appear reveals an underlying emotional agenda. The third case study, therefore, focuses on the word "malice," and how in some contexts it had both legal and extralegal connotations as an emotion-word.

Each of these case studies explores a different type of emotional evidence, including direct emotional statements, the accumulation of emotional evidence where emotion is inferred from evidence of actions (but where explicit emotions labels are absent), and, finally, the alignment between emotion and the court's emphasis on proving "malice." The three case studies are intended to show the different ways in which emotional reactions, motivations, and relationships can be identified in the sources, and what purpose they served for petitioners and counsel in making their case.

43. Anthony Musson, *Medieval Law in Context: The Growth of Legal Consciousness from Magna Carta to The Peasants' Revolt* (Manchester: Manchester University Press, 2001), 84–134.

44. Dolan, *True Relations*, 120.

45. Dennis R. Klinck, *Conscience, Equity and the Court of Chancery in Early Modern England* (Farnham: Ashgate, 2010); Haskett, "The Medieval English Court of Chancery"; and Tucker, "Early History."

Case Studies

Case Study 1: Direct Statements about Uncontrolled Emotions

In Richard Robynson's 1515–29 petition for a writ of *certiorari*, emotion is associated with a complex set of actions and behaviors that focus on uncontrolled temper and a lack of self-restraint.⁴⁶ The case hinged on an apprentice, William Bateman, allegedly breaking his apprenticeship indenture by running away from his master Robert Warner, draper. Bateman allegedly departed from his 8-year apprenticeship with Warner but with Robynson's encouragement was brought back and returned. Robynson had provided the bond for the apprenticeship and so had a financial interest in the case. Emotional evidence is presented as both a cause and an effect of actions that are described in chancery's moral formulae as contrary to "all ryght and good conscience."⁴⁷ This phrase met chancery's moral criteria, but the petition closely aligns the immoral actions with emotions. In the petition, Warner is presented as a man motivated by excessive and unreasonable temper. John Hudson has recently argued that since Glanville, the law "at least implicitly contrasted [reason] with emotion," and that "excessive emotion conflicted with reasonableness, and law was to be on the side of reason."⁴⁸ "Unreasonable" in this instance is equated with excessive and inappropriate emotion.

Robynson's petition consistently explores excessive actions and bad temper by using language that emphasizes Warner's unstable character and systematic cruelty. The bill of complaint refers to Warner's "crafty & subtyll Imagynacyon" and his "syndry synster matters," while his character is also portrayed as malicious: "his Inwarde malice." The bill implies that Warner himself promised that in the future he would no longer "cruelly & unreasonably dele with the seyd Bateman." By reporting on Warner's supposed speech, Robynson and his counsel attempted to prove that Warner himself acknowledged the unreasonableness (i.e., the excessiveness) of his past conduct. It was this combination of Warner's cruel treatment, including "unreasonable beytyng," the failure to provide clothing, meat, and drink, as well as the unidentified "synster matters," which allegedly became the cause of Bateman's desire to run away and become a monk at the new abbey at Tower Hill.

46. A writ of *certiorari* was a writ from a superior court (in this case chancery) which plaintiffs could request when they believed that they would not receive justice in an inferior court. It could be used to demand that documents and official records be made available.

47. TNA, C1/564/3 (1518–29).

48. Hudson, "Emotions in the Early Common Law," 135, 151.

Although it is common to see evidence of this sort of mistreatment in cases concerning apprentices, the connection between experiences like these and emotional reactions can be harder to find.⁴⁹ However, in this case, emotional reactions are explicitly aligned with Warner’s ill treatment and cruelty. The petition describes the complex emotional consequences for Warner’s apprentice, Bateman: “that he by suche eno[]yous delyng was brought in to suche mysery & dyspaire that he cared nott what dyd become of hym self by reson whereof he of pure necessitye was dryvyn to depart & glad to forsake the service of the seyd Warner.” Without taking this as evidence of experienced emotions, Robynson and his counsel were framing Bateman’s actions using a particular emotional repertoire that drew on contemporary beliefs about excessive and inappropriate violence and the emotional impact this could have on someone else. The petition alleges that Bateman was so willing to leave Warner’s care that he would “have forsaken the seyd Citie for ever rather then to abyde suche miserable & penneyous lyff with the seid Warner.”

