Colchester Courts and Court Records, 1310-1525

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I

By virtue of concessions granted to the burgesses of Colchester by Richard I and his successors, jurisdiction over the ancient Hundred of Colchester during the later Middle Ages was exercised by the elected bailiffs of the borough.[1] Courts were held in the moothall, where the town hall now stands, and the business of each session was recorded by the town clerk. This jurisdiction, like that of rural hundreds, embraced both the execution of justice on behalf of private litigants and the administration of day-to-day police work. But the courts of Colchester Hundred had some exceptional features by 1310/1, the date of the earliest surviving court roll.[2] There was more than one court for private litigation; the work of the hundred court was supplemented by that of a 'court of pleas'. The two courts shared the same court room, but they employed different procedures in bringing defendants to answer charges against them. Meanwhile the special sessions of the hundred court called lawhundreds, which handled most of the police work of the borough, were held three times a year, rather than only twice as in rural hundreds.[3] Even so small a town as Colchester was sufficiently urban to have moulded its jurisdiction away from the rural pattern.

All through the fourteenth and fifteenth centuries the record of all Colchester's courts continued to be kept on a single roll. There is here ample documentation of the way in which procedures for both private litigation and for police work became adapted to the burgesses' changing requirements. The development of litigation was a very different matter, however, from that of police work, and the two things cannot conveniently be discussed in tandem. The present study concerns only the handling of private disputes in the hundred court and the court of pleas, a topic which presents enough complications of its own.

Private litigation in the borough included cases of violence and theft which fell short of felony but for which a plea of trespass might bring some redress to the victim. Other pleas concerned debts, detention of chattels and breaches of contract. The authority of Colchester's courts extended beyond the normal competence of an English hundred. A defendant was not usually obliged to answer in hundred courts for debts over £2,[4] but the Colchester courts did not recognise any such restriction. When a merchant attempted to stay proceedings against himself on these grounds in 1311 the court judged that it had frequently heard pleas of debt of over £2, and even some amounting to £10 or more.[5] In practice the courts assumed the competence to determine any plea concerning debt arising within the liberty — that is, any debt which was repayable there. Again, normally a freeholder was not obliged to answer for his freehold unless his opponent secured a writ directed to the sheriff, which meant that it was unusual for pleas concerning title to freeholds to appear before hundred courts. But since 1252 writs concerning disputes within the liberty of Colchester were directed to the bailiffs of the borough rather than to the sheriff of Essex.[6] This meant that the courts were from time to time instructed to determine the justice of rival claims to landed property. In reality, it must be admitted, only a tiny proportion of the business of the courts was initiated by royal writ, and litigation concerning title to freeholds occupied little of the bailiffs' time.[7] This must be because burgesses preferred to defend their freeholds in the king's courts rather than in those of the borough.

The hundred court was the older of the two civil courts in Colchester at the opening of the fourteenth century, and its sessions were more predictable than those of the court of pleas. Even in rural areas increasing private litigation between the tenth and the thirteenth centuries had caused an increase in the number of times hundred courts met. In 1234 the king's council had decreed that these courts should be held no more frequently than once every three weeks, so that they commonly met only 17 times a year.[8] In Colchester, by contrast, the hundred court usually met fortnightly on Mondays. In 1311/2 there were recesses at Christmas time, when no hundred court sat between 13 December and 17 January, and again during August and September, but on the other hand sessions were held weekly during the spring between 27 March and 1 May, so that all told there were 23 meetings during the year. In 1336/7 there were no recesses, and the court met regularly on alternate Mondays, the only irregularity being that one sitting in May was brought forward a week. There were accordingly 27 sessions of the court during this year.[9]

But not even frequent sessions of the hundred court could cope with all the requirements of the burgesses, since procedure was too slow for some purposes. When a plea was first registered with the town clerk the defendant was summoned for the next session, and only if he failed to appear then did the court order his goods to be distrained. Moreover, defendants were entitled to three essoins (i.e. excuses for absence) at fortnightly intervals before having to answer the charge against them. This meant that a plaintiff would have to wait from eight to ten weeks before he could expect the procedures of the hundred court to bring a reluctant defendant to account.[10] This was not good enough for pleas against outsiders who might be in town one day and gone the next. The officers of the court had no authority to arrest defendants once they had passed beyond the bounds of the old Colchester Hundred, now known as the liberty of Colchester, nor could they distrain goods except within those bounds. It was for this reason that the burgesses had developed the court of pleas as a second avenue for litigation.

