

Customary Law, Social Memory and Collective Identity in Essex c.1540 -1700

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Abstract

This thesis examines bills and answers and depositions from the Duchy of Lancaster and Exchequer courts, and customals from Maldon, Colchester, Coggeshall, Barking, Mersea Island and Hatfield Broad Oak in Essex between c.1550 and 1700. By analyzing disputes about customary law this thesis presents an original perspective of early-modern mentalities. The main themes considered are oral and literate culture, memory, space and social relations. Chapter One considers the way deponents used spoken and written evidence in disputes about custom. This reveals that deponents maintained an experiential connection to both forms of evidence and that oral and literate culture were inextricably intertwined in the early-modern mind. Chapter Two looks at the way deponents created collective memories, demarcated time and conceptualized the past. Consequently it is demonstrated that deponents constructed their memories in the three mental spaces of work, family and the ‘country’. This meant that their memories became connected to their personal history and social identity. Chapter Three focuses on how deponents conceptualized their physical environments. It is observed that the landscape was described in terms of its resources, boundaries and jurisdictions which served as both functional and symbolic. Deponents used the landscape to anchor their memories of custom, filling space with legal and social meaning. Chapter Four considers the role of customary disputes in social relations. It is demonstrated that deponents used customary disputes as a platform to articulate their social, moral and legal expectations. While the character of negotiation and reciprocity underwent some change through this period, customary disputes remained important in the way early-modern people established their rights, responsibilities and identities.

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Success is not final.

Failure is not fatal.

It is the courage to continue that counts.

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Introduction

This thesis examines social identity and collective memory in early-modern Essex. The construction and practice of customary law will be the mirror in which the mind-sets of ordinary people are reflected. By studying the memories, words and actions of people giving testimony in legal disputes in sixteenth and seventeenth century Essex, new light will be shed on the world in which they lived. This will be achieved through the examination of oral and literate culture; the construction and recollection of memory; the understanding and experience of the landscape; and the negotiation of social relationships. Before this is attempted the scene must be set. In this chapter the location, sources and themes of this study will be laid out.

Early-modern Essex

Essex is a large county in the east of England. It lies to the north-east of the city of London, and is bounded to the west by Hertfordshire and Cambridgeshire. To the north lies the county of Suffolk, and to the east the North Sea eats into the land, creating a network of estuaries, creeks, rivers and marshes. During the early-modern period, the River Thames formed the southern boundary of the county. The proximity of Essex to the North Sea also facilitated trade and communication with the north of England, continental Europe, and further afield. This landscape dictated patterns of agriculture, industry and the economy, and thus affected the lives of those who lived and worked in Essex. As a result, the county's position

was key in the development of its unique culture.¹ The terrain of early-modern Essex can be divided into four categories that determined the type of agriculture practiced in the region. The south of the county consisted of heavy London clay, preventing early arable cultivation. This led to the presence of dense forests, and the development of heath land grazing and brick production. Further north, mixed pastoral and arable farming were punctuated by the valleys of the Stour, Chelmer and Colne Rivers which provided a mild loam soil. This made it the most valuable meadow land in Essex. The north-west and uplands of the county were largely used for arable agriculture, where the medieval open-field system remained intact. F. G. Emmison has observed that

Whilst most of the county had been enclosed direct from woodland or waste at an early date, the ancient common-field system with its intermixed arable strips covering the English Midlands and beyond extends deep into north-west Essex and right along its northern and western boundaries and was to remain so until the parliamentary enclosure period which in this county ranged from 1800 to 1860.²

Despite the early enclosure of most of the county, customary resources played an important role in the landscape of Essex. Access to wood, grazing and other resources remained contentious throughout the early-modern period and the resulting disputes provide the historian with evidence of how ordinary people perceived the world around them. The perception of the early-modern landscape will be dealt with in greater depth in Chapter Three.

Some of the most distinctive features of the landscape of Essex were the rivers, estuaries and marshes that made up the eastern coastal regions. These geographical features enabled the development of a strong maritime industry which was not confined to the coast, but extended inland via a complex network of waterways. Emmison observes that

From Barking to Harwich at the mouth of the river Stour, the Essex coastline is characterized by its numerous estuaries and deeply-indented creeks ... In 1565

¹ W. Hunt, *The Puritan Moment The Coming of Revolution in an English County* (Harvard, 1983), 6-13.

