Seigniorial Control of Villagers’ Litigation beyond the Manor in Later Medieval England

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Summary

Medieval villagers were assiduous users of legal structures in defence of private interests. To enforce contracts and recover debts against residents of other villages, rural plaintiffs had to prosecute in courts situated beyond the boundaries of their ‘home’ manors. The ability to sue elsewhere than the local manor court was thus crucial to commercial development in the countryside. This article explores the obstacles to such litigation, challenging the claim that servile villeinage acted to restrict villagers’ choice of court. It lays the foundation for a larger investigation into the importance of villagers as civil litigants in ecclesiastical and royal jurisdictions.
A defining attribute of the later medieval English peasantry, and of its wealthier sections in particular, was the assiduous and skilful use of formal legal structures in defence of private rights and interests.\(^1\) In the vast majority of instances, such use of law took place within the plaintiff’s own village, in manor courts of private lords. The local manor court was the villager’s ‘court of first resort’, being conveniently situated and familiar to litigants who attended all its sessions as a condition of their tenure. Yet manor courts were not the only jurisdictions in which villagers could initiate the important civil actions of debt, defamation, trespass, and broken agreement (personal actions) with which this article is concerned.\(^2\) Petty debts and trespasses like those heard in the manor court also formed the subject of suits in the ‘communal’ courts of hundred and county.\(^3\) As ‘instance’ cases, debt and defamation disputes were handled by the church courts, too; the debts appeared as cases of ‘breach of faith’, or *fidei lesio*.\(^4\) Finally, personal actions were routine in the royal courts at Westminster, especially the court of common pleas, and they were also heard in provincial sessions held before royal justices, such as those of the general eyre, and of the various judicial commissions that followed the eyre’s demise in the early fourteenth century.

When one villager sued another in a personal action, how common was it for the plaintiff to choose to sue not in his ‘home’ manor court — by which I mean the court of the manor where the plaintiff was tenant, or that nearest his home — but to opt instead to go further afield to seek justice in one of the alternative settings just described?\(^5\) Answering this question, especially where disputes about debts and agreements or contracts are concerned, is vital for understanding the role of peasant market transactions in the medieval rural economy.\(^6\) A legal framework guaranteeing the enforcement of agreements was a crucial prerequisite for the formation of economic relationships in the medieval English countryside. Yet the enforcement of
agreements between peasants living in different places relied upon wronged parties prosecuting outside their ‘home’ manor courts. Because a landlord was not permitted to distrain the goods of a person dwelling outside the lord’s own ‘fee’, or territory of lordship, and hence to compel that person’s appearance in the court, it was very difficult for a villager suing in his ‘home’ manor court to get justice against an outsider. Therefore, if the court of manor X was the only forum that the peasant of manor X ever used to recover a debt or enforce a contract, then this would have restricted the range of commercial ties he could risk entering into. Alternatively, if a peasant could sue relatively easily and with a chance of success in jurisdictions beyond the ‘home’ manor, then this would broaden the range of people he was prepared to transact with, because the chances of getting justice if things went wrong would be greater.

Most recent work challenges any idea that the typical wealthy later medieval villager’s direct experience of civil litigation was limited to what went on in the local manor court. Hyams, for instance, stresses the opportunities and incentives for leading peasants who wished to seek alternative forums outside the village. Others, especially those working on changes in the royal courts, share Hyams’s optimistic impression of the scale of villagers’ participation as civil litigants in the wider legal system. Yet although studies produced to date demonstrate the considerable potential for villagers to travel in search of civil justice, there is little published work to show it actually happening in practice. Musson in particular indicates circumstances that may have helped peasants to sue beyond the manor, and in the royal courts especially, such as the geographical accessibility of appropriate jurisdictions, and the relative cheapness of original writs. However, any attempt to quantify resort by villagers to royal and other extra-manorial jurisdictions ultimately depends upon detailed
investigations of the social characteristics of litigants in those courts, and these remain in short supply.¹¹

This article provides an essential stepping stone towards a comprehensive investigation along those lines. It presents the conclusions of the first phase of a larger project on medieval English peasants’ access to civil justice. The project’s second phase, whose findings will be published separately, uses the records of various royal courts and church courts in addition to those of the manor court in order to trace bona fide villagers suing outside their own places of residence in a range of jurisdictions, and to determine whether such activity was rare or common. However, before one can attempt interpretation of the numbers of villagers found in the plea rolls of non-manorial courts, it is necessary first to determine the degree to which villagers were free to sue where they liked. That is the purpose of the present article.

Crucially, roughly half of all medieval villagers were villeins of unfree status and tenure.¹² Advocates of the position that villagers had the potential to appear with some frequency as civil litigants in a broad range of courts, such as Hyams, have tended to downplay the notion that villeinage could have a restrictive effect on such activity. Yet as will be seen more fully below, other historians have claimed that medieval landlords attempted to stop ‘their’ villagers suing and being sued outside the manor purely on the grounds that the individuals involved were servile villeins. It is necessary to resolve this apparent contradiction, since if it really was the case that the ability of villeins to engage in litigation beyond the manor was constrained by lordship to the extent that has sometimes been suggested, then for many this would have dramatically reduced the incentives to engage in commercial relationships with persons living in other villages. There is certainly no doubt that landlords did maintain certain expectations or rules about the civil jurisdictions that ought to be used by those
villagers who lived in places where they had lordship. It is also clear that landlords sought to enforce those rules through their manorial courts. There is less certainty, however, concerning either the basis for those rules, or their effects, and it is this which I seek to establish in what follows.

The discussion centres on the records of sixteen pre-1400 court roll series from manors in villages located within a ten-mile radius of Cambridge (Table 1, Map 1). Most of the villages discussed in this study lay within the ‘upland’ in the south of the county, while a few were positioned on the edge of the fenland (Map 1). These Cambridgeshire manorial court rolls provide evidence on litigation beyond the manor, in the form of occasional entries where individuals were punished financially for initiating lawsuits elsewhere than in the court of the manor to which the rolls relate. The people thus punished for ‘illicit litigation’ can almost always be treated confidently as ‘villagers’, since most people mentioned in court rolls definitely belonged to a group within the category ‘villagers’ as defined here: peasants (cultivators of a landholding of up to about forty acres); persons engaged in rural crafts or trades; and parochial clergy, the latter being very much part of village society and sometimes drawn from local peasant families.

Some of the ‘illicit litigation’ entries are very short and uninformative. For example, in 1306 in the abbot of Crowland’s manor court of Oakington it was reported simply that Amice the wife of Brice ‘drew her neighbour into a forbidden jurisdiction (ad forum vetitum) in contempt of the lord’, and was amerced (fined) 12d. for the offence. However, other such entries are slightly more revealing in that they indicate the type of jurisdiction used, although the nature of the action brought is only very rarely mentioned. All the ‘illicit litigation’ entries arose when landlords
employed their manorial courts to enforce rules that sought to limit villagers’ choice of jurisdiction in personal actions. Investigation of these entries and the villagers they refer to therefore reveals much about the nature of these rules and their enforcement.

