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New Approaches to Late Medieval Court Records

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NEW APPROACHES TO LATE MEDIEVAL COURT RECORDS

Legal Ephemera in the Ecclesiastical Courts of Late-Medieval England

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The article identifies the ephemeral documents that were crucial to the operation of criminal business in the ecclesiastical courts of late-medieval England. It proposes a loose definition of ephemera, focusing on their material qualities as small, transient, and disposable documents. It then looks at different types of legal ephemera generated in the course of ecclesiastical legal processes, and the ways in which they framed – and inflected – the different relationships of power between clergy, parishioners, and the institutions of church discipline. As the material interface between church authority and the laity, ephemera were strangely fragile, a quality that was clearly noticed and sometimes exploited by disgruntled parishioners who ripped up citations. But they were nevertheless vital in conveying information and power. It was their collective weight – the capacity of church courts clerks to produce so many of these documents – that made them sharp instruments of regulation.

The system of ecclesiastical criminal justice in late-medieval England depended on a vast quantity of ephemeral documents, created in order to serve a brief communicative purpose. Documents such as citations, that brought defendants to court, or commissions, which empowered officials to hear a case or perform some process, were routinely deployed by bishops and their administrators; and in return, various missives, memoranda and notifications were sent back to them by parochial clergy and parishioners to provide information or certify the performance of orders. This constant flow of paper in and out of ecclesiastical legal institutions was essential to their function and meaning in the later Middle Ages. Yet despite their ubiquity, and their infrastructural importance, such legal ephemera have survived only rarely; their very routine instrumentality was part of what made them disposable and has mitigated against their survival and study.

Even where these legal ephemera have survived, by chance or design, they have often gone unnoticed. To take an unusual example: a couple of years ago I was examining an act book kept by the commissary-general for the consistory court of Hereford between October 1442 and July 1443. Looking at the wizened parchment of its cover binding, I noticed that there was a small length of paper, about 200 mm long and folded in half (**Figure 1**), tucked within its enveloping folds.[1] The paper

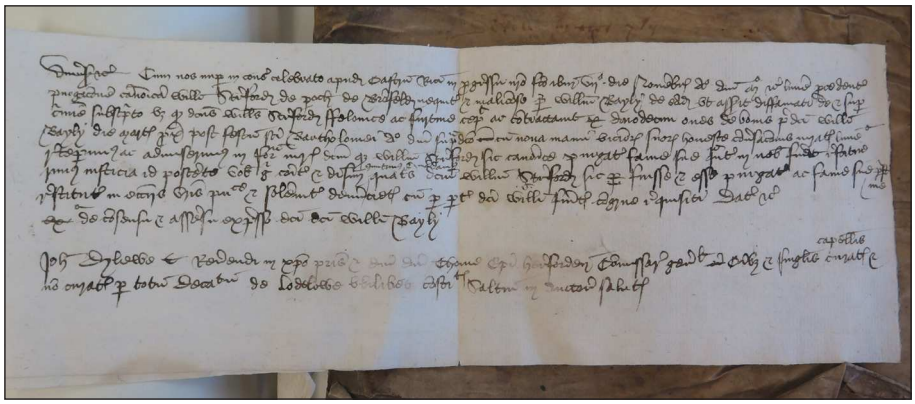

Figure 1: Notification of compurgation, William Dylewe, commissary-general of the bishop of Hereford, 'to all chaplains' in the diocese, November 1442. HARC, HD4/1/88, loose sheet in cover.

[1] Hereford Archive and Record Centre [HARC], HD4/1/88, loose sheet in cover.

is a notification by the commissary-general that William Streford of Bromfield had been defamed of theft, but had sworn his innocence and successfully performed his compurgation – finding a specified number of neighbours to swear to the trustworthiness of his oath – and so cleared his good name, a standard procedure in the lower church courts (Helmholz, 1983: 1–26).[2] While several historians have examined these act books in recent years, they had never uncovered this well-hidden document (Smith, 2004: 64–80; Werner, 2010: 159–81; Donahue, 1994: 169–70). This paper is a vivid symbol of the way that these ephemeral documents, crucial though they were to constituting legal processes, have remained buried within ecclesiastical archives.

Our understanding of late-medieval ecclesiastical legal institutions has traditionally relied on a few different kinds of evidence which bear the imprint of contemporary attitudes towards posterity and preservation. The legal materials of canon law – in the form of canons, glosses on provincial legislation, commentaries and procedural manuals – were normally collected in books. Many of these were imported into England, lavishly decorated and diligently preserved in institutional libraries as prestige objects (Helmholz, 1999: 387–98). Though far more workaday, the records of judicial proceedings (*acta*) also tended to be compiled in registers or books, often combined with various other kinds of administrative and legal material (Donahue, 2016: 259). While many of these have been lost, it seems that attempts were made to conserve them in institutional archives. As Ian Forrest has argued of visitation records, such materials were understood to represent proof of jurisdiction, and were thus kept as a cache of evidence in anticipation of potential disputes (2013a: 1–10). Our view of ecclesiastical discipline in the later Middle Ages, then, is largely the one that contemporary authorities attempted to preserve, the 'future perfect' of the archive (Derrida and Prenowitz, 1995).

A focus on legal ephemera can give us a different view of the workings of criminal business in the late-medieval church courts, revealing how their bureaucracy was

[2] It is possible to sketch out the broader context for Streford's case in the act-book itself: HARC, HD4/1/88, p. 30 [modern pagination]. Bromfield was a Royal Free Chapel and so exempt from the ordinary judicial authority of the bishop of Hereford, which may help to explain why the commissary-general was concerned to send such a notification.

interposed with the quotidian life of the laity. Behind every single citation for someone to appear before a tribunal, often noted in court records with just the word – *citetur*, 'he/she is cited', or *citatus*, 'having been cited…' – there was a small piece of paper or parchment, handed by a summoner to the defendant themselves, or to their vicar or rector to read to them. Behind every order for a guilty party to perform a penance, there was a notification sent back to the episcopal administration; in 1430, John Clerk of Sedgeford in Norfolk was warned to show a 'testimonial letter sealed by his vicar', to prove that he was married to the woman he was living with.[3] Church courts – insofar as the laity routinely encountered them – were substantially constituted by the massive weight of textual materials that propelled forward their regular bureaucratic activities. Ecclesiastical justice in the later Middle Ages was made of parchment and paper.

