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Effectiveness and Authority:

The Bishop of Lincoln's Court of Audience in the Early Sixteenth Century

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Declarations

This work has not previously been accepted in substance for any degree and is not being concurrently submitted in candidature for any degree.

Signed .... (candidate)

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STATEMENT 1

This thesis is the result of my own investigations, except where otherwise stated. Other sources are acknowledged by footnotes giving explicit references. A bibliography is appended.

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STATEMENT 2

I hereby give consent for my thesis, if accepted, to be available for open access, for photocopying and for inter-library loan, and for the title and summary to be made available to outside organisations.

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Abstract

This thesis examines authority and effectiveness in the early sixteenth-century English ecclesiastical justice system. It concentrates upon the bishop of Lincoln's court of audience between March 1528 and March 1530 but seeks to provide insight into that jurisdiction throughout late medieval England. To better understand how effective such justice might have been, and how some of the challenges were met, it investigates that court's jurisdictional coverage and procedural flexibility and considers those who spent much of their working lives engaged within its arenas, their legal knowledge, acuity, professionalism, ethical outlook and inter-personal relations. It rarely deals with high politics or theology but instead with often ordinary lives and the sometimes traumatic, emotional, and uncommon events which happened to those who lived them. It looks at marriage litigation to reveal more about lay and lawyer involvement, courtroom dynamics, and decisions made by or forced upon participants whilst it was underway. It examines enforcement of discipline, especially after sexual misconduct, and particularly the processes of inquisition, sentence construction and penitential punishment. It concludes with a retrospective and looks to future research possibilities.

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First, I owe an enormous debt to my supervisors, Drs Rob Lutton and Claire Taylor, for their unstinting support. Both helped me continue readjustment to academic life after thirty years in the law and constantly open my mind to new challenges, new ways of thinking, and the joys of writing about medieval history. Many other academic staff and fellow students in the Department of History, University of Nottingham, have also been generous with time, encouragement and advice. I am very grateful to those at the School of History and Heritage, University of Lincoln, who suggested this project, and to Lincolnshire Archives, Lyddington Manor History Society, Rockingham Castle, and Dr Patricia Cox for their kind assistance. Finally, without support of family and friends, especially from my wife Kim and daughter Imogen, this journey would have been impossible. Though history graduates themselves, both must occasionally question my sanity. Thank you!

Abbreviations

AJLH	*American Journal of Legal History*
BHO	*British History Online*
BRUO 1500	A. B. Emden, *A Biographical Register of the University of Oxford to A. D. 1500* (Oxford, 1957-1959)
BRUO 1501-40	A. B. Emden, *A Biographical Register of the University of Oxford A. D. 1501 to 1540* (Oxford, 1974)
C&C	*Continuity and Change*
EETS	Early English Text Society
EHR	*English Historical Review*
ELJ	*Ecclesiastical Law Journal*
JFH	*Journal of Family History*
JEH	*Journal of Ecclesiastical History*
JHI	*Journal of the History of Ideas*
LAO	Lincolnshire Archives Office
Lateran IV	The Fourth Lateran Council, 1215
LHR	*Law and History Review*
Longden	*Northamptonshire and Rutland Clergy from 1500,* compiled by Henry Isham Longden (Northampton, 1938-1952)
LRS	Lincoln Records Society
ODNB	*Oxford Dictionary of National Biography* (Oxford, 2004)
P&P	*Past and Present*
PHSdate	*Proceedings of the (date) Harlaxton Symposium*
Reg.	*The Register of* (a bishop) e.g. Reg.Longland

repr.	reprinted (in)
rev.	revised (by)
SCH	*Studies in Church History*
Speculum	*Speculum: A Journal of Medieval Studies*
TNA	The National Archives
TLAHS	*Transactions of the Leicestershire Archaeological and Historical Society*
trans.	translated (by)
TRHS	*Transactions of the Royal Historical Society*
Venn	*Alumni Cantabrigienses: a biographical list of all known students, graduates and holders of office at the University of Cambridge, from the earliest times to 1900*, compiled by John Venn & J.A. Venn (Cambridge, 1922-1954)
X 1.1.1.	*Decretales Gregorii IX (Decretals of Gregory IX)*, lib.1, tit. 1, can.1 (*Liber Extra*)

NOTE: Place of publication, unless otherwise stated, is London.

Conventions

Throughout this thesis, when unpublished material is in Latin, I have included my own translation or paraphrased within the main text. In either case transcriptions have almost always been provided within each pertinent footnote. Occasionally, if the Latin phrase is short, I have included it within the main text accompanied by a translation. Whenever source material is in English, I have refrained from modernising grammar and retained both spelling and word division. Missing characters (lost through damage, omitted by scribes in error, or required for clarity) are included where possible but within square brackets. If a word (or part thereof) could not be deciphered the symbol [?] has been used. When necessary to comprehend scribal practice I have indicated interlineation by including added text between caret marks ('^abc^') and original deletions by scoring through ('~~abc~~').

Dates are Old Style but 1 January has been taken as the start of each new year. Calculations have been made using *A Handbook of Dates for Students of British History*, ed. C. R. Cheney, rev. Michael Jones (Cambridge, 2000).

Place names in manuscript sources were often easily deduced. However, it was sometimes necessary to search at www.kepn.nottingham.ac.uk or www.placenames.org.uk. Unfortunately, access to the latter is now unavailable. When directly quoting from a source, and where spelling was different to that preferred today, I have retained the original first used but include the modern version and county at its first appearance, in text, table and footnote.

As Richard Helmholz explains, English historians of the *ius commune* face some dilemmas including the problem that many terms have no direct translation. I have followed his preferences as

closely as possible.[1] However, I have simplified reference to individual court cases. In office proceedings I have used the title *Office c.* (contra) *The Defendant(s)*, e.g. '*Office c. Johannes A*', and in instance proceedings *The Plaintiff(s)* (Latin: *Actor(s)*) *c. The Defendant(s)* (Latin: *Reus/Rei*), e.g. *'Johannes B c. Emma C*'. In marriage cases, if a competitor was involved, their name follows that of the defendant and the word '*cum*', as in '*Johannes X c. Alicia Y (cum Edwardus Z competitor)*'. Where a case was heard elsewhere than Lincoln's audience court the venue has been identified. At the first mention of each case I have used the Latin version of a forename and the first recorded spelling of a surname. Subsequent appearances of the case title use only an italicised surname. If a passage has been quoted which includes a person's name on more than one occasion, but with variant spellings, I have recorded it as it appears each time within the original source. Elsewhere in the text I have used the modern English equivalent whenever forenames have been used and rationalised use of *u* and *v.*

[1] R. H. Helmholz, *Oxford History of the Laws of England: Volume I, The Canon Law and Ecclesiastical Jurisdiction from 597 to the 1640s* (Oxford, 2004), p.vi.

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1

Introduction

Shortly before his death in 1951 Brian Woodcock expressed hope that his ground-breaking study of ecclesiastical courts in the medieval diocese of Canterbury would not only shed light on their workings and routine but 'provide keys to open many doors'.[2] At the time access to manuscript sources was difficult.[3] Understanding of pre-Reformation ecclesiastical justice in England was limited and largely derived from Bishop William Stubbs's appendix to the *Report of the Ecclesiastical Courts Commission* of 1883, works on canon law such as that by Frederick Maitland, legal handbooks intended for ecclesiastical lawyers, like that written in the fifteenth century by William Lyndwood and in the seventeenth by Henry Conset, collections of Provincial Constitutions and synodal legislation, some printed bishops' and archbishops' registers, editions of episcopal visitations and act books, and the occasional essay.[4] Thirty years later it was still possible to write of 'the paucity of our knowledge of

[2] Brian Woodcock, *Medieval Ecclesiastical Courts in the Diocese of Canterbury* (Oxford, 1952), p.1.
[3] Anne Whiteman, 'An Appreciation', in *The Study of Medieval Records: essays in honour of Kathleen Major*, eds. D. A. Bullough and R. L. Storey (Oxford, 1971), pp.v-x at p.vii.
[4] For Stubbs's work see *Report of the Commissioners appointed to inquire into the Constitution and Working of the Ecclesiastical Courts*, vol. 1 (1883), pp.21-51. F.W. Maitland's *Roman Canon Law and the Church of England* (1898) was the most well-known nineteenth-century work on ecclesiastical law. Earlier examples included the *Codex iuris ecclesiastici Anglicani*, ed. Edmund Gibson, 2nd edn (Oxford, 1761) and Richard Burn, *Ecclesiastical Law*, ed. Robert Phillimore, 9th edn (1842). Handbooks included William Lyndwood, *Provinciale (seu Constitutiones Angliae)* (Oxford, 1679) and Henry Conset, *The Practice of the Spiritual or Ecclesiastical Courts*, 3rd Edn (1708). Legislation could be found in works like *Concilia Magnae Britanniae et Hiberniae, 446-1718*, ed. David Wilkins (1737). Bishops' and Archbishops' Registers in print were relatively scarce, but amongst them were: the *Registrum Epistolarum Johannis Peckham, Archiepiscopi Cantuarensis,* ed. Charles Trice Martin, Rolls Series, 3 vols (1882-1885); the *Register of Richard Mayhew Bishop of Hereford, 1504-1516*, ed. Arthur Thomas Bannister (Hereford, 1919) and the *Register of Thomas Myllyng, Bishop of Hereford, 1474-1492*, ed. Arthur Thomas Bannister (Hereford, 1919). Printed visitation sources included *Visitations in the Diocese of Lincoln 1517-1531*, ed. A. Hamilton Thompson, LRS, 33, 35 & 37 (Lincoln, 1940-1947). Thompson had also produced extracts from a Lincoln Court of Audience book from 1446-1449 in *The English Clergy and their Organisation in*

these courts'.[5] It was 1994 before medievalists had one readily-accessible list telling them of records known to exist and where most were located.[6] Now, sixty-eight years since Woodcock's expression of optimism, we have not only managed to piece together 'a reliable picture' of the spiritual jurisdiction but come to appreciate that the late medieval courts Christian of England 'formed an omnipresent set of interlocking institutions that were comparable to the royal courts in complexity and probably exceeded them in the scale of their activities'.[7] Many keys have indeed been turned; many doors opened. Church court records have been used by ecclesiastical historians and by those interested in social and sexual regulation, gender, marriage, property, law, litigation and lawyers, the clash between orthodox and heterodox, and many other aspects of medieval and early modern life.[8] Evidence from depositions, and of procedures and punishments, has challenged much previously unchallenged and profoundly shifted the direction of scholarship. Nevertheless, lacunae exist, work remains undone and

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the later Middle Ages (Oxford, 1947). A. Percival Moore had published some court records in 'Proceedings of the Ecclesiastical Court in the Archdeaconry of Leicester, 1516-1535', *Reports and Papers of the Architectural and Archaeological Societies of the Counties of Lincoln and Northampton*, 28 (Lincoln, 1905-6), 117-220, 593-662. *An Act Book of the Ecclesiastical Court of Whalley, 1510-1533*, ed. Alice Margaret Cooke (Manchester, 1901), was another example. The most prominent essay was probably F. S. Hockaday, 'The Consistory Court of the Diocese of Gloucester', *Transactions, Bristol and Gloucester Archaeological Society*, 46 (1924), 195-287.

[5] Richard Wunderli, *London Church Courts and Society on the Eve of the Reformation* (Cambridge MA., 1981), p.3.

[6] *The Records of the Medieval Ecclesiastical Courts, Part II: England*, ed. Charles Donahue Jr., (Berlin, 1994).

[7] R. H. Helmholz, 'Local Ecclesiastical Courts in England', in *The History of Courts and Procedure in Medieval Canon Law*, eds. Wilfried Hartmann and Kenneth Pennington (Washington DC, 2016), pp.344-391 at p.344; Martin Ingram, *Carnal Knowledge: regulating sex in England, 1470-1600* (Cambridge, 2017), p.14.

[8] I attempt no comprehensive historiography at this point but a few examples in addition to those above should be mentioned: Colin Morris, 'A Consistory Court in the Middle Ages', *JEH*, 14 (1963), 150-159; Michael M. Sheehan, 'The Influence of Canon Law on the Property Rights of Married Women in England', *Medieval Studies*, 25 (1963), 109-24, 'The Formation and Stability of Marriage in Fourteenth-century England: Evidence of an Ely Register', *Medieval Studies*, 33 (1971), 228-263; Ronald A. Marchant, *The Church under the Law: Justice, Administration and Discipline in the Diocese of York 1560-1640* (Cambridge, 1969); Dorothy M. Owen, *The Records of the Established Church in England, excluding parochial records* (Cambridge, 1970), esp. pp.36-45, 'Ecclesiastical Jurisdiction in England 1300-1500: the records and their interpretation', in *The Materials Sources and Methods of Ecclesiastical History*, ed. Derek Baker, *SCH*, 11 (Oxford, 1975), pp.199-221; R. L. Storey, *Diocesan Administration in Fifteenth-century England*, 2nd edn (York, 1972); R. H. Helmholz, *Marriage Litigation in Medieval England* (Cambridge, 1974), *Canon Law and the Law of England* (1987), *Roman Canon Law in Reformation England* (Cambridge, 1990); *Heresy Trials in the Diocese of Norwich 1428-1431,* ed. Norman P. Tanner, Royal Historical Society (Cambridge, 1977); Ralph Houlbrooke, *Church Courts and the People during the English Reformation 1520-1570* (Oxford, 1979); Martin Ingram, *Church Courts, Sex and Marriage in England, 1570-1640* (Cambridge, 1987); P. J. P. Goldberg, *Women, Work and Life Cycle in a Medieval Economy: Women in York and Yorkshire c.1300-1520* (Oxford, 1992), 'Gender and Matrimonial Litigation in the Church Courts in the Later Middle Ages: The Evidence of the Court of York', *Gender & History*, 19 (2007), 43–59; Shannon McSheffrey, *Gender and Heresy: Women and Men in Lollard Communities* (Philadelphia, 1995).

some evidence is almost untouched. This thesis, though drawing widely from other sources, is largely founded upon the first-ever comprehensive study of a previously rarely-referenced manuscript, a now unbound set of paper records from Bishop John Longland of Lincoln's Court of Audience containing evidence of its activities in the spiritual jurisdiction between March 1528 and March 1530. In its efforts to explore and explain how, despite faults and challenges, the ecclesiastical judicial system then extant in England, and particularly in Lincoln diocese, managed to function effectively and often with considerable popular support, it sets out to open a few of those doors a little more.

This particular audience court manuscript, which can be found at the Lincolnshire Archives under reference Cj.4, is but a very modest fraction of the medieval ecclesiastical judicial records that survive and much excellent work has already been done.[9] Nevertheless, I intend to show it is important, surprisingly rich, reveals much that is new and offers an enticing glimpse of future research. Its content and significance, the early sixteenth-century and wider context, recent and not-so-recent historiography, the extent and nature of my reliance upon other primary and secondary resources, specific methodologies adopted, thesis structure and topic choice will all be discussed later. But first, because notions of effectiveness have long attracted scholarly attention, some fundamental questions of evaluation and analysis must be addressed.

A significant body of literature provides those working in the fields of sociology and public administration studies with several different conceptual frameworks and empirical indicators by which to carry out their assessments. The dominant definition adopted, referred to as the "goal-based" approach or model, may seem at first straightforward and potentially appealing: an action performed is effective if it meets its specific objective aim.[10] There are others, including the "open system" approach (defined as a 'measure of the role of social institutions in shaping or molding behavior') and the "system resource" approach (where an organisation's survivability and ability to

[9] Lincolnshire Archives Office, St Rumbold's Street, Lincoln LN2 5AB.

[10] Chester Barnard, *The Functions of the Executive* (Cambridge MA, 1951), p.20; James L. Price, 'The Study of Organizational Effectiveness', *Sociological Quarterly*, 13 (1972), 3-7; Jeffrey Pfeffer, *Organizations and Organization Theory* (1982), p.41.

attain resources are key measures).[11] These too may seem initially attractive. What is more, the "goal-based" approach has, on occasion, been split between the assessment of "official goals" (which are formally stated but general) and "operative goals" (which reflect specific policies, perhaps for example the need to increase the speed of prosecution).[12] Of course, they all have advantages and disadvantages but they have also all been applied, though often in modified ways, to the evaluation of modern legal systems.[13] Nevertheless, little is gained by discussing their relative merits. Historians of nineteenth-century criminal activity, despite the enormous quantity of statistical information collected by Parliament since 1805 (and especially that published in *Judicial Statistics* since 1867), have still sometimes concluded it reveals little or nothing about crime of the period.[14] Those interested in the ecclesiastical courts of medieval and early modern England, accustomed to working with incomplete, patchy, data obtained from sources that are often bilingual, formulaic and heavily abbreviated in nature, where information has been inconsistently recorded, and which do not readily lend themselves to interpretation or sophisticated statistical analysis, yet also aware such evidence was produced within a complex and dynamic social, legal, administrative and procedural landscape, have been long compelled to consider other methods of assessment.[15] As Jeremy Goldberg has stated,

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[11] Oran R. Young, 'The Effectiveness of International Institutions: Hard Cases and Critical Variables', in *Governance without Government: Order and Change in World Politics*, eds. James N. Rosenau and Ernst-Otto Czempiel (Cambridge, 1992), pp.160-194 at p.161; David McKevitt and Alan Lawton, *Public Sector Management: Theory, Critique and Practice* (Thousand Oaks, 1994), p.226

[12] Charles Perrow, 'The Analysis of Goals in Complex Organizations', *American Sociological Review*, 26 (1961), 854-866 at 854 & 855; Hal Griffin Rainey, *Understanding and Managing Public Organizations*, 2nd edn (San Francisco, 1997), p.127.

[13] Examples in the modern context include: Peter H. Rogers and Mary R. Murrin, 'Effectiveness of Treatment-based Drug Courts in Reducing Criminal Recidivism', *Criminal Justice and Behavior*, 27 (2000), 72-96; Steven van der Walle, 'Confidence in the Criminal Justice System: Does Experience Count?', *British Journal of Criminology*, 49 (2009), 384-398; John Eckelaar and Mavis Maclean, *Family Justice: The Work of Family Judges in Uncertain Times* (Oxford, 2013); Yuval Shany, *Assessing the Effectiveness of International Courts* (Oxford, 2014).

[14] *Judicial Statistics, England and Wales*, Home Office (1867 onwards, annually); John Walliss, 'Lies, Damned Lies and Statistics? Nineteenth Century Crime Statistics for England and Wales as a Historical Source', *History Compass*, 10 (2012), 574-583.

[15] Nor are such problems unique to the study of medieval and early modern England. See Judith Pollman, 'Off the Record: Problems in the Quantification of Calvinist Church Discipline', *Sixteenth Century Journal*, 33 (2002), 423-438. Historians using secular records from that time can face similar challenges: Judith M. Bennett, *Ale, Beer and Brewsters in England: Women's Work in a Changing World, 1300-1600* (Oxford and New York, 1996), pp.158-163.

'the medievalist is used to making a little evidence work very hard'.[16] Filled to the brim with evidence though LAO/Cj.4 is, I shall have to do so too.

Naturally, an assessment of effectiveness depends on examining the makeup of court business and the locations where and frequency with which it was conducted, on considering confessions (guilty pleas), acquittals, convictions and other procedural practices (because such matters reveal something of that considered important to contemporary ecclesiastical authorities and wider society, of who controlled the progress of business, and of how far various elements of the law were put into practice). It also depends on examination of the quality and efficacy of sentences imposed (because that can help reveal any likely impact), on contemporary grasp of jurisdictional, evidential and other challenges faced, and on concurrent understanding of any desire or need for reform. Yet, although counting and measurement are important, as somewhere to begin, results obtained must always be tempered by an understanding that not everything was written down. What happened to sexual transgressors, for example, perhaps especially those suspected of trivial misbehaviour or by only a very few, may have been nothing at all or merely oral in nature and something privately resolved. Informal discipline may have ranged from mild reproof to threats of, or indeed actual, violence but, even in serious cases, there may have been no formal, public, accusation. Much may have been dealt with by way of annual (or more frequent) confession. Measures of the speed with which litigious matters were resolved, the extent to which women took part, and the likelihood orders were obeyed, are all complicated by the type of proceedings concerned, by issues within each case, and by the motivations, abilities and sensibilities, of those directly or indirectly involved, as well as by inconsistent or incomplete recording of evidence, procedural events, abandonment and out-of-court negotiated settlement. The very poorest of society may rarely have engaged in litigation at all, their disputes more often concluded informally or, if not, perhaps in courts where surviving records are so cryptic little can be learned save that certain parties appeared and were fined. Moreover, although a good deal is

[16] Goldberg, *Women, Work and Life Cycle*, p.26.

known about actual behaviour, church court records seem to emphasise acts rather than intentions. In consequence, questions of sexual identity and agency, especially female agency, remain hard to investigate.[17] Finally, although comparison may occasionally be useful, assessment of effectiveness is not about measuring supposed inferiority of the medieval against alleged superiority of the modern. It is not about the desirability of certain outcomes compared with those we may find less morally palatable. In pre-Reformation England discussion of reform was in any event far more concerned with concrete issues of ecclesiastical organisation and function than abstruse questions of theology.[18]

At this early stage I should also point out that throughout this thesis many terms and references recur again and again. As already stated, church court records can be a challenge to interpret too. Consequently, Section 1.1 of this chapter describes the structure and scope of the spiritual jurisdiction in late medieval England, the system in which its tribunals operated and in which its judges, lawyers and other officials worked, the law administered, functions performed, business dealt with, procedures followed, remedies provided, and penalties imposed. It also looks at the role and status of a bishop's court of audience and examines the place of the spiritual jurisdiction as a whole, vis-à-vis the secular, or temporal, legal system in England with which it co-existed.

Both archiepiscopal provinces in pre-Reformation England had their structural differences. The seventeen episcopal dioceses all varied in size, in financial value, and in the structure of their administrative and judicial operations too.[19] Some courts were very active, others may not have sat for years at a time. If sitting in more than one place the frequency and extent of their peripateticism varied. Functions performed or business conducted may not have been undertaken by otherwise near-equivalents elsewhere. Not every court employed full-time judges or administrators nor were they always regularly staffed by formally trained and qualified lawyers. When present such lawyers may

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[17] Helmholz, *Marriage Litigation*, pp.112-123; R. N. Swanson, *Church and Society in Late Medieval England*, paperback edn (Oxford, 1993), pp.174-182; Charles Donahue Jr., *Law, Marriage, and Society in the Later Middle Ages: Arguments about Marriage in Five Courts* (Cambridge, 2007), p.66; Martin Ingram, *Carnal Knowledge*, pp.30, 38-39.

[18] Swanson, *Church and Society*, p.313.

[19] Swanson, *Church and Society*, pp.1-2, 3 (map); Storey, *Diocesan Administration*, p.2.

not have been amongst the most learned or skilful of their profession. Record-keeping practices were never standardised. Routes of appeal varied. The titles given to courts and functionaries varied too. Historians are not even sure how many courts existed in total.[20] Yet, there are more than enough similarities and conformity to consider it a single coherent system.[21] The diocese of Lincoln, because of its size and history, had its own organisational and jurisdictional idiosyncrasies. I cannot therefore claim my conclusions necessarily apply elsewhere. Yet, as both diocese and its court of audience were very much part of that whole, I suspect many have wider application.

To enable better grasp of the role and function of ecclesiastical justice within early sixteenth-century English society, Section 1.2 examines the historical context and, with special regard for that relating to their effectiveness, introduces the historiography of the courts Christian. Life and work in the sixteenth-century church courts was undoubtedly complicated by politics, but this thesis is not primarily about relations between church and state. Nor, indeed, does it focus significantly upon the rivalry and competition then extant between civil and canon lawyers and their secular counterparts. Such things were important, and must be discussed and understood, but ultimately it is much more about the everyday provision of justice and particularly about day-to-day conflict and cooperation between individuals who sought or suffered that justice and those who administered it. It is about practice rather than legal theory and about what effect the courts Christian and their personnel had on society, and on each other, and what effect society, particularly those who appeared in court or caused a case to be heard, had on the way those courts and people who worked in them behaved. The Reformation(s) of sixteenth-century England made the spiritual jurisdiction quite precarious, especially when Protestantism put the canon law under a cloud. Its courts were active for many more years. Although disciplinary cases seem to fall in number by the 1540s, a certain stability was maintained. Later in the 1500s litigation even increased (especially concerning tithes) and there were

[20] A parliamentary report of 1831 suggested 372: *Parliamentary Papers*, 1831-2, vol.24, p.552. But most left few or no records. Some may have escaped detection: R. N. Swanson, 'Peculiar Practices: The Jurisdictional Jigsaw of the Pre-Reformation Church', *Midland History*, 26 (2001), 69-95 at 70.
[21] 'The word "system" is not out of place': Helmholz, *Oxford*, p.207.

reforms, for instance in visitation, which significantly altered the contours of sexual regulation.[22] But, again, such later matters are not the principal focus of my attention.[23]

Robert Swanson explains that to talk of "church" and "society" as if they were separate entities is anachronistic: medieval society was Christian and the church was society; social obligations reflected both religious and ecclesiastical interconnections as well as those of other kinds.[24] In much the same way, one must acknowledge that ecclesiastical justice was society's justice. Of course, it was not the whole: as well as secular justice there was significant informal and unofficial action, and often the various parts were complementary or even ran in parallel.[25] The church was responsible for disciplining its own too. Yet, it is abundantly clear the laity were regularly at the forefront of prosecutions throughout the spiritual jurisdiction.[26] Lawyers played little or no part in such proceedings. Quite often they had no involvement in its litigation too. Moreover, although some clerics working in the jurisdiction may have kept their social and professional circles largely restricted to others of their calling, none lived entirely separate and apart. Church-court lawyers regularly lived where they practised.[27] They were part of the networks or circuits of influence and connection through which much of society operated.[28] They were frequently active in commerce.[29] Many of them, and

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[22] Houlbrooke, *Church Courts,* pp.261-271; Helmholz, *Oxford*, pp.234-235; Ingram, *Carnal Knowledge*, pp.398, 401-402.

[23] For further reading on the church courts in the later period: Marchant, *The Church under the Law*, *passim*; Helmholz, *Oxford*, pp.237-309; R. B. Outhwaite, *The Rise and Fall of the English Ecclesiastical Courts, 1500-1860* (Cambridge, 2006); Ingram, *Carnal Knowledge*, pp.267-285, 309-337 and various other sources.

[24] Swanson, *Church and Society*, p.ix.

[25] Patriarchs of the community could pursue moral infraction through several different avenues but, whether church, ward or guild, these avenues were mostly complementary rather than competing jurisdictions: Shannon McSheffrey, *Marriage, Sex and Civic Culture in Late Medieval London* (Philadelphia, 2006), p.152. Parallel systems of inquiry into the patronage of vacant churches were run by both church and royal courts: Helmholz, 'Local Ecclesiastical Courts', 358-362.

[26] Ingram, *Carnal Knowledge*, pp.116-117. For more on lay involvement in visitations: Helmholz, *Oxford*, pp.219-221.

[27] Advocates of the Ely consistory, for instance, normally had to live in Cambridge to appear in its courts: James A. Brundage, 'The Cambridge Faculty of Canon Law and the Ecclesiastical Courts of Ely', in *Late Medieval Cambridge: essays on the pre-Reformation university*, ed. Patrick Zutshi (Woodbridge, 1993), pp.21-45 at p.34.

[28] David J. Higgins, 'A Canon Lawyer and His Practice: Master Michael de Harclay *c*. 1310-23', *Nottingham Medieval Studies*, 60 (2016), 123-159 at 123.

[29] James A. Brundage, *Medieval Origins of the Legal Profession: canonists, civilians and courts* (Chicago, 2008), pp.468-469.

many providing administrative support, were not ordained.[30] All of them were born and spent their formative years as laymen. For centuries courts had been held in church portals at the threshold of both realms and were necessarily places of frequent contact between clergy and laity.[31] Indeed, courts were not compelled to sit in church or even in an ecclesiastical building at all. On 13 March 1528, for instance, Lincoln's audience court sat in Kirkby Bellars (Leicestershire) at the house of its chaplain.[32]

Nevertheless, spiritual courts were distinct and can be considered a discrete part of the church establishment. They were acknowledged as such and have been studied that way too. In rural areas they were the main agents of discipline. Even in urban areas, where secular justice was elaborately and actively organised, they were astonishingly vigorous.[33] Although dependent on lay involvement and cooperation, the ecclesiastical judiciary had powers others did not possess, and church-court personnel at all levels were greatly preoccupied with society's moral regulation and social control. Furthermore, ecclesiastical lawyers (and the judiciary) regarded themselves a breed apart. Bound by a system of ethics, rules and procedures, theirs was an elite to which admittance was granted only by swearing particular, powerful, oaths.[34] Like lawyers today they had to behave in ways that did not apply to anyone else, and look after their own interests (for instance by ensuring they got paid), yet also represent clients faithfully, presenting their best case and advancing their interests as much as

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[30] Gratian's *Decretum* suggested clerics could only serve as lawyers for certain types of clients, mainly other clerics, ecclesiastical institutions or the poor. Archbishop Winchelsey's statutes for the Canterbury Court of Arches (1295) even stated ordination ought to result in disqualification from legal practice. Ultimately, neither pronouncement prevented clerics acting as lawyers for laymen in all kinds of cases. But later many were laymen and married. See especially: James A. Brundage, 'The Bar of the Ely Consistory Court in the Fourteenth Century: Advocates, Proctors and Others', *JEH*, 43 (1992), 541-560, at 546-547 & 553, 'The Cambridge Faculty of Canon Law', p.44, *Medieval Origins*, pp.207-208, 492; Charles Donahue Jr., 'The Legal Professions of Fourteenth-century England: Serjeants of the Common Bench and Advocates of the Court of Arches', in *Law, Lawyers and Texts: studies in medieval legal history in honour of Paul Brand*, eds. Susanne Jenks, Jonathan Rose and Christopher Whittick (Leiden, 2012), pp.227-251 at pp.240-241 & 248; Chapter Three, pp.122, 136, 144, 148.

[31] Barbara Deimling, 'The Courtroom: From Church Portal to Town Hall', in *The History of Courts and Procedure in Medieval Canon Law*, eds. Wilfried Hartmann and Kenneth Pennington (Washington, 2016), pp.30-50.

[32] 'in domo capellani de kyrkby bellers': *Office c. Johannes Crawlove et Willelmus Godeby* LAO/Cj.4/Q1.fol.5r.

[33] Ingram, *Carnal Knowledge*, pp.391-392.

[34] 'The oath solemnizes the initiation of a new worker into the workplace and perfumes what might otherwise be a pedestrian occasion with the incense of sacred mystery': James A. Brundage, 'The Calumny Oath and Ethical Ideals of Canonical Advocates', in *Proceedings of the Ninth International Congress of Medieval Canon Law: Munich, 13-18 July 1992*, eds. Peter Landau and Joers Mueller (Vatican City, 1997), pp.793-805 at p.793.

possible. Clients who instructed lawyers sought to achieve the advantages of doing so (perhaps without paying), might try to induce them into taking on unworthy, even hopeless, cases, and were sometimes untrustworthy. Lawyers had to be careful: few other roles involved such a constant balancing act or so much potential for conflict.[35]

In Section 1.3 I discuss the primary and secondary resources relied upon, the methodologies and thesis structure adopted, and topic choices made. I begin with my principal primary source – the manuscript at LAO/Cj.4. After a general description, a breakdown of the business it records is provided along with explanation of its importance. For now, I merely point out that much of its content was created at Lyddington in Rutland. Approximately 100 miles from Westminster, seventy-five from Oxford and sixty from Lincoln, Lyddington was ideally situated. Here, until 1547, bishops and other secular clergy took up temporary residence during their ceaseless journeys around the diocese. There was a sizeable permanent presence too. Today a village of mostly seventeenth- and eighteenth-century cottages, two earlier but still-surviving buildings, the Bede House and St. Andrew's Church, were of great medieval significance. The former is the remnant of the Bishop's Palace and some parts date from re-building undertaken by Bishop William Alnwick (1436-1449), others from the episcopacy of Bishop William Smith (1496-1514). Much of the church dates from the fourteenth and fifteenth centuries. It is in these buildings where the audience court was most frequently in session.[36]

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[35] James A. Brundage, 'The Practice of Canon Law', in *The History of Courts and Procedure in Medieval Canon Law*, eds. Wilfried Hartmann and Kenneth Pennington (Washington, 2016), pp.51-73, *Medieval Origins*, pp.309-328.

[36] Lyddington can be found at Ordnance Survey Grid Reference SP 87505 97028. See also 'Parishes: Liddington', in *A History of the County of Rutland: Volume 2*, ed. William Page (1935), pp.188-195, *BHO* http://www.british-history.ac.u/vch/rutland/vol2/pp188-195 [accessed 2 September 2019]. Historic England's *National Heritage List for England* details the Bede House at http://www.historicengland.org.uk/listing/the-list/list-entry/1013825 and the parish church at http://www/historicengland.org.uk/listing/the-list/list-entry/1236656 [accessed 6 September 2019]. Hearings are recorded in the church (for example, 'in ecclesia prebendale de Lydington' at LAO/Cj.4/Q1.fol.40r) and in the chancellor's chamber ('coram domino cancellario in camera sua apud Lidyngton' at LAO/Cj.4/Q1.fol.13v). At LAO/Cj.4/Q1.fol.45v there is reference to one 'in quadam alia camera' i.e. 'in another room' and, at LAO/Cj.4/Q1.fol.67v, to another 'in quadam alta camera cancellarij' i.e. 'in a high chamber of the chancellor's'. These may have varied in size and status. Unfortunately, nothing permits precise identification.

Fig. 1: The Bishop’s Palace, Lyddington, Rutland.

Fig.2: St. Andrew’s Church, Lyddington.

1.1 Structure and Scope of the Ecclesiastical Jurisdiction

Development

As something distinct, and separate from the temporal or secular, the spiritual jurisdiction began to emerge during the second half of the eleventh century. By the twelfth century's second half there had been movement towards creation of an organised system of courts, but none seem to have been regularly constituted. Ecclesiastical disputes were resolved personally by bishops or in chapters of archdeacons and rural deans. Litigation, that is other disputes requiring a formal, judicial, decision and the application of canon law, began to increase during the late twelfth century. But it too was still often dealt with by the bishop, by the archdeacon, or by men specially and specifically appointed (sometimes described as *officiales*) but who did not always act in a judicial capacity. Trained jurists had started to practice ecclesiastical law some fifty or so years earlier, and appear in surviving records with increasing frequency thereafter, but these early officials may not themselves have been legally trained. They had other administrative duties too. During the early thirteenth century the universities of Oxford and Cambridge began to organise their civil and canon law faculties and the law of defamation first began to be formulated. It was the middle of that century before consistory courts began to assume organised, recognisable, shapes in order to prosecute spiritual crime and decide disputes, to be presided over by professional judges (who were by then regularly described as *officiales*) and frequently served by professional lawyers, though often peripatetic to meet most regularly in one specific location, and to keep written records. It was not until its second half that that process had largely been accomplished.[37] At the same time the distinctive procedural character of the *ius commune* (the blend of Roman and canon law adopted by the church) also developed and became largely fully-formed. Archdeacons, who had been involved in the enforcement of morals since Anglo-Saxon times, had a parallel but territorially-restricted jurisdiction, quite similar in many ways to the

[37] Early development of the spiritual jurisdiction is still not fully understood. But see: Helmholz,'Local Ecclesiastical Courts', pp.347-351, *Oxford*, pp.67-146.

organisation of our counties, that seems to have been put in place soon after the Norman Conquest. Keenly interested in exercising disciplinary power as well as resolving disputes, they were also probably meeting regularly by the early thirteenth century and may have been the spiritual forum with which the laity were most familiar. Yet, despite developments in canon law and procedure, they were still relatively informal.[38] However, by 1300 the entire spiritual jurisdiction in England had largely assumed the form in which it was to be found in the Tudor period. Everywhere courts were governed by the same procedural law, jurisdiction was defined in the Gregorian Decretals, the *Liber Extra,* and the *Liber Sextus*, and a system of appeals existed. Supplementary provincial and synodal legislation affected the picture. So did local custom and circumstance. The extent of formality and adherence varied too. Nevertheless, stability had generally been achieved.[39]

Structure

It is possible to imagine the spiritual jurisdiction in England as a pyramid. At the bottom were the courts of rural deans, of monastic houses, of cathedral dignitaries and of bishops for parishes outside their own diocese. Above them, but below the episcopal courts, and in most but not all dioceses, were those of the archdeacons.[40] These were, as previously stated, generally organised according to geography: archdeacons and their appointed judges exercised jurisdiction over specific areas. Where

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[38] Jean Scammel, 'The Rural Chapter in England from the Eleventh to the Fourteenth Century', *EHR*, 86 (1971), 1-21 at 2-3; Frank Barlow, *The English Church 1066-1154* (1979), pp.48-50; C. N. L. Brooke, 'The Archdeacon and the Norman Conquest', in *Tradition and Change: essays in honour of Marjorie Chibnall*, eds. Diana Greenway, Christopher Holdsworth and Jane Sayers (Cambridge, 1985), pp.1-19; Helmholz, *Oxford*, pp.135-138.

[39] The *Liber Extra* was promulgated in 1234 by Pope Gregory IX. The *Liber Sextus* was first promulgated in 1298 by Pope Boniface VIII. It expanded the scope of the law covered by Gratian's *Decretum* and the Gregorian *Decretals*: Swanson, *Church and Society*, p.158; Helmholz, *Oxford*, pp.149, 206-207. Academic debate about the degree of freedom to deviate from papal jurisdiction enjoyed by the medieval English church (the so-called "Stubbs-Maitland" dispute) has long persisted. For further reading: Stubbs, *Report to the Commissioners*; Maitland, *Roman Canon Law*; E.W. Kemp, *An Introduction to Canon Law in the Church of England* (1957); Charles Donahue Jr., 'Roman Canon Law in the Medieval English Church: Stubbs vs. Maitland Re-examined After 75 Years in the Light of Some Records from the Church Courts', *Michigan Law Review*, 72 (1974), 647-716; Helmholz, *Roman Canon Law*, pp.4-20, *Oxford*, pp.161-168.

[40] There were no archdeacons in the dioceses of Chichester, Hereford, Worcester and Carlisle: Owen, 'Ecclesiastical Jurisdiction in England 1300-1500', p.202.

such courts existed, they often carried out functions very similar to those of the bishop. The episcopal courts (the consistory court, the bishop's court of audience, and sometimes the court of the bishop's commissary) stood above that. At the top were the provincial courts of Canterbury and York. From there appeal lay to the papal courts (the *Curia Romana*) and the papacy itself. Such appeals seem to have been rare.

In reality the structure was far more complicated, its layers much less coherent. Although it is clear the system could often be entered at any level, historians' grasp of hierarchical relationships is at times uncertain. Sometimes, for example, appeals were not from archdeacon to bishop and then to province but took some other route. Knowledge of the courts of rural deans, which seem to have been most active where archidiaconal courts did not exist, and which appear legally unsophisticated, has lately improved but remains sketchy because they left relatively few records. Much more is known about the courts known as "peculiars", elegantly described by Swanson as 'islands of jurisdictional privilege', including those operated by prebendaries, but again documentation is sparse. Historians know they were often different from each other in their organisation, and in work they undertook, but are sometimes unsure whether they were active before the Reformation. Occasionally they only know one existed because of mention in documents elsewhere. A peculiar's boundaries might not always be certain. Sometimes there were disputes over its jurisdiction. They were integrated into the system in varying ways, even sometimes not at all, but can most often be found taking up part of what would otherwise appear an archdeacon's jurisdiction. Lincoln diocese contained several. In Northamptonshire and Rutland, for example, there were four: the peculiar of Empingham and the prebendal courts of Nassington, Ketton and Lyddington, all of which are known to have had probate jurisdiction but for which no medieval records survive. Archdeaconries, where they existed, varied in size and number within each diocese. Winchester had two, Norwich four. In Lincoln there were eight: Lincoln, Stow, Leicester, Northampton, Huntingdon, Bedford, Buckingham and Oxford. Often an archdeacon's duties were more pastoral in nature but he, or his official, still heard large numbers of cases of many different kinds. At times it can be difficult to tell where jurisdiction of archdeacon's

official ended and that of bishop's commissary began. In late medieval Lincoln jurisdictions were sometimes shared or, to minimise possibility of friction, one man might hold both posts.[41]

Except in areas that were exempt superior diocesan courts had, in theory, jurisdiction throughout each diocese. However, how many there were, what they did and, where applicable, what kind of relations they enjoyed with the archidiaconal courts, seems to have depended largely upon the size of diocese. Canon law assumed that within his diocese a bishop exercised ordinary jurisdiction. But, by the fourteenth century, and because of other demands on his time, most judicial work was delegated to a professional judge trained in both canon and Roman law who sat in the consistory court as an official or official-principal (dealing mostly with contentious litigation) or in the commissary's court (handling most of the criminal jurisdiction). Indeed, during the late Middle Ages consistory courts are known in every diocese and, except in August and September, many sat regularly every three weeks or so for two or three days at a time. The jurisdiction that remained with the bishop, that is the judicial work he chose to undertake personally or delegated instead most often to his chancellor, and which was often of the more significant kind, was generally exercised through his court of audience, and many bishops chose to decide at least some cases themselves. Yet, this was never all true everywhere. Several bishops of Winchester and Norwich sometimes sat in their consistory courts and, although courts of audience existed in both dioceses, there is no evidence of one sitting at all in the former between 1528 and 1580 or in the latter between 1550 and 1575. In Canterbury the archbishop's court of audience functioned as a court of appeal from both the consistory court and the

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[41] R. N. Swanson, 'Peculiar Practices', 69-95. The quotation is at 69. See also: *A Calendar of Wills relating to the Counties of Northampton and Rutland, Proved in the Court of the Archdeacon of Northampton, 1510 to 1652*, ed. W. P. W Phillimore (1888), pp.i, vi; Woodcock, *Canterbury*, pp.13, 63; Margaret Bowker, *The Secular Clergy in the Diocese of Lincoln 1495-1520* (Cambridge, 1968), pp.30-32, *The Henrician Reformation: the diocese under John Longland 1521-1547* (Cambridge, 1981), p.xv; Owen, 'Ecclesiastical Jurisdiction in England', pp.202-204; Houlbrooke, *Church Courts and the People*, pp.30-35; Wunderli, *London Church Courts*, pp.10-11; Swanson, *Church and Society*, pp.160-163; Helmholz, *Oxford*, pp.207-208, 216-219; Outhwaite, *Rise and Fall*, pp.2-5.

archdeacon's court. Sometimes the offices of chancellor and official, or official-principal, were combined.[42]

In Lincoln each commissary, whose individual authority was also restricted to a territorial sub-division of the diocese, occupied a position originally developed through enhancement of the role of bishop's sequestrator. Originally, sequestrators dealt only with vacant benefices and the goods of intestates but enhancement gave them powers of correction and ability to grant probate. From the fifteenth century onwards one man was often appointed both bishop's commissary and archdeacon's official. However, commissaries do not seem to have acquired the power to deal with litigation until the sixteenth century.[43] Nevertheless, whatever the work, and whoever had been appointed, it is plain the burden was huge.[44]

Perhaps because of that intense activity at archidiaconal and commissary level, Lincoln's consistory court appears to have sat less often than others elsewhere. Its officials seem to have been first recorded during the mid-twelfth century. Within a hundred years a rigorously organised court undertaking all kinds of spiritual business had emerged. By 1257 the term *consistorium* was in regular use. However, by the middle of the fourteenth century, it seems to have surrendered its powers of correction. Concentrating instead upon property and revenue disputes, it seems to have become both thoroughly professional and virtually secular. Despite that loss of jurisdiction, and the less-frequent sittings, sometimes each official was still so busy a deputy was needed. By the fifteenth century the court met most regularly in St. George's Church, Stamford. In 1430 most of its known cases arose in Lincolnshire although others did come from elsewhere. Appeals lay to the Court of Arches in the

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[42] Woodcock, *Canterbury*, pp.27-28, 31-34; Dorothy M. Owen, *The Records of the Established Church*, pp.36-45, 'Ecclesiastical Jurisdiction in England 1300-1500', pp.200-201, and 'An Episcopal Audience Court', in *Legal Records and the Historian: Papers presented to the Cambridge Legal History Conference, 7-10 July 1975, and in Lincoln's Inn Old Hall on 3 July 1974*, ed. J. H. Baker (1978), pp.140-149 at pp.140-141; Storey, *Diocesan Administration*, pp.4-6; Houlbrooke, *Church Courts*, pp.21-24; Helmholz, *Oxford*, pp.213-215.

[43] Colin Morris, 'The Commissary of the Bishop of the Diocese of Lincoln', *JEH*, 10 (1959), 50-65.

[44] Margaret Bowker, 'Some Archdeacons' Court Books and the Commons' Supplication against the Ordinaries of 1532', in *The Study of Medieval Records: essays in honour of Kathleen Major*, eds. D. A. Bullough and R. L. Storey (Oxford, 1971), pp.282-316, 'The Commons Supplication against the Ordinaries in the Light of Some Archidiaconal Acta', *TRHS*, 21 (1971), 61-77.

province of Canterbury. Of its known officials all twenty-two were trained lawyers, fifteen held doctorates in law and most held benefices both inside and outside the diocese. In 1430-1431 thirteen or fourteen proctors (one of the two types of church-court lawyer) appear on the roll. However, historians know little about either them or other court staff.[45] Sadly, its sixteenth-century litigation records do not survive.[46]

In most places, even though only fragmentary records survive, it is probably safe to say audience business was never extensive. But in Lincoln the court is known to have had greater significance and was often considerably more active than others elsewhere. Hamilton Thompson concludes that for the most part such courts were courts of correction for serious offences. Certainly, as we will see, such cases can be seen amongst Lincoln's surviving audience records. But many mundane offences are also recorded as is instance litigation. Bishop William Atwater (1514-1521) carried out lots of its judicial work personally. Indeed, whilst he was bishop the court seems to have been exceptionally busy. Bishop Longland (1521-1547), on the other hand, had different priorities and seems hardly involved. Nevertheless, as we will also see, during his episcopacy the court was still very active.[47] Being the senior diocesan court of correction, it retained great interest in the moral behaviour of clergy and laity. Yet, by the sixteenth century, like its consistory court sibling, it also appears to have been thoroughly professional and, in some ways, quite secular.

Scope

In general, jurisdictional boundaries between the spiritual and secular had also become firmly established by 1300. Interaction between royal and ecclesiastical courts in England became a fact of

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[45] Storey, *Diocesan Administration*, p.5; Morris, 'A Consistory Court', esp. 151-154, 155-156.
[46] Bowker, *Henrician Reformation*, p.53. The only survival is LAO/Cj.7 an act book from 1554-1555.
[47] Thompson, *English Clergy*, pp.54-56; Owen, *The Records of the Established Church*, p.36, 'Ecclesiastical Jurisdiction in England', p.201, and 'An Episcopal Audience Court', pp.141, 149; Bowker, *Secular Clergy*, pp.19, 26-27; *AECB*, *passim*; Storey, *Diocesan Administration*, pp.5-6. On other surviving records of the court: Section 1.3 below, pp.51-65.

legal life. English spiritual courts had never been the sole preserve of the clergy. Clerics could not claim exemption from temporal jurisdiction, except in criminal matters. Indeed, they made regular use of it. Nor did temporal courts seek to reduce the competence of their ecclesiastical counterparts to such a degree that spiritual jurisdiction was limited solely to church affairs. For the most part there was even a good deal of agreement on both sides about the extent of that jurisdiction. Royal courts asked their ecclesiastical counterparts questions about marriage or legitimacy and, if requested, the Court of Chancery and sheriffs helped enforce church court judgments.[48]

However, quite a lot of late medieval secular legislation set out to affect the spiritual jurisdiction. Much simply aimed to direct the way canon law was to be implemented and tended to be minor in significance, often accorded with long-established custom, and was sometimes even directly in line with that canon law. Yet now and then legislation did seek to prevent exercise of jurisdiction in certain areas. Of that latter type the statutes of Praemunire (1353 and 1392), which originally sought only to prevent appeals to the Roman courts, are the most notorious example.[49] Writs of prohibition could also end cases in the spiritual courts considered by the royal courts to be matters for the Crown or royal dignity.[50] Occasionally church-court judges found their way around them. For the most part they accepted temporal courts could affect the scope of their jurisdiction. What they did not like were attempts to expand beyond traditional boundaries.[51] Nevertheless, during the 1480s, secular litigants increasingly began to sidestep limitations that had become attached to such writs and instead sought more from the statutes of Praemunire. Likely losers exploited the statutes to have cases stopped, arguing they applied to English ecclesiastical courts as much as to those in Rome. Success not only prevented further spiritual proceedings but punished those who initiated them. Suing in a church court for testamentary debt, for *fidei laesio* (breach of faith), or for defamation involving imputation of a crime, became dangerous. Then again, the gradual shrinkage of

[48] Helmholz, *Roman Canon Law*, p.21, *Oxford*, p.144.
[49] Helmholz, *Roman Canon Law*, p.25, *Oxford*, pp.169-172.
[50] Helmholz, *Roman Canon Law*, p.21.
[51] Helmholz, *Roman Canon Law*, p.22.

jurisdiction did not always come about by statute. Despite prohibition in the Constitutions of Clarendon, breach of contract cases had regularly been pursued in the ecclesiastical fora. But, from 1499 onwards, they became easier in secular courts because of what was known as *assumpsit*. That same *fidei laesio* jurisdiction, once an attractive, low-cost, way of suing for debt, began in any event to fade rapidly away. It was never removed: church courts simply lost out because of common lawyers' ingenuity.[52]

Nonetheless, and even during the early sixteenth century, although there were complaints, for instance about court fees or the exercise of heresy jurisdiction (both discussed in Section 1.2), relations were mostly peaceful, and the two jurisdictions were still very firmly interdependent. Praemunire was often only sporadically enforced and what happened most was that neither side denied the other's competence. Remedial procedures were offered in both spheres; litigants were left to choose their forum. Although that might necessitate having to opt for whatever was available, often it meant everyone, even clerics, simply chose whichever means most met their requirements. Some clerics even saw the point of the statutes of Praemunire and were not averse to using them. Overall, the two systems were in parallel but certainly not always in conflict. Those whose insults towards church court officials are recorded would probably have turned to them for assistance had the right circumstances arisen.[53] In any event, the courts Christian still had much to keep them busy.

So, what did they do? Some work related to obligations owed to the church. Spiritual courts exacted payment of tithes as well as offerings and other fees due to the clergy or for church fabric. They set out to enforce Sabbath and saints' day observance. They approved wills, held the authority to supervise administration of a deceased's estate, admitted clergymen to benefices, issued licences and dispensations.[54] Contentious disputes about wills and estates were dealt with too.[55] Although they

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[52] Helmholz, *Roman Canon Law*, pp.25-26; Storey, *Diocesan Administration*, pp.30-32; Swanson, *Church and Society*, pp.185-188.
[53] Helmholz, *Oxford*, pp.178-181; Swanson, *Church and Society*, pp. 185, 189.
[54] Houlbrooke, *Church Courts*, pp.7-8; Helmholz, 'Local Ecclesiastical Courts', p.369.
[55] For further reading: Lloyd Bonfield, *Devising, Dying and Dispute: Probate Litigation in Early Modern England* (Farnham, 2012).

did not deal with crime by clerics they were involved with clerical discipline (such as failure to wear appropriate dress or to celebrate Mass at the proper time).[56] They sought to protect clergy from violence or contemptuous speech and punished those guilty of it.[57] Very occasionally they dealt with litigation involving benefices and ecclesiastical patronage.[58] Sometimes they even dealt with secular crime.[59] Although it will consider a few of these things, this thesis is not much concerned with such matters. But spiritual courts were also greatly involved in many intimate aspects of people's lives including marriage, sexual behaviour and questions about their reputation, or as it was known their "fame". To these it will return time and again. Thousands were cited and punished every year in the ecclesiastical courts for fornication or adultery.[60] Often incidents were cut and dried, or at least straightforward. A cleric, for example, was supposed to be celibate. If he had not been, although it could be quite serious, there were likely to be few complications.[61] Many days might be routine. But sometimes correctional work, or litigation like that regarding marriage, could be thorny and contentious. Preparing, presenting, unravelling and pronouncing upon such matters often required great skill.

Nothing in canon law affected society so much as that relating to marriage. As Richard Helmholz explains, in the medieval period and even until the mid-nineteenth century, '[t]here was never an English law of marriage apart from that administered by the Church courts' and its rules affected everyone except the very young and those who remained single.[62] For the most part those courts sought to enforce the canon law view.[63] Not all of them regularly adjudicated upon marital

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[56] Helmholz, 'Local Ecclesiastical Courts', p.357. For some example matters of clerical discipline: Bowker, *Secular Clergy*, p.106.
[57] Helmholz, *Oxford*, pp.505-508.
[58] Helmholz, 'Local Ecclesiastical Courts', pp.368-372.
[59] R. H Helmholz, 'Crime, Compurgation and the Courts of the Medieval Church', *LHR*, 1 (1983), 1-26, esp. 8-13.
[60] L. R. Poos, 'Sex, Lies, and the Church Courts of Pre-Reformation England', *Journal of Interdisciplinary History*, 25 (1994), 585-607 at 585.
[61] Swanson, *Church and Society*, p.168.
[62] R. H. Helmholz, *Marriage Litigation*, p.3; John A. F. Thomson, *The Early Tudor Church and Society, 1485-1529* (London and New York, 1993), p.234. Marriage could only be effected between a man and woman. See Pope Alexander III's synthesis as explained by Charles Donahue Jr., in 'The Canon Law on the Formation of Marriage and Social Practice in the Later Middle Ages', *JFH* (1983), 144-158.
[63] Helmholz, *Roman Canon Law*, p.6.

disputes or claimed jurisdiction to punish those who facilitated irregular marriage. But those that did were repeatedly grappling with, and trying to overcome, the persistent idea that people could regulate marriages for themselves.[64]

Marriage was one of the seven sacraments and had deep spiritual significance. Conciliar and synodal legislation often dealt with it. Pertinent diocesan statutes were widely circulated at all levels of the clergy.[65] The church expected observation of certain formalities, such as the calling of banns and solemnization in the presence of a priest and congregation. Failure to abide by them could lead to punishment for both couple and priest. It is also likely most couples complied: the desire for something socially acceptable must have been strong.[66] Yet, equally, canon law did not immediately regard contracts entered without solemnization or banns as illicit. Many couples made consensual agreements that way as acts of personal commitment, during negotiations, even spontaneously. There were also other forces at work: as well as parental, familial and societal pressure, and important questions of wealth and property, one cannot ignore love or lust. It was church courts that had to resolve the disputes that inevitably followed when such expressions of commitment were inadequate, went unwitnessed, had been dishonestly obtained, or were repudiated, even withdrawn. Sometimes couples faced opposition from relatives and sought help; sometimes relatives tried to promote marriage between the unwilling.[67] Of course, forced marriages occurred. But actions could be taken to annul them: in the absence of freely given consent no bond had been created. Likewise, those between parties too closely related through blood, marriage or affinity could be set aside.[68] The courts

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[64] Helmholz, *Marriage Litigation*, p.5; R. B. Outhwaite, *Clandestine Marriage in England, 1500-1850* (1995), pp.xiii-xiv.
[65] C. R. Cheney, 'Legislation of the Medieval English Church', *EHR*, 50 (1935), 193-214 & 385-417; Michael M. Sheehan, 'Marriage Theory and Practice in the Conciliar Legislation and Diocesan Statutes of Medieval England', in *Marriage, Family and Law in Medieval Europe: Collected Studies*, ed. James K. Farge (Toronto, 1996), pp.118-176 at p.123.
[66] Ingram, *Carnal Knowledge*, p.51.
[67] Thomson*, The Early Tudor Church*, pp.242-244
[68] Helmholz, *Marriage Litigation*, pp.77-87, *Oxford*, pp.544-546; Donahue, *Law, Marriage, and Society*, pp.21-22, 27-31, 263 (*Pope and Dreu c. Dreu and Newton*). See also McSheffrey, *Marriage, Sex, and Civic Culture*, pp.1-6.

also permitted divorce in the event of impotence.[69] Though rare there were cases about other impediments too.[70] Similarly, there were cases about bigamous marriages.[71] The courts allowed separation (known as divorce *a mensa et thoro* – from bed and board) though no subsequent marriage could be lawful.[72] Those who had separated might be ordered to co-habit. Occasionally, but only when a marriage had been properly solemnized and celebrated, the courts might entertain a claim for restitution of conjugal rights.[73] Though they might try to protect the weaker party, they always aimed to preserve a valid marriage.[74] Yet, they also took a rather more informal role in trying to settle matrimonial disputes.[75] Though more commonly used in the later sixteenth century, church courts even had power to injunct those who, for whatever reason, publicly but falsely asserted they were married to someone else (jactitation).[76]

Ecclesiastical courts were also immensely concerned with illicit sexual behaviour. The late fifteenth and early sixteenth centuries saw efforts at regulation so serious one might say they were a defining feature of European society. England was no exception.[77] Church courts everywhere were busy with prosecution of sex-related spiritual crime.[78] London's commissary court was 'wildly rife with sexual offenders'.[79] Of the 158 charges against persons in Canterbury Consistory Court during 1474 no

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[69] Helmholz, *Marriage Litigation*, pp.87-90, *Oxford*, pp.547-550.
[70] Helmholz, *Oxford*, pp.551-553.
[71] Thomson, *The Early Tudor Church*, p.248.
[72] Helmholz, *Marriage Litigation*, pp.74-76, 100-107, *Oxford*, pp.540-541
[73] Helmholz, *Oxford*, pp.535-536.
[74] Thomson, *The Early Tudor Church*, pp.244-247. See also: Sara Butler, 'Runaway Wives: Husband Desertion in Medieval England', *Journal of Social History*, 40 (2006), 337-359.
[75] Helmholz, *Marriage Litigation*, p.101; Barbara Hanawalt, *The Ties that Bound: Peasant Families in Medieval England*, paperback edn (Oxford, 1988), pp.211-212; L. R. Poos, 'The Heavy-Handed Marriage Counsellor: Regulating Marriage in some Later-Medieval English Local Ecclesiastical-court Jurisdictions', *AJLH*, 39 (1995), 291-309 at 292.
[76] Helmholz, *Roman Canon Law*, pp.60-64, *Oxford*, pp.536-538; Houlbrooke, *Church Courts*, p.59. The courts Christian did not enjoy complete monopoly. The Courts of Chancery, Star Chamber, Common Pleas and Kings Bench handled certain problems that arose, especially those concerned with property rights. But questions about the existence, or otherwise, of a marriage were for them alone: Martin Ingram, 'Spousals Litigation', p.35.
[77] Martin Ingram, 'Regulating Sex in Pre-Reformation London', in *Authority and Consent in Tudor England: essays presented to C. S. L. Davies*, eds. G. W. Bernard and S. J. Gunn (Aldershot, 2002), pp.79-95 at p.80, *Carnal Knowledge*, pp.2-4, 8-16, 32, 391-392.
[78] Houlbrooke, *Church Courts*, p.75; Thomson, *The Early Tudor Church*, pp.252-253; Swanson, *Church & Society*, pp.166-167.
[79] Wunderli, *London Church Courts*, p.15.

less than 110 were sexual in character.[80] Whalley Abbey (Lancashire) records from 1510 to 1537 contain a preponderance of such cases.[81] Courts within Lincoln diocese seem similarly pre-occupied. Numerous examples can be found amongst records from the archdeaconry of Buckingham.[82] The bishop's audience court too. Marriage was the only context within which sexual relations could be legitimately pursued.[83] Improper encounters were meant to be punished.

Data from the late Middle Ages suggests differences between English urban and rural marriage patterns but nevertheless a high incidence of celibacy and marriage regularly delayed until parties were in their mid-twenties or later. Many men married late; many of both sexes not at all. That that was so helps explain certain aspects of society: enforced abstinence was portrayed as serving a useful social function; theologians and canonists who disapproved of sex bolstered social order through teaching a sexual ethic well adapted to economic conditions and social practice.[84] Of course, most who married did so without much thought to reservations of theologians and canonists.[85] Furthermore, although it is difficult to see broad consensus about the morality of certain forms of marital sex, both clergy and laity seem at least to have agreed that the ability to have sexual relations was essential to marriage.[86] In any event, whatever moralists might fear, church courts were little concerned with the marital bed. Blind eyes might have been turned elsewhere too. Consummation before marriage ought not to happen, and could be punished, but was probably common.[87] In Whalley

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[80] Woodcock, *Canterbury*, p.79.
[81] Nigel Tringham, 'Introduction (1): The Early Sixteenth-century Church Courts', in *Life, Love and Death in North-East Lancashire, 1510 to 1537: A Translation of the Act Book of the Ecclesiastical Court of Whalley*, eds. Members of the Ranulf Higden Society led by Margaret Lynch, The Chetham Society 46 (Manchester, 2006), pp.1-7 at p.1.
[82] *The Courts of the Archdeaconry of Buckingham 1485-1523*, ed. E. M. Elvey, Buckinghamshire Record Society 19 (Welwyn Garden City, 1975), esp. pp.xiv-xv.
[83] Ingram, *Carnal Knowledge*, p.75. On sex and sexuality in the Middle Ages generally: Ruth Mazo Karras, *Sexuality in Medieval Europe: Doing unto others* (New York and Abingdon, 2005). As to the existence, and fuzziness, of any line between what was a marriage and what was not: Ruth Mazo Karras, *Unmarriages: Women, Men, and Sexual Unions in the Middle Ages* (Philadelphia, 2012), esp. p.2.
[84] Alan MacFarlane, *The Origins of English Individualism* (New York, 1979), pp.158-159; James A. Brundage, *Law, Sex, and Christian Society in Medieval Europe* (Chicago, 1987), pp.494-495; Goldberg, *Women, Work and Life Cycle*, pp. 203-232; Donahue, *Law, Marriage, and Society*, pp.201-215.
[85] Brundage, *Law, Sex, and Christian Society*, p.497.
[86] Brundage, *Law, Sex, and Christian Society*, p.504.
[87] Brundage, *Law, Sex, and Christian Society*, also at p.504.

at least there is some suggestion that where no child resulted from fornication or adultery neighbours might have been prepared to let matters rest and not proceed to presentment.[88] During the fourteenth and fifteenth centuries there had been a groundswell of opinion against concubinage amongst the laity, and it had been formally prohibited by the Fifth Lateran Council (1514), yet evidence throughout Europe suggests it too remained commonplace, even after systematic measures to suppress it.[89] There is also evidence other types of pair bond existed including between those who preferred temporary or semi-permanent unions, considered marriage uneconomical, faced family pressures or were of greatly discrepant social standing. Some perhaps even chose to keep otherwise stable situations deliberately vague.[90] Nonetheless, those same courts regularly punished sexual encounters outside marriage. As Shannon McSheffrey puts it, 'a medieval person could not claim that the sexual relationship, whether inside or outside marriage, was no-one else's business, because it was'.[91] Sexual activity was never wholly beyond public scrutiny.[92]

Pregnancy or childbirth may, of course, have been reason for prosecution. But that was not always the case.[93] Women were considered physically and mentally weaker, less rational, more likely to be driven by passion, even sexually voracious. Men might have more easily flouted standards of sexual morality than women, their actions being seen by some at least not as transgressions at all.[94] Younger men especially were thought likely to succumb to temptation if not restrained by reason and

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[88] Tringham, 'Introduction (1)', p.4.
[89] Brundage, *Law, Sex, and Christian Society*, pp.514-516.
[90] Karras, *Unmarriages*, pp.1-9 and 165-208. Like Karras I am concerned with unions resulting in sexual activity. Spiritual unions, between those who had taken vows of chastity, also existed.
[91] McSheffrey, *Marriage, Sex, and Civic Culture*, p.193.
[92] For the relevance of marriage and family patterns to patterns of sexual behaviour, and thus to ways in which authorities may have wanted to regulate it, see, Ruth Mazo Karras, 'The Regulation of Sexuality in the Late Middle Ages: England and France', *Speculum*, 86 (2011), 1010-1039 esp. 1029-1039.
[93] Houlbrooke, *Church Courts*, p.76; Poos, 'Sex, Lies, and the Church Courts', 585; Ingram, *Carnal Knowledge*, p.3.
[94] Ruth Mazo Karras, 'Two Models, Two Standards: Moral Teaching and Sexual Mores', in *Bodies and Disciplines: Intersections of Literature and History in Fifteenth-century England*, eds. Barbara A. Hanawalt and David Wallace (Minneapolis, 1996), pp.123-138 at pp.123 & 131. The double standard of sexual morality has been written about many times. Keith Thomas was first with 'The Double Standard', *JHI,* 20 (1959), 195-216. Other works include: Bernard Capp, 'The Double Standard Revisited: Plebeian Women and Male Sexual Reputation in Early Modern England', *P&P*, 162 (1999), 70-100; Karras, *Sexuality in Medieval Europe*, pp.120-124.

self-control. Nevertheless, whilst women were at the sharp end of legal action from time to time, men were also vigorously pursued and occasionally the main target.[95] They seem, for instance, to have been prosecuted far more frequently for bigamy.[96] Though sexual encounters between mistresses and male servants were far from unknown, ecclesiastical prosecutions for adultery with a maidservant similarly appear much more common.[97]

Prostitution also caught the jurisdiction's attention.[98] In London relatively few women were charged with being a prostitute and very modest numbers convicted.[99] Prosecutions were rare in the countryside too.[100] Occasionally prostitutes and brothels were even regulated.[101] Yet, frequent repeat prosecutions for fornication do occur.[102] From 1460 onwards secular courts, though on questionable jurisdictional ground with offences of fornication and adultery, often seem to describe offending women as "living suspiciously" or "badly governed in their bodies" and such catch-all terms became widely used in ecclesiastical courts.[103] Aiding and abetting was also an offence.[104] Harbouring, knowingly permitting sexual activity between the unmarried in an area under one's control – for instance a house – whether to the extent of running a brothel or simply failing to supervise the young, seems regularly prosecuted by church courts almost everywhere.[105]

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[95] Ingram, *Carnal Knowledge*, pp.29-32.
[96] Ingram, *Carnal Knowledge*, p.92.
[97] Ingram, *Carnal Knowledge*, p.95; McSheffrey, *Marriage, Sex, and Civic Culture*, p.146.
[98] As to prostitution in medieval Europe, including England: James A. Brundage, 'Prostitution in the Medieval Canon Law', *Signs*, 1 (1975), 825-845, *Law, Sex, and Christian Society*, pp.521-530; P. J. P. Goldberg, 'Pigs and Prostitutes: Streetwalking in Comparative Perspective', in *Young Medieval Women*, eds. Katherine J. Lewis, Noël James Menuge and Kim M. Phillips (New York, 1999), pp.172-193; Ruth Mazo Karras, 'Prostitution in Medieval Europe', in *Handbook of Medieval Sexuality*, eds. Vern L. Bullough and James A. Brundage (New York and London, 2000), pp.243-260.
[99] Wunderli, *London Church Courts*, p.100.
[100] Ingram, *Carnal Knowledge*, p.102.
[101] R. M. Karras, 'The Regulation of Brothels in Late Medieval England', *Signs*, 14 (1988-9), 399-433.
[102] Goldberg, *Women, Work and Life Cycle*, p.151.
[103] Marjorie K. McIntosh, 'Finding Language for Misconduct: Jurors in Fifteenth-century Local Courts', in *Bodies and Disciplines: Intersections of Literature and History in Fifteenth-century England*, eds. Barbara A. Hanawalt and David Wallace (Minneapolis, 1996), pp.87-122 at pp.97-98; Ingram, *Carnal Knowledge*, p.102.
[104] Ingram, *Carnal Knowledge*, p.103.
[105] R. H. Helmholz, 'Harboring Sexual Offenders: Ecclesiastical Courts and Controlling Misbehavior', *Journal of British Studies*, 37 (1998), 258-268 esp. 258-261. Harbouring was also known as "bawdry" and the offender, male or female, a "bawd".

Of course, some sexual offences were committed by those who could never lawfully marry – the regular and higher secular orders, for instance. Vows of chastity broken in the former were certainly punished.[106] Men of the latter, equally expected to remain unmarried and chaste, were also pursued, often at lay instigation. Estimates must remain provisional but, although some priests used or even owned brothels, and even bishops fathered offspring, most secular clerics probably stayed celibate: imputation of sexual irregularity was a stigma, those accused were often keen to clear their name. Clerical incontinence was certainly a concern for spiritual authorities. Priests often had live-in female housekeepers and risks there were especially obvious. However, prosecutions were relatively uncommon, and those same authorities can appear reluctant to act. On occasion, despite lengthy detailed enquiry, priests were simply told to find an older and honest woman to look after them. Sometimes even notorious sexual relationships went unpunished, or at least without effective action, for long periods. Clerical concubinage, though quite well-known in Wales and seemingly widespread on the Continent, may not have been common in England but may have been considered less injurious to relations with the laity than something more occasional or irregular. Deprivations and other harsh punishments were rare. Often allegations simply went unproven.[107]

Sodomy cases (often described as "offences against nature" but not necessarily involving only same-sex relations) could also be heard, though seldom appear in surviving pre-Reformation English

[106] See *Office c. Katerina Welles (Prioress of Littlemore)*, LAO/Cj.2/fols.45r-47v, 50v.
[107] Bowker, *Secular Clergy*, pp.115-121; Peter Heath, *The English Parish Clergy on the eve of the Reformation* (1969), pp.104-109, 115-119; Stephen Lander, 'Church courts and the Reformation in the diocese of Chichester, 1500-58', in *Continuity and Change: Personnel and Administration of the Church in England 1500-1642*, eds. Rosemary O'Day and Felicity Heal (Leicester, 1976), pp.215-237 at p.218; Houlbrooke, *Church Courts*, pp.173-183; Christopher Haigh, *English Reformations: Religion, Politics, and Society under the Tudors* (Oxford, 1993), pp.41-42; Swanson, *Church and Society*, pp.60 and 166-167; Thomson, *The Early Tudor Church*, pp.168-171; Peter Marshall, *The Catholic Priesthood and the English Reformation* (Oxford, 1994), pp.142-159; Christopher Harper-Bill, *The Pre-Reformation Church in England 1400-1530*, revised edn (1996), pp.48-49; Ruth Mazo Karras, *Common Women: Prostitution and Sexuality in Medieval England* (New York, 1996), p.17, 45, 77-78, and 'The Regulation of Brothels'; Henry Ansgar Kelly, 'Bishop, Prioress, and Bawd in the Stews of Southwark', *Speculum*, 75 (2000), 342-388; Helmholz, *Oxford*, pp.516, 517; Shannon McSheffrey, 'Whoring Priests and Godly Citizens: Law, Morality, and Clerical Sexual Misconduct in Late Medieval London', in *Local Identities in Late Medieval and Early Modern England*, eds. Norman L. Jones and Daniel Woolf (Basingstoke, 2007), pp.50-70; Janelle Werner, 'Promiscuous Priests and Vicarage Children: Clerical Sexuality and Masculinity in Late Medieval England', in *Negotiating Clerical Identities: Priests, Monks and Masculinity in the Middle Ages*, ed. Jennifer D. Thibodeaux (Basingstoke, 2010), pp.159-181; Ingram, *Carnal Knowledge*, pp.239-266 and 394.

records.[108] Incest features more frequently. Nevertheless, commission by close family members still seems rare (or at least rarely prosecuted). When it occurred, condemnation appears clear-cut: most prosecutions concern offences committed by the closely, or very closely, related. Amongst those more distantly related the picture is complicated. The range of relationships of kinship and affinity, within which marriage and sexual relations were forbidden, was so wide (even to third cousins, godparents and godchildren) prohibition was impossible to enforce with consistency. Sexual encounters with nuns, or anyone with whom one had even mere spiritual affinity, were certainly punished but, in some of the latter cases, it is unclear how far those involved could be morally culpable.[109]

Given the considerable importance of good repute, church courts were also frequently concerned with allegations of defamation.[110] The spoken word carried substantial weight so disputes about what had been said, rather than what had been written, predominated. That the jurisdiction was active in this field at all is something of an oddity: relatively few litigants were in holy orders and little of what was said had spiritual content. Nevertheless, resolution was one of the most important services it provided and to those priests accused of impropriety it offered a place where their privileged status allowed the greatest possibility of defending themselves.[111] Imputation of crime could cause jurisdictional disagreement with secular courts, who also heard cases, but by the 1520s a kind of stand-off had emerged. Often the answer was straightforward: if temporal crime was imputed ('Thou art a thief!') it was a matter for the secular authorities, if spiritual ('Thou art a cuckold!') the ecclesiastical. If the allegedly slanderous words included attribution of both temporal and spiritual crime ('Thou art a thief and a whore!') matters were a little more complicated. Such cases were still

[108] Brundage, *Law, Sex, and Christian Society*, pp.533-535; Helmholz, *Oxford*, p.629; Ingram, *Carnal Knowledge*, pp.33-34. As to possible lost records: McSheffrey, *Marriage, Sex, and Civic Culture*, pp.148-149. See also Warren Johansson and William A. Percy, 'Homosexuality', in *Handbook of Medieval Sexuality*, eds. Vern L. Bullough and James A. Brundage (New York and London, 2000), pp.155-189.
[109] Helmholz, *Oxford*, pp.628-629; Donahue, *Law, Marriage, and Society*, pp.27-31; Ingram, *Carnal Knowledge*, pp.89-91.
[110] For evolution of the law of defamation, see *Select Cases on Defamation to 1600*, ed. R. H. Helmholz, Selden Society (1985).
[111] Helmholz, *Oxford*, pp.565-574; Ingram, *Carnal Knowledge*, pp.66-70.

sometimes heard in courts Christian, but others may have been resolved or discouraged behind the scenes. Whatever the truth, numbers remained high.[112]

Women were brought to court as public slanderers, scolds or disturbers of the peace.[113] Men too: In Lyddington, on 12 June 1528, Henry Bretan alleged Richard Ingram had defamed him by suggesting John Cryk, a servant of Henry Freeman, also worked for him.[114] As one might expect, sexual slander was common, perhaps even part of jockeying for position and prestige in local society. Men might boast but could be highly sensitive if accusations were made. Words like 'cuckold' could be powerful, specific in meaning, and damaging. Accused women risked serious injury to reputation. Whilst 'whore' might be a standard means of expressing hostility it could imply prostitution, promiscuity, even a single transgression.[115] On 15 November 1528, for instance, Johanna Goodriche appeared in Lyddington to allege that Alicia Goodriche (presumably a relative) had defamed her by saying she was 'a prestes hoore'.[116] On the same day, William Borneby alleged Alice Fferyby accused him of being 'a false harlott'. He in turn called her 'a strong hoore'.[117] Sometimes spite or blackmail may have been the cause.[118] Sometimes alcohol or hot temper was probably to blame. Whatever the reason, proceedings may often have been inevitable.

[112] Helmholz, *Roman Canon Law*, pp.24 and 56-58, *Oxford*, pp.575-578. See also: Woodcock, *Canterbury*, pp.87-89; C. A. Haigh, 'Slander and the Church Courts in the Sixteenth Century', *Transactions of the Lancashire and Cheshire Antiquarian Society*, 78 (1975), 1-13, at 2; Houlbrooke, *Church Courts*, pp.273-274; Wunderli, *London Church Courts*, pp.66-68, 72, 142.