The records of the sixteen manor courts (Table 1) were searched exhaustively for ‘illicit litigation’ entries. Given the more general characteristics of England’s surviving medieval manorial records, it is unsurprising that some of the best series of rolls used here, such as Oakington’s and Balsham’s, pertain to courts held by large ecclesiastical landlords — in these instances, the abbot of Crowland and the bishop of Ely respectively. However, the records searched are not confined to a single type of seigniorial regime, as there are also good sets of rolls for courts belonging to lay estates of various sizes, such as those of Bottisham, Landbeach, and Harston. Altogether, the rolls detail the proceedings of over 1,860 court sessions, roughly half of which date from the years 1276–1350, and half from the period 1351–1400.

A trawl of these sessions located a total of thirty-one instances of ‘illicit litigation’ (Table 1 column five). In all of these, the wrong committed was that one person had initiated a lawsuit against another elsewhere than in the manor court to which the roll pertained. Some of the entries take the form of a presentment, that is, a jury statement that reported the extra-manorial litigation as an infringement of the lord’s rights, as in the example of Amice the wife of Brice cited above. Others among the thirty-one examples of ‘illicit litigation’ entered the court record as a civil lawsuit, in which the plaintiff complained that he or she had suffered damages through being impleaded by the defendant outside the manor. The key characteristic of the ‘illicit litigation’ mentioned in entries of this kind, as with that reported by presentment, was that it constituted an offence against seigniorial discipline. This is shown by the fact that the lord always took an amercement from the defendant. However, the plaintiff’s
claim of damages from the defendant in these civil lawsuits indicates that villagers also used the rules about where one might rightfully sue to protect their own interests.

In what circumstances was an extra-manorial lawsuit deemed wrong, and hence at risk to incur an amercement and generate an ‘illicit litigation’ entry in the court record? Was someone liable to be punished in a manor court every time a local villager sued or was sued elsewhere than in that court, or did the rules on extra-manorial litigation work more selectively? Few have addressed this question directly, but there does seem to be a general assumption that all court roll entries of the type collected in Table 1 mainly reflect the legal disabilities of villeinage. I scrutinize this assumption below; first, however, it is necessary to outline the more general debate regarding the effects of villein tenure and status on the availability of civil justice.

All commentators acknowledge the importance of the fundamental principle that the jurisdiction of the royal courts in disputes about real property was restricted to freehold property, and that actions about villein or customary land could only be dealt with in the manor court of the villein’s own lord. However, there is less certainty on the somewhat different question of whether villein status was in itself a bar to successful prosecution of a personal action, or an action concerning freehold land, in royal courts and other non-manorial courts. For Maitland, the villein was indeed in theory allowed to sue in the royal court in such circumstances, and more recently Hyams has argued that villein status was not an insurmountable barrier to the prosecution of lawsuits outside the manor court. Claims of this kind remain somewhat theoretical, however, as commentators have as yet been unable to point to many concrete examples in the relevant plea rolls of villeins actually suing. Furthermore, perhaps because the exclusion of villein land from the cognizance of the royal courts was such a fundamental principle, the idea that villeins were excluded in
a more general sense as litigants from the royal courts has retained its strength. In summarizing the generally accepted view, Musson and Ormrod, for example, write that ‘the king’s courts were open only to free men (and free women, if they were unmarried or widowed)…those who held land in customary or servile tenure, and were designated as villeins or unfree, were simply not recognized by the common law’.  

The arguments noted in the preceding paragraph revolve primarily around the issue of whether or not villein status would be raised as an objection when a villager appeared in a royal or other non-manorial court intending to sue. In this article, however, the focus is on seigniorial efforts to stop villagers going outside the manor to sue in the first place. Yet here, too, villeinage has been seen as the key issue. As already mentioned, the few historians who have considered manorial court roll entries of the type featured in Table 1 suggest that they represent attempts made on the grounds of unfree status and tenure to stop villagers bringing lawsuits outside their own lord’s courts. Furthermore, there has been more than one attempt to explain this restriction in terms of the legal fiction that the villein had no property of his own. The logic runs as follows: a villein who sued outside the manor might lose his case, so thereby risked the loss of property that was technically the lord’s. By the same token, anyone who sued a villein caused him financial loss, and so was liable to suffer punishment by his opponent’s lord. It is thus possible to account for the amercements recorded in ‘illicit litigation’ entries as the lord claiming back ‘his’ property whenever his villeins broke a rule against involvement in lawsuits outside the manor.

More recently, in the closest consideration available of court roll entries that record punishment for appearances in jurisdictions outside the manor, Helmholz has offered a somewhat different explanation for the ‘illicit litigation’ entries. He notes
two distinct kinds of entry. First, he cites instances where persons were amerced for ‘wasting the lord’s chattels’. Crucially, these do not report civil litigation. Instead, they involved a specific scenario in which an individual villein had been presented *ex officio* in a church court for a moral crime, usually adultery, and had chosen to commute the penance by means of a cash payment. The entry in the manorial court roll arose when the offender’s lord later exploited the fiction about villein property in order to recover this payment through an amercement in the lord’s court. I found 12 further entries of this kind in the Cambridgeshire court sessions trawled (see Table 1 column six). They are patently not the same as our primary interest here, namely the ‘illicit litigation’ entries in which A sued B in a civil personal action, and should not be confused with them. The ‘illicit litigation’ entries form Helmholz’s second category of entry, and he offers observations on why they arose. Although he suspects that villeins were the usual targets of ‘illicit litigation’ proceedings, he does not hold that the related entries show lords setting out simply to punish every lawsuit involving their villeins in a court outside the ‘home’ manor. Rather, he concludes, ‘it was suing for a wrong that could have been remedied in one’s own manorial court that called forth these disciplinary proceedings’. A large part of my aim in what follows is to test this interpretation, using mainly the evidence collected from the Cambridgeshire courts noted in Table 1, but also material from manors in other counties. This evidence reveals that Helmholz’s interpretation is correct as far as it goes, but that the circumstances in which the rule applied were even more restricted than his account suggests.

Helmholz cites a manorial bylaw of 1387 from Farewell (Staffordshire) as the clearest statement he found of the principle underlying the ‘illicit litigation’ entries:
It was ordained in full court by the agreement of the lord and of all his tenants of Farewell, that if any tenant should procure writs against their neighbours concerning a plea or quarrel that could be expedited and settled in the court of Farewell itself, they should pay half a mark to the prioress of Farewell.29

The texts of the handful of other bylaws on this issue that I have identified contain essentially the same ideas as the Farewell example. These further examples appear below. The first, dated 1344, comes from Great Horwood (Buckinghamshire), while the second, dated 1326, is from Cockerham (Lancashire). The other four, located in the rolls of Barrington, Swaffham Prior, Harston, and Willingham respectively, constitute a small flurry of local legislation on this topic from mid-fifteenth century Cambridgeshire:

…elsewhere it was ordained by the agreement of both freemen and villeins that none of the lord’s tenants shall implead another unless in the court of the lord prior [prior of Newton Longville, lord of Horwood] until they shall have failed in their right there [i.e. unless it is a case over which the prior does not have jurisdiction]…30

