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Waifs and Strays: Property Rights in Late Medieval England

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Abstract

This article seeks to provide new insights into long-standing debates on lord-tenant relations and how they were negotiated through the manorial court in medieval England. This is accomplished through a study of the “stray system”: an institution within which lords and tenants cooperated to manage stray livestock. Specifically, the article argues that the stray system is a clear example of a “public good.” In this context, it was a social benefit provided by lords to their tenants as a collective. In a world where most of the population was reliant on an unproductive agriculture, subject to the vagaries of the environment, to provide a basic livelihood, any potential damage to a crop would have been a very real concern. However, in managing the threat of wandering livestock, the property rights of owners had to be clearly protected to avoid violent disputes stemming from accusations of theft and conflict over ownership. The manorial court’s management of strays provided an institution to resolve these countervailing pressures. Ultimately, it protected a community’s arable land – the most vital source of income for lords and tenants alike – whilst simultaneously assuring the property rights of those who had lost important capital assets in the form of livestock.

I

At the manor court of Little Downham (Cambs.), in a session held 27 September 1392, the lord’s reeve, Robert Rote, presented eight “stray” animals. He declared that “one mare, one brown mare with a foal, one grey mare with a foal, one grey female foal, and two black steers” had appeared inside the lordship around the feast day of the Decollation of St John the Baptist (29 August), about a month earlier. The court roll described these animals as “*de ext(ra)*,” and declared that no one had yet come to claim them. Therefore, the court ordered that the discovery of these stray

¹ We are grateful to feedback received at the following meetings: The Economic History ‘Brown Bag’ seminar and ‘Sowing the Seeds VI’ workshop at LSE; the Oxford Medieval Economic and Social History Seminar; the 2018 Economic History Society Conference; the University of Groningen Economics Seminar and the Cambridge Medieval Economic and Social History Seminar. We are grateful to Alan Rose for providing examples from the manor of Willington and Jean Birrell for providing examples from the manor of Alrewas. We are also grateful to Mark Bailey, Jean Birrell and Patrick Wallis who read earlier drafts of this article and provided many expert comments. As always, any errors are our own.

beasts was to be advertised (or “proclaimed” in the legal jargon) around the local community.² The story was continued in the following court two months later. On 5 December, William Lutgate of Doddington came with “six hands” to prove ownership of one of the horses, a “whitblakspotty” mare. William paid a fee of 12d. to the lord and the mare was released to him.³ However, the remaining seven animals remained unclaimed, and an official was ordered to proclaim them once more. This happened again in courts of February and July 1393.⁴ It was not until a court of 1 September 1393 that the story ends. Having remained unclaimed inside the lordship of Little Downham for a year and a day, the court stated that the animals would become the lord’s property as forfeited chattels.⁵

Events like these were not occasional curiosities; the narrative outlined above is simply one example of a process that played out thousands of times in manor courts across late medieval England. Even a superficial examination of manorial documents reveals that, for rural communities, stray animals were an ever-present nuisance of everyday life. The frequency of references in court rolls illustrates just how much time manorial courts spent administering the stray system,⁶ and the sheer number of bylaws dealing explicitly with the management of loose livestock⁷ reveals the deep concern medieval communities shared about animals damaging their crops. From the lord’s perspective, strays were not only a threat to open-field crops sown by them and their tenants but were also a significant potential source of livestock for their own demesnes (lords’ personal farms, as opposed to the lands of their tenants).⁸ However, despite the centrality of stray animals to medieval rural life, the precise origins of these beasts and the nature of the system that administered them remains poorly understood.⁹

² Cambridge University Library (hereafter CUL), Ely Diocesan Records (hereafter EDR), C11/1/3, m.30, 27 Sep 1392.

³ CUL, EDR, C11/1/3, m.31, 5 Dec. 1392.

⁴ CUL, EDR, C11/1/3, m.31, 28 Feb. 1393; C11/1/3, m.31, 1 July 1393.

⁵ CUL, EDR, C11/1/3, m.32, 1 Sept. 1393.

⁶ The manor court at Little Downham dealt with stray animals so frequently that these cases account for up to 8 percent of all presentments made by officials from the 1310s to 1580s. This was not a regional phenomenon, as up to 22 percent of all presentments made at Worfield, in Shropshire, from the 1320s to 1590s concerned strays: CUL, EDR, C11/1/1-3, C11/2/4-6, C11/3/7-11; Shropshire Archives (hereafter SA), P314/W/1/1/34-831.

⁷ For example, out of 195 bylaws surveyed in Warren Ault’s authoritative study, thirty-three specifically concerned the management of horses. See: W.O. Ault, *Open-Field Farming in Medieval England: A Study of Village By-laws* (London, 1972).

⁸ Jordan Claridge, “The Role of Demesnes in the Horse Trade of Late Medieval England,” *Agricultural History Review* 65, no.1 (Spring 2017): 1-19, at 10, esp. Table 3.

⁹ This is despite recent interest in how medieval local communities administered analogous systems like shipwreck. See: Tom Johnson, “Medieval Law and Materiality: Finders, and Property on the Suffolk Coast, ca. 1380–1410,” *American Historical Review* 102, no.2 (April 2015): 407-32; idem, “The Economics of Shipwreck in Late Medieval Suffolk” in *Custom and Commercialisation in English Rural Society, 1300-1800*, ed. J.P. Bowen and A.T. Brown (Hatfield, 2016), 128-38.

This article has two aims. Through the analysis of a substantial sample of manorial court rolls, spanning the years 1274 to 1453 and containing a total of 1,781 court sessions, it first seeks to illustrate and explicate the “stray system.” We describe the legal framework which undergirded the system and explore its many levels of operation, from the royal franchises that granted the rights to claim strays to the courts that applied and mediated these rights on the manor, and finally to the individuals who worked in the system and made the system work. Secondly, we use the stray system to contribute to recent discussions over the role of manorial structures in village communities and what this reveals about lord-tenant relationships.

Specifically, the article argues that the stray system is a clear example of a “public good.” Although strays could be forfeit to the lord, and so appear to have been a seigniorial perk, our assessment of the operation and the economics of the stray system in practice reveals that lords and tenants collaborated together to provide this service for their community. Why was such a public good necessary on medieval manors? Stray animals represented a significant risk to the arable land held by both lords and tenants and thus managing them was of vital importance for the whole community. In a world where most of the population was reliant on an unproductive agriculture, subject to the vagaries of the environment,¹⁰ to provide a basic livelihood, any potential damage to a crop would have been a very real concern. Whilst in the modern period interventions such as the introduction of barbed wire protected private agricultural land and mitigated this problem, limited medieval technology and the communal nature of agriculture required a different solution.¹¹ However, in managing the threat of wandering livestock, the property rights of owners had to be clearly protected to avoid violent disputes stemming from accusations of theft and conflict over ownership. The manorial court’s management of strays provided an institution to resolve these countervailing pressures. Ultimately, it protected a community’s arable land – the most vital source of income for lords and tenants alike – whilst simultaneously assuring the property rights of those who had lost important capital assets in the form of livestock.

The following article is split into five sections. The first gives a brief survey of the historiography surrounding lord-tenant dynamics and the role of manorial structures in medieval England. The

¹⁰ For examples of recent scholarship which consider the economic impact of environmental factors in the medieval world see: Bruce M.S. Campbell, *The Great Transition: Climate, Disease and Society in the Late-Medieval World* (Cambridge, 2016), 1-29; Philip Slavin, “Market Failure during The Great Famine in England and Wales (1315–1317),” *Past and Present* 222, no.1 (February 2014): 9-49.

¹¹ For a discussion of the relationship between barbed wire and agricultural productivity in the nineteenth-century American plains see Richard Hornbeck, “Barbed Wire: Property Rights and Agricultural Development,” *Quarterly Journal of Economics* 125, no.2 (May 2010): 767-810.

second discusses the legal framework of the stray system. Next come the two key parts to the argument. Firstly, through a qualitative examination of the ways in which the franchise of strays operated, it is demonstrated that manor courts protected the rights of claimants, giving ample opportunity for original owners to retrieve their animals. It similarly shows that tenants were also heavily involved in the exercise of the franchise and collaborated with lords to make it work. Secondly, through a quantitative assessment of stray horses, which compares the income lords could derive from the stray system against the costs they could incur in administering it, we show that lords could not have profited from exercising their right to strays, demonstrating that they maintained this system for the benefit of their tenants rather than for direct economic gain. The final section concludes.

II

The relationship between lords and tenants has been a longstanding subject in the historiography of the late Middle Ages. A particularly influential interpretation, which chiefly developed in the post-war period, is a Marxist explanation of late medieval economic and social development which argues that the relationship between lord and tenants was the primary determinant of economic wellbeing.¹² This model proposes that the feudal mode of production fundamentally involved a process of “surplus extraction,” in which lords secured their incomes through expropriating the product created by their tenants.¹³ The form of this extraction, which varied between places and over time, consisted of some combination of rents and jurisdictional privileges.¹⁴ In this schema, the relations between lords and tenants were inexorably conflictual.¹⁵ At least some of these jurisdictional privileges could, it is argued, be levied at the lord’s will and thus had “an arbitrary and unexpected character.”¹⁶ Often, the lord’s manor court was seen as the primary instrument

¹² Phillipp R. Schofield, *Peasants and Historians: Debating the Medieval English Peasantry* (Manchester, 2016), 84-116; John Hatcher, “Lordship and Villeinage Before the Black Death: From Karl Marx to the Marxists and Back Again,” in *Peasants and Lords in the Medieval Economy: Essays in Honour of Bruce Campbell*, eds. Maryanne Kowaleski, John Langdon and Phillipp R. Schofield (Turnhout, 2015), 113-145, at 119-131; John Hatcher and Mark Bailey *Modelling the Middle Ages: The History and Theory of England’s Economic Development* (Oxford, 2001), 66-120; R.H. Hilton, “Introduction,” in *The Brenner Debate: Agrarian Class Structure and Economic Development in Pre-industrial Europe*, eds. T.H. Aston and C.H.E. Philpin (Cambridge, 1985), 2-5.

¹³ M. Dobb, “From Feudalism to Capitalism” in *The Transition from Feudalism to Capitalism*, ed. R.H. Hilton (London, 1976), 165; R.H. Hilton, “Peasant Movements in England before 1381,” *Economic History Review* 2nd ser.2, no.2 (1949): 117-36, at 118; idem, *Bond Men Made Free: Medieval Peasant Movements and the English Rising of 1381*, (London, 1973), 42; R. Brenner, “Agrarian Class Structure and Economic Development in Pre-Industrial Europe,” *Past and Present* 70, no.1 (February 1976): 30-75, at 31-2.

¹⁴ For a more detailed discussion of feudal incidents see: Mark Bailey, *The Decline of Serfdom in Late Medieval England: From Bondage to Freedom* (Woodbridge, 2014), 16-61.

¹⁵ Hilton, *Bond Men Made Free*, 61-2.

¹⁶ Hilton, “Introduction,” 5; idem, “Introduction”, in idem (ed.), *The Transition from Feudalism to Capitalism* (London, 1976), 15-7; idem, *Bond Men Made Free*, 84.

for the extraction of these rents and privileges. The court gathered information about who owed seigniorial dues and punished those who failed to render them, and therefore acted as a key tool of oppression.¹⁷

However, more recent contributions, written from both Marxist and revisionist perspectives, have tended to complicate this view of manorial institutions. A crucial focus has been on the role of custom as a constraint on lordship. These were local norms and practices which had developed over centuries and defined the rights of lords more specifically than theoretical legal entitlements.¹⁸ For example, Bailey has demonstrated that tallage, typically the right of lords to charge an extraordinary tax on their tenants, was not a “monetary facet of lordly power” that could be levied at will, as Hilton had claimed,¹⁹ but was, in reality, “neither arbitrary nor unpredictable” and “heavily influenced by custom.”²⁰ Local customs were a powerful force that acted to routinize and fix both the land rents and feudal dues that tenants could expect to pay to their lords.²¹ Significantly, manorial customs and courts provided a key channel through which tenants could define and shape custom and therefore were a crucial part of this process.²²

Other studies have challenged the notion of a strictly extractive lord-tenant dynamic by examining the ways in which manorial structures could work positively to serve the purposes of seigniorial tenants.²³ This new direction has partly been the result of a shift away from analysing peasants in terms of their relationship with lords, to examining them as economic actors engaged in a far wider network of market-based associations.²⁴ While historians working in a Marxist framework, such as Hilton, were always aware that peasants engaged in economic activities beyond paying rents to their lords,²⁵ newer studies in a “commercialisation” perspective have tended to emphasise this as

¹⁷ Christopher Dyer, *Lords and Peasants in a Changing Society* (Cambridge, 1980), 265; R.H. Hilton, *The English Peasantry in the Later Middle Ages: The Ford Lectures and Related Studies* (Oxford, 1975), 231-7; Hilton, “Peasant Movements,” 120.

¹⁸ John Hatcher, “English Serfdom and Villeinage: Towards a Reassessment,” *Past and Present* 90, no.1 (February 1981): 3-39, at 8-14; Mark Bailey, “Villeinage in England: a regional case study, c.1250-c.1349,” *Economic History Review* 62, no. 2 (May, 2009): 430-57, at 451-4; J.Z. Titow, *English Rural Society, 1200-1350*, (London, 1969), 58-60.

¹⁹ R.H. Hilton, *A Medieval Society: The West Midlands in the Later Middle Ages*, (London, 1966), 144-7; Hilton, *English Peasantry*, 199, 231, 237; Hilton, “Peasant Movements,” 119-20, 130.

²⁰ Mark Bailey, “Tallage-at-Will in Later Medieval England,” *English History Review* 134, no.566 (March 2019), 25-58, at 57.