In this article, therefore, I would like to suggest that a focus on legal ephemera in the late-medieval church courts not only opens up a new type of ecclesiastical documentary culture for investigation, but can also tell us something about the ways in which the laity interacted with these institutions. For the sake of brevity, my focus throughout is on criminal or *ex officio* business conducted in lower ecclesiastical courts. The numerous stages of canon law civil litigation each generated reams of ephemeral working documents (some of which, such as the York Cause Papers, are very well known), and would require a separate treatment, though I have attempted to keep my definition of legal ephemera sufficiently broad to encompass these, too.[4] The next section of the article turns to this provisional definition. The second section looks at how the formal stages of criminal procedure in the church courts generated ephemeral documents; the third section explores what this meant for the operation and experience of ecclesiastical justice. The conclusion, finally, reflects on ephemeral documentary culture more generally, in relation to our conception of late-medieval legal institutions.

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[3] Norfolk Record Office [NRO], DCN 67/8, m. 2r.

[4] The cause paper records are held in the Borthwick Institute for Archives, York, under the class CP. Their use as sources for social history formed the subject of a debate between Pedersen (1995), Goldberg (1997) and Pedersen (1997).

Defining Legal Ephemera

Legal ephemera do not represent a coherent category of documentation in the traditional manner of legal history, according to jurisdiction, precedent or formula. Rather, marking certain kinds of documents as legal ephemera represents a kind of material classification, prioritizing other aspects of their substance and functions. As a provisional definition, I would like to propose that legal ephemera in the later Middle Ages were small, often single-sheet documents that were oriented towards the performance of a legal process, which after they had served their purpose were not ordinarily conserved. There are exceptions to this rule, of course – it is an irony of ephemera studies more generally that all surviving examples are inherently exceptional, even 'uncanny', precisely because they were conserved (Mussell, 2012). But in fact, by defining legal ephemera not only in relation to their transience, but also in relation to their format and function, it is possible to account for these exceptions. My intention here is not only to identify these poor-quality, lost and/or miscellaneous items, but also to show how the category of legal ephemera encompasses a wide variety of materials.

To begin with their format, legal ephemera were normally small, single-sheet documents, often made from paper cut horizontally from larger folia. These material qualities created several 'affordances', generating certain possibilities for their use (Lupton, 2012: 215–7; Smail, 2016: 19–20). It meant that ephemera were quick and easy to fabricate from the materials that lay to hand within ecclesiastical institutions, which purchased paper on a large scale in the later Middle Ages (Kwakkel, 2011: 185–6). The same quires that were folded and sewn together to make court books could easily yield mandates, monitions, citations and commissions. Their small size also related to their ephemerality, as they could be dropped, misplaced or forgotten. The abovementioned Hereford notification, slipped into a cover binding, is the exception that proves the rule; the size of ephemera also meant that they could be effortlessly preserved within other records. Indeed, almost all of the extant ephemera I discuss here survived because they were pasted, sewn or simply tucked into court books. Finally, their format also meant that they were very easily portable; many could be carried at once, to and from the legal institutions that created and processed them.

Legal ephemera were distinguished by their communicative immediacy. They were relevant to a time-limited event in the legal process. How that time was limited depended on a number of circumstances. A citation, for example, could be said to have been 'active' in the time between its issuance and the appearance of the cited person in court, whereas a memorandum jotted down on a piece of scrap paper had a much shorter life, redundant as soon as the information was successfully retrieved and copied. It was not just the small and flimsy material substance of ephemera, therefore, that made them ephemeral. Their function was transient. This represents a contrast with the long-term storage function of court records, preserved as evidence of jurisdiction in a world where it needed to be continuously exercised to be secure (Johnson, 2017). And this may help to explain, in turn, why ephemera were sometimes kept with or inside these records: they represented another layer of evidence for the exercise of authority. While they were created for an immediate task, then, legal ephemera could be repurposed and have a potential afterlife as 'records'.

On the other hand, we must assume that the vast majority of legal ephemera were thrown away: this disposability also represents a defining quality. Of course, there is a difference between an ephemerality borne of destruction and one borne of neglect (though they are not mutually exclusive), but it is difficult to determine, for the most part, which we are dealing with – it undoubtedly varied between archives (Donahue, 1974). It must remain an open possibility that ephemera were deliberately destroyed: certainly court records in this period were canceled with crosses, presumably for administrative convenience in distinguishing open cases from closed ones.[5] But equally, many ephemera might also just have been abandoned in a document chest or a sack, left to fade or even rot and later discarded as rubbish. Ephemeral materials sent outwards from institutions, such as monitions and citations, without even these basic archival practices to preserve them, must have had worse chances of survival still, though personal documents, such as certificates or testimonial letters, were

[5] Practice varied. The clerk who kept the act-book of the commissary-general of London diocese in the 1480s made a small 'x' in the margin by entries: London Metropolitan Archives [LMA], DL/C/B/041/MS9064/3. By contrast, the clerk who served the visitations for the dean and chapter of Norwich cathedral's peculiar jurisdiction over their subject manors in the 1430s made more strenuous efforts to cross out whole entries: e.g., NRO, DCN 67/3, mm. 2r., 3r.

perhaps retained by individuals in anticipation of having to use them in the future. But ultimately, the format, immediacy of function and inferior relation to other legal records, made the majority of these writings disposable.