² F. G. Emmison, *Elizabethan Life: Home, Work & Land* (Chelmsford, 1976), 37.

Essex is thus recorded as having 187 ‘harbours, ports and creeks’, 349 ships, vessels and boats, and 1196 mariners and fishermen.³

The rivers and the sea provided trade routes to the North of England, Europe, and America, bringing goods such as coal, wine, sugar, salt, dried fruit and spices, as well as foreigners and their religions to the county. The waterways provided Essex with resources. Consequently, fish and oysters were integral to the diet and economy of the Essex population. The surrounding marsh environment provided wild fowl and rich lands for the grazing of ewes for the production of butter and cheese.⁴ London’s expansion during the early-modern period created huge demand for agricultural produce from adjacent rural counties. Goods from Essex were transported to London via the web of rivers and estuaries. This rapacious trade brought problems as well as profit, as grain continued to be exported to London, and to Europe, in times of dearth.⁵ Despite the rise of market agriculture throughout the early-modern period, Essex remained a largely rural county, dependent on mixed husbandry for the subsistence of its inhabitants.

In addition to agriculture, Essex supported a wide variety of crafts and industries.⁶ Essex’s second largest labour market, behind agriculture, was the production of cloth.⁷ In contrast to agricultural workers, many cloth workers did not have access to land, and therefore were unable to supplement their income with husbandry. As a result, they were particularly vulnerable to harvest crises and industrial depression.⁸ During the early-modern period, the cloth industry was focused in urban areas such as Colchester, Bocking, Braintree and Coggeshall. These urban centres attracted religious refugees from the continent, who brought specialist skills to the cloth industry. This created a mix of cultures and religious interests in the urban centres of Essex.

Early-modern Essex was a diverse and distinctive place. Its geographical features created localised industries which were strongly linked to the rest of Essex, and to the wider world, through export by road, river and sea. Thus, Essex comprised a series of productive

³ Ibid, 59.

⁴ Ibid, 45.

⁵ J. Walter, ‘Grain Riots and Popular Attitudes to the Law: Maldon and the Crisis of 1629’, in J. Brewer & J. Styles, An Ungovernable People: The English and Their Law in the Seventeenth and Eighteenth Centuries (London, 1980) 49.

⁶ For a comprehensive assessment of crafts and trades in Elizabethan Essex see Emmison, Elizabethan Life: Home, Work & Land, 74-90.

⁷ Ibid, 74, 75.

⁸ Walter, ‘Grain Riots’, 49.

localities influenced, and occasionally destabilised, by outsiders. The environments of Essex prescribed the nature and stability of the economy, and therefore, the life chances of those living and working in the county. Essex was rural and urban, industrial and agricultural, localised and connected with the wider world. W. Hunt summarises this when he observes that “To the seventeenth century eye Essex was a county of contrasts - almost a microcosm of England as a whole”.⁹ The diverse, yet coherent, nature of early-modern Essex makes it a valuable subject for the attentions of social historians.

Social historians have used Essex as a focal point since the 1960s. Several important works about the county emerged from the wave of new social history, driven by a focus on revealing the experience of the ordinary person which will be explored below. These studies provide a wealth of information about the county, as well as providing a pioneering combination of quantitative and qualitative analysis of archive material. These works provide the empirical foundations upon which this thesis is based.

The work of Emmison is of huge importance to the study of early-modern Essex. In 1938 Emmison was appointed as the first county archivist of Essex. He is credited with making the Essex Record Office “pre-eminent in its field and an inspiration to and model for county record offices to come ... creating in due time the largest English county record office in terms of staffing, size and range of collections”.¹⁰ Emmison created a comprehensive and accessible archive shaping the study of Essex for coming generations of historians. Alongside his role as archivist Emmison’s research has influenced the way historians study early-modern Essex. Most relevant to this study is his work on wills and manorial records, which provides a view into the lives of ordinary working people. Emmison examines the way everyday people’s lives functioned in terms of material culture, structures of home life, agricultural practices and the processes that underpinned the manor as a jurisdiction. Emmison’s observations on the bye-laws and customals from Essex have highlighted the need for a study that explores local customaries in connection with a wider examination of customary law. Emmison identified the diversity of manorial custom, and argued that more research is needed into its relationship with other authorities in the locality.¹¹ This thesis answers Emmison’s call examining the flexibility and multiplicity of custom which operated across numerous jurisdictions.

