Law and History Review (2025), 1–23
doi:10.1017/S0738248025000033

ASLH AMERICAN SOCIETY FOR LEGAL HISTORY
CAMBRIDGE UNIVERSITY PRESS

ORIGINAL ARTICLE

Fines and the Common Bench, 1218–1226

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Abstract

The years immediately following the issue of Magna Carta and the death of John were of fundamental importance in determining the trajectory of the nascent common law legal system. Although the existence of the Bench had functionally been permanently established under chapter seventeen of Magna Carta, the central royal court faced an uncertain future under conciliar rule and in the aftermath of extensive civil conflict. The extensive extant records of the common law fines made to initiate actions in the Bench as recorded the Fine Rolls offer a window into the roles played by the court in relation to litigants, within the wider structure of royal governance, and in relation to a rapidly evolving legal system. An analysis of these sources can therefore both illuminate the early workings of the common law legal procedures and characterize the demand for royal justice that survived the First Barons' War before continuing to grow across the thirteenth century. What emerges is a picture of a judicial system at the onset of a period of rapid development and widespread demand that would come to lay the foundation for the massive expansion of royal justice that was to follow throughout the reign of Henry III and beyond.

The period between the death of John in 1216 and the full assumption of power of Henry III in 1227 was of fundamental importance in determining the trajectory of the nascent common law legal system. Disruptions caused by years of civil conflict and John's judicial meddling had brought the central common law courts to a standstill, but this period of inactivity proved to be short lived. In the direct aftermath of the issue of the 1215 Magna Carta and the subsequent death of John, a period of rapid evolution began in the process of justice in England. One of the most immediate functions of Magna Carta was to reestablish and empower the Common Bench to hear common pleas at Westminster, and the Council ruling during the king's minority wasted little time in commissioning a general eyre to tour the land in 1218 in an attempt to

address the massive backlog of cases that had accrued.[1] This resurgence of royal and common law judicial activity was additionally both the first since the Fourth Lateran Council undermined the viability of the ordeal in 1215 and the first since the evaporation of the court *coram rege* following the death of John, further destabilizing an already uncertain legal environment.[2] These factors combined to create a context in which the system of royal justice begun in the reign of Henry II and solidified in the reigns of his sons Richard and John faced a challenge that would determine its future and one that it had to face without a king of majority age and in the presence of immense domestic divisions.

This crucial moment in the development of the common law judicial system coincides with a rare opportunity for the historian of the central royal courts. Many (although certainly far from all) of the plea rolls created in the reign of Henry III–documents recording pleas heard before the Common Bench (hereafter referred to as the Bench)–survive to the present, as do their eyre roll counterparts from a handful of counties visited in the two stages of the great eyre (itinerant tribunals of royal justices) of 1218.[3] These traditional tools of the legal historian have been immeasurably bolstered in recent years by the creation of the Henry III Fine Rolls Project (FRP).[4] While the overall usefulness

[1] Doris Stenton, *Rolls of the Justices in Eyre: Being the Rolls of Pleas and Assizes for Yorkshire in 3 Henry III* (London: Quaritch, 1937), xi; Doris Stenton, *Rolls of the Justices in Eyre for Lincolnshire (1218–1219) and Worcestershire (1221)* (London: Quaritch, 1934), xxxvi. This great eyre was divided into two halves, with the first ordered in November 1218 and the second in May 1221. The first circuit included orders to the sheriffs of all counties with the exception of Gloucestershire, Worcestershire, Herefordshire, Staffordshire, Shrewsbury, Leicestershire, Warwickshire, and Surrey. Stenton, *Lincolnshire and Worcestershire*, xxxvii. The second commissioned a circuit to visit the counties of Worcestershire, Gloucestershire, Herefordshire, Warwickshire, Leicestershire, Wiltshire, and Cornwall, thus completing the kingdom-wide judicial tour. Stenton, *Lincolnshire and Worcestershire*, xlvii; M. T. Clanchy, "Magna Carta and the Common Pleas," in *Studies in Medieval History Presented to R. H. C. Davis*, ed. Henry Mayr-Harting and R. I. Moore (London: Hambledon Press, 1985), 224–25.

[2] Judges were developing the scope of actions and increasing the influence of the royal court by making every possible use of jurors. Doris Stenton, *Rolls of the Justices in Eyre: Being the Rolls of Pleas and Assizes for Gloucestershire, Warwickshire and Staffordshire, 1221, 1222* (London: Quaritch, 1940), liv; see Clanchy on the reestablishment of the Bench in 1218 as a restoration of normalcy. M. T. Clanchy, *England and Its Rulers: 1066 – 1307* (Newark: John Wiley & Sons, 2014), 220; administration of justice practically ceased when the war began. Stenton, *Lincolnshire and Worcestershire*, xxxvi.

[3] Court of Common Pleas and King's Bench, and Justices Itinerant: Early Plea and Essoin Rolls (KB 26), National Archives, https://discovery.nationalarchives.gov.uk/details/r/C10030 (accessed 13 March 2024); Henry III, Anglo-American Legal Tradition, http://aalt.law.uh.edu/HenryIII.html (accessed 13 March 2024). These plea roll entries have been transcribed in the Curia Regis Rolls (CRR) series. The volumes covering the period examined in this study include: *Curia Regis Rolls of the Reign of Henry III Volume VIII* (London: Her Majesty's Stationery Office, 1938); *Curia Regis Rolls of the Reign of Henry III Volume IX* (London: Her Majesty's Stationery Office, 1952); *Curia Regis Rolls of the Reign of Henry III Volume X* (London: Her Majesty's Stationery Office, 1949); Stenton, *Yorkshire*, xi–xiii; Stenton, *Lincolnshire and Worcestershire*, xxxviii; Stenton, *Gloucestershire, Warwickshire and Staffordshire*, xi; for an overview of the 1218–1222 eyre visitations see David Crook, *Records of the General Eyre* (London: Her Majesty's Stationery Office, 1982), 71–78.

[4] Paul Brand discusses the benefits that use of the fine rolls offer to the legal historian at length in Paul Brand, "The Fine Rolls of Henry III as a Source for the Legal Historian," in *The Growth of Royal Government under Henry III*, ed. David Crook and Louise Wilkinson (Woodbridge: Boydell Press 2015).

https://doi.org/10.1017/S0738248025000033 Published online by Cambridge University Press

of fines–voluntary payments made in exchange for a royal action or the granting of a royal favor–in illuminating the work of the central courts has been discussed in detail in the relevant historiography, the significant potential that the FRP is able to contribute to analyses of the plea rolls and of wider judicial activity has only begun to be realized.[5] This paper will attempt to fill this space through a quantitative analysis of judicial fines made to secure or advance hearings before the Bench between the resumption of judicial activity in 1218 and the declaration of Henry III's majority at the start of 1227.

A study of this type will shed light on the overall character of the central court system and the types of litigation that it oversaw. It will also provide an additional benchmark that will help to further contextualize the development of the royal courts across the long thirteenth century. While historians of the period have convincingly demonstrated the tremendous growth in common law litigation across the century, less attention has been paid to more granular spans of time within it that help to characterize its expansion. That the common law system of the period would not only grow but thrive across the century and beyond was not an inevitability from the perspective of a jurist or litigant in 1218, but from the perspective of 1285 it may appear as such. The eventual reestablishment of the court *coram rege*–an itinerant court that generally followed the person of the king–by the Council of Gloucester in May of 1234 was by no means a foregone conclusion in this earlier period, and in its absence the Bench sat in a position of heightened significance as the sole central common law court. As the years between the death of John in 1216 and the declaration of majority of Henry III in 1227 comprised the longest period of minority governance in England across the thirteenth century, this period additionally offers an unparalleled opportunity to separate the operation of the royal courts from the person of the king. It is for these reasons that a close investigation of the judicial fines of 1218–1226 offers such compelling insights into the forces that animated the early years of what would develop into a century-long surge in common law litigation that would come to characterize much of the reign of Henry III.[6]

This methodology is not entirely novel. Similar approaches have been deployed with great success in broader sample-based analyses of the rolls across the thirteenth century. Few historians, however, have attempted to apply a quantitative methodology holistically and to a limited span of years.[7] In utilizing the fine rolls, this paper will seek to examine the workings of the

[5] Brand, "Fine Rolls," 44–54; Tony Moore, "The Fine Rolls as Evidence for the Expansion of Royal Justice during the Reign of Henry III," in *The Growth of Royal Government under Henry III*, ed. David Crook and Louise Wilkinson (Woodbridge: Boydell Press 2015), 55–71; David Carpenter, "Between Magna Carta and the Parliamentary State: The Fine Rolls of King Henry III, 1216–72," in *The Growth of Royal Government under Henry III*, ed. David Crook and Louise Wilkinson (Woodbridge: Boydell Press 2015), 9.