…no tenant shall implead his neighbour or his fellow for any injury he has suffered in another court outside the aforesaid lordship [i.e. the manor of Cockerham] under penalty of the seizure of his holding…31
At this court by the assent of the lord and tenants it is ordained and declared that no tenant shall implead, vex or disturb another tenant in the hundred or other foreign courts of whatever type other than in this court only, for any matter that can be impleaded and determined here, under penalty of 40d. for each offence, of which half shall go to the church of Barrington.32

For it is ordained by the lord’s council and tenants that if any one of his tenants, whatever his estate, degree or condition, shall implead another tenant of this lord and manor in the hundred court, county court or court Christian, he shall forfeit and pay to the lord 6s. 8d. on each occasion.33

It is ordained by the lady and the tenants that no customary tenant shall implead a fellow customary tenant in any foreign court, except in the court of the lord king, in any plaints that may be determined here in this court, under a penalty of 6s. 8d.34

It is ordained in full leet by assent of all the tenants that no tenant shall implead another tenant in the hundred court, nor in any other court, where the matter can be determined within the court of this lord…under pain of 6s. 8d. payable to the lord on each occasion …35

None of these bylaws is designed to control all instances of the civil litigation of villeins. The fact that four of the texts date from the 1440s or later is in itself a sign that bylaws of this type are not directed at such control of villeins, since by the middle of the fifteenth century, manorial authorities could no longer exploit the tenurial and
personal incidents of villeinage, and these had largely disappeared in most places.

Although the point is absent from the Cockerham and Swaffham Prior texts, it is clear that the main aim of the bylaws was instead to assert that where the manor court was competent to hear a case, it should be brought there in the first instance. This is what the conclusion to Helmholz’s brief discussion would lead one to expect. Yet the bylaws do not claim monopoly jurisdiction over all such cases, irrespective of the parties’ identity. Rather, they say that an action should be heard in the manor court in cases where both parties were tenants of that manor. This is stated explicitly in six of the seven bylaws. The idea is also implicit in the seventh bylaw (Cockerham’s), which says that no alternative court should be used when a tenant sued his ‘neighbour’ or ‘fellow’, that is, someone residing close by within the same lordship.

Which tenants were covered by the bylaws? The Harston bylaw restricts its provisions to ‘customary tenants’, that is, the fifteenth-century successors of the villeins of the later thirteenth and fourteenth centuries. Where such a restriction is not specified, as in all the remaining examples, it was presumably the intention that the bylaw should cover all categories of tenant, free as well as unfree. This is expressed definitively, however, only in the Swaffham Prior example, which ordains that any extra-manorial suit between manorial tenants would result in amercement of the plaintiff, ‘whatever the estate, degree or condition’ of that individual.

The rules about suing outside the manor enunciated in these bylaws fit closely the evidence of the thirty-one ‘illicit litigation’ entries in Table 1. Many such entries express the same concern that disputes appropriate for the lord’s court should be heard there. For example, at Bottisham in 1321, Bartholomew the vicar of Bottisham had to respond as to why he vexed John Pichard tenant of the lord in a court Christian
concerning matters belonging to the lord’s jurisdiction, in breach of the lord’s liberty’.36

The entries also confirm that lords were principally concerned with jurisdiction over litigation between their own manorial tenants.37 In the case of Oakington, earlier detailed work on the court records has made available a large database of individuals. It allows one to assess the identity of the villagers named in Oakington’s ten instances of ‘illicit litigation’.38 This shows that even those villagers not explicitly described as tenants in the ‘illicit litigation’ entries were manorial tenants. Slightly less exhaustive studies of Willingham and Balsham also confirm that all the villagers named as appearing in lawsuits outside those manors were tenants of the lord. Even where it appears unlikely that the person who prosecuted illicitly was a manorial tenant, as perhaps in the case of Bartholomew the vicar of Bottisham cited above, it is nonetheless clear that the individual was a resident of the village in which the amercing lord’s manor lay. None of the thirty-one ‘illicit litigation’ instances concerned lawsuits between people who lived in different places.

Residence of both plaintiff and defendant within the same place seems to have been the key ingredient which made a lawsuit liable for punishment as ‘illicit litigation’. This is neatly illustrated by a Swaffham Prior entry of 1439 in this category. In that year, John Pottere of Reach, tenant of the lord, was presented in the Swaffham court for impleading Thomas Bugge and Richard Multon tenants of the lord in the hundred court in diverse plaints of debt, ‘against the ordinance’.39 Significantly, though, Pottere was not amerced for this offence. The record simply notes, ‘amercement nothing, because he [Pottere] does not dwell upon the fee of the lord’. In other words, even though John Pottere was a tenant of the prior of Ely, the prior renounced his right to amerce Pottere because he resided outside Swaffham
Prior, and therefore could legitimately sue another tenant of the prior elsewhere than in the prior’s manor court at Swaffham.

To summarize: it was deemed wrong for two people resident in the same place, who were usually tenants of a common lord, to engage in civil personal litigation in a court other than that of their ‘home’ manor when the dispute was of a kind that could be determined there. Each ‘illicit litigation’ entry reveals a lord asserting the right to exercise a monopoly of civil justice over the residents of the territory under his control, which in essence meant all the manorial tenants dwelling upon his ‘fee’. The motivation behind the bylaws and ‘illicit litigation’ entries presumably lay in lords’ efforts to define and guarantee their shares of the profits of civil justice. The crucial corollary was that the lord of manor X did not consider it an actionable wrong for a nonresident to sue one of his tenants elsewhere than in the court of manor X. This applied even if that tenant was a villein. Equally, the lord of manor X did not deem it wrong for one of his own tenants — even a villein — to sue someone from another village in a jurisdiction other than that of manor X.

So far, this article has argued that villeinage was a fairly insignificant influence on the medieval villager’s choice of jurisdiction in which to prosecute a personal action. Instances of villeins suing and being sued outside their ‘home’ manor courts attracted seigniorial disapprobation not because a villein was involved, but on the grounds that co-tenants or neighbours - one or both of whom might of course happen to be a villein - had chosen to litigate elsewhere when a remedy was available locally. However, it is possible to accept this interpretation without at the same time concluding that villeinage was entirely irrelevant, or that lords perceived the assertion of their rights to exercise civil jurisdiction as unconnected to their rights over their villeins.
First, it must be admitted that there is a very small quantity of evidence which might indicate that it was sometimes the extra-manorial litigation of villeins *per se* that troubled landlords. The trawl of the Cambridgeshire court rolls in Table 1 has located just one entry that could conceivably support a claim that a villein was not able to sue or be sued outside his ‘home’ manor simply because he was a villein and had no chattels of his own. This is a short text of 1332 from Meldreth, which states only that Hugh Friday was amerced because he ‘expended the lord’s chattels in the court of the prior of Ely’.

Because it contains the same basic elements as the reports of church court citations for criminal offences, this case has been placed in column six of Table 1. Yet to do so is clearly not unproblematic, because the tribunal referred to is not obviously a church court — typically, one finds reference to the ‘chapter’ in this context — and it could be that the ‘court of the prior of Ely’ was a manor court. There is nothing in the entry to suggest that Hugh was being punished for initiating a personal action, though one cannot rule this out. It is just conceivable that Hugh had suffered an exceptionally heavy amercement in the prior’s manor court on some other grounds, and that Hugh’s lord sought to profit from this by levying his own amercement.