[113] Helmholz, *Oxford*, pp.574-575.

[114] *Henricus Bretan c. Ricardus Ingram* LAO/Cj.4/Q1.fol.14v. Presumably Bretan felt his reputation damaged by the accusation he had somehow interfered in the master and servant relationship between Freeman and Cryk. One aspect of such a relationship was its supposed permanency: Hanawalt, *The Ties that Bound*, p.166.

[115] Ingram, *Carnal Knowledge*, pp.69-72. On sexual reputation, gender and power: Sandy Bardsley, *Venomous Tongues: Speech and Gender in Late Medieval England* (Philadelphia, 2006). In respect especially of male reputation and sexual activity: Derek G. Neal, *The Masculine Self in Late Medieval England* (Chicago, 2008).

[116] *Johanna Goodriche c. Alicia Goodriche* LAO/Cj.4/Q1.fol.22v. Perhaps more likely a priest's mistress than prostitute: Ruth Mazo Karras, 'The Latin Vocabulary of Illicit Sex in English Ecclesiastical Court Records', *Journal of Medieval Latin*, (1992), 1-17 at 8.

[117] *Willelmus Borneby c. Alicia Fferyby* LAO/Cj.4/Q1.fol.22v. Men could be harlots and 'false harlott' hinted at dishonesty. The word 'strong' suggested being beyond remedy: Ingram, *Carnal Knowledge*, p.70.

[118] *Buckingham*, ed. Elvey, p.viii & nos.346B, 349, 352.

Procedures, Remedies and Punishments

Aside from probate business, church court cases are most readily divided in two: those against offenders and those requiring dispute resolution. Comparisons are inexact but such division resembles that between civil and criminal matters today. Breaches of the rules of morality and personal conduct were the "criminal", *ex officio* (office), side of court practice. Litigation, the "civil" side, was brought at the instance of a party (or parties) and therefore referred to as *ad instantiam partium*. Yet, many matters could be dealt with either way and which might depend on how they had come to notice, how busy each court was, its usual custom, or a party's standing. Office or "correction" cases can be further divided into those undertaken by the court at the promotion of a third party (*ex officio promoto*) and those pursued of its own motion (*ex officio mero*). As to the former, procedure was like an instance case. I turn to that shortly. *Ex officio mero* cases, on the other hand, were much more common, less expensive, and tended, at least initially, to be summary in form, swift, and straightforward.[119]

Although frequently starting after presentment at visitation, or perhaps following accusation or denunciation by a neighbour or court official, office cases could equally begin in a church court. Most involved correction of sexual offenders, but the procedure was used in connection with heresy, blasphemy, defamation, unauthorised meddling with goods of the dead (acting without probate), even church disrepair. Denunciation and accusation were cumbersome. By the 1520s both had been largely superseded by their easier cousin, inquisition. Accusation required a private prosecutor. Though procedurally almost identical to an instance case, a higher level of proof was needed for conviction. Furthermore, many people (including women, soldiers, monks, excommunicates, minors and those of bad fame) were forbidden from making an accusation, though exceptions could be made for women were injuries caused by near relatives or crimes particularly serious. Worse still, accusers who failed to satisfy a court had to undergo punishment an accused would face if found guilty. There

[119] Woodcock, *Canterbury*, pp.30-31, 68-71; Owen, 'Ecclesiastical Jurisdiction', p.206; Houlbrooke, *Church Courts*, p.38; Swanson, *Church and Society*, p.163; Harper-Bill, *The Pre-Reformation Church*, p.55; Helmholz, *Oxford*, p.600.

were no specific procedures involved in denunciation but some form of fraternal admonition before bringing the matter to church attention was required. An individual might then come forward, and a case would then proceed *ex officio promoto*, or churchwardens might denounce a person (or persons) at visitation. Inquisition, however, followed simply as a result of *publica fama* ('general fame') which, if it was widespread, backed by *indicia* of truthfulness, and not mere rumour, was considered at least as reliable as any individual, perhaps more so. England did not have an Inquisition like that in Europe, but it adopted inquisitorial procedures. Judges and their officials took control of investigations. Defendants, though they could be cited in writing, were, for the most part, summoned orally. Witnesses could be compelled to give evidence.[120]

Defendants might challenge the existence of general fame, perhaps suggesting an allegation came from just one person, but seldom did.[121] They were often questioned and might even adduce evidence of their own good fame.[122] Mostly, in the event an offence was denied and guilt not immediately obvious, they were put to canonical purgation.[123] Compurgation was known not to be perfect. It did not necessarily get at the truth. Then again, it was not really a method of proof at all but an alternative to it. If a person would not confess, further pursuit of evidence could be difficult. Instead, those put to purgation had to swear innocence and produce a certain number (decided by the judge) of others of equal social status, knowledgeable and informed as to the accused's life and character, and also themselves of good repute, who swore they believed the accused would not commit perjury. Sometimes people could not produce the required number but were declared innocent. But, if a person failed to produce them, there was great risk of being found guilty.[124] In the

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[120] Woodcock, *Canterbury*, pp.68-71; Owen, 'Ecclesiastical Jurisdiction', p.206; Houlbrooke, *Church Courts*, pp.38-40; Swanson, *Church and Society*, pp.163-166; Helmholz, *Oxford*, pp.604-608; Ingram, *Carnal Knowledge*, pp.116-117. As to heresy see, for example: *Heresy Trials in the Diocese of Norwich* (footnote 7 above); *Kent Heresy Proceedings*, ed. Norman Tanner, Kent Archaeological Society (Maidstone, 1997); Norman Tanner, 'Penances imposed on Kentish Lollards by Archbishop Warham 1511-12', in *Lollardy and The Gentry in the Later Middle Ages*, eds. Margaret Aston and Colin Richmond (Stroud, 1997), pp.229-249.

[121] Helmholz, *Oxford*, pp.610-611.

[122] Helmholz, *Oxford*, p.611.

[123] Contempt in the face of the court or the event of birth ruled out purgation: Helmholz, *Oxford*, p.613.

[124] Helmholz, *Oxford*, pp.614-617.

more likely event of confession, or after conviction, the stock penalty imposed was penance. Often performed in public it could involve humiliation, shame, even physical violence, but took many forms. The idea was to invoke remorse and contrition. Occasionally if an offence was slight merely a warning, or monition, was required.[125] Financial penalties could be levied, sometimes in complete commutation. People could be told to make donations, offerings, even to go on pilgrimage.[126] Heretics might be required to publicly recant and sent to prison. Their property might also be confiscated. If death was considered their only appropriate penalty they were handed to the secular authorities.[127]

Courts also assisted unmarried mothers who were believed unfortunate or victims of deceit or exploitation. If children resulted, or were expected, courts sought to look after their material and spiritual interests. Clothes, food, maintenance, education and baptism could be ordered. Fathers were often told to pay. If they could not be found, mothers were held responsible.[128] There were other enforcement and disciplinary measures available. Two were common: suspension from entry into church (suspension *ab ingressu ecclesiae*) and excommunication. A third, signification (the right to apply to the secular arm for arrest if excommunicates persisted in disobedience for more than forty days), seems rarely invoked anywhere.[129] Other sanctions, like suspension from office, sequestration of revenue or deposition from holy orders, were aimed exclusively at clergy. Overall their numbers are low. Occasionally deprivations do occur.[130]

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[125] Outhwaite, *Rise and Fall*, p.10.
[126] Woodcock, *Canterbury*, pp.98-99; Swanson, *Church and Society*, p.178.
[127] Helmholz, *Oxford*, pp.618-619, 639-640.
[128] Helmholz, *Marriage Litigation,* pp.108-109; Houlbrooke, *Church Courts*, pp.78-79; Ingram, *Carnal Knowledge*, p.101-102. On the predicaments faced by unmarried mothers more generally: Philippa C.Maddern, '"Oppressed by Utter Poverty": Survival Strategies for Single Mothers and Their Children in Late Medieval England', in *Experiences of Poverty in Late Medieval and Early Modern England and France*, ed. Anne M. Scott (Farnham, 2012), pp.41-62.
[129] Woodcock, *Canterbury*, pp.95-97; F. Donald Logan, *Excommunication and the Secular Arm in Medieval England: a study in legal procedure from the thirteenth to the sixteenth century* (Toronto, 1968); Thomson, *The Early Tudor Church*, pp.80-81.
[130] Harper-Bill, *The Pre-Reformation Church*, p.49; Helmholz, *Oxford*, pp.499-500, 517-519; G. W. Bernard, *The Late Medieval English Church: Vitality and Vulnerability Before the Break with Rome*, paperback edn (New Haven and London, 2013), p.69.

Instance cases generally began when a party notified the court, or more usually its registrar, and requested a citation. Addressed to the defendant(s), it set out a claim's basic detail. Often all that was required to bring about settlement was its service, which was usually effected by court apparitor. But, if not, that apparitor would proceed to certify service and, if proctors had by then been appointed, those for the plaintiff would request a day to put forward the libel that set out the case in writing. In the event that citation could not be served one *viis et modis* would be applied for (which is to say for service by means of a notice affixed to a church door or party's house).[131] At the first hearing after service both sides' proctors (if appointed) filed proof of appointment and took an oath.[132] On 4 June 1529 in Lyddington, for instance, George Pateman formally appointed lawyers on that basis.[133] If no one appeared three times after service a judge could declare them contumacious and suspended from both church and the ability to proceed in the litigation without an apology.[134]

A libel was expected to contain details of the parties, the judge, what had been demanded and the right by which it was claimed. At the end a prayer requested a remedy, say a declaration the defendant was the plaintiff's spouse, or simply asked for correction and justice to be done. Sometimes, the libel might be omitted, and a petition submitted orally instead. However, normally, along with the libel came the positions. These set out a case in more detail. Defendants were required to answer each part of them. Those admitted were taken as proven. Articles were written questions put to witnesses. From the fifteenth century onwards a combination document, called an articulated libel, became common and a way to avoid duplication. Depositions, the answers to those questions, which were often but not always in writing, formed the normal means of proof. A defendant, or their lawyer, might try to convince a court there were exceptions which knocked out all or part of a claim (*res*

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[131] Woodcock, *Canterbury*, pp.50-51; Houlbrooke, *Church Courts*, p.40; Helmholz, *Oxford*, pp.316-321. Apparitors (sometimes called summoners) also collected fines, drew up inventories of decedents' estates, brought instances of irregular conduct to judicial attention, and may even have acted as judge's escort: Brundage, *Medieval Origins*, pp.148-149.

[132] Woodcock, *Canterbury*, pp.52-53; Houlbrooke, *Church Courts*, p.40.

[133] '… Georgius Pateman de Uppingham et constituit magistros Simonem Kent Henricum Litherland et Evanum Machell coniunctim et diuisim suos procuratores ad comparendum etc cum omnibus clausulis necessarijs': *Georgius Pateman c. Willelmus Wellys*, LAO/Cj.4/Q1.fol.41r.

[134] Brundage, *Medieval Origins*, pp.417-418.

judicata, for example, or perhaps that the plaintiff was an excommunicate). They came in various categories, and were used, but could be complicated. Sometimes points could be better made other ways, for instance in a substantive defence. At that stage defendants usually had to raise what was called the *litis contestatio* (the contesting of the suit). Without it they might not be permitted to proceed. But in some cases, including marriage suits, it was often not necessary.[135]

When issue had been joined (or was not required to be) it was for plaintiffs to prove their case. Judges appointed a day or days for witnesses to be produced and the general rule for both sides was that anyone asserting a fact had to prove it. Confession met that proof, as did several presumptions as to law and about written evidence. Inquests by impartial sworn men and depositions could be used to discharge the burden too. Documents (such as wills, schedules about extent of damage in cases concerning church disrepair, or something recording secular court decisions) were sometimes produced but not common. Generally, otherwise, two witnesses were required. But if only one were available, and considered unimpeachable, an oath – known as a suppletory oath – might be taken by a party as a supplement. Sometimes, in a procedure akin to compurgation, a party could seek to rely upon what was termed a decisory oath which was a substitute for proof rather than supplementary to it. Suppletory oaths were generally frowned upon in matrimonial litigation but defendants denying marriage might occasionally be put to a decisory one.[136] Compurgation itself was used in defamation cases in Canterbury till the mid-fifteenth century but seems to have disappeared thereafter.[137] In the London Commissary Court its use dropped to once or twice a year by 1510.[138] In general it was for office cases.

Witnesses gave evidence under oath, were produced by parties themselves and had expenses met by them. Objections could be made regarding competence. Examination, whilst sometimes done by judges, was generally undertaken by court-appointed officials. Articles and written interrogatories

[135] Woodcock, *Canterbury*, pp.53; Brundage, *Medieval Origins,* pp.418-419; Helmholz, *Oxford*, pp.321-327.
[136] Helmholz, *Oxford*, pp.327-338.
[137] Woodcock, *Canterbury*, pp.57-58.
[138] Wunderli, *London Church Courts*, p.142.

usually provided the basis for examination. Questions sought to damage credibility or suggest the other party's case was stronger. After examination written depositions were submitted to the judge who was expected to look for too much consistency (which might imply fabrication) or for inconsistency and contradiction. Parties received copies and could once again object to any witness (perhaps on grounds of age, gender, or truthfulness), but generally evidence was admitted with judges deciding upon its weight. At that point likely losers had a decision to make – fight on, risking adverse costs consequences, or settle on the best possible terms. If no settlement was reached a hearing was set for the definitive sentence to be delivered. Lawyers could make factual and legal arguments prior to its handing down, but we know little about the sort of things said.[139]

Many cases petered out before definitive sentence had been delivered, through exhaustion, lack of funds or an unrecorded settlement – judges largely only took the initiative in correction cases. When it had been handed down a case was over (subject to appeal). Copies were generally separately pre-prepared by parties' lawyers and judges chose whichever seemed appropriate, making amendments they saw fit. At pains to explain each case had proceeded properly, judges almost always read them aloud. Delivery was often postponed, perhaps for settlement discussions. Afterwards time to comply was normally given, though sometimes it was supplied to work out what best to make losing parties do (pay money, perform penance, etc). Losers generally paid winners' costs but could object if the amount was considered immoderate. Sentences might also be given part-way through, that is at an interlocutory stage, if needed.[140] Appeals could be lodged against interlocutory and definitive sentences, and against officials' allegedly wrongful conduct, but, as Helmholz explains, 'a full description would be a very lengthy description' and there is no room here.[141] Instead I intend to

[139] Woodcock, *Canterbury*, pp.55-57; Helmholz, *Oxford*, pp.338-343.
[140] Woodcock, *Canterbury*, pp.58-62; Houlbrooke, *Church Courts*, p.41; Helmholz, *Marriage Litigation*, pp.20-22, *Oxford*, pp.343-348.
[141] For further information: Woodcock, *Canterbury*, pp.63-67; Houlbrooke, *Church Courts*, pp.43, 275-277; Helmholz, *Oxford*, pp.348-353. The quotation is at p.349.

provide some context and examine some historiography, especially that relating to courts' effectiveness.

1.2 Context and the Historiography of Effectiveness

Pressure, Challenge, Reform and Continuity

As those working in courts Christian of the sixteenth century's third decade wrestled with daily anxieties and burdens of courtroom and associated bureaucracy it is clear they, and those courts, had been under pressure from their secular counterparts and others in lay society for some time. They had also suffered scathing criticism from men of the cloth like Dean John Colet (1467-1519).[142] The statutes of Praemunire might have been intermittently enforced but had taken work away. Numerically, defamation suits might not have been badly affected but work had been lost. Some income streams, like that from the *fidei laesio* jurisdiction, had virtually dried up. In 1491 instance cases in Canterbury, for example, numbered less than half those in 1477.[143] Of all ecclesiastical lawyers proctors were the most dependent upon lawsuits for income and in its consistory court their numbers decreased from eight or nine in the 1480s to a maximum of five after 1500.[144] 1528 saw an attempt to cut numbers still further.[145] When compared to the last of the century before, the combined business of King's Bench and Common Pleas increased by a third in the century's first decade too. In the years before it had dramatically collapsed, and common lawyers had been desperate for new business. Their practical

[142] For Colet's Convocation Sermon of February 1512: *English Historical Documents, v, 1485-1588* ed. C.H. Williams (1967), pp. 652-60; See also: H. C. Porter, 'The Gloomy Dean and the Law', in *Essays in Modern English Church History in memory of Norman Sykes*, eds. G. V. Bennett and J. D. Walsh (1966), pp.18-43; Christopher Harper-Bill, 'Dean Colet's Convocation Sermon and the Pre-Reformation Church in England', *History*, 73 (1988), 191-210.
[143] Woodcock, *Canterbury*, pp.84 and 89; Storey, *Diocesan Administration*, p.31.
[144] Ralph Houlbrooke, 'The decline of ecclesiastical jurisdiction under the Tudors', in *Continuity and Change: Personnel and Administration of the Church in England 1500-1642*, eds. Rosemary O'Day and Felicity Heal (Leicester 1976), pp.239-257 at p.241, *Church Courts*, p.51.
[145] F. Donald Logan, *The Medieval Court of Arches* (York, 2005), pp.xv-xviii; R. H. Helmholz, 'Regulating the Number of Proctors in the English Ecclesiastical Courts: evidence from an early Tudor tract', in *Law as Profession and Practice in Medieval Europe: essays in honor of James A. Brundage,* eds. Kenneth Pennington and Melodie Harris Eichbauer (Farnham, 2011), pp.173-186.

self-interest and theoretical self-justification succeeded in bringing it back and more.[146] Whether clerical immorality was commonplace or not, apparently widespread perception of its prevalence had also created risk: if the ecclesiastical judiciary were at all tainted by aspersions on the sexual morality of parish clergy their efforts to tackle the problem could be undermined.[147] It could even threaten authority they had over the laity: if they pushed hard everywhere they might compromise the reputation of their whole institution; if they came down too firmly on individuals they might destroy the careers of otherwise good priests.[148] In towns, and especially in London, secular courts and authorities were continuing to claim jurisdiction over sexual offenders including clerics, and in doing so were often aggressively making some kind of statement, perhaps asserting their piety, seeking the moral legitimacy that came with successful execution of good governance, or wishing to be seen as acting at the bidding of royal government, but also perhaps because they were critical of ecclesiastical authorities and the spiritual jurisdiction.[149]

What is more, just a few years before and like William Tracy's case was later, a *cause célèbre* had been taken up by campaigning common lawyers. It concerned the suspicious death in December 1514 of Richard Hunne, a man at the time in bitter dispute with church authorities over mortuary fees and engaged in litigation including an action brought under the statutes of Praemunire, and they all claimed it a prime example of ecclesiastical excess. Whatever had actually happened, there had been a perception, bolstered by a coroner's jury implicating William Horsey, chancellor of the diocese of London, that churchmen had murdered Hunne in the ecclesiastical prison of St. Paul's Cathedral to maintain their privileges. Not long beforehand benefit of clergy (their right to trial by the church only) had once again become a hot topic. Some clerics strenuously argued against any secular jurisdiction

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[146] Haigh, *English Reformations*, pp.73, 75; Bernard, *The Late Medieval Church*, p.157.
[147] Marshall, *The Catholic Priesthood*, pp.142-163; Ingram, *Carnal Knowledge*, pp.242-243.
[148] Ingram, *Carnal Knowledge*, p.394.
[149] Marjorie Keniston McIntosh, *Controlling Misbehaviour in England, 1370-1600* (Cambridge, 1998), pp.37-40; Marshall, *The Catholic Priesthood*, pp.149-150; Stephanie Tarbin, 'Moral Regulation and Civic Identity in London 1400-1530', in *Our Medieval Heritage: essays in honour of John Tillotson for his 60th birthday*, eds. Linda Rasmussen, Valerie Spear and Dianne Tillotson (Cardiff, 2002), pp.126-136; Ingram, *Carnal Knowledge*, pp.393-394.

over priests. Some who spoke against the church, such as Henry Standish, found themselves the object of efforts to keep them quiet. It all became a huge argument about whether common or canon law took precedence and demanded skilful manoeuvring from Cardinal Wolsey, as well as Henry VIII's inaction despite his proclamation at Barnard's Castle about supremacy of the temporal jurisdiction, to calm things down.[150]

Without doubt, financial relations between church and laity could be a source of dispute. In London, where parish boundaries were often uncertain, assessment and collection of tithes could be problematic: it had seen protest against exorbitant oblations after Hunne's death, in 1528 its clergy were still complaining about difficulties of collection.[151] During the 1520s Sussex saw several attempts to withhold tithes and other dues.[152] In 1529 distinctly anticlerical statutes were passed by the Reformation Parliament to restrict and regulate probate and mortuary fees. Criticisms of the ecclesiastical jurisdiction seem likely to have been raised whilst it was in session (those fees – which directly impacted upon the income of its judiciary – may even have been previously mentioned in the 1523 parliament and perhaps earlier too) and it is possible even disendowment of the church was contemplated.[153] Furthermore, in the same year (1529), Simon Fish's *Supplication for the Beggars*, with its suggestions that apparitors were corrupt and priests men who 'have to do with every mannes wife', was in regular circulation and London's disturbances were referred to by Eustace Chapuys, though at least in part to press his own agenda.[154] In 1531 Convocation faced a charge of Praemunire

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[150] Haigh, *English Reformations*, pp.77-83. For further reading: Richard Wunderli, 'Pre-Reformation London Summoners and the Murder of Richard Hunne', *JEH*, 33 (1982), 209-224; Bernard, *The Late Medieval English Church*, pp.1-16; Peter Marshall, *Heretics and Believers: A History of the English Reformation* (New Haven and London, 2017), pp.88-95. For William Tracy's case: p.43.
[151] Susan Brigden, 'Tithe Controversy in Reformation London', *JEH*, 32 (1981), 285-301 at 286; Robert Whiting, *Local Responses to the English Reformation* (Basingstoke, 1998), p.24.
[152] Whiting, *Local Responses*, p.25.
[153] S. H. Lemberg, *The Reformation Parliament, 1529-1536* (Cambridge, 1970), pp.83-86; Houlbrooke, *Church Courts*, p.51; Haigh, *English Reformations*, p.111; Bernard, *The Late Medieval Church*, p.153; P. R. Cavill, 'Anticlericalism and the Early Tudor Parliament', *Parliamentary History*, 34 (2015), 14-29 at 17-19.
[154] Simon Fish and ed. Edward Arber, *A Supplication for the Beggars* (orig. 1529; edited edn, London, 1878; online edn, 2010) available at www.gutenberg.org/files/32464/32464-h/32464-h.htm [accessed 4 April 2019]. As to Chapuys: 'Spain: December 1529, 11-20', in *Calendar of State Papers, Spain, Volume 4 Part 1, Henry VIII, 1529-1530*, ed. Pascual de Gayangos (1879), pp. 363-374, *BHO* http://www.british-history.ac.uk/cal-state-

over their whole exercise of ecclesiastical jurisdiction.[155] Longland, for one, was convinced it raised issues critical to the church.[156] Then, in 1532, the Commons threw down a gauntlet containing twelve major grievances, its *Supplication Against the Ordinaries*. Clauses 2-7 concerned the church courts and claimed amongst other things that subtle questioning by bishops trapped ignorant men in heresy trials, that it was an expensive and inconvenient nuisance when laymen were ordered to appear outside their own dioceses, that excommunication was invoked and revoked too often and for minor causes, and that fees were excessive.[157]

Yet, even by the time of Hunne's case the church had been fighting back for some years. Its project to impose a version of clerical discipline on the laity had begun as far back as the fourteenth century. By the late fifteenth it had become highly active.[158] Although it failed, a bill 'for the liberties of the English Church', probably designed to safeguard both the spiritual jurisdiction and benefit of clergy, had been introduced into Henry VIII's first parliament.[159] Some bishops, as Nykke of Norwich made clear in 1504, saw criticism of the church's legal position as heresy and may have begun their nationwide drives against it during the 1510s to reassert authority.[160] There is even the possibility action against Hunne may have been taken to protect the ecclesiastical jurisdiction.[161] The bishops had made a tactical error by then appearing to challenge both Crown and common law. After Wolsey's settlement they limited the damage, quietly dropping their demand for separate clerical trials.[162] Yet, neither they nor Convocation remained idle. Before the *Supplication* arrived they had begun discussing possible reforms including amelioration of the *ex officio* citation procedure to ensure that defendants

papers/spain/vol4/no1/pp363-374 [accessed 4 April 2019], esp. p.367; Bernard, *The Late Medieval Church*, p.151.

[155] J. J. Scarisbrick, 'The Pardon of the Clergy, 1531', *Cambridge Historical Journal*, 12 (1956), 22-39.

[156] Bowker, *Henrician Reformation*, p.14.

[157] *English Historical Documents*, v, *1485-1558*, pp.733-735.

[158] Ingram, *Carnal Knowledge*, pp.391-392.

[159] Storey, *Diocesan Administration*, pp.31-32; Houlbrooke, *Church Courts*, p.9; Haigh, *English Reformations*, p.80.

[160] Houlbrooke, 'The decline of ecclesiastical jurisdiction', p.241; Haigh, *English Reformations*, p.76; Bernard, *The Late Medieval Church*, p.157.

[161] Houlbrooke, *Church Courts*, p.9.

[162] Haigh, *English Reformations,* p.83.

were only cited by visitation or other honest means, that fees for compurgators and court officials ought to be limited, and that appeals to higher courts should have to be accompanied by a copy of the correction enjoined by the lower court judge. Probably the thing that riled them most about the *Supplication* was that it appeared a deliberate incursion into the spiritual sphere and an attack on judicial independence.[163]

Moreover, those who worked in the church courts had also pushed back. Sometimes it had been through sheer hard work. In Lincoln Atwater's tenure was distinguished by judicial vigour. He conducted over half the audience court sittings during his episcopacy. Overall, although there were difficulties in securing the attendance of some defendants, surviving records give a strong impression of intense, painstaking, activity. What is more, he adopted a more conciliatory tone towards heretics than his predecessors and appointed skilful deputies.[164] Even Longland, though he did little in court, actively participated in visitation.[165] Elsewhere, other reforms were effected. Wolsey's efforts from 1518 onward encountered resistance. But in Chichester, where Bishop Robert Sherburne was in charge between 1508 and 1536, revitalisation of court administration got underway. Judicial positions and jurisdictions were amalgamated and an increase in court sittings led to speedier dispatch of probate and instance business.[166] Energizing prelates were also at work in Ely, Rochester, Exeter, Hereford and Lichfield.[167] Occasionally, ecclesiastical authorities seem to have made things worse by neglecting clerical misconduct or treating those accused with great leniency but, for the most part, considerable effort had been put into combatting the problem. In general, they were actively assisted by the laity when doing so too.[168] Doctors' Commons, the college of advocates (the second type of church-court lawyer), had emerged to rival the Inns of Court giving a cohesion and centre for English

[163] Michael Kelly, 'The Submission of the Clergy', *TRHS*, 15 (1965), 97-119 at 101 and 102.
[164] Bowker, *Secular Clergy*, pp.16-23; *AECB*, pp.xviii-xx, xxiii and LAO/Cj.2/fols23v, 24r; *Buckingham*, ed. Elvey, p.xvii. But as to some of Bowker's conclusions about deputies, see Chapter Three.
[165] Margaret Bowker, 'The Henrician Reformation and the Parish Clergy', *Bulletin of the Institute of Historical Research*, 50 (1977), 30-47 at 32.
[166] Lander, 'Church courts', esp. pp.219-228.
[167] Haigh, *English Reformations*, pp.84-85.
[168] Lander, 'Church courts', p.218; Ingram, *Carnal Knowledge*, p.246.

civilians they had not previously possessed. At least one amongst the ecclesiastical judiciary in Lincoln diocese was a member.[169] Litigation about contracts between those still living, which had almost vanished, had even begun to reappear. In 1511 judges in Canterbury started once again to order unsuccessful defendants in such cases to make restitution.[170]

Furthermore, although litigation about testamentary debt was undertaken in the secular arena much remained in the ecclesiastical jurisdiction. Only there could actions be taken against executors. Surviving records contain many cases.[171] Spiritual courts allowed defamation actions to proceed if the defamed had died or the slanderer(s) could not be specifically named. That gave them a power to restore public harmony and/or the victim's reputation common law courts did not possess.[172] Sometimes jurisdiction had to be conceded: in 1513 a London judge dismissed a contractual case saying it did not belong within ecclesiastical cognizance; and in 1517 Atwater was especially careful not to act *ultra vires* when dealing with an Alice Ryding who had had a priest's child and suffocated it.[173] But occasionally those seeking to challenge ecclesiastical authority, for example by suggesting church courts had no right to punish sacrilege, went further even than secular judges would allow.[174] What is more, those same judges still referred questions of legitimacy to their spiritual brethren and bowed to them in matters of marriage law. Though some aspects of temporal law touched upon the institution of marriage there were few objections to the ecclesiastical law which dealt with it. The Court of Chancery, High Commission and Privy Council all turned suitors away, thus continuing to lend authority to that part of the spiritual jurisdiction.[175] Every now and then even common lawyers argued the ecclesiastical corner.[176]

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[169] Helmholz, *Oxford*, p.227; Chapter Three, p.134. For a history of Doctors' Commons: G. D. Squibb, *Doctors' Commons: A History of the College of Advocates and Doctors of Law* (Oxford, 1977).
[170] Houlbrooke, 'The decline of ecclesiastical jurisdiction', p.241.
[171] Helmholz, *Canon Law and the Law of England*, pp.307-321, *Roman Canon Law*, pp.23-24, *Oxford*, p.231.
[172] Helmholz, 'Local Ecclesiastical Courts', p.376.
[173] Helmholz, *Oxford*, p.233; *Office c. Alice Ryding*, LAO/Cj.2/fols51v-52r, *AECB*, pp.xx-xi.
[174] Helmholz, *Oxford*, p.233.
[175] Eric Josef Carlson, *Marriage and the English Reformation* (Oxford, 1994), pp. 33 and 88; Helmholz, 'Local Ecclesiastical Courts', pp.369 and 390.
[176] Helmholz, 'Regulating the Number of Proctors', *passim*.

Anticlericalism: A Yardstick for Effectiveness?

In the 1960s Geoffrey Dickens was convinced there was a vast body of evidence for anti-clerical forces and believed 'a gradual, exacerbating growth of anticlerical and erastian opinion among Englishmen' flowed directly through the Hunne case to debates of the Reformation Parliament and on into genuinely popular Protestantism.[177] At the same time, though acknowledging historians were only then becoming familiar with church-court records, he was singularly unimpressed with ecclesiastical justice, certain it was 'hard, mechanical and institutional' and 'held every temptation to avarice and careerism', and that its rewards 'went to clerics who were primarily lawyers by training and never concerned themselves in any real sense with the cure of souls'.[178] Anticlericalism was considered rife, the spiritual courts degenerate; the two walked hand-in-hand.[179]

Although Dickens largely continued to hold this view, understanding fundamentally changed with Christopher Haigh's *English Reformations* (1993). Following his work of 1975 and 1983, and Jack Scarisbrick's 1982 Ford Lectures, Haigh concluded anticlericalism had little to do with bringing about the Henrician Reformation. In 1983 he had been convinced such evidence as existed amounted only to 'an embarrassingly narrow range of examples'.[180] In 1993 he argued it was not even a significant force in English society.[181] Between 1500 and 1529, for example, there were only eight mortuary fee

[177] A. G. Dickens, *The English Reformation*, 1st edn (1964), pp.83 and 326; Peter Marshall, 'Anticlericalism Revested? Expressions of Discontent in Early Tudor England', in *The Parish in Late Medieval England: PHS2002*, eds. Clive Burgess and Eamon Duffy (Donington, 2006), pp.365-380 at p.366.
[178] Dickens, *The English Reformation*, 1st edn, p.43**.** In 1959 Dickens studied heresy cases in the York audience court and searched for others elsewhere in that diocese. Records in the former did not begin till 1534 and no office cases at all could be found in its consistory court. However, because his focus was on heresy, he ignored instance material: A. G. Dickens, *Lollards and Protestants in the Diocese of York* (Oxford, 1959), esp. p.241.
[179] Dickens was not the first to express such views. See, for example: Maitland, *Roman Canon Law*, esp. pp.38-41; Theodore F. T. Plucknett, *A Concise History of the English Common Law* (1956), p.742.
[180] Christopher Haigh, *Reformation and Resistance in Tudor Lancashire* (Cambridge, 1975), and 'Anticlericalism and the English Reformation', *History*, 68 (1983), 391-407, reprinted in *The English Reformation Revised*, ed. C. Haigh (Cambridge, 1987), pp.56-74 (the quotation is at p.57); J. J. Scarisbrick, *The Reformation and the English People* (Oxford, 1984), esp. pp.45-48; Geoffrey Dickens, *The English Reformation*, 2nd edn (1989), esp. pp.316-325. In the 1970s the predominant view was that medieval laymen were discontented and jealous of clerical privilege. See, for example: M. Claire Cross, *Church and People, 1430-1600: the triumph of the laity in the English Church*, (1976), esp. pp.9-52.
[181] Haigh, *English Reformations,* pp.15, 41-51.

cases in Chester Diocese.[182] In 1524 just ten tithe disputes escalated into legal action from 1148 parishes in Norwich Diocese.[183] Although debatable, it is possible, of course, that provision in wills for tithes forgotten is suggestive of evasion.[184] Nor need lack of litigation mean absence of dispute. But, to Haigh, although he accepted lay-clerical relations were more difficult in London, Susan Brigden's suggestion that payment of mortuary fees was 'universally resented' must have seemed exaggeration.[185] Instead, '[a]rguments over mortuaries were, like arguments over tithe, the occasional products of particular contexts'.[186] In consequence, he argued, the mini-crises in 1515 of Hunne's death, the London troubles and the Parliament of that year had not been produced by lay attacks but by prelates seeking to press forward their attempts to reassert control. What is more, it was 'not clear' Hunne's death was blamed on the church as an institution, in any event it did not much matter outside the capital, at the time 'the king had no interest in asserting greater control over the Church, and once he was assured that the churchmen did not threaten his prerogative he let the matter rest'. Afterwards, benefit of clergy virtually disappeared from the political agenda and it was not until the 1540s tithe cases became common. In other words, 1515 was not even a false dawn but instead something soon forgotten. Nor, he opined, were the disruptions of 1529 caused by deep-seated grievance. Rather, they 'were the product of recent circumstances and particular interests' and a result of Wolsey's rule. Furthermore, *The Submission of the Clergy* in 1532 resulted in no real concessions. Complaints about ecclesiastical courts in the *Supplication* were not justified but simply 'contained just enough half-truth to make it effective'.[187] It was not that anticlericalism did not exist; it was simply unimportant.

[182] Haigh, *Reformation and Resistance*, pp.57-58.
[183] Bernard, *The Late Medieval Church*, p.155.
[184] Whiting, *Local Responses*, p.24; Bernard, *The Late Medieval Church*, p.155.
[185] Haigh, *English Reformations*, p.47; Brigden, 'Tithe Controversy', 286. For more on London: Susan Brigden, *London and the Reformation* (Oxford, 1989), esp. pp.48-68, 151, 204-205.
[186] Haigh, *English Reformations*, p.48.
[187] Haigh, *English Reformations*, pp. 45-47, 83, 96-98, 108, 112.

The strength of Haigh's argument came in part from scholars who had by then looked closely at ecclesiastical records.[188] So far as the pre-Reformation courts Christian were concerned Margaret Bowker was especially influential.[189] She helped him realise their value and efficiency and the fundamental truths behind the bishops' response to the *Supplication*: their flexibility was essential, where necessary (for instance in the Court of Arches and Canterbury) problems over fees and the distance defendants were expected to travel were in the process of reform, and whilst there were isolated instances of malpractice, rare abuses and occasional mistakes, such things were far from the norm.[190] As the ordinaries did, she pointed out nothing in the *Supplication* criticised instance jurisdiction.[191] Moreover, so far as Lincoln diocese was concerned, she established that throughout more than a thousand parishes, and amongst perhaps two thousand priests, there were remarkably few reported accusations of clerical misconduct.[192] Stephen Lander and Ralph Houlbrooke helped, though the latter did suggest passions aroused by events of 1509-15 had smouldered on.[193] Helmholz's comments, that by 1520 many ecclesiastical lawyers had accepted contractual litigation of the *fidei laesio* type need not be part of the spiritual jurisdiction and that, in consequence, 'by the time the "official" Reformation arrived, a jurisdictional reformation in the Church courts had already happened', may equally have played a part.[194]

During the 1990s anticlericalism faded further from view. Colin Richmond described a church that had 'a buoyancy which both satisfied and expressed the religious yearnings of most of the devout

[188] Such work included: Scarisbrick, *The Reformation and the English People*; Peter Heath, *English Parish Clergy* and *Church and Realm, 1272-1461: conflict and collaboration in an age of crises* (1988). Local studies included: Bowker, *Secular Clergy*, 'The Henrician Reformation and the Parish Clergy', and *Henrician Reformation*; Norman P. Tanner, *The Church in Late Medieval Norwich, 1370-1532* (Toronto, 1984); Robert Whiting, *The Blind Devotion of the People* (Cambridge, 1989).
[189] Bowker's 'The Henrician Reformation and the Parish Clergy' was reprinted in *The English Reformation Revised*, ed. Haigh, at pp.75-93.
[190] Bowker, 'Some Archdeacons' Court Books', 312-314.
[191] Bowker, 'Some Archdeacons' Court Books', 314.
[192] Bowker, *Secular Clergy*, pp. 3, 110-111, 114, 116, *Henrician Reformation*, pp.6-7. She also believed heretical behaviour was restricted to the Chilterns and Oxford (*Henrician Reformation*, p.64) and showed Atwater sympathetic to transportation problems (*AECB*, pp.xvi-xvii).
[193] Lander's 'Church courts' was reprinted in *The English Reformation Revised*, ed. Haigh, at pp.34-55. Houlbrooke, *Church Courts*, passim but esp. p.11.
[194] Helmholz, *Roman Canon Law*, p.33.

for most of the time', Eamon Duffy's *The Stripping of the Altars* hardly mentioned it, and Peter Marshall confidently asserted 'the priesthood could still tap considerable reservoirs of goodwill' even into the 1530s.[195] In 1968 Scarisbrick had pronounced the overall effectiveness of the ecclesiastical courts, and even the church's ability to legislate for itself, dead by 1535.[196] Yet, in 1997, he explained he had 'never believed that the pre-Reformation Church in England was mortally corrupt and about to be set upon by rampant anticlericalism', though he did argue the upsurge visible in the *Supplication* had been 'long pent up'.[197] Furthermore, he suggested, the events of 1530-31, when the church was accused of operating courts illegally and bishops had to submit to Henry's demands in order to continue, were not the blow they could have been if the king had held his nerve. As to those in 1532, when legislation was drafted abolishing clerical legislative independence but never passed, and when ultimately the clergy submitted, he argued that however much they might have exploited popular feeling they were essentially a government production.[198]

It had taken much academic labour to move things on.[199] Nevertheless, notions of an enfeebled, deeply corrupt, late medieval church ripe for collapse and a spiritual judicial system desperately, and consequentially, in need of reform if not abolition, crafted by understandable but unfortunate reliance upon sources often created to play up even exaggerate faults, and wedded to the idea there was a good deal attractive and inevitable about the activity and achievements of early Protestantism, had been largely dispelled. So too had any idea of properly gauging the effectiveness of the courts Christian without thorough grasp of their records.

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[195] Colin Richmond, 'The English Gentry and Religion, *c*.1500', in *Religious Belief and Ecclesiastical Careers in Late Medieval England: proceedings of the conference held at Strawberry Hill, Easter 1989*, ed. Christopher Harper-Bill (Woodbridge, 1991), pp.121-150 at p.131; Eamon Duffy, *The Stripping of the Altars: Traditional Religion in England c.1400-1580* (New Haven and London, 1992) (The second edition, published in 2005 and from which future references are taken, is similarly inclined); Marshall, *The Catholic Priesthood*, p.223.
[196] J. J. Scarisbrick, *Henry VIII* 1st edn (New Haven and London, 1968), pp.241-304.
[197] J. J. Scarisbrick, *Henry VIII*, 2nd edn (New Haven and London, 1997), pp.8, 209.
[198] Scarisbrick, *Henry VIII*, 2nd edn, pp.224-241.
[199] Other works expressing late medieval church vitality include: Keith Thomas, *Religion and the Decline of Magic: Studies in Popular Beliefs in Sixteenth- and Seventeenth-Century England*, 2nd edn (1971); Beat Kümin, *The Shaping of a Community: The Rise and Reformation of the English Parish c.1400-1560* (Aldershot, 1996); and Eamon Duffy, *The Voices of Morebath: Reformation and Rebellion in an English Village* (2001).

The idea of a role for anticlericalism has recently enjoyed modest resurgence. Richard Rex has written favouring the idea that anticlerical attitudes were 'part of the late medieval vocabulary of dissent and discussion' and Marshall that 'the ability of opinion-shaping pressure groups to force the pace was facilitated by their ability to draw on long-standing and widely-recognised codes and conventions about priests behaving badly'. However, although insistent its presence was 'something of a contemporary truism', Marshall remained convinced ingrained, unrelenting, hostility between priests and laity was 'historiographical myth'.[200] In 2017 he stated very clearly '[t]here was no swelling tide of seething resentment'.[201] In 2015, Paul Cavill, starting from the premise that anticlericalism was if not a cause at least a catalyst of the Reformation, argued that Haigh's analysis was flawed and 'necessarily underestimates the incidence and strength of anticlerical feeling in parliament' and that clerical apprehensions 'were well founded, better perhaps than Haigh's slightly sceptical tone implies'.[202] Yet, just a few years earlier, George Bernard had also questioned Haigh's revisionist orthodoxy about dissatisfaction and church strength, and expressed some reservations, but ultimately came to similar conclusions.[203] But, most especially, none of them challenged the work of Bowker and others on the effectiveness of the ecclesiastical justice system. Indeed, Bernard expressly accepted its validity.[204] In consequence, anticlericalism remains neither the barometer nor bellwether of dissatisfaction and ineffectiveness it once was. There were regional differences. Some people cared more than others. But what seems probable, at least before the mishandling of Tracy's case in 1532, is that events of great notoriety eagerly seized upon by those with an agenda were generally rare, especially in the small towns and countryside.[205] The ecclesiastical judiciary were conscious people

[200] Richard Rex, 'Jasper Fyloll and the Enormities of the Clergy: Two Tracts Written during the Reformation Parliament', *Sixteenth-century Journal*, 31 (2000), 1043-1062 at 1045; Marshall, 'Anticlericalism Revested?', pp.379-380.
[201] Marshall, *Heretics and Believers*, p.64.
[202] Cavill, 'Anticlericalism and the Early Tudor Parliament', esp. 15-18, 28-29.
[203] Bernard, *The Late Medieval Church*, esp. pp.151-163, 236-237; Ingram, *Carnal Knowledge*, p.20.
[204] Bernard, *The Late Medieval Church*, pp.156-157.
[205] As to Tracy's case, which concerned the profoundly Protestant nature of his will (proven in 1531), his posthumous conviction for heresy, and the subsequent burning of his body, see: Haigh, *English Reformations*, pp.72-73.

might express unfavourable or hostile views. They were aware of the frailties of the flesh and, although inconsistent, certainly active in seeking to improve clerical discipline. Accurate numbers of clerical sexual transgressions may not be visible from visitation or court records. Their illicit sexual activity may even have been 'a real, persistent and by no means negligible problem that provoked a great deal of lay resentment'.[206] But at the time that resentment was not necessarily anticlericalism. Rather, it most often seems the expression of a general desire for stricter enforcement of the rules and that was something both laity and church desired.[207]

Increasing Understanding

The work of a previous generation of scholars, growing awareness of early sixteenth-century church vigour, and near-simultaneous fade into myth of rampant contemporaneous anticlericalism only partly explain our evolving appreciation of pre-Reformation ecclesiastical justice. In *Church and Society* Swanson, though not hesitant to point out weakness, ultimately decided that spiritual courts served popular purposes throughout the late medieval period and beyond, albeit perhaps best in the probate jurisdiction.[208] In 1996 Christopher Harper-Bill, summarising work then undertaken, explained that 'late medieval English church courts consistently endeavoured to implement the high ideals of the universal canon law, and they did not deserve the opprobrium visited upon them, for political reasons, during the Reformation Parliament'.[209] We have also come to better appreciate thousands of files in the York Cause Papers, and their complementary Act Books, as well as other resources elsewhere.[210]

[206] Ingram, *Carnal Knowledge*, p.243.
[207] Ingram, *Carnal Knowledge*, p.252.
[208] Swanson, *Church and Society*, pp.174-182, 362.
[209] Harper-Bill, *The Pre-Reformation Church*, p.63.
[210] See: P. J. P. Goldberg, 'Fiction in the Archives: The York Cause Papers as a Source for Later Medieval Social History', *C&C*, 12 (1997), 425–445; Simon J. Harris, 'The York Cause Papers 1300-1858: A New Online Resource for the Church Court Records of the Diocese of York', in *Clergy, Church and Society in England and Wales c.1200-1800*, eds. Rosemary C. E. Hayes and William J. Sheils (York, 2013), pp.23-44. The papers themselves are available at http://www.dhi.ac.uk/causepapers [accessed 10 August 2019]. Other online resources include http://consistory.cohds.ca/about.php?expand=about a database of proceedings in the London Consistory Court [accessed 17 April 2019].

Most significantly, eminent scholars like Richard Helmholz, James Brundage and Charles Donahue, and many talented others, have helped us grasp much more about canon law, court procedures and the ecclesiastical legal profession, sexual conduct, sexual regulation and defamation, sentencing and the enforcement of discipline, marriage and marriage litigation, those who appeared as litigants or to be punished, the place of spiritual justice in medieval society, and other topics too. Indeed, the historiography is now vast and must be examined in segments. Here a few illustrative words about some important works must suffice.

So far as Brundage and Donahue are concerned, I can only mention at this stage their over-arching publications: the former's *Law, Sex, and Christian Society*, his *Medieval Canon Law* and his *Medieval Origins* (a book that explains so much about the ecclesiastical legal profession); and the latter's exceptionally authoritative *Law, Marriage, and Society.*[211] Reference has already been made to Helmholz's *Select Cases on Defamation* (1985).[212] Even by 1974 he had published work on marriage litigation still considered essential.[213] By 2004 his labours had led to the most comprehensive guide to England's medieval and early modern ecclesiastical judicial system yet produced.[214]

Due to work on heresy and inquisition historians have come to understand more about lollardy and the often osmotic boundary between orthodoxy and heterodoxy, but as a result also grasp far better how suspects of all kinds came to be discovered, how detection of many spiritual crimes was achieved, and what actually happened at trial.[215] They are also much more familiar with the social

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[211] James A. Brundage, *Medieval Canon Law* (1995).
[212] See p.[x], footnote 107.
[213] Helmholz, *Marriage Litigation*.
[214] Helmholz, *Oxford.*
[215] Pertinent works include: *Heresy Trials in the Diocese of Norwich, 1428-31*, ed. Tanner; Ralph Houlbrooke, 'Persecution of Heresy and Protestantism in the Diocese of Norwich under Henry VIII', *Norfolk Archaeology*, 35 (1972), 308-326; *Kent Heresy Proceedings*, ed. Tanner; *Lollards of Coventry, 1486-1522*, eds. Norman Tanner and Shannon McSheffrey (Cambridge, 2003); Ian Forrest, *The Detection of Heresy in Late Medieval England* (Oxford, 2005). So far, for example, as *ex officio* defamation cases are concerned, see Poos, 'Sex, Lies, and the Church Courts', *passim*. Inquisition is also discussed in John Arnold, *Belief and Unbelief in Medieval Europe* (2005).

make-up of litigants.[216] In a society with a dynamic church it was easier for its courts to function because many people wanted them to. But what is more, although such people may often have been amongst the more prosperous, when necessary men and women of all kinds turned to the courts Christian for assistance or gave evidence to help friends, relatives or neighbours, or out of a sense of duty to God or their community.[217] The roles of men and women in medieval society were different and canon law and social custom encouraged those differences. But historians have also learned more about that, even how church courts 'afforded men and women an unusual opportunity to critique and reinterpret gendered behaviour in meaningful ways', and there is little to suggest blame for the ever-decreasing proportions of women giving testimony during this period can be laid at the church courts themselves.[218]

On marriage and marriage litigation, and on other forms of sexual regulation and enforcement of discipline, many works other than those by Brundage, Donahue and Helmholz have been published. Martin Ingram's output alone, drawing – as he acknowledges – inspiration from Marjorie McIntosh and others, is considerable.[219] In *Controlling Misbehavior* Mcintosh comprehensively examined the question of social control and tackled what she saw as a flawed assumption common amongst early modernists, that it had only really begun with Puritanism and, hence, that mid-sixteenth century

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[216] Woodcock, *Canterbury,* pp.105-108; Helmholz, *Marriage Litigation,* pp.159-162. See also: Charles Donahue, Jr., 'Female Plaintiffs in Marriage Cases in the Court of York in the Later Middle Ages: What can we learn from numbers?' in *Wife and Widow in Medieval England*, ed. Sue Sheridan Walker (Ann Arbor, 1993), pp.183-213 esp. p.205, *Law, Marriage and Society*, pp.63-89; Goldberg, 'Fiction in the Archives', esp. p.429.

[217] Some differences between male and female plaintiffs in marriage cases are discussed in Donahue, *Law, Marriage, and Society*, pp.218-278. When spiritual courts lost jurisdiction for defamation involving imputation of crime the proportion of female plaintiffs rose but not necessarily to a majority: Ingram, *Carnal Knowledge*, pp.68-69.

[218] See: Goldberg, 'Gender and Matrimonial Litigation', *passim*; Bronach Kane, 'Reading Emotion and Gender in the Later Medieval English Church Courts', *Frühneuzeit-Info (Special edition on the use of court records and petitions as historical sources)*, 23 (2012), 53-63 (the quotation is at 60), 'Women, Memory and Agency in the Medieval English Church Courts', in *Women, Agency and the Law, 1300-1700*, eds. Bronach Kane and Fiona Williamson (2013), pp.43-62.

[219] Ingram, *Carnal Knowledge*, pp.xii-xiii.

regulation of conduct was almost entirely a new phenomenon.[220] It was not. It had medieval roots.[221] Looking at a large sample of what she described as the "local level" of the manorial, leet, borough and hundred courts, and the "intermediate level" of the church courts and Sessions of the Peace, she did not consider many church court records in detail. Nor did she focus on London or purely on sexual regulation. But in *Carnal Knowledge* Ingram successfully fills many of the gaps.[222] Through his work historians now clearly see church courts were highly effective in city, town and countryside. They can also sense not only the presence of a growing (though competitive) symbiosis between those courts, their secular counterparts and local society in pre-Reformation England but also how vital sexual regulation and control of marriage was to all three. This greater awareness, he explains, when coupled with improved understanding of the importance of the "Reformation of Manners" to society before the mid-sixteenth century, also enables better grasp of how necessary public regulation of morals through institutions like the church courts was to it.[223]

In the same publication Ingram also manages to diminish concerns about one serious remaining anomaly, that Richard Wunderli described in *London Church Courts*. Wunderli concluded that, although even evidence from the capital did not support parliament's attack, London's spiritual courts, especially its commissary court, were not only inefficient and ineffective but being abandoned by the laity both for personal gain (debt collection) and more broadly moral ends (prosecution of sexual offenders). Ingram suggests instead that the apparent reduction in office prosecutions may not

[220] McIntosh's earlier work included *Autonomy and Community: The Royal Manor of Havering 1200-1500* (Cambridge, 1986), in which she had shown an upswing in presentments between 1460 and 1500, and 'Finding Language for Misconduct'. Work arguing the Reformation was a regulatory watershed, and suggesting church courts were moribund around 1500, includes: E. William Monter, *Enforcing Morality in Early Modern Europe* (1987); Lyndal Roper, *The Holy Household: Women and Morals in Reformation Augsburg* (Oxford, 1989). For similarly inclined work on England, see Karras, *Common Women*, esp. pp.23 and 137. But cf. Faramerz Dabhoiwala, *The Origins of Sex: A History of the First Sexual Revolution* (2012), esp. pp.9, 11, 27. McIntosh's conclusions about harbouring are specifically accepted by Helmholz in 'Harboring Sexual Offenders', 267-268.
[221] Yet, 'even some medieval historians have been inclined to minimize the scale and impact of the public regulation of sexual morality in pre-Reformation times': Ingram, 'Regulating Sex in Pre-Reformation London', p.81.
[222] For a full list of their primary sources: McIntosh, *Controlling Misbehavior*, pp.217-242; Ingram, *Carnal Knowledge,* pp.427-431. Neither comprehensively examined LAO/Cj.4.
[223] Ingram, *Carnal Knowledge,* pp.12-16, 391-393.

have been due to any dramatic collapse in public confidence but to administrative overload, a change in approach between public and private penance, a shift in priorities towards the prosecution of heretics, and an increase in sensitivity towards public opinion in that regard. As he explains, the last decades of the fifteenth and early ones of the sixteenth century seem to have been a period of leniency in punishment, albeit a brief one.[224]

Of course, not every church court was a shining example. Nor were all their personnel. Disciplinary cases involving judges seem virtually unknown.[225] But there are cases against proctors.[226] Occasional hearings against apparitors suggest some may have deserved their poor reputation.[227] Though to be expected were numerous depositions lodged, several witnesses called, or complex legal and procedural points mulled over, cases often proceeded slowly. Mistakes were made. Jurisdictional boundaries and limitations caused regular problems. Other reforms were needed. Those put in place did not always outlive the period in office of the people who instigated them.[228] Church courts were affected by the realities of sexual behaviour – and attitudes towards it – when it came to what they could, or could not, do.[229] They might genuinely have struggled to deliver the stricter behavioural regime the laity of the early 1500s seem to have demanded.[230] Like everyone else they had to deal with the difficulties of life and travel.[231] Nevertheless, by and large, historians have now firmly established the church courts (and those working in them) generally played an important, principled, conscientious and effective role in late medieval English society.

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[224] Wunderli, *London Church Courts*, pp.133-139 esp. pp.136-137; Ingram, *Carnal Knowledge*, pp.175-210, 396-397. Ingram began deconstructing Wunderli's work in 'Regulating Sex in Pre-Reformation London', esp. pp.85-86.
[225] Brundage, *Medieval Origins*, p.391.
[226] Helmholz, *Oxford*, p.225.
[227] Woodcock, *Canterbury*, p.49; Wunderli, 'Pre-Reformation London Summoners', 210-211.
[228] Sherburne's reforms were not continued by his successors: Lander, 'Church courts', p.228. For consideration of other reforms being discussed: Helmholz, 'Regulating the Number of Proctors', *passim*.
[229] Ingram, *Carnal Knowledge*, pp.393-395.
[230] Ingram, *Carnal Knowledge*, p.252.
[231] Bowker, *Henrician Reformation*, p.4; Paul Brand, 'The Travails of Travel: The Difficulties of Getting to Court in Later Medieval England', in *Freedom of Movement in the Middle Ages: PHS2003*, ed. Peregrine Horden (Donington, 2007), pp.215-228.

Lately, however, it has been tentatively suggested the historiographical pendulum may have swung too far in favour of the work church courts did.[232] Certainly, given how far understanding has progressed, one might wonder at the necessity of further study. Nevertheless, this thesis argues that much can still be learned from greater study of professionalism amongst the ecclesiastical judiciary, advocates, proctors and their assistants, and especially about their networks and daily legal grind. Ingram's work, for example, underplays the skills used by ecclesiastical judges, especially their grasp of offenders' contrition (or lack thereof) during inquisition and sentencing. Previously under-researched evidence, like that in LAO/Cj.4, can also reveal much more about how, and how well, the spiritual courts functioned, how sophisticated they, and those who appeared in them, often were. It can also indicate there is a good deal still to uncover. I explain in detail shortly but now turn to describing that evidence.

1.3 Sources, Methodologies, Topics and Thesis Structure

The Court of Audience Book LAO/Cj.4

The principal primary source consists of two quires of paper records. Throughout this thesis I refer to these as Q1 and Q2. Each consists of a different number of bifolia and has been foliated. Q1 contains folios numbered 1-50. Q2, 51-67. All, bar one, are approximately the same size with each bifolium measuring 410mm x 310mm or thereabouts. In consequence, each folio is approximately 205mm x 310mm in size. Within Q2, and numbered 65A, is one smaller piece of paper, blank on the verso side, which appears to have been torn horizontally from the outer long edge to a mid-point along the bifolium crease. The piece remaining measures approximately 205mm x 150mm. Along its inner edge a modern patch has been attached. This extends downwards, and beyond, to a point at the approximate end of the original bifolium crease thus giving a flag-like appearance. In Q1 folios 3v to

[232] Helmholz, 'Local Ecclesiastical Courts', p.390.

4v are blank, as is 6v. In Q2 the folios numbered 55, 58 and 59 are missing. In consequence, folios 62 onwards are incorrectly numbered. As stitching holes remain both quires may once have been stitched into a larger volume.[233]

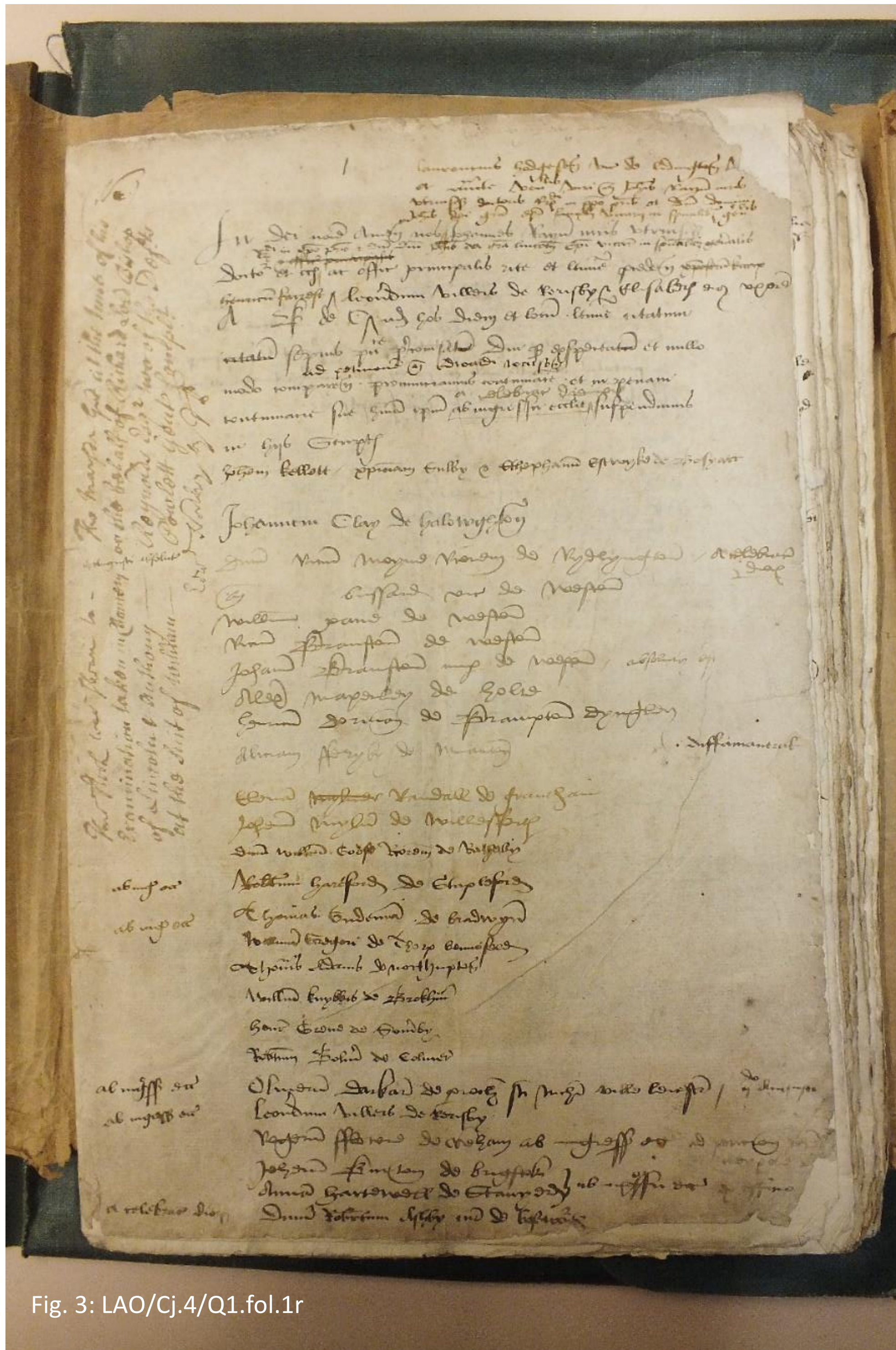

Fig. 3: LAO/Cj.4/Q1.fol.1r

[233] For further description see Appendix.

Fig. 4: LAO/Cj.4/Q2.fol.65Ar.

In form, content, and appearance the two loose quires resemble those in the bound audience court manuscript, from Atwater's episcopacy and dating between 1514 and 1520, LAO/Cj.2, Bowker transcribed and published as *An Episcopal Court Book.* An incomplete, badly damaged, survival, LAO/Cj.3, a collection of scattered audience court and visitation records from 1525 to 1527 and periods between 1542 and 1562 (but with great gaps), is also very similar.[234] Like them they appear to have been regularly used in the audience court throughout each hearing, for the duration of each day's session, and as each case progressed. On occasion entries have been deleted in whole or part and on others both deleted and amended in part, in the last case through addition and/or interlineation. The impression generally given, which is discussed in detail later, is that not only was almost every entry recorded contemporaneously but that corrections were made during (or soon after) each applicable hearing, perhaps even as oral evidence was given, an oral petition made, or procedural steps discussed. Such corrections may, on occasion, simply represent scribal error. Yet from time to time a witness may have been modifying or clarifying their evidence.[235] LAO/Cj.4/Q1, at folio 65Ar, contains a citation.[236]

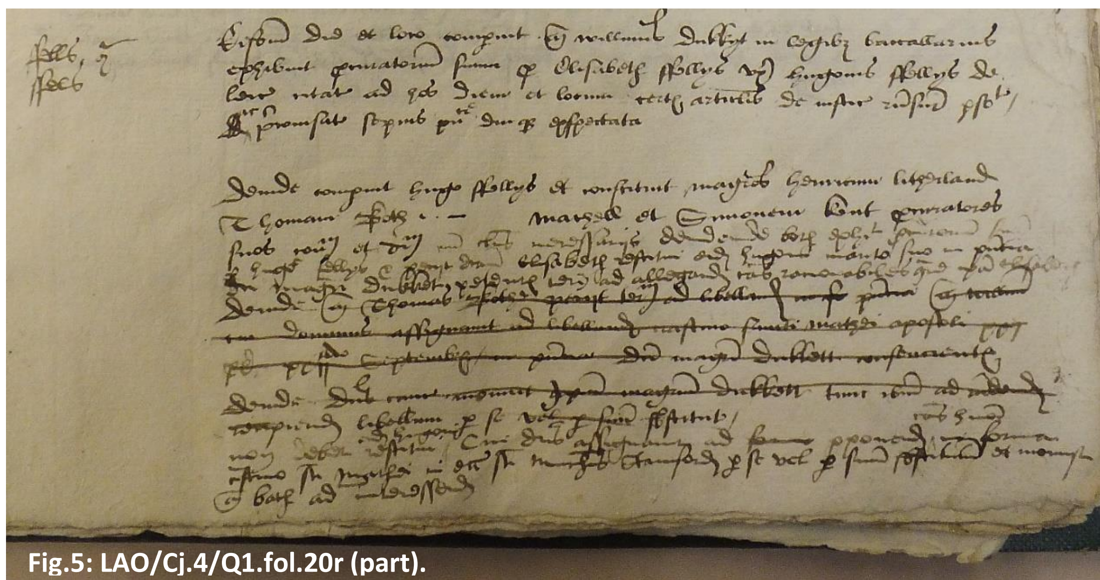

Fig.5: LAO/Cj.4/Q1.fol.20r (part).

[234] For further detail: Kathleen Major, *A Handlist of Lincoln Diocesan Records* (Oxford, 1953), pp.55-56; *AECB*, pp.x-xi (LAO/Cj.2); Chapter Two, pp.74 and 77 (LAO/Cj.3).
[235] See *fig.5* and, for example, *Johanna Turner c. Johannes Nichols* LAO/Cj.4/Q1.fols7v-9r, Chapter Two, pp.105-110. For LAO/Cj.4/Q1.fol.7v & part of fol.8r, see *figs.11-13*.
[236] For further detail: Chapter Two, pp.97-100.

Several distinct hands can be made out throughout, some far neater than others.[237] Occasionally individual entries contain evidence of more than one hand.[238] Some hands can be attributed to named individuals. There are entries by Thomas Webster (a proctor in the court but also a scribe, notary, registrar's deputy, parson of Stoke Dry – a village one mile from Lyddington – and later vicar of St Martin's Stamford), John Wynterbourn (a notary), and, as in LAO/Cj.2, many by Edward Watson (court registrar, notary, and significant member of the local gentry). In both LAO/Cj.2 and LAO/Cj.4 there are entries in which Watson clearly identifies himself as present in court and scribe.[239]

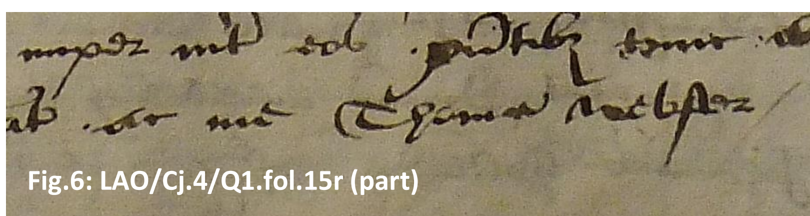

Fig.6: LAO/Cj.4/Q1.fol.15r (part)

Although there are many more individual entries, because some cases were heard on more than one occasion, 151 separate cases are recorded, spanning a period from 13 March 1528 to 16 March 1530. For the most part, though not completely, entries are written chronologically and reveal the court was in session on at least 105 days of that 733-day span. One single case entry appears, apparently without anything missing in between, at the end of Q1, on folio 50v, and at the beginning of Q2, on folio 51r. There are some relatively large gaps when the court did not appear to sit, particularly September 1528 (when no entries are recorded) and December 1528 (when only one, on 26 December, is noted). Only a few sittings are recorded in August 1528 and March 1529. Nevertheless, entries show the court in session sometimes as often as twice or three times a week. I

[237] See Appendix.

[238] In the draft sentence at LAO/Cj.4/Q2.fol.57v the words 'non legitur' ('not read') in the margin appear to be a different hand.

[239] These men are discussed in depth in Chapter Three. On 11 June 1529 Webster lists those present in court and concludes 'me Thoma Webster' (by me Thomas Webster): LAO/Cj.4/Q1.fol.1v. On 18 June 1528 he concludes by writing 'ac me Thoma Webster': LAO/Cj.4/Q1.fol.15r (*fig.6*). On 14 January 1529 he does the same: LAO/Cj.4/Q1.fol.27v. John Wynterbourn records himself as a notary 'et dominus assumpsit me Johannem Wynterborn notarium publicam in scribam actorum huiusmodi negocij in presentia et consensu partem predictarum': LAO/Cj.4/Q1.fol.31r (*fig.24*). For Watson, see especially LAO/Cj.4/Q1.fols1v, 31r, 31v, 36r, 42v, 43v, 47r, 47v & 48r. Fols42r, 47r & 47v each contain the words 'ac me Edwardo Watson' (e.g. *fig.15*). For Watson in LAO/Cj.2: *AECB*, pp.viii-ix and, for example, LAO/Cj.2/fol.65r.

cannot rule out another book, books, or separate bifolia, being used to record hearings in August, September, December 1528 or March 1529, or even contemporaneous hearings of the same court before a different judge, but nothing survives. LAO/Cj.4 and LAO/Cj.3 may once together have formed part of a larger whole but, again, it is impossible to be sure.

When the court was in session most hearings took place in Lyddington, either in the bishop's palace or the church, but on twelve occasions a different venue is clearly named. Besides Lyddington there were hearings in St Mary Magdalene's Chapel (which is near the cathedral), in St. Peter's Church (again Lincoln), in Spalding (twice), Boston, Alford and Grantham parish churches, in the convent church at Croxton (near Grantham) and in the village of Markby (in the Lincolnshire Wolds), in the chaplain's house at Kirkby Bellars (as previously mentioned), the church at 'Hannilden' (which may be Hambleton, Rutland), and in 'the chancellor's room below the house of Robert Stele' in Stamford.[240] On seven further occasions the court ordered parties to appear again elsewhere, St Michael's, Stamford, six times and Langham (Rutland) once.[241] However, no note survives of any consequent hearing. Nine more, where no venue is named, may have taken place elsewhere than Lyddington. However, in seven of them Lyddington seems the likely venue.[242]

The manuscript contains detail of both office and instance cases. For much of the time the language used is Latin, and generally formulaic, but depositions and some other notes are written in English. Entries often begin by reciting the date, court venue and title of the presiding judge (but rarely his name).[243] Other cases heard later the same day often simply note they are occurring that same day

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[240] St. Mary Magdalene's Chapel, LAO/Cj.4/Q1.fol.7r; St. Peter's, LAO/Cj.4/Q1.fol.26r; Spalding LAO/Cj.4/Q1.fol.23r; Boston, LAO/Cj.4/Q1.fol.23r; Alford, LAO/Cj.4/Q1.fol.23v; Grantham, LAO/Cj.4/Q1.fol.26v; Croxton, LAO/Cj.4/Q1.fol.9r; Markby, LAO/Cj.4/Q1.fol.26r; Kirkby Bellars, LAO/Cj.4/Q1.fol.5r; Hannilden, LAO/Cj.4/Q2.fol.51r; 'in camera domini cancellarii infra domum Roberti Stele apud Stamford', LAO/Cj.4/Q1.fol.38r.

[241] Stamford, LAO/Cj.4/Q1.fols 15r, 20v, 34r, 39r, 66r & 67r; Langham, LAO/Cj.4/Q1.fol.36r. Some, though perhaps not those at the end of the manuscript, may hint at the possibility of another contemporaneous notebook. Equally, there could have been many reasons why these hearings simply did not occur.

[242] The two venues I cannot be sure of are in *Office c. Nicholas Idon et Jacobus Dalton*, at LAO/Cj.4/Q1.fol.15r and *Office c. Johannes Evans*, at LAO/Cj.4/Q2.fol.53r.

[243] For example, 'xiijmo die mensis Augusti Anno domini millesimo quingentesimo xxixmo in ecclesia prebendali de lidington coram domino cancellario iudicaliter sedente' ('On 13 August 1529 in the prebendal

and in the same place.[244] John Rayne, Longland's chancellor and vicar-general, from 1525 to 1536, and official-principal of the consistory court, presides over the vast majority of hearings.[245] Other cases are heard by Commissary-general Anthony Draycott, and a deputy, Master Stephen Worthington.[246] Eleven proctors appear, some more frequently than others. Besides these men, and besides Edward Watson and various others associated with the administration of justice (apparitors, '*litterati'* (clerks), advocates and arbitrators), five others are mentioned who are judges in other courts.[247] One papal legate (Laurentius) is also referred to, as is his servant.[248] Ninety-one members of the clergy (both secular and religious) are mentioned too. Four hundred and sixty-five members of the laity are recorded. Not all are parties to proceedings. Some give evidence as witnesses. Others are named as witnesses to events described in court but do not feature giving evidence themselves. Some are referred to for another reason, perhaps because they were somehow considered relevant to a case, or important enough to mention simply by being present at the time of any hearing or sentence.

There are sixteen marriage litigation cases, often involving just two parties but occasionally more and sometimes even more than one disputed contract.[249] Consent, the importance of witnesses and gifts, the power of parents over offspring, the persuasive powers of the church, and the often-competitive nature of the marriage market are amongst the themes which arise. The largest single item in the whole record is a hearing in a marriage case noted across eleven folios which lasted at

church of Lyddington and in the presence of the chancellor sitting in his judicial capacity'): *Agnes Sheffeld c. Marya Waltrott*, LAO/Cj.4/Q1.fol.2v.

[244] For example, 'Die et loco predictis': LAO/Cj.4/Q1.fol.11v.

[245] *Visitations*, ed. Thompson, 35, pp.219-220. John Rayne is referred to as vicar-general and official-principal at LAO/Cj.4/Q1.fols1r, 1v, 3r, 21v, 32v, 42r, 45r, Q2.fols60r & 65Ar.

[246] Draycott is, for example, referred to at LAO/Cj.4/Q1.fol.22v, Worthington at LAO/Cj.4/Q2.fol.53r.

[247] Archdeacon William Smith, LAO/Cj.4/Q1.fol.10r (not the same man as Bishop William Smith); Doctor John Pryn, LAO/Cj.4/Q1.fol.16r (see Bowker, *Henrician Reformation*, pp.33-34, 150); Commissary Worth (no forename given), LAO/Cj.4/Q1.fol.17v; Magister Pachett, LAO/Cj.4/Q1.fol35r; John Silvester, LAO/Cj.4/Q1.fol.35r (see Bowker, *Secular Clergy*, p.32). On the term 'litterati': Chapter Three, p.153.

[248] LAO/C.4/Q1.fol.34r; Chapter Four, pp.194-195.

[249] Just over ten per cent of the grand total of individual cases. For comparison with Norwich and Winchester Consistory Courts, where the percentage is not dissimilar: Houlbrooke, *Church Courts*, pp.273-274. In Canterbury between 1415 and 1507 the number of matrimonial suits introduced during years for which records are complete was never more than twenty and often less than ten: Woodcock, *Canterbury*, p.85. The 215 surviving marriage cases in the York Cause Papers account for almost thirty-eight per cent of the total between 1300 and 1499: Donahue, *Law, Marriage, and Society*, p.65.

least two days.[250] Another, *Edwardus Cleypoll c. Maria Reynoldes*, involves the impediment of nonage, a legal concept combining ideas of mental and physical incapacity.[251] Ten cases more concern defamation, of which most, but not all, involve imputation of sexual misconduct. There are fourteen about wills, probate or the administration of estates, but just three about tithes and one about breach of faith. Several more matters relate to church administration and management, repairs, presentations, non-residence, sequestration, the conduct of divine service, even a bell-ringing dispute between two priests, but I shall not discuss them here.

Seventy-six people, including ten women, appeared in the court accused of a spiritual crime or crimes. Three men are each charged with two separate crimes. Nineteen (twenty-five percent) are clergy. Of the seventy-nine individual cases sixty-two contained accusations of sexual misconduct or of some other socially and morally unacceptable behaviour. Often the misconduct alleged is fornication or adultery. However, the manuscript also includes a case against two defendants accused of sodomy, another accused of incest with his niece, and one regarding an incident in which several young men took part that seems to have come close to gang-rape.[252] Adultery *per se* is only specifically mentioned once.[253] On occasions a term like '*incontinenter vixit*' is used but most often the allegation, or admission, is that '*eum/eam cognovit carnaliter*' (or similar).[254] If an English euphemism is used it tends to be phrased 'he had to do with her'.[255] Prostitution is not mentioned though some sexual encounters may have been primarily commercial in nature. Neither the word '*meretrix*' (prostitute),

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[250] *Henricus Inman c. Elisabeth Thompson cum Jacobus Walker competitor*: LAO/Cj.4/Q2.fols56r, 56v, 57r, 57v, 60r, 60v, 61r, 61v, 62r, 62v & 66r.

