The Historical Journal, 39, 4 (1996), pp. 915–942

THE CULTURE OF RECONCILIATION: COMMUNITY AND THE SETTLEMENT OF ECONOMIC DISPUTES IN EARLY MODERN ENGLAND*

CRAIG MULDREW
University of Cambridge

ABSTRACT. *The period from 1550 to 1640 saw a tremendous rise in the amount of litigation initiated in England. Although the pattern of this great expansion is known, its social meaning is not yet clear. Litigation has, paradoxically, been interpreted as both the barometer of a breakdown in social relations, or alternatively as a functional means of dispute settlement. Here this problem will be addressed by placing the initiation of litigation within the context of the social practices and events which led to disputes, and also by looking at how contemporaries reacted to, and interpreted these events, both publicly and privately. Most litigation arose out of economic disputes concerning credit and contracts, and this was a result of the growth of marketing in the period. Such disputes were seen as threatening to the social order, and were something which contemporaries took very seriously. The primary means of dealing with disputes was to attempt to initiate a community negotiated Christian reconciliation between the disputing parties in order to maintain social peace and concord. But as the market grew more complex, and disputes became more difficult to resolve, increasingly the authority of the law had to be invoked. This in turn led to the development of a more pessimistic language of social relations which stressed that any form of positive sociability could only be maintained under an institutional umbrella created by the threat of authority. As a result, community relations and reconciliation, although still defined in terms of Christian love and charity, came to be seen as more functional than normative because of the massive interjection of the civil law into day to day life.*

I

Recent quantitative investigation of levels of civil litigation in early modern England has shown that beginning in the mid-sixteenth century there was a vast increase in the numbers of private suits being brought before the various common law courts throughout England. This increase reached its peak in the years from about 1580 to 1640, and litigation continued at high levels throughout the seventeenth century, before declining in the eighteenth century. During this period, there were, on average, about 60,000 suits being initiated yearly before the central courts of king's bench, common pleas,

* I would like to thank Keith Wrightson, John Beattie, C. W. Brooks, and Daniel Woolf, who all read over this paper and made helpful suggestions, and also Steve Hindle with whom I have had many helpful conversations about dispute settlement. I would also like to thank the members of the Cambridge Early Modernists Group, and the Toronto English History Group for their helpful comments when I presented earlier versions of this article as papers, and the Social Sciences and Humanities Research Council of Canada for funding me during the period when this article was written.

chancery, exchequer and requests, and in the regional palatinate and council courts. In addition, there were much greater numbers being heard in local courts. Estimates from the town courts of King's Lynn, Bristol, Exeter, Taunton, Carlisle, Great Yarmouth and Scarborough indicate that there were in the region of 400,000 suits being initiated in urban courts each year by the 1580s. Examples of manorial and hundred courts from Yorkshire, Devon and Norfolk also suggest that well over 500,000 private suits were begun in the thousands of small rural courts throughout the country.[1] This represents over one suit initiated for every household in the country!

Contemporaries noted this increase in the numbers of suits, and often blamed the rise on increasing quarrelsomeness. Complaints about unneighbourly litigious people and 'Frivolous and vexatious Suits' were very common.[2] The lawyer Sir John Davies, for instance, complained about the 'litigious humour', and 'malignant and unquiet disposition of many clients'.[3]

[1] The estimate of central court litigation is taken from C. W. Brooks, *Pettyfoggers and vipers of the commonwealth; the lower branch of the legal profession in early modern England* (Cambridge, 1986), pp. 49–51, 56–7, 305 n. 21. The estimates of local litigation are based on counts of the number of suits initiated in various courts for a number of sample years. In towns yearly levels of litigation were simply compared to the household population of each town in question (after subtracting suits by individuals from outside of town), and an average ratio of 2·6 suits per urban household was established, which when multiplied by a rough estimate of the population of towns in the early seventeenth century comes out to 410,526. In King's Lynn and Bristol, for instance, an average of 2,000 and 4,000 suits respectively were brought before their civil courts each year in the early seventeenth century. The figure for local rural litigation is based on calculations made for the wapentake of Langbaugh in north Yorkshire in the mid-seventeenth century, which indicate an average rate of litigation of 0·7 suits per household per year, and this has been checked with other jurisdictions and multiplied by an estimated rural population in the early seventeenth century calculated at 87 per cent of four million people. These estimates will be discussed at greater length in my forthcoming monograph, *The economy of obligation*. Craig Muldrew, 'Credit and the courts: debt litigation in a seventeenth-century urban community', *Economic History Review*, XLVI, 1 (1993), 23–8. Norfolk Record Office: Norwich City Records, Shelf 8b Box #3, Yarmouth Corporation, Court Books, C5/75; Bristol Archives Office, Z27/04457, 04458, 14459 (1–4), Z37/04756-70, 04429; North Yorkshire Record Office, ZDU 154; Public Record Office, E.179 215/451, 216/461; C. W. Brooks, 'Interpersonal conflict and social tension: civil litigation in England, 1640–1830', in A. L. Beier, David Cannadine, and J. M. Rosenheim (eds.) *The first modern society* (Cambridge, 1989), pp. 360–7, 372–4. Martin Weinbaum, *British borough charters 1307–1660* (Cambridge, 1943). W. J. Jones, 'Palatinate performance in the seventeenth century', in Peter Clark, A. G. R. Smith and Nicholas Tyacke (eds.), *The English commonwealth, 1547–1640* (Leicester, 1979), pp. 189–204. Population estimates were taken from E. A. Wrigley, *People, cities and wealth* (Oxford, 1987), pp. 157–67, and E. A. Wrigley and R. S. Schofield, *The population history of England 1541–1871* (Cambridge, 1989), pp. 531–2. The estimate of average household size used here is 4·75 taken from Peter Laslett, 'Mean household size in England since the sixteenth century', in Laslett and R. Wall (eds.), *Household and family in past time* (Cambridge, 1972), pp. 125–58.

[2] Such complaints were voiced by the mayor of London in the 1570s. Steve Rappaport, *Worlds within worlds: structures of life in sixteenth-century London* (Cambridge, 1989), p. 212; Brooks, *Pettyfoggers*, pp. 108–11.

[3] Sir John Davies, *Le primer report* (London, 1650), reprinted in D. Wootton (ed.), *Divine right and democracy* (Harmondsworth, 1986), pp. 137–8. Richard Gough similarly chided one of the members of his parish for being 'a litigiouse person amoung his neighbours much given to the law', Richard Gough, *The history of Myddle*, D. Hey (ed.) (Harmondsworth, 1981), p. 245. W. J. Jones, *Politics and the bench: the judges and the origins of the English Civil War* (London, 1971), pp. 35–6.

Research on the courts of Star Chamber and Chancery has shown that elaborate procedural rules designed to overcome the difficulties of formal common law writs were indeed used by litigants to harass opponents with delays, and to exacerbate disputes rather than resolving them.[4] Many historians, most prominently T. G. Barnes and Lawrence Stone, have taken this evidence to mean that in general litigation involved a great deal of vexatious personal animosity between litigants, and English communities have been characterized as being fairly strife ridden on this basis.[5]

Others, such as Martin Ingram and J. A. Sharpe have offered a less conflictual interpretation of litigation. While Ingram found some examples of vexatious litigation in Wiltshire, these historians have emphasized how important formal arbitration was as a part of the legal process. W. J. Jones has also noted that in the court of Chancery, despite its reputation as a forum for vexatious litigation, the entry books of the court, in fact, teem with arbitrations, mediations, and compositions. Sharpe has also suggested that many defamation cases brought before the consistory courts at York might actually have been initiated with the express purpose of bringing court sanctioned arbitration to bear in a suit.[6]

Although historians and anthropologists have become wary of overtly functionalist interpretations of social institutions, it remains the case that the

[4] T. G. Barnes, 'Due process and slow process in the late Elizabethan–early Stuart Star Chamber', *American Journal of Legal History*, VI (1962), 222, 226–32, 243–9, 337–40; T. Barnes, 'Star Chamber litigants and their counsel, 1596–1641', in J. H. Baker (ed.), *Legal records and the historian* (London, 1978), pp. 7–28; W. J. Jones, *The Elizabethan court of chancery* (Oxford, 1967), pp. 17–19, 177, 196–9, 147–8, 317, 498. Many of the rules of equity were designed to determine rights based on the circumstances of each case, and thus avoid the potential injustice of hard and fast rules. But this actually led many people to make claims which then could only be resolved by litigation. D. C. E. Yale (ed.), *Lord Nottingham's Chancery cases*, Selden Society, LXXIII, LXXIX (1957), I, xxxvii–cxxiv, II, 7–207.

[5] Stone, for instance, has argued that litigation was the consequence of a breakdown in community methods of dealing with conflict. Lawrence Stone, 'Interpersonal violence in English society 1300–1800', *Past and Present*, CI (1983), 28–32. Conrad Russell has stated that by the early seventeenth century, 'many people were using malicious law suits as a means of vexing an enemy'. Russell, *The crisis of parliaments: English history 1509–1660* (Oxford, 1971), p. 173. For similar views see: Stone, *The crisis of the aristocracy 1558–1641* (Oxford, 1965), pp. 240–2; Thomas Barnes, 'Due process and slow process', p. 337; Joyce Youings, *Sixteenth-century England* (Harmondsworth, 1984), p. 225; Cynthia Herrup, 'Law and morality in seventeenth-century England', *Past and Present*, CVI (1985), 110.

