Medieval English villagers' 'sense of law' revisited and legal reasoning in the thirteenth and fourteenth centuries[1]

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The resolution of disputes in medieval English manorial courts has in the past been perceived from the alternative perspectives of 'functionalism' and conflict. The first predicates the impetus to the restoration of harmony and the 'public good' performed by the court.[2] The overriding concern of the village 'community' was reconciliation. In the interests of the village community, the lord and tenantry cooperated for the benefit of individuals and the village as a whole.[3] The conflictual interpretation, usually described as older and Marxian, (partly, but not exclusively) conceived the court as the vehicle for the extraction of surplus product. In the functionalist approach, the emphasis is placed on the involvement of neighbours and 'community' in adjudicating inter-peasant disputes and preference for their resolution, sometimes through informal procedures as well as in the forum. Whilst conflict was the natural order in tight-knit, face-to-face 'communities', more important was the resolution of disputes in reaffirming social cohesion. This functionalist explanation has in some cases been influenced by the systems theory of Parsons, with inter-'class' cooperation and assistance, and at other times from the anthropological discernment of intentions in acephalous African societies.[4] Both approaches beg a number of questions. What was the interest of the litigants (*mens rea*)? Why should any one overarching concern operate at all times? How does a perceived ideology of dispute resolution relate to the actual practice in the courts? Was dispute resolution the only concern of the court and the jurors?

A second strand invokes the language deployed in the courts to consider jurisprudential framework of the litigation. This terminology was no doubt introduced by the clerk of the steward who held the courts or by the steward who often had some instruction in legal matters

(*jurisperitus*). Even so, this legal environment may have infiltrated into the perceptions of the villagers who used the manorial court.

The chronology accords with the height of the recorded litigation by peasants in the manorial courts in the thirteenth and fourteenth centuries before an apparent decline in the employment of the courts by the peasantry for inter-peasant litigation from the late fourteenth century. These personal cases, that is other than transactions in land, comprised actions of debt and detinue (strictly withholding of chattels), trespass ('tort' in a broad sense), and covenant (verbal undertakings).[5]

For the interpretation of complex ('hard') cases which involved more than reference to known norms, a wide range of court rolls has been consulted and these particular cases extracted. When addressing the intentions of litigants in inter-peasant litigation, the court rolls in particular of the Merton College manors in Leicestershire, Barkby and Kibworth Harcourt, have been comprehensively examined.

The material

Here, the intention is to consider two aspects of manorial court proceedings: the motives and objectives of the litigants, as far as they can be elicited; and how the language of the courts might indicate other concerns than resolution and the restoration of harmony. The evidence for the latter is sporadic and will attract the question of how far it was representative of the processes in general. The response is that these 'hard' cases bring into perspective the thinking of the jurors (and steward of the court) which is only visible through these difficult cases: questions not only of fact. 'Hard cases' applies here to those actions which, because of their complexity, were described in more detail in the court rolls, which therefore could not be resolved by reasoning by analogy with earlier cases (the term 'precedent' is not appropriate here).[6] Since the recording of the proceedings is usually reduced to common form, the appearance of unusual lexis might be significant. The elision of the count (*narratio*) or pleading and the truncations of denial, exception (offering an alternative justification) and demurrer (refusal to acknowledge the point), render it difficult otherwise to detect any principles of law (rather than fact) and the motives of litigants.[7]

Such a 'hard case' was prosecuted in the manorial court of Cuxham when the defendant was accused of stealing the plaintiff's geese, to which the defendant's exception retorted that it was a distraint for a detinue of grain by the plaintiff.[8] The jurors weighed the relative positions, deciding that the caption was less just and against the law of the locality (*minus iuste et contra legem terre*) and the plaintiff recovered. Such a resolution might have been merely processual or transactional; law might have resulted from the discovery of the facts ('factual equities'), but it seems that principles were also being applied in a rudimentary manner. In this sense, customary law aligned with common law as 'in essence a system of adjudication, which drew its substantive notions from below through cases presented to the courts'.[9]

Resort to courts in the earlier Middle Ages may have been promoted by the ability of those courts to make and enforce decisions.[10] By the twelfth century, suit to those courts had probably become normalized as a prerogative of seigniorial power. There are sufficient instances of self-help (tit-for-tat reprisals) in trespasses or battery (physical assault) to confirm the resort to extra-legal recourse as a first-order response in dispute. [11]

Much of what follows revolves around pleas in personal actions in the manorial court, by far the most common business. For example, in the late thirteenth and first half of the fourteenth century in Kibworth Harcourt (Leicestershire), on the manor of Merton College, trespass accounted for 701 litigants (plaintiffs and defendants), debt 211, detinue 58, covenant 26 and defamation 14.[12] In the forum for the manor of Redgrave (Suffolk), between 1260 and 1290, trespasses accounted for 1024 'contacts' between peasants, debt 349, and 'assaults' 255.[13] Between 1310 and 1325, in the manorial court of Halesowen (Worcestershire) were prosecuted 987 cases of trespass compared with 301 of debt between 1270 and 1349.[14] Similarly at Brigstock (Northamptonshire) 76 percent of cases concerned trespass, 19 percent debt/detinue and only five percent covenant before 1348.[15] These rural activities contrast quite strongly with borough courts where debt had achieved a much higher level of cases.[16]

Litigants had expectations of what would happen in the manorial court from their experience of manorial custom and procedure. Their recourse to law must then be viewed in that light. The procedural

formalism of the manorial court meant that law was a serious business with considerable consequences. Litigants went to law with prior knowledge of these conditions. That formalism is briefly described below. The custom of the manorial court was not static, but developing and evolving. It also involved a specific language which might have been plain language but might equally have been intended to convey some jurisprudential authority. Again, that language was understood by peasant litigants who had to take it into consideration. Some aspects of that language are analysed below. Another section concerns what can be elicited about the motives of litigants, their attitudes to compromise, the role of emotion and anger, and the compulsion necessary in compromise. Some recent literature has concentrated on cases of real property in manorial courts or 'family law' in a search for substantive principles of custom.[17] The examination here mainly relates to personal actions rather than 'real property' actions, with an emphasis on trespass, but also considering covenant (agreements), debt and detinue, and (where franchisal jurisdiction was deputed, that is, as a liberty with regalian rights), battery with the hue and cry, but in some specific aspects ('rights') allusion is made to real property. The purpose is not to illustrate that 'law' was client-driven, but to illustrate the different interests and tactics in the working through of cases in the manorial court.[18] New ideas were introduced into the manorial lexis and reasoning, such as injuria, and their assimilation merits consideration.[19]

Restoration of harmony through compromise?

