

**Property, Propriety, and Patriarchy: Abduction, Assault and
Housebreaking in the Court of Common Pleas, 1399-1500**

by

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ABSTRACT

Property, Propriety, and Patriarchy: Abduction, Assault and Housebreaking in the Court of Common Pleas, 1399-1500

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This thesis examines the offenses of abduction, assault, and housebreaking before the Court of Common Pleas in England, from 1399-1500. The evidence for this study is provided by the digitized, archived records of the Common Pleas, created by Dr. Jonathan Mackman and Dr. Matthew Stevens. The records of the Common Pleas have, until quite recently, been an untapped resource for examining the social, legal, and cultural history of medieval England. Through examining these records, I suggest the concept of patriarchal legal stewardship greatly informed how these cases were pleaded, and in what ways individuals and households could be involved in these civil suits. Research reveals that although it was mostly men who act as a stewarding plaintiff, it was possible for women to fulfill a similar role. Largely, the intersection of social status, gender and the household informed how individuals experienced the offenses of abduction, assault, and housebreaking.

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Chapter 1: Introduction

Fifteenth-century English society was characterized by the concept of “good governance.”¹ To govern well in the late Middle Ages was to both protect and provide for those who were governed, but also to provide judicious discipline in the face of misbehaviour or wrongdoing.² In the late medieval era, this concept was reflected in the structure and operation of the household. Studying the influence of governance on community roles, social standing and familial relationships in late medieval England is a complex and multi-faceted undertaking. Ideas on good governance were present in the civic structures used by government and citizens.³ Governance was also present in the formation, development and use of the common law courts. These law courts, such as the Court of Common Pleas, were used in the late medieval period to negotiate status, repair affronts to household standing, and establish guidelines of good governance for communities.

The purpose of this thesis is to examine how pleas of assault, housebreaking, and abduction cases in the Court of Common Pleas were shaped by social visions of gender hierarchy, and the personal conduct expected of persons as members of households and governors of households. The Court of Common Pleas existed not only as a forum through which heads of household could protect property and propriety, but also where they defined personal and household identity. However, the records indicate that this system of governance and patriarchal legal stewardship was not always effective in its

¹ Shannon McSheffrey, *Marriage Sex and Civic Culture in Late Medieval London*, (Philadelphia: University of Pennsylvania Press, 2006), 13.

² Ibid, 137-139.

³ Examples include the system of city aldermen. Ibid, 146 ; Sylvia L. Thrupp, *The Merchant Class of Medieval London, 1300-1500*, (Ann Arbor: Routledge, 1989), 81.

guidance of ‘good’ behaviour, and individuals sometimes did act outside of their expected roles.

Governance was a crucial concept in guiding fifteenth-century social interaction. English society following the Black Death was particularly concerned with making daily life more predictable and stable.⁴ These attempts at stabilization were present in multiple levels of society. Men and women in London were commonly encouraged by the mayor to be “of good rule and honest governance,” while the smaller unit of the household was similarly governed by the husband-father figure.⁵ The husband-father figure represented what can be referred to as hegemonic masculinity. The hegemonic masculinity of the householder figure was particularly tied to urban and burgess middling households.⁶

While societies acknowledge several different forms of masculinity, thus we speak of masculinities, there is often one form of masculinity that is dominant and more “honored” above others.⁷ In this study, gender will also be defined as a product of social practice, in an attempt to reduce the fixed, and transhistorical characterizations of masculinity and femininity.⁸ R.W. Connell and James W. Messerschmidt’s work

⁴ John Hudson, *The Formation of the English Common Law: Law and Society in England from the Norman Conquest to Magna Carta*, (New York: Addison Wesley Longman, 1996), 7-8 ; Rosemary Horrox even goes so far as to suggest “What men feared was a sudden catastrophe beyond their control.” Rosemary Horrox, “Introduction,” in *Fifteenth-Century Attitudes: Perceptions of Society in Late Medieval England*, ed. Rosemary Horrox, (Cambridge; New York: Cambridge University Press, 1994), 3.

⁵ McSheffrey, *Marriage Sex and Civic Culture*, 137 ; For further examples of good governance and good lordship, see S.B. Chrimes, *Lancastrians, Yorkists, & Henry VII*, (New York: St. Martin’s Press, 1964), 83.

⁶ Felicity Riddy, “‘Burgeis’ Domesticity in Late-Medieval England,” in *Medieval Domesticity: Home Housing and Household in Medieval England*, ed. Maryanne Kowaleski and P.J.P. Goldberg, (New York: Cambridge University Press, 2008), 28.

⁷ R.W. Connell, James W. Messerschmidt, “Hegemonic Masculinity: Rethinking the Concept,” *Gender and Society* Vol. 16 No. 6 (December, 2005): 832.

⁸ *Ibid*, 843.

informed the definition of hegemonic masculinity in this study, in that the masculinities explored are “configurations of practice created through social interaction.”⁹ According to Connell and Messerschmidt’s model, “masculinities can differ according to the gender relations in a particular social setting.”¹⁰ Hegemonic masculinity in late medieval England was normative, but enacted by only a minority of men. In respect to the interpretation of the Common Pleas records, it is clear that the male individuals that appeared before the court filled many different hegemonic and non-hegemonic masculine roles.

These roles were part of the collection of structures that informed late medieval identities, alongside geographic location, social status, and a multitude of other factors. The fulfillment of hegemonic and non-hegemonic masculinities and femininities helped to shape and define the role of the hegemonic householder and household dependents. To provide further clarity, the term “householder” will be used in this thesis to describe the person who acted as head of a household. This role had a clear legal definition, as the individual recognized by the common law as the owner or head of a house most often represented the household.¹¹ It also carried symbolic and cultural meaning: the body of the householder was a symbol for the household unit, the householder was both the spiritual and economic leader of the house, and the householder became morally and legally responsible for the activities and actions of their household dependents.¹² While a large majority of late medieval householders were men, there certainly were women who

⁹ Connell and Messerschmidt, “Hegemonic Masculinity: Rethinking the Concept,” 838.

¹⁰ Ibid, 836.

¹¹ McSheffrey, *Marriage, Sex and Civic Culture*, 20.

¹² Also, in many instances, they became both morally and legally responsible for the activities of their dependents. Ibid, 138.

fulfilled similar householder roles. The figure of the household and householder contributed to the changing face of governance and desire for stable governing in late medieval England.

The fifteenth century has previously been described as an unpredictable, unstable period, lacking in centralized authority. Earlier historians, such as Johan Huizinga, often portrayed this century as decadent, anarchic, and chaotic. Huizinga has highlighted the negative effects of the demographic crisis caused by the Black Death and the political upheaval of political change throughout Europe during the fifteenth century.¹³ In English history, this popular imagery has been supported further by Shakespeare's epic portrayal of the deposition of Richard II in 1399, and the glorious return of Henry VII in 1485.¹⁴ More recent literature, however, has suggested that the culminating factors of the Hundred Years' War, the War of the Roses and post-Black Death demographic crisis contributed to increased centralization of the king's power, and consequently, a shift in understandings of governance.¹⁵

Recent studies have also suggested that the fifteenth century was an age of ambition, in which the declining population led to rising wages and increased demand for labour on the job market. More recent literature has highlighted the growing aspirations of the bourgeois class and the ambition of urban merchants influencing the social climate

¹³ Johan Huizinga, *The Waning of the Middle Ages*, (London: E. Arnold, 1963), 25 ; William Stubbs previously made a similar argument, stating that royal government was weak at the top and center, but strong at the local administrative level. William Stubbs, *Constitutional history of England*, 5th ed. (Oxford: Oxford University Press, 1893), 267.

¹⁴ Horrox, "Introduction," 1.

¹⁵ K.B. MacFarlane's revisionist approach to the feudal relationship has greatly shaped newer approaches towards the fifteenth century. See K.B. MacFarlane, *The Nobility of Later Medieval England: The Ford Lectures for 1953 and Related Studies*, (Oxford; New York: Oxford University Press, 1973) ; K.B. MacFarlane, *England in the Fifteenth Century: Collected Essays* (London: Hambledon Press, 1981).

of the fifteenth century.¹⁶ It is also important to note that there was a contemporary understanding that the increased opportunities and better living standards came at the cost of high mortality amongst family and friends.¹⁷ The fifteenth century in England was, undoubtedly, a period of political upheaval and change that influenced understandings of power, social structure and governance at all levels of society.

The desire for stability has previously been interpreted as the product of the corrupt and dark end of the Middle Ages.¹⁸ However, functional operation of centralized government in England first developed in the fifteenth century. Following the instability of the Hundred Years' War, the role of the king and the importance of Westminster and London in the governance and operation of the kingdom increased to new levels, since the Norman Conquest.¹⁹ Rosemary Horrox claims that "[i]n late-medieval England, no-one had any doubt that governance was really about kingship."²⁰ Furthermore, scholars such as Susan Amussen have observed that the structure of late medieval (and early modern) English society was very much conducive to analogous thinking, in which the success of smaller units was reflective of the success of larger units.²¹ This marks a clear relationship between the governance of the household and the growing centralization of power around the figure of the king. Thus, the fifteenth century marks a distinct phase in

¹⁶ A.J. Pollard, *Late Medieval England 1399-1509*, (Harlow: Pearson, 2000), 188-190.

¹⁷ Horrox, "Introduction," 3-6.

¹⁸ S.B. Chrimes even went so far as to describe the political changes at the end of the century as a "Cinderella"-like transformation. Chrimes, *Lancastrians, Yorkists, & Henry VII*, xi-xii.

¹⁹ Michael Hicks, *English Political Culture in the Fifteenth Century*, (London: Routledge, 2002), 92-94.

²⁰ Christine Carpenter, *The Wars of the Roses: Politics and Constitution in England, c. 1437-1509*, (Cambridge; New York: Cambridge University Press, 1997), 27 ; See also S.B. Chrimes: "...in those days, and for centuries thereafter, the king *was* the government." Chrimes, *Lancastrians, Yorkists, & Henry VII*, 177.

²¹ Amussen "Punishment, Discipline, and Power," 5.

the evolution of the definition and understanding of governance, both at the level of the kingdom and the level of the household.

Evidence of these changes in perceptions of governance of late-medieval England can be found in the records of the Court of Common Pleas. The Common Pleas was a permanent court that had been seated in Westminster since at least the early thirteenth century. There has been a scholarly debate about the origins of this court, which will be explored in the next chapter. Despite the historiographical debate, it can be concluded that the development of the Common Pleas as a judicial body was a product of changes in kingship, governance and legal structures during the Middle Ages. The court mainly oversaw ‘civil’ cases between subject and subject, initiated by writ from the Chancery.²² By definition, the cases before the Common Pleas did not involve the king acting as plaintiff on behalf of his subjects in the interest of the peace of the realm, as was the practice in criminal courts. It was possible, however, for the king to act as an independent private plaintiff in cases involving his personal property interests, such as illegal hunting, timber thieving, etc.²³ The Common Pleas was, by and large, a court that dealt primarily with offences against property. The court had jurisdiction over rights of ownership and possession in land; debt, account, and covenant; trespass (including housebreaking, assault or abduction), maintenance, conspiracy, and breach of statute.²⁴ Furthermore, the

²² Margaret Hastings, *Court of Common Pleas in Fifteenth Century England: A Study of Legal Administration and Procedure*, (Cornell University Press: 1947; Hamden: Shoe String Press, 1971), 16 ; Jonathan Mackman and Matthew Stevens, “Introduction to the Edition,” *Court of Common Pleas: The National Archives, CP 40: 1399-1500* (2010). <http://www.british-history.ac.uk/report.aspx?compid=119287>.

²³ Ibid. <http://www.british-history.ac.uk/report.aspx?compid=119287>.

²⁴ Hastings, *Court of Common Pleas*, 16. Maintenance, trespass, breach of statute and conspiracy were also all under the jurisdiction of the King’s Bench. A more in-depth

court was a complex and highly formalized structure that “required the services of a hundred or more people to carry on its work.”²⁵

This complexity has been explored by Margaret Hastings in *The Court of Common Pleas in Fifteenth Century England: A Study of Legal Administration and Procedure*. Hastings describes the Pleas as a highly sophisticated judicial body, whose judges, lawyers, and clerks were all extensively educated, and underwent highly formal hiring procedures.²⁶ Furthermore, the Pleas had a meticulous recording system that has left a tremendous volume of records for the contemporary historian. Hastings estimates that for the entire realm in the fifteenth century, there exist almost four hundred rolls, which contain an average of about 6000 entries each.²⁷ Furthermore, until the eighteenth century, all entries were written in highly abbreviated Latin.²⁸ The unwieldy nature of these documents has been a contributing factor to the relative infrequency of studies of the Common Pleas. Historians such as Philippa Maddern and Karen Jones have used samples from the records as supplementary evidence alongside other sources in their studies of East Anglia and Kent, respectively.²⁹ Broadly speaking, social and cultural histories of late medieval England have not commonly made use of the records of this

discussion of the King’s Bench will also follow in the Historiography chapter of this thesis.

²⁵ Hastings, *Court of Common Pleas*, 59.

²⁶ Ibid, 63, 80.

²⁷ Furthermore, each roll weighs around fifteen pounds, and occupies two to three cubic feet of space. This archive contains a cumulative total of 2,400,000 entries for the entire realm in the fifteenth century. Ibid, 63.

²⁸ Mackman and Stevens, “Introduction to the Edition,” <http://www.british-history.ac.uk/report.aspx?compid=119287>.

²⁹ Philippa Maddern, *Violence and Social Order: East Anglia 1422-1442* (Oxford: Clarendon Press, 1992), 30-32, 167 ; Karen Jones, *Gender and Petty Crime in Late Medieval England: The Local Courts in Kent, 1460-1560*, (Woodbridge: Boydell Press, 2006), 36.

court to construct their studies. Legal histories of medieval England incorporate the Common Pleas much more frequently, although usually in studies of the evolution of English common law, and the mechanisms of late medieval judicial systems.³⁰

A recent digitization project funded by the U.K. Arts and Humanities Research Council has sought to make the records of the Common Pleas more accessible to researchers.³¹ Under the direction of Dr. Matthew Stevens and Dr. Jonathan Mackman, sampled cases from the Common Pleas have been translated from the original Latin and archived online.³² Mackman and Stevens outline the parameters for data sampling in this study:

[Cases must involve] London litigants or disputed events supposed to have taken place at London, heard before the Court of Common Pleas in the years 1399–1409, 1420–1429, 1445–1450, 1460–1468, 1480 and 1500 (all dates inclusive). In total [the archive] contains approximately 6,300 pleaded cases, involving over 30,000 individuals and 8,000 events.³³

For purposes of thematic continuity and research relevance, this study will focus specifically on cases that reached the pleading stage.³⁴ It is important to note that all entries (unless specified) are allegations and not decisions made by the court, as the Common Pleas very rarely recorded the outcome of cases, but rather the initial plea and

³⁰ Stubbs, *Constitutional History of England*, 276-277.

³¹ This archive was created under the AHRC-funded project 'Londoners and the law, pleadings in the court of Common Pleas, 1399–1509' (Award Ref. AR119247) and by the AHRC-funded project 'London Women and the economy before and after the Black Death' (Award Ref. RES-000-22-3343).

³² All transcriptions of the Common Pleas records within this thesis are based on Mackman and Stevens' translations.

³³ Mackman and Stevens, "Introduction to the Edition," <http://www.british-history.ac.uk/report.aspx?compid=119286>.

³⁴ All cases sampled by Mackman and Stevens reached the pleading stage.

response by the defendant.³⁵ This thesis will examine the crimes of assault, housebreaking and abduction as they directly affected the composition, security, and structure of the household, both metaphorically and physically. These parameters resulted in a final sample of 345 cases of assault, 285 housebreaking cases and 90 abduction cases.³⁶ As many allegations of housebreaking were accompanied by allegations of abduction or assault (which will be more fully discussed in chapter 5), there was overlap between these three types of offenses. These combined instances of housebreaking, abduction, and assault resulted in a sample of 720 “cases.” I refer to the cumulative number of these instances as “cases” for ease of reference, as it would be extremely difficult to separate and categorize the events that occurred between these offences.

Furthermore, although there were a wide variety of offenses against the household and household members that were heard before the Common Pleas, different cases were initiated by different writs. For instance, cases involving marriage contract litigation, taking of goods and service contracts certainly affected individuals and households, but none of these were issued from writs of trespass. It is important to note that all three of these charges were initiated in the same manner, through a writ of trespass from the Chancery (rather than a writ of debt, assize, etc.)³⁷ Examining writs of trespass ensures that all of these cases followed a similar path to get to the pleading stage before the

³⁵ This is likely due to the practicalities of recording how much revenue was generated by a case. Particular types of pleas cost a certain amount of money, and the judges, clerks and lawyers were paid through the incurred costs of initiating these cases and filing the associated paperwork. Occasionally, a monetary award for damages is recorded, but no further information is provided. For more information, see Hastings, *Court of Common Pleas*, 9, 128, 157.

³⁶ Accounting for approximately 11% of all cases from Mackman and Stevens’ digital archive.

³⁷ Hastings, *Court of Common Pleas*, 16.

Common Pleas, as other writs would have had different associated costs, and required different paperwork and procedures. Utilizing cases issued from one type of writ ensures a level of consistency for quantitative analysis between these cases. In theory, the procedures of the sampled cases cost around the same amount, they involved a similar number of court officials to initiate, and they fell under the same jurisdiction.³⁸

As this study is bound by the sampling criteria outlined by Mackman and Stevens, the population and geographic space of London greatly influenced the demographics of these cases. All cases either alleged that an offense took place within London, or involved citizens of London in other counties. People dwelling in rural areas likely would have had their litigation heard before a manorial court, and would not be included in the sampling undertaken by Mackman and Stevens unless they were involved in a suit with a citizen of London. The status of a “citizen” of London provides explanation for how and why Londoners used this court. In the late medieval period, the city’s legal franchise was structured so that freemen of London initiating legal action against other London freemen could be fined or imprisoned if they did so outside the city’s own courts.³⁹ And for London citizens, therefore, the basic distinction between the Court of Common Pleas and the city’s courts was that the Common Pleas was a venue for Londoners engaged in civil suits with non-Londoners, while the city’s courts were for Londoners suing other Londoners.⁴⁰

³⁸ Interestingly, these cases also could have been heard before either the Common Pleas or King’s Bench courts. This distinction between the Common Pleas and King’s Bench will be explored more fully in the proceeding historiography chapter.

³⁹ M. Stevens, “Failed arbitrations in the Court of Common Pleas: cases relating to London and Londoners,” *The Journal of Legal History* Vol. 31 (2010), 23.

⁴⁰ *Ibid*, 23.

This emphasis is useful, as it reflects the growing importance of centralized power in London and Westminster, and the new boundary taking shape between “London” and “non-London” in English law at the time. London was growing in population and in political power, yet its residents were not isolated in their economic, social, and legal interactions solely with other citizens of London.⁴¹ These cases indicate a relationship of negotiations occurring amongst Londoners themselves, and between residents and non-residents of the city. Studying the Court of Common Pleas during the fifteenth century means studying the negotiations in power between the people of a region that was undergoing a period of reduced economic decline and people of regions experiencing greater levels of economic decline.⁴² The growing centralization of royal power and authority in the late medieval period is complemented by a focus of the relationship of Londoners to the broader population.

This thesis is therefore situated in a relatively untouched corner of late medieval English historiography. The Common Pleas has been a relatively untapped resource for writing the social history of late medieval England. This study is not so much an examination of the social control functions of law and crime in medieval history. Rather, it is an examination of how normative and non-normative uses of violence were negotiated between governmental authority and the population of England, and an exploration of the people who used the developing legal structures of the fifteenth century. Individuals and households used the Court of Common Pleas to establish

⁴¹ Gervase Rosser, “London and Westminster: The Suburb in the Urban Economy in the Later Middle Ages,” in *Towns and Townspeople in the Fifteenth Century*, ed. J.A.F. Thomson, (Gloucester: Alan Sutton Publishing, 1988), 56.

⁴² D.M. Palliser, “Urban Decay Revisited,” in *Towns and Townspeople in the Fifteenth Century*, ed. J.A.F. Thomson, 17-18.

household authority, to negotiate identity and to protect property and status. These themes will be examined by firstly exploring the relevant literature on governance, gender, the household and the medieval state. This historiographical discussion will be followed by an analysis of the role of household governance, structure and composition in cases of abduction, assault, and housebreaking. The analysis of these cases demonstrates that the organizational structure of the household permeated late medieval society; it helped to form personal identity, and served as a broader analogy for state authority and governance.

Chapter 2: Historiography

Studies of the development of the common law system have long been an important part of the historiography of medieval England. The various uses of the common law, the establishment of the English court system, and the development of the legal mechanisms of the common law have all been used to explore themes of power, royal authority and governance in post-Norman conquest England. The ways in which scholars have interpreted the legal history of England, however, has changed quite notably over the past one hundred years of history writing. Although initial interpretations of legal history centered on a top-down model, and explored the change and growth experienced by the monarchy, interpretations have shifted in recent years towards using the law to explore the social history of England. It is the same intent of this thesis to use legal records to explore the social relationships and social structure of late medieval England.

In the Middle Ages, the establishment of formalized law codes helped to dictate social relationships, and can therefore illuminate the social history of the period. As the medieval historian is confronted with a scarcity of surviving primary source evidence, much understanding of the social and political history of the period must be drawn from the evidence left behind in the form of legal charters, court records and law treatises. Medieval legal documents reflect the values and interests of those who wrote them. The process of creating these documents did help to resolve conflict and establish order, but also highlighted the social processes and cultural contexts of the society that produced them. The ways in which these contexts and processes can be understood has undergone a hefty amount of historical analysis, producing a great deal of scholarship on medieval

legal culture. Historians since the late 1970s have considered the particular way that legal documents can reveal the interacting social relationships that produced that document.¹

Historians relying upon legal documentation to construct a narrative of the past highlight the functions and expressions of centralized power. This methodology can also explore those who are excluded from participating in these hegemonic power structures. Law and legal culture in medieval England reflects social and political circumstance. The complexity of the medieval era is revealed through the mutable definitions of violence, crime, governance, the household, and gender that characterize the period. None of these concepts remain static or unchanged for the duration of the medieval period. Particularly, a marked shift in understandings of these concepts began to occur during the late Middle Ages. The development of centralized legal systems particularly reveals a great deal about cultural assumptions concerning violence, crime, the state, the nature of “justice,” and cultural understandings of gender. Furthermore, the advent of the Court of Common Pleas represents a new attention to the growing interests of property-owning heads of household, civic government leaders, royal authority, and a shifting emphasis on the role of law in late medieval English culture. This historiography will explore the breadth of research on the intersections of the household, gender, governance and the common law system in late medieval England.

