



RESEARCH ARTICLE

# Institutional memory and legal conflict in the Old Borough of Durham, 1300–1450

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## Abstract

Historians have long used the archives of major institutions to shed light on medieval society, but in more recent decades the focus has turned towards the proliferation of legal documentation possessed by those lower down the social order and the increasing penetration of legal processes into their everyday lives. Yet, in recapturing this world, there is a danger that we take for granted the immense documentary power of a large institutional repository. This article follows several legal conflicts across the fourteenth and early fifteenth centuries involving the monks of Durham Priory to demonstrate the extent of this archival culture, showing how they turned to their vast array of documentary evidence for information about those who had incurred their wrath. Using their archives, they traced the descent of holdings, the offices held by key individuals, and previous payments in account rolls, all in a bid to demonstrate their rights, the ‘abuses’ of officials, and to counter legal opposition. Not content, the monks then compiled this evidence into an alternative narrative of events that questioned previous legal proceedings and ceremonies, constructing an institutional memory that saw contradictory documentation as ‘entirely most falsely forged’.

## 1. Introduction

In 1336, Alice oth Slade won a legal battle she had been waging against the monks of Durham Priory over her right to common pasture in forty acres of land on Bearpark moor, on the outskirts of the Old Borough of Durham in north-east England.<sup>1</sup> The prior instructed that her rights – and consequently those of similar tenants in the Old Borough – should be restored, which was duly carried out by a ceremony on the moor in the presence of the bishop’s chancellor and his justices. Yet, less than a century later, a new generation of monks had constructed a narrative of these events that saw them as a ‘pretended reseisin’ (invalid legal restitution of rights) because, in their minds, such a process would have been done in the bishops’ chancery, not on the moor, and the monks concluded that documentation to the contrary had ‘been entirely most falsely forged’.<sup>2</sup> Subsequently, in 1427, when

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another tenant of the Old Borough found his cattle detained on the moor and the issue went to court, the monks prevailed, with the jury deciding that the land in question was, and always had been, the freehold of the monks and the tenants had no right of pasture there. Although the drama of enclosure riots and the ensuing loss of common rights have attracted much historical debate, it was more often through this erosion of legal entitlements across multiple generations that such common rights were lost.<sup>3</sup> Yet, how did landowners marshal the considerable documentary evidence available to them in preparation for court appearances and what evidence were such decisions based upon? This article follows the legal battles over both the pasture and coal rights associated with Bearpark moor and the surrounding area to demonstrate how the Durham monks were able to construct, cultivate and curate an institutional memory through their documentary archives that ultimately proved overwhelming.

It is often thought that large institutions had innate advantages in legal proceedings because they were able to draw upon substantial institutional repositories of both personal knowledge and documentary evidence. Monasteries serve as the exemplar of such thinking; they were able to call upon the sage advice of elderly brethren within their cloisters and pour over hundreds – if not thousands – of documents within their repositories. Tom Johnson, for example, has shown how late medieval society was awash with legal documents, bringing more and more people into everyday contact with written evidence and providing them with increasing agency in their legal dealings, but that such interactions also bound people to the courts, where ‘they were little match for the late-medieval institutions built on mountains of parchment and paper, which could store and use documents in far more powerful ways’.<sup>4</sup> Court judgements abound with vague allusions to decisions being made based upon the production of ‘a certain writing’ or ‘by virtue of a certain copy shown in the court’, but what exactly was the nature of this documentary evidence that courts found so compelling? How was such evidence compiled? And what agendas went into its production? As Shannon McSheffrey has argued, ‘legal documents cannot be seen only as reflections of the past, as witnesses of history, but must also be understood as agents in the historical process. Legal documents were not just inert and transparent accounts of a legal proceeding or act’.<sup>5</sup> It is all the more significant, then, that the vast majority of medieval archives have not survived intact, leaving historians to speculate on their size, shape and composition from the registers and cartularies that have been preserved.<sup>6</sup> The disruption suffered by Durham Priory’s archive during the Dissolution was minimal in comparison to other institutions with similar archives, meaning that we are better able to see the copious draft materials, extracts from documents, and memoranda that went into such compilations and which demonstrate the amount of effort that went into securing a legal victory in the courts.

Over the course of generations, institutions such as Durham Priory built up and organised not only their archives but also a curated sense of their past that informed the shared narratives inherited by future generations through their registers and cartularies. In part, these volumes were created for reasons of legal security and ease of access, but they were also used to establish and support a carefully crafted institutional memory that was intended to be definitive.<sup>7</sup> Their registers, cartularies and other compilations of documents reveal aspects of the active process

by which a collective sense of the past could be constructed, and as Georges Declercq has argued, they show how ‘institutions perceived their history and thus shaped the social memory that bound these institutions together’.<sup>8</sup> This is important because we are often forced to work backwards from such curated compilations of evidence presented in secondary records such as registers and cartularies since ‘the great majority of primary documents have been lost, because they consisted of single sheets of parchment’.<sup>9</sup> As Joanna Tucker recently emphasised, their contents may be limited or misleading as cartularies were ‘created and designed with the intention of living alongside the archive’.<sup>10</sup> The remarkably extensive archive of Durham Priory retains many drafts and documents that have proven more ephemeral elsewhere, allowing fresh insights into how the monks utilised their own archives to construct such narratives and the competing agendas that went into their production. Consulting a vast array of documentary evidence from the cathedral’s archives, including chronicles, charters, deeds, account rolls, court records, rentals and surveys, the monks responded to real and perceived challenges surrounding the priory’s rights, creating an extensive evidentiary base for many of their claims. In the case of Alice Slade and her neighbours in the Old Borough, the monks built up what Margaret Bonney has described as ‘a large dossier of notes and evidence’ on the tenants and their claims, tracing the descent of individual holdings and the offices tenants may have held, including notations of where this evidence could be found, in whose custody and its contemporary location in the archives.<sup>11</sup>

This medieval use of their records has, in turn, a significant impact upon the nature and shape of surviving material that is available to us, placing considerable importance upon what has become known as the ‘archival turn’. Building partly on the conceptual framework of the archive as a metaphor for power first raised by Michel Foucault and Jacques Derrida, this research has gone a long way in challenging the assumptions of archives as neutral repositories of knowledge, and instead sees the ways that agency, identity and authority played a key role in their creation.<sup>12</sup> As Alexandra Walsham has argued, ‘far from neutral and impersonal texts, administrative records were a forum within which officials engaged in a form of “creative writing”, amending and fabricating the history of the institutions for which they worked’.<sup>13</sup> This was clearly at work in the present examples in which John Wessington, prior of Durham cathedral, compiled these disparate sets of records into a series of narrative ‘evidences’ in the early fifteenth century, of which around forty may have survived.<sup>14</sup> Relating to the rights and jurisdictions of the community, these compilations served a dual function of bringing together evidence that supported the priory’s rights in response to specific legal challenges, as well as having an intended legacy enabling the monks to respond to – or even pre-empt – future challenges. Indeed, as Carolyn Steedman has noted, archives are in many ways framed in the future-perfect tense, suggesting that what is written is what will have been, and we can see the power of this mentality at work in our Durham examples as the monks used their own archives to construct a powerful counter-narrative of earlier legal processes.<sup>15</sup> In so doing, Wessington and the other monks who worked on producing registers and cartularies were crafting an institutional memory that would shape how they responded to subsequent legal conflicts surrounding their rights and jurisdictions, demonstrating how such

memory was created, the ways in which it was shaped by – and perhaps subsequently distorted – previous legal proceedings, and the consequences for their tenants. As historians, then, we need to understand how the documents we consult were utilised by contemporaries. The way different generations, each with their own agendas and priorities, sorted and sifted through these records has directly shaped our field of vision today, with the customary memory of the tenants in our current case largely written out of proceedings in favour of the monks' revised narrative of events.

The case studies presented here also highlight how quickly the monks could build up such a collection of evidence from their records on anyone who incurred their wrath; their bailiff in the 1427 case, and thus the man who enforced the priory's interests on Bearpark moor, found himself embroiled in his own subsequent battle with them over his obligations to pay coal tithes. The second of our cases thus demonstrates the advantages and pitfalls of manorial officeholding as the monks went into considerable detail of the formal and informal perquisites that might be accrued from such positions to prove their case at arbitration. Outright fraud and embezzlement by manorial officials was certainly possible in medieval England, with some explicit instructions surviving of how an unscrupulous bailiff might skim a little milk off the top to make additional cheese for their own benefit.<sup>16</sup> Such minor indiscretions by manorial officials must have been expected to some extent and, indeed, may well have been considered a benefit of the position so long as such transgressions did not unduly impede the manorial economy or become disreputable.<sup>17</sup> Yet, as the current case shows, there was a fine line between a perquisite and an outright abuse, and often the thing which tipped the scale of the balance one way or the other was not necessarily the actions of officeholders themselves but whether the official was in favour or not: lose favour and lords were only too willing to present 'abuses' to which they had previously turned a blind eye. What reached the courts, and thus our vision, is potentially the tip of the iceberg of a much larger informal economy, of which lords must have been aware but were willing to ignore if it suited them. This certainly seems to be the case in early-fifteenth-century Durham because once their relationship with their official, Richard Cowherd, had soured, the monks went into considerable depth detailing the financial rewards he had been receiving, alongside presenting decades' worth of evidence for their historic rights to impose tithes upon his coal production, as well as a laundry list of his past 'abuses'. This example also demonstrates how estate management decisions were always subject to review; what had been deemed acceptable by an earlier generation of monks was no longer to be tolerated in the financial difficulties of the early fifteenth century.

The conflicts over common pasture rights in Bearpark moor and coal production in the surrounding area presented here thus demonstrate how the institutional repository available to the monks of Durham Priory gave them distinct advantages in potential legal proceedings, often seeming irresistible in the documentary evidence available to them. Yet, this should not be taken for granted. As we shall see, this was not a straightforward case of simply presenting an account roll or referring to a court entry to prove their case, but rather involved diligent research, pouring through decades of documentation, and compiling this raw information

into a coherent counter-narrative of events. This, in turn, led not only to a questioning of previous legal decisions but to a reimagining of judicial space as Wessington utilised the growing importance of the bishop's chancery to question the legitimacy of the previous ceremonial reseiin on the moor. The first section of this article, then, introduces the Old Borough of Durham, its liminal urban nature, and the surrounding areas that were under dispute. The second section analyses the legal conflicts surrounding the common pasture rights of the tenants there, tracing these disputes through a century of decisions, before presenting the monks' zealous investigations into these tenants and the construction of their own narrative of events. The third section examines how the relationship between the monks and their bailiff deteriorated, and the subsequent creation of a range of evidence against him, extolling his many and varied abuses that had previously gone unpunished. The final section explores the implications of these case studies for our understanding of how contemporaries actively deployed documentary evidence, and, indeed, how often the accumulation – or the threat – of such overwhelming written evidence may have pre-empted legal action entirely.