As a final point, it is worth considering how we should demarcate the 'legal' quality of these legal ephemera. As I have been at pains to emphasize, I do not wish to restrict the definition simply to documents produced within legal institutions, as processes such as compurgation, penance or suspension from church necessitated the production of writings outside of formally constituted tribunals. Part of the broader social significance of legal ephemera is precisely that they were made by people other than legal officials, in the course of carrying out and certifying such routine extra-institutional legal acts. Therefore, we should consider legal ephemera generally as those documents made to aid the performance of a legal process, broadly conceived, to include events such as undergoing compurgation, giving witness testimony, agreements and arbitrations, producing verdicts at inquests and the making of petitions. Such an inclusive definition of legal process brings with it some borderline cases, such as informal letters sent outside of formal procedures, but in so doing usefully calls attention to the way that ecclesiastical institutions worked 'within the grain' of social relations (Forrest, 2011: 13). Part of the point of conceiving of legal ephemera as a distinct category of documentation is to highlight the interpellation of law and society in the later Middle Ages, a point to which I will return in the conclusion.

Ephemera in Criminal Procedure

With this provisional definition in mind, what were the institutional processes that provoked the production of legal ephemera in the late-medieval church courts? What follows is an attempt to reconstruct criminal procedure in these tribunals through the lens of their ephemeral documentary production, focusing at first on visitations because of their distinctive methods of soliciting information, and then moving to look at regular tribunals (Hemholz, 2004; Forrest, 2013b). It is important to remember that writings were just one mode of communication within these processes, and that there were important channels of oral and gestural information that ran alongside the use of ephemera (Symes, 2008). Formal proclamations made

before parochial congregations were part of legitimate procedure, just as a public penance might be specified for performance in church before one's neighbours (Forrest, 2005). However, emphasizing legal ephemera here enables us to trace quite sharply the information swilling around ecclesiastical institutions, and the pushing, pulling, riptides of communication generated by their legal procedure.

To begin with, ecclesiastical criminal procedure relied on the obtaining of information about crime. This first stage of communication is perhaps the most obscure. Cases often began with an explanation that they had been brought by *publica fama*, 'the public voice and fame', a legal concept which has cloaked the precise channels of reporting in darkness (Hemholz, 1983: 13–4; Fenster and Smail, 2003). It is possible, given the fact that so many criminal cases in the lower church courts clearly involved interpersonal disputes (for example over marriage or defamation), that some aggrieved parties made direct appeal to the institutions themselves (Donahue, 2016: 286). But Ian Forrest's groundbreaking work (2018) on the parochial *fidedigni*, or 'trustworthy men' has made a very strong case for placing them at the centre of lay ecclesiastical reporting. The capacity of these men to provide information to ecclesiastical institutions was a privilege that tended to be restricted to socio-economic elites within local communities, and, in the power it gave them to define reputation and misbehaviour, helped to further entrench their status.

But how did these crucial intermediaries between parish life and institutional correction actually report information? To begin with, we will look at visitations, when an ecclesiastical judge 'visited' all the parishes under his jurisdiction within a certain diocese, archdeaconry, deanery or other area, in order to correct and reform the clergy and laity there (Forrest, 2013b). When an official instituted a visitation, special citations were sent out to the judicial officials of the relevant jurisdictions. A sample of this kind of document can be found in a fifteenth-century formulary made by a clerk in the diocese of Lincoln from instruments extracted from the episcopal register of Philip Repyndon (in office 1405–1419).[6] The letter is addressed to the

[6] Now preserved as York Minster Library and Archives [YMLA], MS. Add. 22. The manuscript, which belonged to John Pakenham, a canon of York (and official there from 1455), is well described in Ker (1992: iv, 798–800). My thanks to an anonymous reader of an earlier draft for suggesting this

judicial officials of his deaneries of Lincoln and Stow and orders them to cite all rectors, vicars, priests and other clergy, along with 'four or six men from the more trustworthy parishioners' of each parish to appear at specified churches on certain days; it also asks the officials to return a certificate naming each of those men who were cited (in order that non-appearances could be noted).[7]

This order merely notified all concerned parties that the visitors would 'generally inquire' about which parishioners needed to be reformed and corrected, as though those inquiries would be made on the day of visitation itself. But it is clear that in practice the parochial representatives – both clergy and *fidedigni* – sent ahead writings to the judges, presumably in order to save as much time as possible for the conducting of process at the tribunal. A detailed example from the court book for a visitation of Leicester archdeaconry in the spring and early summer of 1413 can help to illustrate something of this process (Forrest, 2005: 208). Among its first folios is a tiny slip of paper reporting on the parish of Barkby. Written in Latin, it records simply that 'Thomas Pyper and John Tayler ate meat after Easter without having received communion'.[8] This was very fresh information, because Easter that year fell on 23 April, and the deanery of Goscote was visited – according to the schedule laid out in the visitation book – from Thursday 4 until Sunday 7 May. Less than a fortnight, then, had passed between their transgressions and the visit of the officials to the parish.[9]

However, the information recorded on this ephemeral document was not straightforwardly transmitted into the court record. The charge against John Tayler did not materialize in the court-book, while that against Thomas Pyper was changed; not only was the Latin of the original charge rephrased, but he was also noted to have laid violent hands on the vicar there, though by the time of the visitation this matter had been settled.[10] Pyper duly appeared before the judges at Barkby and explained

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manuscript to me as a way of uncovering more ephemera in the stages of judicial process. On other such collections, see Owen (1990).

[7] YMLA, MS. Add. 22, fos. 88r–89r.

[8] Lincolnshire Archives [LA], Vj/3, fo. 2a.

[9] LA, Vj/3, fo. 1r.