[6] J. A. Sharpe, '"Such disagreement betwyx neighbours": litigation and human relations in early modern England', in John Bossy (ed.), *Disputes and settlements: law and human relations in the West* (Cambridge, 1983), pp. 167–87; Sharpe, 'The people and the law', in Barry Reay (ed.), *Popular culture in seventeenth-century England* (London, 1985), pp. 246, 253–4. Ingram, 'Communities and courts: law and disorder in early seventeenth-century Wiltshire', in J. S. Cockburn (ed.), *Crime in England 1550–1800* (London, 1977), pp. 119–21, 125–7. It should also be noted that Star Chamber and Chancery, where most vexatious litigation was carried out, only heard about 300 and 3,000 suits respectively a year; Jones, *Chancery*, pp. 271–3. Sharpe has criticized Stone in a reply to the latter's 'Interpersonal violence' article. However, in neither Stone's original article, nor Sharpe's reply was a clear distinction made between conflict and violence. J. A. Sharpe, 'The history of violence in England: some observations', *Past and Present*, CVIII (1985), pp. 207–15. Here, I wish to make clear that I only want to deal with interpersonal conflict. This could lead to violence, but in most cases did not.

members of most societies will inevitably need to practise some means of dispute settlement in the face of conflicting and competing desires, ambitions, opinions, and aggression in order to be able to maintain trust in the most basic forms of social interaction – as neighbours, in business, work, courtship, marriage, and governance, and also to maintain enough cohesiveness to support a definable collective identity. This was certainly the case in a geographically extensive and institutionally complex society such as early modern England. Rule based laws and legal systems have tended to be seen as the most prevalent way in which societies deal with conflict resolution and the maintenance of order, and thus litigation can be evidence of *both* conflict and dispute settlement. But examining conflict only in terms of the law is insufficient; the amount of conflict represented by a dispute which leads to the use of the law depends on the institutional and cultural context in which the law is invoked, and it is vital that the practices, conceptions, and emotions of disputing individuals be studied as well. Thus, social conflict and the attempts made to prevent or limit it cannot be considered separately but need to be studied together as intertwined contrapuntal strands of social interaction, both of which constantly affect one another. It is only in this way that contemporary perceptions of the relative success or failure of efforts to maintain social cohesion can be understood.[7]

In early modern England, in addition to the courts, social institutions, such as hierarchy, the family, kin networks, the neighbourhood, the church, and guilds and companies also played an important role in preventing or resolving disputes. Informal means of dispute settlement and local community procedures played just as important a role in dispute resolution, and in the maintenance of order, as did legal rules and 'law' as enforced by the courts.[8] The inconclusiveness of investigations into the social meaning of disputes and interpersonal litigation in the period indicate that court records examined in isolation do not tell us enough. To understand what initiating a law suit meant to the plaintiff and defendant in emotional terms, and also how it was interpreted more broadly as a cultural practice, requires a wider investigation.

Contemporaries, for instance, thought of vexatious litigation as something much more conflictual and socially harmful than the tens of thousands of other suits which flowed through the courts. Vexatious litigation was the malicious

[7] Simon Roberts, 'The study of dispute: anthropological perspectives', in Bossy (ed.), *Disputes and settlements*; S. Roberts, *Order and dispute; An introduction to legal anthropology* (Oxford, 1979), pp. 30–44, 46–53; Max Gluckman, *Politics, law and ritual in tribal society* (Chicago, 1965), pp. 169–215; Peter Stein, *Legal institutions: the development of dispute settlements* (London, 1984).

[8] The relationship of such local or neighbourly means of maintaining order to the 'law' as enforced by the courts, is now studied by anthropologists and lawyers under the rubric of 'legal pluralism'. John L. Comoroff and Simon Roberts, *Rules and processes: the cultural logic of dispute settlement in an African context* (Chicago, 1981), pp. 5–12; R. Dworkin, 'Social rules and legal theory', *Yale Law Journal*, LXXXI (1972), 855–90; Sally Engle Merry, 'Legal pluralism', *Law and Society Review*, XXII, 5 (1988), 869–96; Barbara Yngvesson, 'Inventing law in local settings: rethinking popular legal culture', *Yale Law Journal*, XCXIII (1989), 1689–1709; H. W. Arthurs, *Without the law: administrative justice and legal pluralism in nineteenth century England* (Toronto, 1985), pp. 1–12.

use of the law to actually exacerbate a dispute rather than attempting to resolve it. Although the term was often used quite freely in anger and frustration by contemporaries, its specific meaning is quite clear, and as C. W. Brooks has pointed out, real vexatious litigation was only 'flotsam and jetsam which floated in on the flood tide of litigation' in the central courts.[9] The vast majority of litigation, especially in the localities, should not be broadly assumed to be 'vexatious', but the sheer amount of suits shows that being involved in litigation was common and, given this situation, understanding what degree of conflict it represented is vital if social relations within early modern communities are to be properly understood. Here conflict and the initiation of litigation will be placed in a much broader social context of dispute settlement than just the working of the courts, in order to come to some conclusions about the social meaning of the increase in litigation.[10]

There is a wealth of evidence about such matters in contemporary diaries, letters and autobiographies, as well as proscriptive pamphlets and works on the law which shows that England was a society which placed a very strong cultural and social emphasis on interpersonal neighbourly dispute resolution. Diaries and letters, especially, are an important source for investigating such matters, because they provide the most direct evidence of how people reacted to disputes, and what they did about them both outside of, and within, the institutional setting of the courts. They are the most detailed accounts of the practices people used to deal with disputes, and also often show peoples' immediate emotional response to them. Such responses reflected broader cultural proscriptions against conflict, and demonstrate the seriousness with which people regarded disputes.[11]

Reactions to conflict were expressed in a language of ethics which drew on religious notions of compassion and charity which stressed concord, reconciliation, and peaceable relations with one's neighbours, as well as the quiescent acceptance of one's place in the hierarchical order of society. These mores were pronounced in sermons and government proclamations, and discussed in numerous published works, and then often repeated subjectively in diaries and letters.[12] The latter evidence, however, shows that disputes were

[9] Brooks, *Pettyfoggers*, p. 111.

[10] Keith Wrightson and Anthony Fletcher have looked at some of the informal means by which villagers sought to control violence, and have compared these methods with more official efforts by constables and justices. Keith Wrightson, 'Two concepts of order: justices, constables and jurymen in seventeenth-century England', in John Brewer and John Styles (eds.) *An ungovernable people: The English and their law in the seventeenth and eighteenth centuries* (New Brunswick, N.J., 1980), pp. 21–46; Anthony Fletcher, *Reform in the provinces: the government of Stuart England* (New Haven and London, 1986), pp. 66–83.

[11] Karl J. Weintraub, 'Autobiography and historical consciousness', *Critical Inquiry*, 1, June (1975), 827. Diary writing became increasingly common in England from the late Elizabethan period onward. These diaries contain a wealth of information on day to day life, and have been used extensively by early modern social historians as a source. For example see Linda Pollock, *Forgotten children* (Cambridge, 1983), esp. pp. 68–89.

[12] Susan Dwyer Amussen, *An ordered society: gender and class in early modern England* (Oxford, 1988); Keith Wrightson, 'Estates, degrees, and sorts: changing perceptions of society in Tudor and Stuart England', in P. J. Corfield (ed.), *Language, history and class* (Oxford, 1991), pp. 30–52.

common, and therefore one must avoid being seduced by the emotional emphasis on peace, reconciliation and good neighbourhood. The constantly repeated christian stress on the need to love one's neighbours should not be taken as a description of 'normal' neighbourly relations – disrupted by unfortunate and aberrant conflict – which could then be restored once the latter was resolved. Such contented conservative communities were certainly very rare in the turbulent economy of the late sixteenth century.

At all times conflict and compassion will inevitably alternate with one another from week to week as people's emotions constantly change and recombine through social interaction. In late sixteenth-century England, however, the sheer scale of disputation was changing the way in which community was understood. Disputes, litigation, and reconciliation were all factors in medieval communities, but as Michael Clanchy and John Bossy have stressed in different ways, the medieval notion of community was a positive expression of social unity through christian love and ritual. Being in charity or 'love' with one's neighbour was not a specific act of good intention or kindness but something which was considered a normative state of being. Natural sociability in the Aristotelian sense was assumed. But by the period under discussion here, this was no longer so.[13] Men, especially in natural law theory, were increasingly seen as fundamentally competitive, and community now had to be *justified* in the negative terms of necessity in order to protect the christian virtues of love and charity. These were still considered paramount as guides to action in relations with one's neighbour and remained the foundation of reconciliation well into the eighteenth century, as they had been in the medieval period, but in a world of such a large number of continually conflicting desires it was no longer plausible to see them as the given

[13] Michael Clanchy, 'Law and love in the middle ages', in Bossy (ed.), *Disputes and settlements*; John Bossy, *Christianity in the west* (Oxford, 1985), pp. 140–52; J. Bossy, 'Moral arithmetic: seven sins into ten commandments', in Edmund Leites (ed.), *Conscience and casuistry in early modern Europe* (Cambridge, 1988), pp. 214–34. Felicity Heal has also described how perceptions of hospitality also shifted during the same period from the idea of ministering to the material and spiritual needs of one's fellow man, to judging the worth of those in need of charity. F. Heal, *Hospitality in early modern England* (Oxford, 1990), pp. 389–402. For discussions and debates about how such notions of solidarity were actually expressed in the institutional and social structure of medieval communities, see, Richard M. Smith, '"Modernization" and the corporate medieval village community in England: some sceptical reflections', in Alan R. H. Baker and Derek Gregory (eds.), *Explorations in historical geography* (Cambridge, 1984), pp. 140–79; Miri Rubin, 'Small groups: identity and solidarity in the late middle ages', in Jennifer Kermode (ed.), *Enterprise and individuals* (Stroud, 1991), pp. 132–50; Zvi Razi, 'Family, land and the village community in later medieval England', *Past and Present*, XCIII (1981), 4–36. For work on medieval litigation and the arbitration of disputes, see, R. H. Britnell, *Growth and decline in Colchester, 1300–1525* (Cambridge, 1986), pp. 98–114, 206–17; Edward Powell, 'Settlement of disputes by arbitration in fifteenth-century England', *Law and History Review*, II (1984), 21–43; Carole Rawcliffe, 'That Kindliness should be cherished more, and discord driven out': the settlement of commercial disputes by arbitration in later medieval England', in Jennifer Kermode (ed.), *Enterprise and individuals* (Stroud, 1991), pp. 99–117. It is my contention here that it was not changes in practice which led to a reformulation of community in negative terms, but the sheer overwhelming scale of disputation and the need for settlement brought about by the growth of the market.

foundation of community. Increasingly, too, the preservation of these virtues came to be seen to depend on the coercive presence of the authority of the civil law. In the twelfth century it had been a dictum that 'agreement prevails over law and love over judgement', but by the early seventeenth century the very capacity to express love and agreement without fear were increasingly seen as only having become possible after the creation of a civil authority which would keep the passions in check – a view which was stated in its most direct form by Thomas Hobbes.[14]

The protestant stress on man's fallen nature was emphasized to show how temptation and individual passions inevitably lead to conflict, and increasingly the language of neighbourliness and reconciliation came to be used in a quasi-functionalist sense. There might have been little hope of achieving ideal peace on earth, but morality and belief were not only necessary for individual souls, but were also needed to keep society together. Humanist rhetoric strongly emphasized the persuasive function of language as a means of government, and protestant theology was centred on the force of the word as the source of God's authority, which resulted in the creation of a discourse in which stress was placed on ethical christian ideals of neighbourliness in order to protect the good, and to keep corruption from spreading.[15] This meant that while contemporaries accepted human conflict as inevitable, their own perception of what it meant to be 'civilized', i.e. members of a civil society, very much came to depend on their ability to contain conflict, and thus the immense amount of litigation of the late sixteenth century was extremely worrisome. This led to a seemingly paradoxical situation in which the language of neighbourly reconciliation was increasingly stressed while at the same time conflict increased dramatically, and English society became dispute ridden despite the efforts of communities to maintain peace.[16] This paradox evaporates, however, if we think of contemporary comments as rhetorically persuasive and not simply descriptive.

