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Introduction

A 1315 Commons' Petition complained that

> Because where a great lord, or a man of power, wishes to disgrace a man, he fabricates a trespass against him or he commits himself to maintaining another to whom a trespass has been made and obtains commissions of oyer et terminer from people biased in his favour, and suspect to the opposing party who will commit themselves to doing all that he wishes . . . Also in a plea of land, and in all other pleas, the great lords of the land and those who are powerful, too often undertake to maintaining parties, so that those who have less power, even if they have a right, are not sufficiently able to sue to obtain their right, but they are put thereby in the situation of losing their right forever.[1]

As this petition illustrates, the legal institutions in medieval England designed for dispute settlement created opportunities for misuse of the legal system. Several scholars have suggested that this manipulation and perversion of the machinery of justice was to some extent a product of the decline of violence in settling disputes and was prompted by a desire to advance self-interest.[2] By the thirteenth century, individuals began to petition the crown and parliament to complain about these abuses and these complaints became common. They sometimes used the word "maintenance" to describe various types of wrongdoing, which were often related to litigation or legal issues and undermined the complainants' legal rights and security of property.

[1] Edward II: Parliament of January 1315, no. 10 (8) in C. Given-Wilson, Paul Brand, Seymour Phillips, Mark Ormrod, Geoffrey Martin, Anne Curry, and Rosemary Horrox, eds. *British History Online, The Parliament Rolls of Medieval England* (hereafter referred to as *PROME*).

[2] W.S. Holdsworth, *A History of English Law*, 17 vols. (London, 1936–66), vol. III, pp. 394–95. He said that this was a "phenomenon which recurs in many nations in many periods." Ibid., p. 395. McFarlane expressed a similar view, stating that "disorder was obliged to assume subtler forms" as it was "no longer possible . . . to settle a dispute out of court by open violence" and it "was necessary to have recourse to a legal guide." K.B. McFarlane, *The Nobility of Later Medieval England: The Ford Lectures for 1953 and Related Studies* (Oxford, 1973), pp. 102–21.

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Moreover, these petitions often alleged the use of power and influence by powerful individuals and officials to pervert the justice system.[3]

By the later thirteenth century, contemporaries considered maintenance a significant social and legal problem. Prompted by these concerns and complaints, the king and parliament responded. Beginning in the reign of Edward I (1272–1307), parliament began to enact statutes to deal with the maintenance problem.[4] Starting with the Statute of Westminster I 1275 and continuing through the medieval period, parliament enacted numerous statutes directed at conduct that threatened the proper operation of the legal system.[5] Several of them prohibited maintenance and champerty.[6] Maintenance was assisting and supporting another person's litigation. Champerty[7] was a form of maintenance in which

3 Hyams said that the degeneration of good lordship into abuse was a fascinating story that merited detailed study. Paul Hyams, *Rancor and Reconciliation* (Ithaca, 2003), p. 263.

4 Misuse of legal procedure as a general phenomenon was not limited to maintenance. As Hudson insightfully pointed out, "Legal norms became detached from social norms. This development allowed those skilled in law to play with legal norms in order to achieve their party's aims, even contrary to the intention of those norms, and in turn new rules had to be devised." John Hudson, "*The Making of English Law* and the Varieties of Legal History," in Stephen Baxter, Catherine Karkov, Janet L. Nelson, and David Pelteret, eds., *Early Medieval Studies in Memory of Patrick Wormald* (Farnham, 2009), p. 431.

5 McFarlane said that the theory of these statutes was that "lordship should not be so strong as to affect the impartial administration of justice," which in the late thirteenth century was a "novel one, at first not generally accepted, at any rate in practice, and hard to enforce." K.B. McFarlane, "Lords and Retainers," (unpublished manuscript in the Magdalen College Archives, University of Oxford), Lecture III, p. 13). These lectures were delivered in 1966 and were a revision of lectures given in a 1959 course, "Livery and Maintenance." G.L. Harriss "Introduction," in K.B. McFarlane, *England in the Fifteenth Century: Collected Essays* (London, 1981), p. x, n. 2. Gratitude is expressed to the Fellows of Magdalen College and Robin Darwall-Smith, College Archivist, for giving me access to these manuscripts.

