

Litigation in the Boroughs: The Shrewsbury *Curia Parva* 1480–1730

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I

Within the last decade our knowledge of the quantitative pattern of civil litigation in the English central law courts from the sixteenth to the eighteenth centuries has been transformed. Thanks largely to the work of Chris Brooks, it is now possible to observe that an immense suspiration of litigation occurred during this period, beginning with a great boom between 1560 and 1640 (particularly marked in Elizabeth's reign), during which the number of actions passing through the common law courts increased about five to six-fold. After disruptions caused by the Civil War, the levels of litigation continued to rise, but at a much more modest pace. Then, after 1680, a spectacular decline appears to have begun. By 1750 the courts of King's Bench and Common Pleas may have dealt with only one-third as many actions as in 1700, and about one-sixth of the number in 1670, and much the same overall pattern of growth and decline can also be observed in the equity jurisdiction of Chancery.¹

If the levels of business at Westminster Hall are now reasonably clear, much less confidence extends to our knowledge of the multitude of local courts scattered across the country. To what extent, if at all, did they share in the developments outlined above? Until quite recently, it was generally assumed that these courts, including the borough courts with which this article is concerned, lost much of their business to Westminster during the sixteenth and seventeenth centuries. Local litigants (it was suggested) became progressively disenchanted by the disadvantages of such courts – their antiquated procedures and modes of proof; the absence of effective final process; the increasing chance of reversal of judgments by central court review; and, in many inferior jurisdictions, their restriction to actions for less than 40 shillings.² In the latter case, this monetary boundary became increasingly irrelevant as Tudor inflation took its toll, forcing a growing number of local litigants to take their suits to the central law courts – themselves restricted to actions at or above the same limit. Indeed, in Milsom's work this development serves

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as an important leitmotiv, helping to explain some of the most significant innovations of the common law in this period.³ In addition to these factors, the decline of the local courts has also been linked to the growing presence outside London of lawyers trained at the Inns of Court or Chancery, working as court stewards or attorneys. According to Baker, their influence 'may well have led people to regard their quaint provincial jurisdictions as anomalous and outdated'.⁴ Again, this may have encouraged a transfer of business to Westminster Hall, so that the increase in litigation at the central law courts can be seen, at least in part, to be due simply to a shift in jurisdictions.

Despite the claim that local court jurisdictions declined after 1500, there is still surprisingly little evidence to confirm it, as some historians have recognised.⁵ In relation to the borough courts, most works published in the 90 years since Bateson's pioneering edition of *Borough Customs*⁶ have concentrated upon descriptions of legal procedure and jurisdictional ambit prior to the sixteenth century, and patterns of litigation as such have remained virtually unstudied. Only three studies exist as yet which contain any information on the number of lawsuits in towns after 1525. These include detailed examinations of the court books of Witney from 1538 to 1610 and of King's Lynn in the second half of the seventeenth century, and some data on litigation in Newcastle on Tyne.⁷

It is in fact by no means obvious from such work that the borough courts fell into decay before the seventeenth century, and both Baker and Brooks have now struck a more optimistic note about their fate.⁸ Clearly much remains to be discovered, particularly about the basic statistical facts of litigation over many decades. This article seeks to contribute to this preliminary task by analysing the evidence from a borough court over 250 years. The records employed are those of the Shrewsbury court of record or *curia parva*, the jurisdiction of which is outlined together with the nature of the entries which provide the basis of the case counts. The statistical pattern of litigation is then set out and compared with Shropshire litigation before the Council in the Marches and at the central law courts. Two distinctive eras of litigation can be identified — a great boom, followed by an even more striking decline. This pattern in fact appears to replicate the flow of business at Westminster Hall, although there were subtle differences which are touched upon at the end of this paper.

II

Including the Abbey Foregate suburb, jurisdictionally distinct until 1586, Shrewsbury's population stood at approximately 3,300 in the first half of the sixteenth century, rising to 5,500 by 1587, c. 7,000 by 1672, 7,200 by

1695 and 8,000 by 1750. In the hierarchy of English provincial towns then, it was of medium rank, standing about 12th to 20th in order of size.⁹ Apart from the Sessions and Gaol Delivery concerned with criminal matters, the courts which had jurisdiction over this population and its counterpart in the rural liberties stemmed originally, as in other chartered boroughs of the Crown, from the old hundredal system; and in Shrewsbury at least the structure of these courts was relatively simple. Private litigation was dealt with by the *curia parva* which met on Tuesday every fortnight (weekly after 1586); while breaches of communal regulations (affrays, forestalling, nuisances and so on) were dealt with by the biannual court leet or *curia magna*.

Like other borough courts, the *curia parva* was restricted to cases which arose from transactions or events occurring within the jurisdictional limits of the town, even though the parties themselves may have come from outside. Originally the jurisdiction had incorporated Shrewsbury itself and eight small townships in the rural liberties. In 1495, however, the liberties were greatly enlarged by charter and some 40 new townships were added, extending eight miles to the north of Shrewsbury and four miles to the west. Altogether the augmented liberties possessed a population about half that of the town and, as a result, the records of the court contain a number of actions of rural origin and character.¹⁰ In 1586 the *curia parva* also absorbed the business of the Abbey Foregate court, formerly part of the suburban franchise of the abbey of SS. Peter and Paul. Although this court had been administered by the town since 1542, it remained formally distinct until the two jurisdictions were merged by charter in 1586.¹¹

The *curia parva* heard personal, real and mixed actions, including collusive recoveries to break entails initiated by a writ of right patent. These and other pleas of land, however, comprised an insignificant proportion of total business which was dominated by actions on informal contracts and sealed bonds. There was no limit to the size of actions, and suits for as high as £5,000 in damages have been noted.¹² A full range of writs existed to enforce judgment, and numerous valuations of goods and chattels survive which demonstrate the ease with which property could be distrained to satisfy judgment.¹³ Thus, at least in terms of its monetary ambit and the provision of final process, there is no reason to suppose that the borough court was handicapped to any significant degree. This claim can be made good in the first instance by disclosing the numerical pattern of litigation. To do this, however, it is necessary first to explain what the cases counted for this purpose actually represent.

Before the late fifteenth century the principal medium of record keeping in the *curia parva* was the parchment roll. From about that time, however,

rolls began to be supplanted by the use of paperbooks — a process which in Shrewsbury was more or less complete by 1540.¹⁴ The details of this transition, which also occurred in Colchester and which has been linked there to the increasing cheapness and availability of paper,¹⁵ need not detain us here except to note that it affected the way in which actions were entered by the court clerks. In essence, rolls provided a sequential record of the progress of a particular action which therefore has to be followed from court to court through the surviving membranes. By contrast, the paperbooks gathered all the information relating to an action in one place. The names of the parties were entered together with a note of the type of action, while the subsequent course of the suit was then annotated in abbreviated form around the original entry.

