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The Evolution of Manor Courts in Medieval England, *c.*1250-1350: the Evidence of the Personal Actions

Chris Briggs and Phillipp R. Schofield

Abstract

Manor courts held by landlords for their tenants and other local people existed in their thousands across medieval England. These courts played a significant role in the everyday lives of villagers, formed a major site for the preservation of law and order, and have been studied by generations of historians. Yet room for debate remains concerning the character of these institutions in the later thirteenth and early fourteenth centuries, and the influences that proved most important for their evolution. This article uses a new database concerning hundreds of manorial personal actions – lawsuits which treated areas roughly equivalent to modern tort and contract law – to explore the procedures and practices of the manor courts, and to reconstruct their development over the first century for which detailed records of their proceedings survive. It is argued that although significant local variation among manor courts persisted, especially in the west of England, overall there was a broad process of 'convergence'. Yet this was not simply a top-down process involving the transmission of practices from the king's courts of common law, or the communication of external rules by legal professionals or landlords. Instead, the suitors, litigants and jurors of the manor courts played a decisive role in this process. The manorial personal actions thus provide an important instance of the fundamental role of experienced laypeople in simultaneously shaping and exploiting key institutions of medieval governance and law.

I. Introduction

Throughout medieval England, landlords held courts on their manors several times a year. These courts, many thousands in number, were attended by the lords' manorial tenants and other local people, and from the 1240s onwards they kept written records of their own proceedings. Although they had existed for a long time prior to that decade, and continued to do so for several centuries after the Black Death, during the century under examination here the manor courts collectively were arguably at the height of their importance in terms of their impact on the ordinary inhabitants of rural England. Generations of historians have studied these courts and the court rolls which provide the primary record of their multifarious activities.[1] Yet what exactly was the character of these institutions in the later thirteenth and early fourteenth centuries? Commentators from F.W. Maitland onwards have agreed that manor courts underwent significant changes during this period, but what were the nature and causes of these changes?[2] What sorts of procedures and practices did manor courts follow, and what kind of law did they observe? And perhaps most importantly, what was the role of the

[1] For a survey of historical approaches to the peasantry, including court roll-based studies, P.R. Schofield, *Peasants and Historians. Debating the Medieval English Peasantry*,Manchester, 2016; also Z. Razi and R.M. Smith, 'Introduction: The Historiography of Manorial Court Rolls', in Z. Razi and R. Smith, eds., *Medieval Society and the Manor Court*, Oxford, 1996, 1-35.

[2] F.W. Maitland, ed., *Select Pleas in Manorial and Other Seignorial Courts,* Selden Society vol. 2, London, 1889; F.W. Maitland and W.P. Baildon, eds., *The Court Baron,* Selden Society, vol. 4, London, 1890.

many thousands of villagers, most of them unfree villeins, in shaping institutions of which they were the most important users?

Although historians have for many decades pondered the nature of the medieval manor court, considerable uncertainty and disagreement remain. All participants in the debate recognize the important fact that the manor courts were in many ways not really 'courts' in the modern sense at all. Their business was remarkably diverse. The courts were used, for example, to enforce the landlord's rights over his tenants (especially his unfree villein tenants), to regulate agrarian routines, and to track and register transfers of customary (or villein) land. These areas of activity were primarily concerned with the landlord's interest in the control of people and resources, and were as much administrative or political as legal. Yet the manor courts were also the setting for another large category of business, namely that which concerned interpersonal or civil interactions and disputes between peasant litigants covering a wide range of matters. Although these generated some curial revenue for the lord, his interest in litigation and interaction between peasant suitors was much more indirect. In the period under consideration, however, this represented a lively and growing area of court activity which was much more obviously legal in nature. Thus it is not surprising that discussion over the institutional character of the manor court has largely, though not exclusively, been conducted in relation to this area of business.

It is possible to point to two main issues on which this debate has focused. First, how far did individual manor courts exhibit distinctive paths of legal development, rather than all moving in a broadly similar manner towards a shared destination? This theme is nicely summed up by the title of an essay by Helmholz, which examines the tension between 'independence'

and ‘uniformity’ in medieval England’s manorial courts.[3] A second, related question is, how intense was the influence of the king’s courts of common law on the ‘feudal’ courts of manorial lords? With their roots in twelfth-century legal reforms, the reach and scope of the common law courts was significant and growing during this period. Few would disagree strongly with Paul Brand’s judgement that ‘well before 1300 the law of the king’s courts had bedded in as England’s national law and had come to be accepted as such not only by justices and lawyers but also by laymen and by litigants’.[4] Those who have favoured the notion of ‘uniformity’ among manor courts have usually seen as its cause the growing influence of the common law on manorial law, as the principles of the former entered the latter through a process of ‘trickle down’.[5]

This has been a varied and nuanced debate, and just a few key contributions can be picked out here, starting with those that have stressed uniformity and common law influence. Beckerman’s landmark comparison of the earliest records of manor court proceedings with those of the fourteenth century revealed marked contrasts in the basic procedures used, and a convergence in practices. Among the key changes he identified were a rise in the importance

[3] R.H. Helmholz, ‘Independence and Uniformity in England’s Manorial Courts’, in L. Bonfield, ed., *Seigneurial Jurisdiction* (Comparative Studies in Continental and Anglo-American Legal History 21), Berlin, 2000. This important study has considerably influenced the approach taken here.

[4] P. Brand, ‘The English Medieval Common Law (to c.1307) as a System of National Institutions and Legal Rules: Creation and Functioning’, in P. Dresch and H. Skoda, eds., *Legalism: Anthropology and History*, Oxford, 2012, 195.

[5] For this expression, see e.g. L.R. Poos, ‘Medieval English Manorial Courts: Their Records and their Jurisdiction’, in Bonfield, ed., *Seigneurial Jurisdiction*, 197.

of juries, and a growing dependence on the written records of the court as evidence.[6] Although he did not see those changes as necessarily the result of manor courts imitating the king's courts, elsewhere Beckerman has expressed sympathy for the view that a standardization of procedure and administration took place in later thirteenth-century manor courts which was in part due to the influence of the developing common law.[7] Smith argued that new types of conveyance of customary land emerged in the later thirteenth century which were modelled on common law forms.[8] In a similar vein, Razi and Smith again placed emphasis on external influences on manorial jurisdictions by stressing competition with the popular royal courts as an explanation for the emergence of manorial court rolls as a written record, and for the internal development of manor court procedures.[9] Finally, perhaps the most all-embracing expression of this view is that of Hyams, who argued that 'common-law influence on manorial courts shines out as soon as one asks of the court rolls serious questions about procedure and custom',

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[6] J.S. Beckerman 'Procedural Innovation and Institutional Change in Medieval English Manorial Courts', 10 *Law and History Review* (1992), 197.

[7] J.S. Beckerman, 'Towards a Theory of Medieval Manorial Adjudication: the Nature of Communal Judgements in a System of Customary Law', 13 *Law and History Review* (1995), 11, 15-16.

[8] See e.g. R.M. Smith, 'Some Thoughts on "Hereditary" and "Proprietary" Rights in Land under Customary Law in Thirteenth and Early Fourteenth Century England', 1 *Law and History Review* (1983), 95; R.M. Smith, 'The English Peasantry, 1250-1650', in T. Scott, ed., *The Peasantries of Europe from the Fourteenth to the Eighteenth Centuries*, London and New York, 1998, esp. 350-355.

[9] Z. Razi and R.M. Smith, 'The Origins of the English Manorial Court Rolls as a Written Record: a Puzzle', in Razi and Smith, eds., *Medieval Society and the Manor Court*.

and introduced the notion of coercion into explanations of such influence, claiming that 'all courtholders at whatever level were well aware of a royal determination to *subordinate* their jurisdictions to the common law'.[10]

Turning to the other side of the debate, Lloyd Bonfield has been the most vocal opponent of the argument for curial uniformity and the absorption of common law forms and practices into manorial jurisdictions. Reflecting on a substantial sample of cases relating mainly to customary land litigation taken from a wide range of different court roll series, Bonfield argued that it was a mistake to regard customary law - the laws and procedures of manor courts – as a system of rules which 'cloned' the English common law. Indeed, he has even suggested that, logically, the reverse was just as possible in certain circumstances, i.e. that the common law followed principles of customary law.[11]

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[10] P.R. Hyams, 'What did Edwardian Villagers Understand by "Law"?', in Razi and Smith, eds., *Medieval Society and the Manor Court*, 79-80, 86, emphasis added. For an argument concerning the emergence of an English legal 'system' resulting from deliberate efforts of the royal courts to dominate and control, and the place of the seigniorial courts in this process, see P. Brand, 'The Formation of the English Legal System, 1150-1400', in A. Padoa-Schioppa, ed., *Legislation and Justice*, Oxford, 1996.

