
Grain trading, law and the moral economy of dearth: some evidence from the Elizabethan Lake District

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On the penultimate day of January, 1596, two men met somewhere in Appleby.¹ The town was a small market centre, of probably not more than about 300 households, but it was also one of two quarter sessions towns for Westmorland, and it was the site of the county's annual summer visitation by the assize circuit judges.² Their presence in the town does not appear to have been connected with the town's market, which was held on a Saturday; moreover, Appleby was both of considerable distance for the two, and in completely the wrong direction were they to have wanted to meet between their abodes.³ Why they were there is a mystery, though it may have been for legal business. At least one of them was a licensed innkeeper, while it is also possible that they were making use of professional legal expertise to make business contracts. The two men were from the mountainous settlements of the Lake District further west. One, Edward Clerke, was a yeoman from 'Langthwaite', which was clearly the tiny hamlet of Longthwaite in Watermillock, just north of Ullswater in Cumberland. The other was Robert Braithwaite, described by Clerke as a husbandman but referring to himself as an innkeeper. He hailed from 'Ambleside alias Troutbeck', which were the names of two upland manors around the northern tip of Lake Windermere.⁴

At their meeting, they made a bargain. In return for the sum of £5 10s., plus a loan of twenty nobles (£7), Clerke was to deliver a total of 63 bushels of grain, half in barley, half in oats, to Braithwaite. The grain was to come in three instalments, two of 21½ bushels and then one of 20, each to be brought to the house of John Threlkeld in Patterdale (which is roughly half way between Ambleside and Longthwaite) on the feast day of St Andrew the Apostle (30 November). Threlkeld's role in the story is obscure: he may have been a

1 The National Archives [TNA], Court of Chancery, C 2/Eliz/C15/11, Clerke vs Braithwaite, 1597.

2 There were 237 households recorded in the 1563 diocesan return: A. Dyer and D.M. Palliser eds, *The Diocesan population returns for 1563 and 1603* (Records of Social and Economic History, New Ser., 31, 2005), 91–2; J.S. Cockburn, *A history of English assizes* (Cambridge, 1972), 46.

3 J.F. Curwen ed., *The later records relating to North Westmorland, or the Barony of Appleby* (Kendal, 1932), 45–72.

4 Ambleside and Troutbeck were both technically 'graveships' within the manor of Windermere. By this time they were holding their own manor courts, but as part of the ancient forest of Kendale (unlike the other two graveships in Windermere manor), they tended to act together in questions of local bylaw and custom. W. Farrer and John F. Curwen (eds.), *Records relating to the Barony of Kendale* (4 vols., 1924), II, 40–57.

brewer, though it is possible that he was simply an associate of the two men who lived at a convenient meeting point. In order to seal the deal, Braithwaite persuaded Clerke to enter into two separate bonds: that he would deliver the grain to Braithwaite, or else he would be liable to pay the sum of £8 twice over. This kind of bond, the 'conditional bond', was a very widespread way of enforcing contracts, which allowed those who had suffered from non-performance to sue for debt rather than pursue an action of covenant. In particular, conditional bonds had the advantage of rendering such debts as fixed liquidated sums. Indeed, such was their popularity that debt actions on conditional bonds constituted the commonest class of actions in Common Pleas from Tudor times to the nineteenth century.⁵

The men probably parted on good terms: perhaps they sealed the deal by drinking together in some local tavern. But over the following year the bargain went badly wrong. The harvest of 1597 was a disaster. The dearth across the north, according to Clerke, was 'greate and lamentable'. The burial rate in Cumberland and Westmorland swelled, probably through famine; in Newcastle there were reports of poor beggars starving to death in the streets.⁶ Both Clerke and Braithwaite survived, but understandably Clerke found it difficult (so he claimed) to supply the grain he had promised. A cynic might suggest that ballooning prices tempted Clerke to sell his grain more locally and risk the consequences from the bonds he had made to Braithwaite, but there is no evidence for this. It seems more likely that he simply did not grow enough both to feed his household and supply his customers.