[251] LAO/Cj.4/Q1.fols40r & 42r.

[252] *Office c. Willelmus Baly et Johannes Jolybrand* (sodomy), LAO/Cj.4/Q2.fol.54v; *Office c. Christoferus Sawer* (incest), LAO/Cj.4/Q1.fol.7r; *Office c. Robertus Greg, Johannes Sympson alias Baker et Radulphus Urmeston* (multi-party assault) LAO/Cj.4/Q1.fols45r & 45v. Seventy-nine is fifty-two per cent of the total number of individual cases in the whole manuscript. For some comparison: Chapter Five, p.214, footnote 48.

[253] 'fatetur quod commisit adulterium cum Elisabeth Ward seruentem sua': *Office c. Henricus Ward* LAO/Cj.4/Q1.fol.12r.

[254] In *Office c. Margeria Benam* the phrase used is 'incontinenter vixit': LAO/Cj.4/Q1.fol.36v. In *Office c. Willelmus Paterson* the defendant is accused of 'being known to be incontinent with' ('notatus de incontinentem ad') Katerina the wife of Thomas Haukes: LAO/Cj.4/Q.1.fol.26v. In a marriage case, *Alicia White c. Ricardus Bale*, the defendant admits he knew the plaintiff carnally ('cognovit eam carnaliter'): LAO/Cj.4/Q1.fol.9v.

[255] *Office c. Thomas Spennyng* LAO/Cj.4/Q2.fol.66v.

nor the word '*concubina'* ('concubine') is used, though the verb '*concubuerunt'* ('they had intercourse') appears once in a case involving a priest admitting sexual intercourse with a woman named Elisabeth who lived in his house.[256] Sometimes an allegation is of misconduct short of actual sexual contact, perhaps presented that way through lack of evidence, though such contact may well have been feared. There are eight cases involving violence against priests. There are some entries which purely record procedural events during a case, for example difficulties with the service of a citation, insistence on compurgation, or reference to arbitration.

Details of a person's age or occupation are rarely recorded. The word 'soluta' is sometimes used to describe unmarried women or female servants, but not, it appears, necessarily in a derogatory fashion, and 'solutus' occasionally used to describe unmarried men.[257] A person's domicile is more frequently noted though not always. Nevertheless, it can regularly be deduced from other evidence. As so often in records elsewhere we cannot always see each case from beginning to end. Sometimes the reason is immediately clear, sometimes not. In the latter event we may sometimes deduce a likely reason why. However, in some cases it is impossible to determine even the nature of an allegation made. There may, for instance, be merely a single entry which gives no detail. But, as well as recording obviously oral evidence, written procedural documents (libels, citations, articles and the like) are frequently mentioned. Often it is possible to work out part of their content and occasionally much more. Procedural steps, interim orders made (including, for example, adjournments or declarations of contumacy), as well as interlocutory and definitive sentences in instance cases, are always in Latin. There are several such sentences in the manuscript, some of which were delivered and some not. Considerable detail is regularly provided of penance or other punishment to be performed (again in Latin) but, again, not always. On many occasions we can deduce a good deal about both the process

[256] *Office c. Johannes Jameson* LAO/Cj.4/Q1.fol.43r.
[257] Alice Rokclyff, for instance, the niece and sexual victim of Christopher Sawer is described as a 'soluta', LAO/Cj.4/Q1.fol.7r. William Persi of Spalding is described as 'solutus', LAO/Cj.4/Q1.fol.23r.

of judicial inquisition and the ways in which sentences of penance might well be deliberately and carefully constructed.

Other Sources

Despite the enormous size of the overall archive, historians interested in the senior courts of Lincoln diocese are not greatly blessed with fifteenth- or sixteenth-century sources (save for those relating to its probate jurisdiction). Although the principal focus of this thesis is upon the years before 1530, and although Northamptonshire and Rutland were lost to the new diocese of Peterborough by 1541, and Oxford by 1542, it would have been useful to study records from a little later in the century. Sadly, to do so is all but impossible. As already explained, save for one Act Book, the diocese has virtually no contemporary consistory court litigation records. Nor are Bishops' Registers 27 and 28, which ostensibly cover the period from 1547 to 1579, of much assistance. Almost nothing survives of the diocesan activities of Longland's immediate successor, Henry Holbeach (1547- *d*.1551), and the whole register of the next, John Taylor (*d.*1554), is lost. There are no surviving visitation records between 1543 and 1551 nor any records for the audience court at all between 1547 and 1554. LAO/Cj.5 contains just one record from 11 June 1546 and small fragments of material from near the end of the sixteenth century. Records are scant in Peterborough for the period too. During Longland's episcopacy, besides LAO/Cj.4 and that single record from 1546, there is more material though not much. Occasional use has been made of Bishops' Register 26 though no printed edition exists. Despite being incomplete, scrappy and challenging to read because of water damage, LAO/Cj.3 has provided some useful information. For the period before Longland's elevation the situation is better but still not without difficulty. LAO/Cj.0, which dates from 1446 to 1452, was transcribed and published in part in Thompson's *English Clergy*. Occasional reference has been made to it. LAO/Cj.2, the manuscript transcribed in Bowker's *An Episcopal Court Book*, has been invaluable. There are extant bishops' registers but, as always, one must remember they were primarily summaries of other documents

made for future reference. In any event, there is still a gap of more than sixty years without documentation produced in, or for use in, court. Two printed sources of records from the lower courts have been mentioned before, Percival Moore's publication of some archdeaconry records from Leicester (between 1516 and 1535) and Elvey's of the archdeaconry of Buckingham (between 1485 and 1523). I have turned to both. I have also made use of Thompson's three volumes of visitations, R. E. G. Cole's editions of sixteenth-century Chapter Acts, and Lawrence Poos's edition of records from the jurisdictions of the Dean and Chapter of Lincoln and the Deanery of Wisbech.[258]

There are other helpful records. I have relied on the Military Survey and Lay Subsidy Rolls for Rutland in Julian Cornwall's *County Community.*[259] I have occasionally supplemented research by reference to wills and the work of legal commentators, moralists and chroniclers. From time to time I have referred to handwritten and printed court records from outside the diocese. Several vital secondary sources have already been mentioned.

However, despite the relative scarcity of primary source material, and despite this project, other records from the courts of Lincoln diocese remain virtually untouched. LAO/Cj.6 contains records of the court of the bishop's commissary in the archdeaconry of Oxford, although only between 13 December 1539 and 31 May 1540. Cij.1 contains the records of courts held by the official and commissary of the archdeaconry of Lincoln between 1536 and 1545. A few late sixteenth-century libels exist in LAO/DIOC/CP/BOXES 59 and 73. There are a few loose citations, articles, depositions and some other documentation stored under reference LAO/DIOC/COURTRECORDS, and others, like

[258] Major, *Handlist*, pp.1-25; Margaret Bowker, *Henrician Reformation*, p.181, 'Longland, John (1473-1547), bishop of Lincoln', *ODNB* (2004), https://doi.org/10.1093/ref:odnb/16986, 'Holbeach (formerly Rands), Henry', *ODNB* (2004), https://doi.org/10.1093/ref:odnb/13477, 'Taylor, John', *ODNB* (2004), https://doi.org/10.1093/ref:odnb/27043 [all accessed 24 April 2019]; Moore, 'Proceedings of the Ecclesiastical Court in the Archdeaconry of Leicester, 1516-1535'; *Visitations*, ed. Thompson, LRS, 33, 35 & 37; *Chapter Acts of the Cathedral Church of St Mary of Lincoln, A. D. 1520-1559* 3 vols., ed. R. E. G. Cole, LRS, 12, 13 and 15 (Horncastle, 1915-1920); *Lower Ecclesiastical Jurisdiction in Late-medieval England: The Courts of the Dean and Chapter of Lincoln, 1336-1349, and the Deanery of Wisbech, 1458-1484*, ed. L.R. Poos (Oxford, 2001); Helmholz, *Oxford*, p.213 (footnote 245).
[259] *The County Community under Henry VIII: The Military Survey, 1522 and Lay Subsidy, 1524-5, for Rutland*, ed. Julian Cornwall, Rutland Record Society (Oakham, 1980).

formularies, stored elsewhere in the Lincolnshire Archives. All of them have yet to be subjected to detailed study. There are also some visitation records from 1538 to 1543 and, in other archives, some records of the archdeaconry courts in Leicester and Northampton similarly remain under-researched. I will discuss some of these later.

Methodologies, Topics and Structure

For the most part, I intend to discuss specific methodological issues as and when they arise. But at this point there are some further general comments to make. As explained earlier, every methodological approach is, to some extent, governed by the availability, or scarcity, of relevant source material. For all that LAO/Cj.4 provides an invaluable window into the senior courts of Lincoln diocese during the 1520s, it must be pointed out that research can never hope to cover such wide ground as say the York Cause Papers. I cannot, for example, perform the type of statistical work on marriage litigation Donahue carried out on those records, and in Ely, Paris, Cambrai and Brussels, for *Law, Marriage, and Society.* The number (let alone the variety and detail) of cases cannot be matched.[260] A wholly, even principally, quantitative study would almost certainly produce results of limited reliability. The ability to cross-reference can also produce great benefit. It might, for example, have proven useful to consult contemporary, or near-contemporary, churchwardens' accounts in places where the laity who appear within LAO/Cj.4 were said to be domiciled. But, sadly, there are none.[261]

What is more, any historian must be aware of the type and purpose of the document he or she is dealing with. A scribe's translation from English into Latin is always likely to be a representation of what was said. Nuance may be lost. As we know from "law in society" literature, law works through

[260] There are 215 surviving marriage cases alone in the York Consistory Court records between 1300 and 1499: Donahue, *Law, Marriage, and Society*, p.65.
[261] Ronald Hutton, *The Rise and Fall of Merry England: The Ritual Year 1400-1700* (Oxford, 1994), pp.263-293.

social interaction. Individuals use the power of governing authorities and their laws to negotiate their lives but the archive (by which I mean the recording ecclesiastical authority) and the law itself also shapes and constrains people's choices and their relationships. Each historian must therefore be alive to the possibility that what parties and witnesses were saying under interrogation was edited or tidied up, perhaps by them, perhaps by their lawyers, perhaps by the courtroom scribe. A deposition carefully crafted outside court and later submitted to a judge may well contain an expression of what someone thought should happen, or wished had happened, or even of something that had not happened at all. Similarly, a libel may put forward a case only at its strongest though for sound legal reasons and even simply to improve prospects of advantageous settlement. We may be able to deduce such reasons but sometimes it will have been for purposes historians can never fully grasp.[262]

Of course, oral depositions made directly to the judge during a hearing and recorded as they happened may be products of similar construction. But, as is explained in Chapter Two, from time to time the format and content of LAO/Cj.4 provides great advantage. It sometimes permits us to reconstruct progress and developments within a case not just from day to day but during each hearing too. Parties and witnesses who were asked questions in court had less time to think before answers were written down and became their evidence. Replies to articles and interrogatories may have been mentally prepared in advance if someone knew or could anticipate what to expect but they too may indicate instant response. I take a closer look at instance and office procedures to examine such matters and explain how that also reveals the court's flexibility and adaptability. Procedures were

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[262] Works on "law in society" include *Communities and Courts in Britain, 1150-1900*, eds. Christopher W. Brooks and Michael Lobban (1997) and *The Moral World of the Law*, ed. Peter Coss (Cambridge, 2000). Further discussion of methodologies for (and pitfalls in) using court records can be found in works such as: Natalie Zemon Davis, *Fiction in the Archives: Pardon Tales and Their Tellers in Sixteenth-century France* (Stanford, 1987); Garthine Walker, *Crime, Gender and Social Order in Early Modern England* (Cambridge, 2003), pp.1-8, 210-269, 'Just Stories: Telling Tales of Infant Death in Early Modern England', in *Culture and Change: Attending to Early Modern Women*, eds. Margaret Mikesell and Adele Seeff (Cranbury New Jersey, London and Mississauga, 2003), pp.98-115; Shannon McSheffrey, 'Detective Fiction in the Archives: Court Records and the Uses of Law in Late-Medieval England', *History Workshop Journal*, 65 (2008), 65-78; Robert N. Swanson, '"… et examinatus dicit…": Oral and Personal History in the Records of the English Ecclesiastical Courts', in *Voices from the Bench: The Narratives of Lesser Folk in Medieval Trials*, ed. Michael Goodich (New York and Basingstoke, 2006), pp.203-225, esp. pp.205-209, 219-220; Tom Johnson, 'The Preconstruction of Witness Testimony: Law and Social Discourse before the Reformation', *LHR*, 32 (2014), 127-147.

there to be followed but justice had to be administered; rigidity within the former was not necessarily the key to success with the latter. People gave evidence once but sometimes twice if clarification were needed. In the same chapter I examine the process of compurgation. Of course, just as there was no single attitude towards the courts amongst the laity, individual lawyers and judges had their different experiences of how ecclesiastical justice worked, and how they felt it ought to work, too. Nevertheless, close-focussed study of this kind can reveal a great deal.

Furthermore, and without doubt, although each choice of topic is also partially dictated by the contents of a chosen source, in this thesis what seemed most appropriate was to take the reader on a logical journey through the whole system. That journey begins with understanding its structure and how it worked. As this thesis is about overall effectiveness, in consequence (and even before considering procedure, application of the law and other courtroom activity) I begin Chapter Two by looking at the court's geographical jurisdictional coverage; was it really the whole diocese or not? It continues with examination of the court's ability to secure attendance and concludes with one of procedural flexibility.

In Chapter Three I take a closer look at those who worked in the court: its judiciary, lawyers, registrar, clerks, apparitors and others. Although I examine their activities in court, here the approach, in large part, is to look beyond the principal source to see what can be discovered about those men as a group and, behind individual names and offices recorded, about their education, skills, careers, connections and networks, even personal lives. Doing that reveals much more about the place and role of ecclesiastical justice within late medieval society. In Chapter Four I examine one type of instance litigation, that relating to marriage. Here the approach is distinctly qualitative in nature. I examine issues of consent and clandestinity and consider both lay and professional involvement in the legal process. Not only were such disputes a significant part of the court's workload but detailed examination and study of its marriage litigation can reveal more about men and women in early sixteenth-century society and their interactions with each other, with their lawyers (if lawyers were

involved) and with the ecclesiastical judiciary. In Chapter Five I consider enforcement of discipline, the role of the Reformation of Manners, and – specifically in matters of sexual misconduct – how close study of the connection between public and private penitential practice and the role of emotion in both judicial inquisition and the discretionary process of constructing suitable penance and punishment can increase understanding of work in the courts during the years before the Henrician Reformation. Once again, the approach is largely qualitative. In Chapter Six I draw some overall conclusions and offer thoughts for the future.

2

Jurisdictional Coverage, Procedural Flexibility

Chapter One promised a journey. Every journey begins somewhere. Here that means establishing milieu, locating Lincoln's audience court within its physical environment, comprehending effects that setting and events had upon performance, and understanding the steps that court officials took to anticipate and meet challenges they faced. It also means delimiting the court's procedural architecture, which is not merely to define the constraints imposed upon those charged with administration and delivery of justice by long-established expectations of procedural compliance but also to discover the extent of adaptability and flexibility. In a sense, therefore, this chapter looks at the audience court first from outside and second, when inside, examines how much room there was to move around.

I have already alluded to some problems faced by those working in the early sixteenth-century ecclesiastical justice system. There were other difficulties too. A few were unique to Lincoln; many were common elsewhere.[1] Extra-diocesan enclaves, of which there were several within Lincoln diocese, disturbed cohesion.[2] Non-resident and peripatetic rectors could be difficult to track down, especially the talented, ambitious, or both, and culprits who lived within easy reach of a diocesan border might simply slip over it to evade attention.[3] There was often temptation to prioritise instance

[1] For some particular to Lincoln: Bowker, *Secular Clergy*, pp.6-12.
[2] Swanson, *Church and Society*, p.3 (map).
[3] *AECB*, pp.xiii-xiv; Lander, 'Church courts', p.218; David Lepine, '"Loose Canons": The Mobility of the Higher Clergy in the Later Middle Ages', in *Freedom of Movement in the Middle Ages: PHS2003*, ed. Peregrine Horden (Donington, 2007), pp.104-122 at pp.105-106.

cases: they brought in more fee income, especially for proctors who almost never appeared in matters of a purely disciplinary nature. Equally, poor clients were entitled to be represented by lawyers without payment and that might mean a lot of work for little reward.[4] Either way, contested litigation requiring valuable, but finite, court time could mean disciplinary cases took a back seat. But, in Section 2.1, and to begin the journey, I consider obstacles to effectiveness and authority posed by the medieval landscape environment and by the death of Bishop Atwater and elevation of Bishop Longland in 1521, particularly the ability of judges and other personnel to travel around the diocese and to work successfully and comprehensively within it. To do so I have undertaken a statistical analysis of the audience court's known hearings and movement between November 1514 and March 1530, used other surviving evidence from that period, and looked at one month, October 1528, in detail.

Section 2.2 considers the procedural environment. Office cases are its first focus. The *ex officio mero* procedural regime had the advantage of simplicity. *Ex officio promoto* cases (for the church at least) had the benefit that individuals exhorting them were supposed to bear the costs if charges proved unfounded.[5] But the whole system of ecclesiastical prosecution also had potential for complication, even complete failure, whenever oral (or, in more notorious cases, written) citations were issued. It therefore begins with an assessment of the court's success in ensuring defendants' attendance.

Undoubtedly the canonical system for prosecution of spiritual crime was never perfect. Historians can also be sure that judges and others in the church were sometimes exhorted to strike terror into those suspected simply in the interests of suppressing such crime. For the judiciary that moment was meant to be during the process of inquisition.[6] For others it could be elsewhere. In 1526,

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[4] Lander, 'Church courts and the Reformation', p.218; James A. Brundage, 'Legal Aid for the Poor and the Professionalization of Law in the Middle Ages', *Journal of Legal History*, 9 (1988), 169-172; Helmholz, *Oxford*, p.226.
[5] Houlbrooke, *Church Courts*, p.38.
[6] Helmholz, *Oxford*, p.607.

for example, Longland not only wrote to Cardinal Wolsey about the king's approval of book searches and the further pursuit of those heterodoxically inclined, but asked him to see merchants bound 'in reacognisans never to bringe in to this Realme any such boks, scrowlis, or writings' because 'some and most parte wil more feare that than excommunicacion'.[7] At around the same time he told archdeacons to search for heretics and heretical books in English. Priests were to talk about the dangers of heresy at Sunday services and, if suspected themselves, were subsequently required on oath not to spread Martin Luther's views.[8] Yet, even in febrile times, the system was far better than some have given it credit for.[9] It can be difficult to understand some of its features, especially those which do not chime with our own era.[10] But, firstly, historians now more clearly grasp the exacting standards of legal knowledge and ethics expected of its judiciary.[11] Secondly, regardless of systemic weakness or imperfection, there was an *ordo iuris* and it is definitely not out of place to speak of a right to canonical due process.[12] Thirdly, there was its adaptability. As mentioned, the procedure was intended to be simple. But greater formality could be applied, and greater care taken, within individual prosecutions if need arose. In consequence, I also consider some office cases in their early stages (that is prior to purgation) where the audience court clearly considered greater assiduousness, inquisitorial diligence and procedural formality vital to limit possibility of injustice. The role of professionalism is considered

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[7] *Original letters of eminent literary men: of the sixteenth, seventeenth, and eighteenth centuries*, ed. Sir Henry Ellis (1843), Vol. 1, pp.180-184; Allan G. Chester, 'Robert Barnes and the Burning of the Books', *Huntington Library Quarterly*, 14 (1951), 211-221 at 215-216; Bowker, *Henrician Reformation,* pp.58-60.

[8] LAO/Reg.26/fol.140; Bowker, *Henrician Reformation*, pp.61-62.

[9] 'The concept of circumstantial evidence, based upon the idea of *fama* and the pseudo-scientific measurement of *indicia*, led to short-cuts in the law of proof': Richard M. Fraher, 'The Theoretical Justification for the New Criminal Law of the High Middle Ages: *Rei publicae interest, ne crimina remaneant impunita*', *University of Illinois Law Review* (1984), 577-595 at 586-587 – a response that seems to ignore much of the purpose of medieval ecclesiastical justice and insist on comparing it unfavourably against late twentieth-century judicial systems.

[10] For example, the idea of being more lenient to clerics in order to save clerical reputation: Helmholz, *Oxford*, p.603.

[11] See, for example, Brundage, *Medieval Origins*, esp. pp.371-406.

[12] Helmholz, *Oxford*, p.604.

further in Chapter Three, the importance of inquisition to the enforcement of discipline in Chapter Five.

Section 2.2 also examines instance litigation. As a method of dispute resolution, despite obvious rigour and sophistication, it can appear excessively formal; episcopal courts particularly seem places where decreed procedures might normally be followed to the letter. After all, as Helmholz explains, '[i]t would not be off the mark to say that a concern for procedure remained at the centre of the thought and work of the medieval jurists', and procedural treatises abounded.[13] Of course, as a consequence of his work historians are aware that whilst there was general conformity between canonical theory and practice within the English ecclesiastical courts when it came to the law of marriage and divorce, things were somewhat different in testamentary, defamation and tithe litigation (where peculiarly English provincial law, custom and interpretation played a much larger part).[14] Historians understand too that this did not mean English practice was insular or unique. Rather, just as throughout western Europe, that its ecclesiastical judiciary operated within a system which not only provided scope for freedom of interpretation and the development of legal principles but allowed room to follow local traditions and needs even if decretal law appeared to direct the contrary.[15] They also grasp that each court's approach could, and did, sometimes vary (the *stylus curiae*), that the procedural system was neither ever wholly static nor a straitjacket for lawyers and that, even though it did not always speed matters up a great deal, it was permissible, from the fourteenth century onwards, for spiritual courts to dispense with any formal step considered inessential for the doing of justice.[16] Yet, any quest for greater comprehension of the courts' flexibility, adaptability and judicial freedom still presents a challenge. It can be difficult enough to discover what happened in an individual piece of litigation let alone why there may have been some diversion from the expected procedural regime. In Ely the data set is huge but a challenge to organise and classify in

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[13] Helmholz, *Oxford*, pp.312-313.
[14] Helmholz, *Roman Canon Law*, pp.5-11.
[15] Helmholz, *Roman Canon Law,* pp.12-20; Chapter One, p.13.
[16] Helmholz, *Oxford*, pp.313-314.

a way that best enables the understanding of court business.[17] In York tremendous detail can be found in the cause paper files, any one of which may contain a deposition or two amongst an assortment of other documents, yet in Norwich Consistory Court those depositions are recorded within entirely separate volumes.[18] Act books elsewhere often contain minimal information about matters in dispute and rarely anything about outcome. As a result, any sense of the courtroom in action, its vitality, its to-ing and fro-ing, and the tactics, theatrics and mindset of those revelling in or enduring that happening within it, can be difficult to discern. The role of parties, witnesses, judges and lawyers within the daily grind of marriage litigation will be considered in detail in Chapter Four. Here a broader view aims to demonstrate that careful study of LAO/Cj.4 permits us to see Lincoln's audience court as extremely adaptable when it came to instance litigation in general, accommodating enough to ensure everything potentially relevant had been considered so that justice could be properly achieved, and occasionally even relatively informal.

Several common themes feature throughout the chapter: the recurrent necessity for planning, preparation and foresight, the frequent application of considerable skill, the essential prerequisites of resourcefulness and flexibility, and a tangible determination to get the job done well.

2.1 Jurisdictional Coverage

The pre-Reformation diocese of Lincoln was huge. Its northernmost boundary was the Humber, its southern the Thames. Its archdeaconries contained Lincolnshire, Leicestershire, Rutland, Northamptonshire, Huntingdonshire, Oxfordshire, Buckinghamshire, Bedfordshire, and parts of Hertfordshire. It covered 7265 square miles and, in 1535, had 1736 parishes. Its landscape varied enormously. Leicestershire had been well connected to London since Roman times, and was mostly ideal for agriculture, but its elevated western parts were often heavily wooded. Rutland and

[17] Donahue, *Law, Marriage, and Society*, pp.218-225.
[18] Swanson, *Church and Society*, pp.162-163; Harris, 'The York Cause Papers', p.24.

Northamptonshire were similarly rural but mostly undulated gently. The Fens stretched from Peterborough to the Wash, included the town of Boston, portions of Northamptonshire and substantial parts of Huntingdonshire, and continued beyond the diocesan border into Cambridgeshire and Norfolk. Despite regular maintenance of existing drainage, and in neighbouring Ely diocese significant work by Bishop John Morton (1479-1486), they were thoroughly wet for much of the year. In the north-west of the diocese the Isle of Axholme had a quite similar landscape. To the north-east were the Lincolnshire Wolds. In the south, Oxfordshire, Buckinghamshire and Hertfordshire were also largely rural. However, the first boasted one of England's two universities and the last the second-highest density of small towns after Kent and some twenty-five percent of its population living within them. The road system in Hertfordshire had strategic importance, and five main routes, yet Oxford had never been part of the Roman network. In other areas well-maintained roads were sparse. Even those out of Lyddington could be difficult to negotiate. Often journeys required planning and could be tortuous and sometimes dangerous. Tolls had to be paid, lodgings and supplies found and purchased. Even obtaining paper could be a challenge. A daily distance travelled of thirty miles in summer and twenty in winter was quite an achievement. Frequently at least one horse was essential. Yet, although the consistory court had generally become fixed in location, the bishop, his chancellor and other judges when they were presiding over the audience court, and his registrar and other staff, continued to travel regularly and extensively in performance of their duties. With Atwater and Longland often in London, messengers must have journeyed there with great frequency. Apparitors must have been constantly on the move. Proctors (and their clerks) must have similarly spent much time on the road, visiting clients, seeking witnesses or obtaining an advocate's opinion.[19]

[19] 'The Middle Level of the Fens and its reclamation', in *A History of the County of Huntingdon: Volume 3*, ed. William Page, Granville Proby and S. Inskip Ladds (1936), pp. 249-290, *BHO* http://www.british-history.ac.uk/vch/hunts/vol3/pp249-290 [accessed 29 April 2019]; J. W. F. Hill, *Tudor and Stuart Lincoln* (Cambridge, 1956), pp.1-3; Bowker, 'Some Archdeacons' Court Books', p.283, *Secular Clergy*, pp.6-7, *Henrician Reformation*, pp.xiv-xvii, 1 and 4; Storey, *Diocesan Administration*, pp.3-9; Brian Paul Hindle, 'The Road Network of Medieval England and Wales', *Journal of Historical Geography*, 2 (1976), 207-221, 'Roads and Tracks', in *The English Medieval Landscape*, ed. Leonard Cantor (London and Canberra, 1982), pp.193-218; Eric Acheson, *A Gentry Community: Leicestershire in the Fifteenth Century, c.1422-c.1485* (Cambridge, 1992), pp.7-13; Norbert Ohler, *The Medieval Traveller*, trans. Caroline Hillier (Woodbridge, 1989, repr.1995), p.97; C. Lewis,

Of course, given travel was something with which the clergy and many who worked in spiritual courts were very familiar, its logistical problems had at least been long known.[20] Considerable efforts had also been made to mitigate them. There were still difficulties. In many dioceses, Lincoln included, important clergy frequently moved in from elsewhere and may not have become thoroughly familiar with their surroundings until years passed.[21] Atwater, for instance, was from Somerset and spent time at Oxford and Eton before his appointment.[22] But everyone valued the equipment needed and understood the importance of good roads. Many in wealthier sections of society, clergy included, made charitable bequests in their wills. In the fifteenth century gifts to maintain roads and bridges were very popular.[23] William Smith, onetime archdeacon of Lincoln, made specific mention of 'my Rydyng velvet bagge with a silke gyrdyll' in his will. Edward Watson, the court registrar, left many things to his wife Emma including his cart horses but his 'best horse to the curate where I shall departe' and to John Wynterbourn, one of his clerks, 'oon of my riding cotes, oon of my hakney horsis'. He also specified that 'the overplus off the yerely rentes off that tan hows, the preist found, the stok mayntened, and reparacions made, I wilbe disposed yerely in mending highe ways and other gud warkes abowt Lidington'.[24] There were certainly good bridges in Peterborough by *c.*1300 and in several places throughout Northamptonshire. There was a wooden bridge at Boston and structures of some kind at Bedford, Huntingdon, St. Ives and Buckingham. At Gainsborough there was a ferry. At Bridge

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P. Mitchell-Fox and C. Dyer, *Village, Hamlet and Field: Changing Medieval Settlements in Central England* (Manchester, 1997), pp.38-48; C. C. Dyer, 'Small Towns, 1270-1540', in *The Cambridge Urban History of Britain*, ed. D. M. Palliser (Cambridge, 2000), pp.505-540; Terry R. Slater, 'Planning English medieval 'street towns': the Hertfordshire evidence', *Landscape History*, 26 (2004), 19-35 at 20; Lepine, '"Loose Canons"', esp. p.106; Brundage, *Medieval Origins*, pp.148-149; Rosemary Canadine et al., *Buildings and People of a Rutland Manor: Lyddington, Caldecott, Stoke Dry and Thorpe By Water*, Lyddington Manor History Society (Oakham, 2015), pp.45-47. For the geographical scope of an advocate's practice: Higgins, 'A Canon Lawyer and his Practice', 135-140.

[20] Brand, in 'The Travails of Travel', esp. at pp.227-228, discusses cases from the thirteenth and fourteenth centuries and the then normal expectations of courts and litigants about speed and modes of travel.

[21] Lepine, '"Loose Canons"', pp.105-106.

[22] *AECB*, pp.xvii-xviii.

[23] Andrew D. Brown, *Popular Piety in Late Medieval England: The Diocese of Salisbury, 1250-1550* (Oxford, 1995), p.198.

[24] William Smith: *Chapter Acts*, ed. Cole, LRS, 12, p.92. The Will and Codicil of Edward Watson: TNA/PROB/11/23/347; 'Lincoln Wills: 1530 (July)', in *Lincoln Wills: Volume 3, 1530-1532*, ed. C. W. Foster (1930), pp.13-30, *BHO* http://www.british-history.ac.uk/lincoln-wills/vol3/pp13-30 [accessed 1 May 2019]. For more on Watson and Wynterbourn: Chapter Three, esp. pp.121-122, 136-138, 143-149.

End (Lincolnshire) a causeway carrying the Grantham to Boston road was maintained by Gilbertines.[25] Episcopal residences were well-distributed. As well as at Lyddington and Lincoln they could be found at Buckden (Huntingdonshire), Wooburn (Buckinghamshire), Sleaford, Louth, Stow and Nettleham (all Lincolnshire). Each one could provide comfortable respite. Elsewhere leased properties might also offer hospitality. Religious houses could afford food and shelter too.[26]

What is more, the creation of bureaucracy itself had probably been driven at least in part by the need to ensure competent administration over long distances.[27] Even though procedures were imperfect, episcopal and archidiaconal visitation ensured visibility and provided opportunity for the exercise of discipline.[28] The courts and the process of visitation were also very complementary in that respect.[29] Both Atwater and Longland delegated a good deal of visitation work to commissaries who might otherwise be busy within the church courts.[30] But appointing an archdeacon's official to the post of bishop's commissary, or vice versa, not only discouraged competition it encouraged cooperation too. Duties of visitation, correction and the granting of probate could be, and were, shared.[31] Episcopal jurisdiction might occasionally be reluctantly accepted but deals could be, and were, done.[32] There were restrictions but workarounds too. Bishops were normally prevented from exercising ordinary jurisdiction whilst outside the diocese. But their secretariats were under no such geographical constraint and Atwater held courts in London on several occasions.[33] He also specifically ensured Richard Roston, his vicar-general, could continue to use powers that would normally have

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[25] David Harrison, *The Bridges of Medieval England: Transport and Society, 400-1800*, paperback edn (Oxford, 2007), pp.58, 68, 106, 140 and 202-203.
[26] Bowker, *Henrician Reformation*, p.4.
[27] M. T. Clanchy, *From Memory to Written Record: England 1066-1307*, 3rd edn (Oxford, 2013), pp.76-77.
[28] Helmholz, *Oxford*, pp.219-221; Ingram, *Carnal Knowledge*, pp.83-84.
[29] See Atwater's itinerary: *AECB*, pp.xxiv-xxxii.
[30] Thompson, *English Clergy*, p.178.
[31] Bowker, 'Some Archdeacons' Court Book', pp.283, 286-289.
[32] Bowker, *Secular Clergy*, p.7.
[33] *AECB*, pp.xxiv-xxxii; Storey, *Diocesan Administration*, p.4. Despite the sittings in London, it is important to note nothing within available records supports Commons' assertions about the frequency with which men were cited to appear out of the diocese on frivolous charges. Very few cases appear ill-founded: *AECB*, p.xxii.

lapsed when he himself was present within the diocese.[34] It was an expediency Longland also found useful.[35]

However, despite similar efforts elsewhere, the geographical jurisdictional coverage of an episcopal court was still sometimes more illusory than real.[36] To understand the position in Lincoln, information compiled by Bowker about Atwater's itinerary has been supplemented with evidence gleaned from my own examination of LAO/Cj.2, from that part of LAO/Cj.3 dating from 9 November 1525 to 30 September 1527, and from detailed study of LAO/Cj.4. There are some preliminary points to make. Firstly, it would be unreasonable to expect the court to visit everywhere in the diocese. Its personnel were always limited in number and had other duties. Even with a busy, conscientious, diocesan like Atwater on hand it was restricted in what it could reasonably achieve.[37] Secondly, when compiling the figures, and to most accurately represent both the frequency of sittings and geographical coverage, I have counted each day the court sat individually. In other words, whether the court sat two consecutive days or two separate days in one place I have counted that as two separate occasions, but if (as occurred once) the court sat in two places in the same town on one day I have included it only once.[38] Thirdly, this evidence points firmly to the court often sitting in Lyddington during both Atwater's and Longland's episcopacy. During the former, sessions in Lyddington were, in numerical terms, just a few more than those in Wooburn (thirty-six to thirty-two). But during the first nine years of Longland's episcopacy the court is recorded there far more frequently and represents a larger proportion of the whole. To a certain extent this may represent a geographical bias or an element of responsive agency at work: if demand existed locally the natural reaction would have been to service it. Finally, despite only partial survival of records, legitimate conclusions can be

[34] *AECB*, p.xix.
[35] Bowker, *Henrician Reformation*, p.15.
[36] The consistory court in Chichester (which dealt with office and instance cases) had theoretical jurisdiction throughout its diocese but usually heard cases only from the Chichester archdeaconry: Lander, 'Church courts', p.216.
[37] As to limits on proctors, for instance: Chapter Three, p.120.
[38] On 18 May 1518 the court sat in Biggleswade in Jacob Whitehed's hospice and the parish church: LAO/Cj.2/fols56v & 57r.

drawn, amongst them that, although perhaps less comprehensively so for some time after Atwater's death, diocese-wide coverage was probably still substantial. I have relied only upon evidence of court sittings which took place or were definitively arranged. Bowker suspected Atwater sat more frequently between 1514 and 1521 than surviving records suggest.[39] The same may be true between 1521 and 1530. If so, that implies an even wider, more comprehensive, jurisdictional coverage.

November 1514 to March 1530

From examination of his known itinerary and cross-referencing to entries within LAO/Cj.2, it is possible to ascertain that between 3 November 1514 and his death on 4 February 1521 Atwater was recorded presiding over his audience court on ninety-nine occasions and in the following places:[40]

Table 2.i: Bishop Atwater's sittings in the Audience Court (Nov. 1514 – Feb. 1521)	
Wooburn (Bucks)	32
Lyddington (Rutland)	20
Old Temple (London)	13
Buckden (Hunts)	10
Lincoln	6
Banbury (Oxon)	2
(Great) Missenden (Bucks)	2
Baldock (Herts)	1
Bourne (Lincs)	1
Bradwell & Snelshall (Bucks)	1
Corringham (Lincs)	1
Daventry (Northants)	1
Dunstable (Beds)	1
Holborn (London)	1
Leicester	1
Notley (Bucks)	1
Peterborough	1
Thame (Oxon)	1
Thornton (Lincs)	1
Torksey (Lincs)	1
Wymondley (Herts)	1
TOTAL	99

[39] *AECB*, p.x.
[40] In *AECB*, at p.xxviii, Bowker lists a hearing at Ampthill. However, folios to which she refers contain no reference to hearings there but, rather, to ones at Wooburn and Lyddington listed elsewhere in the itinerary. I have therefore ignored her finding in this respect.

Of course, it is important to look at the work of other judges. During the first years of Atwater's episcopacy Henry Willcocks was chancellor. He had been vicar-general under Wolsey and may have retained that role.[41] In LAO/Cj.2 four hearings in Lyddington are recorded during 1514 in which an unnamed vicar-general presided. It may have been him each time.[42]

Willcocks was succeeded by Roston. Both chancellor and vicar-general, Roston became Atwater's official-principal and commissary-general too. He sat in both audience and consistory court but seems to have first appeared in the former on 26 March 1516.[43] Within LAO/Cj.2 he is recorded presiding on fifty-six occasions, always as chancellor or vicar-general:

Table 2.ii: Richard Roston's sittings the Audience Court (Mar.1516 – Feb. 1521)	
Lyddington	11
Lincoln	9
Biggleswade (Beds)	6
Old Temple	4
Stamford (Lincs)	3
Banbury	2
Huntingdon	2
Thornton (Lincs)	2
Barton-upon-Humber (Lincs)	1
Blunham (Beds)	1
Buckden	1
Eaton Socon (Hunts)	1
Elstow (Beds)	1
Hertford	1
Heynings (Knaith, Lincs)	1
Legbourne (Lincs)	1
Louth (Lincs)	1
Northampton	1
Partney (Lincs)	1
Redbourne (Lincs)	1
Spilsby (Lincs)	1
St Neots (Hunts)	1
Stixwould (Lincs)	1
Wellow (Grimsby) (Lincs)	1
Wooburn	1
TOTAL	56

[41] *AECB*, pp.xix (footnote 5); LAO/Cj.2/fols23r & 45v.
[42] LAO/Cj.2/fols7r, 7Av, 8r.
[43] *Visitations*, ed. Thompson, 35, p.219; LAO/Cj.2/fol.18r; *AECB,* p.xix; Bowker, *Secular Clergy*, pp.27-28.

Three other named judges presided over cases recorded within LAO/Cj.2. John Sylvester, commissary of Leicester, sat in Market Harborough on 1 July 1518 and Lyddington on 18 March 1519.[44] Thomas Swayne, also a commissary, sat in Old Temple, London, on 9 March 1518 and in St Martin's, Leicester, on 10 July 1518.[45] Commissary John Burges sat in Grantham on 9 August 1518 and in Wooburn on 21 January 1520.[46] On three more occasions the sitting judge's identity is unclear.[47] In short, the audience court was recorded sitting on 168 separate occasions during the 2285-day span of LAO/Cj.2 (approximately once every fourteen days). Of those, some thirty-six (twenty-one percent) occurred in Lyddington and 132 (seventy-nine percent) elsewhere.

To that information we can add evidence gleaned from that part of LAO/Cj.3 to which earlier reference has been made. Between 9 November 1525 and 30 September 1527 (691 days), the audience court is known to have sat twenty times. On sixteen occasions it did so in Lyddington. On four others it sat elsewhere.[48] Furthermore, and as described in Chapter One, during the timespan covered by LAO/Cj.4 (733 days) it sat on 105 days. During those 105 it sat elsewhere than Lyddington on a total of twelve.[49] Of 125 known sittings between 9 November 1525 and 16 March 1530, 109 (eighty-seven percent) were in Lyddington and just sixteen (thirteen per cent) elsewhere.

In total, therefore, we have evidence the audience court sat on 293 occasions between 3 November 1514 and 16 March 1530. Of those, 145 were at Lyddington and 148 elsewhere. The map on page 74 is marked in blue with every location at which the audience court is known to have sat. Lighter shades represent Atwater's episcopacy, darker those of Longland's reign. It is marked in red

[44] LAO/Cj.2/fols58v (Market Harborough) & 59r (Lyddington); *AECB*, pp.xx.
[45] LAO/Cj.2/fols54r (Old Temple), 58r (Leicester); *AECB*, pp.xx.
[46] LAO/Cj.2/fols70r (Weston), 104v (Wooburn); *AECB*, pp.xx.
[47] LAO/Cj.2/fols34r (Caldewell, Beds.), 50r (Wooburn) & 87r (Beaconsfield).
[48] Chapter One, p.55. LAO/Cj.3/fol.1r (Thurmaston (Leics) 09.11.1525); LAO/Cj.3/fol.12r (Thyngdon (Finedon, Northants) 27.02.1526); LAO/Cj.3/fol.15r (Spalding 15.06.1526); LAO/Cj.3/fol.19r (Grantham 28.01.1527).
[49] Chapter One, p.56. The court sat in Spalding for two days (8 & 9 October 1528). For the breakdown of sittings between judges in LAO/Cj.4: Chapter Three, p.119.

where we know hearings in Longland's episcopacy were scheduled but for which we have no evidence they occurred.[50]

Fig.7: Jurisdictional Coverage of Lincoln Audience Court 1514-1530

[50] Chapter One, p.56.

Unfortunately, there is a gap in evidence between 4 February 1521 and 9 November 1525 (1738 days) and another between 30 September 1527 and 13 March 1528 (165 days). What is more, we do not know when exactly Roston's involvement ceased.[51] Of course, we know Longland succeeded to the episcopate in May 1521.[52] We also know he was busy with heretics in Oxford that year, at the royal court in 1522, in Parliament and at Convocation in 1523, at court again in 1524 and 1525, first as Henry's confessor and later a member of his council much involved with the royal divorce yet often ill and over-worked, and from 1526 to 1532 once again preoccupied with heterodoxy.[53] Yet, we are also aware he was not only entirely content that Atwater's creation of a permanent vicar-general should continue, and to keep out of everyday judicial business unless it felt vital to intercede, but carefully watched over his rights and unafraid to intervene if circumstances merited.[54] It is therefore reasonably safe to presume that during these two periods the audience court continued to sit and, if not to his complete satisfaction, almost certainly without his frequent involvement.

Absent direct energetic episcopal input like that from Atwater, Lincoln's audience court simply may not have been able to sit or travel so frequently after 1521. After all, as Ingram has lately shown, the precipitate, somewhat anomalous, fall in London's ecclesiastical prosecutions after 1500 may not have been due to sudden dramatic collapse in public confidence, as Wunderli opined, but to administrative overload.[55] Equally, any conscious decision to reduce doing so in the immediate wake of his death and Roston's later demise may have seemed both necessary and entirely reasonable, perhaps especially given the virtual disappearance of the *fidei laesio* jurisdiction, the period's short-lived flirtation with a regimen inclined towards more lenient punishment, and the then recent death of other helpful personnel like Thomas Swayne.[56] Missing consistory court records and a four-year gap

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[51] We know only he died before 25 September 1525: *Visitations*, ed. Thompson, 35, p.219.
[52] Bowker, *Henrician Reformation*, p.4.
[53] Bowker, *Henrician Reformation*, pp.12-14, 59-62.
[54] Bowker, *Henrician Reformation*, p.15.
[55] Wunderli, *London Church Courts*, esp. pp.95-96, 137-139; Ingram, *Carnal Knowledge*, pp.195-198, 209-210.
[56] For the decreasing *fidei laesio* jurisdiction: Chapter One, p.16. As regards leniency: Chapter One, p.46; Chapter Five, esp. pp.214-216, 243. As to Swayne's death: *Visitations*, ed. Thompson, 35, p.221; Bowker, *Secular Clergy*, p.37. We have no direct evidence of immediate recruitment to replace this lost manpower.

in those of the audience court between 1521 and 1525 mean we cannot be entirely sure but instance litigation was certainly in steady decline elsewhere.[57] Although there were increases in some places they were helped by bishops heavily engaged in the judicial process.[58] Furthermore, although Chancellor Rayne was unpopular in 1536, there is nothing within surviving visitation records or LAO/Cj.4 to intimate he was inclined to particular harshness in the early years of his appointment and, even though some are probably missing, plenty in the former to suggest that during at least spring and summer 1525 he was extremely busy.[59] He may not have had much time for additional judicial work. Moreover still, if, as it appears, archdeaconry and commissary courts were by and large competent and keenly dealing with most cases that came their way, and if, as seems probable, the consistory court was working tolerably well, any contemporary perception amongst the judiciary that the audience court had to go out and about with great frequency was probably reduced.[60]

Whatever the reason, from 9 November 1525 to 30 September 1527 the court seems to have sat just once every thirty-four days or thereabouts. However, from 13 March 1528 to 16 March 1530 sittings took place on average every fourteen days or so once more. It is possible, therefore, that the workload had by then increased from an earlier low. The local population around Lyddington may also have become accustomed to the presence, rather than frequent absence, of the court and thus begun to turn more often to it for assistance. Any such increase, when coupled in 1528 with the pressures of visitation, may have necessitated Anthony Draycott's appointment to the post of commissary-general.[61] We will probably never know. Nonetheless, if, for the sake of argument, one cautiously

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[57] Woodcock, *Canterbury*, pp.44, 84; Helmholz, *Oxford*, p.230.
[58] Lander, 'Church courts', *passim*.
[59] *Visitations*, ed. Thompson, 35, pp.196-197, 220; Chapter Five, esp. pp.201, 223, 225, 231-232, 243.
[60] Bowker, 'Some Archdeacons' Court Books', *passim*; Morris, 'A Consistory Court', 155 and 157-158. Prosecutions in Leicester archdeaconry seem to have been pursued more intently than even in Elizabethan and Jacobean times and were widespread throughout its jurisdiction: Ingram, *Carnal Knowledge*, pp.88-89.
[61] It has been suggested that in Lincoln the offices of vicar-general, commissary-general and official-principal were often combined and held by the same man: Bowker, *Secular Clergy*, p.26; Morris, 'A Consistory Court', 154-155. From 1528 this was not so. Anthony Draycott and John Rayne, who was vicar-general and official-principal, both appear within LAO/Cj.4 after the former's first appearance on 8 October that year. Rayne even sat as vicar-general on 15 January 1529 when Draycott had presided just the day before: LAO/Cj.4/Q1.fols1r, 1v, 22v, 27v & 28v. This could indicate an increase in the particular demands of Longland's frequent absence or simply in judicial workload. For more on Draycott: Gordon Goodwin, 'Draycot, Anthony (*d*.1571)', rev. Andrew

assumes that sittings took place just every thirty-four days between 4 February 1521 and 9 November 1525, and every fourteen between 30 September 1527 and 13 March 1528, it remains entirely conceivable the court sat another fifty-one times during the first period, on twelve more occasions during the second, and sixty-three in total (making a grand total of 356). Even at a similar percentage rate to that known from surviving evidence between March 1528 and March 1530 (eighty-nine percent in Lyddington, eleven percent elsewhere), that would suggest fifty-six more sessions occurred in Lyddington and seven elsewhere. In other words, the total number of hearings between February 1514 and March 1530 could have been 201 in Lyddington and 155 elsewhere.

If sittings during the two periods for which we have no evidence occurred more frequently the total figure could have been higher. Of course, we cannot be sure. Nor can we say where such hearings would have taken place. Some may have been at a familiar location, others somewhere unfamiliar. It is conceivable the court did not travel at all during these periods of missing evidence, sitting only in Lyddington. However, the pattern of peripateticism within existing court and visitation records suggests that proposition unlikely. Reduced manpower during the early years of Longland's episcopacy seems certain to have had some impact. Other factors may have been involved too. Yet that reduction in travel may have permitted the court's remaining judiciary, and its registrar, to focus more closely on work nearer at hand to offset some of the difference. If one factors in the work of other courts, and add both that strong likelihood of further audience court hearings and, when he was alive, Roston's propensity to travel, the overall impression is still of significant geographical coverage at all levels, even the most senior, albeit at that most senior level achieved over quite a long period and less comprehensively so for several years after Atwater's death.

A. Chibi, *ODNB* (Oxford, 2004; online edn May 2010) http://www.oxforddnb.com/view/article/8041 [accessed 1 June 2019]; and Chapter Three, pp.136-137. Visitations certainly took place in July and September 1528, but it is also known records are incomplete: *Visitations*, ed. Thompson, 35, p.197.

October 1528

Further insight is possible through examination of a journey, recorded in LAO/Cj.4, Draycott made between early October and the beginning of November 1528. Although we cannot be sure exactly when or where that journey started, we can see it ending in Lyddington. Not only did Draycott hear a case there on 3 November 1528 he heard others on 5, 18 and 20 November. Lyddington could have been the start too, especially if Draycott had been accompanied by the registrar and other staff normally resident there.[62] Although several different hands can be seen, and some resemble others within the manuscript, unfortunately, not one specifically identifies himself during the trip.[63] But, whoever accompanied him, such analysis still enables greater understanding of the task faced by itinerant ecclesiastical judiciary and how well they managed to cope.

On 8 and 9 October 1528 Draycott presided over hearings in Spalding. Via Peterborough and Crowland, and on modern roads, Spalding is approximately forty miles from Lyddington. In a sixteenth-century autumn, even in good weather, the journey probably took two days. Although we cannot be sure of his route, stopping at either or both abbeys along the way would have made good sense.[64] That would

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[62] Draycott's journey could have been longer. There are no surviving records of hearings in September 1528. They may have been recorded on separate bifolia now lost. However, it is likely the record of the journey is complete. The first entry, dated 8 October 1528 in Spalding, appears at LAO/Cj.4/Q1.fol.23r. Entries proceed chronologically thereafter, and in an order that makes perfect sense for travelling, until that on 29 October 1528 in Grantham at LAO/Cj.4/Q1.fol.26v. The next chronological entry, for 3 November 1528 at Lyddington, appears at LAO/Cj.4/Q1.fol.22v. It is followed by two more, on the same folio, for 5 November 1528. I have considered whether these three entries appear out of order because of later foliation error but do not believe so. At folio 22r an entry dated 29 August 1528 records a hearing before the chancellor in Lyddington. Furthermore, after the dated entry for 29 October 1528 at folio 26v are two entries said to have been made '*eisdem die et loco*' and the first entry on LAO/Cj.4/Q1.fol.27r is dated 18 November 1528 and the second 20 November 1528. Both record hearings before Draycott at Lyddington. The bifolium marked fols27r and v also contains fols16r and v. Folios 17 and 26 make up the adjacent bifolium. On fol.16r is an entry dated 22 July 1528 which proceeds over the page onto 16v. Although there is another entry dated 18 July 1528 on fol.16v, there is also a small entry recording only a date, that of 23 July 1528. On fol.17v is an entry dated 27 July 1528. Entries proceed chronologically thereafter until 29 August 1528 on fol.22r. For further details regarding dating and foliation, see Appendix.

[63] For two examples of the hands engaged making entries on Draycott's journey, see *figs.9* & *10.* Watson frequently travelled with Atwater, for example to Corringham (Lincs): LAO/Cj.2/fol.69r. He travelled with Swayne and Rayne too: *Visitations*, ed. Thompson, 35, pp.86, 97.

[64] Abbeys in south Lincolnshire seem to have had a map-making tradition. Primarily used in property disputes, such maps may have aided travellers: *Local Maps and Plans from Medieval England*, eds. R. A. Skelton and Paul D. A. Harvey (Oxford, 1986), pp.7, 34. See also: Rose Mitchell and David Crook, 'The Pinchbeck Fen Map: A fifteenth-century map of the Lincolnshire Fenland', *Imago Mundi*, 51 (1999), 40-50.

suggest a starting date of 6 October, Saint Faith's Day. However, given that 6 (or possibly 7) October was also the date to commemorate translation of Bishop Saint Hugh of Lincoln, the journey may have begun sooner.[65] Whatever happened, progress was likely to be interrupted by ceremonial.

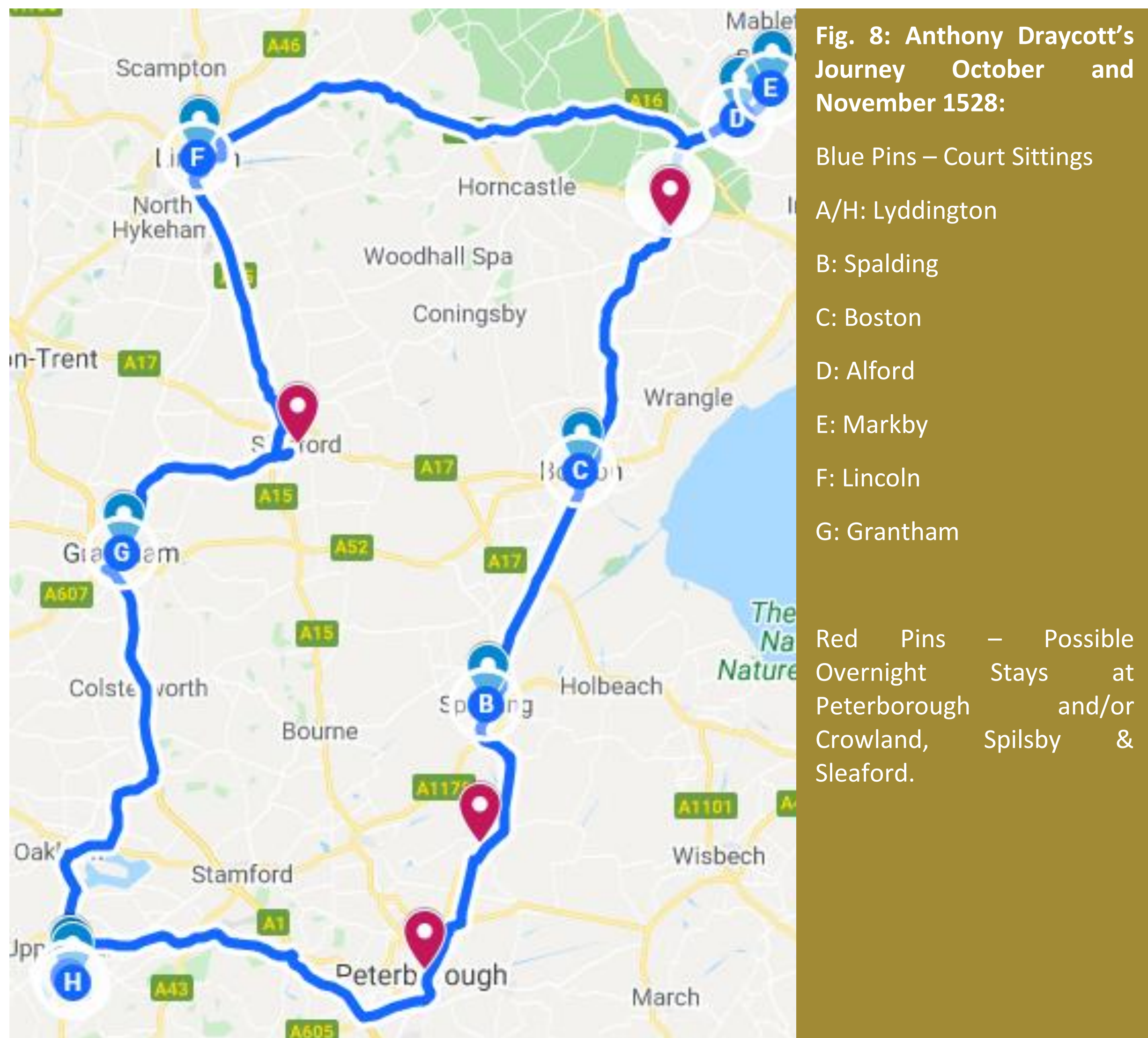

Fig. 8: Anthony Draycott's Journey October and November 1528:

Blue Pins – Court Sittings

A/H: Lyddington

B: Spalding

C: Boston

D: Alford

E: Markby

F: Lincoln

G: Grantham

Red Pins – Possible Overnight Stays at Peterborough and/or Crowland, Spilsby & Sleaford.

Only one case was recorded on 8 October, office proceedings in which Robert Page, from Sutton, and Alicia Sleps, from the parish of Tydd St. Mary, admitted that contrary to a prior injunction they had continued to consort together. The entry confirming penance was short and to the point.

[65] University calendars have it as 6 October; Alms Rolls as 7 October: *A Handbook of Dates: for students of British History*, ed. C. R. Cheney, rev. Michael Jones (Cambridge, 2004), p.75.

The hearing itself cannot have taken long.[66] However, the nature of their offence hints at prior knowledge and preparation on the part of those responsible for court administration: someone would have known breach of such an injunction required a further appearance and it makes most sense if that further appearance had been pre-arranged to coincide with the judge's visit. Both Tydd St. Mary and Sutton are more than fifteen miles from Spalding. Draycott may have been made aware of the case in advance too.

On 9 October, perhaps after sleeping at the local priory, Draycott dealt with one more office case in Spalding.[67] This time proceedings were against William Persi who admitted sexual relations with his servant Johanna Fishe. Discussed in more detail in Chapter Five, it may have been brought in the audience court because of the defendant's social status. Nevertheless, like that the day before, it was unlikely to have taken long.[68] Office cases were, of course, designed to be dealt with speedily. But it is also possible Draycott decided to set off for Boston, where he was to sit the next day, as soon as he could. The journey was some fifteen miles. He would have been conscious the light would fade early. Only a single case was heard in the parish church on 10 October. It concerned tithes and seems to have been concluded within one short hearing.[69] But he may not have realised it would be so easily resolved. He may have wanted to leave soon afterwards too. It is likely he preferred to avoid travelling on 11 October. It was not only a Sunday but often kept as the dedication anniversary of a church.[70]

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[66] 'viijmo octobris anno domini millesimo quingentesimo xxviijmo coram magistro Antonio Dracott domine episcopo Lincoln commissario generali in ecclesia de Spaldyng iudicaliter sedente comparuerunt personaliter Robertus Page de parochiale de Sutton et Alicia Sleps de parochiale de Tydd Marie et fatebantur quod ipsi contra iniunctionem commissarij alius eisdem factum admiserunt se [?hu[?]ide] unus ad consortium alterius unde dominus eisdem de perimplendo illis inuingendam ad sanctam euangelia iurates iniunxit quod ipsorum uterque duobus diebus festiuis proximo sequente publicam in ecclesia suis parochialis peraget penitentiam': *Office c. Robertus Page et Alicia Sleps*, LAO/Cj.4/Q1.fol.23r.

[67] Spalding Priory was well known to bishops of Lincoln: 'Houses of Benedictine monks: The priory of Spalding', in *A History of the County of Lincoln: Volume 2*, ed. William Page (1906), pp. 118-124. *BHO* http://www.british-history.ac.uk/vch/lincs/vol2/pp118-124 [accessed 8 May 2019].

[68] *Office c. Willelmus Persi*, LAO/Cj.4/Q1.fol.23r; pp.221-222.

[69] *Dominus Willelmus Tonard c. Ricardus et Agnes Tonard*: LAO/Cj.4/Q1.fol.23r.

[70] Philip H. Pfatteicher, *Journey into the Heart of God: Living the Liturgical Year*, online edn (Oxford, 2013) at https://www-oxfordscholarship-com.ezproxy.nottingham.ac.uk/view/10.1093/acprof:oso/9780199997121.001.0001/acprof-9780199997121-chapter-9?rskey=EIV9QX&result=1 [accessed 8 May 2019].

Twenty-four miles or so north lay Alford, Draycott's next destination. Here, on 13 October, another tithe case, this time reasonably substantial, was heard in part. Once again, we cannot be sure of the route taken. But if he left Boston on 10 October, and travelled northwards along the western edge of the Fens, he could have reached Alford in good time, perhaps spending a night or two at Spilsby.[71] The facts of this case are unimportant for this exercise but it is vital to grasp the hearing's main purpose. It was for the taking of evidence. Normally gathered outside court, parties (unless witnesses themselves) were usually excluded and judges rarely involved.[72] That was not so here. It may have been a matter of convenience, given Alford's distance from Lyddington, but Draycott had clearly been given the job.

[71] For Spilsby, see: 'Colleges: Spilsby', in *A History of the County of Lincoln: Volume 2*, ed. Page, p. 236. *BHO* http://www.british-history.ac.uk/vch/lincs/vol2/p236 [accessed 8 May 2019].
[72] Helmholz, *Oxford*, p.339.

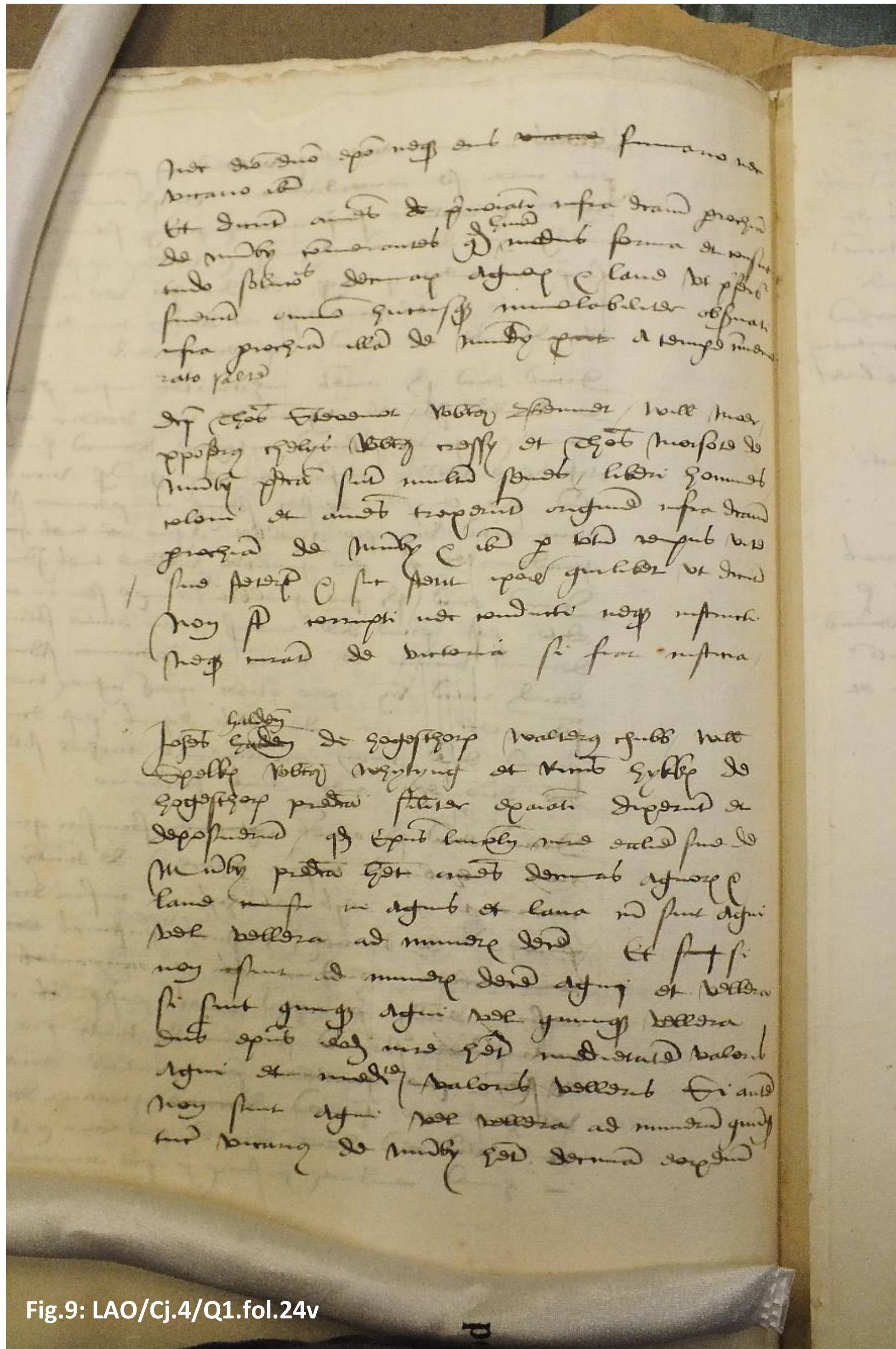

Fig.9: LAO/Cj.4/Q1.fol.24v

At Alford Richard Cartwright, the plaintiff and vicar of Mumby (Lincolnshire), appeared in person ('*comparuit personaliter*') and brought with him six witnesses from the village: Thomas Stevenot, Robert Cressy, Robert Bennet, William Moer, Christopher Cheles and Thomas Morsote Junior. Five others in court were from Hoggesthorpe (now Hogsthorpe, just two miles from Mumby) – John Hadden, Robert Whiting, Walter Chubb, Richard Hikkes and William Spelkis – all of them

defendants to Cartwright's claim. There is no indication they had a lawyer either. Although documents may have been submitted, none are mentioned. Even faced with such a large crowd, Draycott seems to have considered it necessary to take sworn evidence from all eleven. But the record also suggests it was quite likely all six of the plaintiff's witnesses gave oral evidence together followed by all five defendants concurrently too. One can see plural terms used throughout, for example '*dixerunt et deposuerunt*' and '*dicunt*'. The uniformity of each side's evidence was stressed: words like '*omnes'* and '*concordandum inter se*' appear. Formal individual depositions may have been drawn up later but it may have been considered sufficient to make this composite record whilst the case was underway: examiners were supposed to organise what had been said and were told 'to "cut off all vain talk" of witnesses who were "full of babble and nothing to the purpose"'. No final decision was made, no sentence pronounced. Nevertheless, it is still probably safe to assume the hearing took some time – the case record covers five whole folios and Draycott would have had to work out whether all the plaintiff's witnesses were in agreement, and likewise whether all the defendants were – a juggling act that may have been more complicated than it appears.[73] However long the hearing lasted, it must have been sufficient to mean an extra night away. On 14 October 1528 Draycott was in Markby, just three miles from Alford. He may have stayed at its priory.

Markby Priory had eight canons and a prior in 1534. It also had something of a troubled past. Both Atwater and Alnwick had found irregularities during visitations.[74] Atwater had held a court there too.[75] For Draycott to travel there suggests not only appreciation of the opportunity to keep an eye open for further trouble but administrative mechanisms effective enough to ensure continued judicial oversight. Certainly Robert Wallis, a canon at the priory, appeared in court and was ordered to stay away from both the wife and house of John Long. Two dots within the manuscript may signify the

[73] *Ricardus Cartwright c. Johannes Hadden, Robertus Whiting, Walterus Chubb, Ricardus Hikkes et Willelmus Spelkis*: LAO/Cj.4/Q1.fols23v-25v (*fig.9*); Helmholz, *Oxford*, p.339, quoting from a Precedent Book in Buckinghamshire Records Office, D/A/X/4.fols.70r-70v.
[74] 'Houses of Austin canons: The priory of Markby', in *A History of the County of Lincoln: Volume 2*, ed. Page, pp. 174-176. *BHO* http://www.british-history.ac.uk/vch/lincs/vol2/pp174-176 [accessed 8 May 2019].
[75] LAO/Cj.2/fol94r.

scribe missed out some detail. Oddly, the self-same record also notes that John Welton was ordered to stay away from Agnes West, the wife of William West, unless they were both in public and in the presence of others. Normal practice would have been to note such allegations separately. That apparent haste could suggest Draycott was in something of a hurry to leave. Yet, that seems unlikely given the priory's past. His own visit had resulted in two further cases. It may have been inexperienced scribal practice. Perhaps most likely was a precautionary attempt to save paper.[76] There was still some way to go after all.

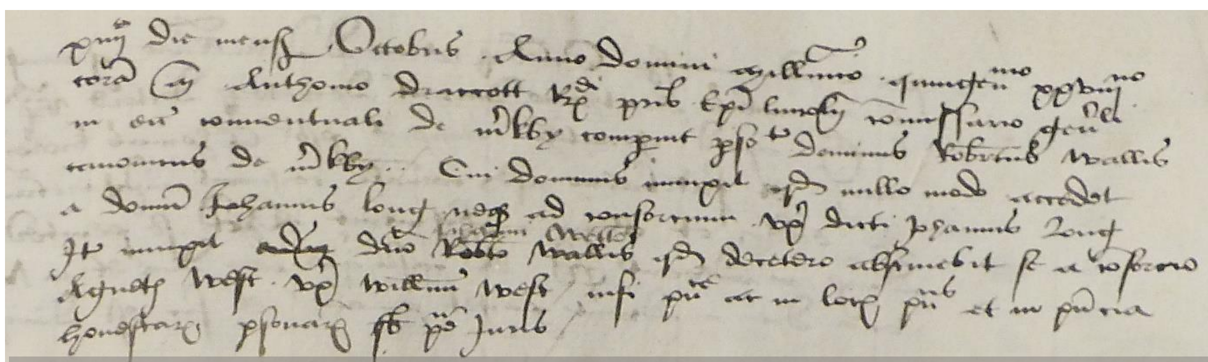

Fig.10: LAO/Cj.4/Q1.fol.26r (part).

We have no records covering the period from 14 to 26 October. A return to Lyddington would have meant a journey of seventy-five to eighty miles. From there to Lincoln, where Draycott sat next, approximately seventy more. 145 to 150 miles meant five to eight days in the saddle. There may have been good reason for such a return, but it seems unlikely.[77] Ordained in 1516, Draycott is recorded preaching at least once.[78] Perhaps, whilst replenishing supplies at the bishop's palace, catching up on

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[76] Wallys: xiiijmo die mensis Octobris Anno Domini Millesimo quingentesimo xxviijmo coram magistro Anthonio Draicott Reuerendi patris Epicopl Lincoln commissario generali in ecclesia conuentuali de Markby comparuit personaliter dominus Robertus Wallis canonicus de Markby · · Cui dominus iniunxit quod nullo modo accedet a domum Johannis Long neque ad consortium uxore dicti Johannis Long Item iniunxit ~~eodem~~ domino ~~Roberto Wallis~~ ^Johanni Welton^ quod decetero abstinebit se a consortio Agnete West uxor Willelmi West nisi publice ac in locis publicis et in presencia honestorum personarum sub pena Iuris': *Office c. Robertus Wallis/Office c. Johannus Welton*, LAO/Cj.4/Q1.fol.26r (*fig.11*).

[77] Markby to Lincoln is approximately 36 miles.

[78] Goodwin, rev. Chibi, 'Draycot, Anthony'.

correspondence and resting, he sought opportunity to engage in pastoral care. Equally, he may have prepared for the litigation ahead.

Seven defendants appeared in Draycott's court at St Peter's church, Lincoln, for the first hearing on 26 October: Richard Kelk of Laceby; Robert Rynger from Caister; Robert Holde, Richard Howsom, William Howsom, Hugo Shorte and Thomas Green from Walton. They had all been cited by someone referred to as 'a certain Weelles'. We do not know what the case was about. The plaintiff did not arrive. The case was dismissed.[79] Draycott may have been prepared to wait in case Weelles appeared. He may even have anticipated a lengthy hearing like that in Alford. In any event, he had another case to deal with. William Somercottes had been cited to appear at the instance of Robert and Alice Carr. It was a testamentary case. However, once again, no lawyers appeared and it required only an order for the defendant to hand over to Isabelle Peerson a horse that had been a legacy in the will of Margaret Turner for whom he was executor.[80] Nevertheless, although ultimately uncomplicated, it still had to be investigated, navigated and concluded.

On 29 October 1528 Draycott was in Grantham, a journey from Lincoln of twenty-five miles. He may have spent a night or more at the bishop's residence in Sleaford along the way. All three cases heard involved sexual offences but appear to have been straightforward.[81] As warden of St Leonard's Hospital in Grantham he may have had cause to visit there too.[82] After that it was thirty miles to Lyddington where, on 3 November, he heard an instance case begun, but not pursued, by the abbot of Sawtry against Johanna Peke, Thomas Durrant, his wife Agnes, John Stevins and his wife Margareta. He ordered it dismissed.[83] The journey had taken a month.[84] Draycott had not dealt with a great

[79] '… istis die et loco comparere non curauit causam suam uersus ipsos prosequtum dominus eosdem ab instantia sua dimisit': *Weelles c. Ricardus Kelk et al,* LAO/Cj.4/Q1.fol.26r.
[80] 'Deinde dominus iniunxuit eidem Willelmo Somercottotes* quod ipse infra xij ^[?]^ dies proximo Isabelle peerson quandam equam eidem legato in testamento margarete turner cuius testamenti predictus willelmus erit executor': LAO/Cj.4/Q1.fol.26r. *sic.
[81] *Office c. Thomas Brown*, *Office c. Robert Fenton*, and *Office c. Willelmus Paterson*: All at LAO/Cj.4/Q1.fol.26v. See also Chapter Five, pp.221, 224, 231, and, for Fenton and Paterson's cases, p.96.
[82] Goodwin, rev. Chibi, 'Draycot, Anthony'.
[83] LAO/Cj.4/Q1.fol.22
[84] And around 175 miles in total.

number of cases, most had been easily resolved, but importance of the bishop's court and the justice his presence represented had been visibly renewed and reinforced.

2.2 Procedural Flexibility

As promised, this section begins with analysis of the audience court's ability to secure attendance in cases of ecclesiastical prosecution. It investigates variations to *ex officio* procedure available when greater care and certainty was needed and in doing so examines how the spiritual jurisdiction sought to address risks of injustice before defendants were put to purgation. Insofar as instance cases are concerned, it examines evidence within LAO/Cj.4 of the usual, expected, procedures, that is to say citations, libels, articles, depositions, etc., but concentrates upon situations, akin to that Draycott met in Alford, where distinctly flexible approaches were preferred.