[11] L. Bonfield, 'What did Edwardian Villagers Mean by "Customary Law"?', in Razi and Smith, eds., *Medieval Society and the Manor Court*; L. Bonfield, 'The Role of Seigneurial Jurisdiction after the Norman Conquest and the Nature of Customary Law in Medieval England' in Bonfield, ed., *Seigneurial Jurisdiction*; these studies draw on L.R. Poos and L. Bonfield, eds., *Select Cases in Manorial Courts, 1250-1550. Property and Family Law*, Selden Society vol. 114, London, 1998.

Debate on these issues was especially intense in the 1990s, and has died down somewhat since. The present article seeks to move matters forward by re-examining the question of 'independence or uniformity' via the evidence of the personal actions. Attention thus far has tended to focus most on manorial disputes about rights to real property, but much more numerous in the records were the personal actions, which treated areas roughly equivalent to modern tort and contract law. In taking a close look at a major yet neglected area of manor court business that promises to reveal much about the institution's legal character, this study draws on crucial new evidence contained in a large database of hundreds of cases taken systematically from a large number of surviving manor court records.[12] Although previous commentators on manor courts have often made use of unpublished materials from a wide range of manors, there has often been a temptation to pick out revealing cases without seeking to establish the presence, absence or frequency of key court roll entries. Our overall aim is to assess the degree of homogeneity among the manor courts, and the evidence for external influence upon them, before offering closer consideration of the possible mechanisms through which the courts may have absorbed such influences. Ultimately, this matters because of what it reveals about the legal experiences and agency of medieval England's rural population.

II. The Manor Courts and the Personal Actions

The personal actions allowed claimants to bring lawsuits, initiated via an oral plaint and usually without a fee, to recover unpaid debts or detained goods and to win damages for various wrongs and broken agreements. Expediting these lawsuits – implementing court orders, securing parties' appearances, empanelling juries, and so on - was the responsibility of the manorial tenants who served as court officials. Maitland called the manorial jurisdiction over personal

[12] See below, n. 19 and Appendix.

actions ‘a useful, thriving reality’.[13] Some courts heard numbers of such lawsuits that were surprisingly large given the relatively small populations under their jurisdictions. An example is the Norfolk village of Bressingham, where sixty-six different personal actions involving approximately eighty-five individuals were pending before the manor court in the calendar year 1316, but there were many other less busy courts which heard ten or twenty actions annually, though a few heard none at all.[14]

The subject matter of the personal actions was diverse. Court rolls from manors all over the country abound with plaints related to assaults and beatings, slander, goods carried away, damage to crops and animals, and failed agreements of many different kinds. The king’s courts of common law also exercised jurisdiction over personal actions, and indeed, trespass was one of the areas in which royal court jurisdiction expanded in the second half of the thirteenth century. However, it was never intended that the royal courts would become the primary jurisdiction for the lesser civil business that was the stuff of manorial personal actions.[15] Furthermore, the manor courts provided remedies for complaints where the common law did not, the most important being broken agreements made without a written deed.[16] It is true that

[13] F. Pollock and F.W. Maitland, *The History of English Law Before the Time of Edward I*, 2 vols., 2nd ed., Cambridge, 1898, vol. 1, 587.

[14] Bressingham: Norfolk Record Office, WAR 7-8.

[15] Maitland and Baildon, eds., *Court Baron*, 115-117; J.H. Baker, *An Introduction to English Legal History*, 3rd ed., London, 1990, 26-27, 72.

[16] D.J. Ibbetson, *A Historical Introduction to the Law of Obligations*, Oxford, 1999, 24; J.S. Beckerman, ‘Customary Law in English Manorial Courts in the Thirteenth and Fourteenth Centuries’, thesis submitted for the degree of Doctor of Philosophy, University of London, 1972, 224-225.

the manor courts did not enjoy exclusive jurisdiction over the lesser personal actions, since such business could also be heard by other local tribunals, most notably the borough courts, church courts, county courts, and hundred courts. Nonetheless, the manor courts and these other local jurisdictions remained a leading venue for this very important category of lawsuit, and for litigation involving a huge number of individual participants.[17] As noted above, the total of sixty-six cases in progress in 1316 at Bressingham was probably above the average for a manor court at this time. However, even if we assume that ten was a more typical number, it is still realistic to imagine that significantly more than 10,000 personal actions were heard in the manor courts of Norfolk alone in that year.[18] And although it is impossible to measure, our strong impression is that the number of personal actions begun in the manor courts collectively each year increased over the first century for which court rolls are available.

The manor courts' jurisdiction over personal actions thus played a major role in the maintenance of law and order in this period, broadly defined. Virtually anyone, and not just servile or customary tenants of the manor, could sue or be sued in a manorial personal action. Litigation about debts, contracts and trespasses therefore involved many more people than did the rarer lawsuits about real property, which concerned the manor's customary tenants only.

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[17] As is explained below, the manor courts did not compete directly with the royal courts in this area owing to the forty-shilling jurisdictional limit.

[18] This calculation is based on the assumption that each of the 1,362 Norfolk lordships or manors recorded in the *Nomina Villarum* of 1316 operated a manor court, and that the average number of personal actions dealt with in each of those courts in that year was ten; see W.J. Blake, 'Norfolk Manorial Lords in 1316. Part II', 30 *Norfolk Archaeology* (1952), 265. Note that levels of litigation were above average in 1316 owing to famine and related economic distress.

For large sections of the population, participation in or witness of civil litigation in the manor court formed one of their most important encounters with the formal structures of law. As already noted, however, manorial jurisdiction over debts, trespasses and broken contracts was not exclusive, and many of those involved in manorial personal actions undoubtedly had experience of conducting similar kinds of litigation in royal and other non-manorial courts.

In order to find out how manorial personal actions developed over the first century for which we have court rolls, we draw mainly on a database of hundreds of personal actions recorded in 103 different court roll series relating to manors both lay and ecclesiastical, situated in five counties in eastern England and five in the west (see Appendix).[19] As already noted, our aim is to assess the evidence for uniformity of practice and the role of external influence in this area of the courts' work. Though we are especially interested in the influence of the royal courts, we have chosen not to frame this enquiry in terms of the question 'did manor courts follow the common law in the conduct of personal actions?'. The contents of the manor court records and those of the contemporary common law courts undoubtedly often look similar when placed alongside each other, since they share features like the categorization of cases according to 'form of action' ('plea of debt', 'plea of trespass' and so on), or the use of analogous terminology in the enrolment of pleadings.[20] Yet moving beyond the identification of such broad similarities to attempt an exhaustive exploration of the degree to which one sector drove the other is a very different proposition, with no guarantee of a clear result.[21] Instead, we

[19] Of this total, two are composite court roll series, each of which contains the records of court sessions from multiple manors.

[20] Helmholz, 'Independence and Uniformity', 226-228; Hyams, 'Edwardian Villagers', 80.

[21] For some of the problems, see Poos and Bonfield, eds., *Select Cases in Manorial Courts*, xxxii.

take a more targeted and pragmatic approach. We first consider the extent to which those involved in manorial personal actions emphasized the limits to manorial jurisdiction based on knowledge of the wider legal landscape (section III). In section IV, we offer an overview of the degree of 'convergence' of practice evident among manor courts in both east and west. Then, in section V, we briefly consider how far the uniformity we have traced was the result of intervention by central authority. Finally, section VI turns to other, less deliberately top-down external influences on the manorial personal actions, evaluating the role of lawyers alongside that of knowledgeable laypeople.