Braithwaite's response was to sue. In Easter 1597, when prices would have still been rising before the 1598 harvest was in (it was a good one), Braithwaite launched a suit in the London Court of Common Pleas, and that summer he succeeded in getting a judgement (evidently at *nisi prius*⁷) against Clerke at the Westmorland Assizes. The take of the common law was clear: Clerke had failed to produce the grain, the bonds were activated, and he was now deeply in debt. It was at this point that Clerke deployed one of the few tactics he had available. He would bypass the common law, at which he had little hope of success, and appeal to the Court of Chancery and its 'equity' side. Chancery's equity jurisdiction had evolved over the medieval period as a way in which the royal prerogative (or a manifestation of it in the form of the Lord Chancellor), could be appealed to in cases where the rigorous application of the common law might conflict with natural justice, or where there was no obvious remedy within the relatively formulaic processes of common law.⁸ Chancery had emerged as the realm's principal court of equity by the fifteenth century, and by the late sixteenth it had become one of

5 J.H. Baker, *An Introduction to English legal history* (4th edn, London, 2002), 320–26.

6 A.B. Appleby, *Famine in Tudor and Stuart England* (Liverpool, 1978), 109–21, 133–45.

7 The writ of *nisi prius* allowed suits commenced at the central common-law courts to be tried at the Assizes: Baker, *Introduction*, 20–22; Cockburn, *History*, Chapter 7.

8 Baker, *Introduction*, Chapter 6; W.J. Jones, *The Elizabethan Court of Chancery* (Oxford, 1967).

England's foremost legal institutions. Most importantly for Clerke, Chancery had the power to issue a writ of injunction,⁹ which ordered litigants in another court, and their counsel, to cease their action, and restraining the implementation of any existing judgements. It is no doubt for this reason that, at the end of 1597, Clerke decided to promote an English Bill in Chancery.

The bill survives, dated to the 1st of November 1597. It seems highly likely that Clerke alerted Braithwaite of his intention to sue, because Braithwaite's 'Answer' to the bill is dated to just nine days later. Clerke's argument was interesting: he attempted to portray Braithwaite as a devious corn-dealer, who had not only known of the coming dearth, but had actively tried to *create* it. Braithwaite, so Clerke alleged, knew that he was paying under the value of the grain, and he knew that by getting Clerke to enter into bonds he could be ruined. One wonders whether this kind of language may have skirted the boundaries of the acceptable, for the court did occasionally throw bills out for intemperate language.¹⁰ Braithwaite, for his part, denied vigorously the accusation of being a grain-dealer. He was, he said, a mere innkeeper, and a licensed one at that, who was buying the grain for the provision of his own house. He had bought only grain for his house for the last eight or nine years, and in any case when he made the bargain he had done so reluctantly, because at the time, 'the pryce of corne in those cuntryes was at so easy a rate' that he 'could have made a better bargain' elsewhere. His main defence, though, was that the issue had been settled fairly at common law.

Chancery Bills of Complaint, and bills in other equity or conciliar courts, can offer a rich and fascinating window onto aspects of the social and economic histories of local communities. They are, of course, supplications, and as such must be read with caution, but in many cases—like this one—they can be compared with defendants' answers and some measure of the facts of the case teased out. There was, for example, little disagreement as to the character of the bargain: the issue was whether it was conscionable in the context of the terrible dearth that followed. Thus, we can use this case to draw out some intriguing insights into both the nature of the grain market in the far north of England at the time, see something of the legal culture of an area well distant from London and, finally, can use it to examine the rhetoric of social justice that was attached to trading in grain: they offer us a window into the 'moral economy' of the age.¹¹ Thus, while local population historians have shown much interest in grain markets, documents such as this provide a rather different line of approach to the more traditional studies of mortality rates, government intervention, and crowd action. They allow a window onto the 'moral

9 Technically a common injunction: Jones, *Elizabethan Court of Chancery*, 183–6.

10 *Ibid.*, 196.