[10] Ibid., fo. 6v. The straightforward Latin of the bill had *commederunt carnes*; the Latin of the book had the more complex form *vescitur carnibus*.

that he had not received communion 'because he had not been in perfect charity' with one of his neighbours. This was an orthodox response, but of course it had nothing to do with meat-eating (Johnson, 2014). It seems possible that his violent confrontation with the vicar was connected with not having taken communion. Either way, the case does not appear to have been followed up and a subsequent note in the court book simply records that Pyper had left the parish. If the case against him fizzled out, though, the discrepancy between the ephemera and the records suggests a preliminary process in which written reports were organized before submission to the visiting judges.

This process becomes a little clearer from a deeper look at the court record. Most of the business of the Barkby visitation did not concern Pyper at all, but rather reports made about the vicar of the parish there: he was said to have left a child unbaptized for three days and to have failed to say the liturgical hours, instead 'wandering around in other places as he pleases'.[11] These charges were made by John Ernesby, a public notary and local notable who was highly active in helping to run this Leicester visitation. Presumably working in concert with the *fidedigni* of the parish, who must have provided the substantive information about the offences, his influence seems to have pushed the vicar's offences into the foreground of the judicial business (Forrest, 2005: 211). Even though no ephemera from these interactions survive, this broader context suggests that our surviving slip was probably just one of many submitted from the parish. Before the tribunal sat and judicial process began, therefore, the ephemera that had been sent forward to the visitors seem to have been sorted, clarified, and even added to, with some offences prioritized at the expense of others.

In some cases, there are reasons to suspect that this ordering of priorities was conducted by the *fidedigni* themselves, a point to which I shall return just below. But as a final point regarding visitation, it is important to note that parishioners also wrote directly to visitors. In the court-book recording the visitation of the dean and chapter of York Minster in 1510 to the prebendal church South

[11] LA, Vj/3, fo. 6v.

Newbald, the entry runs: 'Sir, o[u]r prebend & chirch is well…', before recording, in a composite of English and Latin, that the parish lacked a surplice and that the obits were not being sung, 'wherfor we desir counsel of yor maisterys'.[12] Given the formal address, the use of the first-person plural and the complaint about the provision of religious services, it certainly looks like a letter sent from the parochial representatives to the visitors, which the scribe did not fully translate into the formulae of Latin legal process. Indeed, the same book preserves a number of such ephemera within its pages (including another from South Newbald); some of them have been sewn in and are referenced in court entries as annexed 'bills' or 'schedules' (**Figure 2**).

These kinds of bills had long been submitted to officials for the court sessions that took place within the regular operation of ecclesiastical jurisdiction. An early set of ecclesiastical ephemera, preserved with an act book of the Dean and Chapter of Lincoln from the 1340s, contains a note from lay reporters (*inquisitores*) of an unknown parish, testifying to the moral condition of the clergy there.[13] Later, more detailed evidence hints at the sorting process by which these bills were handled. An

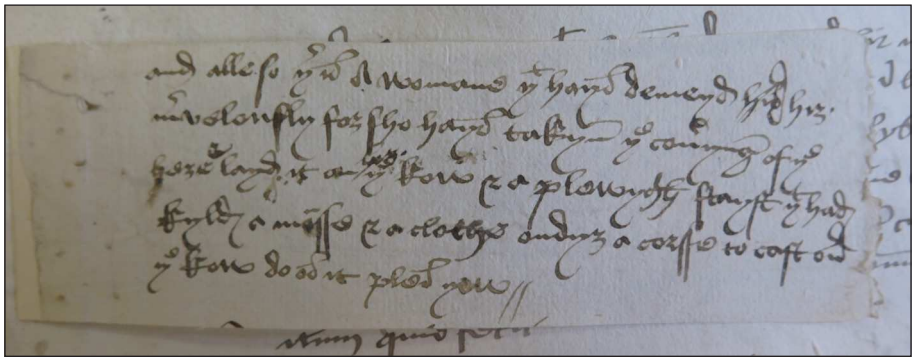

Figure 2: An 'annexed bill' reporting an offence from the parish of South Newbald, referred to in the entry of the visitation book which it covers, June 1510. YMLA, L2/3c, annex to fo. 134v.

[12] YMLA, L2/3c, fo. 134r [NB, contemporary foliation is 8fos. ahead of the modern pencil foliation].

[13] Poos (2001: 266): 'Dicunt inquisitores quod wicarius et omnes capellani bene se habent nec de amplexibus adulterivis nichil nec de fornicationibus'.

entry in the London commissary's act-book for the parish of All Hallows the Great in 1495 was unusually forthright about the source of its information: Thomas Borow was said to be a common defamer, 'as yt aperyth by a byll leyde yn afor hys neybors'.[14] That this ephemeral 'bill' was the precursor to his citation into court is clear, but the subsequent phrase is highly suggestive; if it means that the bill had been submitted to his neighbours, then it would suggest a process in which the *fidedigni* themselves gathered in complaints from other parishioners, before deciding which ones to send on to the official for adjudication.[15]

Once information about an offence had reached the court, and the official had decided to proceed upon it, the defendant(s) had to be ordered to appear. Ecclesiastical procedure placed a great deal of emphasis on legitimate forms of citation. According to canon law, a citation had to include the names of the judge, plaintiff, defendant, the general nature of the case and the time and place of the court session (Helmholz, 2004: 317–21). Normally, it seems, letters of citation were sent to parochial clergy, who would in turn cite the defendant by word of mouth; this was the practice in the 'form of the common citation' given in the Lincoln formulary.[16] Alternatively, an apparitor or summoner – a lay court official – would deliver the citation to the defendant directly, perhaps reading it to them as well to ensure they understood it.[17] If there was some concern that a defendant would not attend court, for example in heresy cases, citation could be made publicly, as an oral proclamation or a written notice (Forrest, 2005: 127–8).[18]

As Richard Helmholz (2004: 320) has remarked, very few actual letters of citation have survived.[19] One such was sent to John French, the priest of Brackley

[14] LMA, DL/C/B/043/MS9064/6, fo. 194v.