## 2. The Old Borough of Durham

The Old Borough of Durham, or Crossgate as it is now known, lies on the west bank of the River Wear, across from the main peninsula complex of Durham city, upon which the cathedral itself sits. Although never possessing a comprehensive charter of privileges, it gained a vague form of borough status in the twelfth century. Further west still lay the priory's manor of Beaufreire (Bearpark), some two miles away from the cathedral and city proper. This was a particularly important possession of the priory because it was one of the prior's primary residences outside of the cathedral. It was here that each member of the monastic community regularly enjoyed periods of relaxation at the prior's games known as *ludi*. There were often four such *ludi* per year, each lasting for two weeks or more at a time, meaning that an early-fifteenth-century prior such as Wessington could spend two months a year entertaining his monks at Bearpark manor. Although the exact events of the *ludi* are not known, they appear to have been well-provisioned affairs with one such gathering in 1391 eating their way through five oxen or cattle, twenty-two sheep and seven pigs over the course of two weeks.<sup>18</sup> In addition to the *ludi*, the prior also routinely entertained other senior members of the monastic community or local dignitaries at his residence there, and so someone in high authority was regularly in attendance. The manor was thus central to the everyday lives of the prior and his monks and, as a result, they were particularly conscious about the management of their park attached to it, whose scale and importance can be seen well into the sixteenth century (see Figure 1). Lying between the monks' manor at Bearpark and the Old Borough lay a sequence of enclosed fields and a stretch of land known variously as Old Borough moor or Bearpark moor, the nomenclature often varying depending upon who was laying claim to it at the time. It was access to this moor that was to prove so contentious over the course of the fourteenth and early fifteenth centuries.

The exact nature of the community of tenants living in the Old Borough has slightly divided historical opinion. In his study of Durham Priory in the early fifteenth century, Barrie Dobson thought that the:



Figure 1. Sixteenth-century map of the Durham region.

Source: Christopher Saxton, *Atlas of the Counties of England and Wales* (London, 1576), DULASC, SD+ 00232. Reproduced by kind permission of Durham University Library. Map Key: Duresme = Durham; Bearpark manor and park are depicted as a wooded region to the north-west of the city, surrounded by a palisade; Bearpark moor lay on the two hills between the Old Borough on the western outskirts of Durham city and the park; the coal mines run south of the park and to the west of Durham at Aldernedge = Aldin Grange; Brome = Broom; Relley = Relley; and the dependent cell of Finkle = Finchale Priory lies to the north-east on the River Wear.

‘Old Borough, whose boundaries ran far west to the extensive 400 acres of Beaurepaire or Bearpark Moor, was still agricultural land in the fifteenth century. Only in Allergate, South Street, Milburngate and Crossgate itself was there much in the way of urban tenements or housing. In most respects the Old Borough retained the characteristics of a rural village until long after the dissolution of the monastery. Pigs and other livestock wandered its streets in the early sixteenth century, while the great majority of its inhabitants depended on the cultivation of the soil rather than trade or industry for their livelihood’.<sup>19</sup>

By comparison, from his study of the borough court rolls, Richard Britnell concluded that: ‘it is plain from the occupational details in the Crossgate records that the borough was a community of tradesmen and artisans even if some had land and livestock. It differs strongly from the court records of rural communities’.<sup>20</sup> The reality was, presumably, somewhere in-between, the borough having a liminal experience, with one face turned across the river and the more urbanised, commercialised and specialised economy of Durham city, and the other looking across the moor towards the more rural pursuits of the manor and park of Bearpark. It is in this context of a semi-rural borough of tradesfolk who had an active interest in agriculture, and a monastic residence whose primary purpose was to entertain, that our legal conflict over common pasture rights took such an edge: the tenants requiring the grass for their livestock, and the monks routinely traversing the area and thus keenly aware of any potential transgressions.

From the borough court records of the Old Borough, we get a strong sense of a community very familiar with legal processes and who were more than happy to litigate, especially against each other. Britnell concluded that this ‘apparent willingness of the priory to allow the burgesses to manage their affairs as they wished, and to accommodate their private needs [by holding *ad hoc* court sessions of private litigation], goes some way to explaining the absence of conflict between priory and townsmen that is a conspicuous feature of Durham’s medieval history.’<sup>21</sup> The court rolls demonstrate a high level of inter-personal litigation, often taking the form of suit and counter-suit, showing the degree of sophistication with which tenants engaged the courts. It also demonstrates the disruption that one particular family – in this case that of John Pearson – could cause in a medieval community and the ripples that were felt more broadly. In 1390, for example, John Pearson sued Agnes Nesham for defaming him and calling him false and a thief; Agnes in turn sued John Pearson and Christiana, his wife, for the latter abusing her in the high exchequer and carrying off her goods, and she further sued John Pearson for maliciously taking goods.<sup>22</sup> In the following year, the Pearsons reappear, this time being sued by John Legge because Christiana had abused and maltreated Margaret, Legge’s daughter. Not one to take this lying down, Pearson in turn sued Legge because the latter’s daughter, Margaret, had in fact abused Peter, John Pearson’s son. Legge countered by suing Pearson for allowing his dog to destroy five *futfals* (skins of dead new-born lambs), and the latter in turn sued Legge for entering his house and abusing Elena.<sup>23</sup> That same year, Pearson again made trouble by suing John Dondale for taking a pair of *crels* (wicker baskets), who countersued Pearson over a debt for a quarter and two bushels of coal. John Pearson then sued Dondale for allowing his animals to enter his garden and destroy his grass, vegetables, leeks and other necessities growing there.<sup>24</sup> These various back-and-forth suits demonstrate the liminal rural-urban character of the borough itself. Although urban in nature, many tenants had access to sufficient land to possess the usual cacophony of animals, which shows why they were so keen to secure common pasture rights on the surrounding moor. These cases also demonstrate the practical experience that the tenants of the Old Borough had with the local courts themselves. They were more than willing and able to appeal to legal processes and, indeed, potentially manipulate them through a range of vexatious litigation, to achieve their own goals.<sup>25</sup>

### 3. Conflict and contestation in the courts

The opening salvos in the legal conflicts over Bearpark moor in the fourteenth century were not in fact between the prior and his tenants but rather between himself and the bishop of Durham, Antony Bek. As part of their long-running dispute, the prior, Richard de Hoton, claimed that Bek had unjustly disseised (dispossessed) him of eighty acres of moor and pasture in the Old Borough.<sup>26</sup> Although Bek and the other defendants claimed this was part of Framwellgate and not the Old Borough, the jurors rejected these assertions and found in favour of the prior, who was awarded £4 in damages.<sup>27</sup> Again in 1305, de Hoton presented a series of twenty-one articles of complaint against the aggressions of Bek to Edward I, which included the accusation that the bishop had disseised the prior of one

hundred acres of moor and pasture in the Old Borough.<sup>28</sup> The monks were successful in reclaiming the moor in these actions and, for his part, Antony Bek confirmed the lands to the west of Durham granted to the priory by William of St Calais, bishop of Durham, in part put at farm by the bishops' officers through their ignorance as outsiders.<sup>29</sup> There then followed a series of further quit-claims (a formal renunciation of a legal right) from individuals, such as that of Peter del Crook in 1315, of any right to common pasture in the moor of the Old Borough which the monks had recovered by an assize of novel disseisin (legal action to recover lands of which the plaintiff had been dispossessed) against Bishop Bek.<sup>30</sup> These early legal forays set the tone for the following disputes between the monks and their tenants, in part because the monks had themselves only just recovered these lands from the incursions of others and so they were particularly sensitive to any further infringements, and in part because these quit-claims formed a piece of the evidence that Prior Wessington would later use to refute the tenants' claims.

In a series of legal proceedings in the subsequent century, the tenants of the Old Borough fought for their rights to common pasture on the surrounding moor. The most important and perhaps controversial of these cases was that of Alice oth Slade, who brought an assize of novel disseisin in the court of Richard de Bury, bishop of Durham. The case survives in several versions, though perhaps the fullest description of events is provided by twenty-four witnesses, neighbours from the locality, who testified in a declaration dated 9 April 1336 that they had seen the events contained within this record and process from beginning to end and were personally present at the restitution of Alice's rights.<sup>31</sup> This asserts that on 28 June 1334, Bishop Bury had issued a writ to the sheriff of Durham because Alice had pleaded that William, prior of Durham, and John Turnour had unjustly disseised her of her common pasture rights on the moor associated with her free tenement in the Old Borough of Durham since the first crossing of King Henry III to Gascony.<sup>32</sup> The bishop instructed the sheriff to have a jury of twelve men from the vicinity view the pasture and tenement, and summoned them before Thomas Hoppescotes, Roger of Esh, and Simon Grimsby – the bishop's justices – for examination. On 26 July 1334, the court action proceeded with Alice protesting that she was denied her rights of common pasture in forty acres of the moor for all manner of her draught animals throughout the year.<sup>33</sup>

Although William, prior of Durham, was personally present and John Turnour represented by his bailiff, Henry de Hett, no decision was made, and the case was adjourned to a later session. It then continued to be adjourned through a number of sessions – 3 January 1335, 25 April 1335, 26 July 1335, 2 October 1335, 2 January 1336, and 8 April 1336 – until, finally, the prior decided to restore Alice to her common pasture in the last court. Although it is unclear why he did so, it is recorded as being done because he did not wish to cause Alice further impediment and that he had sought approval amongst his fellow monks, who had been convened specifically for that purpose. It seems unlikely that the monks would willingly concede any rights – indeed, to do so would be anathema to their purpose of protecting the patrimony of Saint Cuthbert – and instead seems more likely that they were facing legal defeat or default and chose to pre-empt this by restoring Alice's rights. The prior, therefore, instructed John Barneby, the terrar of the priory and acting as



the monks' attorney, to restore Alice to her common pasture rights. And so, on 9 April 1336, John went to Bearpark moor itself and, in the presence of Nicholas Gategang, chancellor of the bishop's temporalities, Thomas Hoppescotes, Roger de Esh, and Robert Parnyng, justices of the bishop, and others 'specially requested' to be in attendance, he resealed (legally restored) Alice to her pasture rights.<sup>34</sup> This was significant for two key reasons: firstly, by acknowledging that her burgage plot had rights to common pasture on the moor, the monks were explicitly acknowledging that similar tenancies of the Old Borough also had these rights, in perpetuity; and secondly, because of the contested sense of judicial space. Given its close proximity to the city, it appears that some of the highest members of the bishop's judiciary were present in person on the moor to oversee this restoration of rights. Yet, this was to become a key source of grievance for the monks, who contested this sense of judicial space, arguing that such a restoration would have taken place in the bishop's chancery not on the moor itself as claimed here.

