

## Understanding Edwardian Villagers' Use of Law: Some Manor Court Litigation Evidence

Chris Briggs and Phillipp R. Schofield  
*University of Cambridge and Aberystwyth University*

Paul Hyams's 'What Did Edwardian Villagers Understand by "Law"? (1996) is a rich and suggestive essay.<sup>1</sup> It offers a highly original account of the legal world view of the thirteenth-century English villager. Hyams argued that the typical substantial peasant of Edward I's reign was not someone whose experience of the law was confined to a local manor court with its particular way of operating. Instead, he suggested, most elite villagers both knew about and participated in a broader range of legal jurisdictions and processes, and that we should therefore be thinking less in terms of the multiple separate and comparatively unsophisticated legal cultures of individual villages, and more in terms of a general legal culture, which incorporated peasants alongside elite groups. Hyams's essay was noteworthy too for setting out a research agenda through which its propositions could be explored. The groundbreaking qualities of this essay have been recognized, and it has stimulated new research, as we note more fully below.<sup>2</sup> Yet it can also be argued that the challenges Hyams laid down have not been taken up as widely or as enthusiastically as one might have expected.<sup>3</sup> In the present study, we engage with the main themes of Hyams's piece from the perspective of a collaborative research project dealing with litigation in the personal actions (primarily debt, detinue, trespass, and covenant) in manor courts in the period c.1250-1350.<sup>4</sup>

Central to 'Edwardian Villagers' is the idea that England's manor courts were transformed during Edward I's reign under the influence of the common law. In advancing this position and providing further evidence for it, Hyams built on existing work, notably that

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- 1 Paul R. Hyams, 'What Did Edwardian Villagers Understand by "Law"?', in *Medieval Society and the Manor Court*, ed. by Zvi Razi and Richard Smith (Oxford: OUP, 1996), pp. 69-102.
  - 2 Among reviewers of the Razi and Smith volume, R. W. Hoyle found Hyams's contribution 'scintillating', a 'stimulating essay and not only for medievalists' (R. W. Hoyle, review article on *Medieval Society and the Manor Court*, in *Agricultural History Review*, 46 (1998): 217-22 (quotation at p. 217), while Edwin R. DeWindt opined that the essay 'overflows with provocative questions for future investigation' (review in *American Journal of Legal History*, 42 (1998): 90-5 (quotation at p. 91)).
  - 3 Hyams himself has not written much directly on this issue in subsequent work.
  - 4 'Private Law and Medieval Village Society: Personal Actions in Manor Courts, c.1250-1350', funded by the Arts & Humanities Research Council, 2006-09, Ref. AH/D502713/1; the project team comprised Chris Briggs and Matthew Tompkins as project researchers; Richard Smith as principal investigator; and Phillipp Schofield as co-investigator.

of John Beckerman, Leon Slota, and Richard Smith.<sup>5</sup> For all these scholars, a comparison of the earliest records of manor court proceedings, dating from the 1250s and 1260s, with those of the end of Edward's reign, revealed marked contrasts. Among the key changes were a rise in the importance of juries of presentment and trial in the conduct of the business of the manor courts at the expense of the entire homage or body of court suitors and older forms of trial such as compurgation, and a growing dependence on the written records of the court as evidence in disputes. Also important in this Edwardian transformation of manorial law was the adoption in the seigniorial courts of various sophisticated instruments for the conveyance of customary or villein land, similar to those already used in the king's courts of common law. For Hyams, a key result of these changes that produced the 'remodelled manorial courts' was that they 'profoundly affected the meaning of law for the better-off villager'. By increasingly dominating its business and procedures, in particular through the membership of juries, the propertied villagers came to see the manor court as 'theirs'. Another crucial if controversial suggestion about the Edwardian transformation advanced by Hyams is that the manor courts became in this period part of the lower tier of an integrated 'legal system', which incorporated all the various jurisdictions in the kingdom under the aegis of the royal common law.<sup>6</sup>

Against this essential background, Hyams develops two central themes. The first is the idea that the elite villagers probably participated in legal jurisdictions beyond the manor to a much greater extent than previously appreciated. Such peasants, Hyams argues, were well placed to use the church courts, courts of hundred and shire, and the various royal courts for their own purposes. The contexts in which villagers might appear in such jurisdictions were various. But Hyams appears particularly interested in the potential use of these courts by village plaintiffs in civil litigation, either in situations where the local manor court could not provide justice, or in situations where an external court offered a better alternative than the local manor court. Hyams argued that servile villeinage would not in itself have caused a serious barrier to such extra-manorial litigation. The second of Hyams's central aims is to encourage investigation of the villager's 'sense of law'. Given the Edwardian transformation of manorial justice and its impact, how did villagers view the law, and what role did it play in their lives? Hyams lays down some broad propositions and suggests ways of pursuing them.

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5 Hyams (and this paragraph) draws in particular on John S. Beckerman, 'Customary Law in English Manorial Courts in the Thirteenth and Fourteenth Centuries', (unpublished doctoral thesis, University of London, 1972); Beckerman, 'Procedural Innovation and Institutional Change in Medieval English Manorial Courts', *Law and History Review*, 10 (1992): 197-252; Leon A. Slota, 'Law, Land Transfer and Lordship on the Estates of St. Albans Abbey in the Thirteenth and Fourteenth Centuries', *Law and History Review*, 6 (1988): 119-38; and R. M. Smith, 'Some Thoughts on "Hereditary" and "Proprietary" Rights in Land Under Customary Law in Thirteenth and Early Fourteenth Century England', *Law and History Review*, 1 (1983): 95-128.

6 Hyams, 'Edwardian Villagers', esp. pp. 81, 83, 87, 98.

Hyams's essay has certainly had an impact on scholarly output in the relevant fields since 1996. Among those who work on medieval English legal records, there has been widespread acceptance of the idea that we should expect to find villagers among the litigants in non-seigniorial jurisdictions. Similarly, scholars appear to have adopted the notion of a legal 'system' involving the various different jurisdiction types, and around which litigants could move relatively freely.<sup>7</sup> Nonetheless, it remains striking that there has been little if any work since 1996 which demonstrates in detail the presence of villager plaintiffs among the civil litigants of non-seigniorial courts.<sup>8</sup> Those discussions that have appeared tend to deal with periods later than the reign of Edward I.<sup>9</sup> On the matter of villagers' 'sense of law', even less has been done, at least for the period and geographical setting with which Hyams was concerned.<sup>10</sup>

Why has more progress not been made in researching the issues Hyams raised? On Hyams's first theme, which calls for historians to track down villagers suing beyond their 'home' manor courts, the difficulties are mainly technical and methodological. Late thirteenth- and early fourteenth-century plea rolls of the royal courts do not record litigants' names in a way that makes it easy to identify *bona fide* peasants, villein or free. Where a plaintiff's place of residence is included on the royal plea roll, this offers the possibility of tracing that individual in contemporary manorial sources, but that information is not routinely given. We also have the problem of poor record survival for the relevant non-manorial jurisdictions, most notably the church courts. Where Hyams's second theme — the

