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Kitrina Bevan

AUTEUR DE LA THÈSE / AUTHOR OF THESIS

M.A. (History)

GRADE / DEGREE

Department of History

FACULTÉ, ÉCOLE, DÉPARTEMENT / FACULTY, SCHOOL, DEPARTMENT

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Rethinking the Statute of Pleading (1362)

TITRE DE LA THÈSE / TITLE OF THESIS

Dr. Kouky Fianu

DIRECTEUR (DIRECTRICE) DE LA THÈSE / THESIS SUPERVISOR

CO-DIRECTEUR (CO-DIRECTRICE) DE LA THÈSE / THESIS CO-SUPERVISOR

EXAMINATEURS (EXAMINATRICES) DE LA THÈSE / THESIS EXAMINERS

Dr. Andrew Taylor

Dr. Mark Jurdjevic

Gary W. Slater

Le Doyen de la Faculté des études supérieures et postdoctorales / Dean of the Faculty of Graduate and Postdoctoral Studies

ENGLISH LEGAL CULTURE AND THE LANGUAGES OF THE LAW: RETHINKING THE STATUTE OF PLEADING (1362)

By Kitrina Bevan

Submitted to the Faculty of Graduate and Postdoctoral Studies in partial fulfilment of the requirements for the M.A. degree in History

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ABSTRACT

ENGLISH LEGAL CULTURE AND THE LANGUAGES OF THE LAW: RETHINKING THE STATUTE OF PLEADING (1362)

Author: Kitrina Bevan | Supervisor: Kouky Fianu | Submitted: 2008

This thesis re-evaluates the impact of the Statute of Pleading and its legislation of the languages of the law on the legal actors who worked in England's royal courts in the fourteenth century. In order to broaden the scope of existing research on the subject, this project puts forth a new interpretation of the Statute by proposing a different hypothesis for why the law exists in two linguistically variable forms on the records of the Parliament and statute rolls. By studying the legal professionals who worked in England's legal realm and their use of languages, this thesis argues that the Statute of Pleading – in each of its versions – is indicative of the legal training and education received by these individuals in the later medieval period, and also as an expression of their resistance to changing the written languages of the law.

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INTRODUCTION

THE STATUTE OF PLEADING (1362)

This thesis grew out of a general interest in two seemingly parallel fields of study: language history and medieval English law. However, one cannot realistically study the law in this period without simultaneously addressing the question of language. Thus these fields are not parallel at all, but complementary. Since the late nineteenth century, if not before, interest in the question of language and the law has steadily increased in various fields. As a result, academics from different disciplines have made assertions regarding the relationship between the two subjects during the later medieval period, when in England it became necessary to outline the parameters of this sometimes conflicting, sometimes cooperative relationship between language and the law in the fitting form of legislation.

I. The Statute of Pleading

During the proceedings of King Edward III's Parliament, held in October 1362, the status of the English language[1] in the English legal system was forever changed. For the first time in the history of Parliament, the speech that signaled the formal opening of the assembly's proceedings was delivered "en Englois," in the language of the people. The importance of the chancellor's decision to address the convocation of men in English was amplified by the fact that this preliminary statement opened the same parliament that created the often cited, but little understood, Statute of Pleading. The Statute of Pleading

[1] For the purposes of this study, the word "English" is used as a collective term to refer to the various dialects of the language present in England in the fourteenth century.

has been characterized as "one of the best-known, but least-understood, statements on the use of the vernacular in medieval England."[2]

The Statute of Pleading was a law passed in response to a real complaint regarding the inability of the majority of the English people to comprehend all of the oral languages of the legal proceedings in which they participated. On the surface, the Statute of Pleading seems straightforward enough. It presents us with a fourteenth-century legal and linguistic predicament and proposes legislation in order to remedy the situation. According to the text of the Statute, there was a problem of communication in the king's courts: the proceedings were in French,[3] but not all people were fluent in this language. The Statute proposes that English, rather than French, should be the compulsory language of oral communication in all royal and seigniorial courts in England.[4] Based on the problem identified in the Statute, it appears that for most people in 1362, the linguistic dominance of Latin and Anglo-Norman French in the royal courts restricted their ability to fully access the institution.

In this context, the notion of "accessibility" goes beyond the mere physical access to the courts, although their itinerant nature and the infrequency of their sessions could certainly delay a litigant's contact with them.[5] In order to understand accessibility as it

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[2] W.M. Ormrod, "The Use of English: Language, Law, and Political Culture in Fourteenth-Century England," *Speculum* 78 (2003), p. 750.

[3] Throughout this study the word "French" is often used as a generic term to describe the language used in northern France and the southern Low Countries (Languedoil), the language that developed in England after the Conquest (Anglo-Norman), and the more technical and linguistically distinct language used in the English royal courts from the thirteenth century ("Law French").

[4] Note that the ecclesiastical courts were not subject to this legislation.

[5] Anthony Musson, *Medieval Law in Context,* (Manchester: Manchester University Press, 2001), p. 163; Anthony Musson and W.M. Ormrod, *The Evolution of English Justice,* (London: Macmillan Press, 1999), pp. 177-181.

was alluded to in the Statute of Pleading, one must consider the extent to which the royal courts were truly open to all classes of people based on language. The complainants behind the Statute of Pleading identified a linguistic impediment to accessing the king's courts; due to an inability to comprehend French, many people were unable to participate in and follow the court's proceedings. This linguistic obstacle was compounded by the financial difficulty of obtaining the services of a legal professional[6] skilled in the law and legal languages. These financial and linguistic barriers to accessing the royal courts were intertwined with the amount of expertise required of the legal professionals involved and the type of work that they performed on behalf of their clients.

Those who lacked the linguistic ability and legal finesse to compose on their own the writs that were necessary to initiate litigation often hired the clerks of royal justices who were traveling in the provinces to do so for them.[7] Especially in the thirteenth century, the solicitation of such *ad hoc* legal advice and assistance was relatively common; it was a financially viable option to employing at a considerably higher cost more skilled lawyers and serjeants to do similar work.[8] Although they may not have benefited from a traditional legal education, royal clerks were at the very least literate in the legal languages used in official documents. By virtue of their profession as government secretaries, they may have also acquired a familiarity with the technical

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[6] The term "legal professional" as will be found throughout this paper is loosely defined as a person whose vocation (both official and unofficial) is based on possessing a level of expertise in the law and in its applications. As such, this term encompasses more than just judges and lawyers and includes all men who earned all – or part – of their earnings by contributing to the function of legal processes.

[7] Some judges traveled in circuits around the provinces in order to dispense royal justice locally; Paul Brand, *The Making of the Common Law,* (London: Hambledon Press, 1992), p. 184.

[8] Ibid., p. 184.

vocabulary that was unique to English law as well as an ability to put that skill to practical use. The most commonly written and oral language used in the royal courts was French, while Latin was used primarily as a language of written record. Once litigation commenced in court, hiring a lawyer to represent and argue in these languages on behalf of a plaintiff could be very expensive, especially if the proceedings were protracted, but by the fourteenth century this was a necessary expense for most litigants who were unable to navigate the linguistically and procedurally technical realm of English law on their own.[9]

The more education, training, and skill possessed by the lawyers, the higher the fees they were able to command in exchange for their legal services. It is clear that in the fourteenth century, "accessibility" to the royal courts was in fact contingent on a litigant's financial ability to procure the services of appropriately skilled legal professionals whose literacy in English, French, and Latin put their services in high demand. The linguistic abilities of these legal actors reflected their education and professional training in the law. This connection between the languages in which legal professionals worked and their education and training can also be observed in the languages preserved in the existing examples of the text of the Statute of Pleading.

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[9] Anthony Musson, *Medieval Law in Context,* p. 164.

II. Existing versions of the Statute of Pleading

i) Discrepancies

The Statute of Pleading is extant in two slightly different versions: one that appears on the Parliament roll[10] of 1362 and another that appears on the statute roll.[11] When viewed side-by-side, the parallels between the texts are apparent, as are the discrepancies. Notably, the statute roll version contains certain added elements, most interestingly a linguistic reference that is absent from the Parliament roll. What appears in the following quotation in normal typeface is the information that is more or less the same on both rolls. The text that appears in italics indicates additional information that is present on the statute roll but is absent from the Parliament roll. The two versions of the Statute of Pleading as they appear on the Parliament and statute rolls are as follows:

> Because the prelates, dukes, earls, barons, and all the commons have *often* shown to the king the great misfortunes that have befallen many of the realm because the laws, customs, and statutes of the said realm are not commonly known in the same realm, since they are pleaded, counted, and judged in the French language, which is very much unknown in the said realm, so that the people who plead or are impleaded in the king's courts and the courts of others have no understanding or knowledge of what is said for or against them by their serjeants and other pleaders; *and that, according to reason, the said laws and customs would be learned and known and better understood in the language used in the said realm, so that every man of the said realm might better organize his affairs without offending the law, and better keep, save, and defend his inheritances and possessions; and in various regions and lands where the king, the nobles, and others of the said realm have been, good governance and full right are done to every person, because their laws and customs are learned and practiced in the language of the land;* the king, desiring the good governance and tranquility of his people, and to prevent and eschew the harms and misfortunes that do and could befall in this matter, has for the above reasons ordained and established with the aforesaid assent that all pleas that shall be pleaded in any of his courts

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[10] "Edward III: Parliament of 1362, Text and Translation," in *The Parliament Rolls of Medieval England*, C. Given-Wilson et al, eds., CD-ROM, (Leicester: Scholarly Digital Editions, 2005).

[11] *Statutes of the Realm,* A. Luders et al, eds., 11 vols, Vol. I (Record Commission, London, 1810-28), pp. 375-76.

> whatsoever, before any of his justices whatsoever, or in his other places, or before any of his other officers whatsoever, or in the courts and places of any other lords whatsoever in his realm, shall be pleaded, counted, *defended, answered, debated, and judged* in the English language; *and that they be entered and enrolled in Latin; and that the laws and customs of the same realm, terms, and processes be upheld and observed as they are and have been before this time; and that no person is to be prejudiced by the ancient terms and forms of the court, provided the substance of the action is fully stated in the declaration and in the writ; and it is agreed with the aforesaid assent that this ordinance and statute of pleading shall begin and be observed from the quindene of St. Hilary next.*[12]

The statute roll's additional linguistic element is an assertion of the continued use of Latin in the written records of legal proceedings. The Parliament roll, however, makes no mention of this. While the text of the Statute of Pleading, as recorded on the Parliament roll, refers to the oral proceedings of the royal courts of law, it does not refer to the language used in court records. The text of the Statute of Pleading as recorded on the statute roll, however, does make reference to the languages used in the official records, and explicitly allows for the continued use of Latin while implying the continued use of French in its customary role. An evaluation of the additions made to the text on the statute roll reveals that the elaborations do not fundamentally alter the original legislative intent of the Parliament's decision. So why would a clerk include additional linguistic information in the statute roll? More importantly, why does this statute on language in the courts appear on the rolls in 1362 in two different formats? The answers to both of these questions can be found in a closer analysis of the legal profession in the fourteenth century and an examination of the relationship between legal actors and producers and the languages they used in later medieval England.

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[12] Each text translated from the original French and placed parallel by W.M. Ormrod in "The Use of English: Language, Law, and Political Culture in Fourteenth-Century England," pp. 756-757.

ii) Format

The physical gathering of the Parliament and statute rolls are similar and fall under the category of what is called a "Chancery" type roll, because the Chancery was the medieval organization responsible for producing each of them.[13] A Chancery type roll is identified by the way in which the documents were sewn together. Chancery rolls consist of several parchment membranes that are attached from end-to-end, rather than single membranes all attached at the top strung with a vellum thong in the manner that is characteristic of the Plea roll format. The languages found in the text of the Chancery rolls are typical of later medieval royal documents in general as they were almost exclusively composed in Latin or French, with English appearing only infrequently on the Parliament roll near the end of the medieval period.

The Parliament roll is the main source of information for historians of the English Parliament. It is a record of the proceedings of Parliament and includes a summary of the chancellor's opening of a session, the appointment of receivers of petitions, the presentation of the Speaker of the Commons, and the petitions, answers and bills which preceded acts of Parliament.[14] Until 1483, the Parliament roll recorded the proceedings that formed the basis of parliamentary acts, but seldom included texts of the statutes themselves, which were found in the statute rolls which were a collection of the records of the laws determined by Parliament.

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[13] The Chancery was then the equivalent of what is today called the Public Record Office, which is one of three organizations that make up the United Kingdom's National Archives.

[14] Maurice F. Bond, *Guide to the Records of Parliament,* (London: Her Majesty's Stationary Office, 1971), p. 26.

The Parliament roll documented the essential framework of each parliamentary session. The early roll recorded various memoranda and it has been argued that it was compiled simply as a means of cross-referencing with other official Chancery documents.[15] The roll was the means by which both the Crown and the Commons could check their facts by referring to the written record.[16] Until 1340, the Parliament roll was basically a list of the business that was to be attended to in the Parliament and it lacked both chronological organization and narrative text. After 1341, the contents of the roll changed and became standardized. W.M. Ormrod hypothesizes that the standardization of the Parliament roll was due to the personal inclinations of the clerks involved in its compilation.[17] One example of an abrupt change in the content of the Parliament roll after 1341 is the total absence of any records of private petitions. The most likely hypothesis to explain this change is that the Chancery clerks had begun to recognize that the roll was meant for community affairs, not individual affairs. It is also at this point that Parliament became recognizable as a court of public record, even though the documentation of proceedings sometimes met resistance from those who were more comfortable with, and accustomed to, the functions of a largely oral society. It has been suggested that the custom of reading a bill aloud three times in Parliament before it could be enacted as a statute is rooted in the Commons' preference for oral remembrance over reliance on the written record.[18]

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[15] W.M. Ormrod, "On – and Off – the Record: The Rolls of Parliament, 1337-1377," in *Parchment and Politics: Parliament in the Later Middle Ages,* ed. L. Clark, *Parliamentary History* occasional publication 23:1 (2004), p. 40.
[16] Ibid., p. 56.
[17] Ibid., p. 41.
[18] Linda Clark, "Introduction: Parchment and People in Medieval Parliaments," in *Parchment and Politics: Parliament in the Later Middle Ages,* ed. L. Clark,

III. The form, force, and creation of the Parliament and statute rolls

i) What is a statute?

From the thirteenth century onwards, the formal decisions made by the king in Parliament and affecting a permanent change in the law of the land were formed into a text known as a "statute."[19] A statute was the official transcription, on parchment, of the public acts of Parliament. Public acts were those new laws (statutes) that applied to the king's English subjects. The statute roll was a compilation of the public acts and a written record of the new laws. Bills that conferred a subsidy or those that regulated only the affairs of the king, the royal family, or the government, were not inserted in the statute roll, but were instead recorded in their entirety on the Parliament roll.[20] Similarly, private bills were only included on the statute roll if the promoter of the bill was prepared to pay a fee for its enrollment.[21]

A statute was one of two methods of promulgating new laws in medieval England, the other method being an ordinance. Both were similar in their legal effect, but a statute was issued in Parliament while the king and his council decided ordinances without any input from parliamentary representatives. Statutes were "new" laws in contrast to the so-called "old" English laws that were called "Common" because they had presumably existed since time immemorial and were based on the unwritten legal customs of the land. The intention of the statutes were to act as "solemn pronouncements on major substantive issues, complementary to the Common law and to be observed in

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Parliamentary History occasional publication 23:1 (2004), p. 4; On "aurality" and "orality" see Joyce Coleman, *Public Reading and the Reading Public in Late Medieval England and France,* (New York: Cambridge University Press, 1996), especially p. 76.

[19] Maurice F. Bond, *Guide to the Records of Parliament*, p. 93.

[20] Ibid., p. 99.

[21] Ibid., p. 99.

perpetuity."[22] In the reign of Edward I (1272-1307), a policy of keeping a written record of statutory laws became necessary as their numbers increased and could no longer be remembered without physical documentation.

ii) Effectiveness of statutes

Statutes can explain much about what was happening at the time that they were made. The creation of new laws can reveal information about contemporary issues: why make a law unless the lawmaker is either trying to provide the solution to an existing problem or to prevent a likely problem from occurring? In his study of the formation of the English Parliament, G.L. Harriss explained the various functions of medieval statutes: they defined the duties of local royal officers, reformed legal abuses and procedures, regulated trade in wool and wine, dealt with the status of alien merchants, prescribed weights and measures and monetary policy, and intervened on myriad other matters.[23] Some of this legislation was reenacted periodically which suggests that the new laws of the land were either often broken, or were imperfectly or irregularly enforced and thus required reassertion from time to time.

The Statute of Pleading was reenacted several times and legislation on making English the official language of England spans seven centuries.[24] Parliament tried three

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[22] W.M. Ormrod, "The Use of English: Language, Law, and Political Culture in Fourteenth-Century England," p. 761.

[23] G.L. Harriss, "The Formation of Parliament, 1272-1377," in *The English Parliament in the Middle Ages,* ed. R.G. Davies and J.H. Denton, (Philadelphia: University of Pennsylvania Press, 1981), p. 48.

[24] David Mellinkoff, *The Language of the Law,* (Toronto: Little, Brown, 1963), p. 4. Mellinkoff cites the following examples of legislation on page 4, note 18: Statute of Pleading, 1362, 36 Edw. II, ch. 15, repealed by Statute Law Revision Act, 1863, 26 & 27 Vict., c. 125; Act for turning the Books of the Law...into English, 22 November 1650, in

times to legislate the language of the law by statute. The first, as has been mentioned, was with the Statute of Pleading in 1362. The second attempt came in 1650 with a statute promoted by Cromwell's Parliament, "for turning the Books of the Law, [...] into English."[25] This statute was considered unfeasible by legal professionals as it included a requirement that statutes be in the English tongue, which was still an unfamiliar written language for litigation, even three centuries after the Statute of Pleading. After the Restoration, this statute was repealed. The third attempt to change the language of the law to English came with a piece of legislation passed in 1731 that required all court proceedings and statutes to "be in the English tongue and language only, and not in Latin or French [...]."[26] Only two of the several attempts at legislating English have persisted, one dates from the time of Victoria (1837-1901) and another from that of Edward VII (1901-1910).[27] This does not suggest that statutes were merely symbolic expressions of power. The velocity of change and adaptation in the medieval English legislative system and the growth of the Parliament as a law-making institution matched pace with the social changes occurring over the course of the later Middle Ages.

C.H. Firth and R.S. Rait, eds., *Acts and Ordinances of the Interregnum, 1642-1660,* 3 vols., Vol. 2 (London: Wyman, 1911), p. 455, repealed by Statute in 1660 12 Car. II, c. 3; Proceedings in Courts of Justice, 1731, 4 Geo. II, c. 26, repealed by Civil Procedure Acts Repeal Act, 1879, 42&43 Vict., c. 59; Courts in Wales and Chester, 1733, 6 Geo. II, c. 14, repealed by Civil Procedure Acts Repeal Act, 1879, 42 & 43 Vict., c. 59.

[25] Act for turning the Books of the Law...into English, 22 November 1650, in C.H. Firth and R.S. Rait, eds., *Acts and Ordinances of the Interregnum,* Vol. 2, p. 455.

[26] Proceedings in Courts of Justice, 1731, 4 Geo. II, c. 26.

[27] Crown Writs to be in English, 1868, 31 & 32 Vict., c. 101, s. 90; Prohibition of Engagement of Seamen..., 1906, 6 Edw. VII, c. 48, s. 12.

iii) The legal force of the Parliament roll and its accuracy as a record

The Parliament and statute rolls are the sole primary sources that are without a doubt the authorized texts of the proceedings and decisions of the medieval English government. It is important to realize that contemporaries did not always consider the Parliament roll to be a definitive record. While the Parliament roll was necessarily an authoritative text with regard to the legal cases heard in Parliament, the Crown did not usually regard the precise wording of the general memoranda appearing on the roll to be in any sense legally binding.[28] Because of the Parliament roll's function as a record of the Parliament's proceedings, it is not unusual to find the record of a statute on both it and the statute roll. Oftentimes, information that was not included on the Parliament roll was included on the statute roll and vice versa. Despite the occurrence of dual enrollments, only the wording of a text of a statute found on the statute roll carried with it the full weight of the law.

One complication in verifying the accuracy of the contents of the Parliament roll is connected to establishing the reliability of the "on-the-spot" translations of Parliament's proceedings. The translations in question are not those of modern scholars, but those of the Chancery clerks in the medieval period. The languages spoken by the men in Parliament were not necessarily echoed in the languages used in the compilation of the rolls. Both English and French would have been used conversationally and orally in Parliament, yet the clerk of the Parliament typically translated the proceedings into French when he wrote the official documents. Furthermore, the information that was included on the roll and that which was left off was left entirely up to the discretion of the

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[28] W.M. Ormrod, "On – and Off – the Record: The Rolls of Parliament, 1337-1377," p. 42.

clerks. It is Ormrod's view that "there has been little systematic analysis of the criteria used by the relevant Chancery clerks in the fourteenth and fifteenth centuries in selecting what was to go on – and what might be left off – the official memoranda of Parliament."[29] For these reasons, the question of establishing the accuracy of the Parliament roll has dogged scholars and care must be taken when reading the roll and interpreting its contents literally as they may not give a true picture of the Parliament's proceedings and its decisions.

iv) Chancery clerks: the producers of the rolls

The Chancery clerks were the men responsible for recording the proceedings of a parliament on the Parliament roll and enrolling the laws on the statute roll. One historian, A.F. Pollard, explained the importance of the Chancery clerks to the organization of parliaments by stating that a parliament was "summoned by Chancery clerks, sewed [sic] by Chancery clerks, and guided by their chief, the chancellor."[30] They were essentially the administrative backbone to the medieval Parliament as they composed and copied the summonses to Parliament and physically compiled the Parliament and statute rolls themselves. Pollard further characterized the Chancery clerks as "undersecretaries of state" because of their additional function as the facilitators of the foreign and domestic correspondence of the government. The Chancery clerks were therefore essential to the smooth functioning of the royal administration and were the sole group responsible for

[29] Ibid., p. 39.
[30] A.F. Pollard, "The Clerical Organization of Parliament," *The English Historical Review* 57:225 (1942), p. 33.

processing and recording Parliament's proceedings as well as enrolling the new laws that were created by this legislative and executive institution.

The act of enrolling statutes was not necessarily performed by the Clerk of the Parliament, but was usually done by lower ranking clerks under his supervision because he was the authority on the Parliament's proceedings and knew which of its acts were to be transcribed as statutes. Chances are, however, that the work of producing the original statute's text was left to the Clerk of the Parliament and the Master of the Rolls who headed the Chancery.[31] This means that these senior Chancery clerks were free to decide what was kept on, and what was left off, of the written record.[32] Once the wording of the statute had been established based on the memoranda of the Parliament roll, the Clerk of the Rolls assumed responsibility for having the statute written out and enrolled on the statute roll. The creation of multiple transcriptions of the statute was the responsibility of the Chancery as a whole because several copies had to be made under the king's great seal for exemplification and distribution throughout the realm.

In the medieval period, the Chancery and its clerks served primarily as the secretariat and the scriveners of the English government. In its official capacity, the majority of the documents produced by the Chancery secretariat were legal documents. However, this official form of employment did not prevent Chancery clerks from moonlighting as private scribes and consultants for individuals who commissioned them to draft important legal documents like writs and petitions. The composition of writs and petitions required an understanding of the written conventions common to their format

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[31] G.R. Elton, "The Rolls of Parliament, 1449-1547," *The Historical Journal* 22:1 (1979), p. 11.