11 Cf. J. Walter, 'The social economy of dearth in early modern England', in Walter and Schofield, *Famine, disease and the social order*, 75–128; also B. Waddell, 'Economic immorality and social reformation in English popular preaching, 1585–1625', *Cultural and Social History*, 5 (2008), 165–82.

economy', but also show people interacting with the government through the complex legal system rather than, say, through riot.¹²

The economy of the area we now call the Lake District was, in the sixteenth century, one of the most backward and poor in the whole of England.¹³ In particular, it was especially deficient in grain, and it is sometimes suggested that the area was increasingly reliant on imports as population grew. The main grains were oats and barley (or 'bigg') and indeed these are the two in which Clerke and Braithwaite were dealing. But the documents produced here suggest at least some degree of sophistication. The two men were dealing grain at not a little distance: here it seems that the relative lowlands north of Ullswater were supplying the mountainous valleys just north of Windermere. Parts of Cumberland were clearly growing enough grain to produce a tradable surplus, and it should be noted that a survey of nearby Legburnthwaite dating from 1588 suggests a surprisingly large area of arable cultivation.¹⁴ They formulated relatively complex bargains, used conditional bonds, and agreed to trade over a period of years. It is interesting, too, that Braithwaite was an innkeeper: he would have had a particular need to buy large quantities of grain, and it seems likely that innkeepers, with their wide-ranging contacts and presumably greater links with legal centres through their need for licensing, were at the forefront of grain trading. Braithwaite also seems to display a keen awareness of price: although his claimed reluctance to buy from Clerke did not stop him from actually doing so.

The window on the grain trade is relatively opaque, but we can say much more about the relationship of the protagonists with the law. It is, indeed, notable how legally literate they were. Braithwaite got Clerke to formalise his legal obligations with a conditional bond; when he failed to honour them, he sued him at Westminster's Court of Common Pleas. Realising he had lost the common-law argument, Clerke responded by launching a suit at equity, in the Court of Chancery. These were, it should be restated, a yeoman and a husbandman-innkeeper from two of the most northerly English counties. We should not exaggerate their poverty: Clerke styled himself 'yeoman' when most Lakeland farmers were considered husbandmen; his farm was clearly large enough to produce a decent marketable surplus. Braithwaite was almost certainly the holder of two tenements in Ambleside in a rental of 1604, making him one of the larger landholders in the manor.¹⁵ But it is still worthy of note that these far northern peasants were both drawn into wider markets, and into the national web of the English legal system. When we come to think

12 Classically, of course: E.P. Thompson, 'The moral economy of the English crowd in the 18th century', *Past and Present*, 50 (1971), 76–136; also J. Bohstedt, *The politics of provisions: food riots, moral economy and market transition in England, c. 1550–1850* (Farnham, 2010).

13 Appleby, *Famine*, 17–94; C.M.L. Bouch and G.P. Jones, *A short social and economic history of the Lake Counties, 1500–1830* (Manchester, 1961).

14 TNA, Admiralty, ADM/76/84, no. 59, Survey of Legburnthwaite, 1588.

15 TNA, Land Revenue, LR 3/116/1, Fine Roll, Westmorland, 1604.

about regionalism, and local identities, we need to remind ourselves that all of England was subject to a universal system of law in the common law, and even outside that, most equitable jurisprudence took place at the political centre.

