IV. Governance

12. Londoners and the court of common pleas in the fifteenth century

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In a recent reassessment of the relationship between London and the rest of the English realm, exploring the legitimacy with which we might broadly conceive of the pre-modern metropolis as a city-state, Derek Keene wrote: 'the establishment of the key state institutions at Westminster, on the edge of London, points to their secondary function within a metropolis whose essential role within the state was as a source of wealth'.[1] Few institutions of the medieval English state would prove so enduring as the principal royal courts, the court of common pleas – or the 'common bench' as it was initially known – and its counterpart the court of king's bench, which became more or less permanent fixtures in the shadow of the city of London, at Westminster Hall, from the late thirteenth century into the modern era.[2] Few institutions were as essential to the rude health of London trade and commerce throughout the later middle ages as was the court of common pleas, which had four main sorts of jurisdiction: 'real actions' to assert title to land; 'personal actions' including actions of detinue, account, covenant and debt over 40*s*; mixed real and personal actions such as *ejectio firmae*, that is, ejection from lands held for a term of years; and, shared with the court of king's bench, actions brought on trespasses, including breach of royal statute. Of these, the court's functions in hearing and determining economically oriented personal actions of detinue, account, covenant and, particularly, debt were far and away those most frequently employed by later medieval litigants, the largest single group of whom at common pleas were, by origin, Londoners (see below).

This chapter explores the extent to which the fifteenth-century court of common pleas exhibited, secondary to its role as a national venue for royal

[1] D. Keene, 'Metropolitan comparisons: London as a city-state', *Historical Research*, lxxvii (2004), 471.

[2] The court of common pleas was occasionally removed from London, usually to York and usually for military reasons, during the later 13th and early 14th centuries, and was again removed from London during Richard II's quarrel with the city of London in the 1390s (D. Keene, 'Medieval London and its region', *London Journal*, xiv (1989), 101–2 and citation there).

justice, a distinct metropolitan function as a de facto London court. It is posited here that, for fifteenth-century Londoners, common pleas was just one among several judicial venues within an explicit framework of London judicial forums geared towards the resolution of their disputes. From at least the tenth century London had been the most populous and wealthiest settlement in the British Isles, continuing to house, even in the decades following the pestilence of the mid fourteenth century, some 40–60,000 souls.[3] Between the mid twelfth and mid thirteenth centuries London, through the proxy of nearby Westminster, had replaced Winchester as the focus of royal government. Throughout the following century and a half, to 1400, the metropolis had greatly influenced the development of regional and national trade networks by generating and responding to the raw market forces of demand, created by the city's need for resources, and supply, of labour and goods, as both the nation's most active port and its largest centre of population and productive specialization.[4] Keene, at the forefront of the exploration of each of these themes, has emphasized the long-term, 'distinct structural effects' of the city in shaping the economic and political landscape of its regional and national hinterlands, and has suggested that these effects may also have extended to the shaping, or at least the commandeering, of the state institutions of the king's courts at Westminster by their London clientele.[5]

With an aim of exploring the relationship between Londoners and the court of common pleas, as well as other related themes, a major Arts and Humanities Research Council-funded project, 'Londoners and the law: pleadings in the court of common pleas, 1399–1509', based at the Centre for Metropolitan History, Institute of Historical Research from 2006 to 2008, identified and calendared more than 6,300 lawsuits at

[3] Keene, 'Medieval London and its region', pp. 99–100, 107.

[4] See below, n. 5.

[5] D. Keene, 'Changes in London's economic hinterland as indicated by debt cases in the court of common pleas', in *Trade, Urban Hinterlands and Market Integration, c.1300–1600*, ed. J. A. Galloway (Centre for Metropolitan History Working Papers Series, iii, 2000), pp. 59–81, quotation at p. 61. See also Keene, 'Medieval London and its region', pp. 99–111; B. M. S. Campbell, J. Galloway, D. Keene and M. Murphy, *A Medieval Capital and its Grain Supply: Agrarian Production and Distribution in the London Region, c.1300* (Historical Geography Research Series, xxx, 1993); D. Keene, 'Small towns and the metropolis: the experience of medieval England', in *Peasants and Townsmen in Medieval Europe: Studia in Honorem Adriaan Verhulst*, ed. J.-M. Duvosquel and E. Thoen (Ghent, 1995), pp. 223–38; J. A. Galloway, D. Keene and M. Murphy, 'Feeding the city: production and distribution of firewood and fuel in London's region, 1290–1400', *Economic History Review*, xlix (1996), 447–72; Keene, 'Metropolitan comparisons', pp. 459–80.

common pleas involving London or Londoners, which reached the stage of pleading.[6] Additionally, this project measured the overall volume of lawsuits before the court, at whatever stage of prosecution (that is, mesne process, pleading and final process). Drawing on these data to investigate the importance of the court of common pleas to Londoners, and to explore whether the court might reasonably be characterized as a 'London court', it is possible to assess both how many London lawsuits and Londoners themselves typically came before the fifteenth-century court of common pleas each year, and the kinds of disputes these Londoners sought to resolve. This is to ask, what was the relative frequency with which cases were 'laid in London', revolving around events taking place there and so begun by an original writ directed to the sheriff of London? What was the relative frequency with which Londoners were litigants at common pleas, by comparison with London city courts? What kinds of legal actions did Londoners employ at common pleas? And who were the Londoners who brought and responded to lawsuits in common pleas? Finally, we might also ask, what was the importance of the court to Londoners who were not themselves litigants? The answers to these questions, collectively, do much to illuminate the nature of the court of common pleas as a 'London court'.