Much of the evidence in the petition relates Bateman’s actions as a run-away apprentice to his fearful emotional state, but Warner’s own actions are argued as stemming from a lack of proper emotional control. The petition presents a picture of what had occurred in the stages leading to the contract being broken by focusing on Warner’s alleged conduct. He was said to have “cruelly & unreasonably. . .dealed with the seyd Bateman as in unresonable beytyng of hym.” Anger was not, of itself, universally disapproved of, despite the church’s warnings over the sinfulness of *ira*. Anger could be measured by its spiritual, political, and social worth, but if it was felt that the display of anger was unreasonable (i.e., in this case, excessive), anger could be publicly contested.⁵⁰ In the petition, Warner’s conduct allegedly showed his inability to control his temperament spilling out into his physical actions, which was a serious flaw in an adult householder. A parallel was drawn between Warner’s disposition and the matter of conscience: “the seyd Warner now of late contrary to all ryght & good consyence of his farther malicious vntrew & troublous dysposycyon.”⁵¹ Warner’s disposition was understood to encompass these moral faults, and hinted at his excessive and inappropriate emotional nature. Emotional temperament and lack of conscience were further alluded

49. Ruth Mazo Karras, *From Boys to Men: Formations of Masculinity in Late Medieval Europe* (Philadelphia: University of Pennsylvania Press, 2013), 119, 124; and Hanawalt, *Growing Up*, 147–49.

50. Stephen D. White, “The Politics of Anger,” in *Anger’s Past: The Social Uses of an Emotion in the Middle Ages*, ed. Barbara H. Rosenwein (Ithaca, NY: Cornell University Press, 1998), 127–52; and Hyams, *Rancor and Reconciliation*, 50–59.

51. “malicious” is a later insertion.

to in the phrase that Warner was “an vncharytable man & of ill conscience.”

For Warner, unregulated emotions were argued to have motivated unconscionable acts of cruelty, whereas for Bateman, his emotions were alleged to be so strong and overpowering that they resulted in his running away. Excessive emotions were used to frame the motivations of both Warner and Bateman in different ways. Bateman’s alleged emotions, and his subsequent actions, are not criticized as are Warner’s actions. Robynson and his counsel no doubt wanted to attribute blame to one figure. But rather than separate emotion from the actions of either party, the petition gave voice to emotion as a key motivator for both men, trusting that the chancellor would be able to see that whereas Bateman’s purported emotionally driven actions in running away were understandable and within conscience, Warner’s emotionally driven actions were not.

Case Study 2: Layered Emotional Evidence

What happens when we take a case in which no explicit emotional labels appear but in which there is an accumulation of evidence providing a compelling account of mistreatment? What can we make of the petition’s emotional force in these circumstances? The following case study focuses on the petition of Thomas Bettes in 1529–32. The case related to Bettes’ son Robert, who had been indentured to Henry Lowmner, a London grocer.⁵² Bettes referred to his son Robert as “weeke & tender by reason of a disease & siknes which he had in his hede,” establishing the foundation of a complex case involving the alleged abuse Robert suffered throughout his apprenticeship. The bill of complaint includes frequent descriptions of the difficult nature of Robert’s apprenticeship, his absences from Lowmner, and Bettes’ interventions on his son’s behalf. Robert’s weakness—the petition explicitly compares Robert to those who are “strong of nature”—led to the supposed agreement that Robert would not be made to carry water tankards or other burdens and that he would not face “grete correction” at Lowmner’s hands. Robert’s illness is curiously worded as a sickness in his head that rendered him weak and tender: “weeke & tender *by reason* of a disease & siknes.”⁵³ The term “tender” usually denoted young people who in their tender age were incapable of making contracts in law. We know that Robert was 17 years of age at the time of the indenture because this is mentioned in the petition. In the context of an illness and sickness that was “in his head,” the petition is

52. TNA, C1/606/65 (1529–32).

53. My emphasis.

possibly alluding to Robert's mental incapacity. Robert is eventually identified as being of *non habilite*, although this is directly related to later severe beatings he received.

Lowmner's alleged failure to treat Robert well, which included making him carry water and other "unlawful burdyns beryng exceeding his power and myghte," resulted in either a return of Robert's illness or a new infirmity which: "cast [him] in a grete cosumpcon and in grete danger of hys lyf." At Lowmner's request, Bettes took his son home for costly treatment by physicians, amounting to £4. Bettes' petition focuses on the financial costs he incurred caring for his son over 6 months. The absence of emotional concern in the text is plain. However, instead of reducing this case to Bettes' and his counsels' emphasis on the father's economic injury, we can explore what the steady accumulation of evidence about Robert's weak state, the comparison to others "strong of nature," and the description of Robert's physical suffering, was doing in the petition.

