The Preconstruction of Witness Testimony: Law and Social Discourse in England before the Reformation

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I

In this article, I address the use of witness testimony by medieval and early-modern historians of England. Although the idea that such evidence straightforwardly represents the thoughts and feelings of quite lowly people has long been discredited, I think that some part of this assumption still haunts the thinking of our postmodern, or cultural turn, historiography. To put it rather too bluntly: the old, empiricist quest for "real voices" in testimonies has to some extent been replaced by a contemporary quest for "real discourses." That is to say, the utilization of testimonies by historians often seems to boil down to the careful extraction of the particular discourse under examination—gender, class, childhood—from the legal discourses acknowledged to be inherent in witness testimonies produced in law courts. Now, this is a severely reductionist account, and later I will elaborate on the varieties and subtleties of current approaches. Nonetheless, this assumption that we can simply extrapolate *social* discourses about "x" from the *legal* discourses of the depositions seems to me somewhat flawed, because it presumes that premodern witnesses were simply conduits of discourse, whose testimony was nonetheless

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decisively shaped by the machinations of the legal counsel. In fact, as I will argue here, medieval witnesses were quite capable of manipulating such discourses, using clichés to tell the court what they thought it wanted to hear. In the subsequent discussion, I will look in detail at two intimately related cases from the Bishop of London's consistory court to make this point more explicit.[1] First, I will relate the basic facts of these cases: the narrative of the events and the procedure of the courts. I will then address the historiography of witness testimony in greater detail, at the same time demonstrating the way in which the examples from the consistory counter the assumptions of this historiography.[2] I will present different ways of reading my own examples using different positions within the scholarly literature, before showing how the case upsets even the most sophisticated of such readings. Overall, I argue that as well as considering the "construction" of the testimony by lawyers and legal counsels, and the "deconstruction" of such discourses by historians, we must begin to think about the "preconstruction" of the testimony by witnesses; their own integration of legalistic ideas into the fabric of their depositions. Finally, I will conclude by considering some of the wider implications of this argument for the use of witness depositions, and for the study of "law and society" more generally in the medieval and early-modern periods.

What follows, is a probable sequence of events, based on the accounts of all of the witnesses from a case first labelled as *ex officio c. Stannard*.[3] On the Saturday before Easter of 1524, Sir John Stephyns, a prominent member of the local gentry,[4] went to speak with Thomas Stannard, the vicar of Twickenham (Middlesex), before services started.[5] He told him of a quarrel

1. For the late-medieval ecclesiastical courts of London more generally, see Richard M. Wunderli, *London Church Courts and Society on the Eve of the Reformation* (Cambridge, MA: The Medieval Academy of America, 1981).

2. Because of the complex nature of the conceptual issues and the legal cases I am dealing with here, I hope that presenting the historiography and the example in tandem will help, rather than hinder, the attempt to clarify both at once.

3. These depositions are from *London Metropolitan Archives* (hereafter *LMA*), DL/C/207, fos. 284r-290v, 300r-v; DL/C/330, fo. 75v. The folio numbers used in references here are from the incorrect foliation in the deposition book itself, which does not keep up with the true number of folios (with fos. 72, 93, and 206 each being featured twice). The meaning and implications of the case being launched "ex officio" will be explored further.

4. He was certainly an armiger, as stated in the preamble to his deposition, and originally from Pembrokeshire: *LMA*, DL/C/207, fo. 284r. He may have had minor connections to the royal court: a John Stephyns was steward of the castle of Haverfordwest before 1521, and perhaps the same man was later 'marshal of the King's Hall'. See Henry Owen, *A Calendar of the Public Records Relating to Pembrokeshire*, 3 vols. (London: Honourable Society of Cymmrodorion, 1911–1918): 6(1):172.

5. Thomas Stannard was instituted as vicar of Twickenham on June 3, 1522; see Richard Stuteley Cobbett, *Memorials of Twickenham Parochial and Topographical* (London: Smith,

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between Gerard Stoker and Roger Colyns, two of the parishioners there, and urged the vicar to "bring them together in charity" before they took their Easter communion. During the service, as the parish lined up to receive the sacrament, Stannard called Stoker and Colyns to kneel beside one another. As he began a homiletic speech about the necessities of charity to one's neighbours, Gerard Stoker quickly realized what was going on. He stood up and interrupted the service in a rage, shouting that he would *never* be in charity with Colyns, "as longe as I have these ij eeys to see," pointing to his eyes as he said this.[6] Then he stormed off out of the chancel of the church, and into the nave, "in a grete fewme," as one witness put it.[7] Sir John Stephyns, the Good Samaritan (or meddling busybody) of the piece, went after Stoker, and tried to coax him to come back and make amends with his adversary, Colyns, emphasizing the sacredness of Easter and the importance of charity.[8] Gerard Stoker still refused to come, and left the church altogether. The same day, he walked approximately five kilometers to the nearby Holy Trinity Priory at Hounslow.[9] There he asked to receive communion. The minister asked why, and Stoker explained that he was being forced into charity with another man, and therefore unable to receive "his rights" (a common name for communion, but telling nonetheless). Richard Richardson, a brother at the priory, was dispatched to Twickenham the next morning, to speak with the Vicar Stannard, and investigate Stoker's claims. Richardson affirmed to Stannard that he could not compel people to be in charity in exchange for communion, but the vicar remained firm, saying that unless Stoker made peace with Colyns—unless he "aske[d] hym for evenes"— he would have to go without communion.[10] Richardson replied simply that if Stannard would not give him communion, then the brothers at the priory would. Stannard was evidently flustered by this, and retorted that if they did, he would take the matter to the Bishop of London. Ironically, it would turn out to be Stannard who was eventually summoned to the consistory court, whence these depositions survive.

Elder and Co., 1872), 108. It is also known that he took his B.A. from Oxford in January 1512–13: *Alumni Oxonienses: the Members of the University of Oxford*, 4 vols. (Oxford: Parker and Co., 1891–92) 1:1405.

6. *LMA*, DL/C/207, fo. 284r.

7. Ibid., fo. 288v.

8. Ibid., fo. 284r–v.

9. On what little can be said of the medieval history of the priory, see G. Eglington Bate, Helen Evans, and Brian Grumbridge, *The 800 Years Story of the Priory and Church of the Holy Trinity, Hounslow* (Hounslow: Holy Trinity with St. Paul and St. Mary, 2010), 11–15.

10. *LMA*, DL/C/207, fo. 288v. This, and all the information about Stoker's journey to Hounslow, relies on the deposition of Richard Richardson.