One advantage of the court of pleas was that when a plea was registered the defendant was distrained to appear at the very next session. Moreover, sessions of the court of pleas might be held any day of the week and at short notice. An allowance of three essoins to the defendant was customary, as in the hundred court, but there was no set period between sessions. When Hugh Fareman was sued on 21 June 1311, for assaulting Ralph Smith with a stick at the Sowenwode within the liberty of Colchester, his three essoins gave him only a day's respite; the bailiffs were willing to hold three sessions of the court of pleas on that day, to exhaust Fareman's capacity to delay justice, and then to hold another session on the following day at which he was compelled to answer.[11] Because of its ***ad hoc*** character the court of pleas sat at irregular intervals. There were 36 sessions between Michaelmas 1311 and 20 August 1312 but in 1336/7 there were only eight.[12]

The system of legal recording practised in Colchester in the earliest court rolls was one which was to last, with few alterations, for the rest of the fourteenth century. Sessions of court were entered in chronological sequence, each with its own heading stating the type of court (hundred court or court of pleas) together with the day on which it was held. The record of court business at each session contained several distinct elements, which may be classified as follows, (a) There was a list of new pleas, usually entered above the heading of the first session to take cognisance of them, (b) A list of essoins at each session was entered immediately below the heading. Following the list of essoins came the details of business handled by the court. These notes concerned (c) the appointment of attorneys by one or other of the parties to litigation, (d) pleadings heard in court with the court's decision how to proceed, (e) verdicts by inquest juries, (f) defendants who had successfully wagered their law or failed to do so, (g) pleas which had terminated through the default of one of the parties or by agreement, (h) acknowledgements of debt by prosecuted debtors, (i) the instructions to be given to officers of the court to arrest or distrain. These various details were recorded in the court roll by the town clerk in court as they arose, which meant that there was no orderly classification of different types of entry. It was a laborious matter checking back on the course of a plea, since each separate stage — essoins, distraints, pleadings, mode of trial and outcome — was recorded as it happened. The record of a protracted lawsuit might be scattered through several membranes of a roll, and often had to be carried forward from one year's record to the next.

II

The main features of development in Colchester courts during the later fourteenth century are to be explained by the great growth in the business of the courts which accompanied Colchester's economic development as a clothmaking town.[13] Table 1 shows the increase in the number of pleas brought to the Colchester courts during the course of the fourteenth century, chiefly as a result of an increasing amount of commercial litigation of various kinds.[14]

Table 1: Pleas brought to Colchester borough courts, 1311/2-1399/1400

Year	no.	Year	no.
1311/2	102	1378/9	532
1336/7	53	1381/2	654
1351/2	62	1382/3	537
1353/4	127	1384/5	643
1356/7	129	1387/8	878
1359/60	286	1398/9	668
1366/7	387	1399/1400	555
1372/3	322		

Source: CR 2, 5, 9, 10, 11, 12, 15, 16, 19, 21, 22, 24, 26, 30, 31.

Table 2: Sessions of the hundred court and of the court of pleas in Colchester each documented year, 1311/2-1399/1400

	hundred court	court of pleas
1311/2	23	36
1336/7	27	7
1351/2	26	8
1353/4	26	28
1356/7	26	62
1359/60	26	65
1366/7	27	73
1372/3	27	67
1378/9	26	31
1381/2	27	62
1382/3	25	45
1384/5	24	58
1387/8	26	48
1398/9	26	38
1399/1400	23	38

Note: Until 1382 it was not unusual for one of the above courts sessions to be held on a lawhundred day. After 1382 this was avoided.

Source: CR 2, 5, 9, 10, 11, 12, 15, 16, 19, 21, 22, 24, 26, 30, 31.

The approximately tenfold increase in business could not be handled without some administrative changes. Table 2 shows how often both courts sat during the later fourteenth century. The hundred court held steadily to its traditional practice, sitting approximately every fortnight and so holding about 26 sessions each year. The court of pleas first accommodated the increase in its business by sitting more and more frequently, but lost much of its older flexibility in the process. This is illustrated in Table 3, which shows how the court of pleas increasingly sat on a Thursday or Friday, becoming more like the hundred court in the weekly routine of its operations.

Table 3: Days on which the court of pleas sat, 1311/2-1399/1400

	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.	Sun.
1311/2	11	6	5	5	3	5	1
1336/7	2	0	1	2	1	1	0
1351/2	3	0	3	0	0	2	0
1353/4	6	3	10	2	4	3	0
1356/7	11	0	22	4	18	7	0
1359/60	16	0	24	2	18	5	0
1366/7	21	1	22	0	26	3	0
1372/3	23	2	9	0	32	1	0
1378/9	18	1	5	1	6	0	0
1381/2	2	3	8	0	43	4	2
1382/3	1	0	1	13	29	1	0
1384/5	3	4	6	1	41	0	3
1387/8	0	1	10	7	29	1	0
1398/9	0	0	0	23	15	0	0
1399/1400	2	1	0	23	10	2	0

Source: CR 2, 5, 9, 10, 11, 12, 15, 16, 19, 21, 22, 24, 26, 30, 31.

