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THE POPULAR CLASSES AND ROYAL JUSTICE IN MEDIEVAL ENGLAND: EVIDENCE FROM THE DERBYSHIRE EYRE OF 1330-1331[1]

Las clases populares y la justicia regia en la Inglaterra medieval: la evidencia del Eyre de Derbyshire de 1330-1331

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ABSTRACT: This article investigates the degree to which England's royal courts of common law were used by the masses (peasants, craftsmen, wage-earners) to prosecute lawsuits of small value. It argues that this issue is important for understanding the institutional framework that supported England's developing market economy, and for investigating claims about state formation in this period. Using a case study of one particular provincial session of royal justice —the Derbyshire eyre of 1330-31— the article presents quantitative evidence on the social status and subject matter of debt and trespass business heard before the king's justices. It is argued that the Derbyshire evidence shows that there were limits to the social reach of the common law courts. If we wish to grasp the framework of civil justice we must aim at a more comprehensive analysis of medieval England's multifarious jurisdictions (royal, communal, urban, seigniorial, and ecclesiastical).

Keywords: courts; litigation; justice; eyre; Derbyshire; bill.

RESUMEN: Este artículo investiga el grado en que las cortes reales de derecho consuetudinario de Inglaterra fueron utilizadas por las masas (campesinos, artesanos, asalariados) para entablar demandas de escaso valor. Sostiene que esta cuestión es importante para comprender el marco institucional que sustentó el desarrollo de la economía de mercado en Inglaterra, así com para investigar las afirmaciones sobre la formación del Estado en este período. Mediante el estudio de un caso concreto de una sesión provincial de justicia real (la sesión de Derbyshire de 1330-31), el artículo presenta pruebas cuantitativas sobre la

[1] I am grateful to Niclas Stark for research assistance, to Jerome Gasson for the map, and to Caroline Burt, Andrew Spencer, and audiences in Cambridge and at the LSE for their feedback on an earlier version.

condición social y el objeto de los asuntos de deudas y usurpación de propiedad que se juzgaban ante los jueces del rey. Se argumenta que la evidencia sobre Derbyshire muestra que había límites al alcance social de los tribunales de derecho consuetudinario. Si queremos comprender el marco de la justicia civil, debemos aspirar a un análisis más exhaustivo de las múltiples jurisdicciones de la Inglaterra medieval (real, comunitaria, urbana, señorial y eclesiástica).

Palabras clave: cortes; litigación; justicia; *eyre*; Derbyshire; *bills*.

0 Introduction: the question

England in the early fourteenth century was a land of many law courts: jurisdictions of different kinds that coexisted, overlapped and competed[2]. Arguably forming the centrepiece of England's landscape of law courts were the royal courts of common law. These emerged in the later twelfth century and had subsequently evolved into ever more complex forms. The common law courts can be divided into the central courts with a presence at the headquarters of government (normally Westminster), the most important of which were the courts of common pleas and king's bench; and the various provincial courts of royal justice such as assizes, gaol delivery, peace sessions, and the general eyre.

Although the common law courts dominate the picture, England in this period continued to be served by other types of non-royal tribunal. These included courts of county, hundred (the administrative subdivision of a county), manor, and borough (town courts), as well as ecclesiastical courts at the level of diocese (consistory), archdeaconry, and deanery. Asking what the various courts did, in broad terms, shows that there were areas of business belonging exclusively to specific court types, plus areas of shared jurisdiction. Most importantly, all serious crime (felony) was a monopoly of the royal courts, as were disputes about freehold land. On the civil side, debts and trespasses above 40 shillings in value were also reserved for the common law courts (in the period discussed in this article, this sum represented around 26 weeks' wages for a carpenter, or the price of around 16-18 hectolitres of wheat).[3] Meanwhile, litigation about rights in customary or servile land —as distinct from freehold— was the business of the courts of the manors of which that land formed a part. Yet shared jurisdiction was also important. For instance, lesser debts and trespasses below the 40s threshold could be sued in a variety of different courts, such as those of manor, borough, county, and hundred.

[2] A good overview is Walker, «Order».

[3] One pound (£) contained 20 shillings (s) and 240 pence (d). The mark was equivalent to 13s 4d. Calculations based on wheat prices of 6-7s per quarter (2.8 hectolitres), and six days of work per week at around 3d per day; Farmer, «Prices and Wages», 791, 816.

My focus in this article is on the royal courts of common law and their social reach. How far did the «popular classes» —peasants, craftspeople, and wage-earners— use these courts for relatively minor business? Where some areas of legal activity are concerned, such as felony, the answer is straightforward: the common law courts had jurisdiction over everyone, regardless of status. Yet in other areas, such as certain aspects of civil justice, there was greater choice involved, and litigants could decide whether or not to use the royal courts. As we shall see below, historians have stressed the role of rising «consumer demand» in the development of the common law courts. At the same time, the king's courts are recognized as high-powered institutions run by professional justices and lawyers. They are naturally most closely associated in the literature with social and political elites engaged in high value disputes. Equally, it tends to be assumed that the requirements of the lower orders were mostly satisfied by the local courts of manor and borough. How far this division was breached in reality remains unclear. In what follows, I investigate this issue through a case study which focuses on one area of business in one provincial session of a common law court: cases about debt and trespass heard in a visitation of Derbyshire in 1330-31.

1 Importance of the question

The question outlined in the previous paragraph has relevance for two interconnected topics: the character of the economy, and the formation of the state. England at this time was a commercializing economy with developing markets in commodities, land, labour, and capital[4]. The detailed study of law courts is essential for grasping the institutional framework within which production and exchange took place. In particular, the courts were central to shaping how property rights were defined and contracts enforced. The development of impersonal trade over distance and between strangers is usually seen as shaped to a considerable extent by the character of the legal system. Crucially for the aims of this article, the commercial economy of medieval England involved the entire population, from poor wage-earners to wealthy long-distance merchants. The character of the legal framework —and the place of the royal courts within it— was therefore an issue of universal social importance.

It is also vital to recognize that an agrarian society like medieval England was especially vulnerable to violence and lawlessness that could have a strong negative impact on production and trading. Therefore, it was not only important for ordinary individuals and households to have access to legal remedies such as debt that allowed them to enforce obligations. Also key were remedies in trespass that could be used to combat the kinds of violent depredations that would otherwise discourage and disrupt exchange and investment. Early fourteenth-century England certainly had no shortage of courts able to offer remedies of this kind. Yet which played the most important role, and how far were agents able to choose the jurisdiction that was best suited to their needs?