In the court rolls of Brigstock, before 1348 about 74 percent of cases (the conclusion of which was recorded) resulted in a compromise and only 26 percent required a 'judicial verdict'.[20] Superficially, the inference might be that this form and degree of resolution reflects the 'communal' predilection for the restoration of harmony. The question remains whether the parties were reconciled. Any assessment must also account for non-suits, in which plaintiffs did not proceed. These failures to pursue a case and default may actually represent vexatious litigation. Since the defaulter was placed in mercy (fined), the court had indirectly made a decision.

An important suggestion was made by Beckerman that the homage (representative of the village) was being replaced by select juries of presentment in some manorial courts. This influential section of the 'community' might have been as interested in imposing norms through sanctions.[21]

The importance of the loveday (*dies amoris*) as a means of compromise and reconciliation in the manorial court has been proposed by Clanchy, but an implicit element of his discussion has been neglected, concerning the possible decline of the loveday towards the end of the thirteenth century and its replacement by the permission to agree (*licencia concordandi*). In this scenario amicable settlement was displaced by formal adjudication.[22] Whereas the loveday lexically (and rhetorically) indicated reconciliation, permission to treat has the primary implication of the lord's consent. Even restitution under the loveday depended on the authorization of the court, for, if one party defaulted at the loveday, the court imposed a fine and the case was forfeit.[23] If the parties failed to resolve their issues at a loveday, they were required to return to court and wage their law.[24] What exactly happened with the *licencia concordandi* is concealed. Formalism of procedure remained important, however, and is implicit in the lexis. In effect, the procedure was only partially extra-curial. One (or both) party (parties) had to request permission to treat, but had to return to court for a formal decision. Such compromise was probably regarded as somewhat an admission of some guilt, since the party agreed to be placed in mercy (fined) for permission to compromise (*ponit se in misericordia pro licencia concordandi*). In this context, some less usual entries may divulge some of the complexities. For example, at Kibworth Harcourt (Leicestershire), both plaintiffs and defendants in two separate cases were placed in mercy because they made a settlement without permission (*quia concordati sunt sine licencia*).[25]

Figures from some other courts apparently are not consistent with the courts cited above. At Kibworth Harcourt, fewer cases were concluded by *licencia concordandi* and only two references are made to lovedays.[26] At Redgrave (Suffolk) and Writtle (Essex) the number of cases resolved by *licencia concordandi* was also smaller.[27] The implication is, as Clanchy suggested, love was no longer respected as much as verdict or law, perhaps extending the notion of Fouracre and

Davies and their contributors that the development of formal courts owed much to litigants' desire for a verdict even if that verdict was a compromise, but one sanctioned by the authority of the court.[28] This emphasis on the authority of the court might be implicit in a case in Barkby (Leicestershire) in 1354 settled after *licencia concordandi*. The entry in the court roll emphatically qualified that the defendant nonetheless, despite the compromise, remained in mercy (guilty and fined) for wrongful detinue (*Et nicholominus predictus Rogerus remanet in misericordia pro iniuste detencione*).[29]

Nor is it certain that in all cases compromise by *licencia concordandi* did actually restore harmony for the community and achieve reconciliation between the parties. Some agreements upon *licencia concordandi* had to be enforced by a sort of recognizance, binding over, or contingent reserved fine. These occasions suggest a reluctance on the part of one of the parties. At Kibworth Harcourt, Nicholas *faber* and Nicholas Polle had permission to treat, but their arrangement was not entirely satisfactory. *Faber* was fined a mark (6s. 8d.) for the trespass committed against Polle, but another half mark held in respite for his future good conduct.

> *... per licenciam concordantur ... ita quod Nicholaus faber obligauit se in una marca penes dictum Nicholaum Ita quod predictus N faber solueret predicto Nicholao unam dimidiam marcam pro transgressione sibi facta et aliam dimidiam marcam poneret in Respectu pro continencia sua videnda.*[30]
>
> (... by permission agree ...such that Nicholas *faber* is indebted in one mark to said Nicholas Such that said N *faber* will pay to said Nicholas half a mark for wrongs done to him and another half a mark will be put in reserve for seeing his good behaviour.)

A similar guarantee was arranged at Cuxham (Oxfordshire) in 1306 in de Heycrofte v. (H)oldman. As a result of three suits against each other, they were allowed *licencia concordandi*. A supplemental pain had to be imposed in case of further discord.[31] Such cases intimate that reconciliation was not always certain (see below).

The *licencia concordandi* ostensibly involved bilateral negotiation. Arbitration and mediation by third parties occurs much less frequently. Although the Hinderclay (Suffolk) court rolls of the late thirteenth century are littered with *licencie concordandi*, only two litigants entered arbitration (*posuerunt se in arbitr'*).[32] Two clearer instances of arbitration occurred in Barkby in the mid fourteenth century.

In 1351, a memorandum on the court roll there recorded a settlement between John Ernald and William Ernald, by which William was to provide John with five strikes of wheat and 10d. for ploughing and handwork. This concord was mediated by four arbitrators elected by the two parties.[33]

> *Memorandum quod Johannes Ernald et Willelmus Ernald concordati sunt finaliter de quadam conuencione inter eos ... Et hec concordia facta fuit per ordinacionem Thome de Querndon' Johannis filii Ricardi electorum ex parte dicti Johannis Et Roberti Power et Willelmi de Hamulton' electorum ex parte dicti Willelmi*
>
> (Note that John Ernald and William Ernald conclusively agreed concerning a certain covenant between them ... And this agreement was made by order of Thomas Querndon' [and] John, Richard's son, selected on the said John's part And Robert Power and William de Hamulton' selected on said William's part.)

The effect of this mediation was to find one party guilty and fined, without any counter-gift to mollify feelings.

A second case in 1354 seems to have concerned constant bickering between Chapman and Hering over trespasses and then the enclosure of land. It was resolved by the arbitration of twelve neighbours, but the settlement needed enforcement by conditional fines for future good behaviour by both parties. If either party infringed the agreement, the forfeit was four pounds of wax for the light of the Virgin Mary in the parish church and 3s. 4d. in money.[34]

> *Willelmus Chapman et Robertus Heryng de omnibus querelis suis de tempore preterito per .xij. vicinos in quibus se posuerunt*

> *finaliter concordant in hunc modum videlicet quod [si] alius deliquerit decetero versus alium et de hoc competenter conuictus fuerit in Curia domini quod ipse sic conuictus de delicto soluat luminari beate Marie .iiij. libras Cere et deinde .xl.d.*
>
> (William Chapman and Robert Heryng have conclusively settled all their pleas up to now by twelve neighbours in whom they trusted, in the following manner, that if one henceforth infringes the other and is demonstrably found guilty for this in the lord's court, the guilty one will deliver to the Mary light four pounds of wax and 3s. 4d.)