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- 7 The present authors have attempted to engage with these themes: Phillipp R. Schofield, 'Peasants and the Manor Court: Gossip and Litigation in a Suffolk Village at the Close of the Thirteenth Century', *Past & Present*, 159 (1998): 3-42; Schofield, *Peasant and Community in Medieval England, 1200-1500* (Basingstoke: Palgrave-Macmillan, 2003), pp. 175-8; Chris Briggs, 'Seigniorial Control of Villagers' Litigation Beyond the Manor in Later Medieval England', *Historical Research*, 81 (2008): 399-422. See also Anthony Musson and W. M. Ormrod, *The Evolution of English Justice: Law, Politics and Society in the Fourteenth Century* (Basingstoke: Macmillan, 1999), pp. 127-33, 177-81; Anthony Musson, *Medieval Law in Context: The Growth of Legal Consciousness from Magna Carta to the Peasants' Revolt* (Manchester: Manchester University Press, 2001); Musson, 'Social Exclusivity or Justice for All? Access to Justice in Fourteenth-century England', in *Pragmatic Utopias. Ideals and Communities, 1200-1630*, ed. by Rosemary Horrox and Sarah Rees Jones (Cambridge: CUP, 2001), pp. 136-55; J. L. Phillips, 'Collaboration and Litigation in Two Suffolk Manor Courts, 1289-1364' (unpublished doctoral thesis, University of Cambridge, 2005).
  - 8 *Royal Justice in the Medieval English Countryside: The Huntingdonshire Eyre of 1286, the Ramsey Abbey Banlieu Court of 1287, and the Assizes of 1287-88*, ed. by Anne Reiber DeWindt and Edwin Brezette DeWindt (Toronto: Pontifical Institute of Mediaeval Studies, Studies and Texts 57, 1981) which considers these issues, appeared prior to, and evidently influenced, Hyams's essay.
  - 9 For example, Robert C. Palmer, 'England: Law, Society and the State', in *A Companion to Britain in the Later Middle Ages*, ed. by S. H. Rigby (Oxford: Blackwell, 2003), esp. pp. 256-7.
  - 10 Relevant works in this area include Daniel Lord Smail, *The Consumption of Justice: Emotions, Publicity, and Legal Culture in Marseille, 1264-1423* (Ithaca: Cornell University Press, 2003), and *The Moral World of the Law*, ed. by Peter Coss (Cambridge: CUP, 2000).

Edwardian villager's 'sense of law' — is concerned, the obstacles perhaps have less to do with problems of record survival or identifying litigants' social background, and more to do with the absence of explicit statements about villagers' attitudes to law. As Hyams recognized in his essay, the vernacular sense of law can only be approached via indirect methods, and so far relatively few have taken up the challenge of formulating and applying such methods.

We do not claim to overcome such obstacles in the discussion that follows. Instead, what we offer are reflections generated by a project whose primary aim is the reconstruction of the laws and procedures observed in manor courts in the prosecution of private lawsuits of debt, detainue, and covenant. Gathering information for this task involved trawling over one hundred series of manor court rolls in search of revealing civil litigation entries.<sup>11</sup> The project was not designed to address either of Hyams's two key themes directly. But our research questions were inevitably informed by Hyams's essay, while the project itself has thrown up information that has relevance for the research agenda laid out in 1996. After a brief reflection on the thesis of an Edwardian transformation of manorial law, we outline some findings on the use of extra-manorial courts in this period, before offering a case study which offers some suggestions on how to investigate the villager's 'sense of law' using manorial court rolls.

#### Transformation of manor courts in the reign of Edward I

Our investigation of private lawsuits over matters other than land has broadly confirmed the idea that profound changes occurred in most manor courts between c.1275 and c.1310. Typically, a search for debt-detinue, trespass and covenant actions in court rolls dating from the start of Edward II's reign will produce entries that are quite different in form and content from their equivalents in the small corpus of surviving rolls of the years c.1255-c.1275. Moreover, the record of litigation in the later era of the 'mature' manor court tends to be quite uniform across courts, by comparison with the earlier period. There is a definite convergence in recording practice, which we interpret as a proxy for convergence in underlying curial procedures and principles.

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11 Selected entries were extracted from court records relating to manors in five eastern counties (Cambridgeshire, Essex, Lincolnshire, Norfolk, and Suffolk), and in five west midland counties (Gloucestershire, Herefordshire, Shropshire, Staffordshire, and Worcestershire). It should be noted that while all the surviving rolls in a series have been trawled in most cases, in some they have not, because some rolls are unfit, or we did not have time to go through the whole series and maintain the coverage of sufficient manors required. We are grateful to Dr Matthew Tompkins who carried out the archival work on the western manors. The project's primary output will be *Select Cases in Manorial Courts c.1250-c.1350: Debt, Detinue, and Covenant*, co-edited by the present authors, and to be published by the Selden Society. The project investigated the personal actions as a group, also gathering information on trespass. Trespass actions are not considered fully in the Selden volume, but for some project findings on this topic, see Phillipp R. Schofield, 'Trespass Litigation in the Manor Court in the Late Thirteenth and Early Fourteenth Centuries', in *Survival and Discord in Medieval Society. Essays in Honour of Christopher Dyer*, ed. by Richard Goddard, John Langdon, and Miriam Müller (Turnhout: Brepols, 2010), pp. 145-60.

In the years c.1255-c.1275, the records of litigation are generally speaking quite brief. Scribes made no attempt to distinguish complaints according to form of action (as 'plea of debt', 'plea of trespass', and so on); any preliminary stages of a lawsuit are usually omitted from the record; and no summary of any pleading in court is provided. Entries frequently restrict themselves to the recording of an amercement of the losing party. Given the opacity and brevity of such entries, it can also be difficult to determine exactly how a matter concerning an inter-personal wrong or broken obligation came before the court, that is, whether it arose from a court presentment or a private prosecution.<sup>12</sup> In the early decades of the fourteenth century, by contrast, court rolls are much more consistent, uniform, and informative in their recording of personal actions. Each complaint tends to be given a form of action, and the various preliminary stages (essoins, attachments, distrainments) are usually recorded. For cases that came to trial the court roll usually includes a summary of pleadings which often incorporates formulaic phrases presumably borrowed from the common law: *verberavit, vulneravit et male tractavit; defendit vim et iniuriam; defendit de verbo ad verbum*, and so on.<sup>13</sup> All in all, while the records of personal litigation of the 1250s to 1270s often look like haphazard notes on a largely oral process, those of the later period were clearly intended as a full record of each stage of a complaint that could be referred back to as needed.

At present, of course, this is a somewhat impressionistic finding. Furthermore, while the written record of litigation was clearly transformed in most places in this period, it does not necessarily follow that the key procedures and rules observed in litigation underwent quite the same degree of transformation between the two dates. To illustrate this possibility one may consider the rolls of Norwich cathedral priory's manor court of Hindringham (Norfolk) which survive from 1258 to 1309 with relatively few large gaps. The recording of personal actions and other business in these rolls evolved over time in roughly the pattern already described. However, when one looks at an indicator such as the mode of trial in personal actions, transformation in practice is not so easy to trace in this particular court. A shift from compurgation (an oath-swearing ritual) to inquest jury is the key change one might expect to see here.<sup>14</sup> But the Hindringham rolls are notable for the complete absence of

12 Some typical examples follow. Two consecutive entries in the court rolls of High Easter, Essex, 20 May 1266: (1) *De Rogero le Tyd pro inquisitione habend'*. (2) *De Willelmo le Wete pro transgressionem quam fecit dicto Rogero le Tyd*. (the margin of the rolls notes 'fine, 2s.' beside each entry) (TNA, DL 30/62/751). From Alrewas, Staffs., 3 November 1259: *Hauwys uxor Pistoris in misericordia propter transgressionem versus Willelmum filium Willelmi Edrian. Plegii Rogerus Wytemay et Willelmus Adam*. (Staffordshire Record Office, D(W)0/3/1, printed in W.N. Landor, 'The Alrewas Court Rolls of 1259-61', *Collections for a History of Staffordshire*, new series x, pt. 1 (1907), p. 269; Horsham St Faith, Norfolk, 24 May 1266 (two consecutive entries): (1) *Alexander cocus petit pacem a Ricardo pistore et idem Ricardus vadiavit pacem dicto Alexandro*. (2) *Alexander Cocus in misericordia pro clamore falso suo plegius de misericordia* [sic] (Norfolk Record Office, NRS 19496).