[4] Bailey, *After the Black Death*, 24-68.

Many economists and legal scholars are clear that formal institutions and more specifically the state courts are key to performing the functions just mentioned. Only the state, it is suggested, can provide impartial, predictable and enforceable justice[5]. In the royal courts of common law medieval England certainly had institutions generally regarded as equating to state law and state courts. Theoretically, these courts possessed many of the advantages highlighted in the studies just noted: they were backed by a strong centralized public authority, and observed a body of law that was uniform across the entire kingdom (hence «common law»). In principle they were widely accessible; whether in practice they were resorted to from across the social spectrum is our focus here.

The second area for which our central question holds relevance is the character, development and ambitions of the medieval English state. It is widely recognized that in this period the structures of royal government were making growing demands on the population, largely in response to the needs of warfare. It is unclear what the state offered its subjects in return for the demands for taxation and service to the crown. There is certainly abundant rhetoric, found in the parliament rolls and elsewhere, around equality of access to the king's law. Yet how far was the state willing or able in reality to cater to demands to provide justice for all?

The medieval common law courts are certainly not short of admirers, among either political or economic historians. Such historians tend to assume the superiority of the common law, which is seen as naturally gaining ground from other types of jurisdiction. Numerous commentators have drawn attention to the expansion in the activities of the common law courts that took place from the late twelfth century, emphasizing their popularity with litigants. Recent remarks in a survey by Burt and Partington are typical of this tendency. They comment that «the state institution that arguably grew most fundamentally —with the greatest impact upon the people— was the common law … As it developed, the common law continued to be broadly accessible, but by 1399 the number of writs and other procedures available to the aggrieved had grown unrecognisably in response to the clamour of demand for "the king's law"…». In commenting on the expansion of the common law the authors also note «its great popularity with the king's subjects, who flocked to its relative impartiality, recordability and enforceability»[6].

Burt and Partington are clear about widening demand and growing access, but they are also careful not to overstate claims about the reach and social ambit of the common law courts. Like others commenting in a similar vein, they suggest that the common law's benefits were restricted to freeholders, with villeins (serfs) excluded. It is also clear that their comments apply primarily to the common law's core areas of freehold land, and crime. Yet it is also the case that statements about the «growth of the common law» often lack specificity about the areas of legal activity most affected. In particular, there is uncertainty about the role of the common law courts in the very large and economically important area of law corresponding roughly to the modern fields of contract and tort.

[5] Deakin *et al.*, «Legal Institutionalism»; Chen and Deakin, «On Heaven's Lathe».

[6] Burt and Partington, *Arise, England*, 3, 594. For similar views, see e.g. Musson and Ormrod, *Evolution*, 8-10; Carpenter, *Struggle*, 480-92.

In medieval parlance this means the «personal actions», principally debt and trespass, as distinct from the «real actions», which were about land and other immovable property.

Questions therefore remain about who exactly the common law courts served in their various different areas of activity, and which different areas of economic life these activities affected. We have no clear sense of how far the courts of common law operated as «generalized institutions», in which rules applied uniformly to all agents, regardless of identity or status, as opposed to «particularized institutions», which tilt the playing field in favour of certain groups[7]. There is more to be learned about the significance of the common law tribunals within the larger universe of medieval English law courts. Uncertainties exist in part because of a shortage of empirical or quantitative studies which undertake the difficult challenge of assessing the social and economic status of parties to royal court litigation. One such attempt is made below.

2 The case study

In a larger ongoing project, I investigate use of the common law courts as part of a holistic study of the litigation of non-elites within a specific English region (Cambridgeshire). In the present article, by contrast, my focus is on a single provincial session, the 1330-31 Derbyshire eyre. The general eyre was a powerful visitation of royal justices which dealt with the full range of criminal and civil business, as well as the administration of royal rights. In the later twelfth and thirteenth centuries the eyre had been the pre-eminent manifestation of the king's law in the localities, in theory visiting each county every seven years. Yet by 1294 the eyre had become less effective, and the advent of war in that year led to its suspension. The eyre was rarely used thereafter, and its work was largely replaced by the other types of provincial judicial session that had emerged during the thirteenth century. In 1329-31, however, a period of governmental experimentation aimed at dealing with serious disorder led to a temporary revival of the general eyre. Four midland counties were visited, one of which was Derbyshire[8].

Derbyshire in 1290 had an estimated population of 84,000-85,000[9]. Derbyshire contains diverse terrain, with the north of the county comprising the upland region of the High Peak (Figure 1). Not surprisingly therefore the population density was somewhat below the average for English counties.[10] Administratively the county consisted of seven wapentakes, equivalent to hundreds. The main town of Derby is in the lower-lying south of the shire.

[7] Ogilvie and Carus, «Institutions».

[8] The others were Bedfordshire, Northamptonshire and Nottinghamshire. Cam, «The General Eyres»; Crook, «Later eyres»; Sutherland, *Eyre of Northamptonshire*, i, xxii-xl.

[9] Broadberry *et al.*, *British Economic Growth*, 25.

[10] Campbell and Barry, «Population Geography», 56-7.

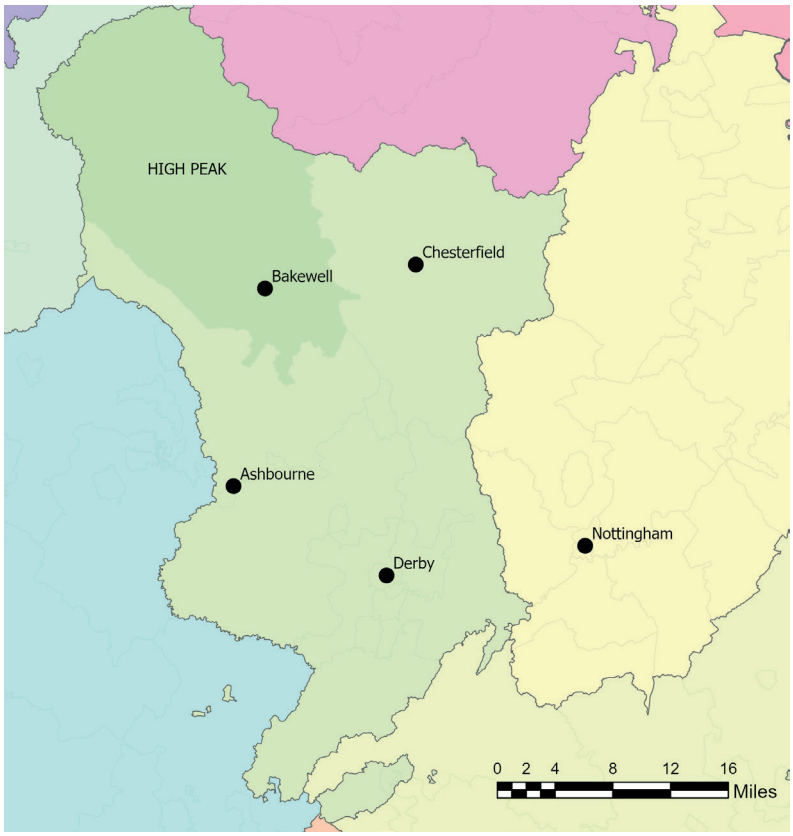

Figure 1. Derbyshire, with places mentioned in the text.

