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**ARTICLE**

# Introduction: New Approaches to Late Medieval Court Records

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Court records can be some of the most rewarding but also some of the most problematic source types available to the historian of premodernity. This introduction to the 'New Approaches to Late Medieval Court Records' Special Collection presents an overview of some of the most important historiography based on these sources, touching on fundamental methodological debates about their nature and the possibilities of their use by historians.

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Amongst the wealth of source material available to historians of premodern Europe, records of crime and justice—or ‘court records’, to use the broad term we favour here—can claim to offer privileged insights into the lives of ordinary people that are matched by few other types of document. The most famous examples of such claims can be found within microhistory, a bestseller genre of historical writing which found a wide public audience from the 1970s. Through their survival in court records, so their authors claimed, the voices could be heard of the medieval villagers of Montaignou (Le Roy Ladurie, 1975), of the Italian miller Menocchio (Ginzburg, 1980), and of the impostor Arnaud du Tilh (Davis, 1983), granting access to their lives and thoughts many centuries after their deaths. This material has allowed questions to be asked of the period that go far beyond purely legal issues, instead touching on areas as distinct as legal politics, administrative practices, feuding, family, kinship relations, gender, sexuality, and belief. Even if recent decades have seen historians insisting more heavily on the mediated nature of the archival ‘voice’, and poststructuralist claims surrounding discourse and language have argued that the ‘reality’ of premodern deponents is an illusion, court records have not lost their ability to inspire new work from scholars engaged in a wide range of fields.

This Special Collection brings together such work under the heading of ‘New Approaches to Late Medieval Court Records’. It was first spurred by our fascination with the tension between the apparent immediacy of archival ‘voices from the bench’ (Goodich, 2006) and the debates about ‘recovering’ or ‘accessing’ voices that have emerged within a variety of historiographical trends since the 1970s. Initially, our enthusiasm for the sources and their methodological problems fuelled a series of collaborations at the Leeds International Medieval Congress between 2013–2015 involving some 30 scholars. During this time, we sought to build contacts with others who shared our interests, laying the groundwork for a one-day workshop at Durham University in June 2017 in which a number of participants from the Leeds sessions were joined by several new speakers to present their work. From the Leeds sessions and the Durham workshop emerged a core of the articles now assembled here as a single collection.

In presenting this Special Collection, we aim not simply to offer a platform for fresh research, but to bring together a geographically wide range of work which can both make significant contributions to existing methodological debates and point the way towards new lines of enquiry. The articles included cover a number of themes, but are united by a common interest in methodology. Contributors have been asked to reflect explicitly upon methodological issues which have shaped (and continue to shape) their engagement with the sources, and to foreground their own approach to archival material in their discussions. A brief description of each article follows at the end of this Introduction; prior to that, the section below offers a short overview of key definitions and relevant historiographical trends which frame our enquiry.

### **‘Court records’: problems of definition**

During the 1340s the civic council of the Dutch city of Utrecht began to keep a register of all the people it had banished from the city or those otherwise punished severely. Over the years, this register, which was kept in duplicate, began to include more and more types of verdicts and would grow to a total size of 126 folios until it was replaced by other registers at the start of the fifteenth century. Some 450 kilometres to the south-west, the royal *Parlement* of Paris had already been keeping track of the business appearing before it from the middle of the thirteenth century. It would transcribe its legal decisions together with official letters relating to cases into a continuous register. During the fourteenth century several additional types of documents came into use in the *Parlement*, including a specialized register for criminal cases and brief journals of the court’s sessions, all in all spanning thousands of folios. At the beginning of the same century, a third legal institution, the archiepiscopal consistory court of York, began to keep both official documentation as well as drafts thereof, to be used in many of the cases it dealt with. These documents could constitute anything from formal lists of accusations or sentences to transcriptions of witness testimony, or even brief accounts of the costs involved in a specific case, and were at some point combined into case-specific dossiers.