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However, this was not the end of what was to be a turbulent Easter Sunday for the vicar of Twickenham. Toward the end of the long process of giving every parishioner communion, at approximately mid-day, Stannard called out for Roger Hampton, who could not be found in the church. It seems that Stannard had decided for the moment to pass over him, and then called him again later. Therefore, Roger Hampton eventually came late, and brought with him 3 shillings and a guilty conscience: he offered to pay Stannard some tithes he owed. Stannard, perhaps not wishing to interrupt the service further, declined to accept the money, saying that they could deal with it another time, and that he would give Hampton the Easter communion. He then proceeded to ask Hampton whether he was confessed and absolved (a prerequisite for taking communion), because, as Stannard put it in his own version of events, "the said Roger was nott confessyd of hym in lent."[11] Hampton said that he had been confessed and absolved at another religious house, namely Syon Abbey, approximately four kilometers north of Twickenham. Stannard asked him whether he had any "letter or token" to prove this; regrettably, Roger Hampton had none such. At this point we may presume that some prior tension existed between the two men, because Stannard immediately became angry, and said to Hampton: "your conscience ys noughte." Hampton responded "yt ys better then yours," to which Stannard replied: "I had lever [rather] see yo hangyd."[12] Most of the witnesses to the dispute thought that this was the end of it, apart from one Reginald Kyght, who said that Stannard went on to abuse Hampton further. According to Kyght's testimony, Stannard said that Hampton was "the most wretch and the most caitiff in his parish," and "that there was no man in his parish that loved him"; and further, that Hampton had responded that if this was true, it was Stannard's fault. Finally, several weeks later (it cannot be the 40 days claimed, as this would place the incident after the witness hearing), while Stannard was walking in the fields around Twickenham, Hampton spotted him and yelled [*dedit obiura*], "m[aster] vicar wyll ye shryve [confess] me?" Stannard shouted back that he would, if Hampton came to church. This rather inconsequential detail is the last one to which we are privy.[13]

This was the story of Thomas Stannard's busy Easter weekend: 2 days, two parishioners, two disputes.[14] The relatively straightforward narrative

11. *LMA*, DL/C/330, fo. 74v.

12. *LMA*, DL/C/207, fo. 291r.

13. *LMA*, DL/C/330, fo. 75v. This information is only given in Stannard's testimony.

14. Interestingly, two religious houses were invoked as extraparochial providers of confession. I will not be exploring this connection further, but this does seem to throw interesting light on the "market economy" for the provision of religious services in late-medieval Catholicism.

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that I have presented here belies the sometimes fragmentary, sometimes overlapping, sometimes contradictory witness testimony I have used to reconstruct it. It is, therefore, necessary to look in detail at the structure of the witness testimonies from which the story is taken. Although it is not known whether the monks of Hounslow gave Gerard Stoker communion or not, a case must have been initiated against Stannard very quickly. Easter in 1524 fell on March 27, and the first time the case appears in the records is a little more than 3 weeks later on April 20, when Stannard gave his personal responses to the *libellus*: the formal complaint lodged against a defendant in canon law courts.[15] Three witnesses, including Sir John Stephyns, and Richard Richardson, were called in on the April 28, and several days later, on the last day of April, three more witnesses were called in to testify. So far, all of this was commonplace with regard to the legal procedure followed by the late-medieval consistory court in London. However, it quickly became complicated, because the next two testimonies in the deposition book, although they are recorded consecutively, are headed "Ex parte Hampton contra vicarius de Twykenham."[16] This is the conventional phrasing for instance business—that is, litigation between two parties—as opposed to the *ex officio* case launched against Stannard in the first place.[17] At this juncture, it seems as though Roger Hampton had begun a coterminous defamation case against Stannard, presumably on the basis of being called "wretch" and "caitiff" during their argument at the altar.[18] This impression is confirmed by the fact that the witnesses in this case do not testify to the incident with Gerard Stoker, but focus solely on the confrontation between Thomas Stannard and Roger Hampton.[19] Therefore, whereas the two incidents initially seem to have generated one general lawsuit against the vicar, at some point on or after the April 30, a second case relating to only the latter incident enters the documentation. Unfortunately, it is not even as straightforward as this marginal case of double jeopardy. The next, and last witness to testify, Robert

15. For this and what follows with regard to canon law procedure in consistory courts, see James A. Brundage, *Medieval Canon Law* (New York: Longman, 1995), 129–34. Three weeks may seem relatively slow, but by the standards of medieval canon law, in which cases could occasionally outlive the parties, it was positively speedy!

16. *LMA*, DL/C/207, fo. 289r. Grammatically speaking, it should of course be "vicarium."

17. The distinction is more or less akin to "civil" and "criminal" litigation in secular legal systems.

18. The London church courts were not assiduous about applying the canonical definition of defamation, which was that the defamatory words uttered had to impute a crime that was prosecutable in a secular court to a person of good reputation, and thereby impugn that person's reputation. On this, see Richard H. Helmholz ed., *Select Cases on Defamation to 1600*, *Publications of the Selden Society 101* (London: Selden Society, 1985): xxi–xxiv.

19. *LMA*, DL/C/207, fos. 289r–290v.

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Hall, was examined more than 1 month later, on May 23. Even though it was simply headed "causa de vicarij de Twykenham," Hall's testimony was certainly recorded in relation to the first, ex officio case, as Hall was asked to testify to both incidents: "and first, as to Stoker, he says he does not know what to say; but as to Roger Hampton he says…"[20]

There are several important points that need to be considered with regard to all this confusion. First, it is made somewhat more difficult by the nature of the evidence, which is both incomplete and paleographically diverse; no independent record of the court's procedures survives for this period, and the scribal hand clearly changes between the third- and second-to-last witnesses.[21] Second, it is probably inappropriate to force too a tight distinction between ex officio and instance litigation. As Richard Helmholz has pointed out, although cases brought against clerical misconduct were mostly labeled as ex officio cases in the court books of the canon law courts, they were generally initiated by the complaint of the laity. He also presents two potential justifications for this procedure under canon law.[22] This technical ambivalence seems to have found a concrete expression in this case. Third, the work of the Bucknell Group of early-medieval social historians, among others, has shown the necessity of examining legal cases as only one manifestation of wider social disputes running before, through, and after them.[23] Overall then, what seems to have

20. "…et primo quoad Stoker dicit quod nescit deponere sed quoad Roger hampton dicit ut sequitur…" Ibid., fo. 300r.

21. It is probable that such books existed, as a single *Liber assignationum* survives for the years 1496–1505; see *LMA*, DL/C/01. For the change in the scribal hand, see *LMA*, DL/C/207, fos. 289v–290r. It becomes far messier, with a great many more redactions; it is accompanied by a more general deterioration in the quality of the manuscript.