First, we should notice how the bill engaged conscience. The first indication comes in the initial description of Robert's specific vulnerable condition (his "weakness") as well as his youthfulness in law (his "tenderness"). The next cluster of evidence comes in an extensive re-telling of Lowmner's ill treatment of Robert. Although long, it is worth quoting in full to illustrate how the petition steadily builds evidence of unconscionable abuse to show that there had been intent to cause harm:

[Robert] ... hath ben worse ordered by the said Lowmner with beryng of tankards and with bering of unlawfull burdyns and unlawfull correctons and mych more than he was before contrary to his promise and also bete him aboute the hede and threw hym under his fete and spurned hym under the rybbs and trad upon hum with his fete and also spurned hym agaynst the stomake with his fete ... that he by reason thereof pyssed blode for water by a long season which is like to put your said apprentice to grete danger and perell of his lyfe. And unlesse the said Robert be not well loked to and haue good drynks by and dyet gyffyn hum he is likly to perish in this world for euer ... for your love of god and in way of charite to grant a writ of chiorary [certiorari].⁵⁴

Making the nature of Lowmner's actions clear to the court imposed certain requirements on the bill, but in this case, the repeated and graphic description of being beaten on the head, thrown under feet, kicked in the ribs, trodden upon (again), and kicked in the stomach, marshals other strategies to arouse the chancellor's pity.

Chancery petitions engaged in two processes, one to show that someone had engaged in an offense against conscience by acting in a way that was

54. "spurned hym," meaning to kick against or to strike the foot against something.

immoral, and the second, to state clearly how this had resulted in actions that could be remedied through the court's judgment.⁵⁵ There are two important points to make here. The first is whether the court was more concerned with the outward manifestation of immorality than with the inward state that drove it.⁵⁶ I will return to the implications of this in the third case study. The second point, however, is much more specific to the matter of the emotional tenor of the bill. Because the focus on outward action meant that there was no intention or need to provide emotional content, Bettes and his counsel made no attempt to highlight Bettes' or his son's emotions. This perhaps risks confusing the lack of overt emotional statements with the emotions that informed people's assumptions about justice and fairness. We can instead use the combination of statements in Bettes' petition to consider how petitioners and their counsel tried to express the excessiveness of someone's actions in a way that was neither detached nor neutral. To achieve this, the petition builds on key points. There are the early references to vulnerability, followed by details about physical pain and injury that are dwelt upon to a greater than usual degree, and then the final plea for sympathy and for the chancellor to judge the case with pity as an act of charity. Read at one level, the emotions in the petition relate to the emotions of the individuals concerned. However, there are also emotions at play on another level, namely the emotion (pity) of the court that the petition was strategically trying to arouse.

Case Study 3: Malice's Emotional Weight

The final case study focuses on malice, which I argue can be appreciated in its legal as well as its extralegal context. In petitions, malice can refer to a range of mutually reinforcing matters including action, character, emotion, and true disposition. Malice lay at the heart of chancery bills, as it did in criminal law, in which malice aforethought informed the understanding of culpability.⁵⁷ Canon law also required proof that defamatory words alleged a sin and were said with malice. It is surprising that malice's emotional valence has been overlooked, given how much of the business of medieval and early modern courts, including canon, criminal and noncriminal

55. Klinck refers to the need to establish the "remediable impact" of sinful actions and that the nature of either the petitioner or defendant's "outward actions" needed to be established through "actual conduct." Klinck, *Conscience, Equity*, 28, 38–39. On the court's correlation with morality, see Gwilym Dodd, "Reason, Conscience and Equity: Bishops as the King's Judges in Later Medieval England," *History* 99 (2014): 213–40.

56. Klinck, *Conscience, Equity*, 38–39.

57. On malice in criminal cases, defamation and tort, see Baker, *English Legal History*.

jurisdictions, was concerned with it.⁵⁸ The relationship between malice and emotion, indeed, whether malice counts as an emotion in some contexts, warrants further thought, as it helps to recover an overlooked emotional norm that was meaningful in court environments.

