The role of written records in peasant tenure and litigation: a study of the manor court rolls of Wakefield (Yorkshire) and Alrewas (Staffordshire) before 1381

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ABSTRACT

The role of written records in peasant tenure and litigation: a study of the manor court rolls of Wakefield (Yorkshire) and Alrewas (Staffordshire) before 1381

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This thesis is an examination of the uses of written records in peasant land tenure, transfers and litigation on the late medieval English manor. It has been widely accepted that the peasantry, although largely illiterate, developed a 'document consciousness' through their growing familiarity with the written culture of the royal and seigniorial administrations. As well as aiming to investigate the extent and nature of the use of written records by the peasants of the manors, the thesis attempts to address the question of what drove the use, and the extent to which the ability to participate in written culture actually mattered to peasants, both functionally and symbolically.

The mechanisms for the transfer of customary land, both by illegal charters and by surrender and admittance in the manor court, are discussed in Chapter 2. The confiscation of charters from the tenants of the manor of Barnet by St Albans Abbey is compared with that of the villein charters which were enrolled in the *Carte Nativorum* of Peterborough Abbey, and the motives of both the peasants and the abbeys for their actions are discussed. It has been suggested that the manor court rolls offered peasants security of tenure, and allowed an increased complexity in land transfers, and the enrolment of inter-peasant transactions and vouchers of records in litigation have been cited as evidence that the peasantry embraced the benefits of the manorial records. Chapter 3 moves on to consider the extent to which the court rolls were vouched in litigation in the courts at Wakefield and Alrewas, concluding that there was no significant shift towards the use of written evidence over the course of the thirteenth and fourteenth centuries. Chapter 4 investigates what voucher of the roll meant in practice, arguing that copies were not usually issued to tenants in this period, and suggesting that the rolls were far from infallible.

Chapter 5 analyses the circumstances in which the rolls were vouched, finding that the case studies support the argument that written evidence was vouched mainly in factual pleading rather than to show custom or precedent. Having argued that evidence drawn from the court's own records could be rejected in the light of other equitable considerations, the thesis will go on to consider whether written evidence could be demanded, looking at cases heard at Wakefield court in which 'specialty' was demanded. Chapter 6 addresses the relationship between written and non-written evidence in land litigation in the manor court. It considers to the question of to what extent we can detect the attitudes of the community at large and of individuals towards the use of written evidence, looking at the extent to which writing played a practical or symbolic role in the relationships between lords and peasants and within peasant communities. Finally, possibilities for further research in this area are suggested, both in the context of the manor and considering the wider spheres in which peasants operated.

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ABBREVIATIONS

B.L.	The British Library
St.R.O.	Staffordshire Record Office
T.N.A.	The National Archives
Y.A.S.	Yorkshire Archaeological Society

INTRODUCTION

The subject of this thesis is the effect which the use of written records by manorial landlords had on their tenants in late medieval England. It focuses on the role played by writing in peasant land tenure and transfers, and the degree to which written evidence supported or replaced communal memory in the resolution of land litigation. It is based predominantly on a systematic study of the manor court rolls of Wakefield in the West Riding of Yorkshire and Alrewas in Staffordshire, from the earliest extant records of the mid-thirteenth century up to 1381, the year of the Peasants' Revolt. In the primarily agrarian society of late medieval England the tenurial relationship between lord and peasant was fundamental. Between the late twelfth century, when the definition of the scope of the common law led to an increased demarcation of free and unfree peasant, and the decline of serfdom in the fifteenth century, various changes occurred in tenure on many estates and manors, particularly in response to the social and economic upheavals of the fourteenth century. Since tenure is so central to my research (and so dominant in the sources), I have adopted Barbara Harvey's definition of the peasant as 'a farmer, who, whatever his legal status, works his own land, with or without assistance from others' – that is, a tenant, as opposed to one of the not insubstantial landless population.[1] These peasants increasingly experienced the effect of written bureaucracy on their daily existence, but to what extent and in what ways did they participate in that local written culture, and to what extent did literacy matter to them personally? Furthermore, how can we define and measure the literacy of people who we see almost exclusively through the lens of administrative records?

Michael Clanchy's *From Memory to Written Record*, first published in 1979, remains the most significant investigation of the development of the written record in later medieval England.[2] The focus of that work was the development of royal record-keeping, particularly under the justiciarship of Hubert Walter, and the appropriation of literate culture by the non-ecclesiastical elite. Less attention, however, was given to the impact of those developments on England's peasantry.[3] Clanchy described in general terms how the increasing use of writs by both the royal and seigniorial administrations to communicate with their officials would have brought many peasants into contact

[1] Barbara Harvey, *Westminster Abbey and its Estates in the Middle Ages* (Oxford: Clarendon Press, 1977), p.5.

[2] M.T. Clanchy, *From Memory to Written Record. England 1066-1307*, 2nd edn. (Oxford: Blackwell Publishing, 1993).

[3] Barbara A. Hanawalt, review of M.T. Clanchy, *From Memory to Written Record. England 1066-1307*, Harvard University Press, 1979, in *History of Education Quarterly*, 21:3 (Autumn 1981), p.368-9. Hanawalt asked, 'To what extent were the peasantry literate? Clanchy does not pursue this interesting question, but he would have found at least a partial answer if he had read more manorial court records rather than concentrating on the records of the elites and the central government administration'.

with written bureaucracy. Furthermore, he argued that the use of charters for the recording of title filtered down the social hierarchy, being widely used by the crown and monasteries in the eleventh century, by secular clerks and knights in the twelfth, and 'reaching the laity in general by the reign of Edward I'. He concluded that although not everyone could read and write, by 1307 'literate modes were familiar even to serfs, who used charters for conveying property to each other and whose rights and obligations were beginning to be regularly recorded in manorial rolls'.[4]

Charters provide perhaps the clearest evidence for the proactive participation of peasants in written culture, the best known being those in the *Carte Nativorum*, a section of a cartulary of Peterborough Abbey consisting of copies of charters confiscated from villein tenants.[5] The publication of the cartulary in 1960, and more particularly M.M. Postan's introductory essay, helped to stimulate the extensive research that has been conducted on the subject of the peasant land market.[6] Its significance in the history of record-keeping has also been noted, with Clanchy calling the charters 'a landmark in the development of the written record'. He argued that they show that

> 'in the latter half of the thirteenth century small properties were being conveyed by peasants using writing... If in many parts of England, as is probable, and not just of the Peterborough abbey estates, single acres and half-acres were being conveyed by charter by 1300, the number of peasants' charters produced amounts to hundreds of thousands or even millions.'[7]

The role of charters in the peasant land market will be discussed in detail in Chapter 1, looking in particular at the conflict between the abbey of St Albans and their tenants on the manor of Barnet over the use of charters in the fourteenth century.

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[4] Clanchy, *From Memory to Written Record*, p.2.

[5] C.N.L. Brooke & M.M. Postan, *Carte Nativorum. A Peterborough Abbey Cartulary of the Fourteenth Century* (Oxford: Oxford University Press for the Northamptonshire Record Society, 1960).

[6] Key works on the subject include: P.R. Hyams, 'Origins of a Peasant Land Market In England, *Economic History Review* N.S. 23:1 (April 1970); P.D.A. Harvey (ed.), The Peasant Land Market in Medieval England (Oxford: Clarendon Press, 1984); R.M. Smith (ed.) *Land, Kinship and Life-cycle* (Cambridge: Cambridge University Press, 1984); John Mullan & Richard Britnell, *Land and Family. Trends and variations in the peasant land market on the Winchester bishopric estates, 1263-1415* (Hatfield: University of Hertfordshire Press, 2010).

[7] Clanchy, *From Memory to Written Record. England*, p.50. No other historian has made an estimate for the level of the use of charters by the peasantry. Clanchy's remarks in general seem to have been accepted, however. For example, Paul Harvey wrote that '[c]ertainly by the mid-thirteenth century the conveyance of even very small pieces of land – quarter or half an acre – was commonly, perhaps normally, accompanied by a written charter. We find charters being used even in conveyancing free land to or from those of servile legal status – villeins – even although such charters would have no validity in a court of common law'. P.D.A. Harvey, 'English Estate Records, 1250-1330', in *Pragmatic Literacy, East and West, 1200-1330*, ed. Richard Britnell (Woodbridge, The Boydell Press, 1997), p.109.

Levels of peasant literacy (in the modern sense), however, have generally been assessed as being low. Jo Ann Hoeppner Moran made the relatively high estimate that by 1530 there was a 15% literacy rate among the population of the diocese of York (1.6-1.8% of whom would be clergy).[8] David Cressy, on the other hand, concluded more conservatively that by 1500 90% of men were still illiterate, and 99% of women.[9] Cressy's assessment was based, like those of many others, on the traditional measure of the ability to sign one's name, although he acknowledged that probably a higher percentage of the population could read.[10] The use of the signature as a yardstick reflects modern thinking. Shaped by our experience of compulsory education, the attainment of a basic level of reading and writing is regarded as a minimum requirement to qualify the individual as 'literate'. Even though non-written and non-verbal forms of communication are central to both our social and professional lives, writing is regarded as essential if we are to function fully in society. To the medieval mind, on the other hand, to be *litteratus* meant to be able to read aloud Latin texts, and in particular from the Bible.[11] Writing was a separate technique; a professional skill required by scribes and by the increasing body of lawyers and administrators.

The modern definitions and expectations of literacy can therefore prove unhelpful when considering a formative period in the development of awareness of, and attitudes towards, the written word. Scholarship has moved on from Galbraith's definition of literacy as the ability to read and write, or James Westfall Thompson's position that '[l]iteracy during the Middle Ages may be measured wholly by the extent of the knowledge and use of the Latin language'.[12] It is now generally acknowledged that there were different shades and levels of literacy, and different uses for it. Jeremy Goldberg has described the literacy continuum in terms of technical competencies, from complete illiteracy, through the ability to read some vernacular material, to the ability to both read and write in the vernacular and in Latin.[13] Charles F. Briggs, on the other hand, described a range of uses: the

[8] Jo Ann Hoeppner Moran, *The Growth of English Schooling, 1340-1548. Learning, Literacy and Laicization in Pre-Reformation York Diocese* (Princeton: Princeton University Press, 1985), p.181.

[9] David Cressy, *Literacy and the Social Order: Reading and Writing in Tudor and Stuart England* (Cambridge, 1980), p.176.

[10] L.R. Poos, *A rural society after the Black Death: Essex 1350-1525* (Cambridge: Cambridge University Press, 1991), p.282; R.S. Schofield, 'The Measurement of Literacy in Pre-Industrial England', in *Literacy in Traditional Societies*, ed. Jack Goody (Cambridge: Cambridge University Press, 1968), p.319.

[11] Clanchy, *From Memory to Written Record*, pp.331-332.

[12] Galbraith, V.H. *The literacy of the Medieval English Kings* (London: Oxford University Press, 1936); James Westfall Thompson, *The Literacy of the Laity in the Middle Ages* (Berkeley: University of California Press, 1939).

[13] P.J.P. Goldberg, *Medieval England. A Social History 1250-1550* (London: Arnold, 2004), p.268.

peasant who witnessed a charter without being able to read it himself, the merchant who kept accounts, the noblewomen reading for pleasure, and the university master.[14]

A broad view of what constitutes medieval 'literacy' is required. Recognizing this, Clanchy suggested that anyone 'who used writing participated in literacy, even if they had not mastered the skills of a clerk'.[15] It is a view which echoes that of R.S. Schofield in his contribution to Jack Goody's 1968 volume *Literacy in Traditional Societies*, who concluded that 'there seems to be little doubt that there was a large area in which there was effective participation in the literate culture by essentially illiterate people'.[16] That the peasantry of later medieval England would have been familiar with the use of written records has been widely accepted. Goldberg has argued that the proliferation of documents, including the manor court records beginning in the thirteenth century, and personal documents such as wills and liturgical books in the later fourteenth, would inevitably have led to an increasing proportion of England's population who used or produced documents.[17]

Terms such as 'document-awareness'[18] and 'document-consciousness'[19] have been coined to encapsulate the concept of the 'literacy' of peasants who could not necessarily read or write, but who understood the importance of records and needed, or wanted, to use them in some way. Yet despite these recognitions, there has been little discussion of how peasant involvement in literate culture developed and manifested itself. One of the few criticisms that were made of Clanchy's work at the time of its first publication was that his somewhat linear explanation of how literate culture and participation in literacy spread to the lower levels of society by 1307 was an oversimplification.[20] In the second edition of *From Memory to Written Record*, published in 1993, Clanchy himself noted that his very title 'is open to misunderstanding because it suggests a single and inevitable line of progress from illiteracy to literacy and, by implication, from barbarism to civilisation'.[21] Paul Strohm has recently stressed the need to modify developmental narratives, which have often failed to recognize

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[14]Charles F. Briggs, 'Literacy, reading, and writing in the medieval West', *Journal of Medieval History*, 26:4 (2000), p.398.

[15] Clanchy, *From Memory to Written Record*, p.2.

[16] R.S. Schofield, 'The Measurement of Literacy in Pre-Industrial England', in *Literacy in Traditional Societies*, ed. Jack Goody (Cambridge: Cambridge University Press, 1968), p.313.

[17] Goldberg, *Medieval* England, p.268.

[18] Poos, *A Rural Society after the Black Death*, p.288.

[19] L.R. Poos & Lloyd Bonfield, *Select Cases in Manorial Courts, 1250-1550. Property and Family Law* (London: Selden Society,1998), p.lxxx.

[20] David Corner, review of M.T. Clanchy, *From Memory to Written Record. England 1066-1307*, Harvard University Press, 1979, in *English Historical Review*, 98 (January 1983), p.134.

[21] Clanchy, *From Memory to Written Record*, p.20.

the co-existence of literate practices with non-literate practices, and also vocational, social, and geographical differences in the levels and nature of involvement.[22] The peasantry formed a large part of English society in this period, and social and economic studies have long recognized the diversity in their situations and experiences. We should consequently not expect to detect a linear and uniform acceptance of written culture across all sections of the peasantry, across all regions, and of all record forms in all contexts.

The second section of *From Memory to Written Record* laid the foundations for the deeper exploration of the extent, nature and factors affecting the development of literacy at all levels of society. Clanchy's discussion of the 'literate mentality' - the 'literate habits and assumptions' that must be developed by social groups in various areas of life before literacy in the modern sense of a technical end product will become the norm – enables us to look beyond the black and white question of whether a person was literate in that they could read and write, and to explore the effect which the growing literate culture had on the attitudes, expectations and aspirations of a largely 'illiterate' rural population. [23] As Clanchy put it, '[t]he growth of literacy was not a simple matter of providing more clerks and better schooling, as it penetrated the mind and demanded changes in the way people articulated their thoughts, both individually and collectively in society'.[24]

The development of a 'literate mentality' is clearly a complex phenomenon, and English-language studies perhaps suffer from the lack of a lucid vocabulary such as that which German and Dutch scholars have developed in this field.[25] The historical development of this area of research and its terminologies, particularly in English and German, have been discussed by Marco Mostert in *New Approaches to Medieval Communication*, the first volume to emerge from the University of Utrecht's *Pionier Project 'Verschriftelijking'*.[26] In a posthumous publication of 1952, Fritz Rörig distinguished

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[22] Paul Strohm, 'Writing and Reading', in *A Social History of England, 1200-1500*, eds. Rosemary Horrox & W. Mark Ormrod (Cambridge: Cambridge University Press, 2006), p.455.

[23] Clanchy, *From Memory to Written Record*, p.185.

[24] Ibid, p.186.

[25] Twenty-five volumes have now been published or are forthcoming in the Utrecht Studies in Medieval Literacy series. Of particular use from a comparative perspective for this study are: Anna Adamska & Marco Mostert, *The Development of Literate Mentalities in East Central Europe* (Turnhout: Brepols, 2004); Franz-Josef Arlinghaus et al (eds.), *Transforming the Medieval World. Uses of Pragmatic Literacy in the Middle Ages* (Turnhout: Brepols, 2006); Karl Heidecker (ed.), *Charters and the Use of the Written Word in Medieval Society* (Turnhout: Brepols, 2000); Arnved Nedkvitne, *The Social Consequences of Literacy in Medieval Scandinavia* (Turnhout: Brepols, 2004); Sarah Rees Jones (ed.), *Learning and Literacy in Medieval England and Abroad* (Turnhout: Brepols, 2003).

[26] Marco Mostert, 'New Approaches to Medieval Communication?', in *New Approaches to Medieval Communication*, ed. Marco Mostert (Turnhout: Brepols, 1999), pp.22-28.

between *Schriftwesen* (the technical conditions for the production of document forms), and *Schriftlichkeit* (the degree to which the written word was used as opposed to *Mündlichkeit* or *Oralität*). Mostert noted that this is the nearest equivalent to our use of 'literacy' in the broader sense, adopted from the work of social scientists such as Jack Goody.[27] This, I would suggest, is what has been referred to so far in this introduction as 'written culture', to distinguish it from the modern use of 'literacy' to denote the technical skills of reading and writing. In 1980, Michael Giesecke added further definition to the ways in which written culture develops, using the term *Verschriftung* to mean the writing down of texts. As texts are written down (*Verschriftet*), then *Schriftlichkeit* of society (or that area of society) increases. Most importantly for our purposes, he introduced the concept of *Verschriftlichung*, translated by Mostert as the 'development of literacy', to describe the 'social and psychological implications' of the experience of *Schriftlichkeit*, a development which he recognized to be a process (*Verschriftlichungsprozeß*) rather than an instantaneous change. It is a process for which English has no appropriate term, other than the 'inept "literalization"' suggested as a translation for the name of the Utrecht project.[28] It is, however, an extremely useful concept, since as Mostert noted, '[o]nce "Verschriftlichung" had been given a name, degrees ("Stufen") of literacy could be distinguished,' degrees which, as already has been noted, have been accepted by English-language scholars. Whatever the shortcomings of a term such as 'literalization', Clanchy noted in his introduction to *New Approaches* that it allows us 'to distinguish this social and intellectual process from "literacy" which is its end product'.[29]

The idea of the 'development of literacy' as a by-product of the increasing written culture is arguably not dissimilar to Clanchy's own concept of the development of the 'literate mentality'. The late medieval English peasant would not develop 'literate habits and assumptions' simply on account of national trends. They had to experience the development of a local written culture through the use of records by their own landlords and local administrators, and to be required to be familiar with them or see their benefits to others. The literacy they therefore encountered and actively participated in might therefore be termed 'pragmatic'. *From Memory to Written Record* was the first to treat the use of writing in government, administration and trade as a subject for research in its own right, rather than as part of diplomatic, legal or constitutional history, and Mostert argued that Clanchy's work may be said to have inspired the particular interest in *pragmatische Schriftlichkeit*, a term coined in 1979 by Brigitte Schlieben-Lange, and the subject of Special Research Project 231, *Träger, Felder,*

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[27] See for example Jack Goody & Ian Watts, 'The Consequences of Literacy', *Comparative Studies in Society and History*, 5:3 (April 1963).

[28] Mostert, 'New Approaches to Medieval Communication?', p.28, fn.70.

[29] Michael Clanchy, 'Introduction', in *New Approaches to Medieval Communication*, ed. Marco Mostert (Turnhout: Brepols, 1999), p.3.

Formen pragmatischer Schriftlichkeit im Mittelalter, at the University of Münster.[30] Mostert noted the potential problem that the boundaries of 'pragmatic' literacy may become blurred, but that generally it has been used to cover literacy for all practical and instructive purposes. The results of the Münster project were published in a volume with accompanying CD-ROM, and the documents and methods of production discussed demonstrate the wide range of the term: account books, 'book communities', illumination, broadsides, city chronicles, encyclopaedias, Episcopal histories, notarial documents, prayer books, schoolbooks and world chronicles.[31]

In the 1997 volume *Pragmatic Literacy, East and West*, Richard Britnell, attributing his use of the term to Thomas Behrmann of Münster, described pragmatic literacy as being 'broader in scope than "official literacy" or "administrative literacy", since it includes the use of writing for practical purposes other than law and administration'.[32] Yet the volume's contributions on English pragmatic literacy falls into those narrower categories, perhaps reflecting the particular strength of the material which survives in English archives. Michael Prestwich on the records of the English government, Paul Harvey on English estates, and Geoffrey Martin on English towns, show the potential of the records available for the study of the development of written culture, but their focus is still largely on the use of the records by their creators, and not on their impact on and reception by the wider population.

At the same time, in attempting to investigate when and why the written word came to the fore, we must not forget the ongoing role of the spoken word, and the ways in which the means of communication coexisted, or indeed clashed. Clanchy noted that '[w]riting had the profoundest effects on the nature of proof, as it seemed to be more durable and reliable than the spoken word'. Yet he also suggested that the value placed on the collective memory of the community would not easily be replaced.[33] The ideas developed by Brian Stock in his study of literacy in the eleventh and twelfth centuries are of use here, despite the work's focus on contexts very different to the late medieval manor.[34] Stock argued that the written word did not replace the oral, but that 'oral discourse effectively began to function within a universe of communications governed by texts'.[35] Rather than

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[30] Mostert, 'New Approaches to Medieval Communication?', p.26 & 34.

[31] Arlinghaus et al (eds.), *Transforming the Medieval World. Uses of Pragmatic Literacy in the Middle Ages.*

[32] Richard Britnell (ed.), *Pragmatic Literacy, East and West, 1200-1330* (Woodbridge, The Boydell Press, 1997), p.vii.

[33] Clanchy, *From Memory to Written Record*, p.186.

[34] Brian Stock, *The Implications of Literacy. Written Languages and Models of Interpretation in the Eleventh and Twelfth Centuries* (Princeton: Princeton University Press, 1983).

[35] Ibid, p.1.

speaking of 'literacy' Stock focussed on the use of texts and 'textuality'.[36] He identified two states of orality: pure orality in a pre-literate context in which texts were absent, and orality where verbal discourse and texts, while mutually exclusive, interacted. Stock also argued for the existence of 'textual communities', taking as his examples the use of texts by heretics and reformers. Not all members of the community were literate, but an individual would be present who had mastered the text and could use it to shape the community's attitudes and actions. In such environments, 'these non-literates had already begun to participate in literate culture, although indirectly. They were made aware that a text lay behind a sermon and they were given an indirect understanding of the principles of authentication, that is, of legal precedence and legitimation through writing'.[37] David Postles adopted Stock's terminology in an article on the production of charters in rural communities in the twelfth and thirteenth centuries. He viewed their use as part of 'transition from pre-literacy to textuality', the result of which was the familiarity with documents which others have noted by the later fourteenth century.[38]

We also need to consider the function of the written record in rural society, and its function in the lives of its individual members. The idea of the functionality of literacy was developed by Franz Bäuml in his article 'Varieties and Consequences of Medieval Literacy and Illiteracy'. Bäuml argued for 'the existence of three socially conditioned and socially functional modes of approach to the transmission of knowledge: the fully literate, that of the individual who must rely on the literacy of another for access to written transmission, and that of the illiterate without need or means of such reliance'.[39] Participation in literate culture was driven not only by the availability of the *means* of access, but also by the *need* for it 'for the exercise of one's social function'.[40] That an individual had the means of access to use or to create records may be hard to judge from the surviving records. Bäuml cited the example of Charlemagne, arguing that the fact that his charters were issued by secretaries cannot be taken as proof that Charlemagne himself could not write: 'Not only is an inference of illiteracy of an individual on the basis of his delegation of the act of writing or reading methodologically unjustified: the very definition of illiteracy as an individual's inability to read and write neglects the far more significant circumstance of the presumed illiterate's use of another's

[36] Ibid, p.7. Stock argued that '[t]o investigate medieval literacy is accordingly to inquire into the uses of texts, not only into the allegedly oral or written elements in the works themselves, but, more importantly, to inquire into the audiences for which they were intended and the mentality in which they were received'.

[37] Ibid, pp.90-1.

[38] David Postles, 'County Clerici and the Composition of English Twelfth- and Thirteenth-Century Charters', in *Charters and the Use of the Written Word in Medieval Society*, ed. Karl Heidecker (Turnhout: Brepols, 2000), p.28.

[39] Franz H. Bäuml, 'Varieties and Consequences of Medieval Literacy and Illiteracy, *Speculum* 55:2 (1980), p.246.

[40] Ibid, pp.243-244.

literacy.'[41] His case can be extended to the opposite end of the social scale: the 'illiterate' peasant, unable to read and write, could still function in the written culture of his society provided there were members of the community (whether parish priest, itinerant or local clerks, or manorial officials) who were familiar enough with the form and language of the required record to write, read or locate it on the peasant's behalf, and provided that he was allowed or was able to procure such assistance.

The habits of creating and preserving written records are important and highly visible marks of a literate culture, and it is consequently much harder to trace its development among those groups who did not display the archival sense of, for example, the great Benedictine abbeys. The survival of records for such institutions is disproportionately higher than for smaller landowners (particularly lay ones), let alone for records created by or for peasants.[42] Unease over the apparent lack of consistent and quantifiable evidence for peasant participation in written culture was expressed by L.R. Poos in his study of society in later fourteenth century Essex, in which he argues that '[b]efore the later fourteenth century at the earliest historians are largely left with qualitative impressions drawn from anecdotal or other narrative evidence'.[43] Poos praised the approach taken by Parkes in his early study of lay literacy,[44] arguing that he was 'commendably cautious in being reluctant to draw even tentative quantitative conclusions', while Goldberg warned that 'we can and should be shy of offering statistical data we do not possess'.[45] However if we limit our assessment of literacy purely to evidence for the generation and preservation of records, a minority activity due to the specialist skills required and expense incurred, then we will miss the broader picture of the contact which many more peasants had with records made and kept by others, particularly in the context of the manor.

The destruction of records in 1381

Perhaps the boldest arguments concerning the level of peasant participation in literate culture are those which have drawn on the literary texts of this period, stimulated in particular by accounts of the destruction of records during Peasants' Revolt of 1381. Christopher Dyer has remarked that the destruction of manorial records in the uprisings of 1381 was 'one of the most widespread expressions

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[41] Ibid, p.242.

[42] P.D.A. Harvey, 'The Peasant Land Market in Medieval England – and Beyond', in *Medieval Society and the Manor Court*, eds. Zvi Razi & Richard Smith (Oxford: Clarendon Press, 1996), p.395; Bruce M.S. Campbell, 'The land', in *A Social History of England, 1200-1500*, ed. Rosemary Horrox and W. Mark Ormrod (Cambridge: Cambridge University Press, 2006), p.193.

[43] Poos, *A rural society after the Black Death*, p.281.

[44] M.B. Parkes, 'Literacy of the Laity', in *The Medieval World*, ed. D. Daiches & A. Thorlby (London: Aldus Books, 1973).

[45] Goldberg, *Medieval England*, p.268.

of rural rebellion', identifying some 107 such incidents.[46] These acts raise fascinating questions about attitudes towards the written record which had developed among rural communities by the later fourteenth century.

Steven Justice's *Writing and Rebellion*, focussing on the supposed rebel letters which are reproduced in the chronicles of the revolt, argued that the peasants formed a document-savvy group, who were laying claim to the almost exclusively clerical domain of literate culture from which they were excluded.[47] He suggested that the image of the illiterate rebel, raging against the oppressive and incomprehensible literate machinery of government, was a construct of monks such as Thomas Walsingham, Henry Knighton and the author of the *Anonimalle Chronicle*; members of that clerical literate elite who had a vested interested in preserving the exclusivity and authority of the written word.[48] In reality, Justice argued, '[t]he rebels aimed not to destroy the documentary culture of feudal tenure and royal government, but to re-create it; they recognized the written document as something powerful but also malleable, something that, once written, could be *re*written'.[49] Justice's work has met with some criticism, particularly for the primacy which it gives to the destruction of written records as a driver of the revolt.[50] Furthermore, as Rosamond Faith noted, despite his emphasis on the exclusion of the peasantry from literacy, Justice in fact pointed out several ways in which they were able and enabled to interact with the written record, including the acceptance of fines by manorial lords from peasants who wished to have their sons schooled.[51]

Justice's work however does make a stimulating contribution to the discussion of peasants' experience of written culture, and builds upon the ideas established by Clanchy and Bäuml regarding the ability of the illiterate to participate in literacy more broadly. While acknowledging that the actual

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[46] Christopher Dyer, 'The Social and Economic Background to the Rural Revolt of 1381', in *The English Rising of 1381*, ed. R.H. Hilton & T.H. Aston (Cambridge: Cambridge University Press, 1984), p.12.

[47] Steven Justice, *Writing and Rebellion* (Berkley: University of California Press, 1994).

[48] 'In the imaginative lexicon of the chroniclers, as of medieval Latinity in general, the embodiment par excellence of reason is writing, and their narratives of the rising are black fantasias about the victimization of written culture and its agents at the hands of those who could not coherently speak (much less think or write) and who could look at writing only with a rage for its destruction.' Ibid, p.17.

[49] Ibid, p.48.

[50] Rosamond Faith, review of Steven Justice, *Writing and Rebellion*, Berkley: University of California Press, 1994, *Economic History Review*, 113 (1998), pp.426-7. 'Justice sees the rising as essentially the peasantry's claim to make written culture and its procedures their own, to take over what had been "defined immemorially as a clerkly space". This is a hypothesis of straw: there is very little evidence of contemporary disapproval of peasants' participation in written culture, as opposed to a fear of their getting above their station... his thesis, that 1381 was 'essentially' a claim to written culture, reduces a complex political movement to a literary metaphor.'

[51] Justice, *Writing and Rebellion*, p.32.

levels of reading and writing in rural communities must be uncertain, Justice suggested that the level of literacy more broadly is liable to be underestimated if we assess it purely in this modern sense. He argued that a peasant may have understood the essence of a document without being able to read (and translate it) in full:

> 'For example, the ability to sound out, and therefore recognize, one's name and to know the equivalents of perhaps ten or twenty Latin words would be enough to allow minimally literate peasants to locate and recognize references to their lands in court rolls or extents, or to be aware of and articulate about the contents of charters they might hold. And I would suggest that this, not fluency or practice in reading books or writing letters, is the literacy that mattered to the rural communities that rebelled in 1381 the literacy that gave them their sense of documentary culture and their determination to make it theirs.'[52]

The last point is essential, and echoes Bäuml's emphasis on the functional need for literacy as a driver in participation. At the heart of any study of peasant literacy must surely lie the question of whether literacy actually mattered to those we are studying, and if so, why? Can we say that evidence for the use of charters or court rolls by some peasants demonstrates a desire for a greater role in literate culture, as Justice himself asserted, rather than a pragmatic response to the administrative demands of their landlords? The questions of to what extent the document itself mattered, the culture it symbolized and the authority it carried as an object, and the extent to which the importance lay in the content of the record, for which the written word purely provided a new medium, are ones which have shaped the research presented in this thesis.

Published two years earlier than Justice's study, Susan Crane's 'The Writing Lesson of 1381' also considered the evidence for peasant participation in literate culture. Again, it focussed on literary texts, including the monastic chronicles, *Piers Plowman*, and also on the closing encounter of the *Wife of Bath's Prologue*. There are many similarities between the conclusions of Justice and those of Crane – she too noted the inarticulateness which the chroniclers attributed to the rebels, and also emphasised the restriction of the participation of the peasantry in literate culture. However, whereas Justice saw the rebels as being ready to take on and take over the ruling elites' use of literacy, Crane offered a far more conservative view. Noting that 'Clanchy's argument that the possession of a seal counts as participation in written culture makes the most positive case possible for the relation between literate culture and the commons', she suggested that this limited participation 'functioned broadly to restrict

[52] Ibid, pp.34-35.

rather than to liberate the illiterate individual'.[53] Furthermore, contrary to the suggestions of legal historians of the manor court such as John Beckerman and Richard Smith (discussed below, p.14),[54] Crane believed that the introduction of writing in legal procedures did not necessarily act to the advantage of the peasants, instead merely facilitating seigniorial control, and contesting the established non-written culture which was 'now labelled deficient'.[55] Thus, while acknowledging the awareness of the function of writing as an instrument of power which the rebels showed in their destructions of old records and demands for new charters, Crane did not believe any significant level of literacy existed, and suggested that rather than reducing social stratification, 'literacy provided a further measure of social differentiation and a new site of friction between social groups'.[56]

Justice and Crane's studies, valuable though they are, arguably typify the 'qualitative impressions' identified by Poos. The difficulties inherent in assessing something as intangible as the growth of a 'literate mentality' must be recognized and constantly borne in mind, particularly when considering individuals and groups who have left little trace in the archival record, and whose interaction with written culture is seen almost entirely through the lens of the official records of the manorial administrations or common law courts. Despite Justice's expression of a desire to broaden the basis for the study of the revolt to non-literary texts, in reality this only extends the traditional corpus of Chaucer, Langland and Gower, to include the 'factual' accounts provided by the monastic chroniclers.[57] Yet as both he and Crane noted, these texts have their limitations for our understanding of literacy in the communities to which they refer. Both identify the possible biases of the monastic chroniclers. Crane found some sympathy in Chaucer's treatment of the Wife of Bath - she is 'the voice of a maligned group, a group outside literate culture and thus disadvantaged at countering literate culture's authority'. Chaucer therefore 'makes the voicelessness of suppressed groups a subject rather than an unconsidered condition of his writing', recognizing 'that those outside literate

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[53] Susan Crane, 'The Writing Lesson of 1381', in *Chaucer's England. Literature in Historical Context*, ed. Barbara A. Hanawalt (Minneapolis: University of Minnesota Press, 1992), p.203.

[54] John S. Beckerman, 'Procedural Innovation and Institutional Change in Medieval English Courts', *Law and History Review* 10:2 (1992); Smith, 'Some Thoughts on 'Hereditary' and 'Proprietary' Rights in Land under Customary Law'.

[55] Crane, 'The Writing Lesson of 1381', p.203.

[56] Ibid.

[57] Justice, *Writing and Rebellion*, pp.4-8. Andrew Prescott has made a strong case for the potential of the judicial records of the aftermath of the revolt to add to our understanding of this subject area. He noted that there are a number of such cases in the judicial records which show the use of written documents by the rebels, suggesting that '[t]hose responsible for the prosecution of the rebels did not have the same problems as the chroniclers in accepting that the rebels could be literate – probably because they received daily petitions and other documents from exactly the kind of people as those who had joined the rising.' Andrew Prescott, 'Writing About Rebellion: Using the Records of Peasants' Revolt of 1381, *History Workshop Journal* 45:1 (Spring 1998), p.15.

culture may indeed have something to say'.[58] But whatever their social sympathies, these authors were set apart from the majority of the population by virtue of their own literacy. To what extent should we really expect to find evidence for the day-to-day, low-level interaction of villagers with administrative or judicial record-keeping in such texts? Such studies, focussing on literary texts, are perhaps not only limited for the study of peasant literacy by the evidence they use, but also by their conceptions of literacy. Looking from the perspective of the literate elite, both Justice and Crane seem to limit their allowances for what may be regarded more generally as participation in literate culture at a pragmatic level, despite Justice's acknowledgement that a far more basic form of literacy was what really mattered to the peasantry.

The approach adopted in this thesis

This thesis stems from the belief that the wealth of surviving manorial records, which have also been so heavily used as ancillary devices for the demographic, economic and social reconstruction of rural communities, also represent the main points for the interaction of the majority of peasants, particularly the unfree, with the written record. Within the past thirty years, there has been significant discussion among medieval legal historians about the nature of customary law and the procedures of the manor courts, including the role played by the written record. On this aspect, John Beckerman's article 'Procedural Innovation and Institutional Change in Medieval English Courts' (1992) and the introduction to Lloyd Bonfield and Lawrence Poos' Selden Society volume (1996) are of particular importance. Beckerman argued that by the later fourteenth century 'documentary proof... gave increased protection, especially in land tenure. When used in connection with disputes about land, it always replaced trial by jury'.[59] Bonfield and Poos sought to modify this view (as will be discussed in greater depth in Chapters 5 and 6), but nonetheless concluded that by the end of the thirteenth century 'the increasing frequency with which parties to suits vouched the record, and used other types of documents, in the course of disputes over property, shows the general acceptance of written evidence in pleas before the manor court, as well as the undoubted "document consciousness" of its suitors'.[60]

The keeping of accounts and court rolls became widespread across all levels of estate during the thirteenth century. Assessments of the impact of this development on the peasantry have varied. It has been argued that the development of record-keeping in the courts brought great advantages for

[58] Crane, 'The Writing Lesson of 1381', p.215 & 217.
[59] Beckerman, 'Procedural Innovation and Institutional Change in Medieval English Courts', p.225.
[60] Poos & Bonfield, *Select Cases in Manorial Courts 1250-1550*, p.lxx.

the tenants of the manor, providing proof of tenure, freezing manorial customs, facilitating the transfer of land by recording the details of each parcel with increasing precision, and allowing increasing complexity in arrangements for the disposal of land.[61] On the other hand these records were undoubtedly primarily seigniorial devices, and others (including Crane, as discussed above) have emphasized their role as instruments of control and oppression. As manorial administrations increasingly came to rely on written evidence rather than oral testimony, peasants needed to understand how their business was translated into the official record, and how they would be able to use that record in case of later dispute between themselves or with their lord. They needed to develop some form, as Barbara Hanawalt put it, of 'functional literacy in self-defense'.[62] These differing interpretations are nonetheless based on the same assumption that litigation in the manor court was increasingly based on documentary evidence. This raises fascinating questions for our understanding of the interaction of the peasantry with the written record, and merits more systematic examination. How quickly, uniformly and totally did this shift occur?

The archival research for this project began with the examination of the Barnet court book, initially concentrating on the evidence for the dispute over the use of charters by the villein tenants (see Chapter 1), but the court books of the manors of St Albans Abbey also, as Beckerman noted, reveal evidence for the voucher of court rolls during land litigation. It was clear from reading through the pleas of land which appear in the book up to 1381 that voucher was not recorded with increasing frequency. The material in the court books, however, was extracted from the original rolls, and it is clear that this was a selective process. Not every court session held at Barnet has an entry within the court book, with the scribe instead grouping several stages of an individual case within one entry. Pleas cannot therefore be fully traced across their course, nor can we be certain that the book represents a full record of all litigation brought in the manor court, making a quantitative analysis of the data in the court book and its comparison to that of other court rolls series problematic. In order to more thoroughly test the theory put forward by Beckerman that written evidence played an increasingly significant role in land litigation, series of full rolls with a good rate of survival were sought. An examination of the published rolls from the manor Wakefield revealed a significant number of pleas of land across the period up to 1351/2, several of which involved the voucher of the rolls as evidence.[63] Wakefield was consequently chosen as the primary case study for this project. As

[61] Beckerman, 'Procedural Innovation and Institutional Change in Medieval English Courts', p.225; Smith, 'Some Thoughts on 'Hereditary' and 'Proprietary' Rights in Land under Customary Law', p.126.

[62] Hanawalt, review of Clanchy, *From Memory to Written Record*, p.370.

[63] William Paley Baildon, *The Court Rolls of the Manor of Wakefield, Vol. I, 1274 to 1297*, Yorkshire Archaeological Society Record Series vol. XXIX (1901); William Paley Baildon, *The Court Rolls of the Manor of Wakefield, Vol. II, 1297 to 1309*, Yorkshire Archaeological Society Record Series vol. XXXVI (Leeds, 1906); John Lister, *The Court Rolls of the Manor of Wakefield, Vol. III, 1313 to 1316 & 1286*, Yorkshire

a comparative study, the smaller lay manor of Alrewas in Staffordshire was chosen. Despite seeing considerably less land litigation (and indeed other business, due to its smaller size and population), the rolls have survived well. These two manors and their records are the subject of Chapter 2, together with a description of the methodology employed in the collection of data.

The remaining chapters present the results of the study of the land litigation in the courts of Wakefield and Alrewas up to 1381: the extent to which the rolls were used as evidence (Chapter 3), the practical aspects of voucher of the court rolls including an examination of the use of copies (Chapter 4), and an analysis of the circumstances in which the rolls were vouched, and the evidence for their requirement or rejection (Chapter 5). Finally, Chapter 6 discusses what the findings of this study suggest about the relationship between written and non-written evidence in the manor courts in this period. Before the results of the case studies are presented, Chapter 1 will provide a fuller discussion of the literature surrounding peasant tenure and land transfers, including a consideration of the use of charters by customary tenants and for customary land. This introduction will conclude with some context for that discussion: the development of manorial record-keeping.

The development of manorial record-keeping

The origins of, and the forces of change and development behind, the manorial records, have been the subject of much debate over the past century. The chronology of the emergence of the various forms of manorial record, beginning with the creation of surveys between c.1180 and c.1230, has been summarized by Zvi Razi and Richard Smith.[64] P.D.A. Harvey, in his introduction to the records of Cuxham, discussed in detail the developments in the form of manorial accounts. He identified two major phases in accounting: the centralized creation of accounts on a small number of large estates from the early thirteenth century (the earliest surviving being those of Winchester from 1208-9 to c.1270); and the proliferation of accounts between c.1270 and the mid-fourteenth century as

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Archaeological Society Record Series vol. LVII (Wakefield, 1917); John Lister, *The Court Rolls of the Manor of Wakefield, Vol. IV, 1315 to 1317*, Yorkshire Archaeological Society Record Series vol. LXXVIII (Wakefield, 1930); J.W. Walker, *The Court Rolls of the Manor of Wakefield, Vol. V, 1322 to 1331*, Yorkshire Archaeological Society Record Series vol. CIX (Wakefield, 1945). Sue Sheridan Walker, *The Court rolls of the Manor of Wakefield from October 1331 to September 1333*, Wakefield Court Rolls Series vol. 3 (Leeds, 1983); K.M. Troup, *The Court rolls of the Manor of Wakefield from October 1338 September 1340*, Wakefield Court Rolls Series vol. 12 (Leeds, 1999); Helen M. Jewell, *The Court Rolls of the Manor of Wakefield from October 1348 to September 1350*, Wakefield Court Rolls Series vol. 1 (Newcastle upon Tyne, 1981); Moira Habberjam, Mary O'Regan, & B. Hale, *The Court rolls of the Manor of Wakefield from October 1350 to September 1352*, Wakefield Court Rolls Series vol. 6 (Leeds, 1985).

[64] Zvi Razi & Richard M. Smith, 'The Origins of the English Manorial Court Rolls as a Written Record: A Puzzle', in *Medieval Society and the Manor Court*, ed. Zvi Razi & Richard Smith (Oxford: Clarendon Press, 1996), pp.38-40.

the majority of landlords adopted the practice, organized locally and displaying increasing standardization in form.

Harvey noted the parallel between the development of demesne farming from the late twelfth century, peculiar to England, and the development of manorial accounting. Its purpose was to establish the state of account between landlord and official and although, as he pointed out, 'it does not follow that demesne farming was possible only where written accounts were used' (suggesting indeed that the written account might be 'a quite unnecessary complication'), the advantages to the landlord are clear.[65] They provided precedent for future expenditure and expectations, served as evidence of title to a manor as a whole or to individual tenancies, and allowed the calculation of annual profit. The reasons for the boom in manorial accounting in the 1270s are less obvious, and Harvey did not provide a definitive explanation. In the case of the greater estates, he suggested that it reflects a wider movement away from centralized management, which allowed greater freedom to local agents in their activities but also subjected them to greater scrutiny at the annual audit. Consequently, he argued that in such cases the initiative for producing written accounts may lie with the agent rather than with the lord: 'the reeve or bailiff found that he was much better able to stand up to the auditors' inquisition if he came provided with a written account setting out his receipts and expenditure in due form'.[66] At the same time, however, we also see the spread of accounts to all levels of estate. Whereas all accounts known to survive from before 1250 come largely from the great ecclesiastical and lay estates, and some smaller monastic estates, accounts from the later phases come from far smaller estates and even single manors.[67]

A similar explosion in the production of court rolls seems to have occurred in the 1260s. Earlier court records have been noted – the Ramsey cartulary contains a copy of a court roll of 1239-40, while the earliest known extant roll of 1246 comes from the Abbey of Bec – suggesting that the practice was not innovative in the later thirteenth century. Nonetheless, the practice appears, like that of accounting, to have become more widespread in this period. The reasons for these developments are unclear, and no completely satisfactory explanation has been suggested. Why do we see this apparent transition from oral to written practices, particularly in the courts, in England but apparently not in the rest of Europe? Why should the number of manor courts for which records survive have increased so dramatically in the 1260s and 1270s? Frederick Maitland saw the court rolls as part of

[65] P.D.A. Harvey, *Manorial Records of Cuxham, Oxfordshire, circa 1200-1359* (London: H.S.M.O., 1976), pp.13-15.
[66] Ibid, p.29.
[67] Ibid, p.18.

the wider administrative and financial reform of estates, providing the lord with an account of the fines, amercements and perquisites which he could expect to receive from the bailiff or reeve.[68] In the earliest accounts from Winchester, the profits of the court were included on the manorial accounts suggesting that their financial aspect was of interest to the lords. Yet as Harvey has noted, the court rolls also contain much information irrelevant to accounting.[69]

Beckerman regarded the seigniorial interest in the holding and transfer of land as the driving force behind the three major procedural changes of the period 1250-1350: the introduction of trial juries, presentment juries, and the growing use of written records.[70] A significant amount of court business involved the monitoring and control of tenure, free and unfree. On manors where there was a mix of free and villein tenements, the value to the lord in insisting on the reporting and recording of all changes in occupancy is evident. The problems which could arise for a landlord who failed to control the ways in which his land was transferred have often been discussed. Unchecked possession of free land by a villein might bring his personal status, and the status of his customary land, into question, while the acquisition of customary land by a free tenant without his proper admittance in the court might result in the services and personal obligations attached to the land being lost. By the second quarter of the thirteenth century, the royal courts had developed a substantive common law of villeinage with tests which demarcated unfree from free. Poos and Bonfield saw this as the impetus for lords to keep records of customary incidents, arguing that 'It is surely no coincidence that the common law of villeinage and the inception of more careful and more regular series of estate documents, of which manorial court records represent only one variety, should be so closely contemporaneous'.[71] Like Beckerman, they suggested that this movement was buoyed by the beneficial economic circumstances which encouraged demesne farming.