[15] In an earlier period, church authorities had been concerned with preventing precisely this kind of co-opting of judicial work by these representatives: Forrest (2013b: 9–11).

[16] YMLA, MS. Add. 2, fo. 50r.

[17] On these poorly-paid and much-despised officials, see Forrest (2014: 421–42).

[18] A memorandum from the Lincolnshire visitation of 1473 recorded that the citation of three defendants had been 'declared in the market': LA, Vj/4, annex to fo. 10.

[19] See the examples he mentions in fn. 34. For an early example see Poos (2001: 265), [Loose Document 'T'].

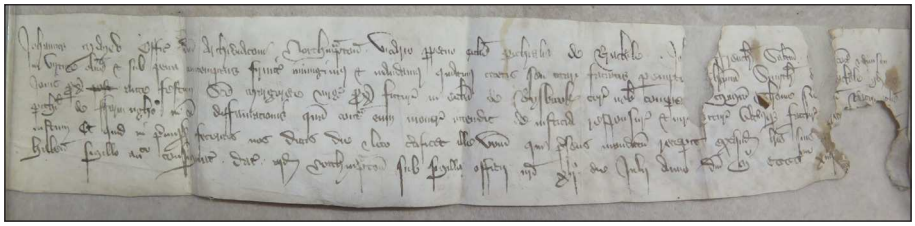

Figure 3: Citation sent by John Mayew, official of the archdeacon of Northampton, to John French, priest of Brackley, ordering him to cite Thomas Smyth in a case of defamation, July 1414. Magdalen College, Oxford, Brackley 55a.

(Northamptonshire), in 1414 (**Figure 3**), ordering him to cite one of his parishioners, Thomas Smyth, to answer a charge of defamation at a specific time and place.[20] The letter itself is a small slip with a darkened, near-circular tear on the right-hand-side that may show where the seal was affixed on the verso – other citations have parts of their seals still intact.[21] It is parchment, which may partly explain its survival; most citations were presumably made from paper. This is an important consideration given just how many have been lost. The number of ephemeral letters of citation that were needed to fulfil the technical requirements of ecclesiastical procedure is breathtaking. The Lincoln formulary devoted an entire section to 'diverse forms of citation', with no fewer than 41 samples offered for a range of different needs.[22] While some of these were for civil litigation, and others for rare circumstances, many were routine: citations were required at multiple stages even in the summary criminal procedures used in the lower church courts.[23]

Each time a citation was issued, moreover, it had to be certified, creating a corresponding piece of legal ephemera to be sent back to the official. This procedure is often meticulously recorded in court books, but without much indication of the communications that lay behind it. An unusual piece of ephemera tucked inside the book of the Hereford commissary-general for 1472–3 throws some light on

[20] Magdalen College, Oxford, Brackley 55a.

[21] For example, a 1421 citation over tithes of *silva cedua* from Ullenhall (Warwickshire) preserves part of the seal of the prior of Wootton Wawen, who issued it. King's College, Cambridge, WOW/36.

[22] YMLA, MS. Add. 2, fos. 50r–57r.

[23] On summary procedure, see Donahue (2016: 284–7).

these processes. It is a English letter from Richard Owen, the vicar of Wenlock, to the commissary-general's office (**Figure 4**), notifying the court about the citations he had delivered to his parishioners.[24] Interestingly, on the verso there are some allusive and incomplete notes in Latin on unrelated citations elsewhere in the diocese; by contrast Owen's writing, in a different hand, is clearly a personal letter, beginning with a conventional form of address: 'right entierly & welbiloved ser, I command me to you as hertly as I can'. Though it is difficult to tell which writing came first, it is interesting as a rare example of legal ephemera that appears to have been recycled.[25]

More than its material qualities, however, the letter is interesting because it is an unusual survival, a notification of citation. Owen acknowledged that he had received from the officiality a commandment to cite two of his parishioners, Julian Couper and Agnes Kyttewell, to appear at Stretton on Friday 7 November to answer charges of fornication. However, he asked that their cases might be respited to another future session, promising that they 'woll obey to yor lawes'. The court book shows, however, that the session at Stretton was actually held on Thursday 6 November;

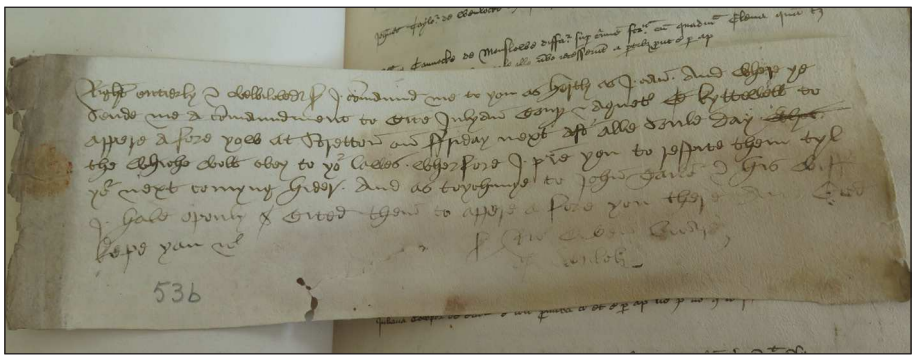

Figure 4: Letter from Richard Owen, the vicar of Wenlock, to the commissary-general of the bishop of Hereford, October 1472. HARC, HD4/1/96, p. 53b.

[24] HARC, HD 4/1/96, p. 53b. The dorse of the letter contains the address 'To Maister John Brewere'.

[25] Given both the content of the Latin text and its placement in relation to fold marks and seal imprints, it seems more likely that this was first a letter, and later used by a commissary clerk to keep rough working notes, and thus tucked inside the book.

when Julian and Agnes thus failed to appear, the judge declared the two women contumacious, and summarily suspended from attending church.[26] It appears, then, that this mistake about dates led to a mix-up, or that the letter failed to reach the court in time. Either way, the letter shows the difficulties parochial clergy and court clerks faced in trying to co-ordinate the appearance of the laity and suggests how the constant 'call and response' of ephemeral citations and notifications between parish and officiality could actually serve to further complicate ecclesiastical procedure.