The great increase in the number of disputes was a result of economic growth. Most conflict and litigation concerned economic matters because the economy was sustained by credit relations in which trust was very fragile, but which needed to be maintained if business was to continue. Although previous investigations have focused on such things as defamation, trespass, and inheritance, most litigation throughout the country involved debts and contracts. Such disputes commonly made up over 80–90% of the cases coming

[14] Clanchy, 'Law and love', pp. 1–3; see below p. 928. For a discussion of a broader simultaneous philosophical skepticism about the possibility of natural sociability in the face of sin in a European context see, Quentin Skinner, *The foundations of modern political thought* (Cambridge, 1978), I, 157–61.

[15] Sir Thomas Elyot, *The boke named the gouernour*, edited by Henry Herbert Stephen Croft (2 vols., London, 1880), I, 148, II, 202; Thomas Wilson, *Arte of rhetorique*, Thomas J. Derrick (ed.), (London, 1982), pp. 18–21. Bossy, 'Moral arithmetic', pp. 217.

[16] For a criticism of thinking which sees the two phenomena as functionally incompatible see, Laura Nader, 'The recurrent dialectic between legality and its alternatives: The limitations of binary thinking', *University of Pennsylvania Law Review*, CXXXII (1984), 621–45.

before most common law tribunals.[17] The economic expansion beginning in the sixteenth century was supported by a vast expansion of credit, which created disputes and led to litigation. Davies noted this, and moralistically explained that the multitude of new suits was caused because,

> there is more wealth, and consequently there are more contracts real and personal, than there were in former ages.... there is more luxury and excess in the world, which breeds unthrifts, bankrupts, and bad debtors; more covetousness and more malice, which begets... breach of the peace and breach of trust. Out of these fountains innumerable suits do spring.[18]

Because of this, dispute settlement was needed to maintain trust, but linguistic proscriptions and informal procedures could not contain the increase in disputes within neighbourhoods, and as a result the number of law suits rose, but this failure did not in any way lead to such procedures becoming atrophied.[19] The social mores of neighbourly dispute settlement continued to be stressed throughout the period under discussion here, and the resort to litigation did not overwhelm or erode the stress on informal settlement. The courts, although they were resorted to much more often, coexisted in tandem with informal procedures. Litigation was seen as a serious step, but most was in fact undertaken because as disputes multiplied there was an increasing need to bring governmental and magisterial authority into the process of dispute resolution.[20]

The bulk of disputes recorded in letters and diaries were in fact economic in nature, unsurprisingly given the pattern of litigation.[21] Although many

[17] Brooks, *Pettyfoggers*, pp. 69, 94–7. Craig Muldrew, 'Credit, market relations and debt litigation in late seventeenth century England, with special reference to King's Lynn' (unpublished Ph.D. dissertation, Cambridge, 1990), pp. 145–80. Cases concerning credit also predominated in the exchequer court of Chester. W. J. Jones, 'The exchequer of Chester in the last years of Elizabeth I', in A. J. Slavin (ed.), *Tudor men and institutions* (Baton Rouge, 1972), pp. 141–5.

[18] Davies, *Le primer report*, p. 138.

[19] This contrasts with the situation in early colonial America, where historians have dealt with dispute settlement more thoroughly than is the case for early modern England. American historians have argued that there was a linear progression away from informal community based dispute settlement in the colonies, as this was supplanted and eroded by the growth of institutional litigation. Bruce H. Mann, *Neighbours and strangers; law and community in early Connecticut* (Chapel Hill, 1987); David Thomas Konig, *Law and society in puritan Massachusetts: Essex County, 1629–1692* (Chapel Hill, 1979). Nicole Castan has argued that a very similar sort of progression took place in France in the seventeenth and eighteenth centuries. N. Castan, 'The arbitration of disputes under the "Ancien Régime"', in Bossy (ed.), *Disputes and settlements*, pp. 220, 257–60.

[20] For an excellent and provocative discussion of how state formation was in many ways a response to this popular 'demand' for authority, see Steve Hindle, 'Aspects of the relationship of the state and local society in early modern England: with special reference to Cheshire c. 1590–1630' (unpublished Ph.D. dissertation, Cambridge University, 1992).

[21] There were, of course, also numerous familial arguments, and drunken brawls, as well as disputes between communities. James Jackson related how a quarrel broke out in a church yard one Sunday afternoon amongst parishioners who had been at the alehouse. He drew the expected moral lesson about non-attendance at church, and pointed out that the affair ended 'to the losse of much bloode'. Francis Grainger (ed.), *James Jackson's diary, 1650–1683*, Transactions of the Cumberland and Westmorland Antiquarian and Archaeological Society, new series, XX (1921), 98–100. J. J. Bagley and F. Tyrer (eds.), *The great diurnal of Nicholas Blundell of Little Crosby*,

accounts have stressed religion as a motivation prompting people to keep diaries, a more important reason – one which is much less frequently discussed – was to keep a record of one's economic activity undertaken within the community.[22] In many cases, there was little contemporary distinction between the keeping of accounts and the keeping of diaries.[23] Religious diarists such as Oliver Heywood, or Nehemiah Wallington, recorded much that was economic as well. The diaries of Samuel Pepys, Ralph Josselin, and the yeoman Adam Eyre and others would not normally be considered account books, yet they also contain innumerable references to economic matters, and disputes over the same. Such things as debts, money, agreements, disagreements, and sales transactions, etc. were all listed in great detail.[24]

Today an account book and a diary seem two very separate things because contemporary society is highly numerate in comparison with the sixteenth and seventeenth centuries, and places a great emphasis on strict accounting. But, although the keeping of accounts by tradesmen and merchants was increasingly common, many Englishmen and women still had great problems with the utilitarian discipline of numeracy. They relied on a much more informal accounting which was social and associated with the situation of the actual transaction and the people involved in it, rather than with a page in an account book.[25] In this sense, diaries were a stage between simple memory and account books, and their very form is as indicative a piece of evidence of the nature of economic practices, as are the entries they contain. Diarists worried over debts and disputes just as they worried over other inter-familial and interpersonal relationships because such matters were very personal.[26]

Of course, diaries also have their problem as a source. Few exist before 1600, and more seriously, they only provide the subjective opinions of literate people, which means that the poorest part of the population are not

---

Lancashire, Record Society of Lancashire and Cheshire (1968), II, 1–3, 6, 10, 20, 27, 30, 36–7; Robert Latham and William Mathews (eds.), *The diary of Samuel Pepys* (10 vols., London, 1970–83), II, 6, 64, 90.

[22] Alan Macfarlane, *The family life of Ralph Josselin, a seventeenth-century clergyman: An essay in historical anthropology* (Cambridge, 1970), pp. 5–7.

[23] Ruth Bird (ed.), *The journal of Giles Moore*, Sussex Record Society, LXVIII (1971).

[24] Alan Macfarlane and Keith Wrightson have looked at some of Josselin's, and Adam Eyre's loans to neighbours, but little else has been done. Macfarlane, *Family life of Ralph Josselin*, pp. 55–9; Keith Wrightson, *English society, 1580–1680* (New Brunswick, N.J., 1982), pp. 52–3. Adam Eyre, and Nicholas Blundell, mentioned debts or reckonings (the balancing of accounts with others) innumerable times. H. J. Morehouse (ed.), 'The diurnall of Adam Eyre', in *Yorkshire Diaries*, Surtees Society, LXV (1875), pp. 8, 9–10, 15, 16, 23, passim; Blundell, *Diurnal*, I, 17, 18, 24, 26, 28, 41, 49, 65, 75, 82, 86, 90, 107, passim.

[25] Samuel Pepys and the Lancashire estate owner Nicholas Blundell both kept detailed separate account books of their financial dealings, but both obviously still considered the memory of the actual transactions they were engaged in socially important enough to record in their diaries. Keith Thomas, 'Numeracy in early modern England', *Transactions of the Royal Historical Society*, 5th Series, XXXVII (1987), 103–32.

[26] Pepys, *Diary*, I, 11, 190, 201, 204, 279; D. Vaisey (ed.), *The diary of Thomas Turner, 1754–1765* (Oxford, 1985), pp. 13, 169.

represented. In addition, many more diaries were written by men than women because of literacy and leisure patterns, and those women who have left diaries tended to come from wealthier households.[27] These are notable defects, but there is still a great deal of information about poorer individuals in the diaries that exist, and male diarists often discussed the activities of women. Poorer individuals and women were certainly involved in disputes and litigation, but the evidence of their subjective reactions to events is simply not as rich as for middling or wealthy males.

The available surviving diaries cover a very great range of religious, social, occupational, and geographical differences. Among the authors whose attitudes I have examined, both Roger Lowe (apprentice, 1663–74) and Nicholas Blundell (estate owner, 1702–28) lived in villages in Lancashire. Adam Eyre (yeoman, 1646–48) and Richard Cholmeley (estate owner, 1602–23) also lived in the north, but in Yorkshire, and James Jackson (yeoman, 1650–83) resided in Cumbria. Samuel Pepys (1659–69) and Nehemiah Wallington (shopkeeper, 1598–1658) were from London, while Ralph Josselin (minister, 1616–81) was vicar of the rural parish of Earl's Colne in Essex. Oliver Heywood was another resident of Lancashire (minister, 1630–1702). William Stout (shopkeeper, 1665–1752), whose autobiography has been used, lived in the port town of Lancaster. Richard Gough's history of the parishioners of Myddle, about five to ten miles north of Shrewsbury, also contains much of interest.[28] Lowe, Turner and Wallington all lived near the bottom edge of the middling sort, whereas Pepys and Stout started with little wealth but gained considerable fortunes during their lifetimes. William Powell and Nicholas Blundell were wealthy estate owners. William Stout was a Quaker, Josselin a godly minister, Eyre, Wallington, and Heywood were puritans, Pepys was a mainstream Anglican, and Blundell and Cholmeley were catholics.

Despite all of these differences, the moral attitudes and practices described by the diarists, even the catholic Blundell, were very similar to those which can be found in contemporary prescriptive pamphlets, sermons, and works on the law.[29] Further, the attitudes and behaviour of different authors were also remarkably similar to each other, and remained consistent through the seventeenth century until at least the mid-eighteenth century.[30] Probably because differences in geography, religion, wealth and status very often exacerbated quarrels, the ideals of reconciliation seem to have crossed such boundaries to the extent that these factors are represented in the diaries.[31]

[27] Sarah Heller Mendelson, 'Stuart women's diaries and occasional memoirs', in Mary Prior (ed.), *Women in English society, 1500–1800* (London, 1985), pp. 181–210.