The articles of presentment of a court baron of c.1400 printed and discussed by Beckerman constitute the only other piece of evidence I am aware of that points to a blanket ban on extra-manorial litigation involving villeins. Jury presentments made in manor courts were responses to such lists of articles, each of which essentially asked whether a particular seigniorial right had been infringed. The two relevant articles in the list in question ask the jury ‘yif oni bond man hath ben inpletid in cristene court but be weie of matrimonie or of testament or yif oni bonde man hath pletid in schere [shire] or in a nother lorde court of thing that he miht hau had
reouerid here in this’.42 One could argue that these articles are at odds with the interpretation of the bylaws and ‘illicit litigation’ entries offered above, since they do not say that they are concerned only with lawsuits between tenants, but seek instead to represent more general rules about where a ‘bond man’ can and cannot sue or be sued. However, it is not certain that the first of these two articles (‘yif oni bond man hath ben inpletid in cristene court but be weie of matrimonio or of testament’) concerns civil litigation. That article is similar to another of c.1342 which asked the jury ‘whether any bondman or bondwoman has been charged in the chapter regarding anything other than marriage or testament’.43 This text might be understood as asking whether any villein has been presented ex officio in a church court for reasons including a moral or sexual offence, and it is conceivable that the later article of c.1400 is modelled on it and meant to have the same meaning, if ‘inpletid’ can be read as ‘charged’ or ‘presented’. It should also be noted that the second of the articles of c.1400 implicitly recognizes that redress in certain matters could not be obtained in the manor court. Most obviously, as discussed more fully below, such courts could not normally hear debt or trespass actions involving claims of forty shillings or more. By acknowledging that there were limits to manorial jurisdiction, the second article of c.1400 concedes the possibility of a villein suing in a royal court.

In any case, these two articles show the rules in operation on a single (unidentified) manor. Their importance as evidence is outweighed by the bylaws and ‘illicit litigation’ entries discussed above, which reveal a consistent basis for the seigniorial restrictions upon villagers’ litigation in operation across more than a dozen Cambridgeshire manors. It should also be stressed that the Cambridgeshire evidence provides little sense of change in those rules between the later thirteenth and fifteenth
centuries; the fifteenth-century bylaws simply represent the first occasion on which practices current throughout the preceding 150 years were set down in writing.

The other subset of evidence that prevents one from regarding villeinage as an entirely irrelevant factor in seigniorial control over villager’s access to extra-manorial civil tribunals is perhaps more substantial. It consists of the justifications recorded when an offender was punished for breaking the fundamental injunction against conducting civil litigation in an outside court when his opponent was a co-resident, and his ‘home’ manor court was able to hear the case. Very occasionally, these justifications made reference to the disabilities of villeinage, specifically the claim that villeins had no chattels of their own. As already noted, such phrases were the archetypal feature of the twelve entries in Table 1 column six which arose from the conviction of a villein before a church court on a criminal charge. The additional inclusion of such phrases in some ‘illicit litigation’ entries raises the possibility that some lords believed that the basic prohibition on the extra-manorial litigation of co-residents ought to be directed at villeins in particular, and not at all tenants.

A solitary Cambridgeshire ‘illicit litigation’ entry employs the legal fiction about seigniorial ownership of villein property. That entry, dated 1327, appears in the Balsham rolls, and states that John Capiard – a known villein manorial tenant – and his wife were amerced because they ‘impleaded the lord’s villein tenants in a court Christian and there injuriously caused them to lose the lord’s chattels’. Why this phrase about the lord’s chattels should appear only in this case of ‘illicit litigation’ and in no other among the thirty-one is not entirely clear. The entry concludes by saying that the dispute prosecuted by Capiard and his wife was of a type ‘where the lord’s court is able to do right to both parties’, and so in this respect the principle invoked was identical to that contained in the bylaws and all other Cambridgeshire
‘illicit litigation’ entries, namely that the manor court should hear the case when it was competent to do so. The lord in this case was apparently using the legal fiction about villein property to reinforce his claim to exercise a monopoly of civil justice over his tenants.

Something very similar certainly seems to have been happening at Great Horwood, whose rolls provide all the remaining references to the disabilities of villeinage within ‘illicit litigation’ entries that I have identified. The 1344 Horwood bylaw cited a little earlier is wholly consistent with the key rule that emerges from the evidence of the Cambridgeshire bylaws and ‘illicit litigation’ entries. In other words, it reflects the now familiar principle that a lord’s claims of monopoly jurisdiction extended only to civil cases between his tenants that his court was competent to hear. Furthermore, Horwood’s instances of ‘illicit litigation’ from the period 1302–91 accord with the evidence of that bylaw, since the court rolls show that all the villagers named in the ‘illicit litigation’ entries were manorial tenants, most but not all of them being villeins, as one would expect in a manor with few free tenants. The contrast with the Cambridgeshire material comes only in the greater degree of allusion to the disabilities of villeinage in the Horwood entries. This takes the form of references to ‘wasting the lord’s chattels’ in three of Horwood’s nine ‘illicit litigation’ instances. For example, in 1362 it was presented that William Verdele and his wife Sarra, bond (villein) tenants of the lord had, ‘contrary to the form of their tenure’, impleaded their peers, other bond tenants of the lord, outside the lord’s court, thereby causing them to expend and lose the goods and chattels of their lord. Thus the Horwood evidence as a whole suggests that the prior of Newton Longville justified the punishment of extra-manorial litigation primarily on the same grounds as the various Cambridgeshire lords, namely that both plaintiff and defendant were his tenants, and that the action
could and should have been heard in his own court. Yet on occasion he reinforced this position by employing the legal fiction that his villein tenants did not possess their own property, and consequently ought not to have been suing each other anyway. This decision to justify the punishment of extra-manorial litigation by reference to villeinage should probably best be understood as part of a response to competition from a second manor court in the village. As a setting for their civil actions, the prior’s tenants seem frequently to have preferred this second court, which was held by the earl of Gloucester, over the prior’s court. Villages of divided lordship featuring more than one manor court were common, yet the occurrence of two equally vigorous courts within one village competing for civil business seems to have been relatively rare, and may in part explain the unusual character of the Horwood ‘illicit litigation’ entries. Finally, and most importantly, although he cited the disabilities of villeinage in order to reinforce his claims, there is nothing to suggest that the prior attempted to penalize every instance of involvement by his villeins in personal actions outside his Horwood court. In particular, there is nothing to suggest that a Horwood villein was any different from his counterparts elsewhere in being at liberty to sue and be sued by any outsider without seigniorial interference.

