Economic History Review, XLVI, 1(1993), pp. 23–38

Credit and the courts: debt litigation in a seventeenth-century urban community

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Legal historians who have studied the development of the laws of debt and contract in England have long suspected that a very substantial proportion of the cases heard before the central courts at Westminster in the early modern period involved litigation over credit arrangements.[1] Economic historians have also often noted the shortage of specie, and the extensive character of credit networks in seventeenth- and eighteenth-century society, which is well attested by much contemporary evidence.[2] At the end of the seventeenth century, for instance, Davenant claimed that trade depended on credit and that most merchants subsisted on credit.[3] A great number of inventories which survive from the period list debts, and in his diary Josselin made innumerable references to the worries he had over his many debts and outstanding loans.[4]

The extent of litigation over failed credit arrangements, however, has only recently been quantified by Brooks. His study of the legal profession in early modern England looked at the volume of different forms of pleading in the central courts at Westminster from the mid sixteenth century until 1640, and demonstrated the extent to which debt litigation dominated pleading in the courts of King's Bench and Common Pleas. He also showed in detail how levels of litigation increased dramatically during the same period.[5] This increase, he argued, was fuelled by the economic expansion which took place as the population of England began to grow after 1520. With more people to feed, clothe, and house, there was more need for business, and more

[1] I would like to thank Keith Wrightson, W. J. Jones, C. W. Brooks, Joanna Innes, and W. A. Champion for their helpful comments. This first point is made in Milsom, *Historical foundations*, pp. 250-1, 283, 353-6; Baker, *Reports of Sir John Spelman*, II, pp. 258-9.

[2] Ashton, *Economic history of England*, p. 206; Davis, *History of shopping*, pp. 151, 154-5, 159, 161, 170-1, 183, 185, 188, 201; Innes, 'King's Bench prison', pp. 251-4; Brewer, 'Commercialization and politics', pp. 203-7; Haagen, 'Eighteenth-century English society and the debt law', pp. 229-30; Earle, *Making of the English middle class*, pp. 115-23; Everitt, 'Marketing of agricultural produce', pp. 567-8. On the shortage of specie, see Styles, 'Our traitorous money makers', p. 173, and Macfarlane, ed., *Ralph Josselin*, pp. 102, 110-1, 118, 546.

[3] Davenant, *Discourses on the public revenue and trade*, I, p. 152.

[4] Macfarlane, ed., *Ralph Josselin*, pp. 7, 32, 55, 71-2, 75, 81, 92, 102, 105, 118, 124, 150, 152, *passim*. In his diary, Adam Eyre, the Yorkshire yeoman, mentioned many of his own debts, and other people's as well; Morehouse, ed., 'Diurnall of Adam Eyre', pp. 8, 9-10, 15, 16, 23, 27, 29, 31, 36, 40, 43, 46, 51, 67, 68, 69, 70, 71, 72, 73, 74, 76, 77, 86, 90, 91, 94, 98-9, 105, 107, 112.

[5] In 1560 there were 5,278 cases in advanced stages before the two courts. By 1606 this number had risen to 23,147, and by 1640 to 28,734. Cases in 'advanced stages of litigation' are those where the defendant had answered the summons of the plaintiff and come into court to join issue; Brooks, *Pettyfoggers*, pp. 49-51, 56-7.

scope for profits.[6] With the increase in business, more credit was being extended. In Common Pleas by 1606 over 80 per cent of the cases were suits of debt which involved some sort of written obligation such as a bond or bill of exchange. By 1640 suits of debt accounted for 88 per cent of the business of Common Pleas and 80 per cent of that of King's Bench.[7]

These figures are impressive and reveal the courts as institutions which played an important role in economic life. They were perhaps the most important formal secular institutions outside the family, for there were still few banks, manufactories, or incorporated companies. The authority of the law was necessary for the enforcement of unfulfilled obligations within the credit network, and the courts were the institutional embodiment of this authority. But apart from work on bankruptcy, economic historians of the early modern period have not dealt with the relationship between litigation and credit.[8] Clearly this needs to be examined. Court records contain a great deal of evidence concerning both the extension of credit and litigation over it, and there is much case law providing information both about the litigants and about their transactions. This shows not only who was suing whom, but also, just as importantly, who was *lending* to whom. By studying such records we can hope to demonstrate just how important both credit and litigation were to most individuals, and to draw some conclusions about the implications for early modern society in general.

Such a study is best made through the records of a local jurisdiction because litigants can be identified and studied in detail within a relatively limited geographical area with a small population. For this reason I have chosen to analyse complaints entered in the borough court of King's Lynn in north Norfolk, in which civil actions were heard.[9] As in the central courts, a great deal of litigation was initiated here, most of which concerned credit. By examining this litigation it is possible to determine the extent of social participation in both the credit network and the legal system, something which is difficult to do in such detail with the records of the central courts.

I

King's Lynn in the reign of Charles II was a wealthy and vibrant trading entrepot, with a market area which stretched far along the river system

[6] Brooks, *Pettyfoggers*, pp. 93-5; Youings, *Sixteenth century England*, pp. 130-77, 230-53.

[7] Brooks, *Pettyfoggers*, pp. 67, 69.