[28] Dates given above indicate the time spans covered by the diaries.

[29] For examples of such works see below pp. 928, 930, 936.

[30] This was true despite the decline in litigation in the first half of the eighteenth century. Brooks, 'Interpersonal conflict', pp. 360–7.

[31] It should be noted as a caveat, however, that while there is evidence that poorer individuals believed in the virtue of reconciliation, it can not similarly be shown whether they considered themselves to have been treated with equanimity in arbitrations by their betters.

II

In 1664 the apprentice Roger Lowe recorded one instance of how a dispute occurred over a debt, stating:

> William Hey came to me to have me go with hime to Wiggan to cast up some accounts betweene hime and Mr. Totty about the buyinge and sellinge of beasts; so I promised to go in the eveninge...

Here Lowe reported that although he spent a night attending to the journey and task, 'there was some differences between them, and we did nothinge to purpose'.[32] The Reverend Oliver Heywood related how a quarrel began in an alehouse when a debtor approached his creditor and attempted to negotiate the payment of the remainder of a debt with corn. The two fell out over the question of when the corn should be delivered, and drunken 'brabling' resulted.[33] Thomas Turner, the Sussex shopkeeper, even noted one occasion where he had 'a great many words' with his mother over £40 worth of book debts she owed him.[34]

A great many disputes were caused simply by the sheer complexity of innumerable reciprocal obligations. Given that most buying and selling was done on fairly long term credit, and that almost all households were enmeshed in obligations, the lack of ready cash in the economy and the poverty of many debtors, meant that it was extremely common for debtors not to have the means to pay when asked, and as a result differences occurred, and emotions could flare quite quickly.[35]

Many other disputes also arose out of the fact that much record keeping in early modern England was very imprecise. Sealed bonds and accurate detailed accounts were still used in only a minority of cases, by the more important tradesmen in towns, who might have mastered numeracy, and by wealthy merchants trading over large distances. Most smaller agreements were written down informally on notes, or as suggested, in such things as diaries, or almanacs, and many others were only entrusted to the memory of the parties involved. To be sued over in the law of assumpsit a contract only needed to be made orally, and indeed many agreements were only verbal.[36] This means

[32] W. L. Sachse (ed.), *The diary of Roger Lowe, 1663–1674* (London, 1938), p. 76.

[33] J. Horsfall Turner (ed.), *The Rev. Oliver Heywood B.A., 1630–1702: his autobiography, diaries, anecdote and event books* (Bingley, 1883), III, 94.

[34] Turner, *Diary*, p. 31. For other examples of quarrels see, Pepys, *Diary*, II, 6, 64, 90, III, 24, 45, 145–6, 216, 261, IV, 211, 288; Blundell, *Diurnal*, I, 96, 111, 120, 123, 130, 144–7, 203–4, 219, 247, 277; J. A. Bradley (ed.), *The diary of Walter Powell 1603–1654* (Bristol, 1907), pp. 25, 27, 30; Stephen G. Dove (ed.), *The parish register and tithing book of Thomas Hassell of Amwell*, Hertfordshire Record Society, 5 (1989), p. 228; M. Y. Ashcroft (ed.), *The papers of Sir William Chaytor of Croft 1639–1721*, North Yorkshire County Record Office Publications, 38 (1984), pp. 22, 26, 50, 62, 93, 145, 163, 183.

[35] Because of the shortage of cash, it was a common practice for individuals to wait for a period of time, and then 'reckon' with one another; that is to compare accounts and cross out mutual amounts owed to one another and then pay the remainder to whomever it was owed. Muldrew, 'Credit market relations and debt litigation', pp. 19–24, 254–8.

[36] Only 11% of the suits entered in the borough court of Lynn involved sealed instruments. Ibid. pp. 145–80, 234–77. Suits over bonds, however, were much more common in the central

that most small, and many very large scale transactions as well, were fundamentally based on individual trust; trust which was implicitly threatened by unresolved disputes.

A large part of the population was still illiterate, and for those who could manage at least some reading, or perhaps writing, the complexities of legal forms must have been daunting, or simply too expensive, as Leveller criticism of the legal system during the civil war indicates. For many, as Keith Thomas has shown, numeracy was an even more difficult problem than literacy, and in many ways, much of England was pre-numerate.[37] Simple memory was the most important record of an agreement.

Paul Seaver, for instance, has concluded that it is unlikely that the London artisan, Nehemiah Wallington ever kept detailed accounts, even though he might have earned over three hundred pounds per annum during some years in the 1640s.[38] Nicholas Blundell, for whom a book of accounts covering a period of almost thirty years of his life in the early eighteenth century has survived, noted how he still stated accounts with his aunt Frances, 'by word of Mouth'.[39] Almost one hundred years later, Thomas Turner recorded similar practices. He often noted how many of his sales were transactions which did not involve the keeping of a record; 'the greatest part of trade being trust, and doubtless in so many small articles we forget a great many, which makes it so much the worse trading'.[40] Obviously if this was a common practice among shopkeepers, disputes could easily arise about the extent of debts which were actually owed.

Witnesses seem to have been the most important form of security for debts and other agreements throughout all levels of society. Most of the diarists mentioned the names of their friends and neighbours present as witnesses at various times when obligations were entered into, and often they themselves also acted as witnesses.[41] Acting as a witness seems to have been a casual, and

---

courts, where suits over larger sums, negotiated between traders dealing over longer distances were more common. Brooks, *Pettyfoggers*, pp. 66–70.

[37] David Cressy, *Literacy and the social order, reading and writing in Tudor and Stuart England* (Cambridge, 1980), pp. 176–7, ch. 6; Keith Thomas, 'The meaning of literacy in early modern England', in Gerd Bauman (ed.), *The written word in transition: Wolfson College Lectures 1985* (Oxford, 1986), pp. 102–3, 108–11; Keith Thomas, 'Numeracy in early modern England', pp. 103–32. John Warr, *The corruption and deficiency of the laws of England soberly discovered* (London, 1949), reprinted in Wootton (ed.), *Divine right*, pp. 158–63.

[38] Wallington never seemed to have any more than a vague idea of the value of his cash on hand, or goods in his shop. In one of his personal manuscripts entitled 'A Record of the Mercies of God', he related the story of a dishonest journeyman, who, in the space of two years, managed to embezzle over £100 pounds from Wallington without him noticing the loss! Paul Seaver, *Wallington's world; a puritan artisan in seventeenth-century London* (Stanford, 1985), pp. 120–4. Guildhall Library MS 204, pp. 428–30.

[39] Blundell, *Diary*, I, 6–7, 131, 203, 225, 288, 313–22.

[40] Turner, *Diary*, p. 207. Also see, Eyre, 'Diurnall', p. 72.

[41] Blundell, *Diurnal*, I, 31, 57, 62, 77, 90, 103, 193, 206, 280, 285, 277; Giles Moore, *Journal*, pp. 5, 170–3, 194–5, 222.

normal part of daily activity, and was one of the duties of neighbourliness. In this way, the memory of transactions were woven into the fabric of the community, as much as they were written into diaries or private account books.[42]

Given this reliance on memory, it is easy to see how the scope for disagreement was large, and that people could worry that too much credit was creating conflict and instability.[43] Such concerns about disputes and instability were the product of a tremendous desire to maintain harmonious relations within the community. Quarrelling, together with riot and crime, was considered to be a serious breach of this order, and thought to be an inherent feature of fallen man's sinfulness, or an inevitable result of his conflicting passions.[44] There were many contemporary denunciations of quarrelling and quarrelsome individuals. The estate steward Nathan Walworth, who often quarrelled with those with whom he conducted business, lamented that, 'there is no dealing with a perverse and wrangling fellow, but *vi et armis*'.[45] In a letter from London to her brother Sir William Chaytor of Croft, a declining member of the Yorkshire gentry, Anne Croft expressed reluctance about coming to Yorkshire to take up her living because she felt it would be a 'great torment' to live amongst such 'a quarlinge ill bred company'.[46] A striking feature of diaries and letters of the period is how often they record often quite lengthy disputes. Despite his condemnation of other quarrelling individuals, Oliver Heywood recorded one controversy between himself and someone else over a broken agreement to purchase a field which lasted for ten years and involved 'meetings in vain' and 'sharp letters' before finally being resolved by twelve 'christian friends'.[47] Denunciations against quarrelling were the result of direct experience. Quarrels, especially over economic matters, could break out between anybody: between friends, kin, landlords and tenants, tradesmen and customers, employers and labourers, and in many other situations as well, and because of this the maintenance of social order and the rule of law were held up as ideals by all levels of society.[48]

[42] For a discussion of community memory, see Daniel Woolf, 'Memory and historical culture in early modern England', *Journal of the Canadian Historical Association*, New Series 3 (1992), 301–4.

[43] Henry Wilkinson, *The debt book, or a treatise upon Romans 13, civil debt and sacred debt of love* (London, 1625), pp. 9, 60, 65, 69, 72.

[44] For a discussion of the protestant notion of inherent sin see Herrup, 'Law and morality', pp. 109–11, 123. The most famous exposition of the antisocial nature of the passions is that of Thomas Hobbes. Hobbes, *On man*, ed. by Bernard Gert (New York, 1972), pp. 55–70; Hobbes, *Leviathan*, ed. by C. B. Macpherson (Harmondsworth, 1968), pp. 183–8.

[45] J. S. Fletcher (ed.), *The correspondence of Nathan Walworth and Peter Seddon of Outwood*, Chetham Society, 109 (1880), pp. 57–8. Also see, Heywood, *Autobiography and diaries*, II, 247; Gough, *History of Myddle*, pp. 59, 95, 101, 104, 140, 184, 245.

[46] Ashcroft (ed.), *Papers of Sir William Chaytor*, p. 22.

[47] Heywood, *Autobiography and diaries*, III, 274.

[48] Gerrard Winstanley's denunciation of quarrelling and repeated emphasis on the necessity of law in his pamphlets aimed at the poor is evidence that these values were held by poorer people. Gerrard Winstanley, *A new-yeers gift for the parliament and armie* (London, 1650), reprinted in Wootton (ed.), *Divine right*, pp. 318–25. John Brewer and John Styles, 'Introduction', to J. Brewer and J. Styles (eds.), *An ungovernable people*, pp. 13–14; Sharpe, 'The people and the law', pp. 244–7.