Villeinage was therefore clearly not irrelevant to landlords’ attitudes and responses to the civil litigation of villagers. Most significantly, there is evidence that on one manor in particular – Great Horwood – an important secondary reason for punishing extra-manorial lawsuits between tenants was that suing outside the manor was deemed incompatible with villein status and tenure. Yet significant though such evidence is, it is not sufficient to support any claim that medieval landlords were concerned to punish every extra-manorial civil lawsuit involving their villeins.
The next step is to return to the sixteen Cambridgeshire villages in order to offer observations on the jurisdictions used in the lawsuits that generated ‘illicit litigation’ entries, and on the significance of the total number of entries recording such infringements. As mentioned in the introduction, the main potential alternatives to the ‘home’ manor court as settings for villagers’ personal actions were the ‘communal’ courts of hundred and county, the church courts, and the various royal courts. Villagers could also initiate suits in manor courts held by lords other than their own. Yet it must be stressed that the villager’s choice of court was circumscribed by the nature of the dispute underlying the lawsuit. First, in discussing alternatives to the ‘home’ manor court for litigation about debts and contracts, we are concerned solely with oral transactions that did not use written instruments, or more precisely, did not employ a sealed agreement known as a specialty. Actions involving oral transactions could be sued in the local ‘communal’ and church courts as well as the manor courts, and it was also possible for a plaintiff to sue in debt in the king’s courts without specialty. However, manor and other local courts did not normally have the power to hear cases which used sealed writings as proof, which appear to have been reserved for the king’s court. Second, it is important to note a more general circumstance which meant that the king’s courts, unlike the local courts, did not compete directly with fourteenth-century manorial jurisdictions in the sphere of personal actions. This was the existence of a division of jurisdiction over debt litigation, which meant that debt actions involving claims of forty shillings or more had to be sued in the king’s courts, while lesser claims were reserved for the manorial and other local courts. Furthermore, chapter eight of the Statute of Gloucester (1278) stated that a plaintiff would not be permitted to bring a trespass case before the royal justices unless he swore that the goods taken away were worth at least forty shillings. Although there is
a lack of consensus among historians about contemporary interpretations of this
 provision, the rule that the king’s courts should have jurisdiction in claims of forty
 shillings or over, while the local courts were confined to claims under forty shillings,
 appears to have become firmly established in trespass as well as debt.\textsuperscript{49} The
 importance of this jurisdictional division becomes clear in the following discussion of
 the types of court mentioned in the Cambridgeshire ‘illicit litigation’ entries (Table 2).

 It is noticeable from Table 2 that reports of use of ecclesiastical courts are
 more numerous than those mentioning secular courts.\textsuperscript{50} Quite probably, this simply
 shows that suits between villagers in secular courts were less likely than those in
 church courts to involve people from the same settlement, and hence to be challenged.

 In particular, it would be dangerous to conclude from the total of just three
 references to royal courts in Table 2 that civil litigation involving Cambridgeshire
 villagers in such courts was rare, since it is by no means clear that a civil lawsuit in a
 royal court would always generate a manorial ‘illicit litigation’ entry, even when the
 parties lived in the same village. As already noted, only the king’s courts were
 competent to hear debt actions involving claims of forty shillings or more.
 Furthermore, most historians maintain that chapter eight of the Statute of Gloucester
 was taken to mean that trespass actions for damages claims of forty shillings or more
 also had to be sued by writ in the king’s courts, even though this is not what the
 statute said. If they are correct, then the limit to the size of claims justiciable in manor
 courts may have encompassed more than just debt. Clearly, then, lords who asserted
 manorial jurisdiction over tenants who prosecuted personal actions at common law
 were on shaky ground, especially when the action was one of debt, because they were
 maintaining a right to hear cases over which they had no claim. This presumably
explains why the Harston bylaw cited earlier explicitly noted that extra-manorial lawsuits in the king’s courts would not be punished.

It also explains why one of the three royal court ‘illicit litigation’ cases in Table 2 shows an attempt to punish a villager’s action begun by writ meeting with a stout rebuttal from the individual concerned. This is a Bottisham entry of 1367, which requested that enquiry be made as to whether Walter Garbo had vexed Peter Straungeray tenant of the lord by a writ when he could have had justice in the lord’s court, in prejudice of the lordship 100s., and causing Peter damages of 6s. 8d. through being bailed at Cambridge. Walter replied that he ‘did not prosecute against Peter other than at common law, which is permissible to everyone, and not in any other way’. As this matter disappears from the record without further comment, it appears that Walter’s refusal to recognize the seigniorial court’s claim to jurisdiction over his action carried the day, presumably because the action involved a claim of forty shillings or more and could therefore rightfully only be sued the king’s court.

Nonetheless, there clearly were occasions on which lords took issue with and successfully punished royal court litigation involving their tenants. This is shown, first, by the two other royal court references in Table 2, which both come from Oakington and report suits before the justices of trailbaston. It is also shown by two ‘illicit litigation’ cases cited by Helmholz, in which persons were presented for vexing manorial tenants by writs of the lord king. This pair of cases underpins Helmholz’s observation that although the majority of ‘illicit litigation’ entries involved other local courts, ‘legal actions in the court of the king enjoyed no immunity from prosecution at the local level’. Schofield’s study of a long-standing quarrel between two Suffolk villeins provides one further example of essentially the same scenario, which saw Nicholas le Wodeward amerced for impleading Robert the son of Adam by a certain
writ of trespass.53 Yet these three are the only ‘illicit litigation’ entries in manorial court rolls mentioning use of royal courts (apart from those in Table 2) that I have encountered in my searches of records and the writings of historians.54 It is striking that all three non-Cambridgeshire examples involve manorial tenants of the abbey of Bury St Edmunds. A likely explanation for the importance of this lordship as a source of such entries is that the Bury monks of the early fourteenth century adhered strictly to the words of the Statute of Gloucester, interpreting it to mean that trespass pleas involving damages claims of forty shillings and over should continue to be heard in their courts, and that tenants who ignored this and sued other tenants in royal jurisdictions were liable to be punished. Other lords may have taken the same view, and this may account for the amercements imposed by the abbot of Crowland at Oakington for suits before the trailbaston justices.55 Yet even if some lords effectively sought to compete with the royal courts to hear the larger trespass cases of their tenants, they had no basis for doing so in debt. This means that any royal court debt actions involving villagers are highly unlikely to leave a trace in the form of ‘illicit litigation’ entries in the manor court rolls.

A total of thirty-one cases of ‘illicit litigation’ looks at first glance to be a small haul from over 1,860 sessions of manor courts enjoying jurisdiction over hundreds of villagers. Yet lords never aimed to exercise monopoly jurisdiction over every instance of ‘their’ villagers’ litigation, so a low figure is unsurprising. The total of thirty-one represents only a minority of the occasions on which individuals went beyond their ‘home’ manor courts to conduct lawsuits against other villagers.

If one assumes that the seigniorial rules on extra-manorial litigation were consistently enforced, a total of just thirty-one cases of ‘illicit litigation’ does suggest that villagers rarely used the county court, hundred courts, church courts or alternative
manor courts in order to sue their fellow tenants or immediate neighbours. This was presumably because the justice available in the ‘home’ manor court usually met the plaintiff’s requirements, or at any rate was not so deficient as to justify risking the financial penalties involved in ‘illicit litigation’ proceedings. These were not necessarily negligible: amercements of 2s. or more were imposed on some illicit plaintiffs, though 12d. was the most common figure, and damages claims ranging from 3d. up to 5s. were awarded to plaintiffs in ‘illicit litigation’ cases that took the form of a civil lawsuit.\textsuperscript{56}

* *

In order to enter the marketplace to buy goods and services on credit, to lend and to borrow money, and to form contracts with others, English villagers in the later middle ages required access to courts that allowed them to enforce obligations using formal legal means. In particular, the development of commercial networks connecting together individuals from different villages depended upon the parties involved being able to journey outside their home communities to obtain civil justice without landlords imposing financial penalties upon them for doing so.