[8] Bankruptcy statutes have been studied by Jones, and bankruptcy cases by Hoppit: Jones, 'The foundations of English bankruptcy'; Hoppit, *Risk and failure*; *idem*, 'The use and abuse of credit'; *idem*, 'Attitudes to credit'. For work on debt litigation in a later period, see the introduction to Rubin and Sugarman, eds., *Law, economy and society*, pp. 1-123; and Francis, 'Practice, strategy, and institution'. On the relationship between law and the economy in the seventeenth century, see Francis, 'Structure of judicial administration', pp. 131-7.

[9] Compared to criminal and regulatory prosecutions, civil litigation in local jurisdictions has been curiously neglected by the new generation of social historians who have studied the cultural significance of law within both rural and urban communities in early modern England. Civil suits, however, were heard in the palatine courts of Chester, Durham, and Lancaster, and before the Welsh Council and the Council of the North, as well as in county, hundred, manorial, and borough courts. The most significant works on civil litigation in such jurisdictions are Jones, 'Exchequer of Chester'; *idem*, 'Palatine performance'; and Ingram, 'Communities and courts'.

connected to the Great Ouse. It was a chartered borough whose prosperity was built on the importance of water navigation.[10] Lynn supplied the whole of six counties, and part of three others.[11] Goods from upriver were unloaded at Lynn to be transferred to coasting or overseas vessels, and vice versa. Grain was exported, while coal, salt, and other goods were shipped along the coast and moved inland. The town's population of between 7,000 and 8,000 was not too large to be analysed. In addition the records of civil pleading in the town have survived in a fairly complete form for most of the period.[12]

Although Lynn had other courts including a court leet, and its own quarter sessions, the most important jurisdiction for civil pleading in the town was the Guildhall Court in which the mayor and recorder sat in judgment.[13] It was held twice a week on Wednesdays and Saturdays, before the mayor and/or the recorder, or either of their two deputies. The Letters Patent of 1537 gave the court 'Power, Jurisdiction and Authority' to hear real, personal, or mixed plaints within the king's writ as well as plaints for messuages, lands, and tenements within the borough. It could hear suits of debt, trespass, detinue, account, and covenant on actions which had to have taken place within the borough, and on average over 1,000 civil suits were being brought into the court each year in the Restoration period.

Most of this litigation concerned credit. But unlike the central courts, where litigation often involved suits of debt over sealed obligations such as bills of exchange and bills obligatory, most litigation in Lynn involved suits of trespass upon the case. These commonly concerned not sealed contracts, but agreements which only had the status of oral contracts at law, and as such involved the extension of a great deal of trust.[14] The great majority of this pleading concerned unpaid sales credit which had been extended on goods bought and sold. Because of the lack of cash, most buying and selling was done on credit, and accounts were compared at regular intervals to settle the difference in cash.[15] Cases involved credit for items as varied as coal, wax, fish, bread, meat, and even hats. They could be for large sales, for example over 80 barrels of beer, or very small sales, such as that of beef worth 10s.[16] Between 1683 and 1686, 83 per cent of the suits brought before

[10] Willan, *River navigation*, pp. 1, 6, 82, 119-21.

[11] Defoe, *Tour*, pp. 73-4.

[12] The records of the court are contained in two main series, the plaint books: Norfolk Record Office (hereafter N.R.O.), KL/C26, and the main court books: N.R.O., KL/C25, which recorded everything else. When cited, references to these sources are listed by date of entry rather than by folio.

[13] N.R.O., KL/C2/46, 48.

[14] Trespass upon the case was a form of pleading in *assumpsit*, a body of law which had developed in the sixteenth century to deal with tortious wrongs, and which has over time developed into modern contract law. The action of trespass upon the case to recover debts, in contrast to the action of debt, was based on the wrong done by a broken oral agreement. For the most recent work on the subject see Baker, *The reports of Sir John Spelman*, II, pp. 255-98; *idem*, 'New light on Slade's case', pp. 213-36; Ibbetson, 'Sixteenth century contract law'; *idem*, 'Assumpsit and debt'; Simpson, *History of the common law of contract*, II; Milsom, *Historical foundations*, pp. 283-360; Kiralfy, *Action on the case*.

[15] Kerridge, *Trade and banking*, pp. 40-4.

[16] N.R.O., KL/C25/17, 28 June 1652; KL/C25/18, 24 Aug. 1653.

the court were trespass upon the case, in contrast to only 15 per cent which were suits of debt.[17]

Because the Guildhall Court was a court of record, the various stages of cases appear in differing amounts of detail. Here, though, it is only the initiation of litigation which will be considered, because these figures give the best estimate of the quantity of credit disputes which individuals felt impelled to take to court. The first step for a plaintiff wishing to initiate a lawsuit would be to go to the Guildhall on a court day and have the clerk enter a complaint in the plaint book. These very simple records of plaints listed the name of the plaintiff, the name of the person the suit was directed against, the type of suit, and the amount of damages sought in a suit of trespass, or the amount owed in a suit of debt. In cases of debt where written obligations were involved, the defendant's occupation and town of residence would also often be given. The numbers of plaints entered in the court for a selection of sample years from 1658 to 1750 are shown in table 1.[18] In this table the years 1683 to 1686 are listed inclusively because they will be examined in more detail.