Razi and Smith, on the other hand, while accepting the relationship between demesne farming and the production of custumals, surveys and accounts, rejected it as the motivation for the production of court rolls. While they too noted the pressure which the crystallization of a 'common law of villeinage' put on landlords to identify and retain their villeins, they argued that the Angevin reforms

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[68] F.W. Maitland, *Select Pleas in Manorial and Other Seignorial Courts* (Selden Society volume 2, London: Bernard Quaritch, 1889).

[69] P.D.A. Harvey, *Manorial Records* (London: British Records Association, 1984), p.42.

[70] Beckerman, 'Procedural Innovation and Institutional Change in Medieval English Manor Courts', p.199. 'In this age of "high farming", labor services had to be extracted from the manorial peasantry and incidents of servility enforced if the demesne was to be cultivated and the continuous existence of a servile labor force assured. This fact alone suffices to explain the flowering and extensive document production of so many manors in the thirteenth and first half of the fourteenth centuries.'

[71] Poos & Bonfield, *Select Cases in Manorial Courts 1250-1550*, p.xxi.

of the common law had a more direct impact on the procedures of the manor courts. They suggested that the records reflect part of a move by the lords to bring court procedures in line with the royal courts in an attempt to attract the business of their free tenants by 'providing them with new and better means of resolving inter-personal and especially land disputes', which free tenants could otherwise take to the county or royal courts.[72] In the few early surviving rolls of the 1230s to 1250s, the frequency with which free tenants appear reflects the ability of landlords to coerce their free tenants to attend. This abuse of free tenants was addressed in the Statute of Marlborough in 1267, compelling landlords to attract, rather than to force the free into their courts, and Razi and Smith believed that this explains the surge in the number of rolls in the 1260s and 1270s. Their explanation was rejected by Rosamond Faith, who argued that the fact that the manorial court was not a court of record for property transactions and disputes would remain as a deterrent for free tenants.[73] The manor court was however a potential forum for the resolution of inter-personal pleas, such as those concerning debt, for both the unfree and the free, as will be discussed further in Chapter 1.[74]

The procedure which developed for the transfer of customary land was that of surrender and admittance, which is discussed at length in the following chapter. Paul Hyams in particular has argued that the transfer of customary land formed part of the wider land market, and that customary law was correspondingly part of a unified legal system. At the same time, lords sought to preserve their distinct jurisdiction over customary land. In Hyams' view, therefore, the initiative for the increasing use of written records in land transfers belonged to the lord: 'The logical conclusion of the process was the birth of Copyhold and the consequent appearance of a distinct customary terminology based on the notion of the "copy" of the court-roll entry as the villager's title-deed, firmly outside the common law.'[75] Aspects of the relationship between customary law and common law are discussed throughout this thesis, and the evidence for the use of copies before 1381 and the drivers behind the development of copyhold are discussed further in Chapters 3 and 6. Hyams' point raises one further issue which must be will be explored: that of agency. If written evidence of title did indeed come to be preferred to non-written evidence in the manor in this period, both as the by-product of land transfers and in litigation, was its adoption a measure forced upon peasant communities by their lords, or an organic process - a sign of individuals' or of communities' growing trust in the medium?

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[72] Razi & Smith, 'The Origins of the English Manorial Court Rolls as a Written Record', p.45.

[73] Rosamond Faith, review of Zvi Razi & Richard Smith (eds.), *Medieval Society and the Manor Court*, Oxford: Clarendon Press, 1996, *Journal of British Studies* 37:3 (July 1998).

[74] See pp.36-7.

[75] Paul R. Hyams, 'What did Edwardian Villagers Understand by 'Law'?', in *Medieval Society and the Manor Court*, ed. Zvi Razi & Richard Smith (Oxford: Clarendon Press, 1996), p.83.

CHAPTER 1

Customary tenure, land transfers and the written record

The aim of this chapter is to provide an introduction to the way in which customary land was held and transferred in this period. Since the approach of this thesis is to investigate what the manor court rolls can contribute to our understanding of written culture, there is an inevitable focus on customary tenure. The literature concerning villein charters will be reviewed, alongside a study of the evidence for the use of such charters in the court book of the manor of Barnet (the nature of which will be described in the following section).[76] The development of the procedure of surrender and admittance, and the extent to which peasants can be seen to have embraced the court rolls as a registry for their land holdings will then be discussed.

Villein charters

Peterborough Abbey's *Carte Nativorum* is an exceptional source but the control of tenure, and especially the alienation of villein tenements, was clearly also a concern for other landlords. The legal theory regarding the alienation of land held in villeinage is clear: as a chattel of his lord, the villein could not sell or donate his land on penalty of forfeiture, and could not lease it without his lord's permission without risking amercement.[77] The villein who wished to 'sell' his land must surrender it in his lord's court to the steward, who then would admit the 'purchaser' to it, upholding the legal principle that the freehold of the villein tenement belonged to the lord and that only he had the right to transfer it.[78] The process of surrender and admittance allowed the lord control not only over the integrity of the villein holdings on his manor, but also over who held them.[79] Failure to enforce this, or to control the acquisition of free land by villein tenants, could severely weaken a landlord's control over the customary holdings of his manor. Postan also noted that in fact the sale of villein land to free tenants was more dangerous than the part or full alienation of land from one villein

[76] British Library (hereafter B.L.) Add MS 40167.

[77] P.R. Hyams, *Kings, Lords and Peasants* (Oxford: Clarendon Press, 1980) p.38; Frederick Pollock & Frederic William Maitland, *The History of English Law Before the Time of Edward I*, Vol. 1, (Cambridge: Cambridge University Press, 1923), p.382.

[78] 'There can be no thought of a person so situated alienating the land by an act of his own will.' Paul Vinogradoff. *Villainage in England: Essays in English Mediaeval History* (Oxford: Clarendon Press, 1892), p.166.

[79] '[W]e may be fairly certain that the lords of this period did not allow that new tenants could be forced upon them against their will.' Pollock & Maitland, *The History of English Law*, Vol. 1, p.382.

to another, since despite the legal argument that *tenementum non mutat statum*, lords risked losing their grip on customary land and the rent and services due from it entirely once in free hands.[80] The use of charters in transfers of customary land, whether made to other villeins or to free tenants, posed its own particular problems. Barbara Harvey, noting a strict separation of villein and free land on the estates of Westminster Abbey, suggested that '[i]f tolerated in the case of customary land, procedure by the execution of charters... could have reduced the monks' role, as happened eventually in the case of sales of free land, to that of receiving a fealty that could not be refused'.[81]

In his account of the 1381 uprising at St Albans given in the *Gesta Abbatum*, Thomas Walsingham related how the tenants of Barnet came to the town and 'demanded with great impudence a certain book drawn up from the court rolls, in order to burn it'. The abbot, 'petrified with fear, promised to hand the book over to them within three weeks'.[82] The reason for their actions, Walsingham alleged, was that although during the administrative lapses caused by the Black Death 'these deceitful and false men had made free charters, one to another', the book remained as proof that almost all the houses in Barnet were in fact held 'by the rolls'.[83] Walsingham also noted that during the rebellion 'many muniments of the monastery' were burnt.[84] It is believed that these included the original court rolls of the abbey's manors, since only a few fragments survive.[85] Fortunately, we not only have Walsingham's contemporary account of the peasants' actions, but also a version of the court rolls against which to test his claims. During the cellarership of John Mote, between 1355 and 1374, the abbey had begun to extract the court rolls into books. Despite the loss of the original rolls and the demands of the Barnet rebels, the rebellion at St Albans collapsed before the abbot could be forced to hand over the book, which survives today at the British Library, and through which we are able to trace something of the conflict highlighted by Walsingham over the creation of charters in the transfer of customary villein land.

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[80] Brooke & Postan, *Carte Nativorum*, p.xxxiii.

[81] Harvey, *Westminster Abbey and its Estates in the Middle Ages*, p.306.

[82] H.T. Riley (ed.) *Gesta Abbatum Monasterii Sancti Albani a Toma Walsingham* Vol.3 (London: Longmans, Green, Reader and Dyer, 1867), p.328.

[83] Ibid, '*Et de Barnet quidam viri quemdam librum confectum de Rotulis Curiarum expetierunt, cum multa protervia, comburendum; quia in ipso inveniendum erat quod omnes pene domus de Barnet tenebantur per rotulos, cum ipsi fallaces et falsi chartas liberas confecissent temporibus pestilentialibus, unus alteri, quando pene nullus Senecsallus aut Cellarerius supererat vel saltem curaret de huiusmodi rebus transitoriis et caducis. Et hunc quidem librum dominus abbas, timore perterritus, ipsius tradendum promisit infra tres ebdomadas...*'.

[84] Ibid, p.370.

[85] A.E. Levett, *Studies in Manorial History* (Oxford: Clarendon Press, 1938), p.76.

By far the greatest part of the Barnet court book consists of entries relating to the transfer of land. In general, there seems to have been an active land market on the manors of St Albans which for the most part was conducted by surrender and admittance, the legal mechanism for the transfer of customary land. The illegal transfer of villein land, however, was a major concern for the abbey throughout this period. An attempt was made to preserve the integrity of the customary holdings in 1275, when Abbot Roger issued ordinances laying down that 'no free man should enter and hold the land of our villeins', and that no villein might lease or sell land or rents to anyone except the abbey.[86] It is clear from the Barnet evidence that there was conflict, or at least confusion, over the right to transfer land outside of the customary procedures. From the earliest presentment for the illegal use of a charter in 1296, there is a steady trickle of these cases. There are, however, clusters in the years between 1311 and 1314, and especially in 1344 and 1345, which suggest that the abbey periodically held large-scale inquisitions into tenure. Five times between September 1312 and November 1314, the jurors were ordered to distrain all those tenants of Barnetleye who had made charters and had entered land without the licence of the lord,[87] while a similar order was given concerning the tenants of Botelerslond in 1345.[88] The proliferation of manorial records in this period, and an apparent expectation that the free tenants would have acquired their free land with charters, allowed St Albans Abbey to demand that proof of tenure be shown where there was doubt over the way in which land was held. From around 1323, individual tenants were regularly called upon to show by what means they claimed to hold their land (*ad ostendere qualiter tenere clamat*). The right to demand proof applied to both free and unfree – where there was doubt over whether land really was free, the tenant was distrained to produce their *carta feoffementa* for inspection. In the majority of such cases, the result of the inquiry was the seizure of the tenement and the surrender of the charter. The land was typically re-granted to the same tenant, but by admittance in the full court, recorded in the rolls in the proper way, to be held *in villenagio* for services.

Between 1341 and 1345, tensions over the transfer of land seem to have been at their height. Presentments for default of services increased, and there is evidence that some tenants tried to challenge their status altogether. A particularly serious case arose in 1344, which is not mentioned in the court book, but for which a full account is given in the *Gesta Abbatum*.[89] It relates how the abbey brought before the assize one William Atte Penne, accused of forging charters in the hope of holding his customary land freely (*per quas chartas terras et tenementa native tenere libere in perpetuum*

[86] Riley, *Gesta Abbatum* Vol.1, pp.453-4.
[87] B.L. Add MS 40167, f38d, f39d, f40, 40d, f41d: Halmotes held at Barnet, Tuesday after the feast of John the Baptist, 6 Ed II, Monday after the feast of St Mark and Tuesday before the feast of St Andrew 7 Ed II, Wednesday before the feast of John the Baptist and Thursday after the feast of St Martin, 8 Ed II (1312-4).
[88] B.L. Add MS 40167, f74d: Halmote held at Barnet, Monday after the feast of St Martin 19 Ed III (1345).
[89] Riley, *Gesta Abbatum* Vol.2, pp.317-329.

cogibant). William was not alone – 'many others of the vill of Barnet' had done the same, and William seems to have been prosecuted simply because the abbot thought it would be easier to plead against one than against many (*Considerans Abbas igitur fore levius contra unum quam plurimos placitare*). Both sides clearly saw the value of charters. The tenants were not simply making them to accompany recent transfers, but seem to have been forging charters for past sales and purchases, as it was alleged that William had attempted to age his charters by smoking them over his hearth.[90] William himself might have been personally free, since the *Gesta* reproduces the text of the indenture by which the land was re-leased to him and his family for lives, but the abbey feared that if court found in his favour, then other tenants (including villeins) might be encouraged to try the same, 'and thus by chance all the land which had been customary might become free land'.[91]

Perhaps it was this case that spurred the abbey's confiscation of illegal charters in 1345. In the court of June 1345, eleven tenants were presented for illegally transferring their villein land by charter.[92] The format for each entry is identical, so the first will serve as an example. The jurors reported that Peter atte Chapelle had acquired one cottage with curtilage from Robert Saly by charter, which the rolls for the fifth year of the reign of Edward II showed had once been held by Edmund Smalhak in villein tenure. The entry records how Peter came to the full court, and recognized 'the right of the abbey and the disinheritance of the said church' (*ius ecclesie Sancti Albani et exhereditionem ecclesie predicte*). Therefore he surrendered his charter and asked to be admitted by the rod at the will of the lord. And the lord, *de gracia sua speciali* (and for a fine of 12d), re-granted the cottage to Peter, who promised to be obedient in all matters, just like the abbey's other customary tenants. In all eleven cases, the abbey's right can indeed be confirmed in entries for the dates cited.

St Albans Abbey seems to have been particularly conservative in its methods of estate management, largely resisting the trend towards the leasing out of demesne lands until the 1420s, and relying on the services due from the customary holdings to continue to farm them. Whether the abbey's concern was to prevent the fragmentation of customary holdings, or simply to ensure that any

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[90] Ibid, pp.317-318. *quidam William Atte Penne, cum multis aliis de villa de La Barnet, falsas et ocultas chartas sibi fecerat fabricari; et sigilla de venditione et emptione, quasi de libera terra et tenementis, sine scientia Abbatis vel ballivorum suorum, fecerant his apponi... Willelmus igitur, nihilominus formidans suam causam injustam exequi, chartas suas, quas sic composuerat, et quas, ut viderentur verisimiles per longam datam et vetustem membranae, in fumo domus suae suspenderat, Curiae regiae, et militibus de patria, ac etiam aliis liberis hominibus, pluries demonstravit.*

[91] Ibid, p.318. *Timuerat utique Abbas maxime si Willelmus supradictus, pro se de tenementis et terris liberis habuisset prolatum judicium, omnes ejusdem conditionis de La Barnet commovissent placitum pro eodem, et ita fortassis tota terra illa native fuisset in conditionem liberam devoluta.*

[92] B.L. Add MS 40167, f73: Halmote held at Barnet, Thursday after the feast of Peter & Paul, 19 Ed III (1345).

divisions or changes in occupancy were recorded so that rents and services could still be demanded from the new tenants is debatable. The apportionments which Slota noted at Park and Codicote, two other manors belonging St Albans Abbey, suggest the latter. He has identified nineteen such cases between 1333 and 1367, in which tenants paid fines to have the court establish exactly what portions of land they held, and what rents and services they owed and to whom.[93] For example, at Barnet in June 1323 it was recorded that William Jordan paid 12d to have an apportionment of the tenement which once belonged to Stephen Bray. The tenants of the tenement in question were to apportion it by the following court.[94] Where land was fragmented, it was in the lord's interests to ensure that the holders together provided the original level of service and rent, and in the individual tenant's to ensure that he was not giving too much for his portion.

The earliest known enquiries into the illegal alienation of villein land occurred in 1239-40 on Ramsey Abbey's manors of Brancaster and Ringstead.[95] Archbishop Hubert Walter's reforming constitution drawn up for Ramsey circa 1200 criticized the abbey for its failure to retain sufficient villein services to ensure the demesne land could support the house. Raftis found that in the majority of the cases, as at Barnet, the current incumbent of the holding was allowed to retain it in return for the payment of a fine, arguing that '[t]hroughout all the lawsuits the main concern of the abbey is to regain control of the services and the customary dues'.[96] The rate of commutation of labour services varied from place to place: it certainly seems to have been the driving force behind Ramsey's reforms in the mid-thirteenth century, but also as late as 1320, the Visitations Articles of the Cathedral Chapter of St Paul ordered an inquiry into whether villeins had been alienating their land to other villeins.[97]

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[93] Leon A. Slota, 'The Village Land Market on the St Albans Manors of Park and Codicote: 1237-1399', Unpublished Ph.D. thesis, University of Michigan, 1984, pp.135-138.

[94] B.L. Add MS 40167, f49d: Halmote held at Barnet, Monday before the feast of Barnabas, 16 Ed II (1323). *Willelmus Jordan dat domino xij d pro aportiontione habendum de tenementum quodam Stephani le Bray. Et preceptum est venire Henricum de Frowyk Willelmum Jordan Johannem Hugh Gilbertum Clericum Gregor' le Carpent' tenentes tenementi predicti ad portionandum dictum tenenmentum ad proximum halimotum.*

[95] Brooke & Postan, *Carte Nativorum*, pp.xxxviii. The Brancaster cases can be found in W.H. Hart & P.A. Lyons, *Cartularium Monasterii de Rameseia* vol. 1 (London: Longman & Co., 1884), pp.423-429.

[96] J.A. Raftis, *The Estates of Ramsey Abbey. A Study in Economic Growth and Orgnaization* (Toronto: Pontifical Institute of Medieval Studies, 1957), p.108.

[97] *Item, an aliqua terra de dominico vel custumaria sint dimissa vel alienata in perpetuum, vel ad tempus, extra manum fimarii, et si sint, an custumariis, nativis, vel liberis, et quibus, et qualiter, et per quem, et quo tempore usque ad quod tempus, an per cartam, et an consensus capituli vel sine.* W.H. Hale, *The Domesday of St Paul's of 1222* (London: J.B. Nichols and sons for The Camden Society, 1858), p.157. As Harvey notes, ultimately services could only survive where a land market did not develop: Harvey, *The Peasant Land Market in Medieval England*, p.347.

Postan, on the other hand, argued that by the time Peterborough Abbey started to investigate their own villeins' charters, the integrity of the villein holdings was no longer a concern, since by 1300 'the integrity of the customary virgate was on many manors a thing of the past, and so was the lord's dependence on the full discharge of labour services'.[98] Christopher Brooke estimated from the palaeographical and historical evidence that it was compiled in the early 1340s (the latest charter being dated 1339),[99] with the charters themselves dating from the second half of the thirteenth century. Differing views on aspects of the chronology and nature of the peasant land market at Peterborough and the abbey's reactions to it have been offered by Postan, Hyams and King. Postan believed that the *Carte Nativorum* represented not a reaction against a new and problematic land market, but evidence of the abbey's new attitude towards it. He argued that the abbey was motivated by 'considerations that were mainly fiscal' – to prevent alienations of villein land prior to death so depriving the abbey of revenue from heriots, and to allow them to raise rents and levy entry fines whenever land was transferred.[100]

In the case of the Peterborough charters however, Postan acknowledged that the land in question 'was as often as not free land'. He interpreted its purchase (presumably in light of the land shortages of the thirteenth century) as attempts by 'natural' buyers to supplement their existing customary holdings in response to their growing families.[101] Therefore, although he acknowledged that some of the purchasers 'were sometimes landholders of substance', he expressed doubts as to 'whether rich peasants predominated among the buyers to the same extent to which poor ones predominated among the sellers'.[102] King's study of the abbey's estates, however, offered a re-interpretation of the evidence, arguing that the *Carte Nativorum* represents a market in free land (most of which had been obtained as a result of assarting) largely conducted by a small group of more substantial villein tenants.[103] Contrary to Postan's view, he argued that 'in large part the cartulary contains the archives of the more prosperous sections of the villein community, and that what they show is a Peterborough 'kulak' class enriching themselves at the expense of a section of the freeholding community'.[104] According to King, the purpose of the *Carte Nativorum* was to keep the details of the free land purchased by the villeins separate from the details and terms of their customary holdings. If a separation was maintained, the free land could not slip into the protection from which

[98] Brooke & Postan, *Carte Nativorum*, p.xlv.
[99] Ibid, pp.xxiii-xxiv.
[100] Ibid, pp.xlvi.
[101] Ibid, p.xxx.
[102] Ibid, p.xxxvi.
[103] Edmund King, *Peterborough Abbey 1086-1310* (Cambridge: Cambridge University Press, 1973), pp.105-108. King's argument for villein purchasers is based on that fact that none of the grantors from his sample can be positively identified as being free.
[104] Ibid. p.110.

customary holdings benefited, and thus the abbey could levy increments and higher entry fines on them. King convincingly illustrated this separation with examples from the account rolls in which the rents due from peasants for their customary holdings are clearly distinguished from the rents and increments (*novo redditu*) due from their *libere terre*.[105]

Therefore although in terms of the nature of the land, the charters made on the Peterborough manors seem to differ from those at Barnet, the concern for both abbeys seems to have been economic at heart – an opportunity for Peterborough to benefit from increments, and a necessity for St Albans to control the transfer of customary land to preserve the rents and services due. It has been suggested that economic concerns may have motivated the peasants to attempt to make illegal transfers. The impact on the free as well as the unfree was also noted by Barbara Harvey, who argued that Westminster Abbey sought to limit alienations by their free tenants as well as by their villeins, insisting that they were licensed after that formality had ended elsewhere. The abbey claimed first refusal on land in fee put up for sale, and insisted that the land could not be sold to one of their villeins.[106] King believed that this was also the case at Peterborough, suggesting that the free land (often assarts) was desirable to both the minority of substantial villeins (his 'kulak' class) who wished to enlarge their holdings, and to the abbey itself.[107]

The Barnet tenants who were making transfers illegally by charter are not easily defined as a group. It is difficult to assess their personal status since we lack other forms of corroborating evidence such as extents and rentals. From their appearances in other contexts in the court book however, it seems that both free and unfree were presented for the offence. The common factor at Barnet seems to have been that the land involved was customary. If there was any commonality among the peasants themselves involved in making charters on these estates, it is most likely to be their position among what Rodney Hilton termed a 'rich upper stratum', for whom the confiscation of charters and re-granting of land was an irritation and a hindrance to their free accumulation of land.[108] Clanchy, despite his high estimates for the numbers of peasant charters, also acknowledged that 'those who made them were the more prosperous smallholders and in that sense were not typical serfs'.[109] Dong-

[105] Ibid, pp.102-103. See also Smith, 'Some Thoughts on 'Hereditary' and 'Proprietary' Rights in Land under Customary Law', p.113.

[106] Harvey, *Westminster Abbey and its Estates in the Middle Ages*, pp.311-312.

[107] King, *Peterborough Abbey*, p.110.

[108] Hilton, Rodney. 'Peasant Movements in England Before 1381', *Economic History Review* 2nd S. 2:2 (1949), pp.130-131.

[109] Clanchy, *From Memory to Written Record*, p.50. Mullan and Britnell's study of the land market on the Winchester bishopric lands has also revealed a small group of tenants engaged in a land market which spanned

Wook Ko, in his study of the social structure of Barnet manor, has suggested that those involved in the illegal transfer of land came from the wealthier sections of the peasant community, whether free or unfree.[110] Here, the purchasers of the customary land involved might have feared that the lord would stand in the way of their acquisitions (as the 1275 Ordinances had made clear was the abbey's right) if they applied for admittance through the manor court. This was not then a question of peasants facing starvation because their lords would not allow them to acquire land (when land was available) for their growing families – the court books show a lively but controlled market in small pieces of land. But the insistence on formal surrender and admittance, officially recorded, prevented a free land market in the truest sense, and the successful tenant, whether free or unfree, relied on his ability to buy and sell land in order to build up his holding.

The economic considerations, however, are perhaps not quite satisfactory in explaining why some tenants went to the expense of having a charter made. Livery of seisin remained the dispositive act, and there are many presentments at Barnet manor court for transfers made without the license of the lord which do not mention the use of charters. What this might say about peasants' attitudes towards the charters themselves will be considered in more depth in Chapter 6. Edmund King also concluded that the abbey's motivations in confiscating the documents may have been more than economic, highlighting concerns which the abbey might have felt about the use of the charters themselves. In particular, he argued that it was the use of the clause *sibi et heredibus suis* that 'made a charter "vicious"'.[111] Its use has often been cited as the reason why a charter might be used by a villein to claim manumission, since in legal theory, a man who was a villein could have no heirs.[112] Yet as Richard Smith found, this very clause had begun to appear in the records of surrender and admittances in the manor court rolls by the end of the thirteenth century, and in practice (even if not in

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different manors of the estate. Mullan & Britnell, *Land and Family. Trends and variations in the peasant land market on the Winchester bishopric estates, 1263-1415*, p.131.

[110] Ko, 'Society and Conflict in Barnet, Hertfordshire, 1337-1450', p.339.

[111] King, *Peterborough Abbey*, p.101. The phrase '*per scriptum viciosum*' was cited by Postan (Brooke & Postan, *Carte Nativorum*, pp.xliii) from a case on the 1302 court roll of Chalgrave, a manor of Ramsey Abbey. The full entry reads *Item presentatum est quod Johannes le Gaunt cepit duas acras terre de Baldwini Poleyn per de scriptum viciosum. Ideo preceptum est quod predictus Johannes gravitas distringatur donec scriptum melius emendatur*. Dale, the editor of the roll, translates *viciosum* as 'faulty' rather than vicious. In the same court, Richard le Graunt was noted to have bought an acre of land in Tebworth from Baldwin Poleyn by charter. Richard too was to be distrained 'until the charter has been amended', but in that case the charter was not described as *viciosum*. Marian K. Dale, *Court roll of Chalgrave Manor, 1278-1313*, Publications of the Bedfordshire Historical Record Society Volume 28 (Streatley: Bedfordshire Historical Record Society, 1950), p.43.

[112] Pollock & Maitland, *The History of English Law*, Vol. 1 p.427; Vinogradoff, *Villainage in England*, pp.70-74.

theory) the majority of villein holdings were held hereditably.[113] Barbara Harvey argued that the monks of Westminster both recognized that villeins as well as the free had heirs, and endeavoured to ensure that those heirs took over the tenements when they became vacant, noting that that some manors adopted the phrases *sibi et suis*, *sibi et heredibus suis* or *sibi et sequele sue* to describe customary tenure.[114] It therefore seems that the danger of the clause lay in its use in a charter in particular. If a fear of a land transfer made specifically *per scriptum viciosum* was genuinely a motivation for the actions of Peterborough Abbey and other landlords, then we might expect to see this reflected in the manner in which the charters and land were treated.

Postan cited one example of how he believed confiscation worked, taken from a later account given in a plea of novel disseisin before the King's Bench between John of Barnham, Norfolk, and his lord, William de Mortimer of Attleborough. The jurors told how William's steward had summoned the tenants of the manor to attend the court with any charters by which they had acquired land, and that accordingly Robert de Estgate, John's father, had presented his charters. Robert paid a fine of half a mark, and had his charters returned.[115] From this example, Postan suggested that 'whether any such inquisitions took place or not, the time came in a number of manors when the landlord issued orders or invitations to the villagers to bring their charters into the court and offered to have them recognized and recorded on the payment of a fee'.[116] In doing so, he argued, 'the lord gave the buyer and seller not only his consent, but also the security of official enrolment'.[117] This does seem to have been the case here – the assize ruled that Robert had acquired the land freely and had not had to perform any servile services for it, and that likewise John had been seised of the land until William had taken it from him. William tried to claim in court that he had taken the land from his villein as was his right, and afterwards he had handed them back to Robert to hold in villeinage (*tenenda de eo in villenagium*), but it seems that the Mortimers, despite the presentment of the charters before the steward and the payment of a fine, had not taken the opportunity to alter the conditions of Robert's tenure of the land or to extract villein services from him (*dicunt quod nec ipsi aliqua servilia servicia ab eo exigerunt, nec ipse ea fecit, solomodo servicia in cartis suis contenta*).

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[113] Smith, 'Some Thoughts on 'Hereditary' and 'Proprietary' Rights in Land under Customary Law'. p.106. For the development of surrender and admittance, see below, p.34.

[114] Harvey, *Westminster Abbey and its Estates in the Middle Ages*, p.278.

[115] *Et dicunt quod super hoc quidam senescallus prediciti Willelmi quadam die sumonivit omnes tenentes prediciti manerii et curiam ipsius Willelmi, domini sui, tenuit et iniunxit omnibus quod, si terras aliqua per cartas perquisiuissent, quod cartas suas eidem redderent inter quos contigit predictum Robertum de Estgate cartas suas sibi ibidem reddere, quas quidem cartas omnes predicto Roberto postea eodem die reddidit per finem dimidie marce, quem de eo ad opus predicti Willeli domini sui receipt.* G.O. Sayles (ed.), *Select Cases in the Court of the King's Bench Under Edward I* Vol. 3, Selden Society Vol. 58 (London: Bernard Quaritch, 1939), pp.47-49. Postan suggested that the surrender probably occurred in the 1260s/70s.

[116] Brooke & Postan, *Carte Nativorum*, p.xlvi.

[117] Ibid, p.xlviii.

Postan's interpretation of the process is therefore relatively positive: an 'invitation' issued to villeins to have their charters 'enrolled' suggests that lords accepted that the production of illegal charters was a widespread practice, and that they were willing to legitimize them by enrolling them on their own court rolls, just as a free man might have his charter enrolled on the recognizance rolls by the royal chancery in return for payment. Postan extended this interpretation to all landlords, supporting his central argument that the lords' sole concern was fiscal gain and that the *Carte Nativorum* and other examples of confiscated charters represent a change in the financial management of the estates, rather than a real objection to a new land market and the ways in which it was being recorded. The case of Attleborough, however, arguably cannot be taken as representative of the situation on other manors (including Ramsey, Peterborough and St Albans).

The *Carte Nativorum* taken in isolation reveals little about the process at Peterborough, but King's interpretation of the charters, made side by side with the account rolls of the abbey, provides a fuller picture of the way in which free land purchased by villein charter was brought under the abbey's control. He too found few direct descriptions of the confiscations, noting that while they are clearly 'implied by the very existence of the cartulary', they are rarely mentioned in the accounts. He did, however, find an entry in the account for 1300/1 which shows an increment paid for land which had been bought by a charter *que remanet in abbacia*, and entries in the 1294/5 Rockingham accounts for increments on land on the manor of Oundle held *per cartas que resident apud Burgum* and on the manor of Great Easton *per tres cartas que sunt apud Burgum*.[118] In these cases, it seems clear that the charters were confiscated permanently from the villeins and retained in the safety of the abbey.[119] King declined to suggest a date when the surrenders were ordered on the nearer manors, but argued

[118] King, *Peterborough Abbey*, p.100, n.3. These charters correspond to entries 154, 418-422 and 439-441 in the *Carte Nativorum* respectively, none of which indicate themselves that the charters had been kept by the manorial officials. King argued that the limitations of this evidence in the accounts regarding increments and references to the whereabouts of the charters can be explained by the fact that the surrender of charters on manors such as Oundle and Great Easton, more distant from Peterborough itself, occurred later than the confiscations on the manors closest to the abbey (including Castor, Boroughbury, Walton, Werrington and Glinton, which make up the bulk of the villein charters in the collection). Increments raised on the earlier confiscations would have been already reflected in the new rental of 1295-6 (no longer extant) and therefore do not appear again in these later accounts.

[119] Later historians have accepted King's argument that these charters were confiscated rather than enrolled and returned. See Smith, 'Some Thoughts on 'Hereditary' and 'Proprietary' Rights in Land under Customary Law', p.107. Clanchy also briefly discussed the 'contrary senses' in which the *Carte Nativorum* can be interpreted: 'that these were illegal documents, which had consequently been surrendered to the lord' or 'that charters made by serfs were a legal commonplace; they were recorded in the cartulary to reinforce their validity'. He too concludes that 'The former hypothesis... is the more likely.' Clanchy, *From Memory to Written Record*, pp.49-50. Hilton also identified two more cases in the Patent Rolls which show the appropriation by landlords of the free land acquired by their villeins, at 1339 at the Priory of Spalding, and in 1366 at the Abbey of Waltham Holy Cross. Hilton, 'Peasant Movements in England Before 1381', p.132.

that 'certainly by this date [1295-6] the surrender of charters and their collection at the abbey were well-established.[120] Furthermore, King suggested that a villein's failure to respond to the lord's 'invitation' to surrender his charters in the manor court could result in the land being forfeit.[121] Where the land could be proved to be customary, charters similarly seem to have been confiscated at Barnet. A particularly protracted case is that of John Page, who in 1322 was pledged to show his charter for a piece of land called Lynescroft, which he had acquired from Radulf Couherd.[122] Page failed to do so, but the land appears to have been customary and the abbey's determination to have him admitted in the proper way is clear. In 1326, we find Lynescroft retained still, until in May of that year, Page finally pledged to surrender his charter, and took the land for services, paying an entry fine.[123] In the court of June 1345 (discussed above), each of the eleven tenants is recorded as having surrendered their charter, while in May 1352, it was reported that John Durham and Simon Arnold *alienavit per cartam* to John Hammond and William Quyke respectively. The land was properly surrendered, as were the charters, and Hamond and Quyke were readmitted *in bondagio.*[124]

On both estates, as at Ramsey, the land seized was typically re-granted to the same tenant, but on the abbey's terms. In the case of St Albans, where the land involved seems to have customary, this was a case of admitting the tenant in the proper way. The entries tend to use the phrases *in villenagio* or *in bondagio* and *pro servicio*, sometimes (as in 1345) *ad voluntatem domini*, and usually 'by the rod' (*per virgam*). At Peterborough, the insistence that the land was now to be held *ad voluntatem domini* was of greater significance, since it altered the nature of the land. Re-granting the land at tenancy at will (which Harvey noted was more typically used in grants of villein holdings to free peasants[125]) allowed Peterborough Abbey to maintain the separation of their villeins' unfree and free holdings. Again, King emphasized the use of *sibi et heredibus* in the charters as the main threat: 'The abbey had to insist on tenancy at will, for uncertainty of tenure was the nearest the law got to a conclusive proof of villeinage, and such clauses in charters, rather than the transactions themselves, threatened certainty.'[126] The fact that the land involved at Peterborough seems to have been free

[120] King, *Peterborough Abbey*, p.101.

[121] For example, No. 424 in the *Carte Nativorum*.

[122] B.L. Add MS 40167, f50: Halmote held at Barnet, Wednesday after the feast of St Nicholas, 16 Ed II (1322).

[123] B.L. Add MS 40167, f52d: Halmote held at Barnet, Monday the feast of Augustine the bishop, 19 Ed II (1326).

[124] B.L. Add MS 40167, f85d, Halmote held at Barnet, Monday after the feast of St Dunstan, 26 Ed III (1352).

[125] Harvey, *The Peasant Land Market in Medieval England*, p.355.

[126] King, Peterborough Abbey, p.101. Barbara Harvey, discussing fifteenth-century developments in the language of the rolls, noted the disappearance of the phrase *sibi et sequele sue* with the decline of villeinage, but also the frequent addition of *et assignatis suis* to *sibi et heredibus* clauses. The change 'reflects the more liberal position of the monks of Westminster towards the land transactions of their customary tenants', since a tenant admitted with those words 'may be deemed to have possessed a fee-simple interest in his land', and consequently be able to sell it. Harvey, *Westminster Abbey and its Estates in the Middle Ages*, p.279.

presented the particular problem that the possession of a charter granting hereditable freehold implied the enfranchisement of the villein.[127] Just as free tenants who took on holdings in villeinage did so as tenants at will, thus preventing the status of that land coming into question, villein tenants who held free parcels of land had to hold them at will to prevent their own status becoming unclear.

'Small wonder, then', Hyams argued from such cases, 'if popular thought denied to villeins the use of the honourable instruments by which freemen transferred their land, charters and seals'.[128] A more thorough investigation of the universality of this statement is needed if we are better to understand the extent of the 'literate mentality' of both lords and peasants in this period, their understanding of the importance of particular forms of written records, and their desire and ability to participate in their production and use. To what extent were peasants (or at least those with the means to have records made for them) actually prevented from possessing any form of written document, in fear that it might imply their freedom? Was the production and possession of documents regarded as a sign of membership of a social elite or does the confiscation of charters at Peterborough, St Albans and other estates simply reflect a very practical concern relating to the development of land law, a means of ensuring that all villein land, and any business of the villeins themselves, was restricted to the manor court?

There is evidence that at least in legal (as opposed to 'popular') thought, villeins were not entirely denied the 'honourable instruments' by which they could conduct their business through written documents. Hyams himself conceded that in the common-law textbooks 'there is no hint of legal prohibition against villeins or any other legal category of people using seals' and he and others have cited the evidence of the 1285 Statute of Exeter which required bondmen serving on inquests to possess them.[129] The ownership and use of the seal in the rural community is a subject worthy of further investigation. Evidence for peasant seals has been regarded as especially significant when considering their participation in written culture, with Clanchy arguing that '[t]he possession of any type of seal implied that its owner considered himself to be of sufficient status to use and understand documents, even if this were an aspiration rather than a reality'.[130] Harvey has suggested that the possession of seals peaked in the first half of the thirteenth century as written confirmation of land transfers became more common, and that 'those who had seals in 1200 may already have included

[127] Vinogradoff, *Villainage in England*, p.71.
[128] Hyams, *Kings, Lords and Peasants*, p43.
[129] Ibid, p.47.
[130] Clanchy, *From Memory to Written Record*, p.51.

villeins as well as townsmen and the smallest freeholders'.[131] But by 1320, he estimated that far fewer people would have owned seals, as 'lesser people would sign with a seal that the clerk, or perhaps a friend, supplied'.[132]

Harvey's suggestion echoes that made by Franz Bäuml: that access to written culture depends not on the personal ability to read or write, nor the ownership of the necessary tools, but on the individual having the means of access available to him, being able to call upon someone who did possess those things.[133] The process by which charters were obtained needs further investigation, for both free and unfree tenants. In the case of the unfree, it is difficult to assess the source of the charters, although it has been argued that it would certainly have been possible to find villagers with the skills to produce the charter for them. Harvey suggested the presence of jobbing clerks in rural communities, as the increasing use of written records in local administrations opened up another rural profession which could be used to supplement small-holding.[134] Zvi Razi and Richard Smith, using evidence from Halesowen and Redgrave, identified a significant number of inhabitants who possessed the skills to meet the requirements for manorial records and the peasantry's need for legal assistance, and 'cautiously' suggested other potential sources of demand, such as the growing numbers of peasant charters.[135] Rather than representing a decrease in participation in written culture, the availability of clerical skills (and seals) in rural communities, alongside the growth of manorial records which provided the registration of peasant tenure, could be argued to have widened the opportunity for participation, active or passive.

Hilton's study of chirograph leases from Gloucester Abbey (some enrolled in a cartulary, others originals) also highlighted the use of seals by villeins.[136] Again, Hilton argued that those villeins involved may have been the wealthier members of the community, and that some these agreements represent the 'regularization' of their illegal transactions. Hilton, noting a lease made to a villein who had bought the land himself 'with our goods' (*cum bonis nostris*),[137] suggested that his actions are 'only symptomatic of commercial activity which must have been general among the richer peasants', going on to argue that by entering into a written contract with them, the abbey was

[131] P.D.A. Harvey, 'Personal Seals in Thirteenth-Century England', in *Church and Chronicle in the Middle Ages: Essays Presented to John Taylor*, eds. Ian Wood & G.A. Loud (London: Hambledon Press, 1991), p.119.
[132] Ibid, p.124.
[133] Bäuml, 'Varieties and Consequences of Medieval Literacy and Illiteracy', pp.243-244.
[134] Harvey, *Manorial Records of Cuxham, Oxfordshire, circa 1200-1359*, pp.36-42.
[135] Razi & Smith, 'The Origins of the English Manorial Court Rolls as a Written Record: A Puzzle', pp.61-67.
[136] R.H. Hilton, 'Gloucester Abbey Leases of the Thirteenth Century' in *The English Peasantry in the Later Middle Ages* (Oxford: Clarendon Press, 1975), pp.152-3.
[137] Ibid, p.150.

acknowledging their 'wealth and eminent status... The chirograph as the written form of these life leases is a type of document which presumes the equivalent status of the parties'.[138] These leases suggest that a villein could enter into a written contract with his lord without his status coming into question. But they are carefully controlled, drafted in precise language by the abbey's clerks and enrolled in the abbey's cartulary, unlike those purchased by the peasants themselves. The leases often refer to the tenant as a *nativus*, and the customary conditions of the land are emphasized. There could be no doubt about the conditions of the tenure, or about its strict life term. There was no risk that these documents could therefore be produced at a later date to claim the freedom of the land or the individual, or to claim a hereditary right to the land in question. If these landowners did want to monopolize written culture in this sphere, it was perhaps more for practical reasons than ideological ones.

While tenants were increasingly called upon *ad ostendere qualiter tenere clamat*, and might offer charters as proof in litigation, Beckerman has noted that '[n]o private muniment, however, was as good proof as an "official" record kept by the lord – the rental, the custumal, the account roll, or the court rolls'.[139] In the eleven cases presented at Barnet manor court in 1345, the official record conclusively proved that the land in question was customary, rendering the charters offered useless. Particularly unfortunate were those who are recorded as having acquired customary land by charter 'innocently' or 'unknowingly' - *per cartam simpliciter*. The case of Henry, son of James in the Hale, is one such example. Henry appears to have been a free tenant, since in October 1332 he had acquired a messuage with curtilage and land called the Benecroft in East Barnet by making a *carta feoffamenta* in the full court.[140] But at the court at St Albans in June 1344, it is recorded that the Lord Abbot Michael had afterwards realized that this, and a further messuage with dwelling house and eight acres which Henry had bought from John Randolf, was in fact customary land, and had therefore been acquired to the disinheritance of the abbey.[141] Even though the abbey recognized that Henry had made the charter in good faith, the land was seized. Henry had to come before the court to recognize the right of the abbey and ask to be allowed to hold it at the will of the lord and the custom of the manor for the due services, surrendering his charters and paying an entry fine of 20s. Others may have been aware that the land was rightfully customary. If the charters had been made in the hope that eventually they might be taken as proof of the free status of the land (or perhaps of the personal freedom of the holder), there are numerous examples from Barnet of tenants who must have been disappointed, even

[138] Ibid, p.153.

[139] Beckerman, 'Procedural Innovation and Institutional Change in Medieval English Courts', p.224.

[140] B.L. Add MS 40167, f.59: Halmote held at Grindlesgate, Tuesday the vigil of the feast of St Simon & St Jude, 6 Ed III (1332).

[141] B.L. Add MS 40167, f.71d: Court held St Albans, Saturday before the feast of St Alban, 18 Ed III (1344).

aggrieved at how the records now served to strengthen and lengthen the already tenacious memory of the abbey.

The inquiries and confiscations of charters had made the abbey's opposition to the activity clear, and the parties could not realistically have hoped that the transaction would avoid detection when the legal ceremony of livery of seisin, which must have preceded the charter, could not have been made out of the public eye.[142] Why then did peasants continue to go to the expense of scribe, ink and parchment to have charters drawn up throughout the fourteenth, and, at least at St Albans, into the fifteenth century? Although, as Hyams has noted, there was no legal basis for the direct equation of the possession of charters with personal freedom,[143] it has been argued that there came to be a belief among lawyers and peasants alike that a written contract made between a lord and his villein implied manumission.[144] Cases have been identified in which a villein might plead freedom by producing a charter from a third party, even though, given the relativity of villeinage, they were 'logically irrelevant' to such claims.[145] By the fourteenth century, with the widespread commutation of labour services, the method of conveyancing by which a tenement had been acquired had become an important test of legal status.[146] Levett remarked on the difficulty of determining the status of some of the tenants on the St Albans manors and noted that, alongside the questions of whether a man paid tallage or merchet, jurors might also ask if he held *per cartam* or *per virgam*.[147] It is possible that some villein tenants acquired charters in the hope that they might in time allow them to challenge their status.