In many ways, the above demonstrates the strength of both the judicial system and of the tenants' willingness to engage with the law courts: Alice was able to take her own landlord to task for denying her pasture rights and, after some delays, win. Although such disputes over common rights are more readily associated with early modern England, we can observe here how such conflict was a feature of the landscape centuries previously, as tenants sought to protect their pasture rights against the incursion of their landlord.<sup>35</sup> Yet, it was not so simple, and legal complaints between the Old Borough tenants and the monks rumbled on in subsequent generations. On 23 September 1359, an assize was held before John Mowbray and his fellow justices of the bishop, to examine the plea of John Potter that John Fossor, prior of Durham, and multiple others had unjustly disseised him of his rights of common in three acres of pasture.<sup>36</sup> Although presumably relating to a different plot of land to that of Alice above, there were similar issues at play here. John of Elvet, as bailiff for the prior and others, replied that Potter had never been seised of the common pasture and they had done no injury. They also challenged a number of the panel of jurors, as well as others who were not in attendance at the session, because they were free tenants of the Old Borough, and so would also want to claim common rights if Potter was successful.<sup>37</sup> Gilbert de Holm and William of Ludworth were chosen to try the jurors who found that the panel favoured John Potter, and so the whole panel was removed.<sup>38</sup> The sheriff then summoned a new panel from the ward of Darlington (the county being divided into four wards), with the proceedings adjourned until 23 March 1360. A jury was subsequently chosen who found that John Potter had never been seised of the common pertaining to his free tenement as claimed. The case was later endorsed (written on the back, often by a later reader) in a fifteenth-century hand as an assize about land lying on the north side of *Godesley* by Bearpark moor, called *Le Gare Brade*, indicating that it was, indeed, a different piece of land to the forty acres of common pasture claimed by Alice.<sup>39</sup> Yet, it is important because it shows that disputes over the moor continued throughout the fourteenth century, creating a legal environment that required the monks to defend and justify their rights there. Besides this specific dispute, John Potter appears to have been in frequent trouble with the monks of Durham Priory and it is hardly surprising that they took a particularly dim view of his claims here.

Throughout the 1330s, 40s and 50s, his misadventures are recounted in the prior's free court rolls, where his dogs were said to have chased and killed twenty-two of the prior's sheep; he protested that he had taken nothing from Robert of Middleham, hostiller of Durham Priory; he stood accused of taking building materials from the terrar's house in South Street; and he was said to have assaulted John Nouthird and, in a separate incident, William Shouff.<sup>40</sup>

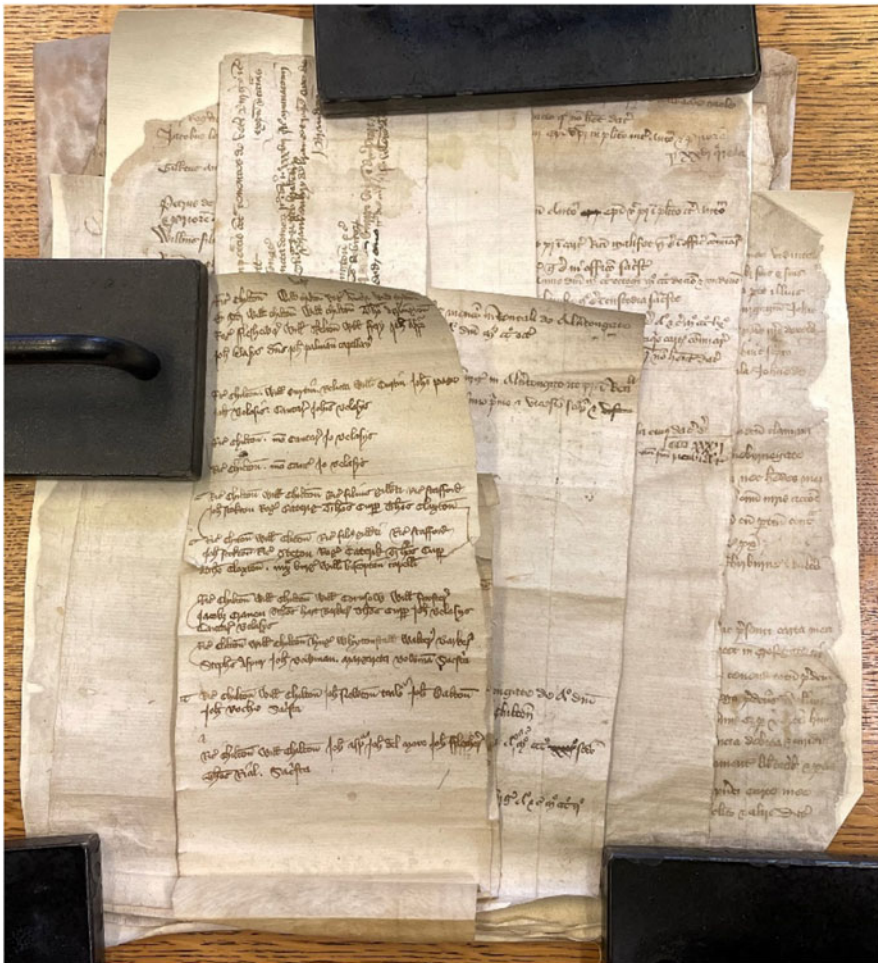
The culmination of these legal proceedings was reached in July 1427, when Thomas Langley, bishop of Durham, issued a writ *recordare facias* to Robert Eure, sheriff of Durham, to record a *loquela* (a writ of a plea without a record in a lower court so that it could be transferred to a higher court) between John Pollard, dyer, and Richard Cowherd of Durham, yeoman. Eure in turn wrote to Robert Dalton, coroner of Chester Ward, and Thomas Wheledale, one of his bailiffs, to take sureties for the appearance of the two before the bishop's justices in September.<sup>41</sup> It was noted that since William Melot, the sub-sheriff, who frequently held such pleas in the absence of the sheriff, received an annual pension of 6s. 8d. from Pollard, that he and the sheriff favoured Pollard in the plea.<sup>42</sup> In the subsequent year, Cowherd was arrested to answer Pollard's complaint and the proceedings were held before James Strangways and his associates, justices of the bishop. Pollard, through Thomas Wheldale, his attorney (and presumably the same Thomas described as bailiff above), pleaded that on 5 July 1427, in Bearpark moor in the Old Borough of Durham, Richard took away twenty-five of his cows and detained them, with Pollard sustaining twenty marks in damage. Richard Cowherd, in person and as bailiff of the prior, acknowledged the detention of the cows, but protested that the moor was part of the manor of Bearpark and not within the bounds of the Old Borough.<sup>43</sup> He claimed the cows were taken between a part of the moor encircled with trees, commonly called *le Monkeherber*, and a close belonging to the almoner of the monastery of Durham, called *le Almoignercloos*, which is a free tenement of the prior, and that, as bailiff, he took and impounded the cows for depasturing (eating) the prior's grass. Although not mentioning the case directly, John clearly resurrected the claim of Alice Slade some century earlier that he, and all the tenants of the Old Borough, had common pasture in forty acres of the moor since time out of mind and that the place Cowherd acknowledges the seizure occurred was in fact part of that same forty acres.

Unfortunately, it is difficult to recover the tenants' memory of these events or how they were passed down through the generations, though other records such as proofs of age and depositions give a sense of how memories could be attached to particularly important events.<sup>44</sup> Given its significance, it seems likely that a similar communal memory would have developed around Alice's legal success, especially since so many of her neighbours were witnesses to subsequent documentation surrounding the event. The similarities between Alice's success and Pollard's claims hints at the strength of a local memory about these common rights, but if Pollard directly appealed to that previous verdict, it has not been preserved in any of the surviving evidence. Communal memory surrounds such documents but is often absent from them, perhaps in this case as part of a deliberate policy by the monks to produce a version of record that was not contradicted by appeals to earlier proceedings. Two exemplifications made in the bishop's court in 1429

inspected and formally recopied the fourteenth-century cases of novel disseisin brought against the prior, including that of Alice Slade, indicating that the prior and convent were similarly reviewing old material in defence of their position.<sup>45</sup> Shortly after this, both Pollard and Cowherd duly submitted themselves to a jury for judgement, who found in favour of Richard Cowherd and ruled that he should have return of the cows.<sup>46</sup> In 1434, the bishop issued a writ to the sheriff informing him that Cowherd had been awarded return of the twenty-five cows of John Pollard, but a memorandum of 1435 makes it clear this had not taken place and, instead, Pollard offered a 1 lb candle at the shrine of St Cuthbert in recompense for the said return. Pollard was forced to acknowledge that he had put forward a false claim and had caused injury by unduly impleading Richard Cowherd and by vexing the prior and convent, to whom the moor belonged of old.<sup>47</sup>

The above outline demonstrates how in several generations common rights could be formally recognised, challenged and then overturned through the courts, including the legal manoeuvring that went alongside this, from retaining local officials to challenging juries in order to secure a successful verdict. Yet, it does not give any real insight into how the juries came to their decisions, what evidence swayed their views, and, ultimately, how the monks compiled this material in order to create their own version of events. As interesting as the case is for the loss of common rights, it is the institutional response of the monks of Durham Priory to these challenges that showcases the amount of effort that could go into creating a mass of evidence, which was often summarised by even the most loquacious of clerks in a handful of sentences. In response to these claims by their Old Borough tenants, the monks of Durham built up what Bonney has described as ‘a large dossier of notes and evidence in an attempt to rebut these claims’ (Figure 2).<sup>48</sup>

It is not clear exactly when this collection of evidence was compiled, though the handwriting suggests a date significantly later than the actual legal battles of the 1330s, whilst the last document consulted or copied is from 1402.<sup>49</sup> An analysis of the lists of names contained in them – most of which are undated and often without headings explaining their significance, but which have been catalogued as lists of tenement holders – suggests that some of these may even have been drawn up in the early fifteenth century.<sup>50</sup> That being said, it is likely that the documents were compiled prior to the dispute with John Pollard in 1427–1429 because, aside from his name appearing once in a single list of names, there is no mention of him, which seems unusual if it were created after this date. It would appear, then, that the evidence represents research conducted by the monks at some point between the legal conflicts of the 1330s and 1420s, and which might have been added to over time. This was a particularly tumultuous period for the English economy, with the Black Death of 1348–1349 and subsequent outbreaks of disease killing perhaps half of the population, in the aftermath of which many social relations and tenurial obligations were refashioned.<sup>51</sup> It was an especially challenging period for landowners as the relationships between wages, prices and rents were fundamentally altered – labour and consumer goods were now in high demand, whereas land and staple agricultural goods were not – whilst lords struggled to enforce labour services.<sup>52</sup> Faced with such wholesale socio-economic transformations, we can well imagine the monks turning to their records for answers to their increasing financial struggles.<sup>53</sup>



**Figure 2.** The large set of notes created by the monks about their Old Borough tenants.  
 Source: DCD, Loc.V:55. Reproduced by kind permission of the Chapter of Durham Cathedral.