6 More than fifteen statutes were enacted between 1275 and 1542. The primary enactments were: Statute of Westminster I, cc. 25, 28, 33, 3 Edw. I (1275), *Statutes of the Realm*, A. Luders, T. Tomlins, J. France, W. Tauton and J. Raithby, eds., 11 vols. (London, 1810–28), vol. 1, pp. 33–34; Statute of Westminster II, 13 Edw. I, c. 49, *Statutes of the Realm*, vol. 1, p. 95; *Articuli Super Cartas*, 28 Edw. I, st. 3, c. 11, *Statutes of the Realm*, vol. 1, p. 139; Ordinance of Conspirators 1293, Edward I Parliaments: Roll 6, no. 14, *PROME*; 4 Edw. III, c. 11, *Statutes of the Realm*, vol. 1, p. 264; 20 Edw. III, cc. 4, 5, and 6, *Statutes of the Realm*, vol. 1, pp. 304–5; I Rich. II, c. 4, *Statutes of the Realm*, vol. 2, pp. 2–3.

7 "Champerty" is a Middle English word, deriving from the French, *champart*, referring to a form of tenure in which the landlord received a portion of the produce of the land, and the Latin *campipars* and *cambipars*, part of the field. Max Radin, "Maintenance by Champerty," *California Law Review* 24 (1935), pp. 61–62. *Oxford English Dictionary Online*, *s.v.* "champerty" and "champart." Blackstone associated the word with the Latin, *campum partire*, meaning "to divide the land." William Blackstone, 4 vols., *Commentaries on the Laws of England* (London, 1765–69; facsimile of the first edition, Chicago, 1979), vol. IV, p. 314.

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the maintainer entered a covenant with a party to the action to receive all or part of the money or land in dispute if the action were successful in exchange for assisting the litigant.[8] Other statutes with related objectives focused on additional forms of conduct such as embracery, livery, bribery of jurors, extortion, deception, and other misconduct by royal officials as well as deceit and misconduct by members of the legal profession.[9]

"Maintenance" was a word that commonly appeared in several contexts in medieval records and other documents. The ordinary meaning was the provision of support or assistance.[10] Its use in this sense appears in several medieval contexts.[11] But in this period the word "maintenance" also acquired additional meanings. It became a term

[8] Blackstone thought that this offense had its roots in Roman law and cited Justinian's Digest. Blackstone, *Commentaries*, vol. IV, pp. 134–35. The provision, which he cited, Dig. 48.7.6, states that "in accordance with the *senatus consultum Volusianum*, persons are liable under the *Lex Julia* on *vis privata* who dishonestly combine in a third party's action with the intention of sharing out between them whatever shall be recovered for his property after his [opponent's] condemnation." Alan Watson, ed., *The Digest of Justinian*, 4 vols. (Philadelphia, 1998), vol. IV, p. 332.

[9] In discussing these statutes, Stephen said that "the offence of maintenance . . . was neither more nor less than chronic organized anarchy, striking at all law and government whatever." James Fitzjames Stephen, *A History of the Criminal Law of England*, 3 vols. (London, 1883), vol. III, p. 238.

[10] *Manutenere* was one of several Latin words used to mean support. Other words included *alere*, *adjurvare*, *assistere*, *favere*, *fovere*, and *sustinere*.

[11] Medieval arrangements, which modern scholars have labeled "maintenance contracts," provided support during old age to persons who were no longer able to perform labor services and other obligations for the lord and wanted to "retire." These contracts involved transfers of land by villein tenants, often by first surrendering it to the lord, their children, or some other younger person. They frequently obligated the new tenant to provide a place to live and various other types of support to the former tenant or other beneficiary during the latter's life. Richard Firth Green, *A Crisis in Truth* (Philadelphia, 1999), pp. 161–63); L.R. Poos and Lloyd Bonfield, eds., *Select Cases in Manorial Courts 1250–1500* (London, 1998), 114 Selden Society, pp. cxv–cxxvii; R.M. Smith, "The Manorial Court and the Elderly Tenant in Late Medieval England," in Margaret Pelling and Richard Smith, eds., *Life, Death, and the Elderly: Historical Perspectives* (London, 1991), pp. 41–48; Barbara Hanawalt, *The Ties That Bound* (New York, 1986), pp. 229–33; 71–74, 220–22; Elaine Clark, "Some Aspects of Social Security in Medieval England," *Journal of Family Law* 7 (1982); J. Ambrose Raftis, *Tenure and Mobility* (Toronto, 1964), pp. 42–46. The register of the abbeys of Ramsey contained fifty-five such records for the period 1398–1458. *Registrum Abbatiae Ramesiensis*, British Library MS Harley 445; Edwin DeWindt, The *Liber Gersumarum* of Ramsey Abbey: A Calendar and Index of B.L. Harley MS 445 (Toronto, 1976). Poos and Bonfield, who discussed the legal aspects of the agreements and their significance for legal historians, included thirty such records in their volume. Although commentators called them maintenance contracts and sometimes