13 For examples of such pleadings from Fornham (Suffolk) manor court, see below.

14 Beckerman, 'Procedural Innovation'.

reference to compurgation in cases of debt-detinue, trespass, and covenant. It seems that jury trial was the exclusive mode of trial from the time Hindringham manor court began to keep written records. Only much closer investigation of the best documented courts at the relevant dates can demonstrate how far changes in the way in which lawsuits were introduced and adjudicated in the court matched changes in the form in which those lawsuits were written down.<sup>15</sup>

More generally, one should not exaggerate the notion of the convergence of manor court practice. It seems highly unlikely that every manor court developed at the same rate, or that the key changes in the handling of personal actions were complete in all locations by the end of Edward's reign. Within individual manor courts important procedural innovations continued to take place at later periods.<sup>16</sup> Again, systematic study of different courts in different regions under different lordships is required to trace more fully the rate of change within courts and its local variation.<sup>17</sup> Such an investigation will ideally incorporate a consideration of the mechanisms through which these changes were effected, which still remain largely a mystery.<sup>18</sup> For the moment, however, we content ourselves with observing that our enquiry into personal actions broadly tends to support Hyams's basic assumption of a remodelling of manorial justice substantially achieved within the reign of Edward I.

#### Villagers in search of justice in the wider legal system

Our project has also generated evidence about villagers' appearances as civil litigants in courts other than those of their 'home' manors. As Hyams pointed out, the manor court records themselves can be a useful source of information about such activity.<sup>19</sup> Landlords and their manorial officials monitored villagers' use of external jurisdictions. If an individual was deemed to have infringed seigniorial rights in litigating beyond the manor, that person was liable to be reported and punished in the court of his or her lord. Similarly, when a villager was prosecuted in a private suit in an external court, then that defendant could also in certain circumstances sue subsequently for damages in the home manor court. The

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15 On changes in this period in the manor court of Hinderclay (Suffolk), see Schofield, 'Gossip and Litigation', pp. 12-13.

16 For changes in the 1330s at Oakington (Cambridgeshire), see Chris Briggs, 'Manor Court Procedures, Debt Litigation Levels, and Rural Credit Provision in England, c.1290-c.1380', *Law and History Review*, 24 (2006): 519-58.

17 As Hyams put it in 1996, 'Further research is badly needed to elucidate the profundity of these changes and their diffusion beyond particular regions and lordships': 'Edwardian Villagers', p. 84.

18 The more detailed investigations outlined in this paragraph and the last form part of the ongoing work of the 'Private Law' project.

19 Hyams, 'Edwardian Villagers', p. 73.



manorial court roll entries generated in both situations are referred to here for convenience as 'illicit litigation' entries. These entries shed light on the rules about suing outside the manor, and on the courts people used when they did so.

Illicit litigation entries have been examined in a previous study which concentrated on Cambridgeshire court rolls of the years *c.*1275-*c.*1450.<sup>20</sup> That study attempted first to establish the circumstances in which civil litigation by a villager outside his 'home' manor was deemed illicit by his landlord. One view is that the restriction on extra-manorial litigation derived from the servile or villein status of the litigants. According to this hypothesis, no villein was allowed to sue or be sued in a jurisdiction other than that of his own lord, as to do so was to risk losing property which in theory was the lord's. In fact, the earlier study argued that the rules on who could sue whom outside the manor and in what circumstances had relatively little to do with villeinage. Instead, most lords asserted the jurisdiction of their manor courts only in cases where both parties were tenants of the lord concerned (free or villein), *and* the matter was one which the lord's manor court had the power to hear. Thus where one party to an extra-manorial lawsuit was not his manorial tenant, or where the type of dispute was one where his manor court had no jurisdiction, the lord had no grounds for objection. The illicit litigation entries occasionally draw attention to the villein status of the offending litigants, apparently as a way of reinforcing the lord's claims for compensation. But most lords did not seek to prevent their tenants from using alternative courts purely because they were villeins.<sup>21</sup>

The earlier study also investigated the types of the other courts in Cambridgeshire mentioned in the illicit litigation entries noted above. Church courts were the type of jurisdiction most frequently noted in such reports. Noticeably rarer were references to villagers going beyond the manor to sue in royal courts.<sup>22</sup> These findings are perhaps unsurprising, given the argument summarized above about the basis for seigniorial objection to villagers' extra-manorial lawsuits. The jurisdictions that probably competed most directly with the manor courts were those of the church. A particularly important area of overlapping jurisdiction concerned petty debts, which could be prosecuted in the church courts as actions of breach of faith. Illicit litigation reports in the manorial court rolls revealing royal court use

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20 Briggs, 'Seigniorial Control'.

21 This accords with Hyams's position that villeinage was not a significant obstacle to use of the wider legal system: 'Edwardian Villagers', p. 71; but see also P. R. Hyams, *King, Lords and Peasants in Medieval England: The Common Law of Villeinage in the Twelfth and Thirteenth Centuries* (Oxford: OUP, 1980), pp. 145-51.

22 Briggs, 'Seigniorial Control', p. 417. In the records of sixteen Cambridgeshire manor courts thirty-three instances of illicit litigation were reported. Twenty-one mentioned church courts, four mentioned seigniorial or communal (hundred, county) courts, and three mentioned royal courts. In five instances the type of court was not specified.

are probably rarer than those revealing church court use because villagers often went to the royal courts to seek remedies in matters over which the local manor court had no jurisdiction. Those included, for example, debts of forty shillings or more. If anything, therefore, the manorial illicit litigation evidence underestimates villagers' activity as civil litigants in the royal courts.

Subsequent research undertaken for the 'Private Law' project allows us to revisit these issues. A number of illicit litigation entries were gathered when working through our hundred-plus manorial court roll series. We cannot claim to have undertaken an exhaustive search in those records for reports of illicit litigation. Our main focus was elsewhere, on the extraction of potentially significant manorial pleas of debt-detinue, trespass, and covenant. That said, the more obvious illicit litigation entries were also noted, and these almost certainly constitute a representative sample of all such entries.

Here we restrict ourselves to discussion of the eleven instances of illicit litigation that we have identified from the reign of Edward I. Each of these contains a report to a manor court of an occasion on which one individual had sued another in an external court.<sup>23</sup> Reports have been found in the records of eight different manor courts.<sup>24</sup> Although this corpus of cases is not large, its very existence is further proof of Hyams's basic contention about the peasant litigant's readiness to use alternative jurisdictions.

These eleven instances largely confirm the findings of the earlier study based on Cambridgeshire evidence. Two of the eleven cases mention the personal status of the participants in the illicit litigation. Thus in a 1288 court session held for the manors of Great Waltham and High Easter (Essex), Robert Fuke was required to respond to the earl (of Hereford, lord of the manor) as to why he had sued Walter Utegate, a villein, in a plea in the court of another lord, John Lovel.<sup>25</sup> Similarly, a 1306 entry from Preston-on-Wye (Herefordshire) states that Gilbert Wryngge was accused of impleading Walter son of Richard de la Bach in a court christian, and a note is added which mentions that the accusation was

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23 It is important here to distinguish between *ad instanciam* cases and *ex officio* proceedings in the church courts. The former category comprised private suits, such as breach of faith, brought by a plaintiff against a defendant. In the latter, which typically concerned sexual and moral offences, the court itself initiated the prosecution of an offender. In discussing manorial reports of illicit litigation in church courts here we are concerned solely with *ad instanciam* cases. However, *ex officio* church court proceedings against individuals are also sometimes reported in manor court presentments.