The increase in the volume of business also explains some changes in procedure introduced in 1388, which were designed to speed up business and to reduce the burden upon officers of the court. In that year the borough council approved the curbing of burgesses' traditional freedom to delay justice. In future a defendant would be allowed to excuse himself for not appearing at the first session at which a plea against him was declared, and after that he would be allowed only one more essoin before the court would start distraining his goods to compel him to answer the charge against him. This gave the courts power to coerce defendants to appear well within one month of a plea having been registered.[15] The reform had a further stage, for an insertion into the text in Michael Aunger's hand — implying that it was made by 1398[16] — states that the second of these essoins was later disallowed. In effect this means that the system of essoining which had operated before 1388 was abolished. This reform had an immediate effect in reducing the clerical work required to keep track of pleas in progress. After 1388 the borough court rolls were never again as bulky and complex as they had been during the mid 1380s. The largest surviving roll is that of 1387/8, which has 71 membranes, but the largest from the 1390s, that for 1391/2, had only 45 and the largest fifteenth-century roll, that for 1437/8, had 50.[17]

Other developments of the late fourteenth century show the way in which the increase in business had encouraged changes in clerical routine and a development of professionalism in the courts.

During the years when business was increasing more rapidly, clerks became used to leaving the courtroom at the end of each session with the record of pleadings still incomplete. During the 1360s and 1370s Michael Aunger's predecessor commonly broke off his record of a plea to finish it later. Usually the record was in fact eventually completed, the resumption of clerical labour being apparent from a change of pen or ink.[18] Some pleadings were completed in a different hand,[19] and a few were never finished.[20] In time this practice became a matter of routine. By the late 1370s the same clerk would systematically leave entries incomplete when he was busy, writing for example 'Richard Crosby was attached to answer Robert Saundone in a plea that he should pay him 3s. Od. which he owes him etc. because he says that . . .', and then leaving a gap of about an inch for the completion of the entry.[21] Michael Aunger continued this practice, which is best illustrated in the court roll for 1398/9 when he had more assistance than usual. At a court of pleas on 4 December 1398 Aunger himself wrote out the list of essoins, the precepts to the sergeants, notes of inquests deferred to later courts and the incipits of each plea heard before the court. Details of six out of the seven pleas attended to that day were later filled in by Aunger's assistant, but the seventh was left imcompletely recorded,[22] perhaps because it terminated rapidly. Against an uncompleted plea from later in the same roll, in the space where normally the plaintiff's case would have been recorded, it is noted that the defendant had afterwards applied for licence to settle with his accuser.[23]

Three conclusions may be drawn from this evidence. The first is that the main skeleton of the court record, including the incipits of each plea heard by the court, were written while the court was still in session, usually by the town clerk himself; Aunger was recording the incipits of pleas in amongst matters which could not have been noted before the court sat. The second is that the completion of proceedings, so far from being a matter calling for the clerk's special knowledge of the law, was treated as hack work to be finished off by his assistant. This implies that the completion of court roll entries involved no more than copying from a written statement of the plaintiff's case. The third is that, though town clerks kept the court rolls mostly in their own hand they had assistants about them. This is probably because they combined their public duties with commercial legal business for which they employed clerks of their own.

The borough courts were sharing in a development common to the judicial system as a whole in the later Middle Ages[24] — the development of procedure by bill of complaint. This required the services of professional clerks to prepare bills for each plaintiff before he went to court. The existence of such bills in the clerk's keeping helps to account for the ease with which they were able to cultivate more leisurely habits. If any query arose concerning the exact form of a plea they could refer to the plaintiff's bill, which was more authoritative than any court roll copy or abstract. Increasingly the most important part of any court record was not a statement of the plaintiff's case but the defendant's answer to it and the court's decision concerning the future course of the plea.

Throughout the later fourteenth century, however, the court roll remained the clerk's working record of what went on. The rolls do not have the characteristics of a fair copy; records of pleas were annotated in the course of their process through the courts to help the clerk follow their progress. Plaintiffs lodged their pleas at the town clerk's office, and the clerk issued instructions for defendants to be summoned, distrained or arrested. For each court session there was, it may be supposed, a closing date after which new business would not be accepted. When this date was passed,[25] the clerk compiled a list of the new pleas in the court roll, writing it, as in the earliest rolls, above the heading of the session at which they were to be declared. The list of new pleas usually had a marginal heading of 'Monday Pleas' or 'Tuesday Pleas' in the case of the hundred court and 'Thursday Pleas' or 'Friday Pleas' in that of the court of pleas. The lists were later annotated to indicate what happened in court. If a defendant came to court or opted to essoin himself the clerk would write ***ca., for captus.*** If he did not come some note about the next step was likely to be noted on the list; ***dis,*** for ***distringatur,*** would imply that the plaintiff would be distrained, ***pr e c,*** for ***preceptum est capere,*** would mean that he should be arrested. Other marginal notes related what had happened in court. If the defendant had come, heard the charge against him and made his defence, the clerk would write ***placit*** beside the plea, as well as recording the details of his case in the records of the court's business. If the plea resulted in an immediate settlement out of court, as it commonly did, or if the plaintiff failed to appear to put his case, then this was recorded in the court business and the letter ***t,*** for ***terminatur*** was put beside the plea in the list of new pleas. These conventions were not pursued with perfect rigour, but they were useful enough to be employed by successive clerks with minor variations.[26]