Table 1. *Plaints entered in the Guildhall Court, 1658-1730*

Year	*Number of plaints*
1659	1,161
1666-7	898
1683	1,314
1684	1,404
1685	1,717
1686	1,541
1700-1	1,004
1710-1	608
1725-6	661
1750-1	160

Note: The average for 1683-6 was 1,494.
Source: see n. 18

It is immediately evident that the number of suits initiated in the court was high in proportion to the population of the town, indicating just how much credit must have been extended.[19] Totals of 1,000 or more suits are

[17] The other 2 per cent were cases of simple trespass or trespass and assault; Baker, *English legal history*, pp. 56-8.

[18] These figures are taken from plaint books; N.R.O. KL/C26/1, 2, 3, 9, 10, 11, 12, 13, 17, 18, 19, 22, 25, 35. Each year is measured from January to January, and the totals given are actually an average of two consecutive years, except for the years 1683-6 which form the core sample years of the study. The figure for 1659 is also taken from only one year, measured from October 1658 to September 1659, because this is the first book which survived.

[19] It should be stressed that it is unlikely that any of the enormous number of complaints entered in the court plaint book were merely done to make a register of a debt at the time of a transaction, as seems to have been the case in some medieval jurisdictions. Complaints entered in the Lynn records were very simple, consisting only of the names of the litigants, the type of suit, the place of residence and occupation of the defendant in suits of debt, and the amount of *damages* asked for. As in suits today, damages asked for were inevitably higher than the actual amount owed, as is shown by plaintiffs' declarations in cases which went beyond the initial stage of complaint. Thus, the complaints were not an accurate record of what was owed, and would have been of little use as proof in the case of a dispute.

impressive, but still must represent only a small part of the tens or hundreds of thousands of business transactions involving credit which took place each year in Lynn, whether they involved a merchant purchasing a shipment of coal from Newcastle, or someone borrowing a horse to ride to Ely.[20] One merchant, for instance, left at his death a record of 330 people indebted to him.[21]

Such a large number of suits shows that the court was an extremely active jurisdiction until the end of the seventeenth century, when litigation declined rapidly. They also indicate that the initiation of litigation must have been a fairly normal part of the process of recovering debts or resolving disputes over payment.[22] Although it is difficult to judge from the records available, the initial stages of litigation, in contrast to a more drawn out suit, do not seem to have represented a serious furtherance of conflict beyond the causal dispute. Rather, the entering of a complaint appears to have been a common part of the credit arrangement. It was probably akin to some of the York defamation cases studied by Sharpe in which the initiation of a suit was actually part of an attempt to bring a dispute to settlement.[23] This is borne out by the fact that only 16 per cent of the cases went beyond the stage of complaint, and only 4 per cent ever came to judgment. Most of the cases which were not taken any further were presumably resolved out of court.

The single entering of complaints cannot represent the vexatious litigation to which contemporaries referred, for if so it is hard to see how society could have functioned normally. Economic expansion certainly created more conflict and opportunities for disputes, but most litigation was not a seriously malignant result of this. Vexatious litigants were those who used the practices of the courts, and in the case of debt litigation, the power the law gave them to collect their debts, further to harm those whom they sued, rather than to resolve their dispute.[24] In contrast, most of the Lynn complaints were largely successful attempts to resolve disputes and maintain the bonds of credit necessary for economic stability. Contemporaries complained about the increase in litigation and the growing complexity of the law, because it facilitated abuse of the system. Such complaints should not be seen as a blanket condemnation of litigation itself.

The data presented in table 1 and in figures 1 and 2 demonstrate the continuing high level of activity of the court throughout the latter half of

[20] N.R.O., KL/C25/17, 28 June 1652, 9 April 1653; KL/C25/18, 14 Jan. 1654.

[21] P.R.O., PROB 4, 25788.

[22] The decline in litigation after 1700 was roughly paralleled by a similar decline in the central courts, the church courts, and other local jurisdictions. Brooks has made some very insightful initial suggestions as to why the decline might have taken place in the central courts, but the general decline throughout the legal system is a striking phenomenon which needs more investigation. I hope to investigate why it occurred in Lynn. See Brooks, 'Interpersonal conflict', *passim*; Jones, 'Palatine performance', pp. 202-5; Ingram, *Church courts*, pp. 372-4.

[23] Sharpe, 'Such disagreement'; for Sharpe's criticisms of Stone, see Sharpe, 'The people and the law', p. 252. For a larger discussion of the role of the arbitration of economic disputes see Muldrew, 'Credit, market relations and debt litigation'. See also Sharpe, 'The people and the law', pp. 246, 253-4; Ingram, 'Communities and courts', pp. 125-7, 134; Powell, 'Arbitration and the law'; Jones, *Chancery*, p. 269.