24 Flixton in South Elmham (Suffolk); Waltham and High Easter (Essex); Essington (Staffordshire); Hartpury (Gloucestershire); Preston-on-Wye (Herefordshire); Eggleton (Herefordshire); Hindringham (Norfolk); and Fornham (Suffolk). The Cambridgeshire examples discussed in Briggs, 'Seigniorial Control', are omitted here.

25 TNA, DL30/62/764 (26 February 1288). This was actually a court at Pleshey (castle), but the evidence suggests that one may treat courts held at Pleshey as equivalent to the more obviously manorial courts of Waltham and Easter.



brought at the suit of Walter, a villein.<sup>26</sup> The other nine examples reveal nothing about the parties' status, however. Nor is there anything in them to suggest that the various lords objected to these lawsuits simply because they involved villeins.<sup>27</sup>

The evidence of these entries does, however, suggest that lords were aggravated by the preparedness of their tenants to take to other courts pleas of a type over which they, as manorial lords, believed they enjoyed an exclusive jurisdiction. Thus at Eggleton (Herefordshire) in 1274, the lord (Hereford dean and chapter) complained that Hugh son of Dionysia had brought a plea in the bishop's court 'which belonged to the court of the chapter', that is, of a type appropriate for the manorial court.<sup>28</sup> At Fornham (Suffolk), William Wynneferyng was amerced because he sued Robert Curteys in a court christian 'in a plea of debt', the implication being that the rightful forum for a plea of debt between tenants of a manor was the court of that manor. Even those instances which note a party's villein status make it clear that villeinage was not the basis for the penalties imposed on the illicit litigant. In the Essex case cited above, the wording of the entry shows that the real offence was that the plaintiff had sued in the outside court 'before suing in the court of the lord earl'. At Preston-on-Wye, the offence was that Gilbert Wryngge had sued in a church court 'concerning debts which are not testamentary or matrimonial matters'. The implication is that while a church court could hear such debts, all other debt disputes were reserved for the manorial jurisdiction.

These eleven 'illicit litigation' cases from Edward I's reign also strengthen the impression that the church courts were the manor courts' main rivals as a forum for peasant civil litigation. Seven of the eleven instances of illicit litigation mention church courts as the jurisdictions used, while two mention alternative seigniorial courts, and two the hundred court.<sup>29</sup>

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26 Hereford Cathedral Library, R827a (18 May 1306).

27 Indeed there is nothing explicit to show that the relevant litigants were even *tenants* of the lords concerned, though we presume this was the case.

28 Hereford Cathedral Library, R1110 (18 May 1274). Hugh's opponent is not named.

29 Evidence from some court roll series, such as the Great Barton court rolls from the same period (Suffolk Record Office, Bury St Edmunds branch [hereafter SRO] E18/151/1), indicates that other jurisdictions, such as borough courts and related fora offering law merchant (e.g. piepowder courts), were also used by villein litigants, though this evidence tends not to appear in the rolls in the context of illicit litigation cases.

The villager's 'sense of law': litigation in the manor court of Fornham, Suffolk

(i) Fornham manor court: background

In the remainder of this essay we explore Hyams's questions about the 'vernacular idea of law' at the upper levels of village society using manorial court evidence. We attempt this via the familiar route of the single manor case study. Fornham, in Suffolk, has been chosen here for this purpose. We use the Fornham personal actions along with other evidence in the manor's court rolls to draw inferences about the villager's sense of law.

The full name of the manor studied, and of the parish in which it lay, is Fornham St Martin. In the headings of the court rolls, the manor is sometimes called Fornham St. Martin, and sometimes plain Fornham. This manor belonged to the cellarer of Bury St Edmunds abbey.<sup>30</sup> Rolls covering ninety-seven court sessions survive for the reign of Edward I, and there are also records of four courts held in 1262-3.<sup>31</sup> The records of ninety-two of the ninety-seven courts are headed either 'court' or 'general court'. Although there are numerous gaps in the court roll series, it seems clear that two general courts were typically held each year, namely one in the spring (April or May), and one in October. This pattern of holding two 'great' sessions per annum plus further ordinary sessions is familiar from other manors. Normally one would expect the bi-annual courts to incorporate the 'public' business of the view of frankpledge, but it is not clear that this was the practice at Fornham. The rolls of the general courts do mention infractions of the assizes of bread and ale, but contain no other view of frankpledge business. However, from 1300 we have records of a third type of court, held in addition to the other two, and called a 'renewal of pledges' (*renovatio pleggiorum*). Records of just five sessions of this court survive. In spite of the unusual name, the 'renewal of pledges' sessions appear to be fairly standard sessions of the view of frankpledge. Although the Fornham court roll series is far from unbroken, and many of the records of sessions are short, it has been chosen for closer examination because many of the entries concern civil litigation, or are in other ways concerned with the property and relationships of the tenants. Some 214 separate actions of debt-detinue, trespass and covenant can be identified in the surviving rolls of Edward I's reign. The records are also notable for a large number of entries recording the subletting of parts of tenant holdings.

The Fornham rolls of the period 1272-1307 reveal a tribunal displaying many features characteristic of the transformation of manor courts in the latter part of the thirteenth century, as described by Hyams and others. In particular, juries of various kinds carried out much of

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30 Court rolls also survive (from a later date) for the adjacent manor of Fornham All Saints, in the parish of that name lying on the opposite bank of the River Lark. For the distinction between the two, see *Medieval Society and the Manor Court*, ed. by Razi and Smith, p. 622; see also M. Bailey, *Medieval Suffolk: An Economic and Social History, 1200-1500* (Woodbridge: Boydell, 2007), p. 16.

31 SRO, E3/15.6/1.1, E3/15.6/1.3, E3/15.9/1.1, E3/15.9/1.2, and E3/15.9/1.3.

the work of the court. The most prominent Fornham jury was the *inquisitio generalis*. This was the presentment jury which reported offences at the general courts. In the 'renewal of pledges' sessions, the presentments were made by a separate jury composed of the chief pledges. Inquest juries were also called in personal actions and, although they were already in use in this context by 1263, they did not entirely replace compurgation as a mode of trial.<sup>32</sup> The Fornham rolls also provide at least one example of a call for scrutiny of earlier court records as a means of providing proof in a civil dispute.<sup>33</sup> As already noted, this practice, along with the move to juries, is seen as part of a fundamental shift in manor courts in this period.

Fornham also seems to offer a good example of the process whereby such transformations allowed leading villagers to play an increasingly dominant role in the manor court and, as Hyams puts it, to make it 'theirs' by the end of Edward's reign.<sup>34</sup> Given the juries' central role in the court, the membership of those juries was clearly crucial. There are twenty-two jury lists which record the names of all the men who served on those juries (no woman acted as juror). These lists relate to various dates in the years 1283 to 1306. In most instances (fifteen), the jury is the *inquisitio generalis*, with a membership varying between six and fourteen jurors. It is striking how much stability and continuity there is among the names of those making up this jury. There is relatively little information on the identity of the chief pledges who formed a presentment jury at the *renovatio pleggiorem* sessions. However, the evidence we do have suggests that there was a good deal of overlap between that jury and the *inquisitio generalis*, since all but one of the seven identifiable chief pledges also served on the *inquisitio generalis* in the same year.