III

In contrast to the great increase of court business in the third quarter of the fourteenth century, the late fourteenth and the fifteenth century saw first a levelling off of activity and then a decline. The dating of this decline is difficult, but the number of pleas of debt was already in the late 1390s lower than it had been during the 1380s. It may be that the reforms of 1388 and subsequently, by removing the defendants right to essoins, had encouraged debtors to settle more readily out of court before any legal action was brought against them. That was not the end of the matter, however. By the second quarter of the fifteenth century the number of pleas was already normally lower than at the end of the fourteenth century, and it continued to decline slowly through the latter half of the century. By the 1490s the courts were handling no more pleas than they had done in the 1360s and 1370s (Table 4). Changes in the courts and in legal recording were nevertheless numerous, and in many respects follow in the same direction as those pioneered during the later fourteenth century.

Table 4: Number of pleas brought to Colchester courts (select years)

1434/5	347
1435/6	496
1437/8	628
1490/1	366
1493/4	389
1510/1	322

Source: CR 52, 53, 55, 83, 84; Monday Courts VI-XVII Henry VII, fos. lr-60d; Thursday Courts VI-XVI Henry VII, fos. lr-76v.

Developments in the organisation of the Colchester courts during the fifteenth century have a certain contradictory look about them. On the one hand the old court of pleas became more routine its operations than it had been before; on the other hand a new court was introduced to supply the flexibility which the old court of pleas had lost. Each of these developments will be examined in turn.

In the last years of the fourteenth century sessions of the court of pleas had numbered about half as many again as those of the hundred court; after the first decade of the fifteenth century this difference disappeared. The court of pleas sat 27.3 times a year on average between 1411/2 and the end of the century, and the hundred court sat 27.5 times a year (Table 5). This change of practice must have been deliberate. The court's title was changed shortly afterwards. In the roll of 1409/10 and thereafter the court of pleas was officially called the foreign court ***(curia forinseca),***[27] a reference to the fact that it was the aptest court in which to prosecute non-burgesses. From now on it was very unusual for the court to sit on any day other than Thursday or Friday. The number of sessions showed no further alteration during the fifteenth century, though it rose again slightly in the early sixteenth. It was felt to be anomalous, perhaps, that the bailiffs had come to be holding more sessions of the court of pleas than of the hundred court when, in effect, it was operating on similar principles.

Some of the advantages of the old court of pleas were recovered from 1448[28] by holding a court of piepowder. This innovation may have been prompted by a clause in the burgesses' new charter of 1447,[29] but the burgesses did not suppose that their right to hold the court depended upon this charter. A heading in the court roll of 1458 speaks of a court of piepowder held in the moothall before the bailiffs 'in accordance with the custom of the town enjoyed from time immemorial by virtue of the market held anywhere in the town on any day'.[30] In Edward IV's charter of 1462 the bailiffs were explicitly authorised to hold courts of piepowder as well as courts meeting regularly on Mondays and Thursdays — a formal legitimation of current practice.

Table 5: Sessions of the hundred court, the court of pleas and the court of piepowder, 1400/1-1524/5

	hundred court	court of pleas	court of piepowder
1400/1	26	38	0
1405/6	30	33	0
1406/7	33	33	0
1411/2	24	31	0
1419/20	28	25	0
1422/3	29	28	0
1423/4	29	29	0
1424/5	26	25	0
1425/6	27	24	0
1427/8	26	27	0
1429/30	26	23	0
1432/3	29	29	0
1434/5	28	27	0
1435/6	27	27	0
1437/8	28	26	0
1438/9	27	27	0
1442/3	30	28	0
1443/4	29	31	0
1447/8	27	25	2
1448/9	29	29	1
1451/2	28	27	1
1455/6	27	27	4
1456/7	24	21	3
1457/8	29	29	5
1458/9	28	26	1
1459/60	28	27	9
1460/1	28	27	5
1463/4	29	24	10
1466/7	26	29	5
1476/7	26	29	4
1477/8	27	29	5
1481/2	28	30	2
1490/1	24	25	?
1493/4	31	29	?
1510/1	30	29	0
1512/3	25	23	0
1514/5	32	29	0
1517/8	33	27	0
1524/5	33	33	0

Source: CR 29-95; Monday Courts VI-XVII Henry VII; Thursday Courts VI-XVI Henry VII.