These notifications and certifications were required for every subsequent stage of legal process after the appearance of the defendant before a church court. If they denied the charge and were ordered to perform compurgation, as was very often the case, they would swear this oath before their own curate and neighbours in their parish church (Helmholz, 1983: 18). For this to happen, the official had to commission to the curate to receive the purgation and then the curate had to write back, certifying whether it was performed and giving the names of the compurgators.[27] If the defendant confessed the crime, or failed their purgation, then they would be assigned a public penance – normally a humble votive procession, sometimes involving candles or penitential whipping in their home parish – requiring similar commissions and certifications.[28] And if they did fail to appear at any stage of the process, then they would find themselves initially suspended from church (like the women above) or, eventually, subject to excommunication; punishments and threats which required the same loop of commissions, notifications and certifications. Thus, ecclesiastical criminal procedure inched forward, pushed and sometimes halted by a vast mass of legal ephemera.

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[26] HARC, HD 4/1/96, pp. 54–5. Agnes and Julian did then appear at the next session held in Wenlock in January: both denied the offence, failed compurgation, and submitted to small penances: p. 56.

[27] For sample commissions to this effect (which include the instruction to send certification back), see YMLA, MS. Add. 2, fo. 63v.

[28] For these kinds of commissions see YMLA, MS. Add. 2, fos. 63v–66r. A good discussion of public penance can be found in Ingram (2014).

Legal Ephemera as Media of Ecclesiastical Justice

All this fluttering paper had intricate consequences for the socio-political relations that constituted ecclesiastical justice in the later Middle Ages. In one aspect, tracing the flows of legal ephemera is merely to follow the obvious lines of hierarchy through the orders given by ecclesiastical authorities and their requests for information. Legal officials sent citations and commissions to clergy and in return required notifications and certifications; they might also communicate directly with the laity via apparitors or summoners, and demand that parishioners provide information about sin and other problems that could be brought before the church courts.[29] But legal ephemera did not merely operate as neutral modes of communication within the system of ecclesiastical discipline. In their peculiar qualities as media – in the flexibility of materials, meanings and functions which they permitted – they subtly altered the ways in which the system operated.

To begin with, the stream of ephemeral communication made parochial clergy crucial intermediaries in the function of ecclesiastical justice. They sometimes abused this power. In 1441, a grand jury for Surrey indicted Thomas Missynden, the vicar of Leatherhead, before the court of the King's Bench for conspiring to commit fraud. It was alleged that upon receiving a citation from the audience court of the archbishop of Canterbury, Missynden had taken the document before his congregation. Instead of reading the actual text (which concerned an unrelated matter with the Prior of Leeds), however, he 'showed, broadcast, and said to his lay and illiterate parishioners' that the document was a commission from the court for him to receive their tithes. His deception had been briefly successful, as he managed to extort 6s. 3d. from parishioner Alice Barbour, among others.[30] It

[29] On the range of matters that might be adjudged by the *fidedigni*, see Forrest (2018: chapters 11, 12 and 13).

[30] The National Archives, KB9/235/16. The inquest which records this information is itself a piece of secular legal ephemera, as a return to a writ, to which it is still attached, directed from the crown to the keepers of the peace. I would like to acknowledge the digital archive at the Anglo-American Legal Tradition website, (Palmer, Palmer and Jenks, 2007), for making an image of this document available online.

seems that even ephemera could still drew upon 'rich reserve of awe and faith' of writing identified by Michael Clanchy (1993: 327), of which parochial clergy were essential mediators.

But even when clergy exercised their interpretative role responsibly, the weight of ephemera raining down on the parish placed them under a great deal of stress, with implications for the operation of ecclesiastical discipline. As noted already, there were severe consequences for parishioners if their curate failed to cite them to the correct time and place for a court session, or even if he simply delayed in certifying the citation.[31] But there were also consequences for clergy who were overwhelmed by their bureaucratic duties. Andrew Nutt, the chaplain of St. Sepulchre-without-Newgate in London, grumbled 'I am trobeld and vexyd dayly with suspencions and letteres of the Bisshop of London', and found himself held in contempt for failing to carry out the mandates of the commissary court official.[32] The constant cycle of legal ephemera could generate an atmosphere of pressure and resentment for the parochial clergy and it is easy to see how that might have leaked into the dull grind of disciplinary procedures carried out within the parish.

Indeed, from the perspective of the laity too, these ephemera clearly signified the disciplinary authority of the church. This can be seen in the violent way in which they sometimes reacted to being cited. Both real and threatened violence against apparitors and summoners was common in late-medieval England, but a detailed case heard before the London consistory court in 1487 shows up the role of ephemera more specifically in constituting this authority (Forrest, 2014: 436–8; see also Wunderli, 1982). Here, Thomas Byrch admitted to reacting angrily when he was cited by the court's official Stephen Folton: 'Who made the a sumnour? Let me se thyne autorite, and it be lawful I wil obey it'. Folton refused to show him the citation and so Byrch tried to grab it; in the resulting tug-of-war, the document's seal was twisted and broken. In the end, Folton gave up the document to Byrch and, after

[31] See the case in a Lincolnshire visitation of 1473, where a rector delayed citation: LA, Vj/4, fo. 85v.

[32] LMA, DL/C/B/043/MS09064/005, fo. 163v.

reading it, he calmed down and agreed to obey it.[33] Thus while Byrch was indignant and dismissive of the summoner Folton, he submitted willingly to the piece of paper which he carried. Ephemeral writings were understood as a direct expression of episcopal authority, creating a complex of submission and resentment in the regular operation of church discipline (Owen, 1990: 36, 38).