Unresolved disputes were especially worrisome, because they were considered fundamentally threatening to both the social order, and the complex bonds of interpersonal trust, economic or otherwise, which were thought to hold early modern society together. Given the importance of informal credit agreements, and other contracts, this was true in a very real way.[49] The increasing commercialization and ubiquity of credit meant that trust was equated with justice, and was seen as the basis of both the family, and all subsequent social organization, and increasingly sociability came to be interpreted negatively; as the need to maintain such trust in order that commerce might continue.[50]

Natural law theory was based on such assumptions. Hobbes, for instance, explicitly constructed his model of civil society as a series of covenants involving trust patterned on those sorts of agreements covered by the law of *assumpsit* governing contracts.[51] The state of nature was a condition where men were at war because they did not keep their contracts. The equation of justice with the keeping of promises can be traced back at least to Cicero, and this classical idea was a commonplace of humanist thought in England.[52] Hobbes' pessimistic view of human nature outside of civil society had a number of precedents. Thomas Wilson, for instance, in his *Arte of Rhetorique* of 1553, argued from the notion of original sin, that after the creation man's reason was overwhelmed...

> so that thinges waxed savage, the earth untilled, societye neglected, goddes will not knowen, man againste manne, one agaynste another, and all agaynste order, some lived by spoyle, some like brute beastes.

Justice, or what Wilson called, 'true Dealyng' was only possible after men had created laws and come together to live in society.[53]

Unresolved quarrels implicitly threatened this social structure because they bred distrust, and could lead men to abandon reason, and to act one against another in a literally unsociable and uncivil way that could ultimately lead to violence. This is why Hobbes, and many others, found the Civil War such a devastating experience. As they saw it, faction had led to a breakdown of civil society. If there was no means of settling disputes, life could seem nasty, brutish and short. Dissension within the community, obviously, did not have the same danger as division within parliament or the church, but it could certainly affect the ability of people to deal with one another.

Keith Wrightson has shown how villagers could believe in order while at the same time disagreeing on what sort of behaviour needed to be proscribed by law. Wrightson, 'Two concepts of order', pp. 21–46.

[49] Muldrew, 'Credit, market relations and debt litigation', pp. 170–80.

[50] William Gouge, *Of domesticall duties* (London, 1622), pp. 228–31.

[51] Hobbes, *De cive* edited by Bernard Gert (New York, 1972), pp. 109–64; Hobbes, *Leviathan*, pp. 183–8, 193, 196, 200–4, 223–8.

[52] See, for instance, Elyot, *Boke named the gouernour*, pp. 186–7, 220 ff.

[53] Thomas Wilson, *Arte of rhetorique*, pp. 16–19, 66–9.

For these reasons, once people became involved in a dispute they would almost inevitably turn to their friends, neighbours and kinsmen to attempt to settle matters. Contemporaries relied much more on their community than on themselves to control their passions when disputes arose. As Sir Christopher Lowther said about his family, 'if we find ourselves disrespected, and that we be once moved, unlesse a reconsiliation come, we carry ourselves as regardlesse on the other side'.[54] Ralph Josselin spent a great deal of energy settling disputes amongst his neighbours. In his diary he recorded over twenty instances when he was engaged in the business of informal arbitration. In most cases he was called in before the threat of going to law was made. For instance, on 14 May 1651, Josselin recorded how he helped two people settle their accounts with one another. He wrote: '... made up the reckonings betweene Mr. Nevill and the widdow Browne; and quieted their mindes in their dealings with one another'.[55] In 1655 Josselin was brought in to mediate between George Cressener and Richard Harlakenden, to end a dispute which the latter feared 'might have bred a quarrel'. Josselin claimed that he was able to end the business.[56] Even more revealingly, Thomas Turner set down at length the deep emotions he felt over worries that his friends were shunning him because he had not resolved a quarrel with his own mother over her debt to him, even though help had been given.[57]

Such actions were undertaken by neighbours to end disputes within communities, and were one of the most important of those reciprocal obligations used by members of communities to support one another.[58] Just as lending to a neighbour in time of need, offering bail, acting as a surety to a bond or as executor of a will, were acts of neighbourliness, so too was stepping in to solve differences and to keep the peace when loans were disputed, or to urge debtors to keep their obligations if debts remained unpaid.[59] Such actions were not only undertaken out of a moral desire to maintain peace and good order, but were also increasingly economically necessary to maintain trust, and to keep credit networks from breaking down. As suggested, the

[54] R. H. Hainsworth (ed.), *Commercial papers of Sir Christopher Lowther 1611–1644*, Surtees Society, 189 (1974), p. 27.

[55] Josselin, *Diary*, p. 245.

[56] Ibid. p. 364. Blundell also recorded instances when he helped to decide differences between his tenants and friends, including disputes over land, one between two parsons, and one between a husband and wife in which he asked another tenant to 'help make them friends'. Blundell, *Diurnal*, I, 120, 123, 130, 161, 170; II, 10. Powell, *Diary*, p. 23.

[57] Turner, *Diary*, pp. 3, 12, 13, 31, 47, 129.

[58] It is clear from the diaries that those whom the authors called friends and neighbours could come from places quite a distance from where they themselves lived. Many of Nicholas Blundell's friends lived in Liverpool, for instance. In this sense the bounds of the community were quite flexible. It is, however, much more difficult to tell, from the diary evidence alone, to what extent nonconformists and catholics drew primarily upon neighbours who shared their own beliefs for assistance. For a discussion of 'neighbourliness' and the variable geographical boundaries of the neighbourhood, see Keith Wrightson, *English society*, pp. 51–7. For a discussion of the nature of 'communities', see Ian Archer, *The pursuit of stability, social relations in Elizabethan London* (Cambridge, 1991), pp. 59–60.

[59] Thomas Tusser, *Five hundred points of good husbandry* (Oxford, 1984), pp. 18–19. Wilkinson, *The debt book*, pp. 4, 59, 95; Turner, *Diary*, pp. 105, 137, 225.

community in this interpretation, obviously, did not need to be completely harmonious, but continual effort was needed to maintain at least a minimal level of interactive fluidity in exchange networks. Because credit was so common, but also so fragile, lenders relied on the prospect of neighbourly commitment to help secure their loans.

Neighbourly harmony was urged especially by clergymen, but also by J.P.s. In 1625 the minister Henry Wilkinson urged debtors to entreat their neighbours to help them to negotiate with their creditors, while at the same time urging people to be good neighbours and, 'solicit the debtor to keep his promise, and solicite thy friends to enterpose themselves, to mediate, for them, to put to their helping hand'.[60] William Wright parson of the Cheshire parish of Waverton wrote to the Cheshire bench in 1597 explaining how he and his neighbours had fruitlessly endeavoured to settle through a 'Christian reconciliation' the 'varience and dissension' which had long existed between two of his parishioners so that they might 'live in love and charity as becomes good Christians'. Sir Richard Grosvenor enjoined his fellow magistrates to attempt to compose the differences between neighbours who were 'tow apt to fale into contentions', and to move them to a 'reconciliation' before acting in their official capacity as justices.[61] After settling one quarrel, Ralph Josselin echoed such sentiments in private by praying to God that his efforts at such peacemaking would be successful.[62]

Such attempts at pacification could be very troubling, time consuming, and even dangerous, but the cultural depth of the aversion to quarrelling, and the commitment to neighbourly assistance was great enough to make many undergo them willingly. Oliver Heywood recorded his deep commitment to the settling of one dispute:

> It troubles me much and I am afraid its a presage of evil that there is such desparate and implacable contentions among many. Mr Tho Wakefield and Sam Pollard came to my house on Monday Dec. 12, 1681, and I must make them friends, but such bitter spight appeared, grievious words uttered, that I am afraid they parted more inraged and will sue, about a trifle.

[60] Wilkinson, *The debt book*, p. 103. Keith Thomas has shown how clergymen, especially, were expected to act as arbiters, and good neighbours to their flocks. George Herbert exclaimed that a good parson should 'endure not that any of his flock should go to law: but in any controversy that they should resort to him as their judge'. Keith Thomas, *Religion and the decline of magic* (Harmondsworth, 1971), p. 182–3. Religious sayings expressing moral sentiments against quarrelling could be hung on the walls of alehouses or in the dwellings of the poor. Tessa Watt, *Cheap print and popular piety 1550–1640* (Cambridge, 1991), pp. 96, 100, 101, 220, 234, 253.

[61] Cheshire Record Office, Quarter Sessions Files, QJF 27/2/44; Grosvenor MS 2/20 fo. 53, 2/24. These references were kindly supplied by Steve Hindle, and will appear in Hindle, 'The keeping of the public peace in early modern England', in Adam Fox, Paul Griffiths, and Steve Hindle (eds.), *The experience of authority in early modern England* (London, 1996). Paul Bowes of Great Bromley in Essex claimed that when his father was a J.P. he prevailed with his neighbours 'by Councells, perswations and his owne example to live peaceably, forgive iniuries and compose diferences whereby he became signalized for a great peace maker and doth enjoy the blessed fruites thereof.' East Suffolk Record Office, Paul Bowe's Diary of Great Bromley, 1659–1683 (typescript) HA93/10/4, p. 8.

[62] Josselin, *Diary*, p. 457. For other examples of Josselin acting as arbitrator in differences between his neighbours see pp. 409, 436, 457, 544, 567.