All of the documents featured in the above examples, stemming from different types of legal institutions in different geographical contexts, can be classified as court records. In their own way all these documents had a part to play in the operation of judicial practice in their respective localities. Yet the immense variety of these documents in itself makes it no mean task to define and delimit them as a category. Browsing through the general introductions on medieval sources, one hardly encounters a univocally defined category of 'court records'. Within the classification of the major series on medieval source typology initiated by Léopold Genicot in the 1970s, most court records would be fit under category A.III.2, that is to say as written sources (A) from legal (III) practice (2) (Genicot, 1972a: 18). Unfortunately, the only volume in the series appearing under this category, that is volume 3 on 'public acts', explicitly defines its subject matter as documents from legal practice '[...] that do not result from the activities of a judge [...] or tribunal', subsequently putting a clear focus on charters (Genicot, 1972b; 15–18). Thus the documents from legal practice that did originate in a court remain largely undefined within the series.

Raoul Van Caenegem provides another possible definition by making a distinction between sources from legal practice before and after the late twelfth century. From that time onwards, so he argues, individual written judgements or *placita* were generally replaced by judicial registers or rolls (Van Caenegem, 1978: 63, 68, 85–89). Thus for Van Caenegem the bureaucratic serialization of written judgements forms the basis of distinguishing a particular type of record emanating from law courts. Still, this definition in its turn excludes the many loose documents of legal practice surviving for various courts, such as York's consistory court dossiers mentioned above, while apparently overlooking the possibility that in some cases serialization of records may be the result of later archival practice.

Steven Vanderputten, Jelle Haemers and Tim Soens most clearly define court records as a separate category. They explicitly distinguish documents of legal practice from more normative sources such as law books and collections of rules, defining the former as 'the concrete deposit of jurisdiction' (Vanderputten, Haemers, Soens, 2016: 145). However, they also recognize that this category is extremely difficult to

demarcate, and that it often overlaps with other categories of sources. Thus, books of banishment are shared under the denominator 'lists of people', a subtype of the category 'sources of administration and bookkeeping', while the authors readily admit these books to be very similar to the books of verdicts categorized as records from legal practice (Vanderputten, Haemers, Soens, 2016: 177–78). Likewise, as in Van Caenegem's definition, the dossiers of loose legal documents found for some courts are not easily fitted within this strongly register-oriented understanding of documents of legal practice. In general, the existing typologies thus provide no clear-cut definition of court records that encompasses the full variety of documents often considered as such in the literature on individual cases.

In searching for a workable definition of court records, one therefore needs to rely on some of the common characteristics of the documents treated as such in the historiography. As the above typologies have already suggested, some aspects recur frequently in the records identified as court records by historians and archivists. Thus these texts are generally seen to emanate from legal institutions, where they record some part of a legal procedure conducted there. In this they differ fundamentally from normative sources like law codes or legal treatises, which, theoretically at least, form the prescriptive starting-point of a procedure, rather than its outcome. This first loose definition can be sharpened in two ways.

Firstly, it would be a simplification to distinguish too strongly between normative sources like law codes or legal treatises, which prescribe the activities employed at court, and documents from legal practice that simply offer a description of this practice. In reality, many types of prescriptive texts were based on records of real cases, which thus influenced the ideal typical procedure elaborated within them. For example, in some courts compilations of selected verdicts were used as a basis for subsequent judgement (Godding, 1973: 25–36). At the same time, the documentation mobilized in legal practice only rarely restricted itself to descriptions of litigation. Written acts and verdicts, which were recorded extensively in many courts, contained only limited descriptive content. Their role was to validate or even perform a specific legal action, not simply to record it. Still, their crucial role

in many courts' processes, as well as the fact that registers often combined them indiscriminately with more descriptive content, makes it hard to disregard them as a species of court record. Thus, rather than imposing excessively technical parameters by limiting a definition of court records to descriptive texts only, we find it more useful to focus on these documents' use, that is to say, their mobilization at particular moments in a particular procedural context.