²¹ S.H. Rigby, *English Society in the Later Middle Ages: Class, Status and Gender*, (Basingstoke, 1995), 29; Hatcher and Bailey, *Modelling*, 105.

²² Jean Birrell, “Manorial Customs Reconsidered,” *Past and Present* 224, no. 1 (August 2014): 3-37, at 33-7; Mark Bailey, *The English Manor, c.1200-c.1500* (Manchester, 2002), 174.

²³ J.A. Raftis, *Peasant Economic Development within the English Manorial System*, (Montreal, 1997), 11-27.

²⁴ Schofield, *Peasants and Historians*, 117-41.

²⁵ Hilton, *English Peasantry*, 37-53; Schofield, *Peasants and Historians*, 118-23.

a crucial driver of economic development in the late Middle Ages.²⁶ In making this case, these studies argue that many manorial structures and institutions actually helped peasants by creating a constructive environment for production, investment and trade.²⁷

A key example of this is Langdon's study of mills. Rather than seeing millsuit, the obligation of all tenants (as opposed to only unfree, or customary, tenants) to use the lord's mill, as a form of seigniorial extraction, Langdon demonstrated that millsuit violations are rarely recorded in court records, which suggests that this feudal incident was not heavily enforced. Langdon concluded that "Customers generally came to mills because they wanted to, not because they were forced there."²⁸ He went as far as to suggest that lords may have had a "paternalistic attitude to their tenants," and tenants may have actually appreciated the easy access to a local mill that many lords provided.²⁹

Langdon's exploration of the milling industry goes some way towards rehabilitating the image of the manor court. Courts provided a direct channel from tenants to lords through which the former could raise concerns to the latter about the unfair dealing of millers or even the need for the improvement or refurbishment of community mills.³⁰ Such a sentiment can be fitted into a wider literature which has examined the facilitative role that courts could have in medieval English village communities.³¹ This could work on both individual and collective levels. In terms of individual tenants, the manor court had a significant role, most pronounced in East Anglia, in transferring customary land (the land of unfree, or villein, tenants as opposed to free tenants).³² This was achieved both through sale in an active land market and via flexible inheritance mechanisms, such as deathbed transfers, which allowed tenants to fashion complex inheritance strategies.³³ For both

²⁶ R.H. Britnell, *The Commercialisation of English Society, 1000-1500*, 2nd ed., (Manchester, 1996), xiii-xvi, 228-38; John Langdon and James Masschaele, "Commercial Activity and Population Growth in Medieval England," *Past and Present* 190, no. 1 (February 2006): 35-81; Hatcher and Bailey, *Modelling*, 121-73.

²⁷ Hatcher and Bailey, *Modelling*, 139-42. See the work of Richard Britnell who argued that lords were important pioneers in establishing markets through the purchase of royal franchises in this period. Richard H. Britnell, "The Proliferation of Markets in England, 1200-1349," *Economic History Review* 34, no. 2 (May 1981), 209-21; idem, *Commercialisation*, 230-3.

²⁸ John Langdon, *Mills in the medieval economy: England 1300-1540*, (Oxford, 2004), 283-7.

²⁹ Ibid, 290. Britnell also argues for this notion of "paternalism" his discussion of the establishment of smaller markets by lords. Britnell, "Proliferation of Markets," 221.

³⁰ Spike Gibbs, "Lords, Tenants and Attitudes to Manorial Officeholding, c.1300-c.1600," *Agricultural History Review* 67, no. 2 (Winter 2019), at 155-74, at 166-7; Langdon, *Mills*, 183-4, 290

³¹ Sherri Olson, *A Chronicle of All Happens: Voices from the Village Court in Medieval England*, (Toronto, 1996), 21-6.

³² Chris Briggs and Phillip R. Schofield, "The Evolution of Manor Courts in Medieval England, c.1250-1350: The Evidence of the Personal Actions," *Journal of Legal History* 41 no.1 (February 2020): 1-28, at 2; Bruce M.S. Campbell, "Population Pressure, Inheritance and the Land Market in a Fourteenth-Century Peasant Community," in *Land, Kinship and Life-cycle*, ed. R.M. Smith (Cambridge, 1984), 87-134, at 107.

³³ P.D.A. Harvey, "Conclusion", *The Peasant Land Market in Late Medieval England*, ed. P.D.A. Harvey (Oxford, 1984), 328-56, at 349-53; Lloyd Bonfield and L.R. Poos, "The Development of the Deathbed Transfers in Medieval

free and unfree tenants, manor courts also provided a forum for cheap and easily-accessed interpersonal litigation.³⁴ Ultimately, this allowed tenants to enter into enforceable contracts which, in turn, fostered the growth of an array of economic activities such as a burgeoning peasant credit market.³⁵ Tenants also used manorial courts for a wider array of collective processes such as registering and enforcing bylaws. These were sets of regulations drawn up by village communities concerning common lands, grazing rights and other collective concerns. The manor court was the primary venue that dealt with these issues in the late fourteenth and fifteenth centuries.³⁶ Thus, historiography has shifted in recent years to seeing the manor court as a vital institution which provided tenants with an array of commercial opportunities whilst also ensuring collective protections of common resources.

Lords did generate revenues from all of the “services” discussed above. They took fees for land transfers, charged for hearing interpersonal suits, and were paid for use of their mills. However, there is a growing realisation that manorial institutions, particularly courts, played a positive role in village communities. They did so not only by providing ways for tenants to constrain lords using the power of custom, but also by facilitating a range of processes essential to the day-to-day economic and social lives of rural inhabitants. In this latter role, rather than providing an arena of conflict or oppression, courts helped to create a commonality between lords and tenants, who collaborated to achieve the common objective of providing an institutional environment conducive to agricultural production and commerce.

III

The argument we present here is that the strays “system” offers a case that powerfully illustrates how lords and tenants could use manorial institutions cooperatively to facilitate economy activity. Firstly, however, we need to understand how the system fitted into the broader legal culture of the time. Whilst every manorial lord had the right to hold a manor court, not every lord had the right

English Manor Courts” in *Medieval Society and the Manor Court*, eds. Zvi Razi and Richard Smith (Oxford, 1996), 117-42; Jane Whittle, *The Development of Agrarian Capitalism: Land and Labour in Norfolk 1440-1580*, (Oxford, 2002), 167-77.

³⁴ Briggs and Schofield, “Evolution of Manor Courts,” 2, 5-6; Idem, “Understanding Edwardian Villagers’ Use of Law: Some Manor Court Litigation Evidence,” *Reading Medieval Studies*, 40 (2014), 117-39, at 128; Zvi Razi and R.M. Smith, “The Origins of the English Manorial Court Rolls as a Written Record: A Puzzle” in *Medieval Society* ed. Razi and Smith, 36-68, at 45-68.

³⁵ Chris Briggs, “Manor Court Procedures, Debt Litigation Levels, and Rural Credit Provision in England, c.1290-c.1380,” *Law and History Review* 24, no. 3 (Fall, 2006): 519-58, at 550-8; idem, “The Availability of Credit in the English Countryside, 1400–1480,” *Agricultural History Review* 56, no. 1 (Spring, 2008): 1-24, at 24.

³⁶ W.O. Ault, “Open-Field Husbandry and the Village Community: A Study of Agrarian By-Laws in Medieval England,” *Transactions of the American Philosophical Society* 55, no. 7 (October, 1965): 1-102, at 11-54; idem, “The Vill in Medieval England,” *Proceedings of the American Philosophical Society* 126, no.3 (Jun, 1982): 188-21, at 195-7.

to claim stray animals. This particular entitlement was part of a larger set of privileges, called franchises, which typically belonged to the crown, but could be granted to lords or claimed by them through immemorial usage.³⁷ The famous legal treatise *Bracton* places the franchise of strays alongside wrecks and great fish as *res nullius*: things that “belong to the lord king because of his privilege or to those whom the king has granted such liberty.”³⁸

Other franchises included relatively common grants such as the view of frankpledge and the assize of bread and ales. The former allowed lords to administer the tithing system, a law and order mechanism which made ten men responsible for their fellows’ behaviour,³⁹ while the latter empowered lords to monitor and regulate the sale of bread and ale. However, some franchises were more unusual. The right to take strays was an exalted privilege, alongside return of writs (allowing the lord to perform duties usually undertaken by royal officials), *infangthief* (allowing the lord to hang thieves caught red-handed within the manor), *outfangthief* (allowing the lord to hang inhabitants of the manor even if they committed crimes abroad), felony forfeiture (allowing lords to take both stolen goods and the chattels of convicted felons) and wreck (allowing lords to profit from items washed up from the sea).⁴⁰ These more privileged franchises often came as a package.⁴¹

How was the franchise of stray exercised? Setting a trend which later writers would follow, *Bracton* wrote simply that stray livestock must be animals “which no one pursues, claims or avows.”⁴² *Britton* provides more detail. He places strays within the category of “those things lost and found above ground.” More importantly, he defines a specific window of time for reclaiming lost livestock. He states that “if the owner demand them within *the year and day*, and can prove them to

³⁷ F. Pollock and F.W. Maitland, *The History of English Law before the Time of Edward I*, vol. I (Cambridge, 1895), 558-9; J.H. Baker, *Introduction to English Legal History*, 5th edn., (Oxford, 2019), 31, 413-4; D.W. Sutherland, *Quo Warranto Proceedings in the Reign of Edward I: 1278-1294*, (Oxford, 1963), 3-6.

³⁸ *Bracton on the Laws and Customs of England*, ed. Samuel E. Thorne, vol. II (Cambridge, Mass., 1968), 339.

³⁹ Sutherland, *Quo Warranto*, 3; Phillipp R. Schofield, “The Late Medieval View of Frankpledge and the Tithing System: An Essex Case Study,” in *Medieval Society*, eds. Razi and Smith, 408-49, at 408.

⁴⁰ F.W. Maitland and F. Pollock, *The History of English Law before the Time of Edward I*, vol. I (Cambridge, 1898), 567-72; Michael Clanchy, “The Franchise of the Return of Writs,” *Transactions of the Royal Historical Society*, 17 (December, 1967): 59-82; J.B. Post, “Local Jurisdictions and the Judgement of Death in Late Medieval England,” *Criminal Justice History* 4 (1983): 1-21; Baker, *English Legal History*, 543; Spike Gibbs, “Felony Forfeiture at the Manor of Worfield, C.1370-C.1600,” *Journal of Legal History* 33, no. 3 (November, 2018): 253-77; Johnson, “Medieval Law and Materiality”; Johnson, “Economics of Shipwreck.”

⁴¹ See for example: Eileen Power, *Medieval English Nunneries c.1275-1535*, (Cambridge, 1922), 103-4; “Henry VI: January 1442,” in *Parliament Rolls of Medieval England*, eds. C. Given-Wilson *et al.* (Woodbridge, 2005); F. Blomefield, *An Essay Towards A Topographical History of the County of Norfolk*, vol. 4 (London, 1807), 108-111; *Cal Close Rolls, Richard II*, 2, 631-635; F.M. Page, *The Estates of Crowland Abbey: A Study in Manorial Organisation*, (Cambridge, 1934), 17.

⁴² *Bracton*, 339.

be his property, they shall be delivered to him.”⁴³ Alternatively, “waifs or estrays, not challenged within the year and day, shall belong to the lord of the franchise.”⁴⁴ The text goes on to emphasise that forfeiture to the lord was only legitimate if the animal had been clearly proclaimed throughout the 366-day period, outlining that “if the lord did not cause the beast so found to be publicly cried in manner aforesaid, then no time shall be run against the owner of the thing or beast, to bar him from replevying it whenever he pleases.”⁴⁵ So, according to *Britton*, for a lord to claim a stray legally, they had to: 1) Keep claimed beasts for 366 days and, 2) Ensure that word of the animal’s discovery was appropriately advertised for this period. Only then, if the animal remained unclaimed, would it become the legal property of the claiming lord.

Importantly, lords could only exercise the franchise of stray (as with all other such franchises) within the boundaries of their own manor.⁴⁶ This is exemplified in 1394 at Little Downham (Cambs.) when the manor’s jury specifically defined the territory in which the lord had the right to collect strays in the surrounding fenland.⁴⁷ The defining of such stray “catchment areas” could, and often did, lead to conflict between lords. This is seen in several conflicts noted in the Year Books over who could exercise the franchise of strays on a particular manor.⁴⁸ These disputes illustrate that not only did lords seek to protect their rights to strays, but also that the crown regulated lords’ claims to these privileges.

To exercise the franchise of strays illegitimately could incur heavy penalties. A trespass case from 1382 at the court of common pleas, replete with lords and their officials, illustrates this. The case hinged on who had the right to take strays within the vill of Shawell (Leics.). A stray mare was seized by William de Garton who was the bailiff of the Prior of the Hospital of St John of Jerusalem in England. However, Sir John de Crophill brought suit over this, claiming that he had the right to strays in Shawell and that his official had [lawfully] seized the mare before William had subsequently taken it.⁴⁹ William responded to this by arguing that, in his capacity as bailiff, he had

⁴³ *Britton: the French Text Carefully Revised with an English Translation, Introduction and Notes*, ed. Francis Morgan Nichols, vol. 2 (London, 1865-6), 67. Emphasis is our own. This was also the time period allowed to owners to reclaim goods that had been washed up as shipwreck. See Johnson, “Economics of Shipwreck,” 122.

⁴⁴ *Britton*, 67-8.

⁴⁵ *Ibid*, 68.

⁴⁶ Baker, *English Legal History*, 30; Sutherland, *Quo Warranto*, 3.

⁴⁷ CUL, EDR, C11/1/3, m.36, 3 Dec. 1394.

⁴⁸ Such conflicts occurred between the Abbot of Waltham and the Prebendary of St Paul’s in 1345 and in 1467 between the Prior of Spalding and a bailiff of the duchy of Lancaster. See: Year Books (YB), Easter 19 Edward III, fo.RS199-23, 43; YB, Trinity 7 Edward IV, fo.10b-12b, 2. At this point the duchy of Lancaster was in the crown’s hands.