III. Jurisdictional Boundaries

The first step is to ask how far the various actors in manorial litigation understood there to be clear limitations to the competence of their own jurisdictions with respect to personal actions. Even a cursory consideration of the personal actions brought in different manor courts shows that, in very broad terms, they all involved the same kinds of subject matter. But a closer look at this issue is important, since it is hard to argue for homogeneity among manor courts if there were significant divergences from place to place in the kinds of disputes that could be prosecuted. To investigate this, we focus first on lawsuits in which litigants raised arguments about the limits of manorial jurisdiction. We then move on to examine the forty-shilling jurisdictional ceiling on all manorial personal actions, and the degree to which it was understood and applied in the courts we have studied. Overall, the evidence suggests that courts possessed a strong and largely uniform understanding of the division of jurisdiction between

manorial and other kinds of tribunal (including royal courts) with regard to interpersonal disputes.[22]

In the first pair of manorial cases under review, the defendants argued that their courts were not competent to act. In 1288 at Aldham (Suffolk), Sampson de Audham brought three separate trespass actions against Alice le Wolf.[23] In the second of these, Sampson complained that Alice and 'unknown men' had, 'with force and arms and against the peace', carried away thorns and briars from his land. In her defence Alice asserted that 'this court does not have the power to hear pleas pleaded against the peace', and asked for a judgment on this point. However, a decision of the 'whole court' went against Alice, and Sampson recovered his property and an award of damages. Alice's defence almost certainly sprang from an awareness that civil actions of trespass which alleged the use of force and arms and a breach of the king's peace could only be prosecuted by writ in the royal courts.[24] This defence presumably failed

[22] This statement must be qualified to take account of the 'ancient demesne' manors, several of which feature among those investigated for this study. Ancient demesne manors had formed part of the royal estate at the time of Edward the Confessor. One of their characteristics was that they were not bound by the forty-shilling jurisdictional limit: see E. Clark, 'Debt litigation in a late medieval English vill', in J.A. Raftis, ed., *Pathways to medieval peasants*, Toronto, 1981, 252; M.K. McIntosh, *Autonomy and Community: the Royal Manor of Havering, 1200-1500*, Cambridge, 1986, 194. However, it must be said that this feature is not very apparent in the litigation records for such manors studied here.

[23] Court of 1 June 1288, Cambridge University Library, Vanneck MSS, Box 1 Roll 1, m. 21.

[24] Beckerman, 'Customary Law', 188-196; Baker, *Introduction*, 72. For further discussion of *contra pacem*, see P.R. Schofield, 'Trespass Litigation in the Manor Court in the Late Thirteenth and Early Fourteenth Centuries', in R. Goddard, J. Langdon and M. Müller, eds.,

because Sampson had alleged only a breach of the peace, and not of the king's peace.[25] Nonetheless, the case shows an awareness of a division of jurisdictional responsibility over civil actions of trespass, and hence of the relationship between manor and royal courts.

Similar issues arose in July 1311 in the manor court of Essington (Staffordshire) when William Phelip sued Robert Mek. William alleged that at a session of the manor court the previous month, Robert had called him a thief, thereby subjecting him to 'scandal' in breach of the lord's peace.[26] Robert stated that he was not required to respond, since William's plaint was 'as in a case of felony, of which this court cannot have cognizance'. He sought judgment, but the court's decision has not survived. It is not entirely clear whether Robert was claiming that the alleged slander was itself a felony, or that the plaintiff's claim had been made in the same manner as an accusation (or 'appeal') of felony. This uncertainty does not invalidate the essential point, though, which is that the defendant knew that the manor court did not have the authority to try a serious crime, or felony, since (although Robert does not appear to have made this point explicitly) such matters fell exclusively under royal jurisdiction.[27]

Survival and Discord in Medieval Society. Essays in Honour of Christopher Dyer, Turnhout, 2010, 153.

[25] In the first of his three actions, Sampson alleged a trespass 'against the peace of the earl [i.e. of Oxford, the lord of the manor]', and it was perhaps the omission of this in Sampson's second plaint which led Alice to attempt her defence.

[26] Essington, court of 2 July 1311, *Phelip* v *Mek*, Staffordshire Record Office, D1790/C/69, m. 1v, m. 2 v. The lord of the manor at this date was apparently one Robert of Essington.

[27] For similar issues elsewhere, see a plea of trespass at Norton Canon, in which the defendant argued that he owed no defence to the plaintiff's plea because the plaintiff had presented his case in a manner that related to the jurisdiction of the crown rather than a trespass (*quia in*

These are not the only cases which show awareness at village level of the boundary between manorial and royal jurisdiction. At Coltishall (Norfolk) in 1290 Richard de Erford sued Peter de Coudessale (i.e. Coltishall), claiming that Peter had dug up his vegetation, carried it away and detained it.[28] Peter's defence was that the vegetation had been growing on his own free tenement. Peter sought judgment on whether 'he was required to respond for his free tenement, or regarding anything growing in his free tenement, without a special mandate of the lord king'. The plaintiff replied that 'this is not a plea about a free tenement, but about a trespass done to him', and judgment was sought. A very similar case had been heard five years earlier in the manor court of Hingham, some twenty miles away.[29] The plaintiff, John Selede, alleged that his ash trees had been carried away by the defendant. The defendant responded that the trees had been growing on his own land, or 'soil', on the day that he had carried them away. He stated, in a fashion similar to the Coltishall defendant, that 'he was not bound to respond concerning this soil without a writ of the lord king'. Both cases reveal a keen awareness of

narracione narrat in modum qui tangit coronam et non transgressionem), a suggestion at least that the plea had touched upon matters beyond the perceived jurisdiction of the court, and possibly towards criminal rather than civil matters (Norton Canon, Herefordshire, court of 19 November 1304, *de Ploufeld* v *de Ekkel'*, Hereford Cathedral Library, R899r).

[28] Coltishall, Norfolk, court of 13 May 1290, *Erford* v *Coltishall*, Cambridge, King's College Archives, COL/361. The vegetation or plant at the centre of this dispute, described as *succus*, has not been identified.

[29] Hingham, Norfolk, court of 8 Aug. 1285, *Selede* v *Yturbril*, Norfolk Record Office, KIM 1/6/7, 5r.

exclusive royal court jurisdiction over freehold tenements and the potential value of this information in mounting defences in manorial trespass litigation.[30]

The above evidence relates to arguments made by parties in their efforts to win lawsuits. In pointing to the jurisdictional boundaries between manorial and royal courts, these litigants were not seeking to enunciate general rules, nor were they necessarily making claims that would have commanded universal agreement. Indeed, as we have seen, some of their arguments about jurisdiction failed. However, this does not invalidate the observation that there are substantial indications in the manorial litigation we have studied of significant knowledge of the respective jurisdictional competences of the manor courts and the royal courts. In disputing about these issues, litigants clearly recognized the capacity of the manor courts' jurisdiction within a larger network of courts.

Also relevant to the question of jurisdictional competence is the issue of the forty-shilling limit in personal actions. This is a confusing topic characterized by scholarly uncertainty. There is general agreement about the existence by *c.*1290 (if not the origins) of a non-statutory rule which said that pleas of debt or detinue amounting to forty shillings or more had to be sued by writ in the king's courts. Manorial and other lesser courts were restricted to debt disputes about sums below forty shillings.[31] The aim of this measure seems to have been to reserve the more important and thus more profitable disputes for the king's courts. Additionally, chapter 8 of the Statute of Gloucester (1278) made the provision that no-one should in future have a writ of trespass before the justices (i.e. in the king's court) unless he declared on oath that the goods taken away were worth at least forty shillings. The objective of

[30] For another very similar (and very early) example, see Redgrave, Suffolk, court of 11 June 1260, *Dusing* v *Wodewell*, University of Chicago Joseph Regenstein Library, Bacon MS 1.