Firstly, the role and presence of violence in medieval society will be analyzed to help clarify why certain centralized formal court systems developed throughout the

¹ Barbara Hanawalt’s work in particular helped to shape this form of historical analysis. Shulamith Shahar, *The Fourth Estate: A History of Women in the Middle Ages* (New York: Routledge, 2006), 22 ; A good example of this type of early study is Barbara Hanawalt, *The Ties That Bound: Peasant Families in Medieval England* (New York: Oxford University Press, 1986).

Middle Ages. A brief history of post-Norman invasion English legal history and the development of the Court of Common Pleas will be provided for foundational context. Alongside this will be an examination of the governmental and economic structures of London in the fifteenth century. The structure of the household in late medieval England will also be explored to provide context for the uses of and demands on the common law system. Additionally, the role of gender in medieval understandings of law and crime will be analyzed to illustrate the numerous and complex facets of the application of law, justice, and governance in the medieval era. Examples from the early modern period will also be used as they provide useful frameworks for understanding law, gender, governance and society in late medieval England.²

Violence, Society and the Medieval State

The relationship between violence and state formation in the medieval period will be explored in this historiography for two reasons. Firstly, the relationship between violence and the medieval state helps to explore the ways the use of violence was both sanctioned and unsanctioned, and made lawful and unlawful. Late medieval England, in particular, had a complex, and multi-faceted relationship between violence, society and governance. As previously mentioned, the work of Susan Dwyer Amussen helps to illustrate the analogous layers of governance in late medieval English society. Sanctioned uses of violence on the scale of the state reflected sanctioned uses of violence within the unit of the household. Therefore, the broader context of studies on medieval European

² Sara Butler has also made this distinction. She also specifies while theories and frameworks are appropriate to use interchangeably between early modern and medieval studies, statistics cannot be applied across periods in this manner. My study will also employ this same methodology. Sara Butler, *The Language of Abuse: Marital Violence in Later Medieval England* (Leiden: Brill, 2007), 4.

violence and state-formation elicits a stronger understanding of why English common law sought to rectify violent conflicts between the crown, individuals and households.

The role of violence and honour in medieval European society influences the ways in which legal development can be understood. Claude Gauvard's examination of the relationship of violence to medieval society provides particularly useful frameworks of analysis. Under Gauvard's anthro-historical approach, violence is not a fringe activity but rather forms a core component of social relationships and rests at the "heart of conflicting relationships that ordinary men could have amongst themselves."³ Gauvard contests characterizations of the medieval person as inherently violent. Rather, she constructs a picture of medieval culture as being inherently honour-bound.⁴ This means that social significance and value is derived from public standing, and can be felt by individuals at all levels of society. Gauvard suggests a dialogue between the king and people in the regulation of acts of violence, rather than subscribing to one side of the traditional top-down/bottom-up dichotomy so often seen in this historiography.⁵ It is not exclusively the king and chivalric elite composing law codes, but rather a discursive practice occurring at all levels of society, reflecting the desire for public order and maintenance of personal honour.

Gauvard further defines violence as a form of defense of one's honour, although the definition of appropriate defense of honour changed over the fourteenth and fifteenth centuries.⁶ Defense of honour can be found performed by the king, amongst the nobility,

³ Translations from French are my own. Gauvard, *Violence et ordre public au Moyen Age* (Paris: Picard, 2005), 16.

⁴ Ibid, 13-16.

⁵ Ibid, 80, 163.

⁶ Ibid, 275.

and amongst average people.⁷ Furthermore, Gauvard suggests that “Violence” as a term was not used until the end of the medieval period.⁸ Violence did not begin to be conceived of as a broad spectrum of offenses until the late medieval period, when state centralization began to increase.

Gauvard’s model is applicable beyond fourteenth- and fifteenth-century France for its theoretical aspects alone. Although her thesis relates directly to a civil law system, it provides several useful theories that can be applied to parallel English examples from the same period. These discursive and honour-bound models can help to explain how and why demands for a formal, centralized court system began to take shape during the Middle Ages. Her effort to “understand the link between the development of justice and the birth of the State” suggests that medieval violence was a product of an honour-based culture, and responses to this violence helped to construct judicial and political systems.⁹ Ultimately, Gauvard suggests that although violence was the most immediate way to respond to a public insult against personal honour, this does not suggest a deficiency in the power of the state.¹⁰ Rather, it is indicative of the important role of personal and household honour in late medieval law codes. Demands for responses to acts of violence in court stabilized public order, and indicated the presence of both legitimate and illegitimate forms of violence in the medieval era.

A similar approach to this understanding of medieval violence can be found in Philippa Maddern’s *Violence and Social Order: East Anglia 1422-1442*. Maddern’s

⁷ Gauvard, *Violence et ordre public* 244-247.

⁸ Ibid, 273-275.

⁹ Ibid, 80.

¹⁰ Ibid, 83. An additional note: There were the very low rates of capital punishment for the crime of homicide (Paris being an exception).

monograph largely is concerned with refuting the previous portrayal of violence in fifteenth-century England as demonstrating the weakness of central royal authority.¹¹ Rather, she suggests that violence in this society was praised. Medieval violence had permissible and non-permissible variations, particularly exemplified through the contrast between execution and homicide. Maddern summarizes the relationship of violence, society and the courts thus: “the courts were not mere engines for the punishment or redress of wrongs; they were the forum in which fifteenth-century gentry... proved their status- rightly or wrongly, holding property, strong or weak, influential or powerless- before the intent gaze of their peers and dependents.”¹² Maddern sees medieval violence sustaining the hierarchical order, and flowing downwards, meaning that women, servants, and children were most likely to feel the effects of violence. Violence was a means of maintaining order at a variety of levels of governance in late medieval England, from the household to State-sanctioned executions. Furthermore, State-sanctioned forms of violence, like executions or forms of violence in warfare were permissible and not punishable by law. Both Gauvard’s and Maddern’s definitions of violence help to contextualize the use of violence in late medieval society, and provide frameworks for understanding cases from the Court of Common Pleas.

The English Common Law System and the Court of Common Pleas

To analyze the advent of formalized legal culture to English contexts, these models of development can be applied to the historiographical debate surrounding how and when the English common law system began to take shape. Traditional historical narratives put forward by legal historians such as F.W. Maitland and R.C. Van Caenegem

¹¹ Maddern, *Violence and Social Order*, 11.

¹² Maddern, *Violence and Social Order*, 67.

postulated that common law first emerged in a recognizable form during the reign of Henry II, and in the creation of the Angevin empire.¹³ The history of common law, under Maitland's model, largely served a descriptive purpose- chronicling the advent of new laws and legislation, landmark decisions by the courts, et cetera.¹⁴ Maitland also directly attributes the rise of a permanent Common Pleas Court at Westminster to the long absences of Henry II and Richard I, being further expanded from the five justices appointed by Henry II in 1178.¹⁵ This court slowly became distinct and separate from the King's Bench due to increased business in the financial and judicial work undertaken by the courts.¹⁶ William Stubbs framed the advent of the Common Pleas as a result of administrative disorder and a "failure of justice" in the 1450s.¹⁷ This era of English medieval historiography is characterized by portrayals of legal administrative weakness at the top and center, but stronger administrative agencies at the local level.¹⁸

John Hudson, in his book *The Formation of the English Common Law*, identifies the age of Anglo-Norman rule as the period that marks the beginning of the English common law's development.¹⁹ Hudson argues that by the reign of Henry I the Norman kings had managed to create an integrated court system. Additionally, in a departure from traditional narrative, Hudson argues that law, legal rules and courts do not exist as

¹³ Hudson, *The Formation of the English Common Law*, 19-21 ; R.C. Van Caenegem, *The Birth of the English Common Law* (Cambridge: University of Cambridge Press, 1988), 12.

¹⁴ Frederic W. Maitland and Francis C. Montague, *A Sketch of English Legal History*, (New York: AMS Press, 1915; 1978), 31.

¹⁵ Ibid, 36 .

¹⁶ Ibid, 34.

¹⁷ Stubbs, *Constitutional History of England*, 276-277.

¹⁸ M. Stevens, "Failed arbitrations in the Court of Common Pleas," 25 ; Stubbs, *Constitutional history of England*, 275.

¹⁹ Hudson, *Formation of the English Common Law*, 22.

separate conceptual or institutional categories at this time.²⁰ Within this argument, the Magna Carta is contextualized alongside other legal developments to explore whether or not a real 'common law' had emerged in England by 1215.²¹ Jurisdictional ruling was fluid, and the county, seigneurial, royal and the hundred courts were sharing many of the same procedures and customs by this point.²² Even more specifically, Hudson argues that the birth of the Common Pleas occurred with the specific provision in the Magna Carta that “common pleas shall not follow our court, but shall be held in some specified place.”²³

This directly disputes Maitland and Van Caenegem’s interpretation of Henry II’s role as the great reformer of the English common law, and places the formation of the Common Pleas court nearly 40 years later.²⁴ Beyond this, it can be said with certainty that a formalized English common law system had certainly arisen by 1236.²⁵ What appears to be the most important theme in the growth of medieval legal jurisdiction is the dispensing of justice from a centralized royal authority. If Hudson’s model of legal development is followed, the growth of the English common law system can be interpreted as a product of increasing centralized strength and a desire to maintain “the king’s peace”.²⁶

The development, growth, and use of the Court of Common Pleas in the fifteenth century are unique in medieval legal history. Only in medieval England did two central

²⁰ Hudson, *Formation of the English Common Law*, 49-50.

²¹ Ibid, 224.

²² Ibid, 40.

²³ Ibid, 224.

²⁴ Ibid.

²⁵ Ibid, 239.

²⁶ Ibid, 84.

law courts with overlapping jurisdictions appear, with the Common Pleas at Westminster, and the mobile King's Bench court.²⁷ Both of them operated under common law, followed the same procedures, and performed much of the same work. Gradually, over time, the Common Pleas became the central venue of civil litigation, whereas the King's Bench involved a mixture of civil and criminal proceedings. The Common Pleas shared with the King's Bench jurisdiction over all cases originating from writs of breach of statute and trespass.²⁸ Margaret Hastings describes the Common Pleas as having reached its heyday in the fourteenth and fifteenth centuries, resulting in a massive amount of written records from the time period.²⁹ There is a particular increase in volume for the records from the fifteenth century- this could indicate an increased culture of litigiousness, a desire for publicized conflict resolution, as Smail has suggested, or could be a product of improved methods of enrollment and recording.³⁰

Following the fifteenth century, the Common Pleas eventually diminished in importance and saw a gradual reduction in number of cases, before ceasing to exist following the Judicature Act of 1873.³¹ The two rival central institutions most likely to have taken business away from the Common Pleas were the common law court of the King's Bench and the Exchequer of Pleas, but neither is likely to have done so frequently

²⁷ Ralph V. Turner, "Origins of the Common Pleas and King's Bench," *The American Journal of Legal History* Vol. 21 No. 3 (July 1977): 237.

²⁸ Stevens, "Failed arbitrations in the Court of Common Pleas," 25.

²⁹ Hastings, *Court of Common Pleas*, 8.

³⁰ Ibid, 7. ; Stevens, "Failed arbitrations in the Court of Common Pleas," 23.

³¹ J.H. Baker, *An Introduction to English Legal History*, 38.

before the late fifteenth century.³² Ralph V. Turner suggests that, contrary to previous historiography, the growth of institutions in medieval England was highly complex.³³

Turner characterizes the development of the Common Pleas as a product of increasing government specialization and increasing governmental strength. Edward Powell offers a differing interpretation, suggesting instead that the Crown lacked the resources to enforce a primarily punitive form of justice.³⁴ He argues that the ability of the court to coerce individuals into obeying its decisions was weak in the fifteenth century, and the influence of the community was powerful. Powell sees a weakness of centralized authority leading to more mediatory functions of justice over punitive forms of justice.³⁵ However, this interpretation of the fifteenth century is characteristic of an earlier mode of historiographical interpretation, since contested by scholars like Maddern and Hudson. Turner's interpretation of the development of the Common Pleas aligns with more recent historiography, evidenced through an increased interest on the part of royal authority in strengthening its monopoly on violence.³⁶ The development of a new court necessitated the ability to also enforce the decisions made by that court. Therefore it meant that the creation of new law courts like the Common Pleas reflected the state's desire to assert authority over permissible uses of violence.³⁷ The formation and growth

³² Stevens, "Failed arbitrations in the Court of Common Pleas," 33

³³ Turner, "Origins of the Common Pleas and King's Bench," 239.

³⁴ Edward Powell, "Settlement of Disputes by Arbitration in Fifteenth-Century England," *American Society for Legal History* Vol. 2 No. 1 (Spring 1984): 22.

³⁵ *Ibid*, 17.

³⁶ Max Weber, "Politics as a Vocation," in *From Max Weber: Essays in Sociology*, ed. H.H. Gerth and C. Wright Mills (Routledge: 1991), 78.

³⁷ John Bellamy, *Crime and Public Order in England in the Later Middle Ages* (Toronto: University of Toronto Press, 1973), 1, 7-12.

of the Common Pleas in the fifteenth century was partially reflective of changing social attitudes towards the role of violence in governance and state formation.

Gender, The Household, and Governance

The ways in which these newly emerging law courts dealt with crime and violence helps to illuminate their intended purpose and the social concerns of the societies creating these legal systems. Particularly, the development of a gendered approach in discussing social effects of new legal systems illustrates a new field of medieval legal historiography. In terms of the methodological approaches in medieval social and cultural history, a post-modernist perspective informs the work of the vast majority of scholars. Many studies in this field analyze the social control and regulatory function of the law, and how this contributed to female and male experiences in the late medieval period. A clear example of the developing post-modernist and linguistic theory approach can be found in the anthology *Medieval Women and the Law*, edited by Noël Menuge.³⁸ These new lenses have incorporated useful methodologies from other disciplines to provide new understanding of the intersectional and diverse experiences of women in the Middle Ages.

New historiographical questions have been raised concerning how medieval law courts dealt with perpetrators of crime as gendered individuals. Karen Jones' examination of the effects of gender on English local courts in *Gender and Petty Crime in Late Medieval England: The Local Courts in Kent, 1450-1560* provides interesting conclusions about how social control was exercised, and how it had an influence upon men and women. One of Jones' most notable conclusions is that women were not

³⁸ Noël Menuge, ed. *Medieval Women and the Law* (Woodbridge: Boydell Press 2000).

prosecuted for theft as frequently as men.³⁹ Interestingly, her study also reveals that both men and women were rarely treated with the severity that the law promised to deliver for these offenses.⁴⁰ Throughout the book, Jones examines gendered aspects of crime for both men and women, and also rebuilds an image of the social structure of late medieval Kent. Not surprisingly, women were excluded from public political activity and decision-making in the court system.⁴¹ However, Jones successfully demonstrates that men were tried for homicide much more frequently, and additionally suffered from “status anxiety” based on their ability to exert control on the familial level.⁴² Within this model, we can see echoes of the analogous types of governance and control suggested by Amussen, Gauvard, Maddern and others. Transgression of social and gender boundaries by a subordinate (i.e. female or servant) member of a household indicated a lack of control on the part of the householder.⁴³

The portrait of the local common law courts that Jones creates definitely reflects a society using their law courts as a means of maintaining public order and morality.⁴⁴ The law courts of late medieval England served as an expression of a culture with a strong public/private dichotomy in terms of the participation of women. In addition to this dichotomy, Jones’ study produces interesting results in terms of the actual prosecution of crimes of theft and violence. The concern for household and personal honour influenced how England’s courts were used, and how frequently they were used. Alongside this, an increasing use of violence by the state and decline in reciprocity in the feudal system

³⁹ Jones, *Gender and Petty Crime in Late Medieval England*, 49.

⁴⁰ Ibid, 49, 82.

⁴¹ Ibid, 199.

⁴² Ibid, 209.

⁴³ Ibid, 97.

⁴⁴ Ibid, 203-205.

yielded a highly gendered application of the law to men and women, and to individuals from varying social strata.

The composition and structure of the household in late-medieval England had enormous influence on the activities of individuals of each gender, and how these individuals interacted with other households. C.M. Woolgar's study of late medieval English households suggests that a great deal of change to the structure of the household began to occur in the late fourteenth century as a product of demographic disruption post-Black Death.⁴⁵ Woolgar also points to new forms of royal reverence practiced in the court of Richard III, in that "[r]oyal magnificence and ritual were emulated in lesser households".⁴⁶ His work suggests another top-down interpretation, where the units of late medieval society mimicked and served as analogies for their social superiors. In the later Middle Ages, according to him, there was an increasing sense of importance associated with having a London house for the bourgeoisie. Furthermore, the role of the servant changed considerably, moving towards more domestic duties rather than farm or outdoor labour. As the importance of urban dwellings grew, the physical size of the house began to decrease. Female presence also began to increase in the household both in terms of servants and service, and female control of domestic arrangements.⁴⁷ Woolgar also suggests that social distance between servant and employer increased with the intimacy of surroundings.⁴⁸ A rigid and structured set of social conventions for living in quarters with superiors and inferiors developed in this time period, not necessarily denoting a

⁴⁵ C.M. Woolgar, *The Great Household in Late Medieval England* (New Haven: Yale University Press, 1999). 18-19, 198.

⁴⁶ Ibid, 198.

⁴⁷ Ibid, 202.

⁴⁸ Ibid, 197.

public/private dichotomy, but more reflecting the forms of royal reverence practiced by elites. The structure and function of the household underwent significant change during the later Middle Ages, and had further implications for gender roles and participation in civic life.

The collection *Towns and Townspeople in the Fifteenth Century*, edited by J.A.F. Thomson, further explores the effects of these changes on the urban household. P.J.P. Goldberg's chapter identifies an increasing level of legal restrictions on women participating in the economic life of towns, and states that it was rare for a woman to gain a position of authority.⁴⁹ Goldberg's essay on the roles of women in urban life particularly demonstrates the changing roles of the servant, and the increasing household role of the wife, previously discussed by Woolgar. He points out that in many larger towns nearly a third or more of all households employed servants, and that service is likely how most people spent the years between childhood and adulthood (from the age of twelve onwards). He further explores how "the daughters of the mercantile elite...appear to have gone into service in like households," suggesting that servitude did not necessarily denote class difference.⁵⁰ Goldberg demonstrates that both male and female servants were employed in non-elite households, but, "in the generally wealthier mercantile households, however, servant groups became increasingly feminized."⁵¹ This is an interesting trend, echoing Woolgar's theory on the increased feminization of the

⁴⁹ J.A.F. Thomson, "Introduction", in *Towns and Townspeople in the Fifteenth Century*, ed. J.A.F. Thomson, x-xi.

⁵⁰ Ibid, 113.

⁵¹ Woolgar, *The Great Medieval Household*, 114 ; Barbara Hanawalt disagrees with this interpretation, stating that male servants were "favoured" over female servants. Barbara Hanawalt, *Growing Up in Medieval London* (New York: Oxford University Press, 1993), 179.

household in the fifteenth century.⁵² Goldberg further posits that during the fifteenth century, society became more socially polarized, that women were more clearly subordinated to men, and quite explicitly, “that society became more patriarchal.”⁵³ This increased sense of social rigidity can be found mirrored in scholarship on urban living, the household and marriage.⁵⁴

Shannon McSheffrey’s study of marriage in late medieval London provides a lens through which the themes of gender, the household and governance in the late medieval period can be explored. The effect of the changes in the common law system in the fifteenth century can be seen expressed in the units of the married couple and household. McSheffrey argues that governance itself was gendered and that patriarchy regulated the community and the household. Under the broad umbrella of civic government, men were required to govern themselves, including controlling their sexual impulses, whereas women were required to submit to male authority, which also included regulating their sexuality.⁵⁵ McSheffrey argues that “[g]overnance was seen as a crucial concept in fifteenth-century notions of appropriate social comportment. Men and women were commonly enjoined by the mayor and the aldermen of London to be ‘of good rule and honest governance’.”⁵⁶ Households were ruled by the husband-father figure, and by extension, the government and city were ruled in a similar fashion, further exemplifying

⁵² The potency of this social change will later be explored in Chapter 5, “Housebreaking and the Common Pleas”.

⁵³ Woolgar, *The Great Medieval Household*, 122.

⁵⁴ Rosemary E. Horrox, “The Urban Gentry in the Fifteenth Century,” in *Towns and Townspeople in the Fifteenth Century*, ed. J.A.F. Thomson, 24 ; Stephen H. Rigby, “Urban ‘Oligarchy’ in Late Medieval England,” in *Towns and Townspeople in the Fifteenth Century*, ed. J.A.F. Thomson, 69.

⁵⁵ McSheffrey, *Marriage Sex and Civic Culture*, 175 and 188-89.

⁵⁶ *Ibid*, 137.

the analogous nature of governance in the late medieval period. The duties of the household patriarch included involvement in civic politics, governance of social relationships in the neighbourhood, and responsibility for the conduct of those living in the patriarch's household.⁵⁷

Male authority extended beyond the household, turning private matters of sex and marriage into public issues of governance and communal order. McSheffrey herself summarizes: "...bonds of marriage and sex were simultaneously intimate, deeply personal ties and matters of public concern, subject to intervention by everyone from a woman's or man's family, friends, and employers to the mayor of London himself."⁵⁸ Appropriate marriages were a prerequisite for stable, well-regulated households, in which every person had a specific role to fill to guarantee a functioning social order. Within this microcosm, order in the household helped to guarantee a wider social order. The householder made a key contribution, bearing responsibility for the state of his own marriage, his wife's behaviour and reputation, and the sexual encounters and marriages of his dependents. But he was also responsible, as a member of a local community, for helping to ensure that others met their obligations too, by criticizing and reporting their failures.⁵⁹ McSheffrey therefore illustrates how the modern dichotomy of public/private was nonexistent for the concept of marriage and sexuality in late medieval London.

Sara Butler provides support for a similar conclusion in her examination of marital violence. Violence stemmed from an unresolved issue in medieval masculinity: medieval society expected men to regulate and control their wives' behavior, and

⁵⁷ McSheffrey, *Marriage, Sex, and Civic Culture*, 151, 156.

⁵⁸ *Ibid*, 4.