The entries themselves, however, only record those actions where process was actually served on the defendant, and not the total number of actions which plaintiffs originally hoped to bring. The distinction is illustrated in some of the court books which have survived after 1630. As well as the usual annotated entries of cases, these books also contain separate, rough entries of a much more succinct nature, merely giving the names of the parties, the nature of the action and a date in the margin. These latter entries represent the original complaints, and the dates (which could correspond to any weekday) to the days on which these complaints were registered in the town clerk's office. It was then the job of the clerk and his assistants to set mesne process in train.¹⁶ In the Hereford mayor's court the arrangement was similar. Dated entries were made of simple complaints while separate books were also kept of actions, subsequently annotated, where process had been served — one for each of the four civic sergeants.¹⁷ By the seventeenth century at least process in Shrewsbury was usually backed up by issuing the under-officers with a 'ticket' — a slip of paper or parchment on which a brief note of the parties and the nature of the action was written.¹⁸ If the defendant was then found and process served (by summons or attachment for example), the ticket would be returned to the office annotated to that effect. The court clerk would then use this information to enter the action in the main series in the current paperbook. In a tiny proportion of cases (never more than two per cent in any year) entries of this kind were made by mistake, even though the defendant had not in practice been found. In such cases the entry was later marked *vacat*, sometimes with a note explaining that the defendant had not been summoned or attached, or had run away at the officer's approach. Naturally, since it proved impossible to serve process on every potential defendant, plaintiffs usually outnumbered the subsequent, annotated entries — typically by about a third.¹⁹ It is, however, the principal annotated entries in the court books which provide the data

considered here, representing actions where process was in fact served upon the defendant.

III

The number of actions entered in the court books in this way is disclosed in Figure 1 (next page). The totals can also be expressed on a decadal basis (Table 1).

TABLE I
AVERAGE ANNUAL NUMBER OF ACTIONS ENTERED IN THE SHREWSBURY
CURIA PARVA PER DECADE (CIVIC YEARS). NUMBER OF EXTANT COURT BOOKS
GIVEN IN BRACKETS

1490-1500	448	(5)	1610-1620	1292	(10)
1500-1510	474	(8)	1620-1630	1440	(10)
1510-1520	475	(8)	1630-1640	915	(5)
1520-1530	515	(6)	1640-1650	725	(10)
1530-1540	484	(6)	1650-1660	829	(10)
1540-1550	632	(9)	1660-1670	787	(10)
1550-1560	640	(7)	1670-1680	723	(10)
1560-1570	943	(10)	1680-1690	566	(10)
1570-1580	1255	(10)	1690-1700	460	(9)
1580-1590	1516	(10)	1700-1710	276	(10)
1590-1600	1036	(9)	1710-1720	167	(10)
1600-1610	1175	(10)	1720-1730	78	(10)

Sources: SRO 3365/1792-96, 1798, 1800-1802, 1805-7, 1809-16, 1818-19, 1821.

Note: a small number of books (10) have 1-3 folios missing. Estimates have been made for the lost entries.

On the basis of these figures the pattern of litigation can be outlined as follows. In the 50 years between 1490 and 1540 the levels of litigation remained roughly stable. A slight increase is then visible after 1540, but this was soon overshadowed by a huge growth in litigation after 1560 which reached its peak in the late 1580s, by which time the number of actions entered in the court books had tripled since the early sixteenth century. Weekly rather than fortnightly sittings of the town court, introduced in 1586 but already proposed by the town council in 1577, were clearly intended to accommodate this increase in business.²⁰ Actions were reduced sharply in the 1590s, although a slow recovery is visible thereafter. By the 1620s the number of suits was comparable to that witnessed 30 years before. Data for half the 1630s is lacking, although the surviving evidence suggests a significant cutback in litigation, compounded in due course by the civil war. Although levels of litigation recovered somewhat in the 1650s, they never again reached the heights attained before 1630. Indeed, from 1660 a slow but steady decline set in, accelerating after 1695. By 1730 the number of actions was scarcely five per cent of the total

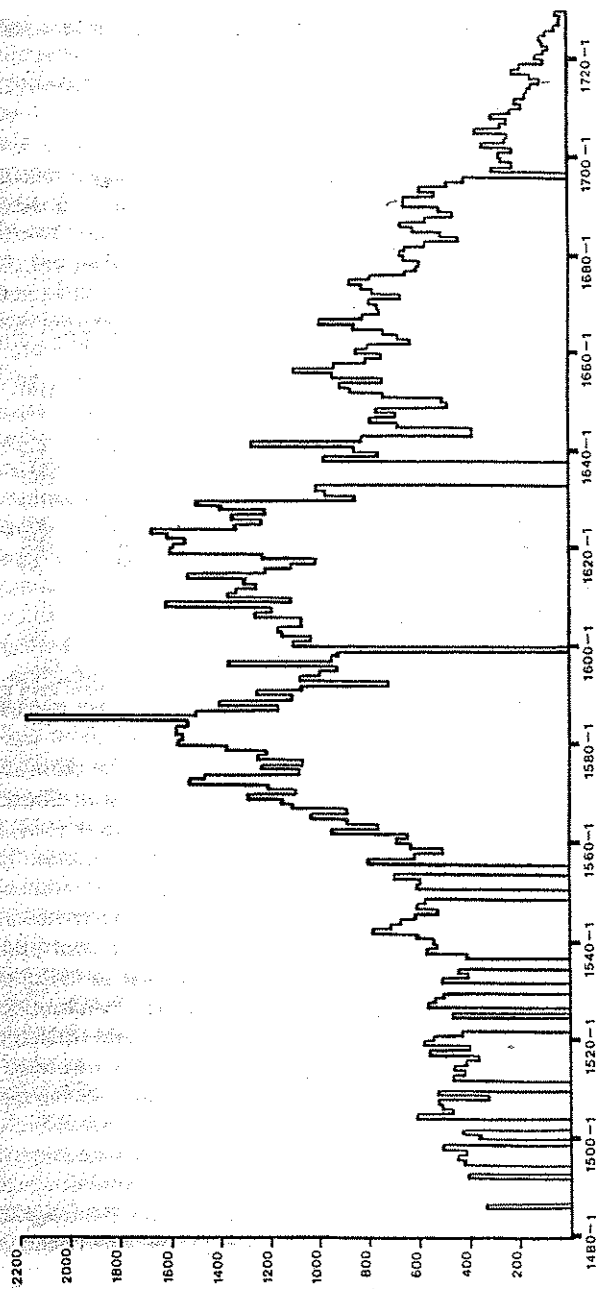


FIGURE 1: NUMBER OF ACTIONS IN THE SHREWSBURY CURIA PARVA, 1486/7 - 1729/30

in the early seventeenth century, a result amply confirmed by other sources. Perquisites of court, for example, which included receipts from such items as fines for defaults and concords and so on, fell from £30 17s 11d in 1629-30 to £15 19s 0d in 1690-91, £3 6s 0d in 1712-13 and to just four shillings in 1735-36.²¹ Similarly, the average number of copies of pleadings made in the town clerk's office fell from 50 per year between 1690-91 and 1699-1700, to 25 between 1700-1701 and 1709-10, and to four between 1740-41 and 1749-50. By the latter decade only 72 tickets were being issued on average each year to initiate process.²²

The Shrewsbury figures can be compared with those sampled from the court books of another Shropshire town, Ludlow. Once again the totals represent the number of entries after process had been served (Table 2).

TABLE 2
AVERAGE ANNUAL NUMBER OF ACTIONS ENTERED IN THE LUDLOW TOWN COURT IN THREE CIVIC YEARS.

1557-60	596	1672-75	321
1585-89	845	1679-82	555
1607-10	775	1706-09	422
1624-27	674	1718-21	234
1635-38	668	1733-36	104
1650-53	423	1745-48	86

Sources: SRO 365/ boxes 18, 23, 27, 30, 32, 34, 36-8, 53.