[32] This concept is more fully explored in Ormrod's article: "On – and Off – the Record: The Rolls of Parliament, 1337-1377," pp. 39-56.

and content as well as a fluency in Latin or French and a familiarity with legal jargon that was not commonly known, even to the average literate medieval person. This type of legal knowledge was unique to those who worked within the legal system – be they lawyers, judges, Chancery or parliamentary clerks, or any other legal professional who earned his living through contact with the law and legal procedures. As the cost of employing a lawyer to do this type of written legal work was most certainly excessively prohibitive for peasants and those of little means, a clerk was a good alternative as he possessed significant legal knowledge by virtue of his position, and the invaluable ability to read and write Latin, French, and English.

IV. Reconsidering the Statute of Pleading

i) Questions raised

The functions of the three languages of medieval England must be at the centre of any evaluation of the Statute of Pleading and its place in legal history. The primary question that will be addressed in the following thesis is based on the existence of two linguistically distinct records of the Statute of Pleading. Why does the Statute appear in two different forms, with obvious linguistic discrepancies? As has been mentioned, the fact that the Statute was recorded both on the Parliament roll and on the statute roll is not an extraordinary occurrence in the records of the fourteenth-century English Chancery. What is truly significant about the Statute of Pleading and its dual enrollment however, is the presence of linguistic discrepancies in each of the texts. It is this matter that merits further investigation. These discrepancies raise several questions that can be grouped into

two closely related lines of inquiry that ask: What social and linguistic factors within the legal profession influenced the creation of the Statute of Pleading, and who was responsible for the discrepancies between the two different versions of the text? Second, what might have motivated that person, or group of people, to add a linguistic reference to the record of the Statute of Pleading on the statute roll?

These fundamental questions about the legal professionals behind the creation of the Statute of Pleading are connected to one of the greatest mysteries surrounding it, being the identity of the petitioner, or petitioners, who wanted and pushed for this legislation in the first place. In this period, private and common petitions were the typical means for individuals or groups of people to voice their complaints and have their grievances addressed and redressed by Parliament. As of yet, no petition associated with the Statute of Pleading has been discovered. This lack of documentary evidence leaves it decidedly ambiguous as to the provenance of the Statute.[33] Due to our inability to connect an ancient petition with this statute, the identities and motives of the true proponents of the Statute of Pleading remain enigmatic. With this unknown in mind, this study will offered an hypothesis consisting of likely candidates who might have filled this role of petitioner according to how they fit into the context of late medieval law and language.

ii) What does the Statute of Pleading say about language and the law?

The Statute of Pleading is an interesting case study to demonstrate how languages and the law came together and interacted in one arena in the mid-fourteenth century. Just as the law affected all members of society, and all members of society had different

[33] W.M. Ormrod, "The Use of English: Language, Law, and Political Culture in Fourteenth-Century England," p. 757.

linguistic abilities, these differences were reflected in the proceedings of the royal courts. Through references to the creation of the Statute of Pleading, scholars from several fields often cite 1362 as a key date in English language and legal history because of the Statute's commentary on the linguistic situation of medieval England. However, the Statute not only decreed that the language of pleading in the king's courts could be conducted in English (rather than the French and sometimes Latin that had been used formerly), but it also stated that the records of these now "English" legal proceedings were still to be kept in Latin, according to custom. At no point does the Statute of Pleading ever question the validity of using French and Latin as the languages of written court records. Furthermore, at no point does the Statute claim that English had ever been forbidden as a language of pleading previous to 1362, and it never claims to advance the role of written English in the legal realm. In addition, the phrase included on the statute roll version, "and that no person is to be prejudiced by the ancient terms and forms of the court [...]" implies that French will continue to be used in both oral and written proceedings, as this language formed the "ancient terms" of the medieval English courts.

Therefore, it is useful to remember that pleading in court and the recording of that pleading are two distinct issues.[34] The written language used to record those same proceedings rarely mirrored the language – or languages – of the oral proceedings of the royal courts in the fourteenth century. In fact, English did not begin to be used as a language of written record in the law until the seventeenth century, and French was not officially and definitively abandoned in this type of role until 1731. For all intents and purposes, the Statute of Pleading actually compromised between the interaction of the

[34] William Rothwell, "English and French in England after 1362," *English Studies* 82:6 (2001), p. 541.

three main languages of England in the law by officially allowing English to be used orally in the royal courts while stipulating that Latin and French retain their customary roles as the languages of written record. This pragmatic interpretation is absent from the traditional historiography of the Statute of Pleading whose scholars have often skewed its meaning in order to suit their personal and academic linguistic biases.

iii) W.M. Ormrod and new approaches to the Statute of Pleading

Arguably, the existing historiography of the Statute of Pleading views it from a perspective that is largely one-dimensional and fails to take into consideration the connection between language and the legal profession it its interpretation. Scholars have mistakenly looked at the Statute superficially and have either taken the contents of its text at face value, meaning that it has been used as evidence to support the argument that the language of the law changed in 1362 from French to English, or it has been used as an example of a law without teeth since the predominant language of the law undoubtedly remained French even after this new legislation was passed. Either way, few historians have ventured to question how and why this statute on English as a language of pleading came to be in the 1360s. Those who have broached this subject have resorted to political and pestilential explanations to justify the creation of this statute during a time of short-lived peace with France when the threat of plague was ever-present. The passing of the Statute of Pleading and the occurrence of the plague in the same period are often connected as the Statute has been interpreted as a consequence of the demographic

changes caused by the plague.[35] As the plague disproportionately affected students and ecclesiastics due to their tendency to live communally, some historians have interpreted the Statute of Pleading's advancement of the English language as a reflection of the plague's demographic effect on these social groups. If the plague decimated the numbers of members in these two highly educated and linguistically skilled groups, it follows that there would be less fluently multilingual men in the realm available to act as legal professionals. If this is also true, then it follows that less educated – and thus less linguistically capable – men would have advanced in the legal profession in the fourteenth century when they might otherwise have been prevented from doing so.

Only one scholar – W.M. Ormrod – has identified the dual format of the Statute of Pleading as being an avenue of exploration to expand our understanding of the Statute and its significance. Ormrod boldly questions why the legislation was made, and sets out three possible contexts in which the Statute may be read:

1) [...] as part of the package of political concessions offered by the Crown in return for a grant of supply in the parliament of 1362;
2) as an incidental affirmation of the newly established authority of the commissions of the peace in the shires;
3) and as a statement of English triumph over, and independence from, the kingdom of France.[36]

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[35] For causal connections between the plague and the development of English, see examples in: Albert C. Baugh and Thomas Cable, *A History of the English Language,* 3rd ed. (Englewood Cliffs, N.J.: Prentice-Hall, 1978); Basil Cottle, *The Triumph of English: 1350-1400,* (London: Blandford Press, 1969); Charles T. Scott and Tim William Machan, eds., *English in Its Social Contexts,* (Oxford: Oxford University Press, 1992).
[35] W.M. Ormrod, "The Use of English: Language, Law, and Political Culture in Fourteenth-Century England," p. 781.
[36] Ibid., p. 781.

In doing so, Ormrod stresses that none of these interpretations of the Statute of Pleading can be called irrevocable truths or serve as definitive explanations for why the legislation was made in 1362.

Ormrod's approach to the study of the Statute is limited insofar as he considers mainly political causes to answer questions regarding this linguistic matter of legal importance. He considers the Statute more from the perspective of the Crown, and as an example he argues that the answer to why the Crown chose 1362 to adopt English lies in large part to the state of diplomacy during the early 1360s.[37] Ormrod's in-depth study of the Statute of Pleading serves to pose questions and propose answers to deepen our understanding of the Statute through a largely political evaluation of the Crown's motives for establishing English as a language of pleading in the fourteenth century context. Ormrod's diligence in examining different aspects and contexts of the Statute of Pleading from a political perspective has opened a door to further study on the subject from a different – though complimentary – angle.

At the core of the thesis that follows is an emphasis on the men who worked in various capacities within the legal system and the inseparable connection between the languages in which they worked and were literate and their legal education and professional training. The roles of the languages preserved in the Statute of Pleading reflect a tie between legal actors and the languages that were essential to their profession. Those men whose linguistic capabilities were fundamental to their identities as legal professionals invariably had a hand in ensuring that the absent linguistic elements from

[37] Ibid., p. 779.

the Parliament roll records were present in the statute roll version of the Statute of Pleading. In continuing the line of investigation begun by W.M. Ormrod, this thesis presents a different kind of approach to the Statute of Pleading by considering the Statute in both of its forms and their linguistic discrepancies as products of the work of a group of legal professionals who participated in the legal culture of fourteenth-century England and contributed to the creation of its legislation. From this perspective, the Statute of Pleading and its commentary on the use of languages in medieval England cease to be anomalies in the chronology of England's linguistic and legislative history and stand alone as logical products of their time. By studying legal producers and their relationships with Latin, French, and English against the backdrops of the royal courts and institutes of professional legal training we will be able to expand our knowledge of the Statute of Pleading and begin to answer some of the linguistic questions that this law has raised.

CHAPTER ONE

HISTORIOGRAPHY AND METHODOLOGY

I. Historiography

With the notable exception of the work done by William Rothwell on the history of language and the work of W.M. Ormrod on political history, historians and linguists have almost entirely overlooked the significance of the Statute of Pleading. When other scholars do refer to the Statute, they tend to ignore its political, legal, and linguistic background and in doing so, they fail to take notice of the legal actors who were fundamental players in creating this law. By neglecting to consider the larger social context in which the Statute appeared, many scholars have yet to recognize that what is truly interesting about the Statute of Pleading is its commentary on the linguistic situation of fourteenth-century England and the use of languages by legal professionals and administrators in the royal courts. In addition, almost none of the authors who have cited the Statute of Pleading have noted the differences between the versions of the Statute enrolled on the Parliament and statute rolls for 1362.[1]

i) Revisionist histories of the Statute of Pleading

In 2001, William Rothwell called for scholars to strive for a more "correct interpretation" of the Statute of Pleading in order to rectify the fact that its importance

[1] The sole exception being W. M. Ormrod, "The Use of English: Language, Law, and Political Culture in Fourteenth-Century England," *Speculum* 78 (2003), pp. 750-787.

has been overlooked, disregarded, and misinterpreted by both historians and linguists.[2] Rothwell's article reviews and revises what we know about the Statute by revealing some of the Statute of Pleading's misinterpretations that are found in its historiography. Rothwell argues that the existing literature on language in the fourteenth century presents erroneous perceptions of the true linguistic situation in England and misappropriates the Statute of Pleading in order to prove that a momentous linguistic shift resulted from the passing of this law, even though this is historically inaccurate. He asserts that these widespread misinterpretations of the Statute of Pleading are a result of the currently accepted view of philologists dealing with Anglo-Norman French who claim that the Statute effectively banned French from the national and legal records in England in order to clear the way for English to take its place.[3] That interpretation of the impact of the Statute of Pleading is categorically false, and Rothwell identifies the propensity of scholars to accept uncritically this highly unlikely "fact" without taking the initiative to independently consult the text of the Statute and look for evidence to support this claim.[4] Rothwell uses the text of the Statute in order to show that English did not oust the French language in the courts of law or in the government in general, which are frequent arguments found in the earlier historiography on the impact of the Statute of Pleading.[5]

Two years after Rothwell's article, W.M. Ormrod answered the call to reevaluate the Statute of Pleading in his article entitled: "The Use of English: Language, Law, and

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[2] William Rothwell, "English and French in England after 1362," *English Studies* 82:6 (2001), p. 559.
[3] Ibid, p. 539.
[4] Rothwell traces the root of this notion to an article written by M.D. Legge, "Anglo-Norman and the Historian," *History* 26 (1941); William Rothwell, "English and French in England after 1362," p. 540.
[5] See below: M.D. Legge, J. Vising, M.K. Pope, H. Suggett, D.A. Kibbee.

Political Culture in Fourteenth-Century England."[6] In this article, Ormrod identifies the lack of research on the political aspects leading up to, and resulting from, the Statute of Pleading as a major weakness in the current historical scholarship regarding the role of the English language in the later medieval period. He argues that insufficient work has been undertaken by legal historians on the administrative and political background to the Statute of Pleading and the implications of establishing English as the spoken language of the courts in 1362.[7] Ormrod questions the tradition of modern scholarship to reject the significance of the Statute of Pleading in the fourteenth century in favour of a "more dynamic" period in the fifteenth century when English was more widely embraced as a language of written record.

Specifically, what Ormrod attempts is a "new evaluation of the place of the statute of 1362 in later medieval legal and political culture" through an examination of the text of the Statute, the political context in which the legislation was issued, and the royal judicial system of the 1360s.[8] He aims to reevaluate the use of French and English in law, government, and politics in the later fourteenth century in the context of the Hundred Years War in order to understand the implications of the Statute in the fifteenth century under Henry V (1413-1422).[9] He proposes to do so by using a five-pronged approach to the study of the Statute of Pleading. First, Ormrod discusses the text of the Statute, and in doing so he identifies discrepancies between the wording of its two versions on the records of the Parliament roll and the statute roll. Next, he analyses the political context

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[6] W. M. Ormrod, "The Use of English: Language, Law, and Political Culture in Fourteenth-Century England," pp. 750-787.
[7] Ibid., p. 752.
[8] Ibid., p. 751.
[9] Ibid., pp. 752-753.

of the legislation, and he explores what the Statute can reveal about the royal judicial system in the 1360s. This is followed by a reevaluation of the use of French and English in the law, government and politics in the context of the Hundred Years War. Finally Ormrod considers the fifteenth-century implications of the Statute of Pleading as it relates to Henry V's well-known promotion of the English language in official uses throughout his reign.

Ormrod does not purport to know the answers to all of the questions he puts forth in his article, rather his goal is to suggest that by looking at the Statute in its political context, and questioning the accuracy of its traditional historiography, scholars may alter their perceptions of this misinterpreted law as they have received these interpretations from the writings of earlier scholars whose assertions on the Statute must be reconsidered. Ormrod's conclusions show that a more critical analysis of the texts of the Statute of Pleading as it was recorded on the Parliament and statute rolls can contribute to improving our understanding of the Statute and expand the breadth of accurate information available on the subject. Ormrod primarily used the state of later medieval English politics as his of frame of reference for interpreting the Statute of Pleading, and his study serves to demonstrate that the existing historiography of this legislation is deficient and does not give a true picture of why a law on the languages used in the royal courts was passed in 1362.

ii) Legal history

Curiously, legal historians tend to overlook the significance of the Statute of Pleading by either ignoring it completely or by accepting its contents at face value and

taking for granted the accuracy of earlier scholars' interpretations. They have neglected to offer their own insights into the text of the Statute of Pleading, its background, and its meaning to the history of law and legal professionals. As a result, an interpretation of the Statute from a purely legal perspective is noticeably absent from the existing historiography on the subject. One possible explanation for this oversight is that the Statute of Pleading tends to get lost among the more politically charged and economically influential laws passed in the same Parliament.[10] To put it simply, on the surface this apparently perfunctory piece of legislation on the languages used in the king's courts seems insignificant in comparison to some of the more sensational legislation being passed simultaneously that is clearly connected to the demographic and economic impact of the Black Death and the Hundred Years War. Exceptions to this trend in academic study on the Parliament of 1362 are relatively few, and those who do bother to comment on the Statute of Pleading merely accept the interpretations (and often misinterpretations) of English and French language historians who have tackled the subject sporadically since the early 1920s. As a result, no legal interpretation of any consequence exists in the historiography of the Statute of Pleading.

iii) Philology

There is, however, one field of study that has made a significant contribution to how scholars have interpreted the Statute of Pleading over the past century. Philology, or

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[10] For example: The Statute of Purveyors (1362): 36 Edw III st. 1 c. 1: *Statutes of the Realm,* A. Luders et al, eds., Vol. I (London: Record Commission, 1810-28), p. 371; The Staple Act (1362): 36 Edw III st. 1, c. 7: *Statutes of the Realm,* Vol. I, p. 373; Wages of Priests Act (1362): 36 Edw III st. 1 c. 8: *Statutes of the Realm,* Vol. I, pp. 373-4; General Pardon Act (1362): 36 Edw III st 2: *Statutes of the Realm,* Vol. I, pp. 376-8.

the history of the relationships between languages, is a branch of study that examines the roles of languages in the past and the development of their usages over time. In the broadest sense, philology includes the history of language, which is an all-encompassing field that includes all manners of study that touch upon language, linguistics, and their history. Philology also pertains to textual criticism through the close study of a text – its contents, language, authors, and history. Mark Amsler defined this methodology as:

> [An] inquiry into the study of language variation, language change, language attitudes, language teaching, schooling and literacy, cultural representations and metaphors for understanding language, and the changes in social registers and speech communities.[11]

While studies that fall under the heading of philology make up the bulk of the academic research on the Statute of Pleading, W.M. Ormrod has criticized the amount of confusion among scholars in general regarding the Statute's impact, and attributes it to the fact that linguistic and literary studies of both English and French in fourteenth-century England have often "misread the early-modern debates on the language of the courts as evidence that the statute was neglected, if not indeed actively resisted, by the common lawyers."[12] This problem comes as a result of Anglicists who view the Statute of Pleading largely from the perspective of their own language. Their understanding of the other half of the equation, which was the changing situation of French at the same time, depended heavily

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[11] As defined in these terms, philology is in many ways synonymous with historical linguistics; Mark Amsler, "History of Linguistics, 'Standard Latin,' and Pedagogy," in *History of Linguistic Thought in the Early Middle Ages,* ed. Vivien Law, (Philadelphia: John Benjamins, 1993), pp. 50-51.

[12] W. M. Ormrod, "The Use of English: Language, Law, and Political Culture in Fourteenth-Century England," p. 752.

on the information provided by a group of accepted "experts" in Anglo-Norman history whose own interpretations are questionable.[13]

One of these experts – Mary Dominica Legge – a professor of Anglo-Norman French at the University of Edinburgh, was undoubtedly one of the United Kingdom's foremost researchers on the French language – especially on the subject of the language and its impact on English law and its history. In the December 1941 issue of the journal *History,* Legge stressed the importance of the French language to historians of English law in her article "Anglo-Norman and the Historian."[14] In it, Legge argued that French was still important to both lawyers and historians of the 1940s, as knowledge of the language was essential to understanding many of the texts of the late medieval and early modern periods of English law and legal history. To support this claim, Legge reiterated an earlier statement of Roger North's in his *Discourse on the Study of the Laws* in which he wrote: "Lawyer and Law French are coincident; one will not stand without the other."[15] Legge lamented the fact that "historians are often sadly ill-equipped, not only on this side of the Channel, for dealing with material written in Old French."[16] At the time of writing her article, Legge could only recommend the use of two earlier works for further reference on the role of French in medieval England. Legge invited her readers to consult J. Vising's *Anglo-Norman Language and Literature*[17] and M.K. Pope's *From Latin to*

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[13] William Rothwell, "English and French in England after 1362," p. 539.
[14] M. Dominica Legge, "Anglo-Norman and the Historian," pp. 163-175.
[15] Roger North, *Discourse on the Study of the Laws*, (London: C. Baldwyn, 1824), p. 11.
[16] M. Dominica Legge, "Anglo-Norman and the Historian," p. 163.
[17] J. Vising, *Anglo-Norman Language & Literature*, (London: Oxford University Press, 1923).

Modern French[18] as studies of Anglo-Norman French that would be helpful to historians.[19]

Recently, William Rothwell has called into question the "authority" of both Vising's and Pope's work on the French language. Most significantly, Rothwell has criticized Legge for relying on these works to support her misguided statements on the Statute of Pleading. Legge wrote:

> [...] it was pretended that "la lange Franceis q'est trope desconue" was no longer suitable for use in pleading, and the well-known Act of Parliament of 1362 ordered the substitution of English. The reasons for this move are obscure. It was quite untrue that French was "desconue," and nobody seems to have taken the slightest notice of the Act.[20]

Legge viewed the passing of the Statute and the resulting evidence of its non-implementation as paradoxical, and she accounted for the contradiction by stating: "nobody seems to have taken the slightest notice of the Act."[21] This interpretation is problematic as she failed to provide any evidence to support this theory. Just because the languages used to record the proceedings remained French does not mean that English was not used orally in pleading, as we know that the language of the written record did not always reflect the languages spoken in court. Unfortunately, others have relied on Legge's authority to perpetuate her ideas regarding the meaning of the 1362 statute. Rothwell criticizes subsequent commentators on the Statute of Pleading for accepting

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[18] M.K. Pope, *From Latin to Modern French with Especial Consideration of Anglo-Norman*, (Manchester: Manchester University Press, 1934).
[19] While Pope and Vising's works were undoubtedly useful for their time, they are also the cause for subsequent scholars' misinterpretations of the relationship between Latin, French, and English in England during the fourteenth century. Vising makes several inaccurate statements regarding the practical and oral use of these languages based on the (in)frequency with which they were used as languages of written record.
[20] M. Dominica Legge, "Anglo-Norman and the Historian," p. 167.
[21] Ibid., p. 167.

Legge's flawed explanation uncritically rather than examining the text of the Statute itself and developing their own interpretations to determine whether the French language was "desconue" in 1362 and the impact of the legislation on the use of English in the courts.[22]

Between Legge's publications in the forties to studies published in more recent years, it seems little has changed in the linguistic historiography of the Statute of Pleading. Writing in the 1990s, professor of French linguistics, Douglas Kibbee, attempted to rectify the rampant misinterpretation of the role of medieval English by clarifying the "confused state of modern scholarship" with regard to the "racial" perceptions of historians of language.[23] In order to do this, Kibbee looked at the second-language teaching of French in England as evidence of the level of bilingualism in medieval England. The resulting work, *For to Speke French Trewely,* is the first comprehensive survey of the linguistic relationships in England in the Middle Ages that intentionally attempts to temper some of the extreme claims that have been made by other scholars based on Legge's work on the subject. In his publication, Kibbee argues that scholars have too often either underestimated or overestimated the domination of French in England based on whichever perspective has benefited most their own professional interests as Anglicists or Gallicists.

Unfortunately, Kibbee's awareness of the academic and linguistic biases of others did not prevent his own fallibility when it came to his interpretation of the Statute of

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[22] William Rothwell, "English and French in England after 1362," p. 540; Rothwell cites J.H. Baker and D.A. Kibbee as examples of scholars who have uncritically accepted the assertions of M.D. Legge with regard to the Statute of Pleading and who have perpetuated the idea that this "contradiction" exists.

[23] Douglas A. Kibbee, *For to Speke French Trewely,* (Philadelphia: John Benjamins, 1991), pp. 1-3.

Pleading.[24] With regard to this legislation, Kibbee writes: "In 1362, Parliament passed a statute that French no longer be the language of government and of the legal system, because that language was too poorly understood."[25] A cursory reading of this statement is enough to spot the fatal flaw in Kibbee's argument. Neither example of the statute make any mention of the "language of government" or of the "legal system." The Statute only mentions the language of the king's courts, which certainly did not cover the royal government at large or the legal system in general. If Kibbee closely consulted the text of the Statute of Pleading he should have noticed that the Statute does not refer either of these things in any instance and he would not have made such a sweeping generalization. However, Kibbee does cite the source, and even quotes a large passage of the Statute of Pleading[26] in order to justify his statement: "The statute of 1362 was the first step in the transformation of the language of government, but its importance can be overestimated."[27] Therefore it is evident that Kibbee did read the Statute of Pleading, but nevertheless continued to misrepresent its contents in keeping with the work of earlier scholars, such as Vising and Legge.

Kibbe's examination of the Statute of Pleading includes questions regarding its implementation, and he incorrectly juxtaposes the language of the written record with the language of oral pleading as outlined in the Statute in order to demonstrate that the Statute had little impact on the courts. In his appeal to a higher authority on the subject,

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[24] Notably, Kibbee questioned Pollock and Maitland's view that French, as a language of the law, constituted a "catastrophe" and Vising's claim that the existence of much French literature was proof that the French language completely dominated all strata of society in the twelfth and thirteenth centuries.
[25] Douglas A. Kibbee, *For to Speke French Trewely,* p. 58.
[26] Kibbee quotes the *Statutes of the Realm* version of the Statute of Pleading.
[27] Douglas A. Kibbee, *For to Speke French Trewely,* p. 63.