The quantitative context of Londoners' litigation in common pleas

The backdrop to Londoners' litigation at common pleas was the overall volume of business handled by the court across the fifteenth century. Based on sampling, in which all case entries on the fronts of the rotulets of three Michaelmas term rolls were counted (Table 12.1), it is possible to estimate that in 1400 there were in progress at the court of common pleas about 9,400 cases in any given term; about five times as many entries as appear on the corresponding rolls of the court of king's bench, where more criminally oriented suits were heard.[7] By 1450, the work of common

[6] M. Davies and H. Kleineke (project directors), 'Londoners and the law: pleadings in the court of common pleas, 1399–1509', Arts and Humanities Research Council (award no. AR119247). This calendar has since been published online by British History Online, as 'Court of common pleas: The National Archives, CP 40 – 1399–1500' <http://www.british-history.ac.uk/source.aspx?pubid=1272> [accessed 19 Apr. 2011]. This online resource includes an introduction outlining the specific documents consulted, and data collection methodology.

[7] The estimated number of cases in progress at common pleas is based on The National Archives of the UK: Public Record Office, CP 40/556, 557, 559, Hilary, Easter and Michaelmas terms 1400; CP 40/756–9, Hilary, Easter, Trinity and Michaelmas terms 1450; and CP 40/955–8, Hilary, Easter, Trinity and Michaelmas terms 1501. All entries on the front of each year's Michaelmas term roll were counted. E.g., on roll CP 40/559, Michaelmas term 1400,

Table 12.1. Estimated number of cases in progress at common pleas in any given term, 1400, 1450 and 1501

	Cases in progress	Ratio of non-pleaded-case entries to pleaded-case entries	Percentage of cases laid in London*
1400	9,400	22:1	12%
1450	4,500	13:1	14%
1501	3,800	5:1	14%

Source: The National Archives of the UK: Public Record Office, CP 40/556–9, 759, 958. For calculations, see above, nn. 7–12.

* These percentages are based on the Michaelmas roll of each year only (see below, n. 20).

pleas had fallen to about 4,500 cases in progress per term.[8] And by 1501, the total number of cases in progress each term had fallen to probably fewer than 3,800.[9] It is worth noting that this decline is contrary to the impression given by the size of the rolls themselves, which are around 400–500 rotulets each throughout the century. The continued high number of rotulets in the rolls across the century, despite the falling number of cases in progress during any given term, is the result of a gradual increase in the size of the documentary hand employed and a rising proportion of cases reaching the stage of pleading (pleaded-case entries take up more space on the roll than the terse non-pleaded-case entries which typically note mesne and final process). In Michaelmas term 1400 the ratio of non-pleaded-case entries to pleaded-case entries was roughly 22:1.[10] By 1450,

there are 602 rotulets. There are 6,449 cases on the fronts of these rotulets (mesne process and pleaded entries), with dorse sides very occasionally being blank, allowing an estimate of approximately 12,000 cases, or about 20 cases per rotulet, on the roll. The rolls CP 40/556, 557 and 559 contain an average of 469 rotulets, equating to an average of around 9,400 cases in progress per term. For the relative number of king's bench entries, see M. Hastings, *The Court of Common Pleas in 15th Century England: a Study of Legal Administration and Procedure* (Ithaca, NY, 1948), p. 16, n. 2.

[8] Applying the same methodology as above, the roll for Michaelmas term 1450 (TNA: PRO, CP 40/759) contains 2,871 cases on the fronts of its 454 rotulets, with the four termly rolls of 1450 averaging 405 rotulets each, equating to an average (rounded down) of 12 cases per rotulet and probably no more than 4,800 cases in progress per term.

[9] Applying the same methodology as above, the roll for Michaelmas term 1501 (TNA: PRO, CP 40/958) contains 2,585 cases on the fronts of its 590 rotulets, with the four termly rolls of 1501 averaging 477 rotulets each, equating to an average (rounded down) of eight cases per rotulet and probably no more than 3,800 cases in progress per term.

[10] TNA: PRO, CP 40/559, Michaelmas term 1400, the fronts of all rotulets contained a total of 6,173 non-pleaded-case entries and 276 pleaded-case entries.

the ratio of non-pleaded-case to pleaded-case entries had fallen to 13:1;[11] and by 1501, to 5:1.[12]

The fifteenth-century decline in business at common pleas, and relative increase in the proportion of cases reaching the stage of pleading, has largely escaped comment by past legal historians. Margaret Hastings's path-breaking work *The Court of Common Pleas in 15th Century England*, which has stood as the standard work on the court of common pleas in this period for more than six decades, notes that competition for business existed between common pleas and king's bench.[13] Further, Hastings observed that the latter court 'eventually defeated the Common Pleas' through the development of the highly flexible and relatively expeditious 'Bill of Middlesex', by which king's bench, in effect, extended its jurisdiction to encompass varieties of dispute previously in the sole preserve of common pleas.[14] Nevertheless, the comparatively speedy handling of such suits by king's bench did not attract to that court a large volume of disputes otherwise destined for the court of common pleas until the sixteenth century.[15] In the later fifteenth century, a survey of the profits of the seals of common pleas and king's bench – that is, the total income, less overhead, that each court accrued by charging a flat rate of *7d* for the sealing of each writ of judicial process issued – indicates that both courts were in decline.[16] In the context of London litigation, Penny Tucker has, probably more accurately, attributed the later fifteenth-century decline of both common pleas and king's bench to the rapid growth of the equity courts, particularly chancery.[17] Regarding the increase in the proportion of cases at common pleas which were recorded as having reached the stage of pleading, no thoroughly researched explanation has yet, to my knowledge, been put forward. However, one may speculate that, at least in part, this increase relates to a substantial fifteenth-century growth in the numbers and availability of those in the legal profession, particularly in the inns of court in London, who could act as attorneys at Westminster

[11] TNA: PRO, CP 40/759, Michaelmas term 1450, the fronts of all rotulets contained a total of 2,659 non-pleaded-case entries and 212 pleaded-case entries.