⁴⁹ This claim to rights over strays took place in a wider dispute over jurisdiction with John de Crophill “not admitting that the prior...has any lordship or view of frankpledge in the aforesaid vill.” *Select Cases of Trespass from the King’s Courts, 1307-1399*, ed. M.S. Arnold, vol. 2, (London, 1987), 251-2.

lawfully seized the mare, on behalf of his lord, who held the right to strays. Ultimately, the court decided that John's bailiff had seized the mare lawfully within his lordship.⁵⁰ William was ordered to pay damages of 100s. for illegally attempting to exercise the franchise of strays where he was not entitled. Similar disputes are mentioned occasionally in manorial court rolls, when officials of one manor accused neighbouring manors of illicitly seizing strays.⁵¹ For instance, in 1307 at the manor of Wakefield (Yorks.), the court ordered that Sir Thomas de Burgh, a subtenant of the earl holding the nearby manor of Waleton be distrained for retaining two stray affers "because no one has waif in the Earl's liberty, save the Earl himself."⁵²

Disputes often hinged on identifying where an animal had first been taken as a stray. This was an issue in asserting property rights over possessions that could wander between manors. Some court rolls even record complaints about potential strays lost to rival local lords. For instance, in 1393, jurors at Tottenham Pembrokes (M'sex.) presented that an exceptionally valuable grey horse had appeared on the manor in May, but that it had then escaped into an adjacent manor held by Adam Franceys, where it was arrested by Adam's bailiff.⁵³ From the other perspective, at Bradford (Yorks.) around 3 May 1360, the bailiff arrested a stray horse and placed it in the manor's common pasture. Subsequently, around 25 December, this same horse was taken by the bailiff of the neighbouring manor of Morley. The bailiff of Morley came to Bradford's manor court and argued that he was justified in taking the animal because it had first wandered in a place called "Renstagh outside Bradfordale" before 3 May and he had arrested the stray "in the park of...Morley."⁵⁴

The legal history of the franchise of strays remains a topic that could be fruitfully subjected to further analysis.⁵⁵ However, for the purposes of this article, three relevant and important conclusions arise from this brief investigation. Firstly, the right to take strays was often held by the most powerful lords, often in combination with a portfolio of other rights. If any lords could have squeezed a surplus from their tenants, it would surely have been those with these extensive legal rights. Secondly, lords were active in defending their rights to strays. They utilised both their manor courts and royal jurisdictions to exercise their franchises and to resolve disputes where strays had

⁵⁰ Ibid.

⁵¹ CUL, EDR, C11/1/6, m.29, 12 July 1440; CUL, EDR, C11/1/3, m.36, 3 Dec. 1394. Obviously, these cases are subjective. Such seizures would only be illegal from the perspective of the lord in whose court it was presented.

⁵² *Court Rolls of the Manor of Wakefield 1297 – 1309*, ed. W.P. Baildon, (Cambridge, 1906), 42, 67, 70, 80.

⁵³ *Court rolls of the manors of Bruces, Dabeneys, Pembrokes (Tottenham): 1 Richard II to 1 Henry IV (1377-1399)*, ed. R. Oram (Tottenham, 1961), 282.

⁵⁴ The National Archives, London (hereafter TNA), DL 30/129/1957, m.51, 12 Nov. 1360.

⁵⁵ In particular, although beyond the scope of this article, it would be interesting to know more about how stray animals were treated in areas where the right to collect them remained with the crown.

crossed manorial boundaries. Thirdly, legal theorists had clear guidelines on how the franchise of strays should be exercised. Of course, legal theory does not necessarily reflect legal practice. In the next section, this issue is addressed by close examination of the way strays were processed through manorial courts.

IV

There were essentially four fundamental stages to the stray system. If the most direct route was followed, a stray was found, presented in court, advertised to neighbouring communities, and finally either claimed by its owner or, if unclaimed for year and a day, forfeit to the lord. There were, however, a number of local peculiarities on any given manor as well as multiple opportunities for individuals to try to cheat the system. Both of these factors could complicate the process. In all cases, the aims of the stray system seem to have been remarkably similar; the core idea was to ensure that the process was sufficiently public and transparent so as to give the owners of lost beasts ample opportunity to find and reclaim them. In the following section, we draw on a range of qualitative evidence from court rolls to reconstruct the complex processes of the stray system, illustrated in Figure 1, as it was administered by manor courts.

The starting point for all cases was for a stray animal to be found within a lordship. This could happen in two ways: either through an *ad hoc* discovery or via an organised search for unidentified livestock.⁵⁶ In terms of the former, larger animals, such as horses and oxen, were often found on common land. For example, in Wakefield, a suspected stray ox was described as “wandering in the great wood.”⁵⁷ Strays could also be discovered when they appeared on the lord’s land, such as when pigs “came into the lord’s park as strays.”⁵⁸ Some manors also carried out systematic searches for strays. This practice was most prevalent at manors with large waste and/or common lands. For example, at Little Downham, a manor located within the vast fenland around the Isle of Ely, strays were frequently found on the large fen commons. Here, strays were identified through annual drives, performed by the community of tenants, where all unclaimed livestock were collected and

⁵⁶ Unfortunately, the records do not generally provide much detail about the former process, although strays seem to have been found in common areas, on peasants’ property or on the lord’s land. For example, in several cases of “stray” bees, the court at Worfield noted that these had been found in the trees of various tenants, presumably as hives migrated. See: SA, P314/W/1/1/151, 17 Oct. 1384; P314/W/1/1/156, 5 Oct. 1385; P314/W/1/1/184, 2 Dec. 1392; P314/W/1/1/254, 4 Oct. 1419.

⁵⁷ *Court Rolls of the Manor of Wakefield 1315 – 1317*, ed. J. Lister (Cambridge, 1930), 157.

⁵⁸ *The Court Rolls of the Manor of Wakefield from October 1338 to September 1340*, ed. K.M. Troup, (Leeds, 1999), vol. 12, 12.

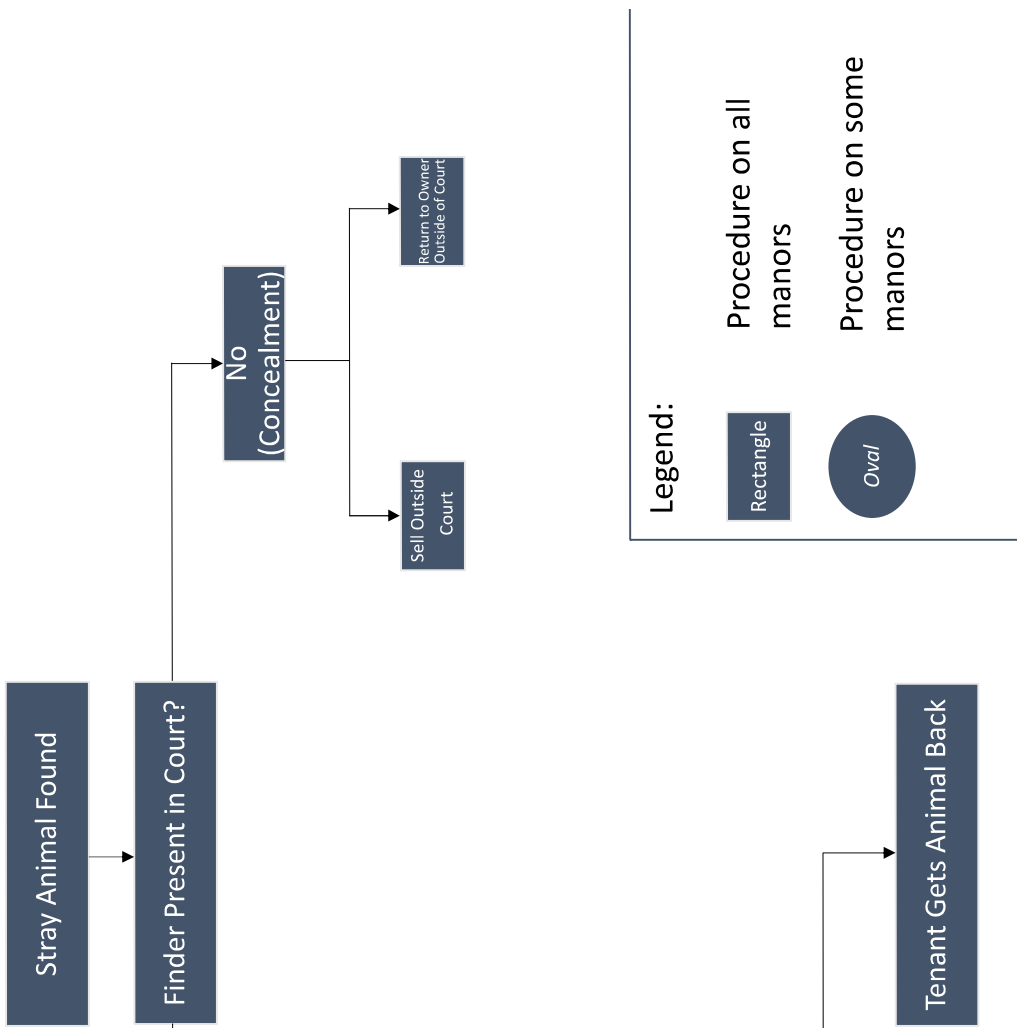
identified.⁵⁹ At other times, strays were identified not through an actual “round up” but through a systematic bureaucratic inquiry. The process did not require the physical presence of the animals at a court session but instead officials simply created a written memorandum documenting the stray’s appearance. Officials at Downham made use of both strategies, and juries regularly made inquiries into strays which had recently come onto the manor.⁶⁰ For instance, in 1428, the jury were ordered to “inquire of all strays existing inside this lordship both inside the park and inside the marsh.” These animals were then meant to be presented at the next court.⁶¹

⁵⁹ CUL, EDR, C11/2/6, m.28, 4 Oct. 1435; C11/2/6, m.31, c.8 Sep 1439; C11/2/6, m.39, 3 Sept. 1447.

⁶⁰ CUL, EDR, C11/2/6, m.26, 30 Sept. 1434; C11/2/6, m.31, c.8 Sept. 1439.

⁶¹ CUL, EDR, C11/2/6, m.14, 22 Sept. 1428.

Figure 1: Flow Chart of Stray System



Once a stray animal was found, the discovery needed to be “registered” at the next session of the manor court.⁶² Sometimes this actually involved bringing the animal to the session, perhaps to ensure that it could be identified by the community. In 1297, Adam Francis was ordered to bring a set of pigs “thought to be strays” to the next court at Wakefield, and similar orders were given at various sessions at this manor between 1307-38.⁶³ This public registration of strays had several benefits for lords. Perhaps most importantly, it identified the existence of an asset in their lordship which they could potentially later claim as their own property. But it also meant that lords could establish, where, and with whom, the animal was being kept, and therefore assign responsibility if an animal was subsequently injured or lost. Such concerns can be seen in inquiries into the death of strays at Worfield and Downham.⁶⁴ At Worfield in 1385, a former reeve was amerced 12d. “for negligence” because “at the time he ought to have guarded...an ox.”⁶⁵ Any ambiguity over the provenance of strays created problems. A 1275 case from Wakefield involved a stray which had not been properly taken and presented. This meant that it was hard to establish who was ultimately responsible for its loss. Initially, the entire township of Walton, a village within the larger manor of Wakefield, was ordered to answer for a stray bullock “that [had been] among them” for around four months between the feast of St. Giles and Christmas, but had “afterwards [been] sent away by them.”⁶⁶ In the subsequent court, the township responded to this accusation by arguing that, whilst the stray had been present “going about in the town and in the fields,” it “was not in anybody’s custody who could be made responsible for it.” The stray had then been seized by Ralph Pykard (via his servant) from nearby Normanton, a village *outside* Wakefield. Ralph’s servant was therefore held responsible, allowing the township to be absolved of any wrongdoing.⁶⁷

At several manors, this registration process explicitly involved a valuation of the animals. This could occur even before a beast was necessarily forfeit to the lord.⁶⁸ At Worfield and Downham it is on occasion explicitly stated that these valuations were made in court by manorial juries or tenants.⁶⁹ These initial valuations were presumably undertaken so that any loss could be charged

⁶² The court rolls usually use the term “presented” for this process, but we have called it “registration” here to avoid confusion with the separate process of “proclaiming.”

⁶³ *Court Rolls of the Manor of Wakefield 1274 – 1297*, ed. W.P. Baildon (Cambridge, 1901), 7, 70; *The Court Rolls of the Manor of Wakefield from October 1331 to September 1333*, ed. Sue Sheridan Walker, (Leeds, 1983), vol. 3, 19, 192; *Manor of Wakefield*, ed. Troup, vol. 12, 19.

⁶⁴ SA, P314/W/1/1/244, 28 Oct. 1415; CUL, EDR, C11/1/2, m.14, 2 May 1365; C11/2/4, m.18, 18 Feb. 1408; C11/2/5, m.15, 3 Dec. 1420; C11/2/6, m.9, 19 July 1426; C11/2/6, m.16, 12 July 1429; C11/2/6, m.21, c.1432; C11/2/6, m.35, c.1443.

⁶⁵ SA, P314/W/1/1/154, 12 Apr. 1385.

⁶⁶ *Manor of Wakefield 1274 – 1297*, ed. Baildon, 135.

⁶⁷ *Ibid.*, 140.

⁶⁸ *Tottenham*, ed. Oram, 8, 54, 58, 106, 160, 233; BL Add. MS. 63432, 10 Nov. 1320.