Malice is closely aligned to the principle of conscience and moral fault. In his reading of the medieval court of chancery, Dennis Klinck argues that the court was able to attend to the outward manifestation of actions but not to the inner predisposition of someone, what he elsewhere refers to as "inward psychological states."⁵⁹ He cautions that this does not mean that inward states were never relevant in chancery, but that the law was not competent to deal with thoughts alone.⁶⁰ Attention to outward action therefore preoccupied the medieval court. He goes on to argue that "Chancery appears to have been more interested in what the parties knew about external facts than about their own internal dispositions."⁶¹ However, Gwilym Dodd suggests that chancellors were well suited to hearing cases in which "establishing the personal integrity" of the parties was essential to making the right judgment.⁶² This also aligns with Simpson's argument that the chancellor was concerned with the state of souls.⁶³

Close reading of chancery petitions suggests that the distinction between internal disposition and the specific matter of malice was often narrow, and that malice was used to refer to moral fault as well as the state of someone's character. For example, Walter Hastynges alleged that his former master, William Tange, had brought vexatious suits against him for malicious purposes: "entendynge to hurte hym of malice and evyll will that taken an acion of trespass ayenst hym."⁶⁴ Richard Wayborne and his counsel coupled the malice of his master, Edmund Paiable, to Paiable's anger, his "gret malice and anger," which they alleged was the cause of Wayborne's arrest in a petition in 1465.⁶⁵ Here, the relationship between malice as a moral fault and malice as a state of character is explicitly placed alongside Paiable's anger. John Thomas' petition in 1475–85 referred to Lambert Fynsshe's malice as the cause of a false accusation of theft. In this petition, Thomas argued that Fynsshe acted "withouten any matier

58. Chancery did not necessarily deal in cases that were more moral or emotional; for example, it did not deal with homicide, one of the most morally and emotionally charged areas in law.

59. Klinck, *Conscience, Equity*, 65.

60. *Ibid.*, 39.

61. *Ibid.*, 39.

62. Dodd, "Reason, Conscience and Equity," 230.

63. Simpson, *History of the Common Law of Contract*, 399–400.

64. TNA, C1/38/40 (1433–72).

65. TNA, C1/33/20 (1465).

or cause of right but oonly of his grete malice which he bereth aswell ayenst the said Thomas Raynold as ayenst your said bisecher.”⁶⁶ Malice alludes to the alleged inner state that has prevented Fynsshe from behaving in a conscionable way. More directly, William Marcham’s 1480–83 petition refers to Catherine Pikto’s malicious disposition (i.e., nature or inner predisposition) in bringing an action against him after he had allegedly refused to enter into a bond of £20: “she of hir malicious disposicion entending vtterly to vndoe hym.”⁶⁷

Using malice to refer to disposition as well as to emotion is also found in John Heblethorn’s bill. This petition included descriptions of Heblethorn’s former mistress, Agnes Machyn, as malicious, envious, greedy, and fearing competition: “her malicious and envious mynde not willing that your said orator should use or mynster his said crafte or occupation [of wire-selling]” and which was done for his “most moste vtter destruction and undoing.”⁶⁸ In this case, the placement of malice with the emotion of envy suggests that the petitioner and counsel were intending to show a correlation between the two. The petition goes on to allege that Heblethorn’s time in prison had been deliberately protracted by Agnes and the co-executor of her husband’s estate, John Sheldon, “of their futher malis” by bribes to the keepers to refuse him bail. The petition reinforces the destructive outcome for him as a result of their behavior: “by duress of imprisonment they intend to wery your said poor orator.” By interpreting their, and particularly Agnes’s, disposition as malicious and motivated by the emotion of envy, Heblethorn and his counsel shaped the narrative to emphasize how her malicious character demonstrated her moral failings, and in this instance was related to the destructive emotion of envy. Similarly, in 1544–51, Clement Morys and his lawyer referred to the envy of Morys’ neighbors in bringing false accusations against him for keeping illegal foreign apprentices: “[his] envious and craftye neyghboures.”⁶⁹

Malice could therefore be identified in relation to an action, but also as an element of someone’s character, for example Pikto (“she of hir malicious disposicion”) and Warner (“farther malicyous vntrew & troublous disposycyon”). Malice also preceded descriptions of emotions including Machyn’s envy (“her malicious and envious mynde”), Morys’ envious neighbors, and Paiable’s anger, (“gret malice and angre”). The petitions go to lengths to show how malice has manifested itself in actions that the chancellor could judge, but there is an attempt to align malicious

66. TNA, C1/67/167 (1475–85).

67. TNA, C1/61/540 (1480–83).

68. TNA, C1/241/33 (1500–1501).

69. C 1/1037/39 (1538–44). Numerous other examples could have been cited.

character or malicious disposition with particular emotions that had shaped the motivation for the offense.

Malice could capture aspects of character and emotion, because it was key to ideas about wickedness and moral culpability. Penny Crofts has suggested that medieval criminal law reflected social values by using malice to convey the gamut of emotion and character, not just the accused's act.⁷⁰ In particular, malice's relationship to moral qualities gave it strong emotional content, because malicious actions could bring into the open the true disposition of a person.

