

MAINTENANCE IN MEDIEVAL ENGLAND

This is the first book covering those who abused and misused the legal system in medieval England and the initial attempts of the Anglo-American legal system to deal with these forms of legal corruption. Maintenance, in the sense of intermeddling in another person's litigation, was a source of repeated complaint in medieval England. This book reveals for the first time what actually transpired in the resultant litigation. Extensive study of the primary sources shows that the statutes prohibiting maintenance did not achieve their objectives because legal proceedings were rarely brought against those targeted by the statutes: the great and the powerful. Illegal maintenance was less extensive than frequently asserted because medieval judges recognized a number of valid justifications for intermeddling in litigation. Further, the book casts doubt on the effectiveness of the statutory regulation of livery. In fact litigants used maintenance litigation to harass and burden their opponents. This book is a treasure trove for legal historians, literature scholars, lawyers, and academic libraries.

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PREFACE AND ACKNOWLEDGMENTS

This book has a serendipitous origin. My interest in English legal history grew out of a sabbatical project on the ethical rules governing the American legal profession. As part of that effort, I studied the origins of the legal profession and its regulation in medieval England. That inquiry resulted in an article that changed my scholarly career.¹ After three decades of focusing on other legal subjects, I decided to change my primary scholarly interest to English legal history. Learning the necessary language and paleographic skills and developing an intellectual foundation from the scholarly literature were arduous and time-consuming tasks.² In pursuing this new undertaking, my earlier interests in the legal profession influenced my research topics.

One of my earliest efforts was an article on conflicts of interest by medieval lawyers.³ This research introduced me to Sir John Fastolf and led me to the first of many visits to the Archives of Magdalen College, University of Oxford, and The National Archives, Public Record Office in Kew. As I made my way through the Fastolf Papers and the plea rolls recording the litigation of Fastolf and his servants, I encountered the medieval actions of conspiracy, maintenance, and attain, which was the first step on the path to this book. Initially, this research produced a draft article on lordship, maintenance, and fifteenth-century social and legal norms with Fastolf's maintenance and related litigation as illustrative. Readers of the draft suggested that more plea roll research would enrich the article and that a book rather than an article might be feasible and appropriate. Thus, I began many hours of research in the plea rolls and

¹ Jonathan Rose, "The Legal Profession in Medieval England: A History of Regulation," *Syracuse Law Review* 48 (1998), pp. 1–137.

² Jonathan Rose, "Learning to Be a Legal Historian: Reflections of a Non-Traditional Student," *Journal of Legal Education* 51 (2001), pp. 294–304.

³ Jonathan Rose, "The Ambidextrous Lawyer: Conflict of Interest and the Medieval Legal Profession," *The University of Chicago Law School Roundtable* 7 (2000), pp. 136–203.

Year Books collecting maintenance and related actions and cases as well as perusing the petitions to the king, his council, and parliament complaining about maintenance and abuse by powerful individuals and officials. In the process, many relevant primary sources were found, which suggested some interesting conclusions about the law of maintenance in medieval England. This research and its results were the basis of a book proposal to Cambridge University Press.

Over time, the scope of the book expanded. The initial proposal focused on maintenance and litigation in late medieval England, 1377–1485. But the statutes and other legal mechanisms directed at maintenance and other forms of legal corruption and the complaints of petitioners emerged at the beginning of the reign of Edward I (1272–1307). As a result, the temporal and substantive scope of the book expanded to include the various legal measures and litigation involving maintenance, champerty, conspiracy, and abuse of legal procedure in the period 1272–1377. In addition, chapters on earlier social norms regarding assisting persons with their problems and litigation, livery, and medieval literature were added. These changes resulted in a more comprehensive study of maintenance and other forms of abuse of legal procedure in medieval England.

In the course of my work on this book, numerous people provided me with valuable assistance, for which I am very grateful. I am indebted to them in ways too numerous to mention in complete detail. Five persons deserve special mention. John Baker and Paul Brand have provided substantial and extensive assistance over several years. They read drafts of many chapters and made detailed comments. They gave me useful primary sources and references to relevant secondary literature. They helped me understand medieval legal institutions, concepts, and primary sources. They have been mentors as well as friends, who have guided me and unselfishly provided their time, assistance, and support to me on this book and as a newcomer to English legal history. Initially, I was a novice in the use of medieval primary sources, but my language and paleographic skills developed over time. Nevertheless, I still needed assistance from time to time in understanding and transcribing primary sources. Christopher Whittick was my “go to” person on these matters. We have exchanged hundreds of e-mails, in which he provided invaluable help in these tasks. His extensive assistance gave me the benefit of his substantial skills and the unselfish commitment of his time. Susanne Jenks also assisted me in understanding primary sources and provided me with many primary sources. I was fortunate to have her nearby in the Map

Room at The National Archives early in the project on those occasions in which I encountered difficulty in going through the plea rolls. She was always willing to help me. Finally, my wife, Wendy Rose, has read every word of the book and proofread all the chapters. She also endured the impact on our personal life of my numerous trips to The National Archives and Cambridge to do research and my constant need to work on the book over the years.