It was at Derby that the king ordered six royal justices to gather on Monday 2 July 1330[11]. Headed by Sir William Herle, the chief justice of common pleas and one of the kingdom's two most senior lawyers, the court was in session at Derby for a total of around 105 days between 2 July 1330 and 27 May 1331, assuming the justices sat for six days each week[12]. Although by this date there had not been an eyre in Derbyshire for almost fifty years —the last one took place in April-May 1281— the 1330-31 visitation was as comprehensive and impressive as its thirteenth-century predecessors, if not more so[13]. The justices delivered the gaol at Derby (i. e. tried all existing prisoners there) and heard the full range of crown (criminal) pleas and civil actions, both real and personal.

[11] *Calendar of Patent Rolls 1327-1330*, 521 (3 May 1330).
[12] Crook, *Records*, 186.
[13] Crook, *Records*, 150; Hopkinson, *1281 Derbyshire Eyre*.

The coming of the eyre undoubtedly had a significant local impact. Although no evidence survives to show this conclusively for the 1330-31 Derbyshire eyre itself, it is almost certain that an order was made at the start of the eyre for all other law courts in the county to be suspended for its duration. This was established practice that was followed, for instance, in the first of the revived 1329-31 eyres, that of Northampton, for which details on the eyre's preliminaries survive[14]. In May 1330, all cases currently before the bench (court of common pleas) at Westminster concerning men of the county of Derby were also ordered to be heard before the upcoming eyre instead[15].

The eyre at Derby should in theory have been well placed to attract new cases involving non-elite plaintiffs. For one thing, the suspension of all other courts might be expected to channel business to the eyre. Furthermore, the eyre clearly sought to address the complaints of all, and not just the prominent. A famous speech made at the opening of the 1329 Northamptonshire eyre by the kingdom's other top lawyer, Sir Geoffrey le Scrope, chief justice of the king's bench, explained that the eyre was being brought back in part because it used to «do justice to both rich and poor»[16]. Surprisingly, no detailed commission to the 1330 Derbyshire eyre justices survives. Thus we have little direct evidence on its purpose and character. However, the eyre's civil plea roll, or record of proceedings, includes a fascinating enrolled royal writ (i. e. a written order) addressed to Herle and his associates in December. This contains telling rhetoric regarding the eyre's intended social reach. The writ concerned cases which for various reasons, so the king understood, could not be brought to a conclusion before the justices in eyre. The king ordered that such cases should instead be adjourned into the bench in accordance with the royal «wish to hasten justice for each and every one of our realm, in as well a manner as we are able»[17]. Finally, the very fact that the justices were close at hand in Derby offered a period of ready access to the king's law for Derbyshire's ordinary subjects.

Three categories of source material are combined in my analysis of personal actions at the eyre: original bills, plea rolls, and law reports[18]. The personal actions that are our focus here could be initiated in the eyre in one of two ways: by writ, or by bill. Initiation of a case by writ involved the purchase of an appropriate writ from the royal chancery, which would then be sent to the sheriff to summon parties. This method is generally considered as more formal, restrictive and costly than the alternative, procedure by bill. A bill was a small piece of parchment upon which the essentials of a plaintiff's grievance were written down, in theory without the requirement for any strict form. A bill was essentially the written record of an oral complaint, or «plaint», and as such the terms «plaint» and «bill» are largely synonymous in the records. There was specific provision for bills to be heard in the eyre from 1278, and they were also presented in other types

[14] Sutherland, *Eyre of Northamptonshire*, i, 8; Maitland *et al.*, *Eyre of Kent*, i, 25.
[15] *Calendar of Close Rolls 1330-1333*, 31.
[16] Sutherland, *Eyre of Northamptonshire*, i, 6.
[17] The National Archives [TNA], JUST 1/167 m. 21r (4 December 1330).
[18] Here I acknowledge the immensely valuable digital images at aalt.law.uh.edu/, which include TNA class JUST 1.

of royal court session held in the localities, such as the commissions of trailbaston (a sweeping investigation into law and order), and the itinerant sessions of king's bench[19].

In the secondary literature, bills are widely seen as an inexpensive and direct way for the ordinary subject to access royal justice. Historians generally contrast bills and writs. Two statements, widely separated in time, nicely encapsulate such views. In 1914, W.C. Bolland wrote that «Most, at any rate many of them [bills], bear evidence of being the petitions of very poor people ... There is no evidence that any fee was payable on the presentation of a bill, as it was on the purchasing of a writ»[20]. Nearly a century later, W.M. Ormrod agreed: «By avoiding the logistical and financial challenge of having to obtain a writ out of chancery, the bill allowed ready and cheap access to justice within the locality where the eyre sat»[21].

The archive of the Derbyshire eyre is unusual and valuable because it preserves a large number of the original bills prosecuted in the eyre.[22] They are all written in Anglo-Norman French, in contrast to the Latin of the plea rolls and writs. The Derbyshire bills almost all begin with the words: «To the justices of our lord the king» (*A les justices notre seigneur le roi*). They then detail the complaint, and request remedy. The bills conclude with the naming of personal pledges who guaranteed the plaintiff's intention to prosecute. The following example features a fairly petty economic dispute:

> To the justices of our lord the king, Henry Penk of Spondon complains that John de Saundeby wrongly took his chattels, that is to say two bushels of malt and two sacks price 5s, on Monday next after the feast of St John the Baptist in the 2nd year of the reign of our lord king Edward that now is [17 June 1328], whom God protect, in the vill of Derby, in a certain place which is called the Marketstede, and carried them off from there to the house of the said John and detained them there, and is still wrongly seised, to the damages of the said Henry 40s, for which he prays remedy. Pledges to prosecute, Robert of Spondoun and Robert Louwerby de Spondon[23].