There were, however, no more than ten sessions of the court of piepowder in any recorded year.

In the daily work of the court the growth of legal professionalism affected in particular those pleas which were contested in court. Burgesses became less likely to speak for themselves. This development is probably related indirectly to the increased use of written pleas, since the same professional clerks both prepared written plaints for litigants and represented them before the bailiffs. There were usually two such men operating regularly in the borough, and they frequently found themselves on opposite sides of a case.[31] The qualifications for this work were close to those required for the office of town clerk. One of the attorneys in regular employment in the 1450s was John Horndon, a former town clerk,[32] and in 1455/6 Roger Purtepet acted as an attorney on several occasions even though he was himself town clerk at the time.[33] Evidence that professional representation became very common — probably most contested pleas being expounded in court by attorneys — comes from the 1450s. In the court roll of 14 5 5/6,[34] Roger Purtepet was more concerned than in earlier years to say whether litigants appeared by attorney or not, and his record shows that in very few cases where the details of pleading are known did a plaintiff state his own case. Defendants were more likely to appear in person both then and in the earlier sixteenth century, since their task was often a relatively simple matter of recognising liability or denying it. Even defendants employed attorneys, however, where anything difficult or technical was in question. The activity of the courts was more conspicuously creating a living for professional men in the mid fifteenth century than at any earlier time.

Meanwhile town clerks made further progress in reducing the size of the court rolls, to the point that by the 1440s a year's records occupied only 25 membranes.[35] These reforms were of a clerical rather than a procedural nature and did not affect the speed with which the courts were able to transact their business.

The biggest single saving was achieved by omitting from the rolls the lengthy running instructions to the officers of the courts which frequently wound up the record of court sessions in the opening years of the century. After Michaelmas 1404 orders to arrest or distrain, after the first in any particular case, were no longer recorded here.[36] Between Michaelmas 1407 and Michaelmas 1409 further clerical labour was saved by the decision to omit any separate record of essoins put in on the first day of a new plea. The relevant procedural detail could be noted beside the record of the new plea, and it was unnecessary to have the same matter duplicated in the business of the court.[37] Thereafter the only essoins to be recorded separately were those allowed after a defendant had defended himself and was preparing for his case to come to trial.

Another development of the fifteenth century which reduced the amount of clerical work, though it did nothing to reduce the size of the rolls, was that clerks became accustomed to leave the record of pleadings in court permanently incomplete. A new format, absent from the roll for 1433/4, appears in the next surviving roll, that for 1435/6, having been adopted at Michaelmas 1434, Michaelmas 1435 or at some point between those dates.[38] In the meantime John Heyward had been replaced as town clerk by John Olyver,[39] so the new style may be credited to the latter. Under this system the defendant's answer to a plea and procedural details relating to it all went into a broad left-hand margin, leaving only the incipit of the plea, with occasionally some details filled in, in the main court record. Since the marginal details usually took several lines, while the incipit of a plea took only one or two, the system was conspicuously wasteful of parchment, but it was nevertheless retained as standard form for at least 50 years. This is by far the most unfortunate of the various changes in practice which have been noted here, since it impoverishes the value of the court rolls as a source of information about urban economy and society.

Shortly after the introduction of this new style of legal recording, John Horndon introduced another labour-saving reform. In 1438/9 no lists of new pleas were transferred to the court roll;[40] they were evidently being kept separately. In 1439/40 the lists were restored to the court roll, presumably because their omission had caused some inconvenience.[41] But shortly after this — by 1442/3, the year of the next surviving roll[42] — a compromise had been devised and the system had been simplified. In cases where a plea terminated at the first session to which it was brought, either because the defendant sought to settle out of court or because the plaintiff failed to prosecute, the plea was omitted from the initial listing. These omitted pleas are equivalent to the ones beside which clerks would earlier have placed the mark ***t.*** From this time onwards the only record of such pleas in the court rolls was a note of their termination, included as a matter of course in the recording of court business. This reform, which reduced the labours of the town clerk, increases those of the historian, since it complicates the task of assessing changes in the volume of business the courts handled. A simple comparison of listed new pleas in the rolls for the years 1439/40 and 1442/3 shows a large drop in their number, but this is of no real significance since it was caused solely by the change in clerical practice which has been described.[43]

