INTRODUCTION

AIMS AND JUSTIFICATIONS

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

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

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

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

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

[2] Ballard, *British Borough Charters*, pp. 10, 12, 13, 13–14, 14, 15, 23, 27, 29, 32, 34; Hudson, Tingey, *Records of Norwich*, I, pp. 12–13.
[3] Brand, *Origins of the Legal Profession*, p. 24.
[4] There were *c.* 360 membranes (excluding those recording the appointments of attorneys) in the roll for Mich. 1299 and *c.* 670 membranes in that for Mich. 1449: TNA (PRO), CP Plea Rolls, CP40/130, /755.

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

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

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

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

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

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

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

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

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

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

[9] Baker, *Oxford History of the Laws of England*, vi, p. 291, Hyams, 'What did Edwardian Villagers Understand by "Law"?', esp. pp. 80–1.
[10] For exceptions, see *CalEMCR*, pp. 168–9, 183–4.

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

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

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

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

of this book is the suggestion that three things which happened from the late fourteenth century onwards influenced the development of both city custom and the common law considerably. First, the city's law offices ceased to exist in semi-isolation from the law offices at Westminster, and came to be merely four of the many posts open to late-medieval common lawyers. This must have had some effect on the conduct of the city courts. Secondly, a sizeable proportion of the justices on the Westminster benches (excluding Chancery) were, from about 1400 until about 1500, former city law officers. Presumably this had an effect both on relations between the central and city courts and on the attitudes of the justices of the central courts. Thirdly, from about 1500 onwards, it became much less common than it had been for much of the fifteenth century for city law officers to be created serjeant at law or to achieve a central court judgeship. This was part of a well-established problem of recruitment to the central courts, but it was nevertheless a belated response. The reasons behind this reversal have a tale to tell about the administration of the law by London and in other jurisdictions.

These changes reflected, and may have contributed to, fundamental developments in the law which took place over the same period. By the end of the sixteenth century, local courts at all levels appear to have become much more closely aligned, in terms of their principles and procedures, to the central courts. For the first time, the national 'system' of law courts might properly be so called. It could be argued that this was merely a culmination of the process of assimilation of custom and local courts by the common law and central law courts which had been going on at least since the twelfth century. The evidence discussed in Chapter 10, however, suggests that it was in the central courts that the most important changes of the later fourteenth and fifteenth centuries occurred, and that these changes brought the central courts and the common law and custom as practised at Westminster closer to the local courts and the common law and custom practised in them, rather than the other way around. This did not of course herald the triumph of local law courts and 'flexible' custom over central law courts and the 'rigid' writ system. On the contrary, it destroyed some of the distinctiveness and advantages of the local courts in relation to the central ones. They thus became less useful at the very moment when political factors were encouraging

attacks on any institution or procedure which was not fully in conformity with and under the control of the common law.

Either way, it is interesting, and often informative, to compare developments in the city courts with those at Westminster at an important time for the common law. For that reason, the administration of the law by London is worth studying both in its own right and as part of research into medieval and early modern law as a whole. Understanding what was administered, how, why and when, is also a prerequisite for those who want to use the court and legal records of London, and indeed of other courts of law and custom, to undertake research in other historical disciplines. Without that understanding, as we shall see shortly, those records can be seriously misleading.

THE MAIN SOURCES OF EVIDENCE

One of the reasons why the significance of London's law courts has not been fully appreciated is that virtually all the records of its busiest court have disappeared. As with so many other medieval and early modern archives, the London collections contain either splendid runs of records relating to one, or one aspect, of its law courts, or almost nothing at all. Having a splendid run of any records might be considered an advantage, but, where records are almost entirely absent or are patchy and of unascertainable representativeness, the temptation to extrapolate from the richer sources to the poorer can mislead badly. This is especially true when one of the reasons for the different survival rates is that the types of records and the business of the courts differed. The aim here is to highlight some of the implications of the types and limitations of the source material for our understanding of the administration of law by medieval London.

EARLIEST SURVIVALS AND SUBSEQUENT LOSSES

Like most if not all English towns, London has lost many of its records to fire: not just the Great Fire of 1666, but also to conflagrations which affected individual administrative departments. Neglect had no doubt destroyed some of its legal records long before the 1660s; and even once the rise of antiquarianism led to more care being taken, the antiquarians themselves were

(notoriously) not above removing records and retaining them in their own collections.[13] The result is that London has proportionately fewer surviving legal records from our period than have other, smaller and probably less well-administered, towns. There are, for example, far fewer surviving full court rolls (that is, complete except for piecemeal damage and loss) for the London Mayor's Court than for the Winchester City Court.