⁹ Hunt, *The Puritan Moment*, 13.

¹⁰ B. Serjeant, ‘Emmison, Fredrick George (1907-1995)’, *Oxford Dictionary of National Biography*, online edition (Oxford, 2006). (<http://www.oxforddnb.com/view/article/60381>), accessed 24/07/2010.

¹¹ Emmison, *Elizabethan Life, Home Work & Land*, 311-333.

Introduction

Customary law often crossed the boundaries of the parish, manor and Corporation while creating its own invisible boundaries through the practice and understanding of the 'country'.

Hunt writes about seventeenth century Essex in a different way. Hunt's work is a social history of the county, which also seeks to shed light on the role of Essex in the religious and political upheaval, of the first half of the seventeenth century. He observes that Essex's exploding population created food supply problems, exacerbated in times of dearth. The rapid population growth of London also affected the county. Hunt suggests that:

In 1564 Essex shipped only 1,086 quarters of grain to the markets of London; by the end of James' reign that figure had risen to 12,765, and Essex was supplying about one-fifth of all of the grain that the capital received by sea.¹²

During this period living standards for the middling sort improved, as the quality of houses and material possessions rose. He argues that "The overall pattern is fairly clear: rural society was becoming polarised. Moreover, the concentration of land in the hands of larger farmers coincided with considerable population growth".¹³ This made it hard for the poor to keep a foothold on land, and thus, subsist. Hunt argues that, in contrast to other counties, there was no massive assault on customary rights, as economics worked to exclude the small holding tenant from land ownership without much intervention from land owners. This thesis intends to investigate this proposition more fully through the examination of customary disputes.

A. Macfarlane uses records from Essex to investigate witchcraft in the early-modern period. He builds a detailed picture of witchcraft in England using information from Assize courts, quarter sessions, ecclesiastical and borough courts, wills, manorial and parish records, and lay subsidy assessments. Macfarlane describes Essex as

Approximately forty miles long and forty miles wide, it had a population of around 100,000 inhabitants in 1638 ... They lived in some 425 villages and seven chartered boroughs; the largest of the latter was Colchester, followed by Chelmsford, Maldon, and Harwich.¹⁴

¹² Hunt, *The Puritan Moment*, 25.

¹³ *Ibid.*, 39.

¹⁴ A. Macfarlane, *Witchcraft in Tudor and Stuart England: A Regional and Comparative Study* (London, 1970) 8.

Macfarlane's detailed study reveals aspects of social change in Essex relevant to this thesis. Through case studies of Little Baddow and Boreham, he identifies that the population doubled between 1560 and 1600. Macfarlane also observes the destabilising effect of large scale migration from within the county, and from abroad. In addition, he cites the growth of the cloth industry as a source of instability, separating the poor from the land, and leaving them extremely vulnerable to industrial slump and harvest failure.¹⁵

K. Wrightson and D. Levine have examined a village in early-modern Essex in their detailed study of Terling. They utilise a wide range of sources to build a vivid and intricate picture of social relations and change in the village. Wrightson and Levine identify that the main force of economic change in this period was the development of market opportunities. They pinpoint the expansion of the London food market, and the rise of commercial food production, as key in forming the character of the area. They find that

The bulk of the produce that travelled along the highways of Essex was bound for the capital city. Still more was shipped from the numerous havens of the county's long coastline. London demand during the long inflationary trend of the sixteenth and early seventeenth centuries underlay the prosperity of Essex farmers in those years.¹⁶

Wrightson and Levine also identify that Essex was one of the richest counties of England. They examine Terling's lay subsidy return from 1524/5, and hearth tax return of 1671, in order to demonstrate the remarkable expansion of the population in the lower strata of the parish society.¹⁷ Alongside this, Wrightson and Levine identify an improvement in the lifestyles of the middle classes. They conclude that

There were elements of real stability in the economic and social history of Terling between 1520 and 1700 but there were also major elements of change. The villagers of 1700 knew both a greater prosperity and a more widespread, more abject poverty and dependence than had those of 1524.¹⁸

¹⁵ Ibid, 147-149.

¹⁶ K. Wrightson & D. Levine, *Poverty and Piety in an English Village: Terling, 1525-1700* (Oxford, 1995) 21.

¹⁷ Ibid, 32-34.