⁵⁹ *Ibid*, 151.

therefore justified men's use of physical force to do so.⁶⁰ Corrective violence as a tool for household governance was acceptable when used by the head of the household. By logical extension, this reflected social perceptions of acceptable use of violence in governing by both local authorities (such as town magistrates) and centralized authorities (such as the King). This dovetails nicely with Maddern's definition of the "moral hierarchy of violence", wherein violence could be acceptable if it was used to enforce hierarchical order. Furthermore, this very much fits with Max Weber's definition of the state as a unit that has successfully claimed authority over legitimate uses of violence.⁶¹ The household itself is a form of state governance exerting control through this monopoly on acceptable violence use. Butler's study makes the important point, however, that while a crucial element of medieval masculinity was the ability to govern one's household, the use of excessive force might be a sign of failure of a man's inability to govern his wife properly.⁶² What McSheffrey and Butler ultimately achieve with their respective studies is an examination of how the functional expressions of the law were related to late medieval understandings of gender roles. During the fifteenth century, the developing concepts of local government specialization, centralized authority, and increasingly rigid social structure all contributed to the gendered roles assigned to individuals in the governed medieval household.

Common law can be interpreted as a reflection of the concerns and values of the culture that created it. The enactment and creation of these laws has been heavily debated in this historiography, with the majority of historians subscribing to either a top-down

⁶⁰ Butler, *Language of Abuse*, 35-36.

⁶¹ Weber, "Politics as a Vocation," 77-79.

⁶² Butler, *Language of Abuse*, 265.

interpretation, where the king and ruling elite create and impose legal systems; or a discursive, negotiative interpretation, where there is an integration of the demands of the populace in the writing of law codes. This historiography suggests that a growing concern for personal and household honour contributed to the creation of the common law system. The consideration of the medieval era as one revolving around a culture of honour helps to identify why the use of violence was so prevalent and permissible. When one's good standing, or *fama*, was threatened by injury (physical or otherwise), it was acceptable to respond to this injury through physical or verbal violence.⁶³

It is partly from the regulation of permissible forms of this violence that medieval law courts sprung. The administration of common law courts required effective governance, whether centralized, localized, or within the household. The application and use of medieval law courts (particularly in England) to deal with injurious activity suggests a culture very sensitive to the process of social control. Overall, the role of violence in the culture and legal systems of late medieval England appears to be one of both cause and effect. The presence of violence being used to assert and maintain honour necessitated the response and regulation of permissible forms of violence. Additionally, the common law system entrenched certain types of violence (like execution and trial by battle) to be non-punishable. Similar acceptable forms of violence were used within the patriarchal household system to enforce order and rank, but also to defend honour and reputation. The concepts of honour and personal reputation very much contributed to the increasing rigidity of social order that developed in late medieval England, and expressed itself through the types of household controls discussed by Shannon McSheffrey, Sara

⁶³ Thelma S. Fenster and Daniel Lord Smail, ed. *Fama: The Politics of Talk and Reputation in Medieval Europe* (Cornell University Press, 2003).

Butler, Philippa Maddern and others. Definitions of gender, governance and the household were very much influenced by the changes in legal structure observed during the fifteenth century.

Chapter 3: Abduction Cases in the Court of Common Pleas

Introduction

All abduction cases in the Common Pleas stemmed from a writ of trespass requested from the Chancery by the plaintiff or the plaintiff's attorney.¹ While abduction in the late medieval period has frequently been characterized as a display of coercive force or rape perpetrated by a man against a woman, the sampled cases in this study demonstrate different trends.² Larger and more extensive studies by Barbara Hanawalt, Caroline Dunn, Gwen Seabourne, Shannon McSheffrey and others have demonstrated a general pattern in medieval criminal abductions (particularly in England): the victim is most often female and marriageable, there is not an explicit mention of sexual violence committed against her, but she is described as having been abducted and married against her will.³

While this may be the general trend, the Common Pleas records indicate a different narrative. Cases of abduction represent the least frequent of the crimes sampled in this study, with a total of 90 cases. There certainly are a small number of cases that involve the abduction of heirs and heiresses, and cases that express concerns over coerced marriage and property inheritance. However, the majority of the cases are directly concerned with the employment within, and composition of, the household in late

¹ Hastings, *Court of Common Pleas*, 16.

² Gwen Seabourne, *Imprisoning Medieval Women: The Non-Judicial Confinement and Abduction of Women in England, c. 1170-1509* (Burlington, VT: Ashgate, 2011), 93.

³ Abduction victims were marriageable, in that they were either over 13 or were widowed. Julia Pope, "Abduction and Power in Late Medieval England: Petitions to the Court of Chancery, 1389-1515," Master's Thesis (Concordia University, 2002), 1 ; Sara M. Butler, *Language of Abuse*, 85 ; Caroline Dunn, *Stolen Women in Medieval England: Rape, Abduction, and Adultery, 1100-1500* (New York: Cambridge University Press, 2013), 15.

medieval London. The majority of abduction cases involve the abduction of servants, particularly male servants. This presents an interesting difference from typical trends seen in other abduction studies, as the abduction of a servant was an affront to the successful operation of a household.⁴ The low ratio of non-servant female abduction in comparison with other demographic groups is likely due to the fact that the Common Pleas was a civil court. The abduction of women was perceived as more criminal; therefore this likely resulted in a far higher number of abduction cases being presented before criminal courts as a felony, rather than before the Common Pleas as a civil offense.⁵

Abduction of household members represented an affront to householder authority. A post-Black Death demographic crisis contributed to a growing concern about household structure. At the start of the fourteenth century, the first wave of the Black Death in England produced enormous economic and social change, in both urban and rural areas. The start of the fourteenth century saw a growing and thriving urban life, a revival of long-distance commerce revived, and a population boom.⁶ London rose to dominance in the southeast during this period, with an estimated population of 70,000 people.⁷ The demographic disaster caused by the Black Death coincided with the start of massive economic changes that began in the late fourteenth century, and later characterized the fifteenth century: namely the over-inflation of currency, and rising worker's wages.

⁴ In that, the majority of abduction victims are female. See Dunn, *Stolen Women*, 8.

⁵ Caroline Dunn also suggests that alleging wife-theft through civil suit allowed husbands to expose their wives' wrongdoing, and to thwart their later property rights. Ibid, 152.

⁶ Some estimates suggest that England's population doubled or tripled in this time period. Pollard, *Late Medieval England 1399-1509*, 177-179.

⁷ Pollard, *Late Medieval England 1399-1509*, 180-181.

As the Black Death began to produce higher demand for labourers' work, and a subsequent rise in wages, the literate elite grew disgruntled with the disintegrating social and economic order. Contemporary commentators condemned their present in which land lay unplowed and only the immediate fear of hunger could encourage a lazy, disrespectful, drunken peasant to do a moment's work.⁸ There is certainly some truth to the depiction of unploughed fields and unused land- the catastrophic population loss led to the abandonment of less attractive farm land, and even the wholesale desertion of villages.⁹ Some estimates suggest that more than 1300 English villages vanished between 1350 and 1500.¹⁰ These desertions could have been the product of a village's entire population dying, the enclosure of pastures by landlords reducing the sustainability and desirability of living in that village, or the mobility of peasants seeking higher wages. These peasants sometimes moved to other rural areas, but also occasionally moved to large urban centres, like York and London.¹¹ This moving population, from rural areas to urban centres, greatly influenced the ability of large English cities to comparatively withstand the economic hardship of the fifteenth century.¹²

Elite fears over the implications of this mobile population were gradually expressed through legislation. The Statute of Labourers was created by the English parliament in 1351 in response to these fears.¹³ It was specifically designed to prohibit increases in wages and to prohibit the movement of workers from their home areas in

⁸ Ibid.

⁹ Robert Gottfried, *The Black Death: Natural and Human Disaster in Medieval Europe*. (New York: Free Press, 1983), 41.

¹⁰ Ibid, 41-42.

¹¹ Palliser, "Urban Decay Revisited," 6.

¹² Ibid, 16 ; Rosser, "London and Westminster: The Suburb in the Urban Economy in the Later Middle Ages," 45.

¹³ Pollard, *Late Medieval England 1399-1509*, 186.

search of improved conditions¹⁴ The Statute forbade workers to leave their employment without good cause, at the risk of imprisonment. The influence of these social fears and legislative changes was reflected in cases of abduction before the Common Pleas.¹⁵ Social elites clearly had a desire to maintain the labour assigned to a property or household in the late medieval period. The loss of a worker's labour represented an upending of authority, and a challenge to household structure and householder governance. Alongside this, the application of abduction legislation to these cases was related to late medieval understandings of gender roles. Householder authority extended beyond the reaches of household, turning the currently conceived of private matters of marriage, household composition, and sexual behaviour into public issues of governance and communal order.¹⁶

Terminology and Historiography

The terminology of abduction itself has presented a number of issues in the historiography of this topic. Caroline Dunn has suggested that *rapere* is one of the most ambiguous legal terms in medieval England, stating that, "When an individual seized (Latin *rapuit*) a woman or stood accused of her seizure (*raptus*), the term's multivalent connotations mean that the offense might conform to either or both of our modern legal categories of rape and abduction."¹⁷ The divide between rape and abduction occurring

¹⁴ A. Luders, et al., *Statutes of the Realm 1101-1703*, 11 Vols. (London. 1810-28), 307-308. Reprinted in Rosemary Horrox, *The Black Death*, (Manchester and New York: Manchester University Press, 1994), 287.

¹⁵ The Statute of Labourers is invoked by name in a case of assault, involving the servant Agnes Frere and her former employers. However, the Statute of Labourers is never explicitly mentioned in cases of servant abduction. This will be discussed in more detail in the following chapter, Assault and the Court of Common Pleas.

¹⁶ McSheffrey, *Sex, Marriage and Civic Culture*, 137.

¹⁷ *Ibid*, 5.

under the charge of *raptus* has been problematic throughout this historiography. Earlier medieval legal scholars like J.B. Post did not attempt to make a distinction in their work between these two concepts due to this high level of ambiguity.¹⁸ Post actually described this ambiguity as being beneficial to a family's interests as they could pursue a *raptus* case, whether or not any sexual contact had occurred.¹⁹

The ambiguity of terminology should be considered in defining the parameters of this particular study. *Raptus* itself could be one of, or encompass all three of the modern day crimes of abduction, sexual assault, and theft.²⁰ There was also the term *abducere*, meaning "to lead away."²¹ However, *abducere* was not synonymous with kidnapping as it is now, as people could be charged with abducting farm animals, timber, grains, and other miscellaneous goods.²² The presence of sexual violence within *abducere* and *raptus* has also been contested. Caroline Dunn specifies that although *rapuit* and *raptus* remain ambiguous and can mean both "rape" and "abduction," when paired with *abduxit* or *abductio*, the terms almost always refer to a woman's departure, and not sexual violence against her.²³ The use of the term "abduction" in this chapter is based on Mackman and Stevens' translations of the Common Pleas records from the original Latin.²⁴

¹⁸ J.B. Post "The Ravishment of Women and the Statutes of Westminster," in *Legal Records and the Historian: Papers Presented to the Cambridge Legal History Conference*, ed. J.H. Baker (London: Royal Historical Society, 1978), 157-164.

¹⁹ Pope, "Abduction and Power in Late Medieval England," 9.

²⁰ Butler, *Language of Abuse*, 88.

²¹ Dunn, *Stolen Women*, 20, 22.

²² For an example of the *abducere* ("abduction") of a horse, see Jonathan Mackman and Matthew Stevens, "CP40/665: Easter term 1427," *Court of Common Pleas: The National Archives, CP40: 1399-1500*, British History Online.

²³ Dunn, *Stolen Women*, 79.

²⁴ Mackman and Stevens, "Introduction to the Edition," <http://www.british-history.ac.uk/report.aspx?compid=119287>.

The historiography of abduction in late medieval England has had a rather complex evolution in forty years of history writing. Earlier writing on the subject portrayed abduction as an act of elopement consented to by the victim to allow for greater choice in marriage partner.²⁵ The issue of consent has been a persistent theme throughout its historiography, and is still contested in contemporary scholarship. The majority of literature on late medieval abduction centers on the abduction of women, and concerns marriage and property ownership. Legal recourses to punish this offense underwent significant changes during the medieval period in England, particularly with the Statutes of Westminster of 1275 and 1285 and the 1382 Statute of Rapes.²⁶ J.B. Post has demonstrated that these legal developments turned the law of rape into a law offering compensation to husbands and families of abducted women.²⁷ Caroline Dunn has suggested that although medieval abduction legislation often characterizes women as property that can be stolen or taken away, there also exists evidence of females initiating their own prosecutions, eloping, and running away from unwanted husbands.²⁸ Dunn is correct in her assertion that there exists a complex relationship between medieval men and women in cases of abduction, however, it will be further explained that victims of abduction in the sampled cases were sometimes more demographically diverse than those seen in previous abduction studies. While a wide range of literature in this field discusses the abduction of women, the sampled evidence from the Common Pleas proves this was not the only demographic group that was abducted in the late medieval period.

²⁵ Bellamy, *Crime and Order in England in the Later Middle Ages*, 32.

²⁶ Statute of Westminster 1, c. 13, as presented in the appendix to J. B. Post, "Ravishment of Women and the Statutes of Westminster," 162.

²⁷ Ibid. See also Jones, *Gender and Petty Crime*, 77.

²⁸ Dunn, *Stolen Women*, 195.

Finally, the framework of the household unit is essential to understand the social importance of abduction. To abduct an individual was to remove an integral, contributing part of a household's economic success, and undermined householder authority. Derek G. Neal has suggested the model of the "social self" of the householder to explain the importance of why abduction posed such a serious affront to the authority and integrity of the household.²⁹ Servants and other household dependents were part of defining the masculine social self. Household dependents therefore "could be the very human border through which their masters defined their own respective territories against each other."³⁰ Ruth Mazo Karras has also suggested that to be the head of a household was to have the ability to "master others."³¹ The abduction cases of the Common Pleas illustrate the importance of the defined household roles of servant, dependent and householder in late medieval England.

Abduction, Marriage and Wardship

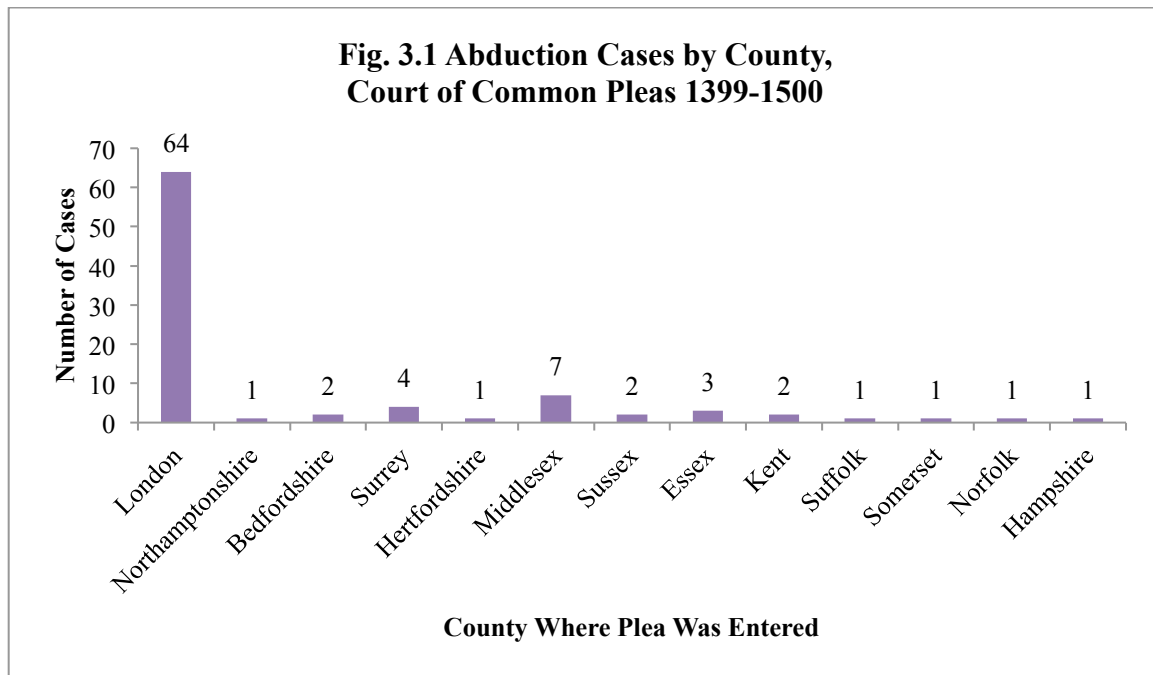
These frameworks provide a strong introduction to the main themes reflected in the data of these abduction cases. Abductions represent 10.8% of the total incidences sampled in this study. Additionally important to note is that 64 of 90 cases were reported as having taken place in London (see Fig. 3.1). Although the sampling from the Court of Common Pleas records for this project was centered on events that either took place in London or involved Londoners, this data indicates that very few Londoners were involved with alleged abductions outside of London itself. Most important to note,

²⁹ Neal, *Masculine Self*, 84-85.

³⁰ Neal, *Masculine Self*, 84.

³¹ Ruth Mazo Karras, *From Boys to Men: Formations of Masculinity in Late Medieval Europe* (Philadelphia: University of Pennsylvania Press, 2003), 111-112.

however, is the high frequency of the abduction of servants and apprentices within the sampled cases (80.8% of all abductions, see Fig. 3.2).



Before further examination of this data is undertaken, it should be noted that this sampling is merely a small indication of simultaneously occurring trends much broader in scope. The ‘dark figure’ of unreported abductions is nearly impossible to account for in this study. Additionally, there exist many issues with the use of these records to create definitive conclusions about the social history of late medieval England. It must be maintained that legal documents do not represent an objective or positivist truth. Rather, the Common Pleas records should be understood as a constructed narrative of what plaintiffs, defendants, victims and servants of the court believed to have happened.³² However, the sampled records can be successfully used to build an understanding of the social history, as they present a semblance of how abduction was understood and dealt with by the individuals named in cases.

³² Dunn, *Stolen Women*, 85.

As previously mentioned, there were several motivations relating to the abduction of an individual. A case from Michaelmas term, 1425, highlights the issue of marriageability, which has been frequently discussed by scholars in this literature. The plaintiff, William Keri, alleged that Thomas Grene “forcibly assaulted him” and abducted his servant Agnes Keri “so that he lost her service for a long time.”³³ Grene, in response, alleged that,

...He and Agnes agreed to marry each other, and consequently he took Agnes into his service for her safety until their marriage. However, afterwards, William Keri took Agnes away from him, against her will, and kept her in his service until the day of the trespass, when Thomas Grene took her out of William Keri's service and into his own. William Keri, wishing to prevent this, attacked him, and so Thomas Grene defended himself. The alleged trespass was therefore committed in self defence.³⁴

This case is the only one of 90 cases that points towards marriage as a reason for the alleged abduction. Dunn’s suggestion of the motivation of marriage in late medieval abduction is not supported in the context of the Common Pleas, due to the infrequency of marriage concerns discussed in abduction pleas. This case incorporates several important themes seen in other abduction cases- namely a possible familial relationship between William and Agnes, and the exchanging of a servant between households.³⁵ Arguably more important than this being the only servant abduction that mentions marriage, Thomas Grene’s plea highlights that William Keri’s retrieving of Agnes Keri was against her will. No age is provided for Agnes, and this family does not reappear in any of the cases sampled, so it is not possible to know the outcome of Agnes Keri and Thomas

³³ Mackman and Stevens, “CP 40/659 rot 429: Michaelmas term 1425.”

³⁴ Ibid.

³⁵ P.J.P. Goldberg, “What Was A Servant?” in *Concepts and Patterns of Service in the Later Middle Ages*, ed. Anne Curry and Elizabeth Matthew (Woodbridge: The Boydell Press, 2000), 15.

Grene's intended marriage. Although this case is unique within the sampled data, it sets an important precedent for the role of victim consent, and for the possibility of non-consensual abductions (particularly of servants) taking place for reasons other than changing employment.

The abduction of heirs and heiresses accounts for the second-largest demographic grouping of victims of abduction, albeit only six cases. The abduction of heirs and heiresses was first and foremost an expression of concern over property ownership and inheritance. More specifically, it was an expression of fears over elite property interests.³⁶ The abduction of underage female heiresses resulted in an attempt at seizing assets that were tied to her name. Under the late medieval English common law system, a husband gained control of a wife's assets for the duration of a marriage.³⁷ Additionally, the abduction of male heirs represented the control of his assets for the duration of his years as a legal minor, and a greater amount of influence on potential marriages.³⁸

There are only four cases of female heiress abduction, and two cases of male heir abduction in the sampled records. These cases reflect instances of conflict between the competing interests of households. The abduction of an heir specifically meant that an individual from outside the kin group or legal guardianship had taken forcible assumption of feudal wardship, and control over the marriage prospects for that ward.³⁹ Barbara Hanawalt has previously suggested that abduction is not a gender-specific or sexualized

³⁶ Seabourne, *Imprisoning Medieval Women*, 91.

³⁷ Mavis E. Mate, *Daughters, Wives and Widows after the Black Death: 1350-1535* (Woodbridge: Boydell Press, 1998), 25.

³⁸ Corinne J. Saunders, *Rape and Ravishment in the Literature of Medieval England*, (Cambridge: D.S. Brewer, 2001), 58.

³⁹ Or control over the marriage of a ward. Sue Sheridan Walker, "Common Law Juries and Feudal Marriage Customs in Medieval England: The Pleas of Ravishment," *University of Illinois Law Review* 3 (1984): 705-718.

crime, but rather an expression of concerns over property ownership.⁴⁰ However, the comparatively higher level of cases concerning the abduction of female wards in this study would suggest otherwise. Property law applied differently to male heirs and female heirs, and there was a distinct fear over the possibility of a female ward being raped.⁴¹ This is not to suggest that victims of abduction were perceived as property of males by their alleged abductors or the plaintiffs. Rather, the victims in the sampled cases were largely underage and were associated with financial wealth, labour, or property, but they were seen as distinct from the wealth and property itself. A case from Trinity term, 1480, describes the abduction of Katherine Watton from the wardship of Thomas Bouchier, Archbishop of Canterbury by Hugh Coneway. According to the Archbishop's plea, Katherine had been his ward since 1 March 1472 due to the death of her father, until her abduction on 17 April 1477.⁴² Fortunately, this entry is one of the few in this sample from the Common Pleas that has a jury's decision recorded:

On this day...jury says that Hugh Coneway was responsible for this trespass and abduction as claimed. Damages and costs assigned to the archbishop at 230m. Also, the jury says that Katherine Watton was returned to the archbishop while under the age of twelve, but not by Hugh Coneway, but they do not know whether she was married before her return. If Katherine Watton was married prior to her return, then the jury assess [sic] damages to the archbishop for that marriage at an additional 10m. Therefore, at the request of the archbishop, order that he recover 230m from Hugh Coneway as assessed by the jury.⁴³

There is concern expressed over whether or not Katherine was married without the consent of her guardian in the duration of her abduction. She is identified by name and

⁴⁰ Barbara Hanawalt, *Crime and Conflict in English Communities, 1300-1348* (Cambridge: Harvard University Press, 1979), 106.