[12] TNA: PRO, CP 40/958, Michaelmas term 1501, the fronts of all rotulets contained a total of 2,185 non-pleaded-case entries and 400 pleaded-case entries.

[13] Hastings, *Court of Common Pleas*, pp. 24–7.

[14] Hastings, *Court of Common Pleas*, pp. 24–7.

[15] M. Blatcher, *The Court of King's Bench, 1450–1550: a Study in Self-help* (1978), pp. 154–66.

[16] Blatcher, *Court of King's Bench*, pp. 15–21, 167–71.

[17] P. Tucker, 'Relationships between London's courts and the Westminster courts in the reign of Edward IV', in *Courts Counties and the Capital in the Later Middle Ages*, ed. D. E. S. Dunn (Stroud, 1996), p. 118.

on behalf of defendants.[18] The result of this may have been that many defendants, who in earlier times would resist appearing in court until the plaintiff had exhausted his resources of money and patience as the case languished in the mesne process stage of proceedings, would later have appeared before the court by attorney and thereby occasioned a pleaded-case entry in which the plaintiff's suit was outlined in more detail.[19] The attorney of a recalcitrant defendant would then employ the alternative delaying tactic of requesting numerous successive licences to imparl, or leave to confer with his client until a later sitting of the court.

What was the relative frequency with which cases were laid in London?

Irrespective of the fifteenth-century decline in the volume of business at common pleas and the increase in the proportion of pleaded-case entries on the rolls, those cases 'laid in London' – that is, reflecting disputes arising from events alleged to have taken place in the city – made up roughly 12–14 per cent of all case entries (totalling non-pleaded- and pleaded-case entries) recorded on the plea rolls of the beginning, middle and end of the century (Table 12.1).[20] A slightly more sophisticated measure of the relative frequency with which cases were laid in London can be attained by totalling the number of case entries appearing on the Michaelmas term plea rolls of 1400, 1450 and 1501, tabulated by the county of enrolment, and setting these county totals against estimated county populations for the late fourteenth century.[21] By this measure – achieved here by first totalling for each county all case entries on the fronts of the individual rotulets making up each of these plea rolls, and then doubling these county sub-totals to take account of the similar number of case entries appearing on the backs of the rotulets – it is clear that there were, in each sample year, significantly more cases laid per head of the population in London than in any other county (Table 12.2, pp. 234–6

[18] N. Ramsay, 'Retained legal counsel, *c.*1275–*c.*1475', *Transactions of the Royal Historical* Society, xxxv (1985), 111.

[19] E.g., the 'Londoners and the law' project extracted 902 pleaded cases from the period 1400–9 (TNA: PRO, CP 40/556–94), in 361 (40%) of which the defendant employed an attorney. By comparison, the project extracted 626 pleaded cases from the years 1480 and 1500 (CP 40/871–4 and 951–4), in 491 (78%) of which an attorney was employed.

[20] TNA: PRO, CP 40/559, Michaelmas term 1400, the fronts of all rotulets contained a total of 6,449 entries, of which 789 relate to cases laid in London; CP 40/759, Michaelmas term 1450, the fronts of all rotulets contained a total of 2,871 entries, of which 395 pertain to cases laid in London; CP 40/958, Michaelmas term 1501, the fronts of all rotulets contained a total of 2,585 entries, of which 350 relate to cases laid in London.

[21] London had its own sheriffs during this period and functioned, in terms of process at common pleas, as an English county (see, C. Barron, *London in the Later Middle Ages: Government and People, 1200–1500* (Oxford, 2004), pp. 30–4).

below). It must be stressed that the population estimates appearing in Table 12.2 probably underestimate, by a significant margin, the country's population as a whole.[22] However, this is not problematic for our purposes here, as the 1377 poll tax returns, from which these totals are derived, nevertheless reflect with reasonable accuracy the relative distribution of population by county.[23]

By averaging the number of all ongoing cases from each county in the Michaelmas term samples of 1400, 1450 and 1501 – again, doubling the case totals on these rolls' fronts – and setting those averages against the estimated population of each county, it is possible to derive a synthesis measure of the volume of ongoing cases, by county, in an 'average' Michaelmas term (Table 12.2). These averaged figures have been used to create Figure 12.1, which offers a general impression of the relative number of ongoing cases laid in each county, respective of county populations, and notwithstanding the backdrop of the sharp decrease in the volume of cases laid in virtually all counties across the century. This exercise makes apparent how disproportionately large was the number of cases laid in London in relation to the city's population; with somewhere around six times more cases laid in London, per thousand persons, than in an average county, and almost double the number of cases laid there, per thousand persons, than were laid in the rival urban centres of Norwich and York combined. After London, the county of Middlesex was, by far, the next busiest shrievalty relative to the size of the local population. This was undoubtedly due to the many social and mercantile transactions, leading to litigation, which took place in the area between Westminster and the western and northern boundaries of the city of London. Hence, many 'Middlesex' lawsuits might also reasonably be considered London related, as products of this county's centrality to London's socio-economic hinterland.

What was the relative frequency with which Londoners were litigants at common pleas, by comparison with London city courts?

It can be established from the 'Londoners and the law' project's periodic sampling of pleaded cases, which yielded just over 6,300 cases laid in London or concerning a Londoner, that about 75 per cent of all pleaded cases laid in the city involved a litigant described as 'of London'.[24] Using

[22] R. B. Dobson, *The Peasant's Revolt of 1381* (2nd edn., 1983), pp. 54–7.

[23] The 1377 poll tax returns have recently been employed by Campbell as a key indicator for English population distribution in the later middle ages (B. M. S. Campbell, 'Benchmarking medieval economic development: England, Wales, Scotland and Ireland, *c.*1290', *Economic History Review*, lxi (2008), 925–8).

