COURT STRUCTURE AND SOCIAL STRUCTURE C. 1300

1. English population c.1300

   Domesday Book (1086): 275,000 tenants = ? 2 million

   Poll Tax Returns (1377): 1,386,196 rate payers =? 3 million

   Population in 1300: ?? 6-7 million

2. Social structure c.1300

<table>
<tr><th>Rural Lay</th><th>Clergy</th><th>Urban</th><th>£ p/a</th><th># families</th></tr>
<tr><td>Earls</td><td>Archbishops</td><td></td><td>400-1100</td><td rowspan="3">140</td></tr>
<tr><td>Barons</td><td>Bishops</td><td></td><td>200-500</td></tr>
<tr><td></td><td>Abbots</td><td></td><td></td></tr>
<tr><td>Knights</td><td>Priors</td><td>Merchants</td><td>20-200</td><td>2000</td></tr>
<tr><td>Esquires</td><td>Rectors</td><td></td><td>5-40</td><td>20 to 40 K</td></tr>
<tr><td>‘Lesser gentry’</td><td>Vicars</td><td></td><td></td><td></td></tr>
<tr><td>Franklins</td><td rowspan="2">Lesser Clergy</td><td rowspan="2">Craftsmen</td><td rowspan="2">2-10</td><td></td></tr>
<tr><td>Villein Tenants</td><td></td></tr>
<tr><td>Cottars</td><td></td><td>Journeymen</td><td>1-3</td><td></td></tr>
<tr><td rowspan="2">Laborers</td><td rowspan="2"></td><td>Apprentices</td><td rowspan="2">1-2</td><td></td></tr>
<tr><td>Laborers</td><td></td></tr>
<tr><td>Servants</td><td></td><td>Servants</td><td></td><td></td></tr>
<tr><td>Marginals</td><td></td><td>Marginals</td><td></td><td></td></tr>
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[Note how important the overall population is. At the upper reaches of the society we're talking about roughly 100 to 200 K people. That's 5-10% of 2 million, 2-5% of 4 million, 1-2.5% of 8 million.]

3. Court structure

   a. General eyre. E.g., Wiltshire 1194–5 (S&M 40A (articles, pp. V–57 to V–59); S&M 40B (civil pleas and presentments, pp. V–59 to V–60) and Warwickshire in 1221 (S&M 54(B), first 2 entries, p. V–62). It heard a vast number of civil pleas and assizes (e.g., S&M 40B, p. V-59; 1194–5):

      > The assize comes to make recognition whether the prior of Farley unlawfully and without judgment disseised William Burnel of his free tenement in Penly after the first coronation of the lord king. The jurors say that the prior of Farley did disseise him of it. Judgment: William to have seisin of it and the prior [to be] in mercy. . . .

   And all criminal matters as well. Grand juries made presentments of crimes to it (e.g., S&M 40 (B), p. V–60; 1194-5):

      > Manor of Malmesbury. Emma of Summerford was slain in the house of her mother, and Thomas and Richard of Malmesbury were on that account accused. And the whole jury,

> being interrogated concerning it, said that they did not suspect the aforesaid Thomas and Richard of Malmesbury of the death of the same Emma. And the knights of the whole county said that they did suspect the aforesaid Thomas and Richard, because the same men then proceeded to Gloucester, and they are convinced that the same men proceeded to Gloucester for the sake of there selling the chattels of that woman. Thomas and Richard are to clear themselves by the water.

The coroners laid their rolls before it (S&M 54 (D), p. V–64 to V-65, extracts from rolls probably laid before the justices in eyre in Bedforshire in 1266–7):

> It happened in the vill of Wilden on [28 October 1266] that unknown malefactors came to the house of Jordan Hull of Wilden and broke into the said house while the said Jordan was absent. And the said malefactors wounded Agnes, wife of the said Jordan, and killed Emma, his eight-year-old daughter. Afterwards they carried off all the goods from the house. . . . Inquest was held before S[imon] Read, the coroner, by four neighbouring townships . . ., who said what has been reported, and that the malefactors were unknown. . . .

b. Parliament. The function of the eyre as in some sense the highest court of the realm was taken over by parliament. (S&M 54 (G), pp. V–66 to V–67; 1283):

> Aymer de Peche, who is ill, beseeches the lord king graciously to command the escheator to return to him the seisin of the manor of Steeple, the custody of which belongs to him because Hugh son of Otto ended his days holding of the said Aymer by military service the aforesaid manor, with which he had been enfeoffed by the same Aymer, who held the aforesaid manor of the lord king in chief.
>
> [Endorsed:] Let it be restored because [Hugh] held nothing of the king in chief.