But legal ephemera were also the medium that enabled some groups of parishioners to skip out the clergy and go straight to judicial officials. As we have already seen, both visitation and regular church courts provided opportunities for the *fidedigni* to report information (Forrest, 2013b). But more than simply serving as a medium of communication in these interactions, the use of legal ephemera meant that they could be shaped to do more than simply inform the officiality; parishioners used them to prise open a much richer discursive space of persuasion. For example, a slip of paper sent to the visitors of Lincoln and Stow deaneries in 1473, apparently written by the parish notables of Worlaby, goes well beyond mere reportage. Beginning with an overblown supplicatory address to the judge as 'reverent and worschypfull lorde', they complained that their vicar was keeping a concubine and that this had gone unpunished for more than six years: 'wharfore we be seke yow of your gracius lordschip þat…þei may be correkyd'.[34] The invocation of grace, the mention of beseeching and a request for justice are all genre conventions which firmly distinguish this writing as a petition.[35]

A visitation was perhaps an opportune moment to deliver such documents. During the 1472 visitation of the dean and chapter of York Minster, the entry for Haxby recorded that the parishioners 'have shown a certain schedule containing certain petitions…which is attached to this folio'.[36] The scribe's description is apt,

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[33] LMA, DL/C/A/001/MS09065B, fo. 9v–10r. My thanks to Shannon McSheffrey and her excellent online Consistory Database (http://consistory.cohds.ca/index.php) which provided a much better transcription and translation of this case than my own notes.

[34] LA Vj/4, annex to fo. 21r.

[35] Petitioning has generally been treated as phenomenon within secular justice: see Ormrod, Dodd and Musson (2009); also Dodd (2011: 217–46). Scase (2007) takes a wider lens on the culture of complaint in this period.

[36] YMLA, L2/3c, fo. 15v.

for this document (**Figure 5**) is explicitly a plaint: 'Compleynes lamentablie to god almyghti and to yowre tender compassion & pities under hym…the pouere inhabitants of the township of Haxby'.[37] The township was divided between the parishes of Strensall and Driffield and so served by a chapel of convenience. However, the petitioners claimed they could not afford to maintain a priest for this chapel and requested that the small tithes they paid to the prebendaries of Strensall and Driffield be diverted to this purpose. Presenting their petition during the visitation, the parishioners bypassed interference from the prebendal vicars who stood to lose out from the proposal. The visitation book records no definite answer to the petition, but the scribe noted on the document's verso that 'the parishioners say that the share of both prebends…comes to about 20 marks'.[38] This bold written gesture seems at least to have caught the attention of the authorities.

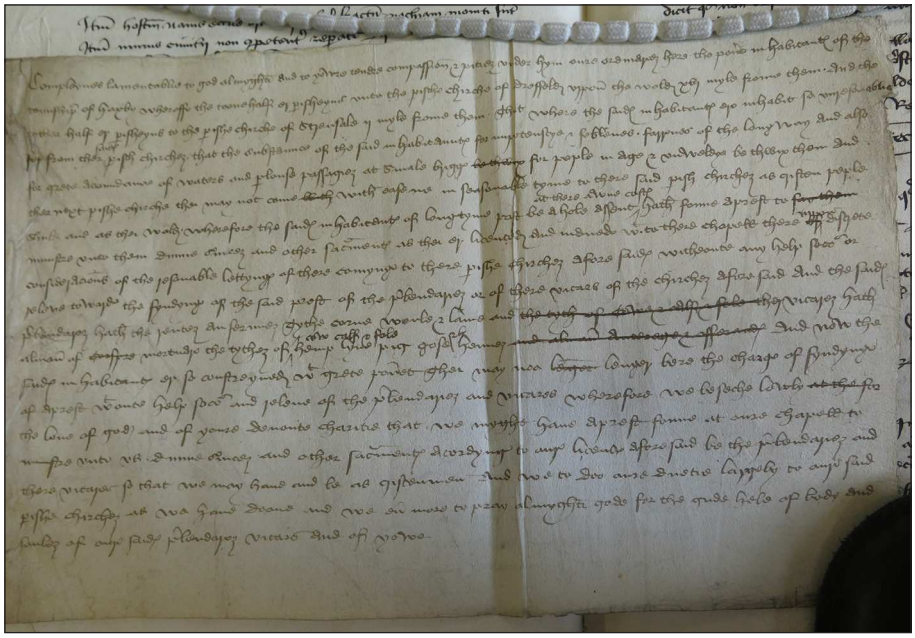

Figure 5: A letter from some parishioners of Uxbridge to the commissary-general of the bishop of London, August or September 1496. LMA, DL/C/B/043/MS09064/007, annex to fo. 29r.

[37] YMLA, L2/3c, annex to fo. 15v.

[38] YMLA, L2/3c, annex to fo. 15v., verso.

But not all such supplications were so ceremonial, nor necessarily associated with visitation. A letter to the London commissary-general, sent in the late summer of 1496, epitomizes the way that these petitionary writings could still be ephemeral. Written by the parishioners of Uxbridge, Middlesex, the letter's sign-off, 'no mor to you at this tyme', and a message on the verso entreating that 'this byll be delyverid… in haste', imply a regular correspondence with the officiality.[39] Their letter complains about Robert Bukeland, one of the summoners for the commissary court. They alleged not only that he had brought two misgoverned women into the parish, but also that he had falsely cited a number of parishioners, including even saintly Agnes Grene, who 'hath bene of good gydynge honeste levynge conversacion & rule [all] days of her lyffe'.[40] After a raft of condemnation against Bukeland's 'bauderye', the Uxbridge parishioners were extraordinarily bold in their demand: 'where upon, put hym to his purgacion amonge his neyghbers'. Less a petition than an order, this incitement to force compurgation represented a remarkable claim to determine *publica fama*. But it seems to have worked.