Freedom was not aspired to merely as a social status without practical advantage - tenants desired freedom *from* services. The case of William Toby at Barnet illustrates how closely the two could be linked. In November 1343 he appears in two separate entries. In the first, he came before the court to claim that he held his land by charter, and it is noted that therefore the rolls are to be scrutinized to verify this.[148] In the second, he is presented for withdrawing his ploughing services, and placed himself on the scrutiny of the custumal.[149] Beckerman noted that in a mid-fourteenth century formulary book belonging to the abbey, the list of offences by villeins to be presented include the

[142] Hyams, 'The Origins of a Peasant Land Market in England', p.26.
[143] Hyams, *Kings, Lords and Peasants in Medieval England*, p.45.
[144] Vinogradoff, *Villainage in England*, pp.70-74; Pollock & Maitland, *The History of English Law* Vol. 1 p.418.
[145] Hyams, *Kings, Lords and Peasants*, p.45.
[146] Pollock & Maitland, *The History of English Law* Vol. 1 p.375.
[147] Levett, *Studies in Manorial History*, p.193 n.2.
[148] B.L. Add MS 40167, f.69d: Halmote held at Barnet, Monday the vigil of the feast of St Martin, 17 Ed III (1343).
[149] B.L. Add MS 40167, f.71: Halmote held at Barnet, Monday before the feast of St Dunstan, 18 Ed III (1344).

conveyance of villein tenements without permission, leywite, merchet and unauthorized ordinations.[150] He argued that against such presentments, 'only documentary proof and a denial in a form susceptible of verification by official documents were sufficient'.[151] Here, then, we can see the power of the manorial records in the control of the unfree tenantry. Before we turn to consider the ways in which the peasantry could use the manorial records for their own ends – evidence for the potential advantages of the records – this chapter will briefly review the extent to which their business was confined to the manor courts.

The development of surrender and admittance, and the impact of the common law

Extant manor court rolls demonstrate how during the thirteenth century means were developing by which villeins could and did lawfully transfer land *inter vivos* within the manorial system. The earliest surviving accounts of 1209/10 from the estates of Winchester Abbey show fines paid by tenants *pro licentia dimittendi*,[152] and Slota noted that such licenses remained common on the estates of St Albans Abbey into the 1250s,[153] while the court rolls of the Bury St Edmunds Abbey manors of Rickinghall and Redgrave in the 1260s display a 'bewildering array' of forms of licenses to buy, sell and lease land (*pro licentia*, *pro emendi* and *pro allocandi*).[154] The latter decades of the thirteenth century, however, saw a growing standardization in the record-keeping procedures of the manor courts. At St Albans, Slota argued that the procedure of surrender and admittance came into use in the 1240s, becoming more standardized and replacing licenses by 1275.[155] Similarly, increasing numbers of transfers were made in Rickinghall and Redgrave manor courts in which the land was surrendered with re-grant being made to a specified person and their heirs (*reddere sursum ad opus ... tendendum sibi et heredibus*). This, Smith noted, became the dominant form of transfer in the 1280s not only on Bury St Edmunds Abbey's manors, but also on the manors of the Prior of Norwich at Sedgeford, Newton and Hindringham, and on the lay manor of Gressenhall.[156] He also argued that this was probably not a pattern peculiar to East Anglia (where Hyams had argued that the peasant land market was especially well developed[157]), pointing to the evidence of transfers to peasants and their

[150] Beckerman, 'Procedural Innovation and Institutional Change in Medieval English Courts', p.235.
[151] Ibid, pp.238-239.
[152] Brooke & Postan, *Carte Nativorum*, p.xxxviii.
[153] Leon Slota, 'Law, Land Transfer and Lordship on the Estates of St Albans Abbey in the Thirteenth and Fourteenth Centuries', *Law & History Review* 6:1 (1988), p.121.
[154] Smith, 'Some Thoughts on 'Hereditary' and 'Proprietary' Rights in Land under Customary Law in Thirteenth and Early Fourteenth Century England', p.108.
[155] Slota, 'Law, Land Transfer and Lordship', pp.121-122.
[156] Smith, 'Some Thoughts on 'Hereditary' and 'Proprietary' Rights in Land under Customary Law', p.109 n.66, citing J. Williamson, *Peasant Holdings in Medieval Norfolk: A Detailed Investigation of the Holdings of the Peasantry in Three Norfolk Villages in the Thirteenth Century* (Unpublished Ph.D. thesis, Reading, 1976).
[157] Hyams, 'The Origins of a Peasant Land Market in England', p19.

heirs on the manors of St Albans Abbey from 1241. Surrenders to uses are present on Crowland Abbey's earliest extant court roll of 1290 for its manors of Oakington, Cottenham and Drayton (Cambridgeshire), although the clause *sibi et heredibus* does not appear until the early fourteenth century, while surrenders to uses appear on the court rolls of the Bohun manors of Waltham and Easter in Essex from the 1280s, with *sibi et heredibus* first appearing there in 1295.[158]

The relationship between the common law and manorial jurisdiction has been the subject of much debate. To what extent did the common law shape the exercise of seigniorial jurisdiction, the development of substantive customary law, the actions available to peasants in the manor court, and consequently the diplomatic of the manorial court records? The strongest argument for the influence of the common law has been made by Hyams.[159] In his contribution to Razi and Smith's volume based upon a paper delivered in 1985, he argued for 'the existence in Edwardian England of some kind of shared national legal culture that transcended the notorious jurisdictional tangles', shown most clearly in the changes in land law.[160]

Hyams argued that the procedure and means of proof of the manor court were 'much closer to that in higher courts, far beyond the archaic, popular village moot which it conceivably had once been'.[161] While he noted that Slota and Smith's dating of the changes in the transfer of customary land to the 1260s-80s might be contested because of their coincidence with the earliest period of widespread survival of court rolls, Hyams believed the first generation of rolls do show 'substantial change' in both procedure and court function.[162] The responsiveness of the manor courts to national legal developments is seen to be demonstrated in particular by the impact of the 1290 statute *Quia Emptores* on the language of land transfers in the manor court. Hyams concurred with Slota's finding that the appearance of phrases such as *ad voluntatem domini*, *in villenagium* and *per virgam* in admittances to customary land transfers mirrors the move from subinfeudation to substitution in the sale of free land.[163] He argued that the impact of the statute both on the form of transfers in the manor

[158] Smith, 'Some Thoughts on 'Hereditary' and 'Proprietary' Rights in Land under Customary Law', p.109 n.68, citing Levett, *Studies in Manorial History* and F.M. Page, *The Estates of Crowland Abbey* (Cambridge: Cambridge University Press, 1934).
[159] Hyams, 'What did Edwardian Villagers Understand by 'Law'?'.
[160] Ibid, p.71.
[161] Ibid, p.80.
[162] Ibid.
[163] Slota, 'Law, Land Transfer and Lordship on the Estates of St Albans Abbey in the Thirteenth and Fourteenth Centuries', p.123.

court and in the language of villein charters (as King detected) demonstrated that transfers of villein land were 'part of a single, seamless land market'.[164]

The extent to which these changes purely reflect seigniorial concerns to keep control of their villein tenants and land, and the extent to which they were a response to peasant demands for improved mesne process can only be a subject for speculation. Hyams suggested that the control of the peasant land market provided an alternative strategy for the control of tenants to the traditional incidents of villeinage: 'The new detail of the rolls positively invited villagers to partake of the extraordinary power of contemporary conveyancing techniques. This, possibly as much as socio-economic forces, weaned them from charters of a character that seigniorial advisers, their eyes on the common law, might deem threatening.' [165] In his view, the initiative for the increasing use of written records in land transfers belonged to the lord, arguing that the development of copyhold marked the 'logical conclusion' of a process which reinforced the separation of the jurisdiction over customary land from the common law.

Beckerman argued that the court rolls were primarily a device which afforded 'more rational ways of ascertaining what had happened in the past, to aid in the maintenance of seigniorial privilege and coincidentally in the adjudication of private law suits'. Civil justice, therefore, 'was distinctly subsidiary to the purposes of disciplinary jurisdiction, and it is hardly an exaggeration to characterize that justice as a by-product'.[166] Nevertheless, the records of the courts should perhaps be seen as mutable, the purpose and form of which reflected the changing needs and expectations of both lords and tenants, and the importance and meaning of which could be altered by their reuse. The adaptation of court rolls on some manors to attract debt litigation has been effectively shown by Chris Briggs.[167] He has argued that the manor court, although the 'court of first resort', was not the only forum in which peasants, including the unfree, could bring personal actions, such as pleas of debt, trespass,

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[164] Hyams, 'What did Edwardian Villagers Understand by 'Law'?', p.83. Poos and Bonfield have been more cautious in their assessment of the influence of the common law over manorial law. They acknowledge that the growing use of written evidence and the adoption of 'language and concepts demonstrably echoing certain common law analogues'. However, they deny that this necessarily implies 'conscious mimicking' on the part of the manor courts. Poos & Bonfield, *Select Cases in Manorial Courts*, p.xxxiii. See also Lloyd Bonfield, 'What Did English Villagers Mean by 'Customary Law'?', in *Medieval Society and the Manor Court*, ed. Zvi Razi & Richard Smith (Oxford: Clarendon Press, 1996).

[165] Hyams, 'What did Edwardian Villagers Understand by 'Law'?', pp.81-2.

[166] Beckerman, 'Procedural Innovation and Institutional Change in Medieval English Manor Courts', pp.199-200.

[167] Chris Briggs, 'Manor Court Procedures, Debt Litigation Levels, and Rural Credit Provision in England, c.1290-c.1380, *Law & History Review* 24:3 (2006).

defamation and broken agreement.[168] Comparing the Crowland Abbey manor of Oakington, Cambridgeshire, and the manor of Great Horwood, Buckinghamshire, held by the Cluniac priory of Newton Longeville, Briggs notes a rise in debt plaints at Oakington from 1337, but no comparable rise at Great Horwood. He suggests that the rise at Oakington reflects attempts to improve the efficiency of debt litigation in which the records played a significant role, such as the grouping and labelling of plaints for ease of reference.[169] While the decision on whether to push for more litigants lay with the lord, the innovations represent a response to the demands of peasants who 'were not indifferent to the quality of civil justice provided by their courts', and who would weigh the speed, transparency and efficiency of the procedures of the available county, hundred, church and manorial courts before deciding where to conduct their litigation.[170]

In contrast, the lord had a monopoly on real actions relating to villein land, and, as has been discussed above, changes in the language and form of the record seem most likely to reflect the legal concerns of the lords. This is not to argue, however, that the manorial records were oppressive or unwelcome. Enrolments of inter-peasant agreements and recognizances of debts, vouchers of custumals and court rolls, and the production of copies have all been cited as evidence that the peasantry embraced the security which the records offered. Beckerman attributed this acceptance to the general 'fallibility of memory and the need for certainty concerning what had happened in the past'.[171] Hyams was more specific, arguing that the ability to turn to written evidence in case of dispute was essential to the peasant land market:

> 'The remodelled manorial courts became an essential premise to a higher level of entrepreneurial activity at the village level. They offered enhanced effective tenurial protection together with a greater flexibility in the marshalling of property resources. The recall and administration of oral entails and marriage settlements, though certainly possible, presents severe problems in real life without some kind of permanent record. Security of disposition almost compels written registration.'[172]

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[168] Chris Briggs, 'Seigniorial control of villagers' litigation beyond the manor in later medieval England', *Historical Research* 81:213, (2008).

[169] Briggs, 'Manor Court Procedures, Debt Litigation Levels, and Rural Credit Provision in England, c.1290-c.1380, p.551.

[170] Ibid, p.554.

[171] Beckerman, 'Procedural Innovation and Institutional Change in Medieval English Manor Courts', p.222.

[172] Hyams, 'What did Edwardian Villagers Understand by 'Law'?', pp.81-2.

Van Bavel, in a comparative study of the leasehold market across northern Europe, has recently argued that a public registry was a prerequisite for a full land market to function.[173] England lacked the formalized public registries found in the Low Countries, but registration of the transfer of customary land was enforced by the manor courts. It has been argued that the manor court rolls (or the pipe rolls in the case of Winchester) acted as a land registry, and indeed that it became almost their sole function as the courts' other business diminished from the fifteenth century.[174]

In a period in which agriculture was so important, and in some areas in the later thirteenth and early fourteenth centuries land so scarce, the regulation of inter-vivos transfers helped to protect the rights of future generations. A customary tenant could not legally sell or lease his land in a private transaction, while a tenant's wish for the disposal of his land expressed on his deathbed was not operative to transfer the rights. In life he had to come before the manor court to declare his intentions; in death, the reeve or another recognized individual had to appear on his behalf to recite his wishes.[175] The insistence on transfer of customary land in the manor court was not simply, as Poos and Bonfield have noted, 'in deference to legal nicety'.[176] If an individual did want to transfer land away from his heirs, he had to do so with the knowledge and consent of not only the lord or his officials, but also of the members of the community.

The dispositive act in the conveyance of all forms of land in this period was not the recording of the transaction but the moment at which seisin was physically given to the new tenant, signified by the handing over of some symbolic object. Thus even when charters were becoming commonplace in the transfer of free land, we still find objects such as knives attached to them. Customary tenure was commonly described as being held *per virgam*, by the rod, because that was the device most

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[173] B.J.P van Bavel, 'The Organization and Rise of Land and Lease Markets in Northwestern Europe and Italy, c.1000-1800, *Continuity and Change*, 23 (2008), pp.23-24. Public notaries also kept registers of private agreements. 'Large swathes of rural southern Europe, therefore, were part of a culture of record use in which creditors protected themselves through writing as a matter of course.' Chris Briggs, *Credit and Village Society in Fourteenth-Century England* (Oxford: Oxford University Press for the British Academy, 2009), pp.79-80.

[174] Rosamond Faith has argued that in the fourteenth century '[l]and changed hands rapidly and on a large scale, with considerable repercussions on the class structure of the countryside. The chief function of the manorial court began to be that of the land-registry for the virtually free market in peasant holdings that had come into being. Rosamond Faith, 'Peasant Families and Inheritance Customs in Medieval England', *Agricultural History Review* 14 (1966), p.92.

[175] Poos & Bonfield, *Select Cases in Manorial Courts*, p.lxxxii. The issue of death bed transfers, peculiar to the manorial courts, has been discussed at length in L. Bonfield & L.R. Poos, 'The Development Of The Deathbed Transfer In Medieval English Manor', *Cambridge Law Journal*, 47(3) (1988) and Elaine Clark, 'Charitable Bequests, Deathbed Land Sales and the Manor Court', in *Medieval Society and the Manor Court* ed. Zvi Razi & Richard Smith (Oxford: Clarendon Press, 1996).

[176] Poos & Bonfield, *Select Cases in Manorial Courts*, p.lxxxiv.

commonly used in the manor court to bestow it. On the manor of Wakefield, in at a court held at Birton in June 1275, the verdict was given in a plea of land between plaintiffs Robert son of Cicely and his wife Emma daughter of Thomas de Heppeworth, and the defendant Robert son of Mary. The jurors related how one William son of Soygnif had two sons: Richard, the ancestor of Robert son of Mary, and Thomas, Emma's father, who was the elder. William had held two bovates of land, and in the manor court he had granted one to Thomas and the other to Richard, with Thomas' consent. After the death of William, Thomas and Richard had come into court and had paid 16s relief to take the land. The steward, holding a rod of which one end was white and the other black, had given seisin to Richard with the white end because he was fair, and to Thomas with the black end. Because at that time Richard was underage and unable to maintain the land, the Steward had appointed Thomas to act as Richard's guardian and to keep his portion of the land until he came of age, when he was to give the land back to Richard without any hindrance. Emma's initial plea is lost, so we do not know what right she thought she had to the land, but her claim was rejected – the jurors concluded that Richard had the greater right (*maius ius*).[177]

Enrolment in the manor court rolls

The case neatly demonstrates how transfers of customary land were made in the medieval manor court, and how later disputes could be settled. The grantor came into court and surrendered his or her right to the land into the hands of the steward or another official. The steward would then admit the grantee to the tenement. The transfer of land was a ritualistic procedure, in the case of customary land witnessed by the whole community of suitors to the manor court. If it later became the subject of dispute the jurors might themselves be able to recall the original transaction, or enquire of those who did. While the object used in the giving of seisin had a central legal role, it could also act as an aide memoire. Nonetheless, the court also kept a record of the transfer which might be called upon in disputes between peasants (as will be discussed in the following chapters). A case heard at Halifax in 1325 suggests how seisin and enrolment went hand-in-hand. Amicia, widow of John de Midgeley, sued Adam son of Hugh de Lihthasles for her dower in three acres in Sowerby after the death of her husband, who had sold the land to John Pikston, uncle of Hugh de Lihthasles. Adam responded that John de Midgeley was never seised of the land, 'nor was the taking of the land enrolled in the rolls of the court'. An inquisition was taken and found that one Matilda Perenes sold the land to John, and that John had been seised thereof for three years. Amicia was therefore to recover her dower, and Adam was in mercy. Whether or not the rolls had been checked for the seisin is unclear (not unusually, the basis for the jurors' decision is not stated), and as yet I have been unable to find the enrolment in the

[177] Baildon, *The Court Rolls of the Manor of Wakefield, Vol. I, 1274 to 1297*, pp.40-1 & 118-9: Court held at Birton, Monday before Pentecost, 2 Ed I (1275).

extant rolls. However the case shows how the rolls might be cited to reinforce a claim over what had truly occurred or not occurred in the court.[178]

In a review of N.R. Holt's edition of the 1210/1 Winchester pipe roll, Warren Ault commented on an item in which the reeve listed six tenants who each paid 6d or 12d *pro imparchamento*.[179] He suggested that '[o]ne might hazard a guess that these are men who paid to have a written record made of a particular transaction in the manor court, a transfer of land, perhaps, before it was routine to have sessions recorded'.[180] He argued that is probable that no court rolls were in fact kept in that earlier period, since the fees and fines were listed in the *purchasia* section. Since the pipe rolls were kept for financial purposes, no other record was needed. Nonetheless, if Ault was correct in his interpretation, perhaps we have here an early example of the use of an existing record-keeping system to preserve memory by individuals who may not have kept records for themselves.

As the production of court rolls became a standard practice, surrenders of and admittances to customary land were automatically enrolled. Beckerman noted that occasionally we find example of parties paying to have the full terms of a transfer of land enrolled, rather than the brief entries which characterise transfers for much of this period.[181] There are many instances in manor court rolls of payments to enrol other types of arrangements. A few examples can be found in the Wakefield rolls, such as the enrolment of a quitclaim in 1333,[182] two mortgages of land in 1357,[183] and a recognizance concerning the failure to repay the money for a piece of mortgaged land in 1376.[184] There are considerably more examples of enrolments, however, in the Alrewas rolls. Table 2.1 provides a breakdown of the types of transactions or agreements involved.

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[178] Y.A.S. MD225/1/51, m1: Court held at Halifax, Wednesday 9th October, 19 Ed II (1325).

[179] W.O. Ault, review of N.R. Holt (ed.), *The Pipe Roll of the Bishopric of Winchester 1210 – 1211*, Manchester: Manchester University Press, 1964, *Speculum*, 40:1 (1965), p.143.

[180] Ibid.

[181] Beckerman, 'Procedural Innovation and Institutional Change in Medieval English Manor Courts', p.224. Helen Jewell noted increasingly complicated arrangements for remainder and reversion recorded in the Wakefield rolls immediately following the Black Death, 'suggesting a very active apprehension of many deaths in their families'. Jewell, *The Court Rolls of the Manor of Wakefield from October 1348 to September 1350*, pp.xviii-xix.

[182] Sheridan Walker, *The Court rolls of the Manor of Wakefield from October 1331 September 1333*, p.214: Court held at Wakefield, Friday the morrow of the feast of St Oswald, 7 Ed III (1333), quitclaim of land in Holme by Matthew son of Thomas de Foulestone to John Matthew's son & heirs.

[183] Y.A.S. MD225/1/83/1, m9: Court held at Wakefield, Friday 21st September, 32 Ed III (1357).

[184] Y.A.S. MD225/1/102, m6: Court held at Wakefield, Friday 27th February, 50 Ed III (1376). Thomas Megson recognized that he owed William Garbot six marks of silver for six acres of land in Alverthorpe, which he mortgaged (*impignoratur*) to him as appears in the court held on Friday 5th October, 46 Ed III (1372). Therefore William and his heirs were to have the land forever.

Year	Lease	Exchange of land	Surrender and admittance	Quitclaim	Recognizance	Mortgage	Repayment of a mortgage	Sale of a mortgage	Licence to enclose land	Total
1331/2									1	1
1332/3				1						1
1333/4	2	1								3
1334/5										0
1335/6	2					2				4
1336/7	2	1		3						6
1337/8	3			1		1				5
1338/9						1				1
1339/40	3									3
1340/1		1								1
1341/2	4			2	1					7
1342/3			1	1		3	1			6
1343/4	2		1		1	1				5
1344/5	3		1			4				8
1345/6	4					1				5
1346/7	5					1				6
1347/8	2					1				3
1348/9	4					1		1		6
1349/50										0
1350/1										0
1351/2	1					1	1			3
1352/3										0
1353/4				1		1				2
1354/5	1									1
1355/6	1			1						2
1356/7	4									4
1357/8	1									1
1358/9	2									2

Year (cont'd)	Lease	Exchange of land	Surrender and admittance	Quitclaim	Recognizance	Mortgage	Repayment of a mortgage	Sale of a mortgage	Licence to enclose land	Total
1359/60	2			1		1	1			5
1360/1	2					1	1			4
1361/2	1									1
1362/3										0
1363/4	2									2
1364/5	2					1				3
1365/6	2		1			1				4
1366/7										0
1367/8	2									2
1368/9										0
1369/70										0
1370/1	1					2				3
1371/2						1				1
1372/3	2									2
1373/4	1									1
1374/5						1				1
1375/6	1		1							2
Totals	**64**	**3**	**5**	**11**	**2**	**26**	**4**	**1**	**1**	**117**

Table 1.1: Breakdown of the types of enrolments in the Alrewas court rolls

Where there is a record of a payment made for an enrolment of a surrender and admittance, there is typically more detail than would normally be given. For example in 1334, Henry Fox surrendered a cottage with curtilage via lord's hands to John Harm and Elaynor his wife for a term of forty years. John and Elaynor were to pay 2s per annum for the first thirty years, and 3d for the remaining term, and the property was subsequently to revert to Henry and his heirs. John and Elaynor also agreed to maintain the house and roof in a good state.[185] Other surrenders might have involved an equal complexity of arrangements without the details being recorded in the rolls – we simply cannot tell. Here, however, Henry clearly felt that it was worth paying to ensure that the terms of the rent, reversion, and maintenance could be more easily enforced if necessary. Land granted on the condition that the new tenant should build on it were also occasionally enrolled, such as the grant by Isabella, widow of Thomas son Robert, to Thomas her son, on condition that he build a grange, a pigsty and another building on part of her land. Thomas also agreed to grant it back to her for her life if he should die first.[186]

However, such agreements made between two parties did not have to have been enrolled for the court to be able to enforce them, as a case heard at Alrewas in 1366 demonstrates. Adam Bernard offered himself against Henry Heryng and Matilda his wife in a plea of covenant, claiming that he had demised one burgage to Matilda and her previous husband, John Edmon, for the term of their lives, under the agreement that they would build and maintain a house on it. He argued that they had broken the agreement, so that its condition had deteriorated to the damage of 20s. Henry and Matilda defended themselves saying that the said agreement had not been made or enrolled in court, and they sought judgement as to whether Adam therefore ought to be able to bring a plea of covenant against them. Adam replied that the agreement was allowed to be made in or out of court without denial that it had been made. He sought judgement, and the court found in his favour.[187]

The nature of the evidence from Wakefield and Alrewas suggests that enrolment of personal agreements was a matter of individual choice, and that it was rare. Even at Alrewas, where there were considerably more payments *pro irrotulamento* than in the rolls of the other manors, the majority

[185] St.R.O. D(W)0/3/18, m5d: Court held at Alrewas, Saturday after the feast of the Nativity of John the Baptist, 8 Ed III (1334).

[186] St.R.O. D(W)0/3/20, m6: Court held at Alrewas, Saturday after the feast of John before the Latin Gate, 10 Ed III (1336).

[187] St.R.O. D(W)0/3/58, m3d: Court held at Alrewas, Saturday after the feast of St George, 40 Ed III (1366). *Et dicunt quod predictam convencionem in Curia non fuit factam nec irrotulatam petunt inde iudicium si accoionem de convencione predicta versus eis habere potest. Et Adam dicit quod licet convencionem predictam facta fuit in Curia vel extra Curia et non dedicit convencionem predictam factus esse.*

concerned real property. The sixty-four enrolled leases represent 55% of the total number of enrolments. Only the two recognizances related to debts.[188] Studies of peasant debt by Phillipp Schofield and Chris Briggs have similarly found that the majority of debts appeared in the rolls only when pleas were brought to recover them.[189] Such arrangements typically depended on oral contracts, and recognizances were rare.[190] The process for the transfer of customary land, on the other hand, resulted in a system of formalized written registration. The theoretical benefits to the peasantry of such a system, as Beckerman, Hyams and others have described, are clear. The manor court rolls did not merely show who had entered what parcels of land and what they owed for the privilege. They could potentially prove a tenant's status in that land, whether they were able to dispose of it, whether their heirs were entitled to enter it according to custom, and so on. The rolls were indeed called upon to help resolve such matters, as an analysis of the circumstances of vouchers shows (Chapter 5). Further tests of how advantageous the rolls were to the peasants, or how advantageous they were *perceived* to be, must also be the ease with which they could be used, and the regularity with which they were called upon. These issues will be dealt with in turn, following a description of the manors and their records and the method of data collection employed.

[188] D(W)0/3/27, m2d: Court held at Alrewas, Saturday, the vigil of the feast of St Simon & Jude, 15 Ed III (1341), recognizance by Richard Gunnild de Frodeley concerning 40s owed to William othehez after the death of Matilda Gunnild. St.R.O. D(W)0/3/30, m9: Court held at Alrewas, Saturday before the feast of Bartholomew, 18 Ed III (1344), recognizance by John de Joxhal de Ednynghal, Richard de Mouseleye and Nicholas atte Stile de Ednynghal concerning 26s 8d owed to John de Freford knight and John le Whyte de Tamworth for a concord.
[189] Phillipp Schofield, 'Peasant debt in English manorial courts: form and nature', in *Endettement privé et justice au Moyen Age*, ed. Julie-Mayade Claustre pp.55-67.
[190] Briggs, *Credit and Village Society in Fourteenth-Century England*, p.14, 37, and especially pp.71-82 on the formation of credit agreements. Recognizances typically involved unusually large cash loans.

CHAPTER 2

The manors and their records

Wakefield, 1274-1381

The manor of Wakefield had belonged to Edward the Confessor, and was still in the hands of William the Conqueror at the time of the Domesday survey in 1086. It was granted along with the nearby manor of Conisbrough to William, second Earl Warenne, a Norman lord who participated in the Conquest and remained in England to assist William the Conqueror. The date of its grant is uncertain, but Walker suggested that the manor was granted to the second Earl by William Rufus in 1090.[191] The Earls Warenne held extensive estates across twelve counties. Their possessions included the honour of Lewes in Sussex, where the second Earl together with his wife Gundrada founded a priory in 1077, the first Cluniac house in England. The Earl granted the churches of Wakefield, Little Sandal, Sandal Magna, Dewsbury, Halifax, Conisbrough, Harthill, Fishlake and Hatfield, and the chapels of Horbury and Hartshead to the priory, and a charter of confirmation of this grant given by the Archbishop of Canterbury proves that the manor of Wakefield was certainly in the possession of the Earl by 1121.[192] He was created Earl of Surrey in 1088, and the principal seat of the earls was at Reigate in that county.[193]

At the time at which the rolls series begins the manor was held by John, sixth Earl Warenne, who succeeded his father in 1242 and reached the age of majority in 1253. He was succeeded in 1304 by his grandson John, eighth and final Earl Warenne. Earl John was married to Joan, the daughter of Henry Count of Barr and Eleanor, eldest daughter of Edward I, but his private life was tumultuous, a fact which had consequences for the manor of Wakefield. John had taken a mistress, Maud de Nereford, and obtained a Papal bull granting a divorce on account of their kinship. Despite objections from the clergy (including the Archbishop of Canterbury), John refused to give Maud up, until in February 1316 John and Joan were legally separated. Joan remained Countess of Warenne and Surrey, and was to receive 740 marks per annum for her life. In June of that year, John conveyed his lands to

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[191] J.W. Walker, *Wakefield, Its History and People*, 2nd edn. (Wakefield: privately printed, 1939), pp.44-45.
[192] Baildon, *The Court Rolls of the Manor of Wakefield, Vol. I, 1274 to 1297*, p.vi.
[193] L.F. Salzman (ed), *A History of the County of Sussex*, vol.7 (London: Oxford University Press for the Institute of Historical Research, 1940), p.1.

the King, who in August reconveyed the lands to John, with remainder to Maud for her life, and to their sons John and Thomas de Warenne.[194]

In 1317, Earl John became involved in a private war with Thomas, Earl of Lancaster. The source of the trouble was Lancaster's second wife, Alice de Lascy, whose family along with Warenne and Lancaster were major landholders in Yorkshire. Alice was taken by John from her husband's home in Dorset to John's castle at Reigate in Surrey.[195] Lancaster, having divorced Alice, besieged John's Yorkshire lands, taking Sandal and Conisbrough castles.[196] The settlement of their dispute saw the surrender in 1319 of the manor of Wakefield with other holdings in Yorkshire and Wales by John to Lancaster for his lifetime. It remained in Lancaster's hands until his execution following his rebellion and defeat at the battle of Boroughbridge in March 1322 (Warenne being one of those who sat in judgement).[197] Lancaster's estates were forfeit, and Wakefield was held by the crown until 1326, when it was re-granted to John with reversion to the Crown. Marie Stinson, discussing the consequences of this upheaval for the tenants of the manor, argued that the tenantry suffered from the lordship of people with life interests only in the land.[198] The eighth Earl's limited interest in the manor however seems to have been to the advantage of some. The patent rolls show that following John's death an enquiry was ordered into his manumission of bond tenants, his alienation of land in the fee, and his appropriation of much of the waste without the king's license.[199] As Walker noted, this enquiry coincided with the increasing demand for labour following the Black Death.[200]

Earl John died on 20 June 1347 at Conisbrough. In August, Wakefield was granted by Edward III to his son Edmund of Langley, with remainder to John of Gaunt. Edmund was only six at the time, so the lands were in the custody of Queen Philippa. However Joan of Bar, Countess de Warenne, also held dower rights in the Earl's Yorkshire lands until 30 June 1359, when she sold them to the crown for £120 per year. As a result, two rolls exist for these years. The split seems to have reflected the natural geographical divides of the manor. The Countess' court heard pleas from and

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[194] Maud predeceased her husband however, and her sons entered the Hospital of St John of Jerusalem at Clerkenwell. Walker, *Wakefield, Its History and People*, p.59.

[195] J.R. Maddicott, *Thomas of Lancaster, 1307-1322: A Study in the Reign of Edward II* (Oxford: Oxford University Press, 1970), p.197-8.

[196] Ibid, pp.207-9.

[197] Ibid, p.312; Walker, *Wakefield, Its History and People*, p.62.

[198] Marie Stinson, 'The Honour of Pontefract, the Manor of Wakefield and their region: a social and economic study c.1270-c.1350', unpublished Ph.D. thesis, University of Leeds, 1991, p.42.

[199] Stinson, 'The Honour of Pontefract, the Manor of Wakefield and their region', pp.48-9; Jewell, *The Court Rolls of the Manor of Wakefield from October 1348 to September 1350*, p.xx.

[200] Walker, *Wakefield, Its History and People*, p.124.

dealt with transgressions by the tenants of the eastern and southern graveships and the Queen's court heard those of the western graveships. Both held courts at Wakefield itself, although the Queen held the tourns there.[201] In 1359 Edmund of Langley came into actual possession of the manor, and held it throughout the remainder of the period in question in this thesis.

The manor and its tenants

The manor of Wakefield was one of the largest in England, stretching over thirty miles from Normanton, east of the town of Wakefield, to Heptonstall and Wadsworth, west of Halifax. Its extent has caused it be described as being more like an honour than a manor, and as a result its tenantry spanned the social strata, reaching into 'the knightly echelons of society'.[202] The manor was divided by land belonging to the honour of Pontefract, and incorporated the majority of the wapentakes of Agbrigg (the western and southern parts of the manor) and Morley (the eastern). At the time of the Domesday Book, the manor had consisted of the manerium, nine berewicks (or inland), and fourteen sokes held by free tenants.[203] The inland made up one third of the manor, but the majority of it lay in the less productive uplands of the manor. Only Sandal was a berewick in the west – the remaining berewicks (Stansfield, Longfield, Cruttonstall, Sowerby, Wadsworth, Midgeley and Warley) lay twenty miles to the east in 'Sowerbyshire'. By 1300, however, the Earls Warenne had succeeded in appropriating a large part of the sokeland into their demesne lands (through force, forfeiture or lack of heirs), so that half of the manor was demesne land. While much of this was still in the upland region (where the Earls had vaccaries), a significant amount of more valuable lowland territory around Wakefield had also been absorbed into the demesne.[204]

The demesne land of the manor was divided into thirteen graveships in this period. The western graveships – Wakefield, Stanley, Ossett, Alvethorpe, Thornes, Horbury and Sandal (including Criggleston) - coincided with townships.[205] In the east of the manor were the graveships of Hipperholme (including Northowram), Warley, Sowerby, Rastrick (including Fixby) and

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[201] Troup, *The Court rolls of the Manor of Wakefield from October 1338 September 1340*, p. ix.

[202] Jewell, *The Court Rolls of the Manor of Wakefield from October 1348 to September 1350*, p.xiv; Baildon, *The Court Rolls of the Manor of Wakefield, Vol. II, 1297 to 1309*, pxiii.

[203] Baildon, *The Court Rolls of the Manor of Wakefield, Vol. I, 1274 to 1297*, p.v; Stinson, 'The Honour of Pontefract, the Manor of Wakefield and their region', pp.64-5. Wakefield had been part of the Danelaw, where free tenants were particularly numerous. F.M. Stenton, *The Free Peasantry of the Northern Danelaw* (Oxford: Clarendon Press, 1969).

[204] Stinson, 'The Honour of Pontefract, the Manor of Wakefield and their region', pp.91-93.

[205] Ibid, p.143. Warley was a graveship during the fourteenth century, but was subsumed into the graveship of Sowerby in the early fifteenth.

Scammonden. The graveship of Holme lay apart to the south, separated from the western graveships by a swathe of land which Marie Stinson identified as being held by military and mesne tenures.[206] In total, the manor of Wakefield contained thirty-six sub manors, including the major rectory manors of Wakefield and Dewsbury, and the manors of Halifax and Heptonstall which were granted to the Priory of Lewes in Sussex.[207] The business of the court rolls derived largely from the graveships, and consequently they are the focus of this case study.

The western, lowland part of the manor was characterized by mixed farming, while the more upland areas to the east supported more pastoral farming. In the lowland graveships, the holdings were smaller. In Rastrick, more than half of the tenants held a half bovate or less, and all held less than one bovate.[208] More than the average number of tenants held fewer than four acres in Alverthorpe.[209] The average holding size was larger in the upland areas. The arable land was of poorer quality, but there was more pasture and more creation of new land by assarting (clearing of woodland) and appropriation of 'new land' from the waste.[210] Land assarted from woodland appears to have been called 'rodeland' at Wakefield. There are entries in the earliest rolls for licences given to individuals to take new land. The court rolls show that at least 777½ acres of land was added to the existing tenant holdings in Sowerby, Hipperholme and Holme between 1307 and 1311.[211] During the later period of more intense creation, numerous licences might be granted in a single court. For example in 1307, thirty-three tenants at the court held at Halifax and ten tenants at the Rastrick court were granted to take parcels of varying sizes from the waste of Sowerby. A few weeks later, at a court held at Wakefield, sixty-nine separate tenants paid fines to take new land in the graveship of Holme.[212] These parcels of new land were often small, mainly ranging from a few rodes to two acres, although in 1311 Richard son of Jordan son of Thomas de Northowram paid 13s 4d to take eighteen acres.

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[206] Ibid, Map 6 ('The Tenurial Structure of Wakefield, c.1302'); Lister, *The Court Rolls of the Manor of Wakefield, Vol. III, 1313 to 1316 & 1286*, p.xiv.

[207] David J.H. Michelmore & Margaret K.E. Edwards, 'The records of the manor of Wakefield', *Journal of the Society of Archivists*, 5:4 (October 1975), p.245.

[208] The bovate (also called the oxgang) was the standard unit of land in many of the former Danelaw areas. Its actual size varied between manors and townships.

[209] Stinson, 'The Honour of Pontefract, the Manor of Wakefield and their region', pp. 378-81.

[210] On the claiming workable land from the waste, see M.L. Faull & S.A. Moorhouse, *West Yorkshire: an Archaeological Survey to A.D. 1500*, volume 3 (Wakefield: West Yorkshire Metropolitan County Council, 1981), p.587, 664-5.

[211] H.E. Hallam (ed.), *The Agrarian History of England and Wales, Volume II, 1042-1350* (Cambridge: Cambridge University Press, 1988), pp.252-256.

[212] Baildon, *The Court Rolls of the Manor of Wakefield, Vol. II, 1297 to 1309*, pp. 86-88, 89-90 and 98-106: Court held at Halifax, Tuesday, the morrow of the feast of St. Boniface, 35 Ed I (1307), Court held at Rastrick, Wednesday after the feast of Boniface, 35 Ed I (1307), Court held at Wakefield, Friday before Oswald King, 1Ed II (1307).

Aside from the creation of new plots, Marie Stinson calculated that 320 transfers of land were recorded in the ten rolls between 1274 and 1309, and 514 in the ten between 1313 and 1329. The majority of these were of small parcels of land – two-thirds involved less than four acres, and 80% involved less than seven acres. [213] She concluded that an active market existed on the manor in small pieces of land, arguing that the majority of the tenants involved were of the 'middling' sort, who built up their holdings from assarted lands and from purchases made from both the wealthier and the poorer tenants of the manor.[214] Following the Black Death, the court rolls show that a significant amount of land was left waste, and that tenants were able to take land for short to mid-term leases (usually between four and twelve years).[215]

It is difficult to establish the legal statuses of the Wakefield tenants. Except in cases which directly concerned status or in which a tenant claimed to be free in order to prevent a plea of land, status is rarely made explicit. Limited information can be derived from the extents which survive for a few of the graveships. A transcript of an extent for the graveships of Rastrick, Sowerby and Hipperholme was published in 1914 by J. Lister and H.P. Kendall.[216] The editors copied it at the Phillips Library in Cheltenham (MS.25387), from what they believed to be a sixteenth century transcript. The Hipperholme portion survives at The National Archives, along with the portion for the graveship of Sandal.[217] A further survey appears to have been produced at Christmas 1314, although the original appears not to have survived. The section for Rastrick was published by John Watson in 1775.[218] The remainder was published by Thomas Taylor in 1836.[219] No custumals survive for this period, but the 1309 extents provide details of the services and dues owed by those listed. The Rastrick portion has no headings to indicate the status of those listed. The customs listed (including payments in lieu of ploughing and reaping, tallage, payments for pannage, and suit of mill) apply to the 'tenants' in general. However the *nativi* are singled out to pay fines for the marriages of their daughters (at the lord's will) and if their sons should become clerks, suggesting that the list of forty-

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[213] Stinson, 'The Honour of Pontefract, the Manor of Wakefield and their region', p.396.

[214] Ibid, pp. 417-425.

[215] Moira Habberjam, Mary O'Regan, & B. Hale, *The Court rolls of the Manor of Wakefield from October 1350 September 1352*, Wakefield Court Rolls Series vol. 6 (Leeds, 1983), p.xvi.

[216] J. Lister & H.P. Kendall (eds.), *The Extent - or Survey - of the Graveships of Rastrick, Hipperholme and Sowerby, 1309*, Halifax Antiquarian Society Record Series vol 2 (Halifax, 1914).

[217] The National Archives (hereafter T.N.A.), DL 43/10/9 (Hipperholme) and DL 43/11/17 (Sandal).

[218] John Watson, *The History of the Antiquities of the Parish of Halifax in Yorkshire* (London, 1775, reprinted Manchester, 1836).

[219] Thomas Taylor, *History of Wakefield in the County of York, the Rectory Manor* (Wakefield, 1836). Taylor dated the survey to 1300, but Marie Stinson has suggested this dating to be incorrect due to references to heirs of tenants who appear in the 1309 extents.

eight tenants includes both *custumarii* and *nativi*. It is unclear as to whether any free tenants are included.

The status of the seventy-seven tenants listed in the Sowerby portion is not made explicit, although it does include ten tenants-in-chief of the lord. The Sowerby portion reflects the nature of the holdings in the manor's uplands, with a mix of the standard bovates and half bovates, rode land and old rode land, and new land. The status of such land received some clarification in a case from the graveship of Alverthorpe in 1307. When questioned over the nature of a parcel of rode land, the jurors responded that

> 'the rent of the land is 2s, and that it is villein land because it owes aid (*auxilium*) to the lord like other villein land, and [the holder] has to be grave (*facere prepositum*). Asked if it is part of the villein bovates (*de bovatis nativis*), they say it is not, but it is called rodeland, because it was cleared (*assartata fuit*) from growing wood...'[220]

Despite the fact that the bovates were villein land, they could be held by free tenants. The Sandal portion of the 1309 extent lists twenty-two villeins (*nativi*), fifty-seven customary tenants (*custumarii*), and ten free tenants (*libere tenentes*). Eight of the ten free men listed held thirty-one bovates between them, twelve of which had been granted to Master Robert de Ketelesthorp by the lord's charter for the term of his life (*per cartam Comitis ad terminum vite sue*). These bovates were still held for customary services - a day's ploughing and the provision of a man for a day's reaping.

Similarly, the Hipperholme portion has two sections with details of *nativi* (the first lists forty-one tenants with varying numbers of acres of villein land; the second lists the twelve who held bovates). It also includes two sections of free tenants who held unfree land (the first listing forty-four tenants under the heading *liberi et tenentes terram nativam*; and the second three tenants under *adhuc liberis terram nativam tenentibus*). These extents do not give the details of the full holdings of the free tenants, but only the villein land which they held. Those who did not hold villein land would not have been included, and consequently the extents cannot give a full impression of the free population, even for the limited number of graveships covered by the 1309 survey.

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[220] Baildon, *The Court Rolls of the Manor of Wakefield, Vol. II, 1297 to 1309*, p.84, Court held at Wakefield, Friday 1 April, 35 Ed I (1307); Lister, *The Court Rolls of the Manor of Wakefield, Vol. III, 1313 to 1316 & 1286*, p.xvii. In 1313, Henry de Coppeley was elected grave of Hipperholme on account of a bovate of villein land. He said that he did not want to be grave, but had to surrender the bovate to avoid the office. Ibid, p. 9: Court held at Brighouse, Monday after the feast of St Luke, 6 Ed II (1313).