22. Richard H. Helmholz, *The Oxford History of the Laws of England: Volume I. The Canon Law and Ecclesiastical Jurisdiction from 597 to the 1640s* (Oxford: Oxford University Press, 2004), 519. For cases of refusing to administer the Eucharist in particular, see 517, fn. 201. For cases in which the laity are explicitly named as having brought the case, see 516, fn. 200.

23. The idea that court cases are just one part of a wider strategy of dispute is now widely accepted by sociolegal historians, to the extent that nothing like a full bibliography can be provided here. See, for perhaps its most influential articulation by medievalists, Wendy Davies and Paul Fouracre eds., *The Settlement of Disputes in Early Medieval Europe*, (Cambridge: Cambridge University Press, 1986). More recent iterations include: Daniel Lord Smail, *The Consumption of Justice: Emotions, Publicity, and Legal Culture in Marseille, 1264–1423* (Ithaca and London: Cornell University Press, 2003); and Paul R. Hyams, *Rancor and Reconciliation in Medieval England* (Ithaca and London: Cornell University Press, 2003). For the roots of the idea in legal anthropology, see Simon Roberts, "The Study of Dispute: Anthropological Perspectives," in *Disputes and Settlements: Law and Human Relations in the West*, ed. John Bossy (Cambridge: Cambridge University Press, 1983), 1–24.

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happened in all of this was that the two disputes, although they were legally grouped together in the ex officio case, were, in practice, conceived separately by both court and witnesses. For example, Roger Soller, although he was examined with others who testified to the facts of both disputes, did "not know what to say as to Hampton," just as Hall did not know what so say about Stoker,[24] and this impression is confirmed through a more detailed analysis of the content of the testimonies. The disputes were qualitatively different. Gerard Stoker, the man who stormed out of the church, did not deliberately provoke a dispute, but seems to have been surprised by the vicar's exhortations. His actions throughout suggest a stubborn man who simply wished to take Easter communion without having to make amends with an adversary. On the other hand, Roger Hampton seems to have been spoiling for a fight; he turned up late, presented *some* of his unpaid tithes, and then was very quick to speak insolently to the vicar.[25] Overall, then, whereas the dispute with Stoker seems very spontaneous, that with Hampton appears contrived.[26] It therefore seems to me that the first dispute between the vicar and Gerard Stoker upset the calculation that had gone into the second dispute between the vicar and Hampton, and caused some of the bungling of the resulting legal case(s). As will become clear, this has important consequences for the interpretation of the witness testimony in this case.

II

Now that the basic course of events and the legal structure of the case have been clarified, I return to a deeper examination of the historiographical approaches that I identified at the beginning. In each case, I will seek to show how the legal cases against Stannard could be interpreted using these approaches, in order to make clearer the thrust of my point. First, I would like to apply a "realist," or empirical methodology to these sources.

24. *LMA*, DL/C/207, fo. 287r.

25. I will give further justifications for this interpretation subsequently.

26. On the deliberate deployment of anger, see John E. A. Jolliffe, *Angevin Kingship* (London: Adam and Charles Black, 1955), ch. 4. "Ira et Malevolentia; the articles in *Anger's Past: The Social Uses of an Emotion in the Middle Ages*, ed. Barbara Rosenwein (Ithaca, NY: Cornell University Press, 1998); and Daniel Lord Smail, "Hate as a Social Institution in Late-Medieval Society," *Speculum* 76 (2001): 90–126. A useful critique of the use of "emotions" by medievalists is John H. Arnold, "Inside and outside the medieval laity: some reflections on the history of emotions," in *European Religious Cultures: Essays Offered to Christopher Brooke on the Occasion of his Eightieth Birthday*, ed. Miri Rubin (London: Institute of Historical Research, 2008): 107–30.

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Perhaps the most famous medieval study to use witness testimony in this way is Emmanuel Le Roy Ladurie's *Montaillou*, which looks at the lives of thirteenth century peasants in the Languedoc through heresy trial records.[27] The idea behind this structuralist project was that medieval *mentalités* were emergent from these sources in fairly uncomplicated ways, allowing historians to delve into the minds of premodern peasants. Of course, other historians have since criticized this work; but not for its methodology as much as for its execution. For example, Leonard Boyle took issue with the way that Ladurie presented the "voices" of the Languedoc peasants as though they were unmediated, when in fact, they had been translated twice: out of their native medieval Occitan, into Latin, and then back into French by Ladurie.[28] Other historians have since nuanced this empiricist approach further, pointing out that the depositions were not free-running speech, but tailored to the articles formulated by plaintiffs, or rather, their legal counsel.[29] In certain circumstances, also, there are reasons to doubt the pure veracity of the witnesses' claims; in some cases there is clear evidence of blackmail and bribery.[30] Such critiques do not reject the assumptions at the heart of the empiricist approach; rather, they attempt to enforce a certain standard of historical good practice. If historians are as good at their jobs as they are supposed to be, they will skilfully circumvent these issues through painstaking attention to detail in translation, reconstruction, and analysis, and reveal the "real voices" lying behind the dusty documents. As Robert Swanson put it, these records "allow the hitherto unheard to speak, and in the process evoke the

27. Emmanuel Le Roy Ladurie, Barbara Bray transl., *Montaillou* (Harmondsworth: Penguin Books, 1990 [first published as *Montaillou: village occitan*, 1975]). Early-modern analogues are perhaps more popular still: Carlo Ginzburg, *The Cheese and the Worms: The Cosmos of a Sixteenth-Century Miller* (Baltimore: The Johns Hopkins University Press, 1992); and Natalie Zemon Davis, *The Return of Martin Guerre* (Cambridge, MA: Harvard University Press, 1983).

28. Leonard E. Boyle, "Montaillou Revisited: *Mentalité* and Methodology," in *Pathways to Medieval Peasants*, ed. J. A. Raftis (Toronto: Pontifical Institute of Medieval Studies, 1981), 139, 122.

29. James A. Brundage, *The Medieval Origins of the Legal Profession* (Chicago: Chicago University Press, 2008), 437; Charles Donahue Jr., "Female Plaintiffs in Marriage Cases in the Court of York: What Can We Learn from the Numbers?" in *Wife and Widow in Medieval England*, ed. Sue Sheridan Walker (Ann Arbor, MI: University of Michigan Press, 1993): 184–85.

30. Even in relatively routine cases accusations of bribery and intimidation crop up. For example, see Edward D. Stone and Basil Cozens–Hardy eds., *Norwich Consistory Court Depositions, 1499–1512 and 1518–1530*, (Norwich: Norfolk Record Society, 10, 1938), unpaginated, cases 46, 112, 126; Norma Adams and Charles Donahue Jr. eds., *Select Cases from the Ecclesiastical Courts of the Province of Canterbury c. 1200–1301, Publications of the Selden Society 95* (London: Selden Society, 1981): 35–36.