Fortunately for Heywood, though, his help succeeded, and he was able to write afterwards, 'they are reconciled, blessed be god'.[63] An example from Adam Eyre's diary shows that dispute settlement could be physically dangerous as well. Eyre recorded how he and a friend, Capt. Rich, attempted to make two men 'friends', but in the process Rich was 'struck ... on the face', his 'nose bled', and a fight broke out. But the next day Eyre continued his efforts to resolve matters, and was successful in the end.[64] Josselin even lent as much as £22 10*s*. out of his own purse to help someone pay a loan![65]

This sort of informal discussion and negotiation was the first and most important step in dispute settlement, and was what most people relied on to help settle matters. The next step was a sort of extra-legal arbitration in which settlements were made by chosen third parties according to more formal rules, which could possibly result in legally binding bonds of arbitration being drawn up. Arbitration represented a step up from mediators simply talking about a problem, because it involved having the disputants agree to give the arbitrator power to attempt to umpire the matter in question: either to design a binding compromise in the case of a dispute, or order a plan to repay all or part of an unpaid debt. There could be various different levels of this power, and differences in how binding it was, depending on what the parties decided. Arbitration was a stage between neighbourly negotiation, and actually invoking the law, because unlike simple negotiation it defined an authority which was given to one or more individuals. It also involved rules of procedure which were set out in advice manuals in addition to neighbourly ethics.[66] But this authority was still only temporary, and did not have the force of law unless a legally binding bond was written up.[67]

Blundell recorded some instances in which umpires were involved in arbitrating disputes in this way, including one with his aunt Frances concerning the abatement of an annuity he owed to her of £25 a year, which he described in some detail. On 7 July 1707, Blundell had his cousin, neighbour, and lord of the adjacent manor, Robert Scaresbrick for dinner to ask him to be an umpire in the dispute. They met twice at the house of another friend and peer, Viscount Mountgarret, and the second time Scaresbrick told him he had decided that £4 should be abated from the annuity. This seems to have settled matters, for Nicholas was dealing with his aunt quite peaceably immediately afterwards.[68]

Although in this example Blundell turned to someone who might be expected, as part of his paternalist duty, to act as an arbitrator, it should be noted that he was also a friend, kinsman, and fellow catholic. In both informal

[63] Heywood, *Autobiography and diaries*, II, 286.
[64] Eyre, 'Diurnall', pp. 32–3.
[65] Josselin, *Diary*, pp. 278, 327.
[66] For a contemporary definition of an arbitrator see, John Cowell, *The interpreter* (Cambridge, 1607), p. 38. Simon Roberts, *Order and dispute*, p. 70: Roberts, 'The study of dispute: anthropological perspectives', in *Disputes and settlements*, pp. 11–13. Also see, Stein, *Legal institutions*, pp. 5–6, 15.
[67] NRO KL/C25/17, 09/18/52. For some examples of the legal forms of written arbitrations, see William West, *Symbolaeographia* (London, 1590), sec. 424–7. Such directions could be put in wills as well.
[68] Blundell, *Diurnal*, I, 144–50, 301.

negotiation, and arbitration, although people naturally turned to individuals with authority such as the clergy or J.P.s, horizontal relations of friendship and acquaintance seem to have been of more importance than vertical social relations.[69] Samuel Pepys, for instance, was involved in an arbitration, which he described in some detail, where both arbitrators were chosen by the disputing parties from their own social milieu; in this case the London merchant community. On the 25 November 1663 Pepys, who worked in the Navy Office, was approached by John Bland, a merchant, and asked to be a referee in a dispute over freightage. A week later Bland called on Pepys and they went to a neighbourhood tavern where Pepys met Bland's 'Antagonist' in the case, and his referee.[70] The dispute was allegedly over £1,300 worth of goods, some of which had been spoiled and others not delivered. On this occasion Pepys recorded that, 'their minds are both so high, their demands so distant, and their words so many and hot against one another, that I fear we shall bring it to nothing'.[71] In such a situation little was done, and the case was only settled on 3 February, but without Bland having to take his opponent to law. The disgruntled merchant was in the end willing to settle for only £202, one sixth of what he originally asked for.[72]

There are few examples of men turning to women as negotiators or arbitrators, although women were certainly involved in marketing and economic disputes.[73] Adam Eyre, for instance, recorded an occasion when he met a man and his wife to determine how much he owed them, and he dealt with the wife.[74] Women also held the same beliefs against quarrelling as men, and there is evidence that they were involved in settling disputes within a familial context, and between each other.[75] Oliver Heywood, when writing about his mother's character claimed that, 'She was very useful in reconciling differences, and making up breaches, taking much pains, yet great delight in that worke...'[76] The Countess of Warwick also recorded reconciling Sir Richard Everard and his son, and on other occasions made peace between various female neighbours.[77] But, because authority was patriarchal it was probably the case that men were turned to more often to settle matters. Also,

[69] For a discussion of the duty of J.P.s to act as arbitrators see, Hindle, 'Keeping of the public peace' (forthcoming), and Norma Landau, *The justices of the peace 1679–1760* (Berkeley, 1984), pp. 173–208. [70] Pepys, *Diary*, IV, 398. [71] Ibid. IV, 404.

[72] Ibid. V, 36; Powell, *Diary*, pp. 15, 23; Eyre, 'Diurnall', pp. 4, 7, 31–2, 89–94.

[73] Norman Penny (ed.), *The household account book of Sarah Fell of Swarthmoor Hall* (Cambridge, 1920); D. M. Meads (ed.), *The diary of Lady Margaret Hoby, 1599–1605* (London, 1930), pp. 94–5, 156, 178, 179, 218; John Loftis, *The memoirs of Anne, Lady Halkett and Ann, Lady Fanshawe* (Oxford, 1979), pp. 83–4, 189; W. Thwaites, 'Women in the market place: Oxfordshire c. 1690–1800', *Midland History*, IX (1984), 23–42; Peter Earle, *The making of the English middle class* (London, 1989), pp. 158–74; Mary Prior, 'Women and the urban economy: Oxford 1500–1800', in M. Prior (ed.), *Women in English society, 1500–1800* (London, 1985), pp. 93–117.

[74] Eyre, 'Diurnall', pp. 42–3.

[75] Hoby, *Diary*, pp. 155–6, 189; Halkett, *Memoirs*, pp. 32–3; Thornton, *Diary*, pp. 16, 136, 163.

[76] Heywood, *Autobiography and diaries*, I, 50.

[77] The Countess of Warwick, Daily Spiritual Diary and Meditations, 166–78, BL Add. MSS 27351-6, 1 March; 30 May; 8, 14 June 1677. (I would like to thank Sarah Mendelson for this reference.)

because married women were not allowed to sue on their own in most jurisdictions, they would have been at an obvious disadvantage as mediators if a suit was threatened.

It is difficult to determine from the available evidence how the poor interacted with their betters both as disputants and mediators, or as arbitrators. On one occasion, though, a difference in a reckoning between Blundell and one of his tenants over repairs that Blundell had undertaken on the latter's house was umpired by a former servant of Blundell's family, indicating that in this vertical dispute acquaintance and trust by both parties in the mediator was more important than status.[78] There is, fortunately, another very revealing example of a dispute between the estate owner Richard Cholmeley of Brandsby in Yorkshire and one of his tenants from the early seventeenth century, which the former recorded in great detail in his memorandum book. This evidence warrants close examination because not only does it provide a rare glimpse of some of the emotions and motivations of a poorer member of the community, but more than any other source it also demonstrates the complex social factors, in this case religious differences, which could exacerbate disputes and make mediation so difficult.

Cholmeley, his household, and a number of his tenants were catholics, and as a result, he was heavily fined under the recusancy laws. The tenant in question here, one Robert Carlell, was a protestant. An inventory included in Cholmeley's memorandum book indicates that despite his heavy fines, he was able to maintain a luxurious, although not large house, while Carlell seems to have been a downwardly mobile small holder. He was listed as occupying a farm valued at £5 rent per annum belonging to the parsonage, although there is no record of him paying this. He did, however, owe Cholmeley £7 rent per annum for a farm he purchased of another tenant for £20. What is clear is that Carlell seems to have had no stock of his own, and he sublet his land to others for pasturage. He was also probably much in debt as he was consistently unable to pay his rent to Cholmelely, and it was this which led to the dispute between the two.[79]

Carlell was one of a number of protestants associated with Sir Thomas Weddall, the protestant parson of the parish, who owed his living to a gift of the deceased previous landlord, Cholmeley's elder brother Marmaduke. Relations between Cholmeley and these tenants, most of whom seem to have been poor labourers, were constantly bad. Cholmeley accused Weddell of:

> Anymating & maynteanyng loyterers, dronkerds, gaymsters, stealers of wodd & connyes etc. brablers, such as spend much & have lyttle, slepes by day & abroade nyghtlye,... [sett?] servants to abuse ther maisters and tenants ther landlords, and how to avoyd all dutye & paynes so they please his humor in thes things.

[78] Blundell, *Diurnal*, 1, 26, 47, 51–2, 90.

[79] Cholmeley paid over £120 per year in recusancy fines on an estate worth less than £800 per year, and he also had to deal with informers attempting to gather information on him and his family. *The memorandum book of Richard Cholmeley of Brandsby, 1602–1623*, North Yorkshire Record Office Publications 44 (1988), pp. vii–viii, 1–12, 18, 34–8, 60–2, 89, 122, 131, 146.

They, on the other hand, constantly complained that Cholmeley was a harsh landlord, and often abused him, calling him among other terms, a 'papist bloodsucker'. But despite these differences, both protestants and catholics were part of the same parish, manor, and community. Also, significantly, Carlell was the second husband of one of Cholmeley's sisters, and although Cholmeley does not seem to have been close to her, this was still an important kinship link, and Cholmeley paid her an annuity of £6 annually which he had allowed to be deducted from Carlell's rent, but which Carlell kept for himself.[80]

In 1612 Carlell was more than £15 in arrears in rent dating back to 1607, and as a result Cholmeley ordered his bailiff to distrain the cattle of four other people who must have been subletting part of Carlell's close, possibly to satisfy debts which he owed to them. It was legally possible to distrain the goods of someone else on the property of the tenant in arrears, if he himself had nothing movable of his own which could be taken within the same jurisdiction.[81] With help of one of the men whose goods had been distrained, a tailor from York, Carlell was able to pay part of the rent, but six years later another distraint was made of a horse and cow of the protestant labourer Thomas Cowlson which were being pastured in Carlell's close. This time, however the distraint led to a violent quarrel because the animals were Cowlson's only assets, and he was also much in debt and being threatened with lawsuits. Being faced with ruin, in anger he ran after the bailiff doing the distraining and attempted to run him through with a pitchfork, though the bailiff was fortunately saved from serious hurt by his leather doublet.[82]

That night the lock on the parish pound was broken and the animals taken and put on the protestant parson's land for protection, but at the same time Carlell came to pay his rent and attempt a mediation by procuring friends to speak for him, promising not to brabble with Cholmeley's servants again which diffused the immediate issue. But this obviously did not reduce the tensions between the two, for a week later at Cholmeley's Christmas celebrations, a time of traditional paternalist hospitality, Carlell again approached Cholmeley and intreated Cholmeley's friend and neighbour, and significantly, his social equal Sir Henry Browne to mediate on his behalf with Cholmeley, claiming that Cholmeley was not showing him 'favourable countenance'. Cholmeley complained that it was no time to reckon up wrongs

[80] Ibid. pp. ix, 16, 162, 165.

[81] Such power was given to landlords in rental agreements, and once a distress was taken the tenant had to sue for trespass in common law if he felt the action to have been unjust. If the rent remained unpaid the landlord could eventually sell the distrained goods at common sale to recover what was owed. In most cases, though, the distress was meant simply to force the tenant to 'compound neighbourly with him for the debt'. Cowell, *The interpreter*, sv. *distresse*; J. H. Baker, *An introduction to English legal history*, third edn (London, 1990), pp. 271–3.