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used to describe abusive conduct that corrupted the justice system, including the maintenance of felons, a form of accessorial criminal liability.[12] By the end of the thirteenth century, maintenance became a specific legal term used to designate a distinct form of unlawful abuse of legal procedure.[13] It meant supporting or assisting a party in litigation, in which one was not a party.[14] In addition, maintenance was a

used the word "maintain" in translating the records, none of records that were viewed used the word *manutenere*. In these records, the word *sustinere* appeared several times and *adjuvare* once. Most often the agreements said that a room or other form of support was reserved (*reservare*) to the beneficiary, that he or she would have an easement (*aisiamentum*) to or have (*habere*) the room or other form of support or that the new tenant would provide (*invenire*) land or other support. Some agreements also obligated the new tenant to repair and maintain the buildings on the land and used the words *reparare*, *sustinere*, and *manutenere*.

[12] McFarlane defined its nature in Lancastrian England as "meed, dread, and favor." McFarlane, "Lords and Retainers," Lecture III, pp. 2–3.

[13] Discussions with legal historians outside the Anglo-American tradition suggest that this notion of maintenance was unique to that tradition. However, Stephen asserted that an analogue to medieval England statutes on maintenance and livery existed in Roman law by the incorporation in Justinian's Digest of the *Lex Julia* on *Vis Publica*. Stephen, *History of the Criminal Law*, vol. I, p. 17. That provision was directed, *inter alia*, at "anyone who does something with malicious intent to hinder the safe exercise of justice or hinder judges in the proper giving of judgment . . ." Alan Watson, ed., *The Digest of Justinian* (Philadelphia, 1998), vol. IV, p. 331. Blackstone also saw a similarity to the Digest. Blackstone, *Commentaries*, vol. IV, pp. 134–35. There was also a provision in Canon Law called the *juramentum perhorrescentiae*, which entitled a plaintiff to invoke a special jurisdiction of the papal curia to hear a case in which "he could not expect to be able to obtain justice in the provinces because the power of his adversary" (*non sperat in partibus posse consequi iustitiae complementum propter potentiam adversarii*)." Richard Perruso, "The *Iuramentum Perhorrescentiae* under Canon Law: An Influence on the Development of Early Chancery Jurisdiction," *Comparative Legal History* 3 (2014), pp. 2–37. Others have suggested that Justinian's Code contains provisions that might be seen as related. One provision stated "That influential persons shall not be permitted to lend aid to litigants or transfer actions to themselves." Book II, Title XIII, 2.13.1. Another "Concern [ed] those who put placards on their landed estates in the name of dignitaries, or use their name as a pretense in a lawsuit." Ibid., Book II, Title XIV, 2.14.1., Online, uwacadweb.uwyo.edu/blume&justinian/. I am grateful to Jeroen Chorus, Retired Vice-President, Amsterdam Court of Appeal in the Netherlands, for these references and insight. However, these provisions in the Codex are somewhat different from the English maintenance provisions since the focus is on the person who requests the assistance of the powerful man rather than on the activity of the powerful man himself.