⁶⁹ SA, P314/W/1/1/68, 8 May 1368; P314/W/1/1/154, 12 Apr 1385; CUL, EDR, C11/2/6, m.46, 5 Mar. 1450; m.50, 4 Mar. 1455.

to the person holding the animal if a defect of care occurred. For example, in 1413 the reeve of Worfield was ordered to exact a fee of 12d. from William Preests, the value of a horse in William's guard that had "ran off by negligence of the same William."⁷⁰ Valuing a stray shortly after it was found also worked to prevent fraud by officials. Accordingly, in 1393, the court at Worfield ordered that a former reeve, Thomas de Rugge, pay 4s. because he had rendered only 7s. for a stray cow, which had been valued at 11s. in his account.⁷¹ Similarly, in 1308 at Wakefield, a grave was amerced 24d. for "concealment." This was because he had not charged himself in the court roll for a stray horse he had purchased for himself or for another stray horse he had sold.⁷² Finally, valuation also helped lords recover the value of strays that fell into the hands of outsiders, either by accident or sometimes by deliberate theft.⁷³ For instance, when the jury at Tooting Bec (Surrey) presented that Richard Bradwatere had carried off a stray hog, the lord could order that its value of 16d. be claimed from Richard's goods and chattels. This meant that even if the stray was gone its value could still be realised.⁷⁴

Despite the registration and valuation mechanisms, the administration of the stray system could be vulnerable to fraud. Court rolls reveal a range of presentments against officials who attempted to circumvent procedure in the manor court in order to profit from stray animals directly.⁷⁵ For instance, at Worfield, in part of a larger set of abuses, Thomas Jenkins, a former reeve, was found to have "seized one cow...which came of an outsider or of stray, which...he did not present in the court."⁷⁶ Then, "without warrant of the steward or...council of the lord [he] delivered the [stray] cow out of the liberty." Similarly in 1410 at Downham, the reeve, Thomas Colleson, delivered two stray bullocks "without claim in court."⁷⁷ In both these cases, the lord's officials circumvented the stray system and simply gave the animals back to their original owners, presumably pocketing the fee owed to the lord for themselves.

Officials could also commit fraud by selling stray animals for their own profit. For example, at Wakefield in 1275, it was found that the lord's sergeant, among other illicit activities, had sold a stray sheep forfeit to the lord. Thomas Colleson, noted above, committed a similar fraud at

⁷⁰ SA, P314/W/1/1/241, 9 May 1413.

⁷¹ SA, P314/W/1/1/212, c.1393; Gibbs, "Lords, Tenants and Attitudes," 161.

⁷² *Manor of Wakefield 1297 – 1309*, ed. Baildon, 157.

⁷³ *Tottenham*, ed. Oram, 282; *Manor of Wakefield 1297 – 1309*, ed. Baildon, 2; *Manor of Wakefield*, ed. Walker, vol. 3, 148; TNA, DL 30/129/1957, m.51, 12 Nov. 1360; CUL, EDR, C11/2/4, m.27, 1 Apr. 1411.

⁷⁴ *Court rolls of Tooting Beck manor* (London, 1909), 38.

⁷⁵ SA, P314/W/1/1/152, 30 Nov. 1384; CUL, EDR, C11/1/2, m.18, 14 Feb. 1369.

⁷⁶ SA, P314/W/1/1/234, 27 Sept. 1406; Gibbs, "Lords, Tenants and Attitudes," 163.

⁷⁷ CUL, EDR, C11/2/4, m.26, 4 Dec. 1410.

Downham when he sold a foal born of a stray horse at Ely market.⁷⁸ Defrauding a lord by abusing the strays system was not the preserve of officials alone; individual tenants did occasionally attempt to cheat the system as well. The easiest way for a tenant to abuse the system was to simply not report the discovery of strays in court.⁷⁹ At Wakefield, in 1315 and 1316, tenants were presented for taking and concealing stray animals.⁸⁰ Particularly audacious was the case of William de Godeley jr. who was presented at court for selling a stray ox at Wakefield. When the ox, for reasons left unstated, “returned to William’s house,” he sold it for a second time to *second* buyer.⁸¹ Such deliberate attempts to circumvent the system could be interpreted as an affront to the lord’s authority. Such cases were certainly described in these terms in the court rolls which, ultimately, reflect the lord’s perspective. However, we might also interpret such cases from the tenants’ point of view.

In cases like the ones discussed above, when a lord’s official circumvented the manor court, but still returned the stray animal to its original owner, the owner obviously stood to benefit from the evasion. In such a scenario, they likely colluded with the official and presumably paid a smaller fee than a lord would exact, or even no fee at all, to get their animal back. Individual tenants and officials would obviously stand to profit from such an arrangement. However, concealment would have had further-reaching negative effects on trust and cohesion within the larger village community and beyond. Ultimately, the stray system was designed to *return* lost animals to their *original* owners. For that to work it needed to be both public and transparent. Concealment, especially if the animal was sold outside the stray system by the concealer, would have deprived a tenant of the ability to reclaim an important capital asset and ultimately undermined the integrity of the stray system.

Once a stray animal was brought to the court and registered as stray, the system required it to be “proclaimed.” This essentially meant that news of the discovery had to be “advertised” or disseminated both inside the community in other nearby public forums, according to the law. This was the fundamental aspect of the stray system that allowed claimants to locate and recover their lost animals. How did this proclaiming process work? Whilst most court roll entries simply state

⁷⁸ *Manor of Wakefield 1274 – 1297*, ed. Baildon, 112; CUL, EDR, C11/2/4, m.26, 4 Dec. 1410.

⁷⁹ *Court rolls of Tottenham*, trans. Oram, 286; *Court rolls of the manor of Hales*, ed. J. Amphlett, pt.1 (Oxford, 1910), 264; TNA, DL 30/129/1957, m.17, 4 Oct. 1347; m.41, 6 Feb. 1357; SA, P314/W/1/1/233, 5 May 1405.

⁸⁰ *Court Rolls of the Manor of Wakefield 1313 – 1316*, ed. John Lister (Cambridge, 1917), 81; *Court Rolls of the Manor of Wakefield 1322 -1331*, ed. J.W. Walker, (Cambridge, 1945), 41, 128.

⁸¹ *Manor of Wakefield 1313 – 1316*, ed. Lister, 117.

that animals “are to be proclaimed,”⁸² “were proclaimed,”⁸³ or “having been proclaimed”⁸⁴ at Tottenham and Alrewas some entries are more prescriptive and explicitly mimic the precise language of the franchisal law, stating that proclamations should occur “in the market place and church.”⁸⁵ At the latter manor, one stray foal was claimed by the bailiff of the precentor of Lichfield after being “cried twice in Lichfield fair and three times in the church.”⁸⁶ Similarly, in 1327, the court at Wakefield ordered that Thomas Alayn, into whose care a stray steer was entrusted, was “to have it proclaimed for three days in the Wakefield market.”⁸⁷ In 1358, at Bradford, a stray was said to have been “multiple times proclaimed everywhere” whilst, in 1444, at Elmley Castle, strays had been proclaimed “in various foreign districts.”⁸⁸ These proclamations were effective in spreading news about strays as the information travelled across a relatively wide geographical area. Map 1 illustrates the impressive reach of these advertisements by plotting the home villages of individuals who came and successfully claimed strays at Little Downham’s manor court. As can be seen, claimants came from as far as ten miles away to recover their lost animals. This was a significant distance in the medieval world, and the round trip would have required a whole day’s travel.⁸⁹

⁸² CUL, EDR, C11/1/3, m.21, 27 July 1388; C11/2/4, 7 Apr 1402; C11/2/6 7 Apr. 1427; *Court Rolls of Elmley Castle, Worcestershire, 1347-1564* ed. R.K. Field (Worcestershire, 2004), 113.

⁸³ TNA, DL 30/129/1957, m.20, 17 Oct. 1349; Transcriptions by D. Jamieson: Bedfordshire Archives and Records Service (hereafter BARS), R Box 212, R8/62/1/1 m.2, 13 Oct. 1394; R8/62/1/3, m.3, 11 Oct. 1407; R8/62/1/4, m.7, 10 Oct. 1414; Court Roll 38a, 18 Nov. 1448 [accessed:bedsarchives.bedford.gov.uk/Community Archives/Willington/WillingtonManorCourtRolls.aspx].

⁸⁴ *Tooting Beck*, 64, 120, 220

⁸⁵ *Tottenham*, ed. Oram, 54, 58, 308; Staffordshire Record Office (hereafter SRO), D(W)O/3/9 m.5, 9 Jan. 1328; m.11, 14 May 1328; m.8, 6 May 1329.

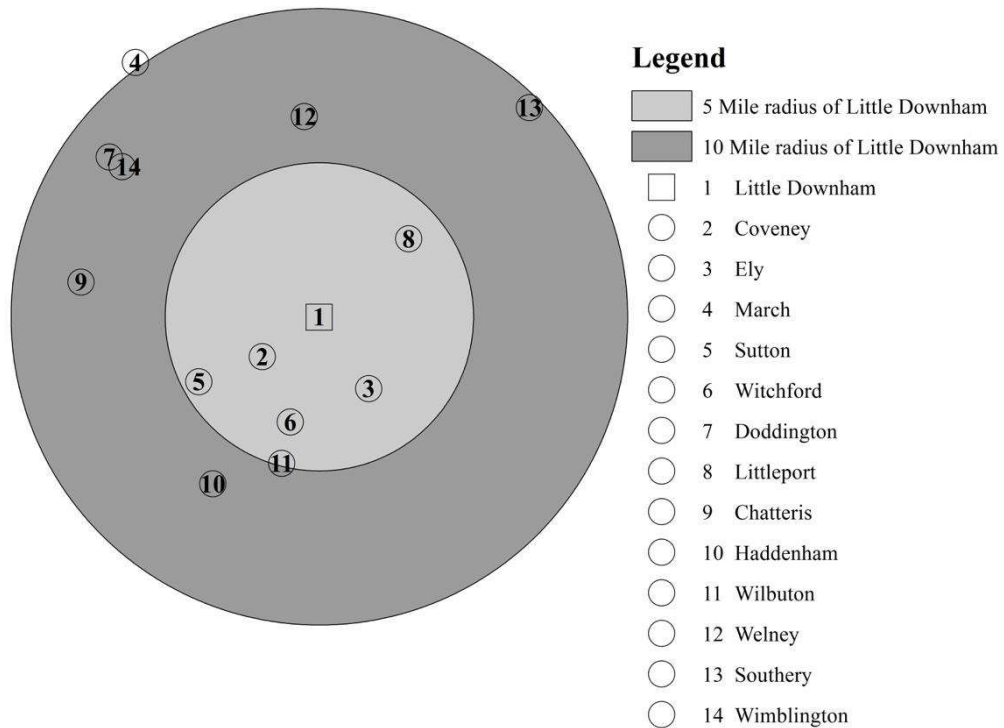
⁸⁶ SRO, D(W)O/3/9, m.11, 25 June 1328.

⁸⁷ *Manor of Wakefield 1322-1331*, ed. Walker, 101.

⁸⁸ TNA, DL 30/129/1957, m.45, 6 Nov 1358; *Rolls of Elmley Castle*, ed. Field, 111.

⁸⁹ The thirteenth-century jurist Henry de Bracton asserted that markets should not be closer than $6\frac{2}{3}$ miles to each other because “every reasonable day’s journey consists of twenty miles.” *Bracton*, 198; For a discussion in the context of medieval Devon see: Maryanne Kowaleski *Local Markets and Regional Trade in Medieval Exeter* (Cambridge, 1995), 285.

Map 1: Home Villages of Claimants to Strays at Little Downham's Manor Court



Sources: CUL, EDR, C11/1/2-3, C11/2/4-6

After a stray beast had been proclaimed, it essentially entered a period of legal limbo where no one person could claim to truly be its owner. Stray animals remained in this stage of the system until they were either claimed or were forfeit to the lord after a year and a day. As one can imagine, there were practical concerns for maintaining an animal during this period. This responsibility was shared by the lord and the community. On some manors the lord's officials were responsible for maintaining the animals while on others tenants actively collaborated with lords to care for the beasts and uphold the integrity of the stray system. At Downham, the custody of strays seems to have been largely the remit of seigniorial officials, as strays were held in the bishop's 250-acre park.⁹⁰ At Worfield, in contrast, strays were frequently assigned to individual tenants. Of the 386 strays whose guardians can be traced in the court rolls for 1353-1450, just under 80 percent were looked after by tenants as opposed to officials. Guardianship was spread throughout the tenant

⁹⁰ CUL, EDR, C11/2/6, m.21, c.1432; C11/2/6, m.24, 24 Sept, 1433; C11/2/6, m.35, date damaged; C11/2/6, m.43, 28 May 1449; M.C. Coleman, *Downham-in-the-Isle: a Study of an Ecclesiastical Manor in the Thirteenth and Fourteenth centuries*, (Woodbridge, 1984), 4.

community. Over 157 individuals cared for two animals each, on average.⁹¹ This phenomenon of entrusting strays to individual tenants can also be seen at Wakefield, Willington, Bradford and Elmley Castle.⁹² Having custody of a stray did *not* mean that the tenant had legal ownership of the animal, and courts clearly recognized this distinction.⁹³

For a claimant to get their animal back, they had to provide certain assurances. Strays had to be “proved” or “haymalded” by the original owner as part of a public process. Typically, the claimant appeared in court with between 3 and 12 “hands”: individuals who would vouch that the stray indeed belonged to the person claiming it.⁹⁴ As with many medieval legal processes these “hands” had to be “trustworthy” men.⁹⁵ For example, in 1390 at Tottenham Bruces, Thomas Benworth of Walthamstow came with “true men of the neighbourhood” to “prove” his calf.⁹⁶ This process could also be carried out by an agent acting on behalf of the actual claimant, such as a servant acting for a master, or a family member acting for a relative who was perhaps a minor.⁹⁷ In addition to proving ownership, claimants were sometimes required to demonstrate that the stray animal in question had not been stolen or in the possession of thieves whilst out of their care.⁹⁸

The only legally legitimate way to recover a stray animal was through the manor court. Circumventing the court system was punishable by amercement, even if this was done by the original owner. Simply put: once a stray had been discovered and it entered the system, an owner could not just go and take it back. Claimants had to recover their animals through the stray system.