Formalism

Despite the 'amateur' status of the jurors who were selected from within the 'community', some jurisprudential criteria were applied in an ad hoc way in inter-peasant personal actions. Although actions between unfree tenants did not have the definition introduced by writs at common law and the *rationes decidendi* or *obiter dicta* of 'professional' justices, the influence of the common law may have had an impact in in the manorial forum, not least through the freeholders of the manor who had access to other courts, including the common law.[35] Stewards, often *jurisperiti* (with a knowledge of common law), also offered counsel ('vostre auis'—'your opinion') on matters of 'law', in which procedure and substantivism were interconnected.[36]

Such jurisprudential reflections in manorial courts (as opposed to their more administrative functions or even administrative law in those cases where franchises were involved) meant that resolution of cases was not necessarily always directed towards compromise. While this substantive 'law' may have remained underdeveloped, formalism of procedure was certainly significant. Beckerman, for example, considered this formalism in detail, but it has sometimes been dismissed as ritualistic rather than secondary rules of law.[37] Formalism has, nonetheless, been identified as a jurisprudential criterion.[38]

The working of the manorial court of Havering is interesting because it illustrates communal judicial activity absent some of the direct influence of lordship.[39] As ancient demesne still retained by the

Crown through the Middle Ages, the vill was apparently left more or less to its own devices, although there remains the question of the oversight of the stewards.[40] Some aspects of the peasantry of the ancient demesne have also been illustrated at Brigstock.[41] Elsewhere, lordship might have been exercised more strongly, through which the more positivistic aspects of law were implemented. The formation of custom was not an autonomous construction by the peasant community; it can clearly be seen that custom had to be accepted by a superior authority—the lord—and thus, to employ Bohannan's phrase 'reinstitutionalized'.[42] Some resemblance is thus borne to Hart's notion that custom becomes law through formal adoption by a superior judicial authority.[43] Thus, in the example cited by Bonfield from the court roll extracts of Chertsey Abbey, where inheritance customs were changed away from ultimogeniture (youngest male heir) to primogeniture, the custom was in fact allowed over several manors, not just one, nor necessarily as the issue in a single case of inheritance. The particular case appears to have been the occasion for a wider transformation of custom at the petition or instance of the homage (the local jury). No doubt behind the petition was at least the imputation of servility of ultimogeniture. The homage of all the manors, nevertheless, contributed fines for the lord to accept the alteration, so that the custom was reinstitutionalized by authority.[44]

Legal ideas

Procedural formalism was most evident in the nature of pleading, as Beckerman has indicated.[45] Counts (*narrationes*) had to deployed in the established manner, but even more critically denials or exceptions had to be issued in the words of the court. Both plaints and exceptions could fail on the form of words, through miskenning. In courts with higher-level jurisdiction (franchises), miskenning could have serious consequences; in allegations of robbery in the court of the extensive manor of Wakefield, the accuser who pleaded incorrectly could not only lose the case but be imprisoned, the wrong words construed as a false accusation.[46] Numerous cases were lost by plaintiffs on the manor of Ingoldmells through defective counts.[47] Elsewhere, a case foundered because the plaintiff did not define the day and year.[48] In Kibworth Harcourt, William de Reyns was denied his plea of trespass because his

count only mentioned that the wife and servant (*serviens*) of William Brun wrongly reaped his grain , neglecting to specify their names.[49] The demand to observe the words of the court was probably one reason for employing eloquent 'friends' as attorneys in manorial courts, with rules about their use being tightly prescribed in some courts, such as Halesowen.[50]

Occasional insights into motives of litigants and jurors can be detected in the rolls, which are otherwise laconic; these exceptional entries may have a wider significance. The phrases tend to suggest that, at least in some cases, litigants and jurors were apparently seeking absolute values such as truth, perhaps indicating a notion of natural law, and assessing conflicting, competing, perhaps hierarchical rights.[51] In the manorial court of Chalgrave, the manorial jurors contended that they did not know the truth and elsewhere juries decided that a party need not respond since the truth was not evident.[52] Although the court's intervention to protect covenant might have involved simply fact, there may also have been a recognition of the basic principle that *pacta sunt servanda* (contracts must be observed), some basic idea of natural law and rights.[53] Indeed, the legal treatises, such as the *Court Baron* which were produced for the instruction of stewards, employed a language of reason and rights.[54] Disentangling fact, truth and right may be ambivalent. Any such thoughts might have unself-consciously addressed the sources of law.[55] When the jurors made a verdict at Halesowen, they referred to the process as *judicialiter* (lawfully) which might have simply described the legal process, but wider notions are possible. The term is employed widely throughout the Halesowen rolls.[56] It remains possible, however, that the basic concern of the courts was to remedy wrongs rather than protect rights.[57]

The language of rights was more usually applied in cases relating to (customary) land than personal actions. In Kibworth Harcourt, for example, the issue in Robert Sibile the younger v. his sister, Beatrice, concerned who had the greater right in three roods of land, in which the jury responded that Beatrice had right.[58] In most manorial courts, the issue concerning land pertained to who had the greater right, recognizing that there was a complex of rights, one of which was superior.[59]

Principles can further be elicited in deliberations in manorial courts about *injuria*.[60] *Injuria* (shame) had origins in Roman Law and involved affronts to honour (exemplary damages) as well as economic damages inflicted by trespass and torts. As Beckerman indicated, damages were differentiated in this way in only a small number of manorial courts, such as Chalgrave and Halesowen, but it might be surmised that where they remained undifferentiated, both elements were present. At Chalgrave, economic damages and *pudor* (shame) are combined in the same sum, but differentiated in one case.[61] Even the detinue of a goose might be conceived as causing *pudor*.[62] Damage and *pudor* were collected together in Hinderclay in 1283 (*ad dampnum et pudorem &c .C.s.*).[63] The claim for *pudor* implied compensation for embarrassment. Where franchisal jurisdiction obtained, compensation for battery consisted of damages and honour (*dedecus*), in one case half a mark (6s. 8d.) for each component.[64] Quite obviously here (and in many other forms of personal action) litigants were concerned with reputation more than compromise.

As mentioned above, the vast proportion of cases referred to the manorial courts were personal actions between peasants: debt/detinue, covenant (verbal promises), and trespasses (covering a wide range of undifferentiated torts since they were not defined more closely by writ). These personal actions are recorded peremptorily in the court rolls and were not ostensibly *just* part of the give and take of agrarian society.[65] One aspect is the development of a notion of intention through the adverb *scienter* (knowingly). Agnes Wen was presented as a common hedge breaker (for fuel) and she was with this knowledge accommodated by Joan atte Parkeyate (*communis fractrix sepium et claustrorum parci ... Et Johanna atte Parkeyate scienter recettat dictam Agnetem* ...) ('a common breaker of hedges and park closes ... And Joan atte Parkeyate knowing this accommodated said Agnes.').[66] Secondly, a notion of reasonableness or reason was understood. In a case in Gussage (Dorset) in 1281, the defendant accused of ejecting a lessee responded with several causes why he reasonably terminated the lease.