[24] For discussions of vexatious litigation, see Brooks, *Pettyfoggers*, pp. 108-11; Jones, *Politics and the bench*, pp. 35-6.

the seventeenth century. Litigation remained at a level above 1,000 suits a year except for 1666, when it fell to 900. The 1680s, though, were clearly a peak period for litigation, with over 1,200 suits in each year from 1683 to 1686. The average number of plaints for each of the four years selected was 1,494, which was 22 per cent greater than the level for 1659, and 30 per cent higher than in 1700, and it is probable that these high figures are a reflection of the trade boom of the mid 1680s.[25] Since the initiation of litigation seems to have been a fairly normal part of debt collection it appears reasonable to assume that with an increase in transactions there would have been more credit, more defaults, and more litigation.[26]

Impressive as these figures are, they become much more meaningful in the context of the town's population. In the four years 1683-6, at the height of the court's activity, 5,976 plaints were entered in the plaint books. The names of all these litigants were recorded, and table 2 lists the total number of people appearing in the plaint books at least once, either as a plaintiff or a defendant, or as both.[27] A great many people were involved in the court at this stage. Of the total number of litigants, over half, 58 per cent, appeared as plaintiffs, and 67 per cent as defendants, while 26 per cent appeared as both. Those appearing as plaintiffs sued an average of 3.4 times each, while the defendants were sued an average of 3 times each. The average number of times any litigant appeared as either a plaintiff or defendant, or both, however, was four.

Table 2. *Total number of plaintiffs and defendants, 1683-1686*

Plaintiffs	1,741
Defendants	2,010
People who are both plaintiffs and defendants	768
Total people involved	2,983

Source: as tab. 1

Most of these litigants were male. The court seems to have conformed to the law which prohibited married women from initiating litigation in their own right, and almost all the women appearing alone in the records were widows or spinsters.[28] Only 154 plaintiffs (9 per cent) and 123 defendants

[25] Chandaman, *English public revenue*, pp. 34-6, 75-6.

[26] The levels for the single years 1678 and 1689 respectively were 1,039 and 1,002: N.R.O., KL/C26/7, 15.

[27] The counting of names and standardization of spelling was greatly aided by Wrigley's methodology for family reconstitution; Wrigley, 'Family reconstitution'. When counting names, spelling was standardized when different spellings were obviously the same person. People who were discovered to have shared a name were marked, and the number of times each individual among them sued, or was sued, was then divided proportionately on the basis of the number of times different occupational listings occurred, or according to wealth, as wealthy people tended to sue more often. If no such information was available, the suits were simply divided out evenly to each person in a group with the same name. In every case discretion was used, but the size of the total sample should compensate for any error. Individuals who shared a name, however, constituted only a small part of the total sample. In the case of plaintiffs they constituted only 6 per cent of the total; in the case of defendants only 5 per cent.

[28] Sheppard, *Actions on the case for deeds*, pp. 10-1.

(6 per cent) were female, and they were seldom involved as litigants. Female plaintiffs brought 346 cases into court, which means they each sued an average of only 2.2 times, while female defendants were proportionately even further below the general average, each suing only 1.6 times.

In addition, not all the people who used the court actually resided in King's Lynn. Although the transactions under dispute had to take place in the town, the people involved could come from elsewhere. Thirty per cent of the defendants had their place of residence listed in the plaint made against them, and 28 per cent of these individuals came from outside King's Lynn.

From this initial discussion it is already evident that the court was not dominated by an elite, especially when almost 60 per cent of litigants came into the court on their own initiative as plaintiffs. By comparing this figure with an estimate of the town's population it is possible to determine how many households were actually involved in litigation.

Hearth tax records from the late 1660s and 1670s indicate that there were about 1,800 households in the town.[29] Work done by Cooper on kinship in Lynn indicates a lower average household size than Laslett's commonly used estimate of 4.75, probably between 4 and 4.5. This would mean that the population of the town was between 7,000 and 8,000, but what is important for the purposes of analysis here is the number of households.[30]

By comparing the number of litigants with the hearth tax estimate, it is possible to determine what percentage of the town's household heads were actually involved in the court over the four years under consideration. Almost all the litigants were heads of households, since neither wives nor children were involved on their own.[31] Only adult males, widows, and spinsters could be matched.

If the proportion of outsiders was the same for the plaintiffs as it was for the defendants, then the total number of litigants who resided in King's Lynn in the mid 1680s was 2,019.[32] If this figure represents the number of Lynn households involved in the court, it is remarkable for being larger by 220 than the households recorded in the hearth tax. This discrepancy could mean that the number of households exempted from the hearth tax has been

[29] The figure of 1,799 households was arrived at by adding 973 households from a hearth tax from the late 1660s (the tax is undated, but comparison with other records indicates that it almost certainly came from these years) with 826 households listed as being exempted from the tax in 1670. The numbers of households exempted in 1672 and 1674 were consistent with the number exempted in 1670, indicating that the number exempted in the late 1660s was probably roughly the same, which is why I have added the two figures: P.R.O., E179/367/13; E179/238/119; E179/154/697.

[30] Cooper, 'Family, household, and occupation', pp. 24-6, 127; Laslett, 'Mean household size', pp. 125-58. A household multiplier of approximately four is also more in line with other estimates made for urban areas in the seventeenth century: Cooper, 'Family, household, and occupation', pp. 24-6; Boulton, *Neighbourhood and society*, pp. 16-8.

[31] The 1689 poll tax taxed all members of the household including servants and children. Only those on alms, children of day labourers who were under 16 and servants in husbandry, those exempt from the poor rate, and families worth less than £50 who had more than four children were exempted: 1 Wm and Mary, c. 13, VI.

[32] This figure was arrived at by subtracting the 28 per cent of outsiders from the total number of litigants given in table 2, and then reducing that estimate by a further 6 per cent to account for the yearly turnover as new people migrated into town or grew old enough to enter the sample, and others died or left Lynn.

underestimated, or more likely, that in some households more than one member was involved in the court, which could have happened if a widow or young tradesman was lodging with a family.