But perhaps most interesting is the rhetorical dimension. Both men deployed, presumably in heavy consultation with their attorneys, whose names appear at the bottom of the bill and the answer, certain politically charged phrases to support their case. These provide insight into the morality attached to the grain trade—especially during a shortage of food—that still held at the end of Elizabeth's reign. It is striking how Clerke attempts to portray Braithwaite as a devious manipulator of the grain market. He was a 'regrator', a 'forestaller' and one that 'by indirecte meanes dothe obtaine and gett into his hands great store of corne for his unconscionable lucre and gaine'. He knew his bargain was 'greate' in respect of 'the exceedinge gaine which was to come unto him by the extreame dearth of corne which hee as an unconscionable forestaller and regrator did well knowe was to ensue'. He had 'drawen' Clerke, who was just an 'ignorant and simple man' into 'this moste unreasonable bargaine' so as to ensure his 'undoinge and impoverishinge'. Braithwaite had dealt with Clerke 'extremelie' and in an 'ungodlie' manner, and had endeavoured to his 'beggarie' through his regrating and through 'extortinge this heavie hard and unconscionable bargaine'. Clerke's credulousness, far from bringing the accusation that he should have been more careful, is brought up to suggest victimhood. The implication is an ideology in which the onus was on participants in markets to act with each others' interests at heart, rather than one in which everyone should look after themselves. Clerke's arguments should be understood within a context in which Chancery *did* overturn conditional bonds on the grounds of unfairness or fraud. This included occasions when circumstances intervened or when one party had deceived the other, even if, ironically, it has been suggested that Thomas Egerton, Lord Keeper at the time of Clerke's suit, was more inclined than his predecessors to insist on the performance of contracts.¹⁶

But the bald fact was probably just that Clerke was unlucky. Both he and Braithwaite probably went into the bargain knowing full well that the price of grain could fluctuate wildly with harvest conditions, and hence Clerke's attempt to portray Braithwaite as a devious dealer in grain: a forestaller and a regrator. His argument that Braithwaite, as such, had actually helped *create* the dearth seems ridiculously far-fetched to us, but it did chime with the ideology, or at least the rhetoric, of a central government that could still see middlemen as enemies of the commonwealth.¹⁷ By contrast, Braithwaite painted an image of himself as a useful member of society. His inn, which was licensed, provided important lodging for travellers; his grain purchases were for the provision of his own house and that only. Moreover, he had even entered into the bargain despite the fact that 'the pryce of

16 Jones, *Elizabethan Court of Chancery*, 436–48.

17 See, e.g. R.B. Outhwaite, 'Dearth and government intervention in English grain markets, 1590–1700', *Economic History Review*, 34 (1981), 389–406.

come in those cuntries was at so easy a rate that he ... could have made a better bargaine'. Even if, in reality, his argument that the case had already been settled at common law was essentially one of contract—Clerke had made the bargain and thus had the responsibility to stick with it—his rhetoric in the equity pleadings was based upon his good heart and good service to the commonwealth. It would be going too far to suggest this as evocative of a conflict between a common law system that was based on a strict notion of obligations and thus the simple morality of the market, and a law of equity that still scrutinised contracts and market trading within a wider and heavily moralised social environment, but perhaps not by much.

We do not know how the story ended. There were Clerkes in the Watermillock area right into the eighteenth century; and Robert Braithwaite makes a brief appearance in Troutbeck parish register when one Elinor Browne gave birth out of wedlock and claimed that Robert's son John was the father.¹⁸ I have not found any evidence that the Chancery suit went any further: if the suit continued then rejoinders and replications would usually follow bills and answers, but no such documents survive in this case. Nor have I been able to locate any interrogatories, depositions, orders or decrees, so it appears that the case stopped there. This is not unusual: many Chancery suits proceeded no further than the pleadings stage. Usually this means they were settled out of court, and it seems very likely that this was what happened here. In fact, given that he had already won his case at common law, any settlement can be regarded as a retreat by Braithwaite, but it was most likely to have been a compromise. Indeed, the 1598 harvest was a major improvement on its precursor, so maybe he got some of his oats and bigg after all. Whatever the case, there is much that local social historians can gain from looking in detail at lawsuits like this.

The documents

C 2/Eliz/C15/11¹⁹

The Bill of Complaint, dated 1 November 1597

To the Right Honorable Sir Thomas Egerton knight

Lord Keeper of the Greate Seale of England

In moste humble wise complayninge[,] Sheweth unto your good Lordeshippe your poore and daylie orator Edwarde Clerke of Langthwayte in the countie of Cumberland yeoman. That whearas your said orator the thirtithe daie of Januarie and in the eighte and thirtithe

18 H.S. Maclean and H. Brierley eds, *The Registers of the Parish of Watermillock in the County of Cumberland: baptisms, burials and marriages, 1579–1812; The Registers of Matterdale Church, 1634–1720* (Kendal, 1908); Cumbria RO (Kendal Branch), WPR 62/1/1/1–2, Troutbeck Chapelry Register, 1579–1629, 1633–61.

