

## DISPUTE SETTLEMENT IN THE MANORIAL COURT: EARLY FOURTEENTH-CENTURY LAKENHEATH

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Although each society has a level of disorder that it considers acceptable, there must exist a machinery for the settlement of disputes which threaten to create an unacceptable level of disorder. In much of daily life, compliance with the variety of rules that order a society is usually more or less unconscious, but there will inevitably be times when the personal advantage of one member of society will conflict with the social rules or with the interests of another. Such conflict often leads to quarrels which disrupt the order of the social group. The examination of dispute settlement thus defines the means by which quarrels are settled and order maintained.

The most obvious mechanism for dispute settlement involves the application of law in the disposition of trouble cases as they arise. E. Hoebel outlined four functions of law essential to the maintenance of all but the most simple societies: to define relationships among the members of society, to allocate authority, to settle disputes, and to redefine relations between individuals and groups as the conditions of life change<sup><1></sup>. It is the third function in which law 'works to clean up all the little social messes (and the occasional big ones) that recurrently arise between the members of a society from day to day'<sup><2></sup>. In other words, law can act to bring the relations of disputants back into balance. However, the application of law usually implies a formal procedure for dispute settlement which may not be the automatic resort of those in dispute. Broadly speaking, the medieval English village would seem to have had three more or less related institutions for settling disputes and maintaining social order. The first was the family. In a society in which means of subsistence were limited and primarily acquired by inheritance or family gift, some degree of social control must have been exercised by senior family members over their juniors. To some degree, such social control may account for the absence of women and younger children from the court rolls in any large numbers; in many offences and disputes they may not have been considered legally responsible, but the system worked because senior male family members could take responsibility for them and by reason of their position in the family influence the behaviour of female and junior family members. A second institution for maintaining social order was the community, and the importance of social pressure on the behaviour of individuals most of whom had little expectation of mobility. This communal pressure was institutionalised in the tithing or frankpledge system, but it must also have operated through the traditional means of small communities, such as the use of shame and ridicule (defamation, vituperation) or the withdrawal of essential forms of co-operation as effective means of handling conflict extra-legally. It is possible that the

use of hue and cry itself acted as such a form of communal prosecution. Finally, and most obviously, there was the appeal to law in the manorial court: the court being held frequently and locally, and having a well-defined machinery for dispute settlement. Of these three institutions - the family, the community, and the court - the last is the only one the mechanism of which has left records to allow the investigation of its use and procedures. In examining the problem of disputes in medieval rural society, one would like to know first how frequently the legal option was taken up by disputants, and with what kinds of disputes the court most frequently dealt. Next, one would hope to discover who was using the court, and for whose benefit it most frequently acted. With such information, it should be possible to draw some conclusions concerning the extent to which the manorial court can be discussed in terms of a communal as opposed to a seigneurial institution; in other words, how far the community mechanism for dispute settlement was incorporated in the manorial court.

Although some of these questions are difficult to answer with available evidence, they are important for two reasons. First, answers would obviously further the understanding of medieval peasant society, and second, they would at the same time further the understanding of the role of the manorial court in that society. The latter point is particularly important in view of the increasingly popular use of medieval court rolls for demographic information and the collection of data on the activities and contacts of different socio-economic strata within the village<sup><3></sup>. It is possible to determine what strata of the manorial population seigneurial action brought into the court, but if a high proportion of court business is inter-tenant litigation or lord-tenant litigation, it is important to determine what strata of the manorial population such litigation brought into court, as either plaintiffs or defendants. It is somewhat surprising, given the recent interest in court rolls as social evidence, that the question of the use of the manorial court in dispute settlement has been so little discussed. There are, of course, numerous studies of crime and criminals, most notably the work of B. Hanawalt<sup><4></sup>, which discuss the sociology of crime and the use of law as an instrument of social control. However, Hanawalt is almost exclusively concerned with public prosecution rather than private litigation, and dispute is a wider question than crime. The sort of work on the village community one might expect to have some discussion of dispute, disputants and legal action - Britton's *Community of the Vill*<sup><5></sup> - deals with 'friction' in eight pages and is exclusively concerned with the identification and quantification of inter-group, as opposed to intra-group, friction. Britton does not, for example, look at the comparative frequency of his family groups as plaintiffs or defendants except in the case of litigation for debt. Most of the useful discussions of dispute settlement occur in legal anthropology rather than existing historical work<sup><6></sup>. If areas of interest to medieval historians follow contemporary trendiness (as medieval crime studies seem to have followed in the wake of the popularisation of studies of modern criminal sociology), then it may be that the whole question of dispute settlement and the bias of the manorial court will become more interesting to historians in the light of discussions of institutional discrimination in the modern court and policing systems and the varying abilities of different social and economic groups to manipulate the systems to their advantage.