The general pattern is similar to that at Shrewsbury. Litigation increased sharply in the second half of the sixteenth century, and probably reached a peak at about that time. Numbers appear to have stabilised or even declined slightly thereafter, although a drastic reduction did not occur until the beginning of the eighteenth century, and was proportionately not as marked as at Shrewsbury. A massive decline in litigation from the late seventeenth century is also visible at Newcastle on Tyne, King's Lynn and probably Hereford.²³ Sufficient evidence exists, therefore, to propose that far from being undermined by the development of the central law courts, the borough courts may actually have followed a path not unlike their own. This possibility can be examined more closely by comparing litigation in the different jurisdictions. Before attempting this in Shrewsbury's case, certain technical factors affecting the levels of litigation in the *curia parva* must first be recognised.

Since only two complete court books survive before 1495, decadal comparisons are barely affected by the extension of Shrewsbury's liberties in that year. More problematic is the incipient rise in litigation after 1540. There is some evidence of about this date suggesting that actions from the Abbey Foregate were for a short time heard in the *curia parva*, presumably

due to a jurisdictional hiatus after the town had been granted the Abbey Foregate franchise in April 1542 — and this may explain the noticeable spike in litigation in 1542–44 (Figure 1).²⁴ A separate court, however, was once again operating in the suburb by 1551,²⁵ so the higher levels of litigation visible by the 1550s must have some other cause. It is tempting to ascribe this to a sharp increase in actions for 'deceit' and subsequently for 'trespass on the case' which began after 1538; but close examination of the constituent forms of action in the court books and of surviving pleadings shows that this was largely due to a shift in nomenclature as Shrewsbury attorneys began to adopt common law innovations, in particular the use of pleadings in *assumpsit* to replace the old action of debt and of actions in trespass on the case to replace *detinue*.²⁶

In one respect, however, such innovations did lead to a small but detectable increase in litigation. As Helmholz has stated, 'Local-court jurisdiction over defamation revived in the sixteenth century with the rise of the action on the case for words in the royal courts at Westminster'.²⁷ In Shrewsbury the first actions of this kind appear in the early sixteenth century,²⁸ and by the 1550s they comprised a distinct category, almost exclusively labelled 'on the case'.²⁹ In fact it was demurrable to bring an action for words in 'trespass on the case', rather than simply 'on the case' — an interesting reflection of how, even in the local courts, the lawyers had begun to reify the forms of action.³⁰ Although this distinction was later abandoned, it means that for a short period the number of actions for defamation entered in the court books can be readily identified. In 1543–44 and 1556–57 about four per cent of entries took this form (about 30 suits in each case), and these at least represented actions that had not been heard 50 years earlier. Even so, the numbers involved are too small to account for all of the modest increase in the 1550s, which seems then to have genuinely prefigured the great boom which followed.

Two other points remain, each relating to the year 1586. As mentioned above, the Abbey Foregate court was finally absorbed by the *curia parva* in that year. This explains the spectacular increase in litigation in 1585–86, clearly visible in Figure 1, when 2,151 actions were entered — almost 600 more than the highest previous total. Surviving entry books of the Abbey Foregate court in the 12 years between 1567–68 and 1578–79 indicate that on average some 173 actions were entered in each civic year.³¹ Thus, even with the addition of actions from the suburb, the total in 1585–86 seems to have been an exceptional one. It is surprising, nonetheless, given the extension of the court's jurisdiction, that litigation should have dipped so sharply during the succeeding 15 years. In the 1590s, for example, litigation was down by a third from the levels experienced in the preceding decade. In part this reduction was certainly due to the difficult

economic conditions of that period, and to a typhus epidemic which killed one-tenth of male householders in 1587.³² But it may also be attributable to another privilege granted by the same charter which had amalgamated the franchises in 1586. The town was given the right to hold a 'court of conscience' (sometimes known as the 'Chancery Court') for personal actions worth less than 40 shillings. In this court, clearly intended to assist poorer litigants, proceedings were by bill as in the equity courts at Westminster. A scatter of pleadings have survived from 1587, 1589 and 1591, illustrating a characteristic range of actions — suits were brought by craftsmen for small debts and by servants for wages due.³³

Since this court was restricted to actions for less than 40 shillings, a decline in actions to this value in the *curia parva* should be observable; and such evidence does exist. Three-month samples at the end of each calendar year show that the proportion of actions for less than 40 shillings fell from 60.7 per cent in 1585 to 50.9 per cent in 1586. But the proportion recovered subsequently, and there is no discernible difference in this respect between 1580–84 and 1590–94 (about 63 per cent in each case).³⁴ There is moreover no evidence to suggest that the court of conscience was still active during the seventeenth century. Although it may initially have drawn some actions away from the *curia parva*, it seems to have been a short-lived experiment, albeit one which distantly prefigured the creation of the similar court of requests in 1783.³⁵

If these factors are borne in mind, together with the growth in Shrewsbury's population outlined above, it is possible to calculate that in each year there were notionally 0.2 suits per person in the 1520s (excluding the Abbey Foregate), 0.3 in the early 1580s, and 0.1 in the 1670s, continuing to fall thereafter. Since the town's population continued to grow until the 1630s,³⁶ while litigation never again exceeded the levels seen in the 1580s, it seems that the number of actions per head must already have begun to decline during the early seventeenth century. If litigation had increased at the same rate as the population, the number of actions entered annually in the court books would have been about 1,900 by the 1630s — several hundred more than the actual figure. By contrast, although there was also a pronounced reduction in the rate of increase of litigation between 1606 and 1640 in the central law courts, some growth may still have been registered. Moreover, unlike the *curia parva*, these courts also saw further modest growth in business before 1670.³⁷ Is it possible then, despite the evident resilience of borough litigation before 1600, that Shrewsbury litigants began after all to take a significant proportion of business to Westminster Hall? In Shrewsbury's case the possibility of jurisdictional shifts in business is sharpened by the existence of the court of the Council in the Marches, based at Ludlow and not

abolished until 1689. Difficult though the task is, the potential impact of these alternative jurisdictions requires consideration.

Shrewsbury court officers were certainly accustomed to intervention by the Council in the Marches. On average, in the late sixteenth and early seventeenth centuries about two or three actions in the *curia parva* each year were stayed by letters of privilege from the Council, usually because a party was already involved in litigation at Ludlow.³⁸ It would be a mistake, however, to assume that the Council was a natural rival to the *curia parva*. In at least one Shrewsbury action in 1595, the Council preferred, 'for the avoydinge of multiplicyie of sutes', to order the postponement of the trial, rather than have the case turned over to them as requested.³⁹ At the same time, there is clear evidence that the Council opted on occasion to pass actions back to Shrewsbury rather than to resolve them itself. For this reason, the borough archives contain a number of English bills and later pleadings which had originally been heard at Ludlow. In the case *Hood v. Pynner et al.* (c. 1542), for example, the pleadings were turned over with a note that since the parties lived in Shrewsbury, and 'the matter may there be tryed with lesse costs to both parties then in this court bifor the Counsell', the bailiffs were to examine and settle the case themselves.⁴⁰ A further reason to doubt a high degree of Council encroachment stems from the Privy Council instructions of 1576 including the article that no bill should be accepted at Ludlow for matters less than 40 shillings in value.⁴¹ In theory, this meant that a substantial proportion of Shrewsbury business was protected from capture since actions for this amount typically comprised over half of all suits in the 1590s, and still made up 49.4 per cent in 1620, and 46.3 per cent in 1630.⁴² This article, however, was not explicitly confirmed in the later 1633 instructions, and witnesses called before the Lords committee considering the Bill for the abolition of the court of the Marches in 1689 stated that there was then an abundance of small actions under 40 shillings.⁴³ It is not so clear, then, that Shrewsbury litigants could not after all have taken smaller suits to Ludlow.