There appears to have been little demesne production at Wakefield.[221] The income from the manor came from the lease of the farm of the borough, the leases of the mills and vaccaries, the rents, heriots and reliefs, and the fines from the court. The extent of 1309 show that the tenants of the various graveships were required to pay certain dues or provide services, but already ploughing and reaping services had been commuted for monetary payments in Rastrick and Hipperholme, and by the time of the Black Death, most of the services on the manor had been commuted for money payments.[222]

The administration of the manor

The manor was overseen by the earls' stewards on behalf of their largely absentee lords. The earls dealt with matters requiring their attention by writing, and several examples of letters written in French to various stewards were copied into the rolls. It is possible to trace the careers of some of the stewards, and it is clear that they were experienced in law and administration beyond the confines of the manor. For example, John of Doncaster, who acted as steward between 1297 and 1307, can be seen to have been active in the royal courts between 1307 and 1323, when he returned to Wakefield as steward of all the Yorkshire manors which previously had belonged to Warenne and which, after the battle of Boroughbridge, had been forfeited by Thomas, Earl of Lancaster.[223] Sir William de Skargill both acted as steward of the manor during the 1330s, and managed John de Warenne's chases, parks and warrens across his Yorkshire holdings. He also served on several commissions of oyer and terminer and peace commissions in the West Riding, and as a tax collector.[224]

The steward or a deputy presided over the manor court, held at Wakefield at three weekly intervals. A tourn (the leet court) was also held there as part of the Michaelmas Great Court, and again in May. Tourns were also held in these weeks at Halifax, Brighouse and Birton. No distinction was made between the customary court and the court baron (for the free tenants), although as has already been noted, the free tenantry appear with less frequency in the record. There appears to have been a bailiff of the 'free court', even if such a court did not have a separate existence, and the appearance of *baillivus* in the margin of a roll suggests that the bailiff was required to perform an action involving a free tenant. Each graveship was administered by a grave who was elected on an annual basis from the villein tenants. The term that appears in the court rolls is *prepositus*, which would normally be

[221] Stinson, 'The Honour of Pontefract, the Manor of Wakefield and their region', p.125.
[222] Walker, *Wakefield, Its History and People*, p.98.
[223] Sheridan Walker, *The Court rolls of the Manor of Wakefield from October 1331 to September 1333*, p.xiii.
[224] Ibid, p.xiii; Jewell, *The Court Rolls of the Manor of Wakefield from October 1348 to September 1350*, p.xvii.

translated as reeve. However, the term grave (from the old English term *gerefa*) was later used at Wakefield and on the nearby manor of Methley. Baildon remarked that 'In several respects each grave seems to have acted as an under-steward in respect of his graveship, and he was a much more important officer than the *prepositus* of an ordinary manor'.[225] The grave was responsible for the collection of rents, heriots and amercements, as well as for distraints. Tenants were also able to surrender land into the hands of the graves while on their death beds, and the graves were then responsible for reporting those surrenders for entry onto the rolls.[226]

The town of Wakefield received a charter from Hamelin, Earl Warenne, in 1180, which created burgage tenures. The burgesses were free from all personal services, and quit of tolls throughout the manor. The town was granted the right to hold a fair by King John in 1204, which was held on the three days over the feast of All Souls, and a further fair was granted in 1331.[227] The burgesses had their own borough (or 'burman') court and bailiff, responsible for law and order within the town. There are numerous cases in the manor court rolls in which the bailiff of the town claimed cases for the borough court because one or both parties were burgesses.[228] However no records of the borough court survive before 1533.[229]

The Wakefield court rolls

The court rolls of the manor of Wakefield are justly famous as one of the most complete set of court rolls to survive, with 670 rolls commencing in 1274 and ending with the abolition of manorial jurisdictions in England in 1925. The rolls run from Michaelmas each year, with the earliest surviving being the roll for 1274/5 and part of the roll for 1276/7. Four further rolls survive from the thirteenth century (1284/5, 1285/6, 1296/7 and 1297/8). Between 1306 and 1381 the series is complete bar

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[225] Baildon, *The Court Rolls of the Manor of Wakefield, Vol. I, 1274 to 1297*, pp.xii-xiii; Jewell, *The Court Rolls of the Manor of Wakefield from October 1348 to September 1350*, p.xvi.

[226] Roger de Brighouse, grave of Hipperholme, and William, son of Roger, grave of Thornes, were both amerced for having failed to do so. Lister, *The Court Rolls of the Manor of Wakefield, Vol. III, 1313 to 1316 & 1286*, p.75, p.92: Court held at Rastrick, Tuesday after the feast of Luke the Evangelist, 8 Ed II (1314); Court held at Wakefield, Friday the feast of St Nicholas, 8 Ed II (1314).

[227] Walker, *Wakefield, Its History and People*, p. 90; Baildon, *The Court Rolls of the Manor of Wakefield, Vol. I, 1274 to 1297*, p.vii.

[228] Walker, *Wakefield, Its History and People*, p.88-9. This right was confirmed by the eighth Earl in a charter of 1307. John Goodchild, *Aspects of Medieval Wakefield and its Legacy* (Wakefield: Wakefield Historical Publications, 1991), p.17; Baildon, *The Court Rolls of the Manor of Wakefield, Vol. II, 1297 to 1309*, pvi.

[229] Goodchild, *Aspects of Medieval Wakefield and its Legacy*, p.1.

fourteen rolls, five of which form a block between 1317/8 and 1321/2.[230] With the exception of the earliest rolls, the Wakefield court rolls are sown in the Exchequer fashion, head to foot on the recto, and foot to head on the dorse. The rolls are written in a variety of hands which are generally clear, although in places there is inevitable damage to the parchment, discolouration or faded ink.

A uniform structure was quickly adopted for the Wakefield rolls. Typically, the record for each court starts with the essoins, followed by a mixture of pleas – of debt, of trespass, of breaches of agreements, of land – and finishes with any land transfers, both post-mortem inheritances and their heriots or reliefs, and inter-vivos transfers and their fines.[231] The graveships from whence each item originated are written in the left-hand margin, along with the value of any individual amercements or fines arising from the matter, and a total for each court is given at the end of the court record. The clerks often also made an abbreviated note if an action was required (for example if one of the parties to the case was to be distrained, or if the rolls were to be searched) or to indicate what stage the case had reached (if the case was respited, or if judgement had been given). They were clearly working documents, intended to be consulted. They provided the steward of the manor with a record of the ongoing business of each of graveships, and allowed him to ensure that the graves were performing their duties. The structure of the Wakefield court rolls is by no means exceptional, but the geographical complexity of the manor of Wakefield arguably made a clear and comprehensive written record of even greater administrative importance than on more nucleated and less populous manors.

Was Wakefield of ancient demesne status?

As has already been noted, Wakefield was in the possession of Edward the Confessor, and remained in the hands of the William the Conqueror following the Conquest. As such, it fulfilled the conditions for the status of ancient demesne. Ancient demesne land was described as *Terra Regis* in Domesday Book, denoted by 'T.R.E.' and 'T.R.W', and Vinogradoff argued that the key to the status was that the crown's possession of the land bridged the conquest.[232] Tenants of ancient demesne land

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[230] The majority of the rolls are held by the Yorkshire Archaeological Society (hereafter Y.A.S.), MD225/1/1-106. The exception for this period is the court roll for 1316/7 (British Library, Add Ch. 54408).

[231] Jewell noted that the rolls for 1348-1350 mix in the fines for land to a greater extent, perhaps because of the number occasioned by the Black Death. Jewell, *The Court Rolls of the Manor of Wakefield from October 1348 to September 1350*, p.xiii.

[232] Vinogradoff believed that the conditions on the ancient demesne manors preserved the conditions for peasants on the Anglo-Saxon manor, and that the status prevented the deterioration of those conditions in the eleventh to thirteenth centuries. Hoyt later disputed this idea, arguing that the term 'ancient demesne of the crown' was not used until the end of the twelfth century, and that appeals to the Domesday Book as evidence of a manor's ancient demesne status only became common under Edward I. Rodney Hilton, examining the ancient

were often described as 'villein sokemen'. In some respects they might resemble a manor's villeins, being required to perform services for their lord and to pay dues associated with villeinage such as merchet (a marriage fine), and facing forfeiture of their land if they failed to perform their services or pay their rents. However various privileges were also attached to ancient demesne tenure: they were not bound to attend the hundred or county courts or to serve on juries and assizes before king's justices, they were free from toll in the manor's markets, they were not taxed with the country at large or tallaged by their lord at will (although they could be tallaged by the king without parliament's consent). Perhaps most importantly, they were protected from arbitrary changes to their services and rents. To this end, the writ *monstraverunt* was available to sokemen to appeal to the crown against attempts by their lords to increase services or changes of customs.

Tenants of ancient demesne land were also entitled to sue for their land by the 'little writ of right close' (*parvum breve de recto*), which was addressed to the bailiff of the manor. [233] This was distinct from the writ of right patent by which cases over free land could be begun in the manor court. A lord could bar his tenants from bringing property litigation in the common law courts by pleading that the land was ancient demesne (just as he could do by pleading villeinage), so litigation was still restricted to the manor court, but the ability to bring it by royal writ was a distinct advantage, as it limited the power of the lord or his officials over the land. The writ might be brought against a fellow tenant, but crucially it could also be brought to distrain the manor's lord to answer in a plea of land. Furthermore, villein sokemen were able to bring a writ of false judgement. On account of these rights, Vinogradoff argued that 'the distinction between freehold and ancient demesne villeinage is narrowed to a distinction of jurisdiction and procedure'.[234] While the tenants of manors who claimed ancient demesne status often did so as if *all* the tenants were of privileged status, such manors had tenants of free and villein status alongside the sokemen. Vinogradoff suggested that the divisions in personal status were often linked to the land. The demesne land of the manor was held in frank fee to be used at will, from which villein tenements could be created. Thus '[i]t was not all the tenants on ancient

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demesne manor of Stoneleigh in Staffordshire, argued that those described as 'freemen' in the Hundred Rolls were in fact sokemen, since they were expected to litigate in the manor court rather than holding by common law tenure. He concluded that their privileged status as tenants of ancient demesne land 'was not a matter of Anglo-Saxon freedom preserved, but of a new freedom won'. Vinogradoff, *Villainage in England*; Hoyt, R.S., *The Royal Demesne in English Constitutional History, 1066-1272* (Ithaca, New York: Cornell University Press 1950); R.H. Hilton, *The Stoneleigh Leger Book*, (Oxford: University Press, 1960), p.xxviii, xliv.

[233] The little writ of right close did not appear until the 1230s, and *monstraverunt* at the end of the thirteenth century. Marjorie Keniston McIntosh, 'The Privileged Villeins of the English Ancient Demsene', *Viator* 7 (1976), p.297.

[234] Vinogradoff, *Villainage in England*, p.113.

demesne soil that had a right to appeal to its peculiar privileges – some had protection at Common Law and some had no protection at all'.[235]

Baildon, in his introduction to the first volume of Wakefield manor court rolls, argued that the tenants of Wakefield do not seem to have enjoyed the privileges of an ancient demesne manor.[236] Lister disputed this, arguing that the tenants of Wakefield could not be impleaded outside of the manor court and that they were free from toll 'for all things concerning their husbandry', although he provided no references for the evidence for this conclusion.[237] He also noted that Henry VIII exempted 'the Manor of Wakefield, and the towns dependent thereon, from payment of toll, on the principle that, by ancient custom, the tenants of the old demesne lands of the crown had been, and ought to be, free from such payment.' No claim to ancient demesne status appears to have made by the Wakefield tenants in the records of this period, however. Walker assumed that they did have these privileges due to Edward the Confessor's possession of the manor, but found only one example of the tenants trying to benefit from the status, and that was made in 1562.[238] Stinson suggested that the manor's 'bordland' might have been part of the ancient demesne, but she too, however, found no evidence for ancient demesne status being claimed.[239] Furthermore, while free tenants of the manor demanded that their tenure could not be challenged without writ, I have found no evidence for the use of the little writ of right close at Wakefield.

Alrewas, 1259-1381

The court rolls of the manor of Alrewas have been chosen as a comparative case study of the use of written documents by the tenantry in this period. Alrewas makes an interesting counterpoint to

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[235] Ibid, p.120.

[236] Baildon, *The Court Rolls of the Manor of Wakefield, Vol. I, 1274 to 1297*, p.v.

[237] Lister cited a note made by Watson in his *Memoirs of the Ancient Earls of Warren and Surrey* (1792) on the charter made by the eighth Earl to the burgesses of Wakefield in 1307. Watson's note begins, 'His temporal grants, which I have seen any account of, are, that he confirmed to the free burgesses of Wakefield, and their heirs, their privileges, and granted them to be toll free in all his lands, for all wares, merchandise of their own manufacture, and that they should be not obliged to answer at any court but his, called the Burman Court, in Wakefield...' It seems possible that Lister had this in mind in his comments on ancient demesne status. Lister, *The Court Rolls of the Manor of Wakefield, Vol. III, 1313 to 1316 & 1286,* p.vi.

[238] Walker, *Wakefield, Its History and People*, p.71, 390 n.2.

[239] Stinson, 'The Honour of Pontefract, the Manor of Wakefield and their region', p.356. The status of the bordland came into question in 1314 and 1316, and was found to be unfree. The holders, however, paid a fine to preserve their personal freedom. Lister, *The Court Rolls of the Manor of Wakefield, Vol. III, 1313 to 1316 & 1286,* p.54: Court held at Halifax, Monday after the feast of Luke the Evangelist, 8 Ed II (1314); Lister, *The Court Rolls of the Manor of Wakefield, Vol. IV, 1315 to 1317*, p.54: Court held at Wakefield, Friday the morrow of the feast of St Vincent the martyr, 9 Ed II (1316).

Wakefield. It was also a lay estate, but on a far smaller scale. Such manors tend to be far less well documented than those of the ecclesiastical institutions or the great estates of lords such as the Warennes, but the rolls of Alrewas have survived well for the fourteenth century. Furthermore, Alrewas was a part of the ancient demesne and, unlike Wakefield, clearly exhibited those features which distinguish such manors.[240]

The lordship of the manor of Alrewas

The manor was granted in 1204 to Sir Roger Somerville. At the time from which the earliest rolls survive (1259), the manor was held by Sir John Somerville. The manor passed to his son Robert in 1287, and then to his son Edmund. Philip, brother of Edmund, inherited the manor in 1319. He also inherited land in Lincolnshire, Warwickshire, Yorkshire and Northumberland from another brother, Roger, in 1337. However these manors were sub-tenanted, and the Somervilles continued to reside on the manor of Wychnor, which lay across the River Trent from Alrewas and was part of the Earl of Lancaster's honour of Tutbury. A list of the wealth of Staffordshire landlords was drawn up in 1337 in response to Edward III's request for a subsidy. A broad annual value was given for each landlord's property: £100, £40, £20, £10, or 10 marks. Only the Earl of Lancaster and his son were assessed at the highest level, but Philip Somerville was one of the thirteen men assessed at £40.[241] Philip was a significant figure in local government, acting as a knight of the shire at least six times between 1322 and 1336, and serving as a keeper of the peace and commissioner of array.[242] The manor was inherited by his daughter, Joan, in 1356, and on her death in 1378 by her son from her second marriage, Rhys ap Griffith.

The manor and its tenants

The manor of Alrewas lay in south-east Staffordshire, approximately five miles north of the cathedral city of Lichfield, and near a convergence of the rivers Trent and Tame. It included the hamlets of Fradley, Orgreave, and Edingale (part of which lay in Derbyshire). While considerably smaller than the manor of Wakefield, the manor of Alrewas consisted of approximately 4300 acres. It

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[240] Poos and Bonfield largely avoided the inclusion of cases from ancient demesne manors in the *Select Pleas*, due to the actions available to their tenants in the royal courts. As they note, a much fuller examination of the records of such manors will allow a proper comparison of the differences and similarities in procedure between ancient demesne and non-ancient demesne manors. Poos & Bonfield, *Select Cases in Manorial Courts 1250-1550*, p.xix.

[241] R.H. Hilton, *The English Peasantry in the Later Middle Ages* (Oxford: Clarendon Press, 1975), p. 224.

[242] Jean Birrell & Dick Hutchinson, 'An Alrewas Rental of 1341', in *A Medieval Miscellany*, Collections For a History of Staffordshire 4th series, Vol. 20 (Staffordshire Record Society, 2004), p.60.

was a heavily wooded area, and Alrewas itself lay in Alrewas Hay, part of Cannock Forest. Hilton found that more than half of the families across Staffordshire were personally free, which he attributed to the more recent settlement of the county and the lack of well established estates.[243] This was not the case on the manor of Alrewas, however. A snapshot of the pre-plague tenantry survives in a rental of 1341. The rental lists ten 'free tenants by charter', nine 'free sokemen' (*liberi sokemanni*), and 115 'customary tenants of base tenure who in domesday are called villeins'. Of the customary tenants, ten were listed under Fradley, twenty-one under Orgreave and nine under Edingale. The rental includes cottagers, but would seem not to be complete according to Helena Graham's calculation that the manor's population of adult males was around 350 in the 1320s.[244]

The size of the holdings of the free tenants and free sokeman is impossible to judge, since the rental seems only to list land granted by the lord by charter rather than their complete holdings. This is suggested by the disparate (and occasionally vague) amounts involved: ten virgates, one virgate, a messuage, various acreages, 'a meadow', 'an assart', or 'a piece of land'. The majority of the customary tenants listed in 1341 are listed as holding a virgate, half virgate or quarter virgate, or a cottage. But Graham also demonstrated that there was an active market in smaller parcels of land, as at Wakefield. Of the inter-vivos transfers, 90.4% involved five acres or less.[245] Her findings suggest that the wealthier tenants of the manor predominated in both inter-vivos and inter-familial transfers of land, although tenants who are listed as only holding a cottage a few acres in the rental can also be found acquiring land.[246] Those with the resources could also acquire pieces of new land, assarted from the woodland or created from the waste. The number of entries into such plots, a rise in the number of transfers of land, and a rise in the entry fines demanded suggested that there was a greater demand for land in the 1330s. A scarcity of land would also help to account for the significant number of mortgages and leases in the rolls, whereby those in financial difficulties could raise money without permanently losing a valuable resource.[247]

The 1341 rental is a vital source since it provides a detailed picture of the customs of the manor and the legal privileges of the tenants. Beneath the list of free sokemen are details of their

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[243] R.H. Hilton, 'Lord and Peasant in the Middle Ages', *North Staffordshire Journal of Field Studies*, 10 (1998), pp.8-9.

[244] Helena Graham, 'A Social and Economic Study of the Late Medieval Peasantry: Alrewas, Staffordshire, in the fourteenth century', unpublished thesis, University of Birmingham, 1994, p.18.

[245] Ibid, p.276 & 283. After the Black Death the number of inter-vivos transfers fell, but there was a 'small but significant' increase in the average size of parcels of land transferred after the Black Death.

[246] Ibid, pp.298-9, 315-7.

[247] Ibid, pp.343-4.

exemptions. The only services noted for the free sokemen was that they were bound to do suit of court and to oversee the mowing of the meadow of Churchholme. They were excused from the offices of reeve, ale-taster, beadle or forester. Their daughters could be married without merchet being due, and their sons could be 'put to letters, tonsure and orders' without the lord's permission. They did not have to pay mill toll or pannage, although they were required to sit with the bailiff on the day on which pannage was collected (for which they received 1d or a meal), and afterwards investigate the concealment of pigs. They also had fishing rights in the manor's rivers and brooks, and the right to collect wood.[248]

Beneath the list of customary tenants is a longer section of text, in which the reasons for the making of the rental are fully described, and which contains the services and dues of those who held a virgate, a half virgate or a quarter virgate of land. The heriots due from the tenants are described at length. They were to pay merchet, to mow one meadow, to give their tenth pig for pannage at Martinmas each year, and to pay tallage whenever the king's manors were tallaged. They were not allowed to put their sons to letters without permission. A widow could not marry without the bailiff's permission, and if she did so she had to surrender all the lands which her husband had held. They had to grind their corn at the lord's mill, owed suit of court every three weeks, and had to serve as reeves, frankpledges, ale tasters and beadles when elected.[249] Mixed in with these services and dues were certain rights: to take wood and to fish in the river for their own consumption.

As an ancient demesne manor, the rents were fixed. 2s was owed annually for each virgate of 'ancient tenure' (*antiquorum tenencium*), and 4s for each virgate that had been demesne land. The level of rent appears to have been the same for both free and customary tenants, but while the entry fines to free land were set at twice the annual rent, those to customary land were at the lord's will.[250] As noted above, as well as the benefit of the fixed rents, tenants of ancient demesne also enjoyed unalterable dues and services. The procedure for cases brought by writs of right close (which could not be brought for cases involving less than one acre) is also given in detail. A widow was not

[248] Birrell & Hutchinson, 'An Alrewas Rental of 1341', pp.70-71.

[249] Birrell found that demesne agriculture was relatively undeveloped in Staffordshire, so that labour services tended to be light, and other sources of income such as the view of frankpledge, commons and fisheries rights, pannage, mills, heriots and entry fines were important. Mowing is the only labour service listed, although even this might be begrudged by the tenants: Graham noted that in September 1334, twenty-one tenants were amerced for not wishing to mow the lord's meadow after the bailiff had given them notice to do it. Jean Birrell, 'Medieval Agriculture', in *Victoria County History of Staffordshire*, Vol. VI (Oxford University Press or the Institute of Historical Research, 1979), p.29; Graham, 'A Social and Economic Study of the Late Medieval Peasantry', p.66.

[250] Graham, 'A Social and Economic Study of the Late Medieval Peasantry', pp.249-50.

allowed to bring a writ of dower for land which had belonged to her husband but which had been sold. Instead, the customs describe how she was to make her complaint in court, and the defendants were to be warned by the bailiff to come to the next court to say why she should not have dower. If they could not do so she would be awarded her dowry, or if they denied it the claim would be investigated.[251]

The details which follow the rental's list of 'customary tenants of base tenure who in domesday are called villeins' suggest that these men were in fact villein sokemen. The rental contains a lengthy explanation of the circumstances of its creation which demonstrates that it was made at the behest of the privileged tenants, restating the ancient customs to which the manor's lord was bound.[252] As such, it can be argued to serve a different purpose to the rentals, custumals and extents drawn up on many manors, which served as administrative and economic documents. No reference is made in the rental to ordinary villein tenants, as we might expect to find on the manor's demesne land. Walter Noble Landor, in the introduction to his transcription of the earliest rolls, suggested that such a class of tenants may have existed.[253] This would perhaps help to account for the difference between the number of tenants who appear in the rental and Graham's estimate for the number of adult males on the manor. Jean Birrell, however, concluded that there were no villeins at Alrewas.[254] I can find no evidence in the court rolls to absolutely support the idea of there being villeins, since the rental suggests that land described in the rolls as being held by base tenure (*de basse tenura,* which on other manors would signify villeinage) may simply be a shortened form of 'customary tenants of base tenure who in domesday are called villeins'. There are also references to 'inferior tenure', but these too are not conclusive. One concerns the inheritance of the moiety of a cottage by Henry Averel in 1334, who appears in the list of customary tenants in 1341; another records the property of Godfrey Paty at his death, who held two cottages and one acre 'of the lord by inferior tenure', and a piece of meadow 'which is free land'.[255]

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[251] Birrell & Hutchinson, 'An Alrewas Rental of 1341', pp.80-1.

[252] The text of that explanation, taken from Birrell & Hutchinson, 'An Alrewas Rental of 1341', pp.75-6. is given in full on pp.127-8, below.

[253] Walter Noble Landor (ed.), 'Alrewas Court Rolls, 1259-1261', in *Collections for a History of Staffordshire*, Vol. X New Series Part 1 (London and (London: Harrison and sons, 1907), pp. 251, 254.

[254] Jean Birrell, 'Rereading Manorial Custumals: Lords Tenants and Custom on Three Staffordshire Estates (1297-1341), *Staffordshire Studies*, 19 (2008), p.4.

[255] Staffordshire Record Office (hereafter St.R.O.) D(W)0/3/18, m5: Court held at Alrewas, Saturday after the feast of St Augustine of the English, 8 Ed III (13334); St.R.O. D(W)0/3/21, m6d: Court held at Alrewas, Saturday after the feast of St Swythan, 11 Ed III (1337).

The administration of the manor and the court rolls

As on other manors, the courts (held on Saturdays) were presided over by stewards, although only Richard de Ballinton is actually named (in the roll for 1329/30). The Somervilles were also entitled to hold a view of frankpledge, which occurred biannually. Unlike the tenants of Wakefield manor, those of Alrewas saw their lords regularly in the manor court. Between 1332 and 1334 Sir Philip Somerville made sixty-four grants of land. He is described as coming into the court in person on several occasions (*venit in plena curia in propria persona*).[256] Pleas could also be brought against the lord of the manor. The ancient demesne status of the manor allowed tenants to bring writs against their lord if he dispossessed them of customary land. Philip Somerville was sued in this manner by John son of Richard Burdon of Edingale in 1335, and the jury found for the tenant.[257] Writs of right close were addressed to the bailiff. The bailiffs appear to have been elected from the customary tenants – for example in 1343 Henry Bernard and Thomas Colyn (who appear among the customary tenants in the 1341 rental) were elected bailiffs of the court (*baillivi de corona*). As has already been noted, the customary tenants also supplied the usual offices of ale-taster, beadle and frankpledge, and served as the reeves for Alrewas, Fradley and Orgreave.

The first roll to survive for the manor of Alrewas is that of June 1259 to May 1261, and is the earliest known to survive for the county. Rolls then survive for December 1268 to August 1269, and April 1272 to December 1273.[258] A partial roll for the years 1286/7 and 1287/8 survives at The National Archives.[259] The records for only two courts survive for 1315/6, and only one court for 1326/7. Staffordshire Record Office holds rolls, or parts of rolls, for every year from 1327/8 up to 1381, with the exception of the roll for 1379/80.[260] Having considerably fewer tenants subject to the manor court's jurisdiction, the record for each court, and consequently the court rolls themselves, are notably shorter than those of Wakefield. They follow a similar structure however, starting with the essoins, followed by a mixture of pleas brought by tenants and prosecutions for civil order offences, and ending with transfers of land.

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[256] For example St.R.O. D(W)0/3/15, m4: Court held at Alrewas, Saturday the vigil of the feast of Invention of Holy Cross, 6 Ed III, (1332); St.R.O. D(W)0/3/15, m7: Court held at Alrewas, Saturday before the feast of Luke the Evangelist, 6 Ed III (1332).

[257] St.R.O. D(W)0/3/20, m1: Court held at Alrewas, Saturday before the feast of Luke the Evangelist. 9 Ed III (1335).

[258] Walter Noble Landor (ed.), 'Alrewas Court Rolls, 1259-1261', in *Collections for a History of Staffordshire*, Vol. X New Series Part 1 (London and (London: Harrison and sons, 1907); Walter Noble Landor (ed.), 'Alrewas Court Rolls, 1268-1269 and 1272-1273', in *Collections for a History of Staffordshire*, (London and (London: Harrison and sons, 1910).

[259] T.N.A., SC 2 202/56.

[260] St.R.O. D(W)0/3/1-75.

The collection and analysis of data from the rolls

For each manor, a database of all pleas of land from the earliest extant rolls to those of 1380/1 from each manor was created using Microsoft Excel. Every plea of land was noted as a separate entry, with the further stages of each case from subsequent courts added to the intitial entry. For each plea, the names of the plaintiff(s) and defendant(s), the details of the land in question, the stage reached in each court, and the details of any pleading were recorded in separate fields. The outcome of the case was noted: whether a verdict was reached, the parties compromised, the plaintiff(s) withdrew, the defendant(s) admitted the plea, or the case ended due to a technicality (such as the defendant being found to be a minor, or the parties being incorrectly named). The outcome field was left blank if the case disappeared from the rolls entirely. A separate field was included for whether the rolls were vouched and, if so, whether they were cited in the verdict), in order to allow those cases to be easily extracted from the rest of the pleas. Finally, the years of the court rolls and the membranes on which each plea appeared were noted. For the Wakefield rolls, further fields were created for the location of the court (whether Wakefield, Rastrik, Birton, or Halifax), and for the graveship from which the case came. The volumes of published Wakefield rolls were used to extract the pleas of land for those years, but those cases in which written evidence was vouched were also then transcribed from the originals. Full transcripts were made of all cases in which the rolls were vouched.

CHAPTER 3

The use of the court rolls as evidence in land litigation

The procedure for pleas of land in the manor court

Property disputes, like personal civil pleas concerning debt, detinue and broken covenants, were brought by action. A variety of terms were used to describe the initiation of an action: the plaintiff 'complains of' (*queritur de*), 'seeks against' (*petit versus*) or 'offered himself against' (*optulit se versus*) the defendant(s) in a 'plea of land' (*de placito terre*) or in a 'plea of unjust deforcement' (*de placito iniuste deforciamenti*). The defendant(s) would be summoned. Both parties were entitled to a certain number of essoins (usually three apiece) whereby they excused themselves from appearing, and they could usually be distrained for default on a further three occasions. 'Love days' could be granted at the request of the litigants to allow them time to reach a settlement. The result of this was that cases could stretch over several months before they came to a conclusion.

While both parties were bound to see the case through to resolution once it had been initiated, not all ended with the court passing a verdict. The defendant might admit the plaintiff's claim, the plaintiff might withdraw, or parties might pay a fine to be allowed to compromise. Resolution of disputes by lengthy legal proceedings was perhaps a last resort rather than the desired means. It is possible that many cases were not brought with the intention that the parties would make detailed arguments that would be weighed by a jury, but rather to initiate negotiation in the hope that the matter would be resolved outside of the court, while the court rolls would preserve a permanent record of the fact that they had laid a claim. Where the parties officially settled their cases, a fine was paid 'for licence to agree' (*pro licencia concordandi*). Usually the rolls do not show the reasons for a plaintiff's failure to prosecute the case or for a defendant's default, nor do they often record the terms of any settlement.[261] As Poos and Bonfield concluded from their extensive survey of court rolls, there

[261] In two cases in the Alrewas manor court rolls the terms of the settlements are given, and it is noted that they were brought about 'by the intervention of friends' (*amycis intervenientibus partes predicti concordati sunt*). In the first case, the plaintiff agreed to release and quitclaim his right in half of the land which he sought to the defendant; in the second, the jurors found that the defendant had the better right (*melius ius*), but due to the intervention of friends, they agreed that the defendant would acknowledge the plaintiff's right in one of the three rodes of land in question. St.R.O. D(W)0/3/31, m7: Court held at Alrewas, Saturday before the feast of Augustine, 19 Ed III (1345), Henry son of Ralph Faber versus Henry Mogge de Orgrave; St.R.O. D(W)0/3/19,

was an 'unevenness' in the recording of pleas, particularly in the early stages. The consequence of this is that there are many pleas for which no details are recorded of why each party believed they had the right to the property.

Evidence and verdict finding in land litigation

While wager of law was long used in cases of debt, detinue and trespass, Poos and Bonfield's survey of court rolls found no evidence for its use in pleas of land.[262] Instead, those pleas that reached conclusion in the courts did so by jury verdict. Beckerman has described the development of juries in the manor courts at length.[263] He argued that lawsuits concerning land were traditionally tried by inquest of the whole court, but that this gave way to inquest by trial juries in the later thirteenth century. Verdicts were still occasionally described as being found 'by the whole court' (*per tota curia*) or 'by the whole homage' (*totum homagium*), but it seems unlikely that these were literal. Beckerman argued that the increase of England's population in the thirteenth century led to an increase in litigation which required a more streamlined process than the consultation of all the suitors. It also led to a demand for land which was reflected by the colonization of previously uncultivated land and the fragmentation of holdings, leading to more complex tenurial arrangements in some areas.[264]

The verdicts that were recorded often simply state whether the land would be recovered or retained, and the value of any consequent amercements and entry fines. It was rare for any reasoning for the jury's decision to be stated.[265] Cases were often adjourned until the following sitting of the court (and sometimes this occurred several times) so that the jurors could conduct further investigations, but how they did so is a matter for speculation. A general sense has emerged in recent studies, however, of a shift over the course of the later thirteenth and fourteenth centuries from a

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m3d: Court held at Alrewas, Saturday after the octave of Epiphany, 8 Ed III (1335), Thomas Colyn versus Thomas Gyn.

[262] This is borne out by the Alrewas court rolls. Of the 943 pleas of land at Wakefield, two appear to have involved wager of law. In both, the plaintiffs claimed to have been ejected from property after the defendant had leased it to them for a term of years. Poos and Bonfield found in their survey that even cases involving land that were referred to as pleas of covenant were never resolved by wager of law, but the second of the Wakefield cases was couched in those terms later in the process. MD225/1/59, m18: Court held at Wakefield, Friday after the feast of Matthew the Apostle. 8 Ed III (1334), John de Godeley versus John le Aumblur; MD225/1/63, m10: Court held at Wakefield, Friday before the feast of Peter in Cathedra, 12 Ed III (1338), Augustyne le Skynner versus Henry Forester.

[263] Beckerman, 'Procedural Innovation and Institutional Change in Medieval English Manor Courts', pp.218-9.

[264] Ibid.

[265] Poos & Bonfield, *Select Cases in Manorial Courts*, p.xlii.

reliance on the memories of members of the community towards the use of written evidence. The argument has been put most strongly by John Beckerman: 'The thirteenth and fourteenth centuries thus saw increasing reliance on and deference to the authority of written documents. Tenants frequently were summoned to manor courts to show whatever charters they might have as proof of tenure, and sometimes private muniments, notably charters and deeds, were introduced as proof in lawsuits.'[266] While he argued that written evidence could be of use in various types of disputes, it was most prevalent in land litigation.[267]

The shift towards the use of written records in tenure and land litigation has been borne out by Britnell and Mullan's recent study of the land market on the Winchester estates, who found that '[i]n matters concerning tenure, increasing faith was put in the written word of the pipe rolls during the fourteenth century'.[268] From 1300 onwards, the records of land transfers stated the names of the parties, but also the location and status of the properties, and the terms of the transfer. By the later fourteenth century, such records might also give the acreage of the property, the reasons for the transfer, and the terms of leases. The authors argue that '[t]he initiative for this elaboration doubtless came from the episcopal administration, not only in order to record more fully the determinants of its income from entry fines, but also to facilitate judgements concerning the descent of property. However, it was a development that villeins were willing to encourage for their own purposes'.[269] They found early pleas of land in which 'judgement had depended on reference to the written record' in the Winchester pipe rolls of 1271/2 and 1325/6, before such cases start to appear more regularly from the 1330s, particularly in cases which dealt with complex inheritances or with transactions which had occurred many years before. The corollary of this development is that while jury inquests appear commonly in the pipe rolls of the late thirteenth and early fourteenth centuries, Britnell and Mullan found few references to their use after the 1340s.[270]

No other study, however, has addressed in detail the way in which this change occurred on a particular estate or manor. Poos and Bonfield's Selden Society volume provides an extremely useful collection of some of the more detailed records of litigation including many cases which demonstrate the use of written evidence, but their aim was to illustrate more widely the adjudicative role of the court and the meaning of customary law, and to show the way in which form and content of routine

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[266] Beckerman, 'Procedural Innovation and Institutional Change in Medieval English Courts', p.224.
[267] Poos & Bonfield, *Select Cases in Manorial Courts*, p. lviii- lx.
[268] Mullan & Britnell, *Land and Family. Trends and variations in the peasant land market on the Winchester bishopric estates, 1263-1415*, p.68.
[269] Ibid.
[270] Ibid, pp.68-9.

transactions changed, and so cannot provide a comprehensive picture of the role of writing in any one place over time. There are many points (and perhaps assumptions) raised in the wider debate on the nature of the manor courts and the origins of the court rolls which would merit closer examination. Did written proof come to replace oral testimony in all pleas of land? Did the use of written evidence depend upon the circumstances and details of particular cases, regardless of the status of the parties involved, or did it reflect their economic means, legal awareness or social aspiration? Can we say to what extent such change reflects a shift in the attitude of the peasantry towards written culture; evidence of their development of a 'literate mentality'?

To what extent were the rolls used as evidence in this period?

The remainder of this chapter presents a statistical analysis of the use of the manor court rolls of Wakefield and Alrewas as evidence in pleas of land. Although other forms of written evidence (including charters, indentures, and the more general *scripta*) are occasionally mentioned in cases, they are far outweighed by vouchers of the court rolls themselves. Table 3.1 (below) provides a basic quantitative analysis of the findings for Wakefield (based on the data collected via the methodology outlined in Chapter 2), indicating the extent of land litigation and the extent of the use of the court rolls on the manor.

Court Year	Number of courts	Total no. pleas of land	Average no. pleas per court	No. pleas of land in which rolls searched	Proportion of pleas in which rolls were searched (%)
1274-75	25	17	0.68	0	0
1276-77	9	6	0.67	0	0
1284-85	9	6	0.67	0	0
1285-86	26	13	0.50	0	0
1296-97	30	26	0.87	3	11.5
1297-98	27	18	0.67	1	5.6
1306-07	25	35	1.40	1	2.9
1307-08	32	16	0.50	1	6.3
1308-09	32	19	0.56	2	1.1
1311-12	31	21	0.68	2	9.5
1313-14	31	25	0.81	3	12
1314-15	32	15	0.47	3	20
1315-16	29	18	0.62	1	3.4
1316-17	29	7	0.24	2	28.6
1322-23	17	4	0.24	1	25
1323-24	15	5	0.33	0	0
1324-25	25	7	0.28	0	0
1325-26	24	14	0.58	3	21.4
1326-27	34	8	0.24	0	0
1328-29	7	7	1.00	0	0
1330-31	29	9	0.31	0	0
1331-32	31	4	0.13	0	0
1332-33	31	44	1.42	0	0
1333-34	29	28	0.97	2	7.1
1334-35	31	16	0.52	1	6.2
1335-36	29	24	0.83	1	4.2
1336-37	31	22	0.71	0	0
1337-38	30	26	0.87	1	3.8
1338-39	32	29	0.91	1	3.4
1339-40	28	10	0.36	2	20
1340-41	20	15	0.75	2	13.3
1341-42	24	10	0.42	2	20
1342-43	29	14	0.48	5	35.7
1343-44	29	22	0.76	3	13.6
1344-45	25	15	0.60	5	33.3
1345-46	29	13	0.45	2	15.4
1346-47	24	7	0.29	0	0
1348-49	27	18	0.67	1	5.6
1349-50 (CW)	19	2	0.11	0	0
1350-51	22	12	0.55	0	0
1351-52	22	0	0.00	0	0
1352-53	17	10	0.59	0	0
1352-53 (CW)	22	0	0.00	0	0
1353-54	18	7	0.39	1	14.3
1354-55	18	3	0.17	0	0
1354-55 (CW)	21	11	0.52	5	45.5
1355-56	15	9	0.60	1	11.1
1355-56 (CW)	21	8	0.38	0	0

1356-57 (CW)	23	8	0.35	2	25
1357-58	17	3	0.18	1	33.3
1357-58 (CW)	24	7	0.29	3	42.9
1358-59	18	6	0.33	0	0
1358-59 (CW)	21	7	0.33	0	0
1359-60	24	11	0.46	1	9.1
1359-60 (CW)	12	3	0.25	0	0
1360-61	31	18	0.58	1	5.6
1361-62	28	14	0.50	0	0
1362-63	32	8	0.25	1	12.5
1363-64	29	4	0.14	2	50
1364-65	31	9	0.29	1	11.1
1365-66	30	8	0.27	1	12.5
1368-69	32	23	0.72	2	8.7
1369-70	28	21	0.75	1	4.8
1370-71	26	9	0.35	0	0
1371-72	25	18	0.72	1	5.6
1372-73	25	17	0.68	2	11.8
1373-74	25	12	0.48	0	0
1374-75	23	26	1.13	2	7.7
1376-77	25	16	0.64	2	12.5
1377-78	25	7	0.28	2	26.8
1378-79	24	1	0.04	0	0
1379-80	26	6	0.23	1	16.7
1380-81	25	6	0.24	0	0
Total	**1821**	**943**		**84**	

Table 3.1: pleas of land and voucher of rolls at Wakefield

(CW: court of Joan of Bar, Countess of Warenne)

A graphical representation of this data (Figure 3.1), which combines the figures from the separate courts of Joan of Bar and Queen Philippa (1349-1359) and also includes those years for which no rolls are extant, helps to put these figures into perspective. From 1296/7 there was a steady trickle of pleas of land in which the rolls were vouched, although not until 1316/7 did it form a significant proportion of the total number of cases at 28.6%. Voucher of the court rolls peaked in 1342/3 (35.7%), 1344/5 (33.3%), in Joan of Bar's courts in 1354/5 (45.5%) and 1357/8 (42.9%), in Queen Philippa's court in 1357/8 (33.3%), and in 1363/4 (50%). The highest number of vouchers in any one year was five (which occurred in 1342/3, 1344/5 and 1354/5).

When the data is grouped into a chart showing five year periods (Figure 3.2) a clearer picture still emerges of use of the rolls. The rolls saw their most consistent use in the 1340s, cited in 19.7% of land pleas between 1339/40 and 1343/4 and in 15.1% between 1344/5 and 1348/9. In the wake of the Black Death, both the number of land pleas and the use of the rolls subsided (cited in only 1 out of 31 cases), but the percentage usage rose again to 19.4% between 1354/5-1358/9. Yet in the later decades of this study, the number of pleas in which the rolls were vouched relative to the total number of land pleas subsided again, and in no period were they vouched in more than a fifth of land pleas. Significantly, during the 1330s when there seems to have been the greatest pressure on land with a total of 202 pleas and being brought in Wakefield manor court, there are only six cases which mention voucher of the rolls.

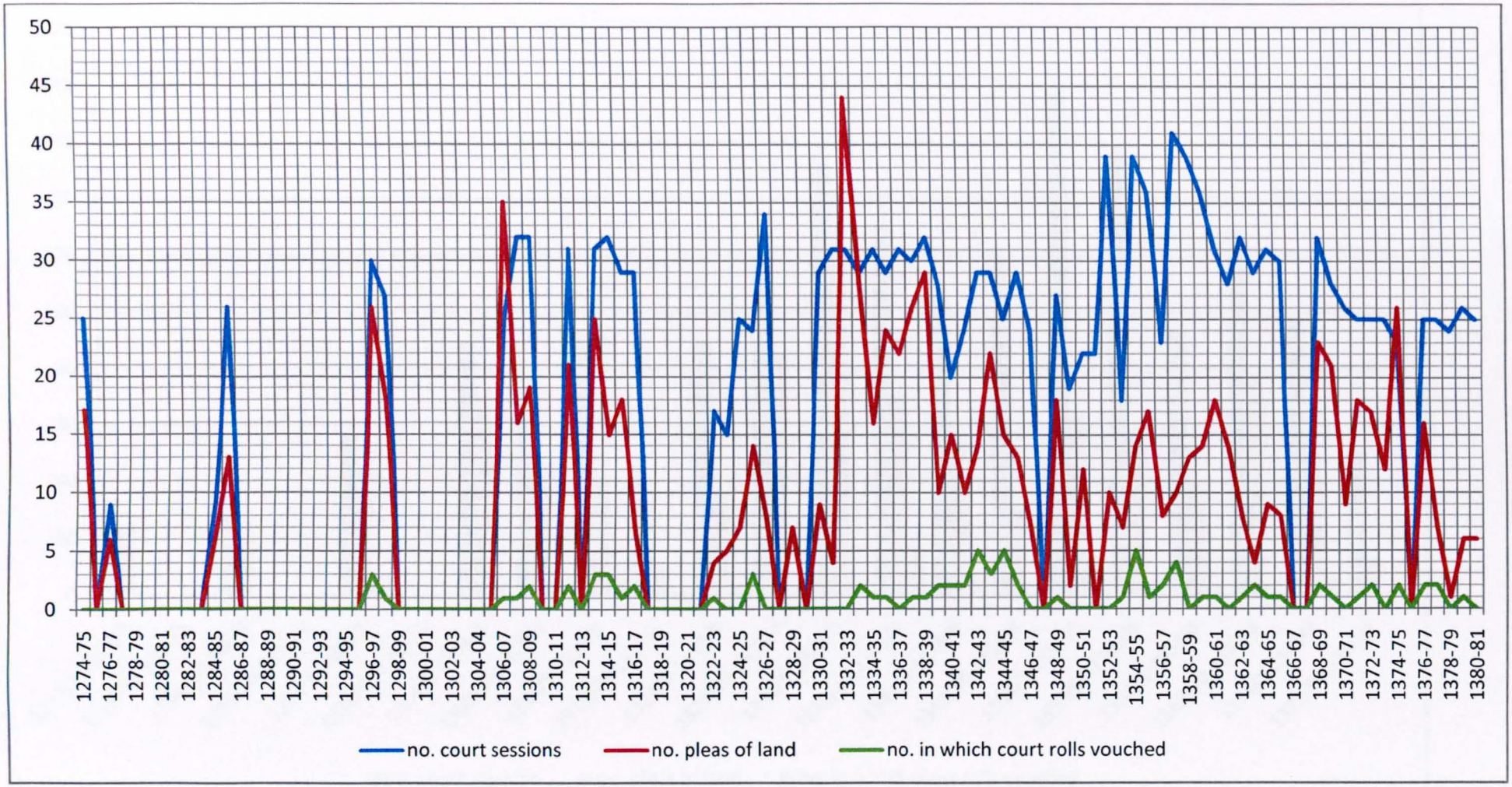

Figure 3.1: the number pleas of land and voucher of rolls at Wakefield in each court year

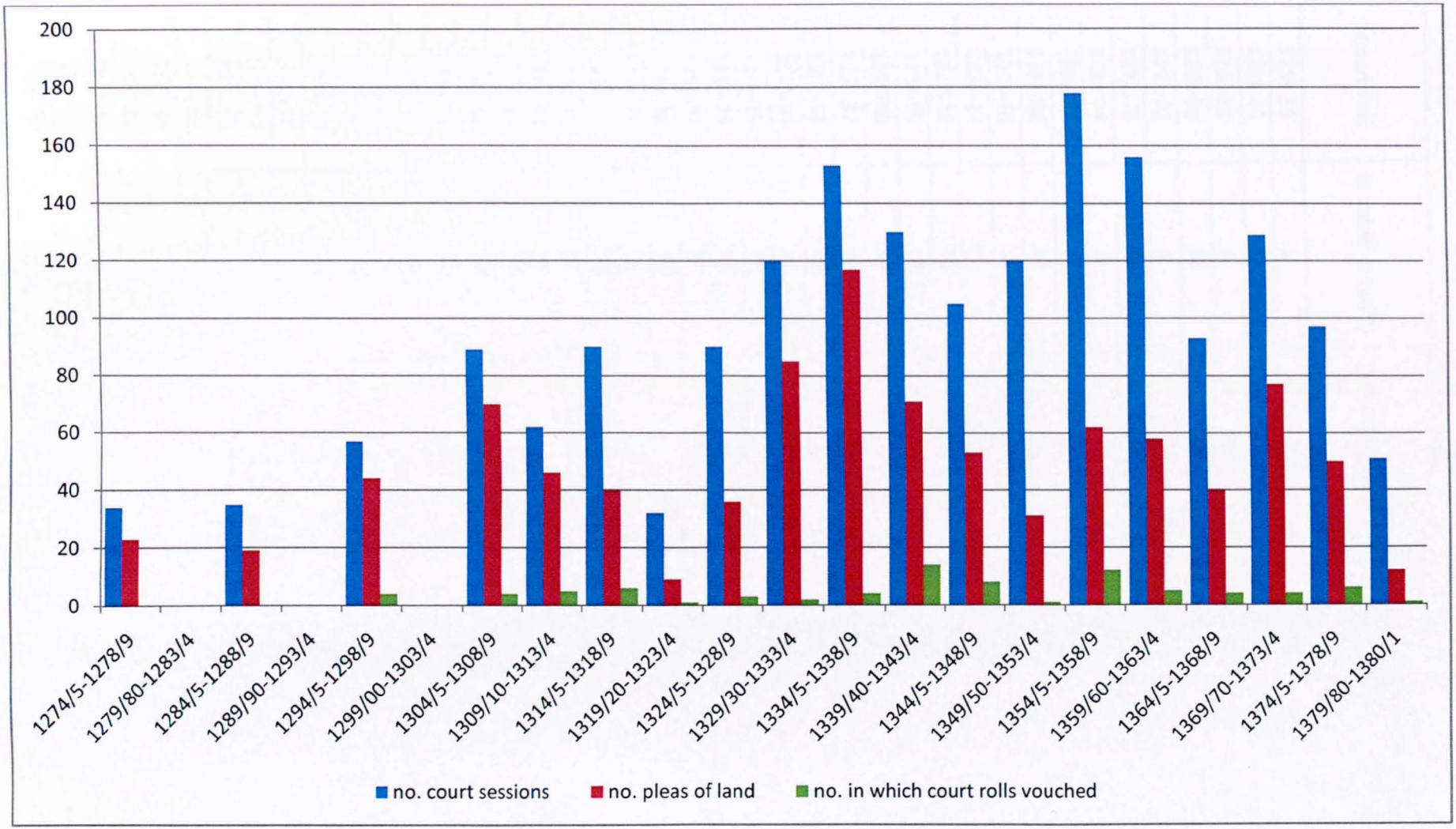

Figure 3.2: the number pleas of land and voucher of rolls at Wakefield in 5 year periods

The same analysis has been performed on the data collected for the pleas of land at Alrewas.