Of course, even if seigniorial restrictions had been widely applied upon villagers’ litigation beyond the manor, this would only ever have amounted to a financial disincentive; especially determined (and wealthy) plaintiffs could still have gone through with their illicit actions, and simply elected to pay the penalty. Yet this article has shown that in most economic dispute situations, wronged villagers could enjoy access to appropriate civil jurisdictions without incurring such penalties at all.
If one wanted to sue an outsider for a debt or damages claim under forty shillings, one’s unrestricted choices comprised another manor court, a church court, or the courts of hundred and county. If one wanted to sue an outsider or a neighbour for a debt or damages claim of forty shillings or over, access to the royal courts was usually possible without seigniorial reprisal. Seigniorial prohibitions routinely restricted freedom of access to civil remedies in personal actions only when a villager wished to sue a fellow tenant or neighbour elsewhere than in the ‘home’ manor court for a debt or damages claim under forty shillings. In this scenario, the plaintiff was of course not entirely deprived of a remedy, but simply restricted to the justice available in his own local court. As the small total of ‘illicit litigation’ cases suggests, plaintiffs usually seem to have regarded the justice of the ‘home’ manor court as satisfactory. It was probably only in the middle of the fifteenth century, as many manor courts became moribund as a result of wider social and economic changes, that litigants became dissatisfied with such courts as a setting in which to sue their immediate neighbours. Manorial civil suits dry up in court rolls from this period, mainly, it seems, because court sessions were now being held too infrequently to meet litigants’ needs. At this time, plaintiffs appear to have turned to alternative jurisdictions when suing co-residents of their own villages, a process that perhaps lies behind the ‘explosion’ of fidei lesio actions in church courts over the course of the fifteenth century. The mid-fifteenth century failure of manorial civil justice almost certainly explains why the Cambridgeshire bylaws on ‘illicit litigation’ were written down in the period from the 1440s to the 1460s, and it probably also accounts for the tendency for manorial ‘illicit litigation’ entries to become especially numerous around the same period. It seems that landlords were making increasingly desperate efforts to
maintain the flow of personal actions in their manor courts at a time when frustrated civil litigants were voting with their feet.

Although it has sometimes been claimed otherwise, the condition of servile villeinage was not in itself used as a basis for landlords to try to dictate where ‘their’ villagers could and could not sue. Breach of the disabilities of villeinage was occasionally referred to as a justification for punishment of particular instances of litigation, as at Great Horwood, but it only ever acted as a reinforcement of the key rule which said that a landlord had exclusive right to exercise justice only where his court was competent hear the case, and where both parties to the suit were his tenants.

The most important conclusion of this study is that it was possible for both free and unfree villagers to engage in market transactions with people living at a distance safe in the knowledge that one’s own lord would not seek to restrict the choice of civil jurisdictions that might be used to bring an opponent to justice if he failed to repay a debt or honour a contract. Lords did not seek to penalize those seeking such access, perhaps accepting that to have done so would be to prevent their tenants getting justice. The foundations are now laid for an investigation of the records of appropriate civil tribunals, including those of various royal and ecclesiastical courts, in order to try to establish just how frequently Cambridgeshire villagers – including villeins - actually sued each other in such jurisdictions between about 1275 and 1400. Such an investigation will provide a stronger sense of the true accessibility of civil justice beyond the boundaries of the village, and, in turn, a fuller indication of the risks and incentives facing villagers when contemplating the formation of commercial relationships with people resident elsewhere. It is not yet clear what quantity of litigation involving villagers travelling outside the manor will be identified by such an investigation. However, in explaining the extent to which
villagers prove to have travelled elsewhere to prosecute civil personal actions, it is clear we must reject any notion that the prerogatives of landlords and the disabilities of villeinage exercised the most significant influence. Other factors were clearly more important. In particular, the costs in time and money, the levels of legal expertise required, and the practicalities of journeying, where necessary, to sue in one’s court of choice are likely to need particularly close consideration as explanations for the patterns of extra-manorial litigation that emerge.
Table 1. Reports of litigation and appearance in courts outside the manor in 16 Cambridgeshire manor courts, 1276-1400*

<table>
<thead>
<tr>
<th>Court</th>
<th>Years covered</th>
<th>No. court sessions surviving/searched</th>
<th>1 To 1350</th>
<th>2 1351-1400</th>
<th>3 Total</th>
<th>4 'illicit litigation' (private suits)</th>
<th>5 ‘wasting lord’s chattels’ (adultery etc.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balsham</td>
<td>1310-1349</td>
<td>141</td>
<td>0</td>
<td>141</td>
<td></td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Barrington</td>
<td>1281-1379</td>
<td>31</td>
<td>5</td>
<td>36</td>
<td></td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Barton (Lancaster)</td>
<td>1356-1400</td>
<td>0</td>
<td>60</td>
<td>60</td>
<td></td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Barton (Priory)</td>
<td>1326-1347</td>
<td>65</td>
<td>0</td>
<td>65</td>
<td></td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Bottisham</td>
<td>1320-1372</td>
<td>224</td>
<td>104</td>
<td>328</td>
<td></td>
<td>5</td>
<td>0</td>
</tr>
<tr>
<td>Foxton</td>
<td>1276-1325</td>
<td>45</td>
<td>0</td>
<td>45</td>
<td></td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Fulbourn</td>
<td>1361-1400</td>
<td>0</td>
<td>117</td>
<td>117</td>
<td></td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Grantchester</td>
<td>1398-1400</td>
<td>0</td>
<td>5</td>
<td>5</td>
<td></td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Great Abington</td>
<td>1287-1400</td>
<td>5</td>
<td>52</td>
<td>57</td>
<td></td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Great Eversden</td>
<td>1382-1399</td>
<td>0</td>
<td>28</td>
<td>28</td>
<td></td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Harston</td>
<td>1313-1400</td>
<td>5</td>
<td>99</td>
<td>104</td>
<td></td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Landbeach</td>
<td>1327-1398</td>
<td>26</td>
<td>71</td>
<td>97</td>
<td></td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Meldreth</td>
<td>1316-1395</td>
<td>78</td>
<td>44</td>
<td>122</td>
<td></td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Oakington</td>
<td>1291-1385</td>
<td>276</td>
<td>168</td>
<td>444</td>
<td></td>
<td>10</td>
<td>8</td>
</tr>
<tr>
<td>Swaffham Prior</td>
<td>1281-1377</td>
<td>64</td>
<td>78</td>
<td>142</td>
<td></td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Willingham</td>
<td>1377-1399</td>
<td>0</td>
<td>78</td>
<td>78</td>
<td></td>
<td>8</td>
<td>0</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td></td>
<td></td>
<td>960</td>
<td>909</td>
<td>1869</td>
<td>31</td>
<td>12</td>
</tr>
</tbody>
</table>

