Manor Court Procedures, Debt Litigation Levels, and Rural Credit Provision in England, c.1290–c.1380

CHRIS BRIGGS

In the last two decades or so, questions of law have moved back to the top of the research agenda in work on medieval English manor courts. This marks a shift away from the 1960s to the mid-1980s, when the historians on both sides of the Atlantic who established the court roll as the pre-eminent source for everyday life in the countryside sought inspiration from the social sciences rather than legal history.[1] The court roll studies published in that period generated much methodological debate about use of these records to study peasants and their communities.[2] Nonetheless, in

1. In that era, the sociologist George Caspar Homans through his book *English Villagers of the Thirteenth Century* (1941; New York: Russell and Russell, 1960) was the key influence; for acknowledgments of Homans's impact, see J. Ambrose Raftis, *Tenure and Mobility: Studies in the Social History of the Mediaeval English Village* (Toronto: Pontifical Institute of Mediaeval Studies, 1964), 13; Edwin Brezette DeWindt, *Land and People in Holywell-cum-Needingworth* (Toronto: Pontifical Institute of Mediaeval Studies, 1972), 276.

2. Zvi Razi, "The Toronto School's Reconstitution of Medieval Peasant Society: A Critical View," *Past and Present* 85 (1979): 141–57; Zvi Razi, *Life, Marriage and Death in a Medieval Parish: Economy, Society and Demography in Halesowen, 1270–1400* (Cambridge: Cambridge University Press, 1980), 11–24; Judith M. Bennett, "Spouses, Siblings and Surnames: Reconstructing Families from Medieval Village Court Rolls," *Journal*

Chris Briggs is a research associate, Cambridge Group for the History of Population and Social Structure <cdb23@cam.ac.uk>. Research for this article was funded by Trinity College, Cambridge, and the British Academy. He is grateful to Peter Kitson for help with analysis of the court roll data, and to Paul Brand, Phillipp Schofield, Leigh Shaw-Taylor, Richard Smith and this journal's anonymous referees for comments on earlier drafts of the article. The views presented here and any errors are the responsibility of the author.

Law and History Review Fall 2006, Vol. 24, No. 3
© 2006 by the Board of Trustees of the University of Illinois

https://doi.org/10.1017/S0738248000000791 Published online by Cambridge University Press

most of those studies, consideration of the manor court as a legal forum first and foremost, or of the implications of reliance on a legal source to study social and economic history, was secondary to analysis of the data in the rolls.[3] More recently, though, scholars have started once again to look at the court roll from the perspective adopted by Maitland in his *Select Pleas in Manorial and Other Seigniorial Courts.*[4] These historians are concerned with defining and characterizing "customary law": that is, with the nature and principles of the law applied in manor courts; the extent to which those principles were malleable or unchanging; the relationship between the rulings pronounced in the manor courts and those recorded in other areas of the legal system, most importantly the common law courts;

of British Studies 23 (1983): 26–46; Judith M. Bennett, *Women in the Medieval English Countryside: Gender and Household in Brigstock before the Plague* (Oxford: Oxford University Press, 1987), 199–205; L. R. Poos and R. M. Smith, "'Legal Windows onto Historical Populations'? Recent Research on Demography and the Manor Court in Medieval England," *Law and History Review* 2 (1984): 128–52; Zvi Razi, "The Use of Manorial Court Rolls in Demographic Analysis: A Reconsideration," *Law and History Review* 3 (1985): 191–200; L. R. Poos and R. M. Smith, "Shades Still on the Window: A Reply to Zvi Razi," *Law and History Review* 4 (1986): 409–29; Zvi Razi, "The Demographic Transparency of Manorial Court Rolls," *Law and History Review* 5 (1987): 523–35. The debate contained in the four preceding articles is reprinted as L. R. Poos, Zvi Razi, and Richard M. Smith, "The Population History of Medieval English Villages: A Debate on the Use of Manor Court Records," in *Medieval Society and the Manor Court,* ed. Zvi Razi and Richard Smith (Oxford: Clarendon Press, 1996), 298–368.

3. An important exception is John S. Beckerman, "Customary Law in English Manorial Courts in the Thirteenth and Fourteenth Centuries" (Ph.D. diss., University of London, 1972). The writings of one prominent court roll scholar illustrate well the shift from a social-scientific to a legal-historical approach. Richard Smith's earlier work applies complex techniques to court roll data with little attention to its institutional provenance, especially R. M. Smith, "Kin and Neighbours in a Thirteenth-Century Suffolk Community," *Journal of Family History* 4 (1979): 219–56. But by 1983 Smith was heralding later developments by calling for "the procedures and instruments of customary law and its tribunals" to be fully understood as a sound basis for "the more elaborate exercises in village 'reconstitution'": R. M. Smith, "Some Thoughts on 'Hereditary' and 'Proprietary' Rights in Land under Customary Law in Thirteenth and Early Fourteenth Century England," *Law and History Review* 1 (1983): 127; similar themes also feature in Poos, Razi, and Smith, "Population History of Medieval English Villages." Smith's subsequent publications document the emergence and social effects of new legal devices for land transfer in manorial courts: see especially R. M. Smith, "Women's Property Rights under Customary Law: Some Developments in the Thirteenth and Fourteenth Centuries," *Transactions of the Royal Historical Society,* 5th ser., 36 (1986): 165–94; Richard M. Smith, "Coping with Uncertainty: Women's Tenure of Customary Land in England c. 1370–1430," in *Enterprise and Individuals in Fifteenth-Century England,* ed. Jennifer Kermode (Stroud: Alan Sutton, 1991), 43–67.

4. F. W. Maitland, ed., *Select Pleas in Manorial and Other Seignorial Courts,* Publications of the Selden Society 2 (London: B. Quaritch, 1889).

https://doi.org/10.1017/S0738248000000791 Published online by Cambridge University Press

and the machinery of manor courts with respect to procedures, personnel, and record keeping.[5]

The lively historical debate that has characterized this recent scholarship reflects the difficulty of tracing the complex origins and development of the laws and procedures of manorial courts. It also reveals the need for more detailed research on central questions such as the relationship between manorial and common law forms. The recent flurry of legal-historical publications still leaves many aspects of manorial practice poorly understood. This highlights the relative neglect of curial processes by earlier historians following the social-scientific agenda of the traditional court roll study. It raises the possibility that the arguments put forward in those earlier studies may sometimes have suffered as a consequence.[6] In particular, the recent focus on customary law prompts the question whether previous historians appreciated the impact of legal and institutional changes within individual manor courts on the character and composition of their business. For instance, in one early contribution to the revival of interest in the legal characteristics of the manor court, Razi's study of population in Halesowen (Worcestershire) was criticized for assuming little or no development in court procedure, despite the apparent evidence of such development in the Halesowen rolls. As procedural change is clearly capable of affecting

5. L. R. Poos and Lloyd Bonfield, eds., *Select Cases in Manorial Courts, 1250–1550: Property and Family Law,* Publications of the Selden Society 114 (London: Selden Society, 1998); John S. Beckerman, "Procedural Innovation and Institutional Change in Medieval English Manorial Courts," *Law and History Review* 10 (1992): 197–252, based on Beckerman, "Customary Law"; Lloyd Bonfield, "The Nature of Customary Law in the Manorial Courts of Medieval England," *Comparative Studies in Society and History* 31 (1989): 514–34; Lloyd Bonfield, "What Did English Villagers Mean by 'Customary Law'?," in *Medieval Society and the Manor Court,* ed. Razi and Smith, 103–16; John S. Beckerman, "Towards a Theory of Medieval Manorial Adjudication: The Nature of Communal Judgements in a System of Customary Law," *Law and History Review* 13 (1995): 1–22; Paul R. Hyams, "What Did Edwardian Villagers Understand by Law?" in *Medieval Society and the Manor Court,* ed. Razi and Smith, 69–102. See also Richard M. Smith, "The English Peasantry, 1250–1650," in *The Peasantries of Europe from the Fourteenth to the Eighteenth Centuries,* ed. Tom Scott (London and New York: Longman, 1998), 339–71; Lloyd Bonfield, ed., *Seigneurial Jurisdiction,* Comparative Studies in Continental and Anglo-American Legal History 21 (Berlin: Dunker and Humblot, 2000); Maureen Mulholland, "Trials in Manorial Courts in Late Medieval England," in *Judicial Tribunals in England and Europe, 1200–1700,* ed. Maureen Mulholland and Brian Pullan (Manchester: Manchester University Press, 2003), 81–101. For critical comments on these developments, see Kate Parkin, "Courts and the Community: Reconstructing the Fourteenth-Century Peasant Society of Wisbech Hundred, Cambridgeshire, from Manor Court Rolls" (Ph.D. diss., University of Leicester, 1998), 21–34.

6. For brief criticisms along these lines, see Bonfield, "Nature of Customary Law," 517, and Hyams, "What Did Edwardian Villagers Understand by Law?," 69–70.

https://doi.org/10.1017/S0738248000000791 Published online by Cambridge University Press

the counts of individuals appearing in the court records over time, it can change inferences about demographic trends made using that evidence.[7]

It is clearly incorrect to claim that social and economic historians using court rolls to study the English peasantry have invariably conducted their investigations in isolation from issues that have preoccupied recent commentators on the law of manor courts. Indeed, it is often virtually impossible to separate legal from social and economic concerns, as is evident from Smith's work on peasant land transfer and Bennett's studies of rural women, to cite just two examples.[8] Moreover, Schofield's study of the use of law as an aspect of rural social relations perhaps indicates the degree to which the recent work on the legal attributes of manor courts is shaping current research into village society.[9] However, given the centrality of the court roll as a source for medieval English rural society, it is clear that more needs to be done toward establishing the extent to which court roll data on village social and economic relationships are shaped by the relevant aspects of manorial law and procedures and their effects, even though charting the procedural underpinnings of individual jurisdictions is extremely difficult owing to the rarity of unbroken court roll series and the effort required to analyze the voluminous information they contain.

This article seeks to further this aim by asking whether a detailed investigation of court procedure can assist in interpreting the manorial debt plaints that constitute the best available evidence for small-scale inter-peasant credit relationships.[10] Much peasant exchange, like most areas of the medieval English economy, involved credit, but in spite of its importance rural credit has been neglected until recently.[11] A key question in research on rural credit is to ask how chronological changes in debt litigation levels

7. Poos, Razi, and Smith, "Population History of Medieval English Villages," 301–2, 327–28, 341–43, 359–63, debating methods used in Razi, *Life, Marriage and Death.*

8. For Smith, see n. 3 above; Bennett, *Women;* Judith M. Bennett, "Writing Fornication: Medieval Leyrwite and Its Historians," *Transactions of the Royal Historical Society,* 6th ser., 13 (2003): 131–62.

9. Phillipp R. Schofield, "Peasants and the Manor Court: Gossip and Litigation in a Suffolk Village at the Close of the Thirteenth Century," *Past and Present* 159 (1998): 3–42.

10. The terms plaint, plea, case, and action are used interchangeably in this study to mean "civil lawsuit."

11. The pioneering studies are Elaine G. Clark, "Medieval Debt Litigation: Essex and Norfolk, 1270–1490" (Ph.D. diss., University of Michigan, 1977), and Elaine Clark, "Debt Litigation in a Late Medieval English Vill," in *Pathways to Medieval Peasants,* ed. J. A. Raftis (Toronto: Pontifical Institute of Mediaeval Studies, 1981), 247–79. For key recent research, see Phillipp R. Schofield, "L'Endettement et le crédit dans la campagne anglaise au moyen âge," in *Endettement paysan et crédit rural dans l'Europe médiévale et moderne: Actes des XVIIes journées internationales d'histoire de l'abbaye de Flaran, Septembre 1995,* ed. M. Berthe (Toulouse: Presses Universitaires du Mirail, 1998), 69–97; P. R. Schofield

https://doi.org/10.1017/S0738248000000791 Published online by Cambridge University Press

relate to expansions or contractions in the underlying total of extant credit ties and, in turn, to consider the possible causes of such expansions and contractions.[12] This question is tackled here using two sets of manorial court rolls, which were selected for study largely because they offer almost unbroken coverage of substantial time periods.[13] It charts annual changes in totals of debt actions and in the other personal actions of trespass and broken covenant. It attempts to see what weight should be given to the internal procedures of the two manor courts, rather than to economic or demographic forces, when explaining the complex and contrasting patterns revealed.[14] Focusing on court procedure rather than on legal rules and principles should not be taken to imply that all manorial jurisdictions shared a uniform substantive law of debt, trespass, and covenant. Instead, it simply reflects the fact that manor court roll entries rarely give details about the rules and principles applied in determining personal actions.[15]

The first of the two manor courts studied is that of Oakington (Cambridgeshire), a manor belonging to Crowland Abbey. The abbey had three manors in Cambridgeshire, in the parishes of Oakington, Cottenham, and Dry Drayton. These lie to the north and west of Cambridge four to six miles from the town. Because the manors were so close together, just one court was held for the abbot's tenants from all three places. All three parishes contained more than one manor.[16]

The second court belonged to the manor of Great Horwood, located in north Buckinghamshire. In the fourteenth century the Cluniac priory of nearby Newton Longville held this manor, which was one of three in the

---

and N. J. Mayhew, eds., *Credit and Debt in Medieval England c. 1180–c.1350* (Oxford: Oxbow, 2002). See also Christopher D. Briggs, "Rural Credit, Debt Litigation and Manor Courts in England, c. 1290–c.1380" (Ph.D. diss., University of Cambridge, 2002).