> *Item presentant quod cum onerati fuissent per sacramentum suum de inquisicione capienda utrum Radulphus Calabre iuste*

> *optulit se uersus Ricardum Breymond super eo quod idem Ricardus expulsit eum a quoddam furno que [sic] dictus Radulphus conduxit ab eodem Ricardo ad terminum unius anni infra terminum suum super quibus dictus Ricardus quasdam causas rationabiliter proposuit quare prefato Radulpho dictam conuencionem obseruare non debet nec potuit ...*[67]
>
> (Item they return that when they were on oath required to take an inquisition whether Ralph Calabre correctly put himself against Richard Breymond that same Richard ejected him within the term from a certain oven which Ralph leased from same Richard for a year's lease, said Richard produced certain reasons why he should not nor could not observe the agreement to Ralph ...)

This term (*rationabiliter*) (according to reason) recurs throughout the court rolls of Halesowen, for example, as he might reasonably demonstrate (*sicut rationabiliter monstrare poterit*).[68]

Extra-legal action

Trespass is important in the further respect that it may represent attempts at self-help outside the legal forum and only brought into court in the later stages of dispute. Particularly is this so in the numerous cases of tit-for-tat reprisal which were perpetrated serially before the dispute was introduced into the court. Battery was another contentious area. This infringement could only be presented in those courts which held leet jurisdiction and view of frankpledge, regalian rights devolved as franchises. These actions were regarded as a breach of the King's peace. Their presentment could be construed as the response by the community to resolve conflict which displayed signs of getting out of hand and disrupting the 'community'. Whilst this interest of the 'community' was present, the elements of formally constituted (royal) sanction and seigniorial interest were as important. Presentment was also adopted on some manors with the jurisdiction by plaintiffs in 'private' prosecutions for battery, perhaps as a more effective way of prosecuting cases missed by the chief pledges and juries of presentment. These private suits suggest that the power of the courts to impose a

decision was attractive to litigants.[69] Even where leet jurisdiction required ('public') presentment of battery, plaintiffs could initiate 'private' actions. In 1302 in the Halesowen court, Roger de la Pirie and his wife Margery impleaded Richard Chaunderey for beating Margery from head to foot, demanding damages.[70] Some 'victims' were not content with the 'public', 'community' response to violence, but required personal satisfaction and the restitution of their honour.

The motives of litigants as opposed to the preference of the 'community' or its hierarchy can be elicited from cases of reciprocal trespass and occasionally other forms of personal action. At Barkby, for instance, in 1365 Richard Samson impleaded William Playtour in trespass, claiming damage by William's pigs, upon which the jury of inquisition awarded Richard damages of two bushels each of barley and peas. Samson also proceeded against Playtour in another case of trespass that the defendant's dog had killed one of the plaintiff's piglets, the jury again awarding Samson damages (6d.). Another arraignment was initiated by Samson against Playtour, that the plaintiff's cow had died in the defendant's custody, but in this instance the jury found for the defendant for a false claim (*pro falsa querela*). Further, however, Samson impleaded Playtour that the defendant's pig had entered the plaintiff's close and destroyed a quarter of peas, the jury concluding that plaintiff should recover a strike of peas. Finally, from Samson's side, he accused that Playtour's pig had broken the plaintiff's door (*ostium domus*), the jury again finding for the plaintiff. Counter pleas were, however, pursued by Playtour: two of trespass and one of detinue. In the first, the plaintiff alleged that Samson's sow had broken his barn door (*ostium grangie*) and consumed his malt; the plaintiff recovered a peck of malt. Samson acknowledged his culpability in the second trespass and Playtour received damages. In the case of detinue, Playtour professed that Samson withheld a knife (*cultellum*), valued at 2d., which Samson denied but was found guilty, the plaintiff allocated damages.[71]

The proceedings of this court at Barkby were dominated by this mutual enmity. The reciprocity of 'community' life degenerated into discord and antagonism. Neither of the parties had any inclination for compromise, but demanded decisions. The disputes eventually entered into the court, but as retrospective accumulated grievances. Whether the decisions of the court moderated the rancour is not apparent.[72] (In

other cases, where officials were involved, spite was alleged as the motive, as against the foresters of Sowerby.)[73]

In Barkby, Samson's fortunes were declining as one of the customary tenants, as indicated in other entries in the court rolls relating to land transactions. He became embroiled with another tenant, John Tante, in 1346. Tante impleaded Samson for trespass and simultaneously Samson was prosecuted by Hawise Tante for whom John stood as pledge (surety). This dispute was inflamed by Samson alleging that Tante had purloined some of the grain of the Abbot of Leicester (the rector of the parish):

> *de eo quod ipsum defamauit quia dixit quod dictus Johannes asportauit bladum domini Abbatis de Leyc' et quia dictus Robertus noluit facere legem suam ideo dictus Robertus in misericordia et dampnum dicti Johannis taxantur ad .vj.d. et si dictus Robertus alias dictum Johannem defamaret soluet dicto Johanni .xx.d.*[74]
>
> (for reason that he defamed him because he announced that said John carried off the grain of the lord Abbot of Leicester and since said Robert would not wage his law, therefore Robert in mercy and said John's damages are assessed at 6d., and if said Robert should slander said John again he must pay John 1s. 8d.)

Samson thus refused to defend his accusation, which was obviously spurious, and he was placed in mercy. Tante was awarded damages and Samson bound over not to repeat any slander. Samson attempted then to bring vexatious litigation against Tante in trespass, but the jury rejected his case (*et compertum est per inquisicionem quod Robertus Samson iniuste questus est versus Johannem Tante ideo in misericordia*) (and it is shown by inquisition that Robert Samson unjustly impleaded John Tante and so in mercy).

Trespass featured strongly in reprisals, but not alone. Again in Barkby, in 1375, William Bonde introduced an action of trespass against Robert Heryng, but the issue was really defamation. Bonde had alleged that Heryng had erred when he sat on a jury (*inquisicio*). Accordingly, Heryng claimed damages, but also responded with a suit

against Bonde in covenant that Bonde had promised to loan him a horse for eight days which had not been delivered (nonfeasance), although payment had been received in advance (*quod idem Willelmus locauit sibi unum equum per .viij. dies pro .viij.d. et non habuit dictum equum ad dampna .iij.s. iiij.d.*) (that William provided a horse for him for eight days for 8d., and he didn't have the said horse, damages 3s. 4d.).[75] Upon which Bonde retorted with a counter claim of covenant that he was owed 6d. for pledging (acting as surety) on behalf of John Pertre with damages of 1s. Heryng's involvement in this pledging is not revealed, but he admitted the obligation, requesting only that a jury decide the damages (*de vj.d quos sibi debet pro plegg[agio] Johannis Pertre ad dampna .xij.d. .. Robertus cognouit debitum ... et petit quod dampna taxantur per Inquisicionem que postea taxat* [sic] *ad .iiij.d.*) (for 6d. which he owes him for pledging for John Pertre, damages 1s. .. Robert acknowleged the debt ... and requested that damages be assessed by jury, which are afterwards assessed at 4d.).[76] Simultaneously, Bonde was impleaded by Heryng for detinue of a *kerche* (cloth or veil) during three years, with damages. In his turn, Bonde acknowledged the obligation, but also requested assessment of the damages by a jury. Bonde then retaliated by introducing a case of debt against Heryng, which Heryng also confessed, but again demanded a jury resolve the damages—which were afterwards waived (*que postea condonantur*).