⁹¹ SA, P314/W/1/1/34-303.

⁹² *Manor of Wakefield 1322 -1331*, ed. Walker, 107; Jamieson Transcriptions: BARS, R Box 212, R8/62/1/1 m.2, 13 Oct. 1394; R8/62/1/1 m.4, 10 Oct. 1425; R8/62/1/3, m.3 25 Oct. 1404; R8/62/1/4, m.6, 22 Oct 1415; Court Roll 31, 22 Oct. 1422; Court Roll 38a, 18 Nov. 1448; Court Roll 42a, 11 Nov. 1453 D. Jamieson, *Willington and the Mowbrays After the Peasants Revolt*, (Woodbridge, 2019), 113; TNA, DL 30/129/1957, m.30, 29 Jan. 1354 and 17 Mar. 1354; m.49, 11 Dec. 1359; m.56, 8 June 1361; *Elmley Castle*, ed. Field, 76, 130.

⁹³ This is drawn out in an example at Worfield, where, in 1394, the beedle was ordered by the court to account for a horse “formerly existing in the custody of William Chese for 8 weeks...after the same was arrested for doing a felony.” Here, the beast was still considered a stray, and therefore was not forfeit to the lord as a felon’s goods typically were on this manor. If legal ownership had transferred with custody of the stray, the horse would have been forfeit to the lord. SA, P314/W/1/1/189, 30 June 1394. Gibbs, “Felony Forfeiture,” 253-77.

⁹⁴ See for example: *Court rolls of the manor of Carsbalton from the reign of Edward III to that of Henry VII*, eds. D.L. Powell, H. Jenkinson and M.S. Giuseppe, (London, 1916), 26-7; TNA, DL 30/129/1957, m.30, 17 Mar. 1354; *Elmley Castle*, ed. Field, 2, 116; CUL, EDR, C11/1/3, m.16, 10 Sept. 1386; C11/1/3, m.18, 9 Sept. 1387; C11/1/3, m.25, 2 Aug. 1390; C11/1/3, m.28, Sept. 1391; C11/1/3, m.31, 5 Dec. 1392; C11/1/3, m.38, 3 Dec. 1395; C11/1/3, m.43, 26 Nov. 1398; C11/2/4, m.4, 29 Nov. 1400; C11/2/4, m.5, 26 July 1401; C11/2/4, m.15, 4 Mar. 1406; C11/2/5, m.5, 17 Dec. 1415; C11/2/6, m.17, 23 Dec. 1429; *Manor of Wakefield*, ed. Walker, iii, 34, 120; SA, P314/W/1/1/308, 16 Apr. 1454.

⁹⁵ Ian Forrest, *Trustworthy Men: How Inequality and Faith Made the Medieval Church* (Princeton, 2018), 53-6.

⁹⁶ *Tottenham*, ed. Oram, 54.

⁹⁷ *Manor of Wakefield 1274 – 1297*, ed. Baildon, 84, 102, 191; CUL, EDR, C11/2/4, m.7, 7 Mar. 1402.

⁹⁸ *Manor of Carsbalton*, eds. Powell, Jenkinson and Giuseppe, 26-7; TNA, DL 30/129/1957, m.30, 17 Mar. 1354; *Elmley Castle*, ed. Field, 80. This was because a lord’s claim to stolen goods overrode the rights of the original owner of a stray. See: Gibbs, “Felony Forfeiture,” 263.

This was designed to prevent illegitimate claims, but perhaps most importantly, to protect the transparency upon which the system depended. A number of cases illustrate this point.⁹⁹ In an unusually detailed example from Wakefield in 1331, William, son of William del Hirst was arraigned for taking two stray mares held in the custody of Thomas de Stainland. William admitted that he had indeed taken the strays, but claimed that his actions were permissible, as the two mares were his property. Nevertheless, because he had circumvented the system, he was fined 12d. for taking the mares without the bailiff's licence.¹⁰⁰

Strays could be returned to owners outside of an actual court sitting, but this still had to be approved by a seigniorial official.¹⁰¹ Even once strays were returned, several courts had procedures to ensure that if a second claimant subsequently appeared with a genuine claim they could still recover their property. This was typically done through a pledging system, where the original claimant had to find one or more pledges. Similar to the “hands” discussed above, pledges were “trustworthy” men from the community. Rather than simply vouching for the legitimacy of an individual's claim to a stray, as hands did, a pledge was made responsible for either producing the animal, or providing its value, if another claimant came within a year and a day of the stray's original discovery.¹⁰² Therefore, a claimant's property rights were always protected by the system, even if the court had initially allowed another to (illegitimately) recover a stray, so long as a claim was made within a year and a day.

Once the myriad stages of the stray system are broken down it becomes clear that it was heavily biased towards claimants who could rely on a public system to not only find and secure a lost animal, but also to protect largely unalienable rights to claim the stray within a 366-day window. Despite these rights, a significant number of stray animals went unclaimed. Evidence from Downham, where it is possible to track animals over time, reveals that, of 299 strays which can be tracked between 1365 and 1449, around 57 percent were not claimed.¹⁰³ When this happened, unclaimed animals became the property of the lord. In several cases, lords then took the animals

⁹⁹ *Manor of Wakefield*, ed. Walker, vol. 3, 19; *Manor of Wakefield*, ed. Troup, vol. 12, 174; TNA, DL 30/129/1957, m.37, 22 Jan. 1356.

¹⁰⁰ *Manor of Wakefield*, ed. Walker, vol. 5, 168. That this amercement was for circumvention of the stray system has been inferred by the authors because William *was not* presented for either theft or for infringing the lord's right of stray.

¹⁰¹ CUL, EDR, C11/2/6, m.23, 7 July 1433.

¹⁰² Suffolk Record Office, Ipswich Branch, (hereafter SRO) HA116/3/19/1/2, m.15, 14 June 1323; *Elmley Castle*, ed. Field, 2; *Manor of Wakefield 1274 – 1297*, ed. Baildon, 84, 97, 100, 134, 164, 169, 171, 191, 192, 238, 258; *Manor of Wakefield 1313 – 1316*, ed. Lister, 56; *Manor of Wakefield*, ed. Walker, vol. 3, 81, 85, 120; SRO, D(W)0/3/1, m.1, 7 Jul 1259; TNA, SC2/202/56, 14 Dec. 1298.

¹⁰³ Exact proportions: 57% fell to the lord, 30% were claimed, 3% were embezzled, 4% died and 5% are unknown. CUL, EDR, C11/1/2-3, C11/2/4-6.

into their own hands for their own uses. Working animals were often taken for the lord's demesne. Court rolls sometimes illuminate such transfers, such as in 1274 at Wakefield when two horses and a cow went unclaimed and were subsequently ordered to be placed with the earl's stock.¹⁰⁴ Account evidence reveals that the acquisition of strays augmented other seigniorial perquisites, like heriots, and provided lords with a significant source of demesne livestock.¹⁰⁵ When lords put an acquired stray draught animal to work on their farm, the former stray often displaced an incumbent of lower quality.¹⁰⁶ When non-working animals fell to the lord, they were sometimes simply consumed. At Downham in 1450 a black bullock, valued at an exceptional 9s. 6d., fell to the lord and was slaughtered "in hospitality of the lord to the use and welcome of the lord."¹⁰⁷ As Downham was a rural retreat of the Bishop of Ely, this beast was likely slaughtered for the bishop and his guests.

Lords often chose to simply realise the value of acquired strays through sale. This option presumably offered greater flexibility, especially as many of the stray draught animals acquired by lords would have been of lower quality than those employed in demesne agriculture.¹⁰⁸ Indeed, many of the stray horses which fell to demesnes would have been surplus to requirements, and were therefore quickly "flipped" for cash.¹⁰⁹ At some manors, such as Worfield and Bradford, sale seems to have been almost universally favoured. At Worfield sales are described as being made "by the steward" and "in full court."¹¹⁰ This means that sales of stray livestock were public, ensuring that tenants had first access to the unclaimed strays which had fallen to the lord. At other manors, sales seem to have managed differently. At Elmley Castle, strays were often sold to the tenants who had guarded the beasts for the requisite 366-day claiming period. This perhaps suggests an incentive for tenants to maintain strays well, because there was the possibility to secure permanent ownership.¹¹¹

Bradford saw this taken a stage further, with stray animals being sold *before* the end of the 366-day period and thus being placed into the custody of these purchasers. However, this explicitly did not

¹⁰⁴ *Tooting Beck*, 220; *Manor of Wakefield 1274 – 1297*, ed. Baildon, 97

¹⁰⁵ Claridge, "Role of Demesnes," 15.

¹⁰⁶ Jordan Claridge, *The Trade of Agricultural Horses in Late Medieval England* (PhD diss., University of East Anglia, 2015), 94.

¹⁰⁷ CUL, EDR, C11/2/6, m.46, 5 Mar. 1450; C11/2/6, m.9, 19 July 1426.

¹⁰⁸ Claridge, *Trade of Agricultural Horses*, 126; Langdon, *Horses, Oxen and Technological Innovation: the Use of Draught Animals in English Farming from 1066-1500* (Cambridge, 1986), 250.

¹⁰⁹ Claridge, *Trade of Agricultural Horses*, 94; For the "rigidity" of demesne livestock numbers on the Bishop of Ely's manor of Wisbech Barton see also David Stone, *Decision-Making in Medieval Agriculture* (Oxford, 2005), 114.

¹¹⁰ SA, P314/W/1/1/73, 3 Nov. 1369; P314/W/1/1/85, 15 Nov. 1371; P314/W/1/1/86, 14 May 1372; P314/W/1/1/87, 4 Nov. 1372; P314/W/1/1/97, 16 Oct. 1374; P314/W/1/1/99, 14 June 1375; P314/W/1/1/100, 19 Nov. 1375; P314/W/1/1/117, 2 May 1379; P314/W/1/1/242, 24 Oct. 1413. This mirrors evidence for the sale of felons' goods at this manor. See Gibbs, "Felony Forfeiture," 269.

¹¹¹ *Elmley Castle*, ed. Field, 130, 134-5, 143.

obviate the claim of the original owner. Much like when strays were claimed, purchasers were required to provide pledges in order to ensure that they would produce the animal or its value if a claimant later appeared within the allotted time period.¹¹² At the same time, whilst the animal had been sold, payment to the lord could be delayed until after the 366-day period had elapsed meaning the purchaser did not lose their investment.¹¹³ At Bradford, tenants seem to have been allowed right of first refusal for animals found as strays. This is seen in an example from 1353, where three stray foals were given to the Brothers of Pontefract because “none will buy them.”¹¹⁴ Of course, the difficulty of finding a buyer here may well have been an effect of dampened demand and economic uncertainty in the wake of the Black Death. On rare occasions, strays were sold in bulk. An entrepreneurial individual might have been able to lease or purchase the right to buy *prospective* strays, as seemingly happened at Wakefield when all the strays found in the accounting year 1350/1 were sold in advance to William Mirefield for a flat sum of 10s.¹¹⁵ This also may have been an exceptional response in the aftermath of plague, but other bulk sales were not unheard of, as was the case at Downham in 1452 when twelve strays were sold to Roger Davy, described as “Ely.”¹¹⁶

Overall, however, the discussion above suggests two significant conclusions about the exercise of franchisal rights to strays in late medieval England. Firstly, there was a robust and sophisticated procedure which was heavily biased towards legitimate claimants, ensuring that any owner had the right to claim their stray within the year and a day, as stipulated in the franchise. Courts worked to ensure that strays were publicly registered and then widely proclaimed within the 366-day period. The system also punished both officials and tenants who tried to illicitly profit from animals or simply failed to guard them properly. The rights of claimants were protected in all circumstances.

Secondly, this system necessitated the significant involvement of a large number of the lord’s tenants. This obviously included the seigniorial officials, drawn from among the peasantry, who managed strays but also extended beyond this to encompass the broader community. In terms of involvement in the stray system, tenants not only utilised the court to present strays but also acted as jurors or a general collective to assign valuations to these animals. They often became responsible for the custody of the animals over the 366-day claiming period. Moreover, this system

¹¹² TNA, DL 30/129/1957, m.43, 16 Apr. 1358; DL 30/129/1957, m.52, 12 Jan. 1361.

¹¹³ TNA, DL 30/129/1957, m.36, 6 Aug. 1355; DL 30/129/1957, m.37, 22 Jan. 1356; DL 30/129/1957, m.39, 23 May 1356; DL 30/129/1957, m.41, 6 Feb. 1357; DL 30/129/1957, m.42, 2 Oct. 1357, DL 30/129/1957, m.43, 16 Apr. 1358; DL 30/129/1957, m.47, 19 June 1359; DL 30/129/1957, m.52, 12 Jan. 1361.

¹¹⁴ TNA, DL 30/129/1957, m.26, 15 Feb. 1353.

¹¹⁵ *The Court Rolls of the Manor of Wakefield from October 1350 to September 1352*, eds. M. Habberjam, M. O’Regan and B. Hale, (Leeds, 1987), vol. 6, 259.