This figure is startling because it is actually larger than the best, and highest, estimate of the population of the town. This means that over a four-year period all, or almost all, of the households in Lynn were involved in at least the initial stages of litigation, and a majority of household heads appeared as plaintiffs at least once. Of course, this sample represents the court at its peak of activity, but since each person was involved an average of four times, even if there were only 1,000 odd plaints a year, most households would probably still have been involved in other years in the second half of the century, only less often.

To show how active the Guildhall Court was, a comparison can be made with the courts of Common Pleas and King's Bench. In 1640 it has been estimated that 41,250 cases were initiated in Common Pleas.[33] Since the court's jurisdiction extended over the whole of England, with a population (in 1641) of 5,091,725, there were 810 instances of litigation per 100,000 people.[34] The rate of litigation for King's Bench in the same year would have been 318 per 100,000 of the population. In comparison, assuming that the population of King's Lynn was 7,500 for any one of the sample years in the 1680s, and dividing this into the average number of plaints (1,494) per year, and then multiplying it for comparison with the national figures, a rate of 19,920 instances of litigation per 100,000 emerges, much greater than either King's Bench or Common Pleas at the height of their activity. These calculations show that the local borough court was still a far more important forum for interpersonal litigation than those at Westminster.

Both Ingram and Sharpe have suggested that litigation not only affected the gentry, nobility, and wealthier tradesmen but penetrated much deeper into society.[35] Both authors, however, were inferring a high degree of public involvement from data for courts of all kinds over long periods of time, and including a great many cases that were not civil suits initiated privately, but suits concerned with public order. The Lynn court figures, in contrast, are derived from a single court in the town, which dealt only with civil pleas, and they have been related much more closely to a known local population.

These figures indicate that litigation not merely penetrated deep into society, but seems to have engulfed it completely. They also show that credit was extended by individuals from much lower on the social scale than some of the historians of eighteenth-century business credit have assumed.[36] In King's Lynn, both credit, and the use of litigation over credit were not something exceptional, but a common feature of life for most members of

[33] Brooks estimated that there were twice as many suits initiated as those which reached advanced stages. In King's Lynn the comparable figure was closer to five times larger than the number reaching advanced stages of litigation. Brooks, *Pettyfoggers*, pp. 49-51, 305, n. 21.

[34] Wrigley and Schofield, *Population history of England*, p. 258.

[35] Ingram, 'Communities and courts', pp. 112-6, 134; Sharpe, 'The people and the law', pp. 246, 251.

[36] Anderson, 'Money and the structure of credit', pp. 97-8; Kerridge, *Trade and banking*, pp. 50-2; Hoppit, *Risk and failure*, p. 25; *idem*, 'Attitudes to credit', pp. 306-7.

the community. This situation, if it was normal in other towns, has been until now an unobserved feature of early modern society.

II

If the majority of the town's population were involved with the court, this must have included most of the poor, who were not, therefore, culturally isolated from the town elite and the middling sort in matters of law and marketing. Information on individual wealth is available most importantly in the parliamentary aid of 1689, but the 1689 and 1692 poll taxes and another aid from 1693 are also useful. The 1689 aid was a tax on the yearly profit arising from the sale or use of 'Goods Wares Merchandizes or other Chattells or Personal Estate'. Liability for taxation was worked out in the act to a standardized formula that estimated one-twentieth of profit to be worth 6s. for every £100 of the real value of goods in stock or rent. Household 'stuffe', stock on lands, and debts owed were exempted. The act also taxed 'Lands Tenements and Hereditaments' by a simple rate of 1s. per £ of the true yearly value (usually the annual rent). The fees and profits of office holding were taxed at the same rate.[37] The tax provides a very extensive record of household ownership and the value of tradesmen's stock in King's Lynn.[38] The lowest valuation of goods taxed was £25, and it rose thereafter by multiples of 50 into hundreds of pounds. Rents ranged from £1 to over £20 per year. None of these taxes listed property held outside the town, but since they give a detailed valuation of housing and stock, they are at least as accurate as the hearth taxes.[39]

To make sense of this mass of information, and to see who the poor were suing, various categories of general wealth have been created, based on the value of goods, property, and rents owed to them. Category 1 is composed of people who did not appear on any of the tax lists, which would have encompassed people from outside the town, and more importantly, most of the town's poor, who would not have been taxed. The other categories are graded from poor to wealthy. People from category 2, for instance, had housing worth £5 or less a year or only £25 worth of goods. Categories 2 to 4 comprised the town's middling sort of modest wealth, while categories 5 to 8 encompassed members of the town elite. Category 5 included people with goods worth over £100 and housing worth £6 to £12, or housing worth £13 to £20 but with goods worth only £50 or less. Category 8 represented

[37] 1 Wm and Mary, c. 20.

[38] N.R.O., KL/C47/8.