[31] Merchants, exceptionally, were not bound by the rule.

this measure was probably to keep petty disputes out of the royal courts. The traditional view of the Statute of Gloucester provision was that it was understood by contemporaries to restrict the jurisdiction of local courts to forty shillings in all kinds of personal actions, even though that is not what the statute said. In 1975 Beckerman adopted a contrary view, however, arguing that the forty-shilling rule in debt-detinue and the statute's provision concerning trespass must be regarded as separate matters, and that after 1278 local courts retained the power to hear trespass actions in which more than forty shillings was claimed.[32]

Clearly, where the forty-shilling jurisdictional limit is concerned we are dealing with rules affecting manor courts that emanated from the common law, though as is apparent from the previous paragraph, it is difficult to argue that those framing the rules intended to give comprehensive and unambiguous direction to manor courts concerning the size of the civil claims they were allowed to hear. Even if contemporaries took chapter 8 of the Statute of Gloucester to demonstrate an upper limit on manorial trespass claims involving the taking away of goods, doubt must have remained about the position with other kinds of trespass claim and with covenants, about the importance of damages claims (as opposed to goods taken away), and so on. It is perhaps surprising, therefore, that our research in the manorial court rolls has revealed a fairly consistent broad understanding among litigants from *c.*1290 that a forty-shilling jurisdictional limit existed across the board in personal actions. One can certainly find

[32] Key discussions include J. Beckerman, 'The Forty-Shilling Jurisdictional Limit in Medieval English Personal Actions', in D. Jenkins, ed., *Legal History Studies*, London, 1975; Helmholz, 'Independence and Uniformity', 220-221; S.F.C. Milsom, *Historical Foundations of the Common Law*, 2nd ed., London, 1981, 244-245; R.C. Palmer, *The County Courts of Medieval England, 1150-1350*, Princeton, 1982, 240-263.

cases in which more than forty shillings was successfully claimed without opposition.[33] However, such cases are not common, and defendants sometimes invoked the forty-shilling rule to explain why they need not answer a particular charge, or ensured that their claims did not exceed forty shillings, as in instances where the sum claimed came to 39s $11^{3}/_{4}$d.[34]

The material on the forty-shilling limit thus lends further weight to the view that the local litigation we have examined generally presents a shared understanding of the boundaries to manorial jurisdiction over personal actions, especially in relation to the royal courts. Furthermore, there is little sign of chronological change or regional variation in the arguments litigants made on this topic. Throughout the period under consideration, well-informed manorial litigants made arguments that imply a common understanding of the overall competence of the manor courts. Yet this still leaves huge scope for local diversity from court to court in legal procedures, and it is to this that we turn in the next section.

IV. Convergence Among Manor Courts

[33] For instance, Wymondham, Norfolk (Groshagh manor), court of 12 Dec. 1296, Clericus v de Brathweyt et al., Norfolk Record Office, NRS 18476 (successful plea in detinue for sixty shillings).

[34] E.g. Heacham, Norfolk, court of 24 March 1298, *Sapling* v *de Torp*, Norfolk Record Office, Le Strange, DA2 (defence based on plea exceeding forty-shilling jurisdictional limit); Woolhope, Herefordshire, court of 30 July 1308, *de la Hyde* v *Folemore et al*., Hereford Cathedral Library, R750, m. 2r,v (defence based on damages claim in trespass exceeding forty shillings); Alrewas, Staffordshire, court of 19 May 1330, *Tymmore* v *Nicholas*, Staffordshire Record Office, D/W/O/3/13, m. 10 r (example of a sum claimed just below the forty-shillings limit; interestingly this was an ancient demesne manor).

In assessing the extent of 'convergence' among manor courts in this period, it is essential to distinguish as far as possible between underlying practices and procedures on the one hand, and, on the other, the written forms used to record these in the court roll. Similar procedures could be written up in different ways. It is clear that the earliest manorial court rolls - i.e., those of the period *c.*1255-*c.*1275 - are often strikingly different from, and much more diverse than, those of Edward II's reign (1307-27) and later.[35] Where the personal actions in particular are concerned it is also easy to detect a marked development and convergence in recording practices over this period. While the records of personal litigation of the 1250s to 1270s often appear to be haphazard notes on a largely oral process, those of the later period were clearly intended as a full record of each stage of a plaint to which subsequent reference could be made, as and when necessary.[36] If a broad convergence in the format of recording is clear, however, to what extent can one identify a similar convergence in underlying curial procedures?

Here, too, existing scholarship would lead one to expect most manor courts to have been developing in the same general direction in this period. In particular, as noted above, Beckerman's influential comparison of the earliest records of manor court proceedings with those of the fourteenth century revealed marked contrasts in the basic procedures used. Among the key changes were a rise in the importance of juries of presentment and trial in the conduct of business at the expense of the entire homage or body of court suitors and older forms of trial such as compurgation (an oath-swearing ritual, usually involving a defendant denying all or part of a plantiff's claim with the assistance of 'oath-helpers'), and a growing dependence on

[35] See e.g. Poos, 'Medieval English Manorial Courts: Their Records and their Jurisdiction', 198-199.

[36] C. Briggs and P.R. Schofield, 'Understanding Edwardian Villagers' Use of Law: Some Manor Court Litigation Evidence', 40 *Reading Medieval Studies* (2014), 117.

the written records of the court as evidence in disputes.[37] These broad changes affected all aspects of the manor courts' work. Where the conduct of personal actions is concerned, the most important of these changes is the shift to jury trial, which, it is argued, was increasingly seen as a more rational and attractive mode of trial than compurgation.[38]

We undertook a systematic analysis of the records of a large number of manor courts in an effort to determine how far individual courts followed the same basic procedures in personal actions. Attention is restricted to the seventy-four court roll series (out of the total of 103) in which the records of a minimum of ten court sessions survive, and in which the entries dealing with personal actions have been searched in an attempt to locate at least one recorded instance of each of five common procedures encountered in personal actions.[39] These procedures were: (i) jury trial; (ii) use of compurgation as a mode of trial (see above); (iii) use of an essoin, or formal excuse for non-attendance, made for a party by an 'essoiner'; (iv) employment of mesne process to compel the appearance of a defendant (counted as one or more of the three steps of summons, attachment or distraint); and (v) enforcement of a court judgment, indicated by a statement that the court will act to 'levy' a debt or damages awarded to the plaintiff. The Appendix indicates whether or not these features could be traced in the surviving records of each court.

The results should be treated with caution, since the surviving series have a wide range of different start dates, and are available for periods of greatly varying length. Overall, while

[37] Beckerman, 'Procedural Innovation'.

[38] For the perceived advantages of trial juries over compurgation, see Beckerman, 'Customary Law', 20-38.

[39] For the seventy-four court roll series, see the Appendix. Of this total, two are composite court roll series.

there is evidence of convergence among manor courts with respect to procedure in personal actions, we should first note that this was not pronounced everywhere. While the manor courts operated using fundamentally the same set of procedures when prosecuting personal actions, an important point to which we will return, they were in no sense identical.[40] Manors in the western region appear to have been less uniform than those in the east of England. Instances of all five categories of procedure could be traced for just ten out of the thirty-eight western court roll series examined. This proportion was much higher in the east, where all but six of the thirty-six series studied yielded an example of each of the five aspects of procedure, and those six fell short on just one element. Such evidence does seem to reflect a deeper regional contrast between western and eastern England, which cannot be explained wholly by the fact that for the western region we are obliged to rely more heavily on short runs of surviving records than is the case for the eastern counties.

In particular, there was a tendency among western region courts to employ either compurgation or jury trial, but not both (twelve series). Thus in the west, there is less support for a linear model in which most courts tended to move over the century under consideration from a reliance on compurgation to a preference for trial by jury. For one thing, there were manor courts, such as the de Bockleton family's at Bockleton (Worcestershire), where there was significant use of compurgation but no explicit evidence at all that juries were used to adjudicate pleaded personal actions. Furthermore, rather than shifting over time from compurgation to jury trial, some western manor courts appear to have gone in the opposite direction. Examples include those of the cellarer of Worcester cathedral priory, and of the dean

[40] For this theme, see especially C. Briggs, **'**Manor Court Procedures, Debt Litigation Levels, and Rural Credit Provision in England, c.1290–c.1380', 24 *Law and History Review* (2006), 555.