¹¹⁶ CUL, EDR, C11/2/6, m.49, 24 May 1452.

provided the additional benefit of allowing tenants the opportunity to purchase unclaimed strays, giving members of the community access to a relatively cheap stock of animals. In this way, the system is akin to that described by Johnson for wreck courts, where the system provided a way to legitimately realise the value of found objects.¹¹⁷

Of course, it could be argued that there were more efficient ways to provide the “public good” of policing strays. For example, a “finders-keepers” model, where those who found a stray simply got to keep the animal. Another hypothetical alternative would have been a system at the village level which cut out the lord completely. In this scenario, there would have been no need to pay a fee to the lord for custody upon a claim, nor would it have been necessary to buy strays from the lord. Under such a hypothetical situation the lord would not have had the ability to take strays for his stock or consumption. However, even in the unlikely scenario that lords would have allowed such an undercutting of their authority, a solely village-run institution would not have offered the protection guaranteed by the public process of the lord’s court and its ability to coerce those who flouted this system through financial penalties. Whilst other systems could have provided protection against destruction by animals, they could not simultaneously preserve the property rights of the original owner.

V

The preceding discussion has illustrated how the stray system protected the property rights of tenants, serving their purposes as much as their lord’s. However, this begs an obvious question: did administering the system still bring lords a windfall of profits? When strays were claimed back by their owners, lords received a fee. In addition, if animals went unclaimed after the 366-day period, lords, either by adding the animal to their stock or by simply selling it, realised its value.

But any such income derived from the stray system needs to be weighed against the costs of administering it. The subsequent section addresses this with a hypothetical exercise, by asking whether it would have been possible for lords to turn a profit on the stray system. We will illustrate that, due to a range of constraints imposed by the legal institutions underpinning the stray system, it would have been difficult, if not impossible, for most lords to profit from the system, even if they had wanted to. This will be achieved by imagining a situation where lords *did* try to profit

¹¹⁷ Johnson, “Economics of Shipwreck,” 125; Johnson, “Medieval Law and Materiality,” 425-7.

from the system. What would this look like? What conditions would have to be met for lords to gain in a meaningful way from wielding the franchise of strays?

Table 1: Composition of Stray Animals

Type of Animal	No. of Observations	Percentage
Horses	393	36.9
Cattle	256	24.0
Bees	182	17.1
Sheep	173	16.2
Pigs	43	4.0
Oxen	16	1.5
Geese	3	0.3
Total	1066	100

Sources: SA, P314/W/1/1/31-303; CUL, EDR, C11/1/2-3, C11/2/4-6; *Wakefield 1274-1297*, ed. Baildon; *Wakefield 1297-1309*, ed. Baildon; *Wakefield 1313-1316*, ed. Lister; *Wakefield 1315-1317*, ed. Lister; *Wakefield 1322-1331* ed. Walker; *The Court Rolls of the Manor of Wakefield from September 1348 to September 1350*, ed. H.M Jewell, (Leeds, 1981), vol. 2; *Wakefield*, ed. Walker, vol. 3; *Wakefield*, eds. Habberjam, O'Regan and Hale, vol. 6; *Wakefield* ed. Troup, vol. 12; TNA, DL 30/129/1957; *Tottenbam*, ed. Oram; Jamieson Transcriptions: BARS, R Box 212; *Tooting Beck*; BL, Add. Ch. 63428-51; SROI, HA116/3/19/1/2-5.

For this exercise we focus only on stray horses, which are the best available test of the stray system. Within the wide range of livestock that came into the system, horses appeared most frequently and, accordingly, represent the largest group in our sample. Out of our total of 1,066 stray observations, 393 were horses, comprising 36.9 percent of the total sample (see Table 1). Cattle are also a large group (256 animals accounting for 24 percent of the total), but the great range of types and variations in maturity of these beasts makes any quantification impossible. Horses, on the other hand, were a rather more homogenous group of animals and there is sufficient surviving quantitative evidence to model both lords' costs in maintaining horses and the potential payoff they could have received if the animals ultimately fell to them. Oxen could be modelled similarly, but the sixteen observations in the sample are too few to draw any meaningful conclusions. Horses were also a more expensive beast to buy and keep than sheep or pigs and therefore are the obvious case study to pursue here.¹¹⁸

Let us first outline the costs lords would have incurred in keeping a stray horse for the requisite 366-day period. These costs could include a range of components. The largest cost by far would have been fodder, and there were also other obvious costs in maintaining a working animal.

¹¹⁸ Bees also make up a relatively large part of our sample (182 observations accounting for 17 percent of the total sample). However, unlike other strays, the difficulty of tracing the owner of these animals means that they were seemingly immediately sold to the person who found them for a small fee. Thus they do follow the typical path of animals in the system. See *Manor of Wakefield 1274 – 1297*, ed. Baildon, 293; SA, P314/W/1/1/158, 24 Oct. 1384; P314/W/1/1/195, 30 Sept. 1395.

Horses were frequently shod with metal shoes and the stables or barns in which they were kept had to be maintained. On a more theoretical level, one might also figure depreciation into the equation. The year and a day lords were required to keep stray animals was a significant portion of a horse's effective working life of around ten years, so the animals clearly lost value as they aged.¹¹⁹ Taking all of this into account, we have created two maintenance cost estimates for every year between 1250 and 1450, a high estimate which includes all of the components discussed above, and a low or "bare bones" estimate which only includes fodder costs, and is basically the amount required to simply keep an animal alive. The specific composition of each estimate and the relevant methodological concerns are described in Appendix A. These are illustrated, along with discrete values of individual stray horses, in Figure 2. Over the two centuries from 1250 to 1450, the average cost of maintaining a horse for 366 days would have been around 115d. at a high level and 102d. at the "bare bones" level of subsistence. As our maintenance estimates are driven by fluctuating grain prices, maintenance costs were substantially higher in the famine years of 1315-17 and following the Black Death in 1350-52. A third spike is observed in 1369, which Bruce Campbell has attributed to a "combination of dearth and plague" in a period of bad harvests and recurring plague episodes.¹²⁰ In any event, the cost of maintaining a stray horse was centred around 100d., or 8s. 4d., for most of our period. This would have been equivalent to 40 days' wages for a semi-skilled worker, such as a thatcher, in 1300 when such a job paid 2.5d. per day or 22 days' pay in 1400 when wages had climbed to 4.5d.¹²¹

To calculate a cost/benefit analysis, the lords' outlays need to be balanced against the income they could generate through the stray system. The first revenue channel was the fines claimants paid to retrieve their stray animals from the lord. The court rolls unfortunately do not record this information systemically, but we were able to glean 28 observations, which appear in Table 2. As can be seen, these "retrieval fines" tend to cluster in distinct groups. Claimants usually paid either 3d., 6d., or 12d., to reclaim their animals. These rates are typical of the wider range of manor court fines and amercements at the time. When described in the court rolls, the fines are justified as either for keeping the animal or, more generally, as a fee for claiming.¹²² What is obvious here is

¹¹⁹ John Langdon, "The Economics of Horses and Oxen in Late Medieval England," *Agricultural History Review* 30, no. 1 (Spring 1982), 31-40, at 36 esp. Table 4.

¹²⁰ Bruce M.S. Campbell, *English Seigniorial Agriculture 1250-1450* (Cambridge, 2000), 7.

¹²¹ Christopher Dyer, *Standards of Living in the Late Middle Ages: Social Change in England c. 1200-1520*. (Cambridge, 1989), 215.

¹²² *Manor of Wakefield 1274 – 1297*, ed. Baildon, 238-9; *Manor of Wakefield 1297 – 1309*, ed. Baildon, 70, 140; *Manor of Wakefield 1313 – 1316*, ed. Lister, 87, 91, 169; *Manor of Wakefield 1315 – 1317*, ed. Lister, 44, 56, 157; *Manor of Wakefield 1322 -1331*, ed. Walker, 22; *Manor of Wakefield*, ed. Walker, vol. 3, 34, 81, 120; *Manor of Wakefield*, ed. Troup, vol. 12, 12; *Elmley Castle*, ed. Field, 80; CUL, EDR, C11/2/6, m.41, 9 Sept. 1448; SA, P314/W/1/1/208, 4 Dec. 1398; *Manor of Carsbalton*, ed. Powell, Jenkinson and Giuseppe, 26-7.

that these fines are so low, it would have been difficult for lords to make any significant profit from them. Table 2 compares the fines paid by claimants against lords' maintenance costs. The table provides the number of days of maintenance that any individual fine would have financed. As can be seen, these fines, on average, would have covered only 29 days' maintenance costs and most strays spent significantly more time under the lord's care. Fortunately, Downham's court rolls provide enough information to estimate the number of days several stray horses spent in the lord's care before being claimed. In all fifteen cases, the lord held the animal for significantly longer than would have been profitable. A case of 1370 described in the Year Books supports this view. A plaintiff (who was clearly high status, if not a lord himself) sued a certain lord for refusing to return his stray mule. The defendant argued that he had retained the mule justly, as the fee of 2s. offered by the plaintiff (through his bailiff) "was too little, for the [month] that the mule was in the defendant's keeping."¹²³ A fine of 2s. is much greater than the average fine of 9d., yet it was argued here that such an amount was still insufficient to cover the costs of maintaining this particular mule.

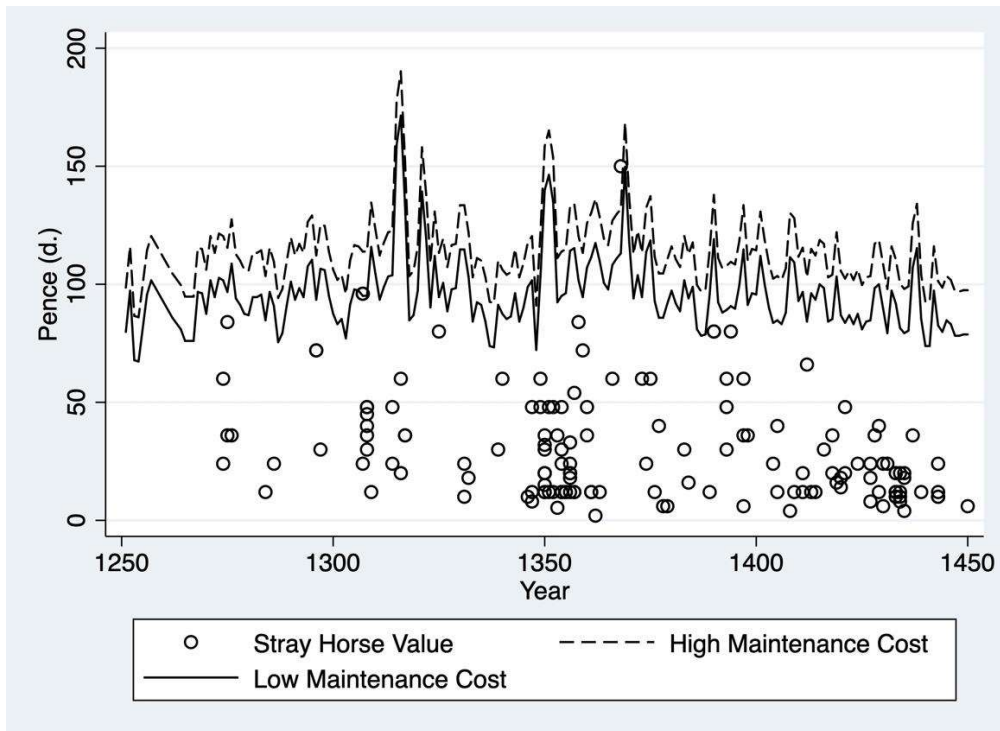
¹²³ YB, Easter 44 Edward III, fo.14a, 30. It is hard to take this case at face value. Pro-rating the amount of 2s. over a year works out to 24s. or 288d., 49 percent greater than our 366-day "high" cost estimate for 1370. This suggests that the excessive costs sought in this case were actually to cover damage done by the mule or even just personal animosity between the two parties.

Table 2: Stray Fines in Comparison to Maintenance Costs

Year	Manor	Animal	Amount given for keeping (d.)	Number of Days in which lord could make profit	Actual Days held by lord before claimed (Downham only)
1275	Wakefield	Foal	12	45	-
1275	Wakefield	2 Stotts	12	23	-
1275	Wakefield	Foal	6	23	-
1296	Wakefield	Mare	12	47	-
1296	Wakefield	Horse	12	47	-
1307	Wakefield	Filly	6	23	-
1308	Wakefield	Mare and foal	12	46	-
1315	Wakefield	Affer	12	28	-
1316	Wakefield	Ox	12	44	-
1323	Worlingworth	Mare	4	16	-
1332	Wakefield	Mare and foal	3	11	-
1365	Little Downham	Mare	3	11	39
1369	Little Downham	Mare	12	29	87
1369	Little Downham	Mare	6	15	87
1369	Little Downham	Mare	12	29	329
1369	Little Downham	Mare	24	59	329
1382	Little Downham	Mare	4	17	101
1385	Little Downham	Mare	9	33	308
1392	Little Downham	Mare	12	50	98
1398	Little Downham	Ox	12	51	214
1401	Little Downham	Mare	12	39	282
1402	Little Downham	Mare	6	22	214
1410	Little Downham	Horse	6	24	310
1412	Elmley Castle	Foal	4	17	-
1429	Little Downham	Foal	4	15	183
1431	Little Downham	Foal	Nothing	0	371
1434	Little Downham	Mare	6	27	291
Avg.	-	-	9	29	216