As a result of these various changes the court rolls of the mid fifteenth century are a less complete record than those of the late fourteenth century. Much of the procedural information required by the courts was kept elsewhere, the clerks having reduced their work by excluding such material from the rolls. As this happened the rolls lost their workaday character and assumed the function of a formal record, until in the sixteenth century much of their content was superfluous. To chart this process is difficult for want of the more informal records compiled during the daily course of legal administration. The revised method of recording pleas from about 1440 implies that town clerks at that date were copying up the court roll after each session rather than during it, since otherwise nothing but inconvenience could have accompanied the omission of some sorts of plea from the lists. This suggests the existence of a record such as the later court books in which procedural details were noted while courts were sitting. Such notes, together with the plaintiffs' bills of complaint, were all that were really necessary for the administration of justice, but they were not considered of sufficient status to be preserved indefinitely. This is readily understandable if the court books contained no formal enrolments of title deeds, indentures or recognisances, which continued to be recorded on the court roll.

Some court books made of paper, and evidently informal in their standards of neatness and legibility, survive from the 1490s.[44] By this time they must surely have been the main record from which clerks worked. Unlike the court rolls, where hundred courts and courts of pleas continued to be interspersed in chronological sequence, court books were kept separately for the two sorts of courts. The court books were compiled not before each session, as a listing of new pleas would have been, but while the courts were actually sitting. A practice already pioneered in the plea lists of the old court rolls was here carried to its logical conclusion; all the business relating to any given plea was recorded in one place, beside the first entry of the plea. Pleas are recorded in one of two forms, the commonest being 'A complains against B in a plea of trespass, the pledges to prosecute being C and D'. The subsequent history of this case would be recorded beside the original entry, so that if after a while the plea was settled out of court the clerk simply added ***pro li con,*** for ***pro licencia concordandi*** (i.e. 'for licence to agree') in the margin. But another form of words was adopted if a plea had already been settled before being considered by the court. In these circumstances the clerk wrote 'A complains against B in a plea of trespass for licence to agree, the pledges being C and D'. Pleas entered in this form correspond to those which were now (since ***c.*** 1440) omitted from the court roll listings. The total number of pleas registered in a year by the town clerk is the sum of the pleas recorded in both these forms. So even though the court books contain no lists of new pleas comparable to those in the court rolls, it is easy to use them to gain accurate information about the volume of business handled by the courts. The count of pleas for 1490/1 and 1493/4 shown in Table 4 is from the court books of those years.

The number of court books surviving from 1490/1 onwards shows that by this time their status was sufficiently high to warrant their being stored. One indication of the triumph of the court books as an official record is that their style of presentation was transferred to the court rolls in 1516/7. The procedure, then over 200 years old, whereby new pleas were listed separately above the heading of the session at which they were first declared was abandoned. New pleas were now recorded amidst other court business, interspersed with notes in a different form concerning pleas which had terminated at their first session.[45]

By this time the court rolls had lost all independence as a record of court business. Comparison between the roll for 1524/5 and the surviving Thursday court book for part of that year shows that the former is little more than an edited version of the events, compiled some time after the date of the business it records. For example the court book records a plea of deception brought to court by John Vend against Edmund Chaundeler on Thursday, 13 October 1524. Chaundeler then denied the deception and undertook to wager his law. Marginal notes show that the court proceeded to summon six compurgators, but a subsequent addition shows that Vend failed to prosecute his suit and was penalised by an amercement of 6d. The court roll simply records in the business of 13 October that Vend was amerced for failing to prosecute Chaundeler, and there is no note that the latter denied the charge or that he offered to wager his law. There is in the court roll, however, a note of Vend's pledges to prosecute which is absent from the court book, and this information must have come either from a written bill submitted by Vend at the time when he first brought the plea to court, or, less probably, from a register of new pleas kept separate from the court book.[46] The dependence of the court roll on the court book record can be illustrated further from the records of 1529/30, a year whose court roll and Thursday court book are both available. Again the roll supplied an edited version of the book, court by court; on one occasion the copyist overlooked a scrawled heading in the court book and so amalgamated the business of two sessions.[47] It is noteworthy that this court book contains recognizances which are copied up in the court roll[48] as well as one which is not.[49] In the rolls for the years after 1516 most pleas are recorded by a simple note of the manner in which they terminated and of any sum of money due to the court in consequence.

What were the main considerations behind these changes in office procedure? The fact that so many changes in the court rolls were designed to save clerical labour looks less significant when the growth of other forms of record keeping is taken into account, but it remains the case that clerks became increasingly unconcerned with formal neatness or completeness in the records they kept. Administrative considerations triumphed decisively over any concern to preserve a coherent legal record. The desirability of reform from the clerk's point of view was prompted by the repetitious and time-consuming nature of the clerical routines maintained until the early fifteenth century, and this alone must have created a disposition to cut corners wherever the efficiency of the courts would be unimpaired. But the pattern of reform was affected in detail by changes in the costs of office materials. In particular the greater availability and cheapness of paper[50] made it easier for clerks to slip into more ephemeral and informal styles of recording, a development which was at the heart of most of these changes in practice.