The availability of bill procedure is another reason why one might imagine the presence of litigants from the popular classes to have been relatively high in the Derbyshire eyre. As we shall see, bill procedure allowed people to bring relatively small claims of less than 40s to the king's courts, something not possible when suing by writ. In this respect the eyre at Derby directly replicated the jurisdiction of the manor courts, for example. Moreover, the Derbyshire eyre received bills of debt as well as trespass, which is distinctive, since normally bill procedure in the king's courts featured the latter type of action only.

[19] Pugh, *Wiltshire*, 123-31, 150-60; Harding, «Plaints and Bills», 65-86; Sayles, *Select Cases*, lxvii-lxxxv.

[20] Bolland, *Select Bills*, 157-8.

[21] Ormrod, «Language», 35.

[22] TNA, JUST 1/1562. In *Select Bills*, Bolland printed 47 of the 244 extant original bills.

[23] TNA, JUST 1/1562/178, at http://aalt.law.uh.edu/AALT4/JUST1/JUST1no1562/bJUST1no1562/IMG_3730.htm

In conjunction with the bills, which on their reverse contain valuable details about process, I have used the roll of civil pleas at the eyre[24]. The plea roll details proceedings in all civil actions, real and personal, but I concentrate on the latter, as already noted. Cases begun both by writ and by bill appear on the plea roll, but in many cases it is not possible to establish the mode of initiation, because there is no mention there of the words for «writ», «plaint» or «bill». Once a case was under way, procedure appears to have been the same regardless of initiation method. Many cases appear multiple times on the plea roll, reflecting the various stages by which the court sought the appearance of both parties.

The third and final category of source material comprises the manuscripts of Anglo-Norman law reports on cases at the eyre. At least 13 different manuscripts containing Derbyshire eyre reports are known[25]. The reports were probably compiled by apprentice lawyers who observed proceedings and made notes on legally interesting cases and the points made by serjeants (counsel) and justices. The abundance of law report material relating to the revived eyres of 1329-31 is testimony to the great interest among professional lawyers in this relatively short-lived experiment in justice. It is telling that the Derbyshire eyre reports include not only weighty and complex real actions but also several of the supposedly more «petty» cases brought by bill[26]. This is further evidence of the importance that the legal minds behind the eyre attached to its bill jurisdiction.

3 Findings (I): cases and subject matter

By painstakingly linking the plea roll entries to the original bills and to the large number of documents concerning process that are preserved in the same files as the bills, it is possible to arrive at a total of separate personal actions initiated in the eyre. Altogether, around 566 such cases can be identified (Table 1). All cases are included, regardless of outcome. The largest category is trespass, which covered a wide range of forcible wrongs, all with potential for negative economic effects: assault; removal of animals and goods; damage to crops, buildings and movable property; imprisonment; and extortion. Almost as numerous were cases of debt or detinue —the latter term denoting the wrongful withholding of a person's goods. Replevin was an action brought to contest a distraint, that is, the taking of an animal or other movable. There are 19 cases brought by bill which appear only on the plea roll, which shows that some original bills have been lost. There are also 71 cases that are known only from the bills and do not appear in the plea roll, presumably because they were registered before the court, but not prosecuted further. The implication is that the figure of 566 is a minimum for the actual total of cases initiated. Even this figure is impressive, however, if we recall that the justices sat for just over 100 days and were preoccupied during that time with a great deal of other business.

[24] TNA, JUST 1/165.

[25] Those in Rogers, «Law Reporting», plus Cambridge University Library [CUL], MS Gg.5.1, fols. 229v-236v. For the Northamptonshire eyre reports, see Sutherland, *Eyre of Northamptonshire*.

[26] For printed examples: Bolland, *Select Bills*, 152-5.

	Plaint/bill	Writ	Unknown	Total
Trespass	136	16	132	284
Debt-detinue	122	11	128	261
Replevin	1	0	11	12
Other/unknown	4	0	5	9
Total	263	27	276	566

Source: TNA, JUST 1/1562; JUST 1/165.

Table 1. Derbyshire eyre: cases of different type brought by plaint/bill, writ, or unknown method (i. e. either bill or writ).

Not all cases were recent; the disputed debt or trespass was alleged to have taken place before 1300 in four cases. However, the majority of cases that give a relevant date —160 out of 276, or 58 per cent— involved a dispute from the first four years of the reign of King Edward III (r. 1327-77). Moreover, a significant portion of that subset of disputes occurred after the commencement of the eyre.

It is also important to remember that some plaintiffs brought multiple cases. Most notably, the executors of Master Henry de Maunefeld, formerly dean of the church of Lincoln, initiated some 39 separate actions at the eyre against the debtors of the deceased. Yet this was exceptional.

Table 2 reports the size of the debt claimed in those cases for which this information is provided. These are only the debts in cash. Excluded, because not easily comparable, are debts in goods, many of which were mercantile in character and involved large quantities of wool and lead (Derbyshire was a centre of the lead industry). The assumption underlying the analysis here is that if there was a significant quantity of litigation involving the «popular classes» at the eyre, then we should see this reflected in the strong presence of disputed debts of low cash value. At this time a carpenter earned around 3d per day, while the average annual income of a minor landlord was around £15[27]. Significantly, Table 2 demonstrates that it was possible for plaintiffs to sue concerning debts below 40s in value using bill procedure, though writs were used only for debts above this threshold, as one would expect. However, fewer than 20 per cent of debts were below 40s in value, while well over half of the total lay between £5 and £50. The data in Table 2 contrast dramatically with evidence from manor courts, where peasants conducted most of their litigation. The proportions of sub-5s debts ranged between 68 and 82 per cent in four pre-1350 manorial case studies[28]. On this evidence, then, it is clear that the eyre heard relatively few petty debt cases.

[27] Farmer, «Prices and Wages», 816; Campbell, «Agrarian Problem», 12.
[28] Briggs, *Credit*, 59.

	Plaint/bill	Writ	Unknown	Total	(%)
£100+	1	1	4	6	(3.9)
£50-£99 19s 11d	1	0	1	2	(1.3)
£10-£48 19s 11d	28	2	9	39	(25.7)
£5-£9 19s 11d	36	1	11	48	(31.6)
40s-£4 19s 11d	20	0	9	29	(19.1)
20s-39s 11d	9	0	3	12	(7.9)
10s-19s 11d	8	0	2	10	(6.6)
<10 shillings	6	0	0	6	(3.9)
Total	109	4	39	152	(100.0)

Source: see Table 1.

Table 2. Debt-detinue: size of debt claimed (no. cases).