A notable example of a frequently occurring juror's name is Robert Curteys, which appears on all but one of the *inquisitio generalis* lists. Robert was not the only member of the Curteys family to sit routinely on this key jury. Thomas Curteys is named on nine of the ten *inquisitio generalis* lists of the years from 1298 (when his name first appears) to 1306. Benedict Curteys, John Curteys, and Roger Curteys also sat on this jury at various times. The Curteys family, and especially Robert and Thomas, emerge from the rolls as leading figures in Fornham society, as prominent in inter-personal disputes about property as they are in the juries.<sup>35</sup> Their wealth and influence is also shown by court roll evidence concerning their relations with the lord. For example, Robert Curteys is known to have been acting as reeve in 1283, and both Benedict and Thomas Curteys made arrangements to purchase the entire

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32 For the early trial jury (4 February 1263), see SRO, E3/15.9/1.1.

33 SRO, E3/15.9/1.2 (8 January 1304).

34 Hyams, 'Edwardian Villagers', p. 98.

35 For examples of their inter-personal disputes, see below.

herbage of the lord's meadow on an annual basis for large sums.<sup>36</sup> Although the name Curteys is the most prominent in the court rolls, the members of this family clearly belonged to a larger group of leading peasants who between them ran the manor court. Another example of such a man is Walter Dykeman, who appears on nine out of the eleven *inquisitio generalis* lists dating from 1295 (when his name first appears on the lists) to 1306.

Although business concerned with enforcement of seigniorial rights is far from absent from the Fornham rolls, it does not dominate. Instead, as already noted, the most striking feature is the substantial quantity of inter-personal litigation at the level of the peasantry and notices of peasant sublettings, though this latter issue is only recorded because it required seigniorial licence. The impression gained is that the lord and his steward (who is never mentioned) operated at arm's length in this court and left things to the peasant jurors and manorial officials. A revealing 1295 court roll entry reports that Hamo the reeve was amerced for contempt, namely for saying in full court that the prior of Bury St Edmunds had 'had 30s. from him unjustly', referring perhaps to a hard fought audit of the manorial account. That the reeve was moved to make such a public outburst arguably reveals leading villagers as secure and confident participants in the manor court, and it is also perhaps significant that Hamo's amercement for contempt was waived on this occasion.<sup>37</sup>

A final important point about Fornham St Martin is that it lies less than two miles north of Bury St Edmunds. The village and manor were influenced by the town.<sup>38</sup> A number of individuals described as 'of Bury St Edmunds' appear in the court rolls. The most notable of these was 'Payn the merchant of Bury St Edmunds' (*Paganus Mercator de Sancto Edmundo*), often recorded simply as Payn the merchant. This man is frequently mentioned in the rolls between 1294 and 1306, most often as a temporary lessee of the land of various Fornham tenants, but also as a civil litigant. At first glance it seems surprising that a man whose name identifies him as an urban merchant should be found frequently taking on leases of agricultural land in a nearby village. Yet an examination of all the court roll material concerning Payn suggests the overall objective behind his involvement in Fornham was to obtain a secure supply of grain, possibly for sale in the town, or for malting. The policy of taking parcels of land on lease appears as one mechanism for achieving this. Other persons described as residents of Bury St Edmunds, including a baker and a further man described

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36 SRO, E3/15.6/1.1 (22 February 1283, 17 May 1283), E3/15.9/1.1 (24 February 1306). Thomas and Robert Curteys were also involved in the Fornham freehold land market. For charter evidence illustrating this market, see SRO, 449/2/161-273.

37 SRO, E3/15.9/1.2 (2 April 1295).

38 See also Bailey, *Medieval Suffolk*, pp. 39, 46.

as merchant, also took on short-term leases of tenant land in Fornham possibly with objectives similar to Payn's.<sup>39</sup>

Although one presumes that he resided in Bury, Payn's connection with Fornham and its inhabitants was close. He is even listed on one occasion as one of the jurors of the *inquisitio generalis*. In another location the rolls record that Payn had entered an essoin of common suit, suggesting that theoretically he was (at this date at least) required to attend all sessions of the Fornham manor court.<sup>40</sup> Payn's leases of portions of tenant land were numerous and many of them were for comparatively long terms (typically six years), so it is possible that he became classified as a manorial tenant and therefore as someone owing suit of court.<sup>41</sup> If so, he was not the only Bury resident to be treated as a *de facto* Fornham manorial tenant. One William Brun, tanner of Bury St Edmunds, was recorded in 1303 and 1305 as essoing of common suit.<sup>42</sup>

(ii) What was law for the Edwardian villager?

In 1996 Hyams, with a view to stimulating further enquiry, offered six propositions about villagers' sense of law.<sup>43</sup> These were intended to provide food for thought about a range of encounters with the law much broader than we are able to consider here. Accordingly, we have taken ideas from Hyams's six propositions and used them in three narrower questions designed to be addressed using the Fornham manor court material. Their purpose is to allow us to consider the following: what was law for a villager, where the experience of litigating in manorial personal actions was concerned?

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39 Lease to Baldewyne le Draper of Bury St Edmunds, SRO, E3/15.9/1.1 (11 July 1289), E3/15.9/1.3 (28 September 1290); lease to John de Balswell of Bury St Edmunds, E3/15.9/1.1 (8 May 1305); lease to Adam de Gislingham, *pistor de sancto Edmundo*, E3/15.9/1.2 (2 May 1303); leases to Helia le Yrmonger de sancto Edmundo, E3/15.9/1.2 (27 April 1304); lease to Baldewyne, *mercator de sancto Edmundo*, E3/15.9/1.3 (28 September 1290). A trespass case against William Champion of Bury St Edmunds, E3/15.9/1.2 (14 September 1294), accused of carrying away peas of a Fornham man, perhaps arose from a failed arrangement whereby an urban resident bought crops in advance, or leased tenant land plus its crop. John Pug of Bury St Edmunds was a plaintiff in a trespass action, E3/15.9/1.1 (3 September 1291). Charter evidence also shows Bury St Edmunds residents purchasing Fornham freehold land in this period, e.g. SRO, 449/2/229, 449/2/243, and numerous others. There is also one 1313 charter recording a six-year lease of two pieces of arable to Robert le Laver of Bury (six years was also the typical term in leases of customary tenant land): SRO, 449/2/259.

40 SRO, E3/15.9/1.2 (2 May 1303); E3/15.9/1.1 (8 May 1305).

41 It is also possible that Payn made purchases of tenant land, recorded in rolls now lost.

42 ...*tannator de sancto edmundo*...: SRO, E3/15.9/1.2 (4 October 1303), E3/15.9/1.1 (8 May 1305). No evidence has been found of Brun leasing or purchasing Fornham land.

43 Hyams, 'Edwardian Villagers', p. 92.

1. How far was Fornham litigation in the personal actions based on well-defined and inflexible principles and procedures? Put simply, if manor court litigation is viewed as a game, were there rules that successful players were required to follow, and if so, how complex and formal were they?

In answering this we face an immediate difficulty, which is that the court rolls reveal frustratingly little of the discussions that took place in court when cases of debt-detinue, trespass, and covenant were heard. These records certainly were never intended to provide a comprehensive statement of the kinds of claims that the court was prepared to hear, or of the correct steps required in prosecuting each action. Instead, the records of manorial litigation mostly take the form of terse enrolments which focus on what the court had decided, rather than on how each decision was reached.<sup>44</sup>

That said, using court rolls to reconstruct the procedures and principles observed in manorial personal actions is not an impossible task. Probably easiest to reconstruct is court procedure. This includes the steps taken in getting parties to court; the elements of pleading; the appointment and conduct of juries and the administration of compurgation; the enforcement of judgements; and the imposition of court amercements (fines) and damages. Where one has a series of court rolls covering a lengthy time period with few gaps, it is possible to obtain good information about many of these areas by studying actual court practice.<sup>45</sup> We can also gain information about procedure from those occasional instances where parties or the court pointed out that *incorrect* procedure had been observed in a particular case.