This focus on the use of records also opens up questions about the people who produced these documents. Although most records were written by scribes working as part of a legal administration, in many other cases their authors were not formally attached to the court where the case was being treated. This could be true for the litigants in a case or for those representing them, such as their lawyers, proctors, or other legal personnel. As one of our contributors rightly notes, an exclusive focus on the production of texts by legal officials leaves out of the picture many documents crucial for the operation of courts' legal process (Johnson, 2019: 7). In line with such critiques we prefer to base our definition more generally on the procedural activity surrounding courts, rather than on the court itself as primary actor. As historians have shown in different contexts, for the late medieval period the appearance and survival of court records is strongly linked to the procedural logic of the law court and its related social practices (Clanchy, 2013 [1979]; Brundage, 2008: 126–63; Camphuijsen, 2017). While not necessarily always the direct product of these legal bodies themselves, court records were produced as part of the legal practice and logic they tried to encourage.

In summary, a more precise definition of court records which leaves enough freedom to encompass a broad variety of documents while still permitting a distinction from other types of legal documents would thus be: documents produced and mobilized as part of a court's procedure by any of the parties involved.

### **Opportunities and critiques: the historiography of court records**

Scholarly interest in this type of source is far from new and is evident well before the stories of Montaigne and Menocchio found a wide public audience in the 1970s. As early as the nineteenth century, growing interest in the history of national

administrations brought both archivists and historians to the surviving series of documents of legal practice. In several countries the nineteenth and early twentieth centuries saw the appearance of major editions and inventories of the records of late medieval courts. Archivists working in the records of the Parisian *Parlement*, for example, produced both an edition of the institution's oldest four books of court records (the *Olim*) (Beugnot (ed.), 1839–1848) and multiple volumes of summaries of its records up to 1350 (Boutaric (ed.), 1863–1867; Furgeot et al. (eds.), 1920–1960). For other regions as well, court records were published, inventoried, or summarized, either in individual volumes, such as the edition of the oldest English royal court rolls (Palgrave (ed.), 1835), or in full series, such as the Dutch *Werken der Vereeniging tot uitgave der bronnen van het oude vaderlandsche recht*, running from 1880 onwards, and the selected pleas and cases published by the (English) Selden Society from 1888 onwards. Although these archival efforts significantly facilitated the accessibility of court records, the prevalent historiographical focus of the time on the political history of nation states strongly influenced archivists' choices of which records to publish, favouring, for example, proto-national administrations above ecclesiastical, local or civic ones. In line with such editions, court records also formed a basis for the production of some of the most extensive institutional histories to date. For France, the years spanning the late nineteenth and early twentieth centuries saw no less than three major monographs on the late medieval *Parlement* (Aubert, 1894; Ducoudray, 1902; Maugis, 1913–1916), while in England many volumes were written on the history of the English legal system (Stephen, 1883; Pollock and Maitland, 1895–1898).

In the second half of the twentieth century, several strands of historical scholarship made the study of court records the core of their novel approaches, claiming through them to be able to access aspects of the past barely touched upon by earlier scholars. Within legal history some authors shifted their attention from formal procedural rules to the messy reality of procedure in practice. For the latter, the study of documents of practice was considered a fundamental prerequisite. The extensive historiography on the legal procedure in English ecclesiastical courts, for one, became strongly based on documents of court practice. Historians like Richard



Helmholz (1974) and Charles Donahue (1981) used these sources to show how local court procedure could differ significantly from the overarching system of canon law. The value of court records to elucidate legal procedures has also been shown for other regions. Recently, for example, Louis de Carbonnières (2004) has used the evidence provided by vast amounts of court records to reconstruct the criminal legal procedure for the Parisian *Parlement* in a period where formal statutes are lacking. A similar desire to grasp the everyday reality of the court through its records can furthermore be seen in the popularization of prosopographic approaches to court personnel during the 1980s. To reconstruct the names, backgrounds and networks of the officials operating late medieval courts, historians like John Baker (1980; 2012) and Françoise Autrand (1981) have delved into the wealth of accidental information on these men that was contained in the records.