12. Schofield, "L'Endettement," 94–96.

13. In the period studied, 1345 (Great Horwood) is the only year for which no court records survive at all.

14. Litigation about real property is ignored.

15. Beckerman, "Medieval Manorial Adjudication," 5–6; for the general problem of the concealment of substantive principles within procedural forms, see David Ibbetson, *A Historical Introduction to the Law of Obligations* (Oxford: Oxford University Press, 1999), 11–12.

16. Cambridge University Library (hereafter CUL), Queens' College (hereafter Q) boxes 3, 4, and 11 (Oakington court rolls, numbers 1–7 and 12). Court roll references are given by number of court roll and membrane and date of court session, e.g., Q 1, m.1 (12 Mar. 1291). An edition of the rolls relating to 26 of the 418 court sessions of the period 1291–1380 with surviving records was published in Frances M. Page, *The Estates of Crowland Abbey: A Study in Manorial Organisation* (Cambridge: Cambridge University Press, 1934), 333–412. For other manors in the three villages, see Chris Briggs, "Creditors and Debtors and Their Relationships at Oakington, Cottenham and Dry Drayton (Cambridgeshire), 1291–1350," in *Credit and Debt,* ed. Schofield and Mayhew, 129, 143–44.

https://doi.org/10.1017/S0738248000000791 Published online by Cambridge University Press

parish. Newton Longville was an alien priory, subject to a foreign motherhouse, in this case the priory of St. Faith, Longueville, in Normandy.[17]

The Importance of Procedure

There are strong a priori grounds for thinking that a manor court's procedures influenced the amount of debt litigation that came before it. Most debts involving residents of a particular village would have been repaid voluntarily when due. But if this did not happen, it was not inevitable or automatic that the lender would respond immediately by bringing a lawsuit in the manor court situated in his home village. As an alternative, the lender could, for example, bring social pressures to bear on the debtor, or could decide only to go to court much later as a last resort if the dispute became intractable. The lender might also opt to eschew his own "home" manor court and seek a remedy in a different jurisdiction in the neighborhood, a possibility that is revisited toward the end of this article. When selecting a forum, the lender would probably first ascertain that the chosen court had the power to compel the defendant to appear and, in particular, that the defendant possessed distrainable property within its jurisdiction. Assuming those conditions were satisfied, however, the most important consideration for a potential litigant was probably the procedures of a court, in particular, its speed, transparency, efficiency, and the financial costs involved. Similarly, changes in the procedures of a court may have changed a lender's estimation of its likely effectiveness in debt recovery.

Local court procedure might even have shaped the earliest stages of the process of debt creation, not just decision making following default. If rural lenders were concerned about the risk of nonpayment when contemplating the initiation of a credit relationship, as they presumably were, then their confidence in the local manor court as means of securing future repayment probably had a strong influence on deciding whether or not to lend in the first place.[18]

17. Oxford, New College Archives (hereafter NCA) 3912–15 (Great Horwood court rolls). The Horwood rolls are notable for their lengthy entries concerning disputes over land and for numerous bylaws. For examples, see respectively Poos and Bonfield, *Select Cases,* and W. O. Ault, *Open-Field Farming in Medieval England. A Study of Village By-Laws* (London: Allen and Unwin, 1972). Fourteenth-century Great Horwood contained the manorial units of Singleborough and the "Bradwell fee" in addition to the Newton Longville manor: Briggs, "Rural Credit," 48–54.

18. Of course, the threat of manor court assistance in recovery was not the only enforcement mechanism available to creditors. Land could be used as security for peasant debts, but for the possibility that this was not especially widespread in England in this period,

https://doi.org/10.1017/S0738248000000791 Published online by Cambridge University Press

Debt and other civil litigation was just one of the diverse matters dealt with by medieval manor courts. Reading through a substantial number of different court roll series shows that the amount of such litigation varied widely from place to place, both in absolute terms and as a proportion of total court business.[19] The records of some manors are dominated by personal plaints. Those of others feature just a scattered handful of such lawsuits, while a few court roll series contain no litigation at all. In some relatively complete sets of rolls, such as those of Merton College, Oxford's manor of Thorncroft in Leatherhead (Surrey) covering the period 1279 to 1343, the amount of litigation in general is tiny, and the amount of debt litigation virtually nil.[20]

There are several possible explanations for these differing amounts of personal litigation. First, they may simply reflect variations in the size of manors and the size of the population under the court's jurisdiction. Second, economic circumstances might provide the answer, since conditions conducive either to exchange and interaction, or to bringing disputes to court, may have been more prevalent in some places and times than others. Third, one must consider the purpose of the court, and in particular the extent to which it offered facilities for civil justice in addition to its core functions of seigniorial control over tenants and the administration of the manor. Courts that were keen to attract private litigants could quite possibly have adapted their procedures to do this. Finally, variations in quantities of personal litigation from court to court might reflect variations in the frequency with which local litigants resorted to alternative legal jurisdictions.

In the case of Thorncroft, it could be that the population of the manor was too small to generate many "situations" leading to inter-tenant litigation. This is unlikely, however, since although the manor was not as big as some in terms of tenant numbers, it was the largest in the parish, con-

---

see Chris Briggs, "Connections between Land Transfer and Credit Provision in English Villages, c. 1250–c. 1350," in *Credit and the Rural Economy in Europe, c. 1100–1850,* ed. Thys Lambrecht and Phillipp R. Schofield (forthcoming).

19. These comments apply only to the ordinary manor court (also known as the court baron or halmote). Many lords of manors also enjoyed the franchisal rights of the view of frankpledge, exercised in a court leet. On the differences between manor and leet courts, see Mark Bailey, ed., *The English Manor c. 1200–c.1500* (Manchester: Manchester University Press, 2002), 167–83. On the wide functions of the manor court, some of which were more administrative than legal, see Bonfield, "Nature of Customary Law," 517–18; for an attempt to quantify different types of business in one court, see Janet Williamson, "Dispute Settlement in the Manorial Court: Early Fourteenth-Century Lakenheath," *Reading Medieval Studies* 11 (1985): 33–41.

20. Oxford, Merton College Records 5781–5789 (court rolls 1279–1343).

https://doi.org/10.1017/S0738248000000791 Published online by Cambridge University Press

taining fifteen unfree holdings and over fifty free holdings in 1333.[21] It is possible that local commercial activity was negligible, making economic disputes rare, but this seems unlikely, considering the presence of the small town of Leatherhead, the site of a weekly market and annual fair from 1248. Finally, we can look to the assumptions about what the court was ultimately for. The verdict of a recent close discussion of the Thorncroft records is that "the primary purpose of the court, to judge by its written proceedings, was to protect the lord's interests."[22] It was evidently not a court orientated toward providing facilities for inter-tenant litigation, and one might speculate that disputes arising in the vicinity tended to become the subject of litigation in alternative local jurisdictions as a consequence. The Thorncroft case, along with other instances where courts in roughly the same geographical area had litigation that differed widely as a proportion of total business, suggests that economic and demographic factors cannot wholly explain the content of the curial record. We must also consider whether or not court procedures attracted litigants.[23]

Recent research has certainly not ruled out the possibility of significant procedural contrasts between individual manor courts. Although the debate about the influence of the common law upon manorial jurisdictions has been dominated by discussion of substantive rules or customs in the law of real property, procedural matters such as mesne process have not been entirely ignored.[24] Beckerman's position is that in both rules and proce-

21. Ralph Evans, "Merton College's Control over Its Tenants at Thorncroft, 1270–1349," in *Medieval Society and the Manor Court,* ed. Razi and Smith, 203, 236. The fifteen unfree holdings comprised one full yardland, six half-yardlands of either eight or ten acres, one quarter-yardland, and seven one-acre cottage holdings. The majority of the free holdings were under ten acres by this date. At Oakington in 1344, by comparison, there were thirty-nine unfree holdings (twenty-six ten-acre holdings, seven five-acre holdings, and six croftmen/cottars), and twelve free holdings (mostly smallholdings of a few acres): Briggs, "Rural Credit," 212, 216–18. Typically, most manor court debt litigants were drawn from the manor's unfree tenant population, rather than from among the free tenants or outsiders. Since Oakington had more unfree tenants than Thorncroft, we would therefore expect more inter-tenant litigation at Oakington than Thorncroft. But the almost complete lack of debt litigation at Thorncroft cannot be explained by an absence of unfree tenants.

22. Evans, "Merton College's Control over Its Tenants," 204; see also Ralph Evans, "Whose Was the Manorial Court?" in *Lordship and Learning: Studies in Memory of Trevor Aston,* ed. Ralph Evans (Woodbridge: Boydell Press, 2004), 155–68.

23. For other court roll series containing little or no litigation, see the survey of medieval manorial court rolls in England in *Medieval Society and the Manor Court,* ed. Razi and Smith, 569–637; Schofield, "L'Endettement," 74. Another example is the prior of Ely's manor court of Winston (Suffolk): CUL EDC 7/17/1–17. In the 153 court sessions of the years 1306–61 for which records survive, only forty personal plaints were begun. Twenty-one of these were debt, giving an average of just 0.1 new debt plaints per court session (for comparisons, see Table 2).

24. Mesne process is defined as the steps taken by a court to secure the initial appearance of a defendant.

https://doi.org/10.1017/S0738248000000791 Published online by Cambridge University Press

dures, differences between manor courts were overshadowed by similarities. Procedural homogeneity arose partly from the training of lawyers and estate administrators at Westminster in the late thirteenth century. This influence made manorial practices tend to resemble those of the common law.[25] Bonfield, by contrast, stresses a diversity among courts that "does not extend merely to positions taken on a particular narrow issue like canons of descent" but "also runs to broader questions of the types of disputes that came before the individual court and the procedural means by which they were litigated and resolved."[26] Yet the volume of evidence that has been brought to bear on these matters is small. As Helmholz has observed, "no conclusive answer" is yet possible as to "how far the seigneurial courts continued to use informal procedures, which stood outside or even contrary to the rules of the English royal courts. . . . There was variation."[27] Given the possible connections between court procedure and patterns in the data that interest social and economic historians, however, it is obviously important to seek greater certainty on this issue.

Litigation Patterns over Time

In order to test whether the varying incidence of inter-peasant manorial litigation was linked to procedural differences between courts, this section explores the character and possible determinants of chronological litigation patterns at Oakington and Great Horwood.[28] It begins by comparing the average annual number of new personal plaints initiated each decade in the two courts (Table 1, columns 9 and 10). The average annual number of new debt plaints appears in column 9, while the equivalent figure for non-debt plaints (trespass, broken covenant, and "unspecified") appears in column 10.[29]

25. Beckerman, "Medieval Manorial Adjudication," 11–16; Beckerman, "Procedural Innovation," 243. Schofield ("Peasants and the Manor Court," 12), drawing on Beckerman, suggests that actions and processes in the court rolls of Hinderclay (Suffolk) closely parallel those of the common law.

26. Bonfield, "What Did English Villagers Mean by 'Customary Law'?," 111; see also Lloyd Bonfield, "The Role of Seigneurial Jurisdiction after the Norman Conquest and the Nature of Customary Law in Medieval England," in *Seigneurial Jurisdiction,* ed. Bonfield, 177–94.

27. "Independence and Uniformity in England's Manorial Courts," in *Seigneurial Jurisdiction,* ed. Bonfield, 223.

28. Reworking of court roll information results in some very slight differences between the tables and figures in this article and earlier presentations of related Oakington data in Briggs, "Rural Credit," and Briggs, "Creditors and Debtors and Their Relationships."