While the decisions of the juries may have been intended to dampen the ardour of litigants in disputes, nevertheless the 'community' was powerless to prevent this sort of heightened friction which occurred initially outside the court in sequential actions. Self-help before resolution in the courts was a not uncommon disruption. When introduced into the courts, these fractious litigants more often sought a decision than compromise.[77] The incidents were sometimes accompanied by malicious words. At the centre again, in one case in 1348 at Barkby, was Robert Samson who was found guilty of trespass (*recte* defamation) against William Ernald, against whom he launched counter suits of debt and trespass (*Compertum est per inquisicionem quod Robertus Sampsun transgressus est Willelmo Ernald vocandum ipsum Hokester' et alia enormia ad dampna sua .iiij.d.*) (It is shown by inquisition that Robert Sampson wronged William Ernald calling him a Huckster and other names, damages 4d.).[78] Since the words of slander

were recited in court, the necessity of the restoration of honour by damages was paramount.

A dispute of significant magnitude occurred in Barkby at an earlier time, in 1287, which necessitated the attention of the lords' (the Warden and Scholars of Merton College) steward.[79] The lords were alerted about a dispute (*contencio*) which had erupted between two tenants, William le Playtur and John Ernald.

> *Quia senescallus intellexit per litteram Custodis quod contencio esset mota inter Willelmum le playtur et Johannem Ernald et senescallus voluit attingere quis eorum fuit culpabilis de contencione et quia in despectu dominorum noluerunt inde presentare tota villata excepto Ricardo preposito in misericordia et tunc venit Johannes Ernald et dicit quod nunquam contencio inter eos fuit mota nec Willelmus nunquam ei transgressionem fecit.*
>
> ('Since the steward understood by the Warden's letter that a dispute had arisen between William le Playtur and John Ernald and the steward wanted to discover who was guilty for the contention and since they all refused to make a presentment about it, the whole village except Richard the reeve in mercy and then John Ernald came and said that no dispute had ever arisen between them nor had William ever wronged him.').

Although the steward attempted to discover the guilty party, he was met with silence. Subsequently Ernald denied that there had arisen any discord or any trespass against him by Playtur. Having recently acquired the manor at its foundation, the College might have been too diligent in its oversight, but the event reflects the lords' interest in enforcing 'law' and legal resolution in its own court, separate from the desires of the 'community'. The manorial court remained a vehicle for the confirmation of control over people and bodies.[80]

Self-help is demonstrable where lords held leet jurisdiction and the view of frankpledge as delegated regalian right. The frequency of the raising of the hue (*hutesium*) and incidences of battery ('drawing blood'—*traxit sanguinem*) suggests a high level of extra-legal self-help. At

Kibworth Harcourt in a single session in 1320, the hue was invoked 14 times and five incidences of battery presented.[81] From 1321 between four and 11 presentments of the invocation of the hue were recorded in each session of the court. In 1343 as many as eight cases of battery were indicted. In the adjacent manor of Kibworth Beauchamp between 1346 and 1351, the hue was convened between four and 13 times at each session and presentments for battery between one and nine.[82] Some manorial courts were compelled to pronounce injunctions against violence with stiff conditional fines, as high as £5 at Risley (Nottinghamshire) in 1331-2 (*Pena. Preceptum est in plena Curia quod nullus de homagio domini percussit alium sub pena centum solidorum.* Fine. Ordered that none of the lord's tenants strike another under pain of £5).[83] The fine of £5 was a hefty amount and indicated the lord's interest in restraining discord on the manor as well, perhaps, as reflecting a high level of conflict, at least incidentally. The resort to self-help in battery is well illustrated by the arraignment of John son of Thomas Webster for beating Alcok le Waynwrith at Halifax parish church, for Alcok had impleaded Thomas's father for trespass.[84]

At Halesowen, violence was perpetrated commonly with knives and sticks—allegedly—and biting.[85] Counts in some private prosecutions for battery contained more florid language than the stark 'public' presentments, the latter simply referring to drawing of blood (*pro effusione sanguinis*, *causa sanguinis*, *traxit sanguinem*). Walter le Archer proceeded against Henry *de Aula* and Nicholas de Farle at Halesowen because they *roughly* beat him (*crudeliter wlneraverunt*).[86] There too John le Esquier was accused by William de Halewell of threatening him to such an extent that he feared for his life (*ita quod de vita sua desperabatur*).[87] In similar vein, William *carpentarius* alleged that Philip de Lineker attacked him with a sword at his own door upon which William fled into his house for fear for his life.[88] Perhaps the plaintiffs were attempting to influence the jury by adding colour.[89] Occasionally, 'public' presentments invoked this language: the homage of Oldbury informed that Richard son of William de Cernhull beat his brother and intended to kill him (*voluit occidere*) and that self-defence was the only recourse for fear of death (*pro dubio mortis*).[90] When colour was adduced, the motive becomes clearer: to influence the court towards a stiff penalty.

Familial strife

Litigation was pursued vexatiously and subsequent upon much extra-legal discord. The circumstances of the contention between the Ernalds illustrates these motives dramatically. The origins of the disagreement appear to reside in a memorandum about fleeces held by one in trust for the other. (*Memorandum de .v. velleribus que fuerunt Willelmi Ernald et sunt in Custodia Johannis Ernald fratris eius...* Note about five fleeces of William Ernald in the keeping of his brother John Ernald...).[91] Two years later, in 1346, William sued his brother, John, in debt for 15s., but, although the jury decided in favour of William, they reduced the debt to 10s., so that both were placed in mercy and fined.[92]

> *Compertum est per inquisicionem quod ubi Willelmus Ernald questus est de Johanne fratre suo et petuerit .xv.s Et jurati dicunt per sacramentum suum quod dictus Johannes tenetur dicto Willelmo fratri suo in .x.s. et non in .xv.s.*
>
> (It is shown by inquisition that when William Ernald sought from his brother John 15s., the jurors report on oath that said John owes said William 10s. and not 15.)