[39] Spufford has demonstrated that an association existed between wealth and house size; she has also argued that hearth tax assessments can provide an accurate guide to status and wealth: Spufford, *Contrasting communities*, pp. 36-41. Doubts about the correlation between rent paid on a property and total wealth, however, have been raised by Alexander, who has compared wealth listed in people's inventories with their poll tax and aid assessments from London in the 1690s. He found a low correlation between rent and total wealth, but the correlation became much better when stock was included in the calculation. On the whole, though, Alexander concluded that the parliamentary aid, although it tended to underassess some wealthy people, can be used as an accurate guide to general wealth: Alexander, 'Economic and social structure', pp. 10-38. My own informal comparison of a much smaller sample of inventories from Lynn with the assessments I have used certainly indicates a correlation between wealth and assessed rent and stock: Muldrew, 'Credit, market relations and debt litigation', pp. 87-108.

the pinnacle of the town's elite and included people with housing worth more than £40 and goods valued at over £500.[40]

Category 1 presented something of a problem in the estimation of how many poor individuals were using the court, because it contained not only those too poor to have been taxed by the parliamentary aid, but also people from outside Lynn. Moreover it further included people who were not taxed because they had died or left town in the period 1683-9, whose wealth may well have meant they should have been placed in a higher category. In order to determine what proportion the poor formed of the total number of people using the court, these other individuals had to be removed. To eliminate the first group the number of plaintiffs from outside Lynn was assumed to be the same as in the case of defendants, or 28 per cent, and this percentage was subtracted from the figure for wealth category 1.[41] Estimating the amount of migration from the town each year was harder. In light of Clark's work, however, it seems safe to assume that migration out of a town of this size was not very high, and a conservative reduction of 1 per cent of the total population has been used.[42]

Calculating the number of people who died simply involved counting them in the burial registers for the town. Two hundred and forty individuals who sued in the court were found in these registers, which implies that 8 per cent of the total court population died before the end of 1689.[43] Thus, 37 per cent of the *total* number of litigants (2,983) needed to be subtracted from the gross population figure for category 1 to account for those who either came from outside the town, or who might have been wealthy enough to have been placed in a different category had they survived to be taxed, or had they not migrated.[44] The total in figure 1 for category 1 was therefore derived by subtracting 37 per cent of the total number of litigants (1,104) from the original number of litigants counted in category 1 (2,302). The remaining 1,198 litigants can reasonably be assumed to represent the poorest part of the town's population.

[40] These valuations were augmented by some additional information from the 1689 poll tax which included a surtax on certain wealth over £100, together with some information from the 1692 poll tax which placed a special rate of 10s. on tradesmen, shopkeepers, and vintners with an estate of £300 or more: 1 Wm and Mary, c. 13; 3 Wm and Mary, c. 6. The exact specifications for each wealth category are described in more detail in Muldrew, 'Credit, market relations and debt litigation', pp. 87-108.

[41] It is possible that there might have been more plaintiffs than defendants from outside the town, which would mean category 1 should be reduced further, but this does not seem likely because plaintiffs from outside would have had to make an extra journey into town to make the complaint, which a resident would not have had to do.

[42] Clark, 'Migration in England', pp. 1, 63-7, 78. See also Souden, 'Migrants and the population structure', pp. 99-132.

[43] N.R.O., PD/39/35, 113. Obviously those who died before the aid was taken, had there been information on their wealth, would have been included in one or another of the various categories, making these categories somewhat larger, and this fact must be kept in mind when looking at the total population numbers. But since it is unlikely that the deaths would have been biased towards any one category, it can safely be assumed that the actual percentage value of each category in relation to the others remains the same with the dead people missing.

[44] It is also probable that a certain number of wealthier individuals managed to avoid being assessed for any of the taxes used here, but their number must have been very small. Alexander's work shows the 1692 aid in London was comprehensive, and this seems to have been the case in Lynn as well. Certainly, the inclusion of any evaders would not alter my distribution significantly: Alexander, 'Economic and social structure of the City of London', pp. 18-22.

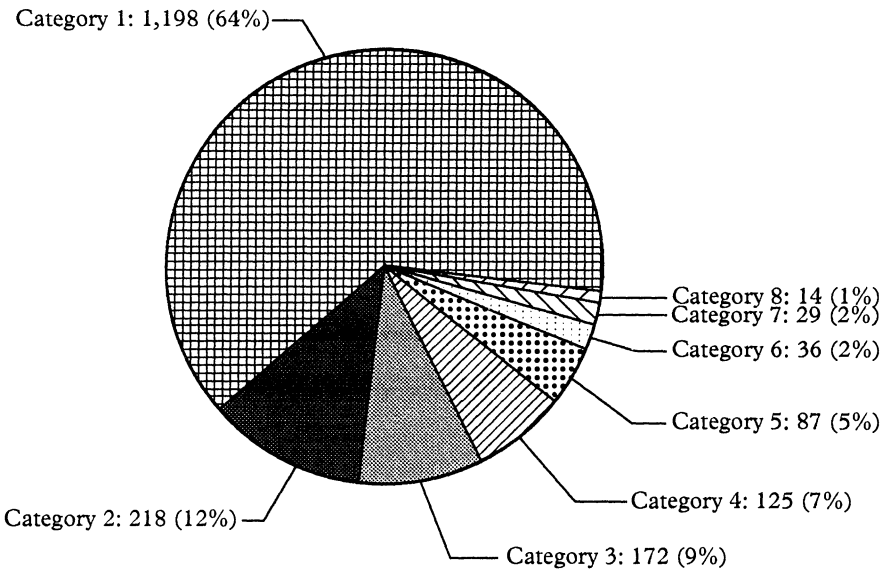

Figure 1. *Breakdown of all litigants using the borough courts into categories based on wealth*