Kibbee cited Helen Suggett as a "modern scholar" who was likewise baffled by the contradiction between the language supported in the Statute (English) and the language used to record the Statute (French).[28] This "contradiction" is not at all problematic as the use of two or more languages in the written record is typical of the period. If the Statute of Pleading had been enrolled in English it would have raised significantly more questions as it would not have been in keeping with Chancery tradition. The fact that the oral language of the court was not reflected in the language used in the written record of the proceedings is not at all unusual for documents written in 1362.

It is essential to note that Kibbee wrote his monograph on the French language in England nearly fifty years after the publication of Suggett's work,[29] yet he relied on her authority to make his own assertions on the Statute of Pleading. For unknown reasons, Kibbee failed to consider the work of Suggett's critics, like William Rothwell. Interestingly, in a later article[30] Kibbee commented on the origins of the overestimations of the relationships between French and English in England in the Middle Ages by citing one of Rothwell's earlier accusations that some scholars were guilty of "slavish copying" in this regard.[31] As early as 1978 Rothwell wrote:

> Au fait, c'est Vising qui est responsable en dernière analyse de l'opinion courante sur l'emploi du français en Angleterre, parce que les érudits modernes que nous

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[28] Ibid., p. 58.
[29] Helen Suggett, "The Use of French in England in the Later Middle Ages: The Alexander Prize Essay," *Transactions of the Royal Historical Society,* 4th ser., 28 (1946), pp. 61-83.
[30] Douglas A. Kibbee, "Historical Perspectives on the Place of Anglo-Norman in the History of the French Language," *French Studies* 54 (2000), pp. 137-153.
[31] William Rothwell, "A quelle époque a-t-on cessé de parler français en Angleterre?", *Mélanges de philologie romane offerts à Charles Camproux,* Vol. 11, (1978), pp. 1075-89.

> avons cités plus haut [John Orr, M. Dominica Legge, John Holt, Helen Suggett] n'ont fait que suivre sans réserve son interprétation des textes en question.[32]

Again, Rothwell continues to make a connection between the contradictions in the historiography of the French and English languages in England and the tendency of scholars like Kibbee to rely on the authority of a small group of early twentieth-century "experts."

A similarly flawed interpretation of the Statute of Pleading comes from Albert C. Baugh and Thomas Cable, two eminent literary scholars. As the accepted authorities on English language history, they account for the importance of the Statute of Pleading by claiming:

> In 1362 an important step was taken toward restoring English to its rightful place as the language of the country. For a long time, probably from a date soon after the Conquest, French had been the language of all legal proceedings. But in the fourteenth century such a practice was clearly without justification, and in 1356 the mayor and aldermen of London ordered that proceedings in the sheriffs' court of London and Middlesex be in English.[33]

The authors note that there is reason enough to believe that the Statute was not immediately observed, while blithely stating that the Statute "constitutes...the official recognition of English."[34] If Baugh and Cable's reference to English, its use, and application in the legal realm means to suggest that the Statute of Pleading was a purely rhetorical statement rather than a practical statement then their argument would be sound. However, Baugh and Cable are referring to the status and practical use of the French and

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[32] William Rothwell, "A quelle époque a-t-on cessé de parler français en Angleterre?," *Mélanges de philologie romane offerts à Charles Camproux,* Vol. 11, (1978), as cited in Douglas A. Kibbee, "Historical Perspectives on the Place of Anglo-Norman in the History of the French Language," *French Studies* 54 (2000), p. 138, fn. 3.
[33] Albert C. Baugh and Thomas Cable, *A History of the English Language,* 3rd ed. (Englewood Cliffs, N.J.: Prentice-Hall, 1978), p. 148.
[34] Ibid., p. 149.

English languages in the royal courts, and their argument makes it clear that they believe that the legal force behind the Statute was weak and was ignored, while claiming that the Statute carried enough authority to affect an official recognition of the English language.[35]

This contradiction is not unique to Baugh and Cable's account of the Statute of Pleading and merely exposes one example of how the Statute of Pleading has been accused of ineffectuality due to the unwillingness of English lawyers to abide by it, while simultaneously being hailed as an "important step" toward "restoring English to its rightful place." It is unfortunate that two well-known historians of English have contributed to perpetuating conflicting information regarding the Statute. Such misunderstandings may appear innocuous, but in reality they have served to limit our ability to accurately place the Statute of Pleading in its rightful social and linguistic context. As a result, one of the most seminal works to lay the foundation for a history of the English language has put forth an inaccurate portrayal of the first examples of legislation of the English language.

While it is true that philology has greatly contributed to the current body of knowledge on the Statute of Pleading, it is unfortunate that the traditional philological interpretation of the place of the Statute in fourteenth-century English history has also perpetuated many of the contradictory interpretations and problematic source work that are present in the existing historiography. These contradictions have led to

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[35] Ormrod criticizes the tendency of historians of language to disregard the substance of the Statute of Pleading and their frequent assumption that the law was a dead letter after 1362 merely because it did not affect an immediately noticeable shift in the *written* records of the royal administration; W. M. Ormrod, "The Use of English: Language, Law, and Political Culture in Fourteenth-Century England," pp. 773-774.

misinterpretations that can be traced back to the work of a small number of scholars who have made erroneous claims on the causes, impacts, and influence of the Statute of Pleading. These assertions generally differ according to whether the scholar specializes in the study of the French language or is an Anglicist, however they share in common overtly nationalistic approaches to the study of the Statute of Pleading and its reflection of the linguistic situation in later medieval England. As a result of the linguistic myths perpetuated by certain "experts," a flawed perception of the true linguistic situation in England developed over the period 1920-1990 as the Statute of Pleading was hailed as a signal of the beginning of the use of English in legal proceedings and also as the end of allowing the French language in England's national and legal records. Neither of these interpretations is historically accurate and despite the new legislation, French continued to be used until the seventeenth century in much the same way as it always had been – as an official language alongside Latin (and increasingly, English).

New perspectives

W.M. Ormrod, William Rothwell, and Douglas Kibbee are not the only scholars who have made a conscious effort to clarify some of the decades-old contradictions in the study of the Statute of Pleading and the historical use of languages in England. Since Vising, Pope, Legge and Suggett's time, a greater focus has been placed on the importance of language in English history through the discipline of linguistics and its sub-disciplines of socio- and historical linguistics. In recent years, scholars have evaluated the Statute of Pleading from different perspectives that address not only the contents of the Statute but also its social and linguistic impact on the written and spoken

languages of medieval England. Marilyn Corrie's essay, "Middle English – Dialects and Diversity," is indicative of the influence that sociology and linguistics have had on the study of language history and philology.[36] In contrast to the narrow scope that many of the aforementioned scholars have used to contextualize the Statute of Pleading, Corrie puts forward some new ideas and hypotheses that are strongly informed by sociolinguistics in order to explain what may have been the more immediate impact of the Statute in the 1360s.

Corrie argues that since the records of legal proceedings continued to be kept in French even after 1362 when the oral language of the courts was outlined in legislation, the Statute of Pleading cannot be shown to have had a significant impact on the legal muniments that are "the only medium to which posterity has access."[37] Rather, Corrie asserts that the true impact of the Statute of Pleading is that it gave the English language a level of validation that it had previously lacked. This then stimulated the use of English as a written language and in effect hastened the passage of French to the status of a foreign or learned language as it became increasingly unnecessary to acquire a fluency in spoken French.[38] Corrie's evaluation of the Statute, while being undoubtedly linguistically nationalistic, demonstrates that by asking different questions of the source and integrating the methodologies of sociology and linguistics, it is possible to add to our understanding of the Statute of Pleading by viewing it through the lens of a new perspective.

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[36] Marilyn Corrie, "Middle English – Dialects and Diversity," in *The Oxford History of the English Language,* ed. Lynda Mugglestone, (Oxford: Oxford University Press, 2006), pp. 86-119.
[37] Ibid., p. 99.
[38] Ibid., p. 99; See also: Jeremy Catto, "Written English; The Making of the Language 1370-1400," *Past and Present,* No. 179, (2003), pp. 24-59.

II. Methodology

The use of new perspectives that are readily available and widely applicable to the study of languages and the law in history is a methodological necessity when examining the Statute of Pleading. The traditional revisionist, legal, and philological historiographies of the Statute have revealed problems of misinterpretation in some cases and a total lack of interpretation in other cases which suggests that historians ought to approach the Statute in a new way in order to rectify the matter. Sociolinguistics is an ideal approach to use when studying the legal history of the Statute of Pleading – a law with a social and linguistic impact that is indicative of the status of English, French, and Latin in England in 1362.

i) Legal history

The languages used by legal professionals in the fourteenth century served as a method of distinguishing between the social statuses of legal practitioners. By using a distinct language and vocabulary, fourteenth-century English lawyers easily set themselves apart as a special class of professionals[39] and proved that language is culture, and culture language. French, as it was used by legal professionals in England, acquired the designation of "law" in front of the word "French" in order to show that this language was a breed apart from continental varieties of French and therefore specific to legal professionals in England. This reflects the fact that language can be used as a means of self, or group identification. Through the written and oral use of three languages, English lawyers also made it abundantly clear that they had achieved a certain level of education

[39] Charles F. Mullett, "Language as a Social Study," *The History Teacher* 6:1 (1972), p. 88.

and professional training because of their fluency in the languages used by people at all levels of English society. Therefore, it can be demonstrated that in the fourteenth century, language and linguistic ability were important indicators of the professional and social statuses of men of law.

Professionalization

Language was also a standardizing factor in the professionalization of the law in England as the use of Latin, French, and English were necessary for all manner of legal professionals. Their linguistic ability set these men apart from those who worked in other professions that did not require such facility, and thus contributed to making work in the legal realm distinctive. A noticeable increase in the "professionalization" of legal actors and institutions was one of the defining features of the development of the law over the thirteenth and fourteenth centuries and resulted in a distinct "legal profession" characterized by a specialization in the roles performed by "men of law" as they came to be referred to by Parliament.[40] The idea behind professionalization includes not only the intentional formation of a distinguishable group of men who worked within the legal system, but also includes a remarkable increase in the professional organization of the system itself.

In Anthony Musson's opinion, English legal professionals possessed a common identity in general because external observers of the profession could easily identify and group together men of law based on their skill set.[41] From within, members of the

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[40] Anthony Musson, *Medieval Law in Context,* (Manchester: Manchester University Press, 2001), p. 36.
[41] Ibid., pp. 44-50.

profession actively formed a shared ethos that was self-defined and developed internally in accordance with their common educational background and professional legal training. According to Musson's definition, men of law:

> [...] were defined by the way they utilised their literate and communicative skills for a particular endeavour in the law and possessed a training capable of coping with (indeed one that was stimulated by) the clarity and intellectual rigour demanded by the technicalities of substantive law and its all-dominating procedures.[42]

As such, medieval men of law relied on language and linguistic ability to self-identify as legal professionals and to demonstrate to outsiders that they possessed unique skills that were specially tailored to meeting the needs of an increasingly litigious society.

Legal professionals were able to distinguish themselves from other professions based on the organization of the legal system. During Edward I's reign (1272-1307), the legal system of the royal courts became progressively more organized. An internally managed system of teaching and promoting apprentices resulted in the tendency of the royal court judges to further the careers of practicing lay serjeants and lawyers by bringing those men to the bench rather than recruiting from the ranks of royal clerks who were primarily clerics. The organization of the royal courts coincided with the professionalization of the legal actors who worked in and for these courts, which occurred alongside the gradual laicization of the common law courts and their employees throughout the thirteenth century.

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[42] Ibid., p. 44.

The growth of legal consciousness

Throughout the later medieval period, an explosion of consciousness happened in England with regard to the law. The law was a part of everyday life – for all people – regardless of whether or not one was directly involved in litigation. At any given moment, the law impacted the lives of all people and naturally they became increasingly curious about this business that affected them. In this sense, legal professionals were not the only intellectuals that influenced the development of legal ideas. Just as the law impacted people, the people who used the system impacted the law.

Anthony Musson's book *Medieval Law in Context* explores the idea of "legal consciousness" as it applied to the judicial developments of the thirteenth and fourteenth centuries. He writes that this phenomenon represents a feature common to legal professionals as they were immersed in the distinct languages of the law, its rules and processes and that their cosmology was affected by the various texts and practices associated with their privileged education and livelihood.[43] As such, it was these same individuals "who, in turn, contributed to the intellectualizing of the law and the espousal of ethical standards of professional behaviour."[44] In a broader sense, "legal consciousness" also recognizes the impact of the law on all others whose participation in, and experiences with, the law and legal institutions reflect to a degree the state of the legal culture of their time.

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[43] Ibid., p. 8.
[44] Ibid., p. 8.

ii) Sociolinguistics

Sociolinguistics first appeared in the 1960s and is associated primarily with the work of linguists William Labov in the United States and Basil Bernstein in the United Kingdom in the early 1970s.[45] The main focus of sociolinguistics is the effect of society on language. Some purists, who do not differentiate between the field of linguistics and that of sociolinguistics, have called the term "sociolinguistics" redundant as each includes an examination of the interrelationship between language and society. However other linguists and sociolinguists have persisted in their belief that the two fields differ. The main difference between the two is one of scope: linguistics typically emphasizes the structure of language and its patterns while sociolinguistics has traditionally been concerned with all types of correlation between language form and social group identification, or, what are called the "social aspects of language."[46]

Historical sociolinguistics is a relatively new field that is capable of bridging the gap between the history of language and linguistic history by placing the history of that language and its linguistic variations within their social contexts.[47] All of these studies are connected as a society's beliefs about the status of a language – including its social

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[45] William Labov, *Sociolinguistic Patterns*, (Philadelphia, PA: University of Pennsylvania Press, 1972); Basil Bernstein, *Class, Codes, and Control, Vol. 1: Theoretical Studies toward a Sociology of Language*, (London: Routledge & Kegan Paul, 1971).

[46] Charles T. Scott and Tim William Machan, "Introduction: Sociolinguistics, Language Change, and the History of English," in *English in Its Social Contexts,* ed. Charles T. Scott and Tim William Machan, (Oxford: Oxford University Press, 1992), p. 8.

[47] The first monograph in historical sociolinguistics was published in 1982: Suzanne Romaine, *Socio-historical linguistics: its status and methodology,* (Cambridge: Cambridge University Press, 1982). In the 1990s the field became an established approach under the umbrella of linguistics. Since 2000 there has also been an Internet journal devoted to the study: *Historical Sociolinguistics and Sociohistorical Linguistics* [http://www.let.leidenuniv.nl/hsl_shl/index.html].

meanings, its uses, and its speakers – have histories, and they appear in particular sociolinguistic contexts for particular reasons.[48] These considerations are typically less prominent in purely linguistic histories of the English language and its development. When we ask questions about the societal functions of a language at different points in time and the attitude of its speakers toward their own language(s) and toward the language(s) of others, we are asking questions that touch upon the social contexts of language. By asking questions like these we engage in a discourse about language that is sociolinguistic in approach. Historical sociolinguistics asks these questions through the study of the relationship between language and society in its historical dimension.

It is essential to understand that languages do not – and cannot – exist apart from their users.[49] Just as we cannot take the Statute of Pleading out of its fourteenth-century context, we cannot separate Latin, French, and English from the people who spoke, wrote, and read these languages. For this reason, it can be argued that any study of language must be necessarily and emphatically social in approach.[50] R.A. Hudson makes a similar statement in his book *Sociolinguistics* in which he argues:

> The social perspective of sociolinguistics is indispensable to the study of language or speech. The social context in which speech occurs encompasses a large number of factors, including the social group or groups to which the speaker belongs, the social relations between speaker and hearer, the structure [and type] of their interaction...and the shared knowledge of the participants, which will be both general ("culture") and specific (concerning present interaction).[51]

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[48] Tim William Machan, *English in the Middle Ages,* (Oxford: Oxford University Press, 2003), p. 2.
[49] Ibid., p. 8.
[50] Matthew Townend, "Contacts and Conflicts: Latin, Norse, and French," in *The Oxford History of the English Language,* ed. Lynda Mugglestone, (Oxford: Oxford University Press, 2006), p. 69.
[51] R.A. Hudson, *Sociolinguistics,* (Cambridge: Cambridge University Press, 1980), p. 231.

The same theory can be applied to the study of language history, and in this case it lends itself perfectly to the study of the Statute of Pleading. By using a sociolinguistic approach, the social context of the unique linguistic situation in fourteenth-century England gains greater importance than it has held previously. The social factors that should be considered, as outlined by Hudson, are essential to our understanding of the interplay between Latin, French, and English in the legal and educational spheres, as well as in the greater social sphere of England in this time.

Adding another dimension to the study of sociolinguistics is the work of linguist Ralph Fasold. In his view, the essence of sociolinguistics is based upon two facts about language that are often ignored in the narrower field of linguistics. The first and perhaps most important fact is there are a few critical purposes that language serves for its users. On the most basic level, language is used for transmitting information and thoughts from one person to another. While transmitting this information, the speaker or writer can engage language as a tool to make indirect statements about who he or she is based on the social status of the language used and the context in which it is used. It is the selection among these linguistic alternatives that defines a social situation.[52] The fact that language varies means that the person using it has the ability to say more or less the same thing in different ways according to the language he or she chooses to use. These two things – communicating information and defining social situations, can be carried out simultaneously precisely because language varies and speakers have the freedom to choose among alternative linguistic means and languages in order to make statements

[52] Ralph Fasold, *The Sociolinguistics of Society,* (Oxford: Basil Blackwell, 1984), p. ix.

about themselves. The study of the interplay between these facts about language is exactly the definition of sociolinguistics.[53]

Marc Bloch anticipated the difficulty of studying sociolinguistics when he wrote: "Au grand désespoir des historiens, les hommes n'ont pas coutume, chaque fois qu'ils changent de mœurs, de changer de vocabulaire."[54] In the absence of direct evidence connecting a change of custom to linguistic shift, how can a sociolinguistic perspective help scholars to study language and the law? As will be demonstrated with the examples of Latin, French, and English in medieval English law, languages are used and articulated within historical contexts. Historians rely largely on documentary evidence to learn something of the past. Unfortunately, this approach can be problematic when looking at languages that were not traditionally used as languages of record – like English. What the text of the Statute of Pleading is able to do for historians, *via* sociolinguistics, is demonstrate the nature of language and language use in the legal realm of fourteenth-century England. By returning to the original source for information, approaching it in a different way, and anchoring it in its historical, social, and linguistic context, the Statute of Pleading can be seen as having a deeper level of complexity that has been overlooked by several scholars.

Recently, Tim William Machan explained why sociolinguistics ought to be applied to the study of the history of the English language in his monograph *English in the Middle Ages*:

> [...] the status of a language has a history, [...] like the history of linguistic forms, this is a history that is sometimes documented and that can be studied. Indeed, the

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[53] Ibid., pp. ix-x.
[54] Marc Bloch, *Apologie pour l'histoire ou le métier d'historien*, (Paris: Armand Colin, 1993), p. 57.

> development of sociolinguistics over the past forty years has provided much of the evidence for studying a language's roles in a linguistic repertoire and the means to approach them.[55]

According to Machan, Thorlac Turville-Petre is an example of a specialist in language and literature who attributed a great significance to the role of Middle English in the conceptual history of the English language and its development.[56] In his sociolinguistic evaluation of English in the thirteenth and fourteenth century, Turville-Petre argues that it was a change in linguistic attitudes in England during this period that enabled other literary, political, and religious transitions to take place around the same time. Turville-Petre explains: "the use of English was a precondition of the process of deepening and consolidating the sense of national identity by harnessing the emotive energy of the association between language and nationalism."[57] Turville-Petre uses language and the expanding use of the vernacular as evidence of a growing sense of English nationhood that was rooted in a culture that increasingly associated itself with the English language. This is but one example of applying sociolinguistics to the study of medieval language history in order to explain political change.

The methodological approach that will be applied to the study of the Statute of Pleading in this thesis is similar to Machan's as he inquired into the status of English in the late medieval period. Just as he approached his subject from a sociolinguistic perspective which included specifically the meanings, reputation, and purposes of the English language, I too will evaluate these elements when interpreting the Statute of Pleading and considering the status of Latin, French, and English in their later medieval

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[55] Tim William Machan, *English in the Middle Ages,* p. 3.
[56] Ibid., p. 6.
[57] Thorlac Turville-Petre, *England the Nation: Language, Literature, and National Identity, 1290-1340,* (Oxford: Clarendon Press, 1996), p. 10.

context. Machan explains the interconnectedness of these issues in the introduction to his work by stating:

> [...] for if the beliefs of speakers about a language, and the functions they perform with it, accord that language particular status, that status in turn encourages beliefs, justifies functions, and generally produces social meanings for uses (and users) of the language.[58]

By approaching the Statute of Pleading from the perspective of sociolinguistics, some questions regarding the relationship between the law, language, and legal professionals can be answered. Understanding societal perceptions of language and the law in the fourteenth century can contribute to the legal history of the Statute by informing our understanding of this legislation on languages in the courts and their uses. The Statute of Pleading is not a law that was made in a bubble, and it could not exist without the legal actors that drafted it and were responsible for it being made into law. These legal professionals had their own shared culture, background, perceptions, and motivations that were shaped in part by their social interactions with Latin, French, and English. Sociolinguistics can contribute to our understanding of the legal and social history of the Statute of Pleading by revealing indicators of language teaching practices, representations of language differences and identity, and attitudes toward language in operation at the time of this new legislation's passing by considering how the text of the Statute reflects the historical relationship between language and the law in 1362.[59] In looking behind the linguistic discrepancies in each of the existing formats of the text of the Statute of Pleading, it is possible to discern evidence of a commentary on the social aspects of language within the broader context of medieval English law and legal culture.

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[58] Tim William Machan, *English in the Middle Ages,* p. 8.
[59] Mark Amsler, "History of Linguistics, 'Standard Latin', and Pedagogy," p. 51.

It is in this regard that this thesis is capable of making an innovative contribution to the existing scholarship of the Statute of Pleading. By using a dual approach that combines the historical method with a sociolinguistic perspective, a connection between the languages addressed in the Statute of Pleading and the languages used by the legal actors who were essential to its creation will be clarified. This clarification will contribute to the existing historiography on the Statute of Pleading by considering the Statute in both of its forms and their linguistic discrepancies as indicative of the languages used by legal professionals as they participated in the legal culture of fourteenth-century England. Building on W.M. Ormrod's foundation for understanding the political and legal context of the Statute of Pleading, this study will broaden the scope of research by examining other, less obvious, contributing factors that culminated in the events of 1362. These other considerations include education and legal training. An examination of the linguistic and educational aspects of English law and life for legal professionals in the later Middle Ages is integral to understanding the social, legal, and linguistic contexts of the Statute of Pleading. The importance of the social background to, and the implications of, the Statute warrant further investigation in order to gain a deeper understanding of the meaning of Parliament's decision to assert the validity of English as an officially accepted language of pleading in the royal courts in 1362.

CHAPTER TWO

LANGUAGE IN FOURTEENTH-CENTURY ENGLISH SOCIETY

The Statute of Pleading and its commentary on Latin, French, and English were developed in the context of a multilingual society. The main sociolinguistic characteristic of this society was its diglossia, which means that two or more languages coexisted in England by functioning in specialized ways. In a typical diglossic situation, one language variety – the "high" variety – is used in authoritative domains and is therefore considered more prestigious than the "low" variety that is used for more casual functions.[1] England's diglossia included three languages. It was composed of Latin as the most prestigious language of the Church, followed closely by French as a language of culture and power, which was followed by English as the popular vernacular language of English society. However, the delineations between these three languages were not impermeable in fourteenth-century England. Rather, Latin, French, and English coexisted in this period and English society made ample use of all of the languages at its disposal. The two versions of the Statute of Pleading found on the Parliament and statute rolls are reflections of England's hierarchy of languages that was apparent at this time. This society wrote and spoke certain languages rather than others in accordance with the functions of the languages being used in specific social contexts. The following chapter will show how Latin, French, and English were associated with different social statuses and situations by demonstrating how these languages were used and perceived by contemporaries of the Statute of Pleading.