[24] Based on 4,469 cases laid in London, as indicated by their first county of marginalization, of which 3,361 involve a party described as 'of London' (2,895 Londoners in 3,821 cases laid in London after 1413). See also above, n. 6.

Table 12.2. Entries on Michaelmas term rolls 1400, 1450 and 1501, by county

County*	Estimated population	1400 Entries on Mich. term roll fronts	1400 Entries on fronts ×2 per 1,000 persons†	1450 Entries on Mich. term roll fronts	1450 Entries on fronts ×2 per 1,000 persons†	1501 Entries on Mich. term roll fronts	1501 Entries on fronts ×2 per 1,000 persons†	Average 1400, 1450 and 1501	
								Entries on Mich. term roll	Entries on fronts ×2 per 1,000 persons†
Bedfordshire	31,525	72	4.6	41	2.6	31	2.0	96	3.0
Berkshire	35,220	86	4.9	41	2.3	24	1.4	101	2.9
Bristol	9,835	0	0.0	9	1.8	11	2.2	40	4.1
Buckinghamshire	38,241	77	4.0	26	1.4	53	2.8	104	2.7
Cambridgeshire	42,392	101	4.8	34	1.6	20	0.9	103	2.4
Cornwall	53,125	154	5.8	54	2.0	55	2.1	175	3.3
Cumberland	18,354	32	3.5	8	0.9	9	1.0	53	2.9
Derbyshire	36,027	60	3.3	14	0.8	29	1.6	69	1.9
Devon	70,734	312	8.8	173	4.9	119	3.4	403	5.7
Dorset	53,074	111	4.2	40	1.5	21	0.8	115	2.2
Essex	74,341	222	6.0	105	2.8	112	3.0	293	3.9
Gloucestershire	56,978	173	6.1	70	2.5	51	1.8	196	3.4
Hampshire	51,524	181	7.0	76	3.0	53	2.1	207	4.0
Herefordshire	23,743	32	2.7	37	3.1	34	2.9	69	2.9
Hertfordshire	30,961	93	6.0	45	2.9	57	3.7	130	4.2
Huntingdonshire	21,962	46	4.2	19	1.7	8	0.7	49	2.2

Kent	87,663	317	7.2	47	1.1	150	3.4	343	3.9	
Kingston-upon-Hull	2,413	0	0.0	29	24.0	0	0.0	19	8.0	
Leicestershire	49,182	107	4.4	58	2.4	34	1.4	133	2.7	
Lincoln	5,289	20	7.6	28	10.6	9	3.4	38	7.2	
Lincolnshire	147,434	415	5.6	179	2.4	123	1.7	478	3.2	
London	36,137	789	43.7	395	21.9	350	19.4	1023	28.3	
Middlesex	17,427	179	20.5	180	20.7	92	10.6	301	17.3	
Newcastle-upon-Tyne	4,103	2	1.0	18	8.8	2	1.0	15	3.6	
Norfolk	137,635	311	4.5	171	2.5	225	3.3	471	3.4	
Northamptonshire	62,349	128	4.1	69	2.2	57	1.8	169	2.7	
Northumberland	21,951	50	4.6	8	0.7	3	0.3	41	1.9	
Norwich	6,126	0	0.0	54	17.6	50	16.3	69	11.3	
Nottinghamshire	40,703	102	5.0	43	2.1	51	2.5	131	3.2	
Oxfordshire	38,722	146	7.5	43	2.2	42	2.2	154	4.0	
Rutland	9,291	24	5.2	7	1.5	8	1.7	26	2.8	
Shropshire	36,540	40	2.2	13	0.7	17	0.9	47	1.3	
Somerset	84,636	342	8.1	66	1.6	72	1.7	320	3.8	
Southampton	1,786	1	1.1	0	0.0	1	1.1	1	0.7	
Staffordshire	33,271	50	3.0	25	1.5	28	1.7	69	2.1	

Table 12.2 continued

County*	Estimated population	1400 Entries on Mich. term roll fronts	1400 Entries on fronts ×2 per 1,000 persons†	1450 Entries on Mich. term roll fronts	1450 Entries on fronts ×2 per 1,000 persons†	1501 Entries on Mich. term roll fronts	1501 Entries on fronts ×2 per 1,000 persons†	Average 1400, 1450 and 1501	
								Entries on Mich. term roll	Entries on fronts ×2 per 1,000 persons†
Suffolk	90,846	176	3.9	106	2.3	172	3.8	303	3.3
Surrey	27,960	97	6.9	40	2.9	57	4.1	129	4.6
Sussex	54,755	152	5.6	67	2.4	52	1.9	181	3.3
Warwickshire	39,443	112	5.7	57	2.9	54	2.7	149	3.8
Westmorland	11,453	24	4.2	19	3.3	13	2.3	35	3.0
Wiltshire	66,028	187	5.7	66	2.0	61	1.8	209	3.2
Worcestershire	22,512	63	5.6	34	3.0	56	5.0	102	4.5
York	11,234	9	1.6	40	7.1	18	3.2	45	4.0
Yorkshire	203,112	410	4.0	197	1.9	71	0.7	452	2.2

Source: 'Londoners and the law' project data, see above, n. 6. Estimated county populations (except those indicated with an asterisk) have been calculated from the 1377 lay poll tax returns published in Dobson, *Peasant's Revolt of 1381*, pp. 54–7, multiplying the published return figures by 55 per cent in order to compensate for children, beggars and others not represented in the totals of those taxed.

* Cheshire, Durham and Lancashire were counties palatine, for which the court of common pleas did not exercise justice, and so do not appear in this list.