These notes are more than simple duplications or accumulations of material found elsewhere within the monks' archives and suggests a level of conscious compilation, editing and extraction of information. For example, there are extracts from the bursar's rental of 1397, as well as from the bursar's accounts of 1316, 1337–1338, and 1340; the prior's free court rolls of 1316, 1331–1332, 1334–1335, and 1337–1338; the sacrist's rental of 1311; and a 1349 charter. Going beyond a general survey of their lands or views of the estate of the borough, included were detailed notes on the individual descent of particular holdings and their owners, such as those concerning Adam de le Brome and Walter de le Brome who appeared in the 1280 Allergate rental and Henry de le Brome in the rentals of 1319–1327; or of Richard Chilton who appeared in the Allergate rentals of 1310–1315 and was recorded as bailiff of the Old Borough in 1302, and of William Chilton being bailiff

in 1316 and of his holdings there in 1318; or of John of Barnard Castle's holdings in the Old Borough in 1334–1338 and his being bailiff there in 1337. It also includes a list of likely tenement holders in the Old Borough with references to documents between 1310–1344 about their property and their officeholding. There is a further list of names – perhaps also tenement holders in the Old Borough – dated 1336, surely not a coincidence that this was the same year as the finding in favour of Alice Slade's common pasture rights – as well as previous lists from 1305, 1319 and another from 1360 – again, the year of the ruling against John Potter. The fact that there is not a similar list for the 1420s further suggests that it was compiled prior to that conflict between Pollard and Cowherd.

It is unclear what the motivating purpose was behind this collection of evidence. At one level, it made sense after the ruling of 1336 to discover which holdings had common pasture rights on the moor restored to them and so we may be seeing an administrative reaction to this restoration of rights. In this relatively benign interpretation, we could be seeing nothing more than the monks' diligence in tracing who now held pasture rights upon the moor. Rather than us viewing a passive bureaucracy, however, another interpretation seems more likely – that this was an attempt to undermine earlier proceedings by demonstrating that the witnesses and jurors were themselves tenants of the Old Borough, and thus had a vested interest in the outcome. Although this latter might seem a cynical interpretation, the Durham monks appear to have not just refuted the claims of common pasture, but to have actively constructed their own counter-narrative of events in order to undermine the previous legal proceedings. For example, the case was copied into the register of John Fyshburn, chancellor of the priory, which runs from 1417 onwards. It repeats the details of the proceedings as above, including the favourable verdict for Alice, but a marginal note describes the events as a 'certain pretended process...handed to John Hemmyngburgh, prior of Durham, by the burgesses of the Old Borough of Durham, 1406', with an additional note describing it as having 'been entirely most falsely forged, as appears by the rolls of the assizes in the chancery of the lord bishop of Durham'.<sup>54</sup> Although it is not entirely clear what the monks were referring to by the certain pretended process displayed in 1406, it could perhaps be connected with the declaration of the twenty-four witnesses to the proceedings of 1336 outlined above or could suggest another flare up of these issues that has not survived. What is clearer is the ongoing concern within the priory over this matter, and the efforts of subsequent generations of monks, perhaps even into the mid-fifteenth century, to ensure that the 'correct' version of events was asserted by their registers and cartularies.

The drive to accumulate so much documentation appears, therefore, to have come from a desire to demonstrate that many of the interested parties in the earlier decisions were themselves 'free tenants in the Borough of Durham and Framwellgate and in the Old Borough with various parcels of arable in the field beside the moor that was recovered', as John Wessington – in his compilation discussed below – was at pains to highlight.<sup>55</sup> For example, several of the undated and unlabelled lists of names within the collection of evidence match up together perfectly. Two of these – one with a label of 1336, the other as 1360 – are identical to the list of witnesses who signed the declaration of the events described above surrounding Alice Slade's victory and subsequent restoration of rights. If, as the monks

seem to have believed, they were themselves all tenants of the Old Borough and with a clear vested interest in the case, it appears the monks saw this as undermining the legitimacy of that witness declaration. Some of the purpose of the evidence may even have been to challenge the jurors in their conflicts with John Potter in 1359–1360, who we know they were successful in having removed from the case entirely. The monks followed this up with as much information as they could find on each of the individuals, not just noting a piece of evidence but citing where it could be found – for example that Richard de Chilton was bailiff of the Old Borough in 1302 as was evident in the charter of William Lambe, which was in the custody of the sacrist. There are also several instances in which the seal attached to the referenced document is described in its physical detail, such as one which was oblong and containing an eagle with spread wings.<sup>56</sup> That they were at such pains to record the source of this information shows a desire to future-proof this research, allowing the originals to be consulted should they be needed in further legal challenges and, presumably, adding to the authority of the evidence by citing its source in such extended detail. Also telling of the extent of the priory's archive is the fact that several of the documents that they relied on to prove the status of individuals were not of monastic origins. Whether these muniments were deposited into the archive for safekeeping, actively acquired by the monks, or simply inherited through land transactions, is not clear. But, by whatever means such documents arrived in the hands of the monks, they clearly had no qualms in using records created for and by the Old Borough tenants against them, such as Thomas Sclater's 1310 grant, which was used as evidence of John de Haldwood's status as bailiff of the Old Borough.<sup>57</sup> This is especially significant given the apparent lack of documents produced by the tenants in support of their own rights. While to some extent this lack of written evidence may be a feature of the brevity of the court records and the nature of documentary survival, the extant evidence suggests that over multiple generations the tenants employed references to memory and rights which had been in place since 'time out of mind'.<sup>58</sup>

The accumulation of this archival material was just the beginning for the monks who, in the early fifteenth century under John Wessington, prior of the cathedral, created a set of 'evidences' related to the rights of the priory, including those relating to Bearpark moor.<sup>59</sup> Wessington likely had a range of motivations for producing such compilations, including his own interest in historical writings, but such efforts were part of a broader range of institutional record-keeping initiated in this period, in part in response to the financial challenges of the late fourteenth and early fifteenth centuries.<sup>60</sup> For example, the priory kept a close eye on their tenants generally, compiling lists of their villeins or serfs by blood, and producing a new survey of free tenants, the *Feodarium*, during Wessington's priorate.<sup>61</sup> In 1436–1437, the monks expressed alarm at the decline in their spiritual income, analysing their historic finances and providing four explanations why this had declined since the thirteenth century, blaming the loss of Scottish parishes and explaining how garb tithes had declined as land was put to pasture and frequent outbreaks of pestilence led to many places becoming waste.<sup>62</sup> Wessington's compilations were written in the context of this broader bureaucratic tradition of record-keeping and institutional anxiety over the current state of their financial affairs. These 'evidences' were the culmination of preceding events and decisions surrounding a

particular jurisdictional right that sought to demonstrate the monks' views, as well as serving to gainsay any future conflicts. In so doing, Wessington was actively curating an institutional memory of these disputes, repeating many of the above proceedings, albeit with a decidedly myopic viewpoint that clearly benefitted the monks' interpretation of events. He sought to assert that the moor in question belonged to Bearpark, not the Old Borough of Durham, and that the tenants did not have the pasture rights they so claimed. Wessington especially turned to the priory's prestigious history to overawe his opponents. He traced the history of the community of monks back to the removal of St Cuthbert from Chester-le-Street to Durham by Bishop Aldhun in 995, before which there was no Old Borough. Through a compilation of extracts from a range of charters and papal bulls, he traced the emergence of the Old Borough and the monks' possessions there. It details the lands gained to the west side of Durham across the Wear, which were made into a garden and called the Cellarer and Almoner orchards, and which were recorded in a number of charters and bulls. Quoting from a charter granted by King Richard I in 1195 and subsequent confirmations, it demonstrates how the priory established a grange called Bearpark beside the River Browney with a vaccary and sheepfold and, having no land beyond the Browney, assigned the whole adjoining moor for the grange's pasture, so that it was called Bearpark moor. It notes in passing that the site of the Battle of Neville's Cross (1346) between the English and Scottish was on Bearpark moor, as shown by a copy in the prior's register of a letter sent to the bishop.

It then went into more detail, noting that on part of the land given by Bishop William of St Calais (1081–1096) nearer the River Wear, the priory had put up buildings for a *praetorium* and a gaol and gave to various tenants burgage parcels of land near the road from the Almoner's orchard northwards to the Millburn without any part of the moor or pasture. The priory subsequently enclosed various parcels of land for their own use, such as Almoner's orchard, *Holcroft* and *Codesley* with wood, and granted to various tenants other parcels of land for cultivation, such as *Bellasis* and *Codesley* south and north of *Chiltonpool* with land below and on *Redhough*. This narrative of events does allow that tenants were permitted by special grace sufficient common pasture on the said moor, specifically extending east of the highway to the Millburn towards the north, which the tenants separated from the prior's moor of Bearpark and enclosed by an ancient dyke running along beside the highway, and also the whole waste from this close towards the south to the boundary of Elvet common, with the priory retaining its right to approve (to improve by increasing rent or cultivation) the moor and waste.