Bukeland had been the main summoner for the commissary parishes west of London since about February 1496, with 'B' or 'R Buk' noted in the margin for cases he promoted.[41] In March, his wife – presumably one of the misgoverned women – was reported as a common scold and defamer in Uxbridge, but Bukeland had her excused from attending court.[42] The court book records that by late summer Bukeland had peremptorily cited no fewer than ten people, from Chelsea, Uxbridge, Acton, Staines and Isleworth, including Agnes Grene, whose plight partly inspired the petition. She was cited on 22 August and successfully compurgated on 1 of September, along with a 'promise to pay Bukeland within 8 days', referring to the 2d. each defendant owed to the apparitor who cited them.[43] But after this, Bukeland completely disappears from

[39] LMA, DL/C/B/043/MS09064/007, annex to fo. 29r.

[40] LMA, DL/C/B/043/MS09064/007, annex to fo. 29r.

[41] LMA, DL/C/B/043/MS09064/007, fos. 11r–v, 13r., 20v, 21v, 23v., 26r., 27v. Before this time, London's western hinterland had been served by a summoner named 'Bray': fos. 3r–v, 6r, 7v–8r.

[42] LMA, DL/C/B/043/MS09064/007, 12v. Not only did she get off the hook, but the people whom she had defamed were required to put themselves to compurgation.

[43] LMA, DL/C/B/043/MS09064/007, fo. 26v. On summoners' fees, see Forrest (2014: 433, fnn. 37–40)

the records.[44] Given the reams of peremptory summons that Bukeland was handing out in the deanery at that time, and the fees this brought him, the impassioned plea of the Uxbridge parishioners had been perfectly timed. Their supplicatory letter – informal, unformulaic, vernacular – was the perfect antidote to his bureaucratic and Latinate letters of citation.

The media qualities of legal ephemera thus shaped relations between the laity, parochial clergy and legal officials in several different ways. For the legal officials who wrote and sent them, their rigidness of form enabled their proliferation on the vast scale required for the efficient logistical operations of the courts; for the parochial clergy, the material weight of ephemera constituted their unrelenting and exhausting intermediary role in the functioning of this bureaucracy; for the laity, ephemera sent from above represented the daunting expression of ecclesiastical authority, while those which they created themselves permitted a flexibility of genre that enabled certain groups of parishioners to access, petition and persuade that authority.[45] This variety of functions of legal ephemera reflects, to some extent, the range of purposes to which they were put in the church courts' system of communications. But the category of 'legal ephemera', though, does not melt away in the midst of this diversity – rather, in bringing such diverse documents together, it helps to foreground their systemic importance to the operation of church discipline in the later Middle Ages.

Conclusion

This essay has sought to highlight legal ephemera as a crucial, but neglected, type of legal document in the later Middle Ages. I proposed a starting definition for these documents: small in format and usually made from paper, they served an immediate communicative function and were thereafter disposable. As Shannon McSheffrey has eloquently put it,

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and Wunderli (1982: 214).

[44] The next time the commissary began receiving cases from these Middlesex parishes in January 1497, a summoner with the initial 'C' reported Rose Barat as a bawd. This man did not last long, however, reporting just 8 cases; thereafter, a summoner with the initial 'N' appeared, and remained at least until August 1497. LMA, DL/C/B/043/MS09064/007, fos. 36r, 37r–38r, 39r, 40r, 46r, 47v, 51r.

[45] I have not discussed the effects of this unequal access to information within the laity; this is comprehensively treated in Forrest (2018: 163–200).

legal documents 'cannot be seen only as reflections of the past, as witnesses to history, but must also be understood as agents in the historical process' (2008: 66). The legal ephemera we have examined here epitomize this idea; rarely preserved in order to bear witness to the past, their significance lies almost entirely in the way in which they contemporaneously shaped the processes of the church courts. As a media-technology, their particular qualities meant that information and orders within this complex system were transmitted in ways that bent, stretched and sometimes disrupted its constitutive social and legal relations. The medium was not the message, exactly, but it created a set of possibilities for the message's content, reception and afterlife.

Legal ephemera were not, of course, distinctive to the church courts in late-medieval England, and recognising this can help us to understand other legal institutions in this period. The common law courts, for example, had long used a system of writs to initiate both personal litigation and criminal justice, which were directed from the royal courts to county sheriffs and other officials.[46] This created a scheme of orders and verification very similar to that deployed in ecclesiastical process, though one that generated a different set of bureaucratic logics, legal fictions and practices of archiving (Clanchy, 1993: 90–2, 272–3). Looking more widely still, we can stretch the category of legal ephemera further. In southern India of the twelfth century, for example, contemporary law-books describe a range of different documents that could be used to evidence contracts, agreements or conventions, but hardly any examples have survived because once their terms were fulfilled, or they were no longer relevant, they were destroyed (Davis, 2017: 167–98, 191–2). Such an approach bespeaks a different attitude towards law and the ways in which its institutions related to the written word.

As a final point, indeed, I would like to suggest that the legal ephemera of the ecclesiastical courts presented here might alter the way we think about these institutions. How did the fact that so much of their daily business was constituted in these fleeting, ephemeral writings, affect perceptions of their authority? As

[46] For an overview, see Baker (2002: 53–70). For the administration of this system at county level, see Palmer (1982: 174–219).

the material interface between church authority and the laity, ephemera were strangely fragile, a quality that was clearly noticed and sometimes exploited by disgruntled parishioners who ripped up citations. But as we have seen, the fact that ephemera were small, transient and disposable did not generally lessen their effects in conveying information and power. It was their collective weight – the capacity of church courts clerks to produce so many of these documents – that made them such sharp instruments of regulation. To rip up or ignore a mandate was only to provoke a further three. Ephemera were the means by which the ecclesiastical criminal system sucked in the participants that made it work, material instantiations of the late-medieval church's peculiarly bureaucratic discipline.

Competing Interests

The author has no competing interests to declare.

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