Three years later, John was found guilty in covenant for not fallow ploughing William's land (*ponit se in misericordia quia conuictus versus Willelmum Ernald ... quia non Warectauit terram Willelmi Ernald ut debuit*) (stood in mercy because found guilty against William Ernald ... that he did not fallow plough William Ernald's land as he ought).[93] In a reversal of fortune, William was then convicted for three false suits against John concerning composting and carrying charcoal.

> *Compertum est per inquisicionem quod Willelmus Ernald male queritur de Johanne Ernald ... de terra sua compostanda et in carbones cariandas [sic].*[94]
>
> (It is found by inquisition that William Ernald wrongly impleaded John Ernald ... about composting his land and carrying charcoal).

In the same court, John accused William of letting his pigs cause damage in his beans and brought a case of detinue for 1s. William immediately countered in trespass. As a consequence, William became so aggravated that he accused the six jurors on the inquisition of malfeasance and demanded a different jury, which, nonetheless, confirmed the judgment of the first.[95]

> *queritur de tota Inquisicione videlicet [six named jurors] eo quod ipsi male et false dederunt presentacionem suam in querela dicti Willelmi et Inquisicio audita hoc dedicit et ideo inquiratur per aliam inquisicionem que dicit quod Inquisicio predicta bene presentauit*[96]
>
> (accused the whole inquisition that they badly and wrongly presented him in said William's suit and the inquisition hearing this, denied it, and therefore it will be assessed by another inquisition which reported that the first inquisition found correctly).

The court proceedings of 1346 were thus dominated by the sequential counter suits of two brothers. Neither kinship not neighbourliness could prevent the friction. Ultimately, their dissension was referred to arbitration, as above, but both parties were admonished.

Sanctions

Some reference has been made above to the necessity of sanctions, recognizances, contingent fines or binding over for the enforcement of decisions of the court or mediation. The imposition of sanctions or binding over suggests that, although there might have been a predilection for harmony, nevertheless the parties had divergent interests.

Although technically compromised by an agreement, disputes in Middleton (Warwickshire) had to be reinforced with sanctions. In Adam le Templer and his wife, Margery, plaintiffs v. Ralph Osberne and his wife, Margery, defendants, the action was compromised and the defendants became responsible for the fine to the lord. The concord,

nonetheless, had to be enforced by a pain of £1 on whichever party might break the agreement, half to the lord and half to the parish church.

> *... concordati sunt per licenciam et Radulphus Osberne et Margeria uxor eius acquietabunt amerciamenta. Et hec concordia tenebit[ur] sub pena subscripta scilicet qui eorum transgressiet uersus alium prout poterit probari domino .x.s Et frabrice ecclesie .x.s. et sic remanet ...* [97]
>
> (and they are agreed by permission and Ralph Osberne and his wife, Margery, will pay all the fines. And this agreement will be held to under pain as below that is who wrongs the other as can be demonstrated 10s. to the lord And 10s. to the church fabric.)

In the same year and court, a series of disputes between two other tenants was also resolved with the imposition of a conditional sanction.

> *Et si decetero dicti Henricus et Radulphus litigent aut querelam moueant supradictis decausis Iniungitur eis pena .ij.s. in quo primo contumelia mota fuerit* [98]
>
> (And if in future said Henry and Ralph go to law or bring a suit about the said causes, a fine of 2s. will be imposed on the first occasion that discord is moved)

At the end of a long series of mutual trespasses, two tenants at Eglington (Herefordshire) reached an agreement by permission in 1274, but the court felt it expedient to institute a conditional pain of half a mark on whoever might break their truce.

> *Rogerus Joldewin dat Hugoni Deneys.ij.s. pro omnibus transgressionibus sibi factis et concordati sunt et prouisum est per totam Curiam quod si quis eorum alias deliquerit dabit Capitulo [the lord] dimidiam marcam et dictus Rogerus invenit plegios Hugonem Deneis Rogerum Rossel et Radulphum Joldewin Est in misericordia plegius Rogerus Rossel .xij.d.*[99]

> (Roger Joldewin pays Hugh Deneys 2s. for all wrongs done to him and they are agreed and it is ordered by the whole court that if either of them in any way defaults he will pay to the Chapter half a mark and said Roger finds [as] pledges Hugh Deneis, Roger Rossel, Ralph Joldewin And he is in mercy [for] 1s. pledge Roger Rossel).

Sanctions for good conduct—a sort of binding over—featured also in the court at Halesowen. John *carpentarius* de Hille found pledges for the good behaviour of his wife, Dionisia, towards William Mody and his wife, Felicia, in 1294 on pain of a fine of half a mark.[100] When John son of Felicia and Roger Snode compromised in 1306, both were placed in mercy and fined and required to be pledge for each other, but additionally it was decreed (*statutum est*) that if either aggrieved the other and was convicted, he would forfeit half a mark.[101] In the dispute between Thomas Simund and his brother, Ranulph, it was adjudged that if either wronged the other and was convicted by a jury of six, if the offender was Thomas he would be fined two marks and if Ranulph half a mark.[102] In one case, de Longele v. le Per, a second jury had to be convened with its verdict that if discord resumed, their chattels and land would be confiscated.[103] In le Feys v. Symond, the abbot as lord did actually sequester Symond's tenement to compel him to come to court to answer the serious allegations of le Fey about Symond's deliberate wasting of his holding.[104]

Some conclusions

Some of the language deployed in the court rolls displays a sense of trying to enunciate some substantive principles, of law in general and for particular issues. Several items of curial lexis can be adduced here. *Judicialiter* implied some idea of justice or the correct procedure at law. *Scienter* imputed a concept of intentionality or *mens rea*. *Injuria* had a genealogy from Roman law. *Veritas* could include a notion of the discovery of law, not just the facts. Finally, *rationabiliter* resonated with natural law, the law of reason. The formalism of the court was not merely ritualistic or common form, but in it inhered those secondary

rules of procedure which some legal positivists have detected as the first principle of jurisprudence.

The practical litigation, where it is recounted in detail, illustrates that, whilst the community—and the lord—had an interest in the restoration of harmony, the parties had different objectives. The parties had resource to law for a decision authenticated by the court. Where compromise was achieved—through bilateral or third-party negotiation—the parties were not always satisfied. In some instances the rancour was so evident that sanctions had to be imposed to maintain the decision of the court. Charity was not always extended to opponents after sentence; enmity might continue. Impleaded by Mariota for detinue of three bushels of malt, Avice was found innocent in the manorial court of Wakefield and Mariota was placed in mercy. Avice, however, could not restrain herself from directing spiteful comments at Mariota, which the steward overheard and placed Avice in mercy too.[105] Such constant interactions reflect the quotidian conflict of peasant, agrarian society which were introduced into the local legal forum, sometimes with immediate recourse, at other times referring back to numerous earlier frictions.