29. "Debt" comprises all cases mentioning debt or detinue of money or goods, or explicitly called "plea of debt" or "plea of detinue." "Trespass" comprises all cases labeled "plea of

https://doi.org/10.1017/S0738248000000791 Published online by Cambridge University Press

The totals of new plaints begun in each sub-period are shown in Table 1, columns 2 to 5. These totals form the basis of the average annual number of new plaints in columns 9 and 10. In converting the totals of new plaints into plaints per annum, slight adjustments have been made to take account of two problems with the data. The first of these concerns the "unknown" plaints (column 5), which tell one nothing about the cause of the dispute. Since some of these must have been debt and some non-debt, the "unknown" plaints are divided equally between those categories. The resulting totals in columns 6 and 7 are used in calculating the figures in columns 9 and 10. Second, one must also consider the possibility that additional new plaints were brought at court sessions whose records are now lost. This is not a serious problem since it is clear that rolls are available for almost all sessions held at Oakington and Horwood, as is indicated, for example, by the fact that record loss rarely prevents one tracking a personal action from beginning to end over several court sessions. However, for a few years records are missing for one or both of the bi-annual "great courts," at which a session of the view of frankpledge was held on the same day as an ordinary manor court. At Oakington and Horwood the "great courts" were the two basic sessions held every year, supplemented by additional ordinary sessions that varied somewhat in number over time. Hence any absence of a roll from a "great court" is clearly evidence of record loss. In recognition of this, a handful of additions have been made to the totals of recorded sessions (column 1) to produce an estimated total of all sessions held (column 8). It should be noted that the estimated totals only take account of missing "great court" records; no attempt has been made to adjust for losses of ordinary session rolls, as one cannot determine how many such sessions were held in any one year. However, a total of four sessions are added in column 8 to compensate for the complete lack of Horwood rolls for the year 1345. Incorporating these slight adjustments allows one to produce more reliable figures on the average annual number of new plaints.[30]

---

trespass" or using any form of the word "trespass" (*transgressio*). "Unspecified" consists of disputes that concern matters dealt with in trespass cases but do not use the word "trespass." The "unspecified" category includes no debt cases, however, as these can be distinguished by their content. Plaints of "unknown" type say nothing about the cause of the dispute, for example: "Thomas ad Fontem and John Colyn are agreed by licence and John places himself [in mercy] pledge the reeve" (Q 2, m.6d, 21 Oct. 1309).

30. Where the estimated total of court sessions (column 8) was higher than the total of recorded court sessions (column 1), a revised estimate of the total number of plaints in each decade was also produced. At Oakington in 1291–1300, for example, two extra court sessions were added to give the estimated total in column 8. As the average number of debt plaints per court session in that decade was 1.4 (column 6 divided by column 1), a further 2.8 plaints were added to the decadal total when generating the figure in column 9.

https://doi.org/10.1017/S0738248000000791 Published online by Cambridge University Press

Table 1. New personal plaints initiated per decade at Oakington and Great Horwood (total number and average per annum)

		1	2	3	4	5	6	7	8	9	10
		Total new plaints							Average no. new plaints per annum		
	Date	No. court sessions with surviving rolls[a]	All	Debt	Non-debt	"Unknown"	Debt + half all "unknown"	Non-debt + half all "unknown"	Estimated total court sessions held[b]	Debt	Non-debt
Oak.	1291–1300	43	147	43	73	31	58.5	88.5	45	6.1	9.3
	1301–1310	41	134	32	54	48	56.0	78.0	42	5.7	8.0
	1311–1320	43	139	50	55	34	67.0	72.0	43	6.7	7.2
	1321–1330	41	96	29	61	6	32.0	64.0	41	3.2	6.4
	1331–1340	45	253	83	158	12	89.0	164.0	45	8.9	16.4
	1341–1350	63	277	138	139	0	138.0	139.0	63	13.8	13.9
	1351–1360	43	176	82	92	2	83.0	93.0	46	8.9	10.0
	1361–1370	52	237	117	119	1	117.5	119.5	53	12.0	12.2
	1371–1380	47	244	127	113	4	129.0	115.0	47	12.9	11.5
Hor.	1302–1310	34	73	13	54	6	16.0	57.0	36	1.9	6.7
	1311–1320	54	93	39	51	3	40.5	52.5	54	4.1	5.3
	1321–1330	59	69	26	40	3	27.5	41.5	59	2.8	4.2
	1331–1340	47	97	29	67	1	29.5	67.5	47	3.0	6.8
	1341–1350	38	130	41	87	2	42.0	88.0	44	4.9	10.2
	1351–1360	42	128	31	93	4	33.0	95.0	43	3.4	9.7

Source: CUL Q boxes 3, 4, and 11; NCA 3912–3915.
Note: "Non-debt" comprises trespass, covenant, and "unspecified" cases (see text).
[a] Occasions (known as a "great court") on which a session of the view of frankpledge was held on the same day as an ordinary manor court are counted as a single session.
[b] "Great courts" are added where records thereof are missing, and four sessions added for year 1345 at Horwood (see text for details).

https://doi.org/10.1017/S0738248000000791 Published online by Cambridge University Press

For Oakington, the most significant feature of Table 1, columns 9 and 10, is the rise in the 1330s and 1340s in the number of new plaints begun each year. Where numbers of new non-debt actions are concerned, there is a clear and striking contrast between the decades 1291–1330 and the period 1331–50. Although debt litigation levels clearly began to grow in the 1330s, the most notable shift upward in that plaint category occurred in the 1340s, which saw an average of 13.8 new debt plaints per annum, more than twice as many as in 1311–20, the previous high point. In both debt and non-debt, the average number of new cases fell slightly in the 1350s, but rose again thereafter so that in the 1360s and 1370s litigation levels exceeded by a substantial margin those reached in the first three decades of the fourteenth century. Figure 1 shows the annual totals of debt cases, indicating that 1337 marked the beginning of the substantial increase.

As columns 9 and 10 of Table 1 show, the similarities between Horwood and Oakington in chronological litigation patterns are most noticeable where non-debt actions are concerned. In particular, at both Oakington and Horwood, the 1340s stand out as a period in which annual totals of new non-debt plaints became substantially higher than in earlier decades. Yet where the pattern of debt litigation is concerned, the differences between Oakington and Horwood are as significant as the similarities. By contrast with Oakington, Horwood debt litigation levels in 1331–40 did not exceed those of the decade 1311–20. It is true that the average number of new Horwood debt plaints per annum was marginally higher in the 1340s than in any earlier decade, but this is slightly misleading, as more than one quarter of all debt plaints of the years 1341–50 were brought in 1349 by a single plaintiff, John Aschewy.[31] As Figure 2 shows, apart from the exceptional year 1349 the annual counts of Horwood debt plaints for the 1340s are not particularly high relative to earlier years. Most important for the comparison of the two courts, the late 1330s were not a turning point in debt litigation at Horwood as they were at Oakington.[32]

31. Aschewy brought 12 of the 21 debt cases of 1349: NCA 3914, mm. 49, 51 (25 Feb. 1349, ?29 Apr. 1349).

32. Broken covenant cases totaled fifty-two at Oakington and twenty-three at Horwood. Of nine Horwood covenant cases specifying the nature of the broken agreement, three were equivalent to debt actions because they involved a promise to pay. If around one third of all Horwood covenant actions actually involved debts, then the data on new debt disputes in Figure 2 would require very slight adjustment upward. However, adding one-third of Horwood covenant actions to the debt actions would hardly change the picture for the 1330s and 1340s at all, since there was a total of only two covenant actions in 1331–40 and three such actions in 1341–50. At Oakington, none of the twelve cases specifying the nature of the broken agreement mentions a promise to pay.

https://doi.org/10.1017/S0738248000000791 Published online by Cambridge University Press

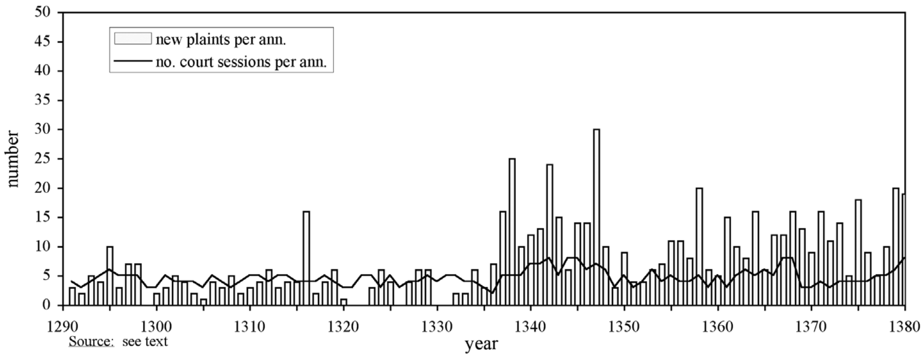

Figure 1. Oakington: new debt plaints per annum, 1291–1380.

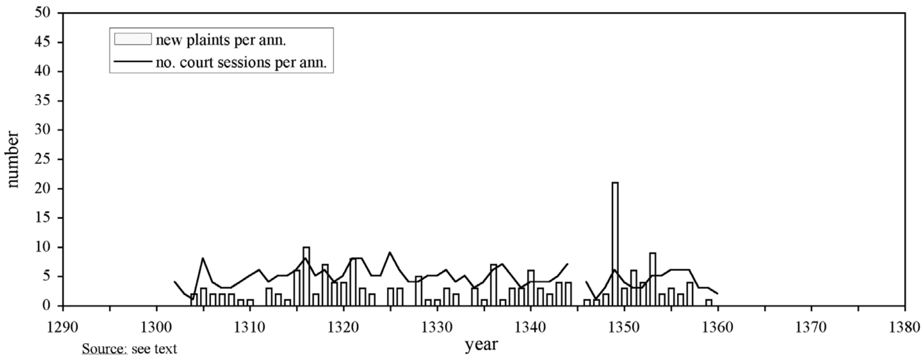

Figure 2. Great Horwood: new debt plaints per annum, 1302–1360.

When interpreting debt litigation, it must be remembered that debt plaints only tell us about credit transactions where the debtor failed to repay and the matter came to court. Such credit relationships were almost certainly a minority of the total.[33] What economic factors account for the two courts' litigation patterns and the differences between them, especially with regard to debt litigation in the late 1330s? The timing of the rise in Oakington debt litigation from 1337 invites the suggestion that the well-known circum-

33. Briggs, "Rural Credit," 26–32, considers the possibility that some court roll debt entries record the formation of new credit relationships ("recognizances") rather than recovery upon default at the end of a credit relationship, reaching the conclusion that this issue can be ignored because examples of possible recognizances are extremely rare in these rolls.

https://doi.org/10.1017/S0738248000000791 Published online by Cambridge University Press

stances of coin shortage and economic distress caused primarily by heavy taxation at the start of the Hundred Years War were a key factor.[34] Having insufficient money with which to pay their own taxes and dues, creditors were perhaps driven to court to recover debts that in better circumstances might have gone uncollected for longer. Significantly, Schofield argues that similar heavy taxation levels contributed to an increase in debt plaints at Hinderclay (Suffolk) in the mid-1290s.[35] Also, the claim that the Oakington litigation surge reflects the widespread crisis affecting the peasantry in the years 1337–41 is supported by evidence from other manor courts. Razi found that between 1270 and 1348 the peak in the annual totals of debt pleas at Halesowen occurred in 1340–42.[36] Also, Bennett's study of Brigstock (Northamptonshire) used four samples of fifty civil pleas each from the periods 1301–3, 1314–16, 1331–33, and 1343–45, and found that whereas debt actions accounted for no more than ten percent of pleas in the first three samples, they jumped to 44 percent in the period 1343–45.[37] Both historians interpreted these patterns of debt litigation as related to short-term economic changes.

The sudden increase in Oakington debt litigation from 1337 might therefore belong to a more general pattern in which recovery of more debts than usual was sought in response to economic difficulties associated particularly with heavy taxation and other wartime demands on the peasantry. The absence of a comparable shift in debt litigation at Great Horwood might accordingly be a sign that the debilitating effects of royal demands were less pronounced there than elsewhere. There is certainly some evidence that the impact of such impositions was relatively light at Horwood. For example, it has been suggested that the burden of purveyance fell heavier in Cambridgeshire than in Buckinghamshire.[38] However, the returns to the *Nonarum Inquisitiones* of 1340–41 suggest a different picture of the

34. For these conditions, see E. B. Fryde, "Parliament and the French War, 1336–40," in *Historical Studies of the English Parliament,* vol. 1, *Origins to 1399,* ed. E. B. Fryde and Edward Miller (Cambridge: Cambridge University Press, 1970), 255–61; J. R. Maddicott, "The English Peasantry and the Demands of the Crown, 1294–1341," in *Landlords, Peasants and Politics in Medieval England,* ed. T. H. Aston (Cambridge: Cambridge University Press, 1987), 285–359; Michael Prestwich, "Currency and the Economy of Early Fourteenth-Century England," in *Edwardian Monetary Affairs,* ed. N. J. Mayhew, British Archaeological Reports 35 (Oxford, 1977), 45–58.