*Sources: See n. 13

Notes: Several court roll series have substantial gaps within date range. Oakington court also covers manors in Cottenham and Dry Drayton

Table 2. Courts mentioned in reported instances of ‘illicit litigation’*

<table>
<thead>
<tr>
<th>Type of Court</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Church courts</td>
<td>20</td>
</tr>
<tr>
<td>2 Seigniorial or communal (hundred, county) courts</td>
<td>3</td>
</tr>
<tr>
<td>3 Royal courts</td>
<td>3</td>
</tr>
<tr>
<td>4 Unidentified</td>
<td>5</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>31</td>
</tr>
</tbody>
</table>

*Sources: see Table 1.
Notes: Row 1: ‘in a court Christian’ (10); ‘in the chapter of the archdeacon at Cambridge’ (7); ‘in the chapter’ (2); ‘before the official in the chapter’ (1). Row 2: ‘in the court of Royston’ (1); ‘in the court of Wiggenhall’ (1); ‘in the hundred court’ (1). Row 3: ‘before the justices of trailbaston/at the trailbaston’ (2); ‘by writ, at common law’ (1). Row 4: ‘at Cambridge’ (2); ‘in an alien court’ (1); ‘in a forbidden jurisdiction’ (1); ‘outside this court’ (1).
Versions of this article were presented at the University of Cambridge’s Seminars in Medieval Social and Economic History, and Historical and Cultural Geography; I am grateful to participants, and to Zvi Razi and Richard Smith, for their comments. Research for this article was funded by Trinity College, Cambridge, and by the British Academy, and I take this opportunity to acknowledge this support. I have benefited from the assistance of archivists in numerous record repositories; in particular, I would like to thank the knowledgeable and helpful individuals in charge of the Cambridge college archives used (Corpus Christi, King’s, and Trinity College). Philip Stickler, of the Cartographic Unit, Department of Geography, University of Cambridge, drew the map. The views presented here and any errors are the responsibility of the author.


2 The terms plaint, plea, case, and action are used interchangeably here to mean ‘civil lawsuit’. Trespass was a broad category which, in manor courts, encompassed damage to and removal of property of all kinds, plus assaults.


4 R.H. Helmholz, The Oxford History of the Laws of England Volume I. The Canon Law and Ecclesiastical Jurisdiction from 597 to the 1640s (Oxford, 2004), 358–63, 565–6. Instance cases were civil lawsuits brought at the instance (ad instantiam) of one private party against another.
In this article I confine myself to the male personal pronoun purely for stylistic reasons. I do not intend to imply that women did not litigate outside the manor, though they did so much less often than men. For women as civil litigants in manor courts, see C. Briggs, ‘Empowered or marginalized? Rural women and credit in later thirteenth- and fourteenth-century England’, *Continuity and Change*, xix (2004), 13–43.


Musson writes that ‘far from bringing alienation from the king’s courts, the widening scope of royal justice observable over the thirteenth and fourteenth centuries (in terms of opportunities for redress and in the range of legal remedies available) not only provided greater access at the local level, but also catered for the litigious tendencies of at least some sections of the peasant and urban communities’: A. Musson, *Medieval Law in Context. The Growth of Legal Consciousness from Magna Carta to the Peasant’s Revolt* (Manchester, 2001), 173; see also A. Musson, ‘Social exclusivity or justice for all? Access to justice in fourteenth century England’, in R. Horrox and S. Rees Jones (eds.),

10 Musson, Medieval Law in Context, 135–83; Musson, ‘Access to justice’.


12 See B.M.S. Campbell, ‘The agrarian problem in the early fourteenth century’, Past & Present, 188 (2005), 36, for the most recent estimate of the proportions of free and unfree tenants c.1300.

13 Balsham: London Metropolitan Archives (hereafter LMA), ACC/1876/MR/02/001–8; Barrington: Cambridge, Trinity College Archives (hereafter TC Archives), Box 35, rolls 1–7; Barton (Lancaster manor): Cambridge, Corpus Christi College Archives (hereafter CCC Archives), XXXVII/1–2; Barton (Priory manor): Cambridge, King’s College Archives (hereafter KC Archives), BAR/261, BAR/296; Bottisham: The National Archives of the U.K., London (hereafter T.N.A.), Public Record Office (hereafter P.R.O.), SC 2/155/47–52; Foxton: TC Archives, Box 27, rolls 1–5; Fulbourn: T.N.A.: P.R.O., E 315/79; Grantchester: KC Archives, GRA/284–5; Great Abington: Cambridgeshire Record Office (hereafter CRO), 619/M1–2; Great Eversden: Cambridge University Library (hereafter CUL), Queens’ College (hereafter Q) Box 11; Harston: British Library (hereafter Brit. Libr.),
Additional Charter 18521, 18523–18525, 18530; Landbeach: CCC Archives, XXXV/121–2; Meldreth: LMA, HO1/ST/E/079/1–18; Oakington: CUL, Q Boxes 3, 4 and 11, rolls 1–5 and 12; Swaffham Prior: CUL, EDC 7/13/2–5; Willingham: CRO, L1/177. A few other broken manorial court roll series exist but have not been used.

14 Attention is focused on this well-defined area of Cambridgeshire so that, in the second phase of the project, an estimate may be made of the size of the total volume of personal litigation arising within a particular set of villages, and of the proportion that found its way into jurisdictions other than the plaintiff’s local manor court.


16 CUL, Q roll 2 (10 Nov. 1306). Amice was almost certainly a widow.


Royal Justice, ed. DeWindt and DeWindt, 84–5, cites examples of villein participants in Huntingdonshire royal courts, but plaintiffs in civil pleas are not numerous. Hyams, ‘What did Edwardian villagers understand by law?’, 71, invites historians to ‘do what we do best and seek out villagers of unfree or uncertain status actually suing’.

Musson and Ormrod, Evolution of English Justice, 9. It must be emphasized that the authors present this as a generally accepted position, but argue that it requires qualification: ibid., 131–3.


An Oakington example: ‘The jurors of Oakington present that William Kycchesson villein of the lord abbot (nativus domini abbatis) of Oakington committed adultery with a certain woman and lost the lord’s chattels in the court Christian, therefore he is in mercy’: CUL, Q roll 3 (6 March 1344). For

26 All the reports of church court use in Table 1 column 5 specify two parties and state that one had caused the other to appear unjustly. The manorial punishment is directed at the party that brought the church court lawsuit. The nature of the action is not given, but it is assumed here that the reason for the appearance was a civil (instance) cause such as defamation or fidei lesio. By contrast, the reports in column 6 either specifically mention an offence such as adultery, or refer to and punish a single individual only. That individual is assumed to be the villein prosecuted in the church court via ex officio procedure. For the argument that individuals or groups of individuals might instigate the use of the ex officio machinery against suspected offenders, and that such accusers might be named in the manorial court roll references to the church court appearance, see Schofield, ‘Peasants and the manor court’, 29–37.


28 Revealing as it is, Helmholz’s short account forms part of an avowedly preliminary sketch of the jurisdictional conflicts affecting manor courts.