Getting to the centre of the issue, the evidence discusses what it describes throughout as the 'pretended reseisin' of Alice Slade and other tenants of the Old Borough, for land north of *Codesley* called *Garbrade*, in which John Potter subsequently claimed common as belonging to his free tenement and which the prior recovered against him by an assize before John Mowbray and other justices of the bishop in 1359–1360. The evidence suggests that he would not have done so if the pretended reseisin and the record made of it had been true, but many of the pretended makers of the record were burgesses of the Old Borough whilst others were their relatives (undoubtedly why the monks went to such pains in the above collection of evidence to prove these links). Nor, the compilation claims, would three

justices and the chancellor have gone in person to the moor to see the pretended reseiin because delivery would have been made in the bishop's chancery. In so doing, Wessington offered up a new interpretation of legal ceremony and judicial space. Under an assize of novel disseisin, the jurors were to view the tenement in question to determine the extent of the land or rights that had been denied the plaintiff but here, in addition to this, the chancellor and justices were said to have witnessed the ceremonial restitution of Alice's rights.<sup>63</sup> Some form of such ceremony had been common in the transfer of land. Known as livery of seisin, the property must be delivered to the recipient, who needed to enter into possession of the land (seisin), often with the grantor giving the recipient some token of ownership, such as a rod or a glove and, increasingly, a written charter or deed.<sup>64</sup> Yet, Wessington put forward a new understanding of where legitimate judicial decisions should be carried out; in his hands, the symbolism of the ceremony on the moor now detracted from its legitimacy. In part, this may have been inspired by the growing importance of the bishop's chancery from a writing office hardly distinguishable from the bishop's domestic household to a court in its own right as the fourteenth and fifteenth centuries progressed.<sup>65</sup> Here, Wessington appears to be using the growing judicial significance of the bishop's chancery in his own day to challenge the legitimacy of a historical legal ceremony.<sup>66</sup>

The compilation then recites some of the older history of the ownership of Bearpark, including going back to the quit-claims of the late thirteenth and early fourteenth century, to demonstrate that Antony Bek, bishop of Durham, disseised the prior of the moor where the tenants of the Old Borough had pasture, which the prior recovered before the king's justices and then obtained quit-claims from the tenants of the land. The quit-claim of Peter del Crook is quoted in full to demonstrate that the whole moor was recovered, and that this was separated from the other part of the moor by the old dyke, so that the claim by Alice Slade and others should extend to that part only. Finally, it noted that only burgesses of the Old Borough with arable land could claim common pasture in that part of the moor, in line with the law of the realm. Unfortunately, it is not possible to date Wessington's compilation as it survives in a cartulary copy rather than in the original, but it is perhaps significant that it also does not make mention of the 1427 case between Pollard and Cowherd. There are two potential scenarios behind its writing: either this compilation was created before Pollard's case – perhaps even in preparation for it – thus helping to explain the success of the monks in convincing the jury of their cause. This would, after all, have made for a particularly compelling reading of events, deploying the considerable history of the institution for centuries to explain the emergence of these rights. Or, alternatively, it was produced after this final conflict and Wessington was compiling the culmination of claims to these rights for posterity, though it seems a little unusual if so to have excluded the ruling against Pollard, which would surely have been an important external confirmation of their rights.

The tenants of the Old Borough thus seemingly gained and lost their common pasture rights in Bearpark moor – or, at the very least, had their rights acknowledged, then subsequently clarified and curtailed – over the course of a century of legal proceedings. Yet, behind these relatively terse and mundane court decisions lies the informal world of late medieval legal and institutional history: the toing



and froing over juries or retained officials, the accumulation of evidence on witnesses and their rights by their lord, and the construction of an entire counter-narrative that challenged the validity of earlier proceedings right down to the legitimacy of judicial space. As Christopher Cheney has argued for the early fourteenth century, the Durham monks 'built up their own stores of muniments and with them, we must suppose, office-books: formularies, texts of canon law, notes on the history and liberties of their church, tax assessments and so on', with individual monks copying a range of public documents and formulas which they thought may 'come in useful some day'.<sup>67</sup> This went beyond simple accumulation and, as Michael Clanchy pithily concluded, where there was any doubt about a particular monastic right, monks 'were determined to establish the truth for posterity. By truth about the past they meant what really should have happened.'<sup>68</sup> It is this construction of what *should* have happened – in the monks' view – that we can see most clearly in Wessington's version of events and the marginal notes to the priory's register. It is, however, difficult to ascertain the specific uses of Wessington's compilation and whether it or the more informal collections of documents created earlier were ever referred to in court or produced as evidence, though Dobson certainly thought that 'some of Wessington's compilations were designed to be read aloud, often before the sessions of the bishop's justices at Durham, while others were meant to be studied more carefully and in private by the lay or ecclesiastical authority to whom they were directed'.<sup>69</sup> The monks of Durham Priory had both the resources and mindset to deploy an impressive array of documentary evidence not just on the case at hand but about all those it potentially touched upon. The above case demonstrates how such monastic landowners deployed their documentary resources and religious heritage to both win the day and construct an institutional memory that would inform future proceedings should the need arise.

#### 4. Coal, conflict and the perquisites of office-holding

Bearpark moor was to be more contentious than the above concerns over pasture rights, however. Richard Cowherd, as bailiff of the priory and so the enforcer of the monks' wishes in their disputes with the tenants of the Old Borough, came into conflict with the monks in the early fifteenth century. The monks subsequently opened up a dossier on him, exposing his past 'abuses' in office and auditing his financial benefits. Richard had a long history with the park and moor there, as he was also the keeper and forester of Bearpark, an office which had been in the family for nearly a century. In 1353, Richard's father, Roger Cowherd, was made forester for life, as was Richard himself in 1382.<sup>70</sup> The remunerations for the office were not inconsiderable, with the position including a stipend of 4½d. per week for provisions, seven white loaves and seven gallons of beer called *Tysedaiale* each week, a prior's servant's robes each year, and four ordinary loaves for keeping the moor, and for his shoes, 10s. yearly to be taken from the bark of felled trees in the park. Yet, the informal benefits of being keeper and forester of such an important park – being, as it was, attached to the prior's own residence – presumably far exceeded these payments. So desirable was the office that in 1437 Richard Neville, Earl of Salisbury, wrote to John Wessington, prior of Durham, noting the death of

Richard Cowherd, and stating that he had been informed that William Cowherd, his son, should succeed Richard as forester.<sup>71</sup> Unfortunately, in the following year, Wessington was to disappoint both the Nevilles and the Cowherds, granting the office instead to John Rakett, who was succeeded in 1475 by John Bell, who was eventually succeeded by the Tempests, a knightly family.<sup>72</sup> Such was the appeal of the appointment that in 1462, John Neville, Lord Montagu, attempted to gain patronage over the position by asking that the office be reserved to him upon the death of Rakett, so that he might confer it upon a servant of his own.<sup>73</sup> Why then, did the Cowherds lose their long association with such a clearly profitable and desirable office?

The answer lies in Richard's own dispute with the monks of Durham Priory over his involvement in the coal mines to the west of the city.<sup>74</sup> Bearpark moor was not only a key source of grazing for the urban residents of the Old Borough, but also of important mineral deposits. In between the monk's manor of Bearpark and the city lay a series of coal mines around Baxterford Wood, Broomhall and Aldin Grange (Figure 1). The dispute centred upon Richard's payment of tithe on his coal production, which had seemingly been waived by a previous generation of monks, but which angered Wessington and jeopardised Cowherd's relationship with his monastic lords.<sup>75</sup> The monks produced a series of memoranda, a compilation of 'evidences', and extracted a range of information from their archives to bring to bear against Cowherd. This included, for example, trawling through the hostillers' accounts on a near annual basis between 1354–1398 to demonstrate the tithe previously paid for coal produced at Broom and Aldin Grange.<sup>76</sup> This, importantly for the monks, included many payments by Roger Cowherd – Richard's father – of 40s. for the coal tithes currently under dispute. Going beyond this, they produced a side-by-side analysis of how many chalders of coal the monks had received, extracted from the bursars' accounts, and the subsequent tithe paid for them, from the hostillers' rolls, between 1386–1402.<sup>77</sup> That these extractions were informally and often messily written further suggests they were notes taken from the originals in an active search for this data, before being replicated within another of Wessington's compilations.

Having established that they had previously been entitled to coal tithes and that these were duly paid by Richard's father for the very mines that were in dispute, the monks then produced a memorandum explaining the sources of their coal in the years since then and Richard Cowherd's role in its supply between 1410 and 1418. This included supplies partly from the monks' own mines at Broom, those of Finchale Priory (a dependent cell of Durham Priory), the bishops' mines at Broom, Relley and Baxterford Wood, and those produced by Richard Cowherd. Presumably, this had a double utility, serving as both evidence of the scale of Cowherd's operations for the benefit of the external adjudication, but also perhaps as an internal document for the monks to judge whether the tithe remittance had been worth it. Finally, in 1418, Richard Cowherd paid the hostiller just 6s. 8d. for coal tithes since he delivered little coal that year because the pits of the bishops of Durham, Finchale Priory and Durham Priory delivered to the Durham area instead. With the pit on the bishops' land ceasing production, the prior produced coal from his own land for the monastery and then Richard Cowherd, considering the prior's pit to be much nearer Durham and the coal more readily sold than his own, offered

to supply 260 chalders of coal a year to the monastery for seven years with payment to him of 20s. a year.<sup>78</sup> After the seven years were up, the prior restarted production of coal of his own until Richard entered the same arrangement for a further seven years, with the prior undertaking not to sell coal within a mile of Durham. This both shows the preferential arrangements that were available to Cowherd as an officer of the priory but also the monopolistic need to dominate the supply of coal in a locality in order to ensure its profitability, given the potentially unpredictable expenses involved in its production.<sup>79</sup> However, in light of this coal supply, William Barry, the hostiller – unbeknown, it was claimed, to the prior – allowed Richard to pay no coal tithes, which were said to be worth some six or seven marks a year, or other tithes apart from corn and hay, which were worth with the coal tithes some ten marks a year. Henry Helay, a subsequent hostiller, treated Richard for seven years as William Barry had done, and for the last five years Richard had paid only one mark for coal tithes and nothing for other tithes except corn and hay.