35. Phillipp R. Schofield, "Dearth, Debt and the Local Land Market in a Late Thirteenth-Century Village Community," *Agricultural History Review* 45 (1997): 15–16. Harvest failure forms another major explanation for the rise in Hinderclay debt litigation.

36. Razi, *Life, Marriage and Death,* 37.

37. Bennett, *Women,* 207, 217.

38. Maddicott, "The English Peasantry," 301. Purveyance was the system whereby royal officials requisitioned foodstuffs from the populace for military campaigns.

https://doi.org/10.1017/S0738248000000791 Published online by Cambridge University Press

effects of taxation and the condition of the peasantry in the case study villages. Those returns arose from an investigation into the shortfall in the expected yield of a tax of a ninth of corn, wool, and sheep granted in 1340. An important reason given for the shortfall was abandonment of formerly cultivated land. In Cambridgeshire and Buckinghamshire, much abandonment was put down to tenant poverty, to which the high incidence of taxation presumably contributed even where it was not explicitly mentioned. Interestingly, the Oakington, Cottenham, and Dry Drayton jurors did not report uncultivated land, and such reports were uncommon in the hundreds where those parishes lay. However, three of the five parishes leaving returns in Great Horwood's hundred (Mursley) did complain of land lying waste, although no return for Horwood itself survives.[39] Problems therefore exist with the argument that the sole explanation for differing patterns of debt litigation around 1340 lies in contrasts between the case study villages in economic pressures on peasant creditors in general, and in the effects of taxation in particular.[40]

Moreover, some features of Figure 1 are not easily explained if the data on debt lawsuits are taken to reflect economic changes alone. The rise in Oakington litigation is a long-term shift, not a temporary fluctuation. Debt plaints there peaked in 1347, in the period when the worst fiscal demands of 1337–41 had perhaps eased.[41] With the exception of a dip in the 1350s, debt litigation levels remained high in the decades after the Black Death of 1348–49. This is not easy to square with the demographic losses and presumed upturn in the amount of coin in circulation per head of popula-

39. *Nonarum Inquisitiones in Curia Scaccarii, temp. Regis Edwardi III* (London: Record Commission, 1807), 203–4, 326–40; Alan R. H. Baker, "Evidence in the *Nonarum Inquisitiones* of Contracting Arable Lands in England during the Early Fourteenth Century," *Economic History Review* 19 (1966): 518–32; Edmund Venables, "The Results of an Examination of the 'Nonae Rolls' as They Relate to Cambridgeshire," *Proceedings of the Cambridgeshire Antiquarian Society* 1 (1859): 7–14. Marilyn R. Livingstone, "The *Nonae:* the Records of the Taxation of the Ninth in England, 1340–41" (Ph.D. diss., Queen's University Belfast, 2003) is an exhaustive study of unpublished documents pertaining to the ninth; I thank Marilyn Livingstone for confirming the absence of a return for Great Horwood.

40. Peasants' difficulties in the later 1330s arose from problems such as low prices and livestock disease as well as the demands of the Crown; see, for example, Mavis Mate, "The Agrarian Economy of South-East England before the Black Death: Depressed or Bouyant?" in *Before the Black Death: Studies in the "Crisis" of the Early Fourteenth Century,* ed. B. M. S. Campbell (Manchester: Manchester University Press, 1991), 90–103.

41. Maddicott, "The English Peasantry," 289, 351, suggests that the crisis of 1340–41 marked a turning point; see also W. M. Ormrod, "The Crown and the English Economy, 1290–1348," in *Before the Black Death,* ed. Campbell, 158–59. However, Martin Allen, "The Volume of the English Currency, 1158–1470," *Economic History Review* 54 (2001): 595–611, stresses that the 1330s marked the beginning of a sustained rather than temporary downturn in the amount of coin in circulation.

https://doi.org/10.1017/S0738248000000791 Published online by Cambridge University Press

tion consequent upon the plague.[42] Relatively high litigation levels are undoubtedly consistent with these changes if more money per capita and rising peasant prosperity are seen as likely to have boosted underlying lending.[43] On the other hand, if increased coin per capita meant debtors could repay more easily than before, and that lenders were not as hard pressed as in the 1330s and 1340s, one might expect a litigation decline after the Black Death. The simple fact of demographic collapse might also lead one to expect a drop in absolute numbers of lenders and borrowers after 1350, with correspondingly fewer debt actions.

Explaining the contrasting litigation patterns at Oakington and Horwood in terms of economic conditions leaves uncertainties and inconsistencies. Therefore, a closer look at litigation process in the two courts is definitely required. Such a course is further encouraged by evidence from the court rolls of Broughton (Huntingdonshire) and Cuxham (Oxfordshire), which, although by no means of the same high quality as the Horwood, Oakington, Halesowen, or Brigstock records, do nonetheless help to place in perspective the differences in counts of debt plaints identifiable in Table 1 and Figures 1 and 2. Where a court roll series is broken, it is difficult to estimate the number of court sessions held for which records do not survive, which means reliable figures for new plaints per annum cannot be produced. For this reason the comparison in Table 2 is based on the slightly different measure of the average number of new plaints per recorded court session. Interestingly, Table 2 shows that as at Horwood, but in contrast to Oakington, Halesowen, and Brigstock, Broughton and Cuxham did not witness a debt litigation rise in the late 1330s and 1340s.[44] At Cuxham at least, this absence of a growth in lawsuits perhaps reflects not just local economic conditions, but also the court's unattractiveness as a forum in which to sue. Cuxham, like Thorncroft, was a Merton College property,

42. On increased post-plague per capita circulation of coin, see N. J. Mayhew, "Money and Prices in England from Henry III to Edward III," *Agricultural History Review* 35 (1987): 129; Allen, "Volume of the English Currency," 606; see also Jim Bolton, "'The World Turned Upside Down': Plague as an Agent of Social and Economic Change," in *The Black Death in England,* ed. Mark Ormrod and Phillip Lindley (Stamford: Paul Watkins, 1996), 42–43.

43. For the argument that medieval credit was constrained by the coin supply, see Pamela Nightingale, "Monetary Contraction and Mercantile Credit in Later Medieval England," *Economic History Review* 43 (1990): 560–75.

44. For Broughton in particular, the number of court sessions for which records survive is much smaller than in the case of Oakington or Horwood. P. D. A. Harvey, *A Medieval Oxfordshire Village: Cuxham, 1240 to 1400* (Oxford: Oxford University Press, 1965), 11–12, 146–47, argues that relatively few Cuxham sessions were held for which rolls are unavailable.

https://doi.org/10.1017/S0738248000000791 Published online by Cambridge University Press

Table 2. Average number of new debt plaints per recorded court session in four manor courts

Oakington		Gt Horwood		Broughton		Cuxham	
Years	No.	Years	No.	Years	No.	Years	No.
1291–1300	1.4	—	—	1288–1299	3.3	—	—
1301–1310	1.4	1302–1310	0.5	1300–1309	2.5	1301–1310	2.4
1311–1320	1.6	1311–1320	0.8	1310–1319	2.7	1311–1320	3.0
1321–1330	0.8	1321–1330	0.5	1320–1329	2.4	1321–1330	1.0
1331–1340	2.0	1331–1340	0.6	1330–1340	2.0	1331–1340	1.2
1341–1350	2.2	1341–1350	1.1	—	—	1341–1350	0.5
1351–1360	1.9	1351–1360	0.8	—	—	1351–1360	0.2
1361–1370	2.3	—	—	—	—	—	—
1371–1380	2.7	—	—	—	—	—	—

Source: CUL Q boxes 3, 4, and 11; NCA 3912–3915; Edward Britton, *The Community of the Vill: A Study of the History of the Family and Village Life in Fourteenth-Century England* (Toronto, 1977), 111–13; P. D. A. Harvey, ed., *Manorial Records of Cuxham, Oxfordshire, c. 1200–1359,* Oxfordshire Record Soc. 1 and Historical Manuscripts Commission JP 23 (1976), 607–709.
Note: Oakington and Horwood figures show debt plus half all "unknown" plaints (see text).

and as the earlier discussion of Thorncroft suggested, Merton was not a lord interested in adapting curial procedures to encourage private business.[45]

Plaint Initiation and Mesne Process

This section reconstructs and compares litigation procedure in the two case study courts from the point of plaint initiation to the point when both plaintiff and defendant were present in court. It is based on the terse memoranda in the record of each court session, which noted progress achieved and precepts issued in each plaint. The evidence on debt and non-debt plaints is considered together in this section.

As far as the rolls indicate, plaint initiation took place in broadly the same manner at both Oakington and Horwood. Personal plaints were begun orally without a writ, and process often got under way between court sessions as plaintiffs approached court officers to initiate proceedings. Yet the procedures used by those officers to keep track of basic details about each new plaint reveal a notable difference between the two jurisdictions. In many manors, and presumably at Horwood, individual manorial officers relied on personal documents or memory to keep abreast of parties'

45. As at Thorncroft, the Cuxham court became primarily a forum for protecting seigniorial interests, as reflected in the predominance from the 1320s of business such as encroachments on the demesne.

https://doi.org/10.1017/S0738248000000791 Published online by Cambridge University Press

names, the type of action, and so on.[46] At Oakington, by contrast, the court roll itself was used to record these essential details. From the 1330s in particular, each Oakington roll begins with a list of that session's new plaints. Each entry comprises the names of plaintiff and defendant, the type of case and the identity of the pledge or pledges to prosecute. This section of the roll normally has the marginal annotation *querele* (plaints).[47] The *querele* section provided those considering a particular plaint later on with a convenient means of checking key information on the matter. That this happened is shown by interlineated notations in the *querele* section that updated each entry in the light of subsequent developments in the cases. At Horwood, however, the term *querela* or *nova querela* is used occasionally as a marginal notation, but inconsistently, in that it can appear beside a plaint at any stage of its progress toward termination. In that court, the term was rarely used to identify the summary statement of essential facts about a new plaint.

Putting all the information about new plaints in one place at Oakington meant less reliance on ephemeral documentation or the memories of officers who were liable to be replaced from time to time. Such enhancements made the court roll a more authoritative document. Litigants are likely to have benefited, since officers implementing mesne process using consolidated lists of plaints rather than scattered information probably worked faster and made fewer errors. In personal litigation, the written record of each stage of a suit provided parties with a point of reference in the event of disagreements about its progress or termination.[48] Although evidence to

46. Small pieces of parchment containing notes about a case are sometimes found sewn to a court roll. These were working documents of curial officers used to record necessary details, essentially parties' names and the type of action. Examples: Newton Longville (Buckinghamshire), NCA 3873 (27 Oct. 1373); Bottisham (Cambridgeshire), London, The National Archives, SC2 155/47 (31 July 1322). Similar ancillary documentation was also used to keep track of personal actions in the complex of courts within Wisbech Hundred (Cambridgeshire): Parkin, "Courts and the Community," 55. The low survival rate of such ephemeral documents probably underestimates the true extent of their use.

47. This form appears sporadically in the earlier rolls, involving no more than twenty-two plaints before 1329. The fourteenth-century court rolls of West Halton (Lincolnshire) provide another instance of a *querele* section: Westminster Abbey Muniments 14545, 14546, 14563.

48. For instance, at Newton Longville on 10 July 1331 (NCA 3873), Richard Bacon brought a plea of trespass against John le Sweyn, complaining that John had depastured his hay to his damage 6*d.* John replied that he had committed a trespass against Richard, but it had taken place over a year ago, and Richard had already sued him in the same court on account of that trespass. The case had been terminated, he said, by licence to agree. John claimed that since then he had not done any trespass to Richard. An inquest decided that John was indeed innocent of any trespass other than that for which Richard had already had satisfaction through his earlier action. The entry does not tell us whether the jury searched

https://doi.org/10.1017/S0738248000000791 Published online by Cambridge University Press

prove the point is unavailable, it is possible that full and systematic record keeping maintained in a single location like that represented by the *querele* section may have stimulated litigation because it was equated with fair and efficient justice.