32 Barrington: TC Archives, Box 35 roll 10 (17 Sept. 1464); Ault, ‘Manor court and parish church’, 60.

33 Swaffham Prior: CUL, EDC 7/13/6 (Nov. 1455): *Quia ordinatum est per consilium et tenentes domini quod si aliquis tenentium, cuius status gradus seu condicionis fuerit, implacitat aliquem tenentem domini huius manerii in hundredo, comitatu aut curia christianitatis, foris fecerit et solveret domino vis viiid etc...*

34 Harston: Brit. Libr., Add. Ch. 18538 (19 Oct. 1446). Another bylaw of the same year orders that no tenant living within the domain shall ‘procure or instruct scholars of Cambridge, summoners or other oppressors’ to bring unjust or vexatious charges in church courts or elsewhere against other tenants living in the same place: Brit. Libr., Add. Ch. 18540 (14 March 1446).

35 Willingham: CRO, L1/179 (15 Jan. 1440). This bylaw also includes the provision that no tenant ‘shall abet, procure or sustain henceforth the coming of the hundred bailiffs within this domain to make any summons or make any distraint for any plaint in county or hundred...’.


37 Nearly all Helmholz’s examples of ‘illicit litigation’ also state that both parties were tenants of the same manor: Helmholz, ‘Independence and uniformity’, 232–3.

38 Briggs, ‘Rural credit’, 321–33, for the composition of this database. The Oakington records contain entries concerning Crowland Abbey’s three manors of Oakington, Cottenham, and Dry Drayton.

39 CUL, EDC 7/13/6 (9 July 1439).

40 LMA, HO1/ST/E/079/6 (21 July 1332).
On this possibility, see J.A. Raftis, ‘Social structures in five east midland villages’, *Economic History Review*, xviii (1965), 89.


‘…si home ou femme qest bonde soit tarie en chapitre dautre chose forsque de matrimonye e testament’: *Court Baron*, ed. Maitland and Baildon, 102.

LMA, ACC/1876/MR/02/001 (6 Apr. 1327). For Capiard’s villein tenant status see, for example, his appearance on a list of bond tenants dated 26 Oct. 1316 (LMA, ACC/1876/MR/02/001).

Based on the database of Horwood court roll entries used in Briggs, ‘Rural credit’. The ‘illicit litigation’ cases are: NCA, 3913 (30 Oct. 1311); NCA, 3914 (13 June 1337, 1 Mar. 1340, 20 Sept. 1343); NCA, 3912 (12 July 1344); NCA, 3914 (13 Oct. 1351, 30 May 1362); NCA, 3915 (3 Aug. 1390, 2 Aug. 1391). Two of the persons reported as conducting ‘illicit litigation’ as plaintiffs — Alan le Ropere (case of 1337), and Richard Cole (case of 1343) — were free tenants, as was John Seriaunt, said in 1344 to have been sued in the earl of Gloucester’s court ‘against the ordinance’.

NCA, 3914 (30 May 1362). The other two cases are: NCA, 3913 (30 Oct. 1311), in which Robert de Salden was attached to respond as to why he drew a customary tenant of the lord into an alien court at Winslow, and caused him to expend his chattels; and NCA, 3914 (13 Oct. 1351), a civil lawsuit in which Walter Newman claimed that John Smyht had drawn him into a court Christian, causing him to lose his lord’s goods and chattels, to Walter’s damage half a mark.

Briggs, ‘Rural credit’, 49, 54.


Some identifications of court type are tentative as the descriptions are brief: Table 2, notes.


Helmholz, ‘Independence and uniformity’, 233; his cases come from Redgrave (date 1322) and Rickinghall (1323) (both Suffolk).

Schofield, ‘Peasants and the manor court’, 22; the court is Hinderclay (Suffolk), date 1301.

C. Dyer, *Lords and Peasants in a Changing Society. The Estates of the Bishopric of Worcester, 680–1540* (Cambridge, 1980), 267, cites two examples of villagers suing each other in royal courts, but it is not clear that either instance takes the form of ‘illicit litigation’.

See CUL, Q roll 2 (20 Oct 1315), Q roll 3 (12 Oct. 1331, 30 Jan. 1332). The earliest commissions of trailbaston allowed justices to hear private complaints from individuals concerning...
‘light and personal’ trespasses, and it was probably actions such as this that were brought by the
Hunnisett and J.B. Post (eds.), Medieval Legal Records Edited in Memory of C.A.F. Meekings
see Select Cases in the Court of King’s Bench Volume IV. Edward II, ed. G.O. Sayles (Selden Soc.

56 Twenty-six amercements were imposed in total, at 2d. (one), 3d. (six), 4d. (three), 6d. (four),
8d. (one), 10d. (one), 12d. (seven), 18d. (one), and 2s. (two). In two cases the illicit plaintiff suffered
two separate amercements, of 2s. 3d. and 5d. respectively. It is possible that at Oakington in 1295 an
amercement of 4s. was imposed, though the exact nature of this payment, recorded in the margin
without further annotation, is not clear: CUL, Q roll 1 (Attehill v. Asseman, 12 Mar. 1295). Damages
payments of 3d., 6d., 14d., 16d., 20d. and 5s. (two) were awarded in seven ‘illicit litigation’ cases that
took the civil lawsuit form. In a Landbeach case involving Agnes Knight and John Man, damages to
the lord of 100s. were claimed, yet although Agnes conceded the offence it is unclear whether she was
expected to pay this sum: CCC Archives, XXXV/121 (25 Jan. 1362). At Great Horwood, the offenders
in ‘illicit litigation’ cases suffered amercements of 3d., 2s. (two), and 3s. 4d. (two). Note also the
bylaws cited earlier, which stated that penalties of 6s. 8d. (four bylaws) and 40d. would be imposed
automatically in case of infringement. At Cockerham the penalty - the seizure of the holding - was
notably severe. In 1373 at Oakington, two men who had vexed each other in a court Christian were
ordered not to repeat the offence under penalty of 40s.: CUL, Q roll 7 (presentment v. Thomas Lite and
Robert Sperner, 9 May 1373).

57 J.S. Beckerman, ‘Procedural innovation and institutional change in medieval English manorial
courts’, Law and History Review, 10 (1992), 244–5.

58 For the ‘explosion’, and the subsequent decline, see Helmholz, Oxford History of the Laws of
England, 229–30; B.L. Woodcock, Medieval Ecclesiastical Courts in the Diocese of Canterbury
See the comments in Dyer, Lords and Peasants, 266–7. At Swaffham Prior, seven ‘illicit litigation’ cases appear in the rolls for 1435–55: CUL, EDC 7/13/6, (9 July 1439 (three cases), 30 Oct. 1441 (two), 30 Oct. 1451, Nov. 1455). At Ixworth (Suffolk), around 12 separate ‘illicit litigation’ entries are recorded 1472–83: University of Chicago, Joseph Regenstein Library, Bacon MSS 912 (Ixworth Priory Court Book 1467–83); I am very grateful to Mr Nicholas Amor for drawing my attention to this evidence and providing me with notes on the relevant entries. In gathering court roll evidence towards a study of villeinage in medieval Suffolk, Mark Bailey has also found a marked concentration of ‘illicit litigation’ entries in the mid-fifteenth century; I am grateful to Dr Bailey for sending me his notes on this matter.