Court Year	Number of courts	No. Pleas of land	Average no. pleas of land per court	No. pleas of land in which rolls searched	Proportion of pleas in which rolls were searched (%)
1258-59	2	0	0.00	0	0
1259-60	12	4	0.33	0	0
1260-61	8	0	0.00	0	0
1268-69	12	0	0.00	0	0
1271-72	5	0	0.00	0	0
1272-73	12	4	0.33	0	0
1273-74	3	0	0.00	0	0
1286-87	13	2	0.15	0	0
1287-88	10	1	0.10	0	0
1315-16	2	0	0.00	0	0
1326-27	1	0	0.00	0	0
1327-28	18	4	0.22	1	25
1328-29	18	1	0.06	0	0
1329-30	18	1	0.06	0	0
1331-32	0	2	0.10	0	0
1332-33	20	3	0.17	0	0
1333-34	18	4	0.22	2	50
1334-35	18	3	0.17	1	33.3
1335-36	18	5	0.24	3	60
1336-37	21	15	0.83	3	20
1337-38	18	1	0.04	1	100
1338-39	23	0	0.00	0	0
1339-40	14	1	0.05	1	100
1340-41	22	3	0.19	1	33.3
1341-42	16	1	0.05	0	0
1342-43	20	1	0.10	0	0
1343-44	10	0	0.00	0	0
1344-45	21	10	0.50	2	20
1345-46	20	2	0.10	1	50
1346-47	20	1	0.05	1	100
1347-48	20	0	0.00	0	0
1348-49	20	1	0.06	0	0
1349-50	18	1	0.05	0	0
1350-51	21	0	0.00	0	0
1351-52	18	0	0.00	0	0
1352-53	23	0	0.00	0	0
1353-54	14	0	0.00	0	0
1354-55	19	1	0.06	0	0
1355-56	18	0	0.00	0	0
1356-57	21	1	0.08	0	0
1357-58	12	0	0.00	0	0

1358-59	19	0	0.00	0	0
1359-60	17	2	0.12	0	0
1360-61	17	1	0.06	0	0
1361-62	18	0	0.00	0	0
1362-63	22	0	0.00	0	0
1363-64	19	3	0.17	0	0
1364-65	18	2	0.11	0	0
1365-66	19	3	0.16	0	0
1366-67	19	0	0.00	0	0
1367-68	17	0	0.00	0	0
1368-69	21	0	0.00	0	0
1369-70	18	0	0.00	0	0
1370-71	16	2	0.12	0	0
1371-72	17	1	0.20	0	0
1372-73	5	3	0.15	0	0
1373-74	20	0	0.00	0	0
1374-75	18	0	0.00	0	0
1375-76	20	2	0.09	0	0
1376-77	22	2	0.12	0	0
1377-78	17	0	0.00	0	0
1378-79	12	0	0.00	0	0
1379-80	20	0	0.00	0	0
1380-81	0	0	0.00	0	0
Total	**1025**	**94**		**17**	

Table 3.2: pleas of land and voucher of rolls at Alrewas

The Alrewas rolls contain only a tenth of the amount of land litigation found for the same period in the Wakefield rolls, and although the overall proportion of cases in which the rolls were vouched is proportionally higher, the proportions for individual years are less illuminating. Although the rolls were vouched in 100% of the pleas in 1337/8, 1339/40 and 1346/7, there was only a single plea of land brought in each of those years. While the number of pleas in each court year at Wakefield regularly reached well over double figures (with a high of forty-four pleas in 1332/3), the highest number of pleas at Alrewas was only fifteen in 1336/7 and ten in 1344/5. There are, however, a further thirty-two entries in which a tenant paid for an inquest into whether they had the right to a particular property without evidence for the initiation of an actual plea, and for which the verdicts state whether the instigator had the right or not, but do not suggest that the land was therefore to be recovered from another party. While Poos and Bonfield have suggested that some courts did not

record pleas of land at all until it reached the stage of mesne process, this was not the case at Alrewas, where many pleas were recorded from their initiation.[271]

In a few instances, it is possible that these inquests were a precursor to a tenant obtaining the little writ of right close in order to bring an actual action. For example, in 1337, an inquest concluded that William Franceis junior had the right to two burgages which Richard Elyot held. The entry concluded that William should claim the land by writ or by plea if he wished.[272] On the other hand, when Hugh Halpeny paid 12d and gave two hens for an inquest as to whether he has right in a cottage in Ednighale which had been given in court to Alice de Wich for the term of her life, it was found on inspection of the rolls that he did not have right as Robert le Wolf had been lawfully able to sell to whomsoever he wished.[273]

It seems likely that the majority of these inquests were brought by heirs claiming entry into a vacant tenement. A simple instance of this is an entry in 1332, which states that 'Because it is found by inquest and by scrutiny of the rolls that John Odam has the right to three rodes after the death of Isolda daughter of William Odam, his aunt, he now takes seisin'.[274] The 6d or 12d typically demanded was perhaps considered a small price to pay to have their right proclaimed and recorded in court, and so to lessen the chances of later challenges for their land once they had paid the entry fine. There are also examples of inquests taken prior to the sale of land. In the record for the court held on Saturday after the Feast of the Circumcision, 1334, an entry describes how during the time of Edward I Godfrey son of Nicholas de Alrewas had given to William Gadelig, Hauwisa his wife and their heirs legally procreated of Hauwisa, a cottage with land in Alrewas and half an acre in Bagenhale. If Hauwisa died without heirs, it would revert to the right heirs of Godfrey. The entry goes on to say that this was found by the record of the rolls of the said court, 'and now Henry son of Godfrey, son and heir of Godfrey son of Nicholas, to whom the right of the reversion of the said tenements pertains following the form of the above said gift, comes into court and quitclaims it to John Kyng, servant of the forester of Alrewas Hay'.[275] In 1345, Godfrey Woderone paid 12d for a inquest into whether he was the next heir of his father by blood, and whether he could sell one cottage and one acre in Bagenhale. The jurors found that he was indeed the heir and could sell the cottage according to the custom of the manor 'just as the record of the feoffment of the said Godfrey witnesses, which was read in court'

[271] Poos & Bonfield, *Select Cases in Manorial Courts*, p.xl.
[272] St.R.O. D(W)0/3/21, m6d: Court held at Alrewas, Saturday after the feast of St Swythan, 11 Ed III (1337).
[273] St.R.O. D(W)0/3/20, m4d-5: Court held at Alrewas, Saturday after the feast of St Valentine, 10 Ed III (1336).
[274] St.R.O. D(W)0/3/16, m4d: Court held at Alrewas, Saturday before the feast of St Margaret, 7 Ed III (1333).
[275] St.R.O. D(W)0/3/18, m2d: Court held at Alrewas, Saturday the feast of the Circumcision, 7 Ed III (1334).

(*prout rotulus feoffamenti ipsius Galfridus testatur que lectus fuit in Curia*), but that he could not sell the acre of land because he held this in tail to himself and the heirs legitimately procreated of his body, as was also read out in court from the rolls (*Et dicit quod non potest dare nec vendere predictam acram terre in Bagynhal' eo quod idem Galfridus tenet dictam acram terre sibi et heredibus suis de corpore suo legitimate procreatis prout rotulus curie de feoffamento lectus testatur*).[276]

Since these inquisitions seem not to have been the results of pleas of land, the decision was been made to analyize and present this data separately (Table 3.3). The data has been combined in Figure 3.3, however, in order to show the overall extent of the use of the rolls as evidence for property rights, starting with the earliest voucher in the roll for 1327/8.

Court Year	Number of courts	No. inquisitions	Average no. inquisitions per court	No. inquisitions for which rolls searched	Proportion of inquisitions in which rolls were searched (%)
1258-59	2	0	0.00	0	0
1259-60	12	0	0.00	0	0
1260-61	8	0	0.00	0	0
1268-69	12	0	0.00	0	0
1271-72	5	0	0.00	0	0
1272-73	12	0	0.00	0	0
1273-74	3	0	0.00	0	0
1286-87	13	0	0.00	0	0
1287-88	10	0	0.00	0	0
1315-16	2	0	0.00	0	0
1326-27	1	0	0.00	0	0
1327-28	18	1	0.00	0	0
1328-29	18	0	0.00	0	0
1329-30	18	0	0.00	0	0
1330-31	0	0	0.00	0	0
1331-32	20	1	0.05	1	100
1332-33	18	2	0.11	2	100
1333-34	18	5	0.22	3	60
1334-35	18	2	0.06	1	50
1335-36	21	6	0.14	3	50
1336-37	18	6	0.28	3	50
1337-38	23	1	0.00	0	0

[276] St.R.O. D(W)0/3/31, m3d: Court held at Alrewas, Saturday after the feast of the Purification of Blessed Mary, 19 Ed III (1345).

1338-39	14	1	0.14	1	100
1339-40	22	1	0.00	0	0
1340-41	16	1	0.00	0	0
1341-42	20	0	0.00	0	0
1342-43	10	0	0.10	0	0
1343-44	21	0	0.00	0	0
1344-45	20	4	0.10	2	50
1345-46	20	1	0.00	0	0
1346-47	20	1	0.00	0	0
1347-48	20	0	0.00	0	0
1348-49	18	0	0.00	0	0
1349-50	21	0	0.00	0	0
1350-51	18	0	0.00	0	0
1351-52	23	0	0.00	0	0
1352-53	14	0	0.00	0	0
1353-54	19	0	0.00	0	0
1354-55	18	0	0.00	0	0
1355-56	21	0	0.00	0	0
1356-57	12	0	0.00	0	0
1357-58	19	0	0.00	0	0
1358-59	17	0	0.06	0	0
1359-60	17	0	0.00	0	0
1360-61	18	0	0.00	0	0
1361-62	22	0	0.00	0	0
1362-63	19	0	0.05	0	0
1363-64	18	0	0.11	0	0
1364-65	19	0	0.00	0	0
1365-66	19	0	0.05	0	0
1366-67	17	0	0.00	0	0
1367-68	21	0	0.00	0	0
1368-69	18	0	0.00	0	0
1369-70	16	0	0.06	0	0
1370-71	17	0	0.00	0	0
1371-72	5	0	0.00	0	0
1372-73	20	0	0.15	0	0
1373-74	18	0	0.00	0	0
1374-75	20	0	0.05	0	0
1375-76	22	0	0.00	0	0
1376-77	17	0	0.00	0	0
1377-78	12	0	0.00	0	0
1378-79	20	0	0.00	0	0
1379-80	0	0	0.00	0	0
1380-81	17	0	0.06	0	0
Total	**1025**	**32**		**16**	

Table 3.3: inquisitions into right and voucher of rolls at Alrewas

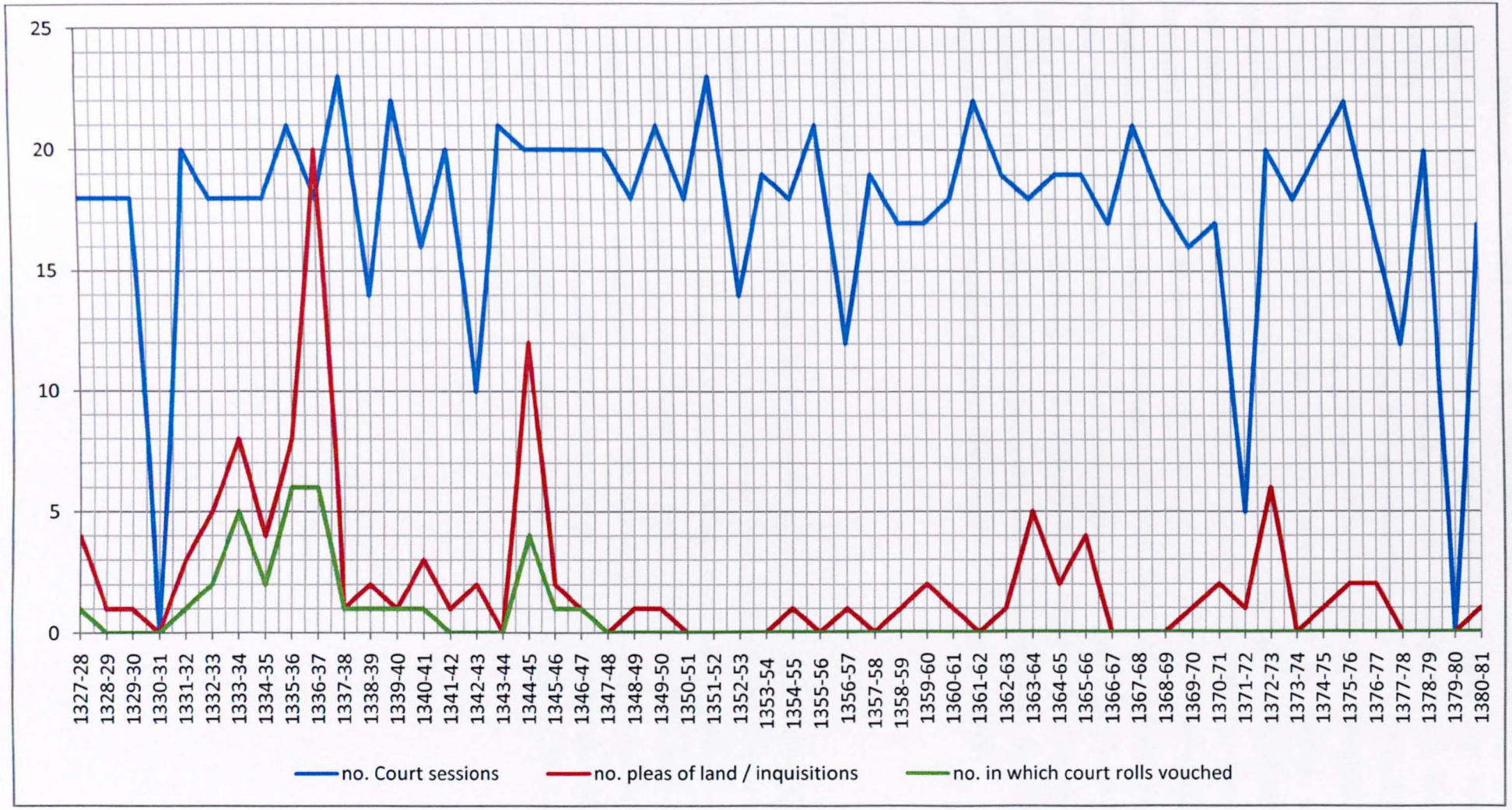

Figure 3.3: the number pleas of land and voucher of rolls at Alrewas in each court year

Between 1331/2 and 1346/7, the court rolls were vouched regularly in pleas of land and inquests into right. The total number of pleas and inquests still remain low, however, so that the percentages of pleas and inquests in which they were vouched are less illuminating than for Wakefield. In the years with the highest level of such entries - 1334/5, 1335/6, 1336/7 and 1344/5 - the rolls were vouched in 63%, 75%, 30% and 34% respectively. As at Wakefield, the graph shows that the voucher of the rolls followed the basic pattern of pleas and inquests. However vouchers ceased entirely at Alrewas from 1347/8. In the years following the Black Death there were few pleas and inquests, but we might expect to find some vouchers in the years from 1362/3 when numbers increased slightly. Does the data prove that the court rolls were no longer vouched? As ever, it is dangerous to assume that changes in the manor court rolls demonstrate changes in procedural practice rather than in recording practices. As has already been noted, the records of verdicts are often brief, giving little indication of the evidence on which they finally rested or the reasoning of the jurors. It is possible that the court clerks simply stopped noting when litigants called on the rolls or when the rolls shaped the final decision because it became the norm for them to be consulted.

The outcomes of pleas of land

Looking at the use of the rolls as a proportion of all pleas of land brought in the manor courts is arguably somewhat misleading. The various ways in which a case might be concluded have already been discussed, and the evidence from both Wakefield and Alrewas illustrates that the majority of cases did not culminate in the court's verdict, or even reach the stage at which the pleading of the parties was recorded (Tables 3.4 and 3.5). The outcomes of some pleas may be lost in gaps in the series of rolls, or on membranes which have become illegible through damage to the parchment or the fading of the ink, but this cannot account for the high number of pleas which simply disappear from the records without explanation.

Outcome of case	No. cases	Percentage (%)
Verdict given	365	38.7
Parties compromised	105	11.1
Plaintiff withdrew	84	8.9
Defendant admitted plea	51	5.4
Ended due to technicality	14	1.5
Wager of law	2	0.2
Case disappears	322	34.1
Total	943	

Table 3.4: outcomes of all pleas of land at Wakefield

Outcome of case	No. cases	Percentage (%)
Verdict given	25	26.6
Parties compromise	19	20.2
Plaintiff withdraws	4	4.3
Defendant admits plea	8	8.5
Technicality	0	0
Wager of law	0	0
Case disappears	38	40.4
Total	94	

Table 3.5: outcomes of all pleas of land at Alrewas

The court rolls were vouched in 84 of the 943 pleas of land at Wakefield, and in 17 of the 94 pleas at Alrewas. While not all of these cases came to a verdict, a higher proportion did, as shown in Tables 3.6 and 3.7.[277]

[277] The inquests in the Alrewas rolls have not been included in this analysis, since they could not be concluded in the same range of ways. Although seven of the thirty-two inquests disappeared without verdict (most likely due to missing rolls or membranes), the verdicts are present for twenty-six.

Outcome of case	No. cases	Percentage
Verdict given	47	56.0
Parties compromise	6	7.1
Plaintiff withdraws	6	7.1
Defendant admits plea	2	2.4
Technicality	0	0.0
Wager of law	0	0.0
Case disappears	23	27.3
Total	84	

Table 3.6: outcomes of pleas of land in which written evidence was cited at Wakefield

Outcome of case	No. cases	Percentage
Verdict given	10	58.8
Parties compromise	1	5.9
Plaintiff withdraws	0	0.0
Defendant admits plea	1	5.9
Technicality	0	0.0
Wager of law	0	0.0
Case disappears	5	29.4
Total	17	

Table 3.7: outcomes of pleas of land in which written evidence was cited at Alrewas

It is interesting that means of dispute resolution other than jury deliberation and verdict were available and were regularly used and, as suggested in the introduction to this chapter, it is possible that resolution by jury verdict was not the intention for many litigants. However, such cases often disappeared before the parties made their arguments in court (or reached a stage at which the clerk would record them), and so can tell us nothing about the relative use of written evidence and non-written evidence. A more representative picture therefore emerges if we look at those pleas of land which did reach a verdict and in which written evidence was cited in comparison to the total number in which a verdict was reached (Figures 3.4 and 3.5).

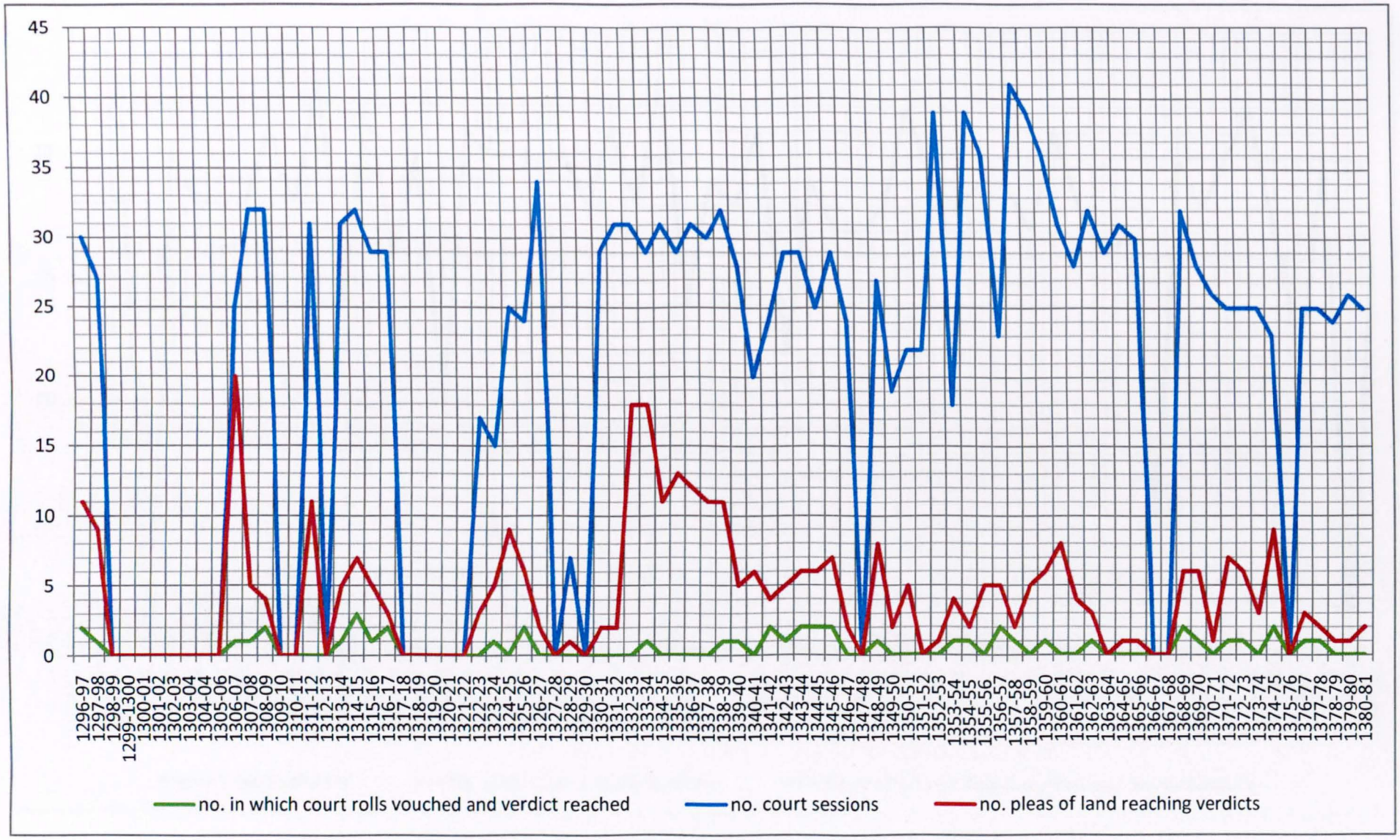

Figure 3.4: the number pleas of land and voucher of rolls at Wakefield in each court year (verdicts reached)

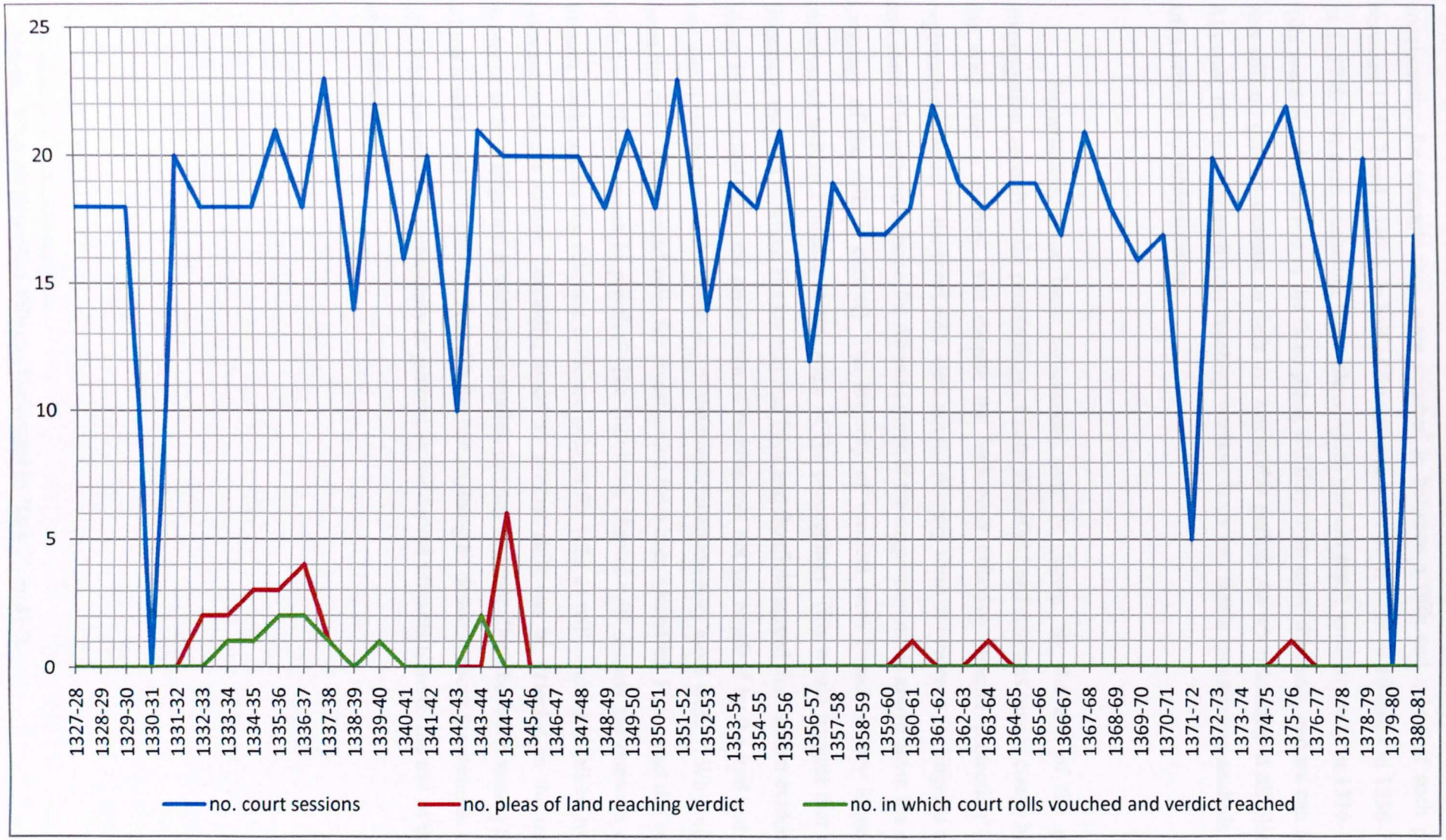

Figure 3.5: the number pleas of land and voucher of rolls at Alrewas in each court year (verdicts reached)

Figure 3.4 shows that at Wakefield there were periods in which the rolls were used fairly consistently: for example they were vouched in between a fifth and a half of such pleas of land between 1341-2 and 1345-6, in half of the cases in 1354-5, in 4 out of 10 cases in 1356-7, and in half in 1357-8. But even excluding those pleas which did not reach verdicts, only in 1316-17, when the rolls were vouched in two of the three pleas, did they form more than half, and we can see that there was still no general increase in their use across this period. As when looking at all pleas of land at Alrewas, the number each year reaching verdicts is so low that a quantitative analysis such as this adds little to our understanding.

Nonetheless, some basic conclusions may be drawn. By the end of the period under investigation, records of the proceedings of both Wakefield and Alrewas manor courts had been kept for well over a century. Yet despite the 'enhanced effective tenurial protection' that written registration offered,[278] the court rolls were not the primary form of evidence for litigants at Wakefield, and cannot be proved to be so for Alrewas (even if the suggestion made above about the change in the language of the rolls is correct). The majority of verdicts were based on jury inquests, with no mention of written evidence at any stage of the proceedings. This would suggest that even in land litigation, the area in which Beckerman and Poos and Bonfield agreed that written evidence was most likely to be called upon, the production of records was not yet required by the lord and his officials, nor was it entrenched in the mentality of the manorial community more widely. Why might this have been the case? Three broad areas for investigation have been identified. First, what did voucher of the rolls by a litigant mean in practice? The following chapter will discuss the question of whether a litigant could access the relevant evidence held in the rolls at will, and what failure to produce the relevant evidence meant. Secondly, since no general shift can be detected in the use of written evidence in land litigation in these case studies, can any commonalities be found among those cases in which it was cited (Chapter 5)? And thirdly, can anything be deduced about the attitudes of the court's officials, the manorial community in general, or individual litigants towards the use of the court rolls as evidence?

[278] Hyams, 'What did Edwardian Villagers Understand by 'Law'?', pp.81-2.

CHAPTER 4

What did 'voucher of the court rolls' mean in practice?

A variety of terms were employed to describe voucher of the court rolls, possibly reflecting the choice of the clerk rather than the words of the litigant. In the rolls of Wakefield and Alrewas, and in the Barnet court book, we typically find *vocat recordum rotulorum*, *vocavit rotulos Curie ad Warrantum*, *petit recordum rotuli*, *petit verificare per recordum rotulorum* or variations on these phrases. On two occasions in the Wakefield rolls, the defendant is said to 'put himself on the court rolls and asked to scrutinize the rolls' (*ponit se super rotulos Curie et petit scrutari rotulos*).[279] The first of these concludes with *Ideo scrutentur rotuli x annis elaspsis.* The phrases *rotuli scrutantur* or *scrutantur rotuli* and *rotuli scrutentur* or *scrutentur rotuli* ('the rolls are scrutinized' / 'the rolls should be scrutinized') appear in twelve cases, but the passivity sheds no light on who was to conduct the scrutiny.[280] In other cases, however, the phrases used suggest that the onus for producing the relevant record lay with the parties who vouched them. In some instances, it was recorded that they 'should have' the record at the next court (*habeat / habeant recordum*). In others, the party or parties were given a day to have or to show the record, or to scrutinize the rolls (*ad habendum recordum*, *ad ostendendum recordum* and *ad scrutandos rotulos*), or were simply ordered to scrutinize the rolls (for example, *Preceptum est dicto Petro scrutari Rotulos*[281]). Indeed, particularly in the Barnet court book, we find combinations of several of these phrases. For example, in a plea of land between Stephen Nichole and John Saly, John 'sought verification by the rolls', and therefore 'they should be searched'.[282] At the following court he was 'given a day to have his record',[283] then 'a day to scrutinize the rolls',[284] and then was told that 'he should have his record at the next court'.[285]

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[279] Y.A.S. MD225/1/100, m14d: Court held at Wakefield, Friday 24th August, 49 Ed III (1374); Y.A.S. MD225/1/105, m5: Court held at Wakefield, Friday 13th January 3 R II (1379).

[280] In classical Latin scrutor is a deponent verb, and is given as such by Eileen Gooder. However, R.E. Latham gives it as an active verb, scruto, and it seems clear that the clerks of the court intended it to have a passive sense in these cases due to their consistent use of the plural verb ending even in cases in which only one party had vouched the rolls, which suggests that the subject of the verb is *rotuli.* Eileen A. Gooder, *Latin for Local History. An Introduction*, 2nd edn (London: Longman, 1978); R.E. Latham, *Revised Medieval Latin Word-List from British and Irish Sources with Supplement* (London: Oxford University Press for the British Academy, 1980).

[281] Y.A.S. MD225/1/67, m11: Court held at Wakefield, Friday before the feast of St Margaret 16 Ed III (1341).

[282] B.L. Add MS 40167, f.35: Halmote held at Barnet, Thursday before the feast of the Translation of St Thomas, 2 Ed II Thomas (1309).

[283] B.L. Add MS 40167, f36: Halmote held at Barnet, Tuesday the feast of St Dunstan, 3 Ed II (1310).

[284] B.L. Add MS 40167, f36d: Halmote held at Barnet, Tuesday after the feast of St Clemens, 3 Ed II (1309).

There is very little evidence in the records of the three manors, however, to allow us to be certain of how that scrutiny worked in practice.[286] We do know that the court rolls from the manors of St Albans Abbey were kept in the abbey's stables. Ada Levett suggested that when parties were summoned before the court at St Albans held either *sub fraxino* or *ad stabulum*, 'both entries usually indicate that reference to the court rolls was desirable, and since those were kept in the stable, that explains why the halmote 'came to the mountain'.[287] Summons *ad stabulum* do not appear in the Barnet court book, but many of the cases which were begun at the court in Barnet, and in which the rolls were cited, were summoned to St Albans to hear judgement or, in two cases, 'to hear the record of the rolls' (*ad audiendum recordum rotuli*).

The Alrewas court rolls too seem to have been at hand. In 1334, Henry Averel senior came into the court to claim the moiety of a cottage following the death of Ralph Averel, and paid 4d for an inquest into whether he was his nearest heir. Henry Averel junior, Henry's step-brother from Ralph's second marriage, also claimed the right to the moiety, saying that Ralph had given it to his second wife, Emma, and the heirs legitimately procreated from their marriage. Both he and Henry senior sought verification by inquest and by the court rolls. The entry goes on to note that the rolls of the 24th year of Edward I (1295/6) were searched 'immediately', and the verdict was given for Henry junior.[288] Poos and Bonfield identified a plea of covenant dating to October 1364 in the manor court rolls of Methley (also in West Yorkshire), in which the rolls were searched in the court itself. John Halyman and John Cok brought a plea of covenant against Hugh Couper and his wife Ellen, with both sides vouching the rolls. The rolls, searched in open court (*scrutatis rotulis ibidem in plena curia*) proved the defendants' version of events. The roll in question was therefore rather more recent than that scrutinized at Alrewas, and it is possible that the clerk at Methley could have brought the most recent rolls to the court with him. It is highly unlikely that over thirty years worth of rolls were taken to Alrewas court: the court rolls were presumably either held at the site of the court, or the 1295/6 roll had been brought to the session for the purposes of that particular case. Alrewas was a small manor and the courts were always held at Alrewas itself, so it is likely that the records were stored either there or in the lord's property on the neighbouring manor of Wychnor, where the Somervilles resided.

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[285] B.L. Add MS 40167, f37: Halmote held at Barnet, Thursday after the feast of St Fabian & St Sebastian, 4 Ed II (1311).

[286] This is not unusual. As Poos and Bonfield note, 'there are few instances in which one can know much about the physical circumstances of manorial court archive-keeping'. Poos & Bonfield, *Select Cases in Manorial Courts*, p.lxvii.

[287] Levett, *Studies in Manorial History*, p. 150.

[288] St.R.O. D(W)0/3/18, m5: Court held at Alrewas, Saturday after the feast of Augustine of the English 8 Ed III, (1334), *Statim vero rotuli curie scrutantur de anno regni regis Edwardi avi domini Regis nunc xxiiii et testificantur quod dictus Henricus Averel junior de dicta Emma procreatus habet ius omnino.*

By contrast, it appears that the court rolls of Wakefield manor were not kept at or near the site of the court itself. In one case, the plaintiff said that he was unable to show written evidence of his right in some property 'because the rolls remained with the steward of the court' (*dicit quod rotuli Curie... remanent penes senescallum Curie*[289]), although there is no indication as to exactly where the steward (or his clerk) kept them in this period. The entry goes on to note that the plaintiff *petit quod rotuli scrutentur Ideo scrutentur rotuli contra proxima.* It is unclear whether he would be given access to the rolls, or whether he could be present when they were scrutinized. In a case heard at Wakefield in 1376, the defendants claimed that they had paid the clerks for the scrutiny of the rolls but that they had not been scrutinized thus far, and they sought an adjournment of the case until the next court and in the meantime for the rolls to be searched (*et ipsi satisfecerunt clericos pro scrutacione eorundem rotulorum qui non scrutantur adhuc ad plenum unde petunt respectum usque proximam et quod interim scrutentur rotuli*).[290] It would seem likely that, wherever the rolls were held, they would be searched in advance of a court session to avoid delays during the day's proceedings, although this is the only entry in the Wakefield rolls (and there are a further two in the Alrewas rolls[291]) in which it was actually recorded that the case was adjourned and that the rolls were to be scrutinized 'in the meantime'. Moreover, this is the only case which makes reference to the role of the clerks in scrutinizing the court records for evidence relating to inter-tenant litigation. It is possible that this was because the Wakefield tenants did not have physical access to the rolls at Wakefield, but even at St Albans where tenants might be summoned to the stables, it is doubtful whether the majority of tenants would have the knowledge and skills to use the rolls, with their heavily abbreviated Latin, by themselves. The assistance of a literate member of the community would have been necessary, if not that of the clerks who had written the rolls in the first place. Ada Elizabeth Levett, in her study of the St Albans estates, came to this conclusion, arguing that litigants asked for the rolls to be searched on their behalf.[292]

The level of precision with which a litigant would have to identify where a record might be found in order to be able to successfully use the rolls as evidence is unclear. Courts were held every three weeks at Wakefield and twice yearly at the manor's outlying courts at Halifax, Birton, and Rastrick or Brighouse, as well as biannual tourns held at each of the four townships, resulting in rolls

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[289] Y.A.S. MD225/1/98, m11d: Court at Wakefield, Friday 6th May, 47 Ed III (1373). This case is described in more detail on pp.106-7, below.

[290] Y.A.S. MD225/1/102, m12: Court at Wakefield, Friday 22nd August, 1 R II (1376).

[291] St.R.O. D(W)0/3/20, m7d: Court held at Alrewas, Saturday after the feast of St Peter ad Vincula, 10 Ed III (1336), plea of land between William Elyot and John le Kyng; St.R.O. D(W)0/3/19, m7: Court held at Alrewas, Saturday after the feast of the Decollation of John the Baptist, 9 Ed III (1335), plea of trespass between Walter de Orby and Thomas le Clerk.

[292] Levett, *Studies in Manorial History*, pp.149-150.

for each year of up to twenty-five membranes. But the exact court in which the transfer of land in question was made is only given in six pleas of land. In a further six the regnal year of the record is given, and in one the year of the stewardship, while in three cases a litigant states how many years have passed since the transaction was made. More typically, (in thirty of the eighty-five cases in which the rolls are vouched), the steward at the time of the original transfer is given. This, however, does not always narrow the parameters of the search significantly – John of Doncaster, for example, appears as steward between 1296 and 1298, between 1306 and 1312, and again in 1323. In the records for thirty-nine of the Wakefield pleas, no time frame at all is stated. In the Barnet court book, litigants most typically referred to the cellarer under whom a transfer of land or past case had occurred (six cases), with one reference to a regnal year, and one to the precise year of a cellarer. Ten cases in which the rolls were cited give no indication of the date. Of the seventeen pleas of land in the Alrewas rolls, regnal years are given in two and the remainder give no date.

The fact that at Wakefield a verdict was still reached with reference to the rolls in five of the cases in which only the steward was cited, and in seven in which no time frame was given, suggests that the lack of detail given in the records of pleading might conceal the tenants' actual knowledge of where in the rolls the relevant evidence would be found. This is evident in the case of William Lee versus John Tomson of Saltonstall, in which the clerk merely recorded that John had called on the record of the rolls 'of a certain year' in which a certain Richard son of Richard de Saltonstall had been grave in order to prove that an acre of land had been surrendered to him, for which year the rolls were scrutinized and no such surrender was found.[293] The task of searching all the rolls of a particular stewardship or cellarership, or without having any idea of the date of the record, would have been great. Barbara Harvey, discussing the 'diplomatic innovation' that was the copy, argued that the monks of Westminster Abbey called on their tenants to show their copies not only to prove their title, but also because it 'saved them a tedious hunt through the manorial archives in search of the entry in question'.[294]

Were tenants issued with copies from the court rolls in the fourteenth century?

Studies of manor court procedure and of the peasant land market have touched upon the emergence of the copy, and its use in inter-tenant land litigation. Harvey found that on some of Westminster Abbey's manors, tenants who claimed to hold by copy had to produce it for inspection.

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[293] Y.A.S. MD225//1/83/2, m4: Court held at Wakefield, Thursday 22nd March, 32 Ed III (1357). *et inde vocat recordum Rotulorum de quodam anno ... quo anno Rotuli Scrutati fuerunt.*

[294] Harvey, *Westminster Abbey and its Estates in the Middle Ages*, p.285.

She noted that at Great Amwell, following the destruction of its rolls in 1381, the terms of a twenty-five year lease were confirmed by reference to a copy *in ista bagga contenta*, suggesting that the Abbey kept their own copies in 'bags' or files.[295] Rosamond Faith, in her study of the peasant land market in Berkshire, argued that copyhold was established on the lay manor of South Moreton by 1361, and was the predominant form of tenure there by the 1430s.[296] Although she found no mention of copyhold in the fourteenth century rolls of the manor of Woolstone, held by the cathedral priory of St Swithin's, Winchester, Faith did find an example of a tenant in 1372 producing a copy of the court entry of his admittance to a holding, and of another case in which the court ordered a tenant to produce, 'and presumably expected him to possess', a record of his tenure.[297] Andrew Jones found that on the Ramsey Abbey manors in Bedfordshire, lease copyholds emerged in the 1370s, with half-virgaters on the manor of Willington, *nuper tenentes in bondagio*, holding by copyhold for years or life by 1383. '[C]opyhold of inheritance' appeared on the Ramsey manors at the end of the fourteenth and beginning of the fifteenth centuries.[298] P.L. Larson makes the strongest claim for the general issuing of copies to customary tenants in his study of the Durham estates, writing that '[t]he lands were essentially copyhold, and the numerous references to tenants' *copia* or *recordum* are sufficient to conclude that each tenant received a copy of the terms when they took up the land' and going on to suggest that '[e]very tenant must have received a copy, as the full terms and conditions of their leases are not spelled out in the halmote books. It would seem that this practice had its origins before the Black Death, but this is indeterminable.'[299]

Beckerman argued that 'the copy of court roll governed possession of and entry to peasant holdings on most manors' by the later fourteenth century, and cited evidence from the records of both Wakefield and St Albans for the development of this in the early fourteenth century.[300] In noting the early existence of copies on the manors of St Albans Abbey, Beckerman was following the findings of Levett, who argued that

> 'from an early period in the fourteenth century the tenant who was ordered to "have his record" would appear with his "copy of Court Roll" to be compared if necessary with the original... Litigants, it would seem, ask that the rolls kept in the great stables at St Albans may

[295] Ibid, p.285
[296] Rosamond Faith, 'Berkshire: Fourteenth and Fifteenth Centuries', in *The Peasant Land Market in Medieval England*, ed. P.D.A. Harvey (Oxford: C.P., 1984), pp.137-8.
[297] Ibid, p.130.
[298] Andrew Jones, 'Bedfordshire: Fifteenth Century', in *The Peasant Land Market in Medieval England*, ed. P.D.A. Harvey (Oxford: Clarendon Press, 1984), p.203, pp.192-3.
[299] P.L. Larson, *Conflict and Compromise in the Late Medieval Countryside: Lords and Peasants in Durham, 1349-1400* (New York: Routledge, 2006), p.195 and p.262, n.20.
[300] Beckerman, 'Procedural Innovation and Institutional Change in Medieval English Manor Courts', p.225.

be searched on their behalf and produce their versions of the record, true or false, in court. The word 'copy' – *profert copiam* – first occurs in Winslow in 1332, when an entry from the roll of 15 Edward II is cited *verbatim* to show that the case had been decided in favour of the litigants ten years previously.'[301]

The question of whether or not tenants typically received a copy of the court rolls entry when they entered customary land is an important one for our understanding of the extent of written culture on these manors in this period. As previously noted some (although by no means all) cases include phrases which suggest that a litigant was expected to produce written evidence in court: *habeat recordum*, and *datus est diem ad habendum recordum* or *ad ostendendum recordum*. This is the case in the earliest two of the four examples from Wakefield cited by Beckerman. Robert Gerbode and his brother John Schirlock, sued in separate cases by Alice widow of Gerbode de Alverthorp for her dower, claimed that Gerbode had only held life interests in the lands in question and called the rolls to witness. In both, it was recorded that the defendant *habeat hic recordum predictorum Rotulorum ad proximam Curiam*. Lister, in his edition of the roll, translated this as 'he is to have an extract of the rolls'; Beckerman as 'to furnish extracts from the rolls'.[302] Beckerman interpreted 'to have a record' as to appear in court with a copy, as did Levett, but this is arguably to stretch the meaning of *habeat* too far. As with the majority of cases in which the rolls were vouched in this period, there is no indication of how and where that written evidence was actually produced. The verdicts of these two cases are simply introduced, again typically, by *Compertum est per recordum Rotulorum.*

There are a small number of cases in the records of the three manors which appear to show the active production of records by litigants in court. The clearest of Beckerman's four examples of copies is a case from 1317, in which Adam de Bothes sued John de Whithill for seven and a half acres and one rood of land in Northourum as his inheritance after the death of his father Henry. John replied that Henry had left the land waste and that Peter de Lount, then steward, had granted it to him and his heirs. He then produced a *billa*, which said that at the court held at Wakefield before Peter de Lount on Friday after the feast of St James in the 24th year of the reign of Edward I, John took half an oxgang and paid a fine of 6d.[303] The original roll, from 1295/6, is no longer extant, but in the

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[301] Levett, *Studies in Manorial History*, pp. 139, 149-150.