The case study courts followed the rule that no judgment could be reached in a personal action in the absence of the defendant.[49] Mesne process aimed at securing the simultaneous appearance of both parties was therefore crucial. An investigation suggests that the two courts observed essentially the same procedures in mesne process. Research to date on manorial mesne process consists largely of generalizations based on a few explicit court roll statements of practice, most notably those from King's Ripton (Huntingdonshire). These indicate that three summonses, three distraints, and three essoins (excuses for non-attendance) were allowed on that manor before appearance was required.[50] However, the entries relate to an unusual form of land plea, and they are unreliable as a general guide to privileges of delay allowed in personal actions.[51]

This is confirmed by analysis of mesne process in the Oakington and Horwood personal plaints.[52] In both courts, a single summons to the defendant was made, often between court sessions. If it failed, the court apparently proceeded to attachment or distraint.[53] Essoins were entered in both courts as a legitimate means of delaying appearance, but they are not numerous enough to allow one to compare rules concerning essoins in

---

the rolls to trace the earlier case, but it is obvious that a verdict reached using the evidence of the rolls stood most chance of being accepted by all parties. Tracing the earlier suit in the records and determining when it had begun and ended required, of course, that the court roll contained a sufficiently full note of each stage of the suit. For another example of an enquiry as to whether a trespass dispute had already been settled, see *William v. Hadenham,* court of Landbeach (Cambridgeshire) (Cambridge, Corpus Christi College Archives XXXV/122, 15 Aug. 1382).

49. Terminations in the absence of the defendant occurred when the plaintiff failed to prosecute or "receded" (see Table 4 for termination methods).

50. Maitland, *Select Pleas,* 107, 114–15, cited by Clark, "Medieval Debt Litigation," 69; Beckerman, "Customary Law," 253–54; Beckerman, "Procedural Innovation," 243; Poos and Bonfield, *Select Cases,* xl. See also Homans, *English Villagers,* 315: "The defendant was allowed a certain delay before he was forced to make his defence or lose the case by default. The usual custom was that he was allowed three summonses, three distraints, and three essoins."

51. This involved use of the "little writ of right," a privilege of villein sokemen of ancient demesne manors (land belonging to the royal estate at the time of Edward the Confessor).

52. For a fuller account, see Briggs, "Rural Credit," 55–86.

53. Orders to summon are recorded in only twenty-six Oakington and nine Horwood personal cases. Numerous precepts in the form "AB is summoned to respond to CD in a plea of debt and does not come, therefore order is made to attach/distrain" suggest that a summons was never made more than once.

https://doi.org/10.1017/S0738248000000791 Published online by Cambridge University Press

the two courts. Process after the initial summons was essentially an open-ended form of the distraint procedure that preceded the stages of *capias* or grand distress in all personal actions begun by writ in the common law courts.[54] As in the common law process, the initial objective in the manor courts was to obtain personal pledges (sureties) for the defendant. If the defendant did not produce pledges, then his or her goods could be taken. If at any stage pledges could be found, they could come and replevy (or recover) the goods for the defendant. If the defendant made further default, then goods could be seized once again. Together, the finding of pledges and the seizing of movables made up the process of distraint. There was no limit set on the number of orders to attach or distrain that could be made. The close correspondence in mesne process at Oakington and Horwood suggests that the stewards presiding over the two courts took guidance on procedures from a common written source. Significantly, mesne process in the two courts is strikingly close to that laid down in the late thirteenth-century legal text *Britton* for plaints begun without writ in county courts and other lower courts.[55]

Yet the distraint of chattels or livestock was not the sole sanction available to the manorial officers who implemented the procedures for compelling appearance. Both case study courts also had the power to amerce (that is, fine) defendants or their pledges following default in a personal plaint. Strict imposition of this pecuniary punishment would no doubt have enhanced a court's reputation for strong action against contumacious defendants.[56] Significantly, however, only the Oakington court made such amercements a routine part of its procedures. Table 3, column 1, gives figures on plaints explicitly noting at least one default by a defendant ("default cases"), while columns 2 and 3 indicate what percentage of those "default cases" record the amercement of that defendant, or of his or her pledges. Sometimes the defendant was amerced, and at other times the pledges. However, it is clear that in all the "default cases," either defendant or pledges were at risk of amercement. The most crucial figures therefore appear in column 5, which shows that at Horwood, amercement of defendants or their pledges for default occurred in a maximum of 19.4 percent of cases in the first two periods into which the data are divided and

54. The *capias* writ allowed the sheriff to arrest the defendant so that he might "have the body"; the writ of grand distress allowed him to distrain all the defendant's land and chattels: Donald W. Sutherland, "Mesne Process upon Personal Actions in the Early Common Law," *Law Quarterly Review* 82 (1966): 482–96.

55. Francis Morgan Nichols, ed., *Britton* (1865; repr., Holmes Beach, Fla.: W. W. Gaunt, 1983), 1:128, 160.

56. Default in personal actions discussed here was distinct from default of "common suit" owed by manorial tenants at every court session; see Briggs, "Rural Credit," 65–66.

https://doi.org/10.1017/S0738248000000791 Published online by Cambridge University Press

Table 3. Personal plaints featuring default by a defendant in which that defendant and/or his pledges to appear suffered amercement, Oakington and Great Horwood[a]

		1	2		3		4		5	
	Date	Total cases with at least 1 default[b]	Defendant amerced		Pledges of defendant amerced		Both defendant and pledges amerced		Either defendant or pledges amerced	
Oak.	1291–1320	31	2	(6.5)	1	(3.2)	0	(0.0)	3	(9.7)
	1321–1350	62	10	(16.1)	9	(14.5)	0	(0.0)	19	(30.6)
	1351–1380	181	100	(55.2)	54	(29.8)	22	(12.2)	132	(72.9)
Hor.	1302–1320	34	1	(2.9)	5	(14.7)	0	(0.0)	6	(17.6)
	1321–1350	62	1	(1.6)	11	(17.7)	0	(0.0)	12	(19.4)
	1351–1360	13	0	(0.0)	0	(0.0)	0	(0.0)	0	(0.0)

Source: CUL Q boxes 3, 4, and 11; NCA 3912–3915.

[a] In parentheses are the values in columns 2–5 as percentages of totals (column 1).

[b] Included are only those cases stating explicitly that the defendant failed to appear. Cases could last for more than one court session for other reasons (see n. 57).

https://doi.org/10.1017/S0738248000000791 Published online by Cambridge University Press

disappeared after 1350. At Oakington, amercement was even rarer before 1320, but by the post-1350 period the situation had changed dramatically, with defaulting defendants or their pledges amerced in almost three quarters of cases. A change in Oakington's amercement procedure had clearly occurred sometime in the second quarter of the fourteenth century, resulting in a substantial improvement in the curial machinery, while the reverse occurred at Horwood.

A court's ability to compell defendants to appear is likely to have been a major consideration for would-be plaintiffs.Therefore, it is necessary to evaluate the performance of the officers responsible for carrying out court orders by looking at the number of court sessions in which plaints were mentioned. The usual reason why a plaint continued for more than a single session was non-appearance of the defendant. A large proportion of plaints lasting for more than one court session is therefore primarily indicative of low efficiency in mesne process, but one must also bear in mind that a case could continue in the record for multiple court sessions after its termination because of lack of success in enforcing the court judgment.[57]

It appears that Oakington was more effective than Horwood in implementing the procedures for compelling appearance. The proportion of personal plaints dispatched in a single court session before 1350 was 80.2 percent at Oakington, compared with 65.4 percent at Horwood.[58] After the Black Death, one would expect an increase in the time taken to resolve suits as manorial authority weakened. Unfortunately, deterioration in record survival means that a clear picture of the situation at Horwood is possible only up to 1360, and a proper comparison of the two courts after 1350 is impossible. Interestingly, the Horwood court continued to perform almost as well in the decade 1351–60 as it had previously, since the percentage of plaints completely resolved in a single session fell by an insignificant margin, from 65.4 to 63.3 percent. Increased plaint resolution time can certainly be seen in the period 1351–80 at Oakington, when the percentage of actions dealt with in one session fell from 80.2 to 55.7 percent. However, one should not imagine that post–1350 Oakington personal suits often

57. Most but not all cases lasting for more than one court session specifically mention the defendant's default and an order to attach or distrain him or her. At other times, the reasons for adjournments or delays are unclear. There were of course delays owing to an essoin or (occasionally) a loveday (a day appointed for informal extra-curial settlement of parties' differences), which were legitimate options and do not indicate slackness in mesne process. Overall, however, the number of court sessions in which a case appeared is a good measure of the speed of justice.

58. Here and in the remainder of this paragraph cases are treated as resolved only where a settlement is recorded.

https://doi.org/10.1017/S0738248000000791 Published online by Cambridge University Press

dragged on for years. In fact, 89.3 percent of such suits were resolved in three sessions or fewer.

That almost nine out of ten Oakington plaints still took under six months from initiation to completion in the period 1351–80 is impressive. It is also revealing, considering Beckerman's observation that the manor court declined in importance as a venue for personal litigation after the Black Death, largely because the civil justice it provided had become prohibitively slow.[59] The key development leading to this, Beckerman argues, was the increasing dominance of the presentment jury.[60] Presentment juries, consisting of bodies of substantial men selected from among the court suitors, were charged with reporting or "presenting" offenses at each court session. They appeared first in the public or petty criminal business of the view of frankpledge in the later thirteenth century, and in the fourteenth century their involvement spread to the very various infringements of the lord's rights and of manorial custom dealt with in the court baron. Presentment replaced an earlier, slower process whereby such offenses came to the court's attention in the form of lawsuits brought by individual manorial officers. Presentment procedure meant that business could be dealt with more quickly than previously, and that lords' costs were consequently reduced as fewer court sessions needed to be held. Yet it also meant that manorial civil litigation was discouraged, Beckerman argues, since plaintiffs suffered lengthening delays in seeking resolution of their actions. At Oakington, however, there is no sign of any abandonment of civil plaint procedure by 1380, which is not surprising given that Oakington plaint resolution times remained low and there was no decline in the number of court sessions held annually.[61] Any decline in the attractiveness of civil

59. Beckerman, "Procedural Innovation," 244–45. Between 1351 and 1380, the average gap between Oakington court sessions was 77.4 days. Personal plaints terminated in three court sessions therefore lasted on average for 154.8 days, or just over five months.

60. Beckerman, "Procedural Innovation," 226–50.

61. Significantly, at Oakington the average number of court sessions held each year in the post-1350 decades did not fall below the pre-1350 norm. The average annual number of court sessions was: 1291–1300: 4.4; 1301–10: 4.1; 1311–20: 4.3; 1321–30: 4.1; 1331–40: 4.5; 1341–50: 6.3; 1351–60: 4.3; 1361–70: 5.2; 1371–80: 4.7. Beckerman cites Horwood as a prime example of a court that held fewer sessions after the Black Death than previously: "Procedural Innovation," 244. It is true that by the end of the fourteenth century a pattern emerges suggesting that few sessions were held there other than the two annual "great courts." This contrasts with the earlier period when up to nine were held annually, though that peak year (1325) was exceptional. Yet Beckerman ignores the issue of record survival, which undoubtedly becomes poor after 1360. For example, between 1360 and 1400 no records at all survive for the years 1363, 1372, and 1375–82, and for numerous other years records of only one "great court" survive. Deteriorating record survival makes it difficult to determine the number of court sessions actually held after 1360.

https://doi.org/10.1017/S0738248000000791 Published online by Cambridge University Press

justice procedure at Oakington must have come after the period covered by this study, perhaps in the fifteenth century.

Overall, plaint initiation and mesne process followed similar basic steps in the two courts. This might at first glance lead one to conclude that the differing chronological litigation patterns at Oakington and Horwood cannot be explained by differences in procedures for getting both parties to court. However, this would be to ignore important contrasts in the way this common set of procedures was carried out. Oakington handled plaint initiation and mesne process more effectively than Horwood, using an enhanced recording system (the *querele* section) and stronger measures against defaulting defendants (more routine use of amercements). These two features must at least partly explain why more cases were resolved in a single court session at Oakington than at Horwood before 1350. It is especially significant that the emergence of both these features is dateable to the second quarter of the fourteenth century and, in the case of the *querele* section, to the 1330s in particular. The long-term rise in Oakington debt litigation from the later 1330s may have been in some measure a response to the introduction of new procedures that advantaged would-be plaintiffs. Equally, the lack of a rise in Horwood debt litigation in the late 1330s fits with the absence of change in its procedures of plaint initiation and mesne process.

Modes of Plaint Termination and Trial

This comparison of litigation procedure now turns to the methods used to bring a personal plaint to a conclusion. As with the procedures for plaint initiation and mesne process, Oakington and Horwood shared essentially the same methods of plaint termination and trial (see Table 4).[62] Section A of the table shows modes of termination in cases that did not reach trial and pleading. These methods allowed either plaintiff or defendant to resolve a case without trial at any stage after its initiation. Each method operated in basically the same fashion in both courts.