¹⁸ Ibid, 42.

Wrightson and Levine's study is important in linking widespread economic changes with the social conditions in the locality of a single village. This approach demonstrates how histories of the locality can be related to, and inform studies of, larger scale social and economic change.

Amongst the historians of early-modern Essex, consensus can be seen in a number of places. First, a wide range of sources are used to get a clear picture of life in a locality. An archival approach, focusing on records touching the lives of ordinary people allows historians to broaden their understanding of early-modern society. This enabled historians to move away from a 'court-centric' analysis of the events of the sixteenth and seventeenth centuries, and to connect history with society. Second, Essex underwent economic and social changes during the early-modern period, with the population rising rapidly. While increased standard of living was experienced by the middle classes, the poor became poorer and were less able to secure their economic positions in 1700 than they had been in the mid-sixteenth century. Third, these historians, while undertaking specifically local studies, changed the nature of 'local' history by connecting their evidence with changes that occurred on a national or international scale. Thus, moments of crisis are seen not just for their causes and consequences in local terms, but for their full significance in relation to the rest of the commonwealth.

This thesis intends to draw on the solid scholarship of the social historians of Essex not to replicate their work but to embark on a deeper study of the early-modern mind-set. The scope and scale of the previous research cannot be recreated here but their findings have laid the ground work for an examination of specific and previously unexplored aspects of early-modern society. In order to do this the focus of the thesis must be sharpened and its location and evidence must be explained.

Sources and Locations

This study seeks to use custom as a key with which to access how early-modern people remembered, thought, and acted, through the interpretation of previously neglected sources. These sources are the bills and answers, and depositions, of cases tried in the central Exchequer and Duchy of Lancaster courts between 1550 and 1700. The proceedings of the Exchequer court began in the early thirteenth century, although its jurisdiction in equity only arose in the sixteenth century. Until 1649, those pleading in the Exchequer were required to be

connected with the crown by holding office, leases or debts. After 1649, the court stopped examining these connections, resulting in even the weakest of connections being sufficient to allow trial in the Exchequer. H. Horwitz's work on the use of Exchequer records emphasises their neglect, despite their potential usefulness to social historians.¹⁹

The bills and answers from the Exchequer court are problematic sources. Horwitz observes that their neglect thus far is partially due to their cataloguing, with the only way to access their content being by considering each page of thousands on an individual basis. While cases from the Exchequer are catalogued by county and content the bills and answers remain uncatalogued being produced in hefty folders of several hundred at a time kept only in numerical order of classmark. The bills and answers were painstakingly searched page by page to establish the location, content and protagonists of each dispute in order to establish their relevance to this research. Consequently the search of the E112s was much slower and less fruitful than other sources but valuable none the less.

Furthermore, their poor condition renders many of the documents only partially legible. The highly formulaic nature of the content of the bills and answers, as a result of the processes of formal legal pleading, further separates the documents from the individuals involved in the cases. Glimpses of reality are fleeting and elusive, and the fact that arguments are being documented means that events are described in extremes and caricatures. However, the bills and answers can provide several useful things. First, the scale of attempted litigation in this period is clear, with an annual average of 467 new bills each year. Second, the contrasting ways in which people understood the law, their duties and responsibilities to each other and to their communities can be seen. There are over 90,000 Exchequer court bills and answers. As a result, a complete assessment of this source is beyond the scope of this study. A deeper investigation into their function and importance as sources may yield more fruitful readings. In this work, those bills and answers relating to the communities on which I focus have been considered, alongside information from other sources. This will allow a better understanding of the functioning of early-modern customary law, both inside, and outside the court room.

This thesis will also consider depositions from the Duchy of Lancaster court, which began proceedings in the thirteenth century under the authority of the Dukes of Lancaster. In 1399 it was transferred to the crown and its jurisdiction and purpose was consolidated by the

¹⁹ H. Horwitz, Exchequer Equity Records and Proceedings 1649-1841 (Richmond, 2001) 1-2.