The best evidence relating to this problem is found in the extant Hearing books of the court of the Marches between 1632 and 1640 at a time when litigation at Ludlow was probably at its peak.⁴⁴ On average the court heard 182 civil suits in each legal year from the whole of Shropshire. If even a quarter of these suits could have been brought at Shrewsbury instead, the town court would still have lost only 45 actions to Ludlow each year. Clearly, encroachment on this scale cannot begin to explain why litigation in the *curia parva* never again exceeded the levels attained in the 1580s, and why suits per head began to decline after 1590. Admittedly, the position after 1660 is less clear. Given, however, that business at Ludlow

was said in c. 1670 to be 'now much eclipsed',⁴⁵ it is more likely that the court of the Marches reflected rather than accounted for the steady reduction of litigation in the *curia parva* in that period, particularly since this reduction actually accelerated after the Council's abolition in 1689.

To assess the amount of Shrewsbury business directed to the Common Law courts at Westminster, it is necessary first to estimate how many Shropshire actions were heard there. This can be attempted by counting the number of actions in 'advanced stages' (that is where the defendant had appeared and the plaintiff had entered a declaration), recorded in the docket rolls and books of the Common Pleas and King's Bench.⁴⁶ Sample totals are given in Table 3.

TABLE 3
SHROPSHIRE CASES IN ADVANCED STAGES IN THE COMMON PLEAS AND
KING'S BENCH, 1562-1741

	Common Pleas	King's Bench	Total	(Adjusted)
1562	62	14	76	(70)
1570	79	33	112	(108)
1580	213	50	263	(250)
1606	684	67	751	(640)
1620	402	60	462	(440)
1640	361	65	426	(380)
1669	529	125	654	(634)
1685	498	93	591	(590)
1691	693	53	746	(745)
1696	441	15	456	(455)
1706	297	12	309	(307)
1719	168	5	173	(170)
1741	149	28	177	(175)

Sources: The Common Pleas series is derived from PRO CP 60/16-957; the King's Bench from PRO IND 1/1339-6176. Precise references can be obtained from the catalogue of Index volumes, PRO Press 22/65.

Note: the totals in the Common Pleas include duplications from term to term after imparlances were entered. These were common before the mid seventeenth century. The adjusted figures in brackets make allowance for this, based on an analysis of the docket rolls in 1570, 1606, 1669, 1691 and 1706, and sample rolls in 1620 and 1640.

The table suggests that the scale of Shropshire litigation at Westminster was broadly similar to the national pattern. Massive growth began in Elizabeth's reign, although the sampled years suggest that this had eased or was even checked by 1620, possibly as a result of procedural innovations in the Common Pleas devised c. 1614. By taking out a writ of *capias* in trespass where the true cause of action was debt, plaintiffs aimed to speed up mesne process and avoid the higher cost of a writ of debt. The effect may have been to promote early settlements out of court and thus reduce the number of cases reaching advanced stages — although the judges in

due course ruled against the practice.⁴⁷ At any rate, it is clear that after 1660, and in contrast to the *curia parva*, litigation once more stood at buoyant levels, before also apparently experiencing a dramatic fall after 1690. The case totals relate to the county as a whole, but equivalent figures can also be worked out for constituent litigation of Shrewsbury origin. To obtain the latter, the *rotulus* references in the dockets to cases in advanced stages have been used to search out the entries on the plea rolls of the King's Bench and Common Pleas. For each such reference, a declaration at least should be found on the rolls mentioning the location of the event or transaction in dispute. In this way it is possible to discover that the number of actions in advanced stages of Shrewsbury origin (including the liberties) was seven in 1524, 370 in 1606, 98 in 1669, 109 in 1691 and 41 in 1706.⁴⁸

The figures, however, undoubtedly underestimate the amount of county litigation. The reason for this was that litigants in the Common Pleas sometimes elected, for technical reasons, to 'lay' their actions in London rather than in the county of origin. In the early seventeenth century the true total of Shropshire litigation in the Common Pleas could have been twice as high as the apparent one — although this is a maximum figure.⁴⁹ At the same time it is difficult to compare directly the number of suits in advanced stages recorded in the dockets with the number of entries in the Shrewsbury court books since each refers to suits at different stages.⁵⁰ If the number of *initiated* cases is considered, a rough comparison might entail augmenting the Shrewsbury figures by one-third (representing prior plaints); and the docket figures two-fold (representing the number of original writs purchased).⁵¹ Because of these difficulties, it makes more sense to assess the figures as a guide to relative changes in total litigation in the different jurisdictions. From this perspective there is no doubt that by the early seventeenth century large numbers of actions that could have been heard at Shrewsbury were instead taken to Westminster. But it is equally clear that the decline in litigation in the *curia parva* over the seventeenth century as a whole cannot be explained by encroachment from the central law courts, since the number of cases of Shrewsbury origin shows no sign of having increased over the same period — quite the reverse in fact. If anything, the remarkable growth between 1524 and 1606 indicates that the central law courts were most successful in poaching business at the same time as the *curia parva* itself experienced a boom in litigation.

An examination of the pleadings, however, shows that even this claim needs refinement. The number of *defendants* from Shrewsbury or its liberties who were involved in actions which originated there, was only ten in 1524, 46 in 1606, 14 in 1691 and 13 in 1706. The great majority

of actions of this kind in fact were typically brought against defendants who did not live within the liberties, but had obviously come to town to transact some business there, such as the raising of a loan by way of bond, which had later been cause for litigation. Of the 267 such individuals from Shropshire or Wales involved in the Common Pleas cases in 1606, 24 came from other towns while nearly all the rest were described as 'gents' or 'yeomen', suggesting that this was particularly true of farmers and gentry from the region. It obviously made sense to sue such men at Westminster rather than at Shrewsbury because no process could be awarded out of the *curia parva* until they visited town again.⁵² The implication is obvious: for actions against, and, one may infer, between Shrewsbury residents, the *curia parva* must nearly always have been the first court of call. Three examples can be given to illustrate this point: in 1606 defendants from Shrewsbury involved in actions in advanced stages at common law included two shermen, one baker and one corvisor, compared with at least 96, 37 and 35 respectively recorded in the court book of the *curia parva* in the civic year 1600–1601.⁵³ If the former set of figures are multiplied even four times to adjust for the technical problems described above, the contrast would remain a huge one. The importance and jurisdictional resilience of the borough court has also been noted at King's Lynn in the 1680s,⁵⁴ and can be demonstrated further by observing the nature of local suits and the degree of litigatory participation.