[14] Holdsworth stated that maintenance did not acquire this technical meaning until it was made illegal by statutes during the reign of Edward I. Holdsworth, *History English Law*, vol. III, p. 396. Radin stated that there were notions in both Athenian and Roman law dealing with excessive intervention on behalf of a litigant, instituting baseless litigation, and perversion of justice that resembled this meaning of maintenance. In Athenian law, it was known as *syncophancy*; in Roman law, it was a form of *calumninia* and its practioners

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social concept, as reflected in the broad use of the word in the petitions and medieval literature. Thus, contemporary sources revealed three different usages or meanings of the word "maintenance," as reflected in the *Oxford English Dictionary*,[15] the *Middle English Dictionary*,[16] and the *Anglo-Norman Dictionary*.[17]

Although maintenance was a common type of wrongdoing in medieval England, and medieval sources such as petitions, plea rolls, the Year Books, and other documents are replete with references to maintenance, scholars have not thoroughly explored this topic. Legal historians have largely ignored it, with a few notable exceptions. Sir Percy Winfield's seminal study traced the development of the maintenance and related statutes, but he did not make a detailed examination of the cases in the plea rolls and Year Books.[18] Holdsworth discussed maintenance in

were called *syncophants* and *calumniators*. Radin, "Maintenance by Champerty," pp. 48–57.

15 The Oxford English Dictionary defines maintenance, maintain, and maintainer. It has multiple definitions of each word. Most of those definitions are included in the sense relating to support or assistance, one of which is the category of law. The definition of maintenance in the legal definition is "wrongfully aiding and abetting litigation; *spec.* support of a suit or suitor by a party who has no legally recognized interest in the proceedings." The more general meaning of "action of giving aid, countenance, or support to a person in a course of action" is marked as obsolete. *Oxford English Dictionary Online*, *s.v.* "maintenance."

16 In the *Middle English Dictionary* most of the definitions focus on the broad usages of supporting wrongdoing of various types with numerous examples from medieval sources. Several definitions mention abuse of lordship and retaining. Two of the words, *maintenuance* and *maintainour*, have legal definitions containing examples of the narrow definition, but also including examples of the broad usage. *Medieval Dictonary Online*, *s. v.* "*mainten*," "*maintenen*," "*maintenuance*," and "*maintenour*." The glossary of the fifteenth-century *Paston Letters* defines maintenance as used in those letters in a manner very similar to the narrower, legal definition. Norman Davis, Richard Beadle, and Colin Richmond, eds., *Paston Letters and Papers of the Fifteenth Century*, 3 vols. (Early English Text Society, Supplementary Series 20–22) (Oxford, 2004–5), vol. III, p. 220.

17 The *Anglo-Norman Dictionary* defines *maintenir*, *maintenaunce*, and *maintenour*, all of which have several variant spellings. Although there is a legal definition with an example of that usage, examples of both the broad and narrow usages seem to be included within several of the definitions. *Anglo-Norman Dictionary Online*, *s.v.* "*maintenir*," "*maintenaunce*," and "*maintenour*."

18 P.H. Winfield, *The History of Conspiracy and Abuse of Legal Procedure* (Cambridge, 1921). He traced the history of maintenance. Ibid., pp. 131–60. In the same year, Winfield wrote another book, which he characterized as "supplementary" to the first book. P.H. Winfield, *The Present Law of Abuse of Legal Procedure* (Cambridge, 1921), p. v. The latter book focuses on cases from the late seventeenth century to the first two decades of the twentieth century. It does refer to some medieval Year Book actions and statutes, but not to official plea roll records.

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several places in his treatise.[19] He said that "maintenance [was] one of the most crying evils of the later medieval period."[20] Two more recent works provided valuable insights regarding maintenance, but studied it in a more limited fashion.[21] Social historians, particularly those of the late medieval period, have frequently written about maintenance and that literature contains numerous references to it. In the debate over bastard feudalism, historians took different views of the fifteenth century and the problem of maintenance. Some historians have viewed that century as more lawless and corrupt than earlier centuries and believed that widespread maintenance was part of the problem.[22] Those historians seemed to use maintenance in the broader sense to describe various types of wrongdoing by influential and powerful persons.[23] K.B. McFarlane, a renowned scholar who provided new insights into the study of late

[19] He discussed its development chronologically, starting with the medieval period. Holdsworth, *History English Law*, vol. III, pp. 394–400, vol. V, pp. 201–3, vol. VIII, pp. 397–402. Tapp studied its relation to contracts. William Tapp, *An Inquiry into the Current State of Law of Maintenance and Champerty Principally as Affecting Contracts* (London, 1861). Bodkin reviewed the history and development of maintenance and the state of the law in the early decades of the twentieth century. Edmund Bodkin, *The Law of Maintenance and Champerty and the Lawful Financing of Actions by Solicitors, Legal Aid and Trade Protection Societies and Others* (London, 1934).