What follows is very much in the nature of a pilot study, looking at some of the ways in which medieval manorial court records can be used to investigate questions of the process of dispute settlement in the medieval English village. For the purposes of this study, I will be using the fourteenth-century court rolls of the manor of Lakenheath, Suffolk<7>. Lakenheath is a large parish of approximately 10,550 acres located in the north-western corner of Suffolk, about 75 miles north of London. The village lies a few yards above sea level on the eastern border of the fens, which stretch away across Cambridgeshire and Norfolk for a distance of about 60 miles. In the medieval period the fens provided abundant food (fish and fowl) and fuel (peat) and provided rich summer grazings, but they were inundated for several months of the year. To some extent Lakenheath undoubtedly shared in the wool wealth of Norfolk and Suffolk, since the 7,000 acres of fen and 2,000 acres of heath provided abundant grazing for sheep. Extensive rabbit warrens were also an important element of the demesne economy<8>. In fact, only about 1,500 acres of the parish were under arable cultivation: poor, light land, providing at best only moderate crops. Demesne lands occupied approximately 600 to 650 acres, and the customary holdings of unfree tenants about the same area. There were 43 villein tenements of 15 acres each; inheritance of villein land was by the youngest son, the eldest son being heir to free land and molland. In the early fourteenth century, rents from agricultural land contributed less to the seigneurial income than rents from grazings and fisheries<9>. Perquisites of court before 1350 represented from 11% to 23% of the total seigneurial income. Court roll evidence suggests that there were more than 300 resident males over the age of 12 in the village in the early fourteenth century, giving a population figure for the village in the region of 1,000. If this figure is even approximately accurate, many of the inhabitants of Lakenheath must have won subsistence from the fens rather than the fields.

The predominant manor in medieval Lakenheath was that of the Prior and Convent of Ely Cathedral, which lay ten miles south-west of Lakenheath at the hub of a compact block of fenland property. A second, smaller manor belonged to the earls of Clare, whose seat was about 20 miles south of Lakenheath. In 1331, an heir granted the Clare manor in Lakenheath to the Prior and Convent of Ely: thereafter, only one manorial court was held in the parish. Both the earl of Clare and the Prior and Convent of Ely had the franchise of view of frankpledge in Lakenheath. Courts were held irregularly - one leet a year, and manorial courts at intervals of from two to eight weeks. Manorial courts were usually held at least once a month, with longer gaps at harvest and at the turn of the year. Lakenheath court rolls - from both manors until 1331 and from the one manor thereafter - survive from 1310 to 1355 with few gaps<10>.

The court rolls of Lakenheath were chosen (with those of Alrewas, Staffs) for computer input for a SSRC project 1976-80<11>. Every entry in each court, from essoins to court totals of fines and amerancements, was entered in a minimally-structured form on the Cambridge University IBM computer. Once the 'raw' input was filed on the computer, indexes - for example, of personal names, delinquencies,

land transfers, marriages, office-holding - could easily be compiled from several years of data. The data was put into files, each of which contained five years of court rolls, and for each five-year file the same series of indexes was run, allowing indexes to be cross-referenced with one another and eventually collated with indexes from adjacent periods. Such indexes allow one immediate access to information in the court rolls which would otherwise only be acquired through many long hours of reading the original rolls. The kinds of questions about dispute and the use of the court that have been outlined above are ideally served by such presentation of court records in computer indexes, and it is on such indexes that the following work is based.