⁴¹ Mate, *Daughters, Wives and Widows*, 125.

⁴² Mackman and Stevens, "CP 40/873 rot 432: Trinity term 1480." Hugh Coneway's status is identified as a gentleman in the entry, and he denies the charges.

⁴³ Ibid.

age, and many familial relations are named and mentioned. Concern for male heir victims of abduction existed for female heiresses too, albeit for slightly different reasons.⁴⁴

Abductees in the cases from the Common Pleas were not themselves considered property, but they could provide an important means towards gaining wealth through inheritances or control of marriage.

The Abduction of Wives and Women

The abduction of wives and women comprises a large portion of medieval abduction historiography, but occurs only four times in the sampled Common Pleas records.⁴⁵ The majority of legal recourses to abduction created during the medieval period concerned the specific abduction of wives. The 1382 Statute of Rapes claimed that the *raptus* of ladies, daughters of noblemen, and other women had become a more prevalent problem than it had in the past.⁴⁶ Statutes throughout the fourteenth and fifteenth centuries expressed concern for the plight of women, alongside practical provisions calculated to safeguard the interests of men and property.⁴⁷ The overall emphasis in these legal remedies is often less on protecting women from becoming victims of abduction than on protecting the man who has been deprived of his rights over them. These late-

⁴⁴ A similar case of abduction of a male heir can be found in the records from Trinity 1448. Mackman and Stevens, "CP 40/750 rot.125: Trinity term 1448."

⁴⁵ The other cases present involve the alleged abduction of a friar from a monastery, although it appears this case is a brother leaving the monastic life. (Mackman and Stevens, "CP 40/567 rot. 175d: Michaelmas 1402." Additional cases are the wrongful imprisonment of male prisoners intended for Royal prisons (e.g. Mackman and Stevens, "CP 40/811 rot. 123 d: Hilary term 1464.") or men alleging wrongful imprisonment as a threat to complete repayment of a debt (e.g. Mackman and Stevens, "CP 40/822 rot. 348: Hilary term 1467.").

⁴⁶ Seabourne, *Imprisoning Medieval Women*, 97.

⁴⁷ *Ibid*, 97-98.

medieval rape statutes and common law cases from the period stressed the damage and insult suffered by a male relation when his wife or daughter or ward was abducted.⁴⁸

Removing a man's wife or daughter was consistently characterized as doing wrong to that man. In fact, of 90 sampled abduction cases, 86 had a male, property-owning plaintiff. There were only three cases where the male plaintiff was the victim of the alleged abduction, and each of these was related to being detained and threatened for outstanding debts.⁴⁹ All other cases concerned the abduction of servants, apprentices, heirs, heiresses, wives and low-ranking clergymen. Therefore, 83, or 92.2% of all abduction cases, involved a male plaintiff suing for the abduction of a lower-ranking, dependent member of his household. Gwen Seabourne makes the distinction that "...this did not mean that there was no idea that the conduct could be wrong to the wife or daughter as well. Ideas of paternal ownership overshadow the sense of wrongdoing against the abducted or imprisoned woman."⁵⁰ In other words, the damage of abduction within a household is framed as damage caused through women, rather than damage caused to them as victims. The honour of the unit of the household and honour of the male householder is undermined through abduction of household members.

A case from Michaelmas 1428 illustrates many of the themes associated with the abduction of wives in the medieval period. The plea states "John Snell and Richard Snell are in mercy for many defaults. John Slygh and his wife Elizabeth Slygh claim that on 06/06/1428 John Snell and Richard Snell used force and arms to seize and imprison

⁴⁸ Ibid, 157 ; See also Dunn, *Stolen Women*, 116.

⁴⁹ Mackman and Stevens, "CP 40/ 811 rot. 123d: Hilary term 1464," ; Mackman and Stevens, "CP 40/ 826 rot. 135: Hilary term 1468," ; Mackman and Stevens, "CP 40/ 828 rot. 327: Trinity term 1468."

⁵⁰ Seabourne, *Imprisoning Medieval Women*, 157-158.

Elizabeth and inflict other enormities upon her at London. Damages are claimed at £20.” The abduction of Elizabeth Snell is, characteristically, portrayed as non-consensual. In contrast to the abduction of servants, the victim of the abduction is a plaintiff in the case. As Elizabeth was married, she was required to act as a *femme couverte*, and could press charges only alongside her husband and only with his permission.⁵¹ The use of the phrase “inflict other enormities upon her,” however, does not have any other parallel abduction cases within this study. The entry is brief, and contains no further information beyond the initial plea, yet it provides a fitting illustration of the active role which women were able to play in seeking compensation for being abducted. Although the language in case law and statutes often portrayed women as simplistic and negated their experience as a victim, cases like that of Elizabeth Snell suggest that women were able to play a somewhat active part in the prosecution of their abductors. Although the abduction of a wife constituted an offense against a man and his household, to characterize all victims as property in the sampled cases would be incorrect.

An additional noteworthy case of wife abduction is from the records of Hilary term, 1421: “Tomas Hatfield claims that parson Gervase Norton used force and arms to pillage/rape (*rapuit*) and abduct his wife Margaret Hatfield at London, as well as taking goods and chattels of Tomas Hatfield, which parson Gervase Norton presently detains.”⁵² This case specifies the “*rapuit*” of Margaret Hatfield, although whether this refers to the explicit detailing of the abduction and rape of a wife is not so clear-cut. The ambiguity of the terminology of raptus must be considered in interpreting this case. It could be that this case is discussing the alleged departure of Margaret Hatfield alone, with parson Gervase

⁵¹ Mate, *Daughters, Wives and Widows*, 3, 187.

⁵² Mackman and Stevens, “CP 40/ 640 rot. 424: Hilary term 1421.”

Norton, or her alleged rape and abduction by Gervase Norton. Additionally important to note is that the defendant is a member of the clergy- a group charged with ravishment more frequently than any other in medieval England.⁵³ This could have been the product of three possible scenarios. Firstly, this could have been the product of the growing anti-clericalism of the late Middle Ages. Secondly, this may have resulted from laymen claiming the benefit of the clergy at the outset of their trial. Thirdly, this statistic could have resulted from the unlikely possibility that a large number of celibate clergymen were stealing wives at an alarming rate in late medieval England.⁵⁴ This case simply helps to clarify the contexts of wife abduction in this period, and illustrates the portrayal of the abduction of wives as an offense against the husband's will and against his person.

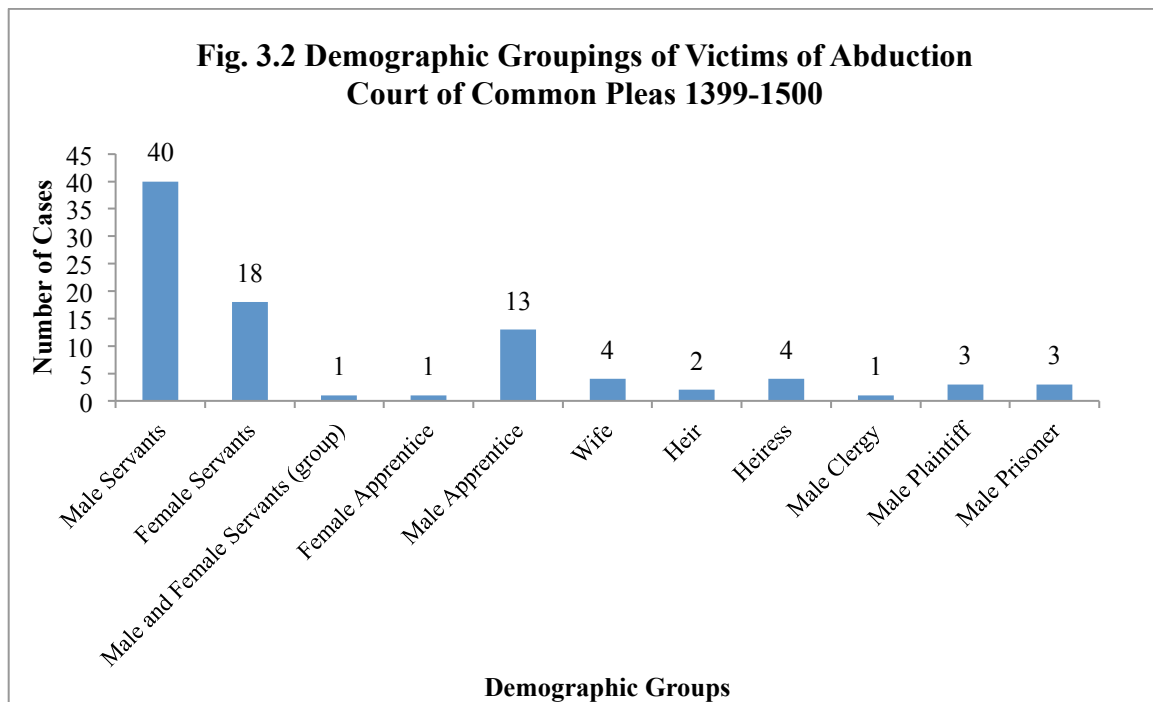
The Abduction of Servants

The most striking trend in the sampled abduction cases is the high number of male servant abductees, with 40 of 90 cases involving the abduction of a male servant. Additionally, thirteen of 90 cases involved the abduction of male apprentices. Meaning that a majority of 53 of 90 abduction cases in the records sampled involved the abduction of a male in the employment or apprenticeship of a household (see Figure 3.2). This highly gendered trend in cases of alleged abduction indicates several interesting themes in the demography and social composition of late medieval London, which have not been sufficiently covered in the historiography of abduction thus far. Rodney Hilton has

⁵³ Dunn, *Stolen Women*, 180. Dunn states that around 33% of alleged ravishers were clergymen

⁵⁴ B.A. Barr, *The Pastoral Care of Women in Late Medieval England*, (Woodbridge: Boydell Press, 2008), 64. Dunn, *Stolen Women*, 184-185.

undertaken some discussion of the abduction of servants, but this largely dealt with the Marxist understanding of the “crisis” of feudalism in post-plague Europe.⁵⁵



As previously mentioned, it is important to consider the large majority of male householders acting as plaintiffs in cases of abduction, with 85 of 90 cases (or 95.5%) having a male plaintiff. Only one case had an independent female pressing charges of abduction for the loss of her female servant to a married couple.⁵⁶ Furthermore, there are no cases of persons identified as servants acting as a plaintiff in an abduction case within the sampled records.⁵⁷ Male householders clearly had a vested interest in pursuing cases of abduction before a civil court to rectify the alleged loss of household members.

⁵⁵ Rodney Hilton, *Class Conflict and the Crisis of Feudalism: Essays in Medieval Social History* (London: Hambledon Press, 1985), 136.

⁵⁶ Mackman and Stevens, “CP 40/582 rot. 412: Trinity term 1406.” This case is analyzed in the following chapter on assault.

⁵⁷ In contrast to the case of William Chepyng, which will be explored in greater detail in the next chapter.

In comparison with other studies of abduction in late medieval England, the sampled cases still represent the concerns of male heads of household over property and prosperity. Consistently, these cases of servant abduction are described as the plaintiff being “deprived of” the service of the servant or apprentice in question, and the abductions are almost always described as forcible.⁵⁸ Although the pleas are very brief and use formulaic language, this regular characterization of abduction as physically forceful, unlawful, and a deprivation of an individual’s contribution to the operation of a household point towards an understanding of servants as part of a male householder’s good rule and control over his dependents.⁵⁹

It should also be noted that this was not restricted to lay households. In Michaelmas term, 1402, Thomas Marshall, the prior of Dunstable, charged Nicholas Taverner with abducting the monk Thomas Burre “so that he was out of the service of the prior for two years.”⁶⁰ Lower-ranking clergymen were covered under the authority of patriarchal legal stewardship in the same way as lay household dependents. The loss of Thomas Burre to Thomas Marshall is very much framed as an economic blow to the prior, in much the same manner as the abduction of a servant from a lay household.⁶¹ The loss of a servant to another household represented a financial loss due to lack of labour for household work. Additionally, it served as an indication of a householder’s inability to retain control of his dependents and to have them “cheerfully submit” to his will.⁶²

⁵⁸ Mackman and Stevens, “CP 40/ 815 rot. 330: Easter term 1465.”

⁵⁹ McSheffrey, *Marriage, Sex and Civic Culture*, 137-138, 145.

⁶⁰ Mackman and Stevens, “CP 40/ 567 rot. 175: Michaelmas term 1402.”

⁶¹ The comparison of the lay household and religious household will be more fully explored in the following chapter.

⁶² McSheffrey, *Marriage Sex and Civic Culture*, 137. This concept is also explored in relation to wives in Sara M Butler’s *The Language of Abuse*.

These cases present strong evidence of the conflicts that occurred between male householders in late medieval England.

Servants in late medieval England were generally between the ages of twelve and seventeen, and were likely related to their employers.⁶³ P.J.P. Goldberg suggests that although servants were frequently related to their employer by blood or marriage, in the records for fifteenth-century London, "...surnames are only sometimes recorded and relatives by marriage would in any case bear different surnames. The true proportion of kin relationships between servant and employer is necessarily understated."⁶⁴ There are many more cases with familial ties within the Common Pleas records than can be inferred from shared family names, or from explicit statements of familial kinship. A case from Trinity 1445 directly states that Thomas Caundyssh "forcibly abducted" Stephen Pyers' [sic] apprentice Anne Caundyssh.⁶⁵ Thomas Caundyssh's defense plea reads that Pyers had released Anne from apprenticeship and service, "... and she then came to serve him, her father."⁶⁶ Cases like this suggest a wider web of informal contracts that existed between individuals and households to secure the employment of servants and apprentices.⁶⁷ Goldberg also makes the important distinction that the servant groups of wealthier urban elites became increasingly more female than male.⁶⁸ Additionally, the economic recession that occurred in the later half of the fifteenth century led to fewer

⁶³ P.J.P. Goldberg, "Women in Fifteenth-Century Town Life," in *Towns and Townspeople*, ed. J.A.F. Thomson, 112-113.

⁶⁴ Ibid, 112-114.

⁶⁵ Mackman and Stevens, "CP 40/ 738 rot. 505: Trinity term 1445."

⁶⁶ Ibid.

⁶⁷ Goldberg, "Women in Fifteenth-Century Town Life," 113

⁶⁸ Ibid, 114.

daughters of the urban elite being employed as servants, instead remaining at home.⁶⁹ In spite of these changes, employment of male and female servants that came from non-elite families is estimated to have been fairly comparable in the fifteenth century.⁷⁰

In light of this, the trend of larger numbers of alleged abductions of male servants in the records of the Common Pleas has three possible interpretations. Firstly, it is possible that the work of male servants was of greater value in the post-Black Death economy, as previously discussed in the introduction to this chapter. Secondly, it may have been that fewer elite households were concerned with the loss of servants or maybe experienced abduction of servants more infrequently. This is highly difficult to demonstrate, as there are very few abduction cases where noble titles are noted for either plaintiffs or defendants. This would mean that largely non-elite households used the Court of Common Pleas as a means of negotiation to establish structure and governance within and between households. Thirdly, it is also possible that male servants were more likely than female servants to take advantage of the post-Black Death labour shortage, and sought out more lucrative places of employment. I would suggest that the more frequent cases of male servant abduction point towards a higher valuing of male servant's work. Pleas alleging the abduction of female servants never mention the type of work that they were employed to carry out, whereas allegations of male servant abductions did this more frequently.⁷¹ The work of male and female servants was understood differently,

⁶⁹ Ibid. ; Goldberg "What Was A Servant?" 19-20.

⁷⁰ Goldberg, "Women in Fifteenth-Century Town Life," 114-116 ; Goldberg "What Was A Servant?" 20.

⁷¹ E.g. Mackman and Stevens, "CP 40/ 579 rot. 290: Michaelmas term 1405" ; Mackman and Stevens, "CP 40/ 815 rot. 330: Easter term 1465."

even though they were employed in roughly comparative numbers in late medieval London.⁷²

The abduction of servants in the late medieval period has had conflicting interpretations. Dunn suggests that “a unique context for the abduction of both male and female servants emerged after the Black Death, when labour shortages made workers more valuable commodities... this type of kidnapping (often consensual departure from one employer to another) was not gendered, with men and women both allegedly kidnapped by rival employers...”⁷³ Dunn relies largely upon Rodney Hilton’s *Class Conflict and the Crisis of Feudalism* to support this thesis. However, as her study focuses on the abduction of women, it does not explore the relationship of gender to the abduction of servants. Additionally, Dunn’s conclusion is based upon a study using a larger sampling of criminal courts (and the King’s Bench civil court), but her study does not consult the Common Pleas records. Dunn’s interpretation cannot be regarded as a workable model in regards to the abduction of servants in cases from the Common Pleas.

Gwen Seabourne disagrees with Dunn’s interpretation, and presents a more flexible model to approach the abduction of servants. Seabourne argues that within court documents, actions for taking servants were frequently presented as forcible, and that, “[w]hile many servants no doubt took advantage of their strong labour market position to leave one master for another, it is not improbable that those desperate for labour used force to acquire unwilling workers.”⁷⁴ Seabourne also argues that even after the post-

⁷² Goldberg, “What Was A Servant?” 20.

⁷³ Dunn, *Stolen Women*, 10.

⁷⁴ Seabourne, *Imprisoning Medieval Women*, 111.

plague labour crisis servants could be abducted for non work-related reasons.⁷⁵ Within the Common Pleas cases of abduction, the consent on behalf of the servants is usually unknown, but cannot be assumed. Seabourne's interpretation provides a framework through which the servant abduction cases of the Common Pleas can be better understood.

The issue of consent on the part of the servant is illustrated particularly well by two cases, one from Trinity term in 1480 and one from Easter term in 1500. The plea from Trinity, 1480, states that

John Baskerfeld claims that on 20/05/1477 William Grove used force and arms to seize and carry off his goods and chattels to the value of £10, as well as to abduct his servant, William Lyster, so that John Baskerfeld was without William Lyster's service from the day of the trespass as far as the day of the making of his original writ on 01/10/1478. The goods taken were, namely: 6 pieces of woollen cloth called kendal, each containing 24 yards; 20 pair of hose; 16 yards of black kersey; 16 yards of russet kersey; and 10 yards of murrey kersey. Damages are claimed at £20.⁷⁶

Contrast this statement to Robert Clyff's plea from Easter 1500: "Robert Clyff claims that at London on 27/01/1500 Roger Man and John Best seized and abducted his servant, Elizabeth Monkton, so that he was without her service for one day and one night immediately following the abduction. Damages are claimed at £10."⁷⁷

There are three differences that are immediately apparent between these cases. First and foremost is the rather obvious difference between the abduction of a male servant, and the abduction of a female servant. Secondly is the characterization of the crime itself. The abduction of William Lyster was framed as a product of the use of "force and arms" whereas Elizabeth Monkton was "seized and abducted." Thirdly, the

⁷⁵ Ibid, 112-114.

⁷⁶ Mackman and Stevens, "CP 40/873 rot. 146: Trinity term 1480."

⁷⁷ Mackman and Stevens, "CP 40/952 rot. 156: Easter term 1500."

abduction of William Lyster lasted for more than a year and was accompanied with the seizure of material goods. Elizabeth Monkton, in contrast, was simply abducted for “one day and one night.” Determining consent in either of these two cases would be challenging at best due to the brevity of the pleas, but also in that the voice of both of the abducted servants is absent. Abduction of servants is always framed through the voice of the individual who allegedly lost service. The use of “force and arms” by William Grove, although formulaic, helped portray Grove as a wronged victim requiring compensation, without sacrificing his image of masculinity and control of the behaviour and cooperation of his household. As there is no record of the outcome of this case in the period sampled, further conclusions would be based on assumption.

In regards to the case of Elizabeth Monkton, there is an equal level of ambiguity in regards to her consent. Her departure for one day and night from the household of Robert Clyff was evidently against Clyff’s consent, but there is no mention of her intent or activity. The time period of one day and night is in stark contrast to the abduction of Lyster. This brief time period makes the concept of a non-gendered and willing departure from one employer to another, as Dunn suggested, highly unlikely. This is not to suggest that there were no allegations of abduction that were the product of a female servant’s conscious decision to seek better employment, but that nearly every case of the abduction of a female servant is different. Of the 18 cases of female servant abduction, and one case of female apprentice abduction, no two have similar duration of the abduction, or number of individuals involved. There is far more regularity in cases of male servant and apprentice abduction (usually 3-9 months, and usually by lone male abductor).⁷⁸

⁷⁸ See Mackman and Stevens, “CP 40/ 594 rot. 499: Trinity term 1409.”

In a case from Hilary term 1403, a male defendant claimed “on the day of the supposed abduction he found [the female servant Agatha Pertenale] at London in the parish of St. Benet Gracechurch, Bridge Ward, unemployed and outside of anyone's service, and took her into his service, as he had good license to do.”⁷⁹ Her former employer, however, claimed that Agatha had been forcibly abducted multiple times by the defendant. A number of forcible abductions could indicate that Agatha was particularly vulnerable to attacks from a predatory abductor. Conversely, perhaps she colluded in the abductions to seek better employment, or to be closer to family. The large number of possible interpretations here again point to a far broader spectrum of forms of servant abduction rather than servants taking advantage of a newly flexible, post-plague labour market.⁸⁰

Speaking more broadly, these cases do not support the idea of consensual abductions for better employment prospects, for a greater sense of widespread female agency post-plague, or for a decreased level of medieval lawlessness.⁸¹ Establishing definitive rates of criminal offenses through medieval legal documents is virtually impossible.⁸² Rather, these abduction cases should be used to examine what the creators of the legal records thought to be the reality of these cases, and how correct human conduct was conceptualized and prescribed through legal documents. This high number of alleged servant abductions indicates an expressed concern with maintenance of the household, and with loss of control over household labour. Further challenges to

⁷⁹ Mackman and Stevens, “CP 40/568 rot. 517: Hilary term 1403.”

⁸⁰ Seabourne, *Imprisoning Medieval Women*, 111 ; Goldberg, “Women in Fifteenth-Century Town Life,” 113.

⁸¹ Dunn, *Stolen Women*, 195.