In some instances, the moral language of the petition is more obvious than its emotional quality, but contemporary views about the relationship between emotion and morality help to bridge this.⁷¹ It is helpful to think about malice's meaning outside the legal environment, because courts are not closed systems, separated from wider social pressures. Pre-Reformation literature provides a strong sense of malice's moral failing and its connection to a host of emotions that we also find in chancery documents, including anger, cruelty, and hatred. In *Aesop's Fables*, malicious characters acted with indifference to the suffering of others, were associated with evil, or demonstrated outright pleasure in their malicious acts: "the grete malyce of the enuyous whiche was *Joyeful* and glad of the harme and dommage of an other."⁷² Malice was referred to in *Lydgate's Troy*: "But now, of malys, hatrede, & envie..þe Grekes contrived han of newe An hize tresoun."⁷³ Although chancery petitions were shaped by precise legal conventions, petitioners, respondents, and counsel were not immune to the power that words such as malice had in their wider social usage, or were unaware that in popular consciousness, malice was used to evoke moral and even emotional outrage. Church of England texts, including *The Book of Common Prayer*, continued to link malice to sinful emotional states in the Protestant period: "from pryde, vainglory, and

70. Crofts focuses on *malitiam* in medieval homicide cases. Penny Crofts, *Wickedness and Crime: Laws of Homicide and Malice* (Abingdon: Routledge, 2013), 85.

71. See Robert Miner, *Thomas Aquinas on the Passions: A Study of Summa Theologiae, Ia2ae 22–48* (Cambridge: Cambridge University Press, 2009); Martha C. Nussbaum, *Upheavals of Thought: The Intelligence of Emotions* (Cambridge: Cambridge University Press, 2001); Carla Bagnoli, ed., *Morality and the Emotions* (Oxford: Oxford University Press, 2011); and Robert C. Roberts, *Emotions in the Moral Life* (Cambridge: Cambridge University Press, 2013).

72. *Here begynneth the booke of the subtil historyes and fables of Esope whiche were translated out of Frensshe in to Englysshe by wyllham Caxton at westmynstre in the yere of oure Lorde M. CCCC. Xxxij* (Westminster: Caxton, 1484), CXV^r. My emphasis.

73. John Lydgate, *Lydgate's Troy Book*, ed. H. Bergen, parts 1–3, Early English Text Society, Extra Series 97, 103, 106 (London: Early English Text Society, 1906, 1906, 1910; repr. as one vol. 1996).

Hypocrisy, from envy, hatred, and malice, and all uncharitableness: Good lord deliver us.”⁷⁴ More widely still, secular entertainments such as those found in seventeenth-century ballads also associate malice with emotions: “Our angry friends in malice,” as well as with immoral actions taken against the vulnerable: “It was but in vain to plead Poverty, when They met with those cruel and hard-hearted men, Who wou’d with much Malice upon the poor frown.”⁷⁵ Similar combinations are found in chancery petitions, with malice linked to comparable emotional states, particularly envy, as well as to unjust behavior and unjust actions more generally.

Some legal scholars have been skeptical about the intersection between cultural values and legal process. Mike Macnair sees conscience in chancery operating as a separate discourse to conscience in a cultural sense, or its “ordinary” meaning.⁷⁶ However, other legal historians such as Norman Doe and even Klinck make compelling arguments about the intersections between chancery culture and wider normative values.⁷⁷ Klinck elsewhere frames the court’s judicial principles against wider beliefs, whereas Doe sees chancery conscience operating in relationship to the wider spirituality of medieval experiences. This is in keeping with the chancellor’s clerical status and the court’s emphasis on morality and the state of souls. More broadly, Smail has explored the moral sentiments that underpinned violence and hatred.⁷⁸ Kamali’s work on felony also points to how Middle English and Anglo Norman literature connected the concept of felony to states such as anger, ruthlessness, cruelty, and venom.⁷⁹ Kamali’s point: “We can begin to understand the role *mens rea* played in medieval criminal adjudication by analyzing the use of words of felony in legal and literary sources” is applicable to other legal terms.⁸⁰

74. *The Book of Common Prayer*, 1549.

75. “An Excellent Sonnet of the Unfortunate Loves of Hero & Leander,” Magdalene College, Oxford, Pepys 3.322 (1684–95?), “The Chimney–Men’s Grief,” Magdalene College, Oxford, Pepys 4.309 (1689).