Court records were also instrumental in the formation of a medieval and early modern historiography of crime as a social phenomenon. By quantifying the range of information provided by these sometimes extensive records, scholars hoped to be able to grasp something of the broader social processes taking place in a given society. Drawing on theories derived from sociology and criminology, they used these records to reconstruct patterns of deviancy and marginality (Rexroth, 1999). Such was the goal of Bronisław Geremek's work on late medieval Paris. Geremek delved extensively and broadly into a range of Parisian judicial records, claiming that his crime statistics based on various types of court records offered a fairly realistic image of late medieval crime and marginality (1976 [1972]: 59–60). Other authors have shared Geremek's careful confidence in the quantitative possibilities of court records when writing social and cultural histories of crime for the late medieval and early modern periods. Several Dutch scholars including Dirk Berents (1976), Pieter Spierenburg (1984) and more recently Manon van der Heijden (2016) and Maarten Müller (2017), have sought to reconstruct patterns of premodern crime and punishment based on these documents of practice. Amongst German-speaking scholars, French work of the 1990s and early 2000s from Claude Gauvard (1991) and Benoît Garnot (2000) has provided impetus for the emergence of a new Germanophone history of crime. A key moment came in 1991 with the formation of the working group for the

premodern history of crime (*Arbeitskreis für die historische Kriminalitätsforschung in der Vormoderne*) headed by Gerd Schwerhoff and Andreas Blauert. As leading figures in the new *historische Kriminalitätsforschung*, their research blended elements of social and cultural history in analyses of deviancy and marginality (Schwerhoff and Blauert, 2000; Schwerhoff, 2011). Important work which has followed in this vein includes case studies of Cologne (Schwerhoff, 1991), Zurich (Burghartz, 1993), Constance (Schuster, 2000) and most recently Württemberg (Pohl-Zucker, 2018). Much of this work has expressed the aims set out in Peter Schuster's 2000 plea for a new 'social history of the law', intended as a conscious departure from an older model of legal history (*Rechtsgeschichte*) that had focused primarily upon normative sources (Schuster, 2000).

A third approach which profited greatly from the study of court records was the newly developing genre of microhistory. Sharing criminality historians' interest in forms and aspects of marginality (Muir and Ruggiero, 1994), microhistorians nevertheless took a radically different approach to their sources. Their *Annales*-inspired focus on 'mentalities', in particular of communities and individuals outside the social elite, led them to the intense study of isolated cases, such as one village, individual or event. Court records formed a welcome source base for many of these historians, as such records could contain evidence of people who might not otherwise be represented in the historical record. Thus the third-generation *Annaliste* Emmanuel Le Roy Ladurie famously claimed in his work *Montaillou* that the records of the fourteenth-century inquisition could provide a clear image of the lives and thoughts of Languedocian peasants. By studying the records of the Inquisition into heresy that visited the region in the thirteenth and fourteenth centuries, so Le Roy Ladurie stated historians could unearth the 'direct voice' of these individuals (1975). A similar, though slightly more cautious, approach was suggested by Carlo Ginzburg in reconstructing the world of ideas of a sixteenth-century miller. Rather than expecting the documents to provide direct evidence of subaltern ideas, he proposed looking for them in the discrepancies between well-known ideas of higher classes and the testimony provided by lower classes in the courts' records (Ginzburg, 1980 [1976]; 14–15). In a comparable vein, Natalie Zemon Davis, in her account of

a sixteenth-century case of identity fraud, presented her subjects as skilful agents possessing both nous and psychological depth. Though the Martin Guerre case she treated was far from ordinary, she argued that the texts it spawned could reveal many of the more common motivations, values and experiences of people from that period (Davis, 1983).

In their own ways, the different historical approaches each sketched above drew on court records to reconstruct a specific reality, be it procedural, socio-economical or mental-cultural. Yet such modest optimism in the possible uses of court records to reconstruct past realities did not go entirely unchallenged. Under the influence of wider shifts in the humanities and social sciences in the wake of poststructuralist claims regarding power, discourse, language and representation, some historians began to emphasize the methodological complexities of using such sources. Did sources generated by aberrant behaviour not furnish a distorted vision of society, exaggerating what was unusual and passing over regular patterns of conduct? What was the ontological status of a deponent's voice? Could an 'authentic' voice be found by stripping back the layers of mediation imposed by judicial officials who interrogated individuals and created the record itself? Was it even possible to reconstruct authentic visions of everyday life, or did court records reflect realities imposed by an external authority?