First, a brief note on the way in which such indexes can be used. One can begin looking at the medieval court and its role in dispute settlement by looking at the types of prosecution and litigation for which the court was used. One of the Lakenheath indexes lists accusations for each five-year period, giving for each accusation where relevant a further description (e.g. amount of debt or nature of trespass), the accused, the fee or amercement and damages claimed or levied, if any, and the date of the entry. By categorising such 'crimes' into those against the lord, those against the community, and those against the interests of other individuals, one can get some idea of the relative importance of seigneurial, public, and private business in the total business of the court. By using the further descriptions of each 'crime', one can find out how many prosecutions for infringements of community rules against trespass are in fact prosecutions by the lord for trespass on or damage in the demesne. It is easy to discover whether amercements for offences against the lord were any higher, or more regularly levied, than amercements for private or community prosecutions. One can look at the level and frequency of damages recovered by individuals for crimes or trespass committed against them, and compare those damages with the seigneurial income from the court assessing the financial benefits of court prosecution for the lord and for the individual tenant plaintiff. One can also discover the financial risks to the plaintiff in court prosecutions, recorded in the number and size of amercements for false pleas, failure to prosecute, and licences to agree.

One way in which to begin looking at dispute settlement and the manorial court, then, is to examine the kinds of litigation and prosecution for which the court was used, and their comparative frequency. In 25 years of Lakenheath court rolls, 1320-45, there were 57 different 'offences' or crimes prosecuted. These offences can be categorised as being offences against seigneurial law or custom; offences prosecuted by the lord or his officials on behalf of the community (that is, crimes one might expect to be prosecuted in most communities); and offences against the interests of individuals (prosecutions in which it was entirely the decision of the injured party to prosecute through the court). Of the three categories, crimes against the individual are the easiest to identify. In this category fall land disputes and pleas of convention, debt, detinue, defamation, and trespass. Discriminating between offences against the community and those against the lord is less straightforward. For the purpose of this study, the following have been categorised as offences against the

lord, offences which only existed as such as a result of the lord's position and attendant rights: failure to perform an office, failure to obtain necessary licence, default of foldsoke, carrying and selling turves, concealment, default of suit of court or mill, failure to sell in the market, being a fugitive, poundbreach, illegal fishing, harbouring, and contempt. Brewing fines have also been considered a perquisite of seigneurial custom. Although it could be argued that the lord's officials were ensuring a standard quality and price of ale on behalf of the community, the very regularity of brewing presentments in most early-fourteenth century court records supports the view that the assize of ale was a means by which the lord took a percentage of brewing profits, a percentage which simply varied with the quality and price of the ale. The sort of offences which were prosecuted, often by the lord, on behalf of the community were: hue and cry, bloodshedding, purpresture, damage, breaking and entering, petty larceny, forestalling, digging turves, mowing reed, nuisance, absence from tithing, or harbouring lepers. The infrequent prosecutions of scolds have also been put in this category. Once offences are thus categorised, it is possible to count and compare the number of prosecutions in each category. For the years 1320-45 in Lakenheath, 29% of all prosecutions were civil, 25% criminal, and (including baking and brewing) 46% seigneurial. Where one decided to put infractions of the assizes of bread and ale in, however, significant, as such infractions represented over 20% of all court prosecutions; shifting these offences from seigneurial to communal or criminal alters the balance of court business significantly. There is no reason to expect the composition of Lakenheath court business to be atypical. For Alrewas (Staffs), a manor of roughly the same population for which the same calculations have been carried out for a 15-year period, the figures are similar. Excluding brewing, which was presented at every court in Alrewas and accounted for 30% of court business, the Alrewas figures 1320-35 were: 40% of all prosecutions were civil (cf. 37% of all business excluding brewing infractions in Lakenheath), 22% communal or criminal (32% in Lakenheath), and 38% seigneurial (31%).