Office Cases

Although office cases arose through visitation it was rarely the most important source of disciplinary business.[85] Indeed, evidence from Leicester and Chichester suggests the bulk did not derive from churchwardens' presentments.[86] Rather, as Poos explains, 'the courts' basis for citation may often have been the end-product of a network of informing, offended community opinion, gossip and rumor at village level'.[87] Cultural norms played their part. Women's sexual offences, for example, became obvious once pregnancy was visible; men may have been allowed rather more licence. Similarly, communities may have been reluctant to intervene in domestic violence until a man's actions became

[85] Ingram, *Carnal Knowledge*, pp.82-86.
[86] Ingram, *Carnal Knowledge*, p.87. Records in LAO/Cj.2 suggest an approximate 50-50 split: *AECB,* p.xi. But, as records of judicial activity in 1525 and of Rayne's visitations in 1528 are incomplete, further analysis is virtually impossible. Besides, offending must have continued during years without visitation.
[87] Poos, 'The Heavy-Handed Marriage Counsellor', 307.

particularly disreputable. A certain amount of such violence was tolerated, almost expected, even seen as an element of patriarchal discipline, and wives were known to seek to hang on to the most wretched of marriages.[88] Nevertheless, despite awareness of those norms, it can be difficult to establish why, say, one court should intervene in some matrimonial matters but not others yet another take a different view. The Winchester judiciary, for example, seem to have proceeded more often against bigamists than their Norwich counterparts.[89] More widely, impediments to marriage were rarely prosecuted. That was probably because the system militated against dissolution and worked towards enforcement. Sometimes only parties to a marriage had the right to complain. Impediments may simply have been waived by an innocent spouse. Yet, cases were brought.[90] Drives, against sabbath-breaking say, were also periodically undertaken, but often we know little about why particular offenders were pursued.[91]

Sometimes a decision to prosecute may have come down to predilections of the local registrar or judiciary. Perhaps victimization played a part, although Wunderli found little to support long-held ideas of summoners frequently involved in over-zealous prosecution, bribery and extortion.[92] Each decision could also be bound up with conflicts of jurisdiction. Often the household, as the fundamental unit of local government, was firmly left in charge. If public order were at stake secular courts might be keenly engaged. But church courts were both community scrutineers and canonical authority. That meant they frequently chose active involvement, and enthusiastically too.[93] In cases like that against William Tann of Asfordby (Leicestershire), who assaulted Roger Woodhows, the local curate, then

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[88] Hanawalt, *The Ties that Bound*, p.214; Butler, 'Runaway Wives', 337. See also: Goldberg, *Women, Work and Life Cycle*; Sara M. Butler, *The Language of Abuse: Marital Violence in Later Medieval England* (Leiden and Boston, 2007); Bronach C. Kane, *Popular Memory and Gender in Medieval England: Men, Women and Testimony in the Church Courts, c.1200-1500* (Woodbridge, 2019), pp.19-20, 59-67, 100-101, 142, 220-222.
[89] Houlbrooke, *Church Courts*, p.70. Houlbrooke points out that cases proven in Norwich could result in more severe punishment.
[90] McSheffrey, *Marriage, Sex, and Civic Culture*, p.24; Donahue, *Law, Marriage, and Society*, pp.43-44.
[91] Woodcock, *Canterbury*, pp.80-81.
[92] Wunderli. 'Pre-Reformation London Summoners', 211.
[93] Poos, 'The Heavy-Handed Marriage Counsellor', 308-309; Ingram, *Carnal Knowledge*, p.393.

appeared in the audience court on 20 February 1529, admitted guilt and sought absolution, they may have been especially keen: such offences undermined the clergy's special status.[94]

Of course, some cases might have been doomed before the start; if an offender was long gone a conclusion was simple to reach.[95] Other decisions must have come down to evidence. Offenders were, after all, rarely caught in the act of adultery or fornication.[96] Fame, ill or good, was what mattered. Helmholz tells us that '[g]ood cause was presumed to exist' whenever citations were requested.[97] But twenty to thirty per cent of accusations recorded in the bishop of London's commissary court between 1483 and 1503 led to no citation at all. That, as Karras believes, suggests at least some were simply implausible.[98] Ronald Marchant describes attempts Nottingham Archdeaconry Court made to ensure it had good grounds for proceeding.[99] He was considering a later period, when proctors more often appeared in office cases and sometimes challenged the existence of public fame or the form of a citation, but courts in the 1520s were well aware of malicious gossip.[100] All in all, it seems likely there was at least some consideration of merits before proceedings commenced.

Ultimately, however, records regularly tell us little about how offences were detected and 'variations in composition of cases, curial emphasis, or prosecutorial zeal are likely to reflect the idiosyncrasies of individual jurisdictions as much as anything else'.[101] When considering overall effectiveness in the earliest stages of ecclesiastical prosecution, therefore, we are probably better served by looking at other things, such as attendance rates, instead.

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[94] *Office c. Willelmus Tann*: LAO/Cj.4/Q1.fol.35v.
[95] See *Office c. Margeria Benam*, at LAO/Cj.4/Q1.fol.36v, and the lack of proceedings against Richard Swafeld, discussed in Chapter Five at p.225.
[96] Houlbrooke, *Church Courts*, p.76. Of course, some were: Wunderli, *London Church Courts*, p.39.
[97] Helmholz, *Oxford*, p.318.
[98] Karras, 'The Regulation of Sexuality', 1015, 1020.
[99] Marchant, *The Church under the Law*, p.182.
[100] As to the increasing appearance of proctors in later office cases: Helmholz, *Roman Canon Law*, pp.117-119. Houlbrooke, similarly considering procedures in the mid-sixteenth century, refers to Bishop Parkhurst of Norwich who admonished scribes for granting citations without proper investigation: *Church Courts*, pp.52-53.
[101] Poos, 'The Heavy-Handed Marriage Counsellor', 293.

Ingram recently reminded us of 'an impressively high level of correctional activity' in Chichester.[102] Admittedly, Lander had shown that the huge increase in prosecutions during the early 1500s in the consistory and archdeaconry of Chichester commissary courts had really been maintained into the 1520s because of jurisdictional unification and efforts by Sherburne and his officers.[103] But Ingram found similar vigour elsewhere too. In Salisbury he discovered the great majority of seventy summoned in 1477 in connection with sexual offences attended court, albeit occasionally after suspension for initial contumacy. Very few did not turn up at all.[104] Even in notorious Southwark most of those prosecuted attended in the end.[105] During Atwater's episcopacy apparitors in the audience court sometimes had to report an inability to effect service of a citation and request service *viis et modis*, and some people did not attend. But, as previously stated, Bowker long ago established its records lent no weight to the Commons' criticisms of 1532.[106] In any case, getting a response was a problem contemporary secular courts also faced.[107] Examination of office cases within LAO/Cj.4 leaves the distinct impression that, despite other challenges, securing relatively prompt initial attendance continued to present no great problem for the audience court. Indeed, its citation procedures seem to have worked well.

Calculation of non-attendance rates from data within LAO/Cj.4 is slightly problematic. Firstly, there are occasions when although a defendant seems to have been recorded absent it would be unwise to accept that necessarily remained so. Henry Dorman of Brampton Dyngley (Northamptonshire), for instance, is named on the first folio amongst a list of several others elsewhere recorded absent and contumacious.[108] Many listed with him ultimately attended. The dates when they eventually appeared vary and most of their cases are unconnected to each other. Yet he is not

[102] Ingram, *Carnal Knowledge*, p.87.
[103] Lander, 'Church courts', pp.223-225.
[104] Ingram, *Carnal Knowledge*, p.126.
[105] Ingram, *Carnal Knowledge*, p.167.
[106] Chapter One, p.40; LAO/Cj.2/fol.92r; *AECB*, pp.xxi-xxiii.
[107] Writs issued in the Court of Common Pleas were frequently ignored: Sir John Baker*, The Oxford History of the Laws of England, Volume VI: 1483-1558* (Oxford, 2003), pp.331-332.
[108] LAO/Cj.4/Q1.fol.1r.

recorded anywhere else in LAO/Cj.4 at all. Perhaps he never attended. But he may have finally appeared after 16 March 1530 and record is now lost. The same could be said for William Coope, rector of Bolesby (possibly Bilsby, Lincolnshire), William Gregori of Thorp Bennifeld (modern equivalent unclear), and Thomas Adams of Northampton.[109] Robert Ashby, a curate of Bostworth (Market Bosworth, Leicestershire), is also named in the list, noted as suspended and unable to perform divine service. However, the first recorded hearing of his case is on the last folio of LAO/Cj.4. It could well have continued later.[110]

What is more, given only names, we cannot be entirely sure Dorman, Coope, Gregori or Adams were party to office cases at all. Robert Bolmer of Colmer (possibly Buckinghamshire), for example, is another named in the same list. Later, on 27 July 1529, he is noted absent despite citation by Robert Adams the apparitor. However, once again we know no facts. It could have been an office case, but we cannot eliminate the possibility it was instance in nature. The manuscript merely states he had been asked to attend in order 'to respond' and follows that with 'etc' rather than providing full detail. Bolmer had probably been cited to respond to some articles, but they were used in both instance and office proceedings.[111] Three more people, John Kellett, Christina Sulby and Stephen Estwyck, also appear in the list. Their case, discussed in Chapter Four, was probably pursued *ex officio promoto* but it too could have been an instance matter. All three eventually attended.[112] The same goes for John Ruddell of Stokerston, the final manuscript entry. We have no idea what the case was about. He does not appear on the afore-mentioned list. The entry merely orders him to attend a future hearing.[113]

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[109] All LAO/Cj.4/Q1.fol.1r.

[110] *Office c. Robertus Ashby* LAO/Cj.4/Q1.fol.1r & Q2.fol.67v.

[111] '... comparuit Robertus Adams apparitor et certificat se citasse Robertum Bolmer per eum personaliter apprehensis in parochiale de Colmer die Iouis xvmo uidelicet die mensis instante Iulij et ad respondendum etc et super hec fecit fidem

'Deinde dominus ipsum preconisari fecit et quia non comparuit ipsum pronunciauit contumacione et in penam contumacie sue eundem Robertum ab ingressu ecclesie suspendit etc': LAO/Cj.4/Q.1.fol.48v.

[112] LAO/Cj.4/Q1.fol.1r, 32v & 34r; pp.187-189.

[113] LAO/Cj.4/Q2.fol.67v.

There are also occasions when the record may not be wholly reliable. John Burton was prosecuted twice, on the first occasion jointly with Agnes Hartewell and on the second with Anna Hartewell. But we can neither confirm Anna and Agnes were one and the same nor rule out possibility they were not.[114] Robert Hareford and Thomas Gudeman are also mentioned on the first folio, but not elsewhere. They may never have attended. Like Dorman they may have attended after 16 March 1530. But perhaps their names were simply noted inaccurately: Thomas Hareford, vicar of Stapleford, did attend to admit fornication and John Gudman was party to an instance case.[115]

Of course, some did not attend when initially summoned. John Clay, whose case is considered in Chapter Five, did not appear on 16 May 1528. Nevertheless, he attended four days later admitting guilt. Although not immediately, and perhaps with community pressure, the procedure had plainly worked.[116] William Knybbys, accused of fornication, also failed to appear at his first hearing but attended later.[117] There were others too, including John Burton and his co-defendant in the second prosecution he faced. We do not know if either attended later but they might have.[118]

Nor was everyone brave enough to face eventual punishment. Alexander Maperley attended court on 18 July 1528 to admit he had had sexual relations with Margareta Waren and had made her pregnant. Warned to appear again, to show cause why he should not provide for the child, he failed to attend the next hearing.[119] Another, Thomas Presgrave, challenged an allegation he was the father of a child but failed to appear when the time came to purge himself.[120] Sometimes, like the case against Richard Morgan, rector of Ridlington (Rutland), we have a record of attendance, even an admission of guilt, but no indication whether punishment was given immediately or at a later, unknown, date.[121]

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[114] *Office c. Johannes Burton et Agnes Hartewell* LAO/Cj.4/Q1.fol.38r; *Office c. Johannes Burton and Anna Hartewell* LAO/Cj.4/Q2.fol.53r.
[115] LAO/Cj.4/Q1.fol.1r; *Office c. Thomas Hareford* LAO/Cj.4/Q1.fols49v & 50r; *Doctor Bollam c. Johannes Gudman* LAO/Cj.4/Q1.fol.27v.
[116] LAO/Cj.4/Q1.fol.12r; pp.201-204.
[117] *Office c. Willelmus Knybbys* LAO/Cj.4/Q1.fols39v & 44v.
[118] Agnes Hogkyns's prosecution stalled for over six months until she finally attended: *AECB*, pp.xiv,
[119] *Office c. Alexander Maperley* LAO/Cj.4/Q1.fols16v & 17v.
[120] *Office c. Thomas Presgrave* LAO/Cj.4/Q1.fols12v, 13r & 14v.
[121] *Office c. Ricardus Morgan* LAO/Cj.4/Q1.fol.21r.

Nevertheless, such problems aside, it is clear the vast majority of the seventy-six people we can be certain were defendants in office proceedings within LAO/Cj.4 attended court at some point after proceedings began.[122] Moreover, sixty-eight did so at the first time of asking.[123] As explained in Chapter One, of the sixty-two cases relating to sexual misbehaviour or some other socially and morally unacceptable conduct between men and women, some fifty-four resulted in an admission even if not exactly to that offence of which the defendant stood originally accused. Nine of the other seventeen resulted in admissions too. In only one case, that on 14 January 1529 against Richard Sutton accused of neglecting the church at Odill (Odell, Bedfordshire), can we be completely sure the defendant failed to attend at all. His non-appearance was not due to procedural failings: good service was proven. Bad weather and the distance between Odell and Lyddington (some thirty-five miles) could have been to blame. But several others appeared that same day (including Nicholas Odill who travelled sixty miles from Warkworth, Northamptonshire, to certify service) and John Hopkinson's mammoth journey referred to in the paragraph below was but a few days before. The order for sequestration suggests Sutton's contumacy was already manifest. His general disregard for clerical duties could well have been the reason.[124]

Such success ensuring initial attendance was almost certainly due in part to the audience court's lofty status and perceived power. During Atwater's episcopacy its presence must have been felt strongly. It sat in so many places that rarely did any accused have to make a long journey.[125] It may have been seen around the diocese less frequently during the 1520s, but it is unlikely it became something to be ignored. Even during Draycott's month-long circuit no one prosecuted failed to attend. Indeed, Robert Page and Alicia Sleps travelled fifteen miles through the autumn Fens though

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[122] This figure assumes Anna and Agnes Hartewell were two different people. Counting each individual person as a separate case (even if prosecuted jointly with someone else), there were seventy-nine office cases altogether. Besides John Burton, two other offenders, Henry Ward and David Harryson, were each involved in two cases. Ward was prosecuted twice concerning sexual crimes, Harryson twice for violence against the clergy. Both attended court each time. For more on Ward: Chapter Five, pp.230-232, 234-235.

[123] This includes Burton's attendance at his first prosecution.

[124] *Office c. Ricardus Sutton* LAO/Cj.4/Q1.fol.28r. See also LAO/Cj.2/fols31r, 34r, 66r, 81c, 85v, 86v; *AECB*, pp.xiv.

[125] *AECB*, p.xvi.

it may not have sat again locally for some considerable time.[126] Whilst some travelled a short distance other people came from much further afield and, like Sleps and Page, in arduous conditions. Some who travelled far were clerics. John Hopkinson, the chaplain of Gedney (Lincolnshire) who admitted sexual relations with Margaret Bowen to the court in Lyddington on St. Stephen's Day 1528, made a round trip close to 100 miles.[127] Richard Clark, another cleric, more than fifty miles.[128] That might be expected: after all the court was their disciplinary body. Some were not clergy but their ostensible or rumoured offence so serious it might have been better to appear than face continued community condemnation. Christopher Sawer, accused of incest with his niece, probably spent at least two days on a return journey to Lincoln cathedral from Gainsborough to face the chancellor on 10 April 1528.[129] But straightforward, less serious, offences committed by the laity also produced prompt response from afar. Richard Ratclyff, accused of simple fornication with Margareta Cowper, came fifty miles from Lamporte (Buckinghamshire).[130] Roger Johnson, who appeared in Lyddington on 5 June 1529 to admit making Margery Smith pregnant, travelled sixty-seven miles from Gainsborough.[131]

Of course, compliance and respect for authority were common in late medieval society. Yet, the audience court was never solely reliant upon power and status. Some defendants may have been gnawed by their conscience. Others may have felt antipathy towards ecclesiastical justice and, despite compliance, distinct unwillingness to attend. However, like others in the spiritual jurisdiction, but not all, the court also seems to have benefitted from attending to procedural formality where especially merited. In the matter of securing attendance its personnel grasped the importance of providing defendants with sufficient, but not excessive, information. The surviving citation in LAO/Cj.4 helps us understand how.

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[126] See pp.79-80.
[127] *Office c. Johannes Hopkinson* LAO/Cj.4/Q1.fol.27r.
[128] *Office c. Ricardus Clark* LAO/Cj.4/Q1.fol.17r.
[129] *Office c. Christoferus Sawer* LAO/Cj.4/Q1.fol.7r; Chapter Five, pp.235-237.
[130] *Office c. Richard Ratclyff* LAO/Cj.4/Q1.fol.13v.
[131] *Office c. Rogerus Johnson* LAO/Cj.4/Q1.fol.42v.

On 11 October 1529 John Jew, vicar of Brigstock (Northamptonshire), was instructed in writing to cite the afore-mentioned John Burton, Anna Hartewell and others. Although it may have been Jew himself, we do not know who requested issue. After formal greetings he was addressed (in Latin) as follows:

> to you, jointly and severally, we entrust and, strictly enjoining, command that you cite or cause to be cited peremptorily John Burton of Brigstock, gentleman, and Anna Hartewell of [*blank*], of the diocese of Lincoln, and also all and singular those whose names are written on the back of these presents, that they and each of them should appear before us, or our deputy in that regard, in the prebendal church of Liddington on Friday next coming, to answer according to law certain articles administered and objected by virtue of our office concerning only the welfare of the souls of them and each of them and further to do and accept what justice shall urge in that regard[132]

He was also told, in English, 'to se this citation trewly execute and to certefy yt your selfe yf this berar cannot speke with the forsayde persons'.[133] All this is relatively standard. But we can glean more.

Historians usually have little idea what was said when someone was cited. There are occasional, perhaps unreliable, glimpses. On 2 August 1529 Robert Baly told the audience court he had served Oliver Darkar, a butcher from Leicester. Darkar challenged his authority, and reportedly said 'what knave who made the a somoner', to which Baly said he replied 'Mary Maister Chaunceller and in his name I cite you'. It confirms successful delivery but possibly sounds too formal for the heat

[132] 'Uobis coniunctim et diuisim committimus et firmiter Iniungendo mandamus quatenus citetis seu citari faciatis peremptorie Johannem Burton de brigstok generosum et Annam hartewell de [blank] dioc' lincoln Necnon omnes et singulos quorum nomina in dorso presentium conscribuntur quod compareant et eorum quilibet compareat coram nobis aut nostro in ea parte deputato in ecclesia prebendale de lidington die ueneris proxime futuro Certis Articulis meram animarum suarum salutem concernentibus eis et eorum cuilibet ex officio nostro ministrandis et obijciendis de iusticia responsuros ulteriusque facturos et recepturos quod iusticia in hac parte suadebit': *Office c. Johannes Burton et Anna Hartewell* LAO/Cj.4/Q2.fol.65Ar. The surviving part of fol.65Av is blank but other names referred to may have appeared on the torn-off section (see Chapter One, pp.48, 51 and *fig.4*. *Quorum nomina* citations appear more commonly in the later sixteenth century: Marchant, *The Church under the Law*, p.181; Kathleen Major, 'The Lincoln Diocesan Records', *TRHS*, 22 (1940), 39-66 at 51.

[133] LAO/Cj.4/Q2.fol.65Ar.

of such a moment.[134] Here we can at least see the information provided to Jew about what was required of the defendants, where, when and why. At first glance that may not seem terribly helpful. According to the law, some specification of the expected place of appearance was required. Helmholz explains that that, for the most part, was what usually happened.[135] On 20 October, when they did not attend, Jew said that that was what he had passed on.[136] Baly claimed to have said similar things to Darkar too.[137] But Helmholz also points out that in certain courts 'it became the custom to suggest that the person cited appear "wherever we shall be in our city or diocese"'.[138] His suggestion, that such place 'could be easily discovered', may be correct, but vocalising such imprecision must have increased the risk of failure.[139] Of course, one survival is insufficient to establish the court's customary scribal practice or the expectations it had of agents at citation. Its scribes and apparitors may even have been imprecise occasionally. But success ensuring first-time attendance suggests such vagueness was rare. If a citation were wholly oral little would be achieved by an apparitor uttering only vague words. If the burden to discover the where and when of any hearing was upon recipients little would be gained by equivocation, unwillingness or inability to reply with detail: the registrar must almost always have known when handing out instructions; if initially playing dumb enabled an agent to effect bribery, it increased risk of discovery.[140] If written citations were similarly indefinite recipients would have had to be alert enough to make further enquiry immediately vital information about time and place was not provided. Here Jew was to witness the process of citation or cite the defendants himself (and could therefore have been asked) but one can imagine circumstances where provision of insufficient information direct from a written citation might similarly cause undeserved suspension

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[134] The record also notes Baly explaining he had been hit seriously about the head ('cum pugno suo super caput suum grauiter processit') and that although Darkar subsequently accepted service he had tried to hit him again with the apparitor's own halberd ('tunc ipse Oliuerus accepit in manum suam uostrum "lez halber" et cum eodem uoluit percussisse dictum Robertum si non fuisset impeditus'): *Office c. Oliverus Darkar* LAO/Cj.4/Q1.fol.21v.

[135] Helmholz, *Oxford*, pp.319-320.

[136] *Office c. Johannes Burton et Anna Hartewell* LAO/Cj.4/Q2.fol.53r. He says nothing about the others.

[137] LAO/Cj.4/Q1.fol.21v.

[138] Helmholz, *Oxford*, pp.318-319.

[139] Helmholz, *Oxford*, p.319.

[140] Those serving citations were expected to do so properly or face consequences: Chapter Three, p.153-154.

even excommunication. Courts were willing to entertain objections about sentence if citations were considered invalid.[141] To modern eyes, it may also seem unjust that nothing specific was mentioned about the offence(s) alleged. It was acknowledged people should know what charge they faced but citations were sometimes read out in church. Too much precision risked bringing innocents into disrepute and unnecessary scandal to the parish.[142] All in all, the audience court was most likely doing these little, essential, things well.

Woodcock suggests that in most Canterbury prosecutions citation was fundamentally, and completely, an oral process. But, as he also explains, if serious crimes were discovered it was usual for articles (questions) to be drawn up and read out in court.[143] Articles were used in Lincoln's audience court too. With Burton and Hartewell's citation a lone example in LAO/Cj.4, and nothing similar in *An Episcopal Court Book*, no trawl elsewhere in the Lincoln archive could identify with certainty those circumstances in which it habitually decided such additional scribal effort was necessary. In any event the flexibility courts valued so much probably meant hard and fast rules were unlikely to exist.[144] Cost may have come into it. After all, who would pay if defendants failed to attend?[145] Nor can we rule out episodes of scribal laxity or variations in judicial preference. In a system relying rather more upon purgation than live scrutiny of prosecution witness evidence, its records can also be hard to interpret. Nevertheless, greater comprehension is possible.

Whilst much within LAO/Cj.4 might first suggest the haphazard, closer examination reveals a sophisticated approach where the court felt free not only to move seamlessly from simplest oral examination to use of pre-prepared written articles but from there to detailed inquisition constructed "on the hoof" in direct and immediate response to live evidence. It was a methodology built upon the

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[141] Helmholz, *Oxford*, p.319.
[142] Helmholz, *Oxford*, p.320.
[143] Woodcock, *Canterbury*, p.70. Evidence can also be seen in *Whalley*, eds. Higden Society & Lynch, pp.39-41, 59, 66-67,
[144] Sometimes defendants even asked for them to be in writing: LAO/Cj.2/fol.57r (*Office c. Johannes Faringdon*).
[145] 'Court fees could not be collected from a fictional entity like the public voice': Wunderli, *London Church Courts*, p.55.

need to constantly assess the requirement of *publica fama*. *Publica fama* can be considered akin to the modern American legal concept of "probable cause".[146] Without it, defendants who denied offending could not be put to purgation. It had to be held by good and substantial people (i.e. at least two and neither the accused's enemies nor the untrustworthy) and be more than mere suspicion. Rumour, unless openly and creditably disseminated, was not enough.[147] The process itself also had some safeguards. Even though John Holand, accused of fornication with someone called Johanna, was put to purgation and failed, it was quite often successful.[148] Evidence Ingram uncovered suggests most compurgators were indeed 'the respectable neighbours that they were supposed to be'.[149] Occasionally defendants even actively sought it to clear their name.[150] But the court still needed to take care beforehand and it did.

Frequently there is nothing to see about the use of articles within an individual record. Nor is the existence of public fame always recorded. Given many cases were straightforward and orality was probably the default in Lincoln as elsewhere that is unsurprising. Occasionally articles are mentioned when offences were admitted straightaway. On 29 October 1528 Robert de Fenton, cited for incontinence with Helena Schlowe and Johanna Jude, came before the commissary-general and admitted the article alleged.[151] But that did not always happen. On the other hand, we can find evidence of their use when even simple offences were denied. On the same October day William Paterson appeared accused of incontinence with Katerina Haukes, wife of Thomas Haukes. He denied the article and was told to purge himself later in Lyddington.[152]

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[146] Helmholz, *Oxford*, p.609.
[147] Helmholz, 'Crime, Compurgation and the Courts of the Medieval Church', 14, *Oxford*, p.610.
[148] *Office c. Johannes Holand* LAO/Cj.4/Q1.fols15v & 18r; Helmholz, 'Harboring Sexual Offenders', 261.
[149] Ingram, *Carnal Knowledge*, p.126.
[150] Poos, 'Sex, Lies, and the Church Courts', 588-589; Helmholz, *Oxford*, p.611.
[151] 'Robertus de Fenton in parrochia de bekingham notatus de incontinentem cum helena Schlowe et Johanna Jude de eadem et fatebatur articulum': *Office c. Robertus de Fenton* LAO/Cj.4/Q1.fol.26v.
[152] 'Willelmus Paterson de Grantham iuratus notatus de incontinentem ad katerin haukes uxor Thome haukes de eadem negauit articulum habet ad se purgandum coram domino commissario apud Lidington': LAO/Cj.4/Q1.fol.26v.

Sometimes the lack of evidence that written articles were used occurs even in serious cases. None are mentioned, for instance, in Christopher Sawer's case.[153] Nor are they are recorded in the prosecution of Robert Greg, John Symson (alias Baker) and Ralph Urmeston. The same occurs in *Office c. Willelmus Baly et Johannes Jolybrand*.[154] There is a "grey area" too. In prosecutions concerning sexual intercourse between a man and his female servant there are cases where articles are recorded and others where they are not.[155]

Articles were used when clerics were accused of interfering with due process.[156] One might expect such offences to be considered important. Sometimes they are recorded in proceedings against both a cleric and the woman offending with him. On 1 February 1529 John Bond, a chaplain from Oakham, answered certain articles ('*respondendo certis articulis*') alleging the existence of public fame and to confirm incontinence with Johanna Claypole and her pregnancy.[157] In turn, Claypole 'admitted the article' that alleged she had lived incontinently with and was pregnant by him.[158]

However, their use is perhaps most commonly recorded in proceedings against clerics accused of misconduct. It is not always documented. They were not, for instance, noted during the prosecution of Richard Clark the chaplain of Bolgrave.[159] Nevertheless, we can learn more from Robert Bekket's case. On 18 June 1529, Bekket, a curate, was ordered to reply to articles about an alleged attempt to

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[153] LAO/Cj.4/Q1.fol.7r; p.92.
[154] *Office c. Robertus Greg, Johannes Symson alias Baker et Radulphus Urmeston* LAO/Cj.4/Q1.fols45r & 45v; *Office c. Johannes Jolybrand et Willelmus Baly* LAO/Cj.4/Q2.fol.54v. As to their detail, and more on *Sawer*: Chapter Five, pp.235-237.
[155] Contrast *Office c. Johannes Doughty* (LAO/Cj.4/Q1.fol.34v) with *Office c. Leonardus Brokden* (LAO/Cj.4/Q2.fol.67v). Both cases involved immediate admission of guilt and pregnancy. Articles are recorded in the first but not the second. For more on both cases: Chapter Five, pp.233-234, 241.
[156] See *Morgan*, p.90.
[157] 'In primis dominus sibi obiecit quod est diffamatus de incontinentia cum quadem Johannam Cleypole de Okeham predicto ffatetur

'Item dominus sibi obiecit quod carnaliter cognouit eandem Johannam pluribus et iteratis uicibus et primo circa festum sancti Laurentij ultimo et diuersis uicibus citra predictum festum *(space)* ffatetur et credit quod impregnauit eandem': LAO/Cj.4/Q1.fol.33r.

[158] 'comparuit dicta Johannna Cleypole et Cui dominus obiecit quod uixit incontinenter cum domino Johanne Bond capellano et etiam quod impregnatur per eundem ffatetur articulum': LAO/Cj.4/Q1.fol.33r.
[159] *Office c. Ricardus Clark* LAO/Cj.4/Q1.fol.20v.

engage the wife of William Tailboys in sexual relations.[160] The existence of public fame was not specifically noted but was important. Bowker considered the case in *Secular Clergy* convinced it provided evidence of anticlericalism.[161] Here I concentrate upon its procedural and substantive elements.

In the first article Bekket was asked whether he had sought to entice his victim by 'saying he must nede have his pleasur of her' and at the time had 'caste a noble of golde upon the bed'.[162] Denying this vigorously he responded that the woman had admitted the allegation was a lie in the presence of neighbours.[163] He also denied several other allegations put to him in articles, including that he had asked Tailboys wife 'to goo to oon Ganghers wyff and bad her to com drynke with hym for sayng she is a well favoryd woman And that I trust she be a better felow than thow art'. However, he admitted asking for a citation against the same woman and said that the 'neigbours did intret hym and gaue hym xxd And the woman uidelicet (that is to say) Tailbois wiff did aske hym forgevenes'. Bowker believed this 20*d* a bribe, but no note confirms the judge considered it one. It could have been a voluntary goodwill payment by those neighbours to meet Bekket's costs once they realised the allegations were false; curates were unlikely to be wealthy.[164] Bowker also assumed Bekket admitted calling the churchwardens 'false perjured churles' but, in fact, he denied this too.

The record went on:

> Item he sayeth ther was ij maidens in Sympson his howse did make a babe of clowtes and they wold have cristened it as it was showed hym And this deponent showed it to Sympson and said it was ill doon so to doo but he did aske no money of hym nor had noon of hym

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[160] 'comparuit personaliter dominus Robertus Bekkett curatus de wollisthorp quem dominus iurato ordinavit de dicendo veritato certis articulis': *Office c. Robertus Bekkett* LAO/Cj.4/Q1.fol.44r.
[161] Bowker, *Secular Clergy,* pp.120-121.
[162] 'In primis Interrogatus an persuadebat uxorem willelmi Taylboys ad libidinem saying he must need … [*etc*]': LAO/Cj.4/Q1.fol.44r
[163] 'Negat totum et dicit quod dictam mulierem fatebatur coram vicinis fecit mendacium in hac parte': LAO/Cj.4/Q1.fol.44r
[164] Dismissal fees could be as much as 20*d*: Wunderli, *London Church Courts,* p.54.

It is entirely possible the two female villagers disliked Bekket and were seeking his removal. Malicious prosecutions were far from unknown.[165] If one admits such a possibility, even though its reasons remain unclear, one must also admit Bekkett's heightened emotion, even his disgust.[166] It may have been visible too. But Bekket also claimed support from the vicar of Lyddington who had crucial evidence. The judge immediately enquired and the vicar confirmed hearing the churchwardens present in court 'saye that they were well servid in ther dyvyn service' and that Tailboys (one of the churchwardens) had also said to him 'he wolde forsake his wyff in all that matters and said plainly she lyid apon him and she askyd the preste forgeunes'. Such conversation could be easily checked.[167] The judge went on to warn Bekket, perhaps not against misbehaviour but against the dangers that women were felt to pose. That the men considered they were 'well served in ther dyvyn service' hardly suggests they felt uncomfortable with his continued presence.

Several things are clear here. The articles were meticulous, naming particular people and referring to conversations in detail. Even if not undertaken before issue of proceedings, such precision involved preparation and some preliminary evaluation of the *publica fama*. Yet, live evidence and direct personal knowledge was always regarded by canon law as more affirmative.[168] The impromptu investigation the judge carried out when turning for clarification to the vicar of Lyddington meant previously credible public fame evaporated away. In his mind a fairer, more considered, result had been achieved.[169]

Sometimes in serious cases a comprehensive guilty plea may have meant recording every response to specific articles felt unnecessary. But offences varied in complexity as well as seriousness.

[165] False charges seem to have been relatively common in East Anglia: R. L. Storey, 'Malicious Indictments of the Clergy in the Fifteenth Century', in *Medieval Ecclesiastical Studies in Honour of Dorothy M. Owen*, eds. M. J. Franklin and Christopher Harper-Bill (Woodbridge, 1995), pp.221-240.
[166] One allegation is denied 'penitus' that is to say, 'from deep inside'.
[167] Later courts relied much more on presentments direct from churchwardens which were already presumed *prima facie* reliable: Helmholz, *Oxford*, p.610.
[168] *Liber Extra,* X 2.20.27 (*De Testibus et Attestationibus)*; Helmholz, 'Crime, Compurgation and the Courts of the Medieval Church', 15.
[169] Kane, in *Popular Memory and Gender*, p.57, reminds us that '[m]ale fantasies of the dangers of women's collective talk shaped portrayals of female testimony' and that '[c]ommunal gatherings of women could be associated with the conspiratorial intent to fabricate evidence'. One alternative reading, therefore, might be that the women faced an unwinnable battle to be believed.

Written articles could certainly assist.[170] Some allegations might be admitted, some not. Sometimes circumstances required detailed investigation simply to understand what had taken place and to discover what exactly each defendant confessed to or denied. A switch to *ex tempore* inquisition could help in that regard, as it could with enforcement of discipline. Indeed, that is what happened in *Greg, Symson et Urmeston* and in *Baly et Jolybrand*.[171] But sometimes, however complex, a case might not be concluded in just one hearing because the alleged public fame and the defendant's replies required further and more careful investigation.

John Caryngton, rector of Stoke Dry (Rutland), appeared on 7 July 1529 to answer allegations of sexual misconduct with a certain Barbara, a single woman. First it was suggested 'he had lived incontinently and had had several children'. In response he admitted he had lived that way but only had two children and that that had been some fifteen years previously.[172] He also admitted he had once lived with Barbara, and had been ordered by the Chancellor to perform public penance for doing so, but denied living with her thereafter.[173] Two further questions followed. In translation they, and Caryngton's replies, read:

> Item: we put it to you specifically that from your costs and expenses in whole or in part she, Barbara, is kept in the countryside – admitted that he handed Barbara 3*s* 4*d* because she was sick
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> …

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[170] LAO/Cj.2/fols.45r-47v, 50v (*Office c. Katerina Welles (Prioress of Littlemore*).

[171] Chapter Five, pp.226-230, 238-244.

[172] '… quod incontinenter uixit et quod habet non nullos proles ffatetur quod habet duas proles ad xvj annos elapsos sed nullam citra illud tempus': *Office c. Johannes Caryngton* LAO/Cj.4/Q1.fol.45v.

[173] 'Item quod tenuisti in domo tua quandam Barbara *(space)* soluta et quod uixisti incontinenter cum eadem ffatetur et dicit quod peraget penitenciam publicam ex iniunctiue domini cancellari

'Item quod tibi obijcimus quod tu citra tempris tue correctionis incontinenter uixisti cum eadem Barbara Negat': LAO/Cj.4/Q1.fol.45v.

Item: we put it to you specifically that around the last festival of Pentecost you were present in Derby or Stafford to speak with the same Barbara – denied vigorously[174]

The court could have ordered purgation immediately. It did in *Holand*. But here Caryngton had supplied an apparently legitimate reason for handing money to Barbara and denied being in either Derby or Stafford. There was therefore a high risk of injustice: dishonesty to the court was unlikely to play well, yet he might also be convicted unfairly. There was no one the court could turn to immediately, as it had in *Bekket*, so further enquiries into the allegations and replies were sensible.[175] The potential risks of future purgation were also simultaneously limited. Caryngton may have later purged himself in respect of anything he continued to deny but he ought not to be put to that task without *prima facie* evidence suggesting guilt. Removing unsubstantiated matters from further attention helped prevent greater public scandal. Clerics were normally expected to stand as compurgators for clerics.[176] They would probably also want to know of what exactly their colleague remained accused. Better justice could be done. Sadly, no further record tells us more.

Instance Cases

Although somewhat shadowy, evidence of the use of formal procedure in instance litigation is visible within audience court records all the way between citation and definitive sentence. Yet we regularly also see practicality, common sense and a distinct lack of rigidity.

One decision often had to be made soon after court proceedings commenced: whether arbitration might be preferable. It can be difficult to grasp why one dispute proceeded formally and

[174] 'Item tibi obijcimus et articularis quod tuis sumptibus et expensis pro parte uel in toto ipsa Barbara custoditur in patria ffatetur quod tradidit dicte Barbare iijs iiijd pro eo quod ipsa infirmabatur …
'Item tibi obijcimus et articularis quod citra festum penthecostes ultimo tu affuisti in coram derbie uel Stafford causa loquendi cum eadem Barbara Negat prorsus': LAO/Cj.4/Q1.fol.46r.
[175] 'Deinde dominus duxit deliberandum et melius inquirendum super promissis et super responsionibus suis': LAO/Cj.4/Q1.fol.46r.
[176] Helmholz, *Oxford*, p.615.

another by arbitration, but the latter certainly offered flexibility and frequently the best prospects of long-lasting settlement. It took a case outside the usual procedural regime and was sanctioned, endorsed, regulated, even encouraged by the canon law; reaching extra-judicial compromise was always considered worthy. A well-known method of resolving disagreement in medieval society, tithes were a good subject for it. Defamation cases too. Even very occasionally matrimonial disputes (though that should have been impossible). Usually to remove a dispute beyond strict formality first involved the parties agreeing to arbitrate. Sometimes act books provide evidence of the subsequent process. Terms of reference would be agreed. They could include many things beyond the usual scope of spiritual jurisdiction. An arbitration committee would be appointed by the parties themselves. Judges have even been recorded ordering parties to agree to a solution. Whether any agreement was later reached is often unknown. But it was sometimes noted and for good reason. If a promise was made to accept an arbitration award ('*arbitrium*') future breaches were actionable under the *fidei laesio* jurisdiction.[177] In LAO/Cj.4 Roger Flower and John Claypole of Oakham agreed all their disputes should go to arbitration.[178] Roger Hartyngdon and William Lee, the latter of whom was accused of defaming the former by saying 'That he had stolyn a busshell of malte', also agreed to it and appear to have resolved their differences.[179] Rectors Thomas Mornford and Robert Carter resolved a tithe and oblations dispute by arbitration and agreed to use the same arbitrators, Laurence Bowner, Richard Stokes, and as chairman ('*imperium*') the Chancellor, in respect of other disputes.[180] Lawyers and the

[177] LAO/Cj.2/fols57r (dispute about church repairs being paid from the estate of Richard Medowe a deceased rector), 89r (*Willelmus Dewbury c. Nicholas Latham* – testamentary dispute); Edward Powell, 'Arbitration and the Law in England in the Late Middle Ages', *TRHS*, 33 (1983), 49-67; Swanson, *Church and Society*, pp.177-178; Helmholz, *Marriage Litigation*, pp.103, 135-137, *Oxford*, pp.328, 362, 446; *Whalley*, eds. Higden Society & Lynch, at pp.50, 90.
[178] LAO/Cj.4/Q1.fol.3r; Chapter Three, p.142 (footnote 171). Claypole may have previously worked at the audience court: *AECB*, p.viii.
[179] LAO/Cj.4/Q1.fol.22v.
[180] 'comparuerunt personaliter dominus Thomas Mornford Rector ecclesie parochiale de Aldwhiche sanctorum et dominus Robertus Carter Rector ecclesie parochiale de Aldwhiche petri Lincoln' dioc' et in materia controuersie inter eosdem pro oblacionibus et decimis inter et aliis juribus ecclesiasticis Dictorum suorum beneficiorum compromiserunt [?] in dominum Laurencium Bowner Rectorem ecclesie parochiale de Waddenhoo et dominum Ricardum Stokes vicarium de Thungdon arbitros et in dominum cancellarium imperium inter eosdem [?] indifferenter electos et promiserunt fide media coram eodem domino cancellario stare laudo et arbitrio eorundem arbitrorum et imperis in omnibus causis inter eosdem pendente Ita quod

church could still be involved but disputes were removed from the public eye.[181] Sometimes such disputes were not even about obtaining a judicial decision but about getting a tolerable result. Arbitration could help achieve that too.[182]

Of course, some cases both began and continued in formal fashion. They may not have concluded with a definitive sentence but progressed at least some way towards that end. Yet even during this more formal process flexibility is visible.

In LAO/Cj.4 we can see reference to a citation in a defamation case, *Henricus Bretan c. Ricardus Ingram* (referred to in Chapter One).[183] In another, Thomas Burton, a vital witness, is ordered by the judge to be cited.[184] Richard Kelk and his co-defendants confirmed they had been cited to attend court just before Commissary-general Draycott dismissed the case against them when the plaintiff failed to appear.[185] Service of a citation was confirmed in the testamentary case brought by Robert and Alice Carr against William Somercottes.[186] On 31 January 1528 Christiana Page of Spalding appeared in Lyddington cited at the instance of Ambrose Rushe. He failed to attend. The case was dismissed. She was awarded costs.[187] Similar references occur in LAO/Cj.2.[188]

Libels are also mentioned in LAO/Cj.4. On 20 April 1528 one was delivered by Johanna Turner, a servant, who represented herself in a case against John Nichols. Reading from a copy, Chancellor

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huiusmodi laudum siue arbitrium feratur citra primum diem mensis maij proximo pro dictos arbitros et imperium suie dominos eorundem: LAO/Cj.4/Q1.fol.30v.

[181] Brundage, *Medieval Origins*, p.407.

[182] Brundage, *Medieval Origins*, p.446.

[183] LAO/Cj.4/Q1.fol.14v; Chapter One, p.25.

[184] 'Deine dominus decreuit Thomam Burton de Eston citari': *Johannes Kirkby c. Agnes Burton et cum Willelmus Dawkyn (competitor)* LAO/Cj.4/Q2.fols63v & 64r. The quotation is at fol.64r.

[185] 'citati ad hos diem et locum ad instanciam cuiusdem Weelles': LAO/Cj.4/Q1.fol.26r; p.84.

[186] 'Willelmus Somercottes de Somercottes citatus ad hos diem et locum ad instanciam Roberti Carr de Tetforth et Alicie uxore': LAO/Cj.4/Q1.fol.26r.

[187] comparuit personaliter Christiana page de Spalding citata ad instantium Ambrosij Rushe ad comparendum iste die et loco ut asseruit Et quod dictus Ambrosius non prosequtus est suam causam ideo dominus iudex dimisit eandem mulierem suam exspensis': LAO/Cj.4/Q1.fol.28v.

[188] For example: LAO/Cj.2/fols6r, 81v.

Rayne confirmed it concerned a disputed legacy.[189] Brundage suggests libels ought to have been prepared by advocates or proctors because they required careful thought, needed to identify the parties, define the claims, explain the legal grounds and specify the remedy sought.[190] Yet, English practice sometimes dispensed with them altogether. Though not in Turner's case, because of the libel mentioned, the words '*uiua uoce allegat*', indicating no prior document at all had been lodged, were frequently used when litigants represented themselves.[191] Sometimes, even if there was a libel, it may merely have stated the claim in general terms and simply asked for justice to be done. In Turner's case, as I explain below, it may have been more sophisticated.[192] Yet Rayne seems to have found nothing wanting within it and entirely content to supervise and engage with any subsequent process whether less formal or not.

Of course, from time to time lawyers were involved. When they were, procedural steps in court were often carefully and precisely noted. We cannot see every formality involved, lawyers' dress, for instance, their ritualistic and deferential behaviour to elder brethren and judiciary, or their way of speaking in court, but some we can.[193] In the matrimonial case of *Thomas Styson c. Elisabeth Digby et cum Thomas Brasebrig (competitor)* Thomas Webster, Styson's proctor, offered up his client's libel in the presence of the defendant's lawyer, Thomas Booth, and at the same time exhibited the procuratorial authority essential to his being allowed to speak.[194] Booth was given his copy and until the second hour of the afternoon to respond. It was important he be allowed time to think and to take instructions.[195] Through him Digby confirmed the plaintiff's allegation of marriage in his libel was true

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[189] 'comparuit personaliter Johanna Turner soluta de Slaweston in quadam causa testamento contra Johannem nicols de eadem Othorp per ipsam mota dedit libellum in presentia eiusdem Johannis preteritis copiam cui dominus decreuit copiam negavit huiusmodi legatum fuisse eidem Johanne directum relictum': LAO/Cj.4/Q1.fol.7v.
[190] Brundage, *Medieval Origins*, pp. 411, 418-419.
[191] For example, *Robertus Edgeley c. Ricardus Tanseley*: LAO/Cj.4/Q1.fol.27r.
[192] See pp.106-109.
[193] For lawyers' behaviour in court: Chapter Three, p.132.
[194] 'deinde obtulit libellum in presentia magistri Booth et exhibens procuratorium suum pro dicta Elizabeth et tamen se partem pro eadem et preteritis copiam libelli': LAO/Cj.4/Q1.fol.31r.
[195] Brundage, *Medieval Origins*, p.416.

but also resisted Brasebrig's claim she was instead married to him.[196] Even before such a first hearing there would likely have been some formality. Webster would have had to seek issue of the citation and discuss a suitable date and place in the calendar for the case to begin. If more than one case was listed each day that in which the most senior proctor appeared would often be heard first.[197]

Flexibility and adaptability within instance proceedings can perhaps be best seen by looking at the recording of depositions and responses to articles. Depositions were normally taken outside the courtroom, secretly, and probably written up afterwards by a scribe.[198] They were most often read aloud in the term set for publication of testimony. The original was deposited with the court and a copy provided to each party.[199] But, within LAO/Cj.4, though Latin words like '*ut dicit*' occasionally appear, and though some language is in phraseology suggestive of legal formulae which could have been created inside or outside the courtroom, they are clearly not only recorded in the vernacular (which was common by the sixteenth century) but frequently found amongst and between records of procedural steps undertaken in the courtroom the very same day. When responses to articles are recorded, they too are often in English and occur amongst and between records of this contemporaneous procedural manoeuvring. There are crossings-out, interlineations, and the script often appears less neatly written. It is, as a result, obvious that evidence of both kinds was often noted "live" in court rather than elsewhere. We have already seen something of this during Draycott's trip to Alford. If we return to the case of *Turner c. Nichols*, we can learn more.

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[196] 'Quia hora secunda adueniens magister Booth procurator predicte Elizabethe respondebat libello oblate siue secundarie petitionem et fatebatur contenta in eadem esse uera et quod uerum matrimonium est inter eosdem contractum': LAO/Cj.4/Q1.fol.31r. Later, when Simon Kent (Brasebrig's proctor) alleges his client has married Digby Booth contests it ('Both contestatus et legitime negatiue dicendo narrate prout warrantur etc uera non esse': LAO/Cj.4/Q1.fol.31v).
[197] Brundage, *Medieval Origins*, pp.416-417, 421.
[198] Helmholz, *Marriage Litigation*, pp.19-20.
[199] Helmholz, *Marriage Litigation*, p.20.

After delivery of the libel, Turner asked for several witnesses to be sworn.[200] The defendant, who also seems to have appeared in person, objected to their being produced but was overruled.[201] No reason behind his objection was noted but it is clear the witnesses were present in court. The chancellor may have been persuaded by the plaintiff to overrule the defendant. Perhaps most likely he decided the best thing to do was hear the evidence for himself and weigh its importance later.[202]

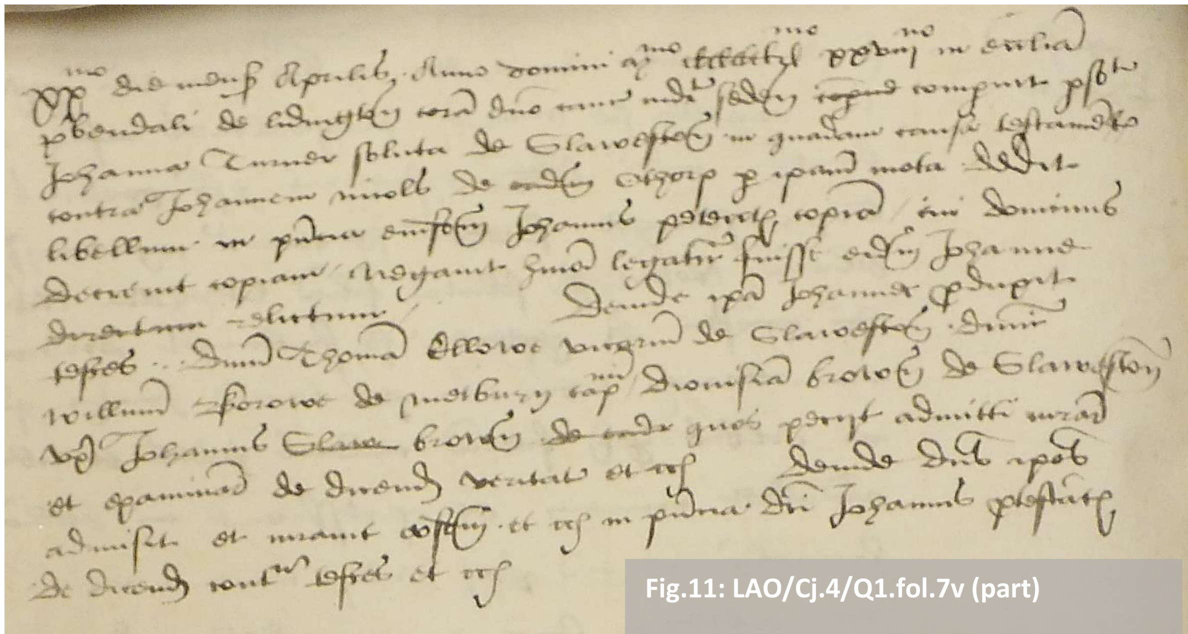

Fig.11: LAO/Cj.4/Q1.fol.7v (part)

Thomas Ellowe, forty-two years of age and the vicar of Slaweston (Slawston, Leicestershire), gave evidence first. An extract reads as follows:

> Interogatus quid nouit in causa dicit [Asked what he knew of the cause he said] that henry nicols off othorp in the parrishe off Slaweston dyd bequeth to Johan Turner ~~xx pounds~~ his seruante xx pounds to his* mariage interogatus quomodo fuit dicit [asked in what way he said] that he was present et audiuit quando dictus henricus nicols sic voluit et disposuit [and heard when the said Henry Nichols wanted and disposed thus] ffor he saith he hard hym so dispose

[200] 'Deinde ipsa Johanna produxit testes … *[witnesses named]* quos peciit admitti iurari et examinari de dicendo veritate et etc': LAO/Cj.4/Q1.fol.7v

[201] 'Deinde Dominus ipsos admisit et iurauit eosdem et etc in presentia dicti Johannis protestantes de dicendo contra testes et etc': LAO/Cj.4/Q1.fol.7v.

[202] As a servant Turner could have obtained legal representation. Sometimes lawyers were appointed to the poor in order to level the playing field. I could discover nothing more about the defendant's circumstances. For further reading: Brundage, 'Legal Aid for the Poor', *passim*.

and give to hyr diuerse tymes in the tyme off his syknes ffirst he said I will give Johan my seruante xx livres and I pray you counsell my ~~kynnysman~~ son ~~to mary hyr~~ John nicols to mary hyr and this deponent said I wyll give hym suche counsell as I can but I think he wilbe at his libertie and after that ~~the said within a~~ in the tyme off his syknes sent for this deponent agen and after oyther convercacons hadd said I give Johan my seruaant her present xx pounds whiche was at that tyme in kepyng as he said off henry sputte of halowghton And after that on the thuresday bifor he departed sent for this deponent and said I give Johan my seruante then beyng present twenty pounds to hyr marriage I pray you write it in my booke and the deponent said what booke in your will and he answered and said ye then this deponent said I have not your wyll I trowe you soon hath it but I shall write it in a byll off Remembrance unto the tyme the wyll may comme into my handes and then I shall putt it into your wyll

Interogatus de tempore dicit [asked when this was he said] the last tyme was oon the thuresday bifor he departed as he remembreth in domo dicti henrici ~~tunc~~ ~~ibidem~~ Et ista audiuit tunc et ibidem in presentia domini Willelmi borowe et Dionisie Brown sed de alijs presentibus nescit [and he heard this then and there in the presence of William Borrowe and Denise Brown but as to others present he did not know] …[203]

After further evidence Ellowe concluded with formal words confirming his independence and desire only for justice to be done.[204]

William Borrowe, a chaplain from Medbourne (Leicestershire) was next. In the note we see indication of further flexibility. Borrowe said he had known both plaintiff and defendant for a year or more and gave answers to five specific articles. These may have been written in Latin. Certainly, some of the responses were.[205] They may have been written in a separate document by the plaintiff herself

[203] LAO/Cj.4/Q1.fols7v & 8r. *This should perhaps be 'hyr'. The scribal corrections are also further indication of the "live" nature of the evidence.

[204] 'Non est conductus neque instructus nec est consanguenius alicii partem predictaum nec curat de victoria si fiat iusticia': LAO/Cj.4/Q1.fol.8r.

[205] LAO/Cj.4/Q1.fol.8r.

(or perhaps prepared for her use).[206] But there is also the possibility they were contained within the libel itself. Articulated libels, a composite single document created instead of the more traditional three of libel, positions and articles, thus saving time and cost, were common in late medieval England. Usually they can be distinguished within the records by use of the phrase '*Item ponit et intendit probare*' ('item put and intended to prove'), though that term is not used here.[207] We do not know whether Turner or the judge put the articles to the witness but the answer to the fifth, which was about the circumstances in which the legacy had been made, was noted in English. Whatever the truth, the judge was accommodating enough to allow their use seemingly as drafted, perhaps because they were sufficiently focussed to aid his understanding. In part answer to the fifth article Borrowe's reply was noted as follows:

> that the vicar off Slaweston and he went to the hows off henry nicols then lyyng seke in his bedd in his parlure and the viccar went into the parlure to hym and this deponent taried in the hall a while and soon after the vicar called this deponent into the parlure and said to hym this sek ~~marn~~ man wold desire you to testifie ij or iij wordes of his mynd And then the seke man said to hym ye shall testifie thies wordes that I wyll say to you I wyll give to my seruante ~~John~~ Johan ~~my [ser]u[a]nt~~ beyng in the hows xx pounds And said to the vicar putt it into my booke then said the viccar is that your wyll that you call your boke and he said ye …[208]

Finally, and still the same day, the court heard from Denise Brown. She replied to several articles. The scribe noted some answers in Latin. As to the fifth article his note was macaronic in form. In the English part it recorded her answer as

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[206] 'Levels of literacy amongst non-elite laywomen were lower than among men in general and women of higher social status, but competence in canon and common law, as well as local custom, could allow the circumvention of these constraints': Kane, *Popular Memory and Gender*, p.178. As to literacy generally, see the same work, pp.176-186; Duffy, *Stripping*, pp.68-70; Paul Strohm, 'Writing and Reading', in *A Social History of England, 1200-1500*, eds. Rosemary Horrox and W. Mark Ormrod (Cambridge, 2006), pp.454-472; D. H. Green, *Women Readers in the Middle Ages* (Cambridge, 2007) As to literacy enabling the exercise of agency in the church courts: Kane, *Popular Memory and Gender*, p.51. As to legal knowledge amongst the laity: Chapter Four, p.16[x].

[207] Helmholz, *Oxford*, pp.322-323.

[208] LAO/Cj.4/Q1.fol.8v.

> that she hard henry nicols say thies wordes ~~I give~~ Magister Viccar I give this meade Johan Turner xx pounds to hir mariage and I pray you putt it in a book a remembrance whille ye may gett my wyll and sett it in my wyll I will she shall haue it to hir mariage who so ever mary with hir[209]

and it concluded in Latin by saying the testator was of sound mind.[210] At that point the court was adjourned and nothing more is recorded. A private, unrecorded, settlement may have been reached.

[209] LAO/Cj.4/Q1.fol.9r.

[210] 'Et dictus testator erat tunc sane memorie': Also LAO/Cj.4/Q1.fol.9r.

Fig.12: LAO/Cj.4/Q1.fol.7v (part)

Fig.13: LAO/Cj.4/Q1.fol.8r (part)

Many further points could be made about flexibility in instance proceedings. Some changes in the courts' ability to do justice took place over time. I mention two briefly but examine them again in

Chapter Four. During the thirteenth and fourteenth centuries judges reacted to parties simply abandoning marriage suits and having a marriage to a third person solemnised by ordering them not to marry *pendente lite* (during the litigation). But even backed by threat of excommunication that tactic often failed. So, during the fifteenth century, courts, especially in the southern province, started to sequester women to a safe place and out of harm's way. Of course, that did not always succeed but it could protect against violence and abduction.[211] Similarly, the flawed practice of abjuration *sub pena nubendi* (enforcing a marriage if parties broke a promise to refrain from further sexual intercourse with each other) largely disappeared towards the end of the fifteenth century because of problems with proof, jurisdiction (the ability of less senior judges to impose it), and the necessity of valid consent for lawful marriage.[212] Other examples of flexibility can be seen as part of the intra-litigation dynamic. As I explain when considering *Johannes Floyd c. Alice Skevington (cum Johannes Spence competitor)*, again in Chapter Four, one is the ability to recall a party or witness to provide further evidence despite their already having done so. In that particular case the defendant – who had earlier herself been sequestered to a safe place – was recalled to clarify how many people had heard words of marriage spoken by her and John Spence in a conversation he alleged had taken place before her father, William Skevington (also known as Skeffington), had changed his mind from refusal to consent to her marriage to the plaintiff.[213] There is evidence recall happened in Canterbury too.[214] The second relates to late admission of witness evidence. In *Henricus Inman c. Elisabeth Thompson cum Jacobus Walker (competitor)* we can see not only two draft definitive sentences, each marked as unread ('*non legitur')*, and thus confirmation the case was considered all but over, but that even then the judge allowed Jacob Walker to instruct lawyers and introduce wholly fresh allegations concerning the validity of his

[211] Helmholz, *Marriage Litigation*, pp.168-172.
[212] Helmholz, *Marriage Litigation*, pp.172-181.
[213] LAO/Cj.4/Q1.fols29v, 30r, 32r & 41v; At p.195.
[214] Helmholz, *Marriage Litigation*, p.129.

marriage to the defendant and the invalidity of the plaintiff's on grounds the latter was already married to someone else.[215]

2.3 Conclusion

Evidence within LAO/Cj.4 confirms the previous understanding of Lincoln's audience court (which was that it was far from moribund and worked reasonably well) but also offers much more. Its ability to function throughout the diocese during the 1520s was undoubtedly affected by Atwater's death in 1521, Roston's by 1525, and the loss of other staff too. Both senior men had been active, attentive, and constantly on the move, and they had frequently been ably assisted along the way. Such losses must have imposed great burdens on those left behind. What is more, the preference Longland showed for non-judicial aspects of his episcopal work away from Lincoln impacted upon the ability of those remaining to work thoroughly and comprehensively throughout the diocese for some time. Yet, it is also clear the loss of such "hands-on" judicial talent, and its mere partial replacement (of Roston by Rayne, but of Atwater rarely by Longland), may have occurred when, as seems the case elsewhere, the judicial workload was slightly, and somewhat fortuitously, less intense. In any event, the court weathered the storm and seems at no time to have retreated to an area no larger than a few square miles around the bishop's palace. It undertook more work in and around Rutland but also remained thoroughly mobile. By 1528 Anthony Draycott had been appointed to the role of commissary-general, Chancellor John Rayne was settled in his post and well used to a heavy workload, and the court had begun to sit and move around more widely and frequently once again.

From what we can tell, Lincoln seems to have been well served by its other senior judicial body, the consistory court. With a generally static base in St. George's, Stamford, it must have given those who worked within it a sense of stability. Many potential litigants throughout the diocese would

[215] LAO/Cj.4/Q2.fols56r-62v & 66r.

also have been aware that that was where it was almost always available. Of course, some who pursued justice through instance litigation were unable or preferred not to travel far from home. They could seek help from their local archdeaconry courts (which also seem to have worked well), travel to Lyddington to commence proceedings in the audience court if that was convenient or preferable, or simply await the latter's arrival on circuit. Although during the 1520s it most frequently dealt with cases in Lyddington, the audience court's mobility offered those litigants a distinct, reasonably convenient, and though perhaps infrequent, no less capable alternative. For the ecclesiastical judiciary, some of whom could be found sitting in both senior courts, it offered much more. It not only enabled them to administer and provide justice to a high standard across the diocese, thus furthering the aims of the church, but provided visibility (i.e. the ability to be seen) and the vital power of oversight.

Travel was a challenge for all concerned with the audience court, judiciary, lawyers and those intimately involved in instance or office cases alike. Conscious decisions had to be made about whether and when to set out, what to take, and how long to spend in one place before moving on. Defendants seem to have been well served by the court's apparitors. Practical information, about the date, time and venue, of any court hearing, was probably regularly and properly provided without too much local scandal being created (at least at the time of citation). Few could have failed to know where and when to attend and very few indeed did not appear when summoned even from many miles distant. Court personnel were similarly reliant upon efficient communication and prior to going out on circuit almost certainly planned their journeys in advance.

Draycott's month-long trip in October 1528 could not have been undertaken lightly. Yet everywhere, perhaps especially when on circuit, judges and clerks had to be adaptable. They were frequently up against the clock, and the elements, not only desperate when out and about to get to the next place because another case or two awaited them, but keen to do, and be seen to do, the job well. They often had other tasks but do not seem to have cut corners unnecessarily. Rather, they

sought to maximise efficiency. They were aware of the importance of overall compromise, and encouraged parties to choose the flexibility of arbitration if that was appropriate, but also felt sufficiently at home in the procedural world of instance litigation that they understood even its serious nature did not always benefit from excessive rigidity.

By the early sixteenth century the spiritual jurisdiction had not only long since moved on from intractability and over-reliance upon the rigid procedures of instance litigation, it had begun to better understand the risks of injustice in office proceedings. Judges were aware of the problems of compurgation and, in the audience court of the late 1520s at least, seem to have fought hard to ensure weak or malicious prosecutions did not succeed whilst also seeking to make certain the guilty were readily located and brought for punishment. Of course, not every offender was tracked down. Nor was investigation and interrogation of prosecution evidence undertaken in the same way as it is today. But neither was that evidence blindly accepted. Rather, it seems to have been quite carefully appraised (if not always before issue of a citation – though that probably occurred - certainly by the time each defendant appeared in court). Defendants had opportunity to explain themselves. Credible defences were not dismissed out of hand. The necessary ingredient of public ill-fame could be revealed as falsely assumed, mistaken, even non-existent, through careful questioning by means of written articles or by direct and focussed inquisition.

The oversight allowed by visitation and, through constant cooperation, by the travelling audience court did not provide perfect opportunity to weed out every serious offence or potential injustice. There was no absolute guarantee of reliability. Later in the century the system came to insist far more upon the presentments of churchwardens, but even that improvement was not totally successful.[216] It was always an imperfect system and would remain so. But it was dynamic and malleable. The audience court's mobility, and its efficient administration, coupled with the willingness of its judiciary (and lawyers) to eliminate or forego unnecessary rigidity in instance proceedings, and

[216] Helmholz, *Oxford*, pp.610-611.

to use thorough means of investigating the merits in any individual ecclesiastical prosecution, whilst also being able to fall back upon a long-established procedural architecture that had worth, in the former in its formality and rigour, and in the latter in its simplicity, went a long way to ensure the jurisdiction functioned well. Of course, it took skill and professionalism to immerse oneself to the extent necessary to feel familiar and comfortable with its idiosyncrasies. In order to learn more about that skill and professionalism, I turn next to the judiciary, the lawyers and others who worked within the system.

3

Judges, Lawyers and Other Personnel

Like many elsewhere, several late medieval bishops of Lincoln only occasionally exercised their judicial authority. John Russell, bishop between 1480 and 1494, and chancellor in the Court of Chancery from 1483, was one, though he was appointed papal judge-delegate in an assortment of cases.[1] Bishop Smith was another: a canon lawyer but often conflicted between diocesan responsibilities and those he had in the Welsh Marches.[2] Longland spent much time in royal service and was rarely in court.[3] Yet Alnwick 'found diocesan administration highly congenial and soon withdrew almost entirely from public life to pursue it' and, as already discussed, Atwater was heavily engaged in the legal and judicial side of episcopal business.[4] But, like their fourteenth-century predecessors, and whatever their character, personal interests or intent, all of them relied heavily on highly skilled, experienced, professionalised, judicial deputies. In consequence, although this thesis has touched upon bishops' activity in the courtroom, and acquainted us with some of them already, this chapter concentrates upon those whose working days were spent as members of the ecclesiastical judiciary and the advocates, proctors, notaries, registrars, apparitors and others who worked beside them.

[1] John A. F. Thomson, 'John Russell (*c.*1430-1494)', *ODNB* (2004, online version 2008) http://www.oxforddnb.com/view/article/24318 [accessed 13 July 2019].
[2] *AECB*, p.xviii; Margaret Bowker, 'Smith [Smyth], William (d.1514)', *ODNB* (2004) http://www.oxforddnb.com/view/article/25920 [accessed 17 July 2019].
[3] Bowker, *Henrician Reformation*, pp. 12, 39, 51.
[4] Thompson, *English Clergy*, p.43; *AECB,* p.xviii; Bowker, *Secular Clergy*, pp.13-14, 16-19; Chapter One, pp.14, 36-37; Chapter Two, *passim*.

In Section 3.1, by way of overview, the various, above-mentioned, roles are more closely examined and several more occupying them within Lincoln diocese are introduced. A brief historiography is also provided. Section 3.2 reflects upon historians' current understanding of the character and quality of medieval legal education and seeks to grasp its usefulness and relevance to everyday church-court practice in the 1520s. The acquisition of legal knowledge and skill by Oxford and Cambridge students is considered, as is its transmission, but its deployment, and its diffusion amongst all those working within the ecclesiastical legal arena, are especially important. Section 3.3 contains an investigation of judges', lawyers', registrars' and notaries' professionalism and an assessment of the impact of ethical standards and rules on their individual and group behaviour. It concentrates on what expectations of adherence to that professionalism, and to those standards and rules, meant not only to their own daily *modus* but to those non-professionals amongst the group and beyond with whom all of them associated. Lawyers' competence and freedom to exercise independence, the patronage all within the group relied upon or dispensed, and their relations with each other and towards the laity, are also considered. Their ability and motivation to make a living is only looked at in passing. Section 3.4 considers what we can especially glean from the lives, careers, known cases, relationships and testamentary evidence of those who feature within the audience court manuscript with which I am principally concerned.

As explained in Chapter One, much of this chapter looks beyond LAO/Cj.4. Of course, there are limitations. Although archdeaconry and even some lesser courts were scarcely inferior, their judges and proctors the same or same kind of men and the cases they dealt with similar, inevitably it concentrates upon those involved at the highest level.[5] Moreover, as Helmholz reminds us, '[n]o proctor we know of described his education' and, for those who did not attend university, 'there was no organised, prescribed course of study, and there were no formal examinations from which to draw

[5] Helmholz, *Oxford*, p. 216; *Buckingham*, ed. Elvey, *passim*; *Whalley*, eds. Higden Society & Lynch, esp. pp.2-3.

conclusions about the training offered'.[6] At the lowest levels, courts were less legally sophisticated with lawyers rarer and presiding judges perhaps limited in their legal training.[7] Nevertheless, we can still learn something new.

3.1 Overview

Judges of the episcopal courts were unquestionably well educated. That great learning in the law was an essential prerequisite had been accepted since the thirteenth century. By the 1270s Hostiensis (Henry of Segusio, canonist and later cardinal-bishop of Ostia (c.1200-1274)) was even able to maintain that the law went so far as to presume judges were legally trained.[8] By the first half of the sixteenth century most chancellors, for instance, were doctors of law when appointed or received doctorates during their terms of office.[9] They were often much-valued too.[10] Many reforms Sherburne accomplished in Chichester may have been achieved because he retained personal interest.[11] He must also have learned much whilst an archdeacon in Lincoln. But he came to depend enormously upon the administrative talents of two highly learned men, his chancellor and official-principal until the mid-1520s, William Fleshmonger, and his commissary-general, but later also his official-principal and chancellor, John Worthial.[12] John Veysey, a doctor of civil law, was vicar-general to Bishop John Arundel of Coventry and Lichfield. So reliable was he that on Arundel's translation to Exeter he became

[6] R. H. Helmholz, 'The Education of English Proctors, 1400-1640', in *Learning the Law: Teaching and the Transmission of Law in England 1150-1900*, eds. Jonathan A. Bush and Alain A. Wijffels (1999), pp.191-210 at pp.193-194
[7] Helmholz, *Oxford*, p.207.
[8] Brundage, *Medieval Origins*, p.375.
[9] Houlbrooke, *Church Courts*, p.24.
[10] Storey, *Diocesan Administration*, p.18.
[11] Lander, 'Church courts', p.227.
[12] Worthial obtained his canon law doctorate in 1525 and Fleshmonger his, in both civil and canon law, in 1514: Lander, 'Church courts', pp.219-220.

chancellor and vicar-general there too. He served Arundel's successor in the same capacities before eventually being elevated himself in 1519.[13]

In Lincoln the picture is broadly similar. Most personal bequests in Russell's will seem to have been to diocesan staff.[14] Smith surrounded himself with trusted friends or relations and looked to his vicars-general.[15] Like his predecessors, Atwater faced the logistical problems inherent in a large diocese. As we have seen, his response, after Henry Willcocks's retirement, was to appoint Richard Roston, Cambridge canon law graduate, possibly Smith's kinsman, and a man of considerable drive and experience, not only official-principal but chancellor, commissary-general and permanent vicar-general.[16] Even with long-established procedures for delegation, and even with Atwater as active as he was, such consolidation might have seemed much to impose upon one man. But both had help from others, including John Sylvester and Thomas Swayne, and may have been aided by the archdeaconry courts' competent performance and the virtual disappearance of breach of faith suits and defamation involving imputation of crime from the spiritual forum.[17] That loss must have decreased income and influence.[18] It may also have meant Roston had less difficult work than his predecessors. But the combination of his appointments probably reduced risk of jurisdictional conflict. Indeed, Atwater and Roston seem to have worked so closely that capable management by one may have led the other to believe little major reorganisation was needed.[19]

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[13] Thomson, *The Early Tudor Church*, p.53; Nicholas Orme, 'Veysey [formerly Harman], John', *ODNB* (2004), http://www.oxforddnb.com/view/article/28262 [accessed 18 July 2019].
[14] Thomson, 'John Russell'; TNA/PROB 11/10/334.
[15] Bowker, 'Smith [Smyth], William (d.1514)'. James Whitstone, Smith's vicar-general from 1495-1500 was a canon lawyer. Charles Booth, his successor till 1508, was a civil though not a canon lawyer. Henry Willcocks, who succeeded Booth, likewise: Bowker, *Secular* Clergy, p.28.
[16] *Visitations*, ed. Thompson, 35, p.219; *AECB*, p.xix; Bowker, *Secular Clergy*, pp.27-30; Chapter Two, pp.69, 72.
[17] *Visitations*, ed. Thompson, 35, pp.220-221; Margaret Bowker, 'The Commons Supplication against the Ordinaries', 61-77, 'Some Archdeacons' Court Books and the "Commons" Supplication against the Ordinaries of 1532', in *The Study of Medieval Records: essays in honour of Kathleen Major*, eds. D. A. Bullough & R. L. Storey (Oxford, 1971), pp.282-316; Chapter One, pp.15-16, 39-40; Chapter Two, p.73.
[18] Helmholz, *Oxford*, p.234.
[19] *AECB*, p.xx.

In any event, by the 1520s Longland was rather more concerned with heresy and the dangers of Lutheranism.[20] As a great delegator he left the welfare of secular clergy and oversight of worship almost exclusively to others. Perhaps he was also initially confident his predecessor had corrected most glaring abuses.[21] Talented, educated and experienced men were kept on or promoted though he appointed some too. John Rayne was not only Roston's successor as bishop's chancellor and official-principal he may have been specifically chosen for the role of permanent vicar-general. Given his inclination to be elsewhere, and probably grasping the benefits of that permanency not only from Roston's success but from its increasing popularity in other dioceses, Longland seems to have found that form of appointment, with its ability to act whether he was in or out of the diocese, suited best.[22] In post until his death in 1536 Rayne held doctorates in both civil and canon law.[23] Within LAO/Cj.4 his presence is, as previously discussed, almost ubiquitous. Often sitting on correctional cases but also presiding over marriage and defamation disputes as well as those about tithes and wills, he played the leading part in Longland's audience court. The work of Commissary-general Anthony Draycott, doctor of canon law and later himself vicar-general (and archdeacon of Huntingdon), has already been examined at some length.[24] He is seen presiding over the court on fifteen occasions.[25] The man himself is considered below.[26]

Given their ubiquity it is essential to focus upon Rayne and Draycott. But those who worked alongside them are also hugely important. Canon lawyers, for instance. They start to appear frequently in ecclesiastical court records around 1250. By the last quarter of the thirteenth century they were

[20] Bowker, *Henrician Reformation*, pp.57-64, esp. p.58.
[21] Bowker, *Henrician Reformation*, pp.37-38.
[22] *Visitations*, ed. Thompson, 35, pp.219-220; Thompson, *English Clergy*, p.47 & Appendix I; Bowker, *Henrician Reformation,* pp. 18, 149, 150.
[23] Venn, vol.3, p.249; *BRUO 1500*, vol.3, p.474; *BRUO 1501-40*, pp.476-477; Chapter One, p.54.
[24] Chapter Two, esp. pp.76-83.
[25] Besides the eleven in October and November 1528 discussed in Chapter Two he sat four times in January 1529.
[26] Longden, vol. IV, p.143; *BRUO 1501-1540*, p.176; Goodwin, rev. Chibi, 'Draycot, Anthony'; Squibb, *Doctors' Commons*, p.142; and further below.

well established.[27] By the fourteenth such men seem to have become virtually indispensable.[28] Advocates formed one of two main groups. They were also highly educated; judicial positions were largely filled from their ranks. Their role was to give legal advice and appear in complex cases. Evidence for their existence is not seen in every diocese. Nor are any mentioned by name within LAO/Cj.3, LAO/Cj.4 or *An Episcopal Court Book*. Nevertheless, they are likely to have been present on occasion.[29] Proctors, the other main group, were perhaps of lesser standing but a substantial minority held degrees in law.[30] Occasionally, like Worthial, who had practised as a proctor in Lincoln's audience court, such men even progressed to the ecclesiastical bench.[31] Appearing for the parties – unless an advocate had been employed – during every aspect of instance litigation, they prepared documentation, spoke in place of their clients and were often in complete control of case management.[32] So frequent seems their presence they have been said to 'swarm through the pages of church court records from the thirteenth century onward'.[33] Yet, in many dioceses their numbers were, ostensibly at least, strictly controlled. Only when one died or retired was another permitted to take his place.[34] Early fourteenth-century evidence suggests a limit of sixteen (save for those then already admitted) imposed upon those allowed to practise within the Lincoln Consistory Court. Even that was larger, because of the size of the diocese, than might otherwise have been the case.[35] I have been unable to find limits upon those entitled to appear in the audience court, but in

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[27] Paul Brand, *The Origins of the English Legal Profession* (Oxford, 1992), p.145; James A. Brundage, 'The Rise of Professional Canonists and Development of the *Ius Commune*', in *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, kanonistische Abteilung*, 81 (Vienna, 1995), pp.26-63 (repr. with identical pagination in his *The Profession and Practice of Medieval Canon Law*, Variorum Collected Studies Series (Aldershot, 2004)), and *Medieval Origins*, pp.164, 283.
[28] Helmholz, *Oxford*, p.222.
[29] See p.138.
[30] Helmholz, 'The Education of English Proctors', p.195.
[31] Lander, 'Church courts', p.220; LAO/Cj.2/fol.51r (there named 'Worthyall').
[32] Helmholz, *Oxford*, p.222.
[33] Brundage, *Medieval Origins*, p.353. The oldest-surviving item in Lincoln Archives is a letter of appointment from 1279: LAO/DIOC/CRAGG/4/24.
[34] Helmholz, *Oxford*, p.223. Woodcock, in *Canterbury*, pp.121-122, lists men serving as proctors in the Canterbury Consistory and Archdeacon's Courts.
[35] 'procuratores uero propter amplitudinem nostrae dioeceseos sexdecim sint in numero, et non ultra, nisi de iam admissis': Henry Burgersh, 'Statuta Consistorii Episcopalis Lincolniensis', in *Concilia Magna*, ed. D Wilkins, p.572; Helmholz, 'The Education of English Proctors', pp.192-193.