One important early insight in this debate was offered by Davis, who called attention to the narrativity of court records. For her the realities present in her sources were partly to be found in shared cultural formations communicated via the stories told by deponents, which drew on recognisable symbols and narrative structures within their society. Rather than realistic accounts of the events leading up to an alleged criminal act, Davis (1987) claimed that the remission letters she studied were the product of a negotiated storytelling process in which an individual could be observed crafting a text that drew on 'real' events and set them within existing narrative patterns in the hope of producing a persuasive story. Other historians also pursued mixed approaches which contextualised personal agency against wider cultural formations. Among histories of crime, the work of Gauvard marks an important turning point in its combination of quantitative and qualitative

approaches of court records. These documents, so Gauvard argued, present above all a discourse on crime, rather than a realistic representation of crime per se. This discourse, in its turn, can however be analysed quantitatively (Gauvard, 1991). With their emphasis on the discursive aspects of court records, historians like Davis and Gauvard showed the limits of historical reconstruction based on the sources while at the same time emphasizing many new ways of reading court records.

Some historiographical fields have formed particularly central fora for these methodological debates on the uses of court records. Heresy studies, which has drawn upon the rich documentary base of inquisitorial registers, is one such example. As we have seen, Le Roy Ladurie's claims to have gained direct access to peasant voices within Languedocian court records did much to showcase the potential of these records as a rich repository of data relevant to the broad microhistorical approach he envisioned. Subsequent criticism nevertheless took issue with what it saw as his naïve treatment of inquisitorial power, pointing out that in treating the records as a direct channel to medieval peasants Ladurie had all but ignored the mediating influence of the Inquisition (Boyle, 1981). Subsequently scholars like James Given, John H. Arnold and Mark Pegg have emphasized the implicit power relations contained in inquisition courts' records, originating as they did in situations of interrogation, and warn against an interpretation of these documents that too easily assumes a form of free speech on the part of the people interrogated (Given, 1997; Arnold, 2001; Pegg, 2001). Thus, for Arnold, drawing heavily upon Foucauldian concepts of discourse and power, the judicial encounter involved the creation of a 'confessing subject' whose recorded speech reflected not so much the subaltern voice of an individual who could be reached 'through' or 'behind' the record, but evidence of 'operations of power' brought to bear upon that individual (2001).

### **Recent trends in court record scholarship**

The popularization of court records as historical sources since the 1970s, as well as the subsequent discussions on their applicability, has spawned a broad and varied historiography spanning multiple themes and countries. In surveying the recent

scholarship that makes use of these sources, several recurring trends can be made out, drawing on and combining earlier approaches to these records.

While legal institutions *an sich* have long since stood at the centre of attention, recent scholarship has begun to shift its attention more explicitly to the interaction between these bodies and the people that turned to them in pursuit of justice, called the 'consumers of justice' by Daniel Lord Smail (2003). For these scholars, concerned as they are with the relationship between legal theory and practice, court records remain an important link between the worlds of legal specialists and of everyday users of the legal infrastructure. Thus, for Italy, Chris Wickham's study of disputing in twelfth-century Tuscany offers vivid insights into the strategies of individuals as they pursued legal conflicts in a number of jurisdictions (2003), while in her study of the Crown of Aragon, Marie A. Kelleher examines how women engaged with late medieval legal culture within the *ius commune* (2010). Such work often tries to combine multiple older approaches to these records. Trevor Dean, for example, in writing a comparative history of crime in late medieval Italy has explicitly sought to link legal and socio-cultural approaches to court records. By taking into account both the narratives created in and of a trial, he links a legal historical focus on procedure to a social and cultural historian's interest in people's daily lives and ideas, while also considering the narrative qualities of his sources (Dean, 2007).