In a similar vein, we can consider the value of goods allegedly carried away in that subset of trespass cases which concern this type of wrong (Table 3). Although one would expect exaggeration to have been routine, my assumption here is that poorer people would have tended to bring claims concerning goods of comparatively low value. Table 3 tells broadly the same story as Table 2. For trespass, small claims are certainly not absent, and the values below 40s form a slightly larger proportion of the total than in debt. Nonetheless, it is striking that the removal of goods valued at £5 or over was alleged in well over 50 per cent of cases.

	Plaint/bill	Writ	Unknown	Total	(%)
£100+	2	0	3	5	(7.7)
£50-£99 19s 11d	1	1	2	4	(6.2)
£10-£48 19s 11d	8	4	8	20	(30.8)
£5-£9 19s 11d	5	1	0	6	(9.2)
40s-£4 19s 11d	9	1	1	11	(16.9)
20s-39s 11d	8	0	0	8	(12.3)
10s-19s 11d	2	0	0	2	(3.1)
<10 shillings	7	0	2	9	(13.8)
Total	42	7	16	65	(100.0)

Source: see Table 1.

Table 3. Trespass: alleged value of goods carried away (no. cases).

A further useful indicator of the character of the disputes brought to the eyre, and of the status of the people involved, is whether or not the disputed debt involved written evidence. In the manor courts, where we can be quite confident that most of the litigation involved peasants and workers, it is very rare to find reference to written documents in

cases of debt[29]. There is more than one possible explanation for this. One rather technical explanation is that production of a writing as proof may not have been to the plaintiff's advantage, since to do so precluded the defendant from requesting the main form of trial available in manor courts, which was compurgation (an oath-swearing ritual). Paradoxically, therefore, the use of written evidence would effectively have put a case beyond the jurisdiction of the manor court[30]. Perhaps more convincing, especially given evidence that writings were not entirely absent from manor court litigation, is the suggestion that most disputes heard in manor courts were of relatively low value. It is arguably for this reason that writings were very rare; parties tended not to go to the trouble and expense of getting a writing for a small, informal obligation, and relied instead on witnesses.

These considerations should be borne in mind when considering the frequency with which writings were offered as proof in the Derbyshire eyre (Table 4). As the Table shows, it was possible to bring a successful debt action before the eyre, as in the common law generally, without a written debt as proof[31]. Yet over 47 per cent of original bills and over 70 of pleaded cases on the plea rolls state that the disputed debt was recorded in a writing. Once again, this evidence demonstrates a stark contrast between the manor courts and the eyre, and suggests that a significant share of the litigation before the eyre involved relatively high value transactions and therefore, one assumes, people of status.

	Original bills	**(%)**	**Pleaded cases**	**(%)**
No reference to writing	61	(52.6)	20	(28.2)
Mention of writing	55	(47.4)	51	(71.8)
Total	116	(100.0)	71	(100.0)

Source: see Table 1.

Table 4. Reference to a writing as evidence of obligation in debt cases at risk to mention writing (original bills and pleaded cases).

As noted already, many of the debt transactions brought to the eyre appear distinctly mercantile in nature, and with this in mind it is useful to look more closely at the geography of dispute. One issue to consider here is the place of the alleged debt or trespass, and the possibility that disputes were disproportionately urban. It does seem to have been possible in theory to sue successfully over matters that had taken place outside the county of Derbyshire, as is shown by the existence of cases about debts contracted in the urban centres of Nottingham and Leicester[32]. Unsurprisingly, however, most of the disputes brought before the eyre were said to have occurred in locations within Derbyshire.

[29] Briggs, *Credit*, 79-82.
[30] Beckerman, *Customary Law*, 225-6.
[31] Palmer, *English Law,* 69-72; Baker, *Introduction*, 365-9.
[32] E.g. TNA, JUST 1/1562/207, JUST 1/165, m. 24d. For out-of-county cases at the Northamptonshire eyre, see Sutherland, *Eyre of Northamptonshire*, ii, 511, 600, 609-10, 747.

As with the other features under consideration, not all cases are at risk to mention the relevant piece of information; for the place of dispute there are 272 cases which do include it (Table 5). This table is intended to highlight the importance of Derby itself as a location for disputes. Derbyshire was not a very urbanized shire. Derby was much the largest town therein, with an estimated population of just 2,900 at the start of the fourteenth century. Derby thus contained some 3-4 per cent of the county population[33]. Strikingly, however, Derby was named as the site of the dispute in around 24 per cent of debt cases and 19 per cent of trespass, replevin and other cases. Ashbourne, which according to one contemporary source was the county's third biggest centre after Derby and Chesterfield, was also prominent as a site of disputed debt. The same source suggests Bakewell was the eighth largest settlement[34].

	Debt-detinue	**(%)**	**Trespass, replevin, other**	**(%)**
Derby	31	(24.2)	28	(19.4)
Ashbourne	25	(19.5)	6	(4.2)
Bakewell	9	(7.0)	4	(2.8)
Chesterfield	7	(5.5)	3	(2.1)
Nottingham	4	(3.1)	1	(0.7)
Other	52	(40.6)	102	(70.8)
Totals	128	(100.0)	144	(100.0)

Source: see Table 1.

Table 5. Places of alleged debt or trespass named in original bills and pleaded cases on the plea roll.

A final indicator to consider relates entirely to the original bills. As we saw earlier, the bills typically include the names of two «pledges to prosecute» who undertook to guarantee the suit. On occasion, however, the names are omitted, and inserted in their place are the words «by faith, because poor» (*per fidem quia pauper*). Instead of producing pledges, the plaintiff in this case was allowed to swear an oath. This phrase should be interpreted as indicating either that a plaintiff was of such low social status that he or she was not able to produce a supporter, or that they were someone who could not afford to pay the necessary fee to a pledge. For Bolland, the appearance of this phrase was in accord with his view that bills tended to be used by poor persons[35]. It should be noted, however, that just 15 of the 244 extant original Derbyshire bills (six per cent) include the phrase «by faith, because poor». We might also be slightly sceptical about the «poverty» of some of the plaintiffs concerned; this applies in particular to John Derley of Chaddesden, who claimed a large debt of £20 of silver against Roger FitzJohn of the same place[36]. This evidence, like that reviewed elsewhere in this section, thus supports the view that

[33] Campbell and Barry, «Population Geography», 57.
[34] Comments based on the tax charges in Glasscock, *Lay Subsidy*, 42-8.
[35] Bolland, *Select Bills*, xxvi.
[36] TNA, JUST 1/1562/189.

while litigants of modest status definitely brought cases in the eyre, they did not do so in proportion to their presence within the population at large.

