LAW COURTS AND LAWYERS IN THE CITY OF LONDON, 1300 – 1550

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Between 1300 and 1550, London's courts were the most important English lay law courts outside Westminster. They served the most active and innovative of the local jurisdictions in which custom combined with the common law to produce different legal remedies from those contemporaneously available in the central courts. More importantly for the long term, not only did London's practices affect other local courts, but they influenced the development of the national common law, and quite possibly the development of the legal profession itself.

This book provides a detailed account, accessible to non-legal historians, of the administration of the law by the medieval and early modern city of London. In analysing the workings of London's laws and law courts and the careers of those who worked in them, it shows how that administration, and those involved in it, helped to shape the modern English law.

PENNY TUCKER now works in Devon as a designer, but continues to research history and to write part-time.

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ABBREVIATIONS

Adm	Admissions
AG	Attorney–General
Ald	Alderman
AMJLH	*American Journal of Legal History*
Att	Attorney
Aug	Augmentations
B(Ex)	Baron (of the Exchequer)
BH	Bridge House
[BI]HR	*[Bulletin of the Institute of]Historical Research*
BL	British Library
C	Chief
Cal	Calendar
CalCorR	*Calendar of Coroners' Rolls*
CalCR	*Calendar of Close Rolls*
CalEMCR	*Calendar of Early Mayor's Court Rolls*
CalFR	*Calendar of Fine Rolls*
CalHW&D	*Calendar of Husting Wills & Deeds*
CalLB	*Calendar of Letterbooks*
CalPR	*Calendar of Patent Rolls*
CalPMR	*Calendar of Plea and Memoranda Rolls*
CCL	[Fitch] *Commissary Court of London*
Chanc	Chancellor
Chirog	Chirographer

CI	Clement's Inn (of Chancery)
ClI	Clifford's Inn (of Chancery)
Clk	Clerk
CLRO	Corporation of London Record Office
Cmn	Common
comm	communication
CP	Common Pleas
CS	Common Serjeant
Ct	Court
dep	deputy
edn	edition
ed(s).	editor(s)
EH	[Williams] *Early Holborn*
EHR	*English Historical Review*
Ex	Exchequer
Exec(s).	Executor(s)
fo(s).	folio(s)
GHLibrary	Guildhall Library
GI	Gray's Inn
GM	*The Guildhall Miscellany*
Gt Chron	*Great Chronicle*
GSLH	*Guildhall Studies in London History*
HB	Husting Book
HR	Husting Roll
HRO	Hampshire Record Office
HRW&D	Husting Rolls of Wills and Deeds
IT	Inner Temple
J	Justice
JLH	*Journal of Legal History*
Jor(s).	Journal(s) of the Common Council
Jun	Junior

KA	King's Attorney
KB	King's Bench
LAssNuis	[Chew, Kellaway] *London Assize of Nuisance*
LB	Letterbook
LCC	[Darlington] *London Consistory Court Wills*
LI	Lincoln's Inn
LQR	*Law Quarterly Review*
LPossAss	[Chew] *London Possessory Assizes*
LyI	Lyon's Inn (of Chancery)
m(m).	membrane(s)
Mich.	Michaelmas (term)
Misc.	Miscellaneous
MS	Manuscript
MT	Middle Temple
OSaL	[Baker] *Order of Serjeants at Law*
pb	paperback
PCC	Prerogative Court of Canterbury
photo.	photograph
PL	Pleas of Land
Plr	Pleader
PRO	Public Record Office
Protho	[Sheriff's] Prothonotary
R&M	[Thorne, Baker] *Readings & Moots*
Rec	Recorder
Recog	Recognizance
Reg.	Register
Rep	Repertories
Ser.	Series
Serg	sergeant
Serj	serjeant
Soc.	Society

SRO	Southampton Record Office
TNA	The National Archives
TRHS	*Transactions of the Royal Historical Society*
US	Undersheriff
v.	versus
vol(s).	volume(s)
WP	Weekly Payments (Bridge House)

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INTRODUCTION

AIMS AND JUSTIFICATIONS

This book originated over a decade ago, during a study of the government of medieval London, in the need to understand the place of the administration of the law in that government.

What had seemed likely to be a short and straightforward investigation led to years of study and to an abiding interest in this aspect of the early history of the English common law. It soon became clear that anyone interested in either what the law of London was or how it was administered would have to look at a large number of books and articles in order to build up a detailed picture.[1] That picture would, moreover, in a few important respects be incomplete or misleading. These problems matter because London's law courts were the most important medieval English lay law courts outside Westminster in terms of the quantity of civil litigation brought in them: in the fifteenth century, the London Sheriffs' Court may well have been second only to the central Court of the Common Bench in this respect. They served the most active and probably the most innovative of the local jurisdictions in which custom combined with the common and merchant laws to produce different legal remedies from those contemporaneously available in the central courts. The practices and procedures of the city's courts also differed in some respects from those which were most commonly employed at Westminster.