Such attention for the users of the courts has also had implications for legal and institutional historical approaches to the late medieval court system. Building on earlier attempts to understand legal procedure in practice, several historians have emphasized the flexible and processual character of these procedures. Thus, focusing upon Perugia and Bologna, Massimo Vallerani has tried to bridge the theoretical distinction between inquisitorial and accusatory procedure, using court records to demonstrate their interrelationship in the emergence of a trial-based system of justice in Italy (2005). Similarly, for France, Katia Weidenfeld has argued how law itself, as a system of rules governing people's lives, was shaped primarily in court practice rather than through received legal traditions. She thus privileges the study of court records, in her case written pleas, to understand the actual consistency of these rules of conduct (Weidenfeld, 2000). In addition to these new understandings

of legal procedure, those operating the courts and other public administrations have also been approached in novel ways. Moving beyond attempts at purely prosopographical reconstruction, recent publications have instead analysed the logics and limits of power behind these officials' operations, focusing for example on practices of accountability (Telliez, 2005; Sabapathy, 2014). In such histories, court records again form a valuable source to grasp the operation and institutionalization of power.

This increased focus on the interaction between legal structures and their users naturally draws attention to the ontological status of people's 'voices' in court records. Far from agreeing on a single approach, scholars have reacted differently to the methodological complexities raised by scholars of discourse and power. In some cases this has meant trying to push back against the strongly discourse-focused analyses which fundamentally problematized the relation between court records and social realities. Thus in their recent study of Burgundian remission letters (a type of source made famous by Davis), Walter Prevenier and Peter Arnade argue against a strong separation between the sources and the social and political reality they supposedly represent, criticizing earlier scholars for overstating the role of narrative construction in these records (Arnade and Prevenier, 2015; 13–18). Yet in other cases, paying attention to discourses and social practice appears mutually inclusive. David Nirenberg (1996), for one, has combined the records of royal courts with numerous other sources to analyse the interrelation between the discourse on and the real-time violence against minorities in the Crown of Aragon and southern France.

While sustaining some of the most fundamental critiques on the use of sources, microhistory as a self-proclaimed genre has far from disappeared from the historiographical stage. On the contrary, it can be said to be undergoing a renaissance, as seen by the emergence of a number of recent books and book series, as well as the formation of several dedicated research groups such as the Microhistory Network in 2007 and, more recently, the AHRC Network 'Global History and Microhistory' (Ghobrial, 2014). Aware of the fundamental critiques addressed at some of the earlier works in this vein, those writing newer microhistories have come to emphasize strongly the complex nature of their sources. Springing from a genre bent on

historical understanding through emphatic proximity, newer work tries to combine these compassionate histories with questions about the power structures operating in and through the documents under scrutiny. In his study of late twelfth century Barcelona, for example, Thomas Bisson (1998) reads his records of complaints as evidence of peasants' experiences of power. Robert Bartlett (2006), recounting the history of the miraculous resurrection of a hanged man in thirteenth-century Wales, engages with the diverse and often contradictory testimonies regarding this event to analyse the construction of memory in a religiously and politically charged legal process. And Steven Bednarski (2014), in his study of the trial of a suspected female poisoner in fourteenth-century Manosque, explicitly combines a methodology which tries to reach 'beyond' the documents into people's real lives with that of a discourse analysis, reflecting on the words and language used in the documents and their strategic mobilization in the case at hand.

Even if earlier views of court records as a direct pathway to premodern mentalities have been tempered by skepticism in more recent times, historians still frequently work with court records out of an inherent interest in the subjective experiences of historical people in relation to their own. Countering scholarship that assumes a fundamental gap between premodern emotional-uncivilized and modern rational-civilized ways of being, anthropologically-minded historians have come to use court records explicitly to bridge the gap between premodern and modern experiences of life. Thus within the field of the history of emotions many authors have identified court records as key sources to understanding the cultural, social and legal logic behind expressed emotions in a time far from our own (Smail, 2001; Hyams, 2003; Bailey and Knight, 2017). In a similar vein, interest in the performative aspects of social life has led historians to read court records primarily as forms of communication between contemporaries. Smail (2003), for example, in his study of late medieval Marseille, emphasizes the public nature of judicial activity, which worked as a stage for litigants to pose their take on specific events and conflicts in their society. This approach to courts as fora for symbolic communication can also be found elsewhere. In her treatment of late medieval understandings and practices of violence, Hannah Skoda (2013) draws upon a large variety of Northern French

court records to analyse contemporaries' strategic mobilization of violent behaviour and vocabularies in and outside the courtroom. In such works, a general attempt at understanding the meanings, logic and motivations behind the behaviour of 'non-moderns' spurs historians to read and re-read the records from legal practice.