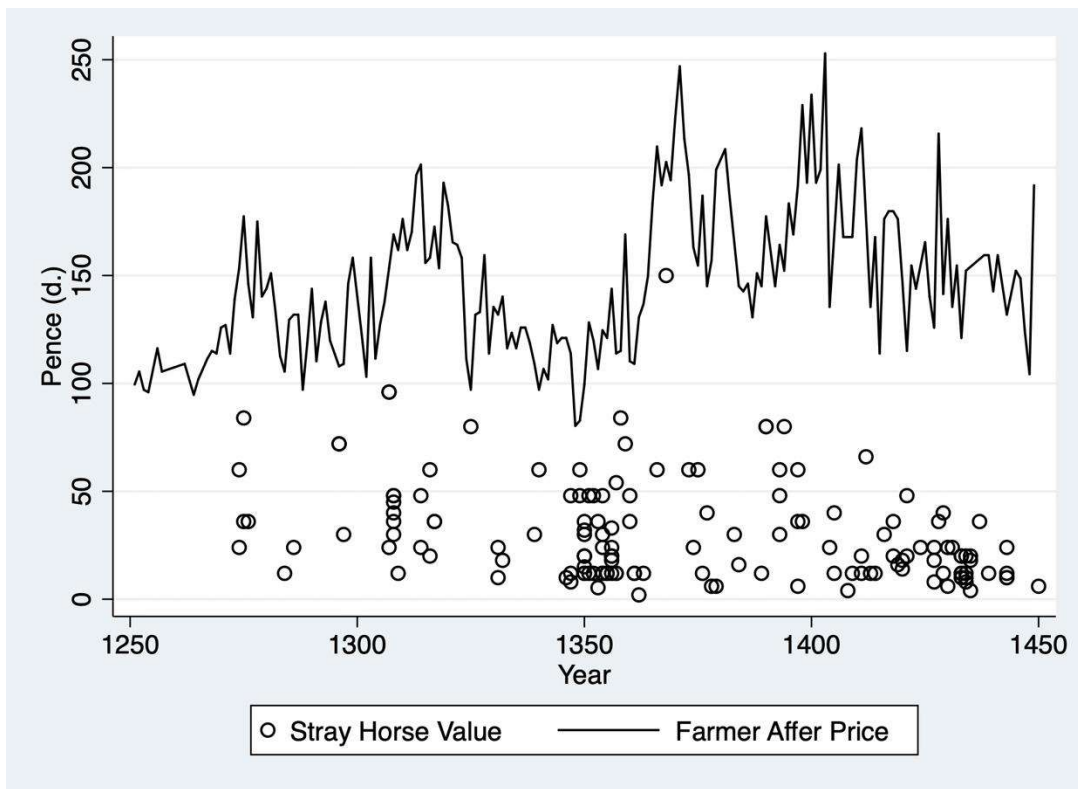
Sources: *Wakefield 1274-1297*, ed. Baildon; *Wakefield 1297-1309*, ed. Baildon; *Wakefield 1313-1316*, ed. Lister; *Wakefield 1315-1317*, ed. Lister; *Wakefield*, ed. Walker, vol. 3; CUL, EDR, C11/1/2-3, C11/2/4-6; SROI, HA116/3/19/1/2-5; *Elmley Castle*, ed. Field.

Figure 2: Comparison of Stray Horse Values with “High” and Low/”Bare Bones” Maintenance Costs



Sources: Stray Values: SA, P314/W/1/1/31-303; *Wakefield 1274-1297*, ed. Baildon; *Wakefield 1297-1309*, ed. Baildon; *Wakefield 1313-1316*, ed. Lister; *Wakefield 1315-1317*, ed. Lister; *Wakefield 1322-1331*, ed. Walker; *Wakefield*, ed. Jewell, vol. 2; *Wakefield*, ed. Walker, vol. 3; *Wakefield*, eds. Habberjam, O’Regan and Hale, vol. 6; *Wakefield* ed. Troup, vol. 12; TNA, DL 30/129/1957; *Tottenham*, ed. Oram; Jamieson Transcriptions, BARS, R Box 212; *Tooting Beck*; Maintenance Costs: See Appendix A.

Figure 3: Comparison of Stray Horse Values with Farmer's Annual Plough Horse Price Series



Sources: Stray Values: See Figure 2; Offer Prices: Farmer, "Chapter 7," 745-55, 799-806; Farmer, "Chapter 5," 455-61, 508-12.

If lords could not generate any significant revenue from fining claimants, then the only remaining profit channel would be to benefit in some way from realizing the value of unclaimed strays. Figure 2 compares all of the values of stray horses contained in our sample against the high and low annual maintenance cost estimates. This analysis reveals that both maintenance cost estimates consistently exceeded the values of stray horses, with very few exceptions, over the duration of our study. Even the very conservative “bare bones” cost, which includes only enough food to keep the animal alive, and assumes no loss in value over the time it was held, is consistently higher than the values lords could expect to realize from any single stray horse. Put simply, the costs of maintaining a stray horse for 366 days would almost inevitably outstrip the animal’s value, whether a lord ultimately decided to keep the beast for his demesne or to sell it for cash. In this paradigm, it would have been difficult, if not impossible, for lords to profit in any meaningful way from the stray system. The one real exception to this pattern is the horse, discussed above and worth an abnormally high 13s. 4d., which appeared at Tottenham Pembrokes in 1393.¹²⁴ If this horse had gone unclaimed, the joint lords of the manor would have stood to make a profit of around 4s.¹²⁵ However, the horse subsequently escaped into a neighbouring lordship and was seized by this other manor’s bailiff. This particular horse was likely an unusually valuable stray, as Tottenham’s clerk took the unusual step of noting that the lord’s counsel should be sought on this matter.

Figure 3 plots the values of stray horses in our sample against the average national price for plough horses, as compiled by David Farmer.¹²⁶ It is immediately apparent that the values of the strays in our sample were not only significantly less than the annual cost of their upkeep, but also much lower than the average plough horse. How can we explain the persistently low values of these animals? The most obvious reason is that they were simply of low quality. Many examples from the court rolls support this conclusion. Stray horses were often described as “infirm,” “disabled” or “debilitated,” and in 1331 the clerk at Wakefield noted that a foal was sold for 10d., a price that was “so little because [the foal] is of no value.”¹²⁷ Similar indications of low quality can be found

¹²⁴ *Tottenham*, ed. Oram, 282.

¹²⁵ This is based on subtracting both the high and low annual maintenance cost estimates from the horse’s value of 13s. 4d.. Using the low estimate, the lord’s profit would have been 70.89d. Using the high estimate, the lord’s profit would have been 52.14d..

¹²⁶ We have used Farmer’s series for plough horses here because they were, compared to cart horses, the cheaper animal and most similar to the types of stray horses encountered in our sample. David L. Farmer, “Chapter 7: Prices and Wages” in *The Agrarian History of England and Wales*, vol. ii, 1042-1350, ed. H.E. Hallam, 1042-1350, 745-55, 799-806; David L. Farmer, “Chapter 5: Prices and Wages, 1350-1500” in *The Agrarian History of England and Wales*, vol. 3, 1348-1500, ed. E. Miller, 455-61, 508-12.

¹²⁷ SA, P314/W/1/1/94, 16 Oct. 1374; TNA, DL 30/129/1957, m.26, 5 Nov. 1352; m.31, 28 Apr. 1354; m.35, 20 Apr. 1355; m.41, 17 Apr. 1357; *Manor of Wakefield 1313 – 1316*, ed. Lister, 50; *Manor of Wakefield*, ed. Walker, vol. 3, 19; *Tottenham*, ed. Oram 46. In the case of the Wakefield foal, the low value may have reflected a lack of training or appropriate temperament, rather than a physical disability.

for other animals, with a range of other beasts also described as “debilitated” as well as “lame” and “weakened.”¹²⁸ Indeed, the jury at Worfield noted a sheep had been valued at 4d., “and not more because [it is] debilitated.”¹²⁹ More colourful examples include a pig at Wakefield described as “leprous” and a bull at Bradford as “insane.”¹³⁰ This low quality was potentially a selection effect. Owners may have released worthless or diseased livestock, rather than going to the bother of slaughtering them, or at least may have not expend much effort to recapture such low quality animals if they escaped.

The very nature of these transactions would have also pushed values down, as these were essentially “fire sales.” Having already borne the high costs of upkeep for a year and a day, lords would have been highly motivated to get rid of strays quickly, pushing them into a forced sale. Similarly, as discussed above, the values recorded in the court rolls were most frequently determined by tenant juries when strays first appeared and were “registered” with the manor court. These juries could have deliberately under-valued stray beasts and would have had reasonably strong incentives to do so, as tenants often ended up purchasing unclaimed stray animals from the lord. But, even if the values of these stray animals were not market prices, they *were* the sale prices. The value determined in the “registration” process was essentially binding, and lords, if they sold strays that fell to them, almost invariably received the registered price.¹³¹

Thus, lords ultimately lost money through the strays because maintenance costs would always outstrip whatever the lord could make from either fines paid by claimants or by selling or keeping the stray beasts that fell into their hands. Of course, horses are only one type of stray animal, and non-working livestock would have produced goods like wool and milk which could have offset the value of their maintenance. Similarly, draught beasts had a potential value in the work they could do. However, as demesne farms operated on full stocking regimes, there was likely little value in having an extra, often unsuitable, horse to contribute to the farm operations.¹³² More

¹²⁸ SA, P314/W/1/1/165, 15 Oct. 1386; P314/W/1/1/187; 29 Oct. 1393; P314/W/1/1/285, 30 Sept. 1434; *Manor of Wakefield*, ed. Troup, vol. 12, 67; DL 30/129/1957, m.39, 11 July 1356; m.43, 16 Apr. 1358; *Tottenham*, ed. Oram, 223, 308.

¹²⁹ SA, P314/W/1/1/99, 14 June 1375.

¹³⁰ *Manor of Wakefield 1322-1331*, ed. Walker, 39; TNA, DL 30/129/1957, m.20, 17 Oct. 1349.

¹³¹ Whilst the data is comprised of both initial valuations and explicit sums paid by purchasers, Elmley Castle, Wakefield and Worfield’s court rolls suggest that animals were nearly always sold for their initial “registration” values. In this way, the valuation process matches the system that Johnson found at Wreck Courts where the very act of valuation determined the price. See Johnson, “Medieval Law and Materiality,” 427. One exception is seen at Worfield in 1413 when it was specifically stated that a hive of stray beasts was “sold by steward in full court for 6d. more than its price.” The fact that this was specifically noted suggests a deviation from the norm: P314/W/1/1/242, 24 Oct. 1413.

¹³² Stone, *Decision Making*, 113.

generally, the fact that lords in reality often did not maintain strays themselves for the 366-day period but frequently assigned them to tenants suggests that they did not see a significant opportunity for profit. As a process which essentially allowed lords to collect low quality animals both unsuited for demesne agriculture and which could only realise a low price at sale after a long period of costly maintenance, it is impossible to see the stray system as being primarily a source of revenue for lords.

VI

We started with a simple and curious narrative about eight animals which had appeared in a small village community in fourteenth-century Cambridgeshire. We hope we have demonstrated that this story is much more consequential than it might first appear. Stray animals were an ever-present feature of rural life in the Middle Ages, and administering scores of such animals had far-reaching implications for the society and economy of late medieval England.

The right to take strays was granted, via formal franchise, by the crown to the most privileged lords. However, on the ground, it was effectively a system run by some of the humblest individuals. Peasants were the actors who found, registered, advertised and cared for stray beasts. They were the owners who came and claimed their lost animals as well as the people who ended up buying those whose owners never came forward. This helped secure and circulate a stock of cheap animals which, while perhaps unsuitable for the demands of commercial demesne agriculture, could be productively utilized by peasants.¹³³ In this way, the stray system aided the broader pastoral economy of late medieval England by catalysing the circulation of animals among the peasantry.

This system had two clear purposes: to protect the property rights of those who had lost animals while safeguarding the agricultural land upon which the whole country depended for its livelihood. This was achieved by cooperation between lords and tenants. Lords channelled royal privileges to the local community and utilized their manor courts to ensure the transparent administration of the system which was so vital to protecting claimants' rights. In a society where individuals could, and often did, resort to violence to settle disputes, such transparency was vital to maintain social cohesion.

¹³³ Langdon, *Horses, Oxen*, 252.

Did lords exercise the franchise of stray for profit? Or did they exercise it for the benefit of the community? We have demonstrated that it was simply impossible for lords to have profited from the stray system in any meaningful way. Our examination of the costs and potential benefits involved in the management of stray horses proves this point clearly. The fines claimants paid to lords to reclaim their lost animals were simply too low to have generated any revenue. Further, lords would have spent more maintaining most strays than they could recoup even if a beast went unclaimed and ultimately fell into their hands. This explains why lords did not attempt to benefit financially from their franchise. Instead, they used their privilege to provide an integral public good to the communities over which they had lordship.

What does this suggest about the role of manorial institutions and lord-tenant relations in late medieval England? Our examination of the strays system supports the growing corpus of revisionist literature which has emphasised the facilitative role played by manorial structures in peasant communities. It demonstrates one way in which lords used their manor courts to coordinate a cooperative solution to a pressing problem for their tenants, rather than as a tool for direct expropriation. The stray system illustrates how seigniorial lords, and their institutions, helped solve a problem that would have been difficult for tenants to solve by themselves. The reasons for this were not necessarily altruistic. Lords were reliant on a productive peasantry to fill their fields with able-bodied labourers and their coffers with rents. Using their manor courts to provide an essential public good, as they did by administering the stray system, simply made economic sense. While lord-tenant relationships could be, and often were, conflictual, our examination of the stray system illustrates how the manor court could also facilitate cooperation. Through this lens, we might think of the manor court as the glue that allowed for social cohesion and the pursuit of mutual economic benefits.

Appendix A

Calculating Maintenance Costs for Medieval Draught Animals

What we attempt here is to estimate how much it would have cost to maintain working horses in late medieval England. As discussed in the text, there are many variables involved in such an estimation, but we do have a wealth of data from which to judge the matter.

Many of these components have been meticulously calculated by John Langdon.¹³⁴ As Langdon outlines, there are three main components to consider when calculating these costs.

1. Food and fodder costs

This is usually comprised of some combination of hay and other more expensive and more calorific grains like oats, but also straw and grass pasture.

2. Other maintenance costs

This would include costs for shoeing, harnessing, and stabling.

3. Depreciation

This component considers the average loss in value of a working animal over time.