The largest proportion of court business in early fourteenth-century Lakenheath comprised seigneurial prosecutions and civil litigation, with the smallest proportion of prosecutions being for crimes or offences against community order or specific by-laws. However, simply isolating violations of seigneurial prerogatives by no means defines the role of the lord and his officials as plaintiff in the manorial court. Inevitably, some of the civil or 'community' prosecutions were made by the lord in his capacity as landholder and member of the community. Excluding what have been termed 'seigneurial' offences, damage and trespass were the two pleas in which the lord appeared most frequently as the injured party. In the same 25-year period, 73% of all damage presentments were for damage to the lord's demesne arable or pasture; 57% of presentments for illegal cartways were brought specifically for cartways across the demesne, and almost 18% of all trespass pleas were brought on the lord's behalf for trespass on the demesne (which was less than 40% of the total arable). Thus, although offences specifically against seigneurial rights did not dominate the court business in medieval Lakenheath, seigneurial prosecutions certainly

dominated the court business when prosecutions for demesne damage and trespass are added to prosecutions and presentments in pursuit of seigneurial prerogatives.

It is not only the relative number of presentments and prosecutions that is important, but their outcome, one indicator of which is their contribution to the total income from court fines and amercements. Although with the inclusion of infractions of the assizes of bread and ale, specifically seigneurial prosecutions accounted for 46% of all prosecutions 1320-45, resultant amercements were 64% of court income from prosecutions in that period. Civil litigation (29% of business) accounted for only 16% of amercement income, and criminal presentments (25%) for 20% of the income. As one might expect, presentments for offences against lord or community, allowing as they did little chance for the accused to defend himself, were both more successfully prosecuted and more regularly resulted in amercements of a higher level than civil litigation.

Looking more closely at the composition of civil litigation, by far the most common plea brought into the court was that of debt, which represented almost half (47%) of all litigation. Trespass accounted for 37% of civil pleas, the only other pleas occurring with any frequency being detinue (8%), land (4%) and convention (2%). Having decided to bring a dispute into the manorial court, what were the chances of a plaintiff attaining his goal, which was presumably the conviction and amercement of the defendant? About three-quarters of civil litigation 1320-45 have their outcomes recorded in the surviving court rolls. Of these cases, marginally more were concluded with a licence to agree (38%) than with the amercement of the defendant (37%). In the remaining quarter of the cases, 13% ended with the plaintiff being amerced for a false plea, and 12% with a failure of the plaintiff to prosecute (with his consequent amercement). In cases of trespass on the lord's demesne brought as litigation rather than by presentment, at least 80% ended with the amercement of the defendant; in other words, the success rate of the lord in trespass prosecutions was over twice as high as that of his tenants. And, of course, a failure of the plea did not result in the amercement of this plaintiff.

Whereas the lord, then, had a 20% chance of his plea failing - and suffered no penalties in that event - a tenant apparently had a 25% chance of his plea failing, in which case he was penalised with an amercement, usually 3d. for either failure to prosecute or bringing a false plea. While it cannot be denied that only a minority of plaintiffs had to pay the court as a result of taking a dispute into court for settlement, it is nevertheless true that by taking a case to court a tenant ran a substantial risk of being himself amerced. Even in the case of a successful prosecution, plaintiffs were seldom awarded damages, particularly in the most common plea, debt.

What can one conclude from such statistics? On the question of who used the court, it is obvious that in early fourteenth-century Lakenheath at least, the lord used the court, more frequently and with more consistent success than any of his tenants. The impact of lordship on the community was felt not only in the enforcement of his



specifically seigneurial rights but also in the number and success of his 'private' prosecutions for damage or trespass against his interests. It is difficult to determine at what stage in a dispute the lord used the court to defend his interests, given the fact that he had more opportunities than his tenants to act effectively extra-legally. Resort to legal prosecution by the lord may have been made only on the failure of extra-legal methods, as was almost certainly the case with his tenants. The fact remains, however, that in the case of the lord's resort to the court, disputes were most frequently settled in his favour, and he was taking no risks of penalty in the case of defeat. The manorial court was obviously the lord's court insofar as he appropriated the profits of the court and it represented the forum for his jurisdiction. But the court can also be described as the lord's court in the sense that as a plaintiff the lord through his officials used the court more successfully than did any of his tenants. The lord used the court in the way that was in theory open to any tenant to use it; that is, to establish a position of power and authority within the community by using the court to prosecute those with whom his personal advantage or security conflicted. This use of the court was a form of seigneurial control mediated through a recognised community institution, more subtle than immediate control through officials but no less effective.