⁸² Seabourne, *Imprisoning Medieval Women*, 160.

household structure and authority will be examined in the next chapter, discussing assault cases in the Common Pleas.

Chapter 4: Assault in the Court of Common Pleas

Introduction

The significance of social status and rank in cases of abduction in late medieval England are demonstrated through the trends found in the records of the Common Pleas. The records indicate that gender was not the sole determinant in an individual's risk of abduction. Historians such as Caroline Dunn have explored the vulnerability of wealthy widows at risk of abduction across England.¹ However, the high levels of servant abduction cases in the Common Pleas indicate the risks faced by individuals from lower social strata. Although the abduction of servants served slightly different purposes depending on the case, its primary offense was an affront to the composition and structure of a household. Such a removal of an individual was both an act of dominance over the abductee, and also an attack on the public standing of the male householder who held responsibility for that abductee.²

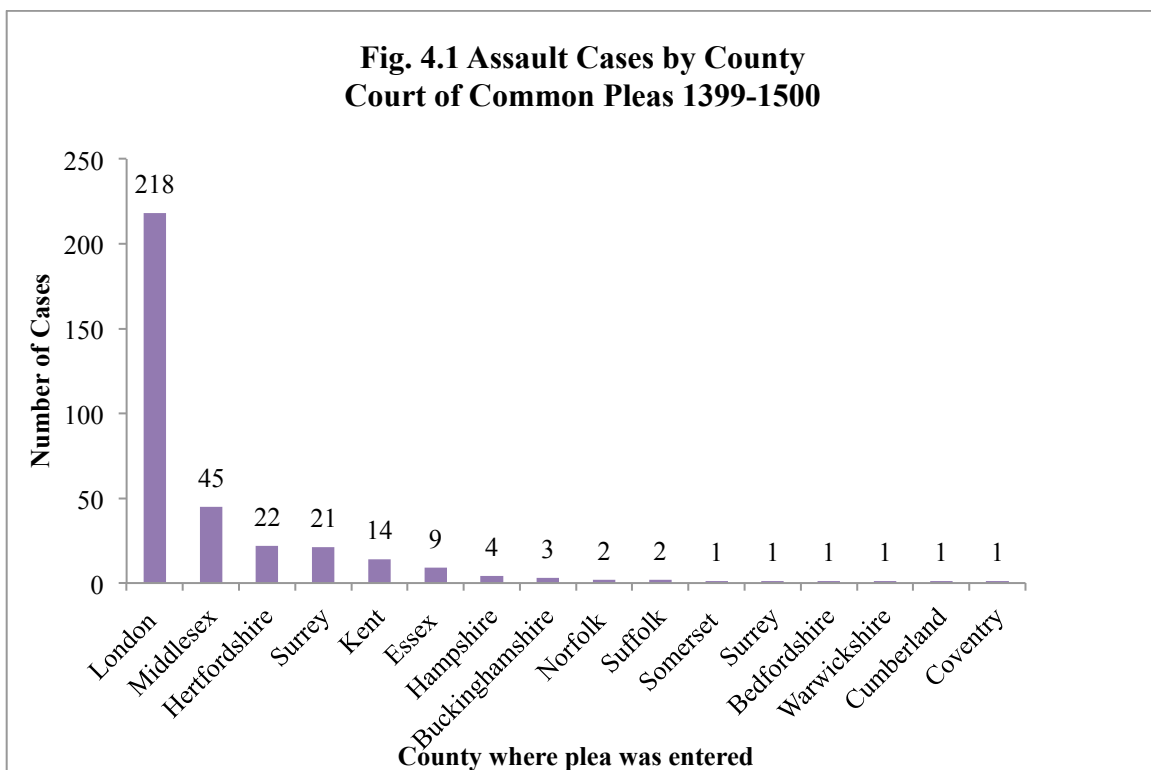
The trends illustrated through cases of assault mirror and complement the themes found in abduction cases. Physical violence (or the threat of violence) served very similar purposes to abduction, however it was utilized slightly differently. Both gender and social status affected the likelihood of an individual's risk of having an act of assault committed against them. Philippa Maddern has proposed the model of the "moral hierarchy of violence," which will be employed to examine how and why assault was used by fifteenth-century English people.³ To be more specific, violence was perceived as less criminal when committed against inferiors than superiors. Unacceptable violence

¹ Caroline Dunn, *Stolen Women*, 87-88.

² Goldberg, "Women in Fifteenth-Century Town Life," 24.

³ Maddern, *Violence and Social Order*, 98-99.

upended social authority and hierarchy and acted in opposition to moral law or the king's peace.⁴ The acts of alleged violence in the Common Pleas' assault cases were made acceptable and unacceptable according to individual and social contexts.⁵ Furthermore, the frequency of cases taking place in London is similarly high, continuing the trends seen in cases of abduction (see Fig. 4.1, below). It is the intent of this chapter to explore how the patriarchal legal stewardship practiced by male householders (and occasionally by high-ranking women) on their own behalf, or on the behalf of their dependents, in the Court of Common Pleas reflects broader late-medieval attitudes towards the purpose and use of violence.



⁴ Maddern, *Violence and Social Order*, 98.

⁵ Garthine Walker, *Crime, Gender, and Social Order in Early Modern England* (New York: Cambridge University Press, 2003), 24.

Frameworks and Methodology

Firstly, it is necessary to establish definitions of “assault” and “violence” within the records of the Common Pleas. Under fifteenth-century English common law, assault was a flexible term with several possible interpretations. Cases of assault in the sampled records refer to the threat of bodily harm. The distinction between threats and physical attempts at assault will not be made, as it is often impossible to discern the gravity of the alleged violence described in the records. There certainly were cases of assault that were predicated merely on verbal violence. For instance, in a case from 1428 the plaintiff, Richard Barry, alleged that, “John Cheyny lay in wait with force and arms to seize, arrest and imprison him, and made such great threats against him that he feared to go about his business from that day until the day of his original writ, 2 April 1428.”⁶ There is certainly a physical element to this case, but no actual physical harm is alleged to have happened. Verbal threats severe enough to warrant an adult male fearing to go about his business were presented in the same manner as a physical charge of assault before the Common Pleas.

Garthine Walker has suggested that medieval legal classifications of violence did not perceive verbal and physical aggression as separate acts. Rather, these activities lay “... on a continuum of violence. Threatening words, attempted harm by force and violence and battery involving actual loss or injury were ‘things of several natures’. Yet their purpose was the same: ‘to hurt him against whom they are bent’.”⁷ This “continuum of violence” aptly describes the wide variety of forms of violence found in the sampled

⁶ Mackman and Stevens, “CP 40/ 669 rot. 373: Easter term 1428.”

⁷ Walker, *Crime, Gender and Social Order*, 23.

cases of assault. Cases are commonly summarized in a very brief phrase, such as “John and Joan Haselbeche state that John Wylde forcibly assaulted Joan on 3 October 1422, to their damage of £20.”⁸ The use of the term ‘forcibly’ seems to suggest an attempted physical encounter, but it cannot be assumed. The use of excessive force was an essential component for an indictment of trespass until 1545, hence the presence of this phrase in nearly all cases in the Common Pleas records.⁹

It is difficult to provide a concise definition of violence in the medieval period, and it is important to note that male heads of household were not the only individuals that used violence. There is a spectrum of violent behaviour that is categorized and described in the Common Pleas records, including verbal threats, threatening tenants, physical beatings by mobs, attacks with swords, and even the unlawful slaughter of another man’s livestock.¹⁰ Some historians such as Mark D. Meyerson have suggested that violence was a normative social practice that was used by all individuals to establish rank within their community.¹¹ It is important to note, however, that although there may be some cases where a woman or servant is accused of violence, not all people were permitted to use violence to the same extent.

The overwhelming majority of cases involve males accused of using violence against other males. However, the nature and extent of these violent activities can be debated. The classic characterization of men’s aggressive behaviour as physical is not

⁸ Mackman and Stevens, “CP 40/ 648 rot. 218d: Hilary term 1428.”

⁹ Garthine Walker has called this depiction of forceful, armed assault a “legal fiction”. See Walker, *Crime, Gender and Social Order*, 27-28 ; Maddern, *Violence and Social Order*, 29.

¹⁰ Mackman and Stevens, “CP 40/ 574 rot. 299: Trinity term 1404.” ; Mackman and Stevens, “CP 40/ 640 rot. 120: Hilary term 1421.” ; Mackman and Stevens, “CP 40/ 562 rot. 534: Trinity term 1401.”

¹¹ Falk, Thiery, and Meyerson, “Introduction,” 5-6.

reflected in these records. Although the majority of individuals accused of assault were men, the forms of violence they were purported to use were not necessarily physical. Beyond this, the treatment of accusations of assault before this court indicates a great deal about the relationship between violence and masculinity in late medieval England. An examination of the Common Pleas records suggests that the late medieval English legal system operated much more effectively for the victim of a crime if a person of wealth, power or established reputation assisted their case. 292 of 345 of sampled cases, or 84.6%, involve an independent adult male plaintiff. However, adult males only comprised 68% of victims of assault. Therefore, at least 15% of all cases before the Common Pleas involved adult males suing on behalf of other people. This affirms the assertion that the use of violence in late medieval England was tied to the concept of the hegemonic masculinity of the householder.

Hegemonic masculinity in the late medieval period informed how this patriarchal legal stewardship operated. The various forms of late-medieval masculine identity were largely informed by social status and performance in conjunction with physical ‘male-ness.’¹² The masculine identity of a male householder differed from that of a servant, or a clergyman. However, there are observable parallels between the roles of a male householder and a high-ranking clergyman, such as the abbot of a monastery. As previously mentioned, the structure of late medieval (and early modern) English society was very much conducive to analogous thinking, in which the success of smaller units was reflective of the success of larger units. Society was comprised of units of reciprocal

¹² Neal, *Masculine Self*, 83 ; Gauvard, *Violence et ordre public*, 12-14.

hierarchical relationships in which protection and care were exchanged for deference and obedience.¹³

Claude Gauvard has asserted the close relationship between honour and violence in the medieval period, and honour was entwined with the unit of the household.¹⁴ Within this unit, both individual and household honour were tightly linked. In some circumstances, honour was linked specifically to the individual, although this differed from modern conceptions of individuality.¹⁵ The gendered distinction between men and women's respective household responsibilities helped to define how collective and personal honour was attained.¹⁶ Family members, including servants, experienced and achieved honour differently, according to their particular obligations and relationships. Household honour was commonly understood though an individual's area of competence and place within the household hierarchy.¹⁷

This measurement of competence in household roles also applied to an over-use of punishment or violence by a male head of household.¹⁸ The household provides an important context for masculinity and violence in a further sense. Derek Neal has suggested that a great many violent disputes arose from conflicts between households, and group assaults frequently reflected household organization and obligations.¹⁹ These models for understanding violence and the household help to frame the cases of assault in

¹³ Gauvard, *Violence et ordre public*, 4.

¹⁴ Ibid, 13.

¹⁵ Walker, *Crime, Gender, and Social Order*, 34.

¹⁶ Ibid, 34.

¹⁷ Amussen, "Punishment, Discipline, and Power," 11.

¹⁸ Ibid, 13.

¹⁹ Neal, *Masculine Self*, 15.

the Common Pleas. Furthermore, an examination of the sampled cases indicates the ways an individual's role in a household would affect their relationship to an act of violence.

In interpreting the records of the Common Pleas, it is also essential to analyze how cases of assault are described. There are descriptions of fearing the mutilation of limbs or loss of life, but also there are also accusations of assault based simply on threats directed at an individual or directed at the safety of a household.²⁰ These discussions of legitimate and illegitimate uses of violence pose important questions about the role of violence in the medieval era. Although late medieval legal records regularly used formulaic language, examining how a plaintiff described an event can elicit deeper understandings of acceptable and unacceptable violence. Walker has asserted that this was essential particularly for males, "Constructing a savage yet cowardly male assailant fashioned the victim positively in contrast. There was nothing inherently dishonourable about 'running away' if neither reconciliation nor an equal fight seemed possible."²¹

Moreover, the gendered use of violence in medieval societies suggests an interesting shift in attitudes of what could be legitimate violence, and who could use this violence. Sandy Bardsley's discussion of the role of women and verbal violence in late medieval England particularly provides a framework for understanding the social restrictions placed upon acceptable forms of female violence.²² Socially appropriate violence as a means of defending honour requires some form of 'pecking order'. Violence was a means of asserting authority and superiority, making it socially

²⁰ The threatening of tenants was also common; see cases CP 40/640 rot 120, CP 40/ 653 rot 307, CP 40/ 653 rot 312 for examples.

²¹ Walker, *Crime, Gender, and Social Order*, 39.

²² Sandy Bardsley, *Venomous Tongues: Speech and Gender in Late Medieval England* (Philadelphia: University of Pennsylvania Press, 2006), 147.

unacceptable for use by women in the public sphere.²³ If, as Claude Gauvard has suggested, violent reaction formed such a key component of medieval culture, understanding violence as a brutish, reactionary activity detracts from complex readings of medieval texts. If however, a more nuanced understanding is applied, deeper cultural meanings of why violence in the face of insults to honour could be legitimized.

Men, Masculinity and the Household in the Common Pleas Records

The Common Pleas records demonstrate the trend of male household leaders initiating legal action on behalf of their dependents, or on behalf of lower-ranking household members. In a case from Hilary term, 1461, “John [Bromley] abbot of Bermondsey, states that on 5 August 1460 William Clement forcibly broke his close at Rotherhithe and assaulted John Wilton, one of his fellow canons, against the peace and to his damage of £20.”²⁴ Bromley is listed as the plaintiff in this case, meaning he initiated the charge of assault against Clement. John Wilton is both male and a member of the clergy, and could hypothetically have initiated this case on his own. However, the involvement of a man of greater religious and social rank lent a greater level of legitimacy to this case, and likely would have made paying the extensive legal costs of the Common Pleas more feasible.²⁵

The importance of the status of the male plaintiff suing on behalf of an inferior is further highlighted in a case from Michaelmas term, 1405: “John Dyndon (esquire) claims that John, son of Thomas Hauk, used force and arms to assault his servant John Whithead at London so that John Dyndon was without his service for four weeks

²³ Bardsley, *Venomous Tongues*, 147.

²⁴ Mackman and Stevens, “CP 40/800 rot. 195d: Hilary term 1461.”

²⁵ Hastings, *The Court of Common Pleas*, 12, 16.

following the said assault. Damages are claimed at £10.”²⁶ The elevated status of the plaintiff in this case is made immediately apparent by the use of the term “esquire.” The lack of a similar title for the defendant supports the model of the moral hierarchy of violence. More specifically, this meant that this alleged assault against a superior’s servant was unacceptable and warranted litigation before a court of law.

Additionally, there are examples of men acting in a similar manner on behalf of their own servants. In Hilary term, 1450, the abbot of St Alban’s charged four men with “[making] such great threats against the abbot’s servants, John Fauconer, John Bernewell, and Henry Flexmere, threatening their lives and the mutilation of their limbs, that they dare not go about their business, namely the keeping of the abbot’s park at Borehamwood, for a month after that date.”²⁷ There are examples of high-ranking clergymen acted on behalf of their servants in court in the same manner as their lay counterparts. Overall, of the 54 cases of assault involving a male servant as the alleged victim, the servant’s employer is named as the plaintiff in 53 cases. The same legal stewardship on behalf of social inferiors is seen through males defending the honour of a household, and clergymen defending the unit of their abbey, or their own religious household.

Derek G. Neal’s discussion of masculinity in late medieval England suggests why this type of litigation would have been taken up by a servant’s employer: “Servants represented the extremities of a masculine social self... It also meant that one husband could attack another through his servants... Servants therefore could be the very human border through which their masters defined their own respective territories against each

²⁶ Mackman and Stevens, “CP 40/ 759 rot. 059: Michaelmas term 1405.”

²⁷ Mackman and Stevens, “CP 40/ 756 rot. 138: Hilary term 1450.”

other.”²⁸ This model of the inferiors of a male householder being extensions of the householder’s social self helps to provide a lens through which patriarchal legal stewardship can be understood. It was beneficial for the victim to engage a high-ranking male in their court case, as it lent their cause a sense of gravitas and legitimacy. Additionally, if an offense was made against a family member, servant or other household inferior, it was part of the expected duties of the head of household to defend the collective honour of the household unit through legal action. Neal’s model also suggests a similarity between the “husbandly selves” of male householders and high-ranking male clergy members.²⁹ The distinction between the clergy and laymen was porous, as the clergy drew upon boys from the lay population to fill its ranks. The responsibilities of high-ranking clergymen, as reflected in the records of the Common Pleas, very much aligned with a similar form of masculine governance required of lay male householders.

There is only one case that breaks this standard trend of householders suing on behalf of their servants. In a case from Hilary, 1450, “William Chepyngdale, servant of John Prysot, chief justice, states that on 31 March 1449 Walter Tyrell and John Tyrell forcibly assaulted him in London and imprisoned him for one hour, against the peace and to his damage of £20.”³⁰ This is the only case from the sampled records where an individual who is explicitly named as a servant acts as the plaintiff in his own case. This anomaly could be the product of the age of this servant. Many servants in late medieval England were between the ages of 13 to 19, and William Chepyngdale could have been

²⁸ Neal, *Masculine Self*, 84.

²⁹ Ibid, 89-100, 105.

³⁰ Mackman and Stevens, “CP 40/ 755 rot. 645: Hilary term 1450.”

older than this.³¹ It is nearly impossible to say, as this record provides no further information on Chepyngdale. It is also possible that Chepyngdale could have been able to afford the fees associated with pursuing a case at the Common Pleas and did not require his employer to financially intercede on his behalf.³² The case brought by William Chepyngdale sets an important precedent that although the masculinity and authority of the householder was relied upon in the proceedings of the Common Pleas, servants were neither completely voiceless nor passive in all cases.

Beyond acting on behalf of allegedly victimized household members, men play an important role in understanding victims of assault in the Common Pleas records. In fact, men were the most frequent demographic group to be the victim of an alleged assault (240 out of 345 cases, or 69.5%). Adult males acting alone and males acting in a group also represent by far the largest demographic groupings of defendants (a combined total of 301 out of 345 cases, or 87.2% of all cases).³³ These numbers are not surprising, and support Karen Jones' statistic that roughly 80-92% of cases of assault in late medieval and early modern England had a male defendant.³⁴ This violence is not necessarily brutish or hastily reactionary; rather, it was a form of re-asserting household and personal honour.³⁵ Ruth Mazo Karras has suggested that the need to prove oneself in competition

³¹ Goldberg, "Women in Fifteenth Century Town Life," 113-114.

³² Hastings, *Court of Common Pleas*, 59-63.

³³ 189 cases had a male defendant acting alone, and 112 cases had males acting in a group of 2 or more. This represented 54.7% and 32.4% of all cases, respectively.

³⁴ Jones, *Gender and Petty Crime*, 63-64.

³⁵ It was also a common occurrence that a failure to pay bonds or repay outstanding debts would be met with an accusation of the bond being made under duress or threat of physical assault. For further explanation of reasons for this, refer to Ibid, 67. As well as cases such as Mackman and Stevens, "CP 40/ 582 rot. 216: Trinity term 1406." ; Mackman and Stevens, "CP 40/ 657 rot. 310: Easter term 1426." ; Mackman and Stevens, "CP 40/ 743 rot. 401d: Michaelmas term 1446."

with other men was a core feature of late medieval masculinity (more precisely, of non-clergy masculinities.)³⁶ Sara Butler has also argued that violence was a vital component of late medieval expectations of lay masculinities, and that these conceptions of gender identity were both internalized and widespread.³⁷ Karen Jones has highlighted the importance of accounting for social status when examining the ways in which men used violence to demonstrate and enforce masculinity:

For many men, as we have seen, the use of violence was regularly called for in the continuing process of demonstrating their superiority to other men, for example when their probity was impugned. For them, it seems, violence was a vital way to demonstrate their manhood. But the local elites whose superiority was manifest because of their wealth or office seldom (at least in theory) needed to use violence in this way... So the regular prosecution of men could be said to be an illustration of the tension between different definitions of masculinity.³⁸

The high proportion of males being accused of assault in the Common Pleas supports the concept of the moral hierarchy of violence, in that it appears men were the most likely to employ violence. Although the records of the Common Pleas cannot be relied upon to provide a thorough and representative sample of assault and violence in late medieval England, this high ratio of male defendants and plaintiffs certainly indicates males were engaging in violent activities quite frequently. Furthermore, the use of this violence was being regulated and made permissible and non-permissible to some extent by the use of courts like the Common Pleas.

Behind adult males, male servants comprise the second-largest demographic grouping of victims of assault (54 cases of 345, or 15.6%). The frequency of abduction cases of male servants in the records of the Common Pleas seems to also be reflected in

³⁶ Jones, *Gender and Petty Crime*, 65 ; Karras, *From Boys to Men*, 10.

³⁷ Butler, *Language of Abuse*, 167.

³⁸ Jones, *Gender and Petty Crime*, 67-68.

cases of assault. However, the motivation for assault against a servant appears to be different than the motivation for the abduction of a servant. In Trinity term, 1428, Richard Bruyn charged John Passelowe with assaulting his servant, Thomas Caynesham.³⁹ The formulaic description of the use of “force and arms” is employed in this plea, however, Bruyn’s claim that his servant was so injured that he was “without [Caynesham]’s service for the half-year then next following the trespass” suggests this was a rather serious incident.⁴⁰ If, as Derek Neal has suggested, assault against a servant was a means of attack against the servant’s employer, this would constitute a serious and egregious use of violence. It is possible that Bruyn augmented the amount of time that Caynesham was injured to frame his case in a manner that would have benefitted him, but this is nearly impossible to discern from this entry alone.

In another case from Easter term, 1429, the male plaintiff alleged that the defendant “used force and arms to beat, wound and imprison” his servant.⁴¹ The Common Pleas provide a rich selection of cases of employers constructing cases on behalf of their servants that depict a serious external threat to the servant’s physical safety, and a threat to the employer’s economic well-being: “Thomas Puseye claims that on 30/06/1427 Bertram Fawe lay in wait at London with force and arms to kill his servant Robert Bartelot, so that Robert Bartelot feared for his life and limbs etc. and was thus unable to go about Thomas Puseye’s business.”⁴² This framing of an assault as a threat to

³⁹ Mackman and Stevens, “CP 40/ 670 rot. 113: Trinity term 1428.”

⁴⁰ Ibid.

⁴¹ Mackman and Stevens, “CP 40/673 rot. 416: Easter term 1429.”