A major beneficiary of this diversity of approaches to court records has been the study of gender and sexuality, itself the product of a more long-established field of women's history. The potential of court records to elucidate the lives of the historically marginal has been crucial in accessing evidence of women's experience and agency, as is evident in studies of women's work and life cycles (Goldberg, 1992), of gender and memory (Kane, 2019), women's social position and mechanisms of social control (Hanawalt, 1998) and, more generally, in several contributions to the recently-published *The Oxford Handbook of Women and Gender* (Bennett and Karras, 2013; esp. 118–30, 148–76). The study of court records has been equally productive in studies of sexual and/or gendered deviancy. Crimes pertaining especially to women, such as prostitution, abortion and infanticide, or in which they were centrally implicated, such as adultery, have been the focus of case studies based on court documents which throw light on distinctively female experiences in the courtroom (Karras, 1996; McDougall, 2014; Page, 2015; Van der Heijden, 2016). The growing concern of many late medieval courts with non-normative sexual practices (Karras, 2011) in its turn has provided an extensive source base for work on sexual deviancy in, among others, France (Otis, 1985), England (Goldberg, 2015; Boyd and Karras, 1996), Italy (Rocke, 1998), Germany (Puff, 2000) and Switzerland (Puff, 2003).

As we have seen for other fields whose practitioners have drawn on court records, the historiography of gender and sexuality has been subject to significant influence from discourse- and power-based methodological critiques. Rather than taking the sources at face value, some historians have examined judicial institutions and their documents as embodiments of patriarchal society, throwing light on how women navigated the legal system as participants in court cases (Menuge, 2003; Kelleher, 2010; Kane and Williamson, 2013), often in the face of disenfranchising or limiting practices such as coverture or the requirement for male support to bear witness (Stretton and Kesselring, 2013). In such works the gendered power relations



underlying the records gain a prominent place in the historical analysis itself. The same is done for the discursive aspects of these sources. Thus within the relatively new field of masculinity studies, a small but growing body of work has drawn fruitfully upon legal records as a source of information about masculine discourses, both in England (McSheffrey, 2006; Neal, 2008) and Italy (Dean, 2004; Laufenberg, 2007).

### **Contributions to the Special Collection**

Today, the diversity of work on medieval court records reflects that of the sources themselves, creating a historiographical landscape in which—as readers will note, even from the very brief survey above—disciplinary boundaries overlap heavily. Court records are far from the sole preserve of legal historians: their versatility when it comes to tackling a wide range of historical questions is clear, as the contributions to this Special Collection make evident. There exists, still more gratifyingly, a large quantity of records still to be uncovered and evaluated. In spite of the inroads made within judicial archives over the past decades, it remains possible to experience the same thrill once described by Ginzburg at the prospect of uncovering the ‘treasure trove’ of untapped resources. This is especially true of archives outside central Europe, on which much existing work has focussed. Nevertheless, a number of fault lines continue to define the historiographical terrain. Linguistic differences and the technical demands of palaeography and administrative knowledge can make comparative work difficult. Separate historiographies also persist for inquisitorial, royal, ecclesiastical and civic courts, even if their most important source base—court records—shows crucial similarities.

The articles presented here are diverse in terms of theme and geography: this is a deliberate choice on our part, reflecting our intention that a focus on methodology form common ground between separate contributions. We have asked each author to foreground discussions of methodology in their work, and to reflect explicitly upon the challenges—and opportunities—provided by the sources in question. As these articles show, exact ways of working with court records differ between fields of specialization, even when the records themselves may show unexpected similarities in terms of materiality (i.e. in the material form they take), institutional context or the subjects of the case load they record. Whether one reads these records as evidence

of procedural practice, for statistical data on social and economic developments, as socio-legal narratives or as instruments of power, the questions posed to the material often spring as much from specific traditions of scholarship as they do from the nature of the sources themselves.