LAO/Cj.4 eleven proctors are mentioned by name. With Stamford, where most consistory hearings took place, only thirteen miles from Lyddington, it is possible several, perhaps all, these men also practised there.[36] Twelve more, including Worthial, feature within LAO/Cj.2.[37] None are common to both sources. Several are described as notaries. Some are shadowy figures who feature in few or no other records. But, despite little surviving testamentary evidence, a number have careers, and lives, which can be tracked quite closely. I examine six from LAO/Cj.4 in detail.

The bishop's registrar, who determined the time of hearings and order of cases, recorded daily events, entered *acta* in the registers, supervised dispatch of citations, controlled apparitors and scribes, received fees, dealt with correspondence, on occasions examined witnesses and conducted inquisitions, and who was of necessity a notary public, has been described as the chancellor's 'most important partner in the work of running the diocese' and the 'one man who held the courts together in times of hardship'.[38] His office had somewhat obscure origins. In Lincoln, during the 1280s and 1290s, John de Scalby had acted as Bishop Sutton's registrar, but in fourteenth-century Worcester the term *registrarius* was still quite rare, even though men there termed *scribae* carried out identical functions.[39] By the mid-fifteenth century that relative obscurity was over. Houlbrooke shows us that later men he looked at were important, possessed of episcopal patents for life, and able to assist others by dispensing patronage.[40] Throughout much of Smith's episcopacy, all that of Wolsey and Atwater, and during Longland's until his own death on 10 October 1530, the registrar of Lincoln Audience Court was the powerful, highly-visible, Edward Watson whose role and influence as an

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[36] Morris, 'A Consistory Court', 155.
[37] Besides Worthial those named in LAO/Cj.2 are John Wymark, Antony Hansard, John Monson and John Littlebury (all fol.8r), John Hakehed (fol.52), one Rogers (fol.50v), Brian Weresdale (fol.76r), William Brown and Richard Morys (fol.76v), and Christopher Rudd (fol.105v). Another, purporting to act for the abbot of Beauchief abbey, Derbyshire, and refused entry because he lacked letters of appointment, is unnamed (fol.78r).
[38] Woodcock, *Canterbury*, p.38; Houlbrooke, *Church Courts*, p.25; Helmholz, *Oxford*, p.213. Rosemary O'Day, in 'The role of the registrar in diocesan administration', in *Continuity and change: Personnel and Administration of the Church in England, 1500-1642*, eds. Rosemary O'Day and Felicity Heal (Leicester, 1976), pp. 77-94, at pp.78-79, offers a slightly different view. She suggests that if not a notary public himself a registrar would have deputies and clerks qualified in that way.
[39] O'Day, 'The role of the registrar', p.77.
[40] Houlbrooke, *Church Courts*, p.25.

educated, wealthy and married, layman is evident throughout *An Episcopal Court Book*, LAO/Cj.4, and several other sources.

Several men with other responsibilities, and of varying importance, can also be glimpsed within the pages of LAO/Cj.4. Some seem closely connected to Watson both in and outside the world of church bureaucracy. Of them much attention will be paid to Thomas Webster but there were others with connections within and beyond the courtroom. Apparitors were undoubtedly minor characters in ecclesiastical administration.[41] Yet such men were also neither without consequence nor without value to their superiors. As already explained, they served citations, collected fines, drew up inventories of decedents' estates, brought instances of irregular conduct to the court's attention, and even acted as judges' escort.[42] Within LAO/Cj.4 three are mentioned by name. Another is unnamed. Four more who serve citations are described as '*litteratus'* which in this courtroom context is a label requiring further exploration. Three named others, including two priests, are seen serving process although seemingly on an *ad hoc* basis. Some of the events which led to their names being recorded provide further illumination.

In his recent work on a fourteenth-century canon lawyer's practice David Higgins reminds us that learning more about such men enables greater understanding of society itself, 'for practitioners were participants too', and points out that we can, if we look hard enough, see glimpses of 'the living reality of this legal and social "ecology" within which [they] operated'.[43] There have been studies of judges, advocates and proctors in the pre-Reformation ecclesiastical legal system, about the development of the canon lawyers' profession, and of their networks and individual careers.[44] There

[41] Wunderli, 'Pre-Reformation London Summoners', 209. For further information on apparitors and their duties: Woodcock, *Canterbury*, pp.45-49, 50-51, 61-62; Houlbrooke, *Church Courts*, pp.28-29, 52-53.
[42] Chapter One, p.32 (footnote 130).
[43] Higgins, 'A Canon Lawyer and His Practice', 123, 141.
[44] As explained in Chapter One, work by Helmholz, Brundage and Donahue is of special importance. R. H. Helmholz's publications include: 'Ethical Standards for Advocates and Proctors in Theory and Practice', in *Proceedings of the Fourth International Congress of Medieval Canon Law*, ed. Stephan Georg Kutner (Vatican City, 1976), pp.283-299; *Roman Canon Law*, esp. pp.117-119, 212-137; 'Ecclesiastical Lawyers and the Reformation', *ELJ*, 3 (1995), 360-370; 'The Education of English Proctors'; *Oxford*, esp. pp.221-226; 'University Education and English Ecclesiastical Lawyers 1400-1650', *ELJ*, 13 (2011), 132-145; and 'Regulating the Number

have been studies of notaries too.[45] We can still learn from studies of the elite. Higgins convinces us we can from the 'quite "low-flying"', from their 'modesty of achievement', and from their ordinary daily grind.[46] The lowliest, most marginal, of the group are also worth further study. Each apparitor may have acquired a modicum of knowledge from long hours' observation in the courtroom, conversation or personal interest. Their appreciation of legal procedure may have been enough only to know how, and when, to serve a citation or grasp a libel's purpose. They may even have had only an understanding of the way to act towards those who had acquired an aura of superiority. Yet, not to include such men risks losing something that helps us grasp how the professionals in such a group, with their strong and long-developed sense of *esprit de corps*, discipline and commonality, may have accommodated others in their work. We may even miss features they have in common.[47] We can also improve appreciation by focussing on the fulcral role of the registrar. Only one article has been published solely on this crucial character of diocesan administration – that by Rosemary O'Day in 1976.[48] Most significantly, our understanding of each court's effectiveness, and the authority of its

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of Proctors'. In 1973 James A. Brundage published 'The Ethics of the Legal Profession: Medieval Canonists and Their Clients', *The Jurist*, 33 (1973), 237-248. Other works already cited but also included in *The Profession and Practice of Medieval Canon Law* are his 'Legal Aid for the Poor', 'The Rise of Professional Canonists', 'The Bar of the Ely Consistory Court', and 'The Cambridge Faculty of Canon Law'. There too, but here given its original reference, is his 'Entry to the Ecclesiastical Bar at Ely in the Fourteenth Century: The Oath of Admission', in *Proceedings of the Eighth International Congress of Medieval Canon Law*, ed. Stanley Chodorow (Vatican City,1992), pp.531-544. Besides *Medieval Origins*, Brundage's other work includes: 'The Medieval Advocate's Profession', *LHR,* 6 (1988), 439-464; 'The Profits of the Law: legal fees of University-trained advocates', *AJLH*, 32 (1988), 1-15; 'Professional Discipline in the Medieval Courts Christian: The Candlesby Case', *Studia Gratiana*, 27 (1996), 41–48; 'The Calumny Oath and Ethical Ideals of Canonical Advocates'; and 'The Lawyer as His Client's Judge: The Medieval Advocate's Duty to the Court', in *Cristianità ed Europa: Miscellanea di studi in onore di Luigi Prosdocimi*, ed. Cesare Alzati, vol. 1 (Rome, 1994-2000), pp.591-607. Charles Donahue Jr.'s work includes *Law, Marriage, and Society* and 'The Legal Professions of Fourteenth-century England'. Other scholarship includes: Woodcock, *Canterbury*, esp. pp.37-49; Brian P. Levack, 'The English Civilians, 1500-1750', in *Lawyers in Early Modern Europe and America*, ed. Wilfrid Prest (1981), pp.108-146; and Brand, *Origins*, pp.143-157. The *ODNB* can be invaluable for named individuals.

[45] For forty-five years the principal work was C.R. Cheney, *Notaries Public in England in the Thirteenth and Fourteenth Centuries* (Oxford, 1972). Cheney's efforts were carried on, and forward into the fifteenth century, by Patrick Zutshi in 'Notaries Public in England in the Fourteenth and Fifteenth Centuries', *Historia. Instituciones. Documentos,* 23 (1996), 421-433. For the post-Reformation period see C. W. Brooks, R. H. Helmholz and P. G. Stein, *Notaries Public in England since the Reformation* (Norwich, 1991).

[46] Higgins, 'A Canon Lawyer and His Practice', 151-152.

[47] Donahue, 'The Legal Professions of Fourteenth-century England', p.229; Rosemary O'Day, *The Professions in Early Modern England, 1450-1800* (Harlow, 2000), p.9.

[48] O'Day, 'The role of the registrar'.

officers, will increase by examining how these upper, middle and lower echelons interacted with each other and with society-at-large both in and outside the courtroom.

By 1528 these judges and lawyers, and those who supported their work, had all lived and worked through the low ebb of the Hunne affair. Their formative years had often come when common lawyers had 'used praemunire in a deliberate campaign to limit the work of ecclesiastical courts' and when the amount of litigation being heard within them had slowly contracted.[49] Their predecessors, and mentors, had 'regarded the more aggressive attitude of the royal courts towards their jurisdiction with resentment and foreboding' but many of them had come to accept the impact of common law rules as 'a fact of life within the spiritual forum'.[50] None could anticipate where any anti-clerical feeling that existed would take them, but some were not only well-connected to important affairs of state, and the king's "Great Matter", but abreast of theological developments across the Channel. Although their bishops often engaged in vigorous attempts to stamp out heresy 'because they were determined to reassert their authority', and held significant sway if there was dispute about the respective jurisdictions of the royal and ecclesiastical courts, there is ample evidence such men themselves were far from mere lackeys anxious to pander to their ordinary's whim.[51] Many were earning less than counterparts half a century before, and some, no doubt, were unhappy about it.[52] Yet, equally, they could have been, and some certainly were, well-respected amongst contemporaries and role-models for the next generation. Though unaware of the imminent threat of the *Commons Supplication against the Ordinaries*, some were perhaps filled with trepidation as they attended Convocation in 1529. By 1530 they became acutely aware of the Commons' attacks on probate, mortuaries, secular employment, pluralism, absenteeism and the ecclesiastical courts. Even before the *Submission of the Clergy* reform was a likely topic of their morning, evening and courtroom conversation. These were the men who made the spiritual jurisdiction function and upon whom it relied to survive.

[49] Haigh, *English Reformations*, p.73.
[50] Houlbrooke, 'The decline of ecclesiastical jurisdiction', p.241; Helmholz, *Roman Canon Law*, p.33.
[51] Haigh, *English Reformations*, p.76; Bowker, *Secular Clergy*, p.30; and further below.
[52] Helmholz, 'Regulating the Number of Proctors', p.177.

3.2 Education, Training, The Practice of Law and Transmission of Knowledge to Others at Work

Until teaching of canon law was suppressed in the 1530s legal study at Oxford and Cambridge was divided into two faculties, one for the Roman tradition and the other to consider the *corpus iuris canonici*.[53] For those intent on reaching the top it was essential to be well-equipped for the long haul. Many students attended both faculties. Study took a long time. Some began relatively young, or obtained partial exemption from formal requirements, but it could still take twenty-three years to obtain a doctorate.[54] Even before one could study canon law at all an MA was required.[55] The feats of memory required were formidable. It was also expensive. Some acquired a benefice and then sought leave of absence. Others had rich patrons or wealthy families.[56] Many Cambridge students received subsidies from the bishops of Ely.[57] Many others chose, or were compelled, to limit their studies. Neither higher degree nor bachelor's qualification was a fundamental necessity, but shorter routes could still be arduous. In Lincoln no prior graduation in civil or canon law was required but statutes of 1334 ordered that no one practise as an advocate in the consistory court without six years' university study. Proctors required four.[58] Some men seem more than reasonably successful despite a lack of formal legal qualification. Others pursued their law degree(s) to completion whilst in practice.[59] But what was it about academic study, other than duration, that provided sound basis for a successful legal career? How did attendance by some at an elite educational institution really contribute to effectiveness of the spiritual courts and all those working within them?

[53] Helmholz, *Oxford*, p.188.
[54] Helmholz, *Oxford*, pp.188-189.
[55] Dorothy Owen, *The Medieval Canon Law: Teaching, Literature and Transmission* (Cambridge, 1990), pp.3-4.
[56] Helmholz, *Oxford*, pp.189-190.
[57] Brundage, 'The Cambridge Faculty of Canon Law', p.25.
[58] Morris, 'A Consistory Court', 156; Owen, *Medieval Canon Law*, pp.22-23.
[59] Helmholz, *Oxford*, p.189; Brundage, 'The Bar of the Ely Consistory Court', esp. 549.

A higher degree, such as a doctorate, was unquestionably prestigious. It provided institutional certification of technical competence and proved the holder a qualified public teacher of law. A bachelor's degree suggested at least a thorough grasp of the major branches of civil and canon law. Even a few years' study was worth a good deal.[60] Of course, as might be true today, neither academic talent nor legitimacy to teach necessarily made a competent and effective lawyer. Moreover, in 2004 Helmholz suggested that '[m]uch of the formal law, both the canon and Roman parts, had always been quite irrelevant to the workaday world of advocates and proctors', and until recently such an opinion was not uncommon.[61] It is true that many topics important to daily practice seem not to have been covered in pre-suppression lectures.[62] Indeed, such lectures seem to have focussed on the texts, particularly the *Decretum*, the *Decretals*, and the *Sext*, though also on works such as Lyndwood's *Provinciale*.[63] Yet, as Helmholz himself made clear in 2004, that was probably enough for most needs of the profession.[64] Furthermore, in 2011 he explained that '[s]uccessful practice in the courts of the church … depended upon familiarity with and control of the texts of the *ius commune*', that 'what mattered most for the civilians of the time was the existence of a text and a sophisticated understanding of that text's meaning', that 'lawyers rarely advanced arguments without a base in the texts themselves', that the contemporary development within the *ius commune* itself of the *usus modernus pandectarum* ['the modern use of everything'], with its ability to effect both change and reform in church court practice, not only depended on knowledge of those texts but relied on 'inventiveness in their use', and most especially that 'criticism of university education as out-of-touch with then current practice is misleading'.[65]

[60] Brundage, *Medieval Origins*, pp.219-220; Helmholz, 'The Education of English Proctors', p.196.
[61] Helmholz, *Oxford*, p.243. See, for example, J. Barton, 'The Faculty of Law', in *History of the University of Oxford,* III, *The Collegiate University*, ed. J. McConica (Oxford, 1986), pp.257-293 at p.275; B. Levack, *The Civilian Lawyers in England 1603-1641* (Oxford, 1973), p.16.
[62] Helmholz, *Oxford*, pp.190-191.
[63] Owen, *Medieval Canon Law*, p.2.
[64] Helmholz, *Oxford*, p.243.
[65] Helmholz, 'University Education', 136, 138, 139.

In any event, as Helmholz also acknowledged, it would be wrong to concentrate only upon lectures. Outside the lecture-room texts were dissected, analysed or expanded upon. Students were given legal problems to solve. There were elements of expected self-instruction.[66] Colleges who admitted lawyers had libraries and many received substantial bequests.[67] Treatises were available and surviving collections of notes make frequent enough reference to them we can assume most students were familiar with their content.[68] Perhaps most importantly, the faculties did not just teach law but how to think and act like lawyers rather than philosophers, theologians or rhetoricians.[69]

Besides academic knowledge, and the distinctive, thorough, nature of the degree itself, other things at university were of substantial importance to lawyers' careers, professional development, and effectiveness. Firstly, students lived together in hostels or what were known as the Common Schools.[70] Neighbourly proximity, and a sense of common ordeal, probably forged many personal, and future working, relationships. Through living and studying together many would come to know what could be achieved and seek out, even befriend, those who might help or those they could assist. They could inquire about rights and wrongs of legal practice too: ever since lawyers had started to create their specialised occupational domain experienced practitioners had passed on sage advice and revealed tricks of the trade in how-to-do-it manuals.[71] No doubt some were popular. Perhaps a few were inspirational.

Each university's proximity to a court must also have helped. Ely's consistory court and an archdeaconry court, and their accompanying staff, were in Cambridge. Oxford had a busy archdeaconry court.[72] Opportunities for observation abounded. Advocates pleading a client's case were exemplars: it was against them other legal professionals were measured; it was by their

[66] Helmholz, *Oxford*, p.191
[67] Owen, *Medieval Canon Law*, pp.7-8, 11-12.
[68] Helmholz, *Oxford*, p.193.
[69] Brundage, *Medieval Origins*, p.282.
[70] Owen, *Medieval Canon Law*, p.6.
[71] Brundage, *Medieval Origins*, p.285.
[72] Brundage, 'The Cambridge Faculty of Canon Law', pp.24-25.

standards performance was evaluated.[73] Indeed, legal professionals of all kinds enjoyed high social esteem and status. Their prestige was founded on a belief (frequently nurtured by the professionals themselves) their occupation benefitted society. Their technical competence connoted a superiority over those who lacked that knowledge and enabled them to exercise authority over others, even social and political superiors. This all came coupled with an implied threat that those who failed to follow a professional's direction may suffer harm as a result.[74] To observe, therefore, was not just to learn but to learn how to emulate. As mentioned, some students even combined study with practise as notaries, proctors or advocates. The courts of these towns also required scribes and clerks. Copying was vital to the litigation process and students were prime candidates for the task.[75]

What then about the actual practice of law beyond the university towns, the practical rather than the intellectual and academic? After all, from the thirteenth century until the sixteenth men studied civil and canon law 'not simply, one may be sure, in the hope of acquiring some small theoretical knowledge of the subject but, in a large number of cases, with the intention of applying it'.[76]

Money was important. Good income enabled many to take part in commerce, even the book trade.[77] Equally, it meant ability to maintain respectable distance from near, non-lawyer, neighbours and perhaps permitted movement into another diocese or wealthier social circles. Judges, though infrequently dependent on the courts for a living, could supplement their income from non-contentious work such as probate. Registrars gained significantly from that work. Although proctors were the most reliant on lawsuits to survive, even they could secure something from licences,

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[73] Brundage, 'The Medieval Advocates' Profession', 444 and 445; Helmholz, *Oxford*, p.191.
[74] Brundage, 'The Medieval Advocates' Profession', 439-440.
[75] Brundage, 'The Cambridge Faculty of Canon Law', 30, *Medieval Origins*, pp.281-282; Owen, *Medieval Canon Law*, p.34; *John Lydford's Book*, ed. Dorothy M. Owen, Devon and Cornwall Record Society (1974), pp.32, 35-38.
[76] C. T. Allmand, 'The civil lawyers', in *Profession, Vocation and Culture in Later Medieval England: essays dedicated to the memory of A. R. Myers*, ed. Cecil H. Clough (Liverpool, 1982), pp.155-180 at p.155.
[77] Brundage, *Medieval Origins*, pp.468-469.

probates and the like.[78] It is difficult to decide what lawyers earned. It was not as much in the 1520s as before. But 'there is no doubt legal fees were often large and lawyers often well-rewarded'.[79] Dorothy Owen suggests there was 'ample scope for the expertise of such men, and opportunities could still be grasped, even on the eve of the Reformation'.[80] The possibility of esteem, reasonable even substantial wealth, status and influence, must have remained appealing. Good prospects may therefore have continued to encourage hard work.

Those advocates and judges who as students had ways of thinking impressed upon them almost certainly carried those ways into everyday practice.[81] Many proctors, especially those academically qualified in law or who as students had worked in the Oxford or Cambridge courts, probably did too. Registrars with a similar background likewise. To do so would be natural. Proctors and advocates also had to spend at least a year in residence (the year of silence) before being "let loose" in the courtroom.[82] Newcomers had opportunities to listen, learn, and develop the attitude and contacts they would later need. In the Lincoln Consistory Court advocates, and proctors, had to be present for every session or obtain permission to absent themselves.[83] Hours in court whilst others worked meant, if one was paying attention, a further education of sorts. There may have been informal apprenticeship, and in London perhaps lectures to attend. There is little evidence of training elsewhere, but Atwater's books are heavily annotated. Perhaps the result of his own education, such notes could equally have aided the lecturing of others.[84]

Wills reveal detail of texts owned by practising lawyers.[85] Brought on from university, or acquired later, many would have been used in court, regularly re-read, even lent to others keen to

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[78] Houlbrooke, *Church Courts,* p.51.
[79] Brundage, 'The Profits of the Law', 14.
[80] Owen, *Medieval Canon Law*, p.17.
[81] Helmholz, *Oxford*, p.188.
[82] Helmholz, *Oxford*, p.191, 'The Education of English Proctors', p.202.
[83] Brundage, 'Entry to the ecclesiastical bar at Ely', 541. I have been unable to find such restriction in the audience court, but practice may have been similar.
[84] Helmholz, 'The Education of English Proctors', pp.200-201; Bowker, *Secular Clergy*, p.14. For details of books owned by Bishop Atwater: *BRUO 1500*, vol. 1, p.73.
[85] Owen, *Medieval Canon Law*, pp.13-14.

improve chances of litigation success. Proctors compiled their own how-to-do-it manuals, or sometimes copied and supplemented those of others, to do so was not peculiar to Oxford and Cambridge. Few from before 1640 have been studied at length but in them procedural steps are outlined and sometimes elements of the law included. Many parts were probably committed to memory or became second nature through persistent use.[86] There were other training books, often setting out what to say, in Latin, and when.[87] Those men with little or no university experience may have keenly sought out the best from those who had more.

Other courts beside those in Oxford or Cambridge needed clerical assistance, though to varying degree. It is entirely conceivable men in the year of silence were asked to help registrars, deputies, even advocates and proctors requiring temporary assistance. The registrar's record-keeping duties were increasingly complex. As he acquired staff his prestige grew.[88] At busy times even his deputies may have been heavily burdened. One often sees several proctors appointed to act for a single party.[89] Such cases may have been factually or legally complex. Perhaps the clients were simply wealthy. Whatever the reason it would have made sense for senior lawyers to delegate laborious, routine, tasks to their junior colleagues. It is easy to imagine senior men preparing their own documents where necessary. After all, drafting a libel might require careful thought and much depended on it.[90] Depositions too. Yet, proficient juniors may have been given some freedom. The acquisition of such experience was vital. Once one had it, there were opportunities to pass it on, or for others to seek it, in abundance.

Mention must be made of notaries. With a limited monopoly in England most worked in the spiritual jurisdiction. Indeed, they make frequent appearance within its records. In addition to the

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[86] Swanson, 'A Canon Lawyer's Compilation', esp. 261-262; Helmholz, 'The Education of English Proctors', pp.202-204.
[87] Helmholz, 'The Education of English Proctors', p.204.
[88] O'Day, 'The role of the registrar', pp.79-80.
[89] See, for example, pp.139-142.
[90] Brundage, *Medieval Origins*, p.418.

registrars, many proctors also claimed to be notaries. Historians know little about the process by which they acquired knowledge of the *ars notarie*. An examination was required, but much is unclear. Given the absence of prosopographical study or biographical register, few generalisations about their education, or their clerical or cultural backgrounds, can be made. Nevertheless, they, and the skills they possessed, were considered very useful. Validation of evidence by a single notary significantly helped court efficiency. They had precedent books too. Some were unmarried clerks in minor orders, others married laymen. Some undoubtedly attended university. But the majority did not practice solely as a notary. Most undertook other administrative or legal duties.[91] Perhaps being a notary was often just an aspect of professional life, an identifier more allied to the task at hand than describing, or defining, a working existence.

3.3 Professionalism and Ethics

Naturally, despite the high standards of many, court practice was never perfect. But over previous centuries church leaders had resolved to improve performance of the courts and the behaviour of those practising within them. Demands had been made that practitioners live up to established, and detailed, ethical standards.[92] The courts became the arbiters of who could exercise right of audience. Limits on numbers were a part of those attempts at quality control.[93] Later, guidelines about professional conduct morphed into rules and desirable behaviours transformed into duties to observe under pain of punishment.[94]

Applicants who wished to practice often had to prove their legal training. Registers were regularly kept, conditions frequently set. There might be a minimum age requirement (often

[91] O'Day, 'The role of the registrar', p.79; Zutshi, 'Notaries Public', 423-431. A John Elvedon is mentioned as a notary in Thompson, *English Clergy*, p.208.
[92] Brundage, 'The Rise of Professional Canonists', 62-63.
[93] See footnote 35.
[94] Brundage, *Medieval Origins,* pp.309 & 313.

seventeen years old), and those blind, deaf, previously sentenced to death, homosexual, known as having fought with wild beasts, female, or tainted with *infama*, could not be admitted.[95] An oath to deal honestly with clients, represent them faithfully, and observe professional obligations, had to be taken prior to admission and renewed annually.[96] In late thirteenth-century Ely qualified lawyers not only swore to abide by its court's rules and customs but agreed to screen clients to determine if cases were well-founded and refuse to act if unconvinced of the justice of their claims. Each also promised to press each case zealously, and strive for a favourable outcome, but resign immediately it proved lacking in merit.[97] Similar oaths were required elsewhere, and records show lawyers frequently abided by them.[98] Confidentiality was also important. Lawyers not only had to keep clients' secrets but protect their person and property.[99]

When in court deference was the order of the day. Proctors and advocates had to behave in similar ways. Every movement was symbolic. At his moment to speak a lawyer would rise, remove his cap, and bow. It was never correct to turn one's back. Appropriate gesture, body language, and seriousness, were always required. Colleagues, especially judges, had to be spoken to politely and respectfully.[100] Good behaviour was visible to those colleagues but so was bad. It was visible to the public too.[101] Even lawyers' behaviour outside court was subject to regulation and constraint.[102]

Of course, just as the system was imperfect so were its members. Nevertheless, there were mechanisms to deal with miscreants. Judges were supposed to discipline themselves. But it was possible to seek their removal. Presentation of a written exception stating a legally acceptable reason to step away (such as bias, conflict of interest, or disparity in social rank) might be all that was required.

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[95] Brundage, 'The Ethics of the Legal Profession', 241-242.
[96] Brundage, 'The Ethics of the Legal Profession', 242.
[97] Brundage, 'Entry to the ecclesiastical bar at Ely', 532, 538-540.
[98] Brundage, *Medieval Origins*, p.317.
[99] Brundage, *Medieval Origins*, p.184.
[100] Brundage, *Medieval Origins*, pp.309-312.
[101] Within LAO/Cj.2/fol.91v there is reference to a crowd of sixty plus. Pastoral literature written by canonists increased this visibility. For a short but effective summary of such work: Kane, *Popular Memory and Gender*, pp.45-47.
[102] Brundage, *Medieval Origins*, p.313.

There were risks deploying such a weapon but sometimes it worked.[103] Registrars were also expected to behave well: the grant to John Frankishe and John Pate (Watson's joint successors) states it is made 'considering the good service done and, as we hope, to be done'.[104] Clients who suffered losses through an advocate's unwarranted desertion were able to obtain compensation, the advocate declared *infama* in turn and unable to practice until purged. Serious negligence might incur further punishment. The ultimate sanction was permanent loss of the right of audience.[105] In 1402, no fewer than thirteen men claiming to be notaries in London were found unable to prove their credentials and declared of bad fame and worthless opinion. Individual notaries were sometimes disciplined too.[106] Apparitors might also be chastised. In fourteenth-century Canterbury deans and incumbents were often appointed as apparitors for the service of citations and the like. Surviving records show them having to answer for failure.[107]

Of course, rogues occasionally got away with serious misbehaviour.[108] But most professionals were probably keen to obey the rules. They may even have existed in a mindset inculcated with fear of transgression. After all, for almost as long as lawyers had existed as a distinct social group people had sought to denigrate them.[109] Their frequent meetings in court, sitting formally attired whether

[103] Brundage, *Medieval Origins*, pp.384-387.
[104] *Chapter Acts*, ed. Cole, 12, pp.144-145.
[105] Brundage, *Medieval Origins*, pp.317-318, 339, 340.
[106] Zutshi, 'Notaries Public', 432-433.
[107] Woodcock, *Canterbury*, p.46.
[108] For a fine example: Brundage, 'The Candlesby Case'.
[109] Brundage, *Medieval Origins*, p.477. There is space here to mention only a few examples of satirical and other literature that sought to criticise ecclesiastical lawyers and their clerical brethren and to advise avoidance of the church courts. Fourteenth-century works include *The Friar's Tale* in Geoffrey Chaucer, *The Riverside Chaucer*, ed. Larry D. Benson (Oxford, 2008), vol.3 (D) 1597 and the anonymous *Ne mai no lewed lued libben in londe* (also known as *Satire on the Consistory Courts*), in *MS Harley 2253: The Complete Harley Manuscript 2253, Volume 2,* ed. & trans. Susanna Greer Fein with David Raybin and Jan Ziolkowksi (Kalamazoo, 2014) and available online at 'Art. 40, Ne mai no lewed lued libben in londe' at http://d.lib.rochester.edu/camelot/text/fein-harley2253-volume-2-article-40 [Accessed 26 July 2019]. Later works include John Skelton's *Colyn Cloute* (London, 1545? Circulating in manuscript form in the 1520s), Thomas More's 1516 *Utopia*, trans. Clarence H. Miller (New Haven, 2014), see esp. p.132, and *Peter Idley's Instructions to his Son*, ed. Charlotte D'Evelyn (Boston, 1935), esp. p.135. For further reading: John A. Yunck, 'The Venal Tongue: Lawyers and the Medieval Satirists', *American Bar Association Journal*, 46 (1960), 267-270; Owen, 'Ecclesiastical Jurisdiction in England 1300-1500', p.199; Thomas Hahn and Richard Kaeuper, 'Text and Context: Chaucer's Friar's Tale', *Studies in the Age of Chaucer*, 5 (1983), 67–101 (particularly referencing the summoner); James A. Brundage, 'Vultures, Whores and Hypocrites: Images of Lawyers in Medieval Literature', *Roman Legal Tradition*, 1 (2002), 56-103, *Medieval Origins*, pp.477-487; Brantley L. Bryant, '"By extorcions I

dealing with cases or not, continually brought the importance of their own oaths and those sworn by witnesses to the fore and forever reminded them of the seriousness of their work. Attempts at quality control may have reinforced any tendency to rely on those within the group and helped create unease when newcomers arrived. Such a group dynamic could well have been largely unspoken but strengthened that need to behave within the rules. If one regarded oneself as of knightly rank, the fear of losing it would have been especially strong. But prospect of professional and/or personal shame would have been a powerful deterrent to all, especially because punishment could be inflicted in the presence of erstwhile colleagues, mentors, family, friends, patrons, neighbours, perhaps even clients.

To learn more, I return to Lincoln's audience court and focus on those whose working days are documented within its records. I begin once again with its judges, move on to consider advocates and proctors, and then discuss the registrar and his deputies. I conclude by looking at apparitors and others.

3.4 Lincoln Records

Judges

Chancellor, Official-principal and Vicar-general John Rayne first graduated in civil law from Cambridge during 1499, obtained his doctorate in that subject in 1506-7 and another in canon law during 1511-12. By 1513 he was an advocate member of Doctors' Commons. In 1521 he successfully applied to be incorporated in Oxford in respect of both doctorates.[110] He could well have spent time in the courts of both university towns. He held several benefices including, from 1523, Cottesmore in Rutland.[111]

lyve": Chaucer's *Friar's Tale* and Corrupt Officials', *Chaucer Review*, 42 (2007), 180-195 at 180; Kane, 'Women, Memory and Agency', esp. pp.51-52.

[110] Venn, vol.3, pp. 249-50; *BRUO 1501-40*, pp. 476-7; Squibb, *Doctors' Commons*, p.132.

[111] Venn, vol.3, p.249; *BRUO 1500*, vol.3, p.474.

No commission of appointment survives but it seems he became chancellor in 1525. Roston died before 25 September that year and Rayne carried out a visitation to Bardney Abbey in that capacity on 12 May.[112]

By 1528 Rayne had many years' experience and his professionalism, stamina and independence are clearly visible within LAO/Cj.4. He dealt with several marriage cases including *Office c. Kellett, Sulby and Estwyck* and *Edwardus Cleypoll c. Isabella Reynoldes* discussed in Chapter Four.[113] His acumen, especially in sentencing, was much needed in Christopher Sawer's case and in that against Greg, Sympson and Urmeston (see Chapter Five).[114] We see him questioning Margery Benam about her relationship with Richard Swafeld (ditto).[115] As mentioned in Chapter Two, he was appointed a chief arbitrator.[116] Even on a routine day like 2 August 1529 he had to deal with litigation between Margaret Tharrald, the widow of Roger Tharrald, and his executors, Robert Whyam the vicar of Helpringham (Lincolnshire) and John Jeuson the cantarist of Hale (ditto), about authenticity of the deceased's will, a defamation case where Johanna Owle appeared to allege Katerina Shipton had called her 'a strong hore', the tragic case of Thomas Curtase and his wife Emma whose young child had drowned, a violent attack by David Harryson of Thyrleby on his priest John Prestburn, and procedural problems concerning service of a citation on Oliver Darkar.[117] Such work could be demanding, difficult and intense. As we saw when Draycott visited Alford, it may have been especially so when lawyers were not involved.[118]

[112] *Visitations*, ed. Thompson, 35, p.219; *BRUO 1500*, vol.3, p.474; Venn, vol.3, p.249; Bowker, *Henrician Reformation,* p.196 (endnote 9 to p.18).
[113] LAO/Cj.4/Q1.fols32v & 34r; LAO/Cj.4/Q1.fols40r, 42r & 42v. See pp.187-189 and 169-172 respectively.
[114] *Sawer* (incest) LAO/Cj.4/Q1.fol.7r; *Greg, Sympson alias Baker et Urmeston* (multi-party assault) LAO/Cj.4/Q1.fols45r & 45v; pp.226-230, 235-237.
[115] *Office c. Margeria Benam* LAO/Cj.4/Q1.fol.36v; p.225.
[116] See p.102.
[117] LAO/Cj.4/Q1.fols49r and 49v. As to Darkar: Chapter Two, pp.93-94.
[118] Chapter Two, pp.80-82.

By 1532 Rayne was questioning heretics. In 1533 he was consulted about the king's divorce.[119] His advance in the diocese had been swift, and he was on good terms with state authorities.[120] But, in 1536, he was murdered during the Lincolnshire Rising. Somewhat opportunely, he had made his will just days before.[121] Probably a traditionalist he was certainly a man of substantial means. Several bequests are of interest for current purposes.[122] One is 'to Symond Kent and his wife xx s [twenty shillings]'. Kent was one of the proctors and, in 1534, registrar to the archdeacon of Huntingdon later appointing his sons William and Kenelm and two more Kents, another Simon and a Gabriel, to that post.[123] William Kent also received ten shillings. Another was 'to Bridget Watson my goddaughter x s [ten shillings]'. Bridget was one of Watson's daughters. There was one to Watson's clerk and notary public John Wynterbourn of twenty shillings, and another 'to Robert Stedes wiffe x s [ten shillings]', Stede being one of the court's apparitors.[124] Rayne may have been related to Richard, Michael and Thomas Rayne who are noted in LAO/Cj.4 as present in court on several occasions. Michael is not referred to in the will. Richard is appointed an executor. Thomas and his wife receive a bequest of twenty pounds.[125] As one would expect, Rayne took his social obligations seriously. He gave significant sums to the parish church, priest and poor of Lyddington as well as to many elsewhere. Yet, these bequests suggest he valued not only his own family but the bond with those he had worked and their families.[126]

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[119] Venn, vol. 3, p.249.
[120] *Visitations*, ed. Thompson, 35, p.220.
[121] The will can be found at TNA/PROB/11/27/5 though the internet catalogue names him John Payne.
[122] Rayne was prebendary of Thame at his death. In 1535 this prebend alone was valued at £82 12s 2d: *Fasti Ecclesiae Anglicanae 1300-1541, vol.1*, Lincoln Diocese, ed. H. P. F. King (1962), pp.115-117; *Fasti Ecclesiae Anglicanae 1541-1857, vol.9, Lincoln Diocese,* eds. Joyce M. Horn and David M. Smith (1999), p.121.
[123] LAO/Cj.4/Q1.fols20r, 22v, 31r, 31v, 38r, 41r, 41v, & Q2.fols56r & 67r; Huntingdonshire Archives, KAH/1/274/23, 24, 25, 26, 29 & 30; *Chapter Acts*, ed. Cole, 12, pp.185-186.
[124] John Wynterbourn is recorded as a notary at LAO/Cj.4/Q1.fol.42v. See also p.156. As to Stede, see pp.150-151.
[125] Richard Rayne is described as 'litteratus' several times and features at LAO/Cj.4/Q1.fols15r, 22r, 30r, 31r, 31v, 32v, 38v, 41v, 42v, 44v, 47r, 47v, and Q2.fols65r, 65v and 67v. Michael Rayne, is described as 'litteratus' once and features at LAO/Cj.4/Q1.fols21v, 31r & 41v. Thomas Rayne is mentioned at LAO/Cj.4/Q2.fols65r & 65v. It is conceivable they were scribes or advocates in their year of silence.
[126] See also the Will and Codicil of Edward Watson: TNA/PROB/11/23/347 and *Lincoln Wills*, ed. Foster, pp.13-30.

Commissary-general Anthony Draycott graduated from Oxford with a first degree in canon law in 1510-11 and obtained his doctorate in 1522. He practised as a proctor in 1514 and became an advocate in January 1525. By 1528 he had at least fourteen years' practical courtroom experience. He was also principal of Great White Hall and afterwards involved in Jesus College. Rector of Cottingham, Northamptonshire, from 1531, and a canon of Lincoln from 1539, he was deprived of both in 1560. At one time vicar-general himself, and archdeacon of Stowe and of Huntingdon, he undoubtedly played a prominent part in diocesan administration. Later he became vicar-general in Coventry and Lichfield and then chancellor both there and in Lincoln. According to Foxe he acted with great harshness against Protestants but, failing to take the oath of supremacy on the accession of Elizabeth I, was imprisoned in the Fleet though later released. He died in 1571.[127] No known will survives.

Magister Stephen Worthington, who sits as a deputy on one occasion, is seen nowhere else. Again, no known will survives. But, by his title, it seems likely he was also well-educated.[128]

All three judges, like many others, would have been thoroughly familiar with proctors' and advocates' oaths and the professional standards they swore to uphold. Bowker suggests that deputies had their limitations.[129] Obtaining the view of their bishop would have been occasionally essential. But, equally, like Roston before them, Rayne and Draycott at least would have been well used to making contentious decisions alone. If in doubt, they could always turn to brethren, advocates, even the registrar, for advice. Away from the courtroom they probably socialised together in the palace at Lyddington or at Watson's nearby residence.[130] Rayne and Watson were contemporaries at Cambridge and could easily have met there.[131] To have been named godfather to one of Watson's daughters Rayne must have been intimately acquainted with him, his family and household. Both blood and

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[127] LAO/Cj.4/Q1.fol22v; Longden, vol. IV, p.143; *BRUO 1501-1540*, p.176; Squibb, *Doctors' Commons*, p.142; Goodwin, rev. Chibi, 'Draycot, Anthony'.
[128] LAO/Cj.4/Q2.fol.53r.
[129] Bowker, *Secular Clergy*, pp.29-30.
[130] 'Successful practitioners tend to identify themselves totally with their profession and often limit their off-duty social activities almost exclusively to interaction with other members of the profession and their families.': Brundage, 'The Medieval Advocate's Profession', p.441. As to Watson's residence: p.145.
[131] See p.143.

affinal relatives were very important in the promotion and sustenance of household piety.[132] To entrust the spiritual upbringing of his child suggests Watson viewed Rayne particularly positively: after all, there were several within the diocese upon whom he could have bestowed such honour. To have that reciprocated through a generous bequest, even though by then Watson himself had been dead for six years, indicates trust had been mutual and that the spiritual bond was important to Rayne too. Judges may have been somewhat aloof, but they were neither a group within a group, apart even from other lawyers, nor cut off from the world.

Advocates and Proctors

No advocates are named in LAO/Cj.4. But there are three cases where they appear to have been present or at least involved. Brundage describes the Ely Consistory Court regularly taking legal advice from advocates before reaching a decision and states that a declaration concerning such consultation prefaced final judgement. His example '*de consilio iurisperitorum nobis assistencium*' ('assisted by the advice of others learned in the law') is almost identical to that in the case of *Inman c. Thompson* where the phrase adopted is '*habentes de consilio iurisperitorum*'.[133] A virtually identical phrase appears in the case of *Cleypoll c. Reynoldes* discussed in Chapter Four.[134] On 4 June 1529 the *iurisperiti* were also mentioned in *Floyd c. Skevington* when Chancellor Rayne adjourned the case for parties to introduce expert legal advice they had received.[135] Each event must have been worthy of special mention. It is unlikely it meant discussion, private or otherwise, between men already frequently in court together.

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[132] Robert Lutton, *Lollardy and Orthodox Religion in pre-Reformation England, Reconstructing Piety* (Woodbridge, 2006), p.25.
[133] Brundage, 'The Bar of the Ely Consistory Court', 544; LAO/Cj.4/Q2.fol.57v. For more on *Inman c. Thompson*: Chapter Two, p.111; Chapter Four, pp.176-180.
[134] See pp.177-178, esp. footnote 66.
[135] 'et quod tunc inducerent consiliarios suos iurisperitos': LAO/Cj.4/Q1.fol.32r. For more on *Floyd c. Skevington*: pp.139, 142; Chapter Two, pp.110-111; Chapter Four, pp.190-196.

Nothing similar appears within *An Episcopal Court Book* and I have been unable to locate anything within LAO/Cj.3.

LAO/Cj.4 tells us little about their ability to earn a living but, for the most part, proctors are easier to track. Master Tyers cannot be traced elsewhere.[136] Whether John Talcarum was, or was not, somehow connected with his near namesake from the famous Court of Common Pleas case is unclear.[137] Of Robert Smyth we can learn little or nothing.[138] Radulphus Leuyns appears nowhere else too, but was likely related in some way to his client, Thomas Leuyns. Perhaps his appearance in a case about chancel repairs was a one-off because he was more conveniently placed to attend than his non-resident namesake: occasional proctors, speaking for relatives, were permitted.[139] As in other courts, general proctors from elsewhere were sometimes refused right of audience.[140] Master Thomas Standeven, mentioned once as being substituted by Thomas Webster, may have been the man who, before his death in 1567, is known to have practised in York.[141] The remaining six, seemingly granted the necessary permission, make many more frequent appearances.

Thomas Both(e), or Booth, appears regularly. He obtained a bachelor's degree in Civil Law in 1504-5 and by 1526 was stipendiary curate of Deene, Northamptonshire, a few miles from Lyddington.[142] By 1539 he may have been vicar of Telford, Lincolnshire.[143] He acted as proctor for the plaintiff in *Floyd c. Skevington* and for the defendant (along with three others - Henry Litherland, Edward Machell, and Simon Kent) in *Styson c. Digby*. In the latter, clearly in the midst of challenging

[136] LAO/Cj.4/Q1.fol.31v.
[137] LAO/Cj.4/Q1.fol.47r.
[138] The Robert Smyth in *BRUO 1500*, vol. 3, p.1719, is an unlikely candidate.
[139] The record states Radulphus 'exhibit tunc et ibidem licenciam domini episcopi Lincoln' de non residendum pro quinquennio ad instantem': LAO/Cj.4/Q1.fol.43v. See also Brundage, *Medieval Origins*, p.209.
[140] LAO/Cj.2/fol.78r.
[141] LAO/Cj.4/Q2.fol.51r; Marchant, *The Church Under the Law*, p.249; and, for example, York Cause Papers CP/G.925A (*Willelmus Mawmond c. Elizabeth Bainton*) at https://www.dhi.ac.uk/causepapers/causepaper.jsp?id=105859 [accessed 21 August 2019].
[142] Longden, vol. II, p.169; *BRUO 1500*, vol.1, p.80.
[143] Venn, vol.1, p.180.

work, he can be seen undertaking vital procedural steps on his client's behalf.[144] He represented Hugo Fellys in a case that had started after his client accused a priest, Richard Clarke, of incontinence with Elisabeth his wife. She appointed Magister William Dukkyt her single proctor (about whom more below) most probably to protect her reputation. Hugo seems to have had means to appoint four – not only Both but, once again, Litherland, Machell and Kent. Unfortunately, we have no record of any final resolution and only limited information about the extent of professional involvement.[145] But we can see Both was also appointed proctor for Margery How alias Fletcher, along once more with Machell and Kent, in another matrimonial suit.[146]

Henry Litherland graduated from Oxford with a bachelor's degree in canon law in 1516 and supplicated for his doctorate in 1521. He was vicar of the Godstone Moiety of Pattishall, Northamptonshire, from 1514 to 1529, and perhaps also of Aukborough, Lincolnshire.[147] Last treasurer of the cathedral from 1535, and prebend of Lincoln (Crackpool St Mary) from 1536, he was executed for treason in August 1538.[148] That execution, when vicar of Newark, was for refusing to accept royal supremacy and playing a part in the Yorkshire Rising.[149] Along with Machell, Both, Kent, Thomas Webster, and a Thomas Stone, he is named a party to an agreement in 1528 with the prioress and convent of St Michael's Stamford that appointed them all proctors. Such appointments may have paid a good fee.[150] In 1526, when keeper of the Altar of St Peter at the Cathedral, he earned £20 from that

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[144] *Floyd c. Skevington*: LAO/Cj.4/Q1.fol.30r; Chapter Four pp.190-196. *Styson c. Digby*: LAO/Cj.4/Q1.fols31r, 31v & 38r; Chapter Two pp.104-105.
[145] *Hugo Fellys c. Elisabeth Fellys*: LAO/Cj.4/Q1.fols17r, 20r and 20v.
[146] LAO/Cj.4/Q1.fol.67r.
[147] Longden, vol. VII, p.243; 'Lee-Llewellin', in *Alumni Oxonienses 1500-1714*, ed. Joseph Foster (Oxford, 1891), pp. 892-921, *BHO* http://www.british-history.ac.uk/alumni-oxon/1500-1714/pp892-921 [accessed 28 September 2018]. It seems likely the entry for Aukborough recording death in 1532 is either incorrect or a different man.
[148] *Chapter Acts,* ed. Cole, 12, p.192; *Fasti 1300-1541*, vol.1, pp.23, 57.
[149] 'Henry VIII: August 1538 21-25', in *Letters and Papers, Foreign and Domestic, Henry VIII, Volume 13 Part 2, August-December 1538*, ed. James Gairdner (1893), pp. 57-75, *BHO* http://www.british-history.ac.uk/letters-papers-hen8/vol13/no2/pp57-75 [accessed 28 September 2018]; *Chapter Acts*, ed. Cole, 12, pp.xi-xii & 192 (esp. footnote 1); and *Chapter Acts*, ed. Cole, 13, pp. x-xi & 3.
[150] TNA/E326/6819. On the employment of lawyers by cloistered nuns: Elizabeth Makowski, *English Nuns and the Law in the Middle Ages: cloistered nuns and their lawyers, 1293-1540* (Woodbridge, 2012).

post alone.[151] In 1527 he had a twenty-year lease on a house close to the cathedral south porch.[152] By the time of his death he was probably a man of very substantial means.[153]

Edward, sometimes Evan or Ewann, Machell can be traced. A Machell (the entry has no first name), like Litherland, graduated from Oxford with a bachelor's Degree in canon law. A doctorate followed in 1503.[154] Like Both, he acted as proctor for Hugo Fellys.[155] The records also suggest he was not only proctor for Elisabeth Digby but also for Thomas Styson. Though this might seem an irreconcilable conflict, because Styson had issued the libel, both were arguing they were married to each other.[156] He also appeared as one of Alice Skevington's legal team. The inconsistencies in her case, discussed at length in Chapter Four, and consequent ethical questions, may have caused him to think hard before proceeding.[157] In *Inman c. Thompson* he can be seen pursuing several procedural steps and seeking to advance the plaintiff's case. He puts Walker (the competitor) on notice to come up with evidence and later, when Walker does not appear, petitions for sentence in Inman's favour.[158] Vindicated, he must have considered the risk worth taking. He may have been the 'magister Marshall of Lid' to whom Rayne bequeathed twenty shillings.[159]

William Dukkyt, who was Elizabeth Fellys's and Thomas Brasebrig's proctor, is slightly more difficult to track.[160] Although not the William Doket who was a fellow of Queen's College in 1484, because he had died in 1503, he may have been the Master Duckett mentioned in LAO/Cj.2 as there in 1507.[161] However, he seems likely to have been the William Duckett (also referred to as Dokett,

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[151] *Chapter Acts*, ed. Cole, 12, p.211.
[152] *Chapter Acts*, ed. Cole, 12, p.192 (esp. footnote 1).
[153] Just prior to execution Litherland and his co-accused were asked to create 'several books of remembrance' to record their wishes as to debts and gifts: 'Henry VIII: August 1538 1-5', in *Letters and Papers, Foreign and Domestic, Henry VIII, Volume 13 Part 2, August-December 1538*, ed. James Gairdner (1893), pp. 1-14, *BHO* http://www.british-history.ac.uk/letters-papers-hen8/vol13/no2/pp1-14 [accessed 28 September 2018]. References to Litherland appear at LAO/Cj.4/Q1.fols20r, 31r, 41r, 41v & Q2.fol.60v.
[154] *BRUO 1500*, p.383; Venn, vol.3, p.123.
[155] LAO/Cj.4/Q1.fol.20r.
[156] LAO/Cj.4/Q1.fol.31r; Brundage, *Medieval Origins*, p.320.
[157] LAO/Cj.4/Q1.fol.41v; pp.190-195.
[158] LAO/Cj.4/Q2.fols61 & 66r; Chapter Four p.180.
[159] TNA/PROB/11/27/5.
[160] LAO/Cj.4/Q1.fols20r & 31v.
[161] *BRUO 1500,* vol.3, p.191; LAO/Cj.2/fol.100A.

Dukytt and Duket), principal of Broadgates Hall between 1526 and 1528, admitted to a bachelor's degree in civil law from Oxford in 1526, who, by 1528, also had a bachelor's degree in canon law. Prebendary of Newarke College by 1528, he vacated that position in October 1532, perhaps to be vicar of Rothley, Leicestershire. He may have been the William Ducket mentioned favourably as 'an honest priest' in a letter written by Abbott Richard Pexall of Leicester to Thomas Cromwell on 26 December 1533. Later canon of Lichfield (Bishopshull) in 1538, vicar of Duffield in Derbyshire, and chaplain to Bishop Roland Lee of that diocese, he remained in those posts until his death in 1540.[162]

There seems no trace of Simon Kent's educational experience. Oddly, he was not only appointed to act as proctor for Thomas Styson and Elisabeth Digby (which was understandable given they agreed they were married) but later for Thomas Brasebrig too. Any explanation of this seemingly irreconcilable conflict remains hidden.[163] He was, as mentioned, later the recipient (jointly with his wife) of the bequest of twenty shillings from Rayne's will and registrar for the archdeaconry of Huntingdon.[164] Given that post he must have known Draycott well.

Thomas Webster, the final proctor discussed here, features frequently within LAO/Cj.4 but no will of his seems to survive. Likely the vicar of St Martin's Stamford in 1519, by 1521 he was the self-styled parson of Stoke Dry, just one mile from Lyddington.[165] Of the proctors named he is the only one within the Military Survey 1522 where he was said to possess the parsonage worth ten pounds and to be worth, in goods, twenty marks.[166] He seems to have worked as a scribe on several occasions, and as registrar's deputy.[167] In *Floyd c. Skevington* he was not only present but was described as "Magister" when Both was appointed proctor.[168] There is no formal record of any legal qualification but he may

[162] 'Henry VIII: December 1533, 26-31', in *Letters and Papers, Foreign and Domestic, Henry VIII, Volume 6, 1533*, ed. James Gairdner (1882), pp. 631-653, *BHO* http://www.british-history.ac.uk/letters-papers-hen8/vol6/pp631-653 [accessed 28 September 2018]; *BRUO 1501-1540*, p.178.
[163] LAO/Cj.4/Q1.fols31r, 31v
[164] See pp.135-136.
[165] Longden, vol. XIV, p.229.
[166] *The County Community*, ed. Cornwall, p.53.
[167] Chapter One, p.52.
[168] 'presentibus tunc ibidem magistro Thoma Webster Ricardo Rayne litterato et alij': LAO/Cj.4/Q1.fol.30r.

have been a Cambridge graduate.[169] On 30 January 1529 he was appointed proctor for Thomas Styson (jointly with Kent and Machell) and described as a notary public.[170] He was appointed jointly with Both as an arbitrator to deal with the disputes between Roger Flower and John Claypole in August 1529.[171] All in all, it looks as if his career progressed quite well, quite quickly. He was undoubtedly respected. Watson treated him very generously in his will bequeathing him 'oon of my furred gownnes, on of my dowbletes of sylk', yearly the sum of forty shillings, a joint share (with John Wynterbourn) of 'the remayndor of all my landes in Rokingham' for life (the other being bequeathed to Watson's son also named Edward) and 'if the child in my wyves body be not a boy or doo not lyve, then I will that after the deth of my wyff … my hows that Parr dwellith in … for ever'.[172] Webster (again with Wynterbourn) also witnessed the will. In 1535, he seems sufficiently well-connected to plead vigorously, and eloquently, on behalf of Watson's son to Thomas Cromwell after the registrar's death.[173] In 1539 he became registrar to the archdeacon of Leicester.[174]

Edward Watson and his Deputies

Since Charles Wise in the nineteenth century, and Bowker's brief comments in *An Episcopal Court Book*, Watson's work, power and influence have remained unexplored.[175] Valuable records may have

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[169] He does not feature in Venn but is described as a Master of Arts of Cambridge in a letter at 'Henry VIII: October 1535, 11-20', in *Letters and Papers, Foreign and Domestic, Henry VIII, Volume 9, August-December 1535*, ed. James Gairdner (1886), pp.195-218, *BHO* http://www.british-history.ac.uk/letters-papers-hen8/vol9/pp195-218 *[*accessed 5 September 2018].

[170] '… in ecclesia prebendali de Lidington comparuit coram domino cancellarum Thomas Styson de Garroden et constituit magistrum Thomam Webster Simonem Kent et Edwardum Machell suos procuratores …': LAO/Cj.4/Q1.fol.31r. 'magistris Simone Kent Thoma Webster notarijs publicis': LAO/Cj.4/Q1.fol.31v.

[171] 'xxmo Augusti Anno domini millesimo CCCCCmo xxixmo in ecclesia prebendali de lidyngton Rogerus Flowers et Johannes Claypole de Okeham promiserunt stare arbitrio magistro Thome Both et domine Thome Webster Arbitratorum ac magistre Johannis Raynes imperis super omnibus causis inter ipsos pendentibus …': LAO/Cj.4/Q1.fol.3r.

[172] *Lincoln Wills,* ed. Foster, pp.13-30.

[173] 'Henry VIII: Miscellaneous, 1535', in *Letters and Papers, Foreign and Domestic, Henry VIII, Volume 9, August-December 1535*, ed. James Gairdner (1886), pp. 367-402, *BHO* http://www.british-history.ac.uk/letters-papers-hen8/vol9/pp367-402 [accessed 28 September 2018].

[174] *Chapter Acts*, ed. Cole, 13, pp.70-71.

[175] C. Wise, *Rockingham Castle and the Watsons* (1891), esp. pp.19-25; *AECB*, pp.viii-ix.

perished in the fire that destroyed Registrar Frankishe's books and papers during the Lincolnshire Rising.[176] However, much can still be uncovered. According to Watson's will, he was born in Sledmer, Yorkshire.[177] A graduate of Cambridge with a bachelor's degree in canon law in 1502/3, he married Emma the niece of Archdeacon William Smith, was appointed registrar by Bishop William Smith, was granted the right to bear arms in 1519, and also seems to have been the bishop's surveyor-general.[178] I have already discussed his connections to John Rayne.[179] He never seems to have been in even minor orders.[180] He may have honed his skills in the ecclesiastical courts of Cambridge or even those of Lincoln diocese.[181] Working in the latter would certainly have brought him to the bishop's attention.

Fig.14: Grant of Arms to Edward Watson

In the Military Survey 1522 and Lay Subsidy 1524-5 Watson featured in Rutland's Wrandike Hundred. In both sources the enormous sum of £200 is noted against his name 'in goodes' and, in the former, it

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[176] *Chapter Acts*, ed. Cole, 13, p. xiv.
[177] 'I will that sone after my deth myn executoures distribute emonges the pore people at Sledmare, where I was born, iij*l*. vj*s*. Viij*d*': *Lincoln Wills,* ed. Foster, pp.13-30.
[178] Venn, vol.4, p.348. Wise (*Rockingham Castle*, pp.19-20) and Bowker (*AECB*, p.viii) suggest Watson married Bishop Smith's niece. However, Archdeacon Smith not only bequeathed Watson his 'bed of downe' and also his 'bed wich I now ly in with all hys appurtenances' but left Emma 'my Nece hys wyff my hoope ring of gold': *Chapter Acts*, ed. Cole, 12, pp.91-94.
[179] Rayne was at Cambridge in 1502. See p.134.
[180] Wise, *Rockingham Castle*, p.23.
[181] Some registrars had careers as proctors: Woodcock, *Canterbury*, p.120.

is said he 'hath londs their £8'.[182] That figure for goods is by far the highest in the latter return. He was the only man recorded possessing a full set of arms and armour. Indeed, in only one other entry throughout either return is a sum for goods in excess even of £100 recorded.[183] Rosemary Canadine and those working on the history of Lyddington suggest its tax-paying population was around 130 and its overall population some 600. Yet, with Watson's wealth skewing the result, it was the second-highest tax-paying community in Rutland and gave precedence only to the county town of Oakham. Watson leased Lyddington's prebendal estate and owned the village tannery. Though neither it nor much of his house survives, the latter was almost certainly substantial.[184]

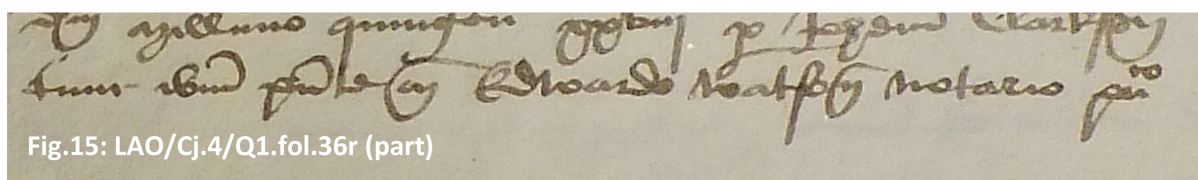
Fig.15: LAO/Cj.4/Q1.fol.36r (part)

Bowker explained that the greater part of the manuscript she transcribed and published as *An Episcopal Court Book* was Watson's work.[185] Not only is his presence there it can be felt throughout LAO/Cj.4.[186] As registrar and notary public, he was frequently in court.[187] If not in attendance himself, he seems to have provided several deputies, including both Webster and John Wynterbourn, and is likely to have exercised control not just over them but advocates, proctors, Michael, Thomas and Richard Rayne, any other scribes, and apparitors including Robert Stede. When not in court Watson could probably be found compiling episcopal registers and visitation books or engaged in

182 *The County Community*, ed. Cornwall, pp. 55, 92.
183 William Plavys of Oakham is described as 'Yoman and tenant to the king' and to have 'in goodes £200' in 1522. By 1524-5 he is referred to as a pewterer but the return refers to goods of only £100: *The County Community*, ed. Cornwall, pp. 76 & 114. Edward Digby of Stoke Dry features in both returns. Although in 1522 the amount for land is left blank, in 1524-5 he is described as a knight who has 'in landes - £120'. He seems the landlord for several properties in the village, and is recorded elsewhere receiving fees too, but the figures for his goods are small or non-existent: *Ibid*. pp.92, 114, 126.
184 Canadine et al., *Buildings and People*, pp.29-31, 56, 117-119.
185 *AECB*, p.viii.
186 Esp. LAO/Cj.4/Q1.fols1v, 31r, 31v, 36r, 42v, 43v, 47r, 47v, & 48r.
187 Watson is referred to as a notary at LAO/Cj.4/Q1.fols1v, 36r, 47r & 48r.

correspondence.[188] Although its records have also been lost, he may have administered Lyddington's peculiar probate jurisdiction.[189]

Watson's will helps flesh out a man many must have relied upon, respected, perhaps even feared. Dated 2 October 1530, with a codicil dated 10 October 1530 the day of his death, it reveals he owned large amounts of property, not just in Lyddington but throughout the diocese and in London, as well as much about his working and religious life.[190] The religious elements seem relatively standard at first. They include requests 'to be buried in the chauncell off the parishe churche of Lidington' and for various sums to be paid to the church in recompense of 'duety undoen' and 'in reparacion thereof', and that

> his executores cause an hole trigintall off masses to be said in the churche where I shalbe buried upon the daye off my buriall if that so may be, orels the next daye or days folowing. And lykwise as many at the monythes mynd, and as many at my yeres day

But subsequent bequests project an image of someone keen, and wealthy enough, to dispense considerable largesse to religious houses. They include gifts 'to the brethern and sistern at Kingwoldgraves emong them xx*s*', to 'the priour and convent of Laund, the priour and chanons of Brok', the priour and chanons of Laund, the abbot and convent of Oselueston, and the priour and convent of Fynneshed xx*s*. apiece' and several more.[191] The gift to Laund may have been inspired by

[188] See: p.121; *AECB,* p.viii; Chapter Two, p.82 (footnote 63).
[189] *A Calendar of Wills relating to the Counties of Northampton and Rutland,* ed. Phillimore, p.vi.
[190] *Lincoln Wills,* ed. Foster, pp.13-30.
[191] Killingwold Grove (also known as Kinwoldgrove) was a St Mary Magdalen Poor Hospital in Yorkshire: 'Regesta 211: 1351-1352', in *Calendar of Papal Registers Relating to Great Britain and Ireland: Volume 3, 1342-1362*, ed. W. H. Bliss and C. Johnson (1897), pp. 447-461, *BHO* http://www.british-history.ac.uk/cal-papal-registers/brit-ie/vol3/pp447-461 [accessed 21 July 2019]. Launde Priory, Brook Priory, Owston and Fineshade were Augustinian houses: 'Houses of Augustinian canons: The priory of Launde', in *A History of the County of Leicestershire: Volume 2*, eds. W. G. Hoskins and R. A. McKinley (1954), pp. 10-13, *BHO* http://www.british-history.ac.uk/vch/leics/vol2/pp10-13; 'House of Austin canons: Priory of Brooke', in *A History of the County of Rutland: Volume 1*, ed. William Page (1908), pp. 159-161, *BHO* http://www.british-history.ac.uk/vch/rutland/vol1/pp159-161; 'Houses of Augustinian canons: The abbey of Owston', in *A History of the County of Leicestershire: Volume 2*, eds. Hoskins and McKinley, pp. 21-23, *BHO,* http://www.british-history.ac.uk/vch/leics/vol2/pp21-23; 'Houses of Austin canons: The priory of Fineshade or Castle Hymel', in *A History of the County of Northampton: Volume 2*, eds. R. M. Serjeantson and W. R. D. Adkins (1906), pp. 135-136. *BHO* http://www.british-history.ac.uk/vch/northants/vol2/pp135-136 [all accessed 21 July 2019].

his connection with the previously-mentioned John Claypole who, in 1522, seems to have been the prior's servant.[192] Watson remembered his own episcopal patrons and recognised important others, appointing Henry Sapcote (his brother-in-law) an executor (along with his wife, a cousin from London, and the vicar of Lyddington, Laurence Hodgson) and John Rayne one of the supervisors.[193] He also gave to the poor and, as explained in Chapter Two, for good works.[194] I have already described some of the bequests to Thomas Webster and John Wynterbourn.[195] The latter was also to receive Watson's 'leace off the parsonage of Stonysby' and, after Emma's death, the 'hows and yard land in Thorp'. There is no information about books, but it seems inconceivable he had none.[196]

Fig.16: Edward Watson (posthumous portrait).

[192] Chapter Two, p.102; *The County Community*, ed. Cornwall, p.74.
[193] Hodgson can be glimpsed at LAO/Cj.4/Q.1.fols1r, 34r, 44v, 47r & 47v.
[194] See p.68.
[195] See pp.142-143.
[196] Watson seems to have known Richard Croke, Henry VIII's Greek tutor: Wise, *Rockingham Castle,* p.24.

Watson was certainly not the only early sixteenth-century registrar to have received an irrevocable commission, but the appointment must have given him considerable confidence and reassurance. He died too soon for us to be sure of his reaction to King Henry's reforms, but others, such as John Cooke at Winchester, certainly caused considerable trouble when they proved irremovable.[197] Yet, the position was not completely secure. Amongst the legacies in Watson's will is one to a Henry Watson described as 'my sonne at Newstede'. Henry is left £20 but with the proviso 'he have no moore of my goodes and landes'.[198] This may have been because Henry had retreated into holy orders at the abbey but, equally, his father may still have been angry. In February 1529, a Henry Watson, then Rector of Luddington (also in Rutland), appeared before the court confessing carnal relations with Anna Bright a widow.[199] Perhaps the senior man believed his son's crime endangered a hard-won position of authority and the memory remained raw.

Watson's marriage would have been anathema to some in previous generations and there is a suggestion that early fifteenth-century clerks, officials, even apparitors, were still forbidden to marry. However, though chancery clerks could not do so until 1523, many in ecclesiastical administration seem to have long moved away from such proscription.[200] John Colman, registrar of Canterbury Consistory Court between 1484 and 1534, Thomas Argall, registrar of the prerogative court of Canterbury from 1536 until his death in 1563, and John Pakyngton, chapter clerk of Lincoln, all had wives.[201] Driven by the growth of lay piety, and middling society's increased power and influence, the early sixteenth century witnessed a burgeoning preoccupation with marriage and, indeed, social control of all kinds. As Colin Richmond wrote, 'moral rigourism' was at work.[202] Wealthy,

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[197] Houlbrooke, *Church Courts*, p.26.
[198] *Lincoln Wills,* ed. Foster, pp.13-30.
[199] LAO/Cj.4/Q1.fols35v-36r
[200] R. L. Storey, 'Gentleman-bureaucrats', in *Profession, Vocation and Culture in Later Medieval England: essays dedicated to the memory of A. R. Myers*, ed. Cecil H. Clough (Liverpool,1982), pp.90-129 at pp.99 & 108-109; Forrest, *Detection of Heresy*, p.87; Chapter One, p.9 (footnote 29).
[201] Woodcock, *Canterbury*, p.39; J. D. Alsop, 'Argall, Thomas (1499/1500–1563)', *ODNB* (Oxford, 2004) http://www.oxforddnb.com/view/article/40611 [accessed 22 July 2019]; Kathleen Major, 'The Office of Chapter Clerk at Lincoln in the Middle Ages', in *Medieval Studies presented to Rose Graham*, eds. V. Ruffer & A. J. Taylor (Oxford, 1950), pp.165-188 at p.175.
[202] Richmond, 'The English Gentry and Religion, c.1500', p.150.

powerful, a member of the gentry, married with children to an archdeacon's niece, and actively involved in church-court administration, Watson was not only the type but in the precise location to wield influential views on marriage. He was present in court during the cases of *Styson c. Digby cum Brasebrig (competitor)* and *Cleypoll et Reynoldes* and almost certainly knew William Skevington, father of Alice and one of the witnesses in her case, personally.[203] He could have held sway over other moralities too.

From time to time, like many gentlemen of his day, Watson was involved in secular litigation.[204] He, and those he relied upon, must have been very busy. Even after death his presence lingered.[205] Secular litigation was pursued by his executors too.[206] The inscription on his tombstone, placed before the altar in Lyddington church, describes him as 'justiciae cultor' ('cultivator' or 'labourer for justice') and that '*Ingenium mores, virtus et fama fidesque nunc illi ad superos concomitantur iter*' (translated on the nearby memorial as 'His abilities, his high character, his virtue, reputation and honour now bear him company on his journey to regions above'). It certainly paints him in a favourable light.[207] His impact as registrar is perhaps best encapsulated by Longland's appointment of two men to succeed him.[208]

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[203] In the first Watson can be seen at LAO/Cj.4/Q1.fols31r & 31v, in the second at LAO/Cj.4/Q1.fol.42v. Watson is also present during the matrimonial case of *Robertus Frysby c. Alicia Bartfield*: LAO/Cj.2/fol.91r. William Skevington's evidence is at LAO/Cj.4/Q1.fol.30r. He appears in the Military Survey 1522 as a knight of Stoke Dry and Calcott: *The County Community,* ed. Cornwall, pp.53-54. See also Chapter Four, p.193.
[204] For example: TNA/C1/687/27 (*Watson v Furthe*).
[205] Watson's Inquisition Post Mortem is at TNA E150/697/13.
[206] See TNA/C1/896/3-5 & 6 (*Sapcott and others, Executors of Edward Watson v. Coldham and Myles*).
[207] Nothing in Watson's will refers to a tombstone. He bequeathed 'the remayndor of [his] landes at Knypton' to Henry Sapcotte 'to the intent he shall ther with found a chauntre in the churche of Lidington for my sowll perpetually to endure' but may have been content to leave any tombstone to his executors: Nigel Saul, *English Church Monuments in the Middle Ages* (Oxford, 2009), pp.95-99.
[208] *Chapter Acts*, ed. Cole, 12, pp.144-145.

Fig.17: Watson's Tombstone

Apparitors and Others

Wunderli wrote that '[i]n real life as much as in literature the evil reputation of summoners is unmistakeable' but could find virtually nothing in London's Commissary Court to indicate such men were especially overzealous or ever charged with corruption or defamation.[209] As in London, apparitors and others serving citations in Lincoln diocese occasionally felt the wrath of those called to account for their failings.[210] But there is no case within LAO/Cj.4 where one can say with certainty that evidence of a prior crime came directly from the summoner's own report. Nor, indeed, are any apparitors charged with corruption. We must be careful ascribing too much commonality between apparitors in London and Lincoln. As Wunderli acknowledges, London summoners did not exist in 'a world of payments in sheep, wool and wheat'.[211] Yet we can learn something about the standing of those in the rural community. In respect of those given the appellation '*litteratus*', we might also say

[209] Wunderli, 'Pre-Reformation London Summoners', 210-211.
[210] See Darkar's case, Chapter Two, pp.93-94.
[211] Wunderli, 'Pre-Reformation London Summoners', 211

a little about their education, perhaps even speculate about their status within the group. Most importantly LAO/Cj.4 provides further evidence that all of them were subject to discipline. Effectiveness is difficult to gauge but, in a society and especially within a group where some held power and others owed duty, there was always an element of control: judges set the moral tone; court officers were subject to rules.[212] Woodcock felt the start, in mid-fifteenth century Canterbury, of naming specific apparitors to serve citations may have been one stage towards establishment of greater control.[213] Whether there or in Lincoln, mistakes, misdemeanours, negligence and dishonesty would certainly have been easier to trace.

In LAO/Cj.4 the named apparitors are Robert Adams, John Huett, and Robert Stede.[214] Robert Hare, Robert Baly, Thomas Spennyng and John Ward are also recorded serving citations, but are referred to as '*litteratus'* rather than as apparitor.[215] Those named others who served citations *ad hoc* were William Clark, a priest from Market Harborough, and John Jew.[216] Thomas Palmer's occupation or status is not recorded.[217]

Robert Stede and John Huett do not appear in the Military Survey 1522 or the Lay Subsidy 1524-5. Stede's domicile is unknown. Given Rayne's bequest was to his wife, he may have been dead by 1536.[218] Huett is said to be from Watford (presumably the one in Northamptonshire) and therefore also outside the Rutland returns. But Robert Adams is noted as resident in Lyddington in 1522, a husbandman and tenant of the bishop. He was said to be worth 'in lond 20*s*' and 'in goods 6*s*'. Forty-eight tenants of the bishop are named in the village but only two are said to have land worth more. In

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[212] Brundage, *Medieval Origins*, p.371.
[213] Woodcock, *Canterbury*, p.46.
[214] Adams: LAO/Cj.4/Q1.fols1v, 11v, 12r, 13v, 21r & 48v. Huett: Q1.fol.39v. Stede: Q1.fols12r, 18r, and 43r & Q2.fol.56r.
[215] Hare: LAO/Cj.4/Q1.fol18r. Baly: at Q1.fol.49v (*Office c. Oliverus Darkar*; Chapter Two, pp.93-94). Spennyng: Q2.fol.51r. Ward: Q2.fol.67v. Richard Rayne is recorded as 'litteratus' but not as serving process: LAO/Cj.4/Q1.fols38v & 42v
[216] Clark: LAO/Cj.4/Q1.fol.37v. Jew: LAO/Cj.4/Q2.fols53r & 65Ar; Chapter Two, pp.93-95.
[217] LAO/Cj.4/Q1.fol.50v.
[218] He was still working in 1531. A citation in LAO/DIOC/BOX92/2/18 states 'Robert Stede delyver this to thabbott of Burne with spede'.

the Lay Subsidy 1524-5 he is noted as having 'goodes £3'. Of the fifty-nine then recorded only nine have a higher figure against their name. In this wealthy village he seems more than moderately successful.[219]

Robert Hare was from Deeping (Lincolnshire), but I have been unable to trace him further. Robert Baly has proven equally elusive. There are two John Wards recorded in 1522. One, said to be a poor young man, is an unlikely candidate.[220] The other, from Belton-in-Rutland, was a husbandman and tenant to Lord Mountjoy with 13*s*. 4*d.* recorded 'in lond' and £3 in goods, the second and third highest figures respectively in the whole village.[221] In 1524-5 a John Ward of Oakham (nine miles from Belton) was recorded as a labourer with goods of 20*s*.[222] This may be a different man. Equally, although marked fluctuations in assessed wealth need not indicate a decline in fortune, it may be the same man but in hard times. By 1528, he might have turned to court work as a supplement to his income.