Where substantive principles are concerned — the rules about what constituted a broken contract, for example, or about what constituted an actionable trespass — the position of the manor courts is harder to reconstruct. If plaintiffs did make an explicit effort in court to explain the legal basis for their claims, this rarely finds its way into the surviving record. Even so, there are ways in which one can gain an insight into the substantive principles that were deemed important in cases of this type. For instance, as is the case with procedure, one can look for occasional entries where parties argued that an opponent had *not* observed the

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44 The theme of this section is connected to the larger debate about substantive law and principles of adjudication in manor courts involving Hyams, Lloyd Bonfield, and John Beckerman. See Lloyd Bonfield, 'The Nature of Customary Law in the Manorial Courts of Medieval England', *Comparative Studies in Society and History*, 31 (1989): 514-34; Bonfield, 'What Did English Villagers Mean by "Customary Law"?', in *Medieval Society and the Manor Court*, ed. by Razi and Smith, pp. 103-16; John S. Beckerman, 'Towards a Theory of Medieval Manorial Adjudication: The Nature of Communal Judgements in a System of Customary Law', *Law and History Review*, 13 (1995): 1-22; Hyams, 'Edwardian Villagers', pp. 101-2.

45 See Briggs, 'Manor Court Procedures', for an example.



correct rule. Usually defendants in manorial personal actions either challenged a case on the facts, or simply issued a general denial (*non culpabilis est*, or similar). Just occasionally, however, a claim was challenged because it contravened a principle, and if one collects enough instances of this kind, some impression can be gained of the rules underlying claims, and the consistency with which they were observed.<sup>46</sup>

Here we restrict ourselves to searching for explicit challenges to procedures and rules in the Fornham court rolls, in the hope that they will reveal something of the formalization of litigation there. The examples found suggest that the court and its litigants had a very clear idea of what was and what was not correct court practice. This is particularly apparent where procedure is concerned. As far as one can tell from the extant records, at Fornham neither the defendant nor the court itself ever sought to challenge the plaintiff's complaint on the grounds that it was legally invalid in itself. When the defendant denied liability, it was always on the facts. However, one can certainly find several instances where it was argued that a particular litigant should or should not suffer a penalty because correct procedure had not been followed.

The court roll summaries of pleading in personal actions give the clearest impression of villagers' belief that in litigation, particular things had to be done and said in a particular order. Pleading took place when both parties were present in court, and began with the plaintiff's complaint or 'count' followed by the defendant's response. In Fornham pleading, the plaintiff had to use the right form of words in making his count, as did the defendant in responding. The frequent inclusion in the summary of that response of the phrase *defendit de verbo ad verbum* ('he defended word for word') underlines the assumption that a defence had to rehearse every element of the plaintiff's count in order to be valid.<sup>47</sup>

Two cases also provide examples of direct challenges made to a count or a defence on the basis of its incorrect form. The first is an early case (1263) in which Thomas Fairknape sued John Daukes in a plea of trespass. Thomas lost his case and John went *sine die* because the former 'did not prosecute using the accustomed words of the court'.<sup>48</sup> The second and more unusual case is dated 1291, and is an action for detinue of 3s. and six quarters of chaff (*paleum*) which John Curteys claimed from Edmund de Elmeswell. Curteys claimed that he had leased three acres to Elmeswell for six years in return for 18s. and the chaff, but had received only 15s.. Elmeswell responded that he was not bound to Curteys in 3s. or chaff as a result of this covenant, or in anything else whatsoever. In turn Curteys challenged this defence, stating that Elmeswell had failed to 'defend' the lease of land on which the claim

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46 This is one aim of our Selden Society volume.

47 One also finds *defendit verba curie*, e.g. SRO, E3/15.9/1.1 (13 May 1292).

48 ... *non est prosecutus secundum verba curie consueta* ...: SRO, E3/15.9/1.1 (4 February 1263).

for the 3s. and chaff depended. It is certainly possible to interpret this case as further evidence of contemporary belief in the importance of correct pleading, since the plaintiff was effectively pointing out that the defendant had failed to respond to a key part of his count, though he might also have been trying to make the subtler argument that by effectively admitting the lease the defendant was also admitting the debt.<sup>49</sup> Yet however we interpret this entry, it does not affect our general argument about the priority villagers placed on correct form in pleading.

This contemporary conviction that there were essential steps which must be observed can be seen in other aspects of the Fornham litigation process. For example, in two separate trespass actions it was noted that the defendant had not yet been summoned to respond to the action, and that a summons should therefore be issued.<sup>50</sup> Clearly, these cases could not proceed further until this essential procedural step had been carried out. Another suggestive entry records a juror in a personal action amerced for contempt because he spoke to the plaintiff after being appointed juror.<sup>51</sup> Admittedly, in all these instances of procedural error, it was the court and its officers that were at fault, and the litigants themselves suffered no penalty. Even so, these entries constitute further evidence that there were rules which had to be followed in litigation. At the very least, it would have been useful for would-be litigants to know such rules.

Even restricting our attention to a few of the most revealing entries, then, suggests that Fornham manor court litigation was not informal, but instead involved adherence to rules, especially procedural rules. Tentatively one may make the argument that this manor court observed a consistent and fairly elaborate framework of practices and principles, albeit one that is hard to reconstruct fully.

Unfortunately there is not space here to tackle the obvious further questions which arise concerning the origins of that framework, and the extent to which it was shared by other manorial jurisdictions. One point that can be made is that the formal character of litigation at Fornham is not obviously a consequence of the involvement of professional lawyers. Such professionals do not appear to have played much of a role in manor court

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49 Curteys's challenge to Elmeswell's defence: ... *videlicet quod non defendit contractum locacionis terre predicte a quo sua petitio monet de iii.s. & paleo predicto etc.* SRO, E3/15.9/1.3 (28 May 1291). The parties later settled by licence to agree.

50 SRO, E3/15.6/1.1 (19 January 1283), E3/15.9/1.2 (18 January 1286).

51 SRO, E3/15.9/1.1 (22 December 1291).

personal actions generally, and they are certainly not mentioned in the Fornham records. A villager here would normally litigate without legal representation.<sup>52</sup>

2. Given the quite complex rules and forms that governed manorial litigation in personal actions, did this mean that the prosecution of such litigation was restricted to a select few possessing the opportunity and incentive to master those rules? In theory at least, the emergence of a small elite group of 'insiders' seems likely.<sup>53</sup> The propensity to use the manor court for litigation would presumably have been greatest among the wealthier male peasants, given their ownership of property, and their high degree of involvement in economic transactions. Because they were relatively likely to need to sue in the court, members of this group probably had a strong incentive to learn about its workings. The wealthier villagers could afford to learn about litigation by doing it. A personal action cost nothing to initiate, but this did not mean that one could sue without fear of the financial consequences, since if one's action failed, one had to pay a court amercement. Furthermore, members of this group were perhaps especially likely to serve on court juries or as manorial officials, and therefore would be best placed to know the rules of litigation because they were involved in making and enforcing them.

Alongside this small group of wealthy villagers one can conceive of a second much larger 'outsider' group, whose members could possibly have been dissuaded from suing with any frequency because their mastery of the rules was insufficient. Members of this group might only be prepared to sue when they were certain of victory, since they could not easily afford to pay any amercement if the suit failed. Members of this group typically might not serve with any frequency on manorial juries or in other manorial offices connected with the operation of the court. This would mean that they did not possess insider knowledge about the rules, and were restricted to observing the court in action as their only means of learning its practices.