In her contribution to the Special Collection, Lidia Luisa Zanetti Domingues analyses two collections of Sienese petitions created by general amnesties promoted by the commune in 1321 and 1329, focussing on the theme of penance. Her article intervenes in the aforementioned debate about the status and nature of archival 'voices', applying a social interactionist approach to uncover distinct strategies of subjectivity employed by petitioners. Jean-Paul Rehr's piece on the registry of the so-called Great Inquisition undertaken by the Dominicans in Toulouse in 1245 and 1246, held in MS 609 of the Bibliothèque municipale de Toulouse, brings to bear a new methodology to a well-known set of court records. Applying techniques of macro and network analysis as a corrective to previous reading strategies employed by historians, Rehr throws new light onto long-standing historiographical questions relating to heresy and belief in the medieval Languedoc.

In his article, Tomislav Popić draws attention to a geographical region neglected by much Anglophone scholarship on court records, which has tended to focus on western and central Europe. In his investigation of lawsuits from the Dalmatian cities of Zadar and Trogir, and drawing on the work of Niklas Luhmann and James C. Scott, Popić offers a case study for the 'simplification' of court documents as representations of social 'realities'. Tom Johnson's piece on legal ephemera in late medieval English church courts draws attention to the materiality of the sources, a topic frequently overlooked by historians' concern with texts as abstract phenomena. Offering a distinctive definition of 'ephemera' as disposable documents, Johnson's article explores how their production reflected—and shaped—relationships amongst diverse legal actors.

Joseph Figliulo-Rosswurm's piece on the 1340s record of a Tuscan dispute offers a rich reading of procedural wrangling in the midst of several historical and historiographical contexts. Re-tracing the dispute between the notary Andrea and the magnate Bartolomeo across several record series, the article illuminates the

opportunities open to litigants to exercise their agency across urban and rural lines, pointing to the significance of support networks in securing favourable outcomes. Lesley Bates MacGregor's article on French animal trials in the fourteenth and fifteenth centuries brings up a topic which has challenged assumptions surrounding legal subjectivity and agency in premodern trials. Her analysis focuses upon discursive strategies employed by actors surrounding an accused animal that made the animal criminal. In doing so, she prompts wider questions relating to legal personhood and the implicit hierarchy in the imagined boundaries between the human and the animal.

In his analysis of the collections of several Portuguese cathedral archives, André Vitória throws light onto a region still understudied within Anglophone scholarship on court records. His analysis reveals distinct patterns of legal practice which, in spite of the limited accessibility of the sources, offer a means of grasping legal practice and relating it to wider social and political trends in thirteenth-century Portugal. Quentin Verreycken, finally, examines a series of pardon letters from English and Burgundian judicial archives. Building upon previous studies by Davis, Prevenier, Arnade and others who have brought these compelling sources to scholarly attention, Verreycken takes a little-used comparative approach to delve into the testifying strategies of the litigants and legal professionals who composed these documents, drawing out their distinctiveness as well as the shared features which define them.

One particular certainty that the study of court records has demonstrated is that medieval judicial authorities were well aware of the power of knowledge and the benefits they might derive from facilitating—or preventing—its exchange. The public communication of legal decisions and the demonstration of legal competence offered a way to claim authority over a wide constituency, whilst conversely, legal power was also effected through the secret harbouring of legal knowledge and the use of covert techniques such as inquisition.

Without wishing to draw overly simplistic parallels between medieval and modern technologies of knowledge production, we note simply that as scholars, we place considerable value on the availability of both archival material and scholarly work no longer protected by official or commercial secrecy, and on the ability to

share it freely with others. In presenting this work as open access we are therefore very pleased to participate in the wider project of the Open Library of Humanities.

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The authors have no competing interests to declare.

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