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day-to-day lives and concerns of 'ordinary' people."[31] Overall, therefore, in spite of the intervention of the legal processes that prompted these statements, the words in the deposition book are thought to bear a direct relationship to the words originally spoken by the witness, and those words are an accurate reflection of what that witness thought.

I will now turn to look at how this approach could be applied to the Stannard case outlined previously. We have already seen that there were problems when attempting to reconstruct the legal structure of the cases; but otherwise, there can be few empirical objections to the "voices" in the testimonies. They are fulsome accounts, written in the vernacular, with no obvious evidence of intimidation. And what were their everyday concerns? The case could certainly be productively harvested for evidence of lay religious belief. Sir John Stephyns, who prompted the dispute between Stannard and Gerard Stoker, was apparently very concerned that his neighbors be in charity with one another. For example, Stephyns himself describes his speech to Gerard Stoker thus: "this deponent desyred hym to come a gayne [back to the altar to receive communion]; and he wt helpe of other woold make them a greyd and to bee in charyte. Which sayd gerard answeryd and sayd: 'I weyll nott come to the.' This deponent then answering: 'I weyll come to the.' And wt that this deponent, going to the chauncell doore and commyng toward hym, sayd these words: 'In the name of god be in charyte with your neybor remembryng what hy feaste thys ys.'"[32]

Such a statement is interesting, because it is very orthodox with regard to Easter both as a feast, and as a time for the exercise of charity. In the first regard, it is worth remembering that Easter was the one time of year when the medieval laity could expect to receive communion in full (that is, with both bread and wine). In the second, we see that Stephyns closely echoes the sentiments espoused in the homily by John Mirk, a late-medieval sermon writer, for Easter Sunday: "I scharge ȝow heȝly in Goddus behalue þat none of ȝow today come to Goddus borde [communion] but he be in ful charite to alle Goddus pepul..."[33] And of course, the redemptive power

31. Robert N. Swanson, '"...et examinatus dicit...": Oral and Personal History in the Records of English Ecclesiastical Courts,' in *Voices from the Bench: The Narratives of Lesser Folk in Medieval Trials*, ed. Michael Goodich (Basingstoke: Palgrave MacMillan, 2006), 220.

32. *LMA*, DL/C/207, fo. 287v. The punctuation included here (and in what follows) is my own attempt to make the text clearer to those unfamiliar with premodern vernacular English. I have not changed anything else about the text. I thank one of the anonymous reviewers for this suggestion.

33. Susan Powell ed., *John Mirk's Festial: edited from British Library MS Cotton Claudius A.11*, 2 vols., *Publications of the Early English Text Society, 334* (Oxford: Early English Text Society, 2009), 1:116. Interestingly, the *Speculum Sacerdotale*, an early fifteenth century sermon collection, does not mention charity at all in the Easter

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of the Eucharist for healing social relations has been the subject of more recent discussions, too.[34] Moreover Stephyns, as a senior member of the parish community at Twickenham, seems to have felt it was his moral duty to instruct his social inferiors in such teachings. The case could thus also be used in the context of debates about the piety of the late-medieval gentry. By no means does Stephyns's religion seem to have been his "private" concern; he proselytized for the virtues of charity, reconciliation, and communion.[35] Overall, then, it is possible to see how this case could be used in a straightforward way for evidence of the religious beliefs of late-medieval people; an affirmation of the role of charity in governing the communal life of parishes.

I do not wish to dismiss this "empiricist" approach out of hand; after all, the ability to critically read evidence and reconstruct it into a plausible narrative is still a fundamental skill for historians. But nonetheless, it is fair to say that such an approach lags far behind the theoretical developments of social and cultural history. From the cultural turn of the late 1980's onwards, historians have begun to raise more sophisticated questions about the issues involved in the reading of witness testimony, complicating the very nature of our relationship to the evidence we read. Natalie Zemon Davis's path-breaking work *Fiction in the Archives* set out to examine witness testimony (from petitions for royal pardon in sixteenth century France) in terms of "the crafting of narrative."[36] This methodology, subtly refined since Davis's work, asserts that that witness testimonies are not, as empiricists would have it, "ossified voices" that have survived by happy accident; rather, as the historian accesses them, they are fundamentally *texts.* As a result of this epistemological shift, it is necessary to scrutinize witness testimonies in the same way as "fictitious" or "literary" texts. They are not simply true or false accounts of words or thoughts that did or did not happen, but composites of the many competing discourses and narratives circulating in a particular historical period. Their constructions, fabrications, and ideologies—even if they are "fictitious"—thus reveal something essential about the society that produced them, because they

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sermon, emphasizing penance above all. See Edward H. Weatherly ed., *Speculum Sacerdotale*, *Publications of the Early English Text Society, 200* (London: Early English Text Society, 1935), 117–29.

34. See the famous article by John Bossy, "The Mass as a Social Institution 1200–1700," *Past and Present*, 100 (1983): 29–61; compare with Miri Rubin, *Corpus Christi: The Eucharist in Late Medieval Culture* (Cambridge: Cambridge University Press, 1991), 2.

35. For a subtle and lucid critique of the debates over gentry piety, see Joel T. Rosenthal, *Margaret Paston's Piety* (New York: Palgrave Macmillan, 2010), 6–7.

36. Natalie Zemon Davis, *Fiction in the Archives: Pardon Tales and their Tellers in Sixteenth-Century France* (Stanford, CA: Stanford University Press, 1987), 3.

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had to be convincing to contemporaries. To say that this approach has been influential is an understatement: a plethora of studies have applied a similar technique to a variety of legal documents, with many even borrowing her pithy phrase.[37] Social and cultural historians interested in a wide variety of subjects—gender,[38] memory,[39] status,[40] childhood,[41] and many more[42]—have found enormously rich pickings in witness depositions, carefully examining the words chosen by deponents in order to detail the contours of these particular social discourses or discursive structures. In analyzing depositions, then, attentive historians can carefully pluck these strands from the rough, legalistic weave of the depositions, and proceed to present an analysis about a particular discourse circulating in medieval society. And without wishing to posit an overidealized consensus, it is fair to say that historiographical opinion on this subject is now broadly aligned within this methodological paradigm.[43] Overall then, we no longer have to worry too much about whether the events or ideas described in depositions are "true" or "false," because the way that they were constructed to be

37. For example, Jeremy Goldberg, "Fiction in the Archives: the York Cause Papers as a Source for Later Medieval Social History," *Continuity and Change* 12 (1997): 425–45; Malcolm Gaskill, "Reporting Murder: Fiction in the Archives in Early Modern England," *Social History* 23 (1998): 1–30; and Shannon McSheffrey, "Detective Fiction in the Archives: Court Records and the Uses of Law in Late Medieval England," *History Workshop Journal* 65 (2008): 65–78.