One other development affecting the appearance of the court rolls may conveniently be discussed here since it relates to the role of town clerks in their compilation. Under the early Tudors there was a reorganisation of clerical work in the borough. Roger Purtepet in the third quarter of the fifteenth century had been a clerk of the same stamp as his predecessors. He was himself responsible for much of the grind of maintaining the court rolls, though he was able to count on more assistance tnan his predecessors had been able to do, to judge from the number of different hands at work in the rolls during his years of office. John Hervy, who succeeded Purtepet in 1481, was also personally involved in clerical routine, and his hand dominates the rolls for 1481/2 and 1484/5.[51] Between his day and the early years of Henry VIII, a period from which no court rolls survive, the post of town clerk became sufficiently aloof from drudgery to be offered to the gentry. William Teye, gentleman, was clerk in 1510/1 and 1512/3.[52] He was succeeded by Thomas Audley, gentleman, first in tandem with John Barnabe in 1514/5[53] and then in his own[54] until Michaelmas 1532, when he was succeeded by Richard Duke, gentleman.[55]

Audley's talents took him into the service of Princess Mary, Cardinal Wolsey and, ultimately, to high office in the state. In 1532 he was appointed Lord Chancellor of England.[56] The clerkship of Colchester was only a first, local step in an ambitious career. Had all else failed perhaps Audley would have settled as an attorney in the Colchester courts. As things worked out, though, he was not often to be found at work in Colchester, and indeed it was not necessary that he should be. Even before his appointment the court rolls suggest that routine clerical work in the borough could be accomplished without the town clerk's personal involvement. The court roll for 1512/3, for example, contains contributions from at least four different hands,[57] and a number of hands were similarly at work when Audley was clerk. There was some continuity from year to year,[58] but new hands come and go, so that palaeographical analysis of the rolls of these years would be an elaborate undertaking. The rolls were evidently the product of a town clerk's office. Since there was no provision for such an office in the borough constitution, it must have been the town clerk's personal concern. Though probably every town clerk operated a private clerical practice, it was only in the early sixteenth century that the private practice ran the public office. The change in the make up of the court rolls introduced in 1516 dates from Audley's period in office, but it was not designed to save his own labour. His duties were partly — one supposes increasingly — honorific, partly those of a useful ambassador in high places, but also partly advisory. The court books of 1524/5 and 1529/30 both contain marginal notes to the effect that particular pleas were adjourned until his coming.[59] Audley was in effect the external legal adviser to the courts. The borough recorder, elected annually from Michaelmas 1463 onwards,[60] does not figure in this capacity; his concern was restricted to the police work of the Commission of the Peace.

In retrospect, then, it can be seen that the office work associated with the Colchester courts had been transformed between 1300 and 1525. The ancient obligation of the town clerk to sit in court and write the court rolls had vanished. Now some employee of the town clerk sat in court with a court book and other papers. The town clerk himself was in court only on special occasions, and when he came he was feted as the most learned and distinguished of men.

Notes

1. *Calendar of Charter Rolls*, i, 411; Tait, 1936, 48, 188.
2. Colchester Borough Records, CR 1. This reference and others like it state the number given to the relevant court roll in the Record Office. This numbering goes back to 1865, when the rolls were arranged and indexed by Henry Harrod, but Harrod's roll 51 was a stray membrane from CR 37 and has recently been restored to its proper place. The rolls have been renumbered to take account of this, so that Harrod's roll 52 is now CR 51, etc. More specific references to Colchester court rolls in this paper are given in the form CR 1/2, signifying the second membrane (using the medieval numeration of the membranes) of the first court roll.

   Years specified in the form 1310/1 signify the 12 months from one Michaelmas lawhundred to the next, in this case from the Monday after Michaelmas 1310 to the Monday after Michaelmas 1311.
3. Cam, 1930, 176.
4. Cam, 1930, 181-3.