[6] The growth in the volume of common law litigation across the thirteenth century is explored by Tony Moore in his analysis of both plea rotuli and judicial fine roll entries. Moore, "Evidence," 55–71.

[7] Carpenter, "Between," and Moore, "Evidence" are the two most closely related studies in terms of methodological approach. Both seek to utilize the fine rolls to shed light on the development of the common law judicial system in the thirteenth century.

https://doi.org/10.1017/S0738248025000033 Published online by Cambridge University Press

central court system during a period of immense uncertainty through an analysis of both its jurisdictional character and of its geographic and social reach in contemporary England. The ground-level image of the nascent central court system between 1218 and 1226 that emerges helps to illuminate its evolution across the first half of the thirteenth century. Given the massive disruptions caused by the First Barons' War (1215–1217) not only to judicial operations but to society in general one might expect to see a royal court system in disarray and perhaps even one that features an uneven distribution of engagement with the common law venues across the realm. This project therefore makes use of the fine entries to test the extent of the demand for royal justice in the aftermath of Magna Carta and to examine the trajectory of growth of the common law courts. It provides an additional snapshot that will serve to complement similar studies at later and earlier points in the thirteenth century, and it augments current understandings of the Bench and its judicial character prior to the reestablishment of the court *coram rege*.

Writs, Fines, and Pleas

As records of receipts for the voluntary purchase of a royal action, the fine rolls are essentially financial documents that not only record information about the transaction itself but that also contain insights into the types of favors being sought. One such favor was the purchase of a writ, a type of document that provided a potential litigant access to the central court system through the foundational common law process first developed under the reign of Henry II.[8] It is those fines that record the purchase of a writ specifically for the initiation of litigation or modification of a lawsuit already in progress, fines which I have here described as "judicial fines", that will be considered in this study. Even at this early stage in the development of the royal courts, these fine roll entries contain information regarding the geographic focus of, amounts rendered for, and underlying causes of action behind each initiation or modification of a case. Plea rolls, by contrast, are judicial documents that record the various procedural steps of a case as it made its way through the royal court system. These plea entries offer a much greater insight into the legal workings of the royal system of justice, but as they do not contain information related to the financial transaction of the fine they are somewhat less useful for the purposes of this study.[9] As a result, the plea and eyre rolls will largely be used to

[8] Brand describes fines as being made by individual litigants in order to ensure that cases that may have otherwise gone to local courts—or that were already being heard before those courts—are instead heard in the central courts. He also highlights the practice of making fines for the hearing of a plea before a "foreign" sitting of the general eyre. Brand, "Fine Rolls," 44. For the foundational importance to the common law of procedure by writ see R. C. van Caenegem, *The Birth of the English Common Law* (Cambridge University Press: Cambridge, 1988), 29–61.

[9] As documents of a legal nature the plea rolls contain extremely useful information about the course of a case. They do not, however, contain the information related to the amount rendered to initiate the case that will be utilized in this study in the manner of the fine rolls. The plea rolls are additionally both massively voluminous and have survived to the present in a much more piecemeal fashion than have the fine rolls. Moore, "Evidence," 57.

https://doi.org/10.1017/S0738248025000033 Published online by Cambridge University Press

contextualize the data provided by the fine rolls here, although space remains for further analysis of the findings of this study in relation to both sources.

The common law system that had taken shape by 1218 had simultaneously reached a stage of immaturity and of complexity that requires careful navigation on the part of the modern historian. The bifurcated system of central royal courts split between the Bench and the itinerant court *coram rege* that had been instituted by King John in the first decade of the thirteenth century had not survived his turbulent reign intact. John's decision to effectively abolish the Bench in the first decade of the century[10] would be resoundingly undone by chapters seventeen and eighteen of Magna Carta,[11] while the court *coram rege* would not survive his death and would remain inactive until 1234.[12] One point of somewhat inconsistent judicial activity had been the visitations of the eyres, circuits travelled in this early period by the judges of the Bench assisted by designated magnates and prelates of the realm.[13] These royal and common (but not central–a significant distinction in both geographic and jurisdictional terms) law courts themselves were but one piece of the wider jurisdictional puzzle of thirteenth-century England, but the century-wide explosion in popularity of the common law venues among litigants had already begun to gain steam when judicial activity in England resumed in 1218.[14]

Litigation was generally initiated at the level of the county court by a writ *de cursu* (or at the level of the feudal court and then brought to the county by a writ of *tolt*), although it could be brought directly to the Bench via a writ *de gratia*.[15] The feudal courts held a wide degree of original jurisdiction (especially in the area of real property disputes), but litigation could be removed to the

[10] Ralph Turner, *The King and His Courts: The Role of John and Henry III in the Administration of Justice, 1199–1240* (Ithaca: Cornell University Press, 1968), 23; Clanchy, "Magna Carta," 228–29.

[11] Clanchy clarifies that the close association between the Bench and chapter seventeen of Magna Carta was a later evolution meant to safeguard the jurisdictional existence of the Bench itself. He argues that the chapter served as a foundation of both the Bench and eyre in this period, and that the common pleas referenced in the chapter apply more to the sittings of the eyre than to the Bench. Clanchy, "Magna Carta," 219–32.

[12] Turner, *King and His Courts*, 25; David Carpenter, *Henry III: The Rise to Power and Personal Rule 1207–1258* (New Haven: Yale University Press, 2020): 153; Clanchy, "Magna Carta," 222; for the quintessential discussion of the newly renewed court *coram rege* see C. A. F. Meekings and David Crook, *King's Bench and Common Bench in the Reign of Henry III* (London: Selden Society, 2010), 19–33.

[13] For a description of a general eyre see Carpenter, *Henry III: Rise and Rule*, 51; the Bench and the eyres can essentially be understood as two iterations or venues of the same royal court system in the years immediately following Magna Carta. With that said the two types of sitting were certainly distinct from one another, and Clanchy describes the authority of the eyre as both more established and wide-ranging than that of the Bench. Clanchy, "Magna Carta," 223.

[14] Moore's findings indicate that while the number of overall rotuli comprising the plea rolls in a given year was lower in 1218 than it had been in 1212, it was still higher than in any of the other previous years. Moore, "Evidence," 59. While regular judicial activity resumed to a degree at Westminster in 1214, the war and the death of John would continue to cause disruptions until 1218. Clanchy, "Magna Carta," 230.