Thomas Spennyng is recorded certifying service in one case and is a party in a case discussed in Chapter Four.[223] His attendance on 11 October 1529 was to confirm service of a citation two days earlier upon Roger Flower of Oakham. Flower failed to appear and was declared contumacious.[224] Spennyng was present again, on 5 February 1530, during the reading of a definitive sentence. The reason was unspecified but note of his name may suggest connection to the case or simply a need for evidence someone was present when the sentence had been delivered.[225] He can also be traced within the Military Survey 1522 and Lay Subsidy 1524-5. In the former he is described as 'archer', 'taillor',

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[219] *County Community*, ed. Cornwall, pp.55-57, 92-93. The median for husbandmen's land in the county was 12*s*. They were the core of its society: Julian Cornwall, 'The People of Rutland in 1522', *TLAHS*, 37 (1961-2), 7-28 at 9 & 16.
[220] *County Community*, ed. Cornwall, p.79.
[221] *County Community*, ed. Cornwall, p.75.
[222] *County Community*, ed. Cornwall, p.115.
[223] *Thomas Spennyng c. Cecilia Cartledge cum Thomas Collis (competitor)*: LAO/Cj.4/Q2.fol.66v. See, pp.180-184.
[224] LAO/Cj.4/Q2.fol.51r.
[225] 'Lecto fuit hec Sentenciam quinto ffebruarij Anno domini predicto in ecclesia prebendale de Lidington presentibus tunc uicario de Wilberston Roberto Dent Thoma Rayne Ricardo Rayne et Thoma Spennyng et alijs': *Willelmus Dawkyn de Eston c. Agnes Burton cum Johannes Kyrkby competitor,* LAO/Cj.4/Q2.fol.65v.

and tenant to Brian Palmes, the 'chieff lord' of Ashwell, having 'in londs … nil' but 'in goods … 30s'.[226] In the latter as 'laber. in goodes … 20s'. [227] Perhaps he also sought to supplement his income. In theory he would have been in at least his mid-twenties by 1530. To merit inclusion in 1522 he would have had to be sixteen years old or more.[228]

Such men as these needed to be strong, muscular and able to defend themselves.[229] But what of this term *litteratus*? In the twelfth century the description seems reserved to clergy. But, by the fifteenth, literacy had become relatively common and the word could simply mean minimally literate.[230] However, the signifier must have been recorded for a reason. Sparse though it is, within its particular context it could suggest these men (and Richard and Michael Rayne) had more education than many around them, may have been schooled to an extent in Latin, were perhaps scribes in the making, skilled in compiling probate inventories and copying correspondence, or even that they had had some legal training.[231]

Many pertinent records about service of citations are routine in nature.[232] There are records elsewhere which show failure despite effort.[233] However, a record relating to Robert Hare and a John Osbornby is particularly revealing. It suggests every man carrying out the role (whether regularly or temporarily) was expected to do so honestly or face the consequences.

On 26 July 1528 Robert Hare confirmed delivery of a citation to John Osbornby, chaplain of Peterborough, for subsequent execution upon one Thomas Bowman, of the same town, but explained

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[226] *The County Community*, ed. Cornwall, p.27.
[227] *The County Community*, ed. Cornwall, p.113. 'laber.' = labourer.
[228] *The County Community*, ed. Cornwall, p.3.
[229] On 3 August 1528 Richard Morgan, rector of Ridlington, answered a charge that he hit Robert Adams. Morgan claimed not to have realised Adams was an apparitor about to serve him with citation but admitted his offence and said it was because he had been called a "bawdy preste": LAO/Cj.4/Q1.fol21r.
[230] Irven M. Resnick, 'Litterati, Spirituales, and lay Christians according to Otloh of Saint Emmeram', *Church History*, 55 (1986), 165-178 at 170; and Clanchy, *From Memory to Written Record*, pp.228-242, esp. p.236.
[231] Thompson, in *English Clergy* at p.72, uses the term *litteratus* to mean 'lettered clerk'. See also Cheryl Glenn, 'Medieval Literacy outside the Academy: Popular Practice and Individual Technique', *College Composition and Communication,* 44 (1993), 497-508 at 498.
[232] For example, *Office c. Willelmus Knybbys*: LAO/Cj.4/Q1.fol.39v.
[233] LAO/Cj.2/fol.92r.

that Osbornby had forewarned Bowman of its existence and was thus in contempt (‘*in contemptum nostrorum iurisdictionis episcopalis*’). There is no explanation why Hare did not deliver the citation himself. Osbornby had presumably been considered the suitable alternative. However, the record noted Osbornby’s inquisition:

> Item tibi obijcimus (we put it to you) that when the citation was deliuerid to you ye did sounde with (discuss it with) Sir Edward Ayer and tolde hym of the saide citation against Thomas Bowman ffatetur (admitted) that he sound in his ere told hym that he had a citation for Thomas Bowman that he beleueth that Sir Edward Ayer dyd warne Thomas Bowman of the said Citation[234]

After this confession Osbornby was ordered to speak the following to his neighbours:

> I did receyue a citation fro magister Chancelor the Sondaye before Saint Anne Daye to cite Thomas Bowman and I graunte that I haue offendyd my lordes Iurisdicion and doon contrary to his commaundement therein Therefore I asked god forgevenes and my lorde of Lincoln and I am inioyned to bear this tapere burnyng and to knele afore the aulter and then to sett it up afore Saint John Baptist after the sacring tyme[235]

Osbornby, of course, was in holy orders. Apparitors were not. Nevertheless, apparitors (or indeed anyone) present in court, or notified of events afterwards, must have realised the importance of this message. Citations were to be served if means existed and the court would brook no misbehaviour by those entrusted with the task. Reasonable efforts might still return little or no reward. People might disappear or be untraceable even after strenuous effort. But it was inappropriate to frustrate due process and folly for any apparitor to attempt something similar and risk discovery. Hare knew where his duty lay. No doubt others did too. That sense of duty was probably as a powerful driver of their

[234] LAO/Cj.4/Q1.fol.18r.
[235] LAO/Cj.4/Q1.fol.18v.

good behaviour as it was for the judges and lawyers. Reasonable, or at least regular, pay and prospect of an occasional inheritance probably also helped.

3.5 Conclusion

Lincoln's audience court was not unique. Like other spiritual courts it had problems. But its records, like those from archdeaconry courts in the diocese, reveal fewer than the Commons pretended.[236] To an extent, hard work by Atwater and Roston, and a decrease in volume through jurisdictional changes, had papered over the cracks. Longland may simply have been absent too often in the 1520s. Worried about heresy and Martin Luther throughout his episcopacy, reform may not even have been his highest priority. But he must have understood his predecessor's efforts and was astute enough, upon appointment, to leave the court (and its consistorial sibling) in the capable hands of a highly educated, professional, and dedicated judiciary supported by a secretariat of similar quality, and later, when necessary, to add to their strength. Rayne was as crucial to the audience court's operation as Roston had been, Draycott equally qualified and vital. Longland may have been seen a reformer, and watched over the diocese with care, but he was not going to unduly upset something that seemed to be performing well.

It is hard to imagine many ecclesiastical judges were blind to the need for some reform. The intellectual rigour and capacity to solve problems they had learned at university, and practical experience, must have exposed them to flaws in the system. As capable men with connections to the capital and elsewhere they would have understood the arguments and historians know the bishops had debated them.[237] Of course, it is possible that Rayne and Draycott, like Roston and Atwater before them, became too involved in their work to bring about change. Even when the audience court was relatively calm the workload was high and demands on their time significant. When coupled with

[236] Bowker, 'The Commons Supplication against the Ordinaries', 77.
[237] Chapter One, p.35.

visitation duties, and for Rayne at least with labour in the consistory court, the effort must have felt relentless, draining, and at times perhaps dispiriting. Draycott's appointment may have begun as the workload increased once more. It may have been a direct response to it. Yet aside from dealing with such an increase, reform may simply not have been their priority. But, whatever their views, their knowledge, skill and professionalism contributed hugely to the court's ability to function competently. They also knew and understood well the benefit of loyal and capable support.

In the late 1520s the audience court seems to have been populated by a remarkably well-qualified, highly proficient, team of lawyers. Advocates remain in the shadows. The records hint strongly at their involvement, but such men may not have been often needed given the aptitude of those available. In 1999 Helmholz told us no one had discovered a proctor in possession of a doctorate.[238] Yet in Longland's audience court, in the persons of Henry Litherland and Edward Machell, there were probably two. At least two more, John Both and William Dukkyt, had degrees in canon or civil law, or both. Another three, Tyers, Standeven and Thomas Webster, may also have been graduates. The rest almost certainly had university experience: they would have needed it to practice. Webster and Wynterbourn were notaries too. It was a formidable array of talent.

We cannot trace all their links and connections, but it seems highly probable at least some of these men knew each other at university. Patrons were crucial. Those fortunate enough to study at either institution, to observe mentors and idols in action, and perhaps even assist them, would have been hugely influenced by the experience. Knowledge and skill the senior men acquired there, honed by long years in court, would have been constantly in use. It is probable that old helped young and the highly skilled those less favourably equipped. The extent of formal education whilst at work is unclear but the facility to increase skill and understanding certainly existed. In any event, skills with which graduates arrived were far from unimportant. Disciplinary proceedings were possible. Sometimes they might even be needed. But most of these men seem unlikely to misbehave.

[238] Helmholz, 'The Education of English Proctors', p.195.

In an institution dependent on evidence and procedure, the special skills some possessed, whether they were notaries, had benefitted from extensive legal training, or merely more literate than many, were regarded as worthy of note. That noting may itself have helped maintain good order. Corruption, as everywhere, is difficult to trace. Nevertheless, that it seems absent may add to the growing understanding that minor officials were not always quite as portrayed. They may even have taken pride in their work, keen to ensure others performing similar duties remained honest. Apparitors and *litterati* may not have been part of the lawyers' or judges' social circle. They were certainly not professionals in the way lawyers were. But they could be highly regarded.

What then of Edward Watson? With his degree, and experience, it is not difficult to think of him as a professional in the way judges, advocates and proctors would have been regarded. Certainly, as notary and registrar, with his authority, and with at least some evidence of his hands-on approach, a strong core of professionalism is plain to see. His work required diligence and long hours. Whether for personal or career-related reasons he chose a layman's life over one in holy orders and survived through the lean years. The considerable loyalty he inspired, respect he seems to have enjoyed from the ecclesiastical judiciary and others, and ability he showed to construct and direct his (or rather his bishop's) entourage of bureaucrats, proctors, notaries and clerks, all suggest he had more than sufficient education, skill and experience, to be firmly considered one of their own. Perhaps motivated by the sense of moral and social duty we see evidenced in his bequests, and conscious not simply to provide himself with a ready and potentially substantial income but also of his social position, Watson comes across as a capable manager at the very centre of things who knew the ways of the law and the requirements those ways imposed upon behaviour. Like others in his social and official position, he may have sought to influence people to his point of view. Some may have curried his favour. But he looked after his staff and may have been sufficiently respectful of colleagues within the ecclesiastical judiciary to ensure they were not bothered with the inconsequential.

Was Watson unique for his time, a driven, charismatic individual, responsible for changing the nature of the diocesan registrar's position before such metamorphosis became common elsewhere? O'Day explained that such transformation 'is evident and yet difficult to document'.[239] Thomas Argall, whom I have mentioned before, was born just too late to be described as of Watson's generation though they were undoubtedly contemporaries. He too created administrative stability in a period of flux, provided unity between church and state, and fostered important continuity with the past. He too seems to have been religiously conservative and something of a property magnate.[240] He also admitted Watson's will to probate.[241] Perhaps he had been inspired by Watson's example. Lincoln records immediately after Watson's death are thin. Although O'Day's earliest example is from Lincoln it dates from 1601.[242] Yet, surviving evidence, including the appointment of his joint successors, suggests one can happily theorise that, with the help of capable lieutenants, Watson was – albeit within the accepted social structures of his time – actively and effectively managing part of the system more than seventy years before.

[239] O'Day, 'The role of the registrar', p.78.
[240] J. D. Alsop, 'Argall, Thomas (1499/1500–1563)'.
[241] Wise, *Rockingham Castle*, p.190
[242] O'Day, 'The role of the registrar', p.81.

4

Marriage Litigation

At its most basic the position of the early sixteenth-century English church and its courts on marriage seems relatively straightforward. Marriage, when and wherever effected, was monogamic and indissoluble. Although simple to create, the mere exchange of appropriate words of present consent ('I take thee, N') by two who validly consented or of future consent ('I shall take thee, N') followed by intercourse was enough, it could be very hard to break. Divorce in the modern sense was impossible; in the event of marital breakdown often a decree of separation was the best that could be hoped for.[1] Moreover, as one of the seven sacraments, and of huge spiritual import, any question about the formation – or for that matter the annulment – of a marriage fell under canonical jurisdiction and firmly within the purview of the ecclesiastical judiciary. Nevertheless, complexities abound. First, despite jurisdictional dominance, the church was still seeking greater control of the only sacramental institution that required no administration by the priesthood and, in order to obtain it, was continuing to convey to the parish clergy, and through them to the laity, the detail of church doctrine on marriage.[2] What is more, it was doing so when ideas of marriage expressed in theology, liturgy and

[1] Houlbrooke, *Church Courts*, p.56; Helmholz, *Oxford*, pp.524, 540. For a general introduction to the subject of marriage: Christopher N. L. Brooke, *The Medieval Idea of Marriage*, paperback reissue (Oxford, 1994).
[2] As to doctrine and earlier efforts to take control: Michael M. Sheehan, 'The Formation and Stability of Marriage in Fourteenth-century England: Evidence of an Ely Register', *Mediaeval Studies*, 33 (1971), 228-263, 'Marriage and Family in English Conciliar and Synodal Legislation', in *Essays in honour of Anton Charles Pegis*, ed. J. Reginald O'Donnell (Toronto, 1974), pp.205-214; Charles Donahue Jr., 'The Policy of Alexander the Third's Consent Theory of Marriage', in *Proceedings of the Fourth International Congress of Medieval Canon Law*, ed. Stephan Kuttner (Vatican City, 1976), pp.251-281, 'The Canon Law on the Formation of Marriage', *passim*, and *Law, Marriage, and Society*, pp.1-3; Brundage, *Law, Sex and Christian Society*, esp. pp.187-190, 235-275, 332-336; Brooke, *Marriage*, esp. pp.126-143; David L. D'Avray, *Medieval Marriage: Symbolism and Society* (Oxford, 2005).

vernacular religious culture contained significant divergences. The English tradition separated validity from sacramentality. Largely, the form of the sacrament had come to be understood, by church and laity alike, as comprising both exchange of consent and nuptial blessing. But the question had not been entirely settled.[3] Solemnisation was encouraged, to ensure plenty of witnesses, but it was not essential.[4] Furthermore, the church's insistence on freely-exchanged consent, on procedural compliance, and upon its detailed rules regarding consanguinity and affinity, continued to clash with notions of the patriarchal family, the hierarchical nature of medieval civil society and what Swanson describes as 'the more fluid vulgar approach to marriage'.[5]

Matrimonial lawsuits of the period were, by and large, not about ending a marriage but about whether the contract that made it was, or was not, valid.[6] This chapter is primarily about just such litigation. It is about the ways, and extent to which, early sixteenth-century church courts sought to resolve such conflict and other marital difficulties to which their attention had been drawn. It is about the dynamism and stress of the legal process and the nature of the society in which those courts functioned. It concentrates on issues of consent and clandestinity (which is not always to say secrecy but merely the creation of privately-contracted marriage bargains that did not comply with ecclesiastical regulations regarding threefold publication of banns, the making of contracts in the face of church and congregation, and the blessing of a priest) and how they were dealt with. It looks at conditional contracts of marriage, that is situations embodied in a phrase such as "I will marry you if

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[3] Jacqueline Murray, 'Individualism and Consensual Marriage: Some Evidence from Medieval England', in *Women, Marriage, and Family in Medieval Christendom: Essays in Memory of Michael M. Sheehan C.S.B,* eds. Constance M. Rousseau & Joel T. Rosenthal (Kalamazoo, 1998), pp.121-152, esp. pp.127-130; Christine Peters, 'Gender, Sacrament and Ritual: The Making and Meaning of Marriage in Late Medieval and Early Modern England', *P&P*, 169 (2000), 63-96 esp.65-78. Sometimes ecclesiastical authorities felt compelled to take a harsh approach. See: *Heresy Trials in the Diocese of Norwich, 1428-31*, ed. Tanner, pp.71, 111; J. Patrick Hornbeck II, 'Love and Marriage in the Norwich Heresy Trials, 1428-1431', *Viator*, 44 (2013), 237-256.

[4] Sheehan, 'Formation and Stability', 239-240; Helmholz, *Marriage Litigation*, p.27; Eric Josef Carlson, *Marriage and the English Reformation* (Oxford, 1994), pp.44-47.

[5] Swanson, *Church and Society*, p.168. Keith Wrightson, in 'Review of *Marriage and Society: Studies in the Social History of Marriage*, ed. R. B. Outhwaite (New York, 1981)', *Social History*, 8 (1983), 422-425 at 423, refers to the 'gradual triumph of ecclesiastical solemnisation'. Despite that eventual triumph many 'obstinately refused to obey these rules, coupling themselves in private in irregular ways' even until Lord Hardwicke's Act of 1753: Outhwaite, *Rise and Fall*, p.48. On impediments of consanguinity and affinity: Chapter One, pp.19, 24.

[6] Helmholz, *Marriage Litigation*, p.25.

my father consents" and others similar. The church recognised such contracts as valid provided a stated condition could be classed as 'to come, expressed, possible, honest, and not against the substance of marriage' and had been included at the time a contract was made. A valid condition suspended a contract until it was fulfilled, unless the parties had intercourse in which event the condition was deemed waived and the marriage to have immediate effect.[7] It also examines some issues arising from competition between suitors and efforts by some people to avoid the unwanted. But first, some issues of continuity, change and complexity require explanation.

4.1 Continuity, Change and Complexity

Since the end of the thirteenth century change in canon law, and in its sources and institutions, had been relatively minimal.[8] Early sixteenth-century marriages, and the entering into of legitimate and illegitimate sexual relationships, remained social acts framed through tradition, custom and local particularities of time and place. They occurred in a society still replete with hierarchical and gender-related contrast. Yet, that society was very different from two hundred years before and neither those dispensing ecclesiastical justice nor those working with them had been isolated from the effects of change. Furthermore, in early sixteenth-century England the ecclesiastical jurisdiction 'contained a mixture of things, some of which were almost perfectly consistent with what was found in the "papal law books", some of which were not', and there was a 'sometimes awkward, sometimes close, fit between formal law and court practice'.[9] In consequence, one cannot immediately assume the canonical law of marriage, despite an apparent paucity of institutional change, was applied in the same

[7] Helmholz, *Marriage Litigation,* pp.47-57, 204-208, *Oxford*, pp.533-534; Donahue, *Law, Marriage, and Society*, p.23.
[8] Helmholz, *Oxford*, p.147; Chapter One, pp.9-10.
[9] Helmholz, *Roman Canon Law*, p.5.

way it had been two hundred years previously or even as it was being contemporaneously applied elsewhere.[10]

Of course, most judges, and most proctors and advocates, had studied civil or canon law (and often both) for many years, frequently in each other's company. Even amongst those who had not graduated, many working in the church courts had attended university and were familiar with the main tenets and standard texts.[11] What is more, there was great emphasis on tradition. Conservatism suited not only the temper of the times but the reflexive attitudes of jurists and the assumptions upon which jurisprudence of the *ius commune* was based.[12] There were differences in practice and judicial decision-making between 1300 and 1500, but more than enough similarities for Donahue, supported by evidence in York, Ely, England as a whole, and what he called 'the Franco-Belgian region', to emphasize 'substantial elements of continuity across the two centuries'.[13] Poos found continuity too. Throughout the period courts in both Lincoln and Wisbech (Cambridgeshire, Ely diocese) sought, he wrote, 'to make some substantially intrusive inroads into the households and living arrangements of English men and women' and continued to be 'instruments of community pressure as well as the weight of the church's authority'.[14]

Coercion into marriage by abjuration *sub pena nubendi* had all but vanished by the mid-fifteenth century.[15] By the early 1500s the courts were reluctant to force marriage on the unwilling.

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[10] For changes in England and English society from the thirteenth to the sixteenth centuries: Michael North, *The Expansion of Europe, 1250-1500* (Manchester, 2007), pp.21-41, 47-48, 383-420 and sources there mentioned. For evidence of change in marriage formation practice: Goldberg, *Women, Work and Life Cycle*, pp.6-7. For regional and hierarchical variety, but also continuity, in courtship behaviour and marriage formation, although sometimes during a slightly later period: Keith A. Wrightson, *English Society, 1580-1680* (1982), pp.72-74, 78-79; Ralph A. Houlbrooke, *The English Family, 1450-1700* (1984), esp. p.22; Ingram, *Church Courts, Sex and Marriage*, p.142; Diana O'Hara, *Courtship and constraint: Rethinking the making of marriage in Tudor England* (Manchester, 2000), pp.5-6. See also McSheffrey, *Marriage, Sex, and Civic Culture*, p.5.
[11] Chapter Three, esp. pp.125-126.
[12] Helmholz, *Oxford*, p.147.
[13] Donahue, *Law, Marriage, and Society*, pp.215-217, 296, 598, 600.
[14] Poos, 'The Heavy-handed Marriage Counsellor', esp. 292. The *ex officio* cases he examined were from Lincoln Cathedral Dean and Chapter (between 1336 and 1349) and Wisbech Rural Deanery (1460-1479).
[15] Between the thirteenth and fifteenth centuries parties convicted of fornication regularly faced a choice – be excommunicated or enter a conditional marriage, the condition being that they would be married if they enjoyed sexual relations together thereafter. It seems to have remained available even into Edward IV's reign

Nevertheless, heavy-handed persuasion was still much in evidence. In Longland's audience court it can be seen in proceedings against Thomas Brown. Brown appeared before Commissary-General Draycott on 29 October 1528. He admitted fornication with Margareta Tailor and getting her pregnant. Ordered to perform penance for three separate days before Advent his punishment was reduced to just one day if they married. Nothing is known of their personal circumstances, save that both lived in the same village (Great Ponton, Lincolnshire). Whether Brown's option came from the judge alone or was formulated in the knowledge of local grumblings is unclear. It may not even have been blatant coercion. But, as coaxing goes, it was far from subtle.[16]

The primary focus of church attention had changed. According to Conor McCarthy 'the problem of clandestine marriage' generated 'the single largest concern of English ecclesiastical legislation in the thirteenth and fourteenth centuries'.[17] The inadvertent marriage, he opined, had been amongst the most-feared because 'in intending to become betrothed, which should occur through making a promise to marry in the future tense, the parties might instead speak in the present tense, and find themselves not engaged, as they had intended, but securely married instead'.[18] His interpretation may be a little extreme. Thirteenth-century statutes in Lincoln certainly said clandestine marriages were to be curbed or prohibited.[19] But neither in them nor any of the thirty or so pieces of conciliar legislation and episcopal decree made in England between 1200 and 1342 were parties to such a marriage automatically excommunicated. Nor were they in Lateran IV. The only *ipso facto* excommunications were for those who knew of an impediment but proceeded nonetheless, and for

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but fell from favour because it conflicted with many aspects of canon law, not least the requirement of free consent: Helmholz, *Oxford*, pp.546-547, *Marriage Litigation*, pp.172-181. In any event, although a greater proportion of unmarried mothers in late medieval England could have married, had they been able to find a partner, it seems comparatively few men were in a position to offer marriage even if they had wanted to: Maddern, '"Oppressed by Utter Poverty"', pp.47-48.

[16] 'Iniunxit se penitere iijbus primis diebus diuersis in advento proximo et casu quo eam duceret in uxorem tunc nisi una die in advento peraget penitentiam et sic est dimissus': *Office c. Thomas Brown* LAO/Cj.4/Q1.fol.26v. For another example of persuasion, though perhaps from church and community, see the matter of John Hunt and Johanna Willys: *Visitations*, ed. Thompson, 35, p.14.

[17] Conor McCarthy, *Marriage in Medieval England: Law, Literature and Practice* (Woodbridge, 2004), p.28.

[18] McCarthy, *Marriage in Medieval England*, p.31.

[19] *Councils and Synods, with other documents relating to the English Church*, Vol.2, eds. F.M. Powicke and C. R. Cheney (Oxford, 1964), pp.274 and 278.

clergymen marrying non-parishioners without licence or participating in marriages elsewhere than in a parish church. There was no sanction of excommunication if one simply married at home, or indeed, anywhere outside a church.[20] Lyndwood's *Provinciale* defined clandestine marriage in various ways but did not include contracts made outside church amongst them.[21] Even the term clandestine marriage itself had become rarely used in ecclesiastical registers.[22] In any event, by the fifteenth century inadvertent marriage appears to have ceased being of great concern. In London at least, parties to a marriage frequently used the present tense of the verb (*verba de presenti*) during the initial contract before family and friends.[23]

Record loss prohibits certainty but there also seems to have been a decline in the overall volume of marriage litigation. There was still a lot.[24] But by the early sixteenth century there was less than there had been, something perhaps explained by the continuing adoption of more settled attitudes and habits when it came to marriage.[25] There were subtle and gradual changes in its form and make-up too.[26] Evidence from York suggests cases were, for the most part, defended the same way and most apparent differences might really be because surviving records from the fourteenth and fifteenth centuries are of different types. But, as well as the decline in cases involving abjuration *sub pena nubendi*, it seems there were fewer fifteenth-century cases about marriage formed by a promise

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[20] Charles Donahue Jr., 'Clandestine Marriage in the Later Middle Ages: A Reply', *LHR*, 10 (1992), 315-322, *Law, Marriage, and Society*, p.32. A full, translated, text of all the canons of Lateran IV (including the most pertinent, number 51) is available at http://sourcebooks.fordham.edu/halsall/basis/lateran4.asp [accessed 15 August 2019].

[21] McSheffrey, *Marriage, Sex, and Civic Culture*, p.31.

[22] McSheffrey, *Marriage, Sex, and Civic Culture*, pp.31-32.

[23] 'For whatever reason, fifteenth-century Londoners were willing to trade away the social usefulness of the waiting period between future and present consent for another kind of security, a more tightly binding contract of marriage': McSheffrey, *Marriage, Sex and Civic Culture*, p.30.

[24] 'The number of such cases … was enormous, and it does not seem to have been infrequent for an Ecclesiastical Judge to hold a court *ad hoc* in the village in which the marriage or espousal was alleged to have taken place': Moore, 'Proceedings of the Ecclesiastical Court in the Archdeaconry of Leicester', 126.

[25] Helmholz, *Marriage Litigation*, pp.167, *Canon Law*, pp.283-284, *Oxford*, p.229. In the later years (1460 to 1500) it might also be explained by economic decline: Donahue, *Law, Marriage, and Society*, p.66. For consideration over a wider period and into the early modern era: Martin Ingram, 'Spousals Litigation in the English Ecclesiastical Courts, *c*.1350-*c*.1640', in *Marriage and Society: Studies in the Social History of Marriage*, ed. R. B. Outhwaite (New York, 1981), pp.35-57 at 54-55. There was a slight increase in Canterbury after 1500: Woodcock, *Canterbury*, p.85.

[26] Helmholz, *Marriage Litigation*, pp.165-183.

of it followed by intercourse (why is unclear). There were also previously unseen cases (involving abduction and some unusual defences) and more visible evidence of other people involved in marital choice (arranged marriages) – though in the latter perhaps not so much as other sources might lead historians to expect. Although the York court remained decidedly pro-plaintiff, whether those plaintiffs were men or women the success rate of those who began instance litigation became markedly lower.[27] Indeed, there was a little less willingness to enforce informal marriages however contracted.[28]

Marriage litigation could be simple. It could also be complex. Sometimes issues were straightforward; often they were not. Occasionally it is difficult to determine exactly what those issues might have been. A case might turn, for example, not upon whether words of consent were spoken but whether force or fear was in play. A successful plea of the latter would make a marriage invalid.[29] Three-way, four-way, or multi-party litigation that generally involved the priority of one exchange of consent over another (or over more than one other) sometimes brought in as an active party (or parties) someone who might otherwise have remained on the periphery. In the absence of joinder such a person (or persons) might simply have been part of an exception of pre-contract, that is mentioned in a defence asserting that a party cannot be married to X (or Y) because he/she is/was already betrothed or married to Z. Sometimes cases began with one shape but took on another. A two-way case may have become three-way if, for example, a party claiming a pre-contract thought they might lose, and therefore called on their preferred spouse for assistance, but that prior betrothal or marriage was itself questionable. Sometimes multi-party cases involved a plaintiff wife seeking a declaration to upset a current marriage and asking the court to declare for another. Alternatively, two parties might each claim marriage to the same person who resisted both. In many cases there was some suggestion a woman had been or might be wronged.[30] Not only were such disputes inherently

[27] Donahue, *Law, Marriage, and Society*, pp.80-82, 169-182, 185-201, 215-217.
[28] Donahue, *Law, Marriage, and Society*, pp. 602-603.
[29] Donahue, *Law, Marriage, and Society*, pp.21-22.
[30] Donahue, *Law, Marriage, and Society*, pp.123-124.

complex, and consequently more difficult to predict if the outcome is unknown, they (like two-way litigation) may even have once begun as an *ex officio* prosecution.[31]

Furthermore, apparently similar situations could be argued differently, because of the differing skills of lawyers or laypeople involved.[32] Many men and women had some legal knowledge, but not everyone did. Those who did were unequal in their knowledge and understanding.[33] Different arguments may have led to different results.[34] Often, historians cannot see what might have been most persuasive. Advocates' arguments were generally not recorded.[35] Judges might have applied the law as they understood it with clinical precision but also came equipped with their own prejudices; courts were neither institutionally impartial nor gender blind.[36] Mistakes were undoubtedly made. Sentences have failed to survive. Some parties and witnesses were honest, others not; some may simply have been confused. Collusion can be difficult to spot.[37] More women than men might have sought to enforce a marriage contract, but some fought equally hard, or harder, to escape.[38] Many of both sexes, although able to afford litigation at its outset, may later have withdrawn having lost enthusiasm, received adverse advice, reached an unrecorded compromise, or simply run out of funds.[39] Those without means had to rely upon lawyers' generosity and good grace.[40] Others, due to social standing, education or wealth, and whether parties or not, may have been able to manipulate litigation in directions they favoured.[41]

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[31] Donahue, *Law, Marriage, and Society*, p.226.
[32] Helmholz, in *Marriage Litigation* at p.151, refers to a Canterbury case from 1460 where the proctor failed to file proper exceptions claiming insufficient time.
[33] Frederick Pedersen, *Marriage Disputes in Medieval England* (2000), esp. pp.77-85, 'The Legal Sophistication of Litigants in Marriage Cases from Medieval York', in *Proceedings of the tenth international congress of medieval canon law* (The Vatican, 2001), pp.965-984.
[34] Helmholz, *Marriage Litigation*, p.45.
[35] Brundage, *Medieval Origins*, pp.440-442.
[36] Goldberg, 'Gender and Matrimonial Litigation', esp. 54; Kane, *Popular Memory and Gender*, pp.57-80.
[37] Helmholz, *Marriage Litigation*, pp.64-65, 162-163; Pedersen, *Marriage Disputes*, pp.119-139, 'The Legal Sophistication of Litigants', pp.973-976 (the *Alice Palmer* case).
[38] Donahue, 'Female Plaintiffs in Marriage Cases', p.197; Butler, 'Runaway Wives', *passim*.
[39] Woodcock, *Canterbury*, pp.59-60; Ralph Houlbrooke, 'The making of marriage in mid-Tudor England: evidence from the records of matrimonial contract litigation', *JFH,* 10 (1985), 339-352 at 348-349, *Church Courts*, pp.83-84; Ingram, 'Spousals Litigation', p.52.
[40] Brundage, 'Legal Aid for the Poor', *passim*.
[41] Pedersen, *Marriage Disputes*, p.74.

There were other complications. Some, such as the nature and extent of any difference between rural and urban marriage patterns throughout Lincoln diocese, the frequency of its arranged marriages, and the effect such things had on pursuit and defence of marriage litigation, remain unclear.[42] Parental or familial pressure could certainly be enormous, especially upon young, previously unmarried, women. Families often sought to take the lead in spousal selection, eyeing improved monetary security or status whatever their social level.[43] Many Leicestershire gentry before 1485 favoured agreements made between parents rather than partners.[44] Yet, parents and other social superiors rarely intervened in the nearby Ely courts and there is less evidence of arranged marriages there than in York.[45] Many, no doubt, took advice offered and welcomed it, yet opportunity for conflict remained high.[46] Remarriage might mean a widow had more freedom of choice, it might not. Competition for, even between, women could be fierce. Social status and the existence of children, or the need to produce them, could be important to both sexes when seeking a second spouse.[47] What is more, whilst on the surface litigation may have been about marriage it might really have been about property.[48] Marriage transferred everything a woman owned to her husband. Neither ecclesiastical nor common law was much concerned with a woman's property thereafter, at least until a surviving female spouse sought resources after her husband's death, but many male suitors may have been

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[42] Goldberg thought that in York diocese whether a woman lived somewhere urban or somewhere rural was the most important variable in marriage choice. Yet Donahue felt any difference much less stark: Goldberg, *Women, Work and Life Cycle*, esp. pp.217-266; Donahue, *Law, Marriage and Society*, pp.201-215. For Lincoln diocese, possibly for reasons connected with source survival, such scholarship is scarce. Acheson, in *A Gentry Community*, studied 194 gentry marriages (see esp. pp.135-173) but nothing seems published for its other counties.

[43] For the role of family, kin and community: O'Hara, *Courtship*, esp. pp.30-56.

[44] Acheson, *A Gentry Community*, p.163.

[45] Donahue, *Law, Marriage, and Society*, p.297.

[46] A classic example of familial conflict can be seen in Margery Paston's refusal to marry Richard Calle: Jacqueline Murray, 'Individualism and Consensual Marriage', *passim*.

[47] For female freedom of choice: Goldberg, *Women, Work and Life Cycle,* pp.357-361.On widows: James A. Brundage, 'Widows and remarriage: moral conflicts and their resolution in classical canon law', in *Wife and Widow in Medieval England*, ed. S. Sheridan Walker (Ann Arbor, 1993), pp.17-31; Joel T. Rosenthal, 'Fifteenth-century widows and widowhood: Bereavement, Reintegration and Life Choices', in the same volume, pp.33-58; Barbara Hanawalt, 'Remarriage as an Option for Urban and Rural Widows in Late Medieval England', likewise, pp.141-164.

[48] Sheehan, 'The Influence of the Canon Law', *passim*; Pedersen, *Marriages Disputes*, p.24; Swanson, '"… et examinatus dicit…', pp.210-214.

beady-eyed at the possibilities of acquisition.[49] Women, on the other hand, though not powerless were often economically vulnerable with few resources of their own.[50] Marriage could be as important politically as it was financially too. Sometimes other things might be at stake.[51] With that, and all such issues and complexities in mind, it is appropriate to descend into the Lincoln records.

4.2 Lincoln Records

This section begins by investigating evidence concerning some of the so-called "vices of consent", those canonical impediments preventing a valid consensual bargain, and especially how church courts approached the inability of someone to marry because of juvenility.[52] It moves on to consider gifts and, in particular, the nub of every marriage contract between those of marriageable age, the exchange of words. It looks at enquiries, about what those words had been, about when, where, by and in the presence of whom they had been spoken (its clandestinity), about whether those words had been sufficient to make a binding *de presenti* bargain or one expressing future intent, and about what had happened afterwards. The reliability of parties and witnesses is considered. Conditional contracts, especially problems caused by a change of heart, failure of proof and imperfect legal knowledge, are looked at. So are some issues of competition and evasion. Some of these matters affected a party's decision-making before, during and after the litigation process. All of them could affect decisions and actions by lawyers and judges. Although there are examples within *An Episcopal*

[49] Caroline M. Barron, 'The "Golden Age" of Women in Medieval London', *Reading Medieval Studies*, 15 (1989), 35-58, esp.35-36, 41-43; Amy Louise Erickson, *Women and Property in Early Modern England* (1993), pp.99-101.
[50] Butler, 'Runaway Wives', 337.
[51] Ultimately, historians might be unable to hypothesise if a party's actions were 'motivated by unreason or emotion, or by a different kind of self-interest that cannot be measured by economic or political advantage': McSheffrey, 'Detective Fiction in the Archives', 74.
[52] There is no space to consider insanity, impotence or error, or to discuss religious impediments and the effect of crime. But, for further reading, see: Helmholz, *Oxford*, pp.544-550, 551-553; Donahue, *Law, Marriage, and Society*, pp.19-20, 22-23, 24-26; Bronach Kane, *Impotence and Virginity in the late Medieval Ecclesiastical Court of York* (York, 2008).

Court Book where parties promise or are ordered to solemnise their marriage, in LAO/Cj.4 no such order is recorded.[53]

The Vices of Consent

There is no litigation in LAO/Cj.4 about consent allegedly obtained by force or abduction. Equally, no one can be seen arguing about impediments of consanguinity or affinity. However, the impediment of nonage, a legal concept combining ideas of mental and physical incapacity, was considered in *Edwardus Cleypoll et Maria Reynoldes*.[54] Both force and nonage feature quite commonly in the litigation records of fourteenth- and fifteenth-century York. Between them they appear in about fifteen per cent of cases. Consanguinity and affinity are rarer, about nine per cent.[55] *Cleypoll* is the only example within LAO/Cj.4. Its existence confirms that some in the diocese were pressured to marry very young; there was even a ceremony at the church door. But it is also a reminder that the audience court had an ability to help some of them gain a level of personal freedom as they reached adulthood.[56] Like spiritual courts elsewhere it was interested in each party's age at the time of the initial bargain – to see if it had been made before the age of legitimacy (fourteen for boys, twelve for girls). Contractual consent was impossible before the age of seven; if a party were aged between seven and the age of puberty when the bargain was first made, he or she could rescind the contract upon reaching such an age.[57] But it was also interested to know whether the quasi-marriage during infancy had been subsequently ratified by intercourse or exchange of words of present consent when or after both parties had reached puberty. If ratification had occurred, or if the couple ratified it by words there and then in court, they were married.

[53] LAO/Cj.2/fols82r, 87r, 88v, 90r.
[54] LAO/Cj.4/Q1.fols40r, 42r.
[55] Donahue, *Law, Marriage, and Society*, pp.20-22, 71, 166-177.
[56] Emphasising freedom of choice also meant the church fulfilling its duty to assist individuals towards salvation: Jacqueline Murray, 'Individualism and Consensual Marriage', p.146.
[57] Donahue, *Law, Marriage, and Society*, p.20.

The first surviving note in *Cleypoll* is dated 20 May 1529. However, the definitive sentence of Friday 4 June 1529 (the only other existing record) makes it clear the case had been ongoing for some time and that litigation had been commenced at the parties' special request.[58] It also explains that the original bargain had been made when Edward was five and Maria seven years old and, further, that a purported solemnisation had taken place at around the same time.[59] We do not know their ages at the time the case concluded but Edward must have been at least fifteen and Maria at least seventeen. Although the only record of evidence dates from the hearing in May, and is from the parties themselves, it also explains that the court had heard from their parents and others.[60]

Edward and Maria's recollections are, perhaps unsurprisingly, a little vague on detail. On 20 May both reported 'that they wer maryid at the church dore to geder as theyr ffryndes do saye but otherwisse they know not and of what age they wer of they cannot tell'. Neither referred to what their parents had to say about the agreement or ceremony but confirmed 'that they wer both in Robert Raynolde her ffathers howse a twelff moneth to geder' (though exactly when is unclear).[61] When asked whether the marriage had been ratified upon reaching the age of legitimacy, Edward said not.[62] Maria described an event within the previous twelve months when Edward 'gaue her the last yere a sylke lace for a tokyn under this maner' (thus suggesting he was at least fifteen by the time of her evidence). She went on to say that Martyn Lee, who had been present at the time, spoke to Edward saying, 'Edward have you gyvyn Mary thei lace or noo', and that, in response, 'then Edward gaue her the lace'. The court pursued this and the scribe recorded that Cleypoll 'saythe he neuer calde her wyff nor neuer gaue her tokyn in waye of maryage' and that Reynoldes 'saith she can not remember that euer she

[58] '… meritis et circumstanciijs cuiusdam pretense cause matrimonialis que coram nobis aliquamdiu uertebatur et adhuc uertitur et pendet indecise inter Edwardum Cleypole de Slawston ex una et mariam Reynoldes de Brampton partibus ex altera Ad specialem instanciam utriusque partis': LAO/Cj.4/Q1.fol.42r.
[59] 'Edwardus Cleypole in quinto et maria Reynoldes in septimo etatum suarum annijs constituti matrimonium in facie ecclesie ...': LAO/Cj.4/Q1.fol42r.
[60] '… atque per diligentem examinationem utriusque partis partium predictarum ac parentum eorundem ad ueritatis eiusdem cause': LAO/Cj.4/Q1.fol.42r.
[61] LAO/Cj.4/Q1.fol.40r.
[62] 'Interogati an postquam uenerunt ad etatem legitimam ratificabat expresse dictum contractum nominandum e coniuges uterque Negat': LAO/Cj.4/Q1.fol.40r.

calde hym husbond after she was xij yere olde'.[63] On 4 June it decided that the supposed marriage in Edward's infancy did not legally constitute marriage at all, that (for the same reason) their union had in no way been legitimately solemnised, that it had not been later ratified, and finally that it remained unratified at the time of sentence.[64] Both parties were free to marry elsewhere.

It all seems simple enough: Edward Cleypoll had been too young to make the marriage bargain; the solemnisation had no effect (nor indeed could it have); and nothing had turned those events into binding matrimony. Nevertheless, further insight is possible. Evidence about the lace might have been important. On this occasion, it was not. What mattered were words spoken at the time it had been handed over. Neither party admitted later ratification or sexual intercourse, so the court had to determine exactly what, if anything, had been said at the time. Of course, some litigants deliberately reshaped their account so their narrative fitted the framework of the law.[65] But the court would have been alive to such possibility and probably explored Maria's evidence with that in mind. It is not clear if Martyn Lee appeared, but we can safely assume any evidence of his corroborated her story. Although initial parental pressure seems obvious, we cannot say exactly what they told the court. They certainly provided no convincing evidence of ratification. Whatever their position, some (perhaps even all) of them could have ended conflict with their own child, or with each other, by the time of sentence, having concluded their hopes for Edward and Maria were over. There was apparently some haste and importance.[66] The case clearly seems to have resulted in local notoriety.[67]

[63] LAO/Cj.4/Q1.fol.40r.
[64] '… de facto cum de iure non poterant solemnisarunt illud tamen matrimonium cum ad maturam etatem pervenerunt nullo modo de iure quo ad matrimonium ratificarunt nec ratificauit ipsarum alter nec in presenti ratificant cuius pretextu matrimonium illud sic in infancia ipsius Edwardi solemnisatum iuxta canonicorum sacrorum sanctiones non subsistit nec de iure ualet', and later in the sentence, '… existentium matrimonium huiusmodi pretensum modo premisso solemnisatum de iure nullum et inualidum fuisse et esse uiribus que carere pronunciamus': LAO/Cj.4/Q1.fol.42r.
[65] O'Hara, *Courtship*, p.62.
[66] Advocates' opinion had been obtained following both parties' urgent petition ('habitentes de consilio iurisperitorum cum quibus ea parte communicauimus ad instantem petitionem utriusque partis partium predictarum'): LAO/Cj.4/Q1.fol.42r.
[67] The definitive sentence notes it being read 'in the presence of their parents and very many other trustworthy people' ('in presentia parentum eorundem ac aliorum plurimorum fidedignorum'): LAO/Cj.4/Q1.fol.42r. The final entry confirms Edward Watson's presence on 4 June. That on 20 May is in a

Seeking clarity by means of public declaration would have been the best way to ensure the parties were considered free of obligation.

Gifts and the Importance of Words

Words exchanged were at the core of every marriage contract. Evidence from York suggests couples there had a firm grasp of the basic canonical rules of marriage formation by the fourteenth century.[68] As mentioned, use of the present-tense form was common in fifteenth-century London.[69] In Lincoln it may have been regularly adopted well before the 1520s. Sources are too scarce to be certain but some fourteenth-century evidence can be seen in the Dean and Chapter's court.[70] In *Ricardus Raynton c. Agnes Johnson*, an audience court case from 1517, the plaintiff alleged he had contracted marriage when he had said 'I Ric[hard] take the Agnes to my wedded wif' and the defendant had replied 'I Agnes take the Ric[hard] to my wedded husband'.[71] More sixteenth-century evidence can be found in records from Buckingham archdeaconry.[72] Others may have adopted words like those found within a formulary kept in the Lincolnshire Archives. It indicated that the customary form of contract was the mutual plighting of troth (betrothal) and the giving of a ring, and also suggested that when vows were exchanged in the presence of witnesses, and when parties were reputed to be married, they were. Yet if the couple lived together without their marriage being solemnised there was still a risk of being charged with fornication or suffering some other challenge to its validity.[73]

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different, unknown, hand. 'Early and middle teenage marriages, perhaps even sexual contacts, were not the norm': Hanawalt, *The Ties that Bound*, p.98.

[68] Frederick Pedersen, 'Did the Medieval Laity Know the Canon Law Rule of Marriage?: Some Evidence from Fourteenth-century York Cause Papers', *Medieval Studies,* 56 (1994), 111-152.

[69] See p.164.

[70] 'William Souter, noted upon the contract of marriage with Alice the daughter of Robert Hugon'… The man says that he said thus, I accept you as my wife. He says also that she responded, it pleases me': *Lower Ecclesiastical Jurisdiction*, ed. Poos, p.17 (translation mine). In denying what had been said Alice must have understood the implications.

[71] LAO/Cj.2/fol.42v.

[72] *Willelmus Hanwell c. Isabella Riddisdale* (the evidence of Christopher Atkyns): *Buckingham*, ed. Elvey, p.252.

[73] LAO/Formulary 2, fols17v, 28v & 29r; Thomson, *Early Tudor Church*, p.238.

Troth-plighting can be seen in the *Floyd* and *Inman* cases (about which more below) and in *Johannes Kirkby c. Agnes Burton cum Willelmus Dawkyn competitor*.[74] Rings also feature, as do tokens of other kinds. John Floyd was said to have given a ring to Alice Skevington via an intermediary.[75] A ring, a pair of gloves, 'a grote' and 'vii grotes' are mentioned by Agnes Jackson, a witness in the *Inman* case.[76] Walter Wodroke referred to 'a king harry penny' as a token in the *Kirkby* case.[77] In *Alicia White c. Ricardus Bale* Margaret Droman, who sought to persuade the court she, not White, was married to Bale, said 'he dydd send hyr a pair of gloves and a sylken lace for tokens in that entent to mary with hym'.[78] Edward Cleypoll's gift of lace has already been mentioned. There are other examples too.[79] Yet, although gift-giving was ripe with social meaning, it was neither essential nor universal.[80] On occasion evidence about it may have become crucial additional testimony but documents elsewhere suggest parties sometimes used such stories to strengthen otherwise inadequate claims. Margareta Droman, for instance, may have deliberately enhanced her weak case by seeking to persuade the court of Bale's intent.[81]

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[74] In *Floyd* there is mention of 'troth' at LAO/Cj.4/Q1.fol.29v and three mentions of 'trothe' at LAO/Cj.4/fol.32r. In *Inman* 'trouthe' appears at LAO/Cj.4/Q2.fol.61r. In *Kirkby*, at LAO/Cj.4/Q2.fol.63v. See also *Ricardus Ingram c. Elizabeth Roys* (Richard Dowke's evidence) at LAO/Cj.4/Q2.fol.63r.

[75] Richard Lee's evidence was that 'he harde Andrewe his sone say that the said Iohn Floyd deliuered hym a ring and dyd byd hym bere yt to Alice Skeuington and deliver yt to hyr in the way of matrimony': LAO/Cj.4/Q1.fol.29v (see further below).

[76] LAO/Cj.4/Q2.fol.66r.

[77] LAO/Cj.4/Q2.fol.63v.

[78] LAO/Cj.4/Q1.fol.10r.

[79] See pp.174, 185.

[80] McSheffrey, *Marriage, Sex and Civic Culture*, pp.58-66; O'Hara, *Courtship*, pp.10-11. See also: Houlbrooke, *Church Courts*, pp.60-62, 'The making of marriage', pp.344-346 & 350; Carlson, *Marriage and the English Reformation*, pp.111-112, 127 & 136; Goldberg, *Women, Work and Life Cycle*, pp.238-240. On exchange of tokens as a reflection of the complexity of marriage transactions: O' Hara, *Courtship*, pp.57-98. On objects as a conduit for social communication and how exchange of tokens reflected a relationship's progression from courtship through to married life: Anna Boeles Rowland, *Material Mnemonics and Social Relationships in the Diocese of London, 1467-1524*, unpublished PhD Thesis, University of Oxford (2017). She discusses coins, for example, at pp.135-146. I am grateful to Dr Rowland for kindly providing me with a copy of her work. An overview of scholarship on the materiality of objects can be found in Rachel M. Delman and Anna Boeles Rowland, 'Introduction: people, places and possessions in late medieval England', *Journal of Medieval History*, 45 (2019), 129-144.

[81] O'Hara, *Courtship*, pp.62-63. Droman admitted not only needing approval elsewhere but also that it had never been obtained, telling the court, 'they poynted that he myght come to Cayton on the tuesday in easterweke that they myght goo to gidder to his uncle to know his mynd but he saith he come nott that day bicause that Alicie sayd she was with child with hym and that she wold denounce hyr selph except she had hym to hyr husbond': LAO/Cj.4.Q1.fol.10r.

There were other problems. The form of words adopted was not always identical. Some parties asked, or were asked by others (including priests), if they "could find it in [their] heart to love X". In *Floyd*, Alice Skevington reported that John Spence had said to her 'mayste thow fynde in thi hart all others to forsake and me for to take', to which 'she sayd yea'.[82] In 1516 Richard Greneleffe witnessed Johanna Charlton saying 'I can fynd in my hart to give you' my faith and my trueth' and John Flete in return 'giving her a noble which she accepted as a sign of marriage'.[83] In *Howes c. Robertes*, a 1519 case, John Howes told the court that Richard, the magister cantarist of Leek, asked him 'John' can' ye fynde in yor harte to love this woman, Agnes Robertson, and to forsake all other for hir sake' and her the reverse, to which she replied 'yea Sir iff my fader and uncle Sir Richard be so pleased'.[84] In some cases words allegedly used were denied. In others meaning was challenged. It could all become something of a Gordian knot.

The future-tense form allowed parties to withdraw in socially acceptable ways, but it also caused complications. John Flete seems to have appreciated the subtleties. When describing the contract mentioned above, he claimed to have said 'Johanna I have taken and I take you to my wiffe' and that she had responded with 'I take you to my husband'. In reply Charlton denied the contract. Clearly, Flete wished to allege a prior *de futuro* contract that had been turned into one confirmed in present-tense form. Perhaps he also felt, if only the future-tense bargain could be proved, that success could be guaranteed if the court believed intercourse had occurred before the contract his competitor Thomas Taillor alleged. Sadly, the result is unknown.[85]

Sometimes, significant difficulties were caused if one party wished to deny a marriage by claiming the validity of an earlier one. Litigation where parties claimed they were married to someone else, or free to marry them, despite the apparent existence of a prior contract between themselves

[82] LAO/Cj.4/Q1.fol.32r.
[83] 'dedit dicte Johanne unum nobile in signum matrimonii quod ipsa sic accepit' (*Charlton c. Flete*): LAO/Cj.2/fol.11r.
[84] LAO/Cj.2/fol.96r.
[85] LAO/Cj.2/fol.6v.

and another, could be similarly problematic. In such cases the words used were particularly important, if the earliest contract had been properly concluded it was immutable.[86] Marion Baily was a defendant in just such a case brought by William Swan in May 1528. In it she described the creation of a prior contract with William Harries but sought to persuade the audience court it was of no consequence despite his having raised an objection at the second reading of the banns of her marriage to Swan.[87]

According to Baily's evidence, she had withdrawn her agreement to marry Harries (after the third reading of their banns but prior to solemnisation) because 'he was an unthristy ffellowe'. She said Harries had consented, had said 'iff ye will nott be married nowe ye shall tarry my leasis' (meaning it would cause delay to property transactions dependent on his marriage), and 'dyd aske hyr his tokens and she dyd give hym them ageyn and oyther Conuersation they hadd noon'.[88] Clearly, she believed their contract had not been marriage but merely betrothal. To her at least, and perhaps to others in society, the return of gifts was significant.[89] However, the court had to know what words had been spoken when there had been agreement about their future. In that regard the scribe had already noted her evidence, which was:

> that the said Will[ia]m [Harries] come to hir masters hows in oon evennyng and the said william dyd aske hir if that she might fynd in hyr hart to love hym as he dyd hyr and she said ye and then the said marion dyd promise hym to be his wiff bifor god by the faithe off hyr body and dyd give hym hir reght hand And she saith that the said Willelmus dyd promise hir to be hir husbond bifor god by the faith of his body and dyd give hyr his reght hand[90]

In later evidence, about the subsequent bargain struck between Baily and Swan, Richard Hallyok told the court:

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[86] See Helmholz, *Marriage Litigation*, pp.57-66.
[87] 'she saith that she was ij tymes asked in the churche with the said William Swan and the said willelmus harries dyd forbyd it': LAO/Cj.4/Q1.fol.11r.
[88] LAO/Cj.4/Q1.fol.11r.
[89] McSheffrey, *Marriage, Sex, and Civic Culture*, p.66.
[90] LAO/Cj.4/Q1.fol.10v.

William harthorn dyd aske William Swan iff that he warr his owen man or nott or wheyther that he hadd made enny promise to enny oyther woman or noo and he said noo and dyd aske marion the same wise and she said noo And then the said William harthorn dyd aske the said William Swan if he myght fynd in hys hart to have the said Marion to his wiff and he said ye and then the forsaid harthon dyd aske the said marion iff that she made no promise to noon oyther man and she said no and then the said harthorn dyd aske the said marion may you fynd in your hart to have this man to your husbond and to forsake all oyther and she said ye and then they drewe handes to gidder and kissed … [and] that he hard thies woordes in hir Fathers hows tunc presentibus (then present were) William harthorn this deponent the Faythe off the said William the faythe and the moyther off the said marrion with oyther diuerse and that they war called theyther to her a contract made bitwixt the said parties[91]

William Harthorn confirmed Hallyok's story and there seem to have been several witnesses. The record of Harries's evidence contains no confirmation there were witnesses to the contract he sought to enforce. Chancellor Rayne decided to adjourn and resume later.[92] Perhaps he wanted to hear from Harries again. What mattered most to the court, and often to the parties, was certainty. No further record survives. Harries may have abandoned his claim.

Equally, problems were sometimes more illusory than real. *Henricus Inman c. Elisabeth Thompson cum Jacobus Walker competitor* helps explain.[93] The first hearing was on 22 October 1529. Inman, represented by Evan Machell, Thomas Bothe and Simon Kent, claimed Thompson was his wife and had been since June 1527. Jacob Walker alleged he had married her around Pentecost 1528.[94] To be successful Walker needed the earlier marriage declared invalid.

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[91] LAO/Cj.4/Q1.fol.11v.
[92] LAO/Cj.4/Q1.fol.12v.
[93] The full record can be seen at LAO/Cj.4/Q2.fols56r, 56v, 57r, 57v, 60r, 60v, 61r, 61v, 62r, 62v, and 66r.
[94] 'dicit ipse Jacobus quod huiusmodi contractum matrimonialem fecit cum dictam Elisabeth prima uice circiter festum penticostes ultimo': LAO/Cj.4/Q2.fol.56v.

Elisabeth Thompson appeared first to answer certain articles put to her by Inman.[95] In answer to the second article she explained that she had married him around the feast of Pentecost two years previously (Whit Sunday 9 June 1527) in George Downes's house.[96] Her detailed evidence was less clear: In answer to the third article, which queried the words used at the time, she explained that

> she toke hym by the hand and promised hym to be his wiffe And he then lyke wise promysed hyr to be hyr husband but *by what wordes she doth not now remembre* but she saith at that tyme when she made hym that promyse she thought in hir mynde to be hys wiffe in that it was matrymony betwixt them[97]

Machell produced George Downes who told the court that two years previously, just before the festival of John the Baptist's birth (24 June 1527), he had been at home and had heard Inman proffering Thompson the words alleged in the third article. We cannot see but it probably contained an allegation of the same *de presenti* words Thompson had not been quite certain about. He went on to confirm she had replied as alleged and that as well as himself, Inman and Thompson, Robert Wright alias Tell had been present.[98]

Walker's case looked unpromising. We can see confirmation in two draft sentences. Each is marked as not read ('*non legitur*') but the first dismissed his case and the second declared Thompson and Inman man and wife.[99] Nevertheless, before either sentence could be delivered, Walker consulted

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[95] 'comparuit personaliter Elisabeth Thompson soluta de castell bytham iurata ad hos diem et locum certis articulis etc': LAO/Cj.4/Q2.fol.56r.
[96] 'Ad secundum articulum fatetur quod contraxit matrimonium cum dicto henrico Inman circiter festum penticostes ad biennium elapsis in domo cuiusdam Georgij Downes de castell Bytham predicta': LAO/Cj.4/Q2.fol.56r.
[97] LAO/Cj.4/Q2.fol.56v (italics mine). Elizabeth's evidence also describes receipt of a ring from Inman 'dyuerse times'.
[98] Ad tertium articulum dicit quod presens fuit in domo sua propria ante festum natiuitatis sancti Johannis Baptiste ad biennium elapsis ubi et quando audiuit dictam henricum Inman tunc ibidem presentem proferentem dicte Elisabeth Thompson uerba ueritata in ipso tertio articulo et etiam eandem Elisabeth tunc ibidem respondenda et dicenda eidem henrico uerba etiam in illo articulo ex parte su a ueritata Dicit etiam quod fuerunt presentes tempore huiusmodi contractus uxorem istius deponentis iste deponens Robertus Wright alias Tell de bitham et prenominatis contrahentibus…':LAO/Cj4/Q2.fol.57r.
[99] LAO/Cj.4/Q2.fols57v & 60r.

lawyers too. On 30 October 1529 he appointed Henry Litherland and Thomas Bothe.[100] However, despite Bothe's immediate objection, Machell was permitted another witness, Elizabeth Downes.[101]

Elizabeth Downes said the exchange of words between Thompson and Inman had occurred on, rather than just before, the same festival of John the Baptist. She went on to say that in her presence, and that of her husband, Inman took Thompson by the right hand and

> asked hyr iff she stode hyr own woman and she said yea And then henry asked hyr iff she cowd ffynde in hyr harte *to be hys wiffe a noyther day and she by hyr trouthe yea and then she said And I promysse you the same As long as we ii lyue to guydder* and then the same henry said to Elisabeth Thompson Elisabath quoth he doth your your harte and your tong agre and then she said yea mary quoth he els I wold ye said not so to me[102]

There was uncertainty about the date, and those italicised words might in isolation have formed a mere *de futuro* contract.[103] However, Walker still faced a problem: Thompson had said she regarded herself as Inman's wife. Inman's lawyers were experienced. Almost certainly his libel included a plea to allege *carnali copula subsecuta* (that intercourse followed the contract). When coupled with proof or an admission that intercourse had taken place, such plea removed problems caused by the future-tense form.[104] After both witnesses answered interrogatories put to them by Walker's lawyers his only remaining hope were new allegations he had put forward on 27 October 1529.

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[100] LAO/Cj.4/Q2.fol.60v.
[101] 'bothe protestantis de dicendo contra testem illam': LAO/Cj.4/Q2.fol.60v.
[102] LAO/Cj.4/Q2.fols60v & 61r (again, the italics are mine). The final line of the quotation is unclear. The most likely reading is that Inman interrupted Elisabeth to invoke the Virgin when she said yes, with Elisabeth then saying she would not have agreed without being sure.
[103] 'Many, perhaps most, canonists regarded … "I will have you next Easter as my wife/husband" or "I will that you be my wife/husband next Easter" [as] expressions of future consent': Donahue, *Law, Marriage, and Society*, p.17.
[104] Helmholz, *Marriage Litigation*, p.35.

The first new claim was that both Thompson and the community had recognised his marriage to her.[105] The second was that Inman had already contracted a *verba de presenti* marriage to an Agnes Jackson and that, therefore, the marriage between Inman and Thompson was void.[106] Although competition for Thompson seems real, we can never be sure of Walker's motives. He may have genuinely believed himself married. He may have known his case was flawed yet wanted to expose Thompson to shame and expense regardless, even at financial cost to himself.[107] Whatever lay behind his manoeuvres, the case was still weak. Any words Agnes Jackson and Henry Inman used had to have created marriage. If they did not, nothing could be proven. As Helmholz puts it, 'the contract might be difficult to evaluate, but an actual contract there had to be'.[108]

On 7 February 1530 Agnes Jackson told the court Inman came to her father's house. Her evidence was that there he

> did take this deponent by the hand [and] dyd asked this deponent yf she cowde ffynd in her hart to loue hym et ista deponens respondit yea and he gaue her abowd grote for a tokyn and she dyd take it but he spake no wordes of matrimony and bifoer that she saith that he another tyme dyd saye to her gyue me your hand and she said naye then he saide gyue me thy hand and you shall haue my hand and then she gaue hym her hand and toke his hand and then they said nothyng And after that the same nyght at the maye daye at Euen he gaue her a ryng saying I gyue the this ring on a condicion and she said I take it on a condicion but they expressid

[105] 'primis proposita alleaguit quod Elisabeth Thompson citra contractum per dictum Jacobum allegatum recognouit se contraxisse cum Jacobo Walkar et quod super contract per ipsam initam cum Jacobo laborat publica uox et fama': LAO/Cj.4/Q2.fol.62v.

[106] 'quod henricus Inman de bitham magna contraxit matrimonium per uerba de presenti cum Agnete Jakson de halywell circiter festum penticostes ultimo cuius pretextu contractus prescius per dictum henricum Inman cum Elisabeth Thompson est nullus': LAO/Cj.4/Q2.fol.62v.

[107] Considerable numbers of suits failed for want of proof and were perhaps begun in hope of bringing shame on the person with whom the claimant had contracted clandestinely: Helmholz, *Oxford*, p.528.

[108] Helmholz, *Marriage Litigation*, p.45.

> no condicion and also he gaue her a pair of gloues and also at dyuerse tymys herry dyd send her vij grotes for tokyns[109]

This was nothing at all: the description of gift-giving was circumstantial and not proof *per se*; Jackson and Inman were not, and never had been, married. Walker's lawyers were experienced too. It is unlikely they believed Jackson's story would win the case. But he may have expected her to be more positive. He may even have insisted she attend. Nevertheless, it seems he was not present when her evidence was given. By then he must have realised his case would fail. Machell sought to put him on notice to come up with further evidence at once or lose the case. The court warned him to attend the following Tuesday. He did not appear. As a result, Machell and Inman's other proctors petitioned for sentence in their client's favour.[110] That sentence was to be delivered on 23 February 1530. It is, unfortunately, missing. Nevertheless, certainty had clearly been provided, albeit by roundabout means.

Although many couples may have spoken more straightforwardly than Agnes Jackson and Henry Inman, their words may still not have been immediately redolent of marital bargain. That caused problems too: meaning and intent could be in doubt; finding a legal solution could be difficult. Working out what parties might have wanted, or believed, can also be hard. In the absence of any known sentence, it can be challenging to grasp how a court might resolve such cases. Whether it began *ex officio* or as instance litigation is unclear, and the surviving record is short, but a matrimonial case heard in Lyddington on 14 February 1529 illustrates these difficulties well.[111]

[109] LAO/Cj.4/Q2.fol.66r.

[110] 'Deinde magister Machell comparuit et apprensat contumuciam Jacobi Walker in presentia Elisabeth Tomson et pecijt tertium ad procedendum ulterius in causa die cuius petitionem dominus assignauit diem martis proximo post festum Juliane virginis ad videndum ulteriorem processionem in ecclesia parochialis sancti michaelis maioris uille Stamford in presentia Elisabeth Tomson et monuit eadem ad comparendum tunc et ibidem et decrevit Jacobum monendum fore ad comparendum eiusdem die et loco …Quo die martis comparuit magister Machell in presencia Both et in presencia mulieris pecijt tertium ad proponendum omnia ad statim quem tertium [?] assignauit et deinde dicti procuratores in presentia mulieris proposuerunt omnia et petierunt ad concludendum ad statim': LAO/Cj.4/Q2.fol.66r.

[111] The entire record is at LAO/Cj.4/Q2.fol.66v.

Four people appeared in court. The first was Thomas Spennyng. The others were Cecilia Cartledge, Thomas Coollis of Ashwell, and Cecilia's brother, Peter. Spennyng was one of the court's *litterati*. His circumstances and career have been discussed in Chapter Three.[112] Peter Cartledge was said to be domiciled in nearby Pykewell (Pickwell), Leicestershire, and thus does not appear in the Rutland Military Survey or Lay Subsidy. There is no trace of Coollis or Cecilia Cartledge within either source or elsewhere.

First to give evidence, Spennyng was asked whether he had contracted marriage with Cecilia.[113] The scribe recorded that he had said to her 'If I mary eny woman I will haue the to my wife and I shall haue my pleasour of the'. The scribe also noted 'and that was afore that he had to doo (intercourse) with her that he spake these wordes and then he had to doo with her'. Spennyng's recollection of Cecilia's response was noted too. According to him she said, 'so that ye will kepe this promysse I am better content that ye haue your pleasure of me'. He claimed not to know whether she had said anything else and denied making her pregnant.[114] Next Peter Cartledge spoke. His evidence was noted by the scribe as follows:

> abowt Easter was iii yere he hard Thomas Spennyng and Cecily common togeder and this deponent said Thomas ye haue drawen long to my suster and lett me know how it is between you and Thomas Spennyng toke her by the hand and said I take you here as my wiffe and ipsa Cecilia dixit and I take you Thomas Spennyng as my husbond

Thomas Coollis then appeared, alleged he had contracted marriage with Cecilia, and asked the court to declare she was his wife.[115] The scribe noted Cecilia's admission – presumably that she had

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[112] See pp.150, 152.
[113] 'In primis dominus interrogauit dictum Thomam Spennyng an contraxit matrimonium cum dicta Cecilia Cartledge'.
[114] 'sed idem Thomas nescit an ipsa mulier protulit talia uerba eodem tempore nec ne sed impregnauit eandem'.
[115] 'Deinde comparuit Thomas Coollis et uiua uoce allegauit quod contraxit matrimonium cum eadem Cecilia Cartledge et pecijt eandem adiudicari sibi in uxorem'.

contracted with Coollis – but also that she claimed a prior contract with Spennyng.[116] Coollis then petitioned for the court to decide whether Spennyng had contracted marriage with Cecilia. Spennyng denied it.[117] At that point Cecilia is noted telling the court 'that she supposith her broder neuer hard thes wordes between Spennyng and her'.

If the case was resolved, the details are lost. But what are we to make of it? Did Cecilia, when she heard Spennyng deny their contract, finally decide there was no better option than Coollis? Had she, even until then, believed it possible Spennyng might keep his word? Did his denial motivate her to deny evidence from her brother? Had their contract really been *de futuro* in nature or had there merely been a conversation followed by sex? Was Peter Cartledge truthful or did he simply prefer Spennyng as a brother-in-law?

We cannot answer all these questions. But some assistance can be found within a fourteenth-century York case analysed by Helmholz, *Isabelle Rolls c. Johannes Bullock*.[118] The issue in *Rolls* was whether the plaintiff could prove certain words the defendant had spoken constituted enough of a contract. A first exchange between them had been insufficient. But in a second Bullock was reported as saying 'If I take any woman as my wife, I will take you'.[119] Rolls was said to have signified her assent, but the words used are not recorded. All the witnesses testified that the parties had frequent sexual relations thereafter.[120] Helmholz helpfully explains that there seemed to have been differing opinions amongst medieval canonists. Some, he writes, would have said Bullock's second exchange of words not only contained an implied affirmative expression but, by ruling out other women, also contained a negative promise. Furthermore, because it was a future promise followed by subsequent sexual

[116] 'et dicta Cecilia fatetur sed dicit quod precontraxit cum Thoma Spennyng'.
[117] 'et dictus Coollis pecijt eundem Spennyng an contraxit matrimonium cum dicta Cecilia et idem Spennyng negauit'.
[118] Helmholz, *Marriage Litigation*, pp.40-45. The case can also be seen at York Cause Papers, CP/E.71 https://www.hrionline.ac.uk/causepapers/causepaper.jsp?id=91744 [accessed 13 August 2019]. Helmholz has Rolls as plaintiff; the website as defendant. This may be because Bullock appealed. Rolls would have been the Defendant in that part of the litigation. However, because Rolls began the case, I have continued with Helmholz's preferred designation.
[119] Testimony of John Manfeld, clerk: Helmholz, *Marriage Litigation*, p.41.
[120] Helmholz, *Marriage Litigation*, pp.40-41.

relations, Bullock's marriage to Rolls would, as the first union, prevail over a second with another woman. But others held that to make a negative promise (i.e. a promise not to marry anyone else) did not amount to a promise to marry Rolls at all.[121]

Like Cecilia, Rolls was the woman wronged; both men seemed to have engineered a sexual encounter through deceit. However, there were other difficulties. Bullock had left open the possibility of marrying someone else, or indeed no one at all. He had also gone on to marry someone else. Spennyng may not have married someone else but some canonists recognized that, where a man made clear he was undecided about marrying at all, such words as those he had spoken made neither espousals nor marriage. Isabelle Rolls might argue John Bullock never intended to remain single. But he could have changed his mind after deserting her. In that case his second marriage would prevail, and her argument would fail. Thomas Spennyng might do the same and Cecilia's case would fail too. Both women might have been able to assert they had been deceived. Commentary upon a decretal of Pope Innocent III suggested that if anyone used "dubious words", with intent to deceive, and afterwards knew the woman carnally, the court should decide in favour of their being married. But that argument might also fail – generally, the courts only upheld objectively valid contracts to punish men who used false names. According to Helmholz, Rolls's strongest argument was that Bullock's words were really a contract in conditional form that their sexual relations had both transformed into an unconditional one and confirmed the marriage. However, canon law may not have recognised such a condition.[122]

Ultimately the result in *Rolls* is unknown. The plaintiff won at first instance but lost on appeal. Although she appealed further, the papers do not survive.[123] But, it is as well to point out differences between the two cases. Rolls originally commenced proceedings because Bullock had reneged on his

[121] Helmholz, *Marriage Litigation,* p.41.
[122] Antonius de Butrio, *Commentario in Quinque Libros Decretalium* (Venice, 1578; repr. 1967) X.4.1.26; Helmholz, *Marriage Litigation*, pp.42-44.
[123] Helmholz, *Marriage Litigation*, p.45.

promise and married another woman. Spennyng denied marriage to Cecilia but he did not claim to have married anyone else. Coollis claimed to be married to Cecilia. She admitted to such contract, though claimed it invalid. She also denied the conversation with Spennyng her brother claimed to have heard. Furthermore, unlike in *Rolls*, Spennyng attributed particular words to Cecilia before their sexual encounter. He also denied getting her pregnant. In *Rolls* there is no indication of pregnancy at all. Cecilia did not deny the events or words Spennyng described but neither admitted to more. If Helmholz's analysis is applied she still risked being considered married to him (perhaps on the basis of negative promise, perhaps because even though the words had been somewhat dubious they had been followed by intercourse, perhaps on the basis of a conditional contract which had transformed into an unconditional one when they had had those relations). But the record hints neither wanted that outcome: both made denials even at risk of a finding of fornication; Cecilia had gone on to contract marriage to Coollis. Moreover, Peter Cartledge was the only one prepared to admit to hearing unambiguous words. In *Rolls* the only witness was less clear but the plaintiff needed his evidence. Whether Cecilia knew that if she challenged her brother's version it would be of no significance because he was the single witness is unclear. It may have been in her mind. Perhaps she simply wanted to persuade the court that "all bases were covered" and it could ignore what Peter Cartledge had said. Ultimately, the court may have preferred preservation of the status quo: Cecilia's marriage to Coollis may have been its most attractive option.

The Importance of Witnesses

As explained, in the absence of admission two witnesses were required for proof.[124] We may not be entirely sure of Cecilia Cartledge's knowledge on such matters, but many others seem to have

[124] Chapter One, p.30. See also: Helmholz, *Marriage Litigation*, p.154, *Roman Canon Law*, pp.179-180, *Oxford*, p.303; Charles A. Donahue Jr., 'Proof by Witnesses in the Church Courts of Medieval England', in *On the Laws and Customs of England: essays in honor of Samuel E. Thorne*, eds. Morris S. Arnold, Thomas Andrew Green, S.

understood the social and legal importance of trustworthy, reliable, witnesses. William Harthorn, for instance, carefully explained that William Swan's father had specifically asked him to attend the house of Marion Baily's father 'to here the conuersation bitwen his son and the said marion'. Indeed, he described a sense of occasion and explained that his questioning of both parties began after they had 'sett down at the table and when they had etton and dronken to gidder a whille' and not just in the presence of immediate family but 'many oyther'.[125] Richard Hallyok, as we have heard, told the court the witnesses 'war called theyther to her a contract made bitwixt the said parties'.[126] Within the last few folios of LAO/Cj.4 a partial record survives of another case, this time involving at least six parties.[127] Such complexities make the case difficult to follow but, those aside, the validity of the marriage at issue between two of the parties, Thomas Stevenson and Isabell Richardes, seems to have caused the court little concern. This was probably because those parties took care with their witnesses. Paul Spencer of Brampton Dyngley certainly appreciated the need for any bargain to be witnessed, both in the strict legal sense and that of wider community acceptance, when he told the court that

> he was at haloughton and ther was Thomas Stevinson and Isabell Richardes in her fadre in law his howse ubi et quando audiuit ut sequitur (where and when he heard as follows) the said Isabell said that she and Thomas had upon mary magdalene last past made a contracte of matrimony bytween them and this deponent askyd what record was by and they both said they had no record by then this deponent said it well not stand if eny swaruing be butt ye have record Then thei both desirid this deponent to here and bare record what they wold say and [he] was contentyd[128]

A. Scully and S. D. White (Chapel Hill, 1981), pp.127-158; James A. Brundage, 'Juridical Space: Female Witnesses in Canon Law', *Dumbarton Oaks Papers*, 52 (1998), 147-156.
[125] LAO/Cj.4/Q1.fol.11v.
[126] LAO/Cj.4/Q1.fol.11v.
[127] LAO/Cj.4/Q2.fols63v, 64r, 64v, & 65r.
[128] LAO/Cj.4/Q2.fol.64v.