[20] Holdsworth, *History of English Law,* vol. III, p. 398.

[21] J.H. Baker, "Solicitors and the Law of Maintenance 1590–1640," in *The Legal Profession and the Common Law* (London, 1986), pp. 125–50; David Seipp, "Jurors, Evidences and the Tempest of 1499," in John Cairns and Grant McLeod, eds., *The Dearest Birth Right of the People of England: The Jury in the History of the Common Law* (Oxford, 2002), pp. 75–92.

[22] E.g., Ralph Griffiths, *The Reign of Henry VI*, 2nd ed. (Stroud, 1998), pp. 128–53, 562–609; Michael Hicks, *Bastard Feudalism* (London, 1995); J.G. Bellamy, *Bastard Feudalism and the Law* (Portland, 1989), pp. 79–101; J.G. Bellamy, *Crime and Public Order in England in the Middle Ages* (London, 1973) (numerous references to maintenance); R.L. Storey, *The End of the House of Lancaster* (Guildford, 1966), pp. 1–28. When these books use the word "maintenance," it is not always clear what they mean or the types of conduct to which they are referring. In general, they use it broadly and to include maintenance of felons and false causes as well as livery. Hicks said that "it could involve violence, the threat of violence, blackmail, influence or bribery." Hicks, *Bastard Feudalism*, p. 119. Bellamy defined it as "giving favor and support to felons and trespassers." Bellamy, *Crime and Public Order*, p. 6. The sources of these definitions are not clear.

[23] Griffiths said "equally skillful was the use of maintenance by influential men to bend the legal process in their favor and, perhaps, to insure for themselves immunity from the consequences of their deeds." Griffiths, *Henry VI*, p. 133. Bellamy saw maintenance as the greatest threat to public order and described it as "tampering with juries of indictment and of trial or with some of the justices, and that it was accomplished through the agency of someone with greater weight in society than the party himself." Bellamy, *Bastard Feudalism*, p. 80.

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medieval history,[24] took a more charitable view of the fifteenth century and the conduct of powerful persons.[25] In particular, he did not agree that maintenance was a significant problem.[26] He said it was an ancient practice.[27] "Maintenance was after all no novelty. But the novelty lay in its being more talked about, denounced, and legislated against."[28] He asserted that it did not involve "new threats to the administration of justice" and that the laws against maintenance were an attempt to reject "practices as old as the law itself," originating in the Anglo-Saxon period and involving conduct that was not subject to "disapproval, but veneration." In his view, "what had once been, and was still thought by most to be, a solemn obligation was now to become an offence against the law."[29] But the contemporary sources show that McFarlane's fears that preferred conduct was being made illegal were unfounded.[30] His views, however, influenced many others who took a similar view.[31]

[24] Karl Leyser, "Kenneth Bruce McFarlane: A Memoir," and Gerald Harriss, "Introduction to the Letters," in Gerald Harriss, ed., *K.B. McFarlane: Letters to Friends 1940–1966* (Oxford, 1997), pp. ix–xxxii.

[25] McFarlane, *Nobility,* pp. 102–21; K.B. McFarlane, *England in the Fifteenth Century*, pp. 23–43. His protégé, Gerald Harriss, said that he "attacked the prevailing orthodoxy that late middle ages witnessed the spread corruption and disorder . . ." G.L. Harriss, "Introduction," ibid., p. xix.

[26] McFarlane defined "simple maintenance" as the "attempts to overawe the court by the present of armed men," which he said was unusual. McFarlane, *Nobility*, p. 115. Further, he believed that "the emergence of maintenance in its broadest sense was an undoubted improvement on more direct forms self-help . . ." Christine Carpenter, "Law, Justice, and Landowners in Late Medieval England," *Law and History* Review 1 (1983), p. 215.

[27] McFarlane traced maintenance back to the Anglo-Saxon oath helpers and to the mainpast of the Angevin kings. Harris, "Introduction," pp. x, xix–xx.