[15] Robert Palmer, *The County Courts of Medieval England, 1150–1350* (Princeton: Princeton University Press, 1982), 141–73. Palmer's definitive discussion of the jurisdictional connections between the county and central royal courts identifies a number of avenues through which litigation might come

https://doi.org/10.1017/S0738248025000033 Published online by Cambridge University Press

higher level of the county courts if there were concerns over a lord's ability to mete out impartial justice or issues over procedure.[16] From the county court, the plea might be brought up to the royal courts through a writ *pone* (transferring a plea first brought before a lower court to a royal court), a writ of false judgement, a grand assize (a determination of the suit held in the royal courts in lieu of trial by battle and at the request of the tenant), or a writ of *recordari* (used to remove pleas when a record of the case was required), and indeed increasingly was across the long thirteenth century.[17] The reasons that might lead a litigant to do so were varied, but the general legal theory (as reflected in Glanvill) was that the higher royal courts were able to dispense a more impartial quality of justice and at a higher level of jurisdictional authority that transcended the geographic boundaries of the county courts.[18] These procedures of removal, record, and challenge helped to offer all parties involved in a plea–the plaintiff, the defendant, and the court–recourse in the event of a deficiency in the course of the judicial process, and it firmly connected the royal courts with the feudal and county courts with which many litigants would interact as a matter of course.

Litigation did not need to first originate in the lower courts in order to be heard before the central courts, however. Actions could be initiated before the royal common law courts either by writs *de cursu* or by writs *de gratia* that could be purchased at varying rates to either initiate or modify the progress of a range of civil and crown actions.[19] These writs were usually initiated by the promise of a later payment for the fine (in the case of writs *de gratia*) or by a purchase up front (for those *de cursu*).[20] Writs *de cursu* were standard-form documents issued through the Chancery[21] that could be received by a litigant through fines made at a relatively affordable 6d and that functioned to initiate pleas at either the county or eyre level (but not before the Bench).[22] Writs *de gratia*, by contrast, were issued through the Exchequer, and the fines made for them could instead vary tremendously in cost.[23] These writs served initially to direct litigation to the Bench and eyres and later to the court *coram rege* as well. It is this latter type of *de gratia* fines that were recorded in the fine rolls of the period, and therefore the type that will be examined here.[24] While writs *de cursu* are thought to have greatly eclipsed writs *de gratia* in the first third of Henry's

from the one into the other and argues that this process was pivotal in the gradual emergence of a common English legal system.

[16] Palmer, *County Courts*, 145–47.

[17] Palmer, *County Courts*, 149–52, 232.

[18] See above.

[19] Moore, "Evidence," 61.

[20] The *de gratia* fines themselves were likely made later on after the moment of procurement. Carpenter, "Between," 10. Fines for writs *de cursu*, however, were far more standardized and were likely purchased at the initial stage of the litigation.

[21] Carpenter, "Between," 12.

[22] Carpenter, "Between," 12; for a thorough discussion of the distinction between the two types of writs see Elsa de Haas, G. D. G. Hall, *Early Register of Writs* (London: Quaritch, 1970), lxiv–lxvi.

[23] Moore, "Evidence," 61–63.

[24] Carpenter, "Between," 12.

https://doi.org/10.1017/S0738248025000033 Published online by Cambridge University Press

reign, the decision to focus solely on those *de gratia* is not one born purely of practicality.[25] The variable nature of these writs offers a more nuanced view of the role played by the central royal courts beyond the standardization of the writs *de cursu*. It should be noted, however, that both types of writs might be involved at different stages in the procedural progress of a given case. A writ *de cursu* returnable at the county court or eyre level might lead to a writ *de gratia* of what might (somewhat anachronistically) be termed a "procedural" nature whereby a case is removed to or challenged at the eyre or Bench level.[26] As a result, a focus on writs *de gratia* is not only practically necessary but is also capable of reflecting some of the unseen litigation initiated *de cursu*.[27] Such an approach naturally limits any analysis to a minority of the actual business that came before the courts, and this foundational limitation must be recognized in contextualizing the information offered from this methodology.

Approach

Despite these inherent limitations, however, a quantitative attempt to investigate the judicial fine rolls across a limited but significant period of years can offer a fascinating window into the position occupied by the Bench in both a legal and a societal sense. This first requires a means through which the relevant fines can be sorted from those unconcerned with judicial business. Here the online accessibility of the FRP has proven itself especially invaluable, as the FRP's search function can be combined with the repetitive and formulaic nature of the fine entries to filter out all but the judicially relevant fines.[28] This was primarily accomplished through a search restricting entries to those that make mention of "justice(s)" (as the most consistently relevant term to appear in fine entries dealing with judicial matters) and through a subsequent culling by hand of entries unrelated to the initiation or modification of a plea before the Bench.[29] This process led to a total of 316 pertinent judicial fine roll entries

[25] Moore, "Evidence," 69 drawing on Beth Hartland and Paul Dryburgh, "Development of the Fine Rolls," in *Thirteenth Century England XII: Proceedings of the Gregynog Conference, 2007*, ed. Janet Burton, Phillipp Schofield, and Björn Weiler (London: Boydell Press 2009), 198–99. For a discussion on returnable writs (those containing a clause requiring the sheriff to return the writ, summons, and sureties before the court on a certain date) in the context of novel disseisin see van Caenegem, *Birth of the English Common Law*, 46–47.

[26] The most common examples of this procedural category include *pone* (an appeal to have the case reheard at a higher level), attaint (to challenge the determination of a jury), and what may be termed "removal" (another method of having a case removed from the current venue to be considered by a different court). These examples are discussed later.

[27] Although it was possible for writs *de gratia* to be granted without fee (especially in cases of poverty) such entries are unlikely to amount to a significant number. These writs would not be enrolled in the fines. Moore, "Evidence," 69.

[28] For more information on the project see Project Information, Henry III Fine Rolls Project, https://finerollshenry3.org.uk/content/information/projectinfo.html (accessed 13 March 2024); the FRP offers advantages for quantitative approaches to the fine rolls that are unavailable to studies of their plea roll equivalents. Moore, "Evidence," 60.

[29] Text Search, Henry III Fine Rolls Project, https://finerollshenry3.org.uk/content/search/search_text.html (accessed 13 March 2024); Moore discusses a similar dilemma in the crafting of

https://doi.org/10.1017/S0738248025000033 Published online by Cambridge University Press

between the years 1218 and 1226. These fines were then analyzed across a number of relevant categories reflecting the wealth of information contained in the limited format of the fines including: the marginal notation of geographic origin; cause of action; venue; cost of fine; and amount offered in pleas of debt.

A typical example of a fine entry, however brief, will contain most or all of this information. One fairly typical entry from December of 1219, for example, reads: "7 Dec. Bath. Wiltshire. Alice daughter of Osbert of Sherborne and Matilda, her sister, give the king half a mark for having a pone before the justices at Westminster in the octaves of the Close of Easter against Baldwin son of John, concerning a virgate of land with appurtenances in Tisbury. They have the writ. Order to the sheriff of Wiltshire to take etc. Witness H. [de Burgh, justiciar] etc."[30] The entry is assigned a margination of Wiltshire–indicating the county to which process was to be directed, and thereby the geographic locus of the dispute–and both the plaintiffs (Alice and Matilda, daughters of Osbert of Sherborne) and the defendant (Baldwin son of John) are clearly identified. The fine indicates that the litigation was to be directed toward the Bench rather than to the eyre, and the cost of the fine is prominently listed at half a mark.[31] The nature of the litigation is included as well, which in this case is a *pone* brought on an underlying dispute of land. Even a typical fine of this nature therefore offers a wealth of information that can be utilized to provide quantitative insights into the daily operations of the Bench without the need for external contextualization through the plea rolls.

Similar methodological approaches have been deployed in recent historiography in order to sift nuggets of valuable information from the river of thirteenth-century English legal records, but most have attempted a broader approach. These studies have largely made use of fine rolls in either a sample-based or a macro methodological approach in order to gain insights into the judicial workings of the period through examination of both the pecuniary data contained in the fines and the overall volume of the fines across time.[32] In order to address the similar set of challenges presented by the plea, fine, and eyre rolls these investigations have adopted approaches that largely avoid the pitfalls inherent in such a repetitive body of primary source material: Tony Moore is certainly correct in highlighting the inherent difficulties in any attempt to link fines for original writs to the surviving plea rolls across any major span of time, for example.[33] Space remains, however, for a close investigation of the judicial fines across a more limited span that reflects a pivotal moment in the growth of medieval English legal institutions. Although

accurate search terms that is likely to confront any use of keyword searches in a database. Moore, "Evidence," 65.