IV

Until at least 1640, litigation in the central law courts was dominated by actions upon sealed obligations (specialties), in particular the conditional bond.⁵⁵ For example, of the 370 suits of Shrewsbury origin in advanced stages in the Common Pleas and King's Bench in 1606, 322 (87 per cent) involved specialties, although by 1669 and 1691 this figure had fallen to 63 per cent (131/207). By contrast, most actions in the borough courts were concerned with informal contracts, especially sales credit.⁵⁶ In Shrewsbury this can be demonstrated by first counting the forms of action recorded in the court books and subtracting those such as trespass, actions 'on the case' for defamation, replevin and ejectment which obviously did not involve contracts of this kind; and then, if ambiguity remains (mainly whether actions in debt involved sealed bonds or parole agreements), by estimating the proportion of these actions arising from informal contracts from the many plaintiffs' declarations which have survived at a proximate date. Thus in 1556–57 some three-quarters of all suits involved informal contracts (c. 600, including bailment), and about 60 to 65 per cent in 1600–1601 (c. 730), 1660–61 (c. 500) and 1690–91 (c. 440).⁵⁷ In 1606,

by contrast, only 29 suits of this kind of Shrewsbury origin were passing through the Common Pleas and King's Bench combined, 18 in 1669 and 31 in 1691. Actions on informal contracts also comprised the lion's share of cases pleaded to issue and tried by jury in the *curia parva*. Of 103 cases tried in 1589–90, for example, 76 took this form. They involved disputes over agreements to repair a house, to cure a disease and to serve as a journeyman; failure to save harmless as a surety and to redeliver cloths set for fulling; the sale of timber, mercery wares, malt and livestock; the hire of a cow – and many others.⁵⁸ Particularly notable was the modest size of the sums in question. Half of the cases tried in 1589–90 were for sums less than 40 shillings (58/103), a result compatible with the equally modest value during the sixteenth century of actions recorded in the court books, noted above.⁵⁹

An important point stems from these facts. According to Milsom, Tudor inflation meant that the monetary limit on local jurisdictions, fixed at 40 shillings, became increasingly redundant during the sixteenth century. As a result, many more local transactions, including debt claims, came within the ambit of Westminster Hall where procedural mechanisms – in particular the provision of compurgation – worked in a less appropriate fashion than in the local courts. Momentous legal consequences followed, as lawyers began to employ pleadings in *assumpsit* to phrase informal contractual claims in trespass on the case, where wager of law was not permitted.⁶⁰

In fact it is not easy to link the rise of *assumpsit* indirectly to the inadequate monetary limits of local courts since the early experiments with this mode of pleading pre-dated the main increase in inflation after 1540.⁶¹ At the same time the subsequent redundancy of these limits should not be exaggerated. In Shrewsbury, as we have pointed out, actions entered in the *curia parva* were not restricted in value, so here at least business need not have been lost to the central law courts for that reason. Still, the evidence clearly discloses the continued importance throughout the sixteenth century of actions for less than 40 shillings. The proportion of actions to this value changed surprisingly little, from 71 per cent in 1529–30 to 63 per cent in 1590–94.⁶² Forty shillings in fact remained a substantial sum and could encompass a very large range of transactions likely to engage an artisan or tradesman, as Bolton and Maslem have pointed out.⁶³ Certainly one need not doubt that more local actions which did breach the old monetary boundary were now being taken to Westminster – contemporary complaints and statutory provision in 1601 attempting to stem the flow indicate as much.⁶⁴ But this can simply be ascribed to the overall increase in litigation in the country, and it does not follow that local courts decayed for that reason. In the Witney town court, for example, which

was restricted to actions for less than 40 shillings, the number of suits trebled after 1560, and similar evidence has now been noted elsewhere.⁶⁵ Both central and local jurisdictions in fact could have flourished simultaneously. Moreover, it is equally evident from comparing litigation in Shrewsbury and at Westminster that although actions on informal contracts in the central law courts increased sharply after 1560, relatively they must still have comprised only a fraction of the total amount of business of this kind passing through the borough courts alone.⁶⁶

If the original vitality of the *curia parva* was promoted by the distinct character of local litigation, which the central law courts never threatened to erode, it was reflected too by a remarkable density of litigatory participation. Thus, of the 453 adult males, virtually all householders, recorded in the suit lists of the Shrewsbury court leet in November 1525, 49.6 per cent appeared as plaintiffs in the court books of the *curia parva* between 1523–24 and 1525–26, 44.8 per cent as defendants, and 63.0 per cent as one or the other. The books are not in fact complete and cover a period equivalent to about two years of litigation. The results may therefore be compared with the degree of litigatory participation in 1667–68 and 1668–69 by the 1,207 adult males recorded in the suit lists of April 1668. The respective percentages were 33.1 as plaintiffs, 30.4 as defendants and 50.0 as one or the other.⁶⁷ For a slightly longer period of four years from 1683 to 1686, Muldrew has estimated that in King's Lynn almost all households were probably involved in the initial stages of litigation, and the majority of household heads as plaintiffs – although, in practice, these proportions would almost certainly be higher than at Shrewsbury because the King's Lynn court books record simple complaints rather than (as in Shrewsbury) actions where process had actually been served, which inevitably involved fewer litigants.⁶⁸ Nonetheless, in their different ways these figures demonstrate that even at this late date the level of recourse to the borough courts remained high – even though in Shrewsbury at least a significant decline in participation had in fact taken place since 1525.

V

The evidence produced above indicates that so far from being squeezed by encroachment from the central law courts, the pattern of litigation in the borough courts was in fact not dissimilar. Detailed explanation for this pattern will require separate study, but closer inspection of the Shrewsbury data suggests that certain modulations will first need to be recognised before such an explanation can be obtained. For one thing, it is clear that the litigation boom after 1560 was more pronounced at Westminster Hall than in the localities. That the boom itself was due to

demographic growth and the associated increase in inland trade and demand for credit there can be little doubt. In Shrewsbury, for example, the litigation pattern closely replicates the growth of the frankpledge population which owed appearance at the court leet, with an incipient increase visible in the 1550s followed by a near-doubling by 1587. Thereafter, growth continued until the early 1630s although at a more hesitant pace.⁶⁹ Over much the same period, toll receipts at the Shrewsbury and Abbey Foregate fairs rose almost three-fold, while the trade in woollen cloths from North Wales, dominated by the Shrewsbury drapers, enjoyed its greatest ever prosperity.⁷⁰ It was certainly as a result of such developments that actions on sealed bonds in the *curia parva* increased from c. 70 actions in 1556–57 to c. 270 in 1600–1601. Although such actions, as we have seen, were never as important as in the central law courts, they nonetheless more than doubled their share of local litigation in the century after 1560.⁷¹ At Westminster Hall, however, their numbers grew at an even faster rate – approximately eight-fold between 1560 and 1640.⁷² The Shrewsbury evidence produced above suggests that one important reason for this contrast between the local and central courts, assuming it can be generalised, was the utility of the latter for bringing actions on bonds against the growing and prospering class of gentry and yeomen farmers, as well as other commercial middlemen, moving easily across local jurisdictions.