4 Findings (II): the litigants

The focus in this section is on what we can learn about the litigants themselves. I concentrate primarily on the plaintiffs, given that choice of venue lay with the plaintiff. Plaintiffs elected whether and where to litigate, though of course a decision to use the eyre may have been shaped by the identity and location of an opponent.

An obvious place to start is with the gender of plaintiffs (Table 6). The proportion of cases involving at least one female plaintiff (13 per cent) is roughly what one would expect given previous work.[37] The records of pleading contain several instances of the language of coverture, the common law doctrine which stated that a married woman had no separate legal personality and was unable to sue and be sued in her own right. Most notable in this respect is a claim for a debt of six marks brought via bill by Anice, «formerly the daughter of John de Barleburgh», against William le Scrivayn of Dronfield. The reverse of the bill tells us that William's defence was that Anice had a husband at Wirksworth, named Henry Payn, the implication being that Anice was not competent to act in Henry's absence. The matter ended in non-prosecution.[38] Such evidence indicates that the eyre, as one would expect, observed coverture, and that women's involvement in personal actions was therefore restricted, as it was more generally in most law courts of this period.

	Debt-detinue	**Trespass**	**Replevin**	**Other**	**Total**	**(%)**
At least one female plaintiff	21	50	0	3	74	(13.1)
Male only plaintiff(s)	240	234	12	6	492	(86.9)
Total	261	284	12	9	566	(100.0)

Source: see Table 1.

Table 6. Gender of plaintiffs.

For the majority of litigants, the records give us a name and nothing more. In some cases, however, the presence of a descriptor attached to the name allows us to say something further about a party's status. Table 7 provides a breakdown of cases according to the status of at least one plaintiff in the case. Persons of high status, such as knights and abbots, are often encountered. «Landlords» of all kinds, ranging from nobility to parish clergy, can be estimated as representing about two per cent of Derbyshire households

[37] Briggs, «Women».

[38] TNA, JUST 1/1562/384, JUST 1/165, m. 16r. The plea roll records the plaintiff as «Alice the widow of John de Barleburgh», but we may assume it is the same case.

in this period[39]. Table 7, however, shows that such people were disproportionately prominent in bringing personal actions before the eyre, accounting for over 10 per cent of cases.

Status of plaintiff	No. cases	(%)
Institutions (including religious houses)	4	(0.7)
Parish clergy: parsons, rectors, vicars, chaplains	33	(5.8)
Other clergy e.g. deans, abbots, abbesses, priors, monks	16	(2.8)
Titled elites: *chivaler*, *miles*, *magister*, *dominus* etc.	45	(8.0)
Merchants and named trade or craft	5	(0.9)
Royal official	3	(0.5)
No status descriptor	460	(81.3)
Total	566	(100.0)

Source: see Table 1.

Table 7. Plaintiff status (no. cases with at least one plaintiff of that status).

Moreover, reliance on specific descriptors leads one to underestimate the presence of social elites. Often the names of litigants are recognizable as those of prominent county families, even where a descriptor is not included. An example is the bill in which Esmond son of William de Kniveton complained that defendants Henry the son of William the son of Henry of Kniveton, John son of Henry of Kniveton and Robert Fox of Birchover took a deed which records the grant by William de Kniveton to Esmond of six marks of annual rent from the manor of Bradley for his lifetime[40]. Similarly, the incidence of the descriptor «merchant» among the plaintiffs understates the actual presence of merchants. For example, four debt cases were prosecuted at the eyre by William de Mekesburgh of Nottingham, including one for eight sacks of wool price £80[41]. This man was almost certainly a merchant and contemporary mayor of Nottingham, but this cannot be determined from the eyre records, where he is not called «merchant»[42].

As with the place of the alleged dispute, consideration of the place of residence of plaintiffs in the personal actions highlights the disproportionately urban character of the litigation —recalling always that when we say «urban» in relation to medieval Derbyshire, small towns are meant. Table 8 shows the five most common places of residence for plaintiffs. It indicates that in nearly a quarter of the cases which provide the relevant information on domicile, there was at least one plaintiff from the town of Derby. Chesterfield and Ashbourne, probably the second and third largest Derbyshire settlements, also

[39] Calculation based on Broadberry *et al.*, *British Economic Growth*, 25-6, 317-8, and Campbell, «Agrarian Problem», 12.

[40] JUST 1/1562/26; Bolland, *Select Bills*, 90-1; for this family see Saltman, *Kniveton Leiger*.

[41] JUST 1/165, mm. 24, 51, 68.

[42] Mekesburgh seems to have been an alias of William Amyas, a leading Nottingham merchant. *Records of the Borough of Nottingham*, 423.

feature. Cases involving men from the larger town of Nottingham, many of them clearly tradesmen and merchants as we have seen, were also quite common in the eyre at Derby.

Place	No. cases with at least one plaintiff from place	% of cases (236) which give plaintiff place of residence
Derby	57	(24.2)
Ashbourne	9	(3.8)
Bakewell	14	(5.9)
Nottingham	23	(9.7)
Chesterfield	7	(3.0)

Table 8. Plaintiff place of residence, no. cases (five most common places).

Of course, there is a limit to what one can do to investigate the status of litigants using just the information in the eyre records. For over three-quarters of personal actions, we have only the name of the plaintiff and no additional descriptor (Table 7), though for some of those individuals we do have a place of residence. In order to find out more about the people involved, one would need to look for their names in other sources. The most important sources for such a task would be the rolls of manor courts, plus other manorial records. Since most of the people whose names appear in manorial material were peasants, rural craftsmen and workers, it would clearly be vital for an investigation into the litigation of the popular classes. Such a time-consuming exercise is beyond the scope of the current article, however, and in any case the surviving Derbyshire manorial records of the period are perhaps not sufficiently abundant to sustain it.

Another widely used source for the analysis of social and economic status is the lay subsidy roll, a record of contributions to royal taxation. The lay subsidies were based on assessments of movable property, with tax charges calculated as a fraction of the assessed value[43]. A relevant document exists for contemporary Derbyshire: this is a return to the lay subsidy of 1327, which lists taxpayers, many of them presumably villagers of modest means, and the tax charges they paid[44].

The problems with this source for an exhaustive analysis of eyre litigants are two-fold, however. First, the document is damaged, meaning that the names and other details of many taxpayers are missing. Second, it is a highly stereotyped return, in which 79.3 per cent of the 1,632 individual tax charges fall conveniently into one of eight rounded charges: 6d, 1s, 18d, 2s, 3s, 4s, 5s, and 6s. This artificial feature leads one to suspect that the return is not the result of a careful assessment of goods undertaken strictly according to the instructions issued to taxers.