The existence of the manorial court presented tenants with a familiar and convenient legal mechanism through which to settle disputes. However, resort to legal solutions of disputes in medieval Lakenheath cannot have been automatic. Given the fact that a plaintiff did take a risk - however small - of personal loss as a result of bringing a case to court, an element of the decision to use the court must have been a plaintiff's assessment of his chances of pursuing his plea successfully. With the proportion of pleas which ended in licences to agree, it would seem that the manorial court functioned to bring disputing parties into negotiation as often as to apportion guilt according to rule-based adjudication. Particularly in these circumstances, individuals would inevitably have differed markedly in the skill and material resources with which the opportunities presented by the court could be exploited. Disputants by definition pursued their respective interests through competing claims; the need to establish the superiority of one claim over another allowed an opportunity for the exercise of power within a system in which supposedly 'judicial' processes of decision-making operated. The decision of a tenant to pursue a claim through the manorial court would probably have been taken only after an attempt at extra-legal settlement and some consideration of the importance of obtaining a settlement, the likely success of further extra-legal pressure, the plaintiff's knowledge of court procedure, and his chances of a favourable outcome. Also taken into consideration must have been the importance of having a written record of the outcome in the case of future dispute. It is significant that the disputes by far the most frequently taken into the court were disputes over or offences against property - debt, trespass, detinue - and that, for example, breaches of convention or claims of defamation were prosecuted infrequently. The plaintiff in disputes over property had more to gain from a successful prosecution.

It is also the case that the plaintiffs in pleas of debt or trespass were more likely by the very nature of the plea to be the more prosperous of the village community. Once the nature and number of disputes in the manorial court in Lakenheath have been examined more closely than in this brief outline, and over a longer period of time, the next step will be to determine who chose to use the court. It should be possible to correlate plaintiffs and defendants with indicators of economic status: office holding, for example, or the buying and selling of land. It should then be possible to determine whether, as one might expect from the type of plea most common and the nature of the court itself, those who used the court most frequently were those who were most familiar with the court and most confident of their ability to manipulate its use to their advantage. The manorial court was not the only mechanism for settling disputes in early fourteenth-century Lakenheath. Despite the few inducements there appeared to be to encourage tenants to use the manorial court to settle their own disputes, a large number of them undoubtedly did. The next stage of the inquiry, identifying those tenants who used the court most frequently, should allow one to draw more conclusions about their reasons for doing so.

## NOTES

1. E. Hoebel, *The Law of Primitive Man*, Cambridge, Mass. 1954, p. 275.
2. *Ibid.*, p. 280.
3. See, for example, Z. Razi, *Life, Marriage and Death in a Medieval Parish*, Cambridge 1980; R. Smith, 'Kin and Neighbors in a Thirteenth-Century Suffolk Community', *Journal of Family History*, 4, 1979, 219-256.
4. B. Hanawalt, *Crime and Conflict in English Communities 1300-1348*, London 1979.
5. E. Britton, *The Community of the Vill*, Toronto 1978.
6. See, for example, S. Robert, *Order and Dispute*, London 1979; L. Nader and H.F. Todd, eds, *The Disputing Process - Law in Ten Societies*, New York 1978.
7. For permission to use the computer indexes of the Lakenheath court rolls, and for much of the following information on the manors of Lakenheath, I am indebted to Miss Judith Cripps, to whom the study of Lakenheath properly belongs.



8. G. Crompton and C. Taylor, 'Earthwork Enclosures on Lakenheath Warren, West Suffolk', *Proceedings of the Suffolk Institute of Archaeology*, 32, 1970, 113-20.
9. I am grateful to Prof. R.H. Hilton for the information from the Lakenheath accounts.
10. The court rolls of the Clare fee are in the Public Record Office (SC2 203/94, 95) and in the Cambridge University Library (EDC 7/15/II/1/6,8,9). The Ely court rolls are all in the Cambridge University Library (EDC 7/15/II/1/1-12; 7/15/II/2/13-14). There is a gap in the Clare fee rolls 1318-25, but the only significant gap in the Ely rolls to 1349 is one 1321-24.
11. The principal investigator for the SSRC project was Prof. R.H. Hilton.