Notes

1 C. Briggs and P. Schofield, 'Understanding Edwardian villagers' use of law: some court litigation evidence', in Law's Dominion: Medieval Studies for Paul Hyams, *Reading Medieval Studies,* 40 (2014), pp. 117-39 (p. 118–'sense of law'). Since it was composed in various iterations between 1995 and 2022, my paper does not address some significant publications in 2023. The author acknowledges numerous helpful comments by an anonymous reader.

2 For the institution as a 'public good', most recently, J. Claridge and S. Gibbs, 'Waifs and strays: property rights in late medieval England', *Journal of British Studies* 61 (2022), 50-82.

3 M. K. McIntosh, *Autonomy and Community: The Royal Manor of Havering 1200-1500* (Cambridge, Cambridge University Press [CUP], 1986), pp. 182-5, pp. 191-215.

4 G. Ritzer, *Sociological Theory* (New York, McGraw-Hill, 2000 edn), pp. 233-4; H. Joas and W. Knöbel, *Social Theory: Twenty Introductory Lectures* (Cambridge, CUP, 2009), pp. 20-42; M. Gluckman, *Custom and*

Conflict in Africa (Oxford, Oxford University Press [OUP], 1956); E. B. De Windt, *Land and People in Holywell-cum-Needingworth: Structures of Tenure and Patterns of Social Organization in an East Midlands Village 1252-1457* (Toronto, Mediaeval Institute Publications [MIP], 1972).; Z. Razi and R. M. Smith, 'Introduction' in *Medieval Society and the Manor Court,* ed. Razi and Smith (Oxford, OUP, 1996) for a critique of the 'Toronto School' of Raftis and De Windt.

5 C. Briggs, 'Seigniorial control of villagers' litigation beyond the manor in later medieval England', *Historical Research* 81 (2008), 399-422.

6 M. Lobban, *The Common Law and English Jurisprudence1760-1850* (Oxford, OUP, 1991), p. 8, p. 81; R. Cross and J. W. Harris, *Precedent in English Law* (Oxford, OUP, 1991, 4th edn), 24-7; 'hard cases' not in the sense of R. Dworkin, *Taking Rights Seriously* (London, Duckworth, 1991, 6th impression), chapter 4.

7 For pitfalls of exceptional forms in a comparative context, P. R. Hyams, 'The charter as a source for the early common law', *The Journal of Legal History* 12 (1991), 173-89 (p. 176).

8 *Manorial Records of Cuxham, Oxfordshire, circa 1200-1359*, ed. P. D. A. Harvey (Historical Manuscripts Commission Joint Publication 23, 1976), p. 640.

9 Lobban, pp. 78-9.

10 W. Davies and P. Fouracre, *Disputes in Early Medieval Europe* (Cambridge, CUP, 1992 pb edn), p. 219.

11 P. 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. For violence, P. Maddern, *Violence and Social Order: East Anglia 1422-1442* (Oxford, OUP, 1992); R. Ellickson, *Order Without Law: How Neighbors Settle Disputes* (Cambridge, MA, Harvard, 1991).

12 Merton College, Oxford, MM 6376 et seqq.[hereafter just MM].

13 R. M. Smith, 'Kin and neighbors in a thirteenth-century Suffolk community', *Journal of Family History* 4 (1979), 219-256 (p. 224).

14 Z. Razi, 'Family, land and the village community in later medieval England', *Past and Present* 93 (1981), 360-393 (p. 368).

15 J. M. Bennett, *Women in the Medieval English Countryside: Gender and Household at Brigstock before the Plague* (Oxford, OUP, 1989), p. 29, Table 2.2.

16 Most recently, T. Phipps, *Medieval Women and Urban Justice: Commerce, Crime and Community in England, 1300-1500* (Manchester, Manchester University Press, 2020), pp. 46-64.

17 L. Bonfield, 'The nature of customary law in the manor courts of medieval England', *Comparative Studies in Society and History* 31 (1989), pp. 514-

34; For a contrary opinion, Beckerman, 'Toward 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. *Select Cases in Manorial Courts: Property and Family Law,* ed. L. R. Poos and Bonfield (Selden Society, 114, 1998).

18 R. Palmer, *English Law in the Age of the Black Death 1348-81: A Transformation of Law and Government* (Chapel Hill, NC, University of North Carolina Press (UNCP), 1993) critiques 'client-driven'.

19 J. S. Beckerman, 'Adding insult to *injuria*: affronts to honor and the origins of trespass' in *On the Laws and Customs of England: Essays in Honor of Samuel E. Thorne* ed. M. S. Arnold, T. A. Green, S. A. Scully, and S. D. White (Chapel Hill, NC, UNCP, 1981), 159-81. *Court Rolls of the Wiltshire Manors of Adam de Stratton*, ed. R. B. Pugh (Wiltshire Record Society 24, 1968), p. 66 (who has *injuria*).

20 Bennett, p. 29 (Table 2.2), 31.

21 Beckerman, 'Procedural innovation', pp. 241-3.

22 M. T. Clanchy, 'Law and love in the middle ages', in *Disputes and Settlement: Law and Human Relations in the West*, ed. J. Bossy (Cambridge, CUP, 1986), pp. 47-67.

23 *Court Rolls of the Manor of Wakefield I 1274-1297,* ed. W. P. Baildon (Yorkshire Archaeological Society Record Series XXIX, 1901 for 1900), p. 99.

24 MM 6376: *habent diem amoris usque ad proximam curiam et si non concordati sunt dictus R debet facere legem per considerationem Curie.* (They have a loveday until the next court and if they do not agree, said R. must wage his law at the court's discretion.) I am grateful to the Warden and Scholars of Merton College for permission to examine and cite these documents.

25 MM 6376.

26 MM 6376 et seqq.

27 Smith, 'Kin and neighbors'; E. Clark, 'Debt litigation in a late medieval English vill', in *Pathways to Medieval Peasants*, ed. J. A. Raftis (Toronto, MIP, 1981), p. 252.