Some use is made here of the return nonetheless. I looked at the 28 lowest value debt cases, that is, those in which sums below 40s were claimed. I also looked at 17 trespass cases in which damages of 40s or below were claimed. This gave a list of 22 plaintiffs for whom a place of residence was provided. Of these, only four can be traced

[43] Willard, *Parliamentary Taxes*.
[44] Cox, «Derbyshire» (TNA, E 179/91/6).

as taxpayers in Derbyshire in the 1327 return. We should not read too much into this small total, especially given the damage to the roll. Certainly the absence of litigants from the tax roll should not be taken as evidence that they were below the tax threshold, and hence too poor to pay.

Two of the four who can be located were plaintiffs in debt, and two in trespass. Thomas de la Pole of Ashbourne was ranked eighth equal by tax charge out of 24 taxpayers in that vill. Roger de Glapwelle', merchant of Chesterfield, was one of 26 taxpayers there. He is ranked equal second together with four others, all of whom paid 4s. Richard de Makeney of Derby was one of 92 taxpayers in the county town. Richard's ranking is 55=, placing him in the bottom half of the Derby taxpayers when arranged according to tax charge. Finally, John Bek of Swarkestone was among the five taxpayers in that vill. John is one of two paying the top charge of 2s 6d. This evidence, as far as it goes, thus tells us that those plaintiffs who brought modest claims in the eyre and are also identifiable in the subsidy roll tended to fall towards the top of the list of taxpayers in their communities when ranked by tax charge. Of the four, the only exception to this tendency is Richard de Makeney of Derby.

Another important thing the eyre records do not tell us is whether a litigant was a serf, or villein. Obviously this is crucial given the usual assumption that villeins faced serious disabilities in using the royal courts of common law[45]. Derbyshire manorial records reveal the existence of villein tenants[46]. But how far members of this status group attempted to sue in personal actions in the 1330-31 eyre is largely impossible to determine, again without laborious work aimed at linking litigants in the eyre records to villeins in the available manorial records.

Just a single case in the eyre sheds light on villeinage. This is an original bill, not traced on the plea roll, in which Nicholas Hasselland sued Roger de Lynacre over the removal of a mare, saddle, and bridle, plus other goods[47]. The notes on the reverse of the bill inform us that Roger came and said he did not need to respond to Nicholas, because Nicholas was his villein and Roger «was seised of him as a villein». Nicholas's response was to assert his free condition, and name his allegedly free forebears, a statement which was challenged in turn by Roger. At this point the parties were given a day for the matter to be heard further, but no outcome is known. It is important to note that Roger's defence was that Nicholas was *his* villein, not that he was *a* villein. If Roger's testimony can be believed, this looks like a case of a villein suing his own lord for damages consequent on a distraint of property. This case is thus compatible with the view that villeins were able in principle to prosecute personal actions without challenge in the king's courts against anyone other than their own lords[48]. That Hasselland v. Lynacre was an unusual case

45 E.g. Prestwich, *Plantagenet England*, 447.
46 Page, *Victoria History*, 162-6.
47 TNA, JUST 1/1562/288.
48 Briggs, «Seigniorial Control».

that raised interesting questions for the lawyers is suggested by the fact that it appears in several of the law reports from the eyre[49].

5 Explanations

One could argue that the Derbyshire eyre 1330-31 was an untypical common law court, and cannot stand for the king's courts more generally. Just a single eyre has been examined, falling within a period of significant challenge to order in the localities and corresponding judicial experimentation[50]. As all-encompassing demonstrations of royal legal authority in a format that was largely a distant memory by that date, the revived general eyres of 1329-31 were a kind of throwback. That said, the rich records of the Derbyshire eyre certainly provide some valuable and intriguing evidence. It was a judicial visitation that was very much open to all litigants in the locality, and to every type of case for which the common law offered remedy. Thus it should be able to tell us something about the question of popular participation.

The Derbyshire eyre did a great deal of business. Its justices sat for longer, and its records used up much more parchment than had been the case with the county's previous eyre in 1281[51]. In this overall sense it was clearly popular. If we focus just on the personal actions brought by bill and writ, which has been the purpose of this article, the total of 566 separate cases is striking. Some non-elites —albeit mainly men— did take the opportunity to use the eyre to seek remedy for comparatively minor debts and trespasses. Given the presumably rather forbidding atmosphere of the court, with its top-level judges and lawyers, it is in some respects surprising that more than a handful of people of limited means were willing and able to use it for this purpose.

However, despite the relatively large number of cases, the kind of everyday disputes and villager litigants familiar from the manor court records are hard to detect in the eyre. In the 1970s, Harding argued that the thirteenth-century eyres were characterized by large numbers of plaints (i. e. bills) brought by people of low status. He wrote that «the breakdown of the eyre system in the last decade of the thirteenth century was caused by the burden placed upon it by the poorer class of litigants. Wherever the justices went, complaints of trespass crowded in upon them»[52]. In 2005 a central element of Harding's argument was overturned by Caroline Burt, who used the plea rolls of the later thirteenth-century eyres to show that the quantities of plaints (or bills) were actually rather limited[53]. Other authorities too have been unimpressed by the claim that the eyres were overrun by a mass of bills from humble plaintiffs[54]. The numbers of plaints heard by the 1330-31 Derbyshire eyre were above the norm seen in the pre-1294 eyres. Yet for this

[49] CUL, MS Hh.2.4., fols. 280v-281r; CUL, MS Gg.5.1, fol. 235r; British Library, Add MS 5926, fols. 21v-22r.

[50] See e.g. Verduyn, «Politics».

[51] Crook, *Records*, 150, 186.

[52] Harding, *Law Courts*, 86.

[53] Burt, «Demise».

[54] Boatwright, *Buckinghamshire Eyre*, 74-6.

later eyre, too, the argument that bill jurisdiction was a route for significant quantities of lesser litigation at common law does not stand up. Larger disputes and social elites played a role as litigants that was greater than their presence in the overall population.

Even though the total of 566 personal actions is not negligible, there must have been many more dispute situations than this in existence in Derbyshire around the time of the opening of the eyre. This inference is drawn from what we know about the size of the county population, and typical rates of litigation in contemporary manor courts. Most if not all of that manorial litigation involved the «popular classes» as defined in this article. Thus it can be argued that peasants, craftsmen and wage earners had only a minor presence in the Derbyshire eyre not because they were relatively uninvolved in commercial activity and related disputes, but because they mostly took those disputes to other courts, whose records are now unavailable to us, rather than the eyre. Only a small share of the county's potential pool of litigation came before the eyre, and those cases that were brought were disproportionately likely to involve social elites.