Possibly more surprising at first sight than this is the fact that London does not appear to have been significantly ahead of towns like Winchester – or indeed of some manor courts – in establishing formal series of legal records. The late thirteenth and early fourteenth centuries were periods which saw great changes in London's record-keeping. This affected practices in its three main courts, the Husting, the Mayor's Court and the Sheriffs' Court. A series of rolls registering property transactions and testamentary provisions (the Husting rolls of deeds and wills) probably started before 1250. While it could be that the earliest known Husting rolls, apparently of the 1230s, were a combined record, containing entries relating to legal disputes as well as deeds and wills, the earliest of the surviving rolls which record the Husting's activities as a court of law is from 1272.[14] Mayor's Court records which include, among other administrative business, the details of lawsuits, survive from 1298. It is certain that the Sheriffs' Court, or the sheriffs themselves, also kept records of cases heard in that court by this date. Although the earliest surviving full record is of a single case from 1318, which is embedded in a larger portion of a roll of 1320, there are some extracts recorded in the Mayor's Court rolls relating to individual Sheriffs' Court cases. The first of these concerns a case heard in 1300. There is also an order in a Husting roll of 1293 to produce the record of a Sheriffs' Court case in which error was alleged.[15]

SURVIVING CITY LEGAL SOURCES

The Court of Husting

The survival rate and organisation of the city's court records considerably affect our ability to understand the administration of

[13] Sharpe, *CalLBA*, pp. 11–12.
[14] Martin, *Husting Roll of Deeds and Wills*, pp. 7–9.
[15] *CalEMCR*, pp. 89–91; CLRO, HR CP22, m. 5v.

the law by medieval London. The Husting rolls, which are almost complete from 1272 on, are until 1448 arranged in a similar way to most contemporary court records. Session headings are followed by a note of business undertaken at that session, from the bringing of writs, through the process (the formal stages by which a case progressed), to the pleadings and to judgments.[16] From 1448 onwards, a 'session book' was employed, in which the briefest of entries recorded the type of lawsuits, process and judgments under session headings. From this date, separate plea rolls recording every stage, including the pleadings, in a few individual cases also survive (rolls relating to individual cases may once have existed for all actions which resulted in pleadings: Husting of Common Pleas Roll 21 concerns a single case, although, because it involved properties forfeited for treason, one cannot be sure that this reflected normal practice). As a result, it is possible both to examine the detailed workings of those cases which resulted in pleadings, which are often given at some length, and to analyse the court's business in terms of its nature and activity levels.

The Mayor's Court

Unfortunately, the Husting is the only city court for which records survive in a virtually unbroken series. The original series of Mayor's Court rolls, which contain details of, usually, several cases under a session heading, ends in 1307, and a new series, the plea and memoranda rolls, does not start until 1323 and ends in 1482. The plea and memoranda rolls, as their title suggests, are only in part a record of legal proceedings in the Mayor's Court, a reflection of the fact that this was originally a general court which did not distinguish clearly between legal and administrative activities ('administrative', in the sense, for example, of enforcing price or quality controls on basic necessities offered for sale).[17] It is possible that there continued to be a separate roll, concerned

[16] In 1329/30, there was another general Husting file which included all the paperwork relating to actions which were pending: CLRO, HR CP53, m. 13.

[17] E.g. on 17 July 1364, the court's business included swearing in the Tanners Company surveyors, taking of mainprises to keep the peace, and the presentation of a royal writ of protection: *CalPMR 1323–64*, p. 272. By the 1480s, these rolls recorded little except writs of protection and acknowledgements of deeds, receipts and bonds: e.g. *CalPMR 1458–82*, pp. 142–8.

purely with litigation and related business. A. H. Thomas, editor of the early Mayor's Court rolls, believed that these rolls were written up by the mayor's (personal) clerk and retained by each mayor when he left office, which might explain the complete disappearance of Mayor's Court rolls after 1307.[18] There is no doubt that this was the case with the Sheriffs' Court rolls in the early fourteenth century, for it was stated in the 1321 eyre that each sheriff 'took his rolls away with him as he pleased' at the end of his term.[19] Whether or not this was the case for the city's mayors, the number of legal disputes entered in the plea and memoranda rolls was probably never an accurate guide to the numbers of bills and plaints presented to the Mayor's Court (for instance, virtually all the entries in the plea and memoranda rolls relating to actions at law record a determination, whereas only a minority of cases recorded in the few surviving court rolls did so). Unfortunately, the mismatch between the numbers of cases brought in this court and recorded in the plea and memoranda rolls clearly grew greater over time. The Mayor's Court roll for 1305/6 (Roll H) contains thirty-four personal actions, whereas the plea and memoranda roll for 1354/5 (Roll A7) contains ten entries relating to this type of case.[20] Even allowing for the aftermath of the first onslaught of the Plague and the probability that the Mayor's Court was more constrained in the types of personal pleas it could hear then than it had been in the early 1300s, it seems unlikely that it was really entertaining as few as this in the 1350s. Moreover, at a time when we know from two files of bills of the 1450s that the Mayor's Court was handling several hundred personal pleas a year, the equivalent plea and memoranda roll contains just five entries relating to actions of this type.[21]

The evidence to be discussed in Chapter 3 suggests the Mayor's Court underwent a major development and expansion of its common-law side sometime between the late-fourteenth and mid-fifteenth century. These changes may have affected the way in which the plea and memoranda rolls were used. Certainly in 1460 individuals were paying to have certain matters (especially the

[18] *CalEMCR*, p. viii. [19] Cam, *Eyre 1321*, II, pp. 113–14.
[20] *CalEMCR*, pp. 228–52, *CalPMR 1323–64*, pp. 241–57.
[21] CLRO, Mayor's Court Files of Original Bills, MC1/3A; *CalPMR 1437–57*, pp. 151–7, *CalPMR 1458–82*, pp. 1–3; see Chapter 4 for further discussion of this evidence.