19 Original spelling has been retained; contracted words have been extended; capitalisation has been altered for clarity.

yeare of her majesties raigne [1596] att Appulbye in the countie of Westmorland did bargaine and contract with one Roberte Brathwhayte of Ambleside alias Troutbecke within the countie of Westmorland husbandeman (beinge a regrator forestaller and one that by indirecte meanes dothe obtaine and gett into his hands great store of corne for his unconscionable lucre and gaine) for threescore and three bushells of barlie and oates of eache a like quantitie to be delivered to the sayd Roberte Brathwhaite in three yeares by even & equall porcions that is to saye everie yeare att the feaste of St Andrewe Thappostle [30 November] then nexte ensuyng twentie bushells of barlie and oates till the whole and entier threescore and three bushells aforesayde were paied a[nd] delivered by your sayd orator unto the said Braythwhayte in consideracion of which bargayne and contracte of the corne aforesayde the sayd Robert Brathwhayte the daye and yeare aforesayd did paie unto the sayd Edward Clerke the somme of fyve pounds and ten shillings of good and lawfull money of England which your sayde orator had and received att thandes [*the hands*] of the sayd Braithwaite who knowinge his bargaine to be greate in respect of the exceedinge gaine which was to come unto him by the extreame dearth of corne which hee as an unconscionable forestaller and regrator did well knowe was to ensue hee havinge drawen in your sayd orator to this moste unreasonable bargaine of corne to the utter undoinge and impoverishinge of your poore orator was not thus satisfied nor contented but procureth your said orator beinge an ignorant and simple man to enter and become bounde to him the sayd Brathwhaite in twoo severall obligacions of eighte poundes a peece (bearinge date the thirtithe day of Januarie in the eighte and thirtithe yeare of her majesties raigne for the severall and yearlie paiement & performance of the deliverye of the corne aforesayd accordinge to the dayes and times lymited in the bargaine aforesayd and all this was done by coloure as the sayd Brathwhayte pretended of securitie for the five pounds and ten shillings which hee had then payed unto your sayd orator, But this may yt please your good lordeshippe was but a showe of honest meanyng whearas in trueth his wicked purpose was as nowe moste plainlie maye appeare by this practise mearlie to overthrowe and beggar your sayd orator for since the makinge of the afforesayd bondes the daye and yeare aforesayd your sayd orator did paie and deliver unto the sayd Brathwhayte for the firste yeare ten bushells of bigge and oates which in respecte of the greate and lamentable dearthe of corne in those Northe Countryes did amount to more in value then the five pounds & ten shillings which he received of the sayd Brathwhayte, And yet notwithstandinge all this besydes that Brathwhayte dothe not performe a promise made by him to your sayd orator in consideracion of his hard and unconscionable bargaine everye yeare to lend him twentie nobles till three yeares were expired for payment of the corne aforesayd, The sayd Brathwhayte not contented thus extreamelie and u[n]godlye to deale with your sayd Orator by heapinge all the aforesayd wronges and injuries upon him but still by all possible meanes endevorethe his beggarie ageinste all equitie and good conscience by regratinge and extortinge this heavie hard and unconscionable bargaine att the handes of your poore distressed orator And to this end and purpose the aforesayd Brathwhayte hathe in Easter Tearme laste comenced his suyt