and chapter of Hereford at Norton Canon (Herefordshire). In both cases, compurgation was the predominant trial mode towards the end of the period studied. One cannot easily determine how far patterns in the choice of trial method reflect the preferences of specific litigants, rather than a deliberate curial policy to promote or prohibit either compurgation or juries, but the evidence is nonetheless interesting. It is also notable that certain phrases used in some of the more abbreviated court roll entries on litigation to describe steps in procedure are very common in the records of the western courts, but never appear in the east. The most notable of these are *vadiavit emendationem* and *traxit curiam*, and variations thereof, the former meaning roughly 'he [usually the defendant] pledged to make amends', the second 'he withdrew from court'.[41] It could be that these are just regionally specific phrases for underlying procedures with identical equivalents in the east, but even if this were the case (and it seems doubtful for *vadiavit emendationem* in particular), the contrasts in recording patterns are themselves significant. Finally, as the Appendix shows, the western courts also featured a marked tendency to omit explicit orders to enforce court judgments (twenty-seven series). Once again, it could be of course that this is simply an instance of non-recording, though the widespread character of this feature would perhaps support the notion that it is a real procedural difference. Overall, therefore, in terms of underlying procedures, the courts in the east of England appear to have

[41] The phrase *vadiavit emendationem*, or variations thereof, appears in the following court roll series: the Worcester cellarer's manors, Norton Canon, Farewell, Ruyton, Whitchurch, and Bromfield, among others; *traxit curiam* or similar in those of Norton Canon, Woolhope, Pencombe, Billingsley, Claverley, Dodington, Hilton, Whitchurch, and Bockleton, for instance. See Appendix for these series.

operated on a more uniform fashion than those in the west, and perhaps also experienced 'convergence' earlier.[42]

Furthermore, just because a general feature of court procedure - such as a trial by jury - can be shown to have been present in different courts, this does not mean that that procedure operated in exactly the same way in all places, or that all courts were subject to external forces promoting uniformity. To reconstruct such variation in detail is difficult, not only because of the problematic relationship between court record and underlying practice, but also because convincing historical accounts of a court's procedures depend upon exhaustive analysis of every surviving litigation entry in its rolls.[43] It is possible, however, to point to areas where variety among courts was especially likely. One of the most important concerned essoins. A surprising amount of the technical argument that was heard in litigation over personal actions focused on essoins: in what circumstances they could be proffered, who could proffer them, and what constituted a legitimate essoin. While one would not wish to claim that each manor court had its own unique rules on the use of essoins in personal actions, there is certainly good evidence that understandings of the correct procedure were highly localized. An excellent instance comes from Alrewas (Staffordshire), where a plaintiff successfully challenged a defendant's right to enter a second essoin after having waged his law (i.e. proffered compurgation), on the grounds that this was not allowed 'according to the custom of the manor'. At Bagots Bromley (also Staffordshire) in 1293, 'the whole court said as its judgment

[42] For discussion of this trait of a general consistency allied to more subtle variation in western manors, see also P.R. Schofield, 'English Law and Welsh Marcher Courts in the Late-Thirteenth and Early-Fourteenth Centuries', in R.A. Griffiths and P.R. Schofield, eds., *Wales and the Welsh in the Middle Ages*, Cardiff, 2011.

[43] For an example, see Briggs, 'Manor Court Procedures'.

that each free man may be essoined by one person both for suit [i.e. ordinary court attendance] and concerning a plaint touching another person', while at West Halton (Lincolnshire) in 1313 an argument between parties about the correct number of essoins allowed following an adjournment prior to the delivery of judgment in a debt case was settled by reference to the 'suitors of the court'.[44] The phrases used in determining rules about essoins thus suggest that primacy was given to local usage, not external authority.

Importantly, though, in spite of regional differences and the scope for local variation, manor courts in both regions were all choosing from essentially the same procedural menu, and the contrasts between courts in litigation practices that are evident were often matters of emphasis. In terms of recording practices, moreover, the surviving records from different locations display the basic similarity that is familiar to all students of court rolls, and the impression gained is that this similarity was increasing over the period studied here.

V. Control From Above?

We have seen that manorial litigants articulated a clear notion of the place of their local manor courts within a wider hierarchy of jurisdictions, including royal jurisdictions. We have also seen that individual manor courts in this period increasingly worked in broadly the same fashion where personal litigation was concerned, albeit with greater local variation in western than in eastern England. Clearly, therefore, at least as far as the personal actions were concerned, manor courts were not self-contained entities operating entirely according to their

[44] Alrewas: *Adam* v *le Glovere*, Staffordshire Record Office, D/W/O/3/21, 1 March 1337,; Bagots Bromley: Staffordshire Record Office, D4038/B/2/2, m. 2v, 11 April 1293; West Halton: *Ralph son of Odo* v *de Pontefract*, Westminster Abbey Muniments, 14544, 29 Oct. 1313.

own rules. But how did such broad uniformity come about? This section begins exploration of this issue via a brief consideration of royal legislation, and specifically, the extent to which royal government made efforts to impose through such legislation a common framework for the conduct of manorial personal actions. To this end, the published royal statutes of the period have been sifted, along with the relevant scholarly commentaries.[45] By focusing on the statutes, it is possible we may miss unwritten, non-statutory decisions made in the common law courts which had the effect of dictating to the seigniorial courts their appropriate spheres of action or procedures.[46] Yet it can be argued that if the central authorities were indeed taking concerted steps to integrate local manorial courts into a larger legal system, then legislation was an obvious way in which to achieve this. A mass of royal legislation dealing with a wide range of matters was issued in this period, most famously under Edward I.[47] However, it is striking, if not surprising, just how little of it was concerned with the manor courts.

Legislation of this period does not ignore the manor courts entirely. Chapters 2 and 15 of the Statute of Marlborough of 1267 concerned rules about distraint in lords' courts which

[45] Especially A. Luders and others, eds., *Statutes of the Realm*,11 vols., London, 1810-28, vol. 1; P. Brand, *Kings, Barons and Justices: The Making and Enforcement of Legislation in Thirteenth-century England*, Cambridge, 2003; T.F.T. Plucknett, *Legislation of Edward I*, Oxford, 1949.

[46] A possible instance of this, though one with only minor implications for the present argument, is the use after 1273 of the common law action of replevin to challenge distraints made in lower courts: P. Brand, *The Making of the Common Law*, London, 1992, 295-298.

[47] For an overview, see P. Brand, 'English Thirteenth-Century Legislation', in A. Romano, ed., *Colendo Iustitiam et Iura Condendo': Federico II Legislatore del Regno di Sicilia nell'Europa del Duecento: per una Storia Comparata delle Codificazioni Europee*, Rome, 1997.

must have had some bearing on the conduct of personal actions and appear to have been generally observed, while chapters 19 and 22 (about pleas of wrongful judgment in a seigniorial court, and the oaths of free tenants, respectively) had less direct relevance to the manor court business that is of interest here.[48] Chapter 35 of the first Statute of Westminster (1275) again concerned lords' efforts to compel appearance in their courts (here called attachment, rather than distraint). The chapter is directly relevant to the personal actions, since it sought to limit certain seigniorial attachments made in interpersonal cases concerning contracts, covenants and trespasses.[49] Finally, as we have seen, the Statute of Gloucester (1278) legislated on the forty-shilling jurisdictional limit in trespass. Yet overall, royal legislation touching on the manor courts in general and their personal actions in particular fell far short of a comprehensive or coherent programme. The relevant chapters form small elements in lengthy statutes which are primarily concerned with other very different issues. Collectively the statutes of 1267, 1275 and 1278 imposed restrictions or standards on few areas of manorial civil litigation, and statutes after 1278 to the end of our period have little if anything to say about the manor courts.[50] On virtually all aspects of law and procedure, legislation left the manor courts free to shape their own affairs.

VI. Legal Expertise and Lay Knowledge

[48] For the text and an extensive discussion, see Brand, *Kings, Barons and Justices*.

[49] *Statutes of the Realm*, i, 35; H. Rothwell, ed., *English Historical Documents Volume III 1189-1327*, London, 1975, 406.

[50] An exception is c. 36 of Statute of Westminster II (1285), though this has little bearing on the personal actions. *Statutes of the Realm*, i, 89.

If the degree of deliberate formal direction of manorial affairs by centralized royal authority was minimal, to what extent was the civil jurisdiction of manor courts connected to the larger legal world by other means, specifically via the influence of lawyers and other experts who possessed knowledge and experience of other jurisdictional contexts?[51] The examples presented in previous sections leave one in no doubt that manorial personal actions were frequently characterized by technical and at times legalistic pleading. Do such arguments reveal individual peasant litigants marshalling their own legal skills, or do they indicate that paid professionals were operating in manor courts and exerting an influence there on a scale perhaps hitherto unsuspected?