⁴² Mackman and Stevens, “CP 40/674, rot. 132: Trinity term 1428.” ; See also, Mackman and Stevens, “CP 40/ 574 rot. 299: Trinity 1404.” ; Mackman and Stevens, “CP 40/ 579 rot. 260: Hilary term 1405.”

both the interests of the employer and the physical safety of the servant solidifies the concept of the servant as part of the physical border of the householder's social self.

The relative frequency of alleged assaults on male servants suggests an interesting gender divide between the importance of male servants and female servants in late medieval England. This frequency of assaults (and as previously discussed, abductions) against male servants compared to female servants reflects almost the same ratio seen in non-servant victims of assault. The ratio of adult males (240) to adult females (26) can be reduced to an expression of 10:1. In cases where the victims were servants, this same male-to-female ratio can be reduced to 13:1.⁴³ This comparatively more frequent level of violence against male servants in contrast with adult non-servant males can again be explained through the "moral hierarchy of violence." It was comparatively less serious to offend against servants than it was against a peer or superior. Assault against servants became problematic (and therefore seen before courts like the Common Pleas) when committed against servants of another household unit.

As was previously mentioned, there is one indirect instance of an allegation of assault perpetrated by a servant. In this particular case, from Trinity term 1466, the initial plea appears to be a fairly standard accusation of assault. The plaintiff, Thomas Hayton, charges William Manne with "forcibly" assaulting him and "making such great threats" against his servant Richard Cok. However, it is the counter-plea entered by William Manne that reveals another layer of meaning behind this incident:

William Manne denies force and arms, and all the trespass except the making of the threats... And concerning the threats, he states that Thomas Hayton ought not maintain his action, since, protesting that Thomas Hayton did not lose the service of Richard Cok as Thomas

⁴³ More specifically, the ratio is 54 male servants to 4 female servants.

Hayton has claimed, at the time of the alleged trespass Richard Cok assaulted Isabel, wife of William Manne, in the same parish and ward in London, and wished to beat her in the presence of William Manne, and so William Manne laid his hands peacefully on Richard Cok to prevent him doing any harm to Isabel, separating him from her and telling him that he would be punished according to the law for this.⁴⁴

Firstly, it cannot be ascertained whether or not this event actually occurred, as this is a narrative constructed to defend William Manne against the charge of assault. However, it does indicate that at least some users of the Court of Common Pleas perceived assault committed by a servant as a possible occurrence. Sara Butler has taken this idea further, suggesting that violence committed by a master against their servant was a common occurrence that simply did not appear before the court. She asserts that, "... the almost total lack of accusations of assaults by masters on their servants, can lead only to the conclusion that much violence within the family or the household, never reached the courts."⁴⁵ However, speculating further upon this possibility would be untenable, as it would rely too heavily upon the 'dark figure' of household violence.

Where this case differs from Butler's model is that it is an act of alleged violence perpetrated by a servant against a master of another household. Additionally, this narrative of defense indicates that assault by a male servant on a higher ranking, non-servant female was presumably unacceptable, and warranted male intervention. This narrative of alleged assault did not fit within the moral hierarchy of acceptable violence, so much so that it would have served as a defense for William Manne against his charge of unacceptable violence. Butler has demonstrated that violence almost certainly did occur with regularity within the medieval household, however, when its boundaries

⁴⁴ Mackman and Stevens, "CP 40/ 820 rot 112: Trinity term 1466."

⁴⁵ Butler, *Language of Abuse*, 34.

extended to another household, the incident was much more likely to be brought before a court.

Women and Assault Cases in the Court of Common Pleas

Examining the role of women within assault cases from the Common Pleas is essential to gain understanding of both their role within the household, and the ways women encountered and performed violent acts in late medieval England. Adult married women comprise the third-largest demographic group of victims of assault, behind adult males and male servants.⁴⁶ As was previously mentioned, there are only 4 cases of assault where a female servant is named as the victim. This highly gendered nature of violence, and the crime of assault in the records of the Common Pleas, reveal the intersectionality of gender and social status in how individuals experienced violence. Women, although highly confined in the ways they were permitted to use violence, sometimes defied prescribed norms for their status. Although general trends indicate that women were far more likely to be victims of violence than perpetrators of violence, Sara Butler has rightly pointed out that “The history of violence against women is not merely a history of women as victims.”⁴⁷ That women were accused of violence at all before the Common Pleas suggests that women could be indifferent, could rebel or could accept late medieval norms on the use of violence. Women, like men, were involved in the discursive process of shaping late medieval norms of gender and violence, although in different capacities.

⁴⁶ 19 cases name a married female as the sole victim of an assault, 5 cases name a husband and wife as the victims of assault, 7 cases name a woman not tied in the record to a man (likely unmarried or widowed) and only 4 cases record a female servant being assaulted.

⁴⁷ Butler, *Language of Abuse*, 4.

Male householders were not the sole practitioners of patriarchal legal stewardship. Women of high status can also be found acting as plaintiffs on behalf of their household inferiors, although in reduced numbers compared to men. In a case from Hilary term, 1401, “Elizabeth, duchess of Norfolk [a widow] states that on 24 August 1400 the Suttons [Idonea and John Sutton] broke into her house in London, took goods worth 10m (cloth, linen and wool), and assaulted her servant, Agnes Dersyngham, so that she was deprived of service for 1 week, to her damage of £10.”⁴⁸ This is an explicit example of a high-ranking, widowed female acting on behalf of her household inferior in the Court of Common Pleas.⁴⁹ Although there are not a large number of these cases (a total of 2 of 345, or 0.05%), they provide important evidence that it was not only men who could act in a role of legal stewardship on behalf of servants in the Court of Common Pleas. The intersection of gender and status provided individuals with varying levels of ability to use late medieval England’s courts effectively.

Within the Common Pleas records, there is a very high number of married women accused of assault alongside their husband or another male family member. Women acting alongside husbands or male relatives comprise the second most frequent demographic group, with 21 named cases. There are very few cases of women acting alone in this court; with only three (or 0.08%) cases naming alleged female perpetrators. The only case where a married woman was accused of assault is through a rather complex defense provided by a female servant. Namely, it was a female servant’s defense

⁴⁸ Mackman and Stevens, “CP 40/ 560 rot. 116: Hilary term 1401.” ; See also, Mackman and Stevens, “CP 40/ 667 rot. 307: Michaelmas term 1427.”

⁴⁹ For more information on the historiographical debate on the legal autonomy of aristocratic widows, see Mavis E. Mate, *Women in Medieval English Society*, (New York: Cambridge University Press, 1999), 81.

against a charge of breach of the Statute of Labourers by her former employer. The servant, Agnes Frere, stated “that on the day John Gernon claims she withdrew from his service, John Gernon's wife Joan Gernon assaulted, wounded, and maltreated Agnes so that she withdrew from service with good licence and did not intend any other injury.”⁵⁰ This case, although isolated, suggests interesting possibilities, much like the defense provided by William Manne. This is one of the only instances in all sampled cases of assault where members (or former members) of a household unit are engaged in a suit against each other.⁵¹ The misuse of violence (or in this case, overuse) on the part of a social superior was a plausible defense for a social inferior charged with an offense of assault.

Rather notably, there is only one case out of the 345 sampled cases of assault where a male charges a female with assault. The plea for the case reads as follows, “John Bate [a baker] claims that on 24/06/1426 Lucy Clerk [a widow] used force and arms to break his close at Stepney, Middlesex, where she assaulted him and threatened his life and limbs so that he feared to go about his business for two weeks next following the trespass. Damages are claimed at £20.”⁵² This entry employs fairly standard and formulaic language seen in a plethora of other assault cases in the Common Pleas. This is, perhaps, the most interesting feature of this case. Lucy Clerk is not characterized or described in terms outside of those used for male offenders. Her offense is framed in

⁵⁰ Mackman and Stevens, “CP 40/ 569 rot. 390d: Easter term 1403.” See also a case from Michaelmas 1400 for a male servant using the same defense against a similar charge by a former employer. Mackman and Stevens, “CP 40/ 559 rot. 120: Michaelmas term 1400.”

⁵¹ Barbara Hanawalt has also commented on the infrequency of this type of court case. For further information, see Hanawalt, *Crime and Conflict in Medieval England, 1300-1348*, 159.

⁵² Mackman and Stevens, “CP 40/ 670 rot. 478: Trinity term 1428.”

quite a clear manner: she broke into the space of a private home and made serious threats of violence against the male plaintiff. Even though this incident represents an upending of the trend of a moral hierarchy of violence previously demonstrated through other cases, Lucy Clerk's violence is not characterized as extraordinarily brutal or unusual. This could be a result of the plaintiff not wishing for his own masculinity to be undermined, or simply due to the common brevity of the entries in these records. Ultimately, Lucy Clerk's case provides important evidence that not all women who appeared before the Court of Common Pleas were passive victims. Lucy Clerk is portrayed as an active perpetrator of violence, present in the discursive negotiation of acceptable violence found in the records of the Common Pleas.

Far more frequently, the records of the Court of Common Pleas contain cases involving women acting alongside husbands or a male relative (a total of 21 cases, or 6%). This specification has been made, as the relationship between male and female defendants with the same family name is only sometimes noted. If so, the defendants are almost always listed as husband and wife. A fairly standard example of married plaintiffs can be found in the records from Hilary term, 1404: "Robert Barte claims that Daniel Southflete and his wife Emma Southflete assaulted, wounded and maltreated him with force and arms, to his damage of £20."⁵³ Outside of explicitly named relationships, the assumption that a shared surname indicated a familial relationship is not unfounded. Garthine Walker has supported this idea even further: "Co-defendants with the same surname were likely to be related or co-inhabitants.... It is worth noting that seemingly unrelated defendants could likewise be bound in ties of household, kinship, and mutual

⁵³ Mackman and Stevens, "CP 40/572, rot. 252d: Hilary term 1404."

support: stepchildren, household servants, servants in husbandry, apprentices, various other relatives (whether inhabiting the household or not).⁵⁴ It is likely that ties of familial kinship may be even greater amongst defendants in the Common Pleas records than has currently been noted.

Women acting alongside their husbands or male relatives have been interpreted as indicating a reliance on their husbands to resolve conflict; however, this interpretation can be disputed.⁵⁵ The predominance of women acting alongside their husbands or male relatives points towards how the importance of household structure informed female behaviour, just as it did male behaviour.⁵⁶ Women had an interest in defending household honour and the honour of their role within that household, much in the same way male householders would. This high proportion of married female defendants is reflective of the extent to which collective and personal household honour dictated activity.⁵⁷ This activity is illustrated through the data in figure 4.2, below.⁵⁸ Regardless of marital status, activity alone, or activity in groups, women involved in cases of assault were equally as likely to be perpetrators or victims of crime. The reduced number of female plaintiffs was undoubtedly a product of the structure of late medieval common law, and the restrictions placed on women's ability to pursue a civil suit. Patriarchal legal stewardship involved women in not an entirely passive role, but neither in a position that afforded them the privilege of the acceptable use of violence. Women certainly were involved in violent

⁵⁴ Walker, *Crime, Gender and Social Order*, 36.

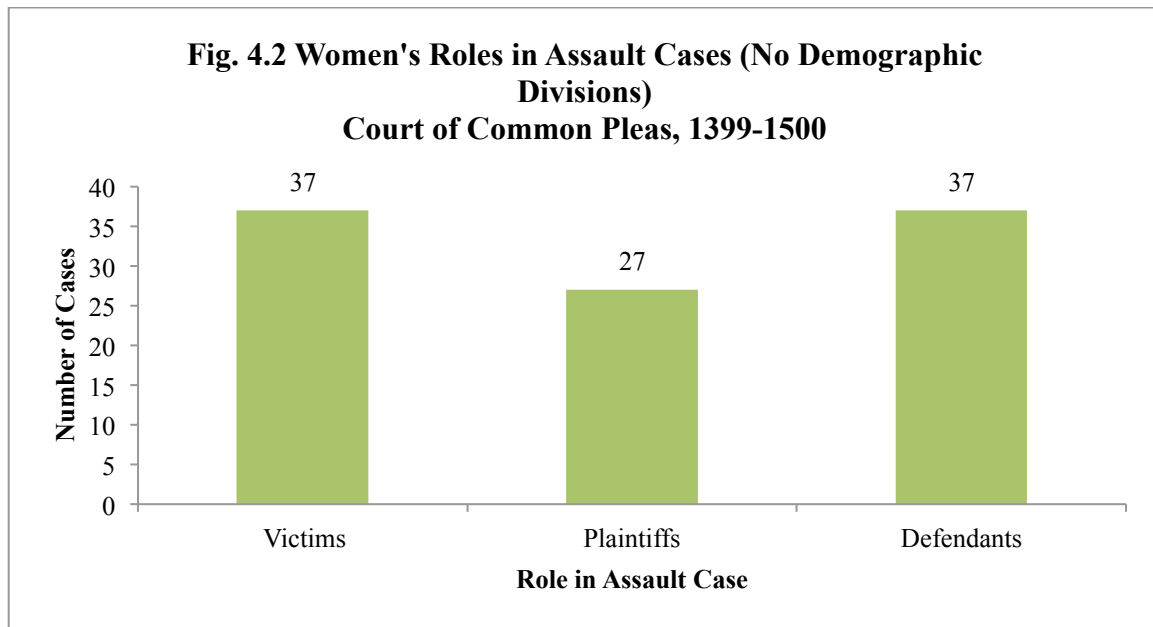
⁵⁵ Ibid, 76.

⁵⁶ This subscribes to Garthine Walker's definition of the late medieval household. Ibid, 76.

⁵⁷ Ibid, 75-77.

⁵⁸ Please refer to Fig. 4.3 at the end of this chapter for a fuller illustration of the divisions of defendants, plaintiffs, and victims between various demographic groups.

acts (albeit in reduced numbers compared to male perpetrators), and were a part of the discursive process of shaping late medieval normative violence.



It is also important to consider the influence of the dark figure of crime in interpreting these records. Reporting these crimes was an admission of a lack of governance on the part of the male householder, and a failure of the household as a unit. Derek Neal has suggested that, “a thieving wife was an injury to her husband’s social self, hence the husbands were protecting male honor... At a higher level of abstraction, a wife’s identity was subsumed in her husband’s, hence her actions, good or bad, regardless of legal definitions, reflected directly on him. The wives fit within the husbands’ social selves, and misbehaviour by wives injured husbands, because it indicated poor husbandry.”⁵⁹ Robert Muchembled has suggested a similar model to Neal’s, stating that the low incidence of female perpetrators may be a result of the correctional intervention on the part of male heads of household, and therefore kept these crimes from being

⁵⁹ Neal, *Masculine Self*, 82.

reported at court.⁶⁰ Cases involving the use of violence within the household are virtually non-existent in the sampled Common Pleas records. However, the examples of women like Lucy Clerk, Emma Southflete, and Agnes Frere indicate that women had multifaceted interactions with the crime of assault beyond simply being victims. It was possible, although less frequent, that women could accuse, be accused, and accuse on behalf of their dependents before the Court of Common Pleas.

Conclusions

Patriarchal legal stewardship within the Court of Common Pleas was an extension of the structure of the household in late medieval England. The power that came along with governing a household made the use of violence (both physical and verbal) normative for male householders. Garthine Walker's definition of violence fits the trends seen in these records, as the gendered dichotomies of feminine verbal threats versus masculine actions of violence do not fit the trends present in the Common Pleas records.⁶¹

This violence became non-permissible if it was used to too great an extent, like the allegations brought by Agnes Frere. Good household governance was defined by temperance and tolerance, alongside the appropriate correction of dependents' behaviour. Incidences of violence became unacceptable and warranted legal action when they disrupted the "moral hierarchy of violence," as suggested by Philippa Maddern. Assault by a male against a peer constituted a loss of face and public honour on behalf of the victim. Assault against a social superior demonstrated a rebellion against acceptable forms of violence, and against the structure of community governance. This rebellion

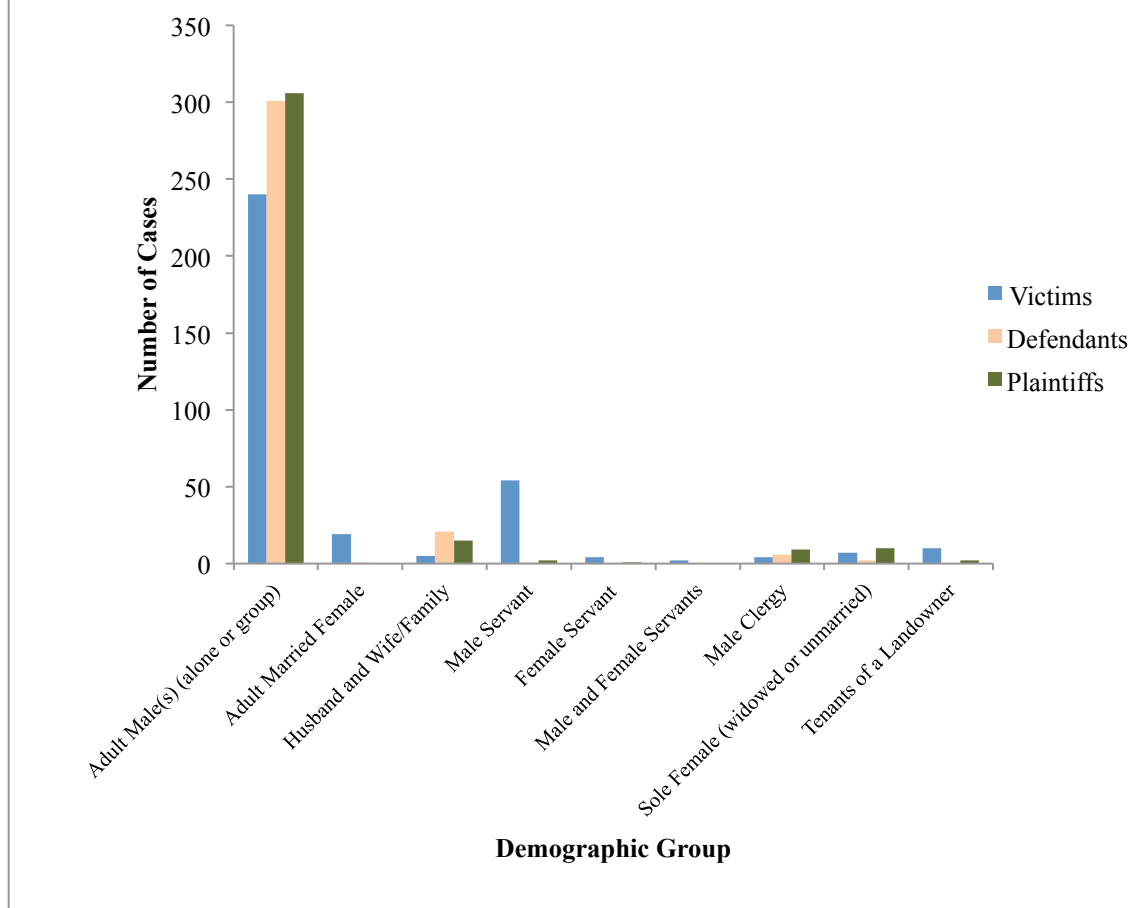
⁶⁰ This, however, refers specifically to early modern France. Robert Muchembled, *Passions de femmes au temps de la reine Margot 1553-1615* (Seuil: Paris, 2003), 64.

⁶¹ Walker, *Crime, Gender and Social Order*, 24.

merited the use of the late medieval common law courts, and compensation through a monetary fine. Assault against servants was distinct from assault against non-servants, as employers virtually always represented servants.

Again, there were exceptions to this trend, demonstrated through the case brought by the servant William Chepyngdale, on his own behalf. Adult males largely brought accusations of unacceptable use of violence against other males, indicating that this hierarchy of violence was both regulated and normalized. Although the largest majority of cases involve males accusing other males, it is important to avoid essentializing violent behaviour in medieval England. It is clear that some women and some servants were behaving violently to some extent. Although these cases were brought before the Court of Common Pleas (and therefore were seen as unacceptable uses of violence by the plaintiffs), they indicate that not all individuals were passively operating within the system of patriarchal household governance. Both rebellion against and acceptance of the governance of the household unit can be found in the records of the Court of Common Pleas. The governance and boundaries of the late medieval household will be further explored in the next chapter, on housebreaking in the Common Pleas.

Fig. 4.3 Demographic Groups of Victims, Defendants and Plaintiffs in Cases of Assault, Court of Common Pleas, 1399-1500



Chapter 5: Households and Housebreaking in the Court of Common Pleas

Introduction

The importance of household structure in late medieval England is evident both in cases of assault and abduction in the Court of Common Pleas. These cases indicate that threats to the physical safety of householders and their dependents challenged household structure and authority. The strong prevalence of male heads of household initiating legal action as a plaintiff on behalf of their servants, wives, or even lower-ranking clergy members helped to solidify the correct governance of households. The crime of housebreaking in the Court of Common Pleas reflects the extension of the male householder's social self. The physical unit of the medieval house served as both a complex barrier and symbol denoting the place and space occupied by a household. This chapter will argue that the crime of housebreaking was one that primarily concerned land-owning heads of households (both lay and religious), and the ways that housebreaking was represented in the records of the Common Pleas served to protect the economic, social and physical security of households.

Methodologies and Historiographical Debate: The Medieval House and "Housebreaking" as a Crime

The significance and meaning of the house as an object in late medieval England has been a subject of frequent historiographical debate. Since the rise of social history in the 1960s and 1970s, there has been considerable historical debate about when the 'house' first began to be regarded as a private and domestic space.¹ The cultural and symbolic associations of the house heavily influence interpretation of housebreaking in

¹ Witold Rybczynski, *Home, A Short History of an Idea*, (New York: Penguin Books, 1987), 75.

the Common Pleas records. Witold Ribzcyński asserts that these associations first began in early modern Holland.² However, more recent scholarship by medievalists such as Felicity Riddy suggests that perceptions of the house as a semi-private, comfortable, and safe space can be traced to the fourteenth century in England.³ Riddy's definition of the late medieval house will be used in this chapter, as it helps to explain how housebreaking was understood beyond the immediate economic threats it posed. The "domesticity" and safety of the late medieval house meant that housebreaking had significance beyond the breaking of doors, walls and fences. It was a violation of a space that, while not as fully private as the house of Victorian England, still held potent meaning for late medieval landowners.⁴

P.J.P. Goldberg and Maryanne Kowaleski have made the important point that the physical appearance and uses of a house varied from rural to urban, and from elite to peasant populations.⁵ Furthermore, these houses were either consciously or unconsciously reflective of the cultural values of their occupants.⁶ Medieval houses brought together numbers of people tied by association of kinship, friendship, commerce, service or neighbourliness.⁷ The collectivity of the house is an important distinction, as the interconnectedness of gender and social rank influenced relationships to the symbol of the house. Gender, rank, and the house intersected in a manner similar to that seen in

² Ribzcyński, *Home*, 75.