In "pleaded" cases, the defendant appeared and denied all or part of the plaintiff's charge and sought a trial and court verdict. As section B of Table 4 shows, there were two alternative trial methods: compurgation, which involved swearing a formal oath (usually a denial of culpability) with the

62. For use of these same termination methods elsewhere, see Marjorie Keniston McIntosh, *Autonomy and Community: The Royal Manor of Havering, 1200–1500* (Cambridge: Cambridge University Press, 1986), 195–99, and Schofield, "Peasants and the Manor Court," 16–17.

https://doi.org/10.1017/S0738248000000791 Published online by Cambridge University Press

Table 4. Termination methods of all civil personal plaints, Oakington and Great Horwood

	Oakington				Great Horwood			
	1291–1350		1351–1380		1302–1350		1351–1360	
No. plaints	1046		657		462		128	
A. not pleaded								
undefended	148	(14.1)	37	(5.6)	63	(13.5)	20	(15.6)
confession	—	—	—	—	14	(3.0)	11	(8.6)
non-prosecution	42	(4.0)	168	(25.4)	12	(2.6)	3	(2.3)
false plnt./plaintiff recedes	88	(8.4)	48	(7.3)	15	(3.2)	6	(4.7)
licence to agree	332	(31.6)	219	(33.1)	206	(44.2)	62	(48.4)
loveday	1	(0.1)	7	(1.1)	7	(1.5)	1	(0.8)
formal recognizance	2	(0.2)	0	(0.0)	2	(0.4)	0	(0.0)
search rolls	—	—	—	—	2	(0.4)	0	(0.0)
B. pleaded (trial methods)								
Inquest[a]	183	(17.4)	138	(20.9)	66	(14.2)	8	(6.3)
Jury[b]	94	(8.9)	0	(0.0)	—	—	—	—
compurgation	7	(0.7)	3	(0.5)	18	(3.9)	2	(1.6)
C. other/unknown								
other	2	(0.2)	0	(0.0)	9	(1.9)	0	(0.0)
unknown	153	(14.5)	41	(6.2)	52	(11.2)	15	(11.7)
Total terminations[c]	1052	(100.0)	661	(100.0)	466	(100.0)	128	(100.0)

Source: CUL Q boxes 3, 4, and 11; NCA 3912–3915.
Note: Figures in parentheses represent percentges of all terminations in the period concerned.
[a] Inquisitio
[b] Iurata
[c] One or more plaints terminated two different ways in three of the four periods

assistance of "oath helpers"; and trial by jury or inquest. The emergence of jury trial in the late thirteenth and early fourteenth centuries as a means of finding verdicts in private lawsuits is one of the fundamental developments in medieval manorial adjudication documented by Beckerman. The rendering of civil judgments by a select group of jurors superseded the earlier thirteenth-century practice of referring private disputes to the entire body of court suitors and produced a rival to compurgation as a trial method.[63]

The remainder of this section investigates the operation of trial methods in the two courts, especially the role of juries. The manner in which a seigniorial court conducted trials in personal actions was probably a major consideration for plaintiffs contemplating a suit in that court. Although it is unlikely that all or even most plaints were initiated with the desire to go all the way to trial, an action did not necessarily proceed as planned

63. Beckerman, "Procedural Innovation," 202–19.

https://doi.org/10.1017/S0738248000000791 Published online by Cambridge University Press

once begun, and the possibility of pleading and trial was always present. Perceptions of the modes of trial available in local courts must therefore have been crucial to litigation strategy, as both parties weighed up the advantages or disadvantages of moving toward either a court judgment, or an early termination of the lawsuit.[64] Knowledge of trial procedures must also have influenced those still at the earlier stage of contemplating the formation of a contract or debt obligation, since they could not ignore what might ultimately happen if things went wrong. There was scope for local variation in these matters, for example in the extent to which the jury, as opposed to compurgation, was understood by both suitors and court administrators as the correct mode of trial in personal actions. Stewards presiding over manor courts are unlikely to have absorbed a single coherent view on this from the literature of law teaching. For instance, there are two versions of a treatise on pleading and procedures in local jurisdictions that present contrasting views on the proper modes of trial in personal actions in manor courts, one stating that compurgation but not jury trial was allowed, the other that trial by jury was permissible.[65]

It is therefore crucial to know in detail whether or not manor courts observed similar practices in the operation of the major modes of trial. Ideally, one would provide answers to the questions that must have mattered most to contemporaries. For instance, how would a jury be formed? How quickly, in what manner, and at what financial cost, if any, would it perform its tasks? What would be the likely identity of the jurors?[66]

Some important points can be established. For example, if taken at face value, the rolls of both Oakington and Horwood indicate that in the majority of cases, a trial jury returned its verdict at the court session in which it was requested. Plaintiffs who valued speed of justice must have welcomed this lack of delay in receiving jury verdicts.[67] On the issue of

64. On litigation strategies, see Schofield, "Peasants and the Manor Court," 10–26.

65. John S. Beckerman, "Law-Writing and Law Teaching: Treatise Evidence of the Formal Teaching of English Law in the Late Thirteenth Century," in *Learning the Law: Teaching and the Transmission of Law in England, 1150–1900,* ed. Jonathan A. Bush and Alain Wijffels (London: Hambledon Press, 1999), 33–50.

66. Rather than being concerned with understanding how juries did their work, most studies of manorial juries and jurors are part of an attempt to identify and characterize village elite families; see, most recently, Sherri Olson, "Jurors of the Village Court: Local Leadership before and after the Plague in Ellington, Huntingdonshire," *Journal of British Studies* 30 (1991): 237–56.

67. Only six Horwood actions (all non-debt) and twenty-eight Oakington actions (eleven debt and seventeen non-debt) feature entries where jury trial is requested and then ordered by the court to return its verdict at a subsequent court session. The entries recording the remaining 455 jury verdicts take one or other of the forms illustrated by the following examples: "It appears by the inquest (*compertum est per inquisitionem*) in which Robert

https://doi.org/10.1017/S0738248000000791 Published online by Cambridge University Press

cost, it is clear that in the case study courts, no fee was levied to obtain trial by jury in a personal action. This contrasts with inquests in disputes over real property, which usually required the payment of a fine.[68]

Unfortunately, the nature of the court roll entries that refer to trial juries make it extremely difficult to reconstruct other significant aspects of their work. Most important, the names of trial jurors in personal actions are seldom provided. This makes it impossible to know whether the courts studied favored a permanent jury, sitting with unchanged personnel and hearing every case that came to trial at a single court session, or a different set of jurors chosen afresh for each case.[69] The absence of trial jurors' names, as well as their numbers, also prevents assessment of any relationship between the trial jury and the various presentment bodies in the two courts. This is important, as it might have been the case that an interpersonal matter would simply have been referred to the familiar village notables of the presentment jury once a defendant had chosen trial by jury. Obviously, issues relating to the appointment and identity of trial jurors have a crucial bearing on the parties' perceptions of the advantages and disadvantages of jury trial.

Relying on the court rolls' terms for juries cannot provide an easy solution to the task of distinguishing different juries and establishing the

---

Cademan plaintiff and John Burman defendant place themselves in a plea of trespass that the aforesaid John trespassed against the aforesaid Robert namely by killing Robert's two sheep with his dog to damages of 2*s.* 6*d.* Therefore it is considered etc. that the aforesaid Robert shall recover the said 2*s.* 6*d.* damages and the aforesaid John is in mercy and order is made to levy" (Q 5, m.14d, ?17 June 1354); "John Churchyard is attached to respond to Agnes Stephens concerning a plea as to why he took and carried away the grain of Agnes namely wheat and beans to the value of 2*s.* growing at le Flete against the peace etc., whereof she says that she has damages to the value 2*s.* etc. and John comes and defends etc. and well defends that he neither took nor carried away Agnes' grain and places himself upon inquest. The jurors say upon their oath that the aforesaid John carried away grain to Agnes' damage 1*d.* therefore she shall recover 1 *d.* against him and John is in mercy" (NCA 3913, m.15, 15 Oct. 1314).

68. This is probably related to the fact that in personal actions the defendant sought the jury, whereas in real actions the claimant did so; see Beckerman, "Procedural Innovation," 212 n. 76.

69. Beckerman refers to a permanent panel of jurors at Rickleigh (Yorkshire) in 1351, but does not indicate how he concludes the jury was of this type: Beckerman, "Procedural Innovation," 215; Beckerman, "Customary Law," 33–34. At Oakington after 1350, clues about the appointment of trial juries emerge. The bailiff was amerced more than once for failing to return the "list" (*panellus*) that apparently contained the names of the jurors, thereby preventing the inquest from appearing and giving judgment. A *panellus* suggests jurors appointed specially in order to hear a particular case. For examples, see Q 7, m.9d (15 Dec. 1372); Q 8, m.3d (1 Aug. 1379).

https://doi.org/10.1017/S0738248000000791 Published online by Cambridge University Press

relationships between them.[70] Clerks might use a single term to refer to different bodies with distinct functions, or, conversely, use different terms for a single jury. Such concerns arise in the interpretation of the sole example of a possible contrast in jury trial methods in the case study courts. This occurred in the 1330s at Oakington. In the earlier decades of the Oakington rolls, the term *inquisitio* is used to indicate a trial jury. However, from 1331 in the case of non-debt, and 1333 in the case of debt, the term *iurata* came into use to describe a body that gave verdicts in personal pleas.[71] From the early 1330s to the Black Death, therefore, there were two terms in use to describe the trial jury, *inquisitio* and *iurata;* thereafter, however, *iurata* disappears.[72]

Were the two terms used to indicate different forms of trial jury or were they simply employed interchangeably? It is notable that half of that small number of cases in which a trial jury was ordered for a subsequent court session date from the years 1331–48, the period in which the *iurata* was in operation.[73] The jury instructed to render its verdict at a subsequent court meeting was termed an *inquisitio.* On numerous occasions, an *inquisitio* was ordered in court sessions where the roll suggests that the *iurata* was also in use. For instance, an *inquisitio* empowered in 1341 to decide

70. At Horwood, a variety of different terms are used to describe the presentment juries at the view of frankpledge and the halmote. It is possible that this reflects the diversity of the juries in composition and function, though certainty is difficult because the individuals serving on each body are often unnamed. The main presentment body at the view of frankpledge (whose members, usually ten in number, are named) consisted of the chief pledges (heads of tithings, the basic unit of local peacekeeping) acting together (from 1328) with the aletasters and constables. "Double presentment" operated at the Horwood views of frankpledge, whereby a secondary jury or juries responded to its own set of articles and reported on the accuracy of the main jury's report. That secondary body or bodies is called either an "inquest" (*inquisitio;* see, e.g., NCA 3913, m.7d), "the twelve jurors" (*duodecim iurati;* see, e.g., NCA 3914, m.72), or the "free tenants" (*liberi tenentes;* see, e.g., 3913, m.21d). At the halmote, presentments were made by a body or bodies referred to variously as "the homage" (*homagium;* see, e.g., NCA 3914, m.54), "the customary tenants" (*custumarii;* see, e.g., 3914, m.47), or an "inquest" (see, e.g., NCA 3914, m.8). The Horwood situation is further complicated by the appointment of bodies with a variety of different names to present verdicts on specific matters of fact or custom. At Oakington, the situation was apparently simpler, with a single presentment jury usually called "the jurors" from each of the three vills reporting in both the "great courts" (where their names are usually listed from 1327 onward) and the halmotes. See Briggs, "Rural Credit," 104–11.

71. See Q 3, m.15d (12 Oct. 1331) in an "unspecified" case; Q 3, m.18 (Apr. 1333) in debt. Most entries using the term *iurata* begin "it appears by the jury (*compertum est per iuratam*) in which [AB & CD] place themselves that. . . ."

72. After 1350, most references to trial juries take the form "it appears by the inquest (*compertum est per inquisitionem*) in which [AB & CD] place themselves that. . . ."

73. See n. 67 above.

https://doi.org/10.1017/S0738248000000791 Published online by Cambridge University Press

whether Geoffrey King owed John Noteman 7*s.* was appointed at one court and ordered to give its verdict at the next even though other debt and trespass actions were concluded *per iuratam* at the first of these courts, and as a consequence the *iurata* would presumably have been available.[74] This suggests that there were two types of trial jury in operation at Oakington in the period 1331 to 1348: a special *inquisitio,* empowered to go away and investigate the facts in cases where this was appropriate; and a *iurata* appointed to hear all the interpersonal business coming before the court and dispatch it in a single session. There are, admittedly, pieces of information that weigh against this account. In 1346, for example, William Frisby brought a trespass plaint against John Gilbert. In recording the fact that the trial jury in this case was to be respited, the words *inquisitio* and *iurata* were both used in the court roll as if referring to the same body.[75] So although far from clear-cut, the evidence for the appearance of a new form of trial jury in the 1330s is suggestive, and it is significant that indications of such an innovation can be found at a date immediately preceding the Oakington litigation surge. The introduction of a permanent jury panel designed to facilitate the quick resolution of cases may well have appealed to would-be plaintiffs and encouraged their suits. If the *iurata* performed such a function, then this could shed light on the growth in personal actions in the 1330s and 1340s.