76. Mike Macnair, “Equity and Conscience,” *Oxford Journal of Legal Studies* 27 (2007): 659–81. On the moral meaning of conscience, see Beilby, “The Profits of Expertise,” 72–90; Baker, *English Legal History*, 106; and Doe, *Fundamental Authority*.

77. Klinck, *Conscience, Equity*, ix, 44–53; and Doe, *Fundamental Authority*, 3–6. See also Capern, “Emotions, Gender Expectations.”

78. Smail, “Hatred as a Social Institution,” 90–126.

79. Early legal scholars focused on what constituted a felonious crime unrelated to state of mind, and were uneasy with exploring felony’s extralegal meaning in other, usually literary and religious, contexts. Elizabeth Papp Kamali, “*Felonia Felonice Facta*: Felony and Intentionality in Medieval England,” *Criminal Law and Philosophy* 9 (2015): 397–421, at 401.

80. Kamali, “*Felonia Felonice Facta*,” 401.

The Presence of Emotions

While chancery did not invite emotions into the court, it nonetheless received them for two reasons. First, petitioners, respondents, and counsel were part of the social and cultural world that was flooded with emotional stimuli and experiences. Debt was harrowing. Petitioners felt the unfairness of a business deal that was unjust, often referring to this as the cause of their “utter undoing.” Without clear safety nets in medieval and early modern society, it was inevitable that fear would be closely aligned to events such as these. Litigants could not help but bring these emotions into the court. For anyone, either in the past or today, behavior that is felt to be unfair or unjust will have emotional force, because it is a way for people to interpret the wrongs done to them. People *feel* injustice, and it is this that carries emotional meaning.

Second, by narrating events with reference to select emotions, petitioners, respondents, and counsel believed that they could more effectively persuade the chancellor to decide in their favor. Emotions were not the only method used to elicit sympathy. We know that petitioners and counsel framed bills to be persuasive and prompt the chancellor’s sympathy.⁸¹ Timothy Haskett’s work on bill pairs—petitions dealing with the same matter but from different petitioners—reveals that petitions were tailored to individual circumstances in order to maximize their persuasiveness.⁸² Haskett was not interested in looking for evidence of emotions, but his argument can be used to consider how emotional language, along with statements about emotional motivations and emotional memories of events, could be a technique of persuasion that existed alongside other methods. Dodd’s work on private petitions to the crown also shows that by the fourteenth century, petitions stressed the petitioners’ worthy qualities and later still (when written in English), their humility or meekness, making the “supplications their own” within the petition’s conventions.⁸³ More directly, Dodd finds evidence in the unusually extensive petition of Thomas Paunfield to Parliament that rhetorical positioning included emotional strategies: “its employment of highly emotive language and

81. See also Butler’s work on chancery bills intending to create a story that the chancellor would find “reprehensible.” Butler, “The Law as a Weapon,” 295.

82. Timothy S. Haskett, “The Presentation of Cases in Medieval Chancery Bills,” in *Legal History in the Making: Proceedings of the Ninth British Legal History Conference*, ed. William M. Gordon and T. D. Fergus (London: Hambledon Press, 1991), 11–28.

83. Dodd, *Justice and Grace*, 283–84.

rhetoric... suggest that this was written very much as a performance to stir feelings of indignation and outrage within the parliamentary community.”⁸⁴

Equally significant is Neal’s work on chancery petitions in which subtle language choices appear to have been employed within chancery’s formal conventions. Neal’s focus lies with understanding the emphasis placed on the defendant’s dishonesty and guile, “an arsenal of deceit that no honest man can engage.”⁸⁵ He too notices that petitioners could stress certain emotional states, more so than is usually found in petitions. One such example that Neal highlights is a chancery petition c.1520 that shows the petitioner, Edward Divrych, stressing that fear for his life kept him from his own house.⁸⁶ Neal’s example echoes two of the cases cited earlier concerning Martyn’s fear that led him to pay a debt, and Clyfford’s statement that the jurors previously called against him felt fear for their lives.