5. CR l/9d.
6. Ballard and Tait, 1923, lxi, 171.
7. For examples of procedure by writ in such cases, see CR l/7r (attached writ), 8d; CR 2/5d, 8r; CR 3/2d.
8. Cam, 1930, 168-9.
9. CR 2; CR 5.
10 Peter le Wylde, distrained to answer a plea of broken contract, essoined himself on 17 April, 1 May and 15 May, 1312. An intervening session of the hundred court on 24 April did nothing to speed up the hearing of the case against him: CR2/8d-12r.
11. CR l/12d.
12. CR 2; CR 5.
13. Britnell, 1986, ch. 4, 5.
14. *Ibid.*, ch. 7.
15. Colchester Borough Muniments, Red Paper Book, fo. 12v.
16. Britnell, 1982, 96, 99-100.
17. CR 26; CR 27; CR 55.
18. E.g. CR 14/3r, 5d, 6r, 7r.
19. E.g. CR 16/5r.
20. E.g. CR 15/3r, 7d; CR 16/lr, 4r.
21. CR 19/9r: *cf.* CR 19/6d, 8r, 13r, 18r, etc.
22. CR 30/7r.
23. CR 30/24r.
24. Harding, 1973, 109.
25. This is indicated by the neatness of the lists, the absence of frequent changes of pen or ink and by the absence of last-minute additions.
26. These abbreviations were neither new nor peculiar to Colchester. For similar conventions in a published sources, see Hopkins, ed., 1950.
27. CR 37 onwards.
28. CR 62/16d, 25d. Benham mistakenly refers to a piepowder court in 1443: Benham, 1937, 205. The court he discusses was in fact held on 5 May, 1458. The details are printed in Gross and Hall, eds., 1908-32, i, 122-5.
29. *Calendar of Charter Rolls,* vi, 84.
30. CR 68/21d.
31. E.g. John Horndon and John Page in 1456: CR 67/4r *bis,* 6d, 8r *ter,* etc.
32. See note above. Horndon was town clerk from Michaelmas 1439 until at least Michaelmas 1449. His hand is that of CR 57-63 and he is identified by name on the first membrane of CR 57-59, 62, 63.
33. CR 66/5d, 7r *bis,* etc. Purtepet succeeded Horndon by Michaelmas 1451 and remained town clerk until Michaelmas 1481. His hand prevails in CR 64-78 and he is identified by name on the first membrane of CR 64-7, 69-78.
34. CR 66.
35. CR 58-63.
36. During the year 1403/4 orders to distrain for the hundred courts were listed once a month except during the summer, i.e. following courts on 22 October, 19 November, 3 December, 7 January, 4 February, 10 March, 7 April, 28 April, 9 June, 1 September: CR 33/5v, 8v, lOr, 12r, 15r,d, 18r,d, 19d, 22r, 24d, 25r, 30r. This practice is abandoned in CR 34.
37. This appears from a comparison between CR 36 and CR 37.
38. This appears from a comparison between CR 52 and CR 53.
39. John Olyver was town clerk between Michaelmas 1423 and Michaelmas 1428 and again from Michaelmas 1434 or 1435 until Michaelmas 1439. His hand is that of CR 44-8, 53-6, and he is identified by name on the first membranes of CR 46 and 53-6. Between these two periods the clerk was John Heyward, whose hand is that of CR 49-52 and who is identified by name on the first membrane of each of these rolls.
40. CR 56.
41. CR 57.
42. CR 58.
43. Vigilance is required to identify variations in clerical practice, particularly in the early sixteenth century. The court roll for 1510/1 (CR 83) uses the conventions practised before *c.* 1440; all new pleas are listed even where they terminated before taking up any court time. The conventions were changed again at Martinmas 1512 when a practice was adopted analogous to that of the years after *c.* 1440; pleas requiring no handling by the court were not systematically listed. Unlike the earlier conventions, however, the termination of a plea after some delay by failure to prosecute or licence to agree was not recorded by a new entry in the rolls: compare the practice in CR 85/2r,d and 3r with that later in the roll. This illustrates the status of the court books as the true current record of litigation. There are no lists of new pleas in the roll for 1516/7 (CR 88) and afterwards.
44. The earliest surviving court books have been rebound in two volumes titled (i) Monday Courts VI-XVII Henry VII, (ii) Thursday Courts VI-XVI Henry VII.
45. CR 88.
46. CR 95/4r; Pan of Thursday Court Book 16 Henry VIII, fo. 3v.
47. CR 99/16r; Thursday Courts 21 Henry VIII, fo. 18r.
48. CR 99/16d; Thursday Courts 21 Henry VIII, fos. 19r, 20r.
49. Thursday Courts 21 Henry VIII, fo. 9v.
50. Febvre and Martin, 1958, 29-30.
51. CR 79/lr; CR 81/lr.
52. CR 83/lr; CR 85/lr.
53. CR 86/lr.
54. CR 87/lr.
55. CR 102/lr.
56. Bindoff, 1982, i, 350-3.
57. CR 85.
58. E.g. the hand in CR 85/15r and CR 86/22r, 23d.
59. Part of Thursday Book 16 Henry VIII, fo. lv; Part of Monday Book 21 Henry VIII, fos. 2r, 12v; Thursday Courts 21 Henry VIII, fo. lr.
60. A recorder was elected every year from Michaelmas 1463: CR 72/1 r.

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