[30] Text Search, Henry III FRP, 4–27 (December 1219) (accessed 5 March 2024).

[31] A *pone* could, however, also function to remove litigation from the county court to an eyre. Paul Brand, "Judges and Judging 1176–1307," in *Judges and Judging in the History of the Common Law and Civil Law*, ed. Paul Brand and Joshua Getzler (Cambridge: Cambridge University Press, 2012), 8.

[32] Brand, "Fine Rolls" and Carpenter, "Between" both rely upon a sample-based approach to illustrate change over time, while Moore's "Evidence" uses a macro approach that investigates the evolution of the judicial fines and pleas across the reign of Henry.

[33] Moore, "Evidence," 63.

https://doi.org/10.1017/S0738248025000033 Published online by Cambridge University Press

Figure 1. Number of Bench entries per year. Text Search, Henry III FRP (accessed 16 January 2024).

such an approach by definition cannot encompass the wider developments discussed in these studies, it can offer a useful window through which larger judicial trends can be contextualized. The information yielded by this methodology is therefore not only useful through the direct image of the central common law court between 1218 and 1226 that emerges, but also in that it provides insights into a distinct period in time through which the wider evolution of the Bench across the reign can be contextualized from the outset.

Number of Entries

Perhaps the most straightforward use of the fines considered in this study is to determine the number of entries–and therefore estimate the general level of *de gratia* litigation–through an examination of the venue designated in each fine (see Figure 1). As documents meant to record information related to the purchase of a fine the fine roll entries in this period designate the specific court and time for any plea hearing as a matter of course. When restricted to the Bench these data indicate a significant and consistent decline in the level of overall litigation across the period from its peak in 1220 to an almost complete cessation in 1226. While this decline must necessarily be contextualized within the wider explosion of common law litigation across the century, it is interesting that the initiation of judicial activity before the Bench had almost entirely ceased by 1224 despite the lack of any of the civil conflicts that usually accompanied such a decline in the period.[34] Perhaps the most obvious explanation is that this decline reflects the successes of both the Bench and the eyres in addressing the backlog of litigation that had accrued by 1218. If so the

[34] This is true not only of the First Barons' War but of the Second as well, as the latter conflict interrupted the steady growth of the royal courts in the 1260s. Moore, "Evidence," 70.

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drop in Bench litigation can be viewed as a success of the judicial reforms envisioned both in Magna Carta and by the ruling council as opposed to a failure providing evidence that the royal courts were not meeting the demand for common law litigation. A small degree of litigation related to the king that might have come before the Bench in the final years of this period may also have been delayed for consideration during his majority, but it is clear regardless that the bulk of judicial activity before the Bench between 1218 and 1226 can be found in the first half of those years.

Causes of Action

Any attempt to categorize fine roll entries in the early thirteenth century along clear-cut lines of subject matter is an inherently messy one: the relatively early stage in its development that the common law system had reached by 1218 necessarily makes any such venture a somewhat anachronistic one as well. Writs may function to initiate legal actions, and in this way these writs will align with what may be termed the underlying–or original–cause of action (such as in an assize of novel disseisin, for example). But writs may also simply advance or modify an action that had already begun, as in a writ of *pone*. As a result, writs can roughly be divided into what may be inelegantly termed "original" and "secondary" categories.

An important element of the wider role played by the Bench in both the common law legal system and in English society can be discerned through an examination of the first of these categories: original, underlying causes of action that animated each fine entry and subsequent legal action. This category of original actions is primarily useful insofar as it not only illuminates the internal breakdown of what types of action were generally heard before the Bench, but also that it reveals the types of disputes that litigants brought to the central common law courts in the first place.[35] Almost every fine entry will contain information on the underlying cause of action regardless of whether the writ being sought was itself of an original or a secondary nature. Figure 2 provides a breakdown of the most common types of these substantive, original entries before the Bench across the period. It is unsurprising that pleas of land dominate the overall complexion of the judicial fines not only due to the central role such cases play across the century but also to the disruptions caused both in John's reign and by the recent conflict that had surrounded his death.[36] Cases related to the recovery of debts make up the second largest section, and the remainder is composed of an assortment of various causes of action. Of these

[35] "Original" in that these writs are animated by the underlying causes of action as opposed to the procedural or appellate actions. Another example would be a fine for a plea regarding land as opposed to a fine for a writ *pone* based on the original plea in land. While some writs certainly blur this distinction, it is still a useful filter in order to discern the types of cases being heard before the common law courts.

[36] Hyams describes the vast majority of cases found in the plea rolls in the first half of the thirteenth century as concerned with land in some way. Paul Hyams, "The Origins of a Peasant Land Market in England," *Economic History Review* 23 (1970): 23.

https://doi.org/10.1017/S0738248025000033 Published online by Cambridge University Press

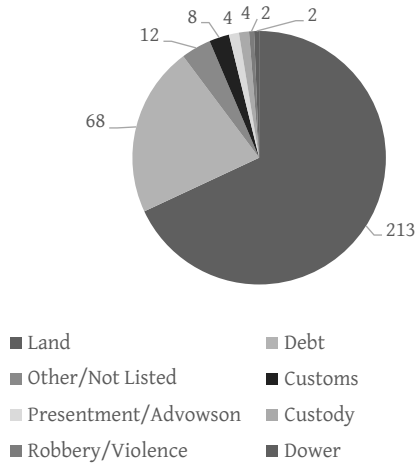

Figure 2. Original causes of action. Text Search, Henry III FRP (accessed 16 January 2024).

the presence of pleas related to robbery or violence is especially worthy of note, as it indicates that the Bench exercised judicial functions that would later come to be associated with the court *coram rege* after its reconstitution in the 1230s.

It is specifically in pleas of debt, however, that a variation from the standard forms of payment for a fine can be identified. These entries are the only examples in the fine rolls during this period of what may be described as an alternative method of payment in the making of the fine. Payment for pleas of debt was oftentimes taken from the first monies of the recovered sum as opposed to the separate fees offered in other judicially relevant fines.[37] It was possible even within these atypical instances to choose between the promise of a set amount of money to be made from the recovered debt and the promise of an overall percentage of the recovered funds.

While the very existence of these alternative options merits further examination, it is the massively divergent amounts of money usually rendered for the debt fines that raise the most significant questions. Three comparable fines directed to the Bench from May and June of 1218 illustrate this discrepancy. The first, from Essex, offers fifty shillings for the judicial fine out of the first monies of a debt of twenty-four marks and seven shillings.[38] The second, from Middlesex, offers one-third of a sixty pound debt,[39] while the third (also from Middlesex) offers a flat one mark fine for a debt of eight marks and six shillings that is not described as coming out of the first monies of the debt at all.[40] These

[37] In his discussion of the practice of promising a portion of the recovered monies to purchase a writ of debt Moore describes it as mandatory in the early years of the period, before later being replaced by the standard fixed rates. It would appear that litigants had a choice in the matter from a quite early point in the century, however, as a flat payment for a fine of debt can be found as early as June 1218. Moore, "Evidence," 67–68; Text Search, Henry III FRP, 2–108 (June 1218) (accessed 13 March 2024).

[38] Text Search, Henry III FRP, 2–95 (May 1218) (accessed 13 March 2024).

[39] Text Search, Henry III FRP, 2–93 (May 1218) (accessed 13 March 2024).

[40] Text Search, Henry III FRP, 2–108 (June 1218) (accessed 13 March 2024).