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[1] For further information on diglossia, see: Ralph Fasold, *The Sociolinguistics of Society,* (Oxford: Basil Blackwell, 1984); R.A. Hudson, *Sociolinguistics,* (Cambridge: Cambridge University Press, 1980).

I. Social status of languages in fourteenth-century England

i) Latin

In no uncertain terms, Latin held the highest linguistic status in medieval English society as the language of Latin culture – a term which encompassed the Church and most official royal documentation until the fourteenth century. Latin was the "high" language in England, and it was used almost exclusively by the people in society who possessed the most power and prestige. Its use carried with it connotations of knowledge and intelligence as the knowledge and use of Latin was a measure of literacy in this period.[2] Generally speaking, Latin was the language of reading and writing in medieval Europe as a whole and it was the first language in which reading and writing were taught to children.[3]

Latin traditionally served as the common medium of literacy and the written word in medieval England. An interesting example of the prestige of Latin as a language of documentation can be found in the record of John Balliol's homage to Edward I at the end of the thirteenth century. John – as king of the Scots – spoke the oath of homage "with his own mouth in the French language," which Edward's notary recorded "literally" in order to give it full legal authority.[4] M.T. Clanchy writes that in this specific situation, the term "literally" actually meant that the notary translated John Balliol's pledge to Edward I in Latin, rather than recording his words verbatim because the social

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[2] John Nelson Miner, "Schools and Literacy in Later Medieval England," *British Journal of Educational Studies* 11:1 (1962), p. 17.
[3] Franz H. Bauml, "Varieties and Consequences of Medieval Literacy and Illiteracy," *Speculum* 55:2 (1980), p. 238; Nicholas Orme, *Education and Society in Medieval and Renaissance England,* (London: The Hambledon Press, 1989), p. 170.
[4] M.T. Clanchy, *From Memory to Written Record,* 2nd ed. (Oxford: Blackwell Publishing, 1993), p. 206.

status of the people involved and the nature of the document called for the use of a more official and sacred language than French.[5] In other, less prestigious, cases the language used for the written record could have been French, even if the words were spoken in English. The choice of language all depended on the context in which the event took place. The more official the context, the more likely it was that Latin would be used as the language of written record.

Interestingly, Latin was never a maternal language in fourteenth-century England, which means that it was necessarily a learned language.[6] In fact, Latin was the only learned language in England for centuries, and was the only language that required the use of grammars as study aides until French began to be studied academically in the later medieval period.[7] As a learned language, Latin was perceived as an elite language since very few members of English society had access to education in Latin at an advanced level. Since education was the domain of the Church in the medieval period, Latin was the language of instruction for its students.[8] These students were not all destined to become priests and monks, rather the Church played an important role in training intelligent civic leaders who could meet the increasing demand for multilingual officials in the kingdom.[9] From the ranks of the clergy came not only chaplains, but also the civil servants, Chancery clerks, attorneys, and judges of the age who compiled the vast number

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[5] Ibid., pp. 206-207.
[6] Serge Lusignan, *Parler Vulgairement,* (Montréal: Les Presses de l'Université de Montréal, 1986), p. 82.
[7] Nicholas Orme, *Education and Society in Medieval and Renaissance England,* p. 252.
[8] For an interesting article on clerical education, see: Christopher M. Bellitto, "Revisiting Ancient Practices: Priestly Training before Trent," in *Medieval Education,* ed. Ronald B. Begley and Joseph W. Koterski, (New York: Fordham University Press, 2005), pp. 35-49.
[9] S.J. Curtis, *History of Education in Great Britain,* 7th ed. (London: University Tutorial Press, Ltd., 1967), p. 4.

of documents that survive to this day like Domesday Book and a substantial number of legal documents like the Parliament and statute rolls.[10] For this educated group of officials (both government and religious), knowledge of the Latin language was indispensable to their ability to gain a livelihood in text-dependent professions.

Overall, Latin was perceived as the sole language capable of adequately expressing the thoughts of sophisticated men, especially on themes of religion and theology.[11] As it was considered a more efficient vehicle of thought than French or English, it was highly respected as a language of the erudite. Latin and knowledge were synonymous – it was nearly impossible for a person to advance his career in the Church or in the royal government or to pursue a more than elementary level of education without first obtaining a solid foundation in Latin. As a reflection of how most medieval people perceived this language that few outside the Church and the intelligentsia could actively use and wholly comprehend, one scholar called Latin's prestige "dazzling."[12] Due to the cachet of Latin, it was firmly believed that only it could effectively communicate religious ideas, philosophies, and teachings – even if the majority of Englishmen were unable to understand it. As the language of the elite, Latin served as a means of differentiating the learned from the unlearned, as well as the socially powerful from the weak.

Ironically, the perception of Latin as the language of the learned was perpetuated by the famous fourteenth-century English-language work written by William Langland –

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[10] J.W. Adamson, *A Short History of Education,* (Cambridge: Cambridge University Press, 1922), p. 13; Henry Blumenthal and Renee Kahane, "Decline and Survival of Western Prestige Languages," *Language* 55:1 (1979), p. 187.
[11] V.H. Galbraith, "Nationality and Language in Medieval England," *Transactions of the Royal Historical Society* 4th ser,. 23 (1941), p. 119.
[12] Ibid., p. 116.

Piers Plowman.[13] This allegorical poem depicts the narrator's pilgrimage as he goes on a spiritual quest to learn the truth behind what makes a truly Christian life. This work is considered by many to be one of the earliest great works of English literature, but it is also loaded with Latin verses, proverbs, and quotations from the Latin Bible.[14] Langland's poem demonstrates how languages were used differently in this society according to their prestige and function. While English is the language of the majority of the text, Latin could not be left untouched – especially when the subject matter covered themes of spirituality and learning. Learning and Latin were virtual synonyms in the fourteenth century, as a person could not be called "learned" without possessing some knowledge of Latin. Similarly, knowledge of Latin immediately qualified a person as literate and to some extent, learned. In the prologue of *Piers Plowman*, an angel from heaven makes an address in Latin for the benefit of the learned men who were present and understood the language, as it was known that "lewed men ne koude" understand Latin by virtue of their unlearned status.[15]

Despite Latin's higher prestige in society, it was a language that while being separate from, was in constant interplay with, the vernaculars used by the "lewed" in England.[16] *Piers Plowman* is not simply an English text interspersed with Latin quotations, rather it is an example of an early bilingual work. The individual characters sometimes change languages mid-speech, and while some of the characters clearly cannot

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[13] William Langland, *Piers Plowman,* ed. Elizabeth Robertson and Stephen H.A. Shepherd, (New York: W.W. Norton, 2006).
[14] Tim William Machan, "Language Contact in Piers Plowman," *Speculum* 69:2 (1994), pp. 359-385.
[15] William Langland, *Piers Plowman,* p. 129.
[16] Henry Blumenthal and Renee Kahane, "Decline and Survival of Western Prestige Languages," p. 187.

understand Latin, they never take notice of the fact that the others switch from English into Latin repeatedly.[17] As Langland wrote his poem, England's diglossia was already beginning to collapse. French had mostly usurped Latin as the most commonly used written language in England by this time, and thanks to authors like Langland, English was quickly establishing itself as a viable written language of literature. In this context, *Piers Plowman* and Langland's liberal use of Latin in a predominantly English text can be seen as reflections of the sociolinguistic shift happening concurrently. Langland's works thus bridges the gap between Latin and English in the written realm by using both languages to show how they can exist together and serve complementary functions in one poem – just as the Statute of Pleading preserved the use of Latin as a language of legal record while simultaneously proposing the use of oral English in the royal courts.

ii) French

However prestigious Latin may have been in the fourteenth century, French occupied a similar, albeit "middling" status in medieval English society as the popular vernacular language of the upper classes. As such, the use of the French language was an indicator of a person's status in English society just as Latin was an indicator of one's education and learning. By the thirteenth century, French was used as a language of culture and a means for expressing spiritual and intellectual ideas that had until that time only been expressed in Latin literature.[18] In the fourteenth century, those in England who knew French undoubtedly also knew English and perhaps even some Latin depending on

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[17] Tim William Machan, "Language Contact in Piers Plowman," p. 359.
[18] William Rothwell, "The Role of French in Thirteenth-Century England," *Bulletin of the John Rylands University Library of Manchester* 58:2 (1976), p. 462.

their level of education. Because of this bilingualism and multilingualism, speakers and authors could choose among the languages that they knew according to the social situation that they found themselves in. While a merchant might use French to communicate with his foreign suppliers, he would also use English when communicating with his monoglot customers. Thus language contact between Latin, French, and English was frequent in English society at this time.[19]

French came to England with the Normans when they conquered in 1066. While the exact number of Normans who settled in England in this early period is unknown, it is clear that this group of Francophones was at least numerous enough to continue to use its own language for the next hundred years.[20] Throughout most of the eleventh and twelfth centuries, those who knew French in England were those of Norman origin. However, through intermarriage and the language's association with the ruling class, its popularity spread to non-native speakers who acquired French as a learned language much as one learned Latin. Throughout the twelfth and thirteenth centuries, French was often written alongside Latin in documents and sometimes used in place of Latin. Intermarriage between Francophones and Anglophones also resulted in a bilingualism that persisted for generations following the Conquest. Why was this language able to persist for centuries after its last native speakers in England had died out? One suggestion is that it was precisely because French was known mostly by the powerful and the few in society that it was considered a desirable language to learn. Learning French was a way of climbing the

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[19] David Mellinkoff, *The Language of the Law,* (Toronto: Little, Brown, 1963), p. 70.
[20] Albert C. Baugh and Thomas Cable, *A History of the English Language,* 3rd ed. (Englewood Cliffs, NJ: Prentice-Hall, Inc., 1978), p. 114.

social ladder in medieval England, as it was not only a useful language for oral and written exchanges in royal administration, but also in international business and affairs.

Before long, the distinction between those who spoke French and those who spoke English in medieval England ceased to be ethnic in nature and became a largely social distinction. A chronicler named Robert of Gloucester described this situation at around the turn of the fourteenth century:

> Thus came, lo! England into Normandy's hand.
> And the Normans didn't know how to speak then but their own speech
> And spoke French as they did at home, and their children did also teach;
> So that high men of this land that of their blood come
> Hold all that same speech that they took from them.
> For but a man know French men count of him little.
> But low men hold to English and to their own speech yet.
> I think there are in all the world no countries
> That don't hold to their own speech but England alone.
> But men well know it is well for to know both,
> For the more that a man knows, the more worth he is.[21]

In this commentary on the linguistic situation of medieval England, Robert of Gloucester not only explains his belief for why people speak French in an Anglophone country, but also demonstrates the social divide between the speakers of these languages. English is the language of "low men" while French is the language of "high men" who are not only viewed as conquerors, but also perceived as having more worth than those who speak

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[21] Robert of Gloucester, *Robert of Gloucester's Chronicle. Transcrib'd, and now first publish'd, from a MS. in the Harleyan Library by Thomas Hearne, M.A. To which is added, besides a glossary ... a continuation (by the author himself) of this chronicle from a MS. in the Cottonian Library. In two volumes.* Vol. 1. (Oxford, 1724), p. 364. Eighteenth Century Collections Online. Gale Group. [http://galenet.galegroup.com.proxy.bib.uottawa.ca/servlet/ECCO]; Construed into modern English by Baugh and Cable, *A History of the English Language,* p. 114.

only English. Therefore bilingualism was an indicator of social status in this multilingual society as it occurred most often among members of the upper classes.[22]

The majority of those who knew French well in the fourteenth century could be categorized as nobility, clergy, government administrators, and even wealthy merchants – all people who possessed considerable power in society and who frequented the royal courts. The use of French by powerful men further contributed to maintaining the elevated prestige of French in this period and in part explains why the language was preserved by the Statute of Pleading. The legal professionals who wrote the Statute were powerful men who used powerful languages and their ability to use prestigious languages reflected their own social prestige. The use of the French language by bilingual English people was considered almost as highly cultured as the use of the Latin language. As such, French was equated with social and economic power – especially when contrasted with the relative weakness associated with English, a common tongue. At this time, the French language was not only a language of power, but was also regarded as a sign of cultivated society in much of Europe, just as it would be throughout the eighteenth century. As Albert C. Baugh and Thomas Cable argue: "the prestige of the French civilization, [...] would have constituted in itself a strong reason for the continued use of French among polite circles in England."[23] Thus, by the fourteenth century the distinction between French speakers and English speakers in England was more a matter of social prestige than a reflection of ethnicity.

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[22] Douglas A. Kibbee, *For to Speke French Trewely,* (Philadelphia: John Benjamins, 1991), p. 29.
[23] Albert C. Baugh and Thomas Cable, *A History of the English Language,* p. 134.

iii) English

Until the end of the fourteenth century, the prestige of English paled in comparison to the social value and respectability of Latin and French. The English language, even though it remained the first and only language spoken by the vast majority of people in England, held non-prestigious status in this society and occupied the lowest rank in its linguistic hierarchy.[24] Latin sat at the top of the proverbial pyramid as the "high" language that was used by precious few members of English society. French occupied a middle tier as a language popularized by high society and used mostly by people of the upper crust. English, by contrast, was the "low" language in fourteenth-century England and was considered the language of the lewd, or unlearned.

By the 1300s, most – if not all – people in England required the use of English in order to communicate with others in their daily lives. In this period, the traditional written domains of English were popular lyrics, romances, and some histories. These domains were "common" and lacked any "practical" administrative or intellectual use along the lines of Latin or French. English could be learned without conscious thought and by mere imitation as a child, which made this language seem nearest to man (who spoke English) and therefore furthest from God and his intermediaries (who spoke Latin).[25] Therefore the largest gap in linguistic prestige in England existed between Latin and English, as the archetypal "high" and "low" languages, and the language of the majority of English people sat at the bottom of the linguistic hierarchy in England throughout most of the later medieval period.

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[24] Charles T. Scott and Tim William Machan, "Sociolinguistics, Language Change, and the History of English," in *English in its Social Contexts*, ed. Charles T. Scott and Tim William Machan, (Oxford, Oxford University Press, 1992), pp. 19-20.
[25] V.H. Galbraith, "Nationality and Language in Medieval England," p. 127.

Just as there was a gap in prestige between Latin and English, so too were French and English perceived differently as their social functions differed. The contrast between the social statuses of the French and English languages is often pointed out in the vocabulary used in the production of an expensive medieval commodity – meat. *Pigs, cows*, and *sheep* were tended to by English speakers and called by names of Old English derivation, while these animals became *pork, beef,* and *mutton* when they were eaten by French speakers and called by names derived from French.[26] As the landed elite after the Conquest, French speakers were more likely to have consumed meat on a regular basis because they could afford to slaughter a cow that might have otherwise provided them with milk. Similarly, a sheep could be a source of wool and its slaughter would have meant the end of that useful commodity for the peasant. That is not to say that only the nobility consumed flesh, merely that they did so more often because they could afford to sacrifice supplies of milk and wool in order to eat meat. Whether the name changes of these animals in their consumable state were intentional to reflect this dietary discrepancy cannot be said for certain, however this shift in language does demonstrate the different domains of use for languages in England at this time.

English was used in different ways than Latin and French throughout much of the fourteenth century due to the fact that it lacked the institutional supports of government and education, the ideological support of theology, and the formal supports of standardized grammars and dictionaries – all of which were given to Latin and French.[27]

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[26] Jeremy J. Smith, "The Use of English: Language Contact, Dialect Variation, and Written Standardisation During the Middle English Period," in *English in its Social Contexts*, ed. Charles T. Scott and Tim William Machan, (Oxford, Oxford University Press, 1992), p. 50.

[27] Tim William Machan, "Language Contact in Piers Plowman," p. 380.

Without these supports, English developed its "covert prestige" by expanding into domains that were hitherto restricted to Latin and French. Even though it remained the language of the majority while carrying with it the least amount of authority, English gained important momentum in this period. It is in fact to this period that we can date an emergent self-consciousness about English and its use in society.[28] John of Trevisa's famous remarks in his English translation of Ranulf Higden's Latin chronicle *Polychronicon*[29] are a reflection of an awareness of linguistic diversity in England in the later 1300s. An entire chapter of *Polychronicon* is dedicated to detailing the native dialects of English and the subsequent corruption of the English language as a result of the encroachment of French in grammar schools. This reflects an awareness of the social impact on English from teaching children in French. Higden criticises teaching schoolboys to construe from Latin into French since this causes them to speak French and neglect their own English language.[30] Higden explains that noblemen teach their children French from birth, which serves to differentiate them from the native English speakers of England. In the 1380s, John of Trevisa's translation of Higden's text also explained that the result of this prevalence of French in English schools and homes was that the French language had become a sign of gentility in contrast to the lewdness of English.[31] Furthermore, Trevisa tells the reader that this was the state of French and English in English society up until the first instance of the plague, after which time a schoolmaster named John of Cornwall began to teach children to construe their French into English,

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[28] Ibid., p. 385.
[29] Ranulf Higden, *Polychronicon Ranulphi Higden Monachi Cestrensis; together with the English translations of John Trevisa and of an unknown writer of the fifteenth century,* Vol II. ed. Churchill Babington, (London: Her Majesty's Stationary Office, 1869).
[30] Ibid., p. 160.
[31] Ibid., p. 159.

which eventually caused children to know no more French than their "lift heele."[32] Higden's chronicle and Trevisa's accompanying glosses demonstrate that in this period, English society was becoming increasingly conscious of the social statuses and uses of the vernacular languages in England. As a result of this linguistic awareness, the use of English began to be encouraged in more and different applications throughout the second half of the century – like literature and by 1362 in the royal courts of law.

II. Written and oral uses of languages

Throughout the fourteenth century, Latin, French, and English had distinct social uses as well as practical written and oral functions in England. As individual members of society operated within what were essentially linguistic "communities," the Latin, French, and English languages can be seen as fulfilling particular social roles in England at this time when individuals used specific languages to perform certain written and oral tasks. According to M.T. Clanchy, no one language could serve all the diverse purposes required of it by medieval English society.[33] The linguistic competition that has been perceived by some scholars as a "struggle for dominance," can also be viewed as medieval linguistic cooperation. This linguistic conciliation is most obvious in written texts of the later medieval period when all three languages were often found together in one sentence or one single document.[34] For instance, while the Statute of Pleading was recorded in French on the Parliament and statute rolls, their contents also show that Latin

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[32] Ibid., p. 161.
[33] M.T. Clanchy, *From Memory to Written Record,* p. 200.
[34] W. Rothwell, "Arrivals and Departures: The Adoption of French Terminology into Middle English," *English Studies* 2 (1998), p. 165.

and English had roles to play in the law as languages of record and pleading. In addition, during this period we can discern a high level of consciousness in general surrounding the social functions of the languages used in England as well as the level of prestige associated with them. The way that all strata of English society used and perceived Latin, French, and English reflects the complex relationships between people and languages in the fourteenth century.

The written and oral uses of languages in medieval England can be difficult to understand because documentary evidence has mainly preserved the history of the written word. Texts only rarely mention the languages of verbal expression. Although medieval vernacular literary texts sometimes reflected the diction of spoken language, business documents by contrast often disguised the oral language used in dictation once it was transformed into text.[35] This happened when the spoken word was translated into the written word, as the language used to record an oral exchange was not always an accurate reflection of what was said aloud. For example, a statement made in court in English or French might be written down in Latin instead of recorded verbatim. Conversely, a Latin charter might have been read out in English or French thus obscuring the original language of the speech or text for the audience.[36] It is especially true that in the English medieval period, the language of record was not a reliable or accurate reflection of the spoken language used in this predominantly oral society.

The following section will address the roles of Latin, French, and English by considering how some of their specific oral and written functions reflected the status of the languages in society and their place in the linguistic hierarchy. In doing so, this

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[35] M.T. Clanchy, *From Memory to Written Record,* p. 206.
[36] Ibid., p. 206.

section will further contribute to our understanding of England's linguistic situation by showing that contemporaries of the Statute of Pleading used oral and written Latin, French, and English for different purposes that to a large extent reflected the social statuses associated with each. As it is beyond the scope of this study to detail all of the various uses of Latin, French, and English in fourteenth-century England, the primary focus of what follows will be on the applications of these languages in the legal realm and examples thereof.

i) Latin

As the language of prestige and of the elite, Latin was used in English society for specific purposes befitting its status. These purposes mainly included written and oral functions of the Church, royal administration, international relations, and higher education. Latin was primarily a written language, but it was also a spoken language – limited mostly to use in the higher Church administration and courts, as well as in the universities. Students at the University of Cambridge were fined a farthing each time they spoke English in place of Latin well into the fifteenth century.[37] Latin was also a prerequisite for almost all public and professional careers in the royal administration as it held a very important role in the proliferation of documentation.[38] After a brief nod to English during the reign of the Conqueror in the eleventh century, Latin assumed a

[37] S.J. Curtis, *History of Education in Great Britain,* p. 70.
[38] William J. Courtenay, *Schools & Scholars in Fourteenth-century England,* (Princeton: Princeton University Press, 1987), p. 17.

commanding position in society that developed into a two-century long monopoly – and persisted as an even longer habit – as the main language used to record the law.[39]

In general, a person learned to read and write in Latin for the explicit purpose of reading and writing Latin – not for speaking Latin.[40] Without the ability to read and write Latin, one had to rely on the services of a translator to either make a written translation of the Latin text or to mentally translate the text by reading it aloud in English or French. Essentially, the Latin language occupied an increasingly isolated position in society, as it had become a mostly literary language.[41] The few remaining domains of oral Latin in the Middle Ages were the Church and the universities, where the rules of spoken Latin were dictated by written Latin.[42] Therefore an ability to speak Latin was contingent on the ability to read and write Latin since they followed the same conventions. By contrast, French and English followed less stringent grammatical or orthographical rules.

Though Latin was the language usually associated with the clergy and the royal administration throughout most of the medieval period, it is interesting to observe their use of the French language – even for their more formal documents. Still, during the prime of French as a legal language in the 1300s, Latin continued to be used for most administrative documents of importance. Latin maintained its position as the language used to record English statutes through to the first half of the thirteenth century (sometimes accompanied by a French translation) while in the second half of the thirteenth century Latin statutes predominated alongside increasing numbers of statutes

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[39] David Mellinkoff, *The Language of the Law,* p. 81.
[40] Franz H. Bauml, "Varieties and Consequences of Medieval Literacy and Illiteracy," p. 253.
[41] Ibid., p. 253.
[42] Ibid., p. 253.

written in French on the statute roll.[43] By the fourteenth century, French had become the regular language of the written laws and oral legal proceedings; yet there continued to be some Latin used in the statute books until 1461.[44] The very few petitions that have been preserved from before the reign of Edward I (1272-1307) appear to be all in Latin.[45] Interestingly, in the thirteenth, fourteenth and early fifteenth centuries, the legal petitions sent by ecclesiastics were almost invariably framed in French, presumably because those who were to consider the petitions were more familiar with that language as opposed to Latin.[46] This reflects the Church's linguistic consciousness. By writing their petitions in French, English ecclesiastics acknowledged that while their institutions may have operated primarily in Latin, other institutions did not so they used an acceptable vernacular alternative for their petitions to the king and his parliament. As a result, we can see that Latin literacy in England was in large part determined by a segment of the population that had restricted, primarily liturgical, learned, and administrative concerns but that was cognizant of the applicability of vernacular substitutes for Latin in the legal realm.[47]

ii) French

French was both a popular spoken language and a popular written language in the fourteenth century. Like Latin, French had many useful written functions in medieval

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[43] David Mellinkoff, *The Language of the Law,* p. 81.
[44] Ibid., p. 81.
[45] Helen Suggett, "The Use of French in England in the Later Middle Ages: The Alexander Prize Essay," *Transactions of the Royal Historical Society* 4th ser., 28 (1946), p. 69.
[46] Ibid., pp. 69-70.
[47] Franz H. Bauml, "Varieties and Consequences of Medieval Literacy and Illiteracy," p. 254.