How far does this hypothetical picture accord with reality? Was manorial litigation dominated by complaints brought by a small coterie of insiders, with members of the much larger outsider group typically appearing as defendants only? There is no doubt that many of the same names keep cropping up as parties to litigation, and that many of these names are also

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52 Only one of the 214 Fornham personal actions features an attorney, and this person was clearly a fellow villager. Elsewhere examples of attorneys who may have been other than well-informed and legally astute villagers can be found; while their numbers are not, as noted, large, they may have exerted considerable influence on litigation in some manorial courts: Phillipp 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 *Thirteenth Century England XIV: Proceedings of the Aberystwyth and Lampeter Conference, 2011*, ed. by J. Burton, P. R. Schofield and B. Weiler (Woodbridge: Boydell, 2013), pp. 15-26.

53 See here Schofield, 'Gossip and Litigation', pp. 13-15.

found on the juror lists. There were some 170 different individuals involved in litigation as plaintiffs and defendants in the 214 cases of this period for which records survive. Clearly, the total of *potential* litigants was much higher than the actual number, if one assumes one plaintiff and one defendant per case. Yet equally, one would not necessarily want to conclude from these figures that participation in personal actions at Fornham was restricted to a select few.<sup>54</sup>

There are other ways of exploring this question. It is worth observing first that women (unaccompanied by men) are far from exceptional as plaintiffs in Fornham personal actions. This seems incompatible with a view that sees litigation as largely the preserve of a small group of elite men. Clearly some of these female plaintiffs came from prominent families, and it is possible that they gained their extensive legal knowledge from their male kin. Even so, the fact that women were prepared to sue suggests that persons outside the elite were not necessarily at a disadvantage in manorial litigation, either through lack of knowledge of the rules or for other reasons. It is also clear that unaccompanied women could be successful as plaintiffs even against apparent 'insider' opponents. In 1291, for example, Basile daughter of Juliana successfully prosecuted Adam Franceys for taking away trees from her holding and allowing his beasts to enter and cause damage within her curtilage.<sup>55</sup> Adam's elite villager status seems clear; between 1278 and 1291, he is recorded on numerous occasions as a juror. Similarly, in 1304 Alice Fraunceys (perhaps a relative of Adam) sued Payn the merchant in a plea of covenant, arguing that she had leased him land temporarily which he had agreed to 'compost' himself, but had failed to do so.<sup>56</sup> These examples show that unaccompanied women were not afraid of taking on heavyweight male opponents in litigation at Fornham.

The hypothesis concerning the dominance of manorial litigation by a select knowledgeable few can also be explored by looking again at those instances where litigants made procedural errors. If certain villagers really were at a disadvantage in litigation as a consequence of their inferior understanding of its rules, we might expect to be able to observe such people making mistakes and losing their cases. We might also expect to see litigants from the 'insider' group exploiting their superior knowledge of correct procedure in order to triumph against opponents from the 'outsider' group.

This not what we see, however. The cases cited in the preceding section show that litigants did occasionally fail to observe the recognized rules of pleading, and were challenged by their opponents for these failures. Indeed, if the court rolls did not sometimes record failures to plead correctly, we would have no way of knowing that manorial pleading was in fact so formalized. However, the two cases cited in the previous section are certainly not enough to support the view of substantial inequality within the village in terms of access to the legal knowledge required to conduct personal actions.

54 For comparative data, see Schofield, 'Gossip and Litigation', pp. 13-15.

55 SRO, E3/15.9/1.1 (10 November 1291). A jury was called but Adam conceded liability by 'confession'.

56 SRO, E3/15.9/1.1 (5 October 1304); later settled by licence to agree.

We have identified only one further Fornham instance of a litigant challenging his opponent's ability to observe correct procedure, beyond those already discussed. In this instance the error did not concern pleading, but rather the approved manner for making an *essoin* (excuse for non-attendance at court). The challenge was made in a trespass case between Walter Dykeman and Payn the merchant. Payn, who seems to have been the defendant, came to a court session in November 1302 prepared to make his law (perform compurgation). The record of previous process in this suit is lost, but presumably pleading had already taken place and Payn had waged his law (promised to perform compurgation). Walter did not appear at the November session but instead entered an *essoin* through a representative, or *essoiner*, named John de Fornham. Payn complained about this *essoin*, saying that 'Walter is *essoined* in a plea of trespass but does not mention law'. Payn's point was that the *essoiner* had failed to perform his job properly because he had omitted to mention that the *essoin* concerned a plea that had reached the stage of waging law. As a result of Payn's objection, the court decided that he could go *sine die*, and that Walter must come to the next court 'to hear the record and judgement' in the plea between himself and Payn.<sup>57</sup>

Undoubtedly, here Payn made use of a highly technical procedural point in order to get Walter's case against him dismissed. One wonders what caused the *essoiner*, John de Fornham, to omit the crucial words in entering his *essoin*. Did it happen because John lacked the necessary experience and knowledge, or because his principal, the prominent juror Walter Dykeman, had failed to instruct John properly? Whatever the answer, this case provides further evidence that detailed knowledge of the rules and the ability to convince the court could be an advantage in litigation. But whether such knowledge and ability were confined to a narrow group within the village is less clear.

3. What was the purpose of manor court civil litigation? More specifically, to what extent was such litigation aimed not at the resolution of disputes, but at the perpetuation of conflict, in that it allowed one to bring pain and humiliation upon one's enemies? At one level, of course, a great deal of litigation must have been undertaken in a fairly dispassionate and impersonal manner in order to achieve finite objectives, most obviously the repayment of a debt, or compensation for loss of the use of a resource. Equally, though, we must recognize that most of the litigants on view in manorial records were neighbours and kin caught up in complex and ongoing relationships, and that litigation quite possibly served to express tensions arising from those relationships. One must even allow for the possibility that a villager might exaggerate or even invent a wrong in order to justify a (vexatious) lawsuit, the main objective of which was to harm an enemy.

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<sup>57</sup> SRO, E3/15.9/1.2 (15 November 1302).

Where one had suffered (or perceived oneself to have suffered) a specific wrong, or where one was involved in an ongoing and multi-stranded conflict with another, the initiation of a manorial lawsuit was just one of a number of potential responses. In many such instances, of course, a lawsuit was no doubt the only reasonable and proportionate response to the injury suffered. In other instances, however, contemporaries no doubt envisaged a wider spectrum of possible extra-curial responses to a wrong. For example, revenge could be exacted through violence against an opponent's person or property, through verbal attacks on his reputation, or through a wide variety of forms of non-cooperation with him or his family. Where the wronged party did not desire to get even but instead sought reconciliation, informal peacemaking or more formal measures such as arbitration and the 'loveday' were all available within village society. Thus litigation was just one of a large number of ways of dealing with dispute, the rest of which all took place outside court. Our interest here is in the frequency with which parties chose litigation as a response, and the degree to which it was preferred over the others.