Spencer went on to tell the court that Richardes and Stevenson had repeated their contract before him. Two more witnesses, William Squyrry and Alice Richards, confirmed it.[129] The definitive sentence is plain: Stevenson and Richards were man and wife.[130]

Occasionally, couples seem to have resorted to the court, accompanied by their preferred witnesses, to obtain immediate public recognition. *Ricardus Ingram c. Elizabeth Roys* was heard on 4 January 1529.[131] Both appeared in person. Ingram asked the court to declare Roys his wife.[132] When asked, she admitted the marriage and explained Roys had given her a groat as token.[133] Both witnesses, Jon Ingram and Richard Dowke, confirmed they were present when the marriage contract was made. Neither could be precise about the date: Ingram said it had been made the 'Twesday before Martinmasse daye'; Dowke 'after all halow masse'. But both were certain it had been in early November, in Horninghold (Leicestershire), and that they and the parties were the only people present. One might suspect collusion: plaintiff and one witness had the same surname; the record describes them both as 'of Eston'. They may have been related. But the case seems to have been brought and concluded on just one occasion, John Rayne, who heard it, was far too clever to allow collusion to go unremarked, and the single entry concludes with a straightforward note that he declared them man and wife.[134] No solemnisation was ordered. It may simply have been expected but it is possible the Chancellor was so satisfied with replies to his enquiries he felt there was no risk it would not occur. We have no easy answer why the couple did not simply arrange for publication of banns, nuptial blessing and an exchange of words before their congregation. Collusion cannot be ruled out. But, perhaps, because of pregnancy, property or inheritance, it was necessary for the marriage to

[129] LAO/Cj.4/Q2.fols64v & 65r.
[130] 'decreuimus et declaramus prefatam que Isabellam in uxorem legitimam prefati Thome Stevinson ac ipsum Thomam Stevinson prefate Isabelle in uirum et maritum legitimum': LAO/Cj.4/Q2.fol.65r.
[131] The whole record is at LAO/Cj.4/Q2.fol.63r.
[132] 'pecijt eandem sibi adiudicari in uxorem'.
[133] 'deinde dominus eandem Elizabeth iurato ordinavit de fideliter respondendo an contraxit matrimonium cum eodem Ricardo Ingram vel non et ffatetur quod contraxit cum eodem Ricardo in presentia eiusdem Ricardi consitentes consimiliter contractum et dicta Elizabeth Roys recepit grossum in signum matrimonij'.
[134] 'Deinde dominus decreuit pro vero matrimonio inter eisdem et adiudicauit huic mulieri dictum uirum in maritum et eandem Isabellam eidem uiro in uxorem'.

be declared as having taken place in very early November. There are other possibilities: perhaps an age gap or a swift remarriage; such occurrences could be scandalous.[135] Court approval may have helped smooth community relations.[136]

To achieve success parties and witnesses had to do and say the right thing. Few would want to risk public censure or excommunication; lying was a gamble. But parties with enough wealth and knowledge might seek additional means to defeat even the most ardent competitor, and to avoid judicial criticism, just in case. *Office c. Johannes Kellett, Christina Sulby et Stephanus Estwyck* provides an excellent example.[137]

Christina Sulby seems to have been the subject of intense competition between John Kellett and another man, Thomas Clarke. Despite being *ex officio* in nature the proceedings may even have begun at the latter's instigation. Kellett and Sulby had had their marriage celebrated not only during the progress of a contested marriage case before the commissary in Northampton but quite possibly whilst it had been adjourned for sentence. In such events the courts were always keen to step in.[138] Stephen Estwyk's evidence reveals the extraordinary lengths to which he, the couple themselves, and others had been prepared to go.

At first the Defendants failed to attend court. However, after being declared contumacious, Kellett, Sulby and Estwyck were all present on 9 February 1529. Estwyk gave evidence. He denied hearing it said that Clarke and Sulby had contracted marriage on 2 December 1528.[139] But when asked to describe what he knew about the latter's alleged marriage to Kellett, he went into fulsome detail

[135] Outhwaite, *Clandestine Marriage*, pp.59-60.
[136] Something similar occurred in the *Huntington c. Monkton* case. See, Frederik Pedersen, *"Romeo and Juliet of Stonegate: A Medieval Marriage in Crisis* (York, 1995).
[137] The record can be seen at LAO/Cj.4/Q1.fols32v & 34r.
[138] Helmholz, *Oxford*, p.539.
[139] '… comparuit personaliter Stephanus Estwike de Bosiatt … interogatus an audiuit dici quod Thomas Clarcke et Christina Sulby contraxerunt matrimonium die dominico ante festum concepcionis beate marie Virginis ultimo negat': LAO/Cj.4/Q1.fol.32v.

about how their contract had first been made during the previous Lent then confirmed in front of witnesses (including himself) because if it were not she was promised to Clarke. The scribe wrote

> dicit (he says) that on our lady daye (25 March 1528) at nyght bitwen vij and viij kellett was at Estwykes howse and at Kellot his desier this respondent did send for Christiana Silby and when she cam theder kellott and Christiana had conuercation and said thei had made a contracte on a Thu[r]sdaye in lenton last past and disiryd this respondent Simon Rawlyn and Richard Jamys to bere wittenes of the conuercation thei had in Lenton for the Thursdaye following she said she must have made promisse to Thomas Clarke if Kellot had not com then this respondent said we here no wordes of matrimony as yet to bere record of and she said I pray you help us to make contracte and bear record of it a fore Thursdaye cam and then thei made a contracte and thes men before namyd did bear wittenes thereof[140]

Estwyck also told the court about the case in Northampton, and that he had been present there too. The scribe noted that when there he had

> hard them saye that she (Sulby) and clark had made a contracte The Sondaye befor our lady daye and he herd when the Judge did command them to be with hym the fridaye after at court at Northhampton and after that William Kellott and this respondent did sett a citation of magister Booth to acyte the woman to Stamford courte but he saith it was not his councell but he thinketh it was doon by the councell of a somner of Wellingborow and then this respondent cam to Stamford with Christian to the court And he said he rood fro Stamford to London at the desier of John Kellott and William Kellott to obteyn a dispensacion for mariage of them and went to Peter Mates seruante to the Legate Laurentius and obteyned the dispensacion and then this respondent and thei rood to Cambridge to geder and gatt a ffreer

[140] LAO/Cj.4/Q1.fol.32v.

> and weer weddid at Clopham but they were neuer askyd in the church at Bosyatt but he denyith that it was not of his counsell [141]

Estwyck had been careful to describe Kellott and Sulby's private contract, to assert that it had been concluded before the contract Clarke alleged had been made, and that it had been confirmed on 25 March before witnesses. He had to acknowledge no banns had been called. The prior private marriage contract claimed may have been invented, as might its confirmation before witnesses on 25 March, but a dispensation to avoid the necessity of banns could be obtained where a de facto, albeit irregular, marriage already existed.[142] Legate Laurentius, Cardinal Campeggio the pope's representative in England, was in London at the time claimed too.[143] But, sometimes, dispensations were alleged to exist yet, when parties were pressed for proof, failed to appear.[144] If one had been obtained, it would have taken considerable expense.[145] At that point, the case was adjourned to the following Monday, in Stamford.[146] No further records survive. Ultimately, if the dispensation had been produced, Clarke's only option may have been to persuade the court there was something invalid about its contents or suggesting the procedure it permitted had not been followed. The courts looked closely at dispensations and they were strictly construed; what they permitted was contrary to the ordinary rules of law.[147] In the face of such apparent wealth, such carefully-crafted evidence, and the limited possibility of further challenge, Clarke may simply have abandoned his pursuit.

When evidence was diametrically opposed witnesses were crucial. Knowing where and when they could help also meant realising the impact of their absence. Clarke may have realised he had no one else to whom he could turn. The final note in *Swan c. Baily*, where the defendant claimed to have

[141] LAO/Cj.4/Q1.fol.34r
[142] Outhwaite, *Clandestine Marriage*, p.6.
[143] Edward V. Cardinal, *Cardinal Lorenzo Campeggio: Legate to the Courts of Henry VIII and Charles V*, Facsimile edn (Ann Arbor, 1981), pp.116-123.
[144] Helmholz, *Marriage Litigation*, pp.85-86.
[145] Helmholz, *Marriage Litigation*, p.86.
[146] LAO/Cj.4/Q1.fol.34r.
[147] Helmholz, *Oxford*, p.543.

withdrawn from her agreement to marry William Harries because he was 'he was an unthristy ffellowe', indicated there was to be another hearing on the first available date after 24 June. A lack of further record suggests it unlikely that hearing took place.[148] Harries may have withdrawn ultimately satisfied with return of his gifts and having resolved his property problems. He may have been confident the court would decide in his favour. But, equally, he may have been unable to provide evidence anyone else had heard the bargain with Baily he had once claimed was permanent. She mentioned no witnesses to it. Absent such proof the court may have been forced to accept her version of events.

Yet, witnesses could be unpredictable: they might not provide the evidence expected. An element of control might come with careful selection of those asked to help. But controlling those called by others was difficult. Evidence was normally admitted if relevant. Criminals could not give evidence, but one had to substantiate any objection for their evidence to be excluded *ab initio*.[149] If other objections were made (and many, including age, gender, reputation and truthfulness, were possible) judges normally allowed the evidence regardless and only considered weight when assessing its probative force. But, regardless even of that, the mere introduction of evidence could cause considerable difficulty. Sometimes witnesses were too closely connected to events, the probative value of their evidence too important to ignore. Sometimes what they said had too much impact. It became vital instead to understand inconsistencies and reconcile apparent contradictions.[150] That might be a challenge for the best legal minds let alone for those acting in person. Precisely such events occurred in *Floyd c. Skevington*, a case about conditional contracts, the last topic to consider.

[148] 'xxixmo die mensis maij anno domini millesimo quingentesimo xxviijmo dominus cancellarius continuauit hic negotium inter Willelmum Swan et marionam paily in crastino natiuitatis sancti Johannis baptistae proximo futuro': LAO/Cj.4/Q1.fol.12v.

[149] Helmholz, *Oxford*, p.601.
[150] Helmholz, *Oxford*, pp.340-341.

Conditional Contracts and Their Consequences

Obtaining the consent of fathers, brothers, uncles, and even mothers, before marriage was often important for any prospective couple and 'socially, the right and wise thing to do'.[151] Presenting one's new spouse to unsuspecting parents, or even merely mentioning their existence, could cause shock and was best avoided. Richard Bale told the court that when he and Alice White 'come home to gidder his moyther wold nott suffre them to come into hir hows'. His subsequent evidence that 'he desiered hys moyther to be good unto hyr', and that 'at his desire his moyther went to the churche and desiered the parson to aske [the banns] in the churche', suggests bridges could sometimes be rebuilt.[152] Conditional contracts helped minimise potential familial chaos. But, as *Floyd* proves, sometimes clashes were inevitable. They could be difficult to predict and cause immense damage too.

John Floyd alleged he had married Alice Skevington. In turn, her case was, firstly, that she had only agreed to marry him if her father consented and, secondly, that she had subsequently contracted marriage to John Spence of Braybrook (now Cambridgeshire) without any condition precedent.[153] It is difficult to decide whether Alice ever really had matrimonial freedom of choice: the Skevingtons were one of Leicestershire's most prominent families. But it is clear matters became much more complicated, both for her and Spence, when her father William (a man probably used to getting his own way) told the court, at the second hearing, that he had originally refused his consent as claimed but three weeks prior to the hearing had changed his mind and agreed.[154]

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[151] McSheffrey, *Marriage, Sex, and Civic Culture*, p.87.
[152] *Alicia White c. Richardus Bale* LAO/Cj.4/Q1.fol.9v.
[153] LAO/Cj.4/Q1.fol.29v. The entire record can be seen at folios 29v, 30r, 32r and 41v.
[154] William Skeffington was knighted by Henry VII, Sheriff of Warwickshire and Leicestershire in 1515 and 1521, and King's Commissioner to Ireland in 1529: S. H. Skillington and G. F. Farnham, 'The Skeffingtons of Skeffington', *TLAHS*, 16 (1929-31), 73-128. The authors omit mention of Alice as William's daughter but see footnote 169 below. See also: Mary Ann Lyons, 'Skeffington, Sir William [*called* the Gunner]', *ODNB* (2004) https://doi.org/10.1093/ref:odnb/25659 [accessed 10 September 2019].

At the first hearing, on 23 January 1529 before Chancellor Rayne, Richard Lee gave evidence.[155] Floyd's witness and uncle, he is described as a farmer aged 60 who had known his nephew from birth and Alice well for eight years. Having related how his son Andrew had told him about being a go-between and taking a ring to Alice, he described being asked to witness and confirm the exchange of vows about a year later and some months before the hearing ('upon shrofe Sunday was twelmonthe'). Both Floyd and Alice Skevington had 'mett and draynk to gedder' in his house at Braybrook 'and when they had drunken to gedder they bothe went to gedder into [his] barn and talked to gedder a while'. When they emerged, he had 'asked them iff they were agreed' and explained that

> Iohn ffloyd sayd yea and sayd I have sedd thies wordes to hyr Alice Skeuington ye wyll take me as your husbond in the way of matrimony and he sayd that she sayd ye And then that he sayd I Iohn ffloyd take you in the way of matrimony to my wiff and then the said Iohn ffloyd sayd Alice wyll ye tak me to your husbond and she said yea And then he sayd to hyr Alice I take the to my wiff and plyght the my troth yn the way off matrimony And I will have my ffather gude wyll orels I will byd this vij yere.[156]

The court needed to be certain about this alleged condition: what did it mean, had it been incorporated into the bargain? Lee explained no one but the three of them had been there at the time ('*Interogatus de presentibus Dicit quod nullus fuit ibidem presens nisi iste deponens cum dictis Johanne et Alicia*'), stated once again that Floyd and Skevington 'went into the bern to gedder as he beleveth to make a contract', but this time explained 'that he harde hyr say I will have you to my husbond thoghe my father say nay to yt but I wyll bydd this vij yere except I may have my ffather gude will'.[157] This was different. In his first statement he had claimed Floyd had said he would obtain his

[155] Deinde dictus Johannes ffloyd produxit in testem Ricardus Lee de Braybrok quem pecijt admitti iurari et examinari quod quem dominus in presentia dicta Alicie admisit et Juramento ordinauit Deinde ipsum examinauit': LAO/Cj.4/Q1.fol.29v.
[156] LAO/Cj.4/Q1.fol.29v.
[157] LAO/Cj.4/Q1.fol29v, 30r.

father's consent or wait seven years, this time that Alice had indicated her father's consent was needed or she would wait.

Alice was next. Her evidence was that 'she made no promise but under a condicion that he (meaning Floyd) cowd gett my ffaythers gude wyll and that was ij yeres a goo and sithens she made hym no promysse'.[158] She also explained that 'hyr uncle did aske her fathers good will and her father would not consent to hit but hett her'. Such violence is not unknown.[159]

On 28 January 1529 Andrew Lee confirmed his father's story about the ring.[160] The court heard from Alice's father the same day. Once again, he was interrogated directly by the judge.[161] Asked if he had required the ability to consent or not to the marriage, William Skevington confirmed he had said that in the past, but (the scribe noted) now

> he saith that abowt iij wekes last past that the foresaid Androo did aske hym his goodwill and for Iohn Floyd and then he consentyd to hit in discheriging hys conciens because he had lett it before and so he is contentyd still in discharching his consciens.[162]

Essentially that meant, if there had been a valid condition in the contract between Floyd and Alice requiring his consent, he had consented a couple of weeks before the case first appeared in the record and thus, potentially at least, had validated the marriage between them. It is not clear what led to the change of mind. He might have reconsidered Floyd's suitability, and Spence's unsuitability, but perhaps anticipation of Richard Lee's evidence had had some bearing.

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[158] LAO/Cj.4/Q1.fol.30r.
[159] LAO/Cj.4/Q1.fol.30r. See also: Alice Jenkyne's evidence in *Rolfe c. Jenkyne,* ((1545-1548), Canterbury Cathedral Archives and Library, MS X/10/3/fols1r-1v) as retold by Diana O'Hara in 'Ruled by my friends: aspects of marriage in the diocese of Canterbury, c.1540-1570', *C&C*, 6 (1991), 9-41 at 15; Murray, 'Individualism and Consensual Marriage', 121-122; *Willelmus Stevyns c. Johanna Stevyns* in *Buckingham*, ed. Elvey, p.xx, items 383-4 and 386-8.
[160] LAO/Cj.4/Q1.fol.30r.
[161] 'Et eodem die dominus Interogat Willelmum Skeuington patrem dicte Alicie': LAO/Cj.4/Q1.fol.30r.
[162] LAO/Cj.4/Q1.fol.30r.

At this point Floyd appointed Thomas Bothe who petitioned for Alice to be sequestered 'to an honest place'.[163] It is probably safe to assume this was an attempt to acquire advantage. From his point of view the approach was justified: either there had been no condition precedent (his original case), or it had now been fulfilled (following William Skevington's evidence). By gaining access Floyd could exercise his authority as husband. However, instead of simply acceding to Bothe's application, the Chancellor specifically sought and obtained consent from both Spence (who was not then a party) and Floyd before ordering her sequestration in the house of Robert and Johanna Crofte.[164] Alice was ordered not to leave on pain of excommunication, but he may have considered her vulnerable (perhaps after hearing the description of violence, because he harboured doubts about Floyd's veracity, or because of her age). Both Floyd and Spence would have been playing with fire approaching her before sentence (presumably neither wanted to see her excommunicated or for themselves to be accused of duress) yet Spence, who could well have guessed Floyd's real intent, seems to have been sufficiently assured of Alice's safety once the identity of those with whom she was to stay had been made clear. She would be out of the immediate reach of her father too.

On 30 January 1529 Spence alleged marriage to Alice. His evidence was that

> he saith he did aske her if she myght fynde in her hart to love hym aboue all other men and to be his wiff and she saith she sayde ye by her faith and then he saith he had her saye after hym I Alice do take you John to have and to holde for better for worse for richer for powrer all others to forsake and oonely you to take to my weddyd husbond and therto I plytte you my trothe and he saithe she said thes words after hym And he saide I John take you Alice to

[163] 'Deinde Johannes ffloyde comparuit et constituit magistrum Thomam Bothe procuratorem suum ad agendam etc cum clausam substituendam presentibus tunc ibidem magistro Thoma Webster Ricardo Rayne litterato et alij … Deinde magister Bothe pecijt eandem Aliciam sequestrari et in loco honesto quia dictus ffloyd non potest habere tutum accessum ad eandem': LAO/Cj.4/Q1.fol.30r.

[164] 'Deinde dominus de consensu mulieris et virorum predictorum videlicet Johannis Spence et Johannis ffloyd sequestrauit eandem in domo Roberti et Johannis Crofte de Stoke Dawbeney et iniunxit dicte Alicie ne recederet a dicta domo priusquam habuit legitimam sub pena excommunicationis': LAO/Cj.4/Q1.fol.30r.

> have and to holde for better for worse all others to forsake and you for to take to my weddyd wife and therto I plytt you my trothe[165]

When asked "when?" Spence said it was on the previous Easter Sunday at his house but that no one else was present.[166] He can only have meant Easter Sunday 1528. This may have been the truth. It may have been a poorly thought-through tactic seeking to ensure the court believed his marriage to Alice had preceded William Skevington's change of mind. Either way it was likely to be doomed to failure. There were, seemingly, no other witnesses. Alice was asked to give evidence again. She confirmed the words spoken, and that they had had intercourse, but indicated no one had witnessed the contractual exchange ('*Nullo tunc presente*') and it had taken place after sex ('*post cohabitationem habitam*'). The scribe also noted 'but they (banns) have been askyd oones in the church'.[167]

The lack of witnesses to their supposed contract represented a problem for Alice Skevington and John Spence. It looked like a concoction to justify fornication. But there were also other difficulties. Alice had claimed Floyd must ask her father for consent yet later reported the violent attack had occurred after her uncle had spoken to request it. If she had expected Floyd to make the request, it is odd she asked her uncle to do the talking. Although in some cases a definite necessity, some women did place the onus of seeking consent upon men making offers of marriage to seek proof of commitment or perhaps as a courtship strategy to illustrate coy reluctance.[168] Yet, the uncle's conversation could also be explained if there had been no such condition at all. Alice may have asked her uncle to intervene and obtain her father's permission to marry Floyd, not because of any strict contractual requirement but because of a strong social obligation she felt and/or guilt she had not

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[165] LAO/Cj.4/Q1.fol.32r.

[166] 'Interrogatus de tempore dicit quod in dominico reliquiarum ultimo elapso in domo habitacionis | eiusdem Iohannus Spence nullis tunc presentibus: LAO/Cj.4/Q1.fol.32r.

[167] LAO/Cj.4/Q1.fol.32r.

[168] Shannon McSheffrey, '"I will never have none ayenst my faders will": Consent and the Making of Marriage in the Late Medieval Diocese of London', in *Women, Marriage, and Family in Medieval Christendom: Essays in Memory of Michael M. Sheehan C.S.B,* eds. Constance M. Rousseau and Joel T. Rosenthal, (Kalamazoo, 1998), pp.153-174, at p.166.

included such condition within the original contractual bargain. She may have asked her uncle to speak anticipating a refusal, in order to be free of obligation to Floyd and available to marry Spence. She may even have tried to push her father too soon into agreement but later changed her own mind preferring Spence instead.

Ultimately, Alice's only hope (and Spence's) may have come first from the words of Richard Lee's evidence ('And I will have my ffather gude wyll orels I will byd this vij yere' - the possibility Floyd had himself put forward a condition precedent, the requirement of his own father's consent) and second that Floyd no longer wanted to pursue his claim after hearing of her sexual relationship with Spence. If Floyd's father confirmed his permission had been required, that he had failed to give it, and still failed to give it, Alice might be free of obligation. But if Floyd wanted to pursue his case, and denied suggesting such condition, and either the judge considered he was unable to reconcile the differences in Richard Lee's evidence (and so forced to ignore everything he had said about the alleged condition) or that evidence was further clarified so as to remove inconsistency, her case was probably lost. Lee was still one more witness than Spence could provide. At that point the case was adjourned for Floyd to answer certain articles; we do not know but might guess the content. Alice Skevington appointed three proctors. They might have spotted the possibility arising from Floyd's own evidence. Amicable settlement of the case was possible, but Spence and Alice were weakly positioned. Whatever happened was unlikely to be pleasant. We hear no more in the court record.[169]

4.3 Conclusion

In the central Middle Ages matrimonial litigation occupied a prominent position in the senior ecclesiastical courts and a large proportion of their caseload.[170] By the 1500s that had changed.

[169] There may have been some reconciliation. Alice is a beneficiary in William's will. See TNA/PROB/11/54/201.
[170] Outhwaite, *Rise and Fall*, p.48.

Archdeaconry courts certainly took on some of the workload.[171] But insufficient documentation survives to be sure the long-term downward trend seen elsewhere also occurred in Lincoln. Between 1528 and 1530 just over ten per cent of instance cases heard by Longland's audience court concerned marriage. Like other spiritual courts elsewhere, it was free to impose canon law relating to marriage without interference from secular judicial authorities. But neither it nor they had been completely immune from societal change. The loss of consistory court records, and gaps in those others which remain, prevent a full picture. Perhaps all we can say is that surviving evidence in the diocese is not particularly inconsistent with such decline. However, even in the absence of original libels, articles, positions, and many of the depositions which must have been created alongside the records in LAO/Cj.4, reconstruction of these previously unresearched cases significantly increases our understanding of litigation in ecclesiastical courts of the sixteenth-century East Midlands.

Of course, the familiar story-patterns of courtship, private contract, parental and other influence, and often fierce competition, can be seen in the surviving Lincoln records. Lawsuits seem to have arisen in much the same way and for similar reasons. Lawyers were not always involved. But, as in other courts, when involved their professional effort might tip the balance and achieve a result worthy of appreciation. Then again, even their best efforts might be defeated. It could be just as difficult as anywhere to prove informal marriages. Sometimes witnesses, even if they could be produced, simply did not come up to proof. Several cases, including *Spennyng c. Cartledge* and *Inman c. Thompson*, confirm that. Furthermore, and unsurprisingly, the audience court of the late 1520s seems less concerned with the clandestine way in which a marriage had been brought into being than to find out precisely how and to what extent parties should be bound by what had been said.

Within the marriages examined insistence on parental consent, though sometimes obviously present, seems to have been a far from universal expectation. The diocese, in that regard, resembles

[171] For example, see *Buckingham*, ed. Elvey, pp.xii, xvi, xviii-xx, items 129, 141, 142A, 161, 245, 336, 337, 344, 349, 352, 359, 380, 382, 383-389.

its near neighbours. But conclusions must be cautious. Opposition from those, particularly parents, who wished to exercise control over the future marital arrangements of the next generation can certainly be seen. But there are also those, such as Alice Skevington, Cecilia Cartledge and others, perhaps even Christina Sulby, who clearly wished to make their own choice, and tried to assert it, even if they might not ultimately be successful. In some cases, the results of influence are harder to see. Yet in *Cleypoll c. Reynoldes* the feeling is, very much, of a pair of young adults wishing to make their own way in the world, away from the manipulation of others, and being permitted by the church to do so.

Some cases heard in Lyddington were straightforward and resolved quite quickly. But only rarely were cases concluded on just one occasion. Even when the audience court was prepared to make a swift decision, like in *Ingram* c. *Roys*, it was almost certainly attuned to the possibilities of collusion. Cases may, on occasion, have posed little intellectual challenge for the judiciary but some were complicated, unpredictable, or both, and took much effort to conclude. Interrogation, whether directly by the judge or by others in anticipation of the evidence witnesses could provide, might take several days. A good deal of labour would have been undertaken in the background before, during and after any trial, whether by lawyers, scribes and others or even by the parties (especially those representing themselves). Furthermore, throughout the process, perhaps especially in court, precise questioning and notetaking were vital, necessary to establish not just what had happened but what was important. The audience court, like other church courts, was concerned to avoid situations where an individual, or individuals, might avoid its censure or the consequences of its sentence. But on many occasions careful consideration of the records reveals a likely good reason for someone's withdrawal from litigation, or at least a possible explanation, rather than mere evasion or indifference. Few, if any, records can be explained away as court-room incompetence.

No doubt thousands met, married, had children and died without once being party to marriage litigation. But such litigation did not just affect the couples concerned, it touched others too.

Many people, now invisible, could have been like Mariona Baily who, whilst clearly understanding that the expected thing to do was to have banns published and the marriage solemnised *in facie ecclesie*, nevertheless regarded an informal marriage bargain rather less of a commitment than did the church and sought to use their own initiative to withdraw from the consequences.[172] But it is always going to be very hard, with or without a large-scale quantitative survey, to say how common such attitudes were. These are after all records of marriage litigation, and not of marriage.

Of course, sometimes individuals tried to persuade (even force) others (including the court) to bend to their will. Sometimes the court was content, sometimes not. Sometimes the particularly astute, and the wealthy, may have defeated the court's efforts by obtaining approval for theirs from higher authority. Some, like Stephen Estwyck and John Kellett seem to have known well how to play the system and to have had the means to get what they wanted. Yet, just as elsewhere, the numbers of abusers in the audience court seem relatively small. Many stories ring true, as does the honesty of parties and witnesses, even on occasions to the detriment of their own, their friend's, or a family member's case. The confusion seen in attempting to recall events that had happened sometime previously is natural. Answers given can sometimes be focused but hardly ever suspiciously precise. That only one case mentions a contentious dispensation is, probably, to be expected: many people simply did not set out to deceive. Even there we know nothing about the behaviour of the parties before the litigation. It may have been perfectly reasonable for Christina Sulby to wish to escape from Thomas Clarke. To have someone able to manipulate the system to achieve a desired, even justifiable, objective is nothing new.

It is impossible to know how many women found themselves in troublesome situations like those experienced by Cecilia Cartledge or Alice Skevington. Sometimes feelings between men and women were mutual but, just as elsewhere, the consequences for the latter could be devastating. Men could, and did, take advantage. Occasionally, as we shall see in Chapter Five, their actions were

[172] See p.181.

horrific and wholly inexcusable. Yet, that the court faced different choices when dealing with Cecilia Cartledge's case than its counterpart in York did in the *Rolls* case is especially illuminating. The legal knowledge and sophistication Pedersen saw emerging in fourteenth-century York is abundantly present although sometimes, like Alice Skevington or Jacob Walker, people may not have realised their legal difficulties until it was too late, or almost so.[173] What the court could do to protect women like Alice, and Cecilia Cartledge, was often limited. Yet, others were clearly sophisticated enough to seek a court decision that would make their marriage legal and settle community disquiet. It would be two hundred years before the system much changed.

[173] Pedersen, 'The Legal Sophistication of Litigants', *passim*.

5

Enforcement of Discipline

On 16 May 1528 Robert Adams informed Chancellor Rayne that although five days earlier he had successfully cited John Clay, of Hallaton, Leicestershire, to attend court, he had not appeared. Hearing this Rayne pronounced Clay contumacious and prohibited from entering church.[1] Just four days later Clay made the seven-mile journey to Lyddington, appeared before the chancellor and admitted sex with a woman named only as Margery. The record notes he also confirmed they had lived together for eight years and were reputedly man and wife but not actually married.[2] After Clay's admissions Rayne ordered he appear again on 29 May to be informed of his penance. At that hearing he was ordered to walk at the front of the solemn procession around Hallaton parish church for two Sundays following Pentecost carrying a burning candle. It was said that, as a penitent and all the while bare-headed and without his shoes, he should be deferential during each procession and, after entry by the choir, be on bended knees throughout the service up to the point of offertory, when he should present the candle to the officiating priest.[3]

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[1] *Office c. Johannes Clay*: LAO/Cj.4/Q1.fol.12r.

[2] '… Johannes Clay de halowghton fatetur quod cognouit carnaliter quandam marieriam et quod tenuit cauo in domo sua per spatium octo annoris tanquam uxorem suam et fuerunt reputati ut vir et uxor ac tamen non fuerint maritata': LAO/Cj.4/Q1.fol.12r.

[3] 'comparuit personaliter Johannes Clay de halowghton et se submisit correctioni cui dominus iniunxit quod post festum penticostes duobus diebus dominicis proximo futuris antecedet processionem circa ecclesiam parochie de halowghton candelam in manu sua ardentem deferendo more penitentialis Et post introitum choro sedeat coram sanctissimo altare genibus flexis usque ad offertorum misse et tunc offerret dictam candelam ad manibus sacerdotis tunc missam celebrantis nudo capite sotolaribus depositis utroque die': LAO/Cj.4/Q1.fol.12r.

Several aspects of John Clay's case remain beyond reach. Besides being ignorant how and why his particular offence was brought before the court, we cannot know, for instance, to what extent, if any, he had been persuaded to attend – so soon after previously failing – simply by hearing he had been declared contumacious and excluded from church.[4] The instinct to obey was strong. So were a sense of community and the communal dimension. Attendance at church, on Sunday for matins, for the Mass, for evensong, and at festivals, was meant to be compulsory.[5] People were supposed to make confession and receive communion at least at Easter.[6] Many did so more often.[7] Since the thirteenth century elaboration of the doctrine of penance had taught many to believe in the virtue of penitence and the ability of the truly repentant to spend less time in Purgatory.[8] Yet declarations of contumacy and orders for suspension *ab ingressu ecclesiae* did not by themselves prohibit association with other Christians. Excommunication, rendering him a religious outlaw, was a risk if Clay had not appeared at the second hearing. But, given he could still have communicated with his own household, and was normally imposed only for contumacy (and not for the original sin of which he stood accused), whether it held particular spiritual terror or meant most as a signifier of sanctions to come is unclear.[9]

There was, of course, great social pressure to refrain from fornication and to marry. Not everyone obeyed the rules but to church and society marriage was an institution of prime importance and the household fundamental to good local government. Indeed, as previously explained, the church, its courts and the communities in which they existed, continued to exert considerable pressure

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[4] After suspension a letter would be delivered to the incumbent of the defendant's parish church for public announcement: Woodcock, *Canterbury*, p.93.

[5] Prosecutions for non-attendance had increased but numbers were still small and offences often trivial if recorded at all: Diana Wood, 'Discipline and Diversity in the Medieval English Sunday', in *Discipline and Diversity: papers read at the 2005 Summer Meeting and the 2006 Winter Meeting of the Ecclesiastical History Society*, eds. Kate Cooper and Jeremy Gregory, *SCH*, 43 (Woodbridge, 2007), pp.202-211 at pp.204-205. Small numbers might suggest tolerance for disobedience; triviality hints more at compliance: Hutton, *Rise and Fall*, p.70. Most Buckinghamshire cases, for example, were simply dismissed: *Buckingham*, ed. Elvey, pp.76 (item 103), 107 (153), 175 (247).

[6] Haigh, *English Reformations*, p.5; Duffy, *Stripping*, p.11.

[7] Duffy, *Stripping*, p.60.

[8] Brown, *Popular Piety*, p.2; Clive Burgess, '"A fond thing vainly invented": an essay on Purgatory and pious motive in later medieval England', in *Parish, Church and People: local studies in lay religion 1350-1750,* ed. S. J. Wright (1988), pp.56-84.

[9] Helmholz, *Oxford*, pp.620-622; Outhwaite, *Rise and Fall*, pp.11-13.

when considered appropriate.[10] Yet how and why Clay and Margery had remained so long together unmarried, why he not she had been cited, and why he did not simply claim they were betrothed, also remains unclear.[11]

Of course, both John Clay and Margery may have had reason to remain unmarried, and to have given out impressions to the contrary. They may even have been entirely unconcerned by prospect of scandal, until – in Clay's case at least – directly faced with the consequences of revelation. But secular implications could also have influenced his decision to attend. Unlikely to have been Hallaton's only meeting place, the parish church was probably its "political centre" for parochial administration. It was where business was transacted, a venue for leisure pursuits linked with the ecclesiastical year and the more worldly, a focus of communal loyalty and solidarity.[12] Although eight years' unmarried cohabitation without confessing such offence hints to the contrary, Clay may have been terrified for his immortal soul, but he may have decided to attend court more immediately fearful of losing his reputation and the ability to easily earn money. Equally, he may have felt to lose some face and take his punishment preferable to continuing legal costs of non-attendance.[13]

However, despite these and other shortcomings, the records of Clay's hearings, and surviving thousands like them, remain extremely useful. This chapter examines penitential punishment for similar offences of adultery and fornication, but also for other sexual misconduct, inappropriate relations between master and servant, incest and sodomy. To spread the net this broadly offers greater perspective upon church-court oversight of family and private life. The overall range of

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[10] Chapter Four, pp.161-162.

[11] Poos, in 'Heavy-Handed', at 296, found couples either claimed existing betrothal or proceeded to contract or solemnize their marriage soon after citation in a substantial minority of the fornication cases he examined.

[12] Sixteenth-century Hallaton was relatively prosperous. A market centre, with several inns, it held three annual fairs: J. M. Lee and R. A. McKinley, 'Hallaton', in *A History of the County of Leicestershire: Volume 5, Gartree Hundred* (1964), pp. 121-133, *BHO* http://www.british-history.ac.uk/vch/leics/vol5/pp121-133 [accessed 18 September 2017]. See also: S.J. Wright, 'Preface', in *Parish, Church and People: Local Studies in lay religion 1350-1750*, ed. S.J. Wright (1988), pp.1-3; D. M. Palliser, 'Introduction: the parish in perspective', also in *Parish, Church and People*, pp.5-28 at p.11; Kümin, *The Shaping of a Community*, p.53.

[13] Borne by the defendant in all cases, often costing around 8*d*. and with an additional fee following suspension possibly due, fees could increase quickly in the event a second proved necessary: *AECB*, pp. xxi-xxii; Bowker, *Secular Clergy*, p.33, 'The Commons Supplication against the Ordinaries', esp. 62 & 70.

offences is more extensive than that which might have featured in matrimonial instance litigation and wider even than in those office cases which might be said to fall within the purview of the ecclesiastical judge as 'heavy-handed marriage counsellor'.[14] A court's motivation may not always have been consistent with, or connected to, any desire to detect clandestine marriage: many offenders had not embarked upon the initial stages of marriage; some offenders could never have been or be married.[15] It was not always pregnancy or childbirth that brought a case to judicial attention. Words, gossip, rumour, tale-telling, even lies, fuelled curial action against sexual malfeasance just as it did against defamers.[16] But, with greater understanding of the historical, social, legal and emotional context in which sentences of penance like that imposed on John Clay were constructed and of the historical, social, spatial, liturgical, symbolic and emotional context in which the ritual of each of them was (or, at least, was expected to be) performed, much can still be uncovered.

Section 5.1 begins with an explanation of late-medieval private penitential practice and looks further at historical context and historiography. It highlights how over the last forty years historians have moved away from largely considering private confession and public, judicially imposed, penance unconnected, even rivals, towards appreciation that although both were different there was no jurisdictional barrier between them but instead a great, complex, connection. In short, historians now broadly accept that one cannot properly understand certain aspects of late-medieval ecclesiastical court practice, nor better comprehend its punishments, without reference to the church's regulation of people's lives and insistence upon frequent private confession. Section 5.1 also sets out how my research builds upon that, and other recent scholarship, through qualitative analysis, further investigation into the inquisitorial process, the construction of condign sentencing, and the role and impact of emotion. By this means, and by correcting one of his few errors, it is possible to continue Ingram's recent, and significant, dismantling of that current orthodoxy which still considers the

[14] Helmholz, *Marriage Litigation*, p.101; Poos, 'Heavy-Handed', 292.
[15] Poos, in 'Heavy-Handed', at 304, suggests around only ten to fifteen per cent of prosecutions he examined may have been concerned with the oversight of marriage.
[16] Houlbrooke, *Church Courts*, p.76; Ingram, *Church Courts*, p.260; Poos, 'Sex, Lies and the Church Courts', 585.

Reformation a watershed for sexual regulation by ecclesiastical and secular authority.[17] In doing so historians can better inform themselves of the aims, objectives and achievements of pre-Reformation ecclesiastical justice. Section 5.2 contains the promised qualitative examination and analysis.

5.1 Context, Historiography and Argument

Private Penitential Practice

Despite evidence of the requirement for private annual confession since Lateran IV, historians remain uncertain about precise ecclesial location of the sacrament and the environment in which late-medieval confession took place.[18] Indeed, there was something of a conflict between the idea of privacy between confessor and penitent and the requirement confession take place in the open.[19] Some visual representations, including several near Lyddington, show kneeling penitents close to priests seated – perhaps on the nave's north side – in draped chairs, high-backed to emphasise the sacrament's judicial nature, and both participants may have been at least partly obscured by a curtain.[20] But, without a confessional, privacy was likely to have been limited. Ultimately, routine confession probably occurred 'in the not-so-remote presence of a large number of neighbours'.[21] Lawrence Duggan, who considered the extent to which people generally obeyed this annual requirement, felt confident most did in some form or other.[22] Norman Tanner came to the same

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[17] Ingram, *Carnal Knowledge*, *passim*.
[18] Canon 21 can be found at https://sourcebooks.fordham.edu/basis/lateran4.asp [accessed 20 August 2019]. See also: Daniel Bornstein, 'Administering the Sacraments', in *The Routledge History of Medieval Christianity 1050-1500*, ed. R. N. Swanson (2015), pp.133-146 at p.136; Peter Biller, 'Confession in the Middle Ages: Introduction', in *Handling Sin: Confession in the Middle Ages*, eds. Peter Biller and A. J. Minnis (York, 1998), pp. 3-33; Duffy, *Stripping*, p.11; and many other sources.
[19] Ann Eljenholm Nichols, 'The Etiquette of Pre-Reformation Confession in East Anglia', *Sixteenth Century Journal*, 17 (1986), 145-163 at 155.
[20] Nicholas Rogers, 'The Location and Iconography of Confession in Late Medieval Europe', in *Ritual and Space in the Middle Ages: PHS2009*, ed. Frances Andrews (Donington, 2011), pp.298-307.
[21] John Bossy, 'The Social History of Confession in the Age of Reformation', *TRHS*, 25 (1975), 21-38 at 24.
[22] Lawrence G. Duggan, 'Fear and Confession on the Eve of the Reformation', *Archiv Für Reformationsgeschichte*, 75 (1984), 153-175 esp.159.

conclusion.[23] There were geographical and regional differences but in general evidence suggests extensive compliance.[24] People were expected to be contrite, confess their sins completely, have them evaluated by their priest for severity and, after receiving words of absolution, perform any works of satisfaction he might assign. Shame was understood to be an obstacle.[25] Available time may have been short, especially at Lent.[26] But manuals such as Mirk's *Festial* guided both priest and penitent through the Ten Commandments, Seven Deadly Sins, Five Senses and corporal works of mercy.[27] For some, perhaps John Clay included, it may have remained a perfunctory exercise. For many, regular and methodical confession may have been their way to seek spiritual guidance and direction.[28]

Tentler and Beyond

Thomas Tentler was amongst the first to emphasise these attitudes and habits of penitence more than theological concepts as he sought to explain the social and psychological impact of the pre-Reformation church. John Bossy improved understanding about the place of the sacrament of penance in medieval society. Clive Burgess, who freely admitted his debt to Tentler, emphasised its 'prime importance'. Daniel Bornstein made much the same point. In short, historians grasped that confession was considered fundamental. Without it the sacrament of the Mass was beyond reach.[29]

Yet, oddly, Tentler deliberately ignored the canon law courts. Describing them as 'in a sense, rivals' to the system of guilt and absolution he portrayed, he stated that he did so because 'when fines, excommunication, or public humiliation are involved in religious sanctions, it is, as it were, an

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[23] Tanner, *The Church in Late Medieval Norwich,* p.10.
[24] Finding confirmatory data can be problematic: Bornstein, 'Administering the Sacraments', p.144.
[25] Nichols, 'Etiquette', 155.
[26] Duffy, *Stripping*, p.60.
[27] John Mirk, *Festial: A Collection of Homilies by Johannes Mirkus,* ed. T. Erbe, EETS (1905); Nichols, 'Etiquette', 155; Duffy, *Stripping*, p.58.
[28] Duffy, *Stripping*, p.60.
[29] Thomas N. Tentler, *Sin and Confession on the Eve of the Reformation* (Princeton, 1977), esp. p. xi; Bossy, 'The Social History of Confession, op. cit. footnote 21; Burgess, '"A fond thing vainly invented"', esp. pp.59-60; Bornstein 'Administering the Sacraments', p.136.

admission that the inner sanctions are not enough'.[30] That suggestion of inadequacy requiring application of a remedy rings true, but Tentler's own confession he had 'not even explained how they are rivals' was too convenient a delineation.[31] It risked accepting that pastoral teaching of spiritual care, with its instruction on matters of sin and forgiveness, was an entirely separate system of discipline, education and consolation. In understating, even leading readers to ignore, the canon law courts' principal role (which was not just to police moral behaviour but 'an attempt to impose on the laity a version of the discipline and authority that the church aspired to exercise over the clergy') and the many connections between private and judicially-imposed public penance he created an obstacle.[32] That obstacle restricted historians' ability to understand not only the former but how the latter was intended, how it was perceived and experienced by sinner and audience alike, and thus how effective it was likely to have been.

However, historians have lately come to understand that both spheres of church authority were interrelated. Both administered the same canon law. Both sought to restrain vice and foster virtue.[33] Both best confessional practice and the process of inquisition at the heart of ecclesiastical criminal procedure sought to discover truth about individuals by exploration of their hidden interior. There was interplay and reciprocity: the court of conscience was provided with a model by the external forum, the courts' inquisitorial methods were enmeshed within the process of confession.[34] One

[30] Tentler, *Sin and Confession*, pp. xv-xvi.
[31] Tentler, *Sin and Confession*, p. xvi.
[32] Ingram, *Carnal Knowledge*, p.392.
[33] Joseph Goering, 'The Internal Forum and the Literature of Penance and Confession', in *The History of Medieval Canon Law in the Classical Period, 1140-1234*, eds. Wilfried Hartmann and Kenneth Pennington (Washington DC, 2008), pp.379-428 at pp.379-380.
[34] Mary C. Flannery and Katie L. Walter, '"Vtterli Onknowe"? Modes of Inquiry and the Dynamics of Interiority in Vernacular Literature', in *The Culture of Inquisition in Medieval England*, eds. Mary C. Flannery and Katie L. Walter (Cambridge, 2013), pp.77-93. John H. Arnold, in *Inquisition and Power: Catharism and the Confessing Subject in Medieval Languedoc* (Philadelphia, 2001), at pp.226-229, explains that inquisition 'formed an essential intersection between other discourses, of religious confession and secular justice'.

surviving confession manual contains a systematic set of inquisitions.[35] Another further confirms the link by including rules for those hearing confessions of the ecclesiastical judiciary.[36]

Tentler underplayed the element of shame common to both public and private penance too. When dealing with the confessional he saw, amongst some authors, 'the affirmation, even the exaltation, of a personal sense of shame'. From others, such as Johann Nider, he grasped the idea that shame had its place as a work of satisfaction and, from Guido de Monte Rochon, that it was a great and salutary punishment. Yet, whilst he understood that '[s]hame before God is more frequently extolled than shame before the priest', his suggestion that 'shame before the priest is itself restricted to the secrecy and privacy of the confessional' was somewhat mistaken.[37] Private penance was, as I have described, likely to have been performed a little more openly than he implied. Its performance and immediate results (perhaps even the priest's forgiving response) may therefore have been more easily visible. Most importantly, he failed to appreciate that whilst imposition of public penance was of course designed to bring forth a sense of shame most potently felt by the offender, it was specifically intended to be at least as visible to the priest as that during private confession and seen by the congregation too.

Admittedly, public penance was different. Although the norm only before 1215, it had not simply disappeared. Underpinned by the same canonical and legal basis, it continued albeit in much-changed form. By the early sixteenth century mass public penitence had long been absorbed into the Ash Wednesday service. Yet, because it was felt routinized confession could subvert personal sincerity, there was still a need for public shaming of individuals as a form of social control.[38] In England and the

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[35] St. John's College, Cambridge, MS/S/35; Duffy, *Stripping*, pp.58-59.

[36] Michael Haren, 'Confession, Social Ethics and Social Discipline in the *Memoriale presbiterorum*' and 'The Interrogatories for Officials, Lawyers and Secular Estates of the *Memoriale presbiterorum*', both in *Handling Sin: Confession in the Middle Ages*, eds Peter Biller and A. J. Minnis (York, 1998), pp.109-122 and 123-163.

[37] Tentler, *Sin and Confession*, pp.128-130; Johann Nider and Johannes Petit, *Confessionale Seu Manuale Confessorum Fratris Johannis Nyder Ad Instructionem Spiritualium Pastorum: Cum Tractatu De Septem Peccatis Mortalibus Plurimum Ualde Utili* (Paris, *c*.1520); Guido de Monte Rochon, *Handbook for Curates: A Late Medieval Manual on Pastoral Ministry*, trans. Anne T. Thayer (Washington, 2011), p.111.

[38] Mary C. Mansfield, in *The Humiliation of Sinners: Public Penance in Thirteenth Century France* (Ithaca, 1995), explains how bishops in thirteenth-century northern France adopted ritual shaming to compensate for lack of

rest of Europe shame was understood as not just 'a bridle to restrain misconduct' but also 'a spur to better behaviour'.[39] Fundamentally, community identity, power, status and the need for conformity were all bound up within the authoritative symbol of the Eucharist, within the process of confession that took place before communicants could fully participate in the receiving of miraculously-transformed bread and wine, and within its other associated ritual. The sounds, smells, props and lights of the Mass invited an element of participation and offered a place for the revelation of fear and anxiety. Although there was separation between the 'essentially private rite in the chancel' and events in the nave, published tracts encouraged private prayer during the service and the *Lay Folks' Mass Book* was almost a parallel liturgy, including recitations of prayers like Our Father and a vernacular version of that inviting the laity to welcome the transubstantiated Christ or the Elevation of the Host.[40] Yet the Communion service could also generate a sense of exclusion from the lay community.[41] This powerful symbolism in a world deeply concerned with spectacle and display reached everywhere through preaching, wall paintings, sculpture, liturgy and literature, and both judicially-imposed penitence and shame were very much part of it. If 'embraced with faith and repentance', the lessons of public shame 'could lead a person's soul to God and be a means towards reconciliation of the criminal or sinner with his or her neighbours'.[42] To properly belong one had to believe and conform. Conformation meant confession. Sometimes the only way back was through humiliation.

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political authority. See also John B. Baldwin's critique in his 'Review of Mary C. Mansfield, *The Humiliation of Sinners: Public Penance in Thirteenth Century France* (Ithaca, 1995)', *LHR*, 15 (1997), 358-359.

[39] Ingram, *Carnal Knowledge*, p.75

[40] Swanson, *Church and Society*, p.277; Nicholas Bull, 'Liturgy', in *The Routledge History of Medieval Christianity 1050-1500* ed. R. N. Swanson (2015), pp.121-132, at p.130.

[41] 'The discipline of the sacrament required the parish priest to give Communion only to those of his own parish whom he knew, having heard them himself or having some testimonial, to have made confession': Martin R. Dudley, 'Sacramental Liturgies in the Middle Ages', in *The Liturgy of the Medieval Church*, eds. Thomas J. Heffernan and E. Ann Matter, 2nd Edn (Kalamazoo, 2005), pp.193-218 at pp.204-205.

[42] Ingram, *Carnal Knowledge*, p.75. For the theory, see: Miri Rubin, 'The Eucharist and the Construction of Medieval Identities', in *Culture and History 1350-1600: Essays on English Communities, Identities and Writing*, ed. David Aers (Hemel Hempstead, 1992), pp.43-63; and Dom Gregory Dix, *The Shape of the Liturgy* (1945), p.599-600. Powerful religious rhetoric, such as that in *Gospel according to John*, 8:7, urged compassion towards the publicly shamed. Images of Christ's humiliation, flagellation and crucifixion were ubiquitous. It is hard to imagine many failed to realise that the socially, and religiously, "correct" way to behave was to accept not only one's own sinful behaviour but also that acts of charity toward those shamed were entirely appropriate: Helen Carrel, 'The ideology of punishment in late medieval English towns', *Social History*, 34 (2009), 301-320 esp. 308-309. Images such as The Last Judgment (partial examples of which survive in

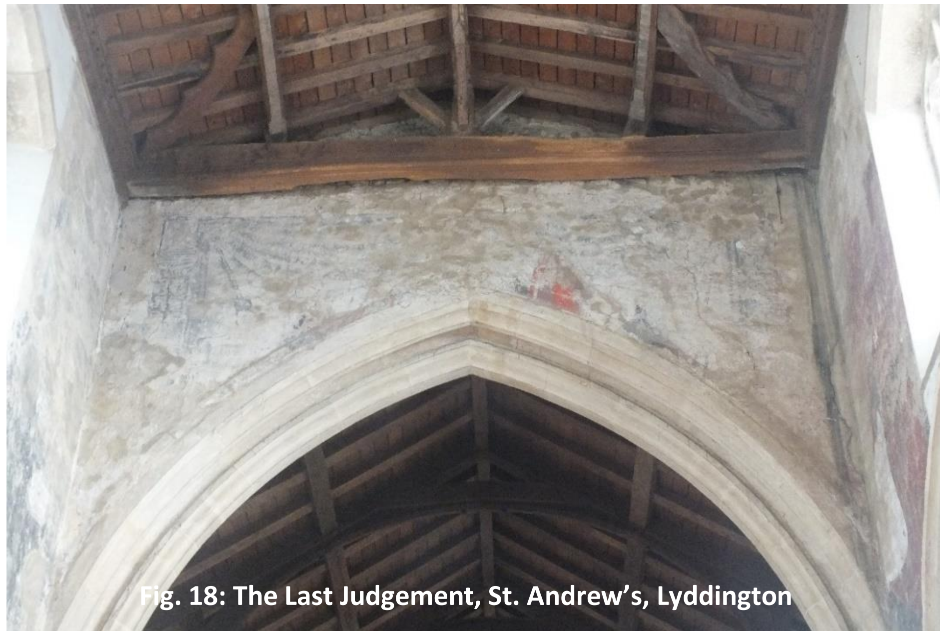

Fig. 18: The Last Judgement, St. Andrew's, Lyddington

The Reformation of Manners

Since Tentler's publication of *Sin and Confession* significant work has also been undertaken on that contemporary concept known as "the Reformation of Manners" (by which is meant the improvement of morals) and on the role of late-medieval legal institutions in the public regulation of behaviour. Historians have established much more firmly that church-court jurisdiction over religion and manners was secure in England as early as the thirteenth century.[43] Through McIntosh's work they understand that periods of economic pressure led to great attempts to reform immoral behaviour.[44] But a restrictive, limiting, orthodoxy has also been established. Dismantling its assumption that properly serious institutional efforts to restrain illicit sexual conduct began only in the later sixteenth century has only recently begun.

Ruth Karras was one promoter of this orthodoxy. She considered fifteenth-century anti-prostitution measures little more than 'halfhearted attempts at eradication' and concluded that

Lyddington and in Lincoln cathedral's south porch) were there to ensure those seeing them examined their consciences: Anthony Musson, 'Controlling Human Behaviour? The Last Judgment in Late Medieval Art and Architecture', in *Theorizing Legal Personhood in Late Medieval England*, ed. Andreea D. Boboc (Leiden, 2015), pp.166-191; 'Parishes: Liddington', pp. 188-195.

[43] Ian Forrest, 'The Transformation of Visitation', *passim*.

[44] McIntosh, *Controlling Misbehavior*, *passim*; Chapter One, pp.45-46.

'fundamental attitudinal change, including increased social control and the regulation of male as well as female sexual behaviour … did not come until the late sixteenth century'.[45] Yet, as Ingram explains, historians now better understand how relevant "reformation of manners" was to earlier English society and grasp how key public regulation of morals (including sexual behaviour) through both secular and ecclesiastical institutions was to it.[46] In rural areas at least, 'church courts were by far the main agents of discipline'.[47] In urban areas they worked keenly, quite closely and often in tandem with secular authorities against sexual transgressors. But wherever they were, the courts of the spiritual jurisdiction were ubiquitous, complex, interlocking institutions that often dealt with huge amounts of business.[48] The Reformation was certainly disruptive. Yet serious efforts to transform peoples' conduct had been made during the reigns of Edward IV and Henry VII. Results had been far from negligible. Definite foundations for later development had been laid.[49] What is more, such work could attract considerable support.[50] It was continuing in the early sixteenth century too.[51]

Taking the Work Further

Ingram's findings are comprehensive. But there are ways to achieve further deconstruction of the orthodoxy of the Reformation watershed and, in doing so, better understand the effectiveness of pre-Reformation ecclesiastical justice. The first is to counter one of his few errors. Another is to build upon the rest of his work by developing the ideas and conclusions of John Arnold and others on the

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[45] Karras, *Common Women*, pp.23 & 137.
[46] Ingram, *Carnal Knowledge*, *passim* but esp. pp.12-16.
[47] Ingram, *Carnal Knowledge*, p.391.
[48] In the London commissary court 60% of suits in 1471 concerned sexual offences. In 1484, 66%. In 1493, 64%. In 1502, 61%. In 1514, 44%: Wunderli, *London Church Courts,* p.81. Of 194 charges brought against laypeople in the diocese of Norwich in 1499 during the *sede vacante* visitation 123 involved a sexual element of some kind: Christopher Harper-Bill, 'A Late Medieval Visitation – the Diocese of Norwich in 1499', *Proceedings of the Suffolk Institute of Archaeology and History*, 34 (1977), 35-47. 'One of the most frequent reasons for citation to the Commissary Court was adultery or fornication with a servant': McSheffrey, *Marriage, Sex and Civic Culture*, p.145.
[49] Ingram, *Carnal Knowledge*, pp.14-15.
[50] Ingram, *Carnal Knowledge*, p.392.
[51] See Chapter One, pp.45-47.

importance of emotion. Further qualitative investigation of inquisition and sentencing and greater study of the public performance of punishment can continue the work. But all must be coupled with appreciation they cannot be wholly understood without reference to the regulation and management of peoples' lives and conduct through private penance and confession. Let us begin by examining Ingram's error.

Although conscious of their qualifications, Ingram underestimates the extent of skill and professionalism in the ecclesiastical judiciary. Indeed, he says little in that regard.[52] Undoubtedly some members were more proficient than others. I have explained that judges in Lincoln's audience court, like many elsewhere, were highly qualified and thoroughly professional.[53] Some, especially in small or peculiar courts, may have had much less academic legal training. But, as Ingram himself writes, even archdeacons' officials often held an MA or LLB.[54] As must also be right, he acknowledges that some judges were stricter than others.[55] There were probably rogues too, though difficult to say how many.[56] But his approach still has problems. Firstly, he seems to misuse, misapply or misunderstand the term "arbitrary" as it has been used in the sentencing context or at least overplay the probability of chance or random elements in sentence construction. The records in LAO/Cj.4 and elsewhere reveal much more was going on. Secondly, though writing of the likelihood that to be 'stripped almost bare must have been a deep humiliation', he underplays the roles played by offenders' verbal, or indeed visible, expressions of contrition (or lack thereof) when subject to the court's direct, probing, inquisition and by judges' experience and understanding of the punishment intended.[57]

Joseph Goering suggests that, in theory, a jurist inclined to ignore theology would probably treat imposition of penance as a purely judicial exercise and a theologian inclined to ignore the law

[52] Ingram, *Carnal Knowledge*, pp.79-80 & 109.
[53] Chapter Three, *passim*.
[54] Ingram, *Carnal Knowledge*, p.79.
[55] Ingram, *Carnal Knowledge*, p.109.
[56] Brundage, *Medieval Origins*, pp.390-391; Chapter Three, pp.131-134.

[57] Ingram, *Carnal Knowledge*, p.109.

would feel free to follow only interpretations that pleased him.[58] Such extremes were unlikely in practice. By the fourteenth century lawyers outnumbered theologians amongst the judiciary.[59] But many lawyers, including those within the judiciary, considered themselves 'a priesthood whose members performed a sacred function'.[60] Even the least theologically-inclined amongst them would have understood contrition essential to the process of *penitentia*. Its visibility, through tears for example, was often praised.[61] What is more, they were products of the laity and had been born and brought up amongst them.[62] Living near, if not within earshot, of their neighbours they would have recognised the difficulties of confession, especially if in a state of hostility with those neighbours themselves or troubled by their own consciences. Inculcated with habits of their own confession, inhabiting a world dominated by deference and procedural regularity, they would have entirely understood the potentially overwhelming burden of guilt.[63] They would have been motivated to achieve conformity.

There were legal rules too. Few judges would have decided guilt or pronounced sentence without reference to, or at least familiarity with, canon law principles and long-established custom. There was no tariff. Regular patterns and "schedules of penance", intended as guidance, were not produced until the mid-sixteenth century.[64] Realisation of the benefit of such documentation probably came slowly. Yet, although risk of a sentence being overturned was small, every judge would have been restrained by knowledge that appeals were permitted, indeed considered a necessity, to protect the innocent. As the ability even of excommunicates to lodge them attests, such a right was not to be easily denied.[65]

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[58] Joseph Goering, 'The Scholastic Turn (1100-1500): Penitential Theology and Law in The Schools', in *A New History of Penance*, ed. Abigail Firey (Leiden, 2008), pp.219-237 at p.236.
[59] Brundage, *Medieval Origins*, p.473.
[60] Brundage, *Medieval Origins*, p.475.
[61] Anne T. Thayer, *Penitence, Preaching and the Coming of the Reformation* (Aldershot, 2002), pp.50 & 55.
[62] Tanner, *The Church in the Later Middle Ages*, p.71.
[63] As to the importance of the legal profession being encouraged to consider their own transgressions: Haren, 'Confession, Social Ethics and Social Discipline', pp.114-115, and 'The Interrogatories', pp.126-131.
[64] Helmholz, *Oxford*, p.623.
[65] Helmholz, *Oxford*, pp.348-349.

There was a definite, widely practised and legitimate flexibility. It was given by the power of judicial discretion but managed by men who grasped its limits and purpose. Discretion was not supposed to lead to the illogical, capricious, cynically random or unsystematically haphazard. Laurent Mayali explained that Huguccio, in his *Summa*, had confirmed ecclesiastical judges had full discretion to reduce or augment any penalty but still had to follow rules and ensure sentences were justified by reasons established by the canons or the laws. He was convinced discretionary punishment had 'lost most of its original penitential character' after Lateran IV and that any remaining discretion was to be exercised very narrowly indeed. By the beginning of the thirteenth century it had, he wrote, merely 'become another legal category' and simply another of a judge's many available tools. Yet he was certain the penitential theory of discretionary punishment did not disappear completely.[66] In the early-sixteenth century it was still around and much more than mere category or simple device. It retained its strong connection to penitence too. In short, it was not a weakness but a strength.

Virpe Mäkinen and Heikki Pihlajamäki, who examined the trend in canon law toward individualization of crime, explained that in the thirteenth century increasing attention was paid to stories from both defendant (through confessions) and witnesses.[67] For the fourteenth century they concluded that:

> From the point of view of social control the concept of individual guilt helped to guide individuals more effectively towards correct behavior. Criminal law based on individualized guilt may thus have seemed a more efficient tool in the hands of the ecclesiastical judiciary[.][68]

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[66] Laurent Mayali, 'The Concept of Discretionary Punishment in Medieval Jurisprudence', in *Studia in Honorem Eminentissimi Cardinalis Alphonsi M. Stickler*, eds. Rosalio Iosepho & Cardinal Castillo Lara (Rome, 1992), pp.299-315. The quotations are from pp.313 & 315. See also Huguccio Pisanus, *Summa Decretorum Tom. 1 Distinctiones I-XX,* ed. Oldřich Přerovský (Vatican City, 2006). Kenneth Pennington's review of this edition (*The Jurist*, 71 (2011), 238-240) fails to flatter but confirms Huguccio's influence spread throughout Europe.

[67] Virpe Mäkinen and Heikki Pihlajamäki, 'The Individualization of Crime in Medieval Canon Law', *JHI,* 65 (2004), 525-542. Twelfth- and thirteenth-century developments in the theory of culpability, that led to greater importance being placed on offenders' intentions than on damage caused, and the consequent coming into play of the penitential tradition, were briefly discussed by Brundage, in *Medieval Canon Law*, at pp.171-172.

[68] Mäkinen and Pihlajamäki, 'The Individualization of Crime', 542.

Of course, evidence can be hard to assess. Aims could be diverse, outcomes complicated, and many offences remarkably similar, but individualization provided new, or at least greater, space for exercise of judicial discretion. By the late-fifteenth and early-sixteenth centuries an ecclesiastical judge's discretion, exercised after appropriate inquisition, enabled punishment to be more closely and personally designed. Certainly, in late fifteenth-century Norwich and elsewhere, there seems to have been quite some effort to fit punishment to crime, and to take account of wealth (in that those richer were ordered to pay a higher monetary penalty) and the penitent's state of mind.[69] Judges were more likely to be inclined towards mercy if defendants showed themselves contrite. Stubbornness and defiance, on the other hand, was likely to be met with corresponding harshness.[70] For most reported sexual offences public penance was, if not always inevitable, often very likely.[71] Yet, at times, a middle way between public and private was actively pursued.[72] Sometimes, even in sexual cases, monetary penalties alone were considered appropriate. On occasion, a judge's discretion even permitted him to press home the pedagogical imperative of confession but refrain from inflicting any real punishment at all. We cannot judge by our standards of proportionality, but the immense variety of sentences is no sign of the random. Instead, it indicates the system's increased sophistication.

That greater sophistication is also revealed through examination of the inquisitorial process. Where a defendant is recorded making an immediate courtroom confession the extent of public knowledge and inquisition can be difficult to fathom. Guilty pleas were common. Many, given the general tendency towards obedience, would have felt remorseful from the moment they committed a crime, or at least from discovery, relieved perhaps even keen to get the problem off their chest.

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[69] *The Register of John Morton Archbishop of Canterbury 1486-1500, Volume III Norwich Sede Vacante, 1499*, ed. Christopher Harper-Bill (Woodbridge, 2000), p.6; Tanner, 'Penances imposed on Kentish Lollards', p.229.

[70] See *Office c. Willelmus Bankes* at LAO/Register26/fols124v, 129v, 130r-133v; Bowker, *Henrician Reformation*, pp.54-55; Ingram, *Carnal Knowledge*, pp.113-115.

[71] Ingram, *Carnal Knowledge*, p.108.

[72] Something of this "middle way" can be seen in the sentence imposed upon John Hepe on 2 March 1514 after confessing fornication with Lettice Richemond. The ecclesiastical court of Whalley ordered penance to be performed during the Mass but Hepe did not have to take part in public procession, or wear anything other than normal clothes. *Whalley*, eds. Higden Society & Lynch, p.53. '[P]rivate devotions might well occur publicly': Swanson, *Church and Society*, p.284. He may have appeared little more than particularly devout.

Visitations were meant to filter out at least some malicious presentments. Few were probably brave enough to assert there were no or too few creditable persons in their community or that rumours had been spread only by enemies. Cases generally had at least *prima facie* credibility. Compurgation was something of a gamble too. The judge, not the accused, determined the exact number and qualification of those to be relied upon. A defendant not only had to provide that number but, when seeking to elicit assistance, had to reveal at least some detail of any accusation made.[73] In consequence, the exact process by which a judge might make enquiries is often completely – or at least partially – hidden. Yet inquiry of some kind must have occurred. Undue harm could have been caused to judicial probity if there were complete failure to investigate grounds upon which defendants might be suspected. Even spontaneous confession obtained absent any, or any proper, explanation of rights required defendants to know to what they were confessing.[74] What is more, there is ample evidence judges' inquisitorial skills were frequently as much directed to determining the nature and extent of a person's guilt, sorrow and contrition for the purpose of creating a condign sentence as to whether they were guilty at all. It is here we can build upon Arnold's work and once again see the deep, complex, connection between public and private penance.

In his work on the language of confession and penance in the late twelfth and thirteenth centuries Arnold sought to examine 'not only *what* emotions, but the wider discursive context within which such emotions are placed: what kind of subject, in what position, at what time, is supposed to experience them and to what end?'. Confessional discourse, he explained, constructed a particular type of subjectivity, deemed necessary a set of interior operations, demanded and codified some key emotional responses, and invited the narration of a certain "individuality" albeit always within the framework of collective sin. Normal, i.e. routine, confession was not expected to be completely understood without instruction first time around but had to be studied, developed and applied to

[73] On *publica fama* and compurgation: Chapter One pp.30, 33; Chapter Two, pp.68 (footnote 9), 100-101, 106.
[74] Henry Ansgar Kelly, 'Inquisition, Public Fame and Confession: General Rules and English Practice', in *The Culture of Inquisition in Medieval England*, eds. Mary C. Flannery and Katie L. Walter (Cambridge, 2013), pp.8-29, at p.29.

oneself. It was 'an ongoing *process*, a self-making or self-reforming' and 'the production and continued development of a better and different identity from that held before'. This self-making was conducted within the wider system of sin and of complementary and balanced emotions including shame and humility.[75]

Sentences of penance do not seem, at first blush, to resort much to "emotion words" or go far beyond the relatively formulaic. But, when coupled with the ritual of imposed penance that followed, they are precisely the scenario to which Arnold's arguments can be extended. A judge's role may principally have been to apply the law impartially and justly to any set of circumstances but, in enquiring about the extent of a defendant's offending behaviour and/or contrition, and in assigning penance, he also exercised a perceptive ability permitting him to sift through emotional clutter and baggage attached to the evidence or submissions of others and successfully divest himself of his own.[76] The number of questions need not be large. Answers need not always be recorded. But each judge had to realise and seek to improve the emotional state of the defendants who faced him and that of the society in which they lived whilst simultaneously seeking to reinforce the power given to him by judicial appointment.[77] In consequence, each combination of sentence and ritual deemed – or at least

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[75] John H. Arnold, 'Inside and outside the medieval laity: some reflections on the history of emotions', in *European religious cultures: Essays offered to Christopher Brooke on the occasion of his eightieth birthday*, ed. Miri Rubin (2008), pp. 107-129. The italics are his.

[76] 'A judge should disregard the dictates of his own conscience if those happened to contradict the law or evidence presented in court … He must not allow feelings of loyalty or dislike to influence his judgment': Brundage, *Medieval Origins*, pp.382-383. Iris Domselaar, in 'The Perceptive Judge', *Jurisprudence* (2017), 1-17, argues modern judges need something she terms 'judicial perception' and defines as 'a species of ethical perception, an other-regarding, character-dependent professional skill that operates in an institutional, judicial context'. This skill enables 'a judge to reliably and adequately attend and respond to the cases he is confronted with' and includes 'having a keen eye for the situational and organisational influences that may sabotage his vision, and a refined sensitivity for how best to motivate one's decisions in a concrete case'. It seems entirely plausible medieval ecclesiastical judges needed it too.

[77] Courts were emotional places: 'moreover oftentimes many run to go there [the secular courts] in great companies and with much clamour and noise come unto the ecclesiastical courts, and very grievously fear the judges and suitors and other that have ought there to do, whereby ecclesiastical jurisdiction is confounded': *Lyndwood's Provinciale: the text of the canons therein contained, reprinted from the translation made in 1534,* eds. J. V. Bullard and H. Chalmer Bell (1929), p.110. Kane considers articulation, narration and recording of emotions within English ecclesiastical courts in 'Reading Emotion and Gender'. Concentrating upon roles played by church and canon law in shaping certain elements of deponents' evidence and plaintiffs' arguments in instance litigation, she set out to identify the predominant ways emotion was constructed within legal testimony and addresses the role of agency in describing emotions within those courts. She realised understanding the emotional world outside court is important and considers the inquisitorial process allowed

sought to deem – necessary the very same set of interior operations, codified and pressed for the same key emotional responses, and invited the defendant to go upon his or her own narrative journey towards eventual reconciliation with the community - all the while collectively reminding the audience present of their sins and responsibilities. It might not always be necessary but the vivid, sometimes blunt, yet often visually-sophisticated lesson of seeing someone else's shame and even physical suffering, their humility and their ultimate readmission and reacceptance, was likely to have been a powerful directive from those in authority to modify, restrain and atone for one's own sinful behaviour. Flexibility was key. Just like routine confession, it might need to be repeated or in different forms for different people and different offences. But where, indeed when, better for everyone to learn such lessons than whilst compelled by liturgy and location to think about one's own sin and desire for salvation?

5.2 Evidence

Like Arnold, I make no attempt to recreate the "real" experience of those participating in the ritual performance of penitence.[78] Nor do I seek to recreate the emotional reality of their courtroom experience. However, the examples below show that the processes of inquisition and sentence construction, and the consequent act of penance, were a manifestation of confessional discourse that aimed to bring every sinner to repentance, and that that was so whether the prescription given was essentially private, semi-private, or wholly public. Following presentation of some statistical detail I examine treatment of male transgressors in the most straightforward cases of fornication and adultery. Thereafter, women similarly accused are considered. After that, more serious cases: firstly, a case involving several defendants but only one victim; secondly, repeat offenders; thirdly, those

each examiner to assume control as evidence was obtained. In office cases it was often the judge himself charged with the duty of inquiry, but the same influences and processes were still at work.

[78] Arnold, 'Inside and Outside', p.113.

offending with servants; fourthly, incest; and, finally, sodomy. In LAO/Cj.4 all those charged with the more serious offences were men.

As mentioned in Chapter One, seventy-six people, including ten women, appear within LAO/Cj.4 accused of a moral crime or crimes. Nineteen (twenty-five per cent) were clergy.[79] Of those seventy-six, sixty-two faced accusations of sexual misbehaviour or of some other socially and morally unacceptable conduct between men and women. Of the sixty-two, fifty-four (eighty-seven per cent) admitted some offence though perhaps of a lesser degree than that of which the record suggests they were originally accused. One more denied guilt but was convicted.[80] Another, having failed in a defamation claim, because her opponent successfully purged herself, was found guilty in consequence and ordered to appear to receive notification of her punishment but no record survives of her having done so.[81] In five cases, although penance was ordered, there is either no record of it (in four) or the description is too vague to be certain what was involved (one).[82] Thirty-two lay defendants were ordered to perform penance of some specified kind for sexual offences. Of those, twenty-seven were ordered to take part at least once in a public procession. Sometimes other additional punishment was ordered. But in *Office c. Willelmus Payn*, for instance, the only order was to pay for the resulting child, in Thomas Brown's case it was to be penitent on three occasions, or once were he to marry the woman concerned, but without detail of process or indication of its public nature, and in *Office c. Willelmus Persi* a sentence of public penance was commuted into the doing of charitable works.[83]

Table 5.i : Moral Crimes in LAO/Cj.4	
Defendants accused:	Number (percentage)
• Laymen	47 (62)
• Laywomen	10 (13)
• Clergy	19 (25)
• Total	76* (100)

[79] See Chapter One, p.55 and Table 5.i.
[80] *Office c. Oliver Darkar* LAO/Cj.4/Q1.fol.49v.
[81] *Agnes Sheffeld c. Maria Waltrott* LAO/Cj.4/Q1.fol.2v.
[82] In that one the only words written are 'punitus et dismissus': *Office c. Thomas Cooke* LAO/Cj.4/Q1.fol.40v.
[83] *Payn*: LAO/Cj.4/Q1.fol.19v. *Brown*: LAO/Cj.4/Q.1.fol.26v; Chapter Four, p.162. *Persi*: LAO/Cj.4/Q1.fol.23r.

Charged with offences of a plainly- or quasi-sexual nature	62 of 76 (82)
Charged with the said offences who admitted some measure of guilt	54 of 62 (87)
Found guilty	2**
Ordered to perform penance	32 of 56 (57)
*Three members of the laity were accused of offences on more than one occasion (i.e. recidivism). **See footnotes 80 & 81.	

The Straightforward Cases

Sometimes the court was ready to proceed immediately. Robert de Fenton, for instance, was cited for incontinence with Helena Schlowe and Johanna Jude. The offences and admission were clear. Public penance was ordered. The record is brief and likely the hearing was too. In consequence, not much can be learned.[84] But occasionally, even when records are short, significant parts of the confessional discourse can be recovered. William Persi's case is an excellent example.

Persi was single. On 9 October 1528 he admitted fornication with his servant, Johanna Fishe, and was ordered to parade on two Sundays in a penitential fashion before the cross around the parish church in Spalding, each time carrying a burning wax candle which at the offertory he was to offer to the priest. After the order was made, and at his 'humble and instant petition', the sentence was immediately commuted.[85] Further public embarrassment had been avoided. But how?

Bowker describes Persi as 'a gentleman of some consequence'.[86] Wealthier men were not immune but, by failing to avoid a court appearance, he may have been less fortunate than others of

[84] *Office c. Robertus de Fenton* LAO/Cj.4.Q1.fol.26v.
[85] 'comparuit personaliter Willelmus Persi de Spaldyng solutus ad sanctam dei euangelia iuratus fatetur quod carnaliter cognouit Johannam Fishe seruentem suam cui dominus officialis iniunxit quod duobis diebus dominicis proximis futuris circa ecclesiam parochialem de Spaldyng peraget penitentiam crucem antecedendum cereum ardentem in manu sua deferendo Et quod tempore offertorij misse dictam candelam ad manus sacerdotis offeret ac quod nullo modo ad consortium dicte mulieris accedet nisi publice et in locis publicis ac in presentia honestorum personarum postea dominus ad humilem et instantem petitionem dicti Willelmi persi eius penitentiam in publica charitatis opera commutauit': LAO/Cj.4/Q1.fol.23r.
[86] Bowker, *Henrician Reformation*, p.56. Erroneously she describes Persi as married.

his station.[87] Being single a sentence of public penance may have meant less trouble at home than if he had been married. Similarly, it may not have mattered greatly to male friends. There is no evidence he had made Fishe pregnant. The court may not even have been especially keen to see him publicly punished.[88] But he was probably eager to preserve his reputation. It is likely he knew something of court procedure. Yet there was no plea for absolution before sentence was announced. That sentence had to be handed down before he applied for clemency and its purpose may not, to adopt Ingram's description of practice in Chichester, have been to terrorize, but it was probably to shock.[89] As well as urgency, there are signs of submission and prostration in the description of Persi's petition. It is likely only then did he appear sufficiently contrite and willing to accept personal and social responsibility. It was late. It was perhaps even an act. But had he not been convincing the court could have refused.