[1] The Introductions to the *CalEMCR* (for city law courts, types of actions and procedures) and *CalPMR 1381–1412* (for merchant law and law courts, customs relating to methods of proof, liability, and negotiable instruments), *CalPMR 1413–37* (for the language of the courts, gifts of deeds and chattels) and *CalPMR 1437–57* (for gifts of deeds and chattels); also Cam, *Law-finders and Lawmakers*, pp. 85–94; Jones, 'City Courts of Law'; Harding, *Law Courts of Medieval England*, pp. 41–2.

Moreover, London's privileges, customs and procedures influenced those of other local courts. By 1216, over a dozen boroughs had adopted London's customs either directly or indirectly.[2] Finally, although there is little doubt that developments in the principles and procedures of the central court(s) had considerable influence on the administration of the law by London until the early fourteenth century, for the next two centuries, at certain times and in certain situations, influence worked in the opposite direction.

Even this might not be enough to justify devoting an entire book to the topic of the administration of the law by London, were it not for the fact that almost everything which has just been said is to a lesser or greater extent controversial and therefore requires to be demonstrated. Take the assertion that London's Sheriffs' Court in the fifteenth century may well have been second only to the Court of the Common Bench in terms of the amount of civil litigation brought there. This is controversial for two reasons. First, there is no direct evidence to support it; the records of the medieval Sheriffs' Court have almost entirely disappeared. Secondly, local courts generally are thought to have been largely eclipsed by the central courts in the course of the Middle Ages. There is no period between 1200 and 1550 when historians have not detected a strong flow of litigation from local courts into the central ones at Westminster, in particular, to the Court of the Common Bench (or Common Pleas). The work of that court undoubtedly burgeoned for most of the period. In the first century after 1200, the number of membranes in the Common Bench plea rolls multiplied twenty-fold.[3] Although growth was less rapid thereafter, the number of membranes had nevertheless almost doubled again by 1450.[4] The traditional explanation for this growth, particularly in the thirteenth century, is that litigants were abandoning local courts for the central ones. This was the result of what has been called the 'birth of the common law': the development of a system of initiating and moving legal actions in

[2] Ballard, *British Borough Charters*, pp. 10, 12, 13, 13–14, 14, 15, 23, 27, 29, 32, 34; Hudson, Tingey, *Records of Norwich*, I, pp. 12–13.

[3] Brand, *Origins of the Legal Profession*, p. 24.

[4] There were *c.* 360 membranes (excluding those recording the appointments of attorneys) in the roll for Mich. 1299 and *c.* 670 membranes in that for Mich. 1449: TNA (PRO), CP Plea Rolls, CP40/130, /755.

and between courts by means of a writ obtained from the royal Chancery. The writs, while preserving the fiction 'that access to the royal courts [meaning, the central courts at Westminster] was limited and exceptional and that the local courts were and remained the ordinary courts of law for the country at large', in fact enabled litigants to abandon local courts for the central ones. Consequently, 'the old local courts ... sank into the comparative insignificance in which they have remained for many centuries'.[5]

Although these conclusions clearly relate primarily to the loss of business which private, seigneurial courts are thought to have sustained, both rural county and borough courts are also believed to have been affected.[6] If, in the minds of these commentators, London was the exception that proved the rule, they do not say so. And in some respects the evidence from the central court records supports those who would include London among the local jurisdictions which lost business to the central courts. There are few cases marginated 'London' in the early Common Bench records, by the fifteenth century, such entries appear by the hundred.[7] At this date, moreover, not only were London cases appearing in their hundreds in the records of the Court of the Common Bench, they could also be found, if in lesser quantities, in those of King's Bench and the Court of Chancery.[8] In the Common Bench, cases marginated 'London' often involved plaintiffs who were free of the city. The city had jurisdiction over such cases and had the right to forbid city freemen from bringing them elsewhere if they

[5] Van Caenegem, *Birth of the Common Law*, Chapter 1 and pp. 24, 29; and see also, for example, Harding, *Law Courts of Medieval England*, p. 84 (*c.* 1160 to *c.* 1290), Pollock, Maitland, *History of the English Law*, I, p. 202 (Edward I's reign, 1277–1307), and Musson, Ormrod, *Evolution of English Justice*, pp. 9–10 (fourteenth century); for the sixteenth century, see Baker, 'High Court of Battle Abbey', p. 263.

[6] Palmer, *County Courts of Medieval England*, pp. 220–1, 262, 254–5, 304–6; van Caenegem, *Birth of the Common Law*, p. 24.