in her majesties Court of Common Pleas by accion of debte for eight pounds forfayted upon one of the aforesayd bondes for the not performinge of the aforesayd unreasonable bargaine this yeare laste paste, And the sayd Brathwhaite hathe had a verdicte passed for him att the laste Assises holden att Appulbie aforesayd, and still proceedethe to judgment[.] In tender consideracion whearof and for that your sayd dystressed orator hathe no remedy therein by the stricte course of the Commen lawes of this realme or otherwyse then by this course of complaynt and petition to your Lordshippe and this honorable Court may yt therfore please your good Lordshippe to graunt unto your sayd orator not onelie her majesties moste gracious wrytt of injuncion owt of her highnes most honorable Court of Chauncerie to be directed to the said Robert Brathwhayte and to his counsellors solicitor & attorneys and other factors whatsoever therby commaundinge them and everye of them upon the paine of fourtie pounds to forbear to commence or prosecute any accion suyt or suytes att the Common Lawe for or concerninge the forfeiture or not performynge of the aforesayd obligacion untill the same shalbe heard and determyned or otherwise ordered by your Lordshippe and this honorable Court, But also her majesties most gracious wrytt of subpoena to be directed to the sayd Robert Brathwhayt therby commaundinge him att a certeyne daye and under a certeyne paine therein by your Lordshippe to be lymtyed personally to appeare before the Queenes majestie in her highnes honorable Court of Chauncerie then and there to answeare to the premisses, And further to stand unto and abyde suche further order and direccion touching the same as to this honorable court shalbe thought convenient and shall seeme moste to stand with equitye and good conscience, And your sayd orator shall daylie praye unto god for the longe contynuance of your Lordships healte with daylie encrease of honour.

The Defendant's Answer, dated 10 November 1597

The Answere and plea of Robert Brathwayte defendant to the Bill of Complaynt of Edward Clarke Complaynant

The sayd defendant saving to himselfe all advantage of exception to the incertentye and insufficyencye of the sayd fryvolous and sclanderous Bill of Complaint, For Aunswere sayth, That he this defendant dyd commense accion at the Common Lawe against the now complaynant upon a Bond of eight pounds in or abowte Candelmas Terme last, and the matter proceded to yssue and was tryed at the last Assises holden at Appulbye in the Countye of Westmerland and found for this defendant, And thereupon the verdict being certyfyed this defendant hath his judgement at the Common Lawe and purposeth to take his execucion, as he thinketh yt lawfull for [h]im to doe, And this defendant demaundeth judgement of this honourable court, and humbly prayeth to be dismyssed with his charges, And yf this courte shall think yt fytt to procede upon this Bill exhibyted after verdict and judgement at the Common Lawe then this defendant for Aunswere sayth that

he this defendant dyd bargaine with the Complaynant for threskore and two bushels of bigg and oates, to be delivered to this defendant at one John Threlkelds howse in Patterdale in the sayd Countye of Westmerland in [damaged] sorte, viz the first yeare xxity bushells the one halfe bigg the other halfe oates, and so in the second [damaged] xxity bushells, the one halfe bigg and the other halfe oates, and the laste yeare xxity bushells the one h[alf] bigg and the other halfe oates, And this defendant sayth, That the now Complaynant dyd offer and seke for this bargaine at this defendants hands, he being not wylling to have made any such bargaine, for this defendant sayth that at the tyme of the making of the sayd bargaine, the pryce of corne in those cuntryes was at so easy a rate that he this defendant could have made a better bargaine. And this defendant sayth that he made the sayd bargaine for the necessary provision of his howse, and dyd purpose to have spent yt in his howse, and trusted to have had them delivered, and upon defalt thereof was thereby inforced to buy elsewhere, for this defendant kepeth an Inne, and lodging for travalers, by lycense from the Justices in that Cuntrye, and doeth not buy any manner of Corne by way of ingrossing or forestalling or which he this defendant doth sell agayne, but all the corne which this defendant bought within these eight or nyne yeares was spent in this defendants howse, without that that any other matter or thing in the sayd Bill conteyned materyall to be aunswered unto, and layd to this defendants charge, and herein not sufficyently confessed and avoyded traversed or denied ys trew, All which matters this defendant ys ready to aver and prove as this honourable courte shall award and humbly prayeth to be dismyssed with his reasonable charges hereby most wrongfully susteyned.