[82] Cowlson had already been sued by Sir Henry Browne. A month later he was also sued by Cholmeley's uncle Robert Hungate and threatened by others, which forced him to flee the parish to avoid being arrested, while his friends again rescued his one poor cow from the pound and attempted to hide it from the bailiff. Ibid. pp. 158, 161–2.

or griefs at Christmas, but to be merry, but as Carlell continued to press for an agreed mediation Cholmeley questioned why he continued to be hostile to his bailiff Henry Watson (who was not listed as a recusant) while he was doing his office. Carlell claimed to be sorry for his action and made up with the bailiff by taking his hand, and giving him a gift of gingerbread and beer. After supper Sir Henry called for a bowl of beer and asked Carlell to drink to the bailiff. But by this time Carlell had plenty to drink and, according to Cholmeley, instead of making amends, 'in an excedinge scornefull and fylthy fashon after a rymyng mannor... called Watson knave, and kisse myne arse shitten Harrye'. At this point he was upbraided by both Cholmeley and Sir Henry for his 'unmannerlye carriage before his betters and to one who was an honster man then him self', although Carlell refused to repent. The next day, however, when sober, Carlell came to church and desired to make a submission to both Sir Henry Browne and Cholmeley, this time through the mediation of Cholmeley's brother Thomas, which was conditionally accepted as long as Carlell promised to 'be loveinge'.[83]

But despite these submissions the dispute continued, and Carlell continued to blame the bailiff Watson for his falling out with his landlord, although in reality it was both his inability to pay his rent, and his unwillingness to be deferential enough to have the remainder forgiven by Cholmeley which led to his problems.[84] This story shows the difficulties of mediation in a dispute aggravated by both religious division, and the tensions inherent in a deferential relationship. It is also a good example of a dispute caused by the inability of one party to pay a debt, in this case because of Carlell's own poverty, and the even more extreme poverty of Cowlson, whom he was willing to forgive but others were not. Both parties turned to mediation to attempt to settle matters, but as a social inferior Carlell obviously relied upon it to maintain a working relationship with his landlord, while Cholmeley could simply resort to the semi-feudal power of landlords to distrain for unpaid rent. Despite the fact that Cholmeley was quite lenient in accepting part payments for rent long overdue, Carlell felt that more mercy should have been shown because of his own obligations to other poor tenants, and could not restrain the resentment he felt towards Cholmeley's bailiff for executing the distraint. While mediation in this case seems to have prevented litigation and an open and serious break between the two, it was not sufficient to resolve this dispute where the social and religious differences were too great to make the two 'friends'.

Although in this case tensions continued without any formal settlement being made, often if the disputing parties remained intransigent formal arbitration resulted in bonds being written up legally binding them to obey the conditions of the arbitrators upon pain of a substantial penalty (usually £100).[85] Such bonds could be sued over if they were broken, but the courts

[83] Ibid. pp. 159–62. [84] Ibid. pp. 162, 167.

[85] A copy of a bond of this nature can be found in the King's Lynn court books, where two individuals who seem to have been engaged in a fairly serious quarrel signed an agreement which

seem to have discouraged the practice of creditors taking debtors to law after private arbitrations had been worked out. William Stout recorded the case of John Hodson, a merchant in decline because of his debts, who would not comply with an arbitration which went against him, and on the advice of his solicitor, who said the agreement was not properly drawn up, he took the matter to law. Eventually it came before the twelve Chief Justices of the Central Courts sitting in Exchequer Chamber who confirmed the original arbitration stating, according to Stout:

> that if awards should be rejected for not being drawn in due forms of law, it would much discurage arbitrations to honest country people who best knew the merits of the cause, and the concientious cause of the same.[86]

The decision to invoke the institutionalized power of the law, and to take an unresolved dispute to the courts was a very serious one. Contemporary pamphlets, and other forms of public discourse counselled people to be very cautious about going to law. Thomas Tusser, the author of *Five hundred points of good husbandry*, one of the most popular pamphlets of the late sixteenth and seventeenth centuries, warned in verse that,

> Who seeketh revengement of everie wrong,
> in quiet nor safetie continueth long.
> So he that of wilfulnes trieth the law,
> shall strive for a coxcome, and thrive as a daw.[87]

Rash action, he stated, rather than attempted compromise would only cause one to lose the 'love and amitie' of one's neighbour.[88] In the 1660s, Pepys recorded listening to a sermon in which the preacher argued that one should never go to law for revenge, but only to obtain repayment.[89] Similarly, John Vernon, in the *Complete compting house*, published in 1678, warned shopkeepers against taking their debtors to law, claiming that suits did '... not agree with their Business in the least'.[90]

Most of the individuals discussed here expressed finding litigation profoundly troubling. They resorted to the law only if both informal and structured arbitration had not worked. When Roger Lowe went to the Ashton Court Baron to sue someone for debt, he called it 'a great trouble to my spirit'.[91] Similarly, when one of Ralph Josselin's tenants paid part of his arrears of rent in kind (with cattle), Josselin claimed it was 'a great mercy of

---

made provision for the repayment of £13 15*s*. in two separate payments. NRO KL/C25/17, 11/13/52. Also see, Eyre, 'Diurnall', p. 80.

[86] J. D. Marshall (ed.), *The autobiography of William Stout*, Chetham Society, third series, 14 (1967), p. 146.

[87] Tusser, *Five hundred points*, p. 21. For information on the popularity of this work, see L. C. Stevenson, *Praise and paradox* (Cambridge, 1984), pp. 16, 132, 140–1.

[88] Tusser, *Five hundred points*, p. 13.

[89] Pepys, *Diary*, II, 29.

[90] John Vernon, *The compleat compting-house* (London, 1678), pp. 178–9.

[91] Lowe, *Diary*, p. 44.

god that I am not forced to sue him at law'.[92] In 1638 Nathan Walworth claimed that he had 'no desire to spend money in law', and advised a friend to avoid 'any wranglinge or suit of law'.[93] William Stout even preferred to let matters drop rather than trouble his conscience with a law suit. He claimed never to have sued any to execution for debt, stating, 'to loose all was more satisfaction to me than getting all to the great cost of my debtor, and to the preservation of my reputation'.[94]

Some of the diaries give an indication of the situations in which people felt it was finally necessary to abandon the initial attempts at compromise and go to law. It seems that very often the decision was made mutually between the conflicting parties when efforts at negotiation were not going anywhere. Ralph Josselin recorded that when Henry Abbot jr. came to him to collect 20*s*., he (Josselin) countered this demand by desiring Abbot to pay his overdue tithe. Abbot refused and 'desired that wee might be civil in the law'. On this occasion, however, Josselin backed down and offered to pay Abbot.[95] At the beginning of what was to become a very involved suit with his uncle Thomas Trice, Samuel Pepys met with him in an ordinary tavern over a pint or two of wine to 'treat about the difference', but found there was no hopes of ending it 'but by law'.[96] In contrast to this, only a month later Pepys recorded being 'sorely vexed' when he visited his lawyer and was informed that someone had 'basesly' taken out a suit against him for a debt of £40 without notifying Pepys of his intention to do so.[97]

Often, quite lengthy discussions with a lawyer would take place when someone was considering using the law, and lawyers were often used by creditors to threaten debtors with suits. Nicholas Blundell was a good friend of the Liverpool lawyer John Plumb, and he met with him and numerous other lawyers many times, and when he did the purpose was often to discuss what he should do about unpaid debts, or rent in arrears.[98] It is clear that local attorneys took an active part in counselling people about going to law, and were very important and certainly necessary members of neighbourhoods, who played a vital role in credit networks. Because litigation had to be filtered through them, they knew more than most about people's credit, and thus were a logical source of advice.[99] Similarly, they also helped to end disputes, either acting as arbitrators, or personally urging debtors to meet their obligations.[100] In at least two cases it is evident that Blundell's lawyers personally contacted his debtors to ask for payment, and in both cases once this intervention was made, payment was forthcoming almost immediately.[101]

[92] Josselin, *Diary*, p. 315. [93] Walworth, *Correspondence*, pp. 60–5.
[94] Stout, *Autobiography*, p. 120. [95] Josselin, *Diary*, p. 342. [96] Pepys, *Diary*, III, 16.
[97] The debt had actually been incurred by Robert Pepys, but Samuel was responsible for it as the executor of the will. He eventually paid it in full two and one half months later. Ibid. III, 34, 80. [98] Blundell, *Diurnal*, I, 89, 189, 285, 310.
[99] Muldrew, 'Credit, market relations and debt litigation', pp. 321–7. B. L. Anderson, 'The attorney and the early capital market in Lancashire', in F. Crouzet (ed.), *Capital formation and the industrial revolution* (London, 1972), pp. 223–55. [100] Blundell, *Diurnal*, I, 79, 277.
[101] Ibid. pp. 189, 285.

William Stout also made use of attorneys to write letters to urge payment, although he claimed he rarely made use of them for anything else.[102]

Such activity has been underestimated because of hostile contemporary references which alleged that lawyers stood to gain more in fees by dragging out suits and discouraging arbitration.[103] Certainly, some lawyers did this. Nehemiah Wallington complained, after being brought into a suit on account of standing surety to someone who defaulted on a debt, how his attorney acted as a 'knave' in the business, getting him entangled in more lengthy proceedings than necessary.[104] Nathan Walworth said that his lawyers took advantage of his ignorance and simplicity in the law, and commented, in anger, about his niece – who had chided him for not making an end to a suit – that she should, 'goe to my attorney and scratch out his eies, because he makes not an end'.[105] But, as W. J. Jones has stressed, it was ultimately lawyers' clients who decided whether to proceed with litigation, and discussion with a lawyer was a crucial intermediate step in moving a dispute from arbitration to the courts.[106] When Thomas Benison, a Lancaster attorney, died, William Stout praised him as having 'the greatest busines of any here', which he claimed was because he was always 'true to his clyant, ... and was no encurager of vexatious suites'.[107]

If a lawyer's intervention was unsuccessful, then a complaint in court was the next logical step. Such complaints were intended as a further threat and could be made independently by creditors to the court clerk, or by an attorney, and were a cheap and easy way of invoking the authority of the law.[108] The very cheapness of complaints meant that they themselves were of little value to a person bent on vexing an opponent. The initiation of litigation was not normally a signal that the plaintiff intended to exacerbate the dispute. Rather, it was most often intended to impose the *threat* of potential costs and damages upon disputants or debtors in order to pressure them to compromise,

[102] Stout, *Autobiography*, p. 120.

[103] Brooks, *Pettyfoggers*, pp. 132–7, 193–5; W. R. Prest, *The rise of the barristers: a social history of the English bar 1590–1640* (Oxford, 1986), pp. 281–91; Sharpe, 'The people and the law', pp. 258–60.