c. Itinerant Justices. The function of the justices in eyre in the country came to be replaced by specific commission to justices to justices to do specific things. In 1225, for example, Martin de Pateshull the CJCB and three Somerset knights were ordered to take assizes of novel disseisin and to deliver the gaols in Somersetshire (S&M 54 (B), p. V–63):

> Richard Goky, accused of the death of Henry Lightfoot who was slain at Ling, appears and denies the entire charge and puts himself on the country. And the townships of North Curry, Bridgewater, Creech, and Newton, also the twelve jurors, say on oath that they suspect of that death no one but the same Richard, and they affirm that he slew [Henry]. And so let him be hanged. Inquiry is to be made as to his chattels. And the township of Ling and the twelve jurors in the first place presented a certain Robert Young as having killed [Henry]. And afterwards they appear and confess that they did so on the instance of Roger Baryl, serjeant of the hundred. And so [he is to be put in] custody, and the twelve jurors and the township of Ling are in mercy for their false presentment. The amercement of the jurors is pardoned.

In 1278 it was still possible for the king to commission justices to hear a specific case that didn't fit into the system (*Mats*. VII–40):

> The lord King commanded his beloved and trusty Salomon of Rochester and Master Thomas de Sutherington [Justices itinerant, holding the Assises in the County of Southampton.] that, whereas from the grave complaint of William of Dunstable, his citizen of Winchester, he had understood that, whereas the same William had bought

> from Robert le Bal' of Winchester 103 sacks of good merchantable wool sewn up in 86 sarplers, [sarpler = a large canvas sack for packing wool: used also as a measure of wool.] namely, every sack out of 53 sacks for 8 marks and every sack out of the remaining 50 sacks for 6 marks, of which sarplers the same Robert in the presence of the aforesaid William caused 8 sarplers to be opened, namely 4 of the greater and 4 of the lesser price, whereof the same William had been content, and faithfully promised that the remaining wool sewn up in the sarplers was like the wool opened; and whereas the said William, attaching faith to the statements of the said Robert herein, carried the whole of the wool aforesaid, save two sacks and a half which were stolen in the custody of the said Robert, to St. Omer: yet, when the same William caused it to be opened and exposed for sale at St. Omer, he found the wool sewn up in 68 sarplers, of which he had not made inspection, vile and useless and altogether differing from his agreement; whereby the same William, through the default of the aforesaid Robert herein, incurred a loss in his goods and merchandises of a hundred pounds.

d. Common Bench (Common Pleas). At Westminster the central royal court divided into three parts. Magna Carta required that common pleas be held in some fixed place, and the Common Bench, as a separate institution, arose because of this requirement. S&M 54 (A) (p. V-61 to 62). As the first entry shows, the Common Bench in its early years (1220) still heard some criminal pleas as well.

> Hugh Hop-over-Humber appeals Thomas of Dean for [the following offense:] that on St. Giles's day, between the first and third hours, in the second year of the king's reign, while he, together with his cousin William of Leigh, was in the park of Cuckfield belonging to the earl de Warenne, for the purpose of guarding that park, the said Thomas came with a band [of accomplices], a multitude of men armed with bows and arrows, and assaulted them, aiming an arrow at the said William and hitting him in the leg, so that within nine days he died of the wound. . . .

e. Exchequer of Pleas. The plea side of the Exchequer was principally concerned with tax cases (see S&M 54 (C), pp. V–63 to V–64):

> An assize, summoned and attached to make recognition on oath whether Richard of Hinton holds three-fourths of a knight's fee with appurtenances in Eastbury of the king in chief or of Ralph le Moyne appears before the barons of the exchequer on the morrow of St. Hilary: namely. . . .[The names of the twelve jurors are omitted.] They declare on oath that the said Richard of Hinton holds the said three-fourths of a knight's fee with appurtenances in Eastbury of Ralph le Moyne in chief; that the said Richard and his ancestors always rendered to the same Ralph and his ancestors the service owed from this [fief]; and that the said Ralph holds that tenement of the lord king. And so it is decided that the said Richard is to be quit of the scutage exacted from him for the said tenement, and that the same Richard shall henceforth render service for the said tenement to Ralph le Moyne and his heirs as has been accustomed. . . .