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three fines made to the same court under the same cause of action not only provide evidence of three separate methods for the payment of the necessary fine for a writ *de gratia* in debt, but they also functionally result in three exceedingly divergent amounts of payment seemingly regardless of the amount of the debt at issue. While it is possible that this can be attributed to a dearth of information among litigants of the normal cost of fines–or even a degree of favoritism toward litigants on behalf of the Exchequer–it is unlikely that either explanation can account for the inconsistency that seems peculiar to pleas in debt during this period. Around 43% of the fine entries in debt from 1218 to 1226 feature a payment expressly drawn from the first monies, and of those twenty-nine entries only three offered a set fee to be drawn from the debt in the manner of the Essex example (as opposed to a percentage-based payment).[41]

It instead seems likely that plaintiffs in cases of debt viewed the making of a larger percentage-based fine as conferring some advantage during the course of their litigation. A motivation of this sort would help to explain the rationale behind the frequent willingness of litigants to make much greater percentage-based payments than were necessary in such cases. The significant variation in levels of payments in cases of debt may therefore reflect individual negotiations between the party seeking the writ and the Exchequer. While there is no indication that higher payments led to more favorable outcomes, there were still a number of other potential benefits to be extended to a well-paying litigant–indeed the very existence of the *de gratia* fines themselves can be described as a method to expedite a plea in exchange for a somewhat variable (and higher) level of payment. Any hints of corruption or bribery on behalf of the royal judges that may have given rise to the potential advantage in cases of debt must, however, account for the constitutional prohibition on the selling of justice contained in chapter forty of Magna Carta.[42] The judges were additionally subject to oversight by the Council, and given the high proportional number of debt cases across the period it is unlikely that any widespread judicial impropriety in such cases would have gone unnoticed.[43]

One possible indication may be provided by the opinions held by contemporary chroniclers toward the judges and their actions, especially in relation to the increasing professionalization of the Bench justices in this period.[44] The composition of the royal courts that emerged in the minority of Henry III featured a much greater degree of turnover than in the transitory periods following the deaths of Henry II or Richard.[45] The preference for great

[41] The corresponding 57% of debt entries offer a set fee (without indication that it is to be drawn from the first monies) in a similar manner to any other judicial fine. The distinction between the two methods of payment suggests that the Bench was in the midst of an interim period between the earlier practice of requiring a portion of the debt and the later development of the writ of debt at a standard rate. Moore, "Evidence," 67–68.

[42] For a translation of and discussion on chapter forty of Magna Carta see Carpenter, *Magna Carta*, 27–28, 52–53.

[43] Ralph Turner, "The Reputation of Royal Judges Under the Angevin Kings," *Albion* 11 (1979): 307.

[44] Ralph Turner, *The English Judiciary in the Age of Glanvill and Bracton, c. 1176–1239* (Cambridge: Cambridge University Press, 1985), 191–93.

[45] Turner, *English Judiciary*, 192.

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magnates and prelates that feature in prior iterations of the courts had begun to give way to a new class of professional justices typified by jurists like Martin of Pattishall and Stephen of Seagrave. While these new justices would come to play pivotal roles in the development of the common law across the century, their rise in the Bench was not an evolution that was universally lauded by contemporary commentators. There is something of a discrepancy between the high regard in which modern historians tend to hold the central judges of the thirteenth century and the decidedly mixed one held by some of their contemporaries.[46] The complaints of chroniclers such as Matthew Paris lie less in criticisms of the judges' competence than in their perceived greed and venality.[47] Dismissed as "men of low birth" who were primarily interested in raising revenue (and not entirely uncolored by discomfort with religious figures dispensing lay justice) the judges tended to be portrayed by chroniclers as having an unhealthy interest in the financial elements of their work.[48] It should be noted, however, that this claimed emphasis on pecuniary extractions rarely amounted to a full-blown accusation of outright bribery or favoritism. Instead, the judges largely seemed to view themselves as productive royal servants engaged in a revenue-raising venture for the king (or for the council).[49] It would, however, be highly unlikely that the individual judges did not stand to benefit from higher revenues, especially while on eyre. The high costs of travelling a circuit were defrayed by an allowance largely taken from amercements (but only at a later point in the century),[50] and the judges themselves seem to have drawn the core of their payments for their services from a customary share of fees payable in this period.[51]

When combined with the obvious interest of the Council in favoring those who maximized revenue there may indeed have been some strategy in offering a percentage of the debt as opposed to a flat payment. These percentage-based fines could have incentivized the judges to expedite the typical pace of pleas in a similar manner to the advantages offered through the purchase of a *de gratia* writ over one *de cursu*.[52] Such a strategy would benefit plaintiffs who may have had a more pressing need for the funds recovered in cases of debt than would be found in the

[46] Turner, "Reputation," 301.

[47] Turner, "Reputation," 306.

[48] Turner, "Reputation," 304–05. The chroniclers themselves were not necessarily free of bias, however. Aside from the discomfort that some expressed with the mixing of lay justice and clerical judges some may have had their opinion colored by past instances of common law litigation that had led to unfavorable results for their own religious houses.

[49] The primary piece of evidence cited for this view is a series of letters written by William of York to the royal chancellor between 1226 and 1228. Turner, "Reputation," 311–12.

[50] C. A. F. Meekings, *Crown Pleas of the Wiltshire Eyre, 1249* (Devizes: Wiltshire Archaeological and Natural History Society, 1961), 12.

[51] Meekings, *Crown Pleas*, 13.

[52] If an expedition of the plea was indeed sought by those making the higher percentage-based fees, then an interesting parallel can be drawn with the Statutes of Acton Burnell (1283) and Merchants (1285) which sought to make the process of debt recovery speedier within a commercial context. The issue shared between the two is the rendering of extra payment to expedite the process of justice in cases of debt. Recovery of debt may have had a degree of temporal urgency that would have differentiated actions in debt from similar types of litigation.

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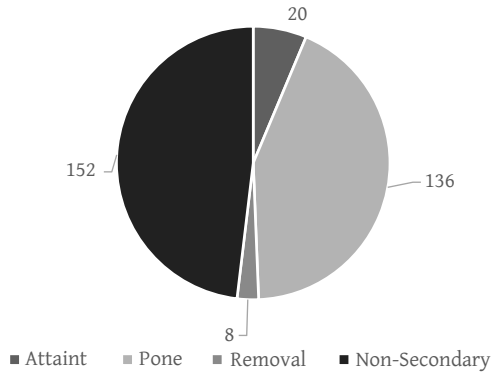

Figure 3. Secondary fines. This chart illustrates the number of secondary fines as a portion of the overall fines considered in this study. Text Search, Henry III FRP (accessed 18 January 2024).

more common land-based pleas while also contributing to the financial success of the Bench as an organ of the royal government.[53] Moore alludes to such a possibility, but without additional evidence no firm conclusions can be drawn solely from the existence of this alternate mode of payment in pleas of debt.[54]

Secondary Jurisdiction

This secondary and procedural category speaks to the role occupied by the royal judicial sittings of the Bench in the wider legal architecture of contemporary England as opposed to the original legal actions initiated before the Bench itself as a court of first instance. While a number of procedural writs can be identified in the fines of this period, it is the "secondary" actions either removing a case to a higher court or questioning some prior element of a case determined by a lower court that speak the most directly to the evolving nature of the central common law courts. When the fines are collated on the basis of this secondary identity a largely procedural characterization of the court emerges from the *de gratia* writs recorded in the fines (see Figure 3).

By far the most common single category is that of the writ *pone*, an instruction to transfer a plea originally brought before a lower court by another writ to a royal court at a specifically designated time.[55] A writ of *attaint*, by contrast, allows a litigant to challenge the jury's verdict and in so doing to continue a plea,[56] while

[53] While any effort to determine the rationale behind these percentage-based pleas is inherently fraught, it is difficult to dismiss such a significant distinction in litigation strategies even at this early stage. For a similar question regarding the features particular to debt litigation within the context of the manor courts see Chris Briggs, "Manor Court Procedures, Debt Litigation Levels, and Rural Credit Provision in England, c.1290–c.1380," *Law and History Review* 24 (2006): 519–58.