³ Riddy, "'Burgeis' Domesticity in Late-Medieval England," 17.

⁴ Ibid, 16 ; See also Elizabeth Langland, *Nobody's Angels: Middle-Class Women and Domestic Ideology in Victorian Culture* (Ithaca: Cornell University Press, 1995).

⁵ P.J.P. Goldberg and Maryanne Kowaleski, "Introduction," in *Medieval Domesticity: Home, Housing and Household in Medieval England*, ed. Maryanne Kowaleski and P.J.P. Goldberg, (New York: Cambridge University Press, 2008), 4.

⁶ Ibid.

⁷ Ibid.

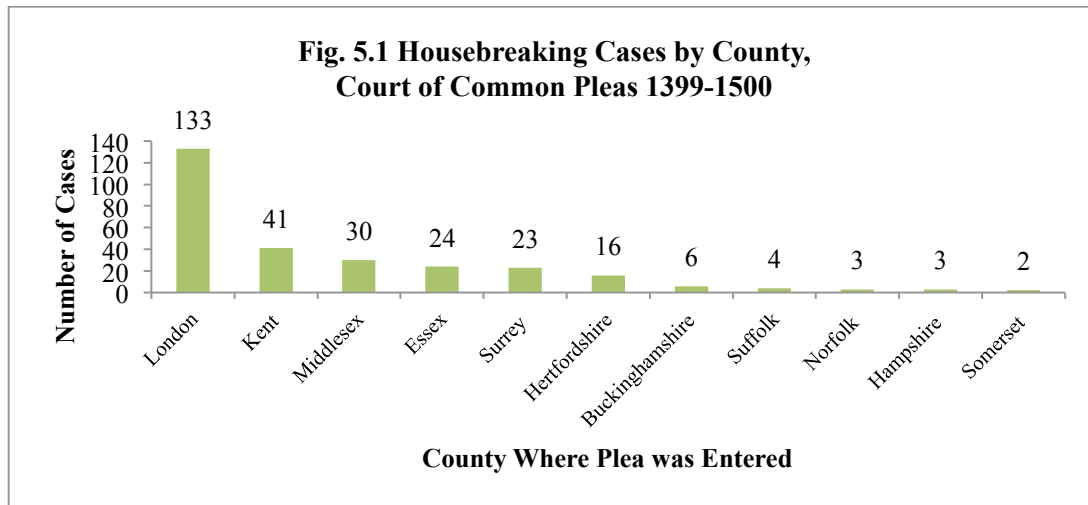
cases of assault and abduction. Furthermore, Mark Gardiner has asserted that medieval houses were “...simultaneously metaphors for domesticity, the family and the proper order of society, and also physical structures in which people have their being and carry out daily tasks.”⁸

Social rank particularly affected the demography of plaintiffs and defendants in cases of housebreaking. The sampled cases virtually never deal with trespasses against the property of the rural poor. With 133 of 285 housebreaking cases taking place within London, and the remaining 153 cases involving citizens of London in other counties, this sample largely represents the interests and activities of urban-dwelling people and wealthy rural landowners (see fig. 5.1, below).⁹ Furthermore, the expenses of litigation before the Common Pleas, as previously discussed, would likely have prevented poor, rural-dwelling people from pursuing legal action.¹⁰

⁸ Mark Gardiner, “Buttery and Pantry and their Antecedents: Idea and Architecture in the English Medieval House,” in *Medieval Domesticity: Home, Housing and Household in Medieval England*, ed. Maryanne Kowaleski and P.J.P. Goldberg, 56.

⁹ To reiterate a point mentioned in the introduction to this thesis, these housebreaking cases had a great deal of overlap between abduction and assault cases, and some were undoubtedly included in the calculation of data in other chapters. However, this chapter will specifically examine the housebreaking facet of these cases. These are instances of housebreaking, which often coincided with instances of abduction or assault; however, they will be referred to as “cases” in this chapter.

¹⁰ Hastings, *The Court of Common Pleas*, 9, 115.



Furthermore, it should also be noted that housebreaking as a crime was not a fourteenth-century invention. Rebecca V. Colman has suggested that breaking of enclosures and houses has had meaning beyond “mere property damage” in English law dating back to the seventh century, demonstrated through the crime of *eodorbryce*.¹¹ However, the meaning and significance of the house was not static between the seventh and fifteenth centuries. Colman, in her exploration of early medieval English law, asserts that houses and buildings had little value or social importance.¹² This interpretation cannot be applied to examples from the late medieval period, as one of the primary uses of the Common Pleas was to discern ownership of property.¹³ It can be asserted, however, that although there was a change in the cultural value associated with the house as an object, concerns about housebreaking as a crime existed throughout the medieval period in England.

¹¹ Rebecca V. Colman, “Hamsocn: Its Meaning and Significance in Early English Law,” *The American Journal of Legal History* 25: 2 (April 1981): 98.

¹² *Ibid.*, 99.

¹³ Sir Edward Coke in Sir William Blackstone, et al. *Commentaries on the Laws of England: On Four Books, Volume 3*, (London: Richard Taylor, 1830), 40.

It is also worth noting not only where these events were alleged to take place, but also how housebreaking was committed. There are very few cases from the sampled records where housebreaking was the only charge pursued; the majority of cases were accompanied by additional charges. Of the 285 housebreaking cases, 192 were accompanied by a charge of taking of goods, 10 with a charge of abduction, 58 with a charge of assault, and 59 with a charge of a trespass against chattels.¹⁴ These charges frequently overlap with each other. Out of all sampled cases, there are only two cases that list housebreaking with no accompanying charges.¹⁵

These statistics provide insight into the fears associated with the crime of housebreaking. There were very few instances where an alleged perpetrator broke a house for the sake of breaking a house.¹⁶ It was often with the intent to steal material goods, or to injure or abduct the people inside. Housebreaking was largely a crime of making the valuables of the household accessible, whether human or material. It should also be noted that housebreaking was a distinct crime from burglary and robbery. Burglary and robbery, both explored by Barbara Hanawalt in *Crime and Conflict in English Communities, 1300-1348*, were felonies.¹⁷ Burglary and robbery cases were seen before the *coram rege*, or king's court, as they concerned the king's peace, and the king would act as plaintiff on behalf of the public. To clarify these offenses more precisely,

¹⁴ Taking of goods represented 67.3%, abduction 3.5%, assault 20.3% and trespass against chattels was 20.7% of accompanying charges alongside housebreaking.

¹⁵ See Mackman and Stevens, "CP 40/ 798, rot. 130 d: Trinity term 1460." ; and Mackman and Stevens, "CP 40/ 825, rot. 430d: Michaelmas term 1467."

¹⁶ In the two cases where housebreaking is the only charge listed, there is no further motive or explanation listed. Both entries merely state that the defendant broke a house "with force and arms," and list the monetary damages claimed by the plaintiff. See cases Mackman and Stevens, "CP 40/ 798, rot. 131: Trinity term 1460." ; and Mackman and Stevens, "CP 40/ 825, rot. 430d: Michaelmas term 1467."

¹⁷ Hanawalt, *Crime and Conflict in English Communities*, 59-61.

burglary involved the illegal entry of a house at night, whereas robbery involved the taking of goods with the intent to harm.¹⁸ Housebreaking was a trespass, rather than a felony, and would be presented before a civil court such as the Common Pleas.

Furthermore, the analogous symbol of the late medieval house for both local government and kingship made housebreaking a crime rich with meaning.¹⁹ It represented a breach of the protection and safety provided by the hegemonic head of household to their dependents, in turn, mirroring the protection provided by feudal lords to their subordinates.²⁰ Housebreaking challenged hegemonic power structures, and the ability to maintain order and governance both at the level of the household, and at larger levels of law and government.

The extension of the male householder's social self through his household members has previously been explored in relation to the crimes of assault and abduction. However, the significance of the male householder as a subject extended beyond the symbolic boundaries of his household dependents, to the physical boundaries of his house itself.²¹ Garthine Walker's model of household honour and masculinity can be applied to the significance of the house and property. Walker suggests that the house was seen by contemporaries as a metaphor for the honour of the persons that comprised the household. There are literary examples from the period that compare the physical body of the male householder with the physical house- alluding to the kitchen as a stomach, et cetera.²² Furthermore, Walker explicitly states "The dwelling-house was culturally and

¹⁸ Hanawalt, *Crime and Conflict in English Communities*, 60-61.

¹⁹ Amussen, "Punishment, Discipline, and Power," 4-5.

²⁰ Ibid, 5.

²¹ Walker, *Crime, Gender and Social Order*, 34.

²² Ibid, 34-35.

legally sanctioned as ‘a place of protection and defence’ against ‘injury and violence’. Infracting household boundaries was a violatory act.”²³ This lends a similar level of significance to housebreaking, abduction and assault, in that these trespasses represented an affront to the governance, composition, and structure of the household.

Although the late medieval house was a semi-private place that housed both spaces of business and spaces for families to dwell, to force illegal entry into the house was to commit violence against an important symbol of household governance. Breaking and entering a house challenged the authority of the householder, and particularly that of the male householder. To housebreak was to cause damage to the property of another in an economic sense, but also was a transgression against the social status of the householder.²⁴ Walker’s model of masculinity complements this concept, in that “[c]omplaints about male violence frequently conflated household and personal honour. Being beaten in one’s own house or grounds was especially shameful. An adversary’s unwanted presence within one’s house was an affront.”²⁵ It is this shame and loss of household honour that gives further meaning to these cases of housebreaking.

In a case from Easter 1421, a plaintiff presented his case of assault and housebreaking as a serious threat to both his personal safety and economic livelihood:

William Tebaude claims that one Robert Swasham used force and arms to break his house and close at Aspenden ('Apisden'), Hertfordshire, whereupon Robert Swasham assaulted him and threatened his life and limbs so that he could not walk openly or go about his business for fear of death for one month following the aforesaid trespass.²⁶

²³ Walker, *Crime, Gender and Social Order*, 35.

²⁴ Neal, *The Masculine Self*, 59.

²⁵ Walker, *Crime, Gender, and Social Order*, 34.

²⁶ Mackman and Stevens, “CP 40/ 641 rot. 219: Easter term 1421.”

As was previously discussed, the formulaic phrase of “force and arms” is employed for legal reasons in this case, just as in other assault cases heard before the Court of Common Pleas. This case provides a strong example of the primary concerns held by the plaintiffs in the sampled housebreaking cases, namely that housebreaking represented a breach of the safety and respite provided by the house. Housebreaking cases contested the ability of a householder to govern and protect household dependents, it disrupted the economic activities of a householder, and it also provided a means through which the alleged perpetrator could steal from or assault the tenants of a house.

The Lay Household in Cases of Housebreaking

The male plaintiff and male householder occur frequently in housebreaking cases, similar to the trends seen in cases of assault and abduction. Of the 258 cases, there are 204 cases with an independent, property-owning male plaintiff.²⁷ There are only seven cases where a married couple or family members are named as co-plaintiffs, and 30 where two or more men are named as plaintiffs. Independent male property owners were, by far, the most likely to initiate legal action in response to a housebreaking. Furthermore, the role of women as victims of housebreaking varies slightly from that seen in cases of assault. Although there are nine cases of housebreaking where a female house member is explicitly named as a victim of assault, there is only one housebreaking case where a wife is named as a victim of an assault and is listed as co-plaintiff.²⁸ All other cases of assault against a family member involve only the male householder as

²⁷ For some good models of these types of cases, refer to cases such as Mackman and Stevens, “CP 40/ 568 rot. 275: Hilary term 1403.” ; Mackman and Stevens, “CP 40/ 651 rot. 126: Michaelmas term 1423.” ; Mackman and Stevens, “CP 40/657 rot. 303: Easter term 1425.” There are a total of 101 cases of solo male plaintiffs charging solo male defendants, so there are many examples of this type of case.

²⁸ Mackman and Stevens, “CP 40/ 807 rot. 306: Hilary term 1463.”

plaintiff. The phenomenon of female co-plaintiffs only appeared in a case involving housebreaking and taking of goods.²⁹ However, the anomalous cases that involve less frequently-appearing demographic groups yield important analyses about the structure and function of the household.³⁰

In a case from Michaelmas term, 1406, the male householder plaintiff presented his case of assault and housebreaking as an affront to the economic success of his household:

John Edmond claims that Hugh Leversegge and Edward Leversegge used force and arms to break his close and house at St Mary Cray, Kent, kill a horse worth 100s, carry off goods and chattels worth £10, and assault his servants so that they did not go about his business for fifteen days. The persons assaulted were John Rose, Nicholas Atta Mere, and Thomas Sibbyng. The goods taken were namely: one bed, one copper/brass and pewter/tin dish, woollen and linen cloth, and timber. Damages are claimed at £40.³¹

Beyond the large number of goods taken in this case, it is worth noting the role of servants. Similar to an assault case from 1427, the assaulted servants are identified by name, but the primary offenses are the plaintiff's governance and operation of the household. The description of assault against servants as an affront to the "business" of the householder again solidifies the concept of the servant as part of the physical boundary of the householder's social self.³² Furthermore, this provides another example of the patriarchal legal stewardship of the householder representing the interests of household inferiors in civil cases before the Common Pleas.

²⁹ For a typical example, see Mackman and Stevens, "CP 40/ 810 rot. 103: Trinity term 1463."

³⁰ Natalie Zemon Davis, "On the lame," *The American Historical Review* Vol. 93, No. 3. (1988): 573.

³¹ Mackman and Stevens, "CP 40/ 583 rot. 410: Michaelmas term 1406."

³² Emphasis my own. See also the cases Mackman and Stevens, "CP 40/ 756 rot. 138: Hilary term 1450." ; and Mackman and Stevens, "CP 40/674, rot. 132: Trinity term 1429." discussed in depth in the previous chapter on assault.

Also worth noting is a case from Trinity 1446 where the plaintiff, John Wotton, stated that “Thomas Hynkeley, *through* his servant John Gryffyth” committed housebreaking against him.³³ Although Gryffyth is named as the individual who allegedly committed the housebreaking, only his master, Hynkeley, is named as the defendant.³⁴ This case set an important precedent for the role of servants in the structure of the late medieval household. Damage to another householder could be done through physically harming a servant, but damage could also be done to other households through the actions of a servant on behalf of their master. There are no other examples similar to this where a master is directly accused of housebreaking (or assault or abduction) and a servant allegedly committed the activity. This could be a result of the nature of housebreaking being an offense against person and property, rather than solely against persons. This could be an indication that householders could have their servants commit property crimes, but not abductions or assaults. This case reveals another layer of the complex relationship of the servant to the master of their household.

It should also be noted that there is a more equal level of assaults and abductions against both male and female servants in cases involving housebreaking. Whereas male servants and apprentices comprised the majority of abductees and victims of assault, cases that specifically allege housebreaking and violence within the house see increased numbers of female servant victims. Six cases allege the abduction of, or assault against, a female servant, nine cases allege assault or abduction of a male servant, and three cases

³³ Mackman and Stevens, “CP 40/ 742, rot. 110: Trinity term 1446.”

³⁴ Ibid.

claim assault against a group of male and female servants.³⁵ This is likely due to the types of work these servants were doing - female servants tended to have more domestic chores, whereas male servants were more likely to be engaged in the public business of the householder.³⁶ Assaults against servants in cases of housebreaking disrupted the daily function and economic success of the household.

Offenses of housebreaking, however, did not very often involve servants. Housebreaking could also include the breaking of enclosures and damaging goods, tenants and livestock. Land and livestock property held just as much meaning as the physical house, as it provided the means for the economic livelihood of the household. A case from Hilary term, 1421, particularly highlights the importance of maintaining the successful operation of land ownership and tenancy:

Philip Falepit and Joan Falepit claim that on 18 February 1417 William Hyndeston, Walter Saunder, John Bykebury, John Rondell, John Spore, and Richard Uppetton, used force and arms to break their houses and closes at Warcombe, Woolston, and Alvington in Devon, whereupon they threatened Philip Falepit and Joan Falepit's tenants so that the same tenants withdrew from the tenure of Philip Falepit and Joan Falepit withdrawing their suit of Court to Philip Falepit and Joan Falepit which Court would normally be held every three weeks, and thus Philip Falepit and Joan Falepit were without their tenants' rents and services from the day of the trespass until the day of the making of their original writ on 5 April 1420...³⁷

Philip and Joan were almost certainly members of the same family - whether or not they were married is not mentioned in this writ, meaning they were likely familial kin through

³⁵ Sample of each type of case: Mackman and Stevens, "CP 40/567, rot. 063: Michaelmas 1402." ; Mackman and Stevens, "CP 40/568, rot. 289: Hilary term 1403." ; Mackman and Stevens, "CP 40/571, rot. 089: Michaelmas term 1403."

³⁶ Goldberg, "Women in Fifteenth-Century Town Life," 113-114.

³⁷ Mackman and Stevens, "CP 40/ 640, rot. 120: Hilary term 1421."

some other connection.³⁸ The allegation of physical aggression against houses, property and tenants committed by a large group of men makes this case noteworthy. Men acting in groups of two or more were the second most frequent defendants in cases of housebreaking, with a total of 86 cases. Men acting alone, as in the majority of sampled cases in this study, were the most common defendants, with 158 cases. The land-owning Falepits were concerned with the loss of income generated by this attack, claiming damages of £400.³⁹

The Falepits' case illustrates the concerns of wealthy rural landowners in late medieval England. The feudal relationship between the landowner and tenant was predicated upon the reciprocity of safety and dwelling space provided by the owner, and work and rent provided by the tenant.⁴⁰ This case of housebreaking disrupted this relationship and threatened the economic livelihood of the Falepits. Furthermore, supporting the previous discussion of the household being analogous to larger systems of governance, the attack on the Falepits' tenants represents an attack on an extension of the social self of the Falepit household. The symbolic boundaries of the household were not confined to its house members, the physical house, or the body of the householder. Land and property (and the income generated through property) owned by a household also served as meaningful symbols of household authority and structure, which could be undermined and attacked through the crime of housebreaking.

³⁸ It is also possible that the defendants shared some form of kinship ties, but this is not directly discussed in the record.

³⁹ Mackman and Stevens, "CP 40/ 640, rot. 120: Hilary term 1421."

⁴⁰ Phillipp Schofield, *Peasant and Community in Medieval England, 1200-1500* (New York: Palgrave Macmillan, 2003), 7.

The number of both female perpetrators and female plaintiffs in housebreaking cases should also be taken into consideration. The female plaintiff is encountered more frequently in cases of housebreaking than in cases of assault and abduction. 27 assaults, or 7.8%, had a female plaintiff either named alone, alongside a family member or another male. 4.5%, or four cases, of abduction named a female plaintiff in some capacity, whereas 29 cases, or 10.2% of all housebreaking cases named a female plaintiff. This is likely because of the ability of non-married women (or women that were non-*couvertes*) to own and control property in late medieval England.⁴¹ Interestingly, it was more common for women to be named as an independent plaintiff, rather than as co-plaintiffs with family members or their husbands.⁴² This might be because these women were widows, however, as their marital status is not always listed in the records, it is very difficult to draw conclusions about the agency of widows in housebreaking cases.

Housebreaking cases that involve female defendants are described in the writs in the same manner as those involving male defendants. A good example comes from Trinity, 1426: “William Donne states that on the Monday before Christmas in the [omitted] year of the reign of Henry V, Agnes Frognale forcibly broke his close and house in London, and carried off goods and chattels to the value of 100s...”⁴³ Entries for female offenders, such as the previous example, are no more or less brief than their male counterparts. Unfortunately, as these rolls did not record punishment or fines, it is impossible to discuss the comparative treatment of female versus male offenders in the

⁴¹ Conor McCarthy, *Marriage in Medieval England: Law, Literature, and Practice*, (Woodbridge: Boydell Press, 2004), 57-58.

⁴² There are 13 cases of non-married female plaintiff named without co-plaintiffs, whereas there are 13 cases of women appearing alongside their husbands, family members, or as part of a mixed-gender group of 3 or more plaintiffs.

⁴³ Mackman and Stevens, “CP 40/652 rot. 319: Trinity term 1426.”

Common Pleas. Karen Jones has suggested that the frequency of females being charged with non-felonious property crime in medieval England may have been a product of jurors' perceptions of women as non-autonomous persons, and not responsible for their criminal activity.⁴⁴ This would account for the slightly higher number of female defendants appearing in civil suits before the Common Pleas, rather than being charged with felonious theft, robbery or burglary.

There is also the interesting fact of comparatively few assaults taking place in cases of housebreaking.⁴⁵ It appears that both men and women were unlikely to engage in violent property crimes- although there was a relatively high level of theft occurring, it was unusual for individuals to employ violence in their theft.⁴⁶ Although women were more frequently named as defendants in housebreaking cases in the other types of cases examined in this study, men allegedly carried out the majority of housebreaking cases. This could mean that women either committed this offense less frequently, or were prosecuted less frequently for housebreaking. Beyond these trends, these cases do provide further support for the established statistics set out in previous studies by historians such as Barbara Hanawalt, Karen Jones, and Sue Sheridan Walker.

The Religious Household in Housebreaking Cases

⁴⁴ It is also interesting to note that there were also lower conviction rates in cases of felonious theft. Civil suits appear to have been the more effective means of punishing property crime. Jones, *Gender and Petty Crime*, 37 ; Carol Z. Wiener, "Sex Roles and Crime in Late Elizabethan Hertfordshire," *Journal of Social History* Vol. 8, No. 4 (Summer 1975): 37.

⁴⁵ Only 58 housebreaking cases also included allegations of assault.

⁴⁶ Karen Jones has also noted this trend, but in regards to felonious theft. It is also possible that violent housebreaking would be considered robbery, and therefore tried in a criminal court. Jones, *Gender and Petty Crime*, 35.

The housebreaking cases of the Common Pleas provide further evidence to support the concept of the husbandry explored in cases of assault. Derek Neal's model of the comparable "husbandly selves" of male householders and high-ranking male clergy members can likewise be observed in housebreaking cases.⁴⁷ Male clergymen were the third most common demographic group to be named as plaintiffs in the sampled cases.⁴⁸ Richard Clifford, the Bishop of London, was particularly litigious in the Hilary term of 1420, accusing different men on three separate occasions of breaking his close, stealing hares and pheasants, and damaging his property.⁴⁹ While this certainly reflected a direct economic and agricultural influence on the Bishop, these repeated incidents (some of which were committed by repeat offenders) constituted an attack on the Bishop's social self and economic standing.