England as a language of administration, literature, and the law while remaining a popular spoken language among the elite.[48] Nonetheless, French was not equal to Latin even if it was used in some of the same realms and by some of the same people – French was still a vernacular language and required slightly less formal verbal articulation and written structure.[49] Spoken Latin and written Latin were very much the same because there were no native speakers of Latin in England. Therefore oral Latin flowed out of the grammatical rules rooted in the written language, which were learned by using works on grammar such as Donatus' *Ars Minor*[50] and *Ars Major.*[51] The *Ars Minor* used a question and answer format to define the eight parts of speech in order to teach Latin to students who already had a firm grasp on French, as French was the language of reference used for understanding the technicalities of Latin.[52] The *Ars Major* was similar although it went beyond mere grammar to include references to style.

By the fourteenth century, French was no longer a maternal language for the majority of English-born people. During this period Geoffrey Chaucer penned the *Canterbury Tales* and wrote of an English prioress who spoke French to her fellow pilgrims. The French she spoke had a distinctly Anglo-Norman accent that had become

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[48] Serge Lusignan, *Parler Vulgairement,* p. 97.
[49] Suzanne Fleischman, "Philology, Linguistics, and the Discourse of the Medieval Text," *Speculum* 65:1 (1990), p. 33.
[50] For an annotated edition of the French translations of the Ars minor, see: Maria Colombo Timelli, *Traductions françaises de l'"Ars minor" de Donat au moyen âge (XIIIe-XVe siècles),* (Florence: La Nuova Italia, 1996).
[51] Louis Holtz, *Donat et la tradition de l'enseignement grammatical: étude sur l'Ars Donati et sa diffusion (IVe-IXe siècle) et édition critique,* (Paris: Centre National de la Recherche Scientifique, 1981).
[52] Maria Colombo Timelli, *Traductions françaises de l'"Ars minor" de Donat au moyen âge (XIIIe-XVe siècles),* p. 9.

typical of English-born speakers of French. Chaucer wrote of the prioress and her language:

> And Frenssh she spak ful faire and fetisly,
> After the scole of Stratford ate Bowe,
> For Frenssh of Parys was to hire unknowe.[53]

The prioress' use of the accent learned at the "scole of Stratford ate Bowe" rather than the Parisian accent used on the continent shows that for her, French was a foreign language. By the thirteenth century, English people had to learn French as a second language through the use of teaching manuals.[54] The first half of the century saw the advent of the production of manuals that were intended to teach French to Anglophones as an acquired language. One such example is Walter de Bibbesworth's *Tretiz de Langage.*[55] Bibbesworth's *Tretiz* is a book that aimed to help the English gentry improve their French, given that the differences between commonly used written and spoken languages had begun to cause difficulties. This seems to have been the case for Lady Denise de Montchensy and her children, for whom the book was specifically intended, in order to teach them the French vocabulary that they would need to manage their lands.[56] It was written in French, and partially glossed in English for the benefit of Lady de Montchensy who was not a native speaker of French. In the thirteenth and fourteenth centuries, writers often prefaced their vernacular works with an explanation of why the language was

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[53] Geoffrey Chaucer, "General Prologue," *The Canterbury Tales,* (Toronto: Pocket Books, 2001), p. 379.
[54] Douglas A. Kibbee, *For to Speke French Trewely,* pp. 17-19.
[55] Walter de Bibbesworth, *Le Traité de Walter de Bibbesworth sur la langue française* Ed. Annie Owen, (Genève: Slatkine Reprints, 1977).
William Rothwell, "The Role of French in Thirteenth-Century England," p. 458.
[56] M.T. Clanchy, *From Memory to Written Record,* pp. 197-200.

employed.[57] Walter de Bibbesworth was no different, and the prologue to his work explains that his primarily French text will appear alongside the English language, as his patroness needed this linguistic assistance. Bibbesworth wrote: "tut dis troverez-vous primes le fraunceis e puis le engleise amount."[58] Bibbesworth also explained that he would not go over the French "ki chescun seit dire" but would only go over less well-known French words.[59] This *Tretiz* shows that Lady de Montchensy was a noblewoman who knew some French but not enough to be able to teach it adequately to her children growing up in an English environment.[60] Interestingly, Bibbesworth himself was an Englishmen who had learned French as a foreign language.[61]

In the fourteenth century, French was learned as a second language through the use of different types of books that were written for this purpose. The *Nominale sive verbale in Gallicis cum expositione euisdem in Anglicis* was another French manual used in England in the early 1300s.[62] The *Nominale* was a vocabulary list of French words entirely translated into English for the reader, which sets it apart from Bibbesworth's *Tretiz* that only glossed selected words.[63] The *Femina* was another vocabulary that appeared later in the period, around 1415, and clearly owed much of its content to what

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[57] Albert C. Baugh and Thomas Cable, *A History of the English Language,* p. 120.
[58] Walter de Bibbesworth, *Le Traité de Walter de Bibbesworth sur la langue française,* ed. Annie Owen, (Genève: Slatkine Reprints, 1977), p. 44.
[59] Ibid., pp. 52-53.
[60] William Rothwell, "The Role of French in Thirteenth-Century England," pp. 459-460.
[61] Ibid., p. 461.
[62] W.A. Wright, ed., *Femina,* (Cambridge: Cambridge University Press, 1909); William Rothwell, "The Teaching of French in Medieval England," p. 41.
[63] William Rothwell, "The Teaching of French in Medieval England," *The Modern Language Review* 63:1 (1968), p. 39.

was first written by Bibbesworth.[64] The first French grammar book used to teach French in England was written at the turn of the fifteenth century and called the *Donait francois.*[65] This grammar was a unique attempt at understanding the technicalities of the French language by going beyond mere vocabulary in order to describe in detail all of the parts of speech. This text was composed in French, not Latin or English, which demonstrates that its readers were meant to already possess some knowledge of the language. In fact, the *Donait*'s author was an English student studying in Paris named Johan Barton. He claimed that he wrote his text to "entreduyr...la droit language du Paris" to his readers because "[...] beaucoup de bones choses sont misez en françois, et aussi bien pres touz les seigneurs et toutes les dames en [...] Engliterre volentiers s'entrescrivent en romance, tres necessaire je cuide estre aus Englois de sçavoir la droite nature de françois."[66]

The personal registers of John of Gaunt not only document the administration of his estates and household during the years 1372-77 and 1379-83, but they also demonstrate the nobility's preference for French, just as Johan Barton claimed in the *Donait.* Nearly all of the entries in John of Gaunt's registers appear in French, rather than Latin or English. From around Edward I's reign in 1272-1307, the French language had begun to play an almost equal role to Latin in documentation and it appeared as though French might replace Latin as the commonest written language in England.[67] In one of Gaunt's registers, the changing balance between written Latin and French can be

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[64] W.A. Wright, ed., *Femina,* (Cambridge: Cambridge University Press, 1909); William Rothwell, "The Teaching of French in Medieval England," p. 41.
[65] Pierre Swiggers, "Le *Donait francois:* la plus ancienne grammaire du francais," *Revue des langues Romanes* 89:2 (1985), pp. 235-251.
[66] Ibid., p. 240.
[67] M.T. Clanchy, *From Memory to Written Record,* p. 201.

observed; only sixty-nine out of 1812 entries are in Latin, while in the second register the proportion is forty-one Latin entries to 1073 French entries.[68] Helen Suggett notes that the majority of these Latin documents were letters patent and correspondence with the clergymen that John of Gaunt patronized.[69] Thus Gaunt, or his secretary, used Latin for special communication with the king and the Church, while reserving the use of French for all other matters.

The status and role of French in England is interesting, as French was technically a vernacular language, but it was also perceived as an elite language alongside Latin. As a result, both Latin and French had non-vernacular status in England and we find both Latin and French texts being translated into the other vernacular language – English.[70] From the eleventh to the thirteenth centuries, Latin had played an important cultural role in England as the language used to write the country's history in chronicles, but by the fourteenth century French had largely replaced Latin in this role and in other roles as well.[71] French was not only used to make translations of Latin chronicles, but it also became an important language used as a substitute for Latin in the legal and administrative realms. As it became more socially acceptable to use French in place of Latin in the period 1200-1300, there is a corresponding increase in the proliferation of vernacular documents. In particular, there is a marked increase in French documents coming out of the English Chancery. The Parliament and statute rolls are the best

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[68] Helen Suggett, "The Use of French in England in the Later Middle Ages," p. 65.
[69] Ibid., p. 65.
[70] William Crossgrove, "The Vernacularization of Science, Medicine, and Technology in Late Medieval Europe: Broadening our Perspectives," *Early Science and Medicine* 5:1 (2000), p. 50.
[71] Chris Given-Wilson, *Chronicles: The Writing of History in Medieval England,* (London: Hambledon and London, 2004), especially pp. 137-152.

examples of official documentation that were produced in French by the Chancery clerks. While Latin was the usual language of accounting in this period, a good number of French entries, mainly letters from or to Exchequer officials, can also be found on the Memoranda Rolls of the Exchequer and its court.[72] French can also be found in many communications between higher royal officials, the chief baron of the Exchequer, the clerk of the Privy Seal, the king's secretary, and the Chancery clerks.[73]

By the time of the Statute of Pleading in 1362, the various legal professionals working in the common law courts had become accustomed to reading and learning the laws of England in the French language.[74] Not only were the laws often recorded in French, but the legal texts that lawyers used to learn points of law and guide them through complex procedures were also being written in French.[75] As the common law courts were strict about the oral and written accuracy of pleadings during all of their stages (from writ to courtroom), it is not surprising that medieval lawyers had books to guide them through these complicated procedures. The late thirteenth-century legal text called *Britton*[76] was the earliest summary of the laws of England written in French. It largely supplanted in popularity the earlier and more "learned" twelfth and thirteenth-century Latin texts on the laws and legal procedures of England. Of these texts that were in common use by legal professionals in the fourteenth century were the works of Ranulf Glanville and Henry de Bracton. Glanville was a late twelfth-century English chief

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[72] Helen Suggett, "The Use of French in England in the Later Middle Ages," p. 62.
[73] Ibid., p. 66.
[74] T.F.T. Plucknett, *Early English Legal Literature,* (Cambridge: Cambridge University Press, 1980), pp. 78-82.
[75] Douglas A. Kibbee, *For to Speke French Trewely,* pp. 32-33.
[76] Britton, *Britton,* ed. and trans. Francis Morgan Nichols, Vols. 1-2 (Holmes Beach, Fla.: Wm. W. Gaunt & Sons, 1983).

justice during the reign of Henry II (1154-1189) and the author of *Tractatus de legibus et consuetudinibus regni Angliae.*[77] Glanville's treatise was a practical text on the forms of procedure in the court of King's Bench and provides the earliest and best description of its framework. Bracton was another English judge and author who wrote in the mid-thirteenth century. His work *De legibus et consuetudinibus Angliae* was a study of the forms of the original writs used in England. Bracton was the first author to make use of personal transcripts of the Plea rolls to write a legal treatise. He was also the first author to offer commentary on the cases he wrote about by creating examples of cases based on those recorded on the Plea rolls, describing them in detail, and then explaining how the law should be applied to each hypothetical case.[78]

The trend of writing legal texts in French continued into the fourteenth century with the very popular pleading manual *Novae Narrationes.*[79] This manual is a collection of model "counts" or "narrations" which were the formal statements made by plaintiffs in response to particular writs when their cases were presented before the court. It is a compilation of thirty-eight manuscripts dating from 1285 - *c.* 1310 that have been given the modern title "*Novae Narrationes*" despite the fact that the original texts were written in French. Another popular French-language legal text written by an unknown author and

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[77] Ranulf Glanville, *The treatise on the laws and customs of the realm of England commonly called Glanvil,* ed. and trans. G.D.G. Hall. (Holmes Beach, Fla.: W.W. Gaunt, 1983); Glanville's authorship has been rejected by some authorities based on the fact that he would not have had sufficient leisure time to complete such a work. See: Ralph V. Turner, *The English Judiciary in the Age of Glanvill and Bracton,* (Cambridge: Cambridge University Press, 1985), p. 33; Josiah C. Russell, "Ranulf de Glanville," *Speculum* 45:1 (1970), pp. 69-70.

[78] Henry de Bracton, *On the laws and customs of England,* ed. and trans. Samuel E. Thorne, Vols. 1-4, (Cambridge: Harvard University Press, 1968-1977).

[79] Donald W. Sutherland, "Review: *Novae Narrationes,*" *Speculum* 40:3 (1965), pp. 547-548; Elsie Shanks and S.F.C. Milsom, eds. *Novae Narrationes,* Selden Society LXXX (London: Bernard Quaritch, 1963).

translated from its original Latin in the fourteenth century was called the *Old Natura Brevium.*[80] This book contains examples of the writs that were used most often in the reign of Edward III. Writs were extremely important documents as the use of an inappropriate writ meant that the courts could nullify any legal action. The *Old Natura Brevium* was an unofficial collection of examples that was intended for the use of legal professionals like Chancery clerks who were responsible for composing the writs that initiated legislation in the courts. Other than the *Old Natura Brevium,* there seems to have been no other compilations of the forms of writs that could be used by the clerks as exemplars.

The fact that an increasing number of legal texts on oral pleading and writ composition were produced in French rather than Latin, or translated from Latin into French, in the fourteenth century suggests that this was the language more familiar to legal professionals at this time. We can be sure that it reflects the most common written language of the law in the fourteenth century as the majority of ancient petitions requesting writs were written in the technical "Law" French typical of the period, as were several other official documents like the Parliament rolls. Although we know that Latin continued to be used occasionally, the vast bulk of the records were written in French and continued to be so written until French began to give way to English in the fourteenth century.[81] What is less clear, however, is the extent to which the written language of these legal texts reflected the oral languages of the courts.

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[80] Elsa De Haas and G.D.G. Hall, eds., *Early Registers of Writs*, Selden Society LXXXVII (London: Bernard Quaritch, 1970); David Mellinkoff, *The Language of the Law,* p. 113.

[81] Helen Suggett, "The Use of French in England in the Later Middle Ages," p. 69.

iii) English

English performed an interesting role in the later medieval period as the maternal language of the majority of people that paradoxically occupied the lowest status in the linguistic hierarchy. English had continued to exist as the popular tongue of English people despite the strong French influence that came with the Normans in 1066, but it had also become a language that was associated with speakers who were economically, educationally, and socially disadvantaged in comparison to bilingual or multilingual speakers of Latin, French, and English.[82] However, by the thirteenth century, the emphasis that had been placed on French began to shift in favour of English and as of the middle of the century, English was being more generally used in England. It is also at this time that the literature intended for polite circles began to be translated from French into English. In a literate society, knowledge is transmitted in writing, therefore whoever has no ready access to it is disadvantaged as certain social functions require such literacy.[83] Previous to 1250, there was a marked absence of works written in English for a reading public that was literate in English. After around 1250 there was a wider diffusion of English language texts, but the use of English remained mostly restricted to oral domains as it continued to be a predominantly spoken language.

By the mid-fourteenth century, England's diglossia was beginning to become unstable as English started to be used in some of the traditional domains of Latin and French. Once notable English writers like Geoffrey Chaucer and William Langland began writing in the English vernacular in the fourteenth century, English was re-established as

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[82] Tim William Machan, "Language Contact in Piers Plowman," p. 378.
[83] Franz H. Bauml, "Varieties and Consequences of Medieval Literacy and Illiteracy," p. 243.

a written language in England, just as Anglo-Saxon had been up until the twelfth century. M.T. Clanchy suggests that it was precisely because English had remained the commonest and most familiar spoken language from 1066 to the 1300s that it was able assume a role as a language of literature and ultimately of record over the course of the fourteenth century.[84]

At the turn of the fourteenth century some vernacular literature provides evidence of how languages were viewed by contemporaries of the Statute of Pleading. So much of the literature of England until just a generation or two before had been in Latin and French that English writers who composed their texts in English first felt obliged to justify their novel use of this language.[85] Accordingly, they frequently began their work with a prologue explaining their choice to write in the vernacular. Incidentally these authors also make interesting observations on the linguistic situation in which they found themselves.[86] One such example can be found in a metrical homily written around 1300, and here translated into modern English:

> Therefore will I of my poverty
> Show something that I have in heart
> In English tongue that all may
> Understand what I will say;
> For laymen have more need
> God's word for to hear
> Than clerks that look in the Mirror
> And see in books how they shall live.
> And both clerk and layman
> Can understand English,
> Who were born in England
> And long have been dwelling therein,
> But all men certainly cannot
> Understand Latin and French.

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[84] M.T. Clanchy, *From Memory to Written Record,* p. 201.
[85] Albert C. Baugh and Thomas Cable, *A History of the English Language,* p. 143.
[86] Ibid., p. 143.

> Therefore methinks it is alms
> To work some good thing in English
> That both learned and lay may know.[87]

William Caxton, who was the first English printer in the early fifteenth century, composed similar prologues and epilogues to apologize for his use of common English in the translations and original English compositions that he printed on his press. Caxton's apologies for writing "rude and symple" or "rude and comyn" English reflects not only the printer's linguistic humility, but also might reflect the general low opinion of the vernacular held by people in medieval England.[88] The popularity of English-language homilies and Caxton's English press point toward the likeliness that in the fourteenth and fifteenth centuries, English was understood by everyone in England (even clerks), and the fact that there was a market for English literature reflects an advancement of written English in this period. Around the turn of the fifteenth century, the choice between the use of French or English was becoming a matter of personal preference and it appears that for some people, French was a language of convention rather than of preference.[89] At the close of Richard II's reign in 1400, four letters from the Scottish earl of March were copied onto the register of the prior of Durham that dealt with the election of a new prior.[90] Two of the letters were written in French while the other two were written in English. Helen Suggett notes that these letters were written by the same earl who also wrote a letter to Henry IV in 1400 in the English language, explaining his choice by

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[87] John Small, ed., "Prologus," in *English Metrical Homilies from Manuscripts of the Fourteenth Century,* (Edinburgh: W. Paterson, 1862), pp. 3-4; Construed in modern English by: Baugh and Cable, *A History of the English Language,* 3rd ed. (Englewood Cliffs, NJ: Prentice-Hall, 1978), pp. 143-144.
[88] Richard Foster Jones, *The Triumph of the English Language,* (London: Oxford University Press, 1953), p. 5.
[89] Helen Suggett, "The Use of French in England in the Later Middle Ages," p. 68.
[90] Ibid., p. 68.

stating: "And noble Prince mervaile yhe nocht that I write my letters in Englishe, fore that ys mare clere to myne understanding than Latyne or Fraunche."[91]

In spite of the increased frequency of written English, it does not follow that French had become an unknown language, or one that had entirely gone out of use, simply because English began to occupy a vernacular literary niche.[92] After all, the Statute of Pleading has shown that French still had an important function as the language of legal proceedings and record, although the law advocated the use of English for pleading in the royal courts. It can be difficult to ascertain how English was used in the legal realm because, as historians, we rely largely on documentary evidence to tell us about the past. Unfortunately, this approach can be problematic when looking at languages that were not traditionally used as languages of official record – like English. While Latin and French continued to be the main languages of learning, administration, and the written record, English had some written and oral applications in medieval society as a matter of necessity.[93] Just as the Statute of Pleading did not outlaw French in 1362, English had never been a forbidden language in England – even after the Norman Conquest, and it continued to be used as the main medium of oral communication between all strata of society.

The difference between Latin and French as compared to English is that Latin and French had special functions as learned and administrative languages, while the English vernacular could be identified by a relative absence of these functions and a lack of

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[91] Ibid., p. 68; F.C. Hingeston, *Royal and Historical Letters During the Reign of Henry IV, 1399-1404,* Part I (London: Longman, 1860), p. 24.
[92] Albert C. Baugh and Thomas Cable, *A History of the English Language,* p. 143.
[93] David Mellinkoff, *The Language of the Law,* p. 70.

prestige that was associated with the knowledge of these official languages.[94] Traditions are difficult to overcome, and in the case of English in England, it took more than three centuries for the language to recover some of the written and oral functions that it had lost in the eleventh century. The Statute of Pleading exemplifies this reclamation by serving as an official affirmation of the practical use of English in the courts. As the language of the people, it was logical that it should be employed as an oral language in legal proceedings so that everyone present in the courtroom would be able to understand as much as they could. By the fourteenth century, the diglossia of England began to collapse because English, the traditional "low" language, joined Latin and French in a number of influential domains (like literature, and to some extent the law) and thereby balanced the linguistic hierarchy.[95]

* * *

The examples of languages, their prestige, and their roles provided in this chapter have served to demonstrate that the Latin, French, and English languages were used and articulated within certain domains and contexts in medieval England. However, the traditional demarcations between Latin, French, and English were not steadfast and English society allowed for a degree of linguistic flexibility and permeability that eventually permitted English to return to its pre-Conquest status as a language of literature. A medical recipe dating from the late fourteenth-century is an interesting

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[94] Franz H. Bauml, "Varieties and Consequences of Medieval Literacy and Illiteracy," p. 255.

[95] Tim William Machan, "Language Contact in Piers Plowman," p. 378.

example to show how England's three main languages could all be found in one document that reflects the social prestige associated with each language in accordance with their traditional social domains. Linda Ehrsam Voigts' article on medieval bilingualism shows that within three lines of text, this recipe for a healing amulet began in English, was followed by Anglo-Norman instructions, and also contained a Latin rubric to explain how the amulet could be used.[96] The recipe is not only an example of a multilingual document, it is also a reflection of England's linguistic hierarchy – a Latin charm first invokes the holy cross, is followed by the ingredients listed in English, and the instructions are written in French.[97] The use of these languages was fitting for the fourteenth century as Latin was the language of the Church and thus connects to the spiritual invocation to be used, English was the common language of the people and connects to the ingredients of the recipe that came from the land which those people tilled, and French was the language of the ruling class so it was associated with administration and instruction.

As written languages, we have seen that Latin and French could fulfil some of the same functions as the social prestige of French increased over the twelfth and thirteenth centuries. As spoken languages, French and English were both used by the upper classes only a few generations after 1066 as a result of intermarriage and increased bilingualism among the nobility. As written vernaculars, French and English were both popular in the fourteenth century among those who could read these languages, while Latin retained its role as the most prestigious language of the Church, higher education, and important

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[96] Linda Ehrsam Voigts, "What's the Word? Bilingualism in Late-Medieval England," *Speculum* 71:4 (1996), p. 815.
[97] Ibid., p. 815.

documentation. Thus, although these three languages certainly had their own specific domains in the multilingual society of fourteenth-century England, Latin, French, and English ultimately served complementary functions that are reflected in the text of the Statute of Pleading.

CHAPTER THREE

LEGAL ACTORS IN THE ROYAL COURTS

The Statute of Pleading was developed in the context of a multilingual society in which specific groups of people were integral to the Statute's creation. The text of the Statute, in each of its existing versions, reflects not only England's diglossia in the fourteenth century but also the multilingualism of the legal actors who worked in the royal courts. As the previous chapter demonstrated, Latin, French, and English were associated with different social statuses and domains in England in this period and their functions are evident in the linguistic commentary present in the Statute of Pleading. Just as the languages used in England performed complementary social functions, the legal actors – whose livelihoods depended on their language skills – also worked together in complementary institutions that made up one greater legal world. The chapter that follows will show how legal actors from different institutions, but similar educational backgrounds, worked together in the royal courts and used their highly developed linguistic abilities to function in their specialized legal fields. By demonstrating who worked in the common law courts we will further understand how the Statute of Pleading affected these legal professionals in 1362.