[302] Y.A.S. MD225/1/41, m15d: Court held at Wakefield, Friday the feast of St James the Apostle, 9 Ed II (1315). Translated by Lister, *The Court Rolls of the Manor of Wakefield, Vol. III, 1313 to 1316 & 1286*, p.149; Beckerman, 'Procedural Innovation and Institutional Change in Medieval English Manor Courts', p.225.

[303] B.L. Add. Ch. 54408, m10d: Court held at Wakefield, Friday the morrow of the Ascension, 10 Ed II (1317). *Et inde ostendit quamdam Billam que dicit quod ad Curiam tentam apud Wak' coram Petri del Lount die veneris proximam post festum sancti Jacobi apostoli Anno regni regis Edwardi patris Regis Edwardi nunc xxiiij*

following court, Adam was amerced because 'it was found by the rolls of Peter de Lount' (*Quia compertum est per rotulos Petri del Lount*) that Henry had indeed left the land waste and the steward had given it to John.[304] It seems clear that in this case, the defendant produced a copy of his grant which was enrolled on the reverse of the court roll, and by the next court, it had been verified by checking it against the original record.

There is one further case from the Wakefield rolls which is of interest in this matter, although the outcome of the case falls at the bottom of a membrane so damaged as to render it largely illegible. In 1346, Robert son of Thomas Dorkying offered himself against John son of John de Osset for unjustly deforcing him from a messuage and two bovates of land in Sandale, of which Thomas had been seised by fee and demesne according to the custom of the manor. Robert claimed that the right in the tenements ought to have descended to him as the next blood relative of Thomas, and that John had no entry except after a disseisin by Agnes Jangill. John replied that Robert could claim no right in the tenement, because at the court held the morrow of the feast of St Andrew, 29 Ed I (1300), before John de Doncaster, Agnes Jangill (whose estate John now had) had impleaded Thomas for the tenement, and at that court it was found that she had the greater right (*maior iure*) and so recovered. John showed to the court a transcript of an enrolment under the steward's seal the record of the roll from the said time (*unde ostendit Curie Transcriptum irrotulamenti inde sub sigillo dicti Senescalli recordi Rotuli de tempore predicto*) and sought judgement. Robert denied that Agnes had recovered the land, maintaining that she had disseised his father. The court rolls were searched through, but because the roll for that year could not be found, an inquisition was taken by the five graveships of the manor with the consent of the two parties. From this point, virtually none of the entry is legible, although the final words appears to be *per falsam clamam suam in misericordia*, suggesting that Robert had lost his case.[305]

John must have possessed a transcript of the enrolment since at the time of the case the rolls were unavailable to check it against. The copy that was produced was the verdict of the previous case, rather than simply being of his admittance to the property. Perhaps Agnes had obtained a copy of the case as evidence that the court had decided that she had the greater right, or perhaps John had obtained the copy when he took the property, knowing that it had previously been the subject of

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in dorso Rotuli cepit Johannes filius Ade de Northourum dimidiam Bovatam terre quam Henricus filius Godith reliquit vastam super Comitem et finem pro ingressu vjd.

[304] Ibid, m11: Court held at Wakefield, Friday, the morrow of the feast of Augustine, 10 Ed II (1317).

[305] Y.A.S. MD225/1/71, m10: Court held at Wakefield, Friday 21st April, 20 Ed III (1346).

dispute. Unfortunately, the roll for 1300/1 does not survive, and no other entry has been found in the rolls to suggest when the transcript had been made.

The term *copia* does not appear in the Wakefield rolls until 1374, and copies were recorded as being offered only three times before 1381. In the earliest of these, William son of Richard de Lupsede sued John son of Richard de Lupsede for four acres in Thornes.[306] William claimed that Richard had given it to another of his sons, Robert, and the heirs of his body, with remainder to William if Robert died without heirs. Robert had died without heirs, and William *inde tendit sectam et ostendit copiam rotuli Curie*. John defended himself by claiming that the four acres in question were not given in this form, and sought an inquisition. The record shown by William was not automatically accepted as proof of his claim, but the ensuing inquisition found that the land which he sought was indeed the land granted by Richard to Robert, and William recovered his land.[307] In the Alrewas court rolls, the term appears once prior to 1381, in a case of 1345 in which Agnes widow of Henry Bernard sought from Alice Adam a third of one acre of pasture in Redychemore. Alice replied that Henry was never seised of the land, and sought an inquisition. At the following court, Agnes brought a copy of the court roll from the 9th year of Edward II, which bore witness to Henry's seisin, and which Alice could not deny (*Et modo dicta Agnes tulit copiam Rotuli Curie de Anno Regni Edwardi Patris ix testantem seisinam ipsius Henrici unde dicta Alicia non potest dedicere*). Agnes therefore recovered her dower in the pasture.[308]

Despite Levett's findings for the St Albans Abbey manors, there is no mention of copies in the Barnet court book before 1381, although there are three cases in which a litigant *optulit* or *protulit recordum*, and one in which the plaintiff offered himself against the defendant *cum recordo rotulorum*. Three of these cases involved the same plaintiff, Stephen le Cok, who brought a series of pleas against tenants to whom he claimed his mother Joanna had alienated land *contra formam donationis*, having acquired the land jointly with her husband, Ralph, to hold to themselves and their legitimate heirs. In one of these cases the defendant, Thomas le Hert, called on the record of the Michaelmas court, 18 Edward II, in cellarership of Robert De Saunford, 'and he produced the record and showed' (*protulit recordum et ostendit*) that Joanna and Ralph had acquired the messuage and

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[306] Y.A.S. MD225/1/100, m.14: Court held at Wakefield, Friday 3rd August, 49 Ed III (1374).

[307] The two other cases in which a *copia* was offered are Y.A.S. MD225/1/102, m11d: Court held at Wakefield, Friday 24th July, 1 R II (1377), Emma de Bateley versus William de Scolecroft, Robert de Freiston and John Malinson, and Y.A.S. MD225/1/103, m3, Court held at Wakefield, Friday 6th November, 1 R II (1377), John Hirst junior and Alice his wife versus Richard Lilte. These are discussed in further detail on pp.107-8, below.

[308] St.R.O. D(W)0/3/31, m6d: Court held at Alrewas, Saturday the vigil of the feast of St Philip & St James, 19 Ed III, (1345).

curtilage in question jointly, together with other lands. Joanna, with her second husband John de Moton surrendered the property to John Pritel, who surrendered it to William Roger, who in turn surrendered it to the defendant 'as is shown by the rolls of the 5th year of Nicholas Flamstead'.[309] The record produced by Thomas appears to have been that of the original acquisition in the time of Robert De Saunford. Stephen's case was based on the terms of that acquisition, and whether his mother's alienation had gone against them (and as the verdict was given for Thomas, it clearly had not in this instance). But it seems that other records were also checked to verify Thomas' own admittance to the land, which do not appear to have vouched or produced in open court.

While it is always problematic to argue from the silence in records, there is insufficient evidence in the pre-1381 court rolls of Wakefield and Alrewas and the Barnet court book to suggest that it was common practice for tenants to be issued with copies of their admittances to customary land in this period or that tenants were expected by the courts to possess and produce their own record of their tenure, as Faith argued for Woolstone. Rather than having the rolls themselves scrutinized in order to verify a copy, is seems equally possible that they provided the sole form of written evidence for many litigants in this period. Certainly copyhold as a form of tenure seems not to have emerged in most places until the late fourteenth and fifteenth centuries. Maitland found that on the manor of Willburton in Cambridgeshire, part of the bishopric of Ely, the typical form of a grant of customary land during the reign of Richard II was *tenendum* X *et* Y *et heredibus et assignatis eorundem per virgam et ad voluntatem domini secundum consuetudinem manerii faciendo servicia antiqua pro predicto integro cotagio.* Only from the mid-fifteenth century did it become common to describe customary tenure as being *per copiam.*[310]

There are, however, a small number of other entries in the records of all three manors which suggest that tenants could obtain copies of entries in the rolls, without the term *copia* being used. In the Alrewas roll of 1329/30, following a lengthy record of the transfer of a one messuage and one virgate from Adam son of William Franceis to Nicholas de Tymmor and Alice Fox to hold for life, the clerk noted that Nicholas and Alice paid 3s for enrolment, and were to have a transcript of this enrolment.[311] At the court at Martinmas in 1336, Thomas le Clerk, a sokeman, was admitted to two pieces of land; first, one acre surrendered to his use by William Woderone to hold following the

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[309] B.L. Add MS 40167, f70: Halmote held at Barnet, Monday the vigil of the feast of St Martin, 17 Ed III (1344).

[310] F.W. Maitland, 'History of a Cambridgeshire Manor', *English Historical Review*, 9 (July, 1894), p.438.

[311] St.R.O. D(W)0/3/13, m10: Court held at Alrewas, Saturday the feast of Bishop Dunstan, 4 Ed III (1330). *Et dicti Nicholas et Alice dant per irrotulamentum iijs Et habent ex utraque parte transcriptum istius irrotulamenti.*

custom of the manor, and secondly, one strip of land leased to him by the freeman Walter de Orby for a term of twenty-two years. At the end of the lease, it was noted that Thomas gave one hen to the lord to have a record of the court (*Et dictus Thomas dat domino pro recordo Curie habendo j gallinam*).[312] Written beneath the two entries is *Istos duos fines scripsit Johannes de Canewell.* It is unclear why Thomas obtained a record of this particular lease. Earlier in the same year, Walter had leased to Thomas the moiety of an acre for a term of twenty years to begin after the death of Hauwisa de Orby, but there is no mention of a transcript being produced in that case.

There are three entries prior to 1381 in the Barnet court book in which payments were made *pro habendo recordo.* In the most straightforward of these, Richard Sali paid 2s to have a record concerning the grant of Katherine wife of John Bretun of six pence of annual rent.[313] In 1248, at the court held on the feast of St Faith, Richard Doget paid 3s for the judgement of the jury as to his right in land held by William le Ailward, but the jurors had said that the Cellarer wished that he should not have the land because he had other.[314] In the record of the following Michaelmas court, there is a memorandum that William should have and hold this land in peace until John, eldest son of Richard, should come of age, namely for eight years from the Sunday after Michaelmas in the 33rd year of King Henry III.[315] Richard paid half a mark for the confirmation of this agreement, and then at the following court paid a further 12d 'to have the record of 12 men concerning which certain land which he sought against William Aileward'.[316] The judgement given here, in compliance with the wishes of the Cellarer, is unique at Barnet in this period, and perhaps helps to explain why Richard should wish to have his own copy of it. The fact that the land was to revert to Richard's son John on his coming of age suggests that Richard did indeed have the greater right to the land, whatever William's claim was (there are no details of how or when he had entered into it). Richard may have felt that possession of a record of the ruling might help to ensure that the reversion to John occurred in eight years time without further dispute, and would protect his son's interests should he himself not live that long.

In these examples from Barnet and Alrewas, the records or transcripts appear to have been purchased at the time of the transaction or case. In the final entry in Barnet court book, however,

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[312] St.R.O. D(W)0/3/21, m2: Court held at Alrewas, Saturday after Martin, 10 Ed III (1336).

[313] B.L. Add MS 40167, f11: Halmote held at Barnet, Friday after the Translation of St Thomas, 51 H III (1267).

[314] B.L. Add MS 40167, f2: Barnet, Halmote held at Barnet, feast of St Faith, 32 H III (1248). *Duodecim dicunt quod dominus Celerarius voluit quod dictus Ricardus non habebit dictam terram quia habet aliam.*

[315] B.L. Add MS 40167, f2d: Halmote held at Barnet, Sunday after Michaelmas, 33 H III (1249). *Memorandum quod Willelmus Ailward habebit et tenebit totam terram in pace quam Ricardus Doget prius exigebat ut de iure suo usque ad etatem Johannis primogeniti filii predicti Ricardi scilicet a die domini proxima post festum sancti Michaelis Anno Regni Regis Henrici xxxiij usque ad finem octo annorum.*

[316] B.L. Add MS 40167, f2d: Barnet, Halmote held at Barnet, feast of St Peter, 33 H III (1249).

Philip de Molendino paid 12d 'to have a record of the fifteenth year',[317] demonstrating that they could be purchased retrospectively. There is no indication of the subject of this particular record, and so Philip's reasons cannot be surmised. However in the third of the Wakefield cases cited by Beckerman, it is evident that a copy was obtained for the purpose of litigation. Here, Adam del Bothe sued Robert Warwlley, chaplain, for an eighth of a bovate in Northowrum. Robert claimed that Adam had sold the land for 20s to William Swyrp, Robert's brother, who then granted it to Robert who would pay the sum to Adam. Adam had then surrendered it to German Filcock the bailiff, who surrendered it to John Burton the Steward, who finally delivered it to Robert. Having called the rolls to witness, Robert was ordered 'to have record of the rolls, under a suitable penalty' (*quod habeat recordum Rotulorum sub pena qua decet*).[318] Attached to the front of the roll are two slips. The second, headed *De tempore J de Burton*, is clearly the copy of the relevant entry from the record of the court held at Halifax on Monday after the Invention of the Cross in the fourteenth year of the reign of Edward I (1286), describing Adam's surrender of the land and its subsequent lease to Robert:[319]

> *De tempore J de Burton'*
>
> *Curia tenta apud Halyfax die Lune proxima post festum Invencionis Sancte Crucis Anno regni regis Edwardi patris Regis Edwardi quartodecimo*
>
> *Adam del Bothes venit in Curia et reddidit in manus domini octavam partem unius tofti unius bovate et nonem acrarum terre in Ourom in prepositura de Hyperum que dimisse sunt Roberto de Werlullay Capellano tenendum secundum consuetudines etc. Et dictus Robertus dat dominio per ingressum xijd*

The verdict, given at a later court, is extremely faded at the right-hand side. Nonetheless, it is possible to read:

> *Compertum est per recordum Rotulorum Johanni de Burton' Curie tente apud Halyfax die Lune proxima [faded] anno quartodecimo quod Adam del Bothe venit in Cur' et reddidit in manu domini octavam [faded] ad opus Roberti de Warlelay capellani [faded] quod predictus Adam nulla capta per querelam suam etc Et in mercia per falsam clamam.*[320]

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[317] B.L. Add MS 40167, f22: Barnet, Halmote held at Barnet, vigil of the feast of St Peter, 18 Ed I (1290).

[318] Y.A.S. MD225/1/48 m.4: Court held at Wakefield, Friday before Pentecost, 16 Ed II (1323).

[319] J.W. Walker, in his edition, did not make explicit the connection between the slips sown to the front of the roll and the case (which appears on pages 15 and 23), calendaring the copy as the sole entry for the court held on Friday, vigil of the feast of St Gregory, 16 Ed II (1323). Walker, *The Court Rolls of the Manor of Wakefield, Vol. V, 1322 to 1331.*

[320] Y.A.S. MD225/1/48, m.6d: Court held at Wakefield, Friday before the feast of St Oswald, 17 Ed II (1323).

The first of the slips is a letter written in French:

> *Honurs e rewences. Pur ces sir q Roberd de Werlullay chapelyn gest emplede deuaunt vous ad touché recorde des roulles John de Burton q fu senesch de Wakefeld une piece en temps le Count de Lancastr q demorent en ma garde; vous enuoy tnsescrite de un enroullement du temps le dit John de Birton com vo' verrez de south seel E vous requer au dit Robd voillez ee gatiouse e favorable en resone. Sir de Dieu soietz honure.*[321]

Wakefield had come into Edward II's possession in 1322 among the forfeited possessions of Thomas Earl of Lancaster, following the rebel Earl's defeat at Boroughbridge and execution at Pontefract in the previous year.[322] The letter was presumably therefore sent by the King to John de Doncaster, steward of the manor at this time. It clearly orders the steward 'to send a transcript of an enrolment from the time of the same John de Burton... under seal'. *Q demorent en ma garde* would seem to refer to the rolls rather than the manor itself (*they* reside in my keeping), and it is possible that the manor's records had been taken at the time of the forfeiture of Lancaster's estates. Another case from 1326, in which the defendant had vouched the rolls, was adjourned in two further courts 'because the rolls are in the hands of the Barons of the Exchequer', before disappearing from the rolls entirely.[323] Even if this was not the case, we have already seen that in a later case of 1373 that a litigant claimed that he had had been unable to produce written evidence because the 'court rolls remain in the possession of the steward', which might provide an alternative explanation for the instruction sent to John de Doncaster in this instance. Regardless of where the rolls physically were, it would seem that Robert had to obtain a copy for the purposes of this case rather than producing one already in his possession, which runs counter to Beckerman's argument that the record provided by Robert 'was checked against the original, the normal practice followed with the copy'.[324]

The fallibility of the court rolls

Beckerman argued that the 'fallibility of memory and the need for certainty concerning what had happened in the past go far to explain the increasing reliance on documentary proof in court proceedings during the high and later Middle Ages'.[325] The rolls themselves were not an infallible source of evidence however, and the Wakefield rolls demonstrate that litigants were aware of the fact,

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[321] Transcription taken from Walker, *The Court Rolls of the Manor of Wakefield, Vol. V, 1322 to 1331*, p.1.
[322] The Earl of Lancaster had held the manor since 1319, when John, seventh Earl of Warenne, had been forced to hand over his Yorkshire manors to Lancaster following their private war of 1317-19. No rolls now survive for the time of Lancaster's possession. Warenne was re-granted the manor in 1326, but with reversion to the crown.
[323] Y.A.S. MD225/1/51, m8d, m9d and m10d: Courts held at Wakefield, Friday 27th June, Friday 11th July and Friday after the feast of St Peter ad Vincula, 19/20 Ed II (1326).
[324] Beckerman, 'Procedural Innovation and Institutional Change in Medieval English Courts', p.225.
[325] Ibid, p.222.

commonly requesting to have the rolls searched 'if they can be found, and if not to have an inquest' (*si possint inveniri et si non ad inquisitionem*). In ten of the eighty-four cases in which the rolls were vouched, they could not be produced or used as evidence. In two cases, as already has been discussed, we are told where the rolls are (one with Barons of the Exchequer, the other with the steward). A further two cases were respited for lack of the roll (*pro defectu rotuli*), perhaps implying that these rolls were also elsewhere at the time that they were required. In six cases the rolls simply 'could not be found', including the roll required to verify the transcript produced by John de Osset (see p.89, above).

There are no comparable cases in the Alrewas rolls or the Barnet court book, and again this perhaps suggests a difference in the management and accessibility of the rolls at Alrewas and St Albans compared to those of Wakefield manor. Poos and Bonfield, however, present a similar case from Hatfield Chase, in which the rolls were vouched by a defendant, but because they could not be found an inquest was taken.[326] Also well known are cases in the years after 1381 on manors whose rolls were destroyed during the unrest. In 1391 at Great Dunmow, for example, John Clerk and Matilda his wife claimed that they held the remainder in one messuage and ten acrewares of land which had been held by Matilda Westwode, *et in iuris eorum evidencia predicti Johannes Clerc' et Matilda uxor eius proferunt copiam premissa testificantem.* However, the rolls which attested to the copy could not be found (*rotuli curie non sunt inventi dictam copiam testificantes*), almost certainly because the manor's rolls had been destroyed. The homage was therefore charged to inquire into the surrender, and found that it was true. John Parker, to whom Matilda Westwode had demised the land without the court's license, was fined for occupying the land.[327]

A distinction appears to have been made between those cases in which the relevant rolls could not be found or were unavailable, and those in which litigants appear to have been at fault for a failure to produce the records they had vouched. In the former, an inquest would be ordered; in the latter, the voucher lost their case.[328] In the manor court of Bradford, on 11th March 1356, the clerk recorded that one William Perkyn, seeking a built plot in Bradford as his right and inheritance and vouching the

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[326] Poos & Bonfield, *Select Cases in Manorial Courts*, no. 66, p.62, Hatfield Chase, 1342.

[327] Ibid, no. 81, p.75, Great Dunmow, 1391.

[328] There is also evidence that on the Winchester estates tenants who cited written evidence and then failed to produce it would lose their case. Britnell and Mullan note a case from 1325/6 in which the plaintiff recovered because defendant was unable to produce the record from the pipe rolls 'which was called as evidence before.' The expression typically used at Winchester was that such a claim failed 'for default of record'. Mullan & Britnell, *Land and Family. Trends and variations in the peasant land market on the Winchester bishopric estates, 1263-1415*, p.69.

record of the rolls, had been given a day to show that record. He now came to the court without the record, and consequently it was decided that he should take nothing from his complaint and was amerced.[329] In Alrewas manor court, Henry le Fre was attached by Ellen, widow of Henry son of Godfrey, who claimed that he detained from her one butt of land in Burwey. Henry responded that Ellen had sold the land together with her late husband to his father, and called the court rolls to warrant this. Henry was given until the following court to have the court rolls concerning the feoffment of his father. At the feast of the Decollation of John he was permitted more time, but finally at Michaelmas Henry put himself in mercy for unjustly detaining the land, because he had called the rolls to warranty and had failed in this (*quod idem Henricus vocavit rotulos Curie ad Warrantum et in hoc defecit*). Ellen therefore recovered the land.[330] Similarly at Wakefield in 1379, Robert del Grene and his wife Margaret sued Roger Bunny for dower in one rode of land which they claimed had belonged to Margaret's first husband. Roger responded that Margaret had surrendered it with her late husband into the lord's hands, and that it had been subsequently granted to himself and his heir, and 'concerning this he put himself on the rolls and asked to scrutinize the rolls'. A clerk has added to the entry *Consideratum est quod Margareta recuperet dotem suam versus dictum Rogerum pro defectu scrutacionis rotulorum et Rogerus in misericordia.*[331]

It is unclear in these cases as to whether attempts had been made to find the relevant records – it is possible that an agreement was reached between the parties in advance. At East Barnet in 1327, Alice Dykes sued Robert Russel for half of a messuage and three acres, claiming that it ought to have descended to her on the death of her father as one of his daughters and heirs. Robert replied that her claim was unjust, since she had surrendered the tenement to him in the time of John Hurlee. Robert called on the record of the rolls, while Alice sought an inquisition by the jurors, and they were told to attend the court to be held under the ash tree at St Albans on the Saturday before the feast of St Nicholas. In the record for the court held on the Thursday after the feast of Guthlaci, it was noted that Robert had a day to produce his record, but that he did not have the record as he vouched (*non habet recordum prout advocavit*). Alice sought judgement, and they were summoned to the court in Pentecost to hear it. The case ended on a technicality: Alice had not included her sister Margery, wife of Robert, in her suit, so was amerced for false claim.[332] Beckerman, citing this case as an demonstration of the inadequacy of jury memory, noted Alice's surrender of, and Robert's admittance

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[329] Poos & Bonfield, *Select Cases in Manorial Courts*, no. 73, p.67, Bradford, 1356.

[330] St.R.O. D(W)0/3/19, m6d & m7: Courts held at Alrewas, Saturday the feast of St Mary Magdalene and Saturday after the feast of St Laurence 9 Ed III, (1335).

[331] Y.A.S. MD225/1/105, m5: Court held at Wakefield, Friday 13th January, 3 R II (1380).

[332] B.L. Add MS 40167 f54d: Halmote held at Barnet, Tuesday after the feast of St Martin, 1Ed III (1328).

to, a tenement in 1316.[333] Again, there is no positive indication in the court book entries that the rolls were actually searched. As Robert ultimately was able to have the case dismissed on account of Alice's failure to name Margery as a party, perhaps he saved himself the trouble of (and possibly also a fee to the clerks for) having the search.

A clearer example can be found in Wakefield manor court in 1357, in the case of William Lee versus John Tomson of Saltonstall, previously described. William claimed that he had acquired the land from Thomas son of Hugh Carpe; John claimed that the land had been surrendered to him by Otto son of Hugh. In this instance the clerk noted that the rolls had been scrutinized, but that no such surrender by Otto as John had alleged was found (*quo anno Rotuli Scrutati fuerunt et nullus de tale redditione per dictum Oton' quam idem Johannes allegavit inventus fuit*), and William was therefore to recover the land.[334] It is possible that John was unable to give sufficiently precise guidance as to when he had been admitted to the land (although this explanation would seem more plausible in cases in which litigants' claims were based on the admittances of and inheritances from family members, which sometimes stretched back over more than one generation). The entry is rather perfunctory, but *tale redditione* may be important here. John had clearly gained possession of the land, but not by 'such a surrender' by Otto as he claimed. As William was to recover the land, it would seem that Thomas (Otto's brother or half-brother) had held the right to the land and had surrendered it to William.

The ability to re-use the rolls for written evidence also crucially depended on the clerks' accurate enrolment of all transfers of land and past cases. In the plea of covenant brought by John Halyman and John Cok in Methley manor court discussed above (p.84), the plaintiffs were clearly dissatisfied with what had been found in the rolls. They had claimed that while Ellen was still single she had demised to them fourteen acres of land in Houghton and the reversion of one acre (which Magote Sperling held as dower at that time), from 1st August 1362 for a term of six years, and that Hugh and Ellen had withheld the reversion from them to the damage of 10s. Hugh and Ellen denied this, saying that Ellen had demised the fourteen acres, but without any reversion. The rolls, searched in open court, supported the defendant's denial of the reversion. The plaintiffs, however, argued 'that this was the fault of the clerk, because he had enrolled the aforesaid covenant badly' (*Et quia predicti Johannes Halyman et Johannes Cok credebant hoc esse in defectu clerici, eo quod male irrotulasset conventionem predictam*), and were allowed to pay 2s for an inquest. The jurors nevertheless found

[333] Beckerman, 'Procedural Innovation and Institutional Change in Medieval English Courts', pp.222-3.
[334] Y.A.S. MD225/1/83/2, m4: Court held at Wakefield, Thursday 22nd March, 32 Ed III (1358).

that Ellen had only demised the fourteen acres, and that the acre was Ellen's right as Magote had remarried. Therefore it was found that they had not broken their covenant, and the plaintiffs were amerced for their false claim. Nonetheless, as Poos and Bonfield have noted, 'the court was to all appearances willing to consider the fallibility of the enrolment.[335]

If the rolls were to provide tenants with an accurate and secure record of tenure, they relied on the proper conduct of land transfers in the courts. In the aftermath of the Black Death, manorial administration at Wakefield can be seen to have been disrupted. The rolls continue without hiatus, listing the numerous deaths in the years following 1348, and recording the equally numerous admittances of heirs to the vacant tenements. Some clearly slipped through the net however. Ten years after the epidemic, Alice widow of Walter Gunne was forced to pay 3s 3d for a cottage and four acres of land in Stanley which Walter had surrendered via the grave to her use during the plague (*pestilencia*). The steward said that through the forgetfulness of the grave they had not been enrolled, as was shown by examining the court rolls of that time, and so she had avoided paying an entry fine.[336] In the same court and under the same circumstances, John Hughetson and Isolda his wife finally paid a 6d fine for the three roods which Henry Poket had surrendered to Isabella, his daughter, during the plague.

A failure by the court officials to enrol verdicts fully could create problems for a tenant beyond insecurity of tenure. In March 1340, there is a lengthy entry in the Wakefield rolls regarding the legal status of William de Sandale. It starts with the enrolment of a letter dated 11th November 1330 that was sent by the Earl to his then steward, Sir Simon de Baldreston, instructing him to have the burgesses of Wakefield inquire into the status of various tenants indicted as villeins, including William de Sandale.[337] The entry goes on to record that Baldreston had brought an inquisition which had found that John del Wro, grandfather of William de Sandale, had been a newcomer and a freeman. Looking back to the court roll for 1330/1, William son of William de Sandale paid 13s 4d 'on condition of being free for the whole of Earl's lifetime, and during the whole of that time not

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[335] Poos & Bonfield, *Select Cases in Manorial Courts* no. 21, p.104, and lxviii.

[336] Y.A.S. MD225/1/85/1, m5d: Court held at Wakefield, 17th February, 34 Ed III (1360). *que per oblivionem dicti prepositi tunc non fuerunt irrotulati ut patet per examinacionem rotulos Curie de eodem tempore.*

[337] In the edition of this roll, the date of the letter has been transcribed as 'le xi jour de Novembre l'an quartorzisme', i.e. 11th November 1340. This does not make sense as it post-dates this court, in which it was re-copied. The letter is in fact dated to the 4th year (11 November 1330). Troup, *The Court rolls of the Manor of Wakefield from October 1338 September 1340*, pp.184-5.

being charged or molested for bondage or servile condition.'[338] Sir Simon, however, had failed to have this verdict entered in his court rolls (*veredictum illius Inquisitionis in rotulos suos non intravit*). The Earl now sent a second letter to the subsequent steward, Sir William de Skargill, ordering him to re-enquire into the matter. The same jurors were sworn in again and examined, and they ratified the verdict that they had given before, saying that William was a free man of free condition and that they recollected the arrival of John del Wro. William was therefore to be quit all bondage and secular service, and he paid 40s for the inquest to be repeated and enrolled. This does not appear to have put William's mind at rest, however. Walker noted that William, together with his brother Hugh, appealed to the King's Court for a final settlement in 1342 after the Earl had claimed them as his bondmen. In the Patent Roll for 16 Edward III, it is recorded that they showed a release and quitclaim by the Steward and the Rector of Dewsbury in French dated 7th November 1341, whereby it was shown by the oaths of the freemen of the manor that their grandfather John del Wro was a freeman, and the court found in their favour.[339] Sir Simon de Baldreston's failure to have the initial verdict recorded proved costly for William de Sandale, as it was this renewed doubt thrown over his status in the manor court which appears to have driven him to pay to have it established and recorded not only at Wakefield, but also in the eyes of the common law.

William's difficulties may be contrasted with the contemporary experience of John de Sandale, clerk. In January 1341, John was summoned to show if he had or could show any reason why he should not be grave in the vill of Sandale as the lord's bondman of the manor of Wakefield (*ut nativus domini de manerio suo de Wakefeld*).[340] John replied that he was free, and that when his father Robert de Sandale, clerk, had been challenged in this court for bondage (*de nayifitate*), it had been found by inquisition that he came from the vill of Wilmerslay and was a free man. This was proved by the record of the court roll, namely, the record of the court held on Friday before the feast of St Gregory's day in 42nd year King Henry, ie. 1258. The record of that case was found and copied out verbatim in the roll of 1340/41. It showed how one Thomas de Burgo had come to court and had demanded to know why he had been distrained to do suit of court, seeing that he had an attorney by his letters patent, Robert de Sandale, clerk. The court said that Robert could not be Thomas' attorney because he was the lord's bondman. Thomas replied that Robert and his ancestors were of free blood, and paid a mark to have an inquisition thereon. The inquisition found that Adam, Robert's father, came with his father Arnold from the parish of Wilmerslay. Arnold had killed a man there, and had come for refuge to the court of the Earl Warenne, and dwelt there many years, and they said that he

[338] Walker, *The Court Rolls of the Manor of Wakefield, Vol. V, 1322 to 1331*, p.161: Court held at Wakefield, Friday after the feast of St Lucy the Virgin, 4 Ed III (1330).
[339] Ibid, p.xii.
[340] Y.A.S. MD225/1/66, m5d: Court held at Wakefield, Friday the vigil of Epiphany, 14 Ed III (1341).

was of free blood. Therefore the jury had decided that Robert could continue to be Thomas' attorney. Because of the evidence of this case, brought over sixty years earlier, the court decided that John would not be troubled with any further secular servitude, and that he and his heirs would forever enjoy full freedom.

The contrasting experiences of John and William de Sandale demonstrate how the quality of the records produced by the court, and later access to the evidence they could provide, arguably mattered greatly to a manor's tenants. In conclusion, no evidence has come to light in these case studies to suggest that the court rolls were jealously guarded by manors lords and officials and that litigants were ever refused access to the rolls for use in litigation. What 'access' actually meant may have varied between manors, depending on how and where the rolls were kept, but even where the rolls were at hand (as seems likely to have been the case at both St Albans and Alrewas), the majority of peasants would still have faced cognitive barriers posed by the language and by the format of the records. The production of the rolls as evidence in these and other manors, however, suggests that mechanisms were in place to allow for their use. While we lack detailed information on how this occurred in practice, it does not seem unreasonable to suggest that a payment to the clerks for the checking of the records, as was noted in the Wakefield rolls in 1376, was a likely scenario.

It certainly seems reasonable to suggest that tenants were not in general issued with copies on any of these manors in the period before 1381, making the court roll the sole source of written evidence to title, and requiring the litigants or jurors to remember the dates of transactions unless the clerks were prepared to undertake the 'tedious hunt' for the relevant entry. If the relevant record was unavailable through no fault of their own, it seems that the litigants were allowed an inquisition, yet the cases discussed here suggest that the failure to produce the vouched record, or a failure in the system of enrolment, could potentially cost a tenant their property or raise questions about their personal status. It is possible that these difficulties associated with vouching the rolls as written evidence partially accounts for the relatively small number of cases in which they were vouched in this period. As Clanchy argued, writing may in time have come to be regarded as a 'durable and reliable' medium, but it was slow to supplant memory as the trusted source of evidence (as will be discussed further in Chapter 6).[341] The community might remember what had been actually said and done in past courts; the rolls were the clerk's version of events, translated into Latin and re-translated for the litigants and jurors if required to serve as evidence at a later date. Yet while the quantitative analysis conducted as a part of this study has demonstrated that inquisition by a jury was the usual

[341] Clanchy, *From Memory to Written Record*, p.186.

course for resolution of pleas of land, it is also evident that a few did put their hopes for the successful resolution of their cases on the rolls. Can any commonalities be found to help to explain why the rolls were cited were in those particular cases?

CHAPTER 5

In what circumstances were the rolls vouched?

Beckerman argued that a person suing for land as their inheritance in the late fourteenth century would be expected to produce their ancestor's copy, which would be checked against the court rolls. 'If the documents agreed and no question arose about the claimant's status as right heir, there was obviously no need to take an inquest, the normal procedure of one hundred years earlier.'[342] As an example of this process, he cited a court roll entry of 1387 from the rolls of the manor Tolleshunt Major in Essex, owned by Wix Priory, in which John son of John Pollard claimed a weir which had been granted to his father in tail. He produced the copy of this grant, and it was duly found that he had the right to the weir '*quia videtur per inspeccionem dicte copie rotulo curie eiusdem concordantis.*'[343] This is perhaps the simplest scenario for the production and acceptance of written evidence in the manor court, but only two such examples have been found in the case studies for this project. In 1345, Agnes widow of Henry Bernard claimed an acre of pasture from Alice Adam as her dower. Alice denied that Henry had ever been seised of the land, but Agnes was able to produce a copy of the record of Henry's seisin which Alice was unable to deny.[344] The second case is that brought by William son of Richard de Lupsede against John son of Richard de Lupsede at Wakefield in 1374 (described on p.90, above).[345]

An analysis of the circumstances under which the court rolls were vouched at Wakefield and Alrewas demonstrates that such a scenario was not the norm. Due to the variation in the level of detail given in the records, it not always possible to determine exactly what it was hoped that the rolls would prove. Nonetheless, there is sufficient detail to determine the circumstances for fifty-five of the Wakefield cases. Some cited the rolls for the details of a past transfer (for example, whether it had been granted for a term of years, for a person's life, or permanently, or to establish exactly what land had been involved). In other cases, the rolls were searched for a previous case which had already determined who had the right to the land now in question again. In others, the defendant claimed that they, or an ancestor, had been admitted to the land by the steward, and the rolls were vouched to

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[342] Beckerman, 'Procedural Innovation and Institutional Change in Medieval English Manor Courts', p.225.

[343] Ibid, and n.132.

[344] St.R.O. D(W)0/3/31, m6d: Court held at Alrewas, Saturday the vigil of St Philip & St James, 19 Ed III (1345).

[345] Y.A.S. MD225/1/100, m.14: Court held at Wakefield, Friday 3rd August, 49 Ed III (1374).

prove that there had been good grounds for this – for example, the land had been seized by the lord's officials because its previous occupants had left it waste or had committed a felony, or no heir had come forward to inherit it in the customary fashion.

In over half of these cases, however, the rolls were vouched (typically by the defendants) to prove first that the land in question had been previously surrendered either by the plaintiffs themselves or by one of their ancestors, or, in pleas of dower, by the plaintiff's late husband, and secondly that either they themselves or their ancestor had been admitted to the land in the proper way, coming to the manor court and taking seisin of it from the steward. The defendant aimed to show by this that the plaintiff had lost any right or interest which they might have otherwise held in the land.

Reason why rolls vouched	**Number of cases**
To show that land had been previously legally transferred	31
To show the terms of a past transfer	6
To clarify the details of the land	1
To show the outcome of previous case over the same land	6
To question the right of a past grantor to transfer the land	3
To show the term for a past lease	3
To show land had been granted for want of an heir	1
To show land had been left waste before seisin granted	3
To show land had been escheated	1
Total	55

Table 5.1: Reasons for litigants' voucher of rolls (Wakefield)

Of the seventeen pleas in which the rolls were vouched at Alrewas, the reasons can only be determined for nine. In seven of these, the rolls were vouched to show that the property in question had previously been lawfully transferred in the manor court. In the other two cases, the plaintiffs claimed that the property should have passed to them by remainder, and the rolls were called to check the terms of original grants. All of the reasons identified for the voucher of the rolls could be described as being essentially factual, and the pleas which were concluded with reference to the rolls turned on whether those facts could be established.

Custom and fact in the manor court

A major debate in the more recent literature on the late medieval manor court has centred on the nature of customary law. Lloyd Bonfield, Paul Hyams and John Beckerman have debated the extent to which customary law could be said to have been based upon substantive principles, and to which the manor court must be understood as part of a unified national legal system.[346] In an article of 1989, Lloyd Bonfield warned against the use of inter-peasant disputes in the manor court rolls for the extrapolation of 'cultural norms' and customary law from 'basically economic documents'. He argued that a distinction needs to be made between issues in which the lord had a direct interest (for example relating to services), and in which the custom of the manor might limit seigniorial will, and 'areas of supervision and administration' for the lord (such as inheritance and land transfer), cautioning that in their preoccupation with determining the customary law which governed lord-peasant relations, historians have tried to apply the same law to civil disputes. In his view, the medieval manor court did not satisfy the three jurisprudential assumptions necessary for principled adjudication to exist in inter-peasant disputes (the existence of some form of substantive law which created 'rights'; the notion of precedent and rules which transcended jurisdictional boundaries; and the existence of due process and equal protection which would ensure the proper application of customary laws regardless of the status of the parties or equitable concerns).[347] Bonfield concluded that 'recourse to linguistic interpretation with regard to manorial court cases is unsatisfactory', since inconsistencies between cases suggest that there was no substantive law within manors, let alone between them.[348] Instead, 'tentatively, and with some trepidation', he put forward an alternative model of the manor court as a civil forum which resolved disputes based on factual equities, akin to the modern concept of an alternative dispute resolution forum (ADR). 'The local community may have preferred to come to what they perceived was an equitable result regardless of right. This was arguably the cultural norm directing dispute resolution in medieval English village communities.'[349]

John Beckerman has rejected the model of the ADR, arguing that the manor court was a public, often involuntary process, bound by rigid formalities such as an insistence on the precise wording of pleas. He argued that the logical form of pleas in the manor courts followed those in the common law courts, whereby the facts of the case (the minor premise) were pleaded, and the

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[346] Lloyd Bonfield, 'The Nature of Customary Law in the Manor Courts of Medieval England', in *Comparative Studies in Society and History*, 31 (July 1989); John S. Beckerman, 'Toward a Theory of Manorial Adjudication: The Nature of Communal Judgments in a System of Customary Law', *Law & History Review* 13:1 (1995); Hyams, 'What did Edwardian Villagers Understand by 'Law'?', and Bonfield, 'What Did English Villagers Mean by 'Customary Law'?'.

[347] Bonfield, 'The Nature of Customary Law in the Manor Courts of Medieval England', p.522.

[348] Ibid, p.530.

[349] Ibid, p.531.

substantive principle (the major premise) was understood by the jury. He noted that statements of principle occur most often in pleas of land since they entailed the most fact-specific inquiries.[350] While Beckerman too noted the flexibility of custom, he argued that this did not necessarily reflect a lack of consistency. More recently, Phillip Schofield has echoed the view that the manor court was suited to both substantive rules and particular responses, arguing that it should be possible to disentangle the two.[351] Like Bonfield, both Beckerman and Schofield raise the possibility of a split in the nature of customary law between those cases which directly involved the lord's interest, and those that did not. They, however, extend this distinction from the immediate question of services to the wider issue of tenancy and the transfer of land between tenants. Schofield distinguished between the treatment of personal actions, which could be shaped by community opinions and preconceptions and by the desire for a peaceful and 'fair' outcome, and that of real actions, noting that decisions in those cases may be postponed until the steward was present to guide the jurors.[352] Poos and Bonfield found a division in the forms of pleading and proof used for the two types of action: inquest by jury and wager of law continued to prevail in personal actions in this period, but wager of law was never used in land litigation, in which they argue documentary evidence was becoming more commonplace.

Schofield found a 'sophisticated regard for precedent and proof through the vouching and analyzing of preceding records of the court' in evidence on the Suffolk manor of Hinderclay.[353] His article focuses on a protracted dispute between two peasants, Nicholas le Wodeward and Robert son of Adam. It involved pleas of debt, trespass and land, as well as the accusation that Robert was having an affair with Nicholas' wife; a dispute which was played out in the manor, church, and probably also the shire court. It culminated in 1307, when, four years after Nicholas had recovered land from Robert, Robert requested that the record be 'audited'. He claimed that it contained 'a manifest error and erroneous judgement' and asked that the rolls be examined. Here, Schofield argued, substantive law can be discerned. Robert claimed that he should be able to take the land back because, despite the later verdict, Nicholas *had* leased the land to him in court. Nicholas' plea and recovery had raised questions over 'the inviolability of the lord's court to give secure title'. Nicholas had since sold the land by the court's license so Robert could not recover it, but Nicholas was amerced the substantial sum of 40s. Schofield suggested that Nicholas had succeeded in his other personal suits against Robert by bringing his morality into doubt and so manipulating the community's opinion of his opponent. His manipulation of the jury in the plea of land, however, knowing that he had leased it to

[350] Beckerman, 'Toward a Theory of Manorial Adjudication: The Nature of Communal Judgments in a System of Customary Law', pp.4-5.
[351] Phillipp R. Schofield, 'Peasants and the Manor Court: Gossip and Litigation in a Suffolk Village at the Close of the Thirteenth Century', *Past and Present* 159 (May 1998), p.8.
[352] Ibid, pp.40-41, n.124.
[353] Ibid, p.13.

Robert previously, was a different matter - an 'inadvertent threat levelled at the manor court's integrity as a forum for the registration of transfers in land'.[354]

How conclusive were the rolls when vouched?