[54] Moore suggests that the use of a percentage-based instead of a flat fee may have expedited a plea in debt by giving the king a stake in the outcome. Moore, "Evidence," 68.

[55] Moore, "Evidence," 65; Palmer, "County Courts," 331.

[56] Stenton, *Lincolnshire and Worcestershire*, liii; Palmer, *County Courts*, 328.

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removal simply serves to directly remove consideration of a plea to a higher court.[57] These types of action represent the sittings of the Bench in the role of a higher court as opposed to an original one, and when combined they outnumber fines that contain no mention of appeal or transfer by a slight–but significant–margin. The indication is that the Bench filled both a primary and a secondary, appellate function in the complicated jurisdictional web of early thirteenth-century England both as a court of first instance and as a court of removal and review. Cases either too difficult for consideration by local courts or perceived as being worth the higher cost of a *de gratia* fine by one of the litigants would be especially likely to be brought before the Bench, and the court clearly sat atop the hierarchy of the English royal judiciary in the period.[58] The corresponding emphasis on local courts adds further weight to the argument that the central royal courts had not yet attained the position of dominance over the once-indispensable local judicial system that would come to characterize litigation later in the century. It also reflects a fundamental confidence in the Bench as a venue that worked hand in hand with the growing demand for royal legal services perhaps even more so than did the eyres.

Here the secondary entries found in this dataset can be compared with the fines reviewed by Carpenter in 1207–1208 and 1256–1257.[59] The results are striking: thirty-three of the approximately seventy judicial fines (~47%) were for writs of *pone* in the fine roll of 1207–08 while only sixty of 462 similar fines were made between 1256 and 1257 (~13%). Between 1218 and 1226, the equivalent percentage sits at ~43% with 136 of the 316 fines being made to secure a writ *pone*.[60] The overall trend that emerges is one of a gradual decline in the popularity of writs *pone* and, by extension, of the principal procedure through which a litigant could access the appellate function of the central common law courts.[61] It is perhaps unsurprising that the temporal proximity between the 1207–1208 and 1218–1226 fine rolls is reflected in relatively similar proportions of *pone* litigation, although the similarity does speak to a rapid resumption of the appellate role that had been filled by the Bench prior to the war and to the death of John. As the common law system grew alongside a flourishing professional judiciary and bench its highest courts were increasingly sought out as an original–as opposed to a secondary–venue for

[57] For an example of removal (and of how removal of an assize had to consider chapter fourteen of the 1217 Magna Carta) see Brand, "Fine Rolls," 50–51.

[58] See Stenton, *Gloucestershire, Warwickshire and Staffordshire*, xlviii for a discussion of the evolution of this process in the period. Stenton highlights how there was less strain on later eyres to defer hearing the plea on account of the difficulty or novelty of the case.

[59] Carpenter, "Between," 13.

[60] See Table 1. Moore found 2,271 instances of the writ *pone* out of a selection of 20,713 judicially relevant entries spanning from 1194 to 1307, and he describes its use as largely consistent across the period. Moore, "Evidence," 65.

[61] The decline is a proportional one in this period, however, as the overall number of writs *pone* grew across the century alongside the wider growth of common law litigation. It likely additionally reflects the replacement of the writ *pone* with that of the writ *ad terminum*. For a discussion of the latter see Robert Palmer, "The Origins of Property in England," *Law and History Review* 3 (1985): 1–50; Moore, "Evidence," 62–63.

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Table 1. Writs Pone

Years	Number of Writs Pone	Number of Writs Overall	Percentage
1207–1208	33	70	47%
1218–1226	136	316	43%
1256–1257	60	462	13%

Text Search, Henry III FRP (accessed 18 January 2024).

litigants that could afford (or were granted) the more expensive *de gratia* writs. This development took place alongside a general trend away from writs *de cursu* and toward the very writs *de gratia* that would have granted a secondary procedure such as the writ *pone*, at least before the central royal courts.[62] Writs *de gratia* can therefore be described as having begun to siphon not only popularity but also the function of originating pleas from their *de cursu* counterparts across the first half of the thirteenth century in a manner that foreshadows the decline of the eyre itself in the latter half as compared to the central common law venues.

The steep decline in writs *pone* reflected in the fine rolls across the century may also be linked to a more negative association with the royal courts of Henry III in particular: that of royal favoritism. Accusations that the royal courts were more open or accessible to members of the king's own circle reflected both frustration with the indifference shown to the justice system by Henry III and wider opposition to the perceived malign influence of foreign actors in the royal court, but they were fundamentally driven by the widespread demand for common law justice across the kingdom. The particular interest in the Bench held by reformers is evinced in the attempt by the Paper Constitution to bring that court out of the hands of the king, and it is significant that the court *coram rege* was not addressed by the planned reforms at all.[63] The decline in writs *pone* may provide evidence in support of the reformers' complaints: given that the function of a *pone* was to bring a plea into the higher royal justice system (as opposed to simply initiating it in the central courts in the first instance) this shift may reflect a greater degree of difficulty in the bringing of litigation up from the lower courts, and thereby a commensurate burden on the litigants who could not afford to access the central royal courts directly.

[62] Moore, "Evidence," 61. It should be clarified that writs *de cursu* were likely still purchased in large numbers throughout the century, especially prior to eyres. The trend toward writs *de gratia* before the Bench (and later the court *coram rege*) took place in the wider context of the growth of those courts and the eventual end of the eyre in the reign of Edward I. See Caroline Burt, "The Demise of the General Eyre in the Reign of Edward I," *English Historical Review* 120 (2005): 1–14.

[63] For a more thorough discussion of the Paper Constitution's intended treatment of the judiciary see N. Denholm-Young, "The 'Paper Constitution' Attributed to 1244," *English Historical Review* 58 (1943): 420–21.

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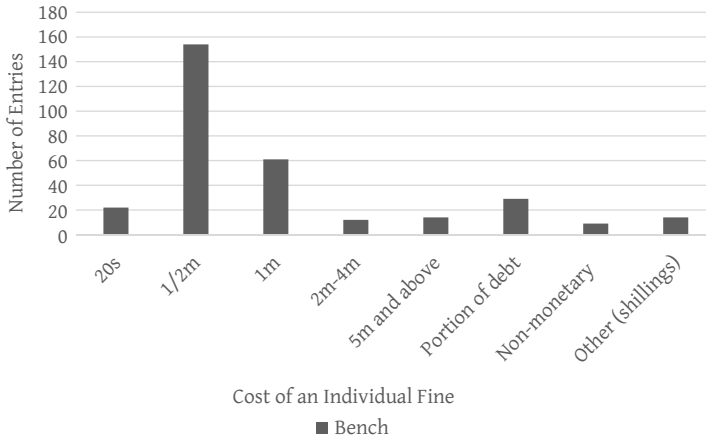

Figure 4. Payments per Bench fine. Text Search, Henry III FRP (accessed 16 January 2024). These amounts have been left in their original states.

Fine Payments

The fundamentally financial nature of the fine roll receipts additionally allows for an analysis of the amounts rendered to purchase these *de gratia* fines and by extension the judicial actions that they governed. Given that one of the primary distinctions between writs *de cursu* and writs *de gratia* is the more variable–and usually higher–amount rendered for the latter (as opposed to the flat 6d cost of the former) these fine payments both indicate the worth of those types of writs to potential litigants and illuminate discrepancies between certain writs and causes of action.[64] Figure 4 indicates a breakdown of the most common types and levels of payment rendered for judicial fines before the Bench across the period.[65] Most immediately noticeable is that the vast majority of these *de gratia* fines were made at either a half mark or at one mark, and especially at the level of the former.[66] This suggests that while the *de gratia* fines were nowhere near as standardized as those made *de cursu* they were still somewhat consistent in cost, albeit at a significantly higher level.[67]

[64] See Carpenter, "Between," 12. Although the higher payments required for fines *de gratia* could essentially price swathes of the free peasantry out of use of those writs, the potential for them to be granted gratis (especially in cases of poverty) helps somewhat to bridge gaps of class in these entries; Moore describes *de gratia* writs as significantly more expensive than their *de cursu* equivalents. Moore, "Evidence," 63–64.