To address this question it is necessary to examine the evidence concerning stewards, attorneys and pleaders in the civil business of the manor courts.[52] Possibly the least important of these figures, in terms of the degree of explicit influence over civil business, was the steward. The steward presided over a manor court on behalf of the lord. He had oversight of all aspects of the court's work and ensured that appropriate business was dispatched correctly. From the thirteenth century various treatises on 'holding manor courts' were produced which purported to guide stewards on how to conduct and record business.[53] Many stewards had a legal background and some had royal court experience. The stewards of courts in our sample

[51] For this issue see Bonfield, 'Role of Seigneurial Jurisdiction', 188.

[52] P.R. Schofield, 'Peasants, Litigation and Agency in Medieval England: the Development of Law in Manorial Courts in the Late Thirteenth and Early Fourteenth Centuries', in J. Burton, P.R. Schofield and B. Weiler, eds., *Thirteenth Century England xiv*, Woodbridge, 2013.

[53] Maitland and Baildon, eds., *Court Baron*.

included common lawyers, as well as people better described as 'local lawyers'.[54] An example of the former is John de Cambridge (steward at Chatteris abbey's manor of Foxton, 1306, 1316-19), a serjeant in the court of common pleas 1309-10, and justice there 1331-34.[55] An example of the latter is John de Barewe (d. 1335), who presided over several of Hereford dean and chapter's manor courts in the years 1306-26. Beyond this role he acted, for example, for clients as a serjeant in the Herefordshire trailbaston sessions of 1305.[56] Yet while such stewards presumably did much to shape the overall character of manorial business, their influence over the conduct of personal actions is hard to gauge. In certain respects we might assume that stewards were instrumental in putting in place any seigniorial initiative aimed at improving the quality of dispute settlement offered in manorial courts. Some stewards were clearly men of some significance and had links that extended far beyond the manor.[57] That said, the steward

[54] For the latter category, see P. Brand, 'Stewards, Bailiffs and the Emerging Legal Profession in Later Thirteenth-Century England', in R. Evans, ed., *Lordship and Learning: Studies in Memory of Trevor Aston*, Woodbridge, 2004.

[55] J.A. Hamilton, 'Cambridge, Sir John (*d.* 1335)', rev. Rosemary Horrox, *Oxford Dictionary of National Biography*, Oxford, 2004 [http://www.oxforddnb.com/view/article/4564, accessed 7 Dec 2016]. He also served as steward for the manors of St Alban's abbey: A.E. Levett, *Studies in Manorial History*, Oxford, 1938, 105.

[56] *Calendar of Inquisitions Post Mortem*, vol. vii, 474-5; P. Brand, *The Origins of the English Legal Profession*, Oxford, 1992, 140.

[57] This is not to say that stewards were invariably the most legally competent actors in their courts; see a case of 1344 at the commotal court at Aberchwiler, in the marcher lordship of Dyffryn Clwyd, where the steward, in ignorance and full view of the court, removed the seal from a document, thereby invalidating it until it could be repaired with supporting explanatory

is rarely mentioned in any context in the court rolls.. He is sometimes named in the court roll heading, which is how the two stewards discussed above are identified, but it is often necessary to resort to other estate records, where they survive, to discover the name of the steward of a particular manor. As far as one can tell, the role of stewards in civil litigation at least, appears to have been largely supervisory and, in most instances, passive.

More directly involved in litigation itself were attorneys and pleaders. Very rarely - in fact, in only three personal actions identified in research for this study - do we find reference to a *narrator*, or pleader, accompanying and assisting the plaintiff.[58] A more common figure is the attorney (*attornatus*). Attorneys seem usually to have appeared in the place of principal parties, and conducted litigation on their behalf. There are examples of single individual attorneys handling a number of cases simultaneously for different 'clients'. For instance, in 1342 at one session of the court of Cannock and Rugeley (Staffordshire) there were eleven personal actions pending. In four of these, Thomas Clerk was attorney for the plaintiff, that is, for a different plaintiff in each case. At a session later that year there were ten personal actions pending, in four of which Hugh Gentill acted as attorney for four different plaintiffs.[59]

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documentation: P.R. Schofield, 'Seals: Administration and Law', in P.R. Schofield and E.A. New, eds., *Seals and Society: Medieval Wales, the Welsh Marches and their English Border Region*, Cardiff, 2016, 43.

[58] Farewell, Staffordshire, court of 14 Nov. 1290, *Paternoster* v *Prencut*, Lichfield Record Office, D30/4/4/3r; Norton Canon, Herefordshire, court of 14 March 1306, *Tayllour* v *Norton*, Hereford Cathedral Library, R900, m. 2; Redgrave, court of 21 Jan. 1261, *Paumer* v *Stebbing*, University of Chicago Joseph Regenstein Library, Bacon MS 1.

[59] Cannock and Rugeley, courts of 11 March, 26 Aug. 1342, Stafford Record Office, D(W)1734/2/1/175/4v, 6r.

Attorneys are much more frequently noted than *narratores*, but even their explicit involvement is evidenced in only a minority of personal actions overall. For instance, only one of the 214 personal actions recorded in the court rolls of Fornham St Martin (Suffolk) between 1272 and 1307 mentions an attorney.[60] Furthermore, the background of such men is obscure, and it is not clear how far attorneys brought experience of non-manorial jurisdictions to their work. Some attorneys were clearly local tenants or neighbours appointed for reasons of convenience, rather than outsiders hired for their expertise.

That said, given the level of sophistication regularly exhibited in pleading manorial personal actions, one cannot rule out the involvement of legal experts whose role is not explicitly noted in the court records.[61] There are occasional hints that lawyers might have acted routinely in many manor courts but would not normally be mentioned in the rolls unless there was a specific reason to do so. An example of this is a debt case brought in 1339 at Romsley (Worcestershire) by William de Herthull against Margery la Deye. William argued that Margery, whose name suggests that she was a dairymaid, had merely denied the debt and 'did not defend in form of law, even though she could have had counsel in court'.[62] The reference raises the possibility of wider unrecorded involvement of such 'counsel' in this and other tribunals.

Furthermore, evidence additional to the court rolls themselves exists to suggest that trained lawyers possessing knowledge of a range of jurisdictions participated in manorial civil

[60] Briggs and Schofield, 'Understanding', 133.

[61] Schofield, 'Peasants, Litigation and Agency'.

[62] …*desicut ipsa potuit habuisse consilium in Curia*: Romsley, court of 17 Dec. 1339, *Herthull* v *la Deye*, Birmingham City Archives, 346809; M. Tompkins ed., *Court Rolls of Romsley 1279-1643*, Worcestershire Historical Society New Ser., 27, 2017, 113.

litigation. This is the French guide to pleading in personal actions which begins 'Each manner of wrong can be pleaded in two ways, namely by writ or by plaint' ('*Chescune manere de trespas put estre pledee en deus maneres, nomement par bref ou par pleynt*'). This unpublished treatise of the late thirteenth or early fourteenth century exists in two versions. A longer version survives in at least eight manuscripts, while a shorter version is known in just two.[63] The treatise describes the various stages of a personal action, moves on to pleading and exceptions, and concludes with sample counts (a 'count' was the plaintiff's opening complaint) and defences. The longer version focuses on debt and covenant, and the shorter version on trespass, but taken together the two versions consider every type of personal action. This work is clearly concerned with litigation in manor courts, since at several points its contents relate explicitly to practice in 'courts baron', i.e. manorial or seigniorial courts, and it is entitled '*Court Baroun*' in several manuscripts.