This discussion concerning the nature of customary law has profound implications for our understanding of the role played by the records themselves. Whether a transfer had been made, or what its terms had been, was a question of fact for which the manor court rolls could often have provided evidence. The tenure and descent of customary land, however, was also determined by more complex questions of manorial custom and, in Poos and Bonfield's view, by equitable considerations. Both parties might have some claim to the land, and it was for the manorial juries to weigh the 'factual equities' and to determine which party had the 'greater right' (*maius ius*).[355] Poos and Bonfield have argued that in cases in which the jury did accept evidence from the rolls, they were confirming it rather than deferring to it.[356] They also found examples in which the written evidence offered did not prove conclusive in the outcome of the case.[357] This was not only due to instances of missing rolls or particular entries which could not be found, as discussed in the previous chapter. There is also evidence for the rejection of written evidence, and even the production of copies did not always resolve a case with the finality argued for by Beckerman. Neither voucher of the court rolls nor production of a copy from them was proof of title, but rather evidence for it.[358]

At Methley, in April 1352, William son and heir of Henry Dogson accused Agnes widow of John Ward of unjustly deforcing him from one messuage and one oxgang of land in Houghton, of which William's father had died seised. Agnes, executrix of John, claimed that the tenements were part of his 'goods and chattels' since he had been granted them for a term of thirteen years when no heir of Henry had wished to claim the land, despite proclamation being made at three courts that the heir should come forward. She showed the record of the court. William responded that an heir could come forward at any time, and an inquest was summoned. The twelve jurors agreed that 'each heir

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[354] Ibid, p.42.
[355] Poos & Bonfield, *Select Cases in Manorial Courts*, p.xxxii, p.lxii.
[356] Ibid, p.lxii.
[357] Ibid, p.lxvii.
[358] Ibid, p.lxvii; Harvey, *Manorial Records*, pp.43-4. The distinction between proof and evidence has been clearly expressed by Trevor Foulds in relation to the production of title-deeds in the common law courts: 'title-deeds in their original form are admissable in a court of law as evidence to title, they are not *proof* of title. The proof resides with the court which can accept the title-deeds as evidence: the evidence to title remains evidence until it is proved by the court and the title-deeds still retain their evidentiary qualities thereafter.' Trevor Foulds, 'Medieval Catualries', *Archives*, XVIII no.77 (April 1987), p.31.

may be accepted to have his inheritance at all times', and found that William was the rightful heir of Henry. He therefore was allowed to recover the land.[359] Here we find a case in which a record was shown, in which there is no evidence that it was rejected as evidence, but in which it was over-ridden by other concerns.

In two of the three cases of the 1370s in which *copia* were produced in Wakefield manor court, the court found for the party who had not vouched written evidence. In 1376, Emma de Bateley sought a cottage and a garden from William de Scolecroft, Robert de Freiston and John Malinson, claiming that they had disseised her 'unjustly and without judgement'. Robert and John responded that they had committed no trespass since the status that they had in the property was by the gift of William de Scolecroft, and they produced a copy from the rolls which witnessed this (*et inde ostendunt copiam rotulorum Curie que hoc testatur*). William himself claimed that Joanna de Bateley had been seised of the property and had given it to him by the court rolls (*per rotulos Curie*), and he too produced a copy (*et inde ostendit copiam que hoc testatur et petit iudicium*). Emma argued, however, that Joanna (who was her sister) had no status in the property except by her permission since the right and fee belonged to her, and she requested an inquisition. The defendants disputed her claim, but the jurors agreed that Joanna had possessed no right in the cottage and had only remained in it with Emma's permission (*set solomodo manebat in dicto messuagio ex permissio et prestito predicte Emme de Bateley et ius inde semper manebat in persona eiusdem Emme*). Therefore they judged that Emma was to recover seisin, and the defendants were amerced.[360] The authenticity and accuracy of

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[359]Poos & Bonfield, *Select Cases in Manorial Courts 1250-1550*, pp.27-28, case 27a-b, Methley (Yorkshire WR), 1352.

[360] Y.A.S. MD225/1/102, m11d: Court held at Wakefield, Friday 24th July, 1 R II (1377).
Emma de Bateley optulit se versus Willelmum de Scolecroft Robertum de Freiston' et Johannem Malinson' de placito quod predicti Willelmus Robertus et Johannes iniuste et sine iudicio dissesiverunt Emmam de uno cotagio et gardino adiacente in Stanlay. Et Robertus et Johannes veniunt et defendunt et cetera et dicunt quod ipsi nullam transgressionem fecerunt eo quod status quem ipsi habent in dictis cotagio et gardino est de dono predicti Willelmi de Scolescroft et inde ostendunt copiam rotulorum Curie que hoc testatur. Et predictus Willelmus dicit quod quedam Johanna de Bateley fuit seisita de dictis cotagio et gardino ut de feodo et dominico suo que quidem Johanna dedit ipsi Willelmo mesuagium et gardinum predictum per rotulos Curie et inde ostendit copiam que hoc testatur. Et petit iudicium et cetera. Et predicta Emma dicit quod predicta Johanna fuit soror eius et quod eadem Johanna nullum statum habuit in eisdem cotagio et gardino nisi ex permissione et prestito ipsius Emme et quod ius et feodum inde semper remanebat in persona ipsius Emme et de hoc ponit se super Curiam et petit quod inquiratur. Et predicti Willelmus Robertus et Johannes dicunt quod predicta Johanna fuit seisita de eisdem cotagio et gardino ut de feodo et dominico suo et cetera et de hoc ponunt se super Curiam et petunt super Curiam et petunt quod inquiratur similiter Ideo preceptum est preposito quod venire faciat xij qui non attingunt partes affinitate. Et Inquisitio capta per sacramentum Hugonis Philip Roberti Cokspur Henrici Cokspur Henrici del Bothom Roberti Hervi Johannis Walot junioris Ade Hoet Johannis Philip Roberti Albray Johannis Tomson' Roberti [.....] et Willelmi Carter Qui dicunt super sacramentum suum quod predicta Johanna de Bateley nullum statum iuris et feodi habuit in dictis cotagio et gardino set solomodo manebat in dicto mesuagio ex permissione et prestito predicte Emme de Bateley et quod feodum et ius inde

these copies do not appear to have been called into doubt. No indication is given that the copies did not match the original rolls (in fact, no reference is made in the record to the copy being checked against the roll). There was no question that Joanna had granted the property to William, or that he had granted it to Robert and John: these grants had been made in court in the proper manner for the transfer of customary land, as the copy of the roll could attest. The issue at stake was whether Joanna had the right to make those grants in the first place.

There is more doubt over the second case. In November 1377, John Hirst junior and his wife Alice sought against Richard Lilte one messuage and 16 acres in Scoles, claiming that Adam de Shaghlay had died seised and that the right and fee ought to have descended to Alice, his daughter and heir. Richard argued that William de Holme, his wife Magota and Alice had come to the court held at Halifax on 11 May 1375 and had surrendered the tenement via the grave to the use of Richard and his heirs, *et inde ostendit copiam Curie*. The plaintiffs replied that Alice had not been a party to the surrender of the tenement and requested an inquisition. The jurors found that Alice had indeed not surrendered the tenement, and the plaintiffs recovered the land.[361] Richard had specifically claimed that the surrender had been made by William his wife Magota *and* Alice. Did his copy say as much? As it is neither enrolled in the record of the court nor attached we cannot be sure, but the court decided that the surrender made to him was to the prejudice of Alice.

The court's ability to overturn transfers could provide protection for the more vulnerable tenants of the manor: a plaintiff could argue that either their ancestor or even that they themselves should not have been allowed to alienate a piece of land because they had been incapable of making that decision. It is not uncommon to find a plaintiff claiming that land had been surrendered by someone who was under age or was not of sound mind. The defendant might still vouch the rolls to demonstrate that they had been admitted to the land in the proper way, but the jurors were required to reconsider the circumstances in which the admittance had been made to ensure that it had not been to the prejudice of another. Such cases relied on the jurors' recollection of an individual's or family's circumstances at a particular date.

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semper manebat in persona eiusdem Emme. Et quia compertum est per inquisitionem predictam quod predicta Johanna nullum ius habuit in dictis mesuagio et gardino ut de feodo et cetera Ideo consideratum est quod predicta Emma recuperet seisinam dictorum cotagii et gardini et Willelmus Robertus et Johannes in misericordia.

[361] Y.A.S. MD225/1/103, m3: Court held at Wakefield, Friday 6th November, 1 R II (1377).

In Barnet manor court in 1340, Richard le Reve sued William le Reve in the form of *mort d'ancestor* for one messuage, two and a half acres of land and thee acres of wood of which William le Fourbour, Richard's uncle, of whom he was heir, was seised on the day he died. William claimed that the land had been handed over to him after William le Fourbour, who had full estate in it (*qui plenum statum habuit*), and he called on the record of the rolls from the time of Brother Nicholas Bewyke, the cellarer. Richard replied, however, that even if such a record could be found, it should not be allowed to damage him, since at the time of the surrender William le Fourbour was not of sound mind, nor did he come before the Brother Nicholas, but by arrangement between William le Reve and Simon de Eston, then bailiff, the suggestion was made to the Brother Nicholas that William le Fourbour should surrender the said tenements into Simon's hands as the lord's attorney while he was lying in danger of death. He also said that le Fourbour had died before William le Reve had any estate in the said tenements through the lord, or paid a fine for them. Richard sought an inquiry into this, and also paid for an inquisition into whether he was le Fourbour's nearest heir.[362] Richard's case therefore rested on three claims: that he was the heir of his uncle; that his uncle had not been mentally fit to dispose of his property; and that the surrender had not been made post-mortem, against manorial custom. Richard was clearly aware that the surrender and admittance had occurred and that a record would be found of it, but that it ought not to prejudice the court against his case since it could provide answers to none of these points.

The entry goes on to state that the jurors found that Simon de Eston had gone to the house of William le Fourbour in London on Monday (the feast of Thomas the Apostle) , and had received from William the surrender of the tenements to the use of William le Reve. On the following Wednesday, Simon had come to the court at St Albans and brought with him William le Reve, and they had testified to the surrender, because of which the lord handed the tenements to William. The jurors stated that William le Fourbour had died on the same Wednesday before the ninth hour, but that he was alive at the time at which William received the tenements. The jurors were given a day for their judgement on this. They also said that Richard was indeed the nearest heir of William le Fourbour. It was further noted that Richard did not come on that day, and so was amerced, and there is no further record of the case in the court book, so we do not know how the jurors responded to the claim of

[362] B.L. Add MS 40167, f66: Halmote held at East Barnet, Thursday before the feast of St Dunstan, 14 Ed III (1340). *Et predictus Ricardus dicit quod licet tale recordum reperiatur quod id ei nocere non debet eo quod idem Willelmus le Fourbour tempore redditionis non fuit compos mentis nec venit coram Cellerario sed per collocutionem inter predictam Willelmum le Reve et Simonem de Eston' tunc ballivum Manerij suggestio facta fuit dicto Cellerario quod predictus Willelmus le Fourbour redderet dicta tenementa in manus ipsius Simonis ut attornati domini ubi dictus Willelmus le Fourbour iacet in periculo mortis et obijt antequam dictus Willelmus le Reve habuit statum in dictis tenementis per dominum vel aliquem finem pro eisdem fecit et hoc petit quod inquiratur et utrum idem Ricardus sit proximus heres eiusdem Willelmi le Fourbour et dat pro inquisitione habenda ijs.*

insanity. Another such case appears in the Wakefield roll for 1296/7, in which William Nelot sought one and a half rodes of land against his brother, John, claiming that his father, Nigel, had been mentally incapable when he had demised it to John. John responded that his father had demised it to him in the presence of the steward and Sir William de Rollesby, and vouched the rolls to warranty. There is no mention of the rolls in the verdict, which merely states that the inquisition found that Nigel had been in his senses.[363]

Could litigants be required to produce written evidence?

While the use of the written record could therefore be challenged, there are also some cases in which one party attempted to force the other to produce written evidence. On 22nd August 1377, Henry Grenehoid brought a plea of land against John de Fery and Alice his wife in Wakefield court for five acres and one rode of land in Alverthorpe. Henry claimed that his brother Thomas had died seised, and because this involved *mort d'ancestor*, he sought an inquiry into the circumstances (*et quia tangit mortem antecessoris petit inquisitionem de circumstanciis*). The defendants replied that Alice had an estate in land by the court rolls, but that they were ignorant of that estate without inspecting the rolls (*quem statum ipsi ignorant absque inspicionem rotulorum predictorum*). The case has already been briefly mentioned, since it was John and Alice who reported that they had paid the clerks for the scrutiny of the rolls but that this had not yet been done. The parties were given a day for the scrutiny of the rolls, and meanwhile the grave was to organize a jury for the next court to make a judgement between the parties.[364] On 25th September, the parties appeared again. Again, Henry claimed that Thomas had been seised in demesne and fee. John and Alice now argued that Henry ought not to bring this case against them, because at the court held at Wakefield on 22nd September 1374, they had sought a third of an acre and a rode of land against Henry as Alice's dower. They claimed that Thomas Grenehoid, Alice's former husband, had held the land after their marriage. Henry responded that Thomas, while he held the land, had assigned six acres as Alice's dower, and that she now held those six acres. Now, in the later case, John and Alice asked for a judgement as to whether Henry should be able to bring this action against his former recognition and allegation, since the five acres were part of the said six acres assigned to Alice. Henry denied that he had recognized and alleged that Alice was endowed of the six acres, and asked that John and Alice should show their record.[365] John and Alice's defence in 1377 rested on the outcome of the case which they had brought

[363] Baildon, *The Court Rolls of the Manor of Wakefield, Vol. I, 1274 to 1297*, p.252, pp.257-8: Courts held at Wakefield, Friday the feast of Archbishop Edmund, and Friday the morrow of the feast of St Nicholas, 24 Ed I (1296).

[364] Y.A.S. MD225/1/102, m12: Court held at Wakefield, Friday 22nd August, 1 R II (1377).

[365] Y.A.S. MD225/1/102, m13: Court held at Wakefield, Friday 25th September, 1 R II (1377).

against Henry in 1374. In August, they had stressed the need for a record to prove Alice's estate in the land, but a month later they clearly had not obtained that record, and now Henry insisted that it should be produced. The case unfortunately then disappears from the rolls, but we have already seen that a failure to produce a vouched record could cost a litigant their case.

Beckerman cited an example from Park, a manor of St Albans Abbey, from 1337 in which both parties in a property dispute vouched the court rolls, and when the plaintiff then sought an inquest, the defendant vouched a further record saying that the plaintiff 'ought neither to proceed nor be admitted to the taking of an inquest for as long as the record of the rolls could serve both parties'.[366] There are two similar cases at Wakefield. In 1343, Alice widow of Roger Fryston sued Hugh del Wro for one third of a bovate and a third of a quarter bovate of land in Horbury as her dower. Hugh claimed that she should not be able to claim the land, since she and her husband had surrendered it to him in court, and he sought an inquiry. Alice, however, argued that the matter ought not come to an inquiry because Hugh's claim lay in the record of the rolls (*Et dicta Alicia dicit quod ad inquisitionem inde venire non debeat eo quod tale responsum iacet in recordo Rotulorum Curie et non in inquisitione*). The court therefore ordered Hugh to scrutinize the rolls if he wished to proceed (*Ideo preceptum fuit dicto Hugone scrutari Rotulos si expedire voluerit*).[367]

Two years later Matilda widow of John Warde, via her attorney William Sympson, sued John Pyndar for unjustly deforcing her from two acres of land, claiming that she had been seised of the land during her maidenhood by the gift of her father, and that the alienation to John had been made by her

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Henricus Grenehode op se versus Johannem de Fery et Aliciam uxorem eius de placito terre et petit versus eosdem Johannem et Aliciam quinque acras et una roda terre cum pertinenciis in Alverth' ut prius de quibus Thomas Grenehoid frater ipsius Henrici cuius heres ipse est obit seisitus ut de feodo et dominico et cetera Et petit assisam et cetera Et Johannes et Alicia veniunt et defendunt et cetera et dicunt quod predictus Henricus versus eos in hoc casu habere non debent quia dicunt quod ad Curiam tentam apud Wakefeld die veneris xxij die Septembris anno regni regis Edwardi tercii post conquestum xlvii ipsi Johannes et Alicia petierunt versus predictum Henricum racionabilem dotem eiusdem Alicie videlicet tercie parte unarum acrarum et unius rode terre in Flansawe in prepositura de Alverth' que fuerunt predicti Thome Grenehoid nuper viri eiusdem Alicie post sponsalia et cetera Et predictus Henricus venit et defendebat et allegabat quod predictus Thomas dum fuit tenens terre predicte assignavit ipsi Alicie sex acras terre nomine dotis sue pro omnibus terris suis ..... et eadem Alicia inde se .... et adhuc easdem vj acras terre nomine dotis sue tenet et petunt iudicium si predictus Henricus contra cognicionem et allegacionem suam predictam accionem habere posit ex quo predicte quinque acre et predicta terre petit sunt parcella predictarum vj acras terre assignavit eisdem Alice nomine dotis sue Et Henricus dicit quod ipse non cognovit nec allegavit quod dicta Alicia fuit dotata de predictis vj acris terre et cetera Et petit quod predicti Johannes et Alicia ostendant inde recordum Et datus est dies eisdem Johanni et Alicie ad hadendum et ostendendum recordum inde ad proximam Curiam..

[366] Beckerman, 'Procedural Innovation and Institutional Change in Medieval English Manor Courts', p.221.

[367] Y.A.S. MD225/1/69, m3: Court at Wakefield, Friday before the feast of St Luke the Evangelist, 17 Ed III (1343).

husband whom she could not contradict (*contradictionem non potuit*). In this case, John did not claim that the land had been surrendered jointly, but that in her widowhood Matilda had come to the court of the steward John de Burton, and had surrendered and quitclaimed all her right in the land to him. John asked for an inquest, but Matilda's attorney similarly argued that his allegation of her surrender in court lay in the record of the rolls. John was consequently ordered to scrutinize the rolls.[368] In both cases, the women claimed to hold prior right in the land – Alice because her husband had held it and Matilda because it was given to her before her marriage. They were able to place the burden of proof onto the defendants to show that the circumstances in which they acquired the land had not been to the prejudice of their rights. These cases suggest that if a litigant chose to press the point, the court might consider written evidence to be the appropriate form for that proof.

There are three particularly striking cases in this respect in the Wakefield rolls. On 27th July 1369, John Swan sued Richard Bokelersmith and Juliana his wife for one and a half acres of land in Alverthorpe, which John claimed as his right since his father had given it to him in the remainder of a gift (*in quibus idem Johannes habet ius virtut[is forme] doni quod Ricardus pater eiusdem Johannis sibi fecit in le remaindre*). Richard and Juliana replied that a plaintiff who claimed a gift in remainder ought to show 'specialty' (*debet ostendere specialitatem*). John had not shown specialty, so they questioned whether they should have to respond to his plea. John argued that the land which he sought was customary land held by the rod which could not be alienated by deed sealed under wax (*non potest alienari per factam sub cera*), and that in such a case this was the only appropriate form of specialty (*quod est sola specialitas in isto casu*). Thus he did not hold any, nor ought he to produce it. Richard and Juliana claimed that for this kind of gift, the court rolls or a copy of them were an appropriate form of specialty (*Et Ricardus et Juliana dicunt quod [rotuli] Curie vel copia inde huiusmodi doni est bona specialitas*), and because John had not produced either of these they sought judgement questioned again whether they ought to have to respond to his plea.[369] A separate plea

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[368] Y.A.S. MD225/1/70, m6d: Court held at Wakefield, Friday the morrow of the feast of St Mathias, 19 Ed III (1345).

[369] Y.A.S. MD225/1/94, m15d: Court held at Wakefield, Friday 27th July, 43 Ed III (1369).
Johannes Swan optulit se versus Ricardum Bokelersmith' et Julianam uxorem eius de placito terre [.....] Johannes ad ultimam Curiam versus predictos Ricardum et Julianam unam acram et dimidiam terre in Alverthorp in quibus idem Johannes habet ius virtut[is forme] doni quod Ricardus pater eiusdem Johannis sibi fecit in le remaindre et cetera. Et predicti Ricardus Bokelersmith' et Jul[iana] veniunt et defendunt et cetera et dicunt quod in forma doni in le remaindre petens debet ostendere specialitat[em] et dictus Johannes nullam specialitatem ostendit et cetera et petunt iudicium si ulterius debeant respondere et cetera Et J[ohannes] dicit quod ista terra quam petit est terra tenta per virgam que non potest alienari per factam sub cera quod est [sola] specialitas in isto casu et sic non tenetur nec debet ostendere specialitatem. Et Ricardus et Juliana dicunt quod [rotuli] Curie vel copia inde huiusmodi doni est bona specialitas. Et ex quo dictus Johannes non ostendit rotulos Curie [nec] copia huiusmodi doni petunt iudicium si ipsi ulterius debeant respondere et cetera. Et

brought by John against Robert Wolf in the same court took exactly the same form. In both, the parties were given a day to hear the verdicts, but the record of these merely states that John would recover nothing but was amerced.[370]

The defendants' demand that John should produce specialty, a sealed bond which was typically used to record debts or contracts, is interesting. R.C. Palmer has discussed the benefit of specialty in the common law court.[371] There, plaintiffs able only to produce suit rather than a sealed deed were limited to bringing the action 'debt on a contract'. If the defendant could produce eleven compurgators to make the oath he would be acquitted. Plaintiffs with specialty could bring the action of 'debt on an obligation'. The defendant could only challenge a specialty either by producing a written acquittance which showed that the debt had been paid, or by proving that he had been a minor or in prison at the time the specialty was made, or by claiming that it was a forgery. Wrongful denial of a deed, however, was punishable by imprisonment.[372] Thus many cases were simply settled with the defendant's acknowledgement of a debt, since if the specialty itself could not be challenged there was no reason for the case to come before a jury. Furthermore, it has been argued that the manor and other local courts did not have the authority to try cases involving sealed deeds.[373] Beckerman noted the statement by one thirteenth century treatise that the court baron could not hear pleas that could not be tried by compurgation, and since specialty could be proffered to bar compurgation, cases based on specialty could not be heard there. He found evidence for the continuation of this theory in the 1321 Eyre of London.

The attitude of the court to the defendants' claims is unclear in this instance. We cannot tell if the case was decided in favour of the defendants because the jury accepted their argument that John

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Johannes dicit quod nec rotuli Curie nec copia eordem est specialitas set solum factam in cera quod ipsi ostendere non possunt et petit iudicium et cetera.

[370] Y.A.S. MD225/1/95, m2d: Court held at Wakefield, Friday 19th October, 43 Ed III (1369). *Consideratum est quod Johannis Swan nichil capiat per querelam suam versus Ricardum Bokelersmith et Julianam uxorem eius de placito terre set sit in mercia.*

[371] R.C. Palmer, *English law in the age of the Black Death, 1348-1381: a transformation of governance and law* (Chapel Hill, N.C.: University of North Carolina Press, 1993), p.70.

[372] R.B. Pugh, *Imprisonment in Medieval England* (Cambridge: Cambridge University Press,1968), p.13.

[373] Beckerman, 'Procedural Innovation and Institutional Change in Medieval English Manor Courts', pp.208-9; Briggs, 'Seigniorial control of villagers' litigation in later medieval England', p.416. Briggs has recently noted that sealed deeds, particularly bonds, are 'ubiquitous' in the probate and common law records which reveal debt, but that they are rarely mentioned in the manor court rolls. 'In effect, the manor court could only be used to enforce oral agreements. If writings could not be used to prove that a debt was outstanding in what was "court of first resort" for most English village creditors, then it probably follows that that such writings were rarely used by them to record a debt and its terms and conditions.' Briggs, *Credit and Village Society in Fourteenth-Century England*, p.80.

had not produced the correct written evidence, or because they had enquired into the case and had found that the land had not been left in remainder, or that for another reason the defendants had the greater right. Four years later, however, specialty was demanded again, when William de Walton sued William del Dene for one messuage and sixteen acres in Crigglestone. William de Walton claimed that Roger Tropynel had surrendered this land and then recovered it to hold to himself, his wife Eve and their heirs, with remainder to Ely Wright and his heirs. Roger and Eve had died without heirs, William argued, so the land ought to have passed to Ely and then descended to his son, Hugh Elyot, and finally to himself as Hugh's son. William del Dene responded that as the plaintiff was seeking against him in the form of a gift in remainder, he ought to show specialty, and since William de Walton had shown no specialty, he questioned whether he could have this action (*actionem habere poterit*). Unlike John Swan, William de Walton did not question what constituted specialty or whether it was applicable in such cases, but simply said that he could not show specialty without scrutiny of the rolls, and was accordingly allowed to scrutinize them before the next court (*ipse Willelmus non potest ostendere specialitatem huius doni in le remanere sine rotuli Curie et petit quod rotuli scrutentur. Ideo scrutentur rotuli contra proxima*). In this instance, the clerk noted that the rolls for the year in which William had alleged that the gift had been made were wanting, and so an inquisition was to come from the graveships of Sandal, Thornes and Horbury.[374] The case then disappears from the rolls.

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[374] Y.A.S. MD225/1/98, m11d: Court held at Wakefield, Friday 6th May, 47 Ed III (1373).
Willelmus de Walton' op se versus Willelmum del Dene de placito terre et petit versus eundem Willelmum del Dene unum messuagium et sexdecim acras terre cum pertinenciis in Crigleston' que dictus Willelmus del Dene ei iniuste deforciant. Et unde dicit quod quidem Rogerus de Tropynel reddidit sursum in Curia predictum messuagium et predictas xvj acras terre et reaccepit statum eorundem tenementorum sibi et Eve uxori sue et heredibus de corporibus eorum exeuntibus Et si predicti Rogerus et Eva obirent sine herede de corporibus eorum exeunte tunc predictum messuagium et predicte xvj acre terre remanerent Elie Wright et heredibus suis et quia iidem Rogerus et Eva obierunt sine herede de corporibus eorum exeunte predictum messuagium et predicte xvj acre terre remanebant et remanere debebant predicto Elie et de eodem Elie ius et feodum inde descendebant Hugoni Elyot ut filio et heredi predicti Elie et de eodem Hugone ius et feodum inde descendebant sibi Willelmo ut filio et heredi predicti Hugonis et inde tendit sectam et cetera Et Willelmus del Dene venit et defendit et cetera et dicit quod ex quo predictus Walton' petit versus eum predicta tenementa per formam doni in le remanere debet ostendere aliquam specialitatem quomodo eadem tenementa debent remanere et idem Willelmus de Walton nullam specialitatem inde ostendit Et petit iudicium si idem Willelmus per querelam suam versus ipsum Willelmum del Dene accionem habere poterit Et Willelmus dicit quod rotuli Curie huiusmodi doni remanent penes senescallum Curie et sic ipse Willelmus non potest ostendere specialitatem huius doni in le remanere sine rotuli Curie Et petit quod rotuli scrutentur Ideo scrutentur rotuli contra proxima. Et postea constat quod rotuli Curie illius Anni quo dictus Willelmus allegat predictum donum fieri deficiunt. Ideo consideratum est quod veniat inquisitio de Sandal et tribus preposituris proximis adiacentibus partes predictas ad inquirendum de huiusmodi dono. Ideo preceptum est prepositis de Sandal Thornes Horbur' et Stanley quod venire faciant xij de preposituris suis inter predictus Willelmum et Willelmum qui non attingunt partes.

The defendants' use of that particular term rather than simply arguing that, as had been done on occasions in the past, the evidence for the gift *iacet in recordum rotuli* is interesting. It is possible that they had witnessed the use of specialty in a royal court, but whereas in cases of debt on an obligation, the production of specialty by a plaintiff could leave the defendant with no case to make at all, here the defendants invoked the concept to suggest to the court that the plaintiff could not provide valid evidence. Whether the defendants hoped that their use of the term would give their demand gravitas or that their experience and knowledge of the common law would intimidate the plaintiffs, or whether they genuinely misunderstood the specific purpose of specialty and the circumstances (and jurisdictions) under which it could be used, is unclear. Taken together, however, these three cases do provide some sense of the manor court's view of its own records. John Swan's objection to their claims had not been that specialty could not be tried in the manor court, but that the land in question was villein and therefore could not be alienated by the necessary deed, *quod est sola specialitas in isto casu.* William de Walton, on the other hand, did not challenge William del Dene's demand for specialty, but merely requested the scrutiny of the rolls in order to provide the 'specialty' required. William's response to the demand for specialty suggests that the jury in the suits brought by John Swan had not objected to the misappropriation of the term to apply to the court rolls and copies.

Four and a half years before William de Walton's prosecution of William del Dene, Dene had faced another plea of land brought by Adam Whitehede and his wife Isabella. As with the later case, they brought their plea in the form of a writ in remainder of the form of a gift (*fecerunt protestacionem sequi in forma brevis in remanenti forme donacionis*). Despite the similarity to the later case, there is no mention of written evidence, either in the pleading or in the verdict. Instead, an inquisition was taken with the consent of the parties (*inquisitio capta de consensus partium predictorum*), which found for the plaintiffs.[375]

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[375] Y.A.S. MD225/1/94, m7: Court held at Wakefield, Friday 29th December, 42 Ed III (1368). *Adam Whitehede et Isabella uxor eius op se versus Willelmum del Dene de placito terre et fecerunt protestacionem sequi in forma brevis in remanentia forme donacionis Et dicunt quod Thomas pater Thome Pelle fuit seisitus de uno cotagio cum pertinenciis in Chapelthorp in prepositura de Sandale Et illud dedit hic in Curia cuisdam Eve filie Elie ad terminum vite sue Ita quod post decessum dicte Eve dictum cotagium cum pertinenciis remaneret Isabelle que modo petit et heredibus suis imperpetuum et cetera Et predictus Willelmus del Dene venit et dicit quod dictum cotagium non fuit datum sicut predicti Adam et Isabella allegaverunt per querelam et hoc petit inquisicionem et cetera Et predicti Adam et Isabella similiter et cetera Et inquisitio capta de consensus partium predictorum per sacramentum Thome Harpour Willelmi del More Thome de Halyfax Thome Broun Willelmi Shakelok' Ricardi Godechild' Roberti Dorkyn Willelmi del Grene Johannis de Tathewell' Johannis de Plegwyk Johannis de Beghale et Ade Kyng' ad hoc.... Qui dicunt super sacramentum suum predictum cotagium non datum fuit sicut predicti Adam et Isabella allegaverunt per placitum suum et cetera Ideo consideratum est quod ipsi recupent dictum cotagium cum pertinenciis suis et quod predictus Willelmus pro sua iniuste detencione sit in misericordia Et predicti Adam et Isabella dant domino de fine pro ingressum habendo et cetera.*

It has been suggested that the complexity of tenure and increasing use of entails, made the security of written registration desirable and even essential. It is interesting to note, however, that in the cases involving 'specialty' it was the defendants who demanded that written proof be shown, rather than the beneficiaries of the remainders (i.e. the plaintiffs). The particular use of the term 'specialty', rather than simply arguing that the evidence *iacet in recordum rotuli*, as had been done previously in Wakefield manor court, suggests that they may have witnessed the use of specialty in a common law court, where it could play an impressively decisive role in cases of debt on an obligation. The influence of the common law in terms of the development of procedure in the manor court has already been touched upon, but the extent of peasant experience of courts beyond the manor and the penetration of the legal profession into the localities is also of significance if we are to fully understand manorial cultures.[376] It is noticeable that in the case studies explored here many cases in which written evidence was vouched were also brought with reference to common law terminology – for example, the land in question having been granted *in forma doni le remaindre*. Experience of outside courts or the influence of an attorney (such as Matilda Warde employed) cannot be discounted as factors in the emphasis we find placed by the individual litigants on documentary evidence in these cases.

In matters relating to customary land, the manor court was the sole jurisdiction. The extent to which the peasantry had access to other jurisdictions (common law courts, church courts or other manorial courts), for civil litigation has been the subject of much recent research. Hyams argued that if prosperous peasants did have access to the common law courts, then the manor '[could] hardly constitute their natural forum or enclosure'.[377] More recently, Anthony Musson and Chris Briggs have shown that even customary tenants did have such access.[378] Sue Sheridan Walker identified a number of tenants from Wakefield who were active in the Court of Common Pleas between 1331 and 1333,

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[376] See Paul Brand, 'Stewards, Bailiffs and the Emerging Legal Profession in Later Thirteenth-Century England', in *Lordship and Learning: Studies in Memory of Trevor Aston*, ed. Ralph Evans (Woodbridge: Boydell Press, 2004); Matthew Tompkins, 'Let's Kill all the Lawyers: did fifteenth century peasants employ lawyers when they conveyed customary land?', in *The Fifteenth Century VI: Identity and Insurgency in the Late Middle Ages*, ed. Linda Clark (Woodbridge: Boydell Press, 2006); Postles, 'County *Clerici* and the Composition of English Twelfth- and Thirteenth-Century Charters'.

[377] Hyams, 'What did Edwardian Villagers Understand by 'Law'?', p.71.

[378] Anthony Musson, 'Social exclusivity or justice for all? Access to justice in fourteenth-century England', in *Pragmatic Utopias: Ideals and Communities, 1200-1630*, ed. Rosemary Horrox (West Nyack, NY: Cambridge University Press, 2001); Anthony Musson. *Medieval Law in Context: the growth of legal consciousness from Magna Carta to the Peasants' Revolt* (Manchester: Manchester University Press, 2001); Anthony Musson & W.M. Ormrod, *The Evolution of English Justice. Law Politics and Society in the Fourteenth Century* (Basingstoke: Macmillan Press Ltd, 1999); Briggs, 'Seigniorial control of villagers' litigation beyond the manor in later medieval England'.

and the widening of such a study would be beneficial.[379] Experience of the procedures of other courts may well have shaped the expectations of the suitors as they returned to their manor courts, including in relation to the use of written records, an aspect beyond the scope of this project, but one which needs further investigation.[380]

In the specialty cases, as in the cases brought by Alice widow of Roger Fryston and Matilda widow of John Warde, one party demanded that the other prove their rights by written evidence. More usually, as the analysis of the reasons for vouchers of the rolls has shown, the rolls were vouched voluntarily by the defendants to demonstrate that they had legally received the land in court. While this was sufficient in some cases, customary tenure was clearly governed by more complex considerations. We have seen examples of how entries from the rolls, and even copies, could be rejected where claimants successfully proved that a grant had over-ridden their *maior ius*. In the case between William and John Nelot, John vouched the rolls and was ultimately successful in his defence. But the decisive factor in the case then appears not to have been that John had received the lands in entirely the proper fashion - in court before the steward and recorded in the rolls - but that their father had been mentally capable of making the decision to demise the land at that time. Where written evidence, or the demand for it from the other party, was accepted, the cases seem to have turned on the facts of past transfers (whether the transfer had occurred at all, who had been involved and the terms of the grant). In those cases in which written evidence was rejected or apparently disregarded, the juries can often be seen to also be applying manorial custom regarding rights in property or weighing other considerations based on their knowledge of the circumstances of the individuals involved.

These findings suggest that both the written record and communal recollection had their place in the manor court. The circumstances in which written evidence was produced, and to an even greater extent decisive, were seemingly limited however. The 'non-written culture' of the manor court appears to have predominated throughout this period and was therefore not, as Susan Crane

[379] Sheridan Walker, *The Court rolls of the Manor of Wakefield from October 1331 to September 1333*, p.xi.

[380] A further instance of the importance of extra-manorial experience has been suggested for cases of debt. Chris Briggs notes that recognizances provided a guarantee of assistance in recovery which was similar to the protection offered to merchants under the statutes of Acton Burnell and Merchants. The clergy were especially likely to be involved in credit arrangements at a regional level, and were probably 'numerically signifcant' among those who did use recognizances. In general, however, he argued that '[t]he rarity of formal recognizances in the manorial documentation perhaps reflects the fact that few within village society were sufficiently conversant with these instruments to request their use'. Briggs, *Credit and Village Society in Fourteenth-Century England*, pp.80-2.

suggested, 'labelled deficient'.[381] The final chapter will pursue this relationship between the written records and non-written culture further. Is there any evidence for the initiation of the use court rolls as evidence by the court officials or juries, rather than by individuals as in the cases discussed thus far? What role did the court rolls play in the application of custom in verdict finding? Lastly, the thesis will return to the wider issue of the extent to which written records were seen as devices for defining communal and individual rights and as a limitation on seigneurial power.

[381] Crane, 'The Writing Lesson of 1381', p.203.

CHAPTER 6

Orality and literacy in the manor court

Over the course of the thirteenth century, estates and manors of all sizes became prolific producers and keepers of records. While the records were undoubtedly primarily kept for administrative purposes and for the benefit of the landlords, a study such as this demonstrates that peasants could and did re-use them. John Beckerman, arguing for a general increase in the use of documentary evidence, saw them as an improved means of settling disputes:

> 'Documents were surer than a jury's verdict, and they required the barest minimum of interpretation or judgment. This judgment was exercised as easily by the court president as by the suitors, indeed, more easily, since the court president had the advantage of literacy. When customs or usages were recorded, there was no need for suitors to state them.'[382]

At the same time, however, he conceded that such a change would serve to further 'undermine' the significance of the suitors in general, already lessened by the introduction of presentment and trial juries. Susan Crane's suggestion that the non-written culture of the court came to be regarded as inadequate is the extreme conclusion of this view-point.[383] Rather than seeing the advantages, as Beckerman did, Crane viewed the perceived shift towards documentary evidence as a source of further social differentiation and exclusion.

While the evidence from the Winchester estates suggests that in some areas jury verdict did perhaps come to play a less significant role in land litigation during the fourteenth-century,[384] the extent to which such a shift occurred in general has been questioned as a result of the analysis of the Wakefield and Alrewas court rolls presented in Chapter 3. Beckerman's argument that written evidence 'always replaced trial by jury' in land litigation by the end of the fourteenth-century certainly requires modification.[385] Rather than written evidence becoming the norm in this period in the manor courts analyzed, it played a limited and particular role. As administrative and jurisdictional entities, manors had developed a high level of *Schriftlichkeit* (to use the German terminology

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[382] Beckerman, 'Procedural Innovation and Institutional Change in Medieval English Manor Courts', p.226.

[383] See p.12, above.

[384] Mullan & Britnell, *Land and Family. Trends and variations in the peasant land market on the Winchester bishopric estates, 1263-1415*, pp.68-9. See p.64, above.

[385] Beckerman, 'Procedural Innovation and Institutional Change in Medieval English Courts', p.225.

described in the introduction to this thesis), relying on written records. The *Verschriftlichung* - the 'social and psychological implications'[386] of that record-keeping on the wider community of the manor – is more difficult to assess. Even in land litigation, these case studies have shown that the balance of *Schriftlichkeit* and *Oralität* was complex. Attitudes towards the written culture of the manor are extremely difficult to draw out with any certainty from the rolls themselves. The numbers of cases in which the rolls were cited are insufficient to suggest a general 'literate mentality' among the peasantry as opposed to pragmatic responses of individuals to their own cases. Voucher of the rolls had not become habitual, nor does there seem to have been any assumption on the part of the officials, juries or litigants that it was automatically the appropriate form of evidence to offer. In general, the case studies presented in this thesis support Poos and Bonfield's view that written evidence was used to support factual pleading, rather than to confirm customs.

So far, the focus of this study has been the process of pleading and production of evidence. It has been argued that the decision to vouch written records was affected by the practical implications of doing so, by the particular circumstances of the individual case and the past history of the land's tenure, and by the personal preferences of the individual litigants. The process of verdict finding is even more difficult to discern from the extant record. Nonetheless, these case studies have revealed some evidence concerning the role of communal memory and perhaps also for the initiation of the use of the rolls by juries which is worth discussing further, and for the wider relationship between manorial custom and written records which may suggest different attitudes towards records on manors of ancient demesne status such as Alrewas.

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Communal memory and the written record

Memory could prove to be fallible, and at Wakefield there are numerous instances of verdicts found by the traditional jury of twelve later being challenged by a process of attaint by twenty-four, and even forty-eight jurors.[387] At Alrewas, Robert Paty complained that William Abbot had deforced

[386] Mostert, 'New Approaches to Medieval Communication?', p.28.

[387] A case brought in 1329 by Walter Gunne against Richard Bunny exemplifies the way in which verdicts could be challenged. Walter sued Richard for ousting him from two messuages and a bovate in Newton. He claimed during the stewardship of John de Doncaster a jury of twelve had found that Henry Gunne (grandfather of Walter) had been seised of them 'in his demesne as of fee' and had demised them to Walter de Northwode for ten years, and that Robert Bunny, Richard's father, had wrongfully recovered them from Northwode, so that the jury had allowed Robert Gunne (Walter's father) to recover them from Richard. Richard responded that he was not bound to answer in this court, because at a court during the stewardship of William de Wakefield, it had been found by an attaint of twenty-four jurors that the twelve jurors who had allowed Richard to recover had made a false oath. He went on to claim that it was 'not consonant with the law, nor the custom of the manor, to

him of a messuage with curtilage in Alrewas.[388] He said that William had no entry except through Nicholas le Cartewryghte and his wife, to whom Adam Paty, Robert's father, gave the land for the term of their lives, and that it ought to have reverted to Robert as Adam's son and heir after their deaths. William responded that Sibilla Halle, mother of Adam Paty, had held it by inheritance and had given it to Nicholas and his wife and their heirs and assigns 'by the court rolls before the memory of the tenants now living (*per rotulos curie ante memoriam tenentium huius manerij modo viventium*), and not for the term of their lives as Robert had said. William put himself on the inquisition of the court in place of the grand assize. (*Et de hoc ponit se super Inquisicionem huius curie loco magne assise*). The jurors found that, as William had said, Sibilla had held the land in inheritance and surrendered it to Nicholas, his wife, their heirs and assigns forever for 8d per annum, and that therefore William had the greater right. It is interesting to note that although William stressed the fact that the transfer had occurred *per rotulos curie* at a date before any living tenant could remember, the entry gives no indication that the rolls were searched.

I have found no similar instances in which it was explicitly stated that communal memory was insufficient in the records from Wakefield or Barnet. The ritual aspects of admittance to customary land discussed in Chapter 1 were one means by which it might be embedded in the memories of the courts' suitors, although so many transfers occurred each year (particularly on a manor of Wakefield's size) that this alone could not have sufficed. More important, perhaps, was the knowledge of a party's immediate community, who would be most affected by changes in landholding and therefore changes in those who shared in the communal rights and obligations. It is not surprising to find, therefore, that in several cases specific requests were made for an inquest by neighbours. In 1277, Dyana, wife of Adam Ball, claimed that Richard de Pynigton had deforced her from a term of three years in land in the vill of Hertesheved. The defendant said that at the previous Martinmas, Dyana and her son had voluntarily surrendered the land and had made a fine of 2s for the deterioration of the buildings, which he had forgiven because of her poverty, 'and he put himself on

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make further inquisition in pleas of land than by an attaint of twenty-four'. Walter replied that in cases of land held in bondage at the will of the lord, the lord of his special grace, notwithstanding the common law, could grant an attaint on an attaint 'to enquire more truly regarding the tenants' right'. Walter then produced a close letter from the Earl Warenne, directed to Sir Simon Baldreston, steward of his lands in the county of York, which ordered him to summon forty-eight men to make inquiry. For some reason, Walter failed to prosecute his suit at that time, as on Richard was allowed to go *sine die*. However in 1333, Walter can be found giving 40d to have inquiry by forty-eight men on the inquiry of twenty-four taken in the case between Richard and Robert his father. It was finally decided that the twenty-four had made a false oath, and the facts were indeed as Walter had stated. Sheridan Walker, *The Court rolls of the Manor of Wakefield from October 1331 to September 1333*, pp. 161-2, 166: Courts held at Wakefield, Friday 26th February and Friday 12th March, 1333.

[388] St.R.O. D(W)0/3/25, m8: Court held at Alrewas, Saturday after the feast of St Peter & St Paul, 14 Ed III (1340).

the verdict of the neighbours in Hertesheved, who saw and heard the same.'[389] But it is interesting to note that all such references to neighbours in the Wakefield court rolls, with the exception of three, date from before 1297/8.[390] It is unclear whether this is indicative of the change in procedure identified by Beckerman, with the role of the suitors in general giving way to that of the trial jury, or whether this simply reflects a change in the language of the record. Wakefield was an extensive manor and suitors to the three weekly courts came from across the graveships, and it seems unlikely that, for example, the tenants of Sandal would have any particular interest in or recall of the transactions of the tenants of Sowerby. Unless the trial jurors could, and did, rely on the court records, there must have remained a place for local knowledge which, like so much of the process by which verdicts were reached, is concealed by the brevity of the official records.