Not content with a general sense of the benefits that Richard had gained in his role, the monks then undertook a series of auditing calculations in an attempt to put a value on the perquisites of his positions. Richard, it was said, had received an indenture of a parcel of land called *Altonfield* worth 26s. 8d. a year, a close called *Almonerclose* (mentioned in the dispute with John Pollard above and perhaps explaining Cowherd's alacrity in confiscating Pollard's cattle in the immediate vicinity) worth 26s. 8d. a year, a close by *Stotgate* worth 20s. a year, and the herbage of Bearpark moor itself worth at least 100s. a year. In return for these lands, Richard was to provide fifty stone of cheese worth 6d. a stone – though it is noted in the compilation that this was in fact not worth 3d. – and ten stone of butter worth 12d. a stone – which, again, it was noted was not all received in many years – worth in total some 35s.<sup>80</sup> Overall, it was calculated that the allowances of the closes, the herbage and the payment of 20s. to Richard for producing coal totalled some £9 13s. 4d., or, deducting the 35s. worth of goods that he paid in kind, £7 18s. 4d.<sup>81</sup> If the unpaid tithes, said to be worth at least £6 per year, were added to this, it was estimated by the monks that Richard was in fact receiving a total of £13 18s. 4d. a year in allowances for delivering the 260 chalders of coal to the priory. Although it has been concluded that 'we have few contemporary documents which digest the material from the accounts [of Durham Priory] and attempt to use it for anything more than auditing', examples such as this demonstrate how the monks actively poured over their financial records and deployed them in their many legal disputes.<sup>82</sup>

Going beyond the financial benefits of the position, this tithe dispute also brought a range of complaints against Richard to the surface for mild misdemeanours that had presumably been overlooked by previous generations of monks as one of the perks of the position. The monks now complained that Richard had taken, without the prior's authorisation or knowledge, many things needed for his coal pits – presumably, most importantly, wood – from Bearpark park. The prior had allowed him to have many animals within the park, particularly oxen, cows, horses, pigs, and sometimes sheep and goats, which were said to have caused grave damage, when strictly speaking he had no right to such pasturage as part of his office. It was said that Richard had taken for many years the bark and

branches of the trees in the park, giving it away or selling it, again without the prior's knowledge (though it should be noted the keeper actually had rights to collect some bark). Richard's servants stood accused of breaking the stone walls of Bearpark park, the dikes of closes and hedges of meadows and pastures in the park, and of bringing in Richard's animals, particularly pigs, which had caused considerable damage. Similarly, for want of Richard's custody, foresters had cut down trees in the park and taken them away. It was concluded, ultimately, that the coal the prior received did not compensate for the damage caused during his occupation of the office. It is, of course, possible that this list was nothing more than a set of fabricated infractions that were added to justify Richard's removal from office, but, if there was some truth in them, it further demonstrates the complicated importance of institutional memory, which relied not just on documentary records but also on the personal knowledge of individual monks about Richard's many minor indiscretions over the years that had previously been overlooked and which went unrecorded elsewhere.

Much as with Wessington's compilation regarding common pasture rights on Bearpark moor, the monks compiled a similar set of precedents for their rights to claim coal tithes, not only appealing to ecclesiastical authorities and canonical decrees more broadly, but also specifying a range of local cases to suggest this was an accepted custom within the bishopric of Durham.<sup>83</sup> This included extracts and quotations from a range of previous cases, including disputes over a local vicarage, sentences by the bishops' officials, charters over the payment of other coal tithes, as well as extracts from the coal tithes at Broom. Such was the care taken that Wessington visited some of the lands in question between 1436–1437, measuring the fields around Aldin Grange and Baxterford wood with a rope, including the aqueduct and the priory's new coal pits which ran up to Cowherd's close and the previous aqueduct and pits there made by the latter. The monks were keenly aware not just of the importance of establishing their authority through their archives but also of the significance of physically measuring and demarcating this upon the land.<sup>84</sup> Once again, the body of evidence accumulated by the monks prevailed and, in 1436, arbitrators agreed to settle the dispute in the light of common custom and previous tithe payments that the prior should indeed have the tenth skeep of coal produced.<sup>85</sup>

## 5. Conclusions

At first glance, these two cases have little in common – the enforcement of common pasture rights over the course of a century of legal conflict and the pursuit of coal tithes that had previously been waived – yet it is the response of the Durham monks that unites them. Through meticulous research into their own archives, the monks were able to create an extensive array of documentary evidence that few tenants – and, indeed, not even many gentry landowners – would have been able to match. Not content with demonstrating their cause in a single charter or an account roll, the monks accumulated extracts from dozens of rolls, triangulating this with evidence from court proceedings, charters and rentals to create an overwhelming case. These examples show how landowners actively used their archives, conducting their own research into the records they held,

responding to immediate legal challenges and establishing a set of arguments that could stave off future conflict. Going beyond this, these examples demonstrate how such draft extractions could then be deployed to create their own narrative of events, sometimes reinterpreting past decisions or previous relationships, allowing us a view into the multiple layers of re-interpretation and alteration that went on beyond the official cartularies. As McSheffrey has argued, surviving documentation is ‘sometimes false, and indeed, deliberately written so as to deceive. While obviously none of the records used here were written with the twenty-first-century historian in mind, they were written with the archive in mind. To use a fifteenth-century word, they were *memoranda*, things which are to be remembered (and by extension, things which are to displace other things which are to be forgotten).’<sup>86</sup> It is precisely such memoranda, carefully constructed from the evidence of their archives, which Wessington and his counterparts produced in the early fifteenth century. Such narratives brought the full weight of the priory’s considerable archive and its history to bear on legal conflicts and, as Dobson concluded, ‘by converting an issue from a purely legal into a largely historical problem he [Wessington] forced his opponents into a sphere where they could not hope to rival his own expert knowledge.’<sup>87</sup> Through a range of such compilations and memoranda, the monks of Durham Priory were able to cultivate an institutional memory that could be used to justify their own claims and, conveniently, forget events or processes that might contradict this institutional narrative.

These examples also demonstrate the litigious nature of a monastic house in late medieval England. In itself, this is hardly surprising. After all, most landowners were embroiled in near continuous legal conflict over one right or another in medieval society and there would have been few lords or even tenants who would not have had to defend themselves in court or be called upon as a witness at some point in their lives. Yet, what these examples demonstrate is how larger monastic houses deployed their considerable institutional repositories in their legal conflicts. The monks were able to produce ‘dossiers’ on their own tenants, on local people who used their courts, or, indeed, on their own officials, should they so choose. Just as historians routinely trawl through archives to reconstruct medieval society, so too were the Durham monks using their documentary archive to build up a picture of the lives, positions and interests of those the priory found itself in conflict with. The often changing nature of their priorities and perspectives over generations has left a traceable, if not immediately visible, impact on the shape of the archive as it survives today. As Johnson has shown, ‘the proliferation of documents that took place in late-medieval England should not be imagined, then, as a mere snowstorm of fluttering papers, but as a cumulative, constraining force that constituted legal authority’, which in turn changed the business of courts who ‘came to focus more and more upon the display of writings, upon the processing of written information, and upon the scrutiny of documents’.<sup>88</sup> Although this gave increasing agency to everyday people who took responsibility for presenting their own documents, it also played into the hands of large institutions, whose repositories likely held information about the vast majority of property holders in a locality. This is not to overprivilege documentary evidence in late medieval England; oral testimony was still important and remained so throughout this period.<sup>89</sup> Rather it demonstrates the extent of documentary evidence that could go into a court

case and which many tenants may well have routinely faced when trying to challenge their lords; lords who, in this case, could not only search through over a century's worth of account rolls, rentals, charters and court records to construct a narrative that suited their claims but also actively deploy their prestigious institutional history to defeat potential opposition.

This, in turn, could produce innovations in how such evidence was compiled and, importantly, presented, not just including the construction of monastic narratives in cartularies and registers but also in the creation of maps and plans to support their interpretation of charters and boundaries. The monks of Durham were precocious in deploying a range of maps to go alongside these records, demonstrating a keen awareness of the power of such tools to persuade where written words failed. Four of the earliest surviving local maps and plans of medieval England come from Durham Priory's archive, all clustered around the 1430s and 1440s and all related to local conflicts and disputes: a map of the course of Tursdale Beck to accompany a suit about its diversion by a local gentleman; a plan of tenelements in Elvet whose owners were claiming common pasture rights in enclosed grounds belonging to the monks; a map associated with conflict over the condition of a riverside road, the monks' mill and the course of the River Wear; and, most pertinently to the current article, a plan demarcating the boundaries between the monks' manor of Bearpark and the almoner's hospital at Witton Gilbert.<sup>90</sup> That these were likely produced whilst Wessington – who was so instrumental in producing a series of quasi-legal compilations in the early fifteenth century – was prior is hardly surprising. Wessington was, moreover, willing to challenge both the memory and record of previous legal proceedings based upon his interpretation of where judicial decisions should be carried out; the ritual ceremony on the moor detracting from its legitimacy in his eyes rather than reinforcing it. Although many court records may rather tersely refer to 'a certain writing' that appears to have swayed the jury, these examples demonstrate the level of effort that went into constructing compilations of evidence and the ways that lords actively accumulated documentation that could be so deployed in the future. Cumulatively, these cases demonstrate how the monks viewed the world around them: rather than seeing like a state, this is seeing like an institution, an institution that was able and willing to build up copious details on anyone who incurred their displeasure and which must have, at least at times, seemed depressingly overwhelming to potential litigants.

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## Notes

1 Durham Cathedral Archive, Durham University Library Archives & Special Collections (hereafter DCD), in the Specialia collection (hereafter Spec.), 2.6.Spec.58; in the Cartularies (hereafter Cart.) DCD, Cart. IV, f.96v-98r; and in the Registers (hereafter Reg.) DCD, Reg. III, f.77v-78v.