Occasionally it hears important cases involving merchants (*Mats*. p. VII–42; 1299):

> William Cause of Lincoln was attached to answer James Pylate . . . of a plea that he do render to him (James) 20 marks which he (William) owes to him; and whereof he proffered a certain writing in which is contained that in the year of Grace 1287, . . . in the fair of St. Botolph, a covenant was made between William Cause, citizen of Lincoln, of

> the one part, and Everard of St. Venant and James Pylate, merchants of Douai, . . . of the other part, namely that the aforesaid William granted and sold to the aforesaid Everard and James all the wool of the house of Welbeck of the Premonstratensian Order, as well for the year of Our Lord 1290 . . . as for the six years next and continuously following, namely every sack of good wool for 15 marks sterling and every sack of middling wool for 10 marks sterling and every sack of selected locks ['Locks' were inferior or short wools.] for 8 marks sterling: whereupon [the agents of Everard and James] . . . have paid to the aforesaid William 20 marks sterling as earnest money (*in arris*) at the time of the making of the aforesaid writing, to be allowed to the same merchants in payment for the said wools in the last year of this covenant. And he (James) says that he did not receive the aforesaid wools except for the first three years, wherefore he asks for the said 20 marks to be restored to him according to the form of the said covenant.

f. Court before the king (King's Bench). The court before the king still notionally moved around with the king. It heard important criminal cases and reviewed proceedings in lesser courts. S&M 54 (F), pp. V–65 to V–66, gives us a roll of judicial appointments for the year 1278, showing both the strucure of the courts and the fact that the justices were not working for nothing.

g. Manor courts. The extracts on pp. V–67 to V–70 (S&M 54 (H), S&M 65; 1246-9) show us manorial courts in operation.

> Ruislip [Middlesex]. . . . The court makes presentment that Nicholas Breakspeare is not in tithing, and he holds land; Therefore let him be distrained.
>
> Breakers of the assize [of ale]. . . .[Thirteen persons are named, with a normal fine of 6d.]
>
> Roger son of Hamo gives 20s. to have seisin of the land that was his father's and to have an inquest by twelve [men] as to a certain croft held by Gilbert Bisuthe. Pledges: Gilbert Lamb, William son of John, and Robert King. . . .
>
> Richard Maleville [offers to prove] at his law [that is to say, by compurgation] as against the lord that he did not take attached property away from the lord's serjeants to the lord's damage and dishonour [amounting to] 20s. Pledges: Gilbert Bisuthe and Richard Hubert.
>
> Hugh Tree [is] in mercy for cattle of his taken in the lord's garden. Pledges: Walter of Hull and William Slipper. Fine 6d.
>
> Twelve jurors say that Hugh Cross has title to the bank and hedge over which there was a dispute between him and William White. Therefore let him hold in peace, and let the said William be distrained for many trespasses. Later he fined for 12*d*. . . .

h. Fair courts. *Mats*. VII–35 to VII–37 show us a franchisal fair court. The fair court at St. Ives run by the abbot of Ramsey at the end of the 13th century. It is dealing largely with mercantile affairs that arise out of the fair. Here's a case from 1291:

> Peter Long of London complains of Geoffrey of Cam [or Caen] and says that he unjustly detains from him 600 ells [a length of cloth, somewhat longer than a yard, 45 in.] of canvas, which he, Peter, through his broker Hamon of Bury St. Edmunds, bespoke [i.e., ordered] and bought from him in his booth in the vill of St. Ives, on the Friday after the feast of St. John before the Latin Gate, for 29s. the hundred and a farthing as a God's penny, to his damage 40s. And he produces suit.

i. Borough courts. *Mats*. VII–37 to VII–38 shows us one case of many from the rolls of the mayor's court of the city of London from 1421.

> Richard Whittington [This is Richard Whittington, as in "Turn again, Dick Whittington, lord mayor of London.], mercer, brought an action for debt against Stephen Turnebonis, merchant, for £296. In his bill he alleged that he had bought and had in his custody a certain Hugh Coniers, a prisoner of war taken in the battle of Agincourt and put to ransom at 1600 crowns . . . and 16 marks of silver troy weight . . . the whole amounting to £296; and that on 10 July 1420 in the parish of St. Michael de la Ryole the defendant agreed to pay that sum for the prisoner as soon as the plaintiff released to the prisoner all his right and claim in him for the ransom and should be prepared to hand him over to the defendant and obtain for the latter authentic letters under his seal witnessing the release; and that thereupon the plaintiff released his right to the prisoner and was ready to hand him over and obtain the aforesaid letters, but the defendant had not paid the money, though often requested to do so; to the plaintiff's damage £40.