Manor court litigation certainly had advantages over any other possible recourse. Most importantly, it was public; it was an opportunity (within the constraints imposed by the pleading rules) to tell everyone who mattered in the community how badly done to one was. It was also cheap, as a lawsuit cost nothing to initiate. Even if one lost the case and had to pay an amercement, the benefits of the lawsuit might still have outweighed the costs, given the public attack it had allowed one to make on one's opponent. If one won the case, one could enjoy the added satisfaction of winning damages. Finally, it was less dangerous than verbal or physical violence against an opponent, both of which ran the risk of a retaliatory lawsuit, as well as actual harm to oneself or one's family.<sup>58</sup>

Needless to say, the Fornham manor court records tell us very little about motives for bringing personal actions. In order to ascertain how often formal civil litigation was used because it was a safe and effective means of hurting enemies, we must rely on indirect hints. One relevant issue is the overall level of violence in the village. If physical violence was commonplace, this would suggest the widespread use of one major alternative to litigation as a means of obtaining satisfaction for an actual or perceived wrong.<sup>59</sup> Because violent bloodshed was one of the matters which the chief pledges were obliged to present to the view of frankpledge, an analysis of the relevant presentments can in many places give an indication of the incidence of physical violence within the village. In the case of Fornham, however, hopes of gaining any reliable insight into overall levels of violence are slim owing

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58 Thus if one was a victim of physical violence, the most rational response was to bring an immediate lawsuit rather than exact violent revenge, since the latter response would have opened the way to a retaliatory suit by one's original assailant.

59 Cf. Schofield, 'Gossip and Litigation'.



to the fact that presentments for assault are restricted to the records of the five 'renewal of pledges' sessions. Only eleven bloodshed presentments are extant, but unfortunately in itself this cannot be taken as evidence that Fornham was not a violent place. Many of the personal actions themselves demonstrate that violent acts were committed at Fornham. Less obvious is how common it was to respond to an act of violence with a further such act on a subsequent occasion.

More profitable insights into the aims of litigation can be gained by looking at instances where a personal plaint was met by a counter plaint in the same court session involving the same parties but in reversed roles. In the extant Fornham records there are three instances of a plaint plus a counter-plaint at the pleading stage. In the most notable of these, there were in fact four interconnected pleaded actions in a single court session (17 November 1285).<sup>60</sup> Here, Juliana wife of Robert Curteys sued Roger de Cavenham for defamation committed on the preceding 20 July, and in a separate action she sued William Bole and his wife Beatrix for an assault (including hair-pulling) and damage to cloth in her possession allegedly committed on the same day. In return, William le Bole prosecuted Juliana's husband Robert Curteys for an old debt due two years previously, and Roger de Cavenham sued Robert for beating him with a stick on 22 July. In three of the cases an inquest was sought, while in the fourth law was waged. The record makes it clear that verdicts in these matters would be deferred to the following session.

There are several notable features of this interconnected litigation. First, Juliana and Robert had clearly suffered wrong at the hands of the other two parties, and they responded to this in at least two ways. Initially, Robert seems to have reacted to violence against his wife with further violence, to judge by the beating alleged by Roger de Cavenham. The other and more significant response offered by Juliana and Robert to injury was to bring litigation. It seems at least possible, however, that in bringing the lawsuits against William and Beatrix and against Roger, the Curteys couple were seeking more than just material compensation for losses sustained. Instead, they seem to have been trying to hurt their enemies, using litigation as a form of revenge. One clue to this is that in the previous court session (8 October 1285), the parties in *Curteys v. Bole* had been given a *loveday*, that is, a chance to sort out their differences outside court before the next court session. This *loveday* clearly failed, but the fact that it was arranged perhaps suggests a feeling around the court that Juliana's suit was a disproportionate and counterproductive response to the wrong she had suffered. Also significant is the very fact that Cavenham and Bole chose to retaliate with suits of their own in the November court session. Perhaps they had discovered that Juliana Curteys intended to use her lawsuits to undermine them publicly and perhaps unfairly, so they concluded that the best form of defence was attack. William Bole sued Robert Curteys about an old,

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60 All the relevant entries relating to these actions are found in SRO, E3/15.9/1.2.

comparatively small debt (3*s.* 6*d.*), which suggests that the precise subject of the plaint did not matter as much as the fact of having some form of ammunition to use against an opponent. Finally, the sizeable damages claims sought by Juliana Curteys — 40*s.* in the action against Cavenham, and 20*s.* in the action against Bole and his wife — suggest that she was also seeking to hurt her opponents in the pocket as severely as possible.

The subsequent history of these actions is also revealing. In January 1286, at the next session following pleading, neither of the defendants turned up. In what seems quite an unusual step, the record notes that owing to their non-appearance, both sets of defendants should forfeit their cases, Juliana Curteys should receive the full damages claimed, and the defendants must come to court to hear the judgement in their cases. If our interpretation of these actions is correct, Juliana must have been triumphant at this point, seemingly having bested both sets of opponents. At the following session, however, the court clearly had second thoughts, and quietly began to reverse its initial decision. Eventually these actions were terminated in April 1286 by a 'licence to agree'. Juliana Curteys's attempt to use the court to make her enemies pay dearly for a minor village scuffle and insult had ultimately failed.

We cannot say precisely what villagers' motives were in prosecuting personal actions at Fornham. There is no doubt that litigation was a potentially powerful weapon against an enemy. A claim with comparatively little substance to it could be brought with minimal risk to the plaintiff. The two plaints brought by Juliana Curteys discussed above were arguably more about revenge than about appropriate compensation for loss. Where other cases are concerned we have fewer clues as to what drove the parties. What does seem abundantly clear is that formal litigation was absolutely central to the resolution and perpetuation of inter-personal disputes at Fornham in this period.

## Conclusion

The central claims of Hyams's 1996 essay have been largely confirmed by research we have undertaken since then on manorial personal actions. In particular, this research has produced little to contradict the general idea that the reign of Edward I was a crucial period for manor courts, as the practices observed in different jurisdictions converged and became generally less inchoate and more sophisticated. This period also saw an increasingly important role for the elite villagers who made up the various types of jury. This overall process of change is still to be charted in detail, but the framework outlined by Hyams and others seems unlikely to be seriously challenged. Research since 1996 has also simply served to strengthen Hyams's conclusion that the upper levels of Edwardian village society were conversant with a wider range of legal jurisdictions than just the manorial. In this paper we have presented some new manor court evidence indicating the range of those extra-manorial legal contacts. Future research must focus on searching for Edwardian villagers on the plea rolls of non-manorial jurisdictions, a crucial task but perhaps one more difficult in practice than Hyams envisaged.

Since 1996 rather less work has been done on Hyams's other key theme, the villager's 'sense of law'. Here we have attempted to determine what civil litigation in a single Suffolk manor court reveals on an issue where Hyams offers valuable pointers and speculations. Our investigation of litigation at Fornham has shown many similarities with another Suffolk manor of the abbey of Bury St Edmunds, Hinderclay, which has been studied by Schofield.<sup>61</sup> As at Hinderclay, litigation at Fornham was central to village social relations, and pursued with especial zeal by the village elite. At Fornham litigation could also be a means of perpetuating intra-village social conflict, just as it was at Hinderclay, as the dispute between Nicholas le Wodeward and Robert the son of Adam charted by Schofield demonstrates. Manorial litigation in these manors and elsewhere had multiple motives: it could be used to recover a debt or enforce a contract among parties who had no meaningful personal connection, but it could also serve as one of a range of actions and reactions in ongoing conflicts taking place within and outside the court. Finally, although litigation was clearly technical and formal, this does not necessarily mean access to the manor courts as a civil litigant was exclusive in social and gender terms. The richer peasants undoubtedly dominated litigation at Fornham and elsewhere, but this is only to be expected given that the incentive to sue and be sued was greatest where such individuals were concerned. In practice, barriers of cost and expertise were low, and civil justice was potentially accessible to all. Litigation was a central part of life for a wide spectrum of Edwardian villagers, and not just the elite.

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61 Schofield, 'Gossip and Litigation'.