28 Davies and Fouracre, p. 219.

29 MM 6571.

30 MM 6382 (1288).

31 Harvey, p. 631.

32 University of Chicago Bacon MS 115 (1283).

33 MM 6571.

34 MM 6577.

35 P. R. Hyams, 'What did Edwardian villagers understand by "law"' in *Medieval Society and the Manor Court*, pp. 69-102; C. Briggs and P. Schofield, 117-39.
36 *The Court Baron* ed. F. W. Maitland and W. P. Baildon (Selden Society 4, 1891 for 1890), pp. 48-9.
37 Beckerman, 'Customary law in English manorial courts in the thirteenth and fourteenth centuries' unpublished PhD thesis, University of London 1972; Beckerman, 'Procedural innovation and institutional change in English manorial courts', *Law and History Review* 10 (1992), 197-25; H. L. A. Hart, *The Concept of Law* (3rd edn, Oxford, OUP, 2012), pp. 100-23; C. Briggs and P. R. Schofield, 'The evolution of manor courts in England, *c.*1250-1350: the evidence of personal actions', *Journal of Legal History* 41 (2020), 1-28.
38 R. Summers, 'The formal character of law', *Cambridge Law Journal* 51 (1992), 242-62; P. S. Atiyah and R. Summers, *Form and Substance in Anglo-American Law* (Oxford, OUP, 1987).
39 McIntosh, pp. 185-6.
40 McIntosh, 'The privileged villeins of the English ancient demesne', *Viator* VII (1976), 295-328; R. S. Hoyt, *The Royal Demesne in English Constitutional History 1066-1272* (Ithaca, NY, Cornell University Press, 1950).
41 J. M. Bennett, *Women in the Medieval English Countryside: Gender and Household in Brigstock before the Plague* (Oxford, OUP, 1987).
42 P. Bohannan, 'The differing realms of the law', *American Anthropologist* 67 (1965), 33-42 (p. 33).
43 Hart, p. 45.
44 Bonfield, p. 533; *The Chertsey Abbey Court Rolls Abstract,* ed. E. Toms volume 2 (Surrey Record Society 48, 1954), e.g. nos 1055, 1103, 1106, 1482.
45 Beckerman, 'Customary law'.
46 *Court Rolls of the Manor of Wakefield* I, p. 25.
47 *Court Rolls of the Manor of Ingoldmells in the County of Lincoln,* ed. W. O. Massingberd (London, Spottiswoode, 1902), passim.
48 University of Nottingham Department of Manuscripts and Special Collections MiM 114/4 (hereafter just MiM) (*quia narrando non nominavit diem neque annum...* 'because in counting he did not name the day or year').
49 MM 6376.
50 *Court Rolls of the Manor of Hales 1270-1307,* ed. Amphlett, S. G. Hamilton and R. A. Wilson (Worcester Historical Society 3 volumes 1910-33); P. Brand, *The Origins of the English Legal Profession* (Oxford,

Blackwell, 1992), pp. 43-6, 75-6; Beckerman, 'Customary law'. For a different perception, K. Parkin, 'Courts and the community: reconstructing the fourteenth-century peasant society of Wisbech Hundred, Cambridgeshire, from manor court rolls', unpublished PhD thesis, University of Leicester (1998), 113-19.

51 Bonfield, p. 531.

52 *Court Roll of Chalgrave Manor 1278-1313,* ed. M. K. Dale (Bedfordshire Historical Record Society XXVIII, 1950), 10; MiM 113, m. 5d.

53 Bonfield, 531; J. Finnis, *Natural Law and Natural Rights* (Oxford, OUP, 1992 edn), pp. 59-60; Lobban, pp. 17-18; For contract as a modern concept, P. S. Atiyah, *The Rise and Fall of Freedom of Contract* (Oxford, OUP, 1988 edn).

54 *Court Baron*, pp. 39, 50, 68 (*tort et non reson, et que il ne purchase dreit vers W., per rectum et judicium* – 'wrong and not reason and that he did not buy law against W. through right or justice').

55 N. Doe, *Fundamental Authority in Late Medieval English Law* (Cambridge, CUP, 1990).

56 *Court Rolls of the Manor of Hales* I, e.g. pp. 13, 16-17.

57 Lobban, pp. 78-9, 257.

58 MM 6376.

59 A. E. Levett, *Studies in Manorial History,* ed. H. M. Cam, M. Coate and L. S. Sutherland (Oxford, OUP, 1963 edn), pp. 304, 306, 323-4 (*maius ius*–better right).

60 Beckerman, 'Adding insult to *injuria*'.

61 *Court Rolls of Chalgrave Manor*, pp. 1-2, 4, 7, 12-13, 34, 37, 38.

62 *Court Rolls of Chalgrave Manor*, p. 34.

63 University of Chicago Bacon MS 115.

64 *Court Rolls of the Manor of Wakefield* I, pp. 56, 78.

65 C. D. Baker, *Tort* (London, Sweet & Maxwell, 1996), p. 241.

66 MiM 131/10.

67 Bodleian Library, Oxford, MS d.d. Queen's Roll 93.

68 *Court Rolls of the Manor of Hales* I, p. 130; II, p. 475.

69 Beckerman, 'Procedural innovation', pp. 245-8.

70 *Court Rolls of the Manor of Hales* II, p. 470; also *Court Rolls of the Manor of Wakefield* I, pp. 78, 84, 255.

71 MM 6574.

72 P. R. Hyams, *Rancor and Reconciliation in Medieval England: Wrong and Its Redress from the Tenth to the Thirteenth Century* (Ithaca, NY, Cornell University Press, 2003).

73 *Court Rolls of the Manor of Wakefield*, I, p. 96.

74 MM 6569. For defamation in manorial courts, R. H. Hemlholz, *Select Cases on Defamation to 1600* (Selden Society 101, 1985).
75 MM 6580.
76 MM 6580.
77 MM 6569 has additional serial litigation of this type.
78 MM 6571.
79 MM 6565.
80 P. A. Brand, P. R. Hyams and R. Faith, 'Seigniorial control of women's marriage : debate', *Past and Present* 99 (1983), 123-48, for a discussion of control over bodies against control over chattels.
81 MM 6393.
82 The National Archives SC2/183/76.
83 MiM 112/2.
84 *Court Rolls of the Manor of Wakefield* I, pp. 281-2 (1297).
85 *Court Rolls of the Manor of Hales* II, pp. 369-76.
86 *Court Rolls of the Manor of Hales* I, p. 34
87 *Court Rolls of the Manor of Hales* I, pp. 236-7.
88 *Court Rolls of the Manor of Hales* II, p. 426 (1301).
89 D. Sutherland, 'Legal reasoning in the fourteenth century: the invention of 'color'', in *On the Laws and Customs of England,* ed. Arnold *et al.*, pp. 182-94.
90 *Court Rolls of the Manor of Hales* I, pp. 146-7 (1280).
91 MM 6565.
92 MM 6569.
93 MM 6570.
94 MM 6570.
95 For jury challenge, Beckerman, 'Towards a theory', p. 19.
96 MM 6570.
97 MiM 131/10.
98 MiM 131/10.
99 Bodleian Library, Oxford, MS Herefordshire Roll 1.
100 *Court Rolls of the Manor of Hales* I, p. 290.
101 *Court Rolls of the Manor of Hales* II, p. 530.
102 *Court Rolls of the Manor of Hales* I, p. 13 (1270).
103 *Court Rolls of the Manor of Hales* I, p. 28 (1271).
104 *Court Rolls of the Manor of Hales* II, p. 492.
105 *Court Rolls of the Manor of Wakefield* I, pp. 18-19.