Even a careful comparison of the case study rolls leaves many questions about juries unanswered. Beckerman's key themes of the rise of trial jury and presentment jury constitute a general account of changes concerning manorial juries and their effects that is unlikely to be seriously challenged. Yet examination of the place of the jury in the resolution of personal actions at the level of the individual manor court reveals greater complexity than Beckerman's account suggests. Beckerman himself admits that great uncertainty exists with respect to the conduct of jury trial and the relationship between trial jury and presentment jury; he implies that there was the potential for considerable local variation in these matters.[76] Although there are telling signs of the introduction of a new form of jury at Oakington in the 1330s, a development not mirrored at Horwood, the nature of the rolls prevents full reconstruction of key aspects of jury trial in the two courts. We must find records of other jurisdictions that allow us to distinguish different judicial bodies and their functions conclusively, or to establish

74. Q 3, mm. 43–43d (11 July 1341, 26 Sept. 1341). See also, among other examples, Q 3, m.26d (12 May 1337) where an *inquisitio* was ordered in a plea of trespass (*R. Sturmy v. W. Miller*), although seven other cases heard *per iuratam.*

75. Q 4, m.10d (22 Nov. 1346).

76. Beckerman, "Procedural Innovation," 215–16.

https://doi.org/10.1017/S0738248000000791 Published online by Cambridge University Press

the existence of a single jury where it existed.[77] There is no reason to assume that the procedures in jury trial revealed by such investigations would conform to a common pattern.

Enforcement

A final and important area of procedure in personal actions concerned the enforcement of court decisions. In cases where the defendant did not deny liability (an "undefended" termination), or pleading and trial produced a verdict in the plaintiff's favor, the court could compel a defendant to repay the debt or (in non-debt actions) the damages that had been awarded in court, if he or she at first failed to do so. Bringing an action in the manor court thus allowed one to harness manorial authority in collecting one's debts, and a court with a good reputation for enforcement is likely to have attracted litigation.

Comparison of enforcement at Oakington and Horwood shows once again that both courts had basically the same procedures at their disposal. These involved the distraint of a defendant's movables in order to recover an unpaid debt. Nonetheless, contrast between the two courts is also evident, since Oakington sought to reform its implementation of enforcement, while Horwood did not.

Entries in both sets of court rolls refer to additional payments made by plaintiffs to the lord to have the court's assistance in levying debts that remained unpaid even after a court decision had been made in the plaintiff's favor (Table 5).[78] These suggest that enforcement procedure was not always as fast moving as some plaintiffs wished. It is significant that all the additional payments for assistance of the Oakington court in debt recovery date from before 1319. In that year, there was a change in enforcement procedure. The phrase *preceptum est levare* ("order is made to levy"), which apparently represented a standing order to enforce repayment of the debt should it become necessary, is included in entries relating to debt cases of that year. This phrase does not appear in debt entries before

77. Though rare, court records containing information on jury composition adequate for this purpose can be identified, such as the late fourteenth-century court rolls of Willingham (Cambridgeshire): Cambridge, Cambridgeshire Record Office L1/177. I hope elsewhere to publish a study of juries using these records and others.

78. For example, "Matilda Wyot gives the lord 6*d.* to levy five bushels of wheat from Margaret Lemmar and John Cosyn which she previously recovered in this court and the said Margaret and said John are in mercy for the aforesaid detention" (Q 1, m.14, 2 Nov. 1298). For fuller discussion, see Briggs, "Rural Credit," 118–20. For similar payments at Castle Acre and Fulmodestone (Norfolk), see Clark, "Medieval Debt Litigation," 85–86.

https://doi.org/10.1017/S0738248000000791 Published online by Cambridge University Press

Table 5. Payments to lord to have assistance in levying debts recovered, Oakington and Great Horwood

Date plaint begun	Payment to lord	Debt
Oakington		
1297	6*d.*	5 bushels wheat
1297	6*s.*	26*s.*
1298	6*d.*	12*d.*
1298	6*d.*	2 bushels wheat
1300	12*d.*	6*s.*
1301	4*s.*, 6*d.*	12*s.*, 6*d.*
1304	2*s.*	25*s.*
1304	6*d.*	3*s.*
1308	12*d.*	4*s.*
1310	9*d.*	18*d.*
1310	2*s.*	unknown
1311	2*s.*	24*s.*
1312	12*d.*	10*s.*, 6*d.*
1314	2*s.*	15*s.*, 24*s.*, 13*s.*, 4*d.*[a]
1315	12*d.*	1 quarter barley
1316	2*s.*	2 quarters drage
1316	6*d.*	4*s.*
1316	12*d.*	1 quarter barley
Gt Horwood		
1315	6*d.*	1 pair linen cloths[b]
1322	2*s.*	8*s.*[b]
1343	3*s.* 4*d.*	13*s.* 4*d.*[b]

Source: CUL Q boxes 3, 4, and 11; NCA 3912–3915.
[a] It is unclear whether aid in recovery was being sought for each of these debts.
[b] Post-mortem debts.

1319, but in this year and subsequently it is used as a matter of course in all entries recording "undefended" terminations and in pleaded cases where the plaintiff was successful. Similarly, the abbreviation *p' e',* signifying *preceptum est,* appears in the margin of the court roll alongside such entries from 1319 onward but not earlier. An identical innovation—insertion of the previously unused phrase *preceptum est levare* and its abbreviation whenever the plaintiff was successful—also occurred in Oakington non-debt cases from around the same date. In non-debt actions, the order referred to the levying of damages rather than of a debt. The change from 1319 is significant in debt cases because it suggests that from then the court systematically recorded its obligation to back up the creditor whenever a recovery was awarded. Even if the court had been expected to enforce its decisions in this way as a matter of course before 1319, it clearly did so rather haphazardly, as is suggested by the payments made to stimulate

https://doi.org/10.1017/S0738248000000791 Published online by Cambridge University Press

the court into action. At Horwood, by contrast, the phrase *preceptum est levare* is rarely used in entries relating to personal actions, although an analogous term, such as *executio,* occasionally appears in the margins of the Horwood court roll.

The payments in Table 5 should be distinguished from a second kind of payment made by plaintiffs, recorded in the Oakington court rolls but not Horwood's. In five debt cases between 1298 and 1313, plaintiffs made payments "for having speedy justice" (*pro festina iustitia habenda*) against opponents.[79] These payments varied from 6*d.* to 2*s.* This category of additional payment is not strictly relevant to a discussion of the enforcement of court decisions, because these payments were evidently made to expedite the initial appearance of the defendant.[80] However, the payments to get debts levied and payments to expedite proceedings both probably derived from litigants' dissatisfaction with the speed and efficiency of the court before about 1320. One aspect of the Oakington court's attempt to remedy this situation was a better organized system for enforcing judgments in personal actions, which, like the procedural changes detailed in the previous two sections, may explain why litigation increased at Oakington from the 1330s.

The Impact of Differences between Courts

At Oakington, increased litigation distinguished the 1330s onward from preceding decades. An upturn in debt litigation, beginning in 1337, was part of this shift. At Horwood, an increase in the volume of non-debt litigation in the 1340s can be identified, but there was no equivalent change for debt cases. Most significantly, the two courts diverged in the pattern of debt litigation.

An investigation into curial procedure reveals differences in practices for administering personal plaints that can help explain the contrasts between the two courts with respect to chronological litigation movements. Differences in the implementation of litigation procedure arose because Oakington made changes in this area, whereas Horwood did not. No single change

79. For example, "Robert son of Ralph Deye gives the lord 2*s.* for having speedy justice against William Fraunce, pledge the hayward of Drayton" (Q 2, m.9, 21 May 1313). See also Q 1, m.14 (22 Dec. 1298); Q 1, m.18d (26 May 1300); Q 1, m.17 (19 Nov. 1302); Q 2, m.2d (22 Jan. 1306). A payment of this type was also made in one covenant action: Q 1, m.14d (13 July 1299).

80. In all but one instance the payment was made and the case settled at the same court session. These payments apparently gave the plaintiff access to a summary process that bypassed the normal steps of plaint initiation and mesne process.

https://doi.org/10.1017/S0738248000000791 Published online by Cambridge University Press

amounts to much in isolation, but in combination they were enough to alter the experience of litigation quite substantially. The Oakington innovations comprise the introduction of the *querele* section of the court roll to record details about new plaints; a drive to impose amercements on defaulting defendants and their pledges; the possibility that jury trial assumed a two-tier structure comprising both special inquests and a permanent panel of trial jurors; and more systematic use of orders to levy debts from defendants in the case of non-payment after recovery, which eliminated the need for plaintiffs to pay extra fees to enforce court decisions.

Improvements in the handling of personal actions are also reflected in more general changes in the court record. At the start of the fourteenth century, Oakington entries on personal litigation were very short, their main objective being to note the amercement due from the losing party. By the late 1330s, a fuller and more systematic written record of litigation developed that may signify a push to attract litigants. Features such as the careful attribution of a standard label (such as "plea of debt") to an increasing proportion of new actions were intended to benefit both curial officers and court users by preventing errors and ambiguities (Table 6). The changes affecting Oakington personal litigation were part of a general reform of this court and its documentation that took place between about 1320 and about 1350. From 1325, the rolls become noticeably bulkier and assume a more uniform arrangement. The practice adopted during the 1340s of holding a greater number of courts each year (Table 1) can be viewed as an aspect of these wider changes also.[81]

There is a complex relationship between the factors giving rise to growth in debt litigation. On the one hand lies the "push factor" of increased default and difficulties facing creditors. On the other lies the "pull factor" of improved curial machinery. It is unwise to overemphasize the latter at the expense of the former. Yet even if the stimulus for litigation at Oakington ultimately came from economic circumstances like coin shortage, such pressures would not necessarily have produced a boom in new actions had the court not been attractive to plaintiffs. The Oakington

81. Other long-lasting recording changes were made in this period, such as the provision of the names of the presentment jurors from 1327, and the separation of view of frankpledge business from halmote business on the rolls of the "great courts" from 1339. Also, 1349 saw the beginning of routine use of marginal notations to indicate which village of the three an entry pertained to (this included personal suits). P. D. A. Harvey has noticed this reorganization; see his remarks on the Crowland rolls in *Manorial Records,* rev. ed. (London: British Records Association, 1999), 51. The amount of parchment used reflects the "reforms": 1291–1320, forty-one membranes; 1321–50, eighty-eight membranes; 1351–80, sixty-one membranes. The membranes themselves are larger from the 1330s.

https://doi.org/10.1017/S0738248000000791 Published online by Cambridge University Press

Table 6. Plaints with standardized designation, Oakington and Great Horwood

Date	No. plaints	Percent of all new plaints in decade
A. Oakington		
1291–1300	5	(3.4)
1301–1310	7	(5.2)
1311–1320	19	(13.7)
1321–1330	47	(49.0)
1331–1340	203	(80.2)
1341–1350	273	(98.6)
1351–1360	163	(92.6)
1361–1370	219	(92.4)
1371–1380	235	(96.3)
B. Horwood		
1302–1310	42	(57.5)
1311–1320	44	(47.3)
1321–1330	46	(66.7)
1331–1340	61	(62.9)
1341–1350	97	(74.6)
1351–1360	84	(65.6)

Source: CUL Q boxes 3, 4, and 11; NCA 3912–3915.
Note: "Standardized" means taking any of the following specific forms: "plea of debt," "plea of detinue," "plea that he render" (*quod reddat*), "plea of trespass," "plea of broken covenant," "plea of acquitting pledges," "plea of false presenting."

procedural improvements perhaps also kept levels of all personal litigation generally high after the difficult conditions of the later 1330s and early 1340s had passed.[82]

One could even argue that the curial enhancements reduced the risks facing creditors and encouraged continued credit extension in the three Cambridgeshire villages in the 1340s, in spite of economic problems. An obvious counter-argument to this is that the Oakington debts that were the subject of lawsuits in the 1340s may actually have been very old, and that new loans were rarely extended after c. 1337.[83] Although few cases yield evidence on this point, what little there is does not support the claim that most lenders were only pursuing old obligations. At Oakington before 1350, the median time period in complete months between credit

82. For these conditions, see n. 34 above.

83. Schofield, "Dearth, Debt and the Local Land Market," 13, advances such an argument concerning the effects of similar economic difficulties on credit availability at Hinderclay in the 1290s.

https://doi.org/10.1017/S0738248000000791 Published online by Cambridge University Press

transaction and first date of plaint was fifty-four months, or four and a half years (Table 7). At the very least, this suggests that there was no cessation of credit supply between the economic crisis in 1337–41 and the Black Death. According to that figure, for example, a debtor prosecuted in 1347 would have first received his or her credit in 1342.[84] For a further twenty-six Oakington debt cases, it is also possible to determine the lag between repayment date and start of lawsuit. As Table 7 shows, creditors waited only six months on average after default before suing. So although almost nothing can be gleaned about the length of loan term involved in the debts sued in the late 1330s and 1340s, one can at least say that few of them are likely to have been old in the sense that their repayment dates fell due long before they came to court.