38. For example, Kim M. Phillips, *Medieval Maidens: Young Women and Gender in England, 1270–1540* (Manchester and New York: Manchester University Press, 2003); Cordelia Beattie, "Single Women, Work, and Family: The Chancery Dispute of Jane Wynde and Margaret Clerk," in *Voices from the Bench*, ed. Goodich, 177–202; and Derek G. Neal, *The Masculine Self in Late Medieval England* (Chicago: University of Chicago Press, 2008), 29.

39. Joel T. Rosenthal, *Telling Tales: Sources and Narration in Late Medieval England* (University Park, PA: The Pennsylvania State University Press, 2003), esp. ch. 1 "Proofs of Age: A Rich Fabric of Thin Threads," 1–62; and Bronach Kane, "Personal Memory, Collective Testimony and Masculinity in the Late Medieval Church Court of York," *Marginalia* 5 (2007) http://www.marginalia.co.uk/journal/07trial/ kane.php (July 10, 2013).

40. See the fractious debate started by Frederik Pedersen, "Demography in the archives: social and geographical factors in fourteenth-century York cause paper marriage litigation," *Continuity and Change* 10 (1995): 405–36; Goldberg, "Fiction in the Archives"; and Frederik Pedersen, "The York Cause Papers: a Reply to Jeremy Goldberg," *Continuity and Change*, 12 (1997): 447–55.

41. Ronald C. Finucane, "The Toddler in the Ditch: A Case of Parental Neglect," in *Voices from the Bench*, ed. Goodich, 127–48.

42. For a more general, reflective collection on this subject, see *History from Crime: Selections from Quaderni Storici*, ed. Edward Muir and Guido Ruggiero, trans. Margaret A. Gallluci, Corruda Biazzo Curry, and May M. Galluci (Baltimore: The Johns Hopkins University Press, 1994).

43. P. J. P. Goldberg, *Communal Discord, Child Abduction, and Rape in the Later Middle Ages* (Basingstoke: Palgrave Macmillan, 2008), 33.

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convincing can reveal something about the social discourses into which such narratives fitted.

This deconstructive methodology helps to complicate the reading of the Stannard case presented earlier, in which the depositions were taken as straightforward enunciations of religious belief. I will look again at the dispute created by the intervention of Sir John Stephyns, the firm proponent of charity, but now in order to look at a rather different facet of late-medieval culture: neighbourliness. First, then, let us see how another witness, Henry Teysdale, described the first dispute:[44] "The sayde gerard and other wer sett down to godds borde, redy to take there ryghts. Then the sayd vicar com unto the sayde gerard and sayde unto hym: 'gerard I have knowen a growge [grudge] betwene Roger colen[s] and yow, this half yere and more, and except yow wyll ryse up and take hym by the hande and be yn love and cheryte ete and dryng with hym and bye and sell with hym as ȝe have don yn tymes past, I wyll nott gyve yow yor ryghts.'"

Here we have the same, firm avowal of charity, but with an interesting caveat. Other witnesses did not elaborate nearly so much on the content of Thomas Stannard's speech to Gerard. Teysdale's testimony is much richer in its evocation of the social gestures of charity: holding hands, eating and drinking, and buying and selling with one another, but such gestures seem utterly inappropriate to the potential reconciliation of Stoker and Colyns, who seem, from Stoker's reaction at least, to be sworn enemies. This is significant; these gestures are not simply what medieval people thought charity "looked like," but are formulaic representations; possibly a creation of Teysdale, possibly of his legal counsel, or perhaps some mediation between the two. And indeed, Keith Wrightson has recently identified similar concepts at work in the early-modern discourse of neighborliness: it involved "a combination of *place,* personal *knowledge*, active *reciprocity* (within certain limits), the *avoidance of conflict* (or at least its *reconciliation*), and aspirations toward a condition of Christian *charity*."[45] Moreover, Richard Richardson, the brother at the priory where Gerard subsequently sought communion, used very similar concepts in order to rebut the notions of charity put forward by Stannard. He said to the vicar: "ȝe can nott co[m] pell any man to take a man by the hande or ete and drynk with hym but yff he wyll."[46] Therefore, what is perhaps most interesting for the historian interested in the deconstruction of these testimonies, is the way that

44. *LMA*, DL/C/207, fo. 286r.

45. Keith Wrightson, "The Decline of Neighbourliness Revisited," in *Local Identities in Late Medieval and Early Modern England*, ed. Norman L. Jones and Daniel Woolf (Basingstoke: Palgrave Macmillan, 2007), 31. His emphasis.

46. *LMA*, DL/C/207, fo. 285v.

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these images of neighborliness were employed by *both* sides in the dispute over whether it was appropriate to expect people to be in charity; these formulaic representations of friendship—eating, drinking, hand-holding—were, therefore, central to the late-medieval and early-modern discourses of charity and neighborliness.[47]

As illuminating as this methodological approach is, there are certainly reasons to be sceptical about it. Specifically, it is unclear that such analyses take seriously enough the legal framework in which the witness testimonies were produced: is it appropriate to withdraw the discourse of "charity" or "neighborliness" from the context of the legal setting in which it was enunciated? After all, the formulaic representations of friendship mentioned previously could also be seen in the light of excommunication.[48] For example, William Laburne of West Ham, cited before a lower London church court as a "common violator of the faith and perjurer," was excommunicated in 1497 for repeated contumacy in the face of these charges. Subsequently, he was alleged to have remarked to his fellow parishioners: "Be war howe ye ete & drung wt me for they have cursed me as blacke as a cole…"[49] That is to say, this discourse of neighborliness, if it is such, might well crop up especially often in the context of law courts, or perhaps especially church courts, because the very *purpose* of these courts was to attempt to regulate the associative lives of the laity. In attempting to untangle "neighbourliness" from the composite fabric of these "legalistic" discourses, then, the potential exists that we are making a category error: can these things actually be separated from one another? It is possible to reserve judgement on this rather stark framing, and nonetheless nuance our accounts somewhat. "Gender," "childhood," "status," or, indeed, "charity," did not simply circulate through societies like seeds on the wind: these discourses were instantiated in their invocations. In the case of witness testimonies, these invocations took place in legal *fora*. If we are to use depositions as evidence, and, furthermore, as evidence that it is possible to textually deconstruct, then it is essential to remember that law courts were the sine qua non for their creation. As Peter Mandler has remarked in a slightly different

47. I do not intend to force a tight distinction between these two concepts, for the late-medieval context at least.

48. On excommunication in medieval England, see F. Donald Logan, *Excommunication and the Secular Arm in Medieval England* (Toronto: Pontifical Institute of Medieval Studies, 1968), 13–24.