We have followed Langdon's methodology except that whilst he used fixed average prices for food and fodder costs, we have utilised annually variable grain prices drawn from the work of David Farmer to compute a more accurate annual cost series.¹³⁵

Figure A1: Draught Horse Maintenance Cost Estimates

High Estimate	Cost in Pence (d.)
<i>Fixed Costs (from Langdon)</i>	
Hay and Straw	24.75
Pasture	12.00
Shoeing	9.00
Other	6.00
Depreciation	12.75
<i>Annual Variable Costs (from Farmer)</i>	
Oats	30.5 to 134.7
Low 'Bare Bones' Estimate	Cost in Pence (d.)
<i>Fixed Costs (from Langdon)</i>	
Hay and Straw	24.75
Pasture	12.00
<i>Annual Variable Costs (from Farmer)</i>	
Oats	30.5 to 134.7

¹³⁴ Langdon, "Economics of Horses and Oxen."

¹³⁵ Farmer, "Chapter 7," 733-45, 787-91; Farmer, "Chapter 5," 432-43, 502-5.

Appendix B

Court Roll Sample and Stray Horse Value Sample

This empirical basis for this article rests on a corpus of 1,066 observations of stray animals based on a sample of manorial court rolls spanning the years 1274 to 1453 and containing a total of 1,781 court sessions. As Table B1 illustrates, these are drawn from nine different manors. The sample is not balanced, with the core manors of Worfield and Little Downham making up a large proportion of the total observations of strays. Similarly, there is a bias towards the post-Black Death period with majority of observations coming from the 1350s onwards as seen in Figure B1.

Despite the unbalanced nature of the evidence, the sample has several advantages. It encompasses a wide variety of regions including the North, West Midlands, Home Counties, and East Anglia. This means it captures regions traditionally seen as more commercialised such as the Thames Basin area around London and East Anglia with less commercialised areas such as the North East and West Midlands. There is some bias in the sample towards manors with openfield systems and commons. There are two likely explanations for this. First, animals were more likely to escape and therefore stray on such manors and second, strays posed a more significant threat to crops on openfield manors and therefore tenants were more incentivised to catch them. The sample also captures a good variety of more powerful lords, including manors held by a mixture of royal, aristocratic, ecclesiastical and monastic lords.

A subsection of the sample was used to provide values for stray horses in section V of the article. This sample consists of the values reported for stray horses from six manors as shown in Figure B2. There are no observations from Downham, Rickinghall or Worlingworth in the horse subsample. Downham's court rolls provided no values for stray animals and no horses were among the strays reported with values at Rickinghall or Worlingworth. Wakefield accounts for the majority of the pre-Black Death horse observations and Worfield for the majority of the sample after 1350. As Figure B3 demonstrates, the sample is well balanced in terms of horse type, with all types of horses except plough horses being found relatively uniformly throughout the time period examined.

Despite the unbalanced nature of our data, the sample is well-suited to the quantitative exercise conducted here, as we make no claims about the average cost or value of animals, but rather use each observation individually.

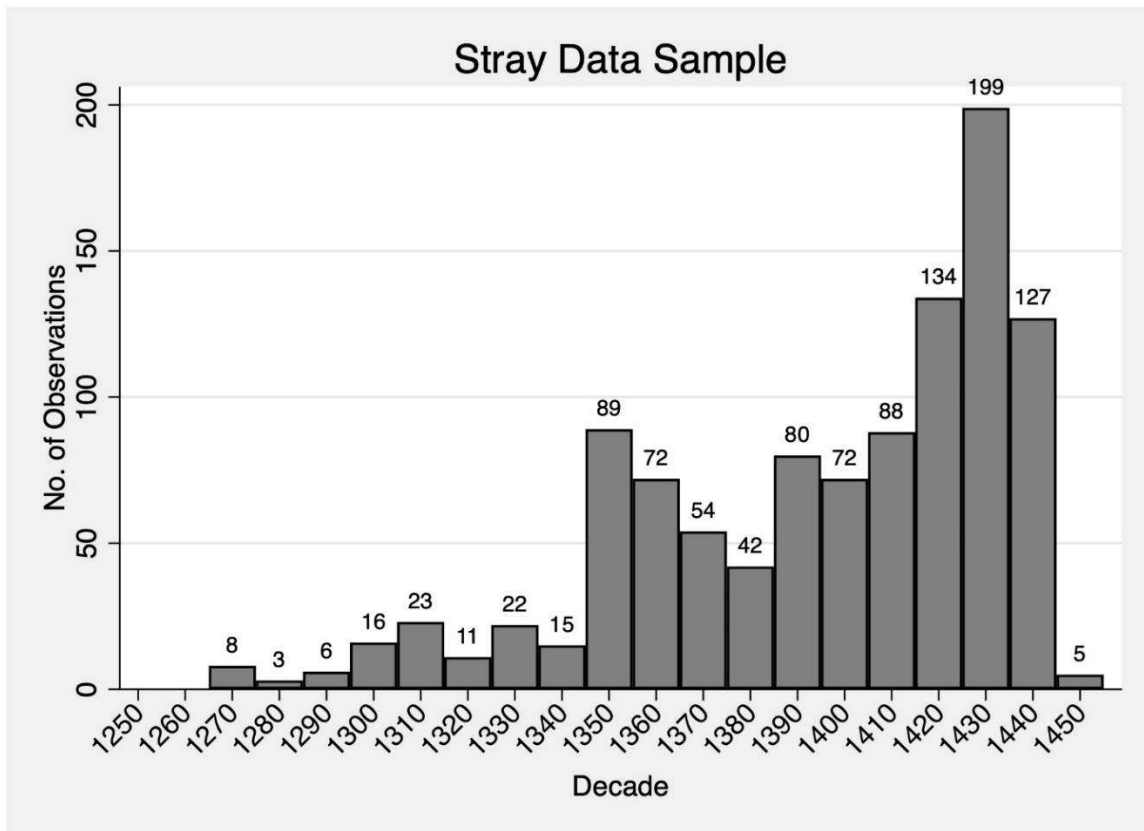
Table B1: Manors Sampled

Manor	County	Type of Lord	Field System/Common Lands	Number of Session Searched	Observations	Percentage
Worfield (1351-1450)	Shropshire	Aristocratic	Common fields and some enclosure with common and woodland	413	493	46.25
Downham (1365-1449)	Cambridgeshire	Ecclesiastical	Common fields with fen commons	263	340	31.89
Wakefield (1274-1351)	West Yorkshire	Aristocratic	Common fields with some enclosure	599	92	8.63
Bradford (1338-1362)	West Yorkshire	Royal	Common fields with some enclosure	142	80	7.50
Tottenham (1378-1398)	Middlesex	Aristocratic/ Gentry	Common fields with some enclosure	108	17	1.59
Willington (1394-1453)	Bedfordshire	Aristocratic	Common fields	12	17	1.59
Tooting Bec (1399-1421)	Surrey	Religious House	Common fields	51	15	1.41
Rickingham (1321-1338)	Suffolk	Religious House	Common fields	105	8	0.75
Worlingworth (1321-1326)	Suffolk	Religious House	Enclosed fields	88	4	0.38
Total					1066	100

Court Roll Sources: SA, P314/W/1/1/31-303; CUL, EDR, C11/1/2-3, C11/2/4-6; *Wakefield 1274-1297*, ed. Baildon; *Wakefield 1297-1309*, ed. Baildon; *Wakefield 1313-1316*, ed. Lister; *Wakefield 1315-1317*, ed. Lister; *Wakefield 1322-1331* ed. Walker; *Wakefield*, ed. Walker, vol. 2; *Wakefield*, ed. Jewell, vol. 2; *Wakefield*, Habbertam, O'Regan and Hale eds., vol. 6; *Wakefield* ed. Troup, vol. 12; TNA, DL 30/129/1957; *Tottenham*, ed. Oram; Jamieson Transcriptions: BARS, R Box 212; *Tooting Beck*; BL-, Add. Ch. 63428-51; SROI, HA116/3/19/1/2-5.

Lord/Field System Sources (from sources other than court rolls): Worfield: G.C. Baugh and C.R. Elrington (eds.), *A History of the County of Shropshire*, vol. 4, *Agriculture*, (London, 1989), 72-118; Gibbs, "Felony Forfeiture," 256-7; Downham: L.F. Salzman, (ed.), *A History of the County of Cambridge and the Isle of Ely*, vol. 2, (London, 1948), 90-5; Wakefield and Bradford: E. Millet, "Farming Practices and Techniques: Northern England" in *Agrarian History*, vol. 2, 399-403; E. Millet, "Farming Practices and Techniques: Yorkshire and Lancashire," in *Agrarian History*, vol. 3, 185-7; Tottenham: T.F.T. Baker and R.B. Pugh, (eds.), *A History of the County of Middlesex*, vol. 5, (London, 1976), 333-9; Willington: P.D.A. Harvey, "Farming Practices and Techniques: The Home Counties," in *Agrarian History*, vol. 3, 254-5; Jamieson, *Willington and the Monbrays*; Tooting Bec: H.E. Malden (ed.), *A History of the County of Surrey*, vol. 2, (London, 1967), 129-130; Rickingham and Worlingworth: Mark Bailey, *Medieval Suffolk: An Economic and Social History, 1200-1500* (Woodbridge, 2007), 111-2. Each observation refers to a specific stray animal or set of stray animals (when these cannot be disentangled) reported in the court rolls.

Figure B1: Frequency of Stray Observations by Decade



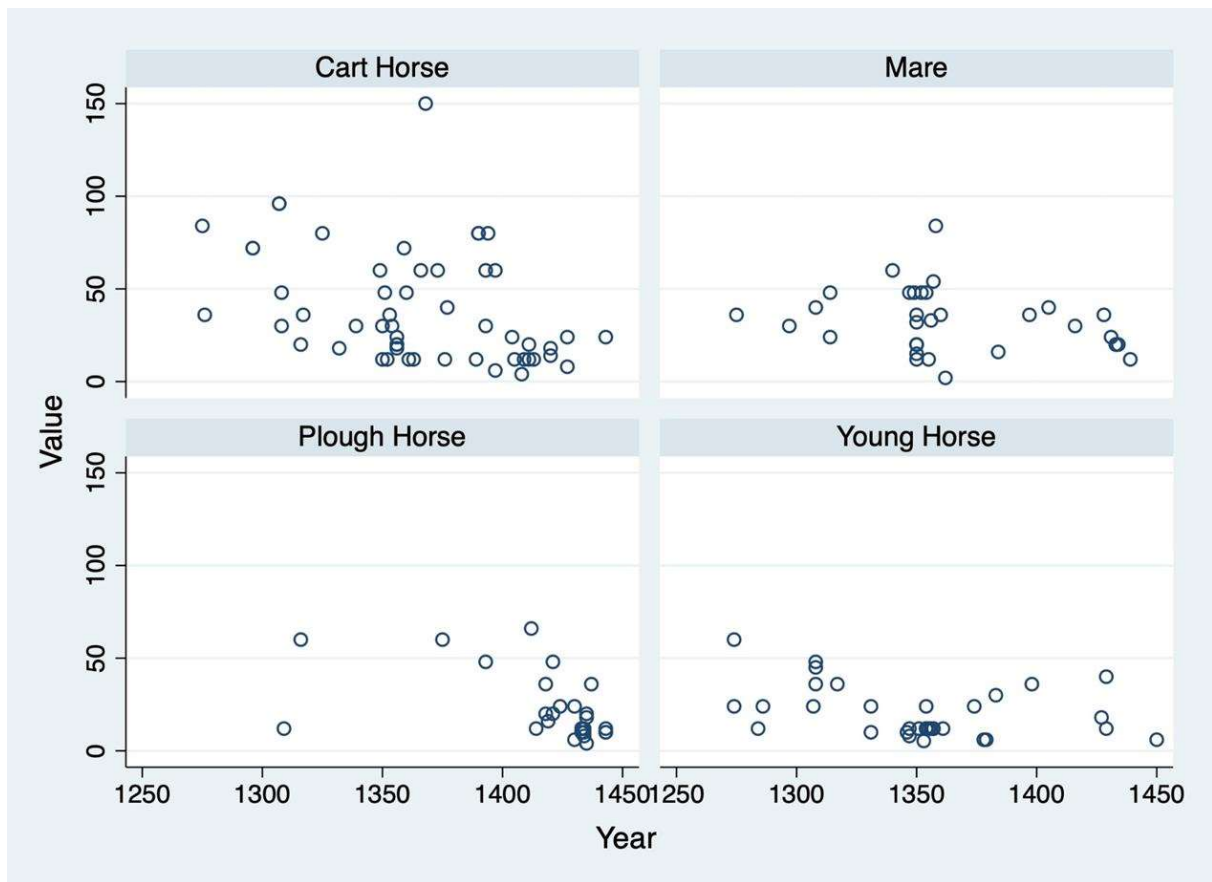
Sources: See Table B1

Figure B2: Composition of Stray Horse Sample by Manor



Sources: Worfield: Shropshire Archives, P314/W/1/1/31-303; Wakefield: *Wakefield 1274-1297*, ed. Baildon; *Wakefield 1297-1309*, ed. Baildon; *Wakefield 1313-1316*, ed. Lister; *Wakefield 1315-1317*, ed. Lister; *Wakefield 1322-1331* ed. Walker; *Wakefield*, ed. Jewell, vol. 2; *Wakefield*, ed. Walker, vol. 3; *Wakefield*, Habberjam, O'Regan and Hale (eds.), vol. 6; *Wakefield*, Troup (ed.), vol. 12; Bradford: TNA, DL 30/129/1957; Tottenham: *Tottenham* ed. Oram; Willington: Jamieson Transcriptions: BARS, R Box 212; Tooting Bec: *Tooting Beck*.

Figure B3: Composition of Stray Horse Sample by Horse Type



Sources: See Figure B2.