Legitimate emotions that are aired in petitions include fear, dread, sorrow, and hurt.⁸⁷ These were the emotions that petitioners claimed feeling. Other emotions such as anger and envy were ascribed to the wrongdoer. Noticeably absent across all fifty-four bills are references to petitioners feeling anger or fury at the injustice done to them. Emotions such as these are exclusively associated with the wrongdoer, usually as part of the petitioner and counsels’ explanation of the cause of the injustice.⁸⁸ White has argued that in the Middle Ages, it was status that determined who could and could not articulate anger.⁸⁹ Chancery petitions emphasize the high social position of the oppressor, pleading that the petitioners’ inferior rank meant they had no hope to remedy through common law; one of the most common ways to achieve this was to stress the petitioner’s poverty. A consequence of emphasising inequitable power relations is that directly expressed anger, and related emotions such as fury, wrath, and

84. Gwilym Dodd, “Thomas Paunfield, the ‘heye Court of rightwisnesse’ and the Language of Petitioning in the Fifteenth Century,” in *Medieval Petitions: Grace and Grievance*, ed. W. Mark Ormrod, Gwilym Dodd, and Anthony Musson (York: York Medieval Press, 2009), 222–40, at 235.

85. Neal, *Masculine Self*, 47.

86. *Ibid.*

87. See also Butler on fear in petitions concerning marital disputes; “The Law as a Weapon,” 296.

88. On strategically displaying anger, see Linda A. Pollock, “Anger and the Negotiation of Relationships in Early Modern England,” *Historical Journal* 47 (2004): 567–90, at 574. Butler also cites a case of “fury” in a chancery petition concerned with marital disputes, which echoes the cases I have seen concerning the wrongdoer’s fury and irrationality, “that he wolde punyssh his wyff at shi pleasour and the more for his. . . and then in a greate fury departyd.” Butler, “The Law as a Weapon,” 314 (TNA C1/287/47, 1504–9).

89. White, “Politics of Anger,” 127–52.

rage, could constitute an attack on hierarchical power. Although the huge number of cases that were brought into chancery challenges such a fiction of fixed power relationships, the language of anger was nevertheless restricted to accounts of other people's anger, not the petitioners'.⁹⁰

Significantly, cases that included emotional language do not appear to have invalidated the plausibility of the legal argument. Any practice that resulted in a consistently negative outcome would have swiftly died out. Given that traces of emotional language can be found in petitions dating from 1480 to 1540, the practice was sufficiently long standing to indicate that it did not have a negative effect and was calculated to have a positive effect. Dodd speaks of the ways that petitioners and petition writers could put "a positive spin" on the deserving nature of their request without overstepping the boundaries of fact or truthfulness or running the risk of masking the basic outline of the case. He suggests that one such method was to draw attention "to the power and *unscrupulous behaviour* of the petitioner's oppressor."⁹¹ I would add that dwelling on the oppressor's emotional motivations, and/or the emotional impact of the wrong done to the petitioner, was one of the ways that unscrupulous behavior could be emphasized. In the end, as long as the petition conformed to acceptable legal procedures and the understanding of what was allowable as evidence, emotional language could be a technique of persuasion for petitioners, respondents, and counsel to choose to employ.⁹²

If certain emotions were calculated to be a strategy to gain sympathy, it suggests that we can use these to understand the emotional norms of late medieval and early modern society. The petitions document that someone could be moved by pity or fear to act in a certain way, but more importantly, that these emotional states could be used to explain oneself before one's peers and before the court. The apprentice Bateman's alleged despair was supposedly so powerful that Robynson and his counsel chose to foreground it in the bill. Emotions are of course relevant to the individual who is feeling them, with their power over someone obvious at a personal level. Emotions are therefore connected to a notion of self, but *statements* about those emotions are about making someone's individual feelings known to a wider audience and matching their experiences to wider social practices.

90. On inequitable social relations between petitioners and defendants in early chancery, see Beilby, "Profit, Piety and the Professions," 77.

91. Dodd, *Justice and Grace*, 298. My emphasis.

92. On the development of precise English language usage from 1443 onwards, see Haskett, "Country Lawyers," 15.

As Joanna Bourke argues, emotions “mediate between the individual and the social. . .they align individuals with communities.”⁹³

Petitioners and counsel selected emotions that fitted their community’s values.⁹⁴ According to Neal, the values that were most important to the mercantile community included “‘trueness’: an open and uncomplicated honesty wherein a man’s outward expressions corresponded to his inward intentions.”⁹⁵ Deceitfulness, falsity, and trickery were, he argues, incompatible with mercantile masculinity. The chancery petitions show how individuals took pains to represent themselves as lawful and “true” members of their group, questioning the specific outward actions (e.g., fraud) and inward intentions (e.g., maliciousness) of the wrongdoer. Warner was specifically identified in these terms as having a “malicious vntrew & troublous disposycyon.” The references in petitions to someone’s inappropriate or excessive emotions drew on beliefs that excessive emotion harmed the capacity for moral actions, inciting dishonesty or “untrueness,” and leading to an offense that could be taken into the court for redress.⁹⁶ Butler’s work on marital discord in chancery petitions shows that similar recognition was paid to cultural norms about acceptable chastisement, with petitioners and their counsel careful to show their willingness to accept legitimate levels of husbandly correction.⁹⁷