[63] Longer version: Harvard Law School, MS. 162, ff. 174r-187v; Cambridge University Library, Ee.2.19, ff. 133r-139v; Cambridge University Library, Mm.1.27, f. 143v (beginning only); Oxford, Bodleian Library, MS. Ashmole 1276, ff. 165r-205v; Bodleian Library, MS. Rawlinson C.459, ff. 197r-218v; Bodleian Library, MS. Rawlinson C.507, ff. 153-183; Dorset Record Office, DC/BTB/G/1, pp. 330-368; Sydney Univ. Lib., Nicholson MS. (not consulted). Shorter version: British Library, Egerton MS. 656, ff. 188v-192v; British Library, Royal MS. 9 A. VII, ff. 219v-227r. See J.H. Baker and J. Ringrose, *Catalogue of English Legal Manuscripts in Cambridge University Library*, Cambridge, 1996, 179-180, 476. Beckerman, 'Customary law', 276-345, provides an edition and discussion of both versions of the treatise based on the Harvard MS and the two British Library MSS. For a discussion of the dating of the tract, see D.J. Ibbetson, 'Sale of Goods in the Fourteenth Century', 107 *Law Quarterly Review* (1991), 492 n. 47.

There is consensus that this treatise is a product of the instruction of apprentice lawyers in London *c.*1300.[64] It includes pedagogical phrases: 'fet asaver', 'Jeo pos qe', 'ore orrez vous' ('let it be known', 'suppose', 'now hear'). The work is a guide, probably generated from 'lecture notes' for the benefit of those expecting to work as pleaders. The treatise suggests that at least some of that work would be in manorial courts. The *Chescune manere* treatise is thus distinct from other contemporary works on the manor court, namely the treatises on holding courts, already mentioned, and the formularies which provide sample court rolls. Those latter texts are aimed not at pleaders, but at either the court's steward, its clerk, or both.[65] The *Chescune manere* treatise, by contrast, is aimed at pleaders in personal actions. Furthermore, and crucially, the *Chescune manere* treatise is not concerned exclusively with manor court plaints.[66] As noted, the treatise starts by saying that every manner of trespass can be pleaded in two ways, by plaint and by writ. The reference to plaints shows the treatise's relevance to

[64] J.S. Beckerman, 'Law-writing and Law Teaching: Treatise Evidence of the Formal Teaching of English Law in the Late Thirteenth Century', in J.A. Bush and A. Wijffels, eds., *Learning the Law. The Teaching and Transmission of Law in England, 1150-1900*, London, 1999; Brand, *Origins*, 114-115. Beckerman's is the fullest available study of the treatise, but further research on the manuscripts is needed. For the London law school, see P. Brand, 'Learning English Customary Law: Education in the London Law School, 1250-1500', in O. Weijers, ed., *Vocabulary of Teaching and Research between Middle ages and Renaissance*, Turnhout, 1995.

[65] E.g. the texts in Maitland and Baildon, eds., *Court Baron*; also the MSS cited in Baker and Ringrose, *Catalogue of English Legal Manuscripts*, 346; also that printed in *Legal and manorial formularies edited…in memory of Julius Parnell Gilson*, Oxford, 1933 (British Library, MS Add. 41201).

[66] On this point see also Ibbetson, 'Sale of Goods', 492.

manor court practice. But the treatise also never loses sight of cases begun by writ, which is how personal actions were typically initiated in the royal courts. There are several points where the treatise points to differences in procedure depending on whether the matter is begun by plaint or writ. For example, there are two forms of an exception to a count based on variation, one when the matter is pleaded by plaint, one when it is by writ. Actions begun by writ also appear among the sample counts, for example a plea of replevin by writ. Numerous incidental references also show that the treatise is not just about manor courts. There are asides on royal court practices. In two instances in the shorter version, sample counts are distinguished according to setting. One starts 'Count by plaint in the court of the king or the county', another starting 'count without writ in the court baron'.[67]

The *Chescune manere* treatise thus points to the existence in our period of an education designed to assist lawyers in conducting personal actions in a range of curial settings, of which the manor courts were just one. The treatise cannot reveal how far lawyers' careers did actually involve such shifting between manorial and non-manorial jurisdictions applying a broadly similar set of pleading techniques. However, if this did occur to any great extent, then it would clearly have acted to tie together the different types of jurisdiction concerned with personal actions into a homogeneous network.[68]

[67] Beckerman, 'Customary Law', 329, 341.

[68] Palmer, *County Courts*, 300-301, argued for seeing the legal profession as a 'living bond between the various levels of courts', but his focus was primarily on the communality of personnel in county courts and royal courts; see also R. C. Palmer, 'The Origins of the Legal Profession in England', 11 *Irish Jurist* (1976), 126.

The treatise focuses on the technicalities of court process relating to exceptions, rules of essoins, counting and defence, and waging law (i.e. compurgation).[69] Such concerns also surface in many manor court cases in the court rolls themselves, as examples presented in earlier sections show. It is therefore tempting to conclude that the close attention to correct form and process evident in manor court litigation was entirely the result of participation of external legal professionals. Yet we should remember that although our surviving court rolls yield many examples of the objections, exceptions and clever legal points that could be employed in civil litigation, very few of these are explicitly attributed to professional attorneys or pleaders. The influence of such professionals was very likely greater than it appears from the record. Yet this does not rule out the likelihood that some of the sophisticated legal argument we observe came from the ordinary manorial litigants themselves, and not from an unrecorded legal adviser.

Virtually all such litigants acted at other times as ordinary manor court suitors, while many also served as jurors in manorial personal actions, and they clearly developed legal expertise and judgement in these capacities also. This point is neatly revealed in a trespass case in the manor court of Ruyton-XI-Towns (Shropshire), in which the plaintiff's count was followed by a request to the steward from the defendant for permission to confer with his legal counsel (*consilium*), which he then did, apparently leaving the courtroom. The plaintiff objected to this move on the grounds that he also needed to grant permission, and sought a judgment as to whether his opponent's actions were faulty on procedural grounds. Rather like the example from Romsley cited above, this case is thus noteworthy and unusual in accidentally

[69] Interestingly, in light of the discussion in section IV above, the treatise's treatment of essoins recognizes local autonomy, discussing some general rules, but also noting that 'in diverse courts there are diverse usages'.

revealing something of the role of lawyers and the court steward in trespass litigation. What is perhaps even more interesting, however, is the fact that the procedural point was referred to the judgment of the court, and that the 'whole court' (*tota curia*) decided that the defendant had indeed made an error, and should lose the case. It was the villagers, as suitors, and not the steward or the lawyer, who were deemed to possess the knowledge and experience required to make a decision in this case.[70]

Of course, if decision-making about how to handle personal actions lay as much with the local court suitors as it did with the 'experts', one might imagine that this would lead to diversity and idiosyncrasy among courts, not uniformity. The case of essoins, discussed earlier, suggests room for procedural variation according to local custom. However, we should recall that in making or weighing legal arguments as litigants, jurors or suitors, villagers drew on knowledge and techniques observed and learned in other, non-manorial jurisdictional contexts, as well as in their own and neighbouring manor courts.[71] Such arguments could occasionally draw explicitly on legal practice beyond the bounds of the manor. Thus the court record tells us that when in 1315 at Bressingham Nicholas Wyte sued John Joye about an alleged trespass in the village, 'John came and did not deny the words of the court [i.e. make a correct defence]

[70] Ruyton, Shropshire, court of 26 Feb. 1336, *Yonge* v *Broun*, Shropshire Archives, 6000 /7401, m. 6r. For another example from the same location of the 'whole court' stating a rule in a personal action, see Shropshire Archives, 6000 /7401, mm. 3, 4r, 23 Nov. 1335 (plaintiff in trespass is required only to narrate the basis of his claim at the first court, not repeatedly thereafter).

[71] J. Masschaele, *Jury, State, and Society in Medieval England*, New York, 2008; Hyams, 'Edwardian Villagers'.

as is the custom of the realm'.[72] We do not know who made this objection and thereby pointed to the necessity of following wider practice, and although the record does not say so, we cannot rule out the possibility that it was made by the steward or an unrecorded lawyer. More likely, however, is that it was the plaintiff, Nicholas, who had made the objection, since he went on to win his case by claiming that this failing had left John undefended. A similar insistence on the importance of following wider practice is evident in a 1279 debt case from Hevingham (Norfolk), in which the plaintiff's attempt to wage his law was successfully challenged by the defendant because 'he does not have the book [i.e. the bible] to make his law, as he should according to the law of England'.[73]

Indeed, rather than demonstrating the existence of highly localized preoccupations, the evidence frequently suggests that the same legal points cropped up repeatedly in different locations as part of the pleading of personal actions, in spite of the heavy lay involvement in proceedings. The possibility exists that manorial litigants made these points not because their lawyers advised them to, but because they had personal knowledge of their circulation in a wider range of legal contexts. A good example is the tendency for defendants to object that they should not be required to respond to an opponent's claim, on the grounds that he or she had failed to specify in his or her count the date or location of the alleged wrong or disputed contract. Several cases from both western and eastern counties include this exception, which took a very similar form in all instances and usually resulted in the collapse of the plaintiff's claim and the defendant going *sine die*. At least seven such cases record the defendant excepting on the basis of the plaintiff's omission of date or place (or both), and also state that

[72] Norfolk Record Office, WAR 5, m. 6r, court of 26 Sept. 1314.