† Plea rolls are made of several hundred individual rotulets, bound at the head and written front and back. Thus, the numbers of entries on the rotulet fronts of each roll have been doubled to derive an estimated total number of entries.

these data as a guide for the interpretation of non-pleaded- as well as pleaded-case entries on the plea rolls it is possible to estimate, roughly, the number of Londoners litigating at common pleas during a particular term. For example, as discussed above, *c.*1450 approximately 4,500 cases were in progress each term, of which 14 per cent, or about 630 cases, were laid in London. If, as suggested by the 'Londoners and the law' sampling, 75 per cent of cases laid in London involved a Londoner as a litigant, these estimated 630 cases would have equated to about 470 cases involving at least one London litigant *c.*1450. Additionally, there were, of course, Londoners litigating in suits laid in other counties. Roughly 30 per cent of cases extracted for the 'Londoners and the

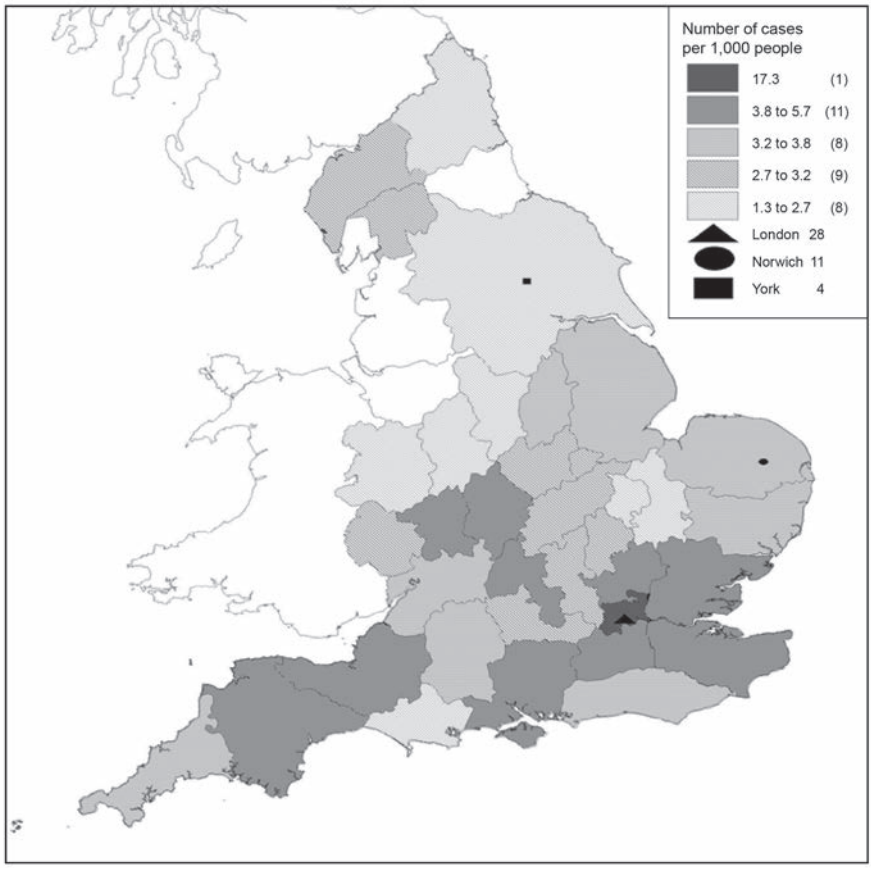

Figure 12.1. Average cases in progress per thousand persons, Michaelmas terms 1400, 1450 and 1500.

Source: Table 12.2.

law' project involved a London litigant, but were not laid in London.[25] This would suggest that a typical plea roll of *c.*1450 would have contained about 250 additional cases laid in counties other than London but involving a London litigant.[26] These estimates suggest that *c.*1450, in total, Londoners may have been litigants in around 720 cases in progress at common pleas during any given term, with the total number of individual London litigants involved probably about the same, some London litigants having brought multiple lawsuits, and some lawsuits having involved multiple London litigants (see below for a discussion of cases involving both a London plaintiff and London defendant). Converting this estimate of the number of lawsuits involving London litigants ongoing during a typical term into an estimate of the number of such lawsuits ongoing at some point during any given year is exceedingly difficult. As discussed above, only one in thirteen case entries on the plea rolls *c.*1450 relate to pleaded cases, with the remainder relating to cases in mesne process, which were frequently discontinued or settled out of court after highly variable periods of time ranging from one term to many years.[27] However, taking these considerations into account, it might speculatively be estimated that no fewer than 750–1,000 cases involving at least one London litigant were initiated, ongoing or resolved at some point during any given year around the middle of the fifteenth century, with the number of individual Londoners involved being probably more or less the same.

These estimates can be contextualized by comparing the number of cases at common pleas involving Londoners to the volume of business passing through London's city courts. The city of London's legal franchise was such that, in theory, London freemen suing other Londoners could be fined or imprisoned if they did so outside the city's own courts. Thus, for freemen of the city, the basic distinction between common pleas and the city's courts was that the former was a venue for Londoners litigating with non-Londoners, while the latter were a venue for Londoners suing other Londoners.[28] However, it has been estimated that freemen are unlikely to have made up more than 12 per cent of all London inhabitants, perhaps

[25] The project sample contains 6,321 pleaded cases, of which 1,844 (29%) were not laid in London.

[26] E.g., if a typical plea roll *c.*1450 contained, among non-pleaded-case and pleaded-case entries, approximately 585 cases laid in London and 250 cases involving a Londoner but not laid in London, totalling 835 cases, then 250 cases involving a Londoner but not laid in London would equal 30% of that total. This reasoning extends the 'Londoners and the law' sampling methodology to include non-pleaded-case entries.

[27] See above for ratios of pleaded-case to non-pleaded-case entries. For the discontinuation of out-of-court settlement of suits, see Hastings, *Court of Common Pleas*, p. 183.