I. Legal actors and the institutions in which they worked

Throughout the thirteenth and fourteenth centuries, there were three main legal traditions operating in England: common law, canon law, and customary law. These traditions were based on the kinds of justice dispensed by their courts and were inherently connected to the three types of courts in which their laws were implemented. Thus the

common law was connected to the royal courts, canon law was connected to the ecclesiastical courts, and customary law was connected to the local courts. The common law developed as a result of the merging together of the legal customs and practices that had existed since "time immemorial," or at least since Anglo-Saxon times.[1] Canon law was the law that governed all of the Western Christian Church and was not in any way a system of laws unique to England. The canon law's rules extended from the Church and applied to all Christians in many lands. Canon law was based primarily on papal decretals and promulgations, but it also made use of the Roman civil-law tradition to provide a complex (though flexible) amalgam of traditions and procedures covering issues such as ecclesiastical discipline and morality.[2] Customary law consisted of a combination of local practices that were interpreted by the itinerant courts according to various regional and manorial customs and conventions that were rooted heavily in folk practices.[3]

While these three legal traditions were distinctive based on the types of procedures, courts, and matters that they addressed, together they formed the body of laws to which medieval English people were subject. Regardless of the different types of legal problems dealt with in each, legal professionals could be found in all of England's courts working in all legal traditions although they were most commonly found working in the ecclesiastical courts, the royal courts, and for the royal administration. This thesis is concerned with the legal professionals working in the common law courts and its administration as the Statute of Pleading directly impacted these people and institutions. It is important to note that these legal professionals could be both cleric and lay as their

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[1] Anthony Musson, *Medieval Law in Context,* (Manchester: Manchester University Press, 2001), p. 9.
[2] Ibid., p. 10.
[3] Ibid., p. 10.

status had relatively little impact on their ability to contribute to the machinery of the English courts. In fact, by the twelfth century the royal clerks in England shifted so often from ecclesiastical to royal duties that it has been said that they must have had a blurred sense of the distinction between these legal traditions.[4]

i) Institutions affected by the Statute of Pleading

In the thirteenth century, the common law central court in England split into three courts that began to be fixed at Westminster. The organizations that resulted from this new division were the courts of Common Pleas, King's Bench, and Exchequer. The court of Common Pleas dealt with private actions between citizens and held a near monopoly on civil cases based on account, covenant, debt, detinue, and land. As it covered the largest breadth of civil litigation, it was the busiest and most expensive court in which to take legal action, making it the most profitable court for judges, lawyers, clerks, and the Crown. The court of King's Bench heard criminal cases and reserved the right to hear other types of cases that did not fall under the jurisdiction of either the court of Common Pleas or the court of Exchequer. The court of Exchequer dealt with matters touching the king's revenue. Together, these courts composed the three superior courts of common law in England.

Royal Courts: what types of business did each court deal with?

The court of Common Pleas was established at Westminster in the twelfth century and originated from Henry II's appointment in 1178 of five members of his council to

[4] Ralph V. Turner, *The English Judiciary in the Age of Glanvill and Bracton,* (Cambridge: Cambridge University Press, 1985), p. 28.

hear pleas (which were civil disputes between individuals), as distinguished from litigation in which the Crown prosecuted. By the later medieval period, a chief justice, who acted as the "president" of the court, headed the court of Common Pleas. The courts also had a fluctuating number of "puisne" (junior) justices. The court of Common Pleas had a large bench of justices that was composed of between three and six puisne justices throughout the fourteenth century.[5]

The court of King's Bench developed out of an earlier court called the Curia Regis. The Curia Regis was not specifically a court of law; rather it dealt with matters relating to the king and was his centre of royal administration. The king depended on his advisors and senior officials to be the functionaries of this court. It is unknown exactly when a new court grew out of the Curia Regis and became a distinctive court of law, but it likely occurred in the late twelfth century around the same time as the formation of the court of Common Pleas. Despite its name, the court of King's Bench did not require the king's immediate presence in order to adjudicate cases. Just as the court of Common Pleas was headed by a chief justice, so too was the court of King's Bench. The court of King's Bench had between two and four puisne justices until around the mid-fourteenth century, but had only one between the years 1349 and 1391, after which the number rose.[6] The majority of the administration of the court of King's Bench was secularized by 1316, around the same time when the order of serjeants at law was founded. After this date, with the notable exception of Chief Justice Hervey de Stanton in 1326, no

[5] Anthony Musson and W.M. Ormrod, *The Evolution of English Justice,* (New York: St. Martin's Press, Inc., 1999), p. 29.
[6] Ibid., p. 28.

ecclesiastic appears to have judged in any of the common law courts[7] but the remaining clerical jurists of the fourteenth century were free to find employment in the ecclesiastical courts, in Chancery as clerks, or in the common law courts as common lawyers.[8]

The court of Exchequer was the oldest of the three superior courts. Originating after the Conquest of 1066, it began as a committee of the Curia Regis that dealt with matters of revenue and collecting the debts owed to the king. It gets its name from the chequered cloths that covered its accounting tables and were used as a means of tabulation in order to prepare the king's financial accounts. By the reign of Henry II (1154-1189) the Exchequer was a separate organization and was not only responsible for collecting the king's revenue but it also gained jurisdiction over all legal cases that affected this income. A panel of judges, comprised of the chief baron and three (sometimes four) other barons, staffed the court of the Exchequer where cases were pleaded by the serjeants at law.

Chancery: what work was done here?

The English Chancery was a complex administrative organization with a rigidly hierarchical and strongly centralized internal structure. The English Chancery grew out of the small secretariat of clerks that travelled with the royal household and accompanied the king on business in the eleventh and twelfth centuries. Over the period of the thirteenth century, the Chancery expanded and came to be established at Westminster as

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[7] William Holdsworth, *A History of English Law,* 4th ed., Vol. I (London: Methuen, Sweet & Maxwell, 1927), p. 197.
[8] Henri Lévy-Ullmann, *The English Legal Tradition,* (London: MacMillan, 1935), p. 78.

the administrative arm of the royal government.[9] The relative few numbers of clerks who worked in the king's household in the thirteenth century eventually grew to be a sizable bureaucratic administration thus resulting in the clerks' permanent settlement into offices in Westminster in the fourteenth century.[10] The clerks who worked in this institution contributed to making the royal courts run smoothly by acting as the administrators of the common law legal system. Under the direction of the chancellor, who was the most senior clerk, worked the twelve clerks of the first form (or masters and clerks of the robes) who were headed by the master of the rolls, who was considered the first among equals.[11] Under the leadership of these men were an additional twelve clerks of the second form as well as twenty-four cursitors[12] who worked to produce judicial writs.[13] Writs were attested by the chief justice of the court and set in motion the processes necessary to secure the appearance of defendants and jurors before the court.[14]

The Chancery also performed other important administrative functions on behalf of the king. Chancery vetted the annual mass of written petitions addressed to the king and Parliament that requested letters of remedy and grants of land and money, and Chancery also composed the writs and charters written in response to these petitions.[15] In addition, the Chancery was responsible for issuing the summonses that arranged for the meeting of each parliament. Once a parliament was gathered together, the Chancery

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[9] Malcolm Richardson, "Henry V, the English Chancery, and Chancery English," *Speculum* 55 (1980), p. 726.
[10] Douglas A. Kibbee, *For to Speke French Trewely,* (Philadelphia: John Benjamins, 1991), p. 66.
[11] Malcolm Richardson, "Henry V, the English Chancery, and Chancery English," p. 744.
[12] Junior clerks in the Chancery who made out original writs.
[13] Malcolm Richardson, "Henry V, the English Chancery, and Chancery English," p. 744.
[14] Paul Brand, *The Making of the Common Law,* (London: Hambledon, 1992), p. 171.
[15] John H. Fisher, "Chancery and the Emergence of Standard Written English in the Fifteenth Century," *Speculum* 52:4 (1977), p. 875.

clerks compiled the Parliament roll that recorded its proceedings, and drafted and enrolled the statutes that emerged from these proceedings on the statute roll. Chancery was likewise responsible for the administration of customs, taxes, and subsidies since these were all derived from the decisions made in Parliament.[16] Essentially, the English Chancery handled all of the important administrative work of the royal government, Parliament, and common law courts.[17]

ii) Actors affected by the Statute of Pleading

The legal personnel of the various central courts and Chancery comprised a closed group with complementary functions, and it is reasonable to suppose that they had a highly developed sense of their own identity and importance.[18] Their sense of group identity and social stature developed in part as a result of their specialized legal training and their highly advanced linguistic skills that were integral to their ability to participate in England's medieval legal culture. This group of legal personnel can be divided into three easily recognizable sections of professionals. At the top of the pyramid of legal professionals working in the royal courts were the royal judges or justices, who were the fewest in number and held the highest status as the top judicial officials in England. The serjeants at law were a specialized group of legal professionals who formed the highest rank of counsel available in the courts. From within the members of this group the royal justices were chosen. Following the judges and the serjeants were the attorneys and pleaders who made up the largest group of legal professionals in England. Among the

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[16] John H. Fisher, "Chancery and the Emergence of Standard Written English," p. 876.
[17] Douglas A. Kibbee, *For to Speke French Trewely,* p. 67.
[18] Anthony Musson and W.M. Ormrod, *The Evolution of English Justice,* p. 29.

legal professionals who acted as attorneys in this period were the apprentices and the Chancery clerks who provided advice on an ad hoc basis to clients engaged in litigation at Westminster.[19] While this motley group of legal professionals came from different backgrounds and types of legal training, be it ecclesiastical or lay, these individuals could all be found working in the common law courts in the fourteenth century where they used their unique skills to the best of their ability. The existence of distinct groups of legal professionals that differed according to their position in the legal hierarchy reflects the fact that the legal profession had its own internal organization by the fourteenth century. This section will consider the functions of these legal actors within the royal courts and their use of languages in order to begin to understand how the legislation passed by the Statute of Pleading would have affected their specialized work in the common law realm.

Attorneys and Pleaders

The act of oral pleading is a practice that has assumed various forms over the centuries. Perhaps the earliest form that pleading took in England can be found in the tradition of taking "counsel" in court. This was an ancient English custom whereby litigants consulted with friends before addressing the local court or the itinerant royal justice. The custom allowed for the parties involved in a lawsuit to openly seek advice from their friends in the language of their choice so that they might determine what to say and how to say it best. However, the custom did not allow for these "counsellors" to

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[19] Just as training by the accumulation of hands-on experience was typical of medieval trades and professions, apprenticeship was also the typical method of instruction and education in the legal profession; Ronald B. Begley and Joseph W. Koterski, "Introduction," in *Medieval Education*, ed. Ronald B. Begley and Joseph W. Koterski, (New York: Fordham University Press, 2005), p. xii.

speak on their friends' behalf. The spoken word carried with it too great a weight and significance to transfer the burden of this responsibility to another person. As the words spoken by a person in court were legally binding, the act of pleading could not be taken lightly. This oral pleading would have taken place in either English or French; depending on which vernacular language was preferred by the litigants since the judges would have understood the dominant language of the region.

In Henry III's reign (1216-1272), a process whereby plaintiffs and defendants began to be physically represented by others in the king's courts evolved from its earlier Anglo-Saxon form. At around this point in time, those experienced in providing counsel to friends began to be permitted not only to prompt a litigant to speak the correct phrases and provide the expected responses, but also to speak in his place on his behalf.[20] These early legal representatives required no special skills or license to represent their clients as long as their appointment did not exceed the length of the specific case before the court. If a client chose to appoint another person to represent him in all legal actions brought against him – both present and future – it was necessary to purchase the right to do so from the king until around the 1230s.[21] It was not until 1235 that the first mention of the "attorney" appeared in the laws of Henry III's statute book. At this time, Parliament passed a law that allowed attorneys to make suit to several courts, stating: "It is provided and granted, that every Freeman, which oweth suit to the County, Trything, Hundred, and Wapentake, or to the Court of his Lord, may freely make his Attorney to do those suits

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[20] However, as early as the twelfth century, the privilege of consulting and answering to one's accusation in court with the benefit of counsel was denied to those accused of capital crimes; F.W. Maitland and F.C. Montague, *A Sketch of English Legal History,* (New York: G.P. Putnam's Sons, 1915), p. 95.

[21] F.W. Maitland and F.C. Montague, *A Sketch of English Legal History,* p. 95.

for him."[22] Until this time, the power to appoint an attorney was conferred by writ out of the Chancery. This writ, composed in Latin, was obtainable provided that the litigant paid certain fees first, after which time the right to obtain counsel was conferred by warrant of the barons or other senior judges of the Exchequer.[23]

The requirement to seek permission to obtain legal representation was directly related to the sacrosanctity of the spoken word in this period. So long as legal procedure retained its extremely formal framework and depended upon the correct utterance of sacramental and specific words, it was perceived as unjust that a person could ask an expert to voice those binding words in his place. In 1285, the Statute of Westminster II[24] gave litigants the right to prosecute and defend their suits by attorney in the courts at Westminster, as the centralization of the royal courts meant that people had to travel to the courts rather than the courts travelling to the people in the countryside as had been done before.[25] Thus the right to appoint an attorney appears during this period in order to spare litigants the expense of travelling to Westminster.[26] It is also in this period that French became a language that was increasingly associated with the law and legal procedures, as attorneys began to professionalize.[27]

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[22] Attorneys in County Courts (1235) 20 Henry III, c. 10, *Statutes of the Realm,* A. Luders et al, eds., Vol. I (London: Record Commission, 1810-28), p. 4.
[23] Edmund Christian, *A Short History of Solicitors,* (Littleton, Colorado: Fred B. Rothman, 1983), p. 5.; The court of the Exchequer was the oldest English common law court, followed by the court of Common Pleas and the court of King's Bench.
[24] The Statute of Westminster II (1285) 13 Edward I, c. 10, *Statutes of the Realm,* A. Luders et al, eds., Vol. I (London: Record Commission, 1810-28), p. 80.
[25] See below: "Training and Professional Development"
[26] F.W. Maitland and F.C. Montague, *A Sketch of English Legal History,* p. 94.
[27] For more information about professionalization of the legal profession in this period, see: Anthony Musson, *Medieval Law in Context,* (Manchester: Manchester University Press, 2001).

Essentially, the difference between attorneys and pleaders was that attorneys physically represented their clients both inside and outside of court and spoke for them and in defence of them. Attorneys worked on behalf of their clients at all stages of the litigation process. By contrast, pleaders spoke on behalf of their clients in court only, and their clients were also present in the courtroom. Pleaders did not in any strict sense of the term "represent" their clients in the way that attorneys did.[28] The Church courts had two similar types of pleaders that were trained in the ecclesiastical legal tradition, but could also be found working in the common law courts. These men were "advocates" (those who spoke on behalf of others) and "procurators" or "proctors" (those who physically represented clients and argued cases before the courts). Advocates and proctors were the equivalents of pleaders and attorneys though they were trained at universities for work in ecclesiastical courts, which meant that they were especially well versed in Latin, as well as French and English. The linguistic repertoire of university and ecclesiastically trained legal professionals made them very useful in the common law courts as attorneys, pleaders, and as clerks in Chancery because of their specialized knowledge of spoken and written Latin.

Serjeants at law

Known from 1066 as *narratores*, and two centuries later as *countors*,[29] by the early fourteenth century these legal professionals came to be known as serjeants at law

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[28] Herman Cohen, *A History of the English Bar and Attornatus to 1450,* (London: Sweet & Maxwell, 1967 [reprint]), p. 205.

[29] *Countors* were thirteenth-century legal practitioners who helped formulate plaintiffs' "counts" which were causes of legal action in the courts; William Blackstone notes in his *Commentaries on the Laws of England,* Book I (Oxford: Clarendon Press, 1765-1769), p.

and together they formed the highest order of counsel in medieval England. The serjeants worked in the court of Common Pleas and eventually earned the exclusive privilege of being the only legal professionals authorized to argue in this superior court. Until the end of the thirteenth century, any distinction between the work performed by serjeants and ordinary attorneys was minimal. However, by the fourteenth century, the type of work performed and the amount of pay that could be demanded as compensation for that work differentiated serjeants from other attorneys. The serjeant that Chaucer described in his book *The Canterbury Tales* was characterized as a notoriously stingy and aristocratic man whose legal services were in high demand, as he performed his job well:

> A Sergeant of the Lawe, war and wys,
> That often hedde been at the Parvys,
> Ther was also, ful riche of excellence.
> Discreet he was and of greet reverence –
> He semed swich, his wordes weren so wise
> Justice he was ful often in assise…
> Of fees and robes hadde he many oon,
> So greet a purchasour was nowher noon…
> Nowher so bisy a man as he ther nas,
> And yet he semed bisier than he was.
> In termes hadde he caas and doomes alle
> That from the tyme of kyng William were falle.
> Thereto he koude endite, and make a thing,
> Ther koude no wight pynche at his writing;
> And every statut koude he pleyn by rote.[30]

The position of serjeant was more prestigious than that of attorney as the serjeants were significantly fewer in number, and they were more experienced practitioners of law in the royal courts, which resulted in their ability to demand higher fees. This experience in

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24, that serjeants or countors are first mentioned in The Statute of Westminster I (1275) 3 Edward I, *Statutes of the Realm,* A. Luders et al, eds., Vol. I (London: Record Commission, 1810-28), p. 29 and the legal text the *Mirror of Justices*, William Joseph Whittaker, ed., Selden Society VII (London: Bernard Quaritch, 1893).

[30] Geoffrey Chaucer, "General Prologue," *The Canterbury Tales,* (Toronto: Pocket Books, 2001), pp. 384-385.

operating in the king's courts is what enabled serjeants to be socially elevated from the rank of general attorney to serjeant at law, and potentially to the rank of royal judge. It also cost more in general to initiate and prosecute litigation in the royal courts at Westminster (where the serjeants worked) than it did in the county courts where less experienced lawyers could be found in abundance.[31] Serjeants were also kept on regular retainer and thus received a constant income from their work – whereas an attorney's employment was less constant and resulted in a lower income.[32]

In addition to their more consistent employment, the distinctive linguistic ability of serjeants caused them to be put in a class above the general attorneys. Paul Brand argues that serjeants were indispensable in the royal courts at Westminster because they spoke the languages used by those institutions. There would never be any question about a serjeant's oral or aural comprehension of the languages used by the participants in the court because these were among the essential skills used in their profession. This was a huge asset in comparison to some of the general attorneys who may have been unable to speak Latin, French, and English well, or they were not fluent in one or two of those languages that were in common use in the royal courts by the thirteenth and fourteenth centuries.[33]

As a result of their specialized work and greater legal expertise, the serjeants obtained a monopoly on the right to speak in the court of Common Pleas thus ensuring the survival of their position as the exclusive pleaders in that court throughout the end of

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[31] Paul Brand, *The Making of the Common Law*, p. 18.
[32] Alan Harding, *The Law Courts of Medieval England,* (New York: Barnes and Noble, 1973), p. 112.
[33] Paul Brand, *The Making of the Common Law,* p. 18.

the Middle Ages.[34] Their exclusive right of audience in this court also made them the wealthiest advocates in the legal world.[35] By the end of the fourteenth century, an "order" consisting of around twelve serjeants at law composed the membership of an elite group that was characterized by its monopoly of practice in the court of Common Pleas.[36] This order of serjeants was subject to a modicum of royal control over who was allowed to practice in the central courts as it was the king's council who decided who was permitted to enter into the order of serjeants at law.[37]

Judges

The judges of the common law courts assumed their place at the top of the legal profession as the adjudicators of the legal cases presented in the courts of Common Pleas, King's Bench, and Exchequer. There was no rigid division between the judges who worked in these courts as a judge would often work in several of the common law courts throughout the span of his career. The royal judges were chosen from among the most skilled attorneys and serjeants and as such, they were also extremely fluent in the languages of the law. The royal judges could not have functioned without a high fluency in English as the common tongue, French as the language of pleading and legal texts, and Latin as the language of official documentation. All of these languages were necessary for the judges to perform their duties in the courtroom.

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[34] Fortescue explains that only serjeants were permitted to plead in the court of Common Pleas, *On the Laws and Governance of England,* ed. Shelley Lockwood, (Cambridge: Cambridge University Press, 1997), p. 72.
[35] J.H. Baker, *The Legal Profession and the Common Law,* (London: Hambledon, 1986), p. 78; Sir John Fortescue, *On the Laws and Governance of England,* p. 72.
[36] Paul Brand, *The Origins of the English Legal Profession,* (Oxford: Blackwell, 1992), p. 106.
[37] Ibid., pp. 106-107.

According to Sir John Fortescue, the judges sat at the royal courts for three hours a day and only in the morning, spending their afternoons consulting with the serjeants and studying the laws.[38] Sir John Fortescue was a prominent English lawyer throughout the first half of the fifteenth century who became a serjeant at law in 1438, and by 1441 he was a special serjeant to the king. In the following year, Fortescue was appointed chief justice of the court of King's Bench and was knighted. Fortescue is known for his celebrated work *De laudibus legum Angliae.* This legal and political treatise was the first to enter into the minutiae of the English legal profession by describing its institutions, places of professional education, and habits of its actors in this period.[39] It is unknown exactly when Fortescue penned this work, but we do know that an updated version of the text was presented to Edward IV sometime after 1471.[40]

Thanks in part to the information contained in *De laudibus legum Angliae,* Fortescue appears to be an excellent example of a later medieval legal actor of whose linguistic ability we can be certain. Fortescue was first educated at Oxford, and then went on to gain a legal education at Lincoln's Inn where he was appointed the governor of this institution four times before 1430.[41] His university education at Oxford would have been in Latin and French, while his legal education at Lincoln's Inn would have been in French and English. According to Fortescue's own text, these were the languages used by

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[38] Sir John Fortescue, *On the Laws and Governance of England,* p. 75.
[39] Edward Foss, *A Biographical Dictionary of the Judges of England,* (London: John Murray, 1870), p. 276.
[40] Shelley Lockwood, "Introduction," in Sir John Fortescue, *On the Laws and Governance of England,* ed. Shelley Lockwood, (Cambridge: Cambridge University Press, 1997), p. xix.
[41] Ibid., p. xviii; Edward Foss, *A Biographical Dictionary of the Judges of England*, p. 276.

the universities and the legal Inns.[42] Fortescue had practical experience and expertise in the courts, and his credentials as an authority on the formal workings of law and government in fifteenth-century England have been called "unimpeachable."[43]

Like Fortescue, the judges in the royal courts in the late fourteenth century invariably once practiced as attorneys. The judges were familiar with the proceedings in all of the royal courts since they would have worked in them as attorneys and serjeants. During the reign of Edward I (1272-1307), the court of Common Pleas instituted an internal system of teaching and promoting young lawyers to the ranks of judges by making them serjeants first. As the profession became increasingly organized, the tendency of the Common Pleas' "bench" (the collective group of royal judges) was thenceforward to seek its recruits from the ranks of the "bar" (the collective group of lawyers who worked in the royal courts) rather than from the ranks of the royal clerks.[44] The new serjeants were appointed to the order by royal writ and installed in their positions with great splendour.[45] There were usually fewer than ten serjeants in practice at any given time, and every ten years or so there would be a group call of six to eight new serjeants to replace those serjeants who had died or been promoted.[46] When the royal court judges ceased to be chosen from the ranks of the royal clerks, they came to be chosen from the order of serjeants and eventually were chosen exclusively from the order of serjeants. As this custom became established over the course of the fourteenth century,

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[42] Sir John Fortescue, On the Laws and Governance of England, p. 67.
[43] Shelley Lockwood, "Introduction," in Sir John Fortescue, *On the Laws and Governance of England,* p. xix.
[44] Henri Lévy-Ullmann, *The English Legal Tradition,* p. 77.
[45] Alan Harding, *The Law Courts of Medieval England,* p. 112.
[46] J.H. Baker, The Legal Profession and the Common Law, p. 78.

it became a general rule that no one could be made a judge in the courts of Common Pleas and King's Bench unless he was first appointed a serjeant.[47]

Chancery clerks

The royal clerks employed by the Chancery at Westminster were a special type of legal professional that worked closely with the common law courts and their officials.[48] Alongside the chancellor (who was also the king's senior minister), various judges and serjeants from the royal courts, as well as Exchequer personnel, the Chancery clerks worked in concert with these legal professionals to administer the common law.[49] These clerks were invaluable to the courts as they exercised considerable discretion in both the Latin and English sides of Chancery business and dealt almost exclusively with producing the writs that were necessary to initiate legislation in the king's courts.[50]

Due to their specialized function as the secretaries and scribes of the royal government, Chancery clerks were indispensable legal professionals who worked both in the English parliaments and in the royal courts. As the clerks were the recipients of the original petitions addressed to the king to ask for redress of grievances, the presenters of

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[47] William Holdsworth, *A History of English Law,* p. 197; J.H. Baker, *The Legal Profession and the Common Law,* p. 79; This rule was left unaltered over the next several centuries until the Judicature Act of 1873: 36, 37 Victoria, c. 66.