[65] For a particularly elegant breakdown of the relative values of thirteenth century English metrics of account see David Carpenter, *Henry III: Reform, Rebellion, Civil War, Settlement 1258–1272* (New Haven: Yale University Press, 2023): xiv.

[66] A half of a mark was worth six shillings and eight pence, and one mark worth thirteen shillings and four pence. Moore, "Evidence," 63.

[67] It should be remembered, however, that a number of these *de gratia* writs would have been granted freely and would not therefore appear in the fines at all. Moore, "Evidence," 61.

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Table 2. Comparison of Payments per Fine

Years	20 Shillings	½ Mark	1 Mark
1218–1226	21 (6.6%)	154 (48.7%)	61 (19.3%)
1256–1257	43 (4.1%)	246 (23.7%)	197 (18.9%)
1194–1305 (selected terms)	1,676 (8.1%)	12,590 (60.8%)	4,600 (22.2%)

Text Search, Henry III FRP (accessed 17 January 2024); Carpenter, "Between," 14; Moore, "Evidence," 63–64.

These figures need not be considered in isolation, however, as both Carpenter and Moore have applied similar analyses to fines at other periods within the thirteenth century and across the century overall.[68] In the fine roll for 1256–1257 the breakdown by cost stands at 246 entries at a half mark (23.7%), 197 at one mark (18.9%), and forty-three at twenty shillings (4.1%).[69] Across a number of selected terms from 1194 to 1307 it stands at 12,590 entries (60.8%) at half a mark, 4,600 at one mark (22.2%), and 1,676 (8.1%) at twenty shillings.[70] When data from the years 1218–1226 are placed in conversation with these figures a roughly similar pattern emerges. An analysis of the fines of 1218–1226 using the same approach reveals a split at 154 entries (48.7%) for a half mark, sixty-one (19.3%) at one mark, and twenty-two (6.96%) for twenty shillings. These figures indicate that the cost of fines of this period largely corresponds with the overall cost of like fines across the century while additionally supporting the assertion that *de gratia* fines became more expensive on average as the century progressed.[71] Beyond these most common sums rendered for a judicial fine more atypical payments can be found in the span of years examined in this study as well. Direct payments exceeding one mark are much more uncommon at approximately 8.2%, although these payments could be as high as fifteen marks or even up to ten pounds.[72] An exceedingly small minority were rendered in non-monetary chattels with a palfrey as the usual payment, although the few entries in which the fine is measured in tuns of wine deserve special mention. The final (and perhaps most noteworthy) type of payment is peculiar to pleas of debt and has already been discussed within that context.

[68] See Table 2. Carpenter, "Between," 14; Moore, "Evidence," 63–64.

[69] Carpenter, "Between," 14. These percentages are from all fines in the period as opposed to solely those related to judicial activity.

[70] Moore, "Evidence," 63.

[71] While a half mark appears to be the most consistent price point for the making of a judicial fine to secure a writ *de gratia* across the century, it decreases significantly in terms of percentage between the 1218–1226 and the 1256–1257 data. The frequency with which fines were made at one mark or at twenty shillings can be seen to remain largely static across the period, however. The general inflationary trend across the selected years and the century more generally must also be taken into consideration in contextualizing the growing expense. P.D.A Harvey, "The English Inflation of 1180–1220," *Past & Present* 61 (1973): 3–30.

[72] Direct terms as defined so as not to include fines made based on a portion of a recovered debt or non-monetary fines with more variable values.

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Geographic Marginations

A final core element of the fine entries speaks specifically to the geographic distribution of the *de gratia* litigation coming before the central common law courts. Up until the later years of the 1220s, all fines contained a marginal notation designating the county to which the business belonged.[73] In the context of the judicial fines, these marginalia indicate the county implicated as the location of the dispute in the fine. This is similar to the way in which the plea and eyre rolls reference the county to whose sheriff process was to be directed.[74] An analysis of these marginalia therefore illustrates which counties and regions of the kingdom were generating litigation that interacted with Bench most–and least–frequently between 1218 and 1226.[75]

Immediately noteworthy is that the Bench drew business from across England. The top ten counties by overall volume of judicial entries span the length and breadth of the kingdom. Such a result suggests that the contemporaneous eyre visitations in this period largely functioned to complement a tapering flow of *de gratia* litigation directed at the Bench as opposed to drumming up new legal business that otherwise would have been geographically inaccessible due to distance from the sitting point of that court at Westminster. Figure 5 additionally reflects the broad population estimates given by Broadberry et al. for 1290 to a somewhat surprising level given the seventy intervening years.[76] The top five counties appearing with the most frequency in this figure–Norfolk, Suffolk, Lincolnshire, Essex, and Kent–largely align with the most populous counties of Norfolk, Yorkshire, Lincolnshire, Suffolk, and Essex (in descending order).[77] The distinction breaks down at the lower end of the population spectrum, but considering the small number of fine entries directed to these counties (the lowest five in terms of overall entries feature either one entry or none at all) this is perhaps understandable without undermining the wider conclusions derived from a review of the marginations.

More remarkable, however, is that the correlation between population and fine entries is much stronger than that between geographic location and fine entries. A useful illustration of this connection is provided by the counties of Devonshire, Northamptonshire, Northumberland, and Warwickshire. All four have roughly similar population estimates and feature a similar number of fine

[73] Carpenter, "Between," 11–12. A later reform in the 1220s attributable to an increase in non-fine business within the fine rolls would modify this, but only for those entries not directly related to fines.

[74] Henry III Fine Rolls Project, Editorial Conventions (https://finerollshenry3.org.uk/content/book/edit_conv.html) (accessed May 4, 2023); AALT, "Reading a Case" (http://aalt.law.uh.edu/readcasedebt.html) (accessed February 4, 2024).

[75] See Figure 5. In a few instances multiple counties will be listed as being touched upon by a single fine entry. In these cases each county has been counted separately.

[76] Stephen Broadberry et al., *British Economic Growth, 1270–1870* (Cambridge: Cambridge University Press, 2015), 25–26.

[77] See above; as the most populous region in the country East Anglia constituted a high proportion of the origin of cases in the first half of the thirteenth century. Hyams, "Land Market," 24.

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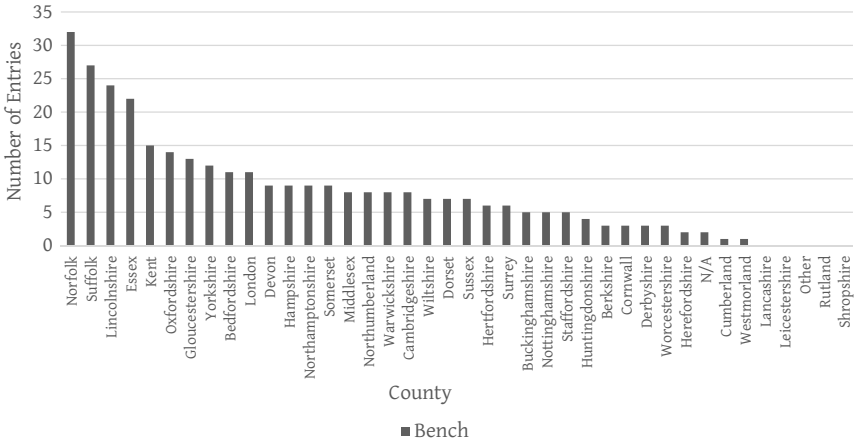

Figure 5. Fine margination by entry. Text Search, Henry III FRP (accessed 16 January 2024).

entries directed toward the Bench in the period.[78] Where they diverge, however, is in their geographic distance to Westminster, with Devonshire and Northumberland representing the southwest and far north of the kingdom respectively as opposed to the more centrally located Wiltshire and Northamptonshire.[79] While a general correlation between the data is perhaps to be expected, this degree of alignment further strengthens the proposition that the period of growth in the royal common law courts that followed Magna Carta was not restricted along geographic lines. Litigants engaged with the Bench at largely even rates across the entire kingdom along lines of population as opposed to those of location.