[7] Palgrave, *Rotuli Curiae Regis*, I, pp. 220–304 (Easter 1199); *idem*, *Rotuli Curiae Regis*, II, pp. 1–153 (Mich. 1199), and Nicol, *Curia Regis Rolls, XVII*, pp. 83–236 (Mich. 1242); compare with TNA (PRO) CP Plea Rolls, CP40/802, / 806, /825 (1460s and 1470s). The change was well under way by the later fourteenth century. Of 8 attorney appointments marginated 'London' in the rolls for Mich. 1336, only 3 definitely involved Londoners: TNA (PRO), CP Plea Rolls, CP40/ 308, Att. rolls, mm. 10, 10v (Robert le Ropere of London 'cyteyn' and Henry Wymond of London 'laver', *bis*), 11v. By contrast, there were 60 such appointments in Mich. 1375: CP Plea Rolls, CP40/460, Att. rolls.

[8] Tucker, 'London's Courts and the Westminster Courts', pp. 119–20.

could be brought in the city's courts. This suggests that the city courts were no longer functioning effectively or that the city's governors were powerless to stem the outflow of litigation.

Then there is the fact that local courts, London's included, do not appear to have been doing much that the central courts were not doing better. Their rolls are full of brief entries relating mainly to common-law actions like debt. As a legal profession emerged, probably before the end of the thirteenth century, the increasing penetration of professional lawyers into local courts brought central court ways of doing and thinking to the inferior jurisdictions. Apparently every little manor court was, by about 1300, tending to deal with the same sort of actions in the same sort of ways.[9] And contrariwise, insofar as they had their own customs, or usages, they were so varied and so localised in their effect as to be little more than a curiosity.

Finally, for the legal historian, there is nothing in the local courts to match the wealth of legal learning revealed in the yearbooks (though not normally in the rolls of the central courts themselves). This is as true of London as of the smallest manor court. Its half-a-dozen custumals may record custom, but they do not usually attempt to explain it. Even where the originating ordinances are preserved in its administrative records, they tend merely to state the problem and provide a solution, which, to later observers, may not even seem to have much of a bearing on the problem concerned. Only rarely do its judges explain their reasoning; they hardly ever discuss on the record the arguments which presumably informed their judgments.[10] One is left to draw what conclusions one may from the judgment itself and any surviving depositions. To scratch around in this unyielding soil for the few crumbs there are seems a painful waste of effort, when so much more can be so much more easily gleaned elsewhere.

All this would be very discouraging, were it true. One of the purposes of this book is to demonstrate that it is not. The argument advanced here is that the Common Bench rolls did not swell after 1200, nor probably indeed at any period before 1550, because cases which would formerly have been brought in the

[9] Baker, *Oxford History of the Laws of England*, vi, p. 291, Hyams, 'What did Edwardian Villagers Understand by "Law"?', esp. pp. 80–1.

[10] For exceptions, see *CalEMCR*, pp. 168–9, 183–4.

London courts were being brought in the central courts instead. Rather, it was, firstly, because litigation in both Westminster and London increased at this period; secondly, because, by the later fourteenth century, Londoners were using the central courts for actions which could not at any time have been brought successfully, or solely, in the city; and, thirdly, because litigants may have been bringing cases in the central courts which they abandoned at an early stage, as a way of 'flushing out' and securing evasive defendants who could then be made to appear in the local courts. The only city court which lost business permanently before 1500 was the Husting. And this was not because lawsuits were being attracted away from it by the central courts, but because the old common-law writs used to initiate most types of legal action there went out of fashion in the local courts. Its loss, moreover, was the other city courts' gain.

In addition, the superficial similarity of the local and central courts' administration of the law is deceptive. Not only procedures but also remedies and judicial attitudes in courts in which private (civil) actions were initiated mainly by written bill or (oral com)plaint differed from those in which they were begun by royal writ. This was the fundamental difference between the two busiest city courts and the Common Bench. Moreover, if it is the case that local jurisdictions were still handling the bulk of civil and criminal cases even in the 1500s (and it is), we need to examine them, not only in order to make sure that they really were doing no more than mimicking the central courts, but also to see what the trends in litigation were.[11] Finally, as has been pointed out in relation to modern contract law, there are laws which are quite well-developed in theory but which are of little or no practical use, or simply are not used.[12] It is possible, if admittedly not at all likely, that the yearbook discussions had hardly more relevance to medieval law in action outside Westminster than had academic debates about angels on heads of pins to the religious practices of the laity and their priests.

Furthermore, the ways in which London's law offices (and, to a lesser extent, the city's judgeships) changed over time throw a sidelight on developments in the law generally. One of the themes

[11] Harrison, 'Manor Courts and the Governance of Tudor England'.
[12] Hedley, 'Needs of Commercial Litigants'.