[48] Note that some historians do not consider clerks to be "legal professionals" on the basis that the nature of their work was essentially scribal in nature and that they only rarely engaged in activity as attorneys, see: Paul Brand, "Were the Court Clerks Members of the English Legal Profession?" in *The Origins of the English Legal Profession,* (Oxford: Blackwell, 1992), pp. 199-201. However, Brand also recognizes that a few clerks were legal experts, and that many more had legal knowledge. Because of this he calls them an "interesting sub-group in the legal world" and considers their functions in the courts only "adjudicatory."

[49] Anthony Musson and W.M. Ormrod, *The Evolution of English Justice,* p. 29.

[50] Ibid., p. 29; Richard Abel, *The Legal Profession in England and Wales,* (Oxford: Basil Blackwell, 1988), p. 36.

the petitions to the magnates who "tried" the petitions, and were also the officials who sent the official replies to these requests, the Chancery clerks were responsible for producing the documents of the king's courts that administered justice to his subjects.[51] In the Chancery, the senior clerks were instructed to check the writs before they were sealed in order to find and correct any errors in form, script, working, and spelling.[52] As Langland explained in *Piers Plowman*: "A chartre is chalangeable bifore a chief justice; If fals Latyn be in that lettre, the lawe it impugneth."[53] Therefore it was essential that the clerks were very careful in their use of languages, as their fluency could cost a litigant his case if a mistake were found in any of the documents that came out of Chancery.

Ambitions in the law and in the secretariat of the Chancery were motivations that inspired Englishmen to study French and Latin.[54] Not only was the law pleaded, disputed, decided, and reported in French by the lawyers, serjeants, and judges, but it was also the language used in Chancery to record the laws on the statute roll.[55] Fortescue explains that Latin was also an essential language for the English Chancery since it was used to write all original and judicial writs, as well as to record the pleas in the king's courts and the statutes that were decided by Parliament.[56] The importance and practical value of the legal, administrative, and linguistic skills possessed by the Chancery clerks was recognized by the royal courts. Of the nineteen judges who staffed the king's court in the

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[51] John H. Fisher, "Chancery and the Emergence of Standard Written English in the Fifteenth Century," p. 875.
[52] Douglas A. Kibbee, *For to Speke French Trewely,* p. 47, fn. 13; M.T. Clanchy, *From Memory to Written Record: England 1066-1307,* (Cambridge: Harvard University Press, 1979), p. 101.
[53] William Langland, *Piers Plowman,* ed. Elizabeth Robertson and Stephen H.A. Shepherd, (New York: Norton, 2006), Passus XI, 303-304.
[54] Douglas A. Kibbee, *For to Speke French Trewely,* p. 94.
[55] Sir John Fortescue, *On the Laws and Governance of England,* p. 67.
[56] Ibid., p. 67.

reign of Edward II, around eight or nine of them came from the ranks of the royal clerks.[57] This practice of appointing only knowledgeable and experienced legal actors to the rank of royal justice developed during the reign of John (1199-1216) when two judicial clerks, masters Eustace de Faucunberg and Godfrey de Lisle, were appointed royal justices.[58] By the fourteenth century, at least six of the judges in the court of Common Pleas and three of the justices of King's Bench had first gained their legal experience as clerks before being appointed as judges in the royal courts.[59]

iii) Case studies

The legal professionals working in the common law courts in fourteenth-century England should not be regarded as a group with a homogenous identity, although these legal professionals possessed several common traits: they were learned in the common law, and were probably also familiar with elements of canon law, they could practise law in Latin, French, and English, and they all depended on their legal work to earn their living.[60] Only the least skilled, most general "non-professional" lawyer would not have fit the preceding description. The division of the legal professionals who worked in the royal courts into the categories of pleaders, attorneys, and serjeants emerged largely as a result of career choices between generalization and specialization, between acting for the client

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[57] William Holdsworth, *A History of English Law,* p. 197; Clerks could be clerics but were not necessarily priests, as most clerks were university-trained and as students of universities they were granted many of the same privileges and had the same social status as the ecclesiastical class.
[58] Paul Brand, *The Origins of the English Legal Profession,* p. 28.
[59] Ibid., p. 29.
[60] Ibid., pp. 50-51; This last trait did not apply to ecclesiastical lawyers working in the lay courts, as they were theoretically not supposed to profit from their work (although they undoubtedly did).

in all aspects of litigation and pleading his case before the judges.[61] Of course, this differentiation was not exclusive to legal actors working in the common law courts since their counterparts "proctors" and "advocates" were also found working in both the common law courts and the church courts during the same time period. In recognizing this overlap between the lay and ecclesiastical courts, Anthony Musson explains that the perceptible differences should not be overdrawn:

> [As] it was not so much the laws themselves which differed as the approaches to (and legal thinking behind) them and approaches to record-keeping. Medieval England was graced not simply with a single, monolithic form of law, but several distinct types of law, sometimes competing, occasionally overlapping, invariably invoking different traditions, jurisdictions and modes of operation.[62]

What follows are two examples of medieval legal professionals who represent the contribution of ecclesiastical and lay legal professionals to the legal realm. William of Drogheda and William Shareshull were legal actors who came from different legal institutions, professional, and educational backgrounds who worked in the royal courts of later medieval England.

William of Drogheda

Some of the earliest lawyers in England were ecclesiastics, but as the Church restricted the ability of priests and persons in holy orders to act as advocates in the common law courts it appears that the secular legal profession began to be increasingly composed of a specially trained class of laymen. One link between the clerical origins of legal study and lay education in the law can be found in the person of William of Drogheda (d. 1245). Drogheda straddled a thin line between the lay and ecclesiastical

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[61] Anthony Musson, *Medieval Law in Context,* p. 45.
[62] Ibid., p. 9.

legal spheres as a teacher of law at Oxford, a man in orders, and (there is reason to believe) a practicing advocate in both the common law and ecclesiastical courts.[63] As a result, F.W. Maitland called him "half priest, half lawyer."[64]

William of Drogheda authored the *Summa Aurea de Ordine Judiciorum* around 1239, a work that has been credited with influencing the creation and formation of the English bar.[65] The *Summa* is a work that appeared in between those of *Glanvill*[66] and *Bracton*[67] but is of a different nature as it was specifically intended for ecclesiastics practicing in the church courts rather than for ecclesiastics or laymen practicing in the royal courts. It has been argued that Wiiliam was familiar with both church and lay courts and must have knowingly borrowed practices from the secular courts when laying down the law of procedure for the ecclesiastical courts in his *Summa.*[68] Similarly, it is inconceivable that the procedures of the ecclesiastical courts should not have had weight in the development of the procedure in the lay courts as William of Drogheda's work appeared when clerics still manned the bench and were not yet excluded from lay advocacy.[69]

As a Bolognese legist, William of Drogheda wrote exclusively for the training of English students of the canon law, but taught his readers to win cases through his

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[63] Herman Cohen, *A History of the English Bar and Attornatus to 1450,* p. 101.
[64] F.W. Maitland, "Canon Law in England: III, William of Drogheda and the Universal Ordinary," *The English Historical Review* 12:8 (1897), p. 635.
[65] Herman Cohen, *A History of the English Bar and Attornatus to 1450,* pp. 101-112.
[66] Ranulf Glanville, *The Treatise on the Laws and Customs of the Realm of England Commonly called Glanvil,* ed. and trans. G.D.G. Hall. (Holmes Beach, Fla.: W.W. Gaunt, 1983).
[67] Henry de Bracton, *On the Laws and Customs of England,* ed. and trans. Samuel E. Thorne, Vols. 1-4, (Cambridge: Harvard University Press, 1968-1977).
[68] Herman Cohen, *A History of the English Bar and Attornatus to 1450,* p. 111.
[69] Ibid., p. 111.

explanation of procedure that was not limited to use in ecclesiastical courts. This is further evidence to support the idea that England's medieval legal world was one entity and the differences between ecclesiastic and lay legal professionals were less significant than has typically been suggested by scholars. In fact, Drogheda's procedure has been called "strikingly similar to that which is open to an Englishman who wishes to bring an action in the English King's Court" as both types of cases required the request of a writ – one from the English Chancery, the other from the Roman Chancery, in order to initiate legislation.[70]

Drogheda was an exceptional legal professional for his period as he had a great deal of respect for the practical use of the vernacular in courts of law at a time when the functions of languages in England were stratified. He was probably the first scholar to vindicate the rights of ecclesiastical legal professionals to plead in the vernacular, as he wrote: "*Advocatio* may be in English, French or Latin,"[71] and explained that the Latin terms of an appeal to the Archbishop at Canterbury were, if necessary, to be explained in French or English to the witnesses so that they may understand the proceedings.[72] English procedure grew slowly out of ecclesiastical practice that began after the Conquest and amalgamated some of the aspects of the canon and lay courts of law that existed before 1066. We know that customary courts would have functioned primarily in the English language, and there is no evidence to prove that English was ever forbidden in the common law courts, so it appears that William of Drogheda's theories successfully

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[70] Ibid., p. 102.
[71] C. 98: *Anglicis vel Gallicis acsi Latinis*, as cited in Herman Cohen, *A History of the English Bar and Attornatus to 1450,* p. 104.
[72] Ibid., C. 326.

"dovetailed" the best of both legal systems that he knew.[73] Drogheda's commentary on the use of the vernacular in ecclesiastical courts predates the Statute of Pleading's affirmation of the use of English in the royal courts by more than one century.

William Shareshull

William Shareshull[74] was a prominent figure in the courts of Edward III in the mid-1300s, as well as the king's legal advisor.[75] A native of Shareshull in the county of Stafford, Shareshull's name was first mentioned in the Year Book of Edward II where he was identified as a lawyer.[76] In the early 1330s, Shareshull became a king's serjeant and was invested with the knighthood of the Bath in 1333.[77] This was the beginning of a long and successful career as a legal professional in the royal courts. On March 20, 1333 he was established as a judge of the King's Bench but only remained there for a short period of time before he was assigned to the court of Common Pleas two months later.[78] Within eleven years, Shareshull was raised to the office of chief baron of the Exchequer where he sat for about sixteen months, when, on November 10, 1345, he was removed once

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[73] Herman Cohen, *A History of the English Bar and Attornatus to 1450,* pp. 106-107.
[74] Sometimes appears as William "Shareshill."
[75] Edward Foss, *A Biographical Dictionary of the Judges of England,* p. 610; "Introduction, Edward III (1333)," *The Parliament Rolls of Medieval England*, C. Given-Wilson et al, eds., CD-ROM. (Leicester: Scholarly Digital Editions, 2005); Great Britain. Parliament, *Rotuli Parliamentorum; ut et petitiones, et placita in Parliamento* ... Vol. 2 (London: 1767-77), p. 69. Eighteenth Century Collections Online. Gale Group. [http://galenet.galegroup.com.proxy.bib.uottawa.ca/servlet/ECCO].
[76] Edward Foss, *A Biographical Dictionary of the Judges of England,* p. 610; F.W. Maitland, ed., *Year Books of 1 and 2 Edward II, vol. I* (London: Bernard Quaritch, 1903).
[77] J. H. Baker, *The Order of Serjeants at Law,* (London: Selden Society, 1984), p. 536.
[78] Edward Foss, *A Biographical Dictionary of the Judges of England,* p. 610.

again to the court of Common Pleas.[79] This time around, Shareshull was conferred with the title of second justice, which he retained for the next five years.[80]

Throughout his career, Shareshull acted as a justice of the peace, itinerant judge, and junior judge in the courts of Common Pleas, Exchequer, and King's Bench.[81] At one time or another, Shareshull worked as a judge in each of the king's courts and was ultimately appointed chief justice on October 26, 1350 to the court of King's Bench.[82] Shareshull remained in that position until 1361, during which time he opened five successive parliaments for the king.[83] Shareshull was active in politics and Parliament, which might explain why he is the least mentioned chief justice in any of the Year Books.[84] He was appointed one of the custodians of the principality of Wales during the minority of the king's son, and along with other senior judges, Shareshull played an important role in the drafting of legislation during his years as a chief justice.[85]

Leading judges in the royal courts, such as William Shareshull, were regularly included on parliamentary committees and held a certain amount of influence over the proceedings. For example, in the parliament of September 1305, three royal judges (Brabazon, Hengham and Bereford) worked together with Scottish representatives in order to draw up a plan for the government of Scotland, and by Edward III's reign,

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[79] Ibid., p. 610.
[80] Ibid., p. 610.
[81] Helen Cam, *Law-Finders and Law-Makers in Medieval England*, (London: Merlin Press, 1962), pp. 141-142; Lord John Campbell, *The Lives of the Chief Justices of England,* Vol. I (Long Island, N.Y.: Edward Thompson, 1894), p. 133.
[82] G.O. Sayles, ed., *Select Cases in the Court of King's Bench under Edward III,* Selden Society VI (London: B. Quaritch, 1965), pp. liii-liv.
[83] Helen Cam, *Law-Finders and Law-Makers in Medieval England*, pp. 141-142.
[84] Edward Foss, *A Biographical Dictionary of the Judges of England,* p. 610.
[85] Ibid., p. 610; Anthony Musson and W.M. Ormrod, *The Evolution of English Justice,* pp. 154-155.

judicial participation in committee work had become an established feature of Parliament.[86] In Shareshull's own time, we can find evidence of four judges sitting on a parliamentary committee in 1331 to discuss relations with the French during the Hundred Years War, while in 1334 seven judges were present in the parliament to advise on matters of taxation and to draft replies to the common petitions.[87]

There is reason to believe that senior judges in the royal courts were also influential in developing the statutes that came out of Parliament, and they certainly had strong opinions on how statutes ought to be (or ought *not* to be) interpreted. During the early 1340s, Robert Thorpe advised that statutory provisions should be strictly interpreted and he coined the maxim "*statuta sunt stricti juris*"[88] which was later endorsed by William Shareshull when he said during a case: "we cannot take the statute further than the words of it say."[89] Anthony Musson argues that this theory of judicial discretion was not developed merely to protect the judges' professional reputations from accusations of leniency or bias, but that it "represented an acceptance of the authority of statute law and provides an indication of the power that a form of words (framed as such for a reason) could invoke."[90] Furthermore, evidence that senior judges influenced lawmakers can be gleaned from the famous comment made by Ralph Hengham (Chief Justice of King's Bench 1274-89, and of Common Pleas 1301-1309) when he warned counsel: "Do not

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[86] Anthony Musson, *Medieval Law in Context,* (Manchester: Manchester University Press, 2001), p. 203.
[87] Ibid., p. 203.
[88] T.F.T. Plucknett, *Statutes and Their Interpretation in the Fourteenth Century,* (Cambridge: Cambridge University Press, 1922), p. 121.
[89] Anthony Musson, *Medieval Law in Context,* (Manchester: Manchester University Press, 2001), p. 205.
[90] Ibid., p. 205.

gloss the statute; we understand it better than you do, for we made it."[91] The influence of fourteenth-century royal judges on statutory legislation is especially evident in the legislative provisions that cannot be connected with corresponding common petitions.[92] The discrepancies between the two versions of the Statute of Pleading reveal a bias towards maintaining the three languages of fourteenth-century England and may reflect an attempt by the judges to advantage legal professionals by defining the uses of Latin, French, and English in the royal courts. It has been argued that Shareshull played an important role in drafting key statutes during his term as chief justice and this has been used as convincing evidence to prove that legal experts on the king's council impacted legislation during Edward III's reign.[93] Therefore, William Shareshull not only exemplifies the frequency and relative ease of movement of legal professionals between the royal courts, but is also an example of a judge who evidently went beyond the mere adjudication of cases in order to participate more fully in the creation of the *nouvel ley* itself.

This section has revealed the types of people who worked in England's common law courts and how languages were important for the roles of these legal actors in the fourteenth century. The common law courts constituted one single legal realm where there was a fluidity of movement between the actors involved in creating the laws, initiating the legislation, providing counsel to the litigants, and adjudicating the cases that came before the bench. The linguistic elements present in the Statute of Pleading reflect

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[91] Ibid., p. 206.
[92] Ibid., p. 207.
[93] See: Anthony Musson and W.M. Ormrod, *The Evolution of English Justice,* (New York: St. Martin's Press, Inc., 1999), pp. 154-55, 184-216.

the interests of all of the legal professionals who participated in the royal courts in England in 1362 as the Statute would have affected all who worked in the royal courts – regardless of their specializations – because their legal skills were absolutely dependant on the mastering of Latin, French, and English.

II. Training and professional development

The fourteenth century marked the emergence of a more clearly defined system of training for those who worked as legal professionals in the central courts. In this period, students of law had more than just legal texts and treatises at their disposal that they could use to learn and practice the procedures of the common law. Apprenticeship was the means by which students learned the practice of law and received professional training through the courts. The custom of learning a trade through apprenticeship was applied to the legal realm just as it was a traditional form of professional education in other vocations in the Middle Ages. Apprentices sometimes remained apprentices for the majority of their careers, until they were promoted to the rank of serjeant. Students hoping to advance to the level of serjeant remained apprentices for twenty years or so, in which time they could have married, raised families, practiced law, and held public office.[94] It was only then that the apprentice lawyer could be elevated to the rank of serjeant or judge, and as such the large majority of legal professionals qualified as apprentices to the court. Fortescue, for instance, differentiated between the status of

[94] Alan Harding, *The Law Courts of Medieval England,* p. 112.

English advocates by dividing them into two classes: serjeants and apprentices.[95] In the legal realm the designation of apprentice was a question of title rather than of expertise, and the term did not indicate that the apprentices had yet to complete their formal training, just that they were not yet serjeants. The specialized training for legal professionals was acquired in the Chancery and its Inns of Chancery, as well as in the royal courts and their Inns of Court. The basis of the acquisition of this education was contingent on the linguistic ability of the apprentices who required knowledge of English, French, and Latin in order to perform their functions as legal professionals. The following section will demonstrate how legal actors learned to practice the law and applied their specialized linguistic skills to their specific trades.

i) Chancery and Inns of Chancery: development of professional writing skills

At least from the late thirteenth century, it was possible to receive some formal education in the technicalities of the common law both in London and Westminster and also in Oxford at the schools that offered training in a range of business skills.[96] This training would have taken place outside of the context of the universities and the schools that we know the most about are the Inns of Chancery that developed in the later medieval period. The exact origins of the Inns of Chancery are obscure, though it is entirely possible that they existed originally to serve the purpose of providing lodging for Chancery clerks, as their name suggests. Later, the Inns of Chancery became affiliated with the Inns of Court. Not only clerks, but also students of law infiltrated the Inns and

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[95] J.H. Baker, *The Legal Profession and the Common Law,* p. 88; Sir John Fortescue, *On the Laws and Governance of England,* p. 16.

[96] Rather little is known about this type of school; Anthony Musson and W.M. Ormrod, *The Evolution of English Justice,* p. 30.

benefited from the education that they found there in such practical skills as composing writs and learning the proper forms for legal documents. Due to this type of training, it is likely that this is how the Inns developed into a type of preparatory school for students hoping to pursue advanced training in law at the Inns of Court.

The Inns of Chancery were well suited as preparatory educational institutions for future lawyers because the Chancery clerks were masters of the written procedures that were followed in order to initiate litigation in the form of writs.[97] Chancery clerks were basically trained in the same methods as what was necessary for other legal professionals – they learned ancient formulae and read, wrote, and spoke the languages of the law. From the beginning of the fifteenth century, and probably earlier, apprentice lawyers attended the Inns of Chancery as the first step in their legal studies. This was where the apprentice lawyers would learn the elementary skills and legal expressions that were necessary to their trade.[98] Inns of Chancery were places of education for common lawyers where they could get training in the composition of documents, clerical procedures, and the handling of writs.[99] Chancery clerks were also fluent in Latin, French, and English as these languages were fundamental to their legal work.[100] A clerk required a significant amount of specialized legal, administrative, and linguistic knowledge in order to do his job. A clerk had to be familiar with English law, and was required to learn the standard Chancery hand, along with its abbreviations in Latin, French, and English, as well as

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[97] Richard Abel, *The Legal Profession in England and Wales,* p. 36.
[98] Douglas A. Kibbee, *For to Speke French Trewely,* p. 100.
[99] E.W. Ives, "The Common Lawyers," in *Profession, Vocation, and Culture,* ed. Cecil C. Clough, (Liverpool: Liverpool University Press, 1982), p. 198.
[100] Anthony Musson, *Medieval Law in Context,* p. 68; See also M.J. Bennett, "Provincial Gentlefolk and Legal Education in the reign of Edward II," *Bulletin of the Institute of Historical Research* 57 (1984), pp. 203-207.

specific procedures, like the composition of writs – none of which could be learned without years of workplace experience and training.[101]

The English Chancery was characterized by its orderliness and a deep sense of tradition as the apprentice system was the basis of training for its many clerks. In most cases, the young Chancery clerks not only worked together but also lived together in the chancellor's household until they married or found other employment. The training for the clerks' specialized work was acquired from within the Chancery itself. The fact that the Chancery clerks lived communally is likely how the Inns of Chancery got their name and it is likely that the clerks had lived together long before we find the first mention of the Inns of Court in any documentation.[102] In his study of the Chancery under Henry V, Malcolm Richardson asserted that the type of knowledge required for work in the Chancery – knowledge of writs, of forms, of administrative procedure, of government protocol – could be learned at no other place.[103] Richardson recognized that some of this knowledge could likely have been learned at university, but that it is more probable that most clerks entered the Chancery at a young age and received their clerical formation at the sides and at the hands of senior clerks in the Inns.