That the reach of the central royal court could extend so thoroughly throughout England is not an obviously evident reality given the parlous state of the land in the immediate aftermath of the First Barons' War. Much insightful scholarship has been directed toward identifying regional fault lines in a largely civil conflict that would have been fresh in the minds of many choosing to bring business before the royal courts, and the reality of rule by a council during the minority of a young king was somewhat incongruous when it came to the process of dispensing royal justice.[80] It would appear that even at this early

[78] 145,582 and 9 entries for Northamptonshire, 147,860 and 9 entries for Devonshire, 148,084 and 8 entries for Northumberland, and 159,857 and 8 entries for Wiltshire. Broadberry et al., *Economic Growth*, 25–26; Text Search, Henry III FRP (accessed 5 March 2024).

[79] Indeed not even the thirteenth century system of roads appears to have succeeded in imposing geographic restrictions upon access to the Bench, as Hindle's estimation of the medieval English road network has both Devonshire and Northumberland connected to a single principal road as opposed to the entire networks running through Wiltshire and Northamptonshire. Brian Hindle, "The Road Network of Medieval England and Wales," *Journal of Historical Geography* 2 (1976): 220.

[80] Carpenter, *Magna Carta*, 302.

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stage in the massive expansion of royal justice across the thirteenth century such concerns did not meaningfully interfere with the widespread demand for the jurisdictional benefits that could only flow from the highest temporal power in the land.[81] As an identifiable group of professional Bench lawyers was still in the process of emerging in this period, there were likely some geographic pressures that the eyre visitations served to ease as well, especially considering potential delays as litigation wound its way through the system in Westminster.[82] That rates of engagement with the common law courts exhibit such uniformity despite these pressures can be attributed in large part to the fixed establishment of the Bench in chapter seventeen of Magna Carta.[83] The resounding success of this chapter in addressing popular concerns over the difficulty in seeking justice from an itinerant court and the lack of any indication that the sedentary nature of the Bench discouraged litigation from the more remote counties is clearly evinced in these data.

Perhaps even more significant is the implicit success that the Bench had in meeting the judicial demands of the kingdom despite the absence of an active king. Contemporary political philosophy focuses extensively on the role of the monarch in acting as the font of justice in the realm. The famously "*simplex*" Henry III would not come to be counted among the ranks of kings lauded for their judiciousness like his contemporary, friend, and lord Louis IX, but the level of development that the English royal courts had attained even before Henry's majority calls into question the necessity of this core element of kingship in England in the first place. Under conciliar rule, the Bench was capable of drawing litigation from across the kingdom and addressing it in a manner that avoided the pitfalls in popular perception that characterized the following decades. When complaints over royal favoritism are taken into account it could indeed be argued that the Bench fulfilled the function of the royal courts with a greater degree of success prior to the resumption of an active kingship than it did following it. While the Bench between 1218 and 1226 may have required a crown under which to operate successfully as a central royal court, it does not appear that it required a monarch to be actively wearing it in order to do so.

[81] Moore, "Evidence," 59; Turner, *King and His Courts*, 24. The major disruption to the business of the central royal courts occasioned by the death of John and the dissolution of the court *coram rege* was that some litigation that normally would have fallen under the jurisdictional purview of the court *coram rege* was postponed until the young king came of age. This included cases directly involving the king's interests or involving royal charters and grants.

[82] Paul Brand, "The Origins of the English Legal Profession," *Law and History Review* 5 (1987): 35–50. Brand discusses the emergence of professional lawyers before the Bench as a result of both the geographic challenges of bringing suit at Westminster and of the regional specialization allowed by the growth of Bench litigation in the second half of the century.

[83] Although this statement must be contextualized somewhat by the small number of fines from many counties in this period (or complete lack thereof), as smaller sample sizes can mask greater possible variations.

https://doi.org/10.1017/S0738248025000033 Published online by Cambridge University Press

Conclusion

An analysis of the judicial fines directed toward the Bench between 1218 and 1226 reveals an adolescent legal system regaining its stride after a period of immense upheaval. It does not, however, reveal one in a state of precarity: where the massive disruptions caused by the First Barons' War may have been expected to hobble the system of royal courts, we instead discover a robust judiciary utilized by litigants from across the kingdom. The end of the 1210s and beginning of the 1220s saw the beginnings of a transitional period in the evolution of the Bench as justices became more professionalized and as judicial stability began to be reestablished by the ruling council. Indeed the Bench was so successful in addressing the backlog of litigation that had accrued that the overall level of business coming before it had dwindled significantly by 1226, setting the stage for a renewed period of growth across the reign of Henry III and beyond. Century-wide trends in levels of payments rendered for fines and in the relative decline of *pone* litigation had already begun to emerge, and the gradually evolving nature of debt pleas had reached a puzzling middle point at which litigants had a choice in the method and amounts of payments rendered to initiate one of the most common types of action across the period. A widespread geographic reach in terms of litigants bringing business to the Bench discerned through the marginal notations of the fines speaks both to the kingdom-wide demand for royal justice and to the celerity with which the central common law court met that need through both the gradual establishment of a permanent Bench at Westminster and through the great eyre of 1218.

It additionally serves to reinforce a view of the immediate successes of Magna Carta and of the ruling council in addressing demand for royal judicial services, and it contributes to the contextualization of the resumption in the growth of common law litigation following the First Barons' War as described by Carpenter and Moore. These findings reveal the Bench of 1218–1226 to have quickly reasserted itself as an enduring and indispensable part of the machinery of common law justice. Perhaps the most immediate possibility for the expansion of an investigation of this nature would be toward the eyres, as consideration of the extant eyre rolls would allow a plea to be tracked from an earlier stage in the lifespan of a common lawsuit and may even provide a suggestion as to the percentage of Bench litigation that was brought up from the eyres in the period.

All of these findings contribute to the current understanding of the trajectory of growth that the common law courts enjoyed across the century and beyond. It is a persistent habit of historians of the common law to attribute significant milestones in its centuries of history to the innovations–or failures–of individual monarchs of particular note such as Edward or even John. Recent scholarship has rightfully made immense progress in attributing much of the legal system's most significant early development to the reign of Henry III, even if not to the actions of the king himself. These results support that wider assertion and indicate that the Bench specifically–and the system of royal common law generally–had developed to a point to which they could meet the

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kingdom's demand for justice even before Henry III declared his majority. This in turn suggests that the growing demand for royal justice relied far more on the supremacy of lay jurisdiction held by the royal courts than it did on the activity of the king himself, a tension that would continue to simmer throughout the reign of Henry III. In the successful expansion of a central common law royal court during a period of conciliar rule we can see the seeds of the later baronial demands in the Paper Constitution and the Provisions–first planted in the judicial chapters of Magna Carta–begin to take root.

Acknowledgements. I would like to thank the Maitland Studentship in Legal History for funding my research and my supervisors during the period in which I worked on this article—Dr. Christopher Briggs and Professor David Carpenter—for their advice, thoughts, and inspiration. Sincere thanks as well to all those who reviewed and commented upon the various drafts for their invaluable insights and to the reviewers for their helpful comments and suggestions. I would additionally like to thank the Centre for English Legal History at Cambridge and the Late Medieval Seminar at the Institute of Historical Research for their invitations to discuss this project. And, of course, I owe an endless debt of gratitude to my wonderful family for their support and encouragement. Any remaining errors are solely the responsibility of the author.

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Cite this article: Douglas R. Chapman, "Fines and the Common Bench, 1218–1226," *Law and History Review* (2025): 1–23. https://doi.org/10.1017/S0738248025000033