2 DCD, Reg. III, f.77v-78r.

- 3 For the history of common land and enclosures see, for example, R. H. Tawney, *The agrarian problem in the sixteenth century* (London, 1912); Andy Wood, *The memory of the people: custom and popular senses of the past in early modern England* (Cambridge, 2013); Angus Winchester, *Common land in Britain: a history from the Middle Ages to the present day* (Woodbridge, 2022); Joan Thirsk, 'Enclosing and engrossing', in Joan Thirsk ed., *The agrarian history of England and Wales, IV: 1500-1640* (Cambridge, 1967), 200-56; John Walter, *Crowds and popular politics in early modern England* (Manchester, 2006).
- 4 Tom Johnson, *Law in common: legal cultures in late-medieval England* (Oxford, 2020), 242.
- 5 Shannon McSheffrey, 'Detective fiction in the archives: court records and the uses of law in late medieval England', *History Workshop Journal* 65 (2008), 65-78, at 66; see also for example Natalie Zemon Davis, *Fiction in the archives: pardon tales and their tellers in sixteenth-century France* (Stanford, CA, 1987); Richard Firth Green, *A crisis of truth: literature and law in Ricardian England* (Philadelphia, 1999).
- 6 See, for example, Rodney M. Thomson, *The archives of the abbey of Bury St Edmunds*, 21 (Suffolk Records Society, 1980); Katrina Legg, *The lost cartulary of Bolton Priory: an edition of the Coucher Book and charters*, 160 (Yorkshire Archaeological Society Record Series, 2009).
- 7 Patrick Geary, *Phantoms of remembrance: memory and oblivion at the end of the first millennium* (Princeton, 1994), 83-4; Matthew Innes, 'On the material culture of legal documents: charters and their preservation in the Cluny archive, ninth to eleventh centuries', in Warren C. Brown, Marios Constambeys, Matthew Innes and Adam J. Kosto eds., *Documentary culture and the laity in the early Middle Ages* (Cambridge, 2012), 295-6; Michael Spence, *The late medieval Cistercian monastery of Fountains Abbey: monastic administration, economy and archival memory* (Turnhout, 2020), 60; see also, for example, Alfred Hiatt, *The making of medieval forgeries: false documents in fifteenth-century England* (London, 2004).
- 8 Georges Declercq, 'Monastic cartularies, institutional memory and the canonisation of the past in the two *Libri Traditionum* of St Peter's Abbey, Ghent', *The Medieval Low Countries* 2 (2015), 38.
- 9 Michael T. Clanchy, *From memory to written record: England, 1066-1307* (Chichester, 2013), 86; see, for example, G. R. C. Davis, Claire Breay, Julian Harrison, and David M. Smith, *Medieval cartularies of Great Britain and Ireland* (London, 2010); Andrew N. J. Dunning, 'John Lakenheath's rearrangement of the archives of Bury St Edmunds Abbey, c. 1380', *The Library* 19 (2018), 63-8.
- 10 Joanna Tucker, *Reading and shaping medieval cartularies: multiple scribes and patterns of growth* (Woodbridge, 2020), 189-90.
- 11 Margaret Bonney, *Lordship and the urban community: Durham and its overlords 1250-1540* (Cambridge, 1990), 220. Although this case was mentioned by Bonney, she did not analyse its contents or the broader implications for Wessington's compilations, whilst the latter are known through the works of Piper and Dobson but which have similarly not been fully explored in relation to the legal conflicts of the priory.
- 12 Jacques Derrida, *Archive fever: a Freudian impression*, trans. Eric Prenowitz (Chicago, 1995); Michel Foucault, *The archaeology of knowledge and the discourse on language*, trans. A. M. Sheridan Smith (New York, 1972). See also, for example, Ann Laura Stoler, *Along the archival grain: epistemological anxieties and colonial common sense* (Princeton, 2010); Antoinette M. Burton ed., *Archive stories: facts, fictions and the writing of history* (Durham, 2005); and Terry Cook, 'The archive(s) is a foreign country: historians, archivists and the changing archival landscape', *The American Archivist* 72 (2011), 600-32.
- 13 Alexandra Walsham, 'The social history of the archive: record-keeping in early modern Europe', *Past and Present* 230, issue supplement 11 (2016), 9-48, at 46.
- 14 R. B. Dobson, *Durham Priory, 1400-1450* (Cambridge, 1973), 383-4.
- 15 Carolyn Steedman, *Dust* (Manchester, 2001).
- 16 Martha Carlin, 'Cheating the boss: Robert Carpenter's embezzlement instructions (1261x1268) and employee fraud in medieval England', in Ben Dodds and Christian Liddy eds., *Commercial activity, markets and entrepreneurs in the Middle Ages: essays in honour of Richard Britnell* (Woodbridge, 2011), 183-98.
- 17 Chris Briggs, 'Monitoring demesne managers through the manor court before and after the Black Death', in Richard Goddard, John Langdon, and Miriam Muller eds., *Survival and discord in medieval society: essays in honour of Christopher Dyer* (Turnhout, 2010), 179-96.
- 18 Dobson, *Durham Priory*, 97-8.
- 19 *Ibid.*, 40.
- 20 R. H. Britnell ed., *Records of the borough of Crossgate, Durham 1312-1531*, 212 (Surtees Society, 2008), xviii.

- 21 *Ibid.*, xxv. For more on the relationship between Durham Priory and its tenants, see P. L. Larson, *Conflict and compromise in the late medieval countryside: lords and peasants in Durham, 1349–1400* (London, 2006) and A. T. Brown, *Rural society and economic change in County Durham: recession and recovery, c.1400–1640* (Woodbridge, 2015).
- 22 In the Locelli (hereafter Loc.) collection, DCD, Loc.IV:229, m. 1. Printed in Britnell, *Records of the borough of Crossgate*, 4–11, 18–21, 27–32, 35–63.
- 23 DCD, Loc.IV:229, m. 6.
- 24 DCD, Loc.IV:95.
- 25 This, in turn, demonstrates our increasing knowledge of how tenants engaged with local courts for everyday practices. See, for example, Chris Briggs, *Credit and village society in fourteenth-century England* (Oxford, 2009); Christopher Dyer, 'Partnership among peasants: rural England, 1270–1520', *Continuity and Change* 37 (2022), 291–312.
- 26 C. M. Fraser, *A history of Antony Bek, bishop of Durham, 1283–1311* (Oxford, 1957); C. M. Fraser ed., *Records of Antony Bek, bishop and patriarch, 1283–1311*, 162 (Surtees Society, 1953).
- 27 DCD, Loc.VII:45.
- 28 DCD, Loc.VII:45.
- 29 DCD, Reg. 1, f.ii.29r-v.
- 30 DCD, 2.6.Spec.32.
- 31 The declaration was made by Hugh Burdon, John Randal, John Faloudon, John Bill, John Brunnyhill, John de Haldwod, Robert de Brakynbery, Roger lord of Newton, William son of Master William of Kelloe, Richard lord of Lintz, William de Edmundsley, William Chauncellor, Adam Scott, John de Welpdall, William son of Adam Scott, William Bill of Langley, William de Bille of Brakynbery, Ralph of Warsop, John of Seaton, John Scott of Brandon, Thomas son of Richard of Lintz, John Fraunkelayne, John del Brome, and William Ausforth. DCD, 2.6.Spec.58; DCD, Cart. IV, f.96v-98r; Reg. III, f.77v-78v.
- 32 As Sutherland noted, acts under the assize of novel disseisin were 'always limited by some fixed event of the recent past, chosen anew from time to time to keep the limitation from growing too long with the passing years', Donald W. Sutherland, *The assize of novel disseisin* (Oxford, 1973), 23–6.
- 33 DCD, 2.6.Spec.59; DCD, Cart. IV, f.98r; DCD, Reg. III, f.77v-78r.
- 34 Another version, DCD, 2.6.Spec.48. See G. W. Kitchin ed., *Richard D'Aungerville of Bury: fragments of his register, and other documents*, 119 (Surtees Society, 1910), iii – translation from line 14.
- 35 See, for example, James P. Bowen, "Before the breaking of the day, in a riotous manner and with great shouts and outcries": disputes over common land in Shropshire in the sixteenth and seventeenth centuries', *Rural History* 26 (2015), 133–59; Christian Liddy, 'Urban enclosure riots: risings of the commons in English towns, 1480–1525', *Past and Present* 226 (2015), 41–77; Briony McDonagh, 'Landscape, territory and common rights in medieval East Yorkshire', *Landscape History* 40 (2019), 77–100.
- 36 The others being: Adam Bourseman, John of Bolton, John Myne, Robert Carter and Richard Bourseman.
- 37 The jurors were named as: Thomas of Coxside, Richard of Stafford, Walter Underside, John del Bowes, Thomas of Pittington, Richard Cosour, Lawrence Jakes, William de Harhelme, John of Plumpton, William of Chilton, John of Herrington, Thomas Goldsmith, Alan Clerk, John Lambe, Stephen Palman, William de Gildeford, Robert Sadeler, William Coke, and William de Kereby.
- 38 For juries and challenges, see for example James Masschaele, *Jury, state and society in medieval England* (New York, 2008); Anthony Musson, *Public order and law enforcement: the local administration of criminal justice, 1294–1350* (Woodbridge, 1996).
- 39 DCD, 2.6.Spec.44.
- 40 DCD, Loc.IV:40; DCD, Loc.IV:52; DCD, Loc.IV:1; DCD, Loc.IV:2; DCD, Loc.IV:67.
- 41 DCD, 2.6.Spec.50; DCD, Loc.V:16; DCD, Cart. IV, f.93v.
- 42 For the problems of retaining, corruption and the legal system more generally see A. Musson and W. M. Ormrod eds., *The evolution of English justice: law, politics and society in the fourteenth century* (Basingstoke, 1999); Jonathan Rose, *Maintenance in medieval England* (Cambridge, 2017).
- 43 DCD, 2.6.Spec.53 and 2.6.Spec.81; For copies, see DCD, Cart. IV, f.93r-v; DCD, Reg. III, f.174v-175v.
- 44 J. C. Hodgson, 'Proofs of age of heirs to estates in Northumberland in the reigns of Henry IV, Henry V, and Henry VI', *Archaeologia Aeliana*, Series 2, 22 (1900), 116–30. See for example Bronach C. Kane, *Popular memory and gender in medieval England: men, women and testimony in the church courts*,



c.1200–1500 (Woodbridge, 2019), and Joel T. Rosenthal, *Social memory in late medieval England: village life and proofs of age* (Basingstoke, 2018).

45 3.3.Pont. 4 and 3.3.Pont 5. The first of these exemplifications also refers to an earlier assize of novel disseisin brought against the prior by an Old Borough tenant, William Chilton, in 1320. Although the result of his case is unclear, Chilton later quitclaimed his rights to the prior and convent (2.6.Spec.37) and appears several times in their notes in dossier Loc.V:55.

46 DCD, Reg. III, f.174v-175v. The jurors were Robert Conyers of Sockburn, Thomas Cuke of Fishburn, John Maulyverer, lord of Croxdale, John Haddam of Seaham, Thomas Marlay of Langton', William Forster' of Auckland, John Fossour' of Durham, John Scrutteville', William Maddysen', Thomas Robynson', Hugh Evenwod', William Dalton'.

47 DCD, Reg. III, f.175v-176r.

48 Bonney, *Lordship and the urban community*, 220.

49 The latest document is a copy of a grant made by William Randolph to Thomas Cupper of a burgage in Crossgate on 30 September 1402.

50 For example, John de Horsley, who is the first name on one of the lists, might be the same John Horsley who, with his wife Margaret, had a burgage on South Street in Durham for which documents survive in 1430–1431, or William Rakett might be the same William who witnessed a grant of a message in South Street in 1437 and who is recorded as having held two burgages in Crossgate in 1440.

51 See, for example, Stephen Broadberry, Bruce M. S. Campbell, Alexander Klein, Mark Overton, and Bas van Leeuwen, *British economic growth, 1270–1870* (Cambridge, 2015); Bruce M. S. Campbell, *The great transition: climate, disease and society in the late medieval world* (Cambridge, 2016); Mark Bailey, *After the Black Death: economy, society and the law in fourteenth-century England* (Oxford, 2021).