Source: N.R.O., KL/C26/9-13 (plaint books); KL/C47/7,8,10,11,12-5,16 (poll taxes); ANW/23/1-9; INV 32A-70 (Norwich archdeaconry and diocesan inventories); P.R.O. PROB4/1745, 1906, 3711, 4040, 11260, 19169, 21265, 21886 (P.C.C. inventories)

The total distribution of population appearing before the court from each of these wealth categories is given in figure 1. The people from category 1 formed 64 per cent of the litigants. This can be compared to 63 per cent of the population who were taxed on one hearth or who were discharged in the hearth tax discussed earlier. This correlation supports my estimated reduction of category 1. It also shows that a great majority of the town's poor households were indeed involved in litigation.

Establishing these categories also makes it possible to examine litigation between people of differing wealth, and to see who the poor were suing. Table 3 lists the total number of suits initiated by plaintiffs from each category.

While poor plaintiffs from category 1 did not, as individuals, initiate as much litigation as the others, they were still involved as plaintiffs to a very significant degree. The richer a person was, the more likely he was repeatedly to initiate litigation, because the wealthy had more business dealings than the poor. Nevertheless, the fact that the poor were still involved in such numbers remains startling. Seventy-seven per cent of the plaintiffs came from category 3 or below, and these people initiated 53 per cent of the suits. On many court days the poor would have been present in the hall with their betters, and would also have spent much time talking to lawyers, or entering complaints with the court clerk.

These bald statistics can be fleshed out with a number of examples of poorer individuals who sued in the court. William Wilkinson and Christopher

Table 3. *Average number of suits per plaintiff from each wealth category, 1683-1686*

Category	*Plaintiffs*	*Plaints*	*Average no. of plaints*
1	571	922	1.6
2	142	498	3.5
3	130	643	4.9
4	104	567	5.5
5	77	489	6.4
6	33	257	7.8
7	26	238	9.2
8	14	206	14.8

Source: as fig. 1

Hestlewood, for instance, were given rooms by the town in the almshouse in Paradise ward as they were poor and over 50 years of age. Wilkinson, a patten maker, sued five times, while Hestlewood sued once.[45] In addition, there were three individuals from the first category, Joseph Clarke, John Rogers, and John Manning, for whom inventories survive demonstrating their poverty, all of whom brought suits into the court.[46]

Taking the analysis one step further, it is also possible to show in graphic form who the poor were suing, and this is done in figures 2 and 3 for categories 1 and 2.[47]

What is noticeable about these figures is how similar the distribution of defendants by wealth category is to the wealth distribution for the population as a whole. There was little bias towards any particular categories of defendants. Those whom category 1 plaintiffs sued were equally likely to be from any station in society, and those whom category 2 plaintiffs sued were even likely to be somewhat wealthier. In aggregate terms the choice was weighted largely by the number of people in each category. Even though the poorer members of the town came into the court to sue less frequently than wealthier plaintiffs, when they did sue, they sued their richer neighbours, as well as other poorer people. It was just as likely for an individual from category 1 to choose to sue someone from categories 4, 5, 6 or 7 as it was for a person from category 7 to do so. The poor could, and did, sue the elite of the town. In fact, calculations for other wealth categories show that people from category 1 were more likely to sue defendants from categories 3 to 7 than were plaintiffs from category 7 or 8! Other calculations also demonstrate that the wealthy did not prey upon poor defendants.

Thus, in social and economic terms, credit was a levelling force within the community. Rich and poor alike were bound by reciprocal bonds of

[45] N.R.O., KL/C7/12, fo. 21v. Alice Browne, a widow who sued twice, was also listed in the Hall Books as having received £8 from the town because of her poverty. Ibid., fo. 29.

[46] Clarke's inventory was worth £1 14s. 6d., Rogers's was worth £4 15s., and Manning's £11 8s. 4d. Clarke sued twice, as did Rogers, and Manning sued once. N.R.O., ANW/23/4/83; ANW/23/4/70; INV/67b/17.

[47] When making these calculations it was unfortunately necessary to omit those people who shared a name, but this did not involve the elimination of many people. Of category 1 plaintiffs, for instance, 51 shared a name, and this was only 4 per cent of the total population of category 1 plaintiffs.