j. Staple courts. *Mats*. VII–38 to VII–39, which reproduce the Statute of Staple of 1353, tell us that in the 14th century separate courts were established in many towns to deal with transactions concerning the wool trade.

k. County and hundred courts. The county and hundred courts did not keep official rolls, and we are poorly informed about their workings. We get some glimpses of what they were doing when actions that they took were brought before the central royal courts.

l. Church Courts. By 1300 every bishop had a regularly sitting consistory court and most archdeacons maintained a lower level court dealing principally with morals offenses, notably fornication and adultery. There were two appellate courts, one at Canterbury and the other at York, and appeal to the pope was still a real possibility. P. VII–41 shows us a brief extract from the consistory court of York from 1511, but similar records exist all the way back to 1300:

> . . . The aforesaid Oliver Foster, at a time before the feast of St. Lawrence recently past, bought and received from the aforesaid George Chart forty sheep, forty lambs and twenty hogs worth £6 6s 8d.
>
> The same Oliver on the day of delivery and receipt of the said sheep, lambs and hogs, paid 26s 8d in part payment of the said sum of £6 6s 8d.
>
> The same Oliver by his oath faithfully promised the same George to pay £5 the rest of the same £6 6s 8d on a certain day now past.
>
> The aforesaid George by himself and his men long before the present suit duly requested the said Oliver to pay to the same George the said £5, the rest of the £6 6s 8d.
>
> The aforesaid Oliver, thus requested as is aforesaid has delayed and refused to pay or deliver to the same George the said £5, just as he delays and refuses at the present time.
>
> The aforesaid are true, public notorious, and manifest, etc.

4. Now it is time to try to integrate the social structure and court structure.

a. Villeins. Distinguish betwen those personally unfree and those who hold by unfree tenure. To the latter the royal courts are closed in land pleas. For both of them the manor court was their chief court, and the chief source for finding out anything about them.

There is a strong sense of community here amounting to a corporate quality. Open fields which are worked in common and which are characteristic of most of England lead to this sense of community. But the manor court was not the only court that villeins saw. They do appear in the hundred, the county; they see royal justices itinerant; they will appear in the courts of the archdeacons of the church–in all cases normally when they were in some sort of trouble.

b. The small freeholder. In most cases he is essentially the same as the villein, suggesting that personal unfreedom may not have made that much difference. But compare the Durham Hallmoot Rolls (1375) [S&M 65, *Mats*., pp. V-70 to V-71] which seem to indicate some distinctions on the basis of status and which are later than most of the other documents we have looked at. Ultimately, the central royal courts will take jurisdiction of the lands held by sevile tenure, which will come to be called copyhold. This does not happen until the 15th and 16th centuries. But personal unfreedom goes into a big decline in the 14th century following the Black Death.

c. The burgesses. In the towns and cities, there is a major distinction between citizens, those who have the freedom of the city, and non-citizens, those who do not. In many ways the citizens are outside the royal court system. They have the privilege of not being impleaded outside the borough. The borough and the fair courts are important for the development of contract law. Its absorption into the common law lies after 1500 (though not quite entirely). In the 14th and particularly the 15th centuries many contract cases are found in the church courts under the rubric of breach of faith.

d. The cleric. His courts never completely separate him. Those who had claims to land litigated in the king's courts, and pleas of contract and trespass could be, and were, brought by and against clerics in the secular courts. The great feudal clerics held honour courts when these were still important. Nor is the layman completely outside the church courts. Ecclesiastical crimes, marriage, testament, defamation cases will all bring them into the church courts. The impression, however, of a separate substantive jurisdiction as opposed to a separate people can be exaggerated: cases concerning criminous clerks and benefice and tithe litigation are largely questions of the church handling its own.

e. That leaves maybe 5% –10% of society, the lay freeholders above the level of simple sokemen. Principally tenants by knight service, though some socage and serjeanty. Like all men they will be sued criminally in the king's courts. They will certainly be in the county courts. They may be in the church courts, particularly for marriage and testamentary matters. But for the thing that mattered to them most, land, they will be in the central royal courts. The story that we are about to tell is a story of how changes in jurisdiction and changes in institutions made the central royal courts more available to more people. To put the matter another way how it was that the practice of the central royal courts became the common law of all England.