[73] Norfolk Record Office, NRS 14634, court of 7 Oct. 1279, 15 Feb. 1280, *de Middelton* v *Kep*. The plaintiff had waged his law following his reply to his opponent's defence.

the defendant was 'present' in making his or her defence, or at least make no mention of an attorney or other legal counsel. This latter feature implies that the defendant was acting on his or her own initiative when making the defence. It provides evidence against the suggestion that this exception cropped up in a similar form in different manorial settings purely as a result of the work of lawyers drawing on a shared education or training, though the importance of including the date and location in a plaintiff's count would have been known to those lawyers whom we presume to be the primary audience of the *Chescune manere* treatise.[74] Furthermore, in all seven instances, the case was referred to 'the court' for a decision following the defendant's exception, which shows again that the suitors at large, rather than any experts present in the court, were perceived as a key source of legal authority.[75]

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[74] For sample counts in the treatise which include this information, see Beckerman, 'Customary law', 295, 307, 308, 309, 317, etc.

[75] Bockleton, Worcestershire, court of 22 Jan. 1323, *Atkynes* v *Algar*, Staffordshire Record Office, D(W)1788/P39.B10; Tardebigge, Worcestershire, court of 30 March 1318, *Lourdebene* v *le Marchald*, Worcestershire Record Office, b 705.128, Box 12/2; Preston-on-Wye, Herefordshire, court of 4 July 1306, *Atenasse* v *Carewardin*, Hereford Cathedral Library, R827a; Heacham, Norfolk, court of ?30 June 1286, *Hou* v *Baule*, Norfolk Record Office, Le Strange, DA2; Redgrave, Suffolk, court of 19 June 1266, *Chantecler* v *Iumpe*, University of Chicago Joseph Regenstein Library, Bacon MS 1; Great Waltham and High Easter, Essex, court held at Pleshey 30 June 1296, *de Valences* v *Reynold*, The National Archives, DL 30/62/769; and the Nov. 1304 case from Norton Canon, n. 27 above. A further three cases note the exception based on the omission of date and place, and imply that the defendant appeared and made a defence in person, but do not explicitly state that the 'court' made a decision on the defendant's exception: Preston-on-Wye, Herefordshire, court of 1 Dec. 1308, *Kaunt* v

Overall, then, it is perhaps safest to conclude that a broadly shared set of practices concerning the conduct of manor court litigation emerged in this period, and that this was partly achieved through the channelling of expert knowledge from beyond each manor, but also with the full participation of ordinary laypeople acting as officials, litigants and suitors. Such people might define a practice as correct not because it was local manorial custom, but because they had learned of it through their experience in a range of external legal settings.

VII. Conclusion

The manorial personal actions mattered because they were the primary means by which many thousands of English households enforced debt repayment, recovered detained goods, defended their reputations, and secured damages for minor injuries and petty infringements of their property rights. Litigation of this kind represented one of the most important settings in which ordinary medieval people engaged with and made use of the law. We have seen that by the end of the first century for which court rolls exist, the individual manorial jurisdictions we have examined were operating in broadly the same fashion where personal actions were concerned. It is true that at the micro level, the precise manner in which crucial procedures were carried out still retained the potential to vary idiosyncratically from court to court, with possibly important effects.[76] Furthermore, there are signs that progress towards curial 'convergence' was less smooth in the west of England than it was in the east. Yet at the macro level, it is the

Kaunt, Hereford Cathedral Library, R829; Lakenheath, Suffolk, court of 5 April 1317, *Criteman* v *Gere*, Cambridge University Library, EDC 7/16, roll 6; Leiston, Suffolk, court of 5 Dec. 1295, *le Colyere* v *Bygot et al*., Cambridge University Library, Vanneck MSS Box 9, roll 2.

[76] Briggs, 'Manor Court Procedures'.

similarities among manors (and their records) that are more striking than the differences. A litigant familiar with the workings of his local manor court would probably have been able to go into most other manor courts in lowland England and make sense of civil proceedings; many undoubtedly did so. The influence driving this broad uniformity was neither central authority, nor 'the common law', in the sense of a system of rules deliberately communicated in a top-down fashion. Nor does it seem to have had much to do with the actions of landlords, who cannot be shown to have been especially interested in the interpersonal litigation of the peasantry. The type of landlord, whether clerical or secular, provides no obvious clues to explaining the patterns in manor court litigation procedures captured in our Appendix, which seem rather to show a larger contrast between regions. Undoubtedly the court stewards, many of them experienced lawyers, exercised a role in overseeing court business as a whole and directing the manner in which it was written down by the clerk or scribe. However, there is little to show that the stewards interfered in the conduct of individual lawsuits.

Instead, the growing convergence of manor courts in the handling of the personal actions reflects the homogenizing influence of shared legal knowledge. This appears to have seeped into manor courts partly through the shadowy presence of lawyers who may have been trained to work in a variety of different jurisdictions – though undoubtedly with the expectation that they would be working mainly in the royal courts - and can occasionally be glimpsed making arguments in manorial litigation. One obvious conclusion to draw is that such legal professionals may have been earlier to appear and thicker on the ground in eastern England than in the western counties, and that this might explain some of the contrast between the two

regions.[77] Yet explicit evidence of the work of lawyers in manor courts is too fragmentary to justify an exclusive focus on them, and we should also emphasize the contribution of experienced villagers whose work as litigants, officials and suitors did so much to determine how the courts would operate. When we can observe disagreements arising in court concerning the correct rule or procedure to follow in disputes over private wrongs and agreements, it was very often the views of individual litigants or those of the 'whole court' that carried the day, and rarely those of the stewards or lawyers. We might speculate further that eastern England's comparatively high concentration of free tenants possessing experience of the common law courts could have been a factor in the contrast between the two regions.

Ultimately, of course, the manor courts were seigniorial institutions. In the century and a half after 1350, demographic stagnation combined with the decline of serfdom and manorialism more generally meant that landlords had less use for their manor courts. In many places they were held less frequently, and their machinery became less efficient. A knock-on effect of this was that these tribunals become less attractive than they had been before the black death as a venue for interpersonal litigation. Numbers of manorial lawsuits brought to manorial courts plummeted in the mid-fifteenth century, as debt and trespass plaintiffs sought out other, less moribund jurisdictions.[78] Thus the shifting fortunes of the manor court as an institution of seigniorial authority in the end determined whether it could thrive as a setting for the personal actions. Yet this does not detract from the importance of the fact that in the century under

[77] For an analogous contrast between eastern and western England, in this case in the emergence of a peasant land market, see P.R. Hyams, 'The Origins of a Peasant Land Market in England', 23 *Economic History Review* (1970), 18.

[78] C. Briggs, 'The Availability of Credit in the English Countryside 1400-1480', 56 *Agricultural History Review* (2008), 1.

consideration here, the success of the manor court jurisdiction over personal actions represents the successful building of legal institutions 'from below' by people - free and villein, male and female - who had extensive knowledge of law courts, including royal law courts, lying beyond the boundaries of their own manors. One might suspect that the resulting institutions were not necessarily always impartial, or intended to benefit the interests of the whole of rural society, as opposed to the village elites who no doubt controlled manorial juries and offices, and brought a great deal of the litigation to the courts. Yet Maitland's assessment that manorial jurisdiction over personal actions was 'a useful, thriving reality' is undoubtedly correct. We should add that jurisdiction to the list of medieval English institutions of governance and law whose success depended ultimately on the participation and expertise of ordinary members of rural society.[79]

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[79] For this theme, see especially I. Forrest, 'The Transformation of Visitation in Thirteenth-Century England', 221 *Past and Present* (2013), 3.

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