[28] He continued by saying that "being men of their time they believed that the evils with which they contended showed a contemporary falling-off from a more perfect past. In thinking so, they were usually wrong." McFarlane, *Fifteenth Century*, p. 42.

[29] McFarlane, "Lords and Retainers," Lecture III, pp. 5–6, 10–12. But he recognized the longstanding problem of abuse of legal procedure, its causes, and the initial attempts to deal with it. Ibid., Lecture II, pp. 6–12.

[30] Relying on McFarlane, Carpenter asserted that "a very thin and not altogether logical line between legitimate and illegitimate manoeuvres developed" and that certain forms of common conduct "were certainly maintenance" or "could be construed" as such. Carpenter, "Law, Justice, and Landowners," p. 215. Richard Firth Green, a law and literature scholar, made a similar assertion. He said that "the communal protection afforded by the earlier notions of warranty and good lordship was redefined by such offenses as maintenance and champerty to appear like reprehensible partisanship." Richard Firth Green, *A Crisis of Truth: Literature and Law in Ricardian England* (Philadelphia, 1998), p. 163.

[31] E.g., Christine Carpenter, *The Wars of the Roses: Politics and the Constitution in England, c. 1437–1509* (Cambridge, 1997); John Watts, *Henry VI and the Politics of Kingship* (Cambridge, 1996).

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A problem with the work of these historians is that it made almost no use of the plea rolls and Year Books, sources that do not support some of their assertions about the nature of illegal maintenance. Thus, as a result of inattention of legal historians and failure of other historians to explore the primary sources, there is a gap in the scholarship. This book proposes to fill that gap by a thorough and comprehensive study of maintenance in medieval England.

Despite the numerous statutes enacted at the end of the thirteenth and during the fourteenth centuries, maintenance actions, other than those alleging champerty and conspiracies to maintain, were uncommon in the first 100 years after the initial prohibitions in the Statute of Westminster I 1275. From 1272 to 1377, conspiracy cases were most common. The litigation was primarily criminal and the civil litigation consisted of actions for champerty and procuring false appeals and indictments. There were no civil maintenance actions. But by end of the fourteenth century, likely as result of a 1377 statute, civil maintenance actions began to appear and by the fifteenth century they were extensive. An examination of the primary sources from 1272 to 1485 identified more than 3,000 entries regarding maintenance and related actions in the plea rolls, comprising just under 2,000 individual actions.[32] An examination of the Year Books during the same period revealed 150 cases involving or discussing maintenance. This litigation has previously never been studied. The present research has revealed, for the first time, the nature of the conduct complained of in actual cases and the manner in which the statutes were actually used by litigants.[33]

[32] This total included private maintenance, champerty, and conspiracy actions; criminal indictments; and crown maintenance actions as well as actions to enforce the livery statutes. This number is smaller than the total entries as the latter includes multiple entries of the same case as well as nonmaintenance and other cases that are relevant to various discussions. Appendix A summarizes this data.

[33] This research used two primary sources: the records of the King's Bench (KB 27) and Common Bench (CP 40) contained in the plea rolls of The National Archives, Public Record Office, and the cases in the printed versions of the Year Books and Abridgements. References to the National Archives' series CP 40 and KB 27 refer to the digital archive assembled by Robert C. Palmer and Elspeth K. Palmer, *The Anglo-American Legal Tradition*, available at aalt.law.uh.edu/ (hereafter AALT). Individual citations will provide the AALT Image number. The Year Book cases are also available in digital format in Boston University School of Law, *Legal History: The Year Books*, compiled by David Seipp and available at www.bu.edu/phpbin/lawyearbooks/search.php. Individual citations will provide the Seipp number.

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Based on this research, the book has two major findings. First, as the relevant statutes did not define illegal maintenance or indicate what particular types of conduct were illegal,[34] medieval judges needed to draw the line between lawful and unlawful conduct. In developing the law, judges limited the offense of maintenance by recognizing several valid justifications for involvement in the litigation of another person. But sometimes assistance was inappropriate either because a justification was lacking or because the conduct exceeded the bounds of propriety.