[104] Wallington, *Record of the mercies of God*, Guildhall Lib. MS 204, pp. 464–5; Lowe, *Diary*, p. 89; W. H. Long (ed.), *The Oglander memoirs: extracts from the MSS of Sir John Oglander* (London, 1888), pp. 20–1.

[105] Walworth, *Correspondence*, pp. 75–6. John Evelyn also recorded dining with the unpopular Lord Chancellor Jeffries and three Sergeants in 1686, where they told stories of how they had 'detained their clients in tedious processes, by their tricks' as if Evelyn noted, 'so many highway thieves should have met and discovered the severall purses they had taken'. E. S. de Beer (ed.), *The diary of John Evelyn* (London, 1959), p. 856.

[106] Jones, *Chancery*, pp. 314–20. Brooks, *Pettyfoggers*, pp. 134–5, and for a discussion of local attorney's practices, and their place in society see chs. 3, 9–11.

[107] Stout, *Autobiography*, p. 189. In one of the many difficult disputes Alice Thornton became involved in, in this case concerning some of her husband's debts, she turned to her cousin, one Roger Covill, whom she described as, 'a very able lawyer and a good honnest man, a freind ... [who] had don many offices of kindness for us ...' Thornton, *Diary*, p. 279.

[108] In King's Lynn, for instance, a complaint could be made for only 4d. Norfolk Record Office, KL/C27/22.

by working upon the fears and worries they might have about these proceedings.[109] Nathan Walworth stated baldly in one letter, that he was only initiating litigation as a threat.[110] Thomas Turner also related how he was summoned by a widow he knew because a suit had been initiated over an unpaid debt of almost £150 owed by her former husband. Turner helped her to end the dispute by buying her house and taking her to an attorney.[111]

The amount of litigation shows that such threats, obviously, had to be resorted to very often by the seventeenth century. None of the diarists, unfortunately, stated exactly how serious they considered only the initial complaint to be, *in contrast* to more drawn out litigation. The fact that in King's Lynn only 16% of the suits proceeded beyond the stage of complaint seems to suggest that making a complaint was normally fairly benign.[112] But, given all the emphasis on peaceable compromise, and the negative views of going to law, it is very striking that this sort of threat had to be made so often after 1570.

Increasingly, it seems neighbourly sanctions needed to be bolstered by more formal authority in order to keep the weak links in chains of credit from multiplying. The initiation of litigation acted as a more potent threat than neighbourly sanctions or entreaties because the courts were an institutional representation of governmental authority on both a national scale (the central courts) and within communities as well. In local borough courts, where most litigation was heard, mayors and aldermen sat in judgement, and the institutions of the courts themselves, and their officers, were sanctioned by the common law and the structure of the central government.[113]

There was a strong sense that community pressure needed to be supported by the authority of the law. John Pym claimed, 'if you take away the law, all things will fall into confusion, every man will become a law unto himself'.[114] In the hierarchical society of the sixteenth and seventeenth centuries, just authority was considered a necessary part of paternalism and order. Even if the law was not resorted to, its rules, and the potential impact of its authority were considered necessary to help people check their passions in any attempt

[109] For other statements of this view, see Jones, *Chancery*, pp. 265–6; Sharpe, 'Such disagreement', pp. 183, 185.

[110] Walworth, *Correspondence*, p. 61.

[111] Turner, *Diary*, pp. xxiii, 16–17, 28–9, 34. Blundell noted an instance where he instructed his lawyer to cease proceedings in a suit after an agreement was made. Blundell, *Diurnal*, I, 170. See also, ibid. pp. 133, 211, 224, 246, II, 66.

[112] In Lynn only 4% of suits ever went all the way to judgement. In 1975, similarly, only 4·5% of actions entered in county courts had judgements entered, which indicates that in our age as well, most suits are not initiated with a view to obtaining a final court awarded judgement. Brooks, *Pettyfoggers*, p. 76 n. 9.

[113] For the civic authority of mayors and aldermen see Robert Tittler, *Architecture and power: The town hall and the English urban community 1500–1660* (Oxford, 1991), pp. 98–120.

[114] John Rushworth, *The tryal of Thomas Earl of Strafford* (London, 1680), p. 662. Similar sentiments were expressed in a preamble to the York Assizes in 1620 cited in Sharpe, 'The People and the law', p. 246. Also, see Brooks, *Pettyfoggers*, p. 135, and Margaret A. Judson, *The crisis of the constitution. An essay in constitutional and political thought in England, 1603–1645* (New York, 1949), pp. 44–67.

at negotiation or arbitration. Hobbes, with his characteristic pessimism about human nature, stated this view in an extreme form, arguing that without the absolute unquestioned authority of the sovereign and state law, to force people to keep their covenants and to resolve disputes, passions would overcome reason and lead to quarrels. As a result society would revert back into a state of each man at war with another.[115]

Hobbes' harsh, and certainly uncompromising, view of authority was unpopular because he emphasized it at the expense of neighbourliness and compromise. Although most of his contemporaries would have undoubtedly agreed with him about the necessity of the *presence* of authority, most would have been much less sanguine about the possibility of its being used to settle a matter. Actually going beyond the stage of a threat, and using the authority of the law, as opposed to being conscious of the seriousness of doing so, meant that to some degree the morals of community dispute settlement had failed to resolve matters.

The use of such authority could, in fact, have very serious consequences for those who were successfully prosecuted for breaking agreements. The legal system gave plaintiffs a great deal of discretion in obtaining restitution for their losses, regardless of the circumstances of the defendant. Plaintiffs could attach goods when an arrest was made, and if victorious they could distrain goods to obtain damages. Ultimately, if a debtor could not pay his damages, he could be put in prison, and even if a defendant could pay, his credit and ability to do business in the community would have been damaged by a successful prosecution.

This very harshness itself became an important social problem as inevitably with the rise in litigation more people suffered from suits which were taken beyond the stage of complaint. The potential plaintiff was supposed to use discretion and charity in his threat to use the legal system, and unmerciful treatment of unfortunate, as opposed to irresponsible debtors, was considered as bad as vexatious litigation.[116] The threat of the possibility of a law suit was something which both parties in a dispute had to consider carefully.

But even if a suit went beyond the complaint stage, judgement was far from inevitable, and as Jones and Sharpe have emphasized attempts at arbitration were encouraged during the legal process.[117] Legal procedures were meant to keep the peace as much as the more abstract morals of neighbourliness. As the

[115] Hobbes, *Leviathan*, pp. 189–239.

[116] The seriousness of imprisonment in gaols, where poor conditions could often lead to death, was criticized by many contemporaries. Paul Haagen, 'Eighteenth-century English society and the debt law', in Stanley Cohen and Andrew Scull (eds.) *Social control and the state* (Oxford, 1983), pp. 222–47; Joanna Innes, 'The King's Bench Prison in the later eighteenth-century', in *An ungovernable people*, pp. 250–98.

[117] Both Steve Rappaport and Ian Archer have shown how the courts of the London companies played an important role in helping to arbitrate disputes between their members. Rappaport, *Worlds within worlds*, pp. 201–13; Archer, *Pursuit of stability*, pp. 78–9, 100. Pepys and Heywood recorded in detail Chancery suits they were involved in which were ended through negotiation. Pepys, *Diary*, I, 134 n. 2; II, 214–15, 134; IV, 221, 132, 351–2; X, 20–321. Heywood, *Autobiography and diaries*, III, pp. 142–3.

number of private suits grew, courts and the law of contract and debt became a much greater part of the culture than hitherto, but they bolstered informal dispute settlement rather than replaced it. Contemporaries viewed the legal system as something which was supposed to be used to restore peace between individuals, and this explains why there was so much comment and worry about the proportionally small amount of vexatious litigation. While going to law was considered a personal and unfortunate failure of neighbourliness, vexatious litigation, in contrast, was considered undeniably evil and overtly anti-social, because it was an abuse of the authority the law gave plaintiffs, and also of the rules of equity designed to help people. By pursuing purely private advantage, vexatious litigants threatened people's trust in the very system which was meant to help them maintain it amongst themselves.

Emphasizing this, however, is not to belittle the victims of vexatious litigation, nor to ignore the abuses which many such as Nathan Walworth and Nehemiah Wallington suffered in trying to obtain justice when compromise proved elusive. It is only to suggest that however problematic the use of the law was, the sheer complexity, and fragility of credit relations during this period meant that the courts played a necessary social role in supplying the authority which was needed to maintain the trust upon which the economy and community relations were based. There was an enormous amount of spontaneous interpersonal conflict within communities over economic matters in English society at this time, some of which involved, at the very least, 'hot words', and at worst physical violence. Given that the members of most communities wilfully expended a great deal of time, resources, and emotional effort in attempting to settle such disputes, it is not surprising that they regarded those who exacerbated them as a major social problem. Complaints were made about those people who used the courts in an unsociable fashion to prolong or encourage conflict, precisely because such action was so odious to the normal ethics of the law which most people considered fundamental to the very existence of their society. As Thomas Turner put it in his diary: those who were in 'the midst of the law', because of their extreme litigiousness, had quite forgotten its virtues of 'justice, equity, or charity'.[118]

It was the stress on such virtues which, on the whole, successfully contained the immense strains created by the explosion of economic disputes. Such a high level of incidental conflict could exist because English society possessed elaborate means for bringing it to an end, the ethics of which were continually stressed both publicly and subjectively, and acted upon between neighbours and within the courts. This success, however, was achieved at the expense of some of the more positive virtues of neighbourliness, as emphasis shifted to a more negative and preventive role of ethics in order to control strife. Although reconciliation and neighbourliness were still described and valued in terms of virtue and Christian morality, and it was through such terms that actual agents such as Ralph Josselin and Thomas Turner described their actions, the

[118] Turner, *Diary*, p. 283.

social meaning of these ethics came to be interpreted in a more functional sense.

Authors increasingly came to see the community as something which needed to be justified in order to preserve charity and love. In the late sixteenth century sociability became equated with commerce, and the community became something which needed to be maintained to ensure that trust and other positive human relationships could survive the pressures of an increasingly disputative market economy. This also needed to be supported by the much greater coercive authority of the law, which was in turn justified by an extremely pessimistic interpretation of human sociability.[119] But these changes in justification and practice meant that communities based on extensive networks of informal personal trust were maintained despite the increasing complexity of the economy. Further, this situation continued until the language, and instrumental implementation, of utilitarianism began to redefine and reorganize trust in a more abstract and impersonal manner, by elevating universal calculated social good above the maintenance of the interpersonal community virtues described here.

[119] See above, p. 928. Also see, Craig Muldrew, 'The contractual society: litigation and the social order 1550–1650' (unpublished paper).