[28] Tucker, 'Relationships between London's courts', p. 117.

a quarter of the adult male population, at any time before 1550.[29] Thus, for the great majority of potential London litigants who did not enjoy the freedom of the city, the primary incentive to litigate against non-Londoners at common pleas was the city's courts' lack of a means by which to secure the appearance of recalcitrant non-London defendants who neither had estate within the city's area of jurisdiction by which they could be distrained, nor were present there to be attached.[30] At the same time, there were strong incentives for London freemen and non-freemen alike to bring suits against their fellow Londoners primarily within the city's courts rather than at common pleas, embodied in the comparative speed and cheapness with which cases could be prosecuted in the city. For example, in the sheriffs' court of London, by far the city's busiest judicial forum, cases could be begun orally or by bill without the need to purchase one or numerous writs, as required for litigation at common pleas.[31] Moreover, even protracted cases in the London sheriffs' court were typically delayed by no more than a few months, as opposed to the many months, and often years, by which cases were regularly delayed in common pleas.[32]

The city's three principal courts for civil litigation were: the sheriffs' court, which was a 'court of first resort for most individuals', initiating most kinds of minor cases, apart from rights to and in land; the courts of hustings, both 'of land', which dealt with disputes concerning property ownership, and 'of common pleas', regarding property-related rights, particularly naam and dower; and the mayor's court, which dealt with the enforcement of civic ordinances as well as some interpersonal pleas over which it came to enjoy a power to remedy injustices 'in conscience', arguably either as superior or parallel court to the sheriffs' court and courts of hustings.[33]

The rough estimates of the volume of interpersonal disputes brought before the mid fifteenth-century courts of the city of London, as appearing in Table 12.3, are the work of Penny Tucker.[34] The records of the court of hustings are nearly complete for this period, and so it is possible to know with some certainty how many personal actions were heard there.[35] The records of the mayor's court are somewhat less complete, and those of the

[29] P. Tucker, *Law Courts and Lawyers in the City of London, 1300–1550* (Cambridge, 2007), p. 24.

[30] Tucker, *Law Courts and Lawyers*, pp. 180–1.

[31] Tucker, *Law Courts and Lawyers*, pp. 152–60 (volume of business), 179 (originating lawsuits); Hastings, *Court of Common Pleas*, pp. 169, 247–55 (fees).

[32] Tucker, *Law Courts and Lawyers*, pp. 168–70, 182–3; Hastings, *Court of Common Pleas*, pp. 211–36.

[33] Tucker, *Law Courts and Lawyers*, pp. 98 (sheriffs' court), 113, 146–7 (mayor's court).

[34] Tucker, *Law Courts and Lawyers*, pp. 144, 150, 159–60.

[35] Tucker, *Law Courts and Lawyers*, p. 144.

Table 12.3. Civil litigation, estimated cases *c.*1450

Court	Cases per term	Cases per year
Royal court of common pleas (*involving a Londoner*)	720	750–1,000*
Sheriffs' court	–	3,800–4,700†
Mayor's court	–	400†
Courts of hustings (*'of land' and 'of common pleas'*)	–	10–20†

Source: 'Londoners and the law' project data, see above, n. 6.
* See discussion above.
† Tucker, *Law Courts and Lawyers*, pp. 144, 150, 159–60.

sheriffs' court are almost completely lacking, making the estimated number of cases heard there necessarily the most speculative.[36] As with the county population estimates in Table 12.2, however, the precision of these estimates is not as important as their relative distribution and orders of magnitude. What Table 12.3 conveys is just how central litigation at common pleas must have been to Londoners' mental map of the legal environment in which they lived and traded. Londoners are unlikely to have seen common pleas as a venue for litigation separate from or outside the usual range of judicial forums they might employ, in the way many provincial merchants may have seen it (see Table 12.2). In addition to London's proximity to Westminster Hall, where the court sat, and the high frequency with which the lawyers and litigants of common pleas undoubtedly patronized the city by the mid fifteenth century, as Keene has shown, the London mercantile community stood head and shoulders above any other town's guild merchants as the hub of a national and international trade and distribution network.[37] In essence, the business of London was to trade with non-Londoners, which in turn regularly generated disputes that could not be settled by the city's own courts, which lacked the power of common pleas to compel litigants from other counties to come before them. London's *Liber Albus* does record that, in theory, commercial arrangements entered into outside the city could be brought before London's city courts if payment had been due to take place in London. However, given their limited power to secure the appearance of recalcitrant non-London defendants (as discussed above), it seems unlikely

[36] Tucker, *Law Courts and Lawyers*, pp. 150, 159–60. See also S. Jenks, 'Picking up the pieces: cases presented to the London sheriffs' courts between Michaelmas 1461 and Michaelmas 1462', *Journal of Legal History*, xxix (2008), 99–145.

[37] Keene, 'Changes in London's economic hinterland', pp. 59–81.

Table 12.4. Pleaded cases involving a Londoner sampled for the 'Londoners and the law' project, 1400–1500

Date range (inclusive)	Involving a Londoner	LvL*	LvL as a percentage of all cases
1400–9	519	28	5%**
1420–9	1,115	107	10%
1445–50	1,056	169	16%
1460–8	1,529	242	16%
1480†	257	37	14%
1500†	207	35	17%
Totals	4,683	618	13%

Source: 'Londoners and the law' project data, see above, n. 6.
* Londoner versus Londoner.
**Before the Statute of Additions (which required a defendant's location of residence).
† Small sample. Four terms only.

that London traders would often have found this an attractive option for dealing with the non-London debtors with whom they would have been most likely to have negotiated debts outside the city.[38]