A second difference concerns the subsequent great decline in litigation. In the *curia parva* this decline seems to have begun earlier and to have been far more severe than at the central common law courts (compare Tables 1 and 3). With respect to the latter, Brooks's pioneering analysis has proposed a complex array of legal and socio-economic factors to explain the fall in litigation.⁷³ Particular significance has been attached to the steep reduction in the proportion of actions brought in debt, which declined from about 80/90 per cent in 1640 to 32 per cent in 1750,⁷⁴ a trend which Shropshire cases show in progress, the relevant percentages falling from 94.3 in 1606 (349/370 – but Shrewsbury origin cases only) to 74.1 in 1691 (552/745) and 64.2 in 1706 (197/307). Since most debt actions at common law were brought on bonds, Brooks has advanced explanations for the reduction in terms of the declining popularity of debt *sur obligation*, including the existence by the late seventeenth century of remedies offered by the courts for the legal stringencies of the conditional bond, and the increasing use of oral promises and informal written agreements, especially promissory notes, as the primary means of transacting business. In fact, one may doubt the extent to which promissory notes supplanted sealed bonds in this way: such evidence as there is suggests that provincial attorneys at least continued to use the bond as the

primary instrument of personal loans.⁷⁵ But whatever the accuracy of these arguments, they can in any case be only partially relevant to developments at Shrewsbury. It is certainly true that the number of constituent actions on specialties in the *curia parva* dropped from about 220 in 1660–61 and 150 in 1690–91 to a bare handful by the 1720s,⁷⁶ but this dramatic reduction affected actions of every kind. Calculations indicate, for example, that the number of suits on informal contracts fell seven-fold between 1660–61 (c. 500) and 1725–26 (c. 70).⁷⁷ Similarly, whereas from 1570 to 1670 some 40–60 actions in trespass were normally entered each year in the court books, of which (judging from clerical distinctions employed by the 1640s) slightly over half involved battery, by the 1720s such actions had virtually disappeared. Defamation suits too almost vanished from the records of the court.⁷⁸

In practice, a more plausible explanation for the decline in business of the *curia parva* may have been the increase in legal costs which rose in real terms about three- or four-fold in the century before 1675, and whose specific local impact may also help to explain the precocious nature of the decline in Shrewsbury. About the 1630s, for example, attornies working in the town court hiked their basic fee up from around 9d to 3s 4d, the standard rate for common lawyers.⁷⁹ Possibly as a result, actions for less than ten shillings, which still comprised 10.6 per cent of all actions in 1631–32 (103/975), had virtually disappeared by 1645–46 (9/685). This sensitivity to costs is highlighted by the introduction on 28 June 1694 (dutifully recorded by the court clerk) of stamp duty upon process in actions above the value of 40 shillings, and on subsequent pleadings.⁸⁰ In July just seven actions were entered in the court book, the smallest total recorded in any month in the whole seventeenth century, apart from July to November 1650 when the town was struck by plague. Although numbers recovered somewhat thereafter, it was this development that marked the acceleration of the decline in business so evident during the 1690s.

These developments, and variations upon them, deserve investigation. But whatever the causes for the decline of litigation turn out to be (and deeper 'cultural' factors also need considering), it is clear that no explanation will be complete unless it recognises that some borough courts at least, concentrating upon different kinds of suits than at Westminster, experienced an even more spectacular reduction in business – as the changing number of trial cases also suggests. In the two civic years 1660–61 and 1665–66, for example, 74 cases were tried by jury in the Shrewsbury *curia parva* and 47 inquests were held for damages, compared to just three inquests for damages and only one jury trial in the whole decade 1740/41–1749/50.⁸¹ By contrast, civil cases tried at the Shropshire assizes declined less

drastically. On average, 33 cases were tried at each assize in 1661–70, 23 in 1691–98, 15 in 1726–36 and 12 in 1771–77.⁸² Such evidence underlines the need now to consider, in the local context, the sociological significance of the near demise by 1740 of civil litigation in the ancient borough law courts, and what this may entail for the provision of alternative and cheaper modes of debt collection and dispute resolution.⁸³

NOTES

1. C. W. Brooks, *Pettyfoggers And Vipers Of The Commonwealth*, Cambridge, 1986, 48–74; 'Interpersonal conflict and social tension: civil litigation in England, 1640–1830', in A. L. Beier, D. Cannadine and J. E. Rosenheim, eds., *The First Modern Society*, Cambridge, 1989. I am grateful to John Baker, Chris Brooks and Craig Muldrew for comments upon an earlier draft of this paper.
2. W. S. Holdsworth, *The History of English Law*, 16 vols., London, 1903–1966, i, 149–50; J. H. Baker, *The Reports of John Spelman*, 2 vols., Selden Society 93–4, London, 1978, ii, Intro., 48, 51–3; C. W. Francis, 'The Structure of Judicial Administration and the Development of Contract Law in Seventeenth-Century England', 83 *Columbia Law Review* (1983), 43–4; Brooks, *Pettyfoggers*, supra n. 1, 78, 96–7.
3. S. F. C. Milsom, *Historical Foundations of the Common Law*, 2nd edn., London, 1981, 60, 67, 91, 246, 282, 304–5, 333, 339–43.
4. Baker, *The Reports of John Spelman*, supra n. 2, ii, Intro., 52.
5. J. H. Baker, 'Personal Actions in the High Court of Battle Abbey 1450–1620', 51 *Cambridge Law Journal* (1992), 508–9; Brooks, *Pettyfoggers*, supra n. 1, 312, n. 114.
6. M. Bateson, *Borough Customs*, 2 vols., Selden Society 18 and 21, London, 1904, 1906.
7. J. L. Bolton and M. M. Maslem, eds., *Calendar of the Court Books of the Borough of Witney, 1538–1610*, Oxfordshire Record Society, LIV, Gloucester, 1985; C. Muldrew, *Credit, Market Relations And Debt Litigation In Late Seventeenth Century England, With Special Reference To Kings Lynn*, Cambridge Univ. Ph.D. thesis (1990); C. Muldrew, 'Credit and the courts: debt litigation in a seventeenth century urban community', *XLVI Economic History Review* (1993); Brooks, 'Interpersonal conflict', supra n. 1, 372–3.
8. J. H. Baker, 'English Law and the Renaissance' in *The Legal Profession And The Common Law*, London, 1986, 463–4; C. W. Brooks, 'Six Centuries of Trials and Tribulations: Civil Litigation in England 1330–1989', paper delivered to the Oxford Legal History Conference, July 1991.
9. W. A. Champion, 'The Frankpledge Population of Shrewsbury, 1500–1720', 41 *Local Population Studies* (1988), 55–6; T. Phillips, *The History and Antiquities of Shrewsbury*, Shrewsbury, 1779, 69; E. A. Wrigley, *People, Cities and Wealth*, Oxford, 1987, 160.
10. W. A. Champion, *Population change in Shrewsbury, 1400–1700*, Shrewsbury Local Studies Library MS 6821, 255.
11. Shrewsbury and Atcham Borough Council, Guildhall records, nos. 36 and 40 (charters of 1542 and 1586).
12. *Whittakers v. Benyon* (Shrewsbury Borough Records, Shropshire Record Office – hereafter SRO – 3365/1813, entry for 15 June 1633 among list of complaints, unfoliated).
13. For writs see e.g. SRO 3365/1801 (1577–78, fol. 9 – *capias ad satisfaciendum*); SRO 3365/1793 (1520–21, fol. 41^v – *Luter v. Jones, levari facias* mentioned); SRO 3365/1792 (1510–11, fol. 23^r – *feri facias*); SRO 3365/1809 (1600–1601, fol. 111 – *scire facias*). For valuations, see e.g. SRO 3365/2152 (1562–68).
14. The earliest surviving paperbook dates from May 1486: SRO 3365/1792. Court rolls went out of use after 1540 except briefly to record pleas of land: SRO 3365/1031, 1034–5.
15. R. H. Britnell, 'Colchester Courts and Court Records, 1310–1525', 17 *Essex Archaeology and History* (1986), 138–9.
16. SRO 3365/1813–14. From 1677 separate books survive for these plaints: SRO 3365/1820, 1824.
17. In 1674–75, for example, there were 463 plaints and 355 subsequent entries in the sergeants' books: Hereford Record Office, Hereford City Records, Mayor's Court, 'Rolls, Files and loose papers', 1674–75 (box 89). Court books of simple plaints were also kept at King's Lynn: Muldrew, 'Credit and the courts', supra n. 7 at 26.
18. Process by 'ticket' is described in Quarter Sessions records of 1635 (SRO 3365/2235 – articles exhibited against David Plumme); and in a declaration in 1653 (*Holland v. Baker*, SRO 3365/1992). Examples can be found lying loose in the court books, e.g. SRO 3365/1810 (1609–10, fol. 26).
19. In 1631–32 and 1632–33, for instance, there were 3,118 plaints and 1,982 later annotated entries. Between 1643–44 and 1648–49 the totals were 5,464 and 3,715 respectively: SRO 3365/1813–14. After 1685, however, entering the initial plaint was progressively by-passed so that there were actually fewer entries of this kind than in the main series. Between 1685–86 and 1690–91, for example, there were 2,889 plaints and 3,491 annotated entries: SRO 3365/1819–20.
20. Shrewsbury and Atcham Borough Council, Guildhall records, no. 76, fol. 215^v.
21. SRO 3365/574, 633, 2642; Shrewsbury Local Studies Library MS 12 (Hotchkis MSS, Vol. 5), 72.
22. National Library of Wales, Aberystwyth, Castle Hill MSS, 937, 939–41, 945, 950, 953.
23. Brooks, 'Interpersonal conflict', supra n. 1, 373; Muldrew, *Credit, Market Relations and Debt Litigation*, supra n. 7, 52. At Hereford, court books of the four sergeants recorded 433 actions in 1682–83 (cf. 541 from only two sergeants in 1608–9), 185 in 1708–9 and 96 in 1732–33: Hereford Record Office, Hereford City Records, Mayor's Court, 'Plea Books', 1439/40–1775/77 (box); 'Rolls, Files etc', 1681–82 (box 92), 1707–9 (box 101), 1732–39 (box 112).
24. In 1544 a plea of land was brought by the warden of St. Giles's hospital in the Abbey Foregate jurisdiction: *Prince v. Cole*, SRO 3365/1795 (1543–44, fol. 27^v). In 1546 another action was brought on a *concessit se solvere* (although the count was in English) 'att seynt gilles within the Jurisdiccon of this cort': *Capper v. Davies*, SRO 3365/1959.
25. The presence of the court is mentioned incidentally in a plaintiff's declaration: *Hatton v. ap Edward*, SRO 3365/1849.
26. I hope to describe this process elsewhere. Cf. A. R. Kiralfy, *The Action on the Case*, London, 1951, 230–36.
27. R. H. Helmholz, *Select Cases on Defamation to 1600*, Selden Society 101, London, 1985, lxiv.
28. E.g. *Smyth v. Barker*, SRO 3365/1793 (1512–13, fol. 13^v); *Fysher v. Madocke*, (c. 1523), SRO 3365/1846; *Horton v. Jeneson*, SRO 3365/1794 (1527–28, fol. 44 – loose count).
29. In the 1550s and early 1560s declarations 'on the case' almost always related to defamation suits: SRO 3365/1847–48. In 1553–54, of 17 actions 'on the case' sent for trial, 15 at least were for words: SRO 3365/1796 (1553–54).
30. SRO 3365/1855 (demurrer for John Greffythes, c. 1560).
31. SRO 3365/1799.
32. Champion, *Population change*, supra n. 10, 97.
33. SRO 3365/2617/39, 2625 (e.g. *ap Rees v. Leaton, Meredith v. Clerk et al.*).
34. SRO 3365/1802, 1805–7 (Oct. – Dec. samples).
35. 23 Geo. III, c. LXXIII.
36. Champion, 'The Frankpledge Population', supra n. 9, 55, 58.
37. Brooks, *Pettyfoggers*, supra n. 1, 107–8; idem., 'Interpersonal conflict', supra n. 1, 360.
38. Based on marginal annotations in the court books. Several letters of privilege survive among 'petitions' in SRO 3365/2621, 2624–5, 2761, and in the court books, e.g. SRO 3365/1801 (1575–76, fol. 95^r – pinned).
39. *Phellipes and Fox v. Gittyns*, SRO 3365/2621, part 9.