The second finding is that the statutes prohibiting maintenance in all likelihood did not achieve their objectives. These statutes were directed primarily at controlling the abuse of the legal procedure by powerful individuals and officials. The status and occupation of the parties to litigation, however, show that maintenance actions were not in fact used to control abuse by such persons. Instead, the litigation reveals a more complex and significantly different picture. Another possible objective of the statutes may have been to reduce specious litigation. But an examination of the actual litigation casts doubt on whether the statutory prohibitions actually had that effect. Although some maintenance actions may have involved legitimate actions against abusive conduct that increased litigation, many did not. In fact, it is quite possible that the maintenance actions actually resulted in more litigation rather than reducing it and that the actions were used abusively. In a number of instances, the sources suggest the parties brought maintenance actions to harass and burden personal adversaries.

In addition, the maintenance litigation demonstrates that the common definition of maintenance by legal dictionaries and commentators over the centuries is likely overbroad or incomplete. Early law dictionaries broadly defined maintenance as any support or assistance of another's legal action. For example, Rastell's *Les Termes de la Ley* said that "Maintenance is, where any Man gives or deliver[s] to another, that is Plaintiff or Defendant in any Action, any Sum of Money or other Thing, to maintain his plea, or takes great Pains for

[34] There was one exception. The statute prohibiting champerty identified three forms of permissible assistance. *Articuli Super Cartas*, 28 Edw I, st. 3, c. 11 (1300), *Statutes of the Realm*, vol. I, p. 139.

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him when hath Nothing therewith to do."[35] Modern legal dictionaries provide essentially the same definition.[36]

Seventeenth- and eighteenth-century commentators defined maintenance similarly, but also identified defenses or exceptions to the statutory prohibitions. Coke divided maintenance into lawful and unlawful and general and special. He said that illegal maintenance was "an upholding of the demandant or plaintiff, tenant, or defendant in a cause depending in suit, by word, action, writing, countenance, or deed."[37] Hawkins discussed maintenance extensively.[38] He stated that "maintenance is commonly taken in an ill sense, and in general seemeth to signify an unlawful taking in hand or upholding of quarrels or sides to the disturbance or hindrance of the common right." It consisted of officious intermeddling in a suit pending in court, to which he was not a party, by assisting either party with money or otherwise in prosecuting or defending the suit.[39] Like Coke, Hawkins divided the conduct into that which was a violation of the statute and that which may be justified, identifying numerous examples in each category.[40] Blackstone defined maintenance as "an officious intermeddling in a suit that no way belongs to one, by maintaining or assisting either party with money or otherwise,

[35] William Rastell, *Les Termes de la Ley*, p. 433 (London, 1721). This work, likely the first law dictionary, was initially published in 1527 as *Exposionciones Terminorum Legum Anglorum*. The next law dictionary, initially published in 1607, defined maintenance as "an upholding of a cause or person . . . him that secondeth a cause depending in suite between others, either by lending money, or making friends for either partie, toward his help." John Cowell, *The Interpreter* (Cambridge, 1637). Cowell said that the word was "metaphorically drawn from the succoring of a young child, that learned to goe, by ones hand. In our common lawe, it is used in the euill part . . ." Ibid.

[36] *Black's Law Dictionary* , 6th ed. (St. Paul, 1990), p. 954; William Edward Baldwin, ed., *Bouvier's Law Dictionary, Baldwin's Edition* (Cleveland, 1934).

[37] He asserted that maintenance was *malum in se* and against the common law. He said that it was *duplex*. He denoted one type as *curialis,* providing support or assistance in a plea pending in court, and the other type as *rurialis,* stirring up litigation. Edward Coke, *The Second Part of the Institutes of the Laws of England*, 2 vols. (London, 1797; reprint, 1986), vol. I, 212. The latter sounds more like barratry, which he discussed separately. Ibid., p. 225.

[38] William Hawkins, *A Treatise of the Pleas of the Crown*, 5th ed. (London, 1771), Book I, ch. 83, pp. 249–56.

[39] Ibid., p. 249.

[40] He identified ten general categories of conduct that may be justified. In his discussion, he included numerous references to the Year Books and abridgments. Ibid., pp. 249–54. A dictionary published one year later had definitions and justifications very similar to those of Hawkins. Giles Jacob, *A New Law Dictionary*, 9th ed. (London, 1772).

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