If differences between courts influenced the tendency to litigate and to form credit contracts, how are those differences to be explained? Evidence such as the Oakington payments "for having speedy justice" shows that peasant suitors were not indifferent to the quality of civil justice provided by their courts.[85] Landlords, operating through their stewards, also had ample financial incentive to make their courts more attractive to personal litigants. Though court perquisites rarely formed a significant element of total estate revenue, it was possible to boost court income by manipulating aspects of curial business. Studies of aspects of the court's work other than personal litigation have shown that lords could increase the number of tenant offenses presented, for example, or seek to encourage and profit

Table 7. Time periods (complete calendar months) between transaction date and initiation of debt lawsuit and between repayment date and initiation of debt lawsuit, Oakington court

	No. cases with information	Miniumum time period	Maximum time period	Median time period
Transaction date → initiation of plaint, 1291–1350	6	21	95	54
Repayment date → initiation of plaint, 1291–1380	26	<1	156	6

Source: CUL Q boxes 3, 4, and 11.

84. It is also worth speculating whether the date of transaction was specified in the six cases in Table 7 precisely because the debt was exceptionally old.

85. For discussion of similar evidence on "consumer demand" from the court rolls of Littleport (Cambridgeshire), see Briggs, "Rural Credit," 122.

https://doi.org/10.1017/S0738248000000791 Published online by Cambridge University Press

from land market activity.[86] Although the profits of justice in the sphere of personal actions are never likely to have been large, since a typical plaint would have brought in only a few pence, for some lords litigation may still have been worth encouraging. However, as argued earlier, the dearth of personal lawsuits in some court roll series suggests that certain lords did not place a high priority on attracting such business.

At Oakington, it seems that even if the curial innovations traced above originated with the suitors, they nonetheless accorded with seigniorial objectives. Most of the changes occurred during the long tenure of Henry of Casewick as abbot of Crowland (1324–59).[87] This period of reform also witnessed similar overall changes in another Crowland manor court, that of Langtoft and Baston (Lincolnshire). Although most of the Langtoft rolls are currently unavailable for study owing to their poor condition, information from the few that can be inspected, as well as work by previous investigators enjoying access to all the documents, indicates that the Langtoft manor court of the 1320s to the 1350s would have been unrecognizable to those who had attended it in the thirteenth and earlier fourteenth centuries. The rolls became much fuller as business expanded and, as at Oakington in the 1340s, more court sessions were held annually than was the case c. 1300.[88] Like the Oakington rolls of the same months, the record of seven Langtoft court sessions of 1337–38 features a remarkably large amount of personal litigation relative to other business.[89] There is a striking contrast between these rolls from 1337–38 and a single small membrane of probable date 1252, on one side of which the proceedings of four short courts

86. Christopher Dyer, "The Social and Economic Background to the Rural Revolt of 1381," in Dyer, *Everyday Life in Medieval England* (London: Hambledon Press, 1994), 207–8; Zvi Razi, "The Struggles between the Abbots of Halesowen and Their Tenants in the Thirteenth and Fourteenth Centuries," in *Social Relations and Ideas: Essays in Honour of R. H. Hilton,* ed. T. H. Aston, P. R. Coss, C. Dyer, and J. Thirsk (Cambridge: Cambridge University Press, 1983), 164; Smith, "Some Thoughts," 116–17.

87. David M. Smith and Vera C. M. London, eds., *The Heads of Religious Houses: England and Wales,* vol. 2, *1216–1377* (Cambridge: Cambridge University Press, 2001), 37.

88. Lincoln, Lincolnshire Archives (hereafter LA) ANC 6/1–42 (court rolls 1252–1354). The archival catalogue indicates that records of 61 court sessions appear on 29 membranes covering the years from 1252 to the start of Henry of Casewick's abbacy in 1324, while records of 109 court sessions appear on 103 membranes covering the first eighteen years of Henry's abbacy (1324/5–1341/2). Record survival is clearly poor for the first of these periods (though court rolls from 1343 to 1352 are also missing), so claims about a growth in court sessions must be cautious. Nonetheless, these figures do reveal how increased business in Henry's abbacy meant that more parchment was required to enroll each court session than previously. See also *Lincolnshire Archives Committee, Archivist's Report 12* (1960–61), 10–13.

89. LA ANC 6/37/1–7, seven large membranes filled with little space remaining.

https://doi.org/10.1017/S0738248000000791 Published online by Cambridge University Press

are enrolled.[90] The similarities shared by the two jurisdictions must partly reflect common local trends in economic conditions. But they are probably also a product of Henry of Casewick's determination to maximize revenue from his courts across the Crowland estates by reorganizing curial administration with a view to generating new business of all kinds, including personal litigation.[91]

By improving civil litigation facilities in the manor court, many lords stood to gain by reaching beyond their own manorial tenants to a potentially bigger pool of debt plaintiffs. Credit relationships were not limited by the boundaries of manor or village, and borrowers frequently entered into transactions with lenders who lived in the same village but were not tenants of the debtor's manor. Alternatively, the lenders may have been residents of adjacent parishes. When such credit relationships broke down, it was by no means guaranteed that the lender would choose to prosecute in the debtor's "home" manor court. Alternative choices open to the plaintiff suing for petty debts included a church court, the local hundred court, the county court, a borough court, or one of the king's courts. He or she might even have attempted to use another seigniorial jurisdiction, such as the lender's own "home" manor court.[92] As argued earlier, when choosing which court to use, the plaintiff's first priority would be to ascertain whether the jurisdiction could compel the appearance of the defendant. This consideration might have reduced the attraction of using a seigniorial jurisdiction other than the debtor's "home" manor court since, in theory at least, getting the defendant to appear was problematic owing to the restrictions on the ability of private lords to distrain outside their own "fee," or territory of lordship.[93] The decision about which court to use would then be informed by factors such as the perceived speed and efficiency of the locally available tribunals.

Lordship was fragmented in all the Cambridgeshire villages in which the Crowland manors lay, especially in Oakington, so there were a large

90. LA ANC 6/2. The Abbot Thomas referred to in the headings to these courts is probably Thomas de Welle. The only other pre-1354 Langtoft rolls currently available for inspection are LA ANC 6/27/2 and LA ANC 6/29/1.

91. For further evidence of this abbacy as a period of significant administrative change at Crowland, relating in this instance to Henry of Casewick's practice of granting fees and pensions to retainers (apparently a novelty under Henry), see E. D. Jones, "The Church and 'Bastard Feudalism': The Case of Crowland Abbey from the 1320s to the 1350s," *Journal of Religious History* 10 (1978): 142–50.

92. For debt plaints against a non-resident defendant, see Briggs, "Rural Credit," 192–97.

93. On this rule, see Beckerman, "Customary Law," 257–60; Paul Brand, *Kings, Barons and Justices: The Making and Enforcement of Legislation in Thirteenth-Century England* (Cambridge: Cambridge University Press, 2003), 94–95, 193.

https://doi.org/10.1017/S0738248000000791 Published online by Cambridge University Press

number of modest freeholders and tenants of non-Crowland manors with whom the Crowland tenants must have been in constant interaction. The abbot's innovations of the second quarter of the fourteenth century succeeded in persuading many of these individuals to bring their litigation to his court.[94] These enhancements also dissuaded Crowland tenant plaintiffs from taking their personal suits to other rival jurisdictions in the vicinity. Similar processes happened elsewhere, as Razi's preview of his research on Gressenhall (Norfolk) demonstrates. The Gressenhall court, like that of Oakington, aimed to attract local plaintiffs who wished to use the local jurisdiction offering the best service.[95] Courts like Oakington and Gressenhall probably assumed a dominant role in local dispute settlement, as they drew business away from other jurisdictions in the area.[96] Things were different at Horwood. Although this court was relatively good at handling personal plaints from the date the records start, the absence of procedural enhancements meant there was less chance of drawing in new debt suits involving tenants of the other manors in the parish, or residents of adjacent parishes. Of course, it is puzzling that at Horwood in the 1340s the patterns of debt and non-debt litigation differed. Non-debt actions increased in this period in spite of the absence of alterations in court practice. It is to be expected that trespass litigation probably would behave differently than debt litigation, since the underlying disputes in trespass actions were more likely than debt disputes to involve immediate neighbors, or at least residents of the same vill. Nonetheless, this factor cannot wholly account for Horwood's growth in non-debt suits in the 1340s, and it is a reminder that curial procedures were just one of many influences upon litigation patterns.[97]

94. On non-tenants of the Crowland manors attracted to Oakington as plaintiffs, see Briggs, "Rural Credit," 198–203; for further discussion of the numbers and identity of debt litigants in the 1330s and 1340s, see Briggs, "Creditors and Debtors and Their Relationships," 133–35.

95. As Razi notes, the lord of Gressenhall attracted litigants "by providing them with an efficient curial service for resolving personal disputes. When such disputes were brought to the court they were settled either immediately or within a very short time. The court's efficiency was a consequence of the strong measures taken against defendants who did not appear there or failed to honour their obligations": Z. Razi, "Manorial Court Rolls and Local Population: An East Anglian Case Study," *Economic History Review* 49 (1996): 761–62.

96. See Briggs, "Rural Credit," 40–54.

97. Horwood non-debt litigation also remained at a relatively high level into the 1350s—with peaks in numbers of new plaints occurring in 1351 and 1357 (nineteen plaints in both years)—which is perhaps a sign that the Black Death had an especially disruptive impact upon social relations in this village.

https://doi.org/10.1017/S0738248000000791 Published online by Cambridge University Press

Conclusion

This article has argued that understanding the development of individual manor court practices helps explain local variations observed in the chronological distribution of manorial personal litigation. Although a common procedural framework existed in the two manor courts studied, there were significant differences of detail in the implementation of those procedures that might account, in part, for the upturn in Oakington debt litigation in the late 1330s, and the absence of a comparable shift at Horwood. The conclusions presented here must be regarded as provisional until explorations of court procedures can be carried out on a wider sample of manorial jurisdictions.[98] However, the present investigation demonstrates that in order to understand the full range of influences shaping court roll data on village social and economic relationships, it is necessary to pay very close attention to the issues raised by the recent return to a legal-historical approach to the manor court.

A central suggestion of this article is that the reputation of a court's procedures as a means of debt recovery served not only either to encourage or to discourage new debt plaints, but also could influence the extent to which lending flourished within the local population. For example, the evidence in Table 7 gives some support to the argument that an increased number of debt cases came before the Oakington court from the 1330s because the curial "reforms" there encouraged a fresh expansion in the overall number of transactions. To prove such a case conclusively is extremely difficult, since the manorial court rolls tell us about defaulted transactions only, not all transactions, and hence our picture is incomplete. Nonetheless, this article reinforces the more general point that legal structures exerted considerable influence over rural households and individuals in their decision making and interactions. In addition, to understand the attitudes of peasants toward the risks and opportunities of the market, it is necessary to take account not only of issues such as price volatility, but also the structure, quality, and accessibility of institutions protecting property rights and contracts.[99] The manor court was a dominant presence in most rural communities of the thirteenth and fourteenth centuries, not only in its role as an instrument of lordly control but also as a forum that benefited peasants by enforcing their contracts. In the organization of credit, as in other areas of agrarian life,

98. This is one aim of collaborative research I am undertaking with Phillipp R. Schofield, which will lead to a volume of select debt actions in manorial courts 1250–1350, to be published by the Selden Society.

99. On peasants and the market, see Mark Bailey, "Peasant Welfare in England, 1290–1348," *Economic History Review* 51 (1998): 223–51.

https://doi.org/10.1017/S0738248000000791 Published online by Cambridge University Press

the manor court was an active force shaping the priorities and behavior of individuals. Of course, manor courts formed only one element in the variegated legal geography of each locality, competing with other jurisdictions that also enjoyed the power to deal with loans and contracts. Nonetheless, this article has demonstrated the significance of the link between the supply and character of rural credit and the availability of agencies for enforcing repayment. The challenge for future research is to establish the nature of this link more fully by expanding the number of manorial case studies of peasant indebtedness, without losing sensitivity to the issue of small but crucial differences between courts.

https://doi.org/10.1017/S0738248000000791 Published online by Cambridge University Press