52 More generally, see Christopher Dyer, *An age of transition? Economy and society in England in the later Middle Ages* (Oxford, 2005). For the situation in Durham, see, for example, Peter Larson, *Rethinking the great transition: community and economic growth in County Durham, 1349–1660* (Oxford, 2022); R. H. Britnell, 'Feudal reaction after the Black Death in the Palatinate of Durham', *Past and Present* 128 (1990), 28–47.

53 For the financial difficulties of Durham Priory, see A. T. Brown, 'Surviving the mid-fifteenth-century recession: Durham Cathedral Priory, 1400–1520', *Northern History* 47 (2010), 209–31; Alisdair Dobie, *Accounting at Durham Cathedral Priory: management and control of a major ecclesiastical corporation, 1083–1539* (Basingstoke, 2015); Ben Dodds, *Peasants and production in the medieval North-East: the evidence from tithes, 1270–1536* (Woodbridge, 2007), 71–131.

54 DCD, Reg. III, f.77v-78r; Cart. IV, f.92r-104v. Although the process of novel disseisin called upon the jurors to view the land in question and come to the court with a decision, it seems to be the location of the formal resseisin which animated Wessington the most. It is not possible to corroborate Wessington's complaints given the fragmentary survival of the bishop's assize courts. For the assize of novel disseisin more generally see Sutherland, *The assize of novel disseisin*.

55 DCD, Cart. IV, ff. 94r-96v.

56 Loc.V:55, doc. 10.

57 DCD, Misc.Ch. 1967 – John de Aldwood/Haldwood bailiff of the Old Borough is listed as a witness.

58 Clanchy, *From memory to written record*; Johnson, *Law in common*, ch. 8. Given that the surviving material naturally benefits Durham Priory, we should be cautious of reading too much into the lack of surviving documentary evidence for the tenants.

59 See, for example, A. J. Piper, 'The historical interests of the monks of Durham', in David Rollason ed., *Symeon of Durham: historian of Durham and the north* (Stamford, 1998), 303–4; A. J. Piper, 'Dr Thomas Swallowell, monk of Durham, archivist and bibliophile (d. 1539)', in James P. Carley and Colin G. C. Tite eds., *Books and collectors 1200–1700: essays presented to Andrew Watson* (London, 1997), 71–100.

60 For more on Wessington as a scholar, see Dobson, *Durham Priory*, 342–86.

61 Dobie, *Accounting at Durham Cathedral Priory*, 145; Larson, *Conflict and compromise*, 157–8. See also, Bailey, *After the Black Death*, 101–8.

62 Ben Dodds, 'Durham Priory tithes and the Black Death between the Tyne and the Tees', *Northern History* 39 (2002), 5–24; Brown, 'Surviving the mid-fifteenth-century recession', 209–31.

63 Sutherland, *The assize of novel disseisin*, 64–8.

64 Frederick Pollock and Frederic William Maitland, *The history of English law before the time of Edward I* (originally published in 1895; new edition, Indianapolis, 2010), 87; Clanchy, *From memory to written record*, 262.

- 65 For the bishop's chancery and the judicial organisation of Durham, see G. T. Lapsley, *The County Palatine of Durham: a study in constitutional history* (London, 1900), 186–90; Cynthia J. Neville, 'The courts of the prior and the bishop of Durham in the later Middle Ages', *History* 85 (2000), 216–31; Kenneth Elmsley and Constance Mary Fraser, *The courts of the County Palatine of Durham from earliest times to 1971* (Durham, 1984), 72–7; Jean Scammell, 'The origin and limitations of the liberty of Durham', *English Historical Review* 81 (1966), 449–73; R. L. Storey, *Thomas Langley and the Bishopric of Durham, 1406–1437* (London, 1961), 57–67.
- 66 For more on the importance of space, place and ritual legal pronouncements, see Frans Camphuijsen, *Scripting justice in late medieval Europe: legal practice and communication in the law courts of Utrecht, York and Paris* (Amsterdam, 2022), 127–35.
- 67 C. R. Cheney, 'Law and letters in fourteenth-century Durham: a study of Corpus Christi College, Cambridge, MS. 450', *Bulletin of the John Rylands Library* 55 (1972), 60–85.
- 68 Clanchy, *From memory to written record*, 151.
- 69 Dobson, *Durham Priory*, 383.
- 70 DCD, Reg. II, f.145v and f.155r; DCD, Reg. II, f.213r.
- 71 DCD, Loc.XXV:120. For a brief discussion of this in terms of monastic patronage, see Dobson, *Durham Priory*, 166.
- 72 DCD, Reg. III, f.212v and DCD, Reg.Parv.II, f.97r; DCD, Reg. IV, f.168r-v; DCD, Reg. V, f.261v.
- 73 DCD, Loc.XXV:19.
- 74 For more on the Hosiller's coal tithes, see Dodds, *Peasants and production*, 85–8; for more on coal in the region, see Brown, *Rural society and economic change*, 56–69; R. H. Britnell, 'The coal industry in the later Middle Ages: the bishop of Durham's estates', in Mark Bailey and S. H. Rigby eds., *Town and countryside in the age of the Black Death: essays in honour of John Hatcher* (Turnhout, 2012), 439–72; and John Hatcher, *The history of the British coal industry, I, before 1700: towards the age of coal* (Oxford, 1993).
- 75 See especially, DCD, 2.6.Spec.78a-g.
- 76 DCD, 2.6.Spec.78a and b.
- 77 A chaldar was a measurement of coal that equated to roughly six quarters, around 1.75 cubic metres, weighing perhaps around 1.25–1.5 tonnes. R. H. Britnell ed., *Durham Priory manorial accounts, 1277–1310*, 218 (Surtees Society, 2014), lxix.
- 78 DCD, 2.6.Spec.78d; DCD, Cart. IV, f.104r-v.
- 79 See, for example, Hatcher, *History of the British coal industry*, 16–30.
- 80 Weights of cheeses often varied since dairies made cheeses of different sizes. For example, they averaged 0.29 stones at an unidentifiable dairy in Durham and 0.67 stones at Pittington. Britnell, *Durham Priory manorial accounts*, 105.
- 81 DCD, 2.6.Spec.78g; DCD Cart. IV, f.302v-303r.
- 82 Dodds, 'Durham Priory tithes', 5.
- 83 DCD, Cart. IV, 100r-103v.
- 84 Tom Johnson, 'The tree and the rod: jurisdiction in late medieval England', *Past and Present* 237 (2017), 13–51.
- 85 DCD, 2.6.Spec.78c.
- 86 McSheffrey, 'Detective fiction', 73. See, also, Tom Johnson, 'The preconstruction of witness testimony: law and social discourse in England before the Reformation', *Law and History Review* 32 (2014), 127–47.
- 87 Dobson, *Durham Priory*, 384.
- 88 Johnson, *Law in common*, 262.
- 89 Clanchy, *From memory to written record*; Wood, *Memory of the people*.
- 90 R. A. Skelton and P. D. A. Harvey, *Local maps and plans from medieval England* (Oxford, 1986).

## French Abstract

De tous temps les historiens se sont penchés sur les archives des grandes institutions afin de faire la lumière sur la société médiévale, mais au cours des dernières décennies, leur intérêt s'est porté sur la prolifération des documents d'archives aux mains de ceux qui

étaient plus bas dans l'échelle sociale, dont la vie quotidienne était de plus en plus touchée en profondeur par des procédures judiciaires. Pourtant, dans notre reconstruction de ce monde passé, le risque demeure que nous tenions pour acquis l'énorme pouvoir documentaire d'un grand système d'archivage institutionnel. Cet article repose sur l'étude de plusieurs conflits juridiques, au XIV<sup>e</sup> et au début du XV<sup>e</sup> siècle, impliquant les moines du Prieuré de Durham. Il démontre l'étendue de leur culture en matière archivistique, comment ils ont pioché dans la richesse de leurs dossiers pour en tirer un vaste éventail de preuves écrites documentées et réunir des informations sur ceux qui avaient suscité leur courroux. Sur la base de leurs sources archivées, les moines ont reconstitué la transmission des tenures, les positions occupées par les acteurs clés, l'historique des paiements effectués antérieurement et notés dans les listes de comptes, tout cela avec l'intention de démontrer leurs bons droits, pointant les 'abus' des officiers en charge et ainsi de contrer leur partie adverse. Non contents, les moines ont ensuite, de plus, compilé ces preuves construites en écrivant leur propre récit des événements, document qui remettait en question les procédures judiciaires passées y compris les cérémonies qui avaient pu avoir lieu. Ils construisirent ainsi une mémoire institutionnelle qui donnait à voir 'entièrement fausse et forgée de toutes pièces' toute documentation contredisant la leur.

### German Abstract

Historiker nutzen schon seit langem die Archive bedeutender Institutionen, um die mittelalterliche Gesellschaft zu beleuchten. Aber in den letzten Jahrzehnten hat sich der Schwerpunkt auf die wachsende Verfügung von Rechtsdokumentationen durch die Angehörigen niederer sozialer Stände und die zunehmende Durchdringung ihres Alltagslebens durch Rechtsvorgänge verlagert. Indem wir uns diese Welt erschließen, laufen wir jedoch Gefahr, die ungeheure Dokumentationsmacht, die ein großes institutionelles Archiv mit sich bringt, einfach zu unterstellen. Dieser Beitrag verfolgt verschiedene Rechtskonflikte, in die die Mönche des Klosters Durham im Laufe des 14. und 15. Jahrhunderts verwickelt waren, um das Ausmaß dieser Archivkultur zu ermessen und aufzuzeigen, wie sie die ungeheure Masse urkundlicher Belege dazu nutzten, um sich Informationen über diejenigen zu verschaffen, die ihren Zorn erregt hatten. Sie verwendeten ihre Archive, um die Übertragung von Gütern, die Ämter von Schlüsselpersonen und frühere Zahlungen in den Rechnungsrollen zu verfolgen – das alles mit dem alleinigen Ziel, ihre Rechte zu belegen, den ‚Missbrauch‘ von Amtsleuten bloßzustellen und rechtliche Gegenpositionen auszuhebeln. Damit noch nicht zufrieden, setzen die Mönche aus diesen Zeugnissen eine alternative Erzählung der Ereignisse zusammen, mit der sie die früheren gerichtlichen Verfahren und Feierlichkeiten in Frage stellten und so ein institutionelles Gedächtnis konstruierten, das gegenteilige Dokumentation als ‚vollständig gefälscht‘ erscheinen ließ.