49. *LMA*, DL/C/B/043/MS9064/7, fo. 24r. Laburne went on to elaborate that as a result of his excommunication, he might as well "have 5 bolas [plums] growyng yn myn arsehole." I did not want this charming detail to distract from the main point here, but thought it worth noting for posterity (no pun intended). On the commissary court, see fn. 1 above.

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context: "Our task is not only to identify what the discourse is, but to whom it belongs."[50]

This criticism, so far as it is indeed a criticism, does not attack the methodological claims of deconstruction per se; rather, it is an attempt to wield them more meticulously. Several medieval historians working with testimony have already made this point, and taken strides toward producing more legally incisive deconstructive accounts. Jeremy Goldberg, for example, uses this analogy to explain his approach to the construction of testimony:[51]

> . . .the depositions are realized in court [like]. . .a play developed by a process of improvisation derived from the experiences of the various actors. There is a predetermined convention that shapes the order in which the actors (deponents) appear and there is likewise an authorial voice (legal counsel) that helps give an overall shape and direction to the narrative. That narrative is, however, voiced by a range of different actors, each of whom is drawing from their own experience and knowledge and each of whom has the advantage of playing themselves. Some actors. . .are more skilful than others.

In this account, the "legal counsel"—the proctors and lawyers who helped a client bring a case to court—feature strongly, becoming "authors" in the construction of the discourses in the testimony. Other historians have gone further still. Michael Goodich, for example, writes of the way that historians "may often be painfully aware of their [the court personnel's] presence, functioning almost as hidden puppeteers. . ."[52] This modified deconstructive approach leads to a more considered understanding of the discursive work that law courts perform: the wide variety of legal influences on the discursive construction of testimony is no longer simply recognized as a hindrance to uncovering "real voices," or, indeed, social discourses, but has come to the forefront of analysis. The witness testimonies in legal documents therefore represent a complicated mixture: strands of social "experience" were reconstituted in court according to the demands of legal procedure (itself influenced by social structures, such as gender).[53]

50. Peter Mandler, "The Problem with Cultural History," *Social and Cultural History* 1 (2004): 96. See, also, the debate sparked by this article in subsequent issues of the same journal.

51. Goldberg, *Communal Discord*, 43.

52. Michael Goodich, "Introduction," in *Voices from the Bench*, ed. Goodic, 3.

53. This is wonderfully illustrated by Christopher Cannon, "The Rights of Medieval English Women: Crime and the Issue of Representation," in *Medieval Crime and Social Control*, ed. Barbara A. Hanawalt and David Wallace (Minneapolis: University of Minnesota Press, 1999), 156–85. He cleverly links the real repression of women at law to

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This approach is a crucial corrective to earlier studies that sought to simply "extract" social discourses from a legal context. However, it has nonetheless absorbed some of the awkward assumptions of the earlier historiography: in particular, the assumption that it was the legal procedure, and the court personnel, that decisively shaped the narratives at work in witness testimonies. A further examination of the Stannard case(s) will demonstrate how this might be problematic. As noted, there seems to be a qualitative difference between the two disputes. Gerard Stoker, confronted with the exhortations of both the vicar and a senior member of the parish (Sir John Stephyns), reacts by storming off. The dispute, therefore, seems unexpected and spontaneous. By contrast, the dispute between the vicar and Roger Hampton seems premeditated. First, Hampton is late to church. Each account notes that he had to be called several times before he came into church; most of them say that he came in only "when all the parysshe was all most s[er]vyd," that is, shriven.[54] Second, once he turns up, he tries to offer Stannard his unpaid tithes: 3 shillings worth, in fact. Significantly, the witnesses diverge here. Richard Chapman, who was evidently a witness "for" the vicar,[55] says that Stannard did not rise to Hampton's bait: "Leth your tythes a loone unto an other tyme, and we shall co[m]mone further…I am content. Come one yow shall have your ryghts."[56] That is to say, he ignored the potentially fractious issue of the unpaid tithes and told Hampton to come forward. On the other hand, the testimony of Reginald Kyght, who was clearly intent on presenting Stannard in the worst possible light, conflicted with the testimony of every other witness. He said that "he see the sayde Roger hampton offryng the sayde vicar iijs [3 shillings] for hys tythes, with the wiche su[m]me he herde the sayde vicar saye that he was nott co[n]tent."[57] This was, apparently, rather selective hearing. The presentation of the tithes therefore seems especially staged: it seems as though Hampton was expecting trouble, quite possibly because he had not been confessed, or because he was late. In any case, it is significant that in the testimonies from the *ex officio* proceedings against Stannard, the tithes are just one of many disputatious aspects. In the eyes of Reginald Kyght, a witness in the instance litigation

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the discursive repression of women in legal documents. For a response, see Beattie, "Single Women," 193.

54. *LMA*, DL/C/207, fos. 287v, 290v, 291v, 292r, 293r. Each witness expresses this in a slightly different way, but most use some variation on the phrase, "when the parish was served of its rights."

55. Chapman consistently portrays Stannard as polite, reasonable, and conciliatory to both Stoker and Hampton. Ibid., fos. 288r–v.

56. Ibid., fo. 291v.

57. Ibid., fo. 292r.

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between Hampton and Stannard, they become a great deal more central to the narrative of conflict.

The performative aspects of the conflict become even more obvious when the issue of Hampton's confession is raised (for which, as noted earlier, he could provide no evidence). After Stannard and Hampton exchange insults over the missing "token of confession," the witness Richard Chapman, very much the vicar's man, puts a rather prescient speech into the vicar's mouth: "And beere record neybors that I do nott denay thys man his rights for no tythes, but when he bryngeth me a lettyr or a tokyn [showing] wher[e] he was confessyd, I will be redy to geve hym hys ryghts."[58] That is to say, Chapman's testimony shows Thomas Stannard giving a soliloquy on the precise, legalistic reasons why he has refused to give Hampton the communion. By comparison, Reginald Kyght misses the issue of confession entirely, to focus on the issue of the tithes and Stannard's insulting words to Hampton.[59] And finally, Stannard himself, in his personal responses to the articles of the cause, does not even mention the tithes: he does not appear to have been *expecting* to remember the tithes, as Kyght and others did.[60] Why are the tithes perceived to be so central by some of the witnesses? It seems probable that there was some pre-existing enmity between Hamtpon and Stannard, and that Hampton deliberately staged a dispute with Stannard, attempting to aggravate him over the issue of the unpaid tithes.[61] When this did not work, he managed to provoke Stannard into a shouting match in church, in front of the whole parish. When Stannard uttered the words "I would rather see you hang," he implicitly defamed Hampton, and thus provided the basis for the desired legal case. The idea that social disputes might be deliberately staged as a precursor to, or basis for, legal action is hardly surprising: this is one of the key insights of the "dispute settlement" conceptualization of medieval law and society.[62] What is especially interesting about this particular attempt to stage a conflict, however, is that it did not work: the spontaneous dispute with Gerard Stoker meant that attention was deflected away from Hampton's staged conflict. Perhaps as an indemnity against the failure of the *ex officio* case, or perhaps in an attempt to harass

58. Ibid., fo. 291v.

59. Ibid., fo. 289r–v.

60. *LMA*, DL/C/330, fo. 75v. It is perhaps also worth repeating that Stannard's personal responses were taken on the April 20, more than 1 week before the witness depositions.