In chancery, people invoked emotions that they believed matched wider community norms and values. The making and recording of this in the court is part of the history of how these emotional norms were collaboratively developed and negotiated within the community. The process of collaboratively drafting a persuasive petition allowed petitioners and their counsel to find ways to insert ideas about their community’s emotional standards into a legal arena, in turn strengthening their value and legitimacy in the community. Legal participants had sufficient knowledge to construct their testimony in conscious and knowing ways, aided by the counsel working for them. The recitation of events, the moral values identified, and the emotional evidence brought into the petitions could not be

93. Joanna Bourke, “Fear and Anxiety: Writing About Emotion in Modern History,” *History Workshop Journal* 55 (2003): 111–33, at 117, 124. Later she writes that emotions “align people with others within social groups” (125).

94. Dodd has explored the attempts that petitioners made to align details of the case with community values. Dodd, *Justice and Grace*, 302.

95. Neal, *Masculine Self*, 7.

96. Monique Scheer, “Are Emotions a Kind of Practice (And is That What Makes Them Have a History)? A Bourdieuan Approach to Understanding Emotion,” *History and Theory* 51 (2012): 193–220, at 195.

97. Butler, “The Law as a Weapon,” 293.

too far out of step, either with legal requirements or with the broader emotional or moral norms of the time, to appear convincing to the court.⁹⁸

Chancery’s interest in determining interior states had always been somewhat ambiguous.⁹⁹ The evidence in this article reveals moments when interior states, emotions, and exterior actions were brought into closer alignment. For a start, emotional motivations helped petitioners and counsel to explain actions and moral faults, as well as to impugn someone’s character. Malicious motivations could also be correlates of particular emotions such as envy and anger. To understand why any value was placed on describing emotional experiences, we need to consider more deeply the relationship between emotion and the moral examination of actions. We know that emotions’ effect on moral decisions was taken seriously; evidence from contemporary philosophical and theological texts makes this clear.¹⁰⁰ Recent research also shows that emotions may impede our ability to make moral decisions by emphasizing self-interest; for example, envy can be a precursor to taking what belongs to another. Emotions may equally motivate moral actions; take for example the love of others (or the fear of God) that inspires charity. Philosophers have long been interested in understanding the motivational force of emotions. Carla Bagnoli has argued that “emotions seem to play a distinctive role in practical reasoning, by supplying motives and reasons for action. Emotions such as blame, guilt and shame speak to the voice of moral conscience.”¹⁰¹

Comparable ideas about emotions and morality are reflected in chancery petitions. Malice disrupted trust between merchants who needed to work with each other. Apprentices’ fears could cause disorder in communities. Appropriate emotions were frequently linked to the maintenance of communal norms and bonds. This makes sense when we think about the strength of assumptions about community and society at this time, and the importance of stable relations. Emotions were important, but they were important, at least partly so, because of their close alignment to maintaining social order.

98. Stretton, “Social Historians and the Records of Litigation.”

99. Klinck, *Conscience, Equity*, 129–39.

100. See Miner, *Thomas Aquinas on the Passions*; Nussbaum, *Upheavals of Thought*; Bagnoli, ed., *Morality and the Emotions*; and Roberts, *Emotions in the Moral Life*.

101. Bagnoli, ed., *Morality and the Emotions*; and Barbara L. Fredrickson, “Gratitude, Like Other Positive Emotions, Broadens and Builds,” in *The Psychology of Gratitude*, ed. Robert A. Emmons and Michael E. McCullough (Oxford: Oxford University Press, 2004), 145–66.

Conclusion

The task of trying to find emotional meaning in chancery sources is not an easy one. We encounter distinctive problems when we consider the nature of the legal genre in question, jurisdictional requirements, and the particular necessities of legal process. Yet, we have not reached the limits of what these sources can tell us about the presence and legitimacy of some emotions in the court. It is also important to remember that rather than accessing the truth of emotional behavior before the proceedings were instigated by bill, we are accessing how accounts of emotions have been mobilized during the proceedings, and the value that references to emotions had as a strategy of persuasiveness. The distinction between legitimate emotions and illegitimate emotions is a particularly fruitful area for further investigation, in this and in other courts. By exploring the language of emotions we will better understand the culture of late medieval and early modern law and the society that produced them.