There are a number of possible explanations for this relatively limited presence of lesser litigation and humble litigants in the Derbyshire eyre. The question of the costs of litigation is obviously important. As we have seen, the traditional view is that a bill could be presented free of charge, and I have found no evidence to contradict this. Initiation of a case by writ was a different matter, since a fee was required, though in itself this was not necessarily enough to have discouraged a suit if the plaintiff saw a particular advantage in using the eyre. When a case was pleaded this would normally have involved a serjeant, as we can glean from the law reports. Serjeants' fees added another element to the costs that had to be met by litigants[55]. Costs connected with travel to Derby may have been a more significant concern, especially for those dwelling in the hilly north of the county. This would partly explain the prominence of Derby plaintiffs. Further, the marked presence of Chesterfield, Bakewell, Ashbourne, and Nottingham in the evidence presumably reflects not only the propensity to sue in centres with urban characteristics. It must also have something to do with the fact that those places enjoyed relatively easy access to Derby along the river valleys. Costs connected with the time involved in pursuing litigation likely played a part also. A minority of plaintiffs were represented by attorneys, but the majority who sued in person presumably had to remain in lodgings in Derby while their cases were pending, or at least be prepared to return there for subsequent hearings.

A further influence upon plaintiffs was likely the uncertainty around the duration of the eyre. Litigants may have asked themselves whether they would have time to get the result they wanted before the justices disbanded. For many plaintiffs, there was never any intention that a case would be pursued all the way to trial, but equally, if an opponent could not be made to appear at all while the eyre sat, then this may have limited what might be gained by litigation. The writ of Edward III enrolled in the plea roll, discussed above, shows that it was recognized that some cases would have to be adjourned to the bench because they could not be completed in the eyre. This may have caused frustration for plaintiffs. The reports of the Northamptonshire eyre frequently stress the importance

[55] Seipp, «Legal Services», 266.

that justices and counsel attached to the provision of speedy justice[56]. No equivalent comment has been traced in the reports for Derbyshire eyre examined for this article, but it would be surprising if it was not a preoccupation of the lawyers there too and, by implication, of would-be eyre litigants.

Perhaps most importantly of all, Derbyshire's potential litigants did not *need* to use the eyre for personal actions. This comment holds good even though we can be fairly confident that the shire's other courts were suspended during the eyre's visitation. Claims over 40s in value were reserved for the king's courts of common law, so with these there was least choice in which court to use. Moreover, the eyre perhaps offered advantages for claims of this size, especially as it allowed litigants to bring them via bill as well as writ. Yet even so, litigants who intended to prosecute cases of this size knew that other royal courts, such as the bench (common pleas), would remain available once the eyre justices had departed.

It was with the smaller, sub-40s personal actions that there was greatest direct competition between the bill jurisdiction of the eyre and the county's non-royal jurisdictions. Although Derbyshire's medieval law courts have not been closely studied, and few of them have surviving records for our period, there is enough to show that like all counties, Derbyshire had the full range of non-royal courts. Each of the following can be assumed to have had the power to hear personal actions below 40s. The first to mention is the county court, which was held at Derby, and, assuming it functioned like its better documented counterparts elsewhere, was able to hear personal actions brought both by plaint and by writ[57]. Surviving court records plus other evidence demonstrate that manor courts were held across the county[58]. On the ecclesiastical side, Derbyshire was part of the diocese of Lichfield, a town that was the site of a consistory court. The county of Derby itself formed an archdeaconry court, and the dean and chapter of Lichfield also exercised special archidiaconal jurisdiction and held a court for three parishes in the Peak[59]. There were also six deaneries in the shire, presumably each with its own court. Within each wapentake there were presumably courts also, though not much evidence about these can be gleaned; the same goes for urban or borough courts in Derby and Chesterfield. Finally we must mention the barmote court, which exercised jurisdiction over pleas within the county's lead mining districts[60].

All of these were potential alternatives to the bill jurisdiction of the eyre. As the various «native» jurisdictions together formed an established part of the institutional structure of the county, they were perhaps to varying degrees seen as more approachable or attractive to its residents than the extraordinary visitation of the eyre. If this is true, it is therefore not surprising that many would-be plaintiffs seem to have preferred to wait

[56] Sutherland, *Eyre of Northamptonshire*, i, xxxi.
[57] Palmer, *County Courts*, 226-8, 312.
[58] Page, *Victoria History*, 167-8; details of surviving records via the online Manorial Documents Register.
[59] Page, *Victoria History*, 38-40; Swanson, «Economic Change».
[60] Page, *Victoria History*, 334-6; Wood, *Politics*.

for the restoration of the county's normal court activity, rather than take their chances before the itinerant justices.

6 Implications

What are the implications of my findings for the two interconnected areas highlighted in the second section of the article: the first being the relationship between access to law and the development of a market economy; and the second, the formation of the medieval state? The evidence presented here suggests that beyond the core areas of land litigation and the prosecution of crime, the social reach of the common law courts in this period was relatively limited. Most of the time the eyre was used for debt and trespass claims that were of much greater magnitude than those with which the historian of bona fide «peasant» litigation in the manor court is familiar. This is the case even though the Derbyshire eyre was a session of royal justice that was explicitly conceived as offering «justice for all», most significantly through the unusual availability of bill procedure in debt as well as trespass.

Where legal remedies related to the market economy are concerned, an investigation of the Derbyshire eyre gives the strong impression that the common law was playing a relatively muted role within the institutional framework at this date. This is because the majority of the population must have been using other jurisdictions to enforce contracts, recover debts and wages, and prosecute those who threatened their capacity to produce goods and to trade in peace. With regard to the development of the state, one may conclude that the aspirations of government did not match the realities, at least as far as debt and trespass are concerned. The king and his leading justices may have enthused about the revival of a court which had formerly brought justice (or so it was said) to rich and poor, and aspired to cater for «each and every one of our realm», as the king's writ put it. Yet when it came to the personal actions, much of the activity must have continued to go on elsewhere, beyond the horizons of the common law courts. Thus to understand the larger legal framework or «system» in which medieval society as a whole operated, it is therefore necessary to look at all court types together. This is best undertaken as a wide-ranging exploration of a single region, of the kind currently in progress for Cambridgeshire.

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