In May 1528, when John Starke came to court, fuller inquiry was necessary. Careful sentencing is visible too. Apparently newly employed at the bishop's registry, Starke sought to vary, or perhaps appeal, a sentence imposed by the archdeacon of Lincoln's commissary for making Alice Cross pregnant. He was partially successful: public penance he had failed to perform 'for good and legitimate reasons' was avoided. Yet it is difficult to see him completely pleased. The chancellor, possibly conscious of scandal and wanting to provide stern warning to someone "on probation" in new employment, commuted public penance into payment of alms in the considerable sum of twenty shillings.[90] Some might have seen composition a money-making exercise.[91] But Rayne also ordered Starke to provide for the child, doubled this up with orders to provide bread and carry out good works on two Fridays around the festival of St. John the Baptist, and to undertake a pilgrimage to Lincoln

[87] McSheffrey, *Marriage, Sex and Civic Culture*, p.180.
[88] Ingram, *Carnal Knowledge*, p.106.
[89] Ingram, *Carnal Knowledge*, p.112.
[90] 'xxxmo die mensis maij Anno domini millesimo quingentesimo xxviijmo in ecclesia prebendali de lidington coram domino cancellario iudicaliter sedente comparuit personaliter Johannes Starke nuper de Talington et postea in Registro dominij et fatebatur se carnaliter cognouisse Aliciam Crosse et prolem ex eadem suscitasse et propteria se submisit correctioni et allegauit quod commissarius domini Archdiaconato Lincoln' imposuit sibi quamdam penitenciam publicam quam ex certis causis ueris et legitimis non conueuit sibi perimplere ideo dominus ad humilem peticionem eiusdem commutavit penitentiam in hunc modum sequentem quod solueret ad elimosinam domini xxs': LAO/Cj.4/Q1.fol.12v.
[91] Helmholz, *Oxford*, p.623.

Cathedral.[92] In the circumstances, Starke probably left court conscious of his indignities still to come. That was probably the purpose: regular reminders of past behaviour, and of how he should continue to behave, were being reinforced; other people would see them too.[93] Working in the registry, the judge might already have been aware of Starke's means. Yet it is plausible he was asked whether he could afford a substantial financial penalty. It is also likely the judge carried out a visual assessment of Starke's physical abilities. After all, it would have been inappropriate to seek payment of sums that could never be paid but worthwhile making the result financially painful, and, although pointless imposing pilgrimage upon someone who could never have made the trip, appropriate to make it sufficiently difficult.[94] The court was trying to strike a difficult balance: the defendant had learned something but his pedagogical journey was incomplete. A fit and proper experience needed to be constructed.

Female Offenders

Women do not often feature as objects of ecclesiastical prosecution. There is some suggestion they may have been more naturally inclined to confess rather than stay quiet in the hope their sins might never be revealed.[95] Quite possibly their offences were mostly considered best dealt with at home: Wives were to be ruled by husbands, daughters by fathers, and the importance of a mother's

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[92] '... Et quod faciet prolem ali et nutriri et quod geminabit citra festum sancti Johannis Baptiste in duabus sextus feriis pane et seruitia et quod uisitabit beatam mariam virginem in ecclesiam cathedralem lincoln' semel in Anno citra festum sancti Michaelis Archangelis Et dominus sibi iniunxit sub pena excommunicationis quod decetero nullo modo admittat dictam mulierem ad consortium suum nisi publice ac in locis publicis et in presencia honestorum personarum sub eadem pena excommunicationis et quod nunquam peccatum committat cum eadem mortale sub eadem pena': LAO/Cj.4/Q1.fol.12v.

[93] Sometimes judges made use of symbols: Helmholz, *Oxford*, p.623. Given the order to provide for a child, it is possible see the bread in such terms. The order for maintenance may itself suggest Rayne considered Starke was shirking his parental duty and that he was conscious how others might feel in consequence. There is substantial evidence the laity believed good parents owed a duty to support their children and that '[f]athers who attempted to shuffle off their child maintenance responsibilities onto others roused indignation among their contemporaries': Maddern, '"Oppressed by Utter Poverty"', pp.49-50.

[94] 'Did you ever prescribe for any accused person too burdensome a purgation': Haren, 'The Interrogatories for Officials', p.127.

[95] Biller, 'Confession in the Middle Ages: Introduction', p.13.

guidance, or that by those in a quasi-maternal position (say to unmarried female servants living away from home), should not be overlooked. There is also evidence some fathers, including the wealthy and the clergy, willingly provided for their illegitimate children and even for the mothers of those children.[96] All these things may have kept some single mothers away from the attentions of ecclesiastical authority. What is more, in rural records even the sexually promiscuous sometimes seen in urban prosecutions are rare.[97] In consequence, it is little surprise a mere few appear within LAO/Cj.4. John Clay's Margery, despite their long-time partnership, does not seem to have been a co-accused. Neither was Margareta Tailor, the partner of Thomas Brown, nor Johanna Fishe, nor any of the female servants discussed below. Occasionally both man and woman were jointly summoned, like Robert Page with Alice Sleps and John Burton with Anna and Agnes Hartewell. They sometimes received the same punishment.[98] But unless Anna and Agnes Hartewell were one and the same person – and it is not completely certain they were – no woman appears in more than one case.[99] Opportunities to learn are therefore restricted.[100] However, sometimes women who were prosecuted fared worse than men with whom they had been involved. Vigilance, community identity and calming of tension were often the order of the day, especially if a woman was unmarried and outside the ideal household structure. But there was still confessional discourse and a penitential journey to construct.

In *Office c. Margeria Benam* the defendant told the court that Richard Swafeld, servant to the prior of Brook, had made her pregnant after they had sex just once.[101] Yet Chancellor Rayne also

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[96] Brundage, *Law, Sex, and Christian Society*, p.519; Felicity Riddy, 'Mother Knows Best: Reading Social Change in a Courtesy Text', *Speculum*, 71 (1996), 66-86; Maddern, '"Oppressed by Utter Poverty"', pp.43-44, 48-49. In early modern England women were also a minority of those prosecuted by the secular authorities despite them participating in most categories of crime: Walker, *Crime, Gender and Social Order*, p.4.
[97] Ingram, *Carnal Knowledge*, p.102. But even in a sample of evidence from urban fourteenth-century York only twelve women from a total of 108 connected to 166 presentments in a 10-year sample between 1441 and 1451 can confidently be said to have engaged in commercial sex: Goldberg, 'Pigs and Prostitutes', pp.175-176.
[98] *Page et Sleps*: LAO/Cj.4/Q1.fol.23r; *Burton et Agnes Hartewell* LAO/Cj.4/Q1.fol.38r; *Burton et Anna Hartewell* LAO/Cj.4/Q2.fol.53r.
[99] See Chapter Two, pp.90-1, 93, 95.
[100] Incomplete records can also be a problem. Johanna Claypole, for instance, admitted incontinence with a cleric and had her sentence deferred until after purification but nothing survives to explain what happened later: *Office c. Johanna Claypole* LAO/Cj.4/Q1.fol.33r.
[101] 'Dicit quod cum quodam Ricardo Swafeld alias *(blank space)* tunc seruientem prioris de Broke qui eandem imprignauit Unica dumtaxat uice carnaliter cognouit': LAO/Cj.4/Q1.fol.36v.

interrogated her about other sexual crimes. She denied sex with the prior and admitted it only with Swafeld.[102] There must have been a reason behind these enquiries. He may have been suspicious of the prior too. But, without accusation or public fame, all Rayne could do was seek to ensure removal of temptation.[103] After her act of penitence had been performed, Margery was expected to leave the parish.[104] Public penance beforehand, during which she had to carry a candle and at point of offertory hand it to the priest but did not have to remove her ordinary clothes or go barefoot, might at least ensure she confronted her own behaviour. Community lessons could be learned.[105] Nevertheless, after her departure, Margery's welfare and that of her child could safely be ignored. Swafeld himself is nowhere to be seen. Perhaps little could be done about him. He may already have left.

Yet, there is also some evidence of sympathetic behaviour. Emota Mitchell, prosecuted for fornication with a clergyman, was neither accused of living incontinently nor asked to leave. Her punishment was, simply, that she should walk barefoot in the procession in the manner of a penitent.[106] Perhaps her sexual partner was considered much more to blame. As a priest he should have been able to restrain himself.[107] Female sexual behaviour often implied a turning upside-down of true governance: frequently described as being "enticed" or "steered" into inappropriate conduct, they could not be wholly responsible for their actions.[108] Reconciliation was therefore still possible.

[102] 'Dominus interogauit eam an prior de brok aut uirginam eandem cognouit negat uirtute Iuramenti Et dicit quod nunquam fuit carnaliter cognita cum nullo alio nisi dumtaxat cum dicto Ricardo Swafeld': LAO/Cj.4/Q1.fol.36v.

[103] Nothing suggests Margery Benam's ill-repute. She is not, for example, described as a 'meretrix'.

[104] 'Posteriorum dominus iniunxit eidem marierie quod (per acta penitenciam) prolem [?] nutriri et quod non faciet moram ibidem sed quod recedat': LAO/Cj.4/Q1.fol.36v.

[105] dominus iniunxit eidem marierie Benam quod die dominico proximo citra parochialem ecclesiam de Broke publicam peraget penitentiam crucem antecedendo candelam ardentem in manu sua deferendo Et quod tempore offertorij misse dictam candelam manus sacerdotis offeruet': LAO/Cj.4/Q1.fol.36.v.

[106] 'dominus iniunxit quod ipsa die dominico tunc proximo uidelicet in die penthecostes apud Morcote ante crucem in processione more penitentis publica peraget penitenciam nudis pedibus sub pena excommunicationis': *Office c. Emota Mitchell* LAO/Cj.4/Q1.fol.40r.

[107] As 'a showcase for the church's ascetic ideals' it was 'all the more important that they should live up to the ideal': Ingram, *Carnal Knowledge*, p.243.

[108] McSheffrey, *Marriage, Sex and Civic Culture*, p.147.

Such nuance within punishments was probably best achieved by understanding and acting upon both factual and emotional elements within the evidence, including each defendant's courtroom behaviour. We can see evidence in more exacting cases too.

More Serious Cases

Multi-party Sexual Misconduct

Certain offences were so serious immediate punitive action was required even if no intercourse had taken place. Men might more easily flout moral standards, but they could not behave as they wished. Proper, righteous and reputable male domination of society was considered vital but sometimes men needed to be brought into line for their own good and that of their community.[109] In *Office c. Robertus Greg, John Sympson alias Baker et Radulphus Urmeston* it is plain things had gone too far.[110] Even absent indication of the victim's identity or social status we can see inquisition was careful. Punishment, though harsh, was meticulous. Nevertheless, the twin aims of repentance and reconciliation were still to the fore.

All three men were from Cottesmore, Rutland, and appeared at Lyddington on 2 July 1529. None are named in the Military Survey 1522. Nor do they appear on the Lay Subsidy Roll 1524-5. Ralph Urmeston was probably a relative of the parson William Urmeston, who features in the former. Sympson's alias may imply a trade. But their complete absence from those records may also suggest all three were relatively young.[111] The record of their evidence states:

> Johannes Sympson de Cottysmore iuratus dicit [sworn to tell the truth said] Mayd tarry I must speke with you and greg openyd the barn dore and he this deponent had her by the hand and

[109] McSheffrey, *Marriage, Sex and Civic Culture*, p.181.
[110] LAO/Cj.4/Q1.fols45r & 45v. The other participant, Custance, neither gives evidence nor is punished. His whereabouts during the proceedings are unclear.
[111] *The County Community*, ed. Cornwall, pp.20-21 & 112.

drue her into the barn and ther was greg and Urmeston and this deponent and Custance because ther was a boye in a mowe they went theure and greg said they wold to the new howse and ther this deponent pullid her in to the howse by the hand and greg asked which of them sholde have to doo with her furst and she said medle not with me for yf ye doo it shalbe laid to your charge and then this deponent laid her into the strawe but he dyd not medle with her and greg cam and bade this deponent go his waye let me have her in fondling but this deponent saith they thought to have synyd with her but greg said we have wresthyd with as good as thow art

Greg examinatus concordat cum [on examination agreed with] Sympson but he saith yf she wolde have consentyd they would have had a doo with her

Radulphus Urmeston concordat cum [agreed with] Iohanne Sympson et Roberto greg[112]

Such behaviour, with its victim forcibly dragged from pillar to post as the defendants attempted to find a suitably secret place to offend, would have been socially unacceptable anywhere.[113] Continuing, despite her ordeal, to express resolve to press charges if raped, she seems aware of the emotional power of overwhelming social disapproval. Secular proceedings could have followed. Even without that very serious offence public penance would have been almost inevitable. But skilful interrogation and sentence creation were still needed to achieve the best result. Inquiry revealed the offending had stopped, albeit only marginally, short of sexual assault. Sympson acknowledged that had he gone on to have sex it would have been sinful. Yet Robert Greg's response hints at defiance: either the immorality of intercourse between the unmarried did not occur to him or

[112] LAO/Cj.4/Q1.fol.45v.

[113] On the seriousness of rape and the greater likelihood of an inchoate or incomplete offence being tried in the church courts: Helmholz, 'Crime, Compurgation and the Courts of the Medieval Church', 11; Caroline Dunn, *Stolen Women in Medieval England: Rape, Abduction and Adultery, 1100-1500* (Cambridge, 2012), pp.51-72. Use of the word 'mayd' suggests at least one of the offenders considered their victim a virgin. On virginity and its legal connotations, especially in connection with secular and ecclesiastical offences akin or similar to rape: Kim M. Phillips, 'Four Virgins' Tales: Sex and Power in Medieval Law', in *Medieval Virginities*, eds. Anke Bernau, Ruth Evans and Sarah Salih (Cardiff, 2003), pp.80-101.

he did not care. Ralph Urmeston's taciturn reply may indicate he had realised the less said the better, but for him to agree with his co-accused may suggest all three were less than contrite, perhaps truculent, or even felt their offending trivial. Certainly, none willingly and immediately confessed. Ultimately, all three were ordered to go shoeless and bareheaded in front of the liturgical procession, each carrying a burning candle and rosary. Each candle was to be handed to the priest at the point of offertory whilst they were on bended knees. Although visible, perhaps even uncomfortable, during the procession, they were permitted to sit during the service until the time came to hand it over.[114]

Although these offenders' exact ages remain unknown, their likely youth is important. If they did not already, they might soon have households of their own, perhaps even positions of civic responsibility, and there were duties and obligations involved.[115] Yet, at this moment it seems likely their elders still exercised patriarchal influence and power. Senior men were supposed to supervise marital and sexual relationships amongst those over whom they had authority.[116] No doubt, on occasion, they had to be seen to do so. These proceedings may have followed complaint to the parson about his relative's behaviour. He, in turn, may have felt the spiritual forum an appropriate venue. But wherever the report came from, improper sexual relations of this kind were of wide community concern.[117] Public penance, with its performative elements and its intention to create thoughts and feelings of reflection, may have been considered essential to control chaotic, aggressive, impulses.[118] Lust was to be tempered. The defendants' future role as socially upright men had to be reinforced.

[114] 'Quibus dominus iniunxit quod ipsi omnes et singuli antecedauit processionem apud Cottismor sotularibus depositis quilibet eorum habens candelam ardentem in manu sua nudis capitibus more penintentis cum preculis in alteris manibus et post introitum ecclesie sedebunt in ecclesia cum candelis ardentis genibus flexis usque ad offertorium et tunc offerat candelas manus sacerdotis et hoc et in partem': LAO/Cj.4/Q1.fol.45v.
[115] McSheffrey, *Marriage, Sex and Civic Culture*, p.147
[116] McSheffrey, *Marriage, Sex and Civic Culture*, pp.74-109.
[117] McSheffrey, *Marriage, Sex and Civic Culture*, p.153.
[118] Catherine Bell, *Ritual Theory, Ritual Practice* (New York, 1992), pp.173-174.

Everyone was encouraged to pray and ask for God's help at the point of offertory.[119] Just as at introit and communion antiphonal chants may have been sung, perhaps with psalmic texts and of a length with the time taken to bring gifts to the altar.[120] There may have been accompanying music. The need for ostentatious performance may have been high.[121] The handing over of a candle at that moment, whilst kneeling, was a common element of imposed public penance. Standing, the priest would have been able to judge the sincerity of each offender's contrition. Intended as a timely reminder of God's presence and of the need to ask Him for help to repent, confess willingly, and thereby receive absolution, it was also constructed this way for all three offenders to ponder how much more serious things might have been and help them move towards responsible adulthood. It was an aide-memoire to those witnessing it too. Nevertheless, balance had to be achieved. Punishment ought not to be excessive. Public penance was only to happen once and not the more customary twice or more.[122] Although no doubt expected to recall their recklessness, their treatment of the victim, and their visit to court, these young men might not always have been "on show" (because of being able to sit). Shame was not to be so severely felt they would later be unable to assume community responsibility, nor punishment so harsh neighbours might consider their ability to lead permanently tainted.

Repeat Offenders

Success could not be guaranteed first or even second time around. Some, perhaps like Richard Swafeld, were simply keen to avoid the consequences. Others were repeat offenders. With the latter

[119] 'Right so oure offrandes Þat we offer, and oure praieres Þat we prefer, Þou take, lorde, to Þi louyng, & be oure helpe in alkyn thyng': *The Lay Folk's Mass Book,* ed. Thomas Frederick Simmons, EETS (1879), Text B, p.22.
[120] Gabriela Ilnitchi, 'Music in the Liturgy', in *The Liturgy of the Medieval Church*, eds. Thomas J. Heffernan and E. Ann Matter, 2nd Edn (Kalamazoo, 2005), pp.589-612 at pp.605-606.
[121] Clive Burgess and Andrew Wathey, 'Mapping the Soundscape: Church Music in English Towns, 1450-1550', *Early Music History*, 19 (2000), 1-46.
[122] Ingram, *Carnal Knowledge*, p.108.

courts needed to be extra careful. Henry Ward of Holt was one such recidivist. He first appeared on 27 May 1528 and, after admitting adultery, was ordered to perform public penance.[123] He was back on 19 February 1529 charged with soliciting the libidinous behaviour of Isabella, wife of John Tailor. Admitting he had been in 'lez malte howse' and laying on the straw with her, he denied solicitation.[124] Perhaps realising he needed to protect himself from greater punishment, he admitted fathering three illegitimate children and reminded the court he had recently appeared before the chancellor for one of those previous offences (i.e. the first offence in the record) and had been ordered to perform public penance in consequence. He claimed the other two had been admitted to Magisters Silvester and Pachett but said he had been ordered only to pay 3*s.* 4*d.* on each occasion.[125] Rayne may have been suspicious. Ward had confessed in part but perhaps there was more than he was prepared to admit. Only when the true extent of his offending had been established could sentencing begin. The right lessons needed to be learned, the right messages sent to the community. In consequence, and to begin that further inquiry, Ward was ordered to purge himself in relation to his claims of commutation.[126] No further record survives, either as to success or failure in that regard or in relation to the original second charge, yet that must have been the adjournment's purpose. Whether it happened or not, follow-up was intended.

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[123] '… comparuit personaliter henricus ward de holt infra parochiam de Metburn fatetur quod commisit adulterium cum Elisabeth Ward seruentem sua et sustitauit prolem ex eadem Cui dominus iniunxit quod ijbus diebus dominicis proximo futuris antecedet processionem citra capellam de holt candelam in manu sua ardentem deferendo more penitentialis nudo capite sotolaribus depositis cum pare precularum in altera manu Et post introitum chore sedeat coram sanctissimo altare genibus flexis usque ad offertorum misse et tunc offeret dictam candelam ad manibus sacerdotis tunc missam celebrantis in parte penitentie hec sibi iniungitur': *Office c. Henricus Ward* (No.1) LAO/Cj.4/Q1.fol12r. Some men may have strongly resented being named as the father of illegitimate children: Maddern, '"Oppressed by Utter Poverty"', p.51.

[124] 'Interogatus an solicitauit Isabellam Tailor uxorem Johannis Tailor ad libidinem et an erant solus cum sola iacentes in quamdam lez malte howse fatetur quod iacebant adinuicem super stramen mediis ipsius Henrici in dicto lez myln howse sed negat quod solicitauit eandem ad libidinem': *Office c. Henricus Ward* (No.2) LAO/Cj.4/Q1.fol.35r.

[125] 'Ita dominus dicto henrico obiecit quod ipse solicitauit tres proles ex illicito coitu cum tribus diuersis mulieribus ffatetur sed fuit correctus semel per magister pachett alia uice per magistrum Siluester et tertio tempore per magistrum cancellarium … … Examinatus quam penitenciam peregit dicit quod cancellarium sibi iniunxit publicam penitenciam sed composuit cum magistris pachett uidelicet per iii solidos iiij denarii Siluester iijs iiijd': LAO/Cj.4/Q1.fol.35r.

[126] LAO/Cj.4/Q1.fol.35r.

Fornication or Adultery with Servants

As explained, Ward's first appearance (at least in LAO/Cj.4) followed an offence of adultery with his servant Elizabeth Ward. She had had a child as a result.[127] Sexual relations with servants were common. Temptation must frequently have proved impossible to resist. Most "lived in". Away from parents, they might often be in a different part of the county or country and in that part of life between puberty and marriage.[128] Others faced charges of fornication with a servant, but Ward's offence of adultery is unique within LAO/Cj.4. Indeed, although Richard Clark, a clergyman, was accused by Hugo Fellys of being incontinent with his wife Elisabeth Fellys, and William Paterson likewise with Katerina the wife of Thomas Haukes, no other lay person is recorded facing a citation involving adultery at all.[129] Given that rarity, it is impossible to discover whether any elements to Ward's punishment were likely to have been imposed simply because he was married. Fornication and adultery were not usually treated differently. Only occasionally was the latter treated more harshly.[130] But married men employing servants were heads of their household and the offence meant failure of good governance.[131] Of course, some of the single men appearing in court may have had their own households but the evidence still suggests Ward was dealt with more severely. It also suggests great care in sentencing construction and consistency too. To consider this further I examine three other

[127] See footnote 123. The common surname is odd. However, had she been related a charge of incest would have been laid.
[128] P. J. P. Goldberg, 'Marriage, Migration and Servanthood: The York Cause Paper Evidence', in *Women in Medieval English Society*, ed. P. J. P. Goldberg (Stroud, 1997), pp.1-15 esp. pp.5-7; McSheffrey, *Marriage, Sex and Civic Culture*, p.18.
[129] *Fellys c. Clark:* LAO/Cj.4/Q1.fol.17r; *Office c. Willelmus Paterson* LAO/Cj.4/Q1.fol.26v. The figure may be low because the court often sat in Rutland. In the poll tax return of 1377 only 10 per cent of its population were servants, as opposed to 20 to 30 per cent of the English urban population. Furthermore, only about one-sixth of its households had servants as opposed to one-third in urban areas: Goldberg, *Women, Work, and Life Cycle*, pp.159 & 161. Of the four cases where adultery is specified in LAO/Cj.2, at fols43v, 96v, 107v, & 108v, none feature servants.
[130] Brundage, *Law, Sex, and Christian Society*, p.519.
[131] McSheffrey, *Marriage, Sex and Civic Culture*, p.145.

cases approaching them in the order suggested by the severity of each offence, by the prescription created and by the likely extent of each offenders' shame and contrition.

I begin with *Office c. Johannes Hayden.* On 31 January 1529 Hayden admitted fornication with a servant, Elisabeth Braggott, and Rayne ordered him to genuflect before the high altar in Wakerley parish church (Northamptonshire) the following Sunday. He was to do this in a stall and holding a burning candle which he was to offer the priest at the offertory. There is no indication Hayden was compelled to take part in procession, go barefoot, or wear only a shirt or sheet. Nor is there evidence of pregnancy. What seems most important is that he submitted himself for correction. There was no need to be too harsh. Ultimately, even during punishment, he may simply have looked very devout. His emotional, pedagogical and confessional journey had already begun.[132]

Like William Persi and John Hayden, Leonard Brokden of Holt (now Nevill Holt, Leicestershire), who on 1 March 1529 admitted sexual relations with his servant Selicia, and making her pregnant, managed to avoid a penitential procession. Instead he was ordered to provide at his own cost four wax candles each of four pounds in weight to stand before four altars in the chapel at Holt in time for the next festival of the Annunciation, new vestments or 'awtercloths to hang bifor the awters' for three of them before Pentecost, 3*s.* 4*d.* in funds to repair public roads of the chancellor's choosing, and other funds for Selicia for two weeks before birth and five afterwards and for the child once born too. In addition, he was to provide 5*d*. for five paupers and, on the Friday before Easter, was to eat only bread and water. Finally, he was never to admit the woman into his company again.[133]

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[132] 'comparuit personaliter Johannes Hayden de Wakerley et fatebatur quod carnaliter cognouit Elisabeth Bragott de Blatherwyk seruentia ac propteria se nostre submisit correctioni Cui Dominus Iniunxit quod die dominici proximo genuflectet coram summo altari ecclesie parrochiale de Wakerley in quadam stablo ibidem cum candela in manu sua ardente usque ad offertorium misse Et quod tempore offertorij misse dictam candelam ad manus sacerdotis offeret: LAO/Cj.4/Q1.fol.28v.

[133] 'comparuit personaliter leonardus Brokden de holt et fatebatur quod ipse carnaliter cognouit seleciam (*space*) dudum seruentem suam iam grauidam Cui dominus iniunxit quod ipse quattuor cereos pondus quattour librarum fieri faciet suis sumptibus et eosdem super quattuor altaribus ante festum anunciationis mare proximum in capella de holt stare faciet et quod pro tribus eorundum altarium tria noua uestimenta aut awterclothes to hang bifor the awters ibidem suis sumptibus prouidebit ante festum penticostes Et quod tres solidos ac quattuor denarios repar' uiarum publicarum ad arbitrium cancellarii exponet Et quod ipsam seleciam per duas septimanas ante partum et quinque septimanas post partum sustentari faciat suis sumptibus Et si

Unlike Persi, Brokden did not appeal for clemency after sentence. There had to be satisfaction, but it is likely he appeared more contrite. Given the penalties, it is possible he was a man of more than average means. The monetary outlay would have been significant. Pregnancy, and the resulting child, had financial implications. Fathers were ordered to pay.[134] The other financial penalties had to mean something to him and his community too.[135] Yet, without public humiliation, it is possible at least some would remain unaware of the reason behind his apparent generosity. Once again, great care was being taken.

Richard Ratclyff was accused of fornication with his servant Margareta Cowper and of getting her pregnant. He admitted both. Like Ward, he was prescribed public penance. In each case several significant, but subtly different, ancillary measures were imposed to reinforce the lessons both men needed to learn. Both Ratclyff and Ward (for the first of his recorded offences) were ordered to perform public penance twice. Ratclyff was also ordered to provide for the resulting child, and for the poor, and to say several Hail Marys. His age is not recorded but being ordered to keep away from virgins may suggest Margareta was particularly young: a girl's virtue had to be protected and society's values preserved. He may have been ill able to afford the financial consequences, but he had at least submitted himself for correction. If he had not the penance may have been even harsher.[136] Yet Ward

mulier ipsa duxerat illam prolem esse suam tunc prolem illam alimentari faciet Et quod quinque denarios pauperibus erogabit et die ueneris in septimana passionis pane et potu ieiunabait Et quod numquam decetero ipsam mulierem ad consortium suum admittet': *Office c. Leonardus Brokden* LAO/Cj.4/Q2.fol.67v.

[134] See the *Payn* and *Starke* cases, at pp.221-224, *Office c. Johannes Doughty*, at footnote 156 below, and *Office c. Alex Mapperley* LAO/Cj.4/Q1.fol.16v.

[135] 'Wardens' accounts reveal a persistent and often lavish expenditure on vestments, altar cloths … and related accoutrements': Whiting, *Blind Devotion*, p.21.

[136] 'comparuit personaliter Ricardus Ratclyff de Lamporte solutus et fatebatur se carnaliter cognouisse margaretam cowper solutam seruentem suam et se propterea correctioni submisit Unde dominus sibi in penitenciam iniunxit quod ipse duobus diebus dominicis proximis futurum publicam crucem in processio in ecclesia sua parochie antecedendo et cereum ardentem deferendo peraget penitenciam more penitentis et etiam quod dictam margaretam a domo et consortio suis amouebit nec virginem ex[?] cum ea offendet nec ad illius consortium suspiciose accedat et quod faciet mulierem illam usque ad purificationem et infantem omnis usque ad perfectam etatem suis scriptibus nutriri et alimentari sub pena excommunicationis Et quod quamque pauperibus parrochie de Lamporte donum [?] [?] et indigentem quinque pare[?] S[?] [?et] et quicumque alijs pauperibus quinque denarios erogabit et quinque p[*manuscript faded*] beate marie virginis dicet': LAO/Cj.4/Q1.fol.13v.

was ordered to suffer further indignities and given other instructions. During the procession he was to be bare-headed, barefooted and carry a rosary. As well as offering his burning candle to the priest at the offertory, he (like John Clay) was to kneel in the presence of the high altar after entry by the choir.[137] The fifteenth century had seen growing emphasis on elevation of the Host. It became increasingly important to expose it to devotees' gaze, to bear it in communal procession, to use it to bless the community and as a tool for reconciliation. Its appeal was broad. It was versatile. It was powerful.[138] That Ward should be encouraged to consider his sins whilst it was being raised and transubstantiation proclaimed was important: he needed to think deeply about repentance and rehabilitation; others needed to see him doing so. The chancellor was specifically aiming to correct poor household governance. By Ward's second appearance, it must have been obvious further education was still needed.

Incest

From time to time senior church courts dealt with the most serious spiritual crimes. On 10 April 1528 the audience court heard a case of incest. The offence had long concerned canonists. Gratian regarded it amongst the worst of sexual offences and akin to murder, heresy, and sacrilege.[139] Some canonical courts were prepared to treat it very harshly. Yet, given frequent impossibility of enforcement, and insistent demand for dispensation, others were less inclined to do so. However, when close family members were involved, condemnation was often more clear-cut.[140] This case concerned uncle and niece.

[137] See footnote 3.
[138] Duffy, *Stripping,* pp.95-116.

[139] James A. Brundage, 'Sex and Canon Law', in *Handbook of Medieval Sexuality* eds. Vern L. Bullough and James A. Brundage, digital edn (New York and London, 2010), pp.33-50 at pp.40-41.
[140] Brundage, 'Sex and Canon Law', p.43; Ingram, *Carnal Knowledge*, pp.89-91. In *Office c. Thomas Hause*, a case arising from a 1518 visitation, the vicar-general constructed his sentence so that both gravity and notoriety were specifically referenced: LAO/Cj.2/fol.78v.

Christopher Sawer from Gainsborough admitted incest with Alice Rokclyff, the daughter of his wife's brother Stephen, and making her pregnant. Punishment was ordered for the next Sunday with favourable weather. Such precision ensured the greatest number of witnesses and could also have been intended to encourage self-reflection every Saturday in anticipation of what the following day might bring. On the day, barefoot, bareheaded, and bare-legged, he was to process in front of the cross into the cathedral with a candle in one hand and a rosary in the other. At the nave's eastern end he was to genuflect before the high altar, in a penitential fashion, and, whilst doing so, say seven prolonged prayers. After that he was to say one Apostles' Creed and offer up the candle again in penitential fashion. He was told to take only bread and water on three Fridays and, on those days, provide 5*d.* for five paupers. When the expected child was born, he was to provide for it. On pain of excommunication he was ordered not to offend with his niece again or suspiciously admit her into his company. A prior sentence of excommunication, of which there is no surviving record, was lifted.[141] The "stage directions" could hardly be more specific: Sawer had been defined by what he had done; chastisement was necessary; the pedagogical nature of his penitential journey clear in every choreographed step; his transgressive act redeemable only through successful completion in the most important church of the diocese.

If unfamiliar in Lincoln Sawer may have retained some anonymity, but many would have understood his offence was especially grave. Almost everyone would have experienced a liturgical

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[141] xmo die Aprilis anno domini millesimo quingentisimo xxviijmo coram domino cancellario in capella sancte marie magdelenes infra ecclesiam cathedralem beate marie Lincoln' iudicaliter sedente constitutus personaliter Christoforus Sawer de Gaynesburghe fatebatur se carnaliter cognouisse et imprignasse Aliciam Rokclyff solutam filiam Stephani Rokclyff ffratris uxoris dicti Christofori et propterea se submisit correctione unde dominus cancellarius eidem in penitentiam iniunxit quod ipse die dominico in albanis propter futuram nudus pedes et tibias capite discoperto antecedet crucem et processionem in ecclesiam cathedralem beate Marie Lincoln' cereum precij denarii in una manu et parum precularum in altera sua manu deferendo more penitentis et quod finita processione huiusmodi genuflectet coram primo altare et ibidem genuflectendo septies orationem ductam tandem salutare angelica[?m] et sumbolum unum apostolorum dicet et hec facto candelam ad manus penitentiarii offerret et quod iij diebus veneris propter pane et aque ieiunabit et quod iste die quinque denarios quinque pauperibus erogabit et quod prolem ex ipsa alicia nascenda nutriri faciet et quod num que cum ea amodo offendet nec eam ad suum consortium suspiciose admittet sub pena excommunicationis residuum punitionem sibi iniungende dictus dominus cancellarius reseruando et deinde dominus cancellarius ipsum a sententia excommunicacionis pro incestum huiusmodi absoluit': *Office c. Christoforus Sawer* LAO/Cj.4/Q1.fol.7r.

procession. Such events could be subtle, complex, even spectacular. Cathedral processions were probably more visually and aurally arresting still, perhaps witnessed by hundreds, if not thousands, of people. Ostensibly, they were abolished in 1547 to eliminate contention, strife, the challenging of places in procession, and because people needed to concentrate on what was being sung or said.[142] Before abolition legitimate places were the subject of competition. Those placed at the head would have stood out, perhaps even regarded as usurping the proper place of others. Moreover, in some miracle stories clamour was regarded essential to both liturgical act and miracle production.[143] Transubstantiation was often eagerly anticipated. There is evidence some ran about excitedly, jostling neighbours and trying to get the best view.[144] In or around a cathedral the effect may have been magnified. In wanting to see, worshippers' eyes would have been drawn to declared sinners. Expressions of curiosity or disapproval perhaps led to even greater noise. Yet both offender and community could also be reunited by genuine, visible and audible self-condemnation. So, as well as the offering of a candle, penitential prayers were ordered, perhaps more than usually expected.[145] Although Sawer was to say it only once, a good many would have known the Apostles' Creed and appreciated its meaning.[146] But the extra repetition and retraction involved in his other prayers may have been additional emphasis – an "unsaying" or palinode necessary to relativise past words and actions.[147] Finally, good works were necessary to make satisfaction. In short, community messages of suitable punishment and forgiveness could but on occasion had to be loudly, and clearly, proclaimed.

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[142] Duffy, *Stripping,* pp. 451-452; James Stokes, 'Staging Wonders: Ritual and Space in the Drama and Ceremony of Lincoln Cathedral and its Environs', in *Ritual and Space in the Middle Ages: PHS2009* ed. Frances Andrews (Donington, 2011), pp.197-212.

[143] C. Clifford Flanigan, Kathleen Ashley and Pamela Sheingorn, 'Liturgy as Social Performance: expanding the definitions', in *The Liturgy of the Medieval Church*, eds. Thomas J. Heffernan and E. Ann Matter, 2nd Edn (Kalamazoo, 2005), pp.635-652 at p.650.

[144] Marshall, *The Catholic Priesthood*, p.42.

[145] Local practice varied. In Germany there is evidence two penitential prayers were the norm. Dudley, 'Sacramental Liturgies', p.206.

[146] In the later-fifteenth century the Apostle's Creed was not only part of the Church's catechetical programme but visually popular: Duffy, *Stripping*, pp.64-65.

[147] Jeremy Tambling, in *Confession: sexuality, sin, the subject* (Manchester, 1990), at pp.53-54, discusses evidence that Chaucer's *The Parson's Tale* uses the palinode as an accentuation because of medieval confessional practice.

Sodomy

Finally, in this section, I examine *Office c. William Baly et Johannes Jolybrand*. Prior to the Reformation sodomy was an ecclesiastical offence. It did not become a secular one until 1534.[148] As a "sin against nature" it seems to have been regarded, along with bestiality and other "unnatural" acts, amongst the worst of sexual transgressions. Yet, there are few court records to help us understand society's reaction in the event of its discovery, indeed little beyond writings of theologians and legists.[149] Wunderli found that amongst 21,000 defendants in London between 1470 and 1516 only one was accused of sodomy.[150] Others have searched elsewhere and found nothing.[151] But, although this case, unique in LAO/Cj.4, was referred to recently by Ingram it is worth looking again.[152] Neither the inquisitorial process nor the penances imposed have been considered. Much can be learned from doing so.[153]

The full record, in translation and including marginal notes, is as follows:

Against Baly and Jolybrand

William Baily (sic) of Kyrkby Bellars, aged 40 years, sworn and examined before the Chancellor in the church at Lyddington, on 22nd October 1529, admitted that he had committed sodomitical sin on several occasions with a certain John Jolybrand of Kyrkby Bellars aforementioned all of which acts occurred about six years previously. He also admitted and

[148] Helmholz, *Oxford*, p.629; 25 Hen. VIII, c.6.
[149] Karras, 'The Latin Vocabulary of Illicit Sex', 3.
[150] Wunderli, *London Church Courts*, pp.81-82.
[151] For example, Karen Jones, *Gender and Petty Crime in Late Medieval England: the local courts in Kent 1450-1560* (Woodbridge, 2006), p.129.
[152] Ingram, *Carnal Knowledge*, pp.37-38.
[153] Wunderli's single case was dropped before punishment could be handed down: *London Church Courts*, p.84.

remembered that he had masturbated one Richard Harryson on two or so occasions around the time of the last festival of the birth of John the Baptist.

Jolybrand

John Jolybrand of kyrkby bellers sworn and examined on the day above written admitted that the said William Baly had committed with him the sin of sodomy on two occasions once in bed and once standing by the bed and that the said William Baly had masturbated him (*lit*. stroked his secret member lightly) on several occasions but not to the point of ejaculation. However, he denied that which had been sworn, that is to say that he, this deponent, had committed any sodomitical sin or that he had offended the Virgin with his semen with the said William.

Baly

Jolybrand

And so, indeed by the examination made in this way, the lord chancellor ordered that the same William Baly and John Jolybrand, and both of them together, should each carry out their penance by going before the cross in the procession into the parish church of Kyrkby Bellars the following Sunday carrying a burning candle in his hand and by proceeding barefoot, with shins not covered by other clothes and covered by a linen sheet. And that both of them should carry out solemn penance at Lincoln, in the cathedral church of Lincoln, that is to say excluded from the church on Ash Wednesday and received into the church once more on Maundy Thursday and there renewed.

Baly

Jolybrand

Then on the Monday thereafter, that is to say on 25 October 1529, John Jolybrand and William Baly certified to the lord chancellor that they had performed their penance and at this the lord absolved them from the sentence of excommunication regarding the crime above committed

by them and restored them to the holy church and ordered that they should next complete their public penance in the customary fashion aforementioned and ordered as above.[154]

In London, if McSheffrey is right, the idea of same-sex relations may have been deeply repressed and simply not part of public discourse.[155] Leicestershire and Rutland may have been little different. Whatever the reality, we do not know how this case came to judicial attention. Had there been individual testimony from someone other than both offenders, it is likely a note would have been made. Even after a guilty plea the court sometimes pursued its own enquiries to obtain more detail.[156]

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[154] LAO/Cj.4/Q2.fol.54v:

contra baly

Jolybrand

Willelmus Baily de kyrkby bellers etatis xlto annorum iuratus et examinatus coram cancellario in ecclesia de Lidyngton xxiido die Octobris Anno 1529mo fatebatur quod ipse commisit peccatum sodomiticum binis uicibus cum quedam Johanne Jolybrand de kyrkby bellers predicta colligato circiter sex annos elapsis ffatetur etiam quod ipse memoret palpauit membra secreta cuiusdam Ricardi harryson de kyrkby bellers predicta circiter binas uices sit citra festum natiuitati sancti Johannis baptiste ultimo

Jolybrand

Johannes Jolybrand de kyrkby bellers iuratus et examinatus die estimo supradictis fatebatur quod dictus Willelmus Baly commisit cum eo peccatum sodomiticum binis uicibus una uice in lecto alia uice extra lectum stando et quod dictum willelmum baly membra sua secreta alijs diuersis uicibus mulcende palpauit non tamen ad offuscionem seminijs negat tamen iste iuratus quod ipse deponens unum quam commisit huiusmodi peccatum sodomiticum aut quod ipse uirginem offendit semen suum cum dicto willelmo

Baly

Jolybrand

etiam quidem examinacione sic factam dominus cancellarius iniunxit eisdem willelmo Baly et Johanni Jolybrand et eorum utrique quod ipsorum uterque die dominicis proximis crucem in processionem in ecclesia parrochialis de kyrkby bellers antecedendo et candela ardentem in manu sua deferendo nudus pedes et tibias nudatus alijs uestibus et coopertus linthiamente antecedendo publicam peraget penitenciam more penitentis Et quod uterque eorum apud Lincoln' solemnem peraget pentitentiam in ecclesia cathedra Linc' uidelicet die Cinerum exclusis ab ecclesia et die jovis cena domini iterum in ecclesia receptis ut noris est ibidem

Baly

Jolybrand

Deinde die lune tunc proximo sequente xxvto uidelicet die octobris anno 1529mo Johannes Jolybrand et willelmus Baly certificarunt domino cancellario quod ipsi peragerunt penitentias suas et super hec dominus ipsos et eorum utriumque a sententia excommunicationis propter criminem predicto per eos commissis absoluit et sacratis ecclesiae restituit et iniunxit quod penitenciam publicam Lincoln' peragent more solito predicta proximo ut supra eisdem iniungitur.

[155] McSheffrey, *Marriage, Sex and Civic Culture*, p.149.

[156] In *Office c. Johannes Doughty* the defendant admitted fornication with his servant Agnes Androo. Nevertheless, despite that admission, the court heard evidence from Agnes: LAO/Cj.4/Q1.fol.34v

We have no record of any such thing. Yet, even without that information, the inquisition is illuminating.

Firstly, regardless of the extent of public discussion and the lack of detailed evidence other than from the defendants themselves, there would have been pressure upon the judge to act. Canon law had developed homophobically. Sodomy was regularly linked to heresy. By the mid-thirteenth century reprobation had morphed into fully-fledged obsession.[157] In consequence, it is no surprise the court sought both confirmation an offence (or offences) had occurred and quite precise detail of the mechanics involved.

Secondly, at least according to theorists, intercourse was supposed to be purely procreative. Some authors were rather inexact. Others could be starkly frank, even condemning sexual relations where the "correct orifice" was used but the act had been performed in an improper manner. Albert the Great, for instance, described five sexual positions each increasing in deviance until the fourth, standing, and the fifth and worst, which was with the man entering from behind.[158] In short, men were not supposed to have sex standing up even with their wives. Nevertheless, and certainly within these Lincoln records, they seem not to have been asked whether they had done so even with another woman.[159] Jolybrand, however, was asked and admitted to being sodomised in precisely that position. It is unclear whether anal intercourse occurred, but that at least one offender had been standing must have been considered an important signifier of seriousness.[160]

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[157] Johannson and Percy, 'Homosexuality', at pp.168-169, & 172. See also: Karras, *Sexuality in Medieval Europe*, pp.134-139. Something further about the clergy's attitude to such offences amongst their own, but perhaps too idiosyncratic and uncommon to permit more generalised conclusions about the attitude of society at large, may be found in records compiled during Bishop Alnwick's 1440 visitation of Newarke College: Katherine Zieman, 'Minding the Rod: Sodomy and Clerical Masculinity in Fifteenth-century Leicester', *Gender & History*, 31 (2019), 60-77.
[158] Tentler, *Sin and Confession*, pp.188-190.
[159] It may have been considered a subject more properly confined to private confession in case it instilled in some the idea of a sin not previously considered. See Tentler, *Sin and Confession,* pp.186-208.
[160] Sodomy was not just anal intercourse. Writers on moral questions lumped together as sodomy any sexual practice they considered unnatural: Brundage, *Law, Sex, and Christian Society*, p.533. Within the record there is no precise description of the sexual act itself. Whatever actually occurred it was probably considered more sinful to be the "passive" participant: Joyce E. Salisbury, 'Gendered Sexuality', in *The Handbook of Medieval*

Masturbation was a sin too, although it was generally ignored by all authorities. Yet here, with an offence between two men, both occurrence and manner were important – the word '*mulcende*' ('touching lightly') being used on one occasion. Such detailed enquiry, perhaps even use of that word, may have been intentional and to feminise the victim. Equally, it might have arisen from the emotional starting-point of a judge whose education had convinced him of the sinful, inherently feminine, nature of the acts committed.[161] Either way, Jolybrand was, and probably had to be, asked whether the point of ejaculation had been reached. This was neither detail for detail's sake nor merely to satisfy the inquisitor's prurience. It was crucial: masculinity was located, according to the medieval mind, within the genitals; semen was not to be wasted.[162] Jolybrand may have spoken the truth when denying such offence. Alternatively, he may have tried to ensure the court did not think his behaviour completely contrary to society's expectations. However, it is also possible the judge allowed him to mention his self-restraint as a small beginning to the pedagogical experience to come.

Those same inquisitorial processes also explain the lack of other information: the judge needed to find out what was relevant but could happily disregard that which was not. When considering the case of John Rykener, a transvestite male prostitute, David Boyd and Ruth Karras argue that civic authorities in London seem to have been mystified with the idea of sex between men and so confused they did not know how to punish him.[163] Here, although Baly admitted to two sexual partners, the court seems unconcerned with lifestyle. To the early sixteenth-century ecclesiastical judiciary the answer may well have been obvious. It probably did not matter whether the men frequently associated or even lived together. What mattered was the precise nature of their sin(s), the extent to they understood what they had done wrong, and the court's ability to punish yet

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Sexuality, eds. Vern L. Bullough and James A. Brundage, digital edn (New York and London, 2010), pp.81-102 at pp.83-84.

[161] Brundage, *Law, Sex, and Christian Society*, pp.533-535. The word "mulcende" obscures the English word Jolybrand presumably used but it can also be translated as "fondling" a word which appears in the *Greg* case (see p.227).

[162] Salisbury, 'Gendered Sexuality', pp.83, 89 & 90.

[163] David Lorenzo Boyd and Ruth Mazo Karras, '"*Ut cum muliere"*: A Male Transvestite Prostitute in Fourteenth-century London', in *Premodern Sexualities*, eds. Louise Fradenburg and Carla Freccero (New York, 1996), pp.99-116.

immerse them into an emotional experience intended to achieve suitable re-shaping and future community reconciliation.

Chancellor Rayne clearly felt these men should undergo a double indignity. Both had first to perform public penance in their own parish church. They also had to provide certification they had done so. At that point they were absolved, their excommunication lifted. But they were still expected to perform a further penance in Lincoln cathedral some months later, on Ash Wednesday just prior to Lent.[164] In the late medieval period the Ash Wednesday expulsion of penitents was very rare and reserved only for the gravest of sins. It involved formal ejection from the church that very day and exclusion throughout Lent. Only on Maundy Thursday, when three hosts were consecrated and Mass celebrated with extra solemnity, and only then after confession, were offenders readmitted. Just as enforced departure of sinners into the Lenten wilderness was of great symbolic importance (firstly, because of its connection to reflection on the sinful condition and death of Jesus, and, secondly, because sometimes church doors were literally closed to those excluded), so was presence at the Maundy Thursday service of the bishop himself. Some commentators suggested only prelates could forgive such serious sin.[165]

The emotional impact of expulsion, exclusion for forty days, and ultimate reacceptance, was probably very powerful. The requirement each offender participate in highly visible and theatrical public penance, scantily-dressed and probably accompanied by music and clamour, was more than just important to continued confessional education and good conduct. Temporarily excluded from receiving communion the two men would have been expected to consider both their previous behaviour and a future where they could not receive and partake of the Host or the blood. It would have been considered vital to the diocese-at-large too. Unfortunately, the next few pages of the

[164] Of course, in the absence of such absolution (and the concurrent lifting of excommunication) neither could have been admitted to any Ash Wednesday service they were told to attend. If not formally re-admitted they could not later be expelled.
[165] Lawrence E. Frizzell and J. Frank Henderson, 'Jews and Judaism in the Medieval Latin Liturgy' in *The Liturgy of the Medieval Church*, eds. Thomas J. Heffernan and E. Ann Matter, 2nd Edn (Kalamazoo, 2005), pp.167-192 at pp.173-176; Dudley, 'Sacramental Liturgies', pp.205-206; Duffy, *Stripping,* p.28.

manuscript seem to have been lost. A certificate confirming attendance at the cathedral would have been of great interest.[166] Of course, we cannot be sure either man was ultimately reconciled with his local community. Nevertheless, the suspicion must be that both felt compelled to suffer their indignities even though the idea filled them with dread. After readmittance some may have still considered what they did to be sinful, but everyone would see they had confessed, had been repentant, and had been forgiven.

5.3 Conclusion

By the 1520s laypeople had long been encouraged by the church and its bishops to reflect on transgressions in order to put right their sins. Across Europe preachers had been consistent: sinners should be contrite, confess failings and perform works of satisfaction to pay the temporal penalties incurred, and in so doing would be restored to a state of grace and made fit for heaven.[167] For three centuries and more church courts had also played their part. Discipline had been imposed upon tens of thousands and that same message, and the necessity of learning it, had been declared many times. However, the sheer variety and complexity of offending, of punishments and of record-keeping, makes interpretation a challenge. In trying to better comprehend the aims, objectives, and achievements of the church courts my focus, like others too, has been upon the regulation and improvement of morals. To make matters manageable, this chapter has concentrated upon the process of inquisition after an admission or finding of guilt, sentencing, and the ritual performance of penance. It has especially examined ways in which the ecclesiastical judiciary used their skill and experience, and the tools available (including their professional discretion), not just to grasp each individual factual matrix and legal conundrum but its emotional content and context, in order to construct fitting penance for

[166] Chapter One, p.52; Appendix, *fig.20*.
[167] Thayer, *Penitence*, pp.46-47.

offending laity that might be punitive but also pedagogically-appropriate both to an individual and, if necessary, to their community and the diocese at large.

Historians have no idea how many laypeople did not commit spiritual crimes and cannot calculate those who avoided detection.[168] They understand it was largely an obedient society, and that many were keen in their own devout religious practice and that others should be too. But they cannot be sure what drove an individual towards obedience. There may have been those who cared little for society's moral codes. Yet there were probably few who could ignore the church or its courts completely. In urban areas the role of those courts was well understood and far from insignificant. Rural areas were especially used to their dominance. When attempting to enforce Christian morality such courts were often highly active and frequently well supported. Their officials investigated sexual misbehaviour and marital problems 'not because they wanted "total control" (although perhaps they wanted that too) but because these were issues of *public*, and not just private, import'. Sexual relationships were simply not beyond public scrutiny.[169] Nevertheless, it was about far more than just punishment.

The interior mental activities involved in confession were encouraged by preaching. A growing literature helped people use confession as a means of obtaining spiritual direction too. The framework of sins, commandments, works of mercy and bodily wits formed the basis of clerical enquiry both in confession and the laity's examination of conscience in preparation for it.[170] As Arnold explains, it is possible to see the explicit discussion of emotion in the sacrament of confession and penance. As he suggests, there is evidence to support its implied presence in other areas too, particularly as a desired state or behaviour amongst readers of works like Mirk's *Festial*, amongst the audience at a parish procession, at Mass, during other parts of the liturgy and within other associated ritual. He also makes it plain that affective piety clearly sought 'to prompt, develop and nurture a particular *kind* of

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[168] Thomson, *The Early Tudor Church*, pp.233-234.
[169] McSheffrey, *Marriage, Sex and Civic Culture*, pp.191-194. The quote is at p.191. The italics are hers.
[170] Duffy, *Stripping*, pp.60-61.

response'.[171] The apparent clamour, noise, sense of excitement and emotional intensity during such processions, divine service (particularly as the Host was elevated), and similar but busier and events within and around a cathedral, have been well discussed by others.[172] The many links between private confession, inquisitorial procedure in the church courts, and in the penance each forum imposed have now also been well established. Neither public nor private should be considered without regard to one another and, to return once more to Arnold, the emotions present were one element within a 'regime of spiritual discipline' that sat at the intersection of discourses including confession, medicine (by which he meant of the spiritual kind), and governance.[173] This chapter has simply set out to explain that that connection between emotion, confession and penance can be clearly seen in the aims and activities of the spiritual courts.

Courts are emotional places. Events which lead to legal involvement, or which result from it, are likely to invoke strong feelings. Such feelings might affect only a few or even just one person alone. But on occasion, perhaps after events like those in the *Greg, Symson & Urmeston* or *Sawer* cases, a good many in each community, even a sizeable majority, might be sorely aggrieved. Church courts were certainly there to instil discipline when needed. Judges were there to apply the law and to do so fairly. But the pedagogical imperative was particularly strong. Historians must be careful when seeking to grasp the degree to which emotion underpinned early sixteenth-century lay spirituality. But certain emotions – especially repentance, remorse, sorrow and contrition – were, and were plainly expected to be, visible or called forth within the court environment.[174] It was what judges, like priests at annual and private confession, looked for and wanted to see. To a judge already confident in his understanding of the facts and law such emotions, or the lack of them, signalled the precise penitential prescription and choreography required.[175] His understanding of the emotional world in and outside

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[171] Arnold, 'Inside and outside', pp.112, 121 & 122. Again, the italics are his.
[172] See pp.237 & 244.
[173] Arnold, 'Inside and outside', pp.125-126.
[174] Arnold, 'Inside and outside', p.121.
[175] Arnold, 'Inside and outside', p.122.

the courtroom, appreciation that punishment and reconciliation sometimes needed to be made clear, perhaps repeatedly so, but were sometimes better left between individuals and their priests, and innate grasp of the powerful symbolism involved in judicially-imposed penance and the passionate environment in which it was to be performed, were very much a part of the process.

There are limits to what can be learned. We are reliant completely on surviving textual resources, and little is gained by seeking solely to reimagine individual experience.[176] In Lincoln, as elsewhere, the experience of women remains obscure. But historians can, and should, acknowledge that emotions were part and parcel of the enforcement regime. Improved understanding of its effectiveness depends on doing so. If they do that, historians can continue to dismantle the idea that truly serious attempts to reform behaviour began only after the Reformation.

[176] Arnold, 'Inside and outside', pp.121-122.

6

Conclusion

Despite principally concentrating on the records of one episcopal court, and especially on just twenty-four months between March 1528 and March 1530, this thesis always aimed to provide more than a snapshot of ecclesiastical justice at a crucial time for the English church and its law. It set out to investigate how those working within that court's particular geographical confines sought – despite numerous challenges – to achieve and maintain considerable levels of activity, efficiency and competence. It does this by examining how behaviour of people in its purview was regulated by the practised canon law and exercise of corrective and adjudicative powers, by aspiring to comprehend how men and women interacted with its professionals and functionaries when seeking remedy or receiving notice of its procedures and punishments, and by seeking to know more about how those professionals and functionaries worked with and related to each other. Notwithstanding limitations of format and topic choice, it has also striven to improve appreciation of those who laboured throughout the spiritual jurisdiction to administer justice, resolve dispute, decide guilt and construct fitting punishment, or who entered its arenas hoping for favourable decisions, advantageous compromise, or at least a bearable result. Lincoln's audience court sat at almost the highest level. In the late 1520s it was operated by a group of men that included some who were extremely well-educated, skilful, and experienced. But it was never isolated or unique. Like counterparts elsewhere it was fighting the realities of sexual behaviour, the preference of some for relationships unimpeded by the permanence of marriage, and the desire of others to bend people to their will, as well as dealing

with those who might anywhere have proven recalcitrant. It too depended upon the participation and cooperation of lay society.

The third decade of the sixteenth century was certainly a critical period. Demands for reform of the courts Christian had spread during the early to mid-1520s. Wolsey, whose skills had helped calm tensions after the Hunne affair, but whose own restructuring efforts had met with failure or were later shelved, was indicted in 1529 after the Blackfriars marriage trial caused Henry VIII great disappointment. *A Supplication for the Beggars* circulated at the end of that year. Legislation regulating collection of mortuary fees that 'was probably part of an orchestrated campaign to pressurise the Church into conformity with the royal will' passed the same year too.[1] Furthermore, the Praemunire indictment of all clergy in October 1530, the dramatic increase in tithe litigation after 1532 and especially during the 1540s, the rise in anticlericalism, the rejection of Papal supremacy, the blow caused by closure of the canon law faculties of Oxford and Cambridge, and huge shifts in religious receptivity, government, administration and society between the late 1520s and the early 1560s, were amongst many hazards the church, its courts, and those who appeared in them, had yet to face. However, important though such weighty matters were, this thesis has always been more concerned with the everyday practice of law and efforts made by judges, lawyers and others, to resolve and survive real-life problems that could be diverse, unusual, complicated, confusing, messy, and even traumatic, but which were far from arguments of politics or theology. Whatever conflicts were playing out in society during the 1520s and 30s, and there were plenty, church courts including those in Lincoln continued to perform that essential and constantly demanding work.

This thesis has limitations. One is caused by the scarcity of source material. From evidence elsewhere it is not only understood that the Protestant Reformation made the existence of spiritual courts more precarious, and that Mary's reign provided them with little in the way of new vigour, but also that they survived with much of their medieval jurisdiction intact even as Elizabeth ascended the

[1] Thomson, *The Early Tudor Church*, p.289.

throne, enjoyed some subsequent stability and a rising litigation workload, and ultimately did not fare badly at all during most of her reign.[2] It is likewise plain, from sources outside the diocese, that many ecclesiastical lawyers seem little affected by the Henrician Reformation. Often the same men continued in practice for years afterwards. Even some of those who entered the profession in the 1540s were still at work decades later. Indeed, 'for all the sound and fury, very little happened on the inside of the Church's legal system' and there was little drastic change.[3] Lincoln was affected by some momentous events. The audience court had to deal with Edward Watson's demise in 1530, John Rayne's murder in 1536, the loss of jurisdiction when the dioceses of Peterborough and Oxford were created in the early 1540s, Longland's death in 1547, Anthony Draycott's imprisonment in 1560, and several other departures. We can see men like Simon Kent and Thomas Webster enjoying career progression beyond 1530 too. Yet substantial record loss in Lincoln prevents scrutiny of the effects these events, and others, had on the court's ability to function. Nor can we investigate what was happening to its consistorial sibling. In consequence, proper grasp of how either senior court adapted to society's changing needs and expectations during the mid-sixteenth century will likely always elude us. In many ways, the contents of LAO/Cj.4 represent the last opportunity for close study of Lincoln's senior church courts until the 1570s.[4]

Nevertheless, much has been learned. It is clear the audience court was far from moribund as it entered the 1530s. Like courts elsewhere, though not all audience courts, it remained highly active. It was managing, and was managed, well despite logistical challenges, the death of a bishop and chancellor who had been dedicated to judicial work and replacement of the former by someone less keen to involve himself in such tasks. Its work was varied, not just limited to matters of great complexity, and came from throughout the diocese. Its judges acted independently though sought advice from specialists, and probably from each other, if required. Court records are an unlikely place

[2] Helmholz, *Oxford*, pp.234-235.

[3] Helmholz, 'Ecclesiastical Lawyers and the Reformation', 363-364.

[4] Major, *Handlist*, p.56.

to find evidence of corruption but its judges, lawyers, and those who worked with them, come across as professional, well-behaved, ethically sensitive, careful and almost certainly honest. There is also a sense of mutual respect, even admiration. For the most part litigants seem sincere and straightforward and defendants mostly cooperative.

The approach of ecclesiastical courts to problems of proof and guilt can seem far removed from today's methods. So too can the concept of judicially-imposed public penance, especially when applied to offences which might now receive no punishment at all. A system of marriage litigation not based on facilitation of divorce, fair division of property and finance, and the primacy of children's welfare, might also be incomprehensible at first. Indeed, as Helmholz suggests, the ingenious and apparently artificial distinctions which canon law drew between the different words and phrases used to contract marriage can seem 'a matter of purely academic speculation'.[5] Yet, the consequence of such words, or of committing moral crimes, created real problems throughout late medieval society and judges in the audience court seem to have applied the law as carefully and evenly as they could. In office proceedings guilty pleas were common, but the court did not rush to convict. In instance cases definitive sentences were handed down, sometimes quickly, but careful deliberation and a sense that justice needed to be done, and often seen to be done, seem commonplace. Though ready to enforce the law, and retain traditional formalities, its judges were never averse to a flexible approach if better justice could be achieved.

The patriarchy, society's hierarchical nature and the special position of the clergy were ubiquitous. Yet, women who appeared in the audience court during the late 1520s can be seen actively seeking remedies and often seem well-acquainted with both legal complexity and court procedure. They also appear to be given fair opportunity to make themselves heard. Those men who pursued litigation without lawyers might have known more but were also prone to make tactical, occasionally disastrous, mistakes. Women were sometimes treated harshly after their sexual misdeeds but

[5] Helmholz, *Marriage Litigation*, p.187.

received sympathetic treatment too. Men could be given stiff and unpleasant sentences, if appropriate, but both sexes were regularly encouraged towards better future behaviour. The judiciary appear to have been trying hard to fit punishment to crime and especially keen to investigate a defendant's emotional state to help them in that task.

Time and space prevented comprehensive study of the 465 members of the laity mentioned within LAO/Cj.4. Further research could reveal connections between them and more about lay legal sophistication. Probate litigation, for instance, has largely been left to one side. Unfortunately, little testamentary evidence from the lawyers discussed here could be found but a wider survey of wills and court records could result in greater understanding of their networks, movement and career progression. Perhaps especially interesting are lawyers' formularies and precedent books. They ought not to be ignored and often contain surprisingly valuable material.[6] As previously stated, several lie untouched in the Lincolnshire archives.[7] More can be learned about archidiaconal and commissary courts too.

Church courts were forcibly closed in the 1640s. Although revived during the 1660s, and surviving till the mid-nineteenth century, they were ultimately doomed. Today, even their continued existence, albeit much-altered and shorn of virtually all influence, might be surprising to some. Yet, in the 1500s they had enjoyed strength and stability for two hundred years, operated everywhere and at many levels, affected the lives of thousands, and regularly did the very best they could.

[6] R. N. Swanson, 'A Canon Lawyer's Compilation from Fifteenth-century Yorkshire', *JEH*, 63 (2012), 260-273 at 261.
[7] Chapter One, pp.61-62.

Appendix

This appendix provides further description of LAO/Cj.4. The manuscript presents within a sheet of brown paper folded twice so that two parts come forward to contain and cover its front. Written on the left-hand front fold, in black ink, are the words ‘Bishop Longland 1528-9 Cases of heresy’ and ‘Cj.4’. In blue ink , and in a different hand, the words ‘+ much probate, marriage and instance material’ also appear. On the right-hand front fold, again in black ink, are written the words ‘+ Response Personalia’, ‘Cj.4’ and ‘cleaned’.

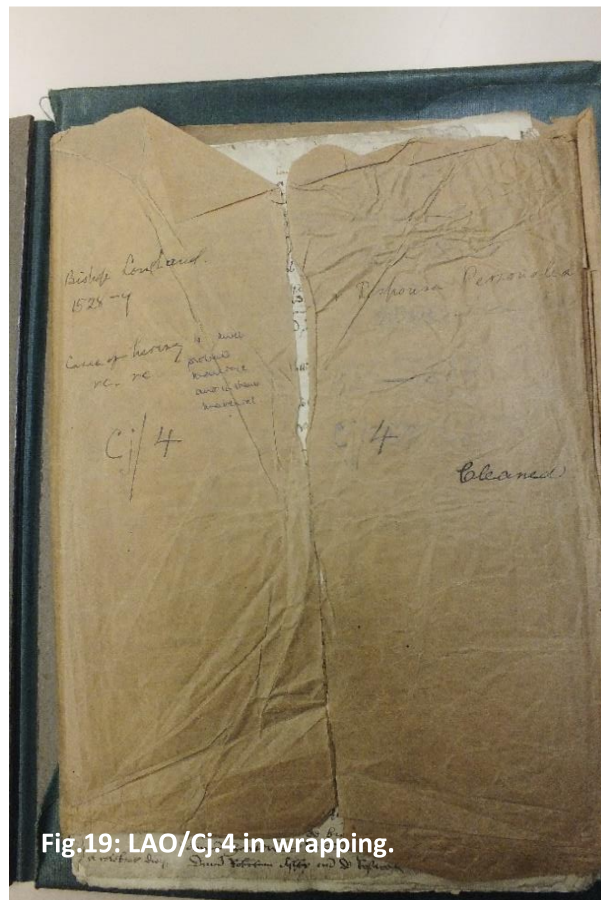

Fig.19: LAO/Cj.4 in wrapping.

Folio 1, in Q1, is slightly torn at the top right.[1] A patch has been applied along the top, outer edge, and bottom of the verso side. Approximately 25mm in width along the top and side edges, it is slightly wider along the bottom. Other pages are in good, though occasionally stained, condition. Save folio 1, each is numbered in pencil in the top right-hand corner of the recto. Folio 1, because of the tear, is numbered at the top but towards the middle. As stated, Q1 consists of 50 folios.[2] Construction and pagination of Q2 are shown in the diagram below. Existing bifolia appear with a solid line, those missing with a dashed line.

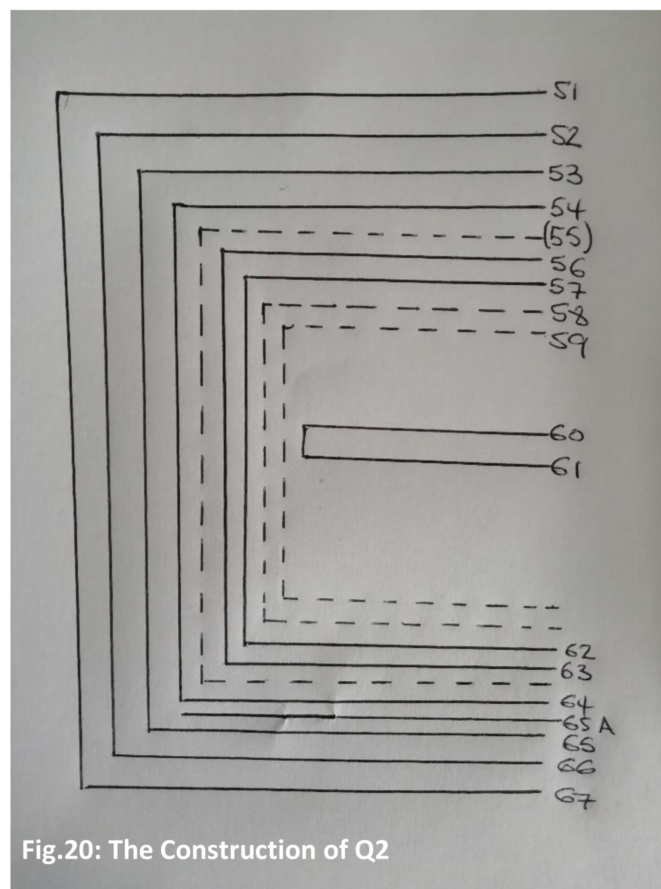

Fig.20: The Construction of Q2

Along the left-hand margin of folio 1r, written vertically from bottom to top, an eighteenth-century hand has written

[1] See *fig.3*.

[2] Chapter One, p.48.

> This book was shewn to Tho[mas] Marsden G.. at the time of his examination taken in Chancery on the behalf of Richard Lord Bishop of Lincoln & Anthony ---- Reynolds Esqr two of the Defts at the suit of William ---- Powlett Gent Compl[ainan]t

Underneath is a signature, possibly 'Edward Northberry', followed by 'by G …' and an illegible mark. It is likely this note refers to Richard Reynolds, bishop between 1723 and 1743. Confirmation can be found in legal proceedings entitled *William Powlett v The Bishop of Lincoln.*[3]

Most entries are chronological. As explained in Chapter Two, some are not.[4] Further examples of those "out of order" can be seen at folios 1v, 2r, 2v. The hands vary in legibility. Besides those on Draycott's journey (*figs. 8 & 9*) other examples can be seen below:

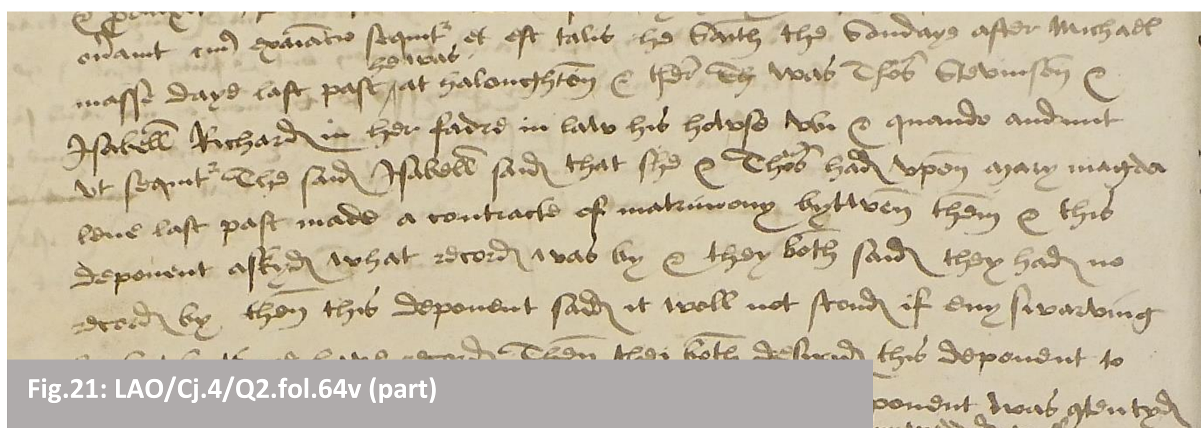

Fig.21: LAO/Cj.4/Q2.fol.64v (part)

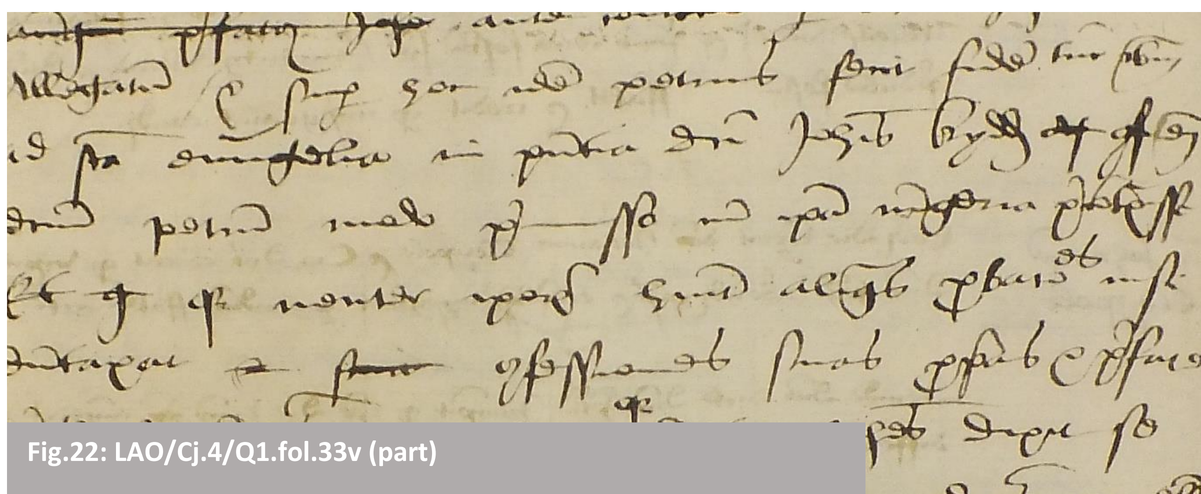

Fig.22: LAO/Cj.4/Q1.fol.33v (part)

[3] TNA/C11/142/4

[4] See p.78 (footnote 62).

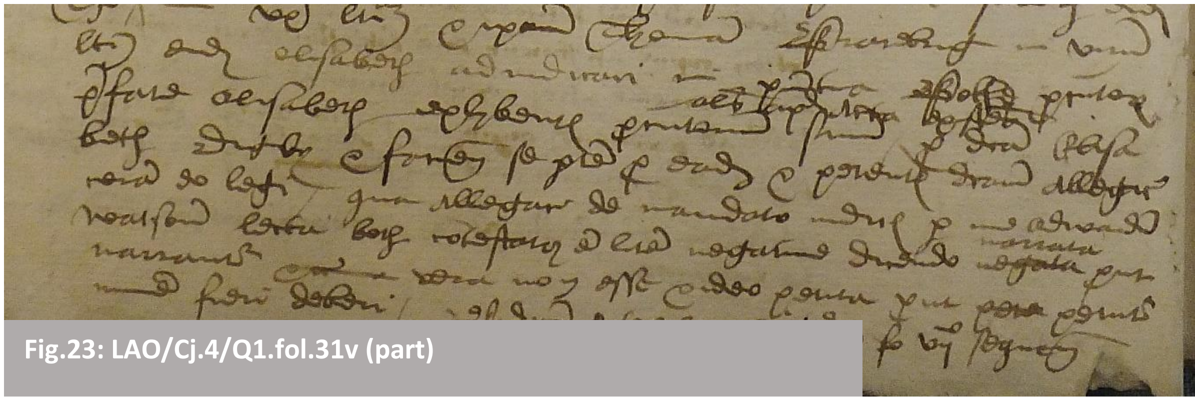

Fig.23: LAO/Cj.4/Q1.fol.31v (part)

I have referred to the hands of Thomas Webster (*fig.6*) and Edward Watson (*fig.14*). John Wynterbourn's can also be identified (*fig.23*).

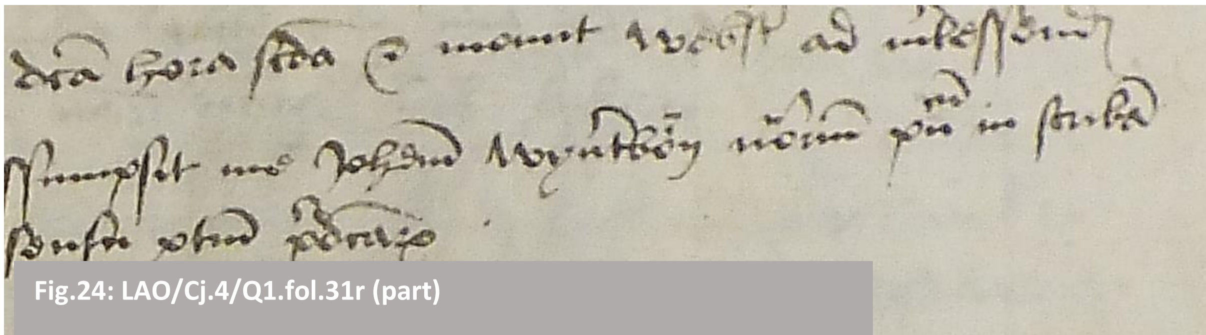

Fig.24: LAO/Cj.4/Q1.fol.31r (part)

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LAO/Cj.3 – Court of Audience Book (1525-1527 and 1542-1562)

LAO/Cj.4 – Court of Audience Book (1528-1530)

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LAO/DIOC/BOX92/2/18 – Loose Citations

LAO/DIOC/COURTRECORDS – Miscellaneous Citations, Articles, Depositions and Other Documents

LAO/DIOC/CP/BOXES 59 and 73 – Late Sixteenth-century Libels

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