61. Miri Rubin suggests that the payment of tithes was essential before the sacrament could be received: *Corpus Christi*, 149. Concomitantly, a post-Reformation case of withheld tithes centred on the vicar's failure to administer divine services; see Helmholz, *Canon Law*, 465, fn. 121.

62. For this work, see above, fn. 23.

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Stannard further, Hampton simultaneously launched separate instance (that is, interpersonal) litigation to deal specifically with their conflict.

Whereas this may well be an accurate recounting of events, it does not especially change the interpretations of the discourses of charity and neighborliness that I have identified. However, in the context of these legal maneuverings, one piece of evidence does fundamentally disrupt these readings. This is the deposition of Reginald Kyght, the first witness to testify in Hampton's instance litigation against Stannard. Here he is talking about Stannard:[63] "Also he sayde [that] hampton was the most wreche and the most keytyff yn hys p[er]yssh, for he [Stannard] sayd that there was no man yn hys p[er]yshhe that loved hym [Hampton]. Furthermore he [the witness] sayth that the sayde hampton awnseryd agayn: 'Ser yow are more to blame that yow doo knowe that they [the parish] doo nott love me; and that yow [ought to] *bryng me and them at a grement*, soo that yff I have done them a fawte that I may make them amens.'"

This, rather like Richard Chapman's unsubtle attempt to make Stannard too prescient, rather gives the game away, and, similarly, no other witness mentions this speech.[64] In his attempt to condemn the vicar, Kyght tries to portray Hampton's social inadequacy as the fault of Stannard, on whom the onus was to "make amends" between neighbors, and "to bring them in agreement." This seems to me very significant. Kyght, testifying two days after the first set of witnesses, adopted a version of the discourse of charity (and reconciliation) that formed the crux of the Stoker incident, and attempted to jam it into Hampton's dispute with Thomas Stannard, which was, in the opinion of every single other witness, supposed to be about tithes or confession. Kyght thus ties the two cases together, but in a slightly clumsy way. What we can see in Kyght's deposition, then, is qualitatively different from the way that Stephyns and Richardson portrayed their thoughts about the virtue of charity in social reconciliation. Whereas they saw "charity" and "neighbourliness" as *concepts* that might or might not apply to social practice, Kyght saw them as *discourses*, words and framings useful for advancing his particular narrative.[65] He performed his own deconstruction of the cultural motifs that he perceived to be at stake: neighbors (the parish), love, and agreement were reconfigured to become representations of pastoral responsibility, akin to

63. *LMA*, D/L/C/207, f. 292r-v. My emphasis.

64. See above, fn. 60.

65. I am grateful to an anonymous reviewer of an earlier draft of this article, who pointed out that Kyght may have wholeheartedly believed in the conciliatory ethic that he insists on so forcefully. This is an interesting alternative to my slightly more pessimistic interpretation of his motives; as they noted, however, this does not alter the overall interpretation, or the thrust of the argument: Kyght was still doing work of adaptation.

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those in the confrontation between Stannard and Gerard Stoker. That is to say, Kyght's testimony was calculated to provoke connections between the two cases where none in fact existed, to give the impression that discourses of charity and neighborliness extended into both of the disputes, where in fact such notions related entirely to the first. In short, from the perspective of a historian attempting to analyze these discourses, his testimony was *preconstructed*.

III

If Kyght had never testified, a historian who examined the deposition books might well have seen the Stannard case(s) as an interesting example of the way that the ideas of charity and neighborliness were conceived, received, and debated among late-medieval English parishioners and their clergy; they might see a firm avowal of charity's continuing importance near the time of the Reformation. Having stumbled across other cases hinging on the same themes of Eucharistic practice and charity, other historians have done exactly that,[66] but on the other hand, if the testimonies were constructed as I have postulated, then Kyght's deposition puts the Stannard case(s) in a very different light. If Kyght, a 20-year-old fisherman, was capable of manipulating conceptual understandings of social ideology, then it is fair to presume that other medieval deponents did so too. On a practical level, this suggests that we ought to give witnesses a little more agency in the constitution of the discourses present in their depositions. But this also has important theoretical implications for the deconstruction of witness testimonies as texts. When historians deconstruct the cultural or societal discourses they perceive in testimonies, regardless of the extent to which they acknowledge the legal prompting of these discourses, they cannot simplistically assume that the witnesses are unwittingly repeating such discourses, and, therefore, concomitantly, that those discourses represent a "microcosm" of wider society.[67] As John Arnold has put it, with regard to the words of inquisitorial depositions:

66. For similar cases, see Marjorie Keniston McIntosh, *Controlling Misbehavior in England, 1370–1600* (Cambridge: Cambridge University Press, 1998), 189, fn. 9; Rubin, *Corpus Christi*: 149–50; and Eamon Duffy, *The Stripping of the Altars: Traditional Religion in England*, 1400–1580 (New Haven and London: Yale University Press, 1992), 92–3. All three see such cases as examples of the importance of charity.

67. For some theoretical observations on this theme, see Franz von Benda-Beckmann, "On the reproduction of law: Micro and macro in the time-space geography of law," *Begegnung und Konflikt—eine kulturanthropologische Bestandsaufnahme*, ed. Wolfgang Fikentscher (München: Verlag der Bayerischen Akademie der Wissenschaften, 2001), 119–31.

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"There is no language available to use prior to the inquisitorial event; the language prompted by that event is intimately connected with its discursive context and not a mirror of speech occurring elsewhere."[68] With the testimony of Kyght, we can take this still further: the *discourses* (of love, charity, and neighborliness) prompted by the legal event are not symptomatic of those found "elsewhere." even though that was precisely the effect that he was attempting to create. Therefore, it is not simply a case of recognizing, as historians have done before, that discourses about x, y, or z, were prompted, or even partly constituted by, the confrontation of the witness and the law courts.[69] Even while trying to obviate such a distinction, such a methodology necessarily separates the "social discourses" of the deponent from the "legal discourses" of the court. In such a conceptualization, the witness becomes simply a vessel of some distilled, abstract, social, or cultural stuff, which the court documents, and then channels to the historian. By contrast, in light of the discursive savoir-faire demonstrated by Kyght, we must acknowledge that social discourses bear an extremely complicated relationship to the people who spoke them, and vice versa. When we see discourses of "gender" or "charity," or anything else, jumping off the folio, they are discourses that have already been received, grasped, and digested by the deponent, and then promulgated in a legal setting. Is it such a stretch to imagine that witnesses reconstituted their ideas in a way that they deliberately conceived as particularly "legal"?