In another case from Hilary 1461, in a case similar to one discussed in the chapter on assault, an abbot charged a layman with breaking his close and house and "assaulting one of his fellow canons."⁵⁰ The concept of patriarchal legal stewardship lends itself to both assault and housebreaking charges. A high-ranking clergyman acted on behalf of his fellow clergyman in the interest of seeking compensation for a public attack against the household. In addition to this, it likely would have benefitted the victim of the assault, as it lent a greater level of legitimacy to this case, and would have made paying the

⁴⁷ Jones, *Gender and Petty Crime*, 89-100, 105.

⁴⁸ Demographic groups were distinguished as follows, with the number of respective housebreaking cases in parentheses: sole adult male (204 cases), Group of two or more adult males (30), Male clergy (22), Sole adult female (13), Husband and wife/Male and female family members (7), Mixed gender group of three or more (6), female clergy (3).

⁴⁹ Mackman and Stevens, "CP 40/636 rot. 108: Hilary term 1420." ; Mackman and Stevens, "CP 40/ 636 rot. 108d: Hilary term 1420." ; Mackman and Stevens, "CP 40/ 636 rot 478: Trinity term 1409."

⁵⁰ Mackman and Stevens, "CP 40/ 800 rot. 195d: Hilary term 1461." See also Mackman and Stevens, "CP 40/ 951 rot. 129: Hilary term 1500." for a similar case.

extensive legal costs of the Common Pleas more feasible.⁵¹ The responsibilities of high-ranking clergymen very much aligned with a similar form of masculine governance required of lay male householders in cases of housebreaking.

These allegations of housebreaking are also the only cases to involve female members of religious houses, in any capacity. There were no female religious house members who were victims of assault or abduction, nor were there any of these women acting as plaintiffs or defendants in any assault or abduction cases. Although there are only three cases where females from religious households were involved in cases of housebreaking, there are similarities that occurred in all of these cases. Each case names a prioress or abbess as the plaintiff, and there are always several males accused of breaking the close of a religious house, and taking goods and chattels.⁵² The allegedly stolen goods ranged from a gilded chalice and plate, to household utensils and clothing, to firewood – all are assigned a related monetary value, and discussed in the same manner in the records.

Although there are no assaults against fellow nuns or Sisters as observed in some housebreaking cases with male plaintiffs, these cases do suggest a similar form of household structure. Marilyn Olivia has asserted that female religious houses had their own form of domesticity as a sacred space.⁵³ The female religious house provided its own form of safety and protection, as did the lay house. It has been previously suggested that

⁵¹ Hastings, *The Court of Common Pleas*, 12, 16.

⁵² Mackman and Stevens, “CP 40/ 583 rot 129d: Michaelmas term 1406.” ; Mackman and Stevens, “CP 40/ 644 rot. 338d: Hilary term 1422.” ; Mackman and Stevens, “CP 40/ 872 rot. 105: Easter term 1480.”

⁵³ Marilyn Olivia, “Nuns at home: the domesticity of sacred space,” in *Medieval Domesticity: Home Housing and Household in Medieval England*, ed. Maryanne Kowaleski and P.J.P. Goldberg, 117.

male clergy members had an interest in utilizing patriarchal legal stewardship on behalf of their fellow clergy members. Although this is not as immediately apparent in the cases involving female religious households, it is important to note that all three suits name a high-ranking prioress or abbess as the plaintiff. Female members of religious houses acted on their own behalf in the Court of Common Pleas without the intercession of a male clergy member to validate their case, just as some of their laywomen counterparts were capable of doing. The system of utilizing patriarchal legal stewardship was not as necessary in cases of housebreaking due in part to English property law at the time, and likely also due to the comparatively lower level of violence in housebreaking civil suits, meaning, more precisely, that the majority of housebreaking cases involve allegations of taking of goods, not allegations of assault or abduction. Housebreaking was an affront to the safety, success, and structure of the household, and affected female religious houses in the same way as male religious houses and lay households.

Conclusions

Housebreaking cases represented a direct affront to the material interests of the late medieval household. They constituted an attack on the householder's ability to govern and provide security to household members. The offense was primarily one of accessibility, in that it breached the boundary of the household to make goods, property and people accessible to non-household members. Contemporary understandings of both the physical house and family members as extensions of the male householder's body made housebreaking an offense that directly challenged the authority of the householder.

The Common Pleas, as a court, was concerned with maintaining the rightful ownership of property.⁵⁴

It is clear that men, women, and sometimes servants, committed acts of housebreaking. These acts could be for personal reasons, like wanting to acquire material gain, as in the case of Agnes Frognale. Housebreaking could also be an act committed in the interests of another householder, as demonstrated in the case of Thomas Hynkeley and his servant John Gryffyth. Individuals in the late medieval period derived a large portion of their identity from their relationship to their household. Both the importance of the boundaries of the house and disregard for these boundaries can be observed through the housebreaking cases of the Common Pleas records.

⁵⁴ Hastings, *The Court of Common Pleas*, 77.

Chapter 6: Conclusion

The use of the Court of Common Pleas in late medieval England primarily served three functions. Firstly, as with most common law courts in the medieval period, the Common Pleas served as a venue for protecting and asserting property rights. Secondly, civil litigation before the Common Pleas played a mediatory role in the development of late medieval norms of acceptable and unacceptable violence amongst the population of England. Thirdly, the Court was a venue for developing and asserting good governance in the household, as well as rectifying misdeeds against the household and householder. Householders could use the Common Pleas to seek reparation for wrongs against their person, their dependents, or against their physical property. The Common Pleas primarily served the interests of property owning, adult males and heads of household, although women of high status or wealth could fulfill similar roles to men.

Examination of the Common Pleas records provides important insight into the patterns and uses of the system of patriarchal legal stewardship. The common law system was undoubtedly structured in such a manner that the legal rights and capabilities of women were restricted in comparison to men.¹ Men, therefore, were responsible for acting on behalf of female (and male) dependents before law courts. In some cases, women could act on behalf of their dependents in a similar manner, but only if they were widowed or unmarried, and if they had a substantial amount of wealth or status.² This thesis has demonstrated, however, that patriarchal legal stewardship before the Common Pleas was not necessarily a concept that required the subservience of the stewarded

¹ Hudson, *Formation of the English Common Law*, 196.

² Seen in Mackman and Stevens, "CP 40/ 560 rot. 116: Hilary term 1401." ; Mackman and Stevens, "CP 40/ 667 rot. 307: Michaelmas term 1427."

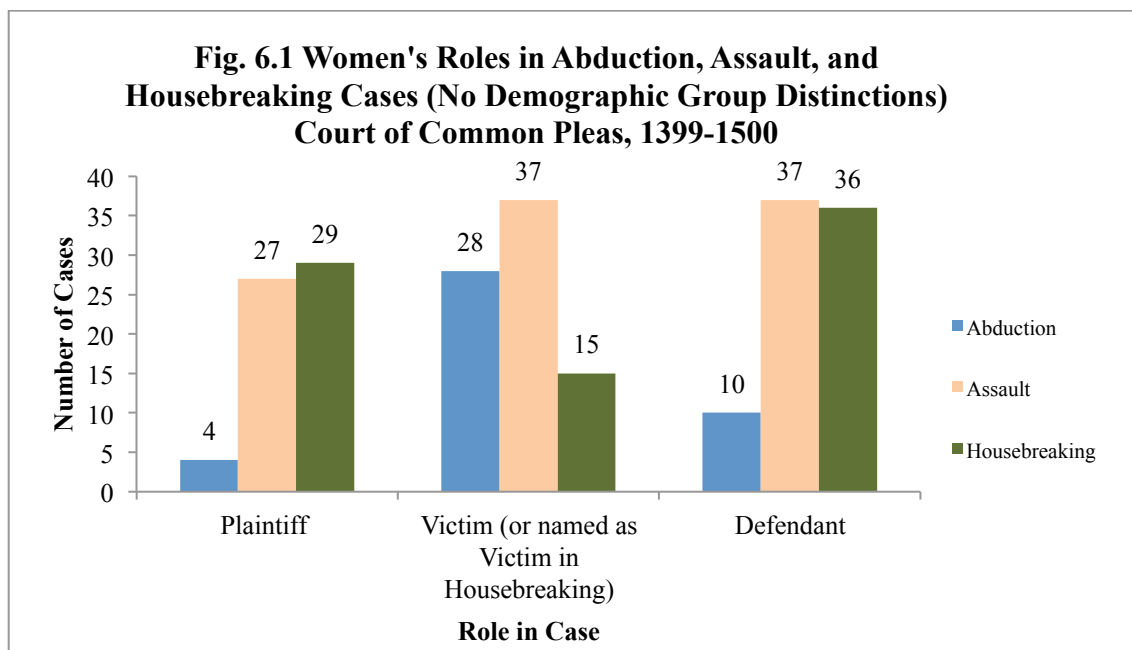
individual. It was very likely that some individuals strategically utilized the legal patronage of a familial superior (or religious household superior) to allow their case to be heard before the Common Pleas, lending a sense of legitimacy to their case, and easing the financial burden of the Pleas' hefty legal fees.³ In this study, the nomenclature of patriarchal legal stewardship is used to describe this concept, as it incorporates the elements of governance and responsibility seen in the patriarchal structure of the household into the navigation of civil litigation between late medieval English people. Patriarchal legal stewardship involved the intersection of culturally normative gender roles, social status, and late medieval understandings of violence, justice and the household.

In terms of the demographics and gender of individuals in these cases, the records indicate some interesting trends. Women were, on average, more likely to be in the role of a victim in cases of assault, abduction, and housebreaking (see fig. 6.1).⁴ However, it is very interesting to note the similar number of females in victim roles and females in defendant roles (80 cases involve female victims in some capacity, whereas 83 cases involve female defendants). In cases of assault, women were equally distributed between the roles of victim and defendant. Women were certainly more frequently present in the role of the victim than either plaintiff or defendant roles in cases of abduction. Women were defendants more often than victims in housebreaking cases, but this is largely due to the fact that housebreaking was a property crime, and not a crime against a physical

³ Hastings, *Court of Common Pleas*, 59-63.

⁴ In Figure 6.1, all cases involving women in some capacity were included in cumulative data. This includes women acting alongside their husbands and family, in mixed gender non-kin groups, as servants, unmarried, etc.

person.⁵ In housebreaking cases, it is also interesting to note the high number of females plaintiffs. Women could act in the interest of their property, the property of their household, or alongside male kin in cases of housebreaking. The civil suits before the Court of Common Pleas demonstrate that women exerted agency and did not always fill the role of passive victim in cases of housebreaking, assault, and abduction.



The presence of female defendants is relatively low in cases from the Common Pleas, in comparison to other courts from the late medieval period. Karen Jones has previously asserted that females comprised anywhere from 8-20% of defendants in the various courts of medieval and early modern England.⁶ The sampled cases of the Common Pleas tend to reflect lower numbers of female defendants, either acting alone, alongside family members or as part of a mixed-gender group. A total of 37 cases (10.7%) of assault and 10 cases (11.2%) of abduction involved female defendants in

⁵ A victim was only noted in housebreaking cases if explicitly specified. That is to say, a victim was identified only if an abduction or assault was alleged alongside the charges of housebreaking.

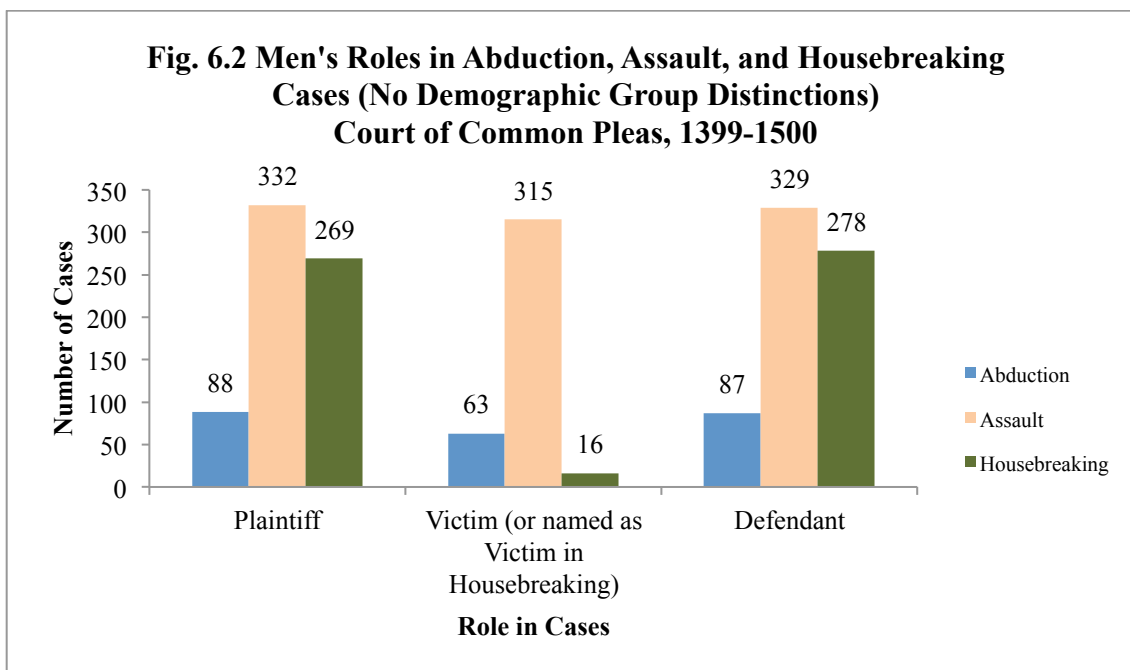
⁶ Jones, *Gender and Petty Crime*, 38.

some capacity, whereas 36 cases (12.6%) of housebreaking cases name a female in a defendant role.⁷ These low numbers of female defendants are likely a product of the structure of civil suits as outlined by the common law in the fifteenth century.⁸

In terms of men's roles in cases before the Common Pleas, men certainly appear more frequently in all case types. In all three case types, men were least frequently the victim of an alleged assault or abduction (or victimized during a housebreaking). What is particularly interesting though, are the comparatively high numbers of male victims of assault and abduction (see fig. 6.2). These numbers are partially the product of the frequent abduction of male apprentices and servants. As previously discussed in chapter three, it is likely that the Common Pleas saw this high number of male servant abductions as opposed to abductions of wives, daughters and wards, due to the fact that it was a civil court. The high numbers of males as abduction victims was heavily influenced by a post-Black Death demographic crisis, which led to an increased need for male household labour. Whether or not these abductions were consensual, however, can certainly be contested.

⁷ Of the 36 housebreaking cases with female defendants, only 7 cases involved only a solo woman defendant accused alone. Furthermore, it is interesting to note that ratios of male to female defendants have stayed remarkably similar over the centuries, and these numbers are comparable to contemporary crime statistics. For more information, see Hanawalt, *Crime and Conflict in English Communities, 1300-1348*, 3.

⁸ Hudson, *Formation of the English Common Law*, 196.



Male victims of assault also merit a brief explanation. The high number of male victims can partially be explained by violent assault committed by a (likely male) defendant against the servant of another household. To commit assault against a servant was to symbolically attack both the householder and the household unit. The majority of these assault cases involved adult, male, non-servants as victim/plaintiff and defendant. The high number of adult male victims of assault (240 cases, 239 of which were attacks perpetrated by another adult male, group of adult males or married couple) was also a product of the cultural understanding of violence in late medieval England. It was more socially normative for males to use violence, and the use of violence in governance was one facet of medieval hegemonic masculinity.⁹ Use of violence by men was certainly more normative than use of violence by women in late medieval England. The overuse of violence in the household, illegal violence against a non-household member, and violence

⁹ Karras, *From Boys to Men*, 221.

against a social superior were all unacceptable and warranted civil litigation before the Common Pleas.

Certainly social status affected the cases in the Common Pleas records. However, due to the structure and content of this digital archive, it is very difficult to draw quantitative conclusions about the social composition of the Common Pleas' plaintiffs, defendants and victims. Occupation, titles, marital status and other social signifiers are only occasionally recorded in the archive, making statistical analysis rather challenging. Beyond these difficulties, there are a few logical assumptions that can be made about the influence of social status on the individuals in these cases. It is likely, for example, that individuals holding very high social rank or members of the nobility would have their status recorded.¹⁰ As these elite titles occur only rarely, it is reasonable to estimate that the majority of individuals who used this court were non-elites and non-nobles.¹¹ Furthermore, as the title of servant is quite frequently mentioned (due to the importance of servants in household governance and in maintaining household economic activity), occupation certainly did matter in the narrative of these cases. Occupation signified the level of household structure to which an individual belonged. As an additional note, that so many of these cases concerned attacks on servants or the loss of servants provides some indication that the individuals who used this court were wealthy enough to employ

¹⁰ Kate Mertes, "Aristocracy," in *Fifteenth-Century Attitudes: Perceptions of Society in Late Medieval England*, ed. Rosemary Horrox, (Cambridge; New York: Cambridge University Press, 1994), 44.

¹¹ This is also logical to infer, as there was an extremely small number of noble families in fifteenth-century England. Ibid, 47 ; Stanford E. Lehmberg and Samantha Meigs, *The Peoples of the British Isles: A New History, Volume I: From Prehistoric Times to 1688* (Chicago: Lyceum Books, 2008), 118-119.

household servants.¹² From these broader estimations, it is therefore reasonable to infer that at least a large portion of individuals involved in civil litigation before the Common Pleas were householders of the middling class, concerned with maintaining structure and good governance within their own household.

The significance of the city of London must also be considered in interpreting the Common Pleas records. The following table indicates that 417 cases (or 57.9%) were alleged to have taken place in London (table 6.3). Therefore, this indicates that Londoners' legal dealings were not confined solely amongst other city-dwellers. Although the parameters of this data sample focus on London and Londoners, there is still a diverse geographic sampling of the counties of late medieval England. 42.1% of all cases took place in counties outside of London, meaning that a resident of the city was involved in litigation in another county in each of those cases. This could be a reflection of Londoners owning property outside of London and acting in defense of their proprietary rights.

**Table 6.3 Total Number of Cases per County, by Case Type
Court of Common Pleas 1399-1500**

County	Abduction	Housebreaking	Assault
London	66	133	218
Middlesex	7	30	45
Kent	1	41	14
Surrey	4	23	21
Hertfordshire	0	16	22
Essex	3	24	9
Sussex	2	0	0
Buckinghamshire	0	6	3
Hampshire	1	3	4
Norfolk	1	3	2
Suffolk	1	4	2
Northamptonshire	1	0	0
Bedfordshire	2	0	1
Somerset	1	2	1
Surrey	0	0	1
Bedfordshire	0	0	1
Warwickshire	0	0	1
Cumberland	0	0	1
Coventry	0	0	1

¹² 138 cases (or 19.2% of all cases) involve servants in some capacity.

As housebreaking was the only crime in this study that directly concerned land ownership and property, I suggest that this cannot fully explain the pattern of Londoners engaged in litigation outside the city. It is more likely that these records indicate intricate social interactions between London and rural areas. This would require at least one of three scenarios in order to be included in the sampled cases: Londoners were committing crimes outside of the city, non-Londoners were offending against Londoners in the city, or Londoners were travelling and being offended against in rural areas. Regardless of which of these explanations occurred most frequently, this clearly demonstrates that Londoners and their households were not isolated from the rest of England in social and economic activity.

If this study had utilized data from cases only between Londoners, there would likely have been an observable difference in the patterns in these cases. I hypothesize that there would have likely been a reduced number of abduction cases, as a number of Common Pleas abduction cases involved the taking of urban servants and apprentices to rural locations.¹³ As London's population grew in the fifteenth century and surrounding villages declined, the need for labour and service outside the city particularly increased. There also would have been a greatly decreased number of housebreaking cases, as a large number of allegations of housebreaking detailed the breaking of a closed field, trampling of grass and theft of livestock, all of which were certainly more rural occurrences.¹⁴ Housebreaking was also the only trespass in this study where the majority

¹³ For examples, see cases Mackman and Stevens, "CP 40/567, rot. 063: Michaelmas term 1402." ; Mackman and Stevens, "CP 40/577, rot. 469: Easter term 1405."

¹⁴ Mackman and Stevens, "CP 40/574, rot. 299: Trinity term 1404." ; Mackman and Stevens, "CP 40/636, rot. 324d: Hilary term 1420." ; Mackman and Stevens, "CP 40/639, rot. 072: Michaelmas term 1420."

of alleged offenses took place outside of London (152 cases, or 53.3%). Throughout London's gradual rise in prominence over the fifteenth century, it still maintained a series of interconnected and intricate social and economic relationships with other places throughout England.

The focus of this study has been on a topic that has been thoroughly discussed in the historiography of medieval England. The Common Pleas records, however, have largely been neglected as a resource for studying this topic. As previously mentioned in this thesis, studies of gender, society and the law in late medieval England have generally utilized the records of criminal courts to supplement their understanding. It is the purpose of this thesis to enhance the scholarship on the role of gender and the household by examining civil litigation in late medieval England. As individuals in the late medieval period derived a large portion of their identity from their relationship to their household, it is important to incorporate these lenses in examining society and legal culture in fifteenth-century England. Future studies in "crime" and legal culture in fifteenth century England should take into account the records of civil courts. Although by definition the offenses heard by civil courts were not felonious, they nonetheless provide important insight into the social concerns of fifteenth-century English people. Furthermore, civil courts indicate the ways that neighbours sought to resolve conflict and recompense wrongdoing without the intervening of the crown on behalf of the public. Civil court records provide insight into the various complex ways that gender, social status, and marital status influenced conflict and conflict resolution in late medieval England.

Due to the focused nature of this Master's thesis, the sample set used in this study was, by necessity, relatively small; however, the results indicate that these sources

provide a promising avenue of research for future studies. For example, was London unique in its civil suit interactions with smaller surrounding counties and villages, or can similar patterns be observed in York, Bristol, and other larger urban centres? What was the definitive cause for so many servant and apprentice abductions to be pursued before a civil court? What role did household identity play in cases of assault, particularly group assault? Additionally, future studies may choose to examine a greater number of cases within a smaller time frame to determine levels of recidivism, the role of social status, and possibly the damages awarded to plaintiffs (as evidence permits). It was the intent of this thesis to explore the relatively untapped resource of the Common Pleas in order to tease out new facets of the social and cultural life of late medieval England. In doing so, this study provides further understanding, alongside existing scholarship, about the complexities of gender, identity, conflict, and the household in late medieval England.

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