There are several cases in which jurors were apparently expected to recall events well past. In 1298, in a dispute over inheritance between brothers Ralph, son of Nicholas, and John Tricke, the jury said that the land had been divided between them when their parents had died forty years ago.[391] A jury's denial in 1309 that neither the plaintiff nor, as he had claimed, his father had been seised of the land during the past hundred years, suggests that they or other senior members of the community could remember who actually had.[392] Can we take the records at face value and be sure that the jurors had not consulted the rolls in those cases in which memory appeared to stretch back forty or even a hundred years? As Beckerman has pointed out, cases in which we could be certain that the jurors had turned to the written record in their inquiries would be extremely instructive. When and by whom the rolls were searched are vital questions. Our ability to answer them must partly determine how successful this approach to the question of local written culture and literate mentalities can be. The case of Robert Paty versus William Abbot described above, in which the records were plainly called but then were not mentioned in the verdict, casts doubt on the court rolls as a full record of the court procedures, and especially on the deliberations and decision making of the jurors. Equally, there are cases in which written evidence is mentioned in the verdict without any mention of its voucher during

[389] Baildon, *The Court Rolls of the Manor of Wakefield, Vol. I, 1274 to 1297*, p.166: Court held at Wakefield, Friday the feast of St Barnabas, 5 Ed I (1277).

[390] The later cases date from 1315 and 1365. Lister, *The Court Rolls of the Manor of Wakefield, Vol. III, 1313 to 1316 & 1286,* p.114: Court held at Wakefield, Friday after the feast of Pope Gregory, 8 Ed II (1315), Juliana, widow of William le Westerne, versus Joanna Dade; p.152: Court held at Wakefield, Friday after the feast of King Oswald, 9 Ed II (1315), Alice, widow of Gerbode de Alverthorpe versus Robert Gerbode. Y.A.S. MD225/1/91 m7: Court held at Wakefield, Friday 27th March, 40 Ed III (1366), Joanna daughter of William de Coplay versus John de Wilghby and Elena his wife.

[391] Baildon, *The Court Rolls of the Manor of Wakefield, Vol. II, 1297 to 1309*, p.52: Court held at Wakefield, Friday before the Exaltation of Holy Cross, 26 Ed I (1298).

[392] Ibid, p.203: Court held at Wakefield, Friday the morrow of the feast of St Philip & St James, 2 Ed II (1309).

pleading, but we should not necessarily assume, as Poos and Bonfield point out, that this means that the rolls were searched on the jury's initiative rather than the litigant's.

Britnell and Mullan cite an example from Winchester in 1336/7, in which a plaintiff was awarded right in a messuage and cotland 'as was found by the pipe rolls of Wolvesey, the time of the surrender being well remembered as was found by an inquest'. They suggest that '[t]his singular fine allows an insight into a moment in time when local, unwritten knowledge was still in balance with the gathering authority of a court roll'.[393] From as late as 1404, Poos and Bonfield cite a case from Over Selby in the East Riding of Yorkshire in which the plaintiff asked that her right be verified by the court rolls and by her neighbours (*et quod tale sit jus suum petit verificari tam per rotulos curie quam per vicinos suos*). The defendant could not deny that the claimant was the 'true and nearer heir' of the tenements.[394] The rolls might therefore confirm communal recollections. They could also, however, be used to fill in gaps when memory was insufficient. The clearest evidence for this comes from Alrewas. In October 1341, John Franceis sued Adam Franceis for one acre of land. John said that William, his father, had died seised in the time of the present King. Adam replied that he had entry to the acre following its surrender by William, and on this he put himself on the rolls, calling them to warranty, and also on the court.[395] At the following court, John sought judgment because Adam had failed to produce the record.[396] When the jurors were instructed to give judgement in this case, however, at the feast of the Conception of Mary in December 1341, they replied that they could not until the court rolls had been scrutinized concerning the feoffment (*dicti jurati dicunt quod non possunt iudicium dare quousque rotuli curie de feoffamento dicte terre scrutantur*), and Adam was ordered to have the rolls by the next court. The case was put in respite in the following four sessions, before disappearing from the rolls. Similarly in 1334, the jurors declined to give a judgement because 'they did not know how to give judgement until the court rolls had been searched' (*dicunt quod nesciunt iustum iudicium dare quousque rotuli Curie scrutantur*).[397] At Wakefield too, in 1348, it was stated that Margery, widow of Thomas Clerk and William son of Robert Genison put themselves on inquiry of twelve jurors, and that 'the same finds (and by record of the roll)' for the defendant. In a previous court, the jurors of Sandal had been amerced for the same case 'because they put their

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[393] Mullan & Britnell, *Land and Family. Trends and variations in the peasant land market on the Winchester bishopric estates, 1263-1415*, p.69.

[394] Poos & Bonfield, *Select Cases in Manorial Courts 1250-1550*, pp.108-9, no. 127, Over Selby (Yorkshire ER), 1404.

[395] St.R.O. D(W)0/3/27, m2d: Court held at Alrewas, Saturday the vigil of the feast of St Simon & St Jude, 15 Ed III (1341).

[396] St.R.O. D(W)0/3/27, m3: Court held at Alrewas, Saturday after the feast of St Martin, 15 Ed III (1341).

[397] St.R.O. D(W)0/3/19, m6: Court held at Alrewas, Saturday after the feast of St Peter & St Paul, 9 Ed III m6 (1335).

verdict in the mouth of one insufficiently knowledgeable'.[398] It seems plausible that the jurors decided to ensure their judgement was above reproach by using the rolls to confirm their own memories.

Manorial custom and the written record

The review of the circumstances in which the rolls were vouched suggested a recognition by the court and its suitors that they were of use only to establish facts. It has been argued that a key purpose of the court rolls was that they should be a point of reference for precedent.[399] Court books such as those of St Albans Abbey might contain only those entries from the rolls which were considered useful for future reference. Drawn up in the scriptorium and kept by the abbey, the court books were arguably for use by the monks and their stewards, not by their tenants. They provided a record of land transfers, of fines and amercements due, and of the verdicts in cases, all of which were of administrative use. In the Barnet court book, the majority of the entries relating to the surrender of charters and re-grant of the villein land involved were highlighted by the scribe, usually by drawing a hand and finger pointing to the entry from the margin. These entries were of particular importance to the abbey as they demonstrated the reassertion of their rights in those parcels of land (and the tenants' acceptance of the change). They are, however, arguably of greater importance for their factual content regarding the land and tenants involved than as records of precedent. In the court book, as in the Wakefield and Alrewas rolls, it is unusual to find much detail concerning the basis for the verdicts which could have been used as precedent in later cases.

The court rolls do include examples of customs which were articulated in court, and even of new ones which were declared. Poos and Bonfield argued for the existence of a 'core' of customs used frequently and well-remembered, and a 'periphery' of customs called upon rarely. The extent of 'recoverable memory' was significant, as rather than referring back to rolls for precedent from before the limits of their memory, the jury would often declare what they believed the custom was or ought to be.[400] There are a few statements of custom in the Wakefield rolls regarding issues that recur with some frequency. In 1275, it was adjudged in the court at Birton that if land was recovered in a plea of land that had already been sown by the defendant, then the defendant would be entitled to take the

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[398] Jewell, *The Court Rolls of the Manor of Wakefield from October 1348 to September 1350*, p.4, p.9: Court held at Wakefield, Tuesday 30th September, 1348.

[399] Ralph B. Pugh (ed.), *Court rolls of the Wiltshire manors of Adam de Stratton* (Devizes: Wiltshire Record Society, 1970), p.21; Harvey, *Manorial Records*, p.42.

[400] Poos & Bonfield, *Select Cases in Manorial Courts*, p.xxxiv.

crops from it.[401] Some were made in the course of litigation, such as the custom of the court 'that when any tenant by the rod surrenders land into the lord's hand in court conjointly with his wife, such surrender is held in this court of the same effect as a fine of free land in the King's Court', given after it was found by the inquisition that Christian, widow of Adam de Flansou, had surrendered conjointly with her husband the land for which she now sued Ralph Bate.[402] Others seem to arise from requests from tenants or officials for clarification of custom, such as the jurors' statement that a tenant by the rod may give, alienate or sell his tenements to whom he will, initiated by Hugh de Stannelay's paying 6d to have an inquisition on the point.[403] Similarly, Henry de Langfeld', an official, queried whether Thomas de Lascy should not have execution in a messuage and eight acres in Hipperholme, which John del Bothe had surrendered into the hands of Robert del Hole, the grave, to the use of Thomas. The jurors said that John had surrendered the land, with the condition that if he paid Thomas 32s he should have the land again, otherwise it would remain to Thomas and his heirs. The clerk recorded that as the surrender was not made in accordance with the common law, all the tenants of the eleven graveships were to be asked if they agreed with this verdict. They replied unanimously that, by custom, surrender into the hands of the bailiff was held to be of equal force with a surrender made in court, and that it had been from time immemorial. Here, as in the case of Christian above, we find the custom established by the whole community, allowing the case to finally be resolved on its facts: as John had not paid the money, Thomas would recover.[404]

Custom therefore did come to be recorded in the court rolls; frequently in some, such as those of Methley. Since the articulation of custom was the responsibility of the whole homage (or a large jury), Poos and Bonfield described it as 'curious' that there is little evidence for those records of those customs being cited in later cases.[405] There is evidence in the Wakefield rolls to support the conclusion that while the court rolls might be referred to establish particular facts, questions relating to the customs of the manor were still put to the community. This division is made especially clear by a case of 1337 in which Henry de Swilyngton sued Robert Malyn and Adam Rudde for damage done to his grass at Flansowe. The defendants claimed that they had common rights in the piece of land in the open season once the corn had been reaped, and they sought verification of this. Henry argued that they should not be able to plead this, because on other occasions it had been found by inquisition that all the tenants of rodeland ought to hold their land *in separali* (divided off), and that no one else

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[401] Baildon, *The Court Rolls of the Manor of Wakefield, Vol. I, 1274 to 1297*, p.148: Court held at Birton, Sunday the morrow of the feast of St Lawrence, 3 Ed I (1275).

[402] Y.A.S. MD225/1/51 m3: Court held at Wakefield, Friday the vigil of the feast of St Andrew, 19 Ed II (1325).

[403] Y.A.S. MD225/1/61 m10d: Court held at Wakefield, Friday the feast of St Dunstan, 9 E III (1335).

[404] Y.A.S. MD225/1/63 m20d: Court held at Wakefield, Friday after the feast of St Bartholomew, 12 Ed III (1338).

[405] Poos & Bonfield, *Select Cases in Manorial Courts*, p.lxvi.

ought to have common rights there. He called the rolls to warranty and was ordered to have record at the next court.[406] At that court, Henry produced a record from 1324/5 (*Et modo ad istam Curiam predictus Henricus profert recordum de anno xviij patris domini Rege nunc*), but the court decided that Henry himself was not a party to the case it described (*videtur Curia quod predictus Henricus non fuit pars hinc Recordo)*, and so an inquisition was ordered which did eventually find in his favour.[407] It seems that Henry hoped to use the rolls to show precedent for the custom of the manor on this issue. The court's rejection of his record because it did not pertain to the facts of his present case, however, supports the conclusion that custom could not be confirmed (even if it ultimately was, as occurred in this case) without an inquisition by representatives of the community.[408]

Poos and Bonfield identified only three cases in which the rolls were cited to confirm custom, in all of which 'the seigneurial interest was present'.[409] In the first of these, from Worlingworth in Suffolk, a woman claimed that as she had entered customary land by descent, by custom she ought not to pay merchet.[410] 'All the tenants in villeinage' were called upon to pronounce custom, and they supported her version. They were given a chance to change their minds, 'being questioned if they wished to claim the said custom at their peril', but they persisted in saying that women who inherited customary land could marry at will, and that it had never been challenged before. The entry goes on to state, however, that 'the rolls being inspected, it clearly appears that such women have made fine for licence to marry themselves', citing two past examples. All the villein men were consequently amerced for their false claim. The other two cases, one from c.1312 and one from 1481, concern the customs surrounding the succession of women to customary land. In the first, a woman claimed a messuage and nine acres as her inheritance, and the customary tenants had found that she had the right to it. Afterwards, it had been discovered that the woman had borne a child out of wedlock 'and that in the rolls of the preceding court of the manor by record and by the verdict of various inquests of the aforesaid [customary tenants]' it had been ruled that such women should lose their inheritances.[411]

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[406] Y.A.S. MD225/1/62, m23d: Court held at Wakefield, Friday after the feast of St Matthew, 11 Ed III (1338).
[407] Y.A.S. MD225/1/63, m3: Court held at Wakefield, Friday after the Quinzaine of Michaelmas, 11 Ed III (1337).
[408] Poos & Bonfield, *Select Cases in Manorial Courts*, p.xxxiv.
[409] Ibid, pp.lxv-lxvi.
[410] Ibid, pp.120-1, no. 147, Worlingworth (Suffolk), 1319.
[411] Ibid, p.130, no. 167, Cranfield (Bedfordshire), 1312; p.154, no. 204, Burnham Thorpe (Norfolk), 1481.

In these cases, it is clear that the rolls were checked at the instigation of the steward (or his deputy) on behalf of the lord. In Poos and Bonfield's later example from Burnham Thorpe in Norfolk, it was the jurors themselves who requested that the rolls be checked, since they were uncertain as to whether the custom was for the elder or younger daughter to inherit. There are also examples of attempts by individuals to appeal to the rolls to establish custom. In the Alrewas rolls, there are two cases concerning the lord's right to heriot in which custom was declared. In the first, the executors of Hauwisa wife of Henry le Reve, argued that the lord should not have the quarter of a heifer that he sought on her death since her husband was still alive. The jurors responded that in this case nothing pertained to the lord, citing (*allegant*) from the time of Lord Edmund, in which heriot had been demanded for the wife of Hugh Barnard. Having scrutinized the court rolls of that time (*scrutatis rotulis curie de eodem tempore*), it was found that the lord took nothing.[412] In the second case, the lord demanded the best beast from Christina, wife of Richard Mogge of Orgrave, as heriot in a messuage with croft in Orgrave after the death of her first husband, Richard Batemon, from whom she had received the land as a gift. Richard Mogge argued that Christina was the tenant of the land when she was betrothed to him, and that in such cases according to the custom of the manor nothing pertains to the lord. Richard sought verification by consideration of the court, and in the meantime the rolls were to be searched 'for the profit of the lord' (*pro commodo domini*). The verdict was returned that neither the lord nor the king from time out of mind (*a tempore quo memoria non existit*) had ever had heriot from a living woman for held land from her husband. Again, the case of the wife of Hugh Barnard was cited.[413]

As noted in Chapter 2, tenants of ancient demesne manors such as Alrewas were protected against changes in customs to a greater level than those of other manors, and indeed they seem to have been the driving force behind the custumal of 1341.[414] Unusually, there is a lengthy description within the rental of the circumstances of its creation:

> 'Whereas various disagreements and disputes have often arisen between the steward [and] bailiffs of Lord Philip de Somerville, knight, lord of the manor of Alrewas, which manor was ancient demesne, on the one part, and the tenants of base tenure of that manor who in the

[412] St.R.O. D(W)0/3/23, m2: Court held at Alrewas, Saturday after the feast of the Circumcision, 12 Ed III, (1339).

[413] St.R.O. D(W)0/3/25, m4, m4d: Courts held at Alrewas, Saturday after the feast of the Purification and Saturday the feast of King Edward, 14 Ed III (1340).

[414] Birrell, 'Rereading Manorial Custumals: Lords Tenants and Custom on Three Staffordshire Estates (1297-1341)'. The article discusses the role played by the peasantry in the construction of this and two other Staffordshire custumals.

king's book called 'domesday' are called villeins, on the other, with regard to differences and uncertainties as to certain customs, concerning which the steward and bailiffs were demanding other customs from the tenants, claiming and proclaiming them to be true and customary, the tenants on the other hand [being] of the opposite opinion [that they were] unjustly and newly exacted... The tenants asked their lord Philip, trusting in his faith as a good lord, and because he had governed the manor amicably and graciously these last forty years and more, and has more knowledge living than anyone else living of the certainty of the customs of the tenants, that he and his council should cause to be set down in writing all the customs and services which the tenants have been accustomed to do and to have from the time when the manor was ancient demesne and subsequently, [to be] remembered in perpetuity, and for the greatest advantage of the lord and his successors, avoiding danger to the souls of either party.

Whereas Roger de Somerville, knight, lord of Alrewas, my great-grandfather, in the 26th year of the reign of King Henry [III, October 1281-27 October 1242] oppressed his tenants Alrewas, by which great discord arose between them. In the end the tenants obtained a writ of *monstraverunt* from the king, and the action of the writ ran even in the neighbourhood, regarding which it was proved by inquisition of the neighbourhood that the tenants were bound to do the service and customs written below as appears by the writ which follows.'[415]

The customs described in the rental are those that appeared in Henry's writ. The rental ends by again stating that 'it was the king's ancient demesne as attested by domesday'. This was not the first time that the lord's attention had been drawn to the rights which his tenants derived from the ancient demesne status. In October 1339, the tenants of base tenure had elected Richard Franceis and John de Byker as reeves. But they were free sokemen, who they said had been quit of the offices of reeve, frankpledge, ale taster and beadle from time immemorial. As evidence, they called on 'the great roll in which the domesday of Alrewas was enrolled' (*Et de hoc vocant magnum rotulum in quo Domesday de Alrewas conscriptum est*).[416]

The actions of the Alrewas sokemen, both in using the rolls to ensure that customs favourable to themselves were upheld and in having their position enshrined in writing in the custumal of 1341, suggests a confidence in and a desire to protect their status. The appeal of ancient demesne status is

[415] Birrell & Hutchinson, 'An Alrewas Rental of 1341', pp.75-6.
[416] St.R.O D(W)0/3/25, m1: View of Frankpledge held at Alrewas, Saturday the feast of St Dionysius, 13 Ed III (1339).

understandable, and in 1377, a 'great rumour' - *magnum rumorem* – appears to have spread through villages in the south and west that certain manors had been able to prove that they held this privileged status. The result was that between autumn 1376 and spring 1378, representatives of at least forty villages across Wiltshire, Hampshire, Surrey, Sussex and Devon obtained writs *certiorari*, ordering the chancery to produce exemplifications for the villages.[417] Concerned landlords petitioned Parliament to have the value of the exemplifications made clear. The reply was returned that:

> As regards the exemplifications made and granted in Chancery, it is declared in parliament that these neither can nor ought to have any value or relevance to the question of personal freedom; nor can they be used to change the traditional terms of tenure and its customs or to the prejudice of the lords' rights to have their services and customs as they used to be in the past. If they wish, the lords may have letters patent under the Great Seal recording this declaration. As for the rest of this article, the lords who feel themselves aggrieved shall have special commissions of inquiry appointed under the Great Seal and directed either to the Justices of the Peace or to other suitable persons. These commissions shall investigate all such rebels, their counsellors, procurers, maintainers and abettors. [418]

The original purpose and consequent uses of Domesday Book as an administrative document have long been debated, yet it is clear that those villeins who appealed to it truly believed that it could still determine their personal rights and status three hundred years after its production. It has been argued that certain more ancient forms of documents were held in particular reverence and trust, since they were believed to guarantee certain privileges or liberties due to the villages from time immemorial.[419] Rosamond Faith has noted how the people of St Albans appealed to not only to Domesday Book, but also to a charter of Henry I and a 'charter of liberties' from the Saxon King Offa which the people believed was held in the abbey (and which the abbot denied had ever existed) in their attempts to prove their borough status.[420] These demands for charters in 1381, accompanied by the destruction of other documents, perhaps demonstrate a naivety among the peasantry about the role played by the written record. The *Gesta Abbatum* relates how tenants from several of the manors of St Albans Abbey demanded that new charters of liberties recognizing the liberties granted by Richard II

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[417] Rosamond Faith, 'The Great Rumour of 1377 and Peasant Ideology', in *The English Rising of 1381* ed. R.H. Hilton & T.H. Aston (Cambridge: Cambridge University Press, 1984). See also J.H. Tillotson, 'Peasant Unrest in the England of Richard II: Some Evidence from Royal Records', *Historical Studies* 16 (April 1974 – October 1975).

[418] R.B. Dobson (ed.), *The Peasants' Revolt of 1381*, pp.77. Translation of an extract from *Rotuli Parliamentorum*, vol. III, pp.21-2.

[419] Faith, 'The Great Rumour of 1377 and Peasant Ideology', pp.62-64.

[420] Ibid, p.58.

to the rebels at Mile End. Of course, these charters were rescinded as soon as royal forces arrived in the town and the abbey regained control. Such actions seem to show a fundamental misunderstanding, believing that the document as a physical object gave authority to whatever message was communicated therein, even though the abbey had the power to alter that message at will, just as quickly as they had been forced to issue the charters of liberties to the rebels.

The role of wealthier peasants, or peasants of higher standing within their communities, in the resistance seen in the later fourteenth century has often been commented upon,[421] including their contributions in terms of money, skills and experience in pursuing legal avenues against their lords.[422] The complaint to Parliament in the aftermath of the Great Rumour demanded the punishment of the 'counsellors, procurers, maintainers and abettors' of the offending communities. Exactly who these people were (if the landlords themselves knew) is unclear. [423] One might suspect though that both wealthier peasants and legal professionals working in the localities would have been heavily involved. To have procured the writs and exemplifications would have required time, money and knowledge of the legal system, or money to pay a representative who did have that knowledge. Exchange within communities was multi-faceted, involving intellectual as well as physical resources. It was not always charitable – the court rolls provide plenty of evidence for wealthier and more experienced tenants exploiting the poorer – but the same resources which could be used for self-aggrandizement could also be used for communal efforts.

Individual attitudes towards written culture

The speculative appeals to Domesday and hopeful demands for charters in 1381 contrast with the targeted voucher of the manor court rolls suggested in the previous chapter. It brings us back to the question, raised in the discussion of illicit peasant charters in Chapter 1, of whether the desire for written records could be aspirational as well as pragmatic. Hyams argued that charters in particular retained a certain 'religious aura' in the countryside, where, '[f]ar from the doctors of the learned law, illiterate peasants felt that possession of a written document must carry with it some power or

[421] On this subject, see for example Hilton, 'Peasant Movements in England Before 1381'; Dyer, 'Memories of Freedom'; Dyer, 'The Social and Economic Background to the Rural Revolt of 1381'; Christopher Dyer, 'The Rising of 1381 in Suffolk: Its Origins and Participants', *Proceedings of the Suffolk Institute of Archaeology and History* 36 (1988).

[422] Miriam Müller, 'The Aims and Organisation of a Peasant Revolt in Early Fourteenth Century Wiltshire', *Rural History* 14:1 (2003).

[423] R.B. Dobson (ed.), *The Peasants' Revolt of 1381*, 2nd edn. (London: The Macmillan Press, 1983), pp.76-78. Translation of an extract from *Rotuli Parliamentorum*, vol. III, pp.21-2.

advantage'.[424] Substantial peasants, such as those identified by King at Peterborough, were already able to build up small private archives of charters and leases.[425] For these men, participation in written culture was already a reality rather than an aspiration, and it is plausible that the confiscation of their records and re-admittance through the manor court procedure would have been seen as socially demeaning as well as financially restrictive.

As well as having a symbolic value in the relationship between a tenant and his lord, the possession of documents, like the ownership of any material goods, perhaps also had a relative social value. The ability to purchase the materials, and probably the skilled labour, required to make the charter must have been a mark of social and economic status. There are several cases in the Wakefield rolls concerning the detention of charters, which perhaps implies that there was a perception of the documents having a value in their own right. John, servant of Nicholas Manse gave his deeds into the keeping of Cicely Holgate, who refused to return them upon his request, and gave them to John son of Gilbert who offered them for sale to another.[426] Those involved in such cases were likely to be free tenants. Where 'bailiff' appears in the margin of the roll, we can be fairly certain that this was the case. For example, in 1370, Richard the vicar of Halifax sued Henry Matheuson for the detention of his charters. The court found in Richard's favour, and Henry was amerced 6s 8d.[427]

Where free tenants and villeins lived side by side, the possession of the written record of one's tenure in this period also became a visible mark of social status at a time when other distinctions (such as the burden of services) were becoming more blurred. Barbara Harvey estimated that '[b]y the end of the [twelfth] century, as their cartularies show, the monks were using charters for all kinds of grant, and we can assume that nearly all the free tenants mentioned in the custumal of c.1225 would have possessed this evidence of their status'.[428] In the court rolls of Barnet manor, entries recording that a tenant was summoned *ad ostendere qualiter tenere clamat*, or more specifically that they were distrained to produce their *carta feoffementa* for inspection, are a regular occurrence from around 1323, suggesting that they abbey expected that free tenants would possess a written document proving their right. The extent to which free peasants received charters from their landlords with their

[424] Hyams, *Kings, Lords and Peasants*, p.46.

[425] Christopher Dyer, *An Age of Transition?: Economy and Society in England in the Later Middle Ages* (Oxford: Oxford University Press, 2005), p.48; Christopher Dyer, 'Memories of Freedom', in *Serfdom and slavery: studies in legal bondage*, ed. Michael L. Bush (London: Longmans, 1996). See also n.169, above.

[426] Baildon, *The Court Rolls of the Manor of Wakefield, Vol. I, 1274 to 1297*, p.173: Tourn held at Halifax, Tuesday after the feast of the Translation of St Thomas the Martyr, 5 Ed I (1277).

[427] Y.A.S. MD225/1/95, m16d: Court held at Wakefield, Friday 13th September, 44 Ed III (1370); MD225/1/96, m1: Court held at Wakefield, Friday 4th October, 44 Ed III (1370).

[428] Harvey, *Westminster Abbey and its Estates in the Middle Ages*, p.118.

feoffment, and made them in transfers among themselves, is difficult to assess, but it is an area which merits far deeper examination.

The sealed chirograph leases from Gloucester Abbey demonstrate that some of the villeins there were allowed to make contracts with their lord in a form which Hilton argued 'presumes the equivalent status of the two parties'.[429] In contrast, on the manors of Westminster Abbey, where there was a strong demarcation between free and unfree, Harvey identified a further distinction in the forms of leases in the fourteenth century: 'Indentures were the probably the preferred form of lease when the tenement in question was a free one... For customary land, the oral *conventio*, recited in the presence of witnesses, seems to have been considered appropriate.'[430] Hyams too has noted that the right of free peasants to alienate was established in law by the thirteenth century so that 'although Surrender and Admittance was not yet restricted to villeins, it certainly smacked of servility'.[431] As well as being an inconvenience to the wealthier villein tenant who wanted to invest in land as he wished, perhaps he might have also felt a certain stigma attached to having no option but be admitted in the manor court. The free tenants who can be seen to be taking customary land at Barnet, meanwhile, were perhaps asserting their personal status by having charters produced. In 1417, there was another small-scale rebellion at Barnet when several townsmen (who held a considerable amount of land) 'claimed to hold by charters and began to implead the Abbot William'. Dong-Wook Ko has shown in his investigation of these events that several of these men appear to have been free, and had previously had charters enrolled in the Close Rolls.[432]

The equivalent form of proof of tenure for customary tenants would, in time, be the copy of court roll. We have already seen differing interpretations of this development. Hyams viewed it as the culmination of seigneurial efforts to define their own jurisdiction over customary land.[433] Beckerman emphasized the benefits to the tenant whose ability to produce a copy which matched the original could settled disputes without the need for inquest.[434] Barbara Harvey saw it as a 'diplomatic innovation', a practical tool from the court officials' perspective to ease the searching of the rolls for the original entry, which in time became an 'individualized record' that included more details of the terms of the tenure than the rolls themselves did. She also, however, acknowledged that the development of copyhold may reflect the changing attitudes and demands of the tenants themselves –

[429] Hilton, 'Gloucester Abbey Leases of the Thirteenth Century', p.153.
[430] Harvey, *Westminster Abbey and its Estates in the Middle Ages*, p.320.
[431] Hyams, *Kings, Lords and Peasants*, p.40.
[432] Ko, 'Society and Conflict in Barnet, Hertfordshire, 1337-1450', p.339.
[433] Paul R. Hyams, 'What did Edwardian Villagers Understand by 'Law'?', p.83.
[434] Beckerman, 'Procedural Innovation and Institutional Change in Medieval English Manor Courts', p.225.

'a growing regard in peasant society for written evidence, and perhaps a desire on the part of customary tenants to emulate the freeholder's possession of a charter'.[435] Hilton too suggested that the development of copyhold as a physical record form gave momentum to the decline of villeinage:

> 'But in fact as customary tenures were turned to copyhold, as was general by the beginning of the fifteenth century, the servility associated with them seemed, at any rate in some places, to melt away. The possession of a deed implying a contract between landowner and tenant was thought by some servile tenants to make them free (*Nativus qui tenet aliquam terram per cartam incontinenti dicit se liberum*), so the issue to customary tenants of a copy of the entry on the court roll recording their tenure no doubt gave them the feeling of the freedom of a contractual relationship between lord and man.'[436]

Such an argument makes a clear connection between the active possession of a written document and the peasant's perception of his personal and legal status. These differing interpretations of the genesis of copyhold are arguably symptomatic of the wider discussions on peasant experience of and participation in written culture. The use of written records has been variously seen as a practical development which served to aid seigneurial administration but also brought advantages of tenurial security for the tenants, a physical medium which symbolised the changing tenurial relationship between lords and peasants at the end of the fourteenth-century, and a means of control and exclusion of an illiterate peasantry.

The manor could be described, to use Brian Stock's term, as a textual community.[437] The business of its officials and courts was written down using well-established forms, but while written and oral discourses interacted, orality also continued to play certain roles on which writing did not encroach, both inside the court in dispute resolution and outside the court in inter-peasant activities (such as the contracting of debts). The two were arguably not in opposition, and the case studies presented in this thesis reinforce the sense that, on the manor at least, the peasantry operated within the textual culture rather than being excluded from it. Steven Justice's argument, based on literary evidence, that the destructions of records in 1381 were part of an attempt to take over and re-write the exisiting documentary culture of feudal as well as royal government would seem to overstate the case.[438] By focussing on another type of record, the manor court rolls, this study has tended to emphasize the practical aspects of peasant participation in written culture. The voucher of the rolls

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[435] Harvey, *Westminster Abbey and its Estates in the Middle Ages*, pp.284-5.

[436] R.H. Hilton, *The Decline of Serfdom in Medieval England* (London: Macmillan, 1967), p.47.

[437] Stock, *The Implications of Literacy. Written Languages and Models of Interpretation in the Eleventh and Twelfth Centuries.*

[438] Justice, *Writing and Rebellion*, p.48.

discussed in the previous chapters suggest an understanding of when it was appropriate to produce written evidence, which perhaps reflected the litigants' familiarity with the court, the procedure of pleas, and the nature of the records themselves. The exemplifications sought from Domesday Book, the charters of liberties demanded in 1381, and the villein charters all had practical purposes as well, providing proof of rights or tenure. But this is not to deny that a growing trust in writing or aspiration to possess records also played a role: these were records commissioned and retained by the peasants, rather than records created and controlled by manorial or royal administrations. It is possible that an extension of the systematic study of customary tenure and land litigation begun in this project in order to investigate the development of copyhold and the use of the copies themselves in the fifteenth-century might serve to illuminate these issues further.

CONCLUSION

The manor was by no means the only sphere in which peasants operated. Recent scholarship has sought to highlight the multiplicity of communities to which they belonged – not only at a local level as members of families, households, vills, manors and churches, but also as members of the wider political communities of the county and state.[439] Focussing on the development of royal record-keeping, Clanchy noted that villagers would be familiar with communication via royal writs.[440] In attending church, they could be viewed as members of what Stock would term 'textual communities', with shared understandings of the texts mediated by priests. Various individuals and groups of peasants have also been shown to have engaged with written culture more proactively, such as those described in the previous chapter who sought ancient demesne status, or the tenants of Bocking, who cited Magna Carta in a petition addressed to their manorial lord, the Prior of Christ Church Canterbury.[441]

Nonetheless, it seems reasonable to suggest that the manor court was the forum in which the majority of peasants (and certainly customary tenants) would have most experience of written records. The unfree owed suit of court and could be called upon to attend as often as every three week. As described in Chapter 1, those who held customary land had to be admitted to it before the whole court. It was the sole jurisdiction for any subsequent disputes over such land, and dealt with many civil pleas of debt, trespass and covenant too. Moreover many courts, including Wakefield, Alrewas and the courts of St Albans Abbey, held leet jurisdiction and so would deal with the minor transgressions of their tenants. The peasants cannot have been unaware of the documentation that resulted from the manorial administrations: rentals and surveys which contained details of the lands which they farmed and the rents they owed; custumals which set down what they owed to the lord; and court rolls which contained a remarkable amount of detail concerning their lives. These, as discussed in the introduction, were primarily tools for seigneurial control and management of their resources, but it has been argued that they also benefitted the peasantry - in particular, that they provided a secure

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[439] Phillipp R. Schofield, *Peasant and community in Medieval England, 1200-1500* (Basingstoke: Palgrave-Macmillan, 2003).

[440] Clanchy, *From Memory to Written Record*, p.2.

[441] John F Nichols, 'An Early Fourteenth Century Petition from the Tenants of Bocking to their Manorial Lord', *Economic History Review* 2:2 (1930).

record of tenure, so that reference to the court rolls came increasingly in the fourteenth-century to replace jury inquest as a more reliable and straightforward means of proof in disputes over land.[442]

The examination of this apparent shift has been a central aim of this research. Since the management of customary tenure was a constant and significant presence in the court rolls, it is well suited to systematic study in order to trace changes over time. The analysis of the data collected from the court rolls of Wakefield and Alrewas shows that before 1381, written evidence neither came to replace jury inquests based on communal memory, nor even that it necessarily became more commonplace. The evidence from Alrewas is slightly problematic, both because of the low level of land litigation throughout this period, and because vouchers cease entirely from 1347/8. The difficulties posed by the manorial court rolls for any study of cultural trends are clear. We can never be entirely certain that changes in the content of the court rolls reflect changes in procedure rather than changes in scribal practices. It is possible that the clerks simply stopped noting where the rolls were vouched, but as there are only twenty-five pleas of land in the entirety of the thirty-four years for which rolls survive after 1347/8, there is insufficient material to draw any firm conclusions. The evidence from Wakefield court, which witnessed a considerable volume of land litigation, is clearer. Of the 365 pleas of land which reached a verdict, the rolls were not vouched in 318 of those. Voucher of the court rolls peaked during the 1340s and 1350s, but declined again in the following decades. The analysis of the outcomes of pleas (Chapter 3) suggests that much litigation never reached the stage at which the court returned a verdict, or even at which parties made their detailed arguments and cited their evidence, perhaps indicating a preference for out of court settlement. Yet even in those cases for which verdicts were reached, inquest by jury appears to have remained the first resort in the majority on both manors.

More detailed examination of the data allows us to make suggestions about how and why written evidence was called, and about the nature of the role that it did come to play in pleading and verdict finding by the later fourteenth-century. It seems clear that on these manors, copies were not issued when a tenant was admitted to customary land in this period. The court rolls were consequently their only written title. There is no evidence to suggest that a litigant who vouched the rolls was ever denied access, although what 'access' actually entailed is unclear. It is generally assumed that the vast majority of the medieval peasantry were illiterate in the modern sense, unable to read or write. The ability to read Latin was not the only potential cognitive barrier to wider use of the rolls. They could be extensive and unwieldy documents - the longest of the Wakefield rolls consists of twenty-five

[442] In particular, see Beckerman, 'Procedural Innovation and Institutional Change in Medieval English Courts', and Poos & Bonfield, *Select Cases in Manorial Courts 1250-1550.*

membranes covering the business of thirty-two courts - densely written on both front and dorse in heavily abbreviated language. It would be dangerous to assume that *all* peasants were illiterate in the modern sense. We cannot estimate the numbers who received schooling or who had acquired basic reading skills, and who made a living as parochial clergy or as the 'jobbing clerks' identified by Harvey, Razi and Smith.[443] But as Franz Bäuml argued, levels of personal literacy arguably become less important if access to records was provided by another, as this thesis has argued to have been the case. There is only one case in which mention is made of a payment to the clerks for the scrutiny of the rolls,[444] but this would seem to be a plausible explanation for how scrutiny was conducted in general. As discussed in the previous chapter, Beckerman argued that once the relevant entry was found, they could be easily interpreted by a court president who enjoyed the 'advantage of literacy'.[445]

Bäuml argued that 'literacy' in the Middle Ages depended not only on an individual's means of access, but also on their actual need for access to records to enable them to function in society. The community who lived under the jurisdiction of a particular manor were never a uniform group. As well as there being a distinction between free and unfree tenants, there was considerable differentiation in economic and social statuses. The spheres in which individuals functioned, and what (if any) records they needed in order to do be able to do so, may therefore have also differed. As discussed in Chapter 1, wealthy villein tenants involved in the purchase of free land may have accumulated charters as evidence of their title in a way in which those without the means to participate in that aspect of the land market would not. This, as Edmund King found, appears to have been the case with the charters produced for villeins on the Peterborough estates. While the rolls themselves provide no evidence to support Susan Crane's argument that the use of written records was a new source of social stratification and potential friction,[446] it has been suggested at various points in this thesis that proactive participation in written culture (as opposed to a general consciousness of or familiarity with it) was a minority activity. Enrolment of agreements and debts appears to have been rare (Chapter 1), while the closer analysis of the circumstances and details of cases in which the rolls were vouched (Chapter 5) suggests that appeal to documentary evidence was in most instances a choice made by individual litigants, perhaps shaped by expectations derived from experience of the common law or by advice from legal professionals. Requests for particular forms of enrolment or record, such as recognizances and specialty, suggest that some suitors were familiar with their forms and benefits (even if, as in the case of specialty, they did not fully understand the

[443] Harvey, *Manorial Records of Cuxham, Oxfordshire, circa 1200-1359*, pp.36-42; Razi & Smith, 'The Origins of the English Manorial Court Rolls as a Written Record: A Puzzle', pp.61-67.
[444] Y.A.S. MD225/1/102, m12: Court at Wakefield, Friday 22nd August, 1 R II (1376), discussed on p.85, above.
[445] Beckerman, 'Procedural Innovation and Institutional Change in Medieval English Manor Courts', p.226.
[446] Ibid.

procedural differences between common law and manorial jurisdictions). The influence of the common law in terms of the development of procedure in the manor court has widely discussed, but the extent of peasant experience of courts beyond the manor and the penetration of the legal profession into the localities is also of significance if we are to fully understand the legal and written cultures of the manors.[447]

It has also been argued that the use of written evidence was a pragmatic response to the circumstances of individual cases, rather than indicating a blind faith in written records. Most commonly, the rolls were vouched by defendants to demonstrate that they had legally received the land for which they were challenged. Beckerman argued that no inquest would be required where a copy of an admittance could be produced which matched the rolls, and if there was no question of the plaintiff having a claim as the rightful heir.[448] This, however, was very rarely the case in those pleas of land which did require the mediation of the court. While admittance to customary land in court and its recording in the rolls was a central part of establishing tenure, disputes tended to arise because plaintiffs did indeed have claims which were based on their personal circumstances and backed up by manorial customs which governed inheritance. Knowledge of personal circumstances depended on the memory of the inquest juries. Manorial customs were often recorded in writing, both in custumals and in the rolls, but such records are very rarely mentioned in the records of verdicts.

Individual cases in which peasants vouched the manor court rolls have been taken as evidence of their faith in the written record, but a quantitative study such as this reminds us that trust in the collective memory of the community was not quickly or easily superseded. The case studies here have on the whole given the sense of written and non-written modes of communication and proof in co-existence rather than competition. Suitors in the manor courts may well have become more familiar with and have a greater confidence in the records over the course of the thirteenth and fourteenth centuries, but I would agree with Poos and Bonfield's argument that written evidence 'did not eclipse the central role of the jury in reaching decisions. In this sense, to use Clanchy's phrase, written records represented "artificial memory"'.[449] A small number of cases have been identified in which the rolls appear to have been used to confirm juries' recollections, or to fill gaps where there was uncertainty (see pp.123-4). It is possible that this happened more regularly than appears, since the rolls tend not to provide details of how verdicts were reached. Again, however, there is no evidence for the adoption of uniform policies on the use of the rolls at the inquest stage of pleas. Juries might

[447] On the use of recognizances, see p.117 n.380.
[448] Beckerman, 'Procedural Innovation and Institutional Change in Medieval English Manor Courts', p.225.
[449] Poos & Bonfield, *Select Cases in Manorial Courts*, p.lxxx.

apparently accept litigants' claims that particular proof *iacet in recordo rotuli* and, as argued in Chapter 4, there is evidence that having vouched the rolls, failure to produce them could result in the loss of the case. There is, however, no evidence for a general demand that written evidence of tenure, whether a copy or the original entry in the rolls, be produced. Demands that a tenant should appear in court to show by what means they claimed to hold their land (*ad ostendere qualiter tenere clamat*) typically only arose where there was suspicion of the illicit use of charters or the transfer of customary land without surrender and admittance, rather than in pleas of land. Voucher of the court rolls in inter-peasant litigation seems more to be the result of a gradual shift in ideas and attitudes rather than a change in procedure introduced from the top, by lords who considered non-written means 'deficient'.[450]

Beckerman, commenting on the destruction of court rolls on some manors during the Peasants' Revolt, found it 'ironic that the burning also destroyed the best proof of peasants' title to land, forcing them back for a time to older, less efficient procedures of extensive litigation and the sworn inquest'.[451] In the period under consideration here, however, there is no evidence that the use of written proof in cases resulted in the speedier resolution of land disputes, and cases could in fact become extremely prolonged if litigants attempted to resort to the rolls in the first instance but were later forced to request an inquiry. The recording of personal pleas such as debt may have been part of lords' efforts to attract litigation over which they did not have a monopoly to their courts, as suggested by Chris Briggs' study of Oakwood and Great Horwood,[452] but the original contracts were oral, and there is no sense that this was regarded by the peasants or the courts as being in any way inadequate,[453] while a jury at Alrewas ruled in the plea of covenant of 1366 that agreements regarding maintenance of property that accompanied land transfers did not have to be recorded to be enforceable.[454] Both the written record and communal recollection had their place in the manor court. Can we detect a 'literate mentality' among peasant communities in this period? There is certainly plenty of evidence for a general 'document consciousness', but the extent and consistency of their 'literate habits and assumptions' is far harder to discern from the administrative records and anecdotal evidence on which we must rely.[455] Nonetheless, it is hoped that by focusing on tenure, transfers and

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[450] Crane, 'The Writing Lesson of 1381', p.203.

[451] Beckerman, 'Procedural Innovation and Institutional Change in Medieval English Manor Courts', p.226.

[452] Briggs, 'Manor Court Procedures, Debt Litigation Levels, and Rural Credit Provision in England, c.1290-c.1380'.

[453] Schofield, 'Peasant debt in English manorial courts: form and nature'; Briggs, *Credit and Village Society in Fourteenth-Century England*, pp.98-99.

[454] St.R.O. D(W)0/3/58, m3d: Court held at Alrewas, Saturday after the feast of St George, 40 Ed III (1366), discussed on p.43, above.

[455] Clanchy, *From Memory to Written Record*, p.185.

litigation within the confines of a small number manors, the findings of this thesis will contribute to the existing picture of peasant involvement with written culture in later medieval England.

Further research

There is scope for far more research in this field. No broad conclusions can be drawn about the relationship of the 'peasantry' of Wakefield and Alrewas with the written culture of their manors (and still less about the 'peasantry' in general). The systematic study of the land litigation in other sets of court rolls would also help to set the findings of this project in context, widening the geographical scope and taking in a greater range of lordships. In particular, comparative studies of manors in East Anglia, where the peasant land market is accepted to have been especially active, would enhance our understanding of the functional relationship between written registration and the secure transfer of land.[456] The methodology adopted in this study has inevitably resulted in a concentration on customary tenants (particularly those heavily involved in the transfers of land) and has neglected the free. Furthermore, as noted above, the 'peasantry' were not a socially or economically homogenous group. It would be useful to conduct prosopographical studies of those individuals who have been identified as vouching the rolls or using other forms of written records, to see in what other contexts they appear and what this might suggest about their economic and social status: as jurors and pledges, creditors and debtors, and buyers and sellers of land.

The survey of the rolls of Wakefield and Alrewas also revealed the use of various other forms of written records besides those examined in this thesis: the occasional possession of final concords, indentures and chirographs; the use of letters and petitions for communication between the lord, his officers, and the tenants on a large manor such as Wakefield; and references to the production and use of other manorial records. Such references occur sporadically, and would benefit from comparison with a greater number of manors to see how common they are, and again to try to identify what sorts of peasants were using them, and in what circumstances. References to final concords in particular are also suggestive of the overlap with the common law which has been so widely commented upon by legal historians. As discussed in Chapter 5, recent research has demonstrated that peasants, free and unfree, had access to the common law courts for civil litigation. Further examination of these courts for the participation of free peasants in land litigation and, more generally, the role of written

[456] See, for example, Hyams, 'What did Edwardian Villagers Understand by 'Law'?', pp.81-2 and van Bavel, 'The Organization and Rise of Land and Lease Markets in Northwestern Europe and Italy', discussed on p.37 above.

evidence which suitors witnessed there, would add much needed depth to our understanding of the making, keeping and using of written records at all levels of society.

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