Conversely, modest numbers of Londoners consistently chose to initiate litigation against other Londoners at common pleas, contrary to city regulation regarding London freemen (see above), throughout the fifteenth century (Table 12.4). The number of Londoners pursuing such cases to the stage of pleading may even have increased slightly from mid century onwards. However, this is difficult to ascertain as, before the 1413 Statute of Additions, writs were not required to specify the defendant's place of residence, leading to the probable under-identification of London defendants.[39] Furthermore, from at least the 1460s, plaintiffs sometimes identified defendants as being 'of London', along with an alternative geographical origin (or 'alias'), thus inflating the apparent number of 'London' defendants. In terms of the content of these pleas, it is probably significant that pleaded cases of Londoner versus Londoner (LvL) at common pleas, when compared with pleaded cases of Londoner versus non-Londoner, contain an unusually high proportion of violence-related lawsuits. For example, LvL cases were only half as likely to be cases of sales of goods (5 per cent (31) LvL vs. 11

[38] Tucker, 'Relationships between London's courts', p. 118.
[39] Statute of Additions, 1 Hen. V, c. 5 (*Statutes of the Realm* (12 vols., 1810–28), ii. 171).

per cent (515) overall), but nearly twice as likely to be cases of 'trespass with force and arms' (23 per cent (142) LvL vs. 14 per cent (656) overall), such as 'taking of goods' or assault.[40] This raises the question of whether Londoners may sometimes have felt more likely to receive impartial justice in tumultuous, intra-city disputes outside the city's own courts; or perhaps felt that common pleas was a more effective tool with which to harry their adversaries in such disputes.

What kinds of legal actions did Londoners employ in common pleas?

Returning to the more general activities of Londoners at common pleas, the overall character of their litigation was strongly mercantile, with 69 per cent of their lawsuits which reached the stage of pleading, as identified by the 'Londoners and the law' project, having been brought on writs of debt (see Table 12.5). This high proportion of debt cases is emphasized by comparison with the only available, albeit problematic, evidence of the types of cases that were heard in the fifteenth-century sheriffs' court of London, which suggests nearer to just 50 per cent of cases decided there may have been suits of debt.[41] However, not all 'debt' cases were about mercantile activity. The most explicitly mercantile of Londoners' many debt cases pleaded in common pleas – 19 per cent of all Londoners' cases found by the 'Londoners and the law' project – were writs of debt on sales of goods or cash loans. Less clearly mercantile, fully 44 per cent of Londoners' pleaded cases revolved around writs of debt on a bond – literally a formalized 'I owe you' – usually without details of what the bond was about. Many of these bonds were no doubt commercial devices such as non-performance bonds for the sale or shipping of merchandise. However, it is important to recognize that many others were clearly not commercial, relating to property ownership, assurances of good behaviour, arbitrations, marriage agreements and the entire range of social activities engaged in by later medieval Londoners.[42] The residue of Londoners' writs of debt, identified by the 'Londoners and the law' project, related primarily to unpaid rents. Further, after the 69 per cent of writs which were writs of debt, the remainder of Londoners' pleaded cases at common pleas were principally writs of trespass, often used to disguise claims to property, followed lastly by writs of disseisin.

[40] 'Londoners and the law' project data (see above, n. 6).

[41] Jenks has reconstructed about 10% of the business of the London sheriffs' court of 1461–2 (Jenks, 'Picking up the pieces', p. 108).

[42] The ratio of mercantile to non-mercantile bonds is impossible to determine, as only a small minority of bonds indicate to what they relate.

Table 12.5. Actions at common pleas involving a London litigant, 1400–1500*

Writ type	Writ sub-type	Number of actions	Percentage of Londoners' cases (Table 4)	Subtotals as a percentage of Londoners' cases
Debt	Bond	2,062	44%	
	Sales of goods/ Loans	890	19%	
	Other	279	6%	
Sub-total		*3,231*		*69%*
Trespass	With force and arms	741	16%	
	Against royal statute	162	3%	
	Other	9	<1%	
Sub-total		*912*		*19%*
Detinue		277	6%	
Account		92	2%	
Disseisin		56	1%	
Other		115	2%	
Totals:		4,683	100%	

Source: 'Londoners and the law' project data, see above, n. 6.
*Based on sample periods 1400–9, 1420–9, 1445–50, 1460–8, 1480 and 1500; all dates inclusive.

Who were the Londoners who brought and responded to lawsuits in common pleas?

An examination of the status and occupation of persons involved in pleaded cases found by the 'Londoners and the law' project featuring at least one London litigant also conveys a very mercantile emphasis to court usage by Londoners (Table 12.6). The most common status of persons appearing in these lawsuits was, not surprisingly, that of citizen (or freeman) of London, with citizens appearing in 2,577 pleaded cases featuring a London litigant. These citizens were most commonly plaintiffs, in 2,010 suits, rather than defendants, in 595 suits. The second most common status in these cases was that of 'gentleman', with these making appearances in 1,207 suits; gentlemen most commonly appeared as defendants (668 def., 187 pl.). Alternatively, focusing on the most

Table 12.6. Most common litigants, by group, in cases featuring a London litigant, 1400–1500*

Group	Total cases with appearances by group members	Cases involving a group member as a plaintiff	Cases involving a group member as a defendant
Laymen, by title:			
'Citizen' or 'freeman of London'	2,577	2,010	595
Gentlemen and gentlewomen	1,207	187	688
Laymen, by occupation:			
Mercers, drapers, grocers and tailors	500–600 each		
Brewers, skinners, fishmongers, butchers and goldsmiths	200–250 each		
Clergy			
Abbot/Abbess or prior/prioress	*c.*200		
Chaplain	*c.*190		

Source: 'Londoners and the law' project data, see above, n. 6.
* Based on 'Londoners and the law' the sample periods are 1400–9, 1420–9, 1445–50, 1460–8, 1480 and 1500; all dates inclusive.

common occupations of Londoners using the court of common pleas, members of the city's main companies dominate, with London mercers, drapers, grocers and tailors each making appearances before the court in 500–600 pleaded cases. Trailing significantly behind are occupational groups such as the brewers, skinners, fishmongers, butchers and goldsmiths, each of which appeared in 200–250 pleaded cases featuring a Londoner. Thus, in terms of its most frequent users, the significance of common pleas to Londoners was, in no small part, as the court of the mercantile Londoner. However, it was also patronized by the clergy, as the cases involving Londoners include over 190 cases with chaplains and 200 cases with abbots and priors, many of whom were from London religious houses and parish churches. The country's largest city, of course, had one of the country's highest concentrations of clergy, the

more prominent of whom had significant landed, and thus economic, interests both throughout the city and beyond.[43]

What was the importance of the court of common pleas to non-litigants?