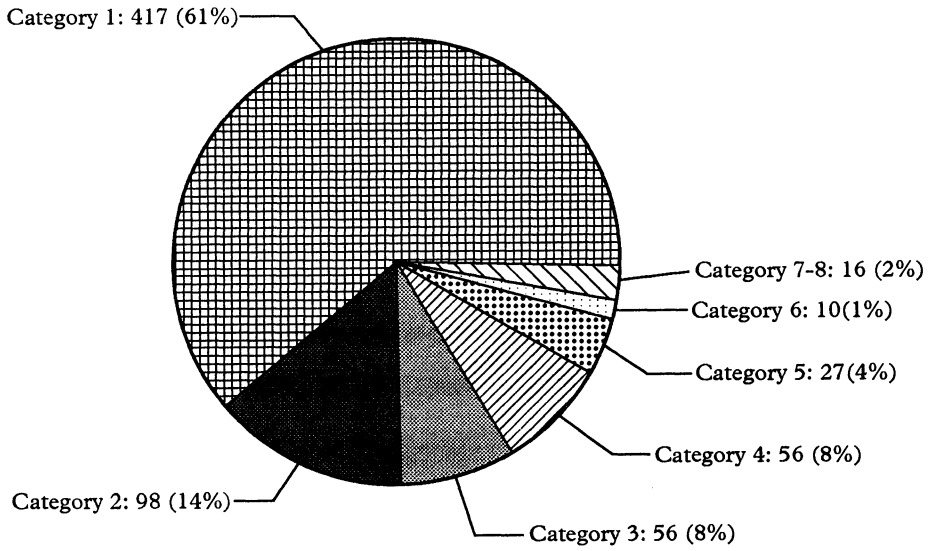

Figure 2. *Analysis of suits made by plaintiffs in category 1, showing the number and percentage of defendants they sued from each wealth category*

Note: In this fig., and in fig. 3, the numbers of both plaintiffs and defendants in category 1 have been reduced using the method described on pp. 32–3.

Source: as for fig. 1

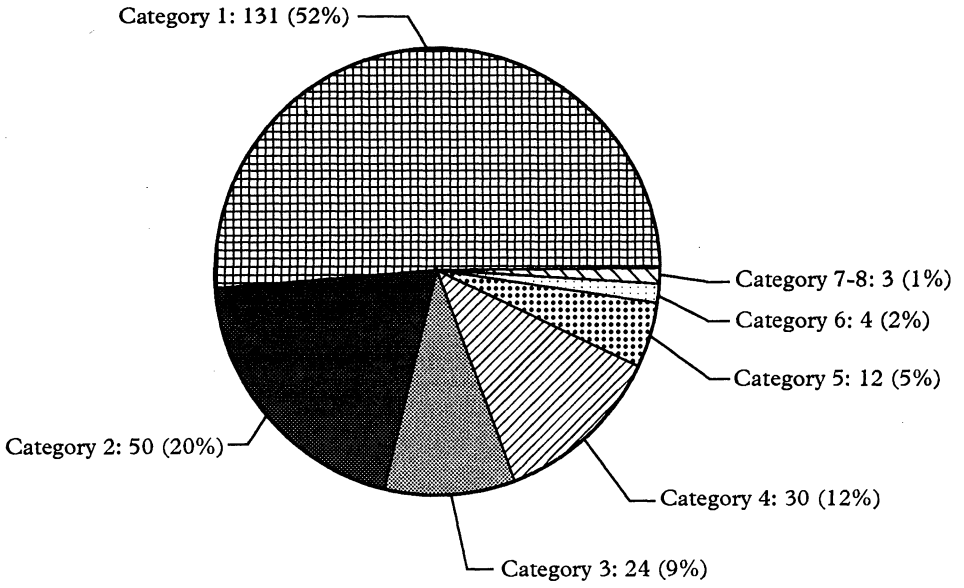

Figure 3. *Analysis of suits made by plaintiffs in category 2, showing the number and percentage of defendants they sued from each wealth category*

Note: see fig. 2

Source: as for fig. 1

indebtedness, and needed to trust one another. True, the poor were more indebted to the wealthy, and credit did not ultimately alter the power of wealth, but the wealthy were still indebted to the poor to a considerable degree.

III

It can only be concluded from this that the court was a surprisingly egalitarian and accessible institution in a society which believed in order and social hierarchy. Unlike the criminal law, there was obviously little social bias in terms of who could use the law against whom.[48] The wealthy did not use the court to force the poor to pay many debts, and certainly the poor showed no deference to their 'betters'. The court seems to have been available to all as an organ of dispute settlement, and it gives a very real illustration of equality before the law; an equality which seems to have wiped out social distinctions in this significant and prevalent sphere of social action.[49]

Further, the total amount of litigation initiated shows how important accessibility and neutrality were in a commercial society like King's Lynn, where credit relations were so intertwined. The court was needed to provide confidence and stability in commercial transactions that were made throughout the social scale. The town may have been highly stratified in terms of wealth and status, but it was also geographically concentrated, and because most people lived in very close proximity there would have been a great deal of personal familiarity in commercial dealing. The market did not, as much traditional historiography has assumed, exacerbate cultural differences. Rather, because marketing involved so many informal credit relations, it was something which introduced a degree of 'effective equality' into an otherwise stratified society. In many ways members of the community had equal potential as both economic and moral agents. All had to trust and also be trusted, and accessibility to the court was needed to maintain this trust.

The sheer volume of complaints shows how important credit and litigation were to almost every family in the town, and if King's Lynn is in any way typical it means that economic transactions and disputes cannot be ignored by social historians of early modern communities. Nor can trust and dispute settlement be ignored by their counterparts in the field of economic history.

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[48] For arguments about how elites and men of property used the criminal law to bolster and define structures of power, see Hay, 'Property, authority and the criminal law'; Herrup, 'Law and morality'; Sharpe, 'The people and the law', pp. 264-5.

[49] Although I have only dealt with the initiation of litigation here, this pattern can be traced through to judgment. See Muldrew, 'Credit, market relations and debt litigation', chs. 5, 8, 9.

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