In addition (I hope I have not omitted anyone), Neil Andrews, Paul Booth, Karen Bradshaw, Jeroan Chorus, Peter Coss, David Crook, Edwin DeWindt, Gwilym Dodd, Charlie Donahue, Paul Eckstein, Chris Given-Wilson, Ralph Griffiths, Richard Helmholz, Michael Hicks, Rosemary Horrox, John Hudson, Lindsey Hunter, Paul Hyams, David Ibbetson, Nicholas Le Poidevin, Gordon McKelvie, Mark Ormrod, Robert Palmer, Ryan Rowberry, Simon Stern, and Henry Summerson have provided assistance in reading and commenting on drafts, identifying relevant primary and secondary sources, and answering my queries on various aspects of medieval English legal history and other matters. Since I am not an expert on medieval literature, I particularly needed help with that chapter in identifying both primary and secondary sources and understanding Middle English. Richard Beadle and Robert Sturges gave me substantial assistance on those matters and also read and commented on that chapter. Diane Facinelli, Robert Meindl, Wendy Scase, and Robert Yeager provided similar assistance. I have presented portions of this book at legal history and medieval conferences in the United States, the United Kingdom, and several other European countries. I want to thank the organizers of those conferences and those who attended my presentations for their interest and comments. Further, significant gratitude is owed to Robert Palmer and those who assisted him in developing the online resource *The Anglo-American Legal Tradition*, for access to the The National Archives, Public Record Office records, and to David Seipp and his website, *Legal History: The Year Books*. It would have been very difficult to do the research necessary to write this book without access to these websites.

I also want to acknowledge several institutional debts. I am grateful for the support that the Sandra Day O'Connor College of Law, Arizona State University, provided for my research and the assistance of the College of Law Library Staff, especially Marianne Alcorn, who sadly passed away before the book was completed. I also want to thank the President and Fellows of Magdalen College, University of Oxford, especially Fellow librarian Christine Ferdinand and archivist Robin Darwell-Smith, for

their assistance. I similarly want to express my gratitude to the academic, administrative, and library staff of the Faculty of Law and Clare Hall, University of Cambridge. Finally, I want to thank Cambridge University Press for undertaking this book and Finola O’Sullivan and the others involved for their assistance. For those who want further information on the sources and have comments, I can be contacted at jonathan.rose@asu.edu.

ABBREVIATIONS

A. 3d	Atlantic Law Reports Third
A.C.	Law Reports Appeal Cases
All E.R.	All England Law Reports
CJ	Chief Justice
CJCP	Chief Justice Common Pleas
CJKB	Chief Justice King's Bench
Eng. Rep.	English Report Full Reprint
Img.	Image
J	Judge or Justice
JCP	Justice Common Pleas
JKB	Justice King's Bench
MS	Manuscript
No.	Number
Oxford History	<i>The Oxford History of the Laws of England</i> , 11 vols. (Oxford, various dates)
PROME	<i>Parliament Rolls of Medieval England</i> C. Given-Wilson, Paul Brand, Seymour Phillips, Mark Ormrod, Geoffrey Martin, Anne Curry, and Rosemary Horrox, eds. (online version)
Q.B.	Law Reports Queen's Bench
Q.B.D.	Law Reports Queen's Bench Division
Co. Rep.	Coke's Reports
S.R.	Statutes of the Realm
TNA: PRO	The National Archives: Public Record Office
tr.	Translation into English by the author. In general, all the descriptions or summaries of the records in the plea rolls and the Year Book cases are my translations.
WL	West Law
W.L.R.	Weekly Law Reports
Y.B.	Year Book

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- 3 Edw. I, Statute of Westminster I cc. 24–30, 33 (1275) 2, 8, 30, 31, 32, 39, 87, 91, 96, 130, 184, 316, 317, 327, 328
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 19 Hen. VII, De Retentionibus Illicitis, c. 14 (1503–4) 351, 352
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