As well as resolving Londoners' disputes, the court of common pleas provided employment and income to numerous Londoners who were not themselves litigants. Many London cases, even those not involving a London litigant or attorney, often directly or indirectly involved London professionals, such as the scriveners and notaries who wrote the bonds, indentures and other documents around which cases laid in the city and elsewhere often revolved. Indications of this can be seen when disputes between principal parties spilled over to affect these professionals, as when in 1480 John Moile, as part of an ongoing property dispute with the executors of one Thomas Eyre, indicted London scrivener John Morecok, along with Eyre's executors, of having made false documents that threatened his lawful possession of certain lands in Kent.[44] John Morecok was otherwise unconnected to the case, or its related arbitration, except for having drawn up documents at his employer's request. Perhaps more obviously, when a dispute came to court, there is every indication that the attorneys representing one or both parties would often have been men residing in and around London. The inns of court, of course, were nearby, between London and Westminster, and many prominent attorneys at common pleas, handling cases between persons from all corners of the country – Richard Edmund, William Kirkeby, Thomas Torald and Richard Flegge, to name just a few – described themselves variously as 'attorney' or 'gentleman, of London', in those instances when they acted as sureties or litigants themselves.[45]

The economic significance of the lawyers, scriveners and other individuals who serviced the court being based in and around London should not be understated. For example, by the early fifteenth century common lawyers were often retained by a dozen or more clients at any one time, and even less well-known professionals might be retained long-term for around a mark per annum.[46] Other prominent attorneys, such as Philip Lewestone, who sometimes described himself as a 'gentleman of London', took fees on

[43] In addition to London's 106 parishes and their clergy, a large number of religious foundations were present in the city and its suburbs (see *The Religious Houses of London and Middlesex*, ed. C. M. Barron and M. Davies (2007)).

[44] TNA: PRO, CP 40/872 rot. 102d.

[45] Richard Edmund (TNA: PRO, CP 40/638 rot. 301); William Kirkeby (CP 40/642 rot. 116); Thomas Torald (CP 40/797 rot. 435d); and William Flegge (CP 40/809 rot. 316d).

[46] Ramsay, 'Retained legal council', p. 105.

a termly basis, in one instance 40*d* per term plus all expenses.[47] This method of charging fees would have yielded Leweston 10*s* per client per annum beyond expenditure on their behalf. As Nigel Ramsay has shown, the more prestigious serjeant-at-law and future justice Robert Tirwhit collected more than £50 in fees, that we know of, in 1400 alone.[48] Much of this very significant revenue stream is likely to have been ploughed back into the London economy in one way or another.

Conclusion

The sum of the answers to the questions posed at the beginning of this chapter has, it is hoped, established the likely importance and centrality of the court of common pleas to Londoners, and to London social and mercantile life. More cases in common pleas were laid in London than in any other county, three-quarters of which involved a Londoner (see Table 12.2 and Figure 12.1). As a result of Londoners' regular need to litigate against non-Londoners, by the mid fifteenth century at least, the court of common pleas was entertaining more Londoners' suits than were two of London's three main courts (see Table 12.3). Throughout the fifteenth century, Londoners were even regularly employing the court of common pleas to litigate against each other, despite a prohibition against London freemen doing so and that court's higher costs and slower process than the city's own courts (see Table 12.4, and above). For Londoners, common pleas was an essential tool for resolving mercantile disputes, and heavily relied upon by both the city's merchants and tradesmen, and the clergy. And finally, the court of common pleas undoubtedly, directly or indirectly, brought some degree of income and employment to the city of London. All of these factors suggest very strongly that, as a 'state institution', the court of common pleas did indeed have, as Keene has suggested, a clear 'secondary role within a metropolis', the business of which was certainly the generation of wealth.[49]

Together, these conclusions would also seem to justify, from a historical perspective, the identification of common pleas as a de facto 'London court', as much as a national institution. The more speculative question of whether Londoners themselves are likely to have thought of the court of common pleas in this way is more difficult to gauge. However, in its unparalleled function as a venue for litigating against non-Londoners, indispensible to a mercantile community overwhelmingly oriented towards

[47] TNA: PRO, CP 40/755 rot. 659d.
[48] Ramsay, 'Retained legal council', p. 105.
[49] Keene, 'Metropolitan comparisons', p. 471.

trading both with the counties and abroad – not to mention the court's uses for resolving certain disputes between Londoners – people living in fifteenth-century London would perhaps have been inclined to see the court of common pleas very much as a London court. More to the point, in the late fourteenth-century allegorical poem *The Vision of Piers Ploughman*, written by some-time Londoner William Langland, the characters Theology and Cyvyle (that is, Civil-law) do not agree to take their dispute over the betrothal of Lady Mede (that is, Fee) to the villainous Fals (that is, Fraud) to Westminster Hall for judgement, but instead decide to 'ledeth hire to Londone, there it is y-shewed, if any lawe wol loke', and so set out in fact to consult the justices at Westminster.[50]

[50] William Langland, *The Vision and Creed of Piers Ploughman*, ed. T. Wright (1842), pp. 36–7.