The Inns of Chancery grew as a consequence of the sheer numbers of men looking to acquire legal skills in order to work in the courts and in the rapidly expanding

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[101] Malcolm Richardson, "Henry V, the English Chancery, and Chancery English," p. 746.
[102] E.W. Ives, "The Common Lawyers," p. 198.
[103] Malcolm Richardson, "Henry V, the English Chancery, and Chancery English," p. 746; The legal documents that clerks wrote were composed in Latin in the name of the king, but would have been mentally translated and pronounced in English when read aloud by sheriffs to the public. Before 1066 and for a little while after, royal writs were composed in Anglo-Saxon and a bilingual Anglo-Saxon/French writ dates from the 1070s, marking the time period when writs were composed exclusively in Latin; M.T. Clanchy, *From Memory to Written Record: England 1066-1307,* pp. 211-212.

area of legal administration.[104] It appears that law students appeared at the Inns of Chancery in sufficient numbers to eventually warrant a prohibition from the chancellor. This seems to be evidence of an early reaction against the collegiate mixing of certain legal actors and an attempt to differentiate between the specializations of these professionals. Frequent statutes appeared in the fourteenth century that forbade Chancery clerks from fraternizing with the legal apprentices.[105] As Douglas Kibbee points out, there would have been no need for such statutes if a substantial number of lawyers were not coming to the Inns of Chancery to obtain legal training in that period.[106]

ii) Inns of Court: development of oral skills and professional techniques of pleading

Around the beginning of the fourteenth century, law societies began to be formed in London. These came to be known as the Inns of Court, or the common law Inns, and numbered four: Lincoln's Inn, the Middle Temple, the Inner Temple, and Gray's Inn. These associations of legal professionals were headed by senior common law lawyers and had the exclusive power to prescribe the necessary qualifications for an apprentice to practice as an advocate and be "called" to the bar.[107] If an advocate was very skilled he might be promoted to the rank of serjeant and would then be eligible to join the king's judges as a member of the bench. Like the origins of the Inns of Chancery, the exact origins of the Inns of Court are unknown, although they were under the special protection

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[104] Anthony Musson, *Medieval Law in Context,* p. 48.
[105] E.W. Ives, "The Common Lawyers," p. 198; Douglas A. Kibbee, *For to Speke French Trewely,* p. 100, fn. 8.
[106] Douglas A. Kibbee, *For to Speke French Trewely,* p. 100, fn. 8; By the sixteenth century, the lawyers dominated the schools of the Inns of Chancery.
[107] E.W. Timberlake, "Origin and Development of Advocacy as a Profession," *Virginia Law Review*, 9:1 (1922), p. 30.

of Henry III as early as 1235 when his Parliament prohibited the study of law in London in any other place than the Inns.

Initially, the Inns began as places on the fringes of London near the courts held at Westminster. Lawyers and apprentices from all over the realm flocked to London from the time of King John (1199-1216) and especially during the reign of Edward I (1272-1307) when the courts became localized at Westminster Hall. As common law lawyers needed a place to stay for the time that they were required to be present in court, they gathered in buildings called "Inns," which provided lodgings to those who came from outside of the city of London. "Inn" is a Saxon word denoting the equivalent of the French "hostel," which signified the private city or town mansion of a person of rank or wealth. Thus "Lincoln's Inn" was originally the hostel of the Earl of Lincoln and leased to lawyers and students of law, and the Inner and Middle Temples were originally the homes of the Knights Templar.[108] Although they initially began as temporary places to stay for provincial legal professionals working at one of the Westminster courts, eventually the Inns became permanent accommodations for the apprentices at law. By the fourteenth century, the Inns of Court formed a legal school of their own where instruction was given in French in the principles of English common law and statute law exclusively.[109] This seems to have been a natural and gradual progression for the Inns from places of lodging to forming a type of legal college.

The legal students who would serve as future lawyers, serjeants at law, and royal court justices also learned their craft and developed their skills by attending and

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[108] Ibid., p. 31, quoting: Charles Warren, *History of the American Bar,* (New York: Fertig, 1939), p. 27.

[109] E.W. Timberlake, "Origin and Development of Advocacy as a Profession," p. 31.

observing the procedures of the central courts from at least the end of the thirteenth century. There can be little doubt that students of law living in any of the Inns near Westminster frequently attended the common law courts to learn from the proceedings. Fortescue refers to a place of study:

> [...] situated near the king's courts, where these laws are pleaded and disputed from day to day, and judgements are rendered in accordance with them by the judges, who are grave men, mature, expert and trained in these laws. So those laws are read and taught in these courts as if in public schools, to which students of the law flock every day in term time.[110]

This place of study that Fortescue refers to is the "crib," which seems to have been an area found in the courts where the apprentices observed proceedings and sat for their self-instruction. The crib dates from the early 1300s onward and was certainly established by the reign of Edward II (1307-1327).[111]

An example of the apprentices acting as a group can be found in a petition that they sent to King Edward II, asking him to grant permission for a second crib to be established for the apprentices in the king's courts so that they might have better perspective on the court's proceedings.[112] This petition dates from the early fourteenth century and is some of the earliest documentary evidence that we have of the apprentices' crib in court. It also is an early demonstration of the collective consciousness of legal apprentices. The crib was a special enclosure set aside for apprentices at law to observe what was happening in the royal courts. The petition describes the crib as being specifically meant for the education of the petitioners ("pur lour esteer a lour aprise") and was where the justices of the court explained matters for the benefit of the apprentices

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[110] Sir John Fortescue, *On the Laws and Governance of England,* p. 67.
[111] G.J. Turner, ed., *Year Books Series vol. VI,* (London: B. Quaritch, 1914), p. xxxix.
[112] The National Archives (TNA): Public Record Office (PRO) SC 8/189/9409.

present.[113] The earliest evidence of the existence of a crib for apprentices is found in the records of a 1302 case where Chief Justice Hengham explained one of the rules that he applied to the case specifically for the apprentices' benefit.[114] In 1310, Chief Justice Bereford addressed Westcote (the counsel) in court and ironically thanked him for his challenge "[...] for the sake of the young men here [the apprentices present in court], and not for the sake of us who sit on the bench."[115]

By witnessing the deliberations of the royal courts when they were in session, students learned the principles of the common law from their cribs. By participating in "moots," or mock trials, the apprentices learned the most effective techniques of pleading by mimicking what they had observed. Moot courts reproduced the aura of litigation so that students could be initiated into the practice of law by examining hypothetical cases as an academic exercise. Mock trials gave the students not only the opportunity to put into practice the skills and techniques they had learned from observation, but also those practices that they had learned from reading legal texts and from engaging in academic discussion on points of law. This type of exercise would have allowed the apprentices to practice their use of technical legal jargon and "Law" French. When students were not engaged in watching and noting legal proceedings, they received direct instruction from skilled attorneys in the Inns of Court.[116] Apprentices hoping for an eventual call to the bar

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[113] Paul Brand, *The Origins of the English Legal Profession,* pp. 110-111.
[114] Ibid., pp. 110-111; For later references of similar actions by judges see: Paul Brand, "Courtroom and Schoolroom: The Education of Lawyers in England Prior to 1400," *Historical Research* 142 (1987), pp. 147-65, especially p. 151.
[115] Herman Cohen, *A History of the English Bar and Attornatus to 1450,* p. 313.
[116] G.J. Turner, ed., *Year Books Series vol. VI,* p. xxxix.

usually spent a minimum of six or more years engaged in all of these various educational activities.[117]

In similar fashion to the university-trained canon or civil lawyers in the fourteenth century, students of common law attended the Inns of Court to learn the theory and practice of the royal courts' procedures. The difference between the legal training received by a scholar at a university as compared to at an Inn was minimal. In each instance, young men went to these institutions to learn the practice of law by reading authoritative texts, through personal attendance and observation in the courts, and by practicing their newly acquired skills by engaging in debates. Fortescue wrote that since the laws of England were learned in Latin, French, *and* English, they could not be conveniently taught in the universities where the Latin language predominated, and as a result the laws were "taught and learned in a certain public academy [the Inns of Court], more convenient and suitable for their apprehension than any University."[118]

The use of Latin in the universities was tradition, and we have already seen that Latin, universities, and the Church were interconnected in the Middle Ages. Just as Latin was used in the theological and academic realms of study, French as the language of the law was used in the realm of legal study at the medieval Inns. The perpetuation of traditional languages used in traditional domains served to maintain the linguistic status

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[117] Michael Van Cleave Alexander, *The Growth of English Education 1348-1648,* (London: Pennsylvania State University Press, 1990), p. 25; Senior apprentices, who were the advocates who were not yet serjeants, took their name of "barristers" from the place where they sat to observe court proceedings. These lawyers sat on the "bar," in the outermost places that were reserved for senior students who were called upon to argue at the moots or mock courts.

[118] Sir John Fortescue, *On the Laws and Governance of England,* p. 67; Samuel E. Thorne, ed., *Readings and Moots at the Inns of Court in the Fifteenth Century,* Selden Society 71, (London: B. Quaritch, 1954).

quo that had developed over the twelfth and thirteenth centuries and also helped to demarcate university-type training from other types of legal training available in the fourteenth century. The various forms of legal training in England at that time – including Chancery, universities, Inns, and apprenticeship – resulted in the creation of legal professionals who had different educational backgrounds and mildly different linguistic skills as a result of these scholastic variations. However, it is likely that legal colleagues who worked in the common law courts would not have felt that the laymen's education in French was at all inferior to the Latin schooling taught in the universities, because England's many legal professionals used their individual linguistic skills and legal training to perform many different functions within England's legal realm.[119]

iii) Professional development

One legal community

Within the framework of the Inns of Court it is clear that the legal profession bore many of the hallmarks of a trade or a "profession" by the late fourteenth century. This profession had an internal hierarchy and an elite, as well as requirements for competence and promotion.[120] Whatever the exact nature and location of the training at the Inns, it is clear that these hostels not only provided lodging and an education in law to their residents, but they also promoted a sense of collegiate ethos and contributed to a sense of professional solidarity among the apprentices and future common law judges and serjeants. Although Fortescue first mentioned the Inns of Chancery in the fifteenth century, it is likely that they existed earlier as the preparatory schools for the Inns of

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[119] Ralph V. Turner, *The English Judiciary in the Age of Glanvill and Bracton,* p. 34.
[120] Anthony Musson, *Medieval Law in Context,* p. 49.

Court. Fortescue described the Inns of Court as a type of legal university and did not at any point suggest that they were a recent development. According to G.J. Turner: "There can scarcely be a doubt that barristers and students were living together in Inns or hostels long before the days of Fortescue...nor that legal instruction of some sort was given in those hostels."[121] The Inns of Chancery were affiliated with one of each of the four Inns of Court and acted as feeder institutions. There, young students and apprentices received legal training and were organized into colleges. Thus Clifford's Inn, Clement's Inn and Lyon's Inn were affiliated with the Inner Temple; Staple's Inn and Barnard's Inn with Gray's Inn; the New Inn and Strand Inn with the Middle Temple, and Furnival's Inn and Thavia's Inn were associated with Lincoln's Inn.[122]

Through communal living and participation in learning a common body of rather arcane and privileged knowledge (in the similarly arcane and privileged languages of Latin and French), the Inns clearly did much to promote a strong sense of professional solidarity among the future functionaries of the king's courts.[123] Within the Inns of Court and Chancery, legal professionals could practice their unique linguistic skills through the composition of writs, attendance at the royal courts, and by practicing the law in the moot courts. Language may have helped the apprentices to develop a sense of professional legal identity since the only way to learn the practice of common law was through the Latin, French, and English that was used by the courts. In addition, it was logical for students of law to gather together in much the same way as other professionals did in the same period.

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[121] G.J. Turner, ed., *Year Books Series vol. IX,* (London: B. Quaritch, 1926), p. xli.
[122] E.W. Timberlake, "Origin and Development of Advocacy as a Profession," *Virginia Law Review*, 9:1 (Nov., 1922), p. 32. fn. 20.
[123] Anthony Musson and W.M. Ormrod, *The Evolution of English Justice,* p. 30.

Group solidarity was important not only because it could give the apprentices a sense of comfort and protection, but also because a legal apprentice held no power or influence as an individual. However, as a group, the collective voice of apprentices could not be ignored. Evidence of this exertion of power can be found in the apprentices' petition to Edward II that requested a second crib in court. Communal living was also a microcosm of the greater legal world in which these men worked. Regardless of their future functions within the legal community, young clerks and apprentices received similar training early in their careers that would have helped to solidify their sense of professional fraternity. The collegiality that must have resulted from working and living in close proximity to each other helped legal professionals to differentiate their own community from those of other fraternal organizations. To this extent, communal living reinforced the closed professional environment of the law, which was further isolated by its practitioners' specialized use of Latin and French.

The Year Books

At the Inns, we know that the legal apprentices worked to compose reports on what they observed in the royal courts. These reports were compiled into what are now commonly known as the Year Books,[124] which are a collection of England's earliest law reports that contain a record of the legal proceedings in the common law. The Year Books present a fairly detailed account of the arguments that took place in court between

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[124] The Year Books appear in numerous volumes published by the Selden Society. The first volume was edited by F.W. Maitland, *Year Books of 1 and 2 Edward II, vol. I,* (London: Bernard Quaritch, 1903); The most recent volume appears in 2002 and was edited by J.H. Baker, *The Year Books of 12-14 Henry VIII,* (London: Selden Society, 2002).

the counsel and the judges. They often omit any mention of the decisions made on any of the points discussed or of the final decisions rendered on the cases, indicating that it was not the judgements that were of interest to the compilers of the Year Books, rather it was the processes of the court and the arguments presented that warranted preservation. As an historical source, the Year Books illuminate the whole body of law as administered by the central courts and speak to the procedures used by later medieval lawyers and judges. They are extant in a continuous series from 1268 to 1535, covering the reigns of Edward I (1272-1307) to Henry VIII (1509-1547).

The Year Books were composed in both Latin and French, which is significant owing to the fact that this illustrates that legal professionals used these as their languages of written record. While we do not know for certain who wrote the Year Books, the languages used by their authors indicate that legal professionals wrote these texts for the explicit use of other legal professionals – or at the very least for those who were literate in Latin and French. The most logical explanation for this explicitly organized production of legal records is that of education. Therefore, it is reasonable to assume that the members of the Inns of Court produced the Year Books for their own edification.[125] It does seem that the Year Books were produced under professional guidance for the future instruction and use of common law students.[126]

The languages found in the Year Books also reflect that these were the languages of written law and legal literature in general, as English continued to be a primarily oral language in the fourteenth century. Writing the Year Books in Latin and French helped to maintain the linguistic specialization of the law; not only was it practice for the authors to

[125] G.J. Turner, ed., *Year Books Series vol. IX,* p. xli.
[126] Ibid., p. xli.

write in these languages, but it also suggests the texts were meant for other legal professionals and administrators to read, rather than the general public. Thus, the esoteric nature of the law and its written languages helped to create and maintain the linguistic difference between legal professionals and those outside of the legal realm because precious few others knew these legal languages as well as the specially trained individuals who formed this exclusive judicial community.

It has been well established that the Year Books were not produced for use or citation as legal precedents in courtroom proceedings.[127] Rather, they were essentially practical works that were most likely used by legal professionals to refer to the content of past cases put before the courts, and the evidence presented, instead of using them as sources of precedents. This explains why the verdicts were left off of the Year Books, as these were not considered to be record-books, but purely as pedagogical texts. Students of law who had successfully mastered the forms of writs and the broad principles of pleading could hardly do better than to study past cases in order to expand their practical knowledge of legal procedure in the courtroom.[128] It is for this purpose that the Year Books were apparently put together, and is certainly justification for the authors' use of Latin and French.

The abrupt cease in production of other instructional treatises written in Latin such as *Fet Asaver,*[129] *Hengham Magna,* and *Hengham Parva*[130] around the same time as

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[127] A.K.R. Kiralfy, *Potter's Historical Introduction to English Law,* 4th ed. (London: Sweet & Maxwell, 1958), p. 271; G.J. Turner, ed., *Year Books Series vol. IX,* p. xl.
[128] G.J. Turner, ed., *Year Books Series vol. IX,* p. xl.
[129] "Fet Asaver," *Four Thirteenth Century Law Tracts,* ed. George Edward Woodbine, (New Haven: Yale University Press, 1910), pp. 53-115.
[130] Hengham's summas can be found in Fortescue's compilation: Sir John Fortescue, *De laudibus legum Angliæ. Written originally in Latin by Sir John Fortescue ... Translated*

the beginning of production of the Year Books is further evidence that the Year Books were used by students and intended for legal instruction. With the exception of some new and revised versions of *Novae Narrationes*[131] (a manuscript dating from the early reign of Edward II, *c.* 1312), and *Brevia Placitata* (first version dates from *c.* 1260), no new works of instruction of any importance were produced in the fourteenth century.[132] Even the beginner student would have needed something more than the works of Henry de Bracton, *Britton,* the *Registrum Brevium,*[133] and a few other thirteenth-century tracts to properly study law and legal procedure as it had evolved by the end of the thirteenth century.[134] The Year Books met that need by recording for posterity the actual actions and manoeuvres of common law legal actors. By creating reports on the proceedings of the royal courts, other students could examine the procedures used by the senior lawyers and serjeants to determine which techniques were most effective in winning past cases.

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into English, illustrated with the notes of Mr. Selden, ... To which are prefix'd Mr. Selden to the reader, and a large historical preface. To the whole are added the preface of the first editor, with the testimonies of Bale, Pitts, and Du Fresne; the Summs of Sir Ralph de Hengham Parva, ... and a copious index. 2nd ed. (London, 1741). Eighteenth Century Collections Online. Gale Group. [http://galenet.galegroup.com.proxy.bib.uottawa.ca/servlet/ECCO].

[131] Elsie Shanks and S.F.C. Milsom, eds., *Novae Narrationes,* Selden Society LXXX (London: Bernard Quaritch, 1963).

[132] G.J. Turner, ed., *Year Books Series vol. IX,* p. xl.

[133] *Registrum brevium tam originalium, quam judicialium,* (London: Printed by the assigns of Richard and Edward Atkins, 1687). Early English Books Online, 1641-1700; 1067:11. [http://gateway.proquest.com.proxy.bib.uottawa.ca/openurl?]; Elsa De Haas and G.D.G. Hall, eds., *Early Registers of Writs,* Selden Society LXXXVII (London: Bernard Quaritch, 1970).

[134] It should be taken into account that many more legal texts may have existed at the same time as those that are mentioned but evidence of them has not survived.

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This chapter has demonstrated that the legal professionals who worked in England's royal courts in the fourteenth century had a sense of belonging to one legal community that expressed its unity through its specialized use of languages. The education and training of legal professionals was particular to the type of work that each performed, and this work was in part characterized by the actor's level of proficiency in Latin, French, and English. The legal professionals who worked in the king's courts moved freely between the various high courts, and they came into contact with each other as they came from similar academic backgrounds where linguistic training was essential to their education and training – regardless of which legal specialization they would eventually settle on. The increased availability of common law legal education was made possible by the emergence of the Inns of Court and Chancery that were dedicated to training apprentices in the law, and in the languages that were used in the common law at this time. The linguistic ability of the apprentices was an essential aspect of their education as their ability to function as legal professionals was based on their knowledge of the spoken and written languages of the law. Although the various legal professionals eventually worked in their own specific domains, their comparable linguistic abilities helped them to serve complementary functions in the royal courts. The clear links between languages and legal professionals further support the connection between the Statute of Pleading and the actors who worked in the royal courts. Thus, as everyone involved in the writing and practice of the law were expected to have a certain proficiency in Latin, French, and English, all legal actors were affected by this linguistic legislation of the law in 1362.

CONCLUSION

The historiography of the Statute of Pleading has thus far presented it as a medieval example of an unenforceable law that failed to enact any change in the use of languages in the royal courts. The evidence that has been used to present this argument is flawed because we cannot know for certain whether the Statute ever influenced the languages of oral proceedings in the courts. In addition, we can be sure that the Statute never intended to propose English as a language of the court's written records, as has been claimed, especially if we consider the high level of linguistic specialization that existed among the legal professionals who worked in these courts at this time. In this matter, the majority of the Statute of Pleading's historiography has proved to be misleading because many scholars have failed to recognize that the text of the Statute as it appears on the Parliament roll cannot be taken at face value. It should not be interpreted superficially because the Statute also exists in another version that appears on the statute roll, which was a record that carried more legal authority.

In order to understand why the Statute of Pleading did not affect the written languages of the law in 1362 it is necessary to consider the larger social context of the legal culture in which the Statute was developed. The Statute of Pleading, in its Parliament roll version, was a piece of fourteenth-century legislation that, if followed to the letter, would have negatively affected all of the legal actors who worked in the royal courts at all of its levels – from the writers of the writs to the pleaders, to the hearers and adjudicators of the pleas. A study of the legal professionals who worked in the various royal courts allows us to propose a different hypothesis for why the Statute exists in two linguistically variable forms. It is imperative that the functions of legal professionals are

considered because this statute mainly affected these individuals and their ability to perform their jobs. As these people defined themselves by their knowledge of the law and of the languages of the law, any statute that suggested alterations to either of these skills would have posed a direct threat to their image and identification as a professional group. Thus, the Statute of Pleading's linguistic commentary present in the statute roll version reflects an assertion of the oral use of English in the royal courts at the same time that legal actors and their profession were increasingly defined by their ability to apply specific linguistic skills to their specialized legal work. By considering the social and linguistic factors present within the legal profession as a whole, we have considered how languages and the law came together in the common law realm in the mid-fourteenth century and learned how this in turn influenced the creation of the Statute of Pleading in each of its versions.

The professional and academic interaction between the Chancery clerks, lawyers, serjeants, and judges in this period has demonstrated how language was a means of reinforcing collegiality and establishing a focal point for mutual identification among legal actors in the common law courts. The addition of certain linguistic elements in the text of the Statute of Pleading on the statute roll – most notably the reference to the continued use of Latin – indicates that the clerk who enrolled the Statute recognized in the imprecise text of Parliament a potential threat to his social identity and sought to defuse it. This action can be considered to be an attempt on the part of a legal professional to preserve the customary roles of Latin, French, and English in the courts of law in order to protect his legal and linguistic spheres of knowledge and influence. The additions made to the text of the Statute of Pleading as it appears on the statute roll did

not make any alterations to the original legislative intent of the Parliament's decision to declare English as an oral language of legal proceedings. The most logical source for explaining why these linguistic additions were made to the Statute lies in the connection between fourteenth-century legal actors and the languages that they used in their professional duties. Therefore, the two versions of the Statute of Pleading directly correspond with two objectives. The first objective was diplomatic, as per W.M. Ormrod's political interpretation of the discrepancies between the texts of the Parliament and statute rolls' records. This thesis argues that the second goal was resistance to change, as legal actors sought to maintain and protect the linguistic specialization of their work by preserving the cachet of all three languages that were used in the legal profession.

Unfortunately, we may never know the identity of the person (or persons) responsible for determining the nature of the text of the Statute of Pleading as it appears on the statute roll. Instead, this thesis has proposed some suggestions for what may have motivated a legal actor to modify the text of the Statute. As Chancery was the medieval organization responsible for producing both the Parliament and the statute rolls, the role of the Chancery clerks in the production of these records should be taken into consideration. Additional research on the involvement of influential judges, like Chief Justice Shareshull, in the development of legislation in the fourteenth century is another avenue for future research that may shed further light on the contribution of legal professionals and adjudicators to the creation of the Statute of Pleading. Further investigation into the role of legal actors in the development and enrolment of statutes is

necessary before we can reach any conclusions on how the Statute of Pleading fits into the legal and linguistic history of England.

While the historiography of the Statute of Pleading has certainly contributed to our general understanding of its place in the linguistic chronology of the English language, the causes for discrepancies between the two versions of the legislation must be taken into consideration before any conclusions can be made on its role in the linguistic history of England. This thesis has proposed a new evaluation of the Statute of Pleading from a sociolinguistic perspective in order to understand why additional linguistic information can be found on the records of the statute roll that is remarkably absent from the records of the Parliament roll. The Statute of Pleading served as a means for preserving the domains of legal actors as training in Latin, French, and English were essential languages for employment in the common law courts. These languages helped shape the identities of the legal professionals who worked in these institutions and defined their qualifications to fulfill their individual legal roles. Therefore, a sociolinguistic analysis of the Statute of Pleading is the key to our understanding not only the statute itself, but also the roles of languages in defining the professional status of legal actors and their legal authority. As a result of following this approach, this thesis has demonstrated that in order to fully understand the meaning and significance of the Statute of Pleading it is imperative to consider its impact on the legal actors who participated in England's legal culture, as well as the wider implications of attempting to legislate the languages of the law in 1362.

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20 Henry III, c. 10.

3 Edw. I, c. 29.

13 Edw. I, c. 10.

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