40. SRO 3365/2628. Other pleadings from the court of the Marches can be found in SRO 3365/2619, 2621, 2625, 2702, 2761.
41. P. Williams, *The Council in the Marches of Wales under Elizabeth I*, Cardiff, 1958, 66.
42. Oct. - Dec. samples, SRO 3365/1812 (1620-21), 1813 (1630-31).
43. Huntington Library, Ellesmere MSS 7571 (microfilm in the National Library of Wales, Aberystwyth); House of Lords MSS, Committee Book, 11 and 13 June 1689.
44. Huntington Library, Ellesmere MSS 7566-7602; P. Williams, 'The Activity of the Council in the Marches under the early Stuarts', 1 *Welsh History Review* (1961), 153.
45. J. Thirsk and J. P. Cooper, eds., *Seventeenth-Century Economic Documents*, Oxford, 1972, 81.
46. The nature of these sources is described in Brooks, *Pettyfoggers*, supra n. 1, 49, and idem., 'Interpersonal conflict', supra n. 1, 358.
47. Brooks, *Pettyfoggers*, supra n. 1, 127-9.
48. PRO, CP 40/1042-5 (1524), 1748-69 (1606), 2848-61 (1669), 3092-102 (1691), 3235-42 (1706); KB 27/1050-53 (1524), 1394-9 (1606), 1904-13 (1669), 2082-7 (1691); KB 122/21-5 (1706). The docket rolls of the Common Pleas for 1524 are incomplete, so the plea rolls were searched directly. In practice, a small number of docket entries could not be traced in the plea rolls, viz., 19 (1606), 25 (1669), 28 (1691) and 15 (1706).
49. Brooks, *Pettyfoggers*, supra n. 1, 64-5. I am grateful to Chris Brooks for assistance on this point.
50. For suits in advanced stages a declaration at least will be found on the plea rolls. The Shrewsbury court books, however, could record actions at an earlier stage, e.g. if the defendant immediately compromised when process was served. In this case no declaration would be filed.
51. For the ratio of original writs to cases in advanced stages, see Brooks, *Pettyfoggers*, supra n. 1, 76.
52. As Baker has intimated more generally: 'Personal Actions', supra n. 5, 526-7. Of the 346 defendants involved in Common Pleas actions of Shrewsbury origin in 1606 whose residence is known, 46 came from the town or its liberties, 190 from elsewhere in the county, 77 from Wales (58 from Montgomeryshire), and 33 from further afield.
53. SRO 3365/1809 (1600-1601). Occupations of defendants were given in two thirds of all cases.
54. Muldrew, 'Credit and the courts', supra n. 7, 30.
55. Brooks, *Pettyfoggers*, supra n. 1, 67-71.
56. Muldrew, 'Credit and the courts', supra n. 7, 25-6.
57. SRO 3365/1796 (1556-57), 1809 (1600-1601), 1816 (1660-61). For declarations in debt; see the plea bundles SRO 3365/1851 (c. 1558-59, 107 declarations - 24 on bonds); 1899, 1920, 1932 (c. 1590-1615, 361 declarations - 186 on bonds); 1982, 1992, 1999, 2005 (c. 1650-63, 149 declarations - 117 on bonds); 2037 (c. 1694-98, 69 declarations - 51 on bonds). Apart from debt for parole agreements, remaining actions on informal contracts were brought in trespass on the case or (earlier) 'deceit'. A tiny proportion of actions on the case, however, were brought for pure misfeasance or nuisance, and these together with defamation suits (at most about five per cent of all pleas), have also been excluded.
58. SRO 3365/1900 (jury calendar). Very similar issues were tried in 1652-53: SRO 3365/1993.
59. Cases could be tried for as little as one shilling, e.g. *Lewis v. ap Thomas*, SRO 3365/1807 (1596-97, fol. 32^r - plea of debt for 12d, verdict for the defendant).
60. Milsom, supra n. 3.
61. For the course of Tudor inflation, see S. Rappaport, *Worlds within worlds: structures of life in sixteenth-century London*, Cambridge, 1989, 123-61.
62. SRO 3365/1795 (1529-30 - whole year); SRO 3365/1806 (Oct. - Dec. samples).
63. Bolton and Maslem, *Calendar of the Court Books of the Borough of Witney*, supra n. 7, xxxvi.
64. 43 Eliz., c. 6; Francis, 'The Structure of Judicial Administration', supra n. 2, 43-4.