By way of conclusion, I will briefly discuss two implications of this larger point. First, as I have been implying, historians ought to assume that medieval people were able to analyze and exploit the discourses circulating with their own cultures. At the moment, I think, too much weight is liable to be placed on the way that the procedures of the courts themselves might have shaped, or even suppressed, the narratives of the deponents. For example, Jeremy Goldberg has identified a marriage dispute from the York consistory in which the testimony of a witness named William Pottell appeared to be suspect, as some of his answers did not fit the questions in the articles to which he was responding. Goldberg suggests that this could have been because the clerk made a mistake, or attempted to suppress Pottell's repetitions; but goes on to outline a version of events in which "Pottell answered the questions as he thought appropriate, but, as a humble menial employed to run errands, he was fazed by the procedure of the court and was stressed by the sense that if he performed badly his job might be on the line, so ended up saying some of the right

68. John H. Arnold, *Inquisition and Power: Catharism and the Confessing Subject* (Philadelphia: University of Pennsylvania Press), 7.

69. See above, footnotes 51–2.

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things in the wrong places."[70] But rather than postulate a scenario in which Pottell fluffed his lines because he was a "humble menial," it might be fairer to put the analytical focus on the fact that he did, after all, self-consciously attempt to determine the narrative of the testimony. As more and more research is demonstrating, it is clear that fairly ordinary people in late-medieval England (and undoubtedly elsewhere) had a good understanding of the legal institutions with which they periodically had to engage.[71] After all, law courts of all kinds were part of the fabric of everyday life in the Middle Ages.[72] We cannot, then, bracket off the prior "experience" of the deponents to counterbalance the "legal" discourse of the documents. The notion that the "real," "social" world is somehow separate and ontologically distinct from the "discursive," "legal" world we see in our sources is nonsense: and, moreover, to force such a dichotomy is to insist upon a transparency that medieval documents simply do not possess. Depositions are no less "social" for being uttered in a law court, and no less "legal" for being about "social" praxis or ideas.

I hope that in this article I have done something to give witnesses some of their critical faculties back, perhaps even something of their reality, although of course our eyes are drawn inexorably back to the institution that provoked, shaped, wrote down, and ultimately preserved this reality: the late-medieval Church. As Shannon McSheffrey has recently remarked, the legal documents produced by the Church "…were written with the archive in mind. To use a fifteenth-century word, they were memoranda, things which are to be remembered (and by extension, things which are to displace other things which are to be forgotten)."[73] Considering issues of agency in the creation of the physical documents with which we work, the pendulum therefore swings back the other way: if witnesses were producing and enunciating their own analyses of cultural discourses, then they were prompted to do so—in the instances of such enunciations that we have available—by the church courts. This leads me to the second potential implication of the wider argument here. Other

70. Goldberg, *Communal Discord*, 40.

71. The "New Legal History" has proliferated in the last decade. See Paul R. Hyams, "What did Edwardian Villagers Understand by 'Law'?" in *Medieval Society and the Manor Court*, ed. Zvi Razi and Richard Smith (Oxford: The Clarendon Press, 1996), 69–100; and Anthony Musson, *Medieval Law in Context: The Growth of Legal Consciousness from Magna Carta to the Peasants' Revolt* (Manchester: Manchester University Press, 2001). For the aims of this approach, see David Sugerman, "Writing 'Law and Society' Histories," *The Modern Law Review* 55 (1992): 292–308.

72. Shannon McSheffrey, *Marriage, Sex, and Civic Culture in Late Medieval London* (Philadelphia: University of Pennsylvania Press, 2006), 13.

73. See fn. 37, "Detective Fiction in the Archives," 73.

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commonly used legal fora in late-medieval England, to which people had relatively frequent recourse, such as the manor court, the county sessions, and various kinds of urban courts, did not, in general, take depositions, and, furthermore, were more concerned with issues of what we might now call "public order" than were the ecclesiastical courts.[74] Some secular jurisdictions, notably the court of Chancery, did do exactly these things, but none could be said to have an articulated impulse toward "peace" in quite the same way.[75] All of which is to ask: was Kyght's particular kind of manipulation—in which he emphasized religious virtues as they related to social cohesion—something that was liable to issue from interactions with the church courts in particular? Were these interactions in which people were asked to consider social relations in legal terms? Certainly, the Church's legal jurisdiction, in extending mainly to sex, marriage, and defamation, of course frequently touched on foundational concepts of social relations.[76] The idea that witnesses might have been prompted to think "legally" about social discourse must change the way that we, as historians, think about the very experience that "lies behind" the swirling Latin (and sometimes Middle English) words that we see on the page in front of us. In the end, perhaps, medieval testimonies might thus be rather accurate representations of these ambiguous tangles of people, words, and ideas, in all their chaotic resplendence.

74. Conversely, current trends seem to lean toward a more holistic understanding of "social control" that cuts across jurisdictional boundaries; see the articles in Paul Griffiths, Adam Fox, and Steve Hindle eds., *The Experience of Authority in Early Modern England* (Basingstoke: Macmillan Press Ltd., 1996); and those in Herman Roodenburg and Pieter Spierenburg eds., *Social Control in Europe Volume 1, 1500–1800* (Columbus, OH: The Ohio State University Press, 2004).

75. See Wunderli, *Church Courts*, 42. I think it is fair to say that the "equity" pursued by Chancery has a different set of associations and emerges from a different tradition of legal thought. Ecclesiastical jurisdictions had no monopoly on the discourse of charity and love; see Carole Rawcliffe, "'That Kindliness Should be Cherished More, and Discord Driven Out': the Settlement of Commercial Disputes by Arbitration in Later Medieval England," in *Enterprise and Individuals in Fifteenth-Century England*, ed. Jennifer Kermode (Stroud: Alan Sutton, 1991), 99–117. An arbitration indenture I have found in the Maldon composite book (i.e., an urban legal context) includes the proviso that the two parties "shold be in love and charyte": *Essex Record Office*, D/B 3/1/2, 8r.

76. Sexual offences and defamation, for example, made up on average nearly 87% of cases prosecuted in the Commissary Court of London, between 1471 and 1514 (five samples were taken at intervals, based on the evidence available); see Wunderli, *Church Courts*, 81. Different levels, however, might be found in the higher jurisdiction of the consistory. As well as these cases, ecclesiastical jurisdiction in England also concerned tithes, probate, and breach of faith (for petty debt) as the next three biggest subjects of litigation.

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