65. Bolton and Maslem, *Calendar of the Court Rolls of the Borough of Witney*, supra n. 7, xxxvi; Baker, 'Personal Actions', supra n. 5, 526.
66. In 1640 there were still only c. 2,000 actions on the case (which included disputes on informal agreements) going through the central law courts in advanced stages: Brooks, *Pettyfoggers*, supra n. 1, 69.
67. SRO 3365/1793 (1523/24-1525/26) and SRO 3365/1816 (1667/68-1668/69) - court books; SRO 3365/1842, part 1 and SRO 3365/1342 - *curia magna*, suit lists.
68. Muldrew, 'Credit and the courts', supra n. 7, 26, 30.
69. Champion, 'The Frankpledge Population', supra n. 9, 55. Strictly speaking frankpledge as a system of collective peace keeping did not exist in Shropshire, but the term 'view of frankpledge' was used in some liberties as an alternative description of the court leet: *Victoria County History, Shropshire*, III, London, 1979, 20-21, 53.
70. W. A. Champion, *Shrewsbury tolls and commerce, 1259-1638*, Shrewsbury Local Studies Library MS 6855, 37-8; T. C. Mendenhall, *The Shrewsbury Drapers and the Welsh Wool Trade in the XVI and XVII Centuries*, Oxford, 1953.
71. The figures are derived by counting the number of actions in debt entered in the court books and then estimating the proportion involving bonds from surviving declarations in debt: supra n. 57. Since the proportion of all pleas consisting of pleas of debt can be readily calculated from the court books, one can then estimate that approximately 9 per cent of all pleas in 1556-57 were brought on bonds (c. 70), 24 per cent in 1600-1601 (c. 270), 26 per cent in 1660-61 (c. 220), and 22 per cent in 1690-91 (c. 150).
72. Brooks, *Pettyfoggers*, supra n. 1, 69, 93-6 - although totals include residual debt actions on parole agreements. Cf. the increase in the number of suits in the Common Pleas and King's Bench arising from bonds drawn in Shrewsbury or its liberties from just one in 1524 to 322 in 1606.
73. Brooks, 'Interpersonal conflict', supra n. 1.
74. *Ibid.*, 388-90.
75. M. Miles, 'The Money Market in the Early Industrial Revolution: the Evidence from West Riding Attorneys c. 1750-1800', 23 *Business History* (1981), 137-9. For some reasons for the longevity of penal bonds, see J. H. Baker, *An Introduction to English Legal History*, 3rd edn., London, 1990, 370.
76. For 1660-61 and 1690-91, supra n. 71. Just four actions in debt of any kind were entered in the court book in 1725-26 and none in 1750-51.
77. For 1660-61, see text to n. 57. In 1725-26 only 86 actions were entered in the court book of which 77 were on the case: SRO 3365/1821 (1725-26).
78. In the civic year 1590-91, for example, 12 defamation counts were filed compared with just three during the four years between 1694-95 and 1697-98 and none at all during 1734-38: SRO 3365/1899, 2037, 2083-5.
79. Based on an analysis of surviving bills of costs presented to the court for taxing, and costs awarded to successful litigants and recorded in the court books. I hope to show this in detail elsewhere.
80. SRO 3365/1824 (plaint book, unfoliated); 5 & 6 William and Mary c. 21.
81. SRO 3365/1816 (1660-61, 1665-66), 1822.
82. PRO, Assi 4/1-3, 5. A systematic comparison of declining business in the local and central common law courts will also need to accommodate two contrasting points affecting the latter. First, it is clear that by 1750 a significant amount of 'litigation' there consisted in fact of collusive suits in debt: C. W. Francis, 'Practice, strategy, and institution: debt collection in the English Common-Law Courts, 1740-1840', 80 *Northwestern University Law Review* (1986), 827-30. Secondly, by the same date totals of docket entries may (conversely) underestimate the number of cases in advanced stages. Such entries were only made after the attorneys had brought in the 'rotuli' (the membranes on which they entered the pleadings) for docketing and subsequent binding in the plea rolls. By 1759, however, they were said to be 'very apt to be negligent in bringing in these entry rolls', although the consequent degree of under-recording in the dockets is unknown: *English Reports*, 2 Burr. 723.

83. In particular, of resort to arbitration: cf. H. Horwitz and J. Oldham, 'John Locke, Lord Mansfield, and arbitration during the eighteenth century', 36 *The Historical Journal* (1993), 145–6. The later proliferation of urban courts of requests is also relevant here, although their communal resonance was very different from that of the older courts of record (e.g. jury trial was not available): W. H. D. Windsor, 'The courts of requests', 52 *Law Quarterly Review* (1936); H. W. Arthurs, 'Without the Law'. *Administrative Justice and Legal Pluralism in Nineteenth-Century England*, Toronto, 1985, 25–34.

The Legal Education of British Army Officers, 1860–1923

G. R. RUBIN

Shortly after the termination of the Crimean War in 1856, a military newspaper, the *Naval and Military Gazette*, fulminated against the 'gross ignorance' of Army officers, charging that the 'Army can no longer be left as a refuge for ignorant, stupid, and vicious young men'.¹ The conduct of the war had exposed serious shortcomings in the administration and command of the Army, and a reappraisal of the qualities required for Army leadership was now emerging.² There fell under scrutiny the conventional wisdom that the class or upbringing of an 'officer and a gentleman' guaranteed the competence of that individual to command efficiently and effectively. In its place, critics were now looking to an alternative education for military command, with reliance beginning to be placed upon formal courses of instruction in professionally relevant military education.

Such provision at the time of the Crimean War was haphazard and patchy. Officer cadets could attend the Royal Military Academy, Woolwich, for instruction in engineering and artillery, which were both considered to be scientific subjects. Those cadets seeking commissions in the cavalry or infantry could enrol at the Royal Military College, Sandhurst.³ However, at this point in time, Sandhurst was little more than a poor quality public school, offering, in addition to the conventional school subjects, the 'military' subjects of mathematics, drawing and fortification, the instruction in which was considered deeply unsatisfactory.⁴ A candidate seeking a direct commission in the Army might be either a university graduate or an officer in the yeomanry or militia who underwent an entrance examination, which, apart from 'fortifications', did not cover specifically military subjects. He might be the recipient of a free commission available to those whose officer-fathers had died, been killed or been severely injured on Army service, or whose fathers were too poor to purchase a commission for their sons. He might be a fortunate applicant from the ranks, seeking a free commission as a replacement for an officer either killed in action or who chose to leave the regiment rather than serve abroad with it in an unhealthy, or merely an unexciting, station.

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