1470s. Like the Exchequer, it dealt with matters of equity, but specifically those involving manors under the authority of the Duchy of Lancaster. The court functioned until the nineteenth century only ceasing proceedings during the interregnum.²⁰ In both courts, once a complaint in Exchequer had been registered, and bills and answers had been entered by plaintiffs and defendants the courts formed a commission which went into the localities with a set of interrogatories, or questions, to ask each of the witnesses in the case. Witnesses' replies to these questions were recorded by a scribe, whose interpretation of the witnesses words are, ultimately, all that the historian has access to. These sources provide what is often a legalistic, formulaic, highly edited and led version of the witnesses' testimony. However, it remains, at least in part, the actual words of early-modern people. The records provide a selective view of early-modern life. Many of the deponents were wealthy, with gentlemen, yeoman and merchants being represented plentifully. From the 891 deponents who testified, 759 declared their occupation, 300 were gentlemen, yeomen, clergy or merchants. The proportion of deponents who were female or poor is significantly lower. Only 53 deponents were women and only 27 deponents declared themselves as labourers or servants.²¹ The majority of deponents, however, were tradesmen or craftsmen who numbered 316 in all. As a result, these sources allow the historian to hear the dairy maids, weavers, tanners, sailors and widows interpreting the customs of their neighbourhood, in addition to the voices of the wealthy and powerful. From these sources historians have access to multiple views on custom, rights and responsibilities, recollections and interpretations of the past, and attitudes towards communities and to the individual. In short, from these documents, we can begin to understand the view of early-modern people of the world they lived in.

In addition to documents from the Exchequer and Duchy of Lancaster Court, I have considered customals which survive from several locations in Essex, in an attempt to link the customary traditions of each locality with the resulting disputes. Customals are documents that recorded customs, and could be made for a parish, manor, or town. Generally, they were written by a group of male inhabitants who claimed to speak on behalf of the community, sometimes against a repressive enemy, or to resolve general disorder and confusion

²⁰ R. Somerville, 'Duchy of Lancaster Council and Court of Duchy Chamber', Transactions of the Royal Historical Society, 4th series, xxiii (1941) 159-177.

²¹ These figures were calculated from deponent's description of themselves in the Exchequer and Duchy of Lancaster depositions, using Wrightson and Levine's categories for the calculation of social status as a guide. However, the range and complexity of occupations for category III, due to the prevalence of the cloth and maritime industries in these areas, compromises the Terling model. While the focus of this thesis is not the demographic reconstruction of these communities, future work would benefit from an investigation of occupational distribution in Essex. Wrightson & Levine, Poverty and Piety, 73-110.

surrounding their customary rights. These documents provide a frozen moment in which the rights, responsibilities and punishments which related to the customs of the area were codified. Invariably, these documents referred to their qualifying statement, that the customs had existed ‘time out of mind of man immemorial’, or that they came from ‘the common voice’ of ‘ancient men’. These sources are rich and invaluable, despite their often formulaic content and fictional justifications. Customals varied in the views they presented of custom, of rights, and of community identity. The specific customals that are investigated in this thesis, the intricacies and meanings of the statements they make, and the contradictions and problems created by these documents will be discussed in depth in Chapter One.

It is beyond the scope of this thesis to comprehensively examine records from the whole of Essex. As a result, locations were selected for analysis based on the total number, and temporal extent of sources available for each location. A search of the sources from the Exchequer court depositions and Essex customals revealed six areas as having a substantial number of cases, consistently distributed throughout the time period. As a result, sources from these locations are suitable to provide a continuous view of the period across Essex. In order that this thesis considered previously unused material the Depositions and Customals were supplemented by the examination of a large body of bills and answers from the Exchequer court.

The locations selected for analysis in this thesis are: Colchester, Maldon, Coggeshall, Hatfield Broad Oak, Barking and Mersea Island. Their locations are highlighted on the map in Figure 1. At each of these locations, cases concerning customary law have been selected, as well as cases from peripheral settlements linked to the places of interest through common jurisdiction, economic and social networks. Many of these places have been written about by other historians, and a better understanding of the contents of the depositions can be gained by considering the position and situation of each location.

The first location considered is Colchester. Daniel Defoe, in 1724, described Colchester as “an ancient Corporation; the town is large, very populous; the streets fair and beautiful”.²² Although Chelmsford was the county town, Colchester was the largest town in Essex in the early-modern period. It lies in the north east of the county, on the river Colne, which narrowed around three miles from the town at Wivenhoe. This restricted the types of vessel able to access Colchester. The town, surrounded by the remains of Roman walls,

²² D. Defoe, *A Tour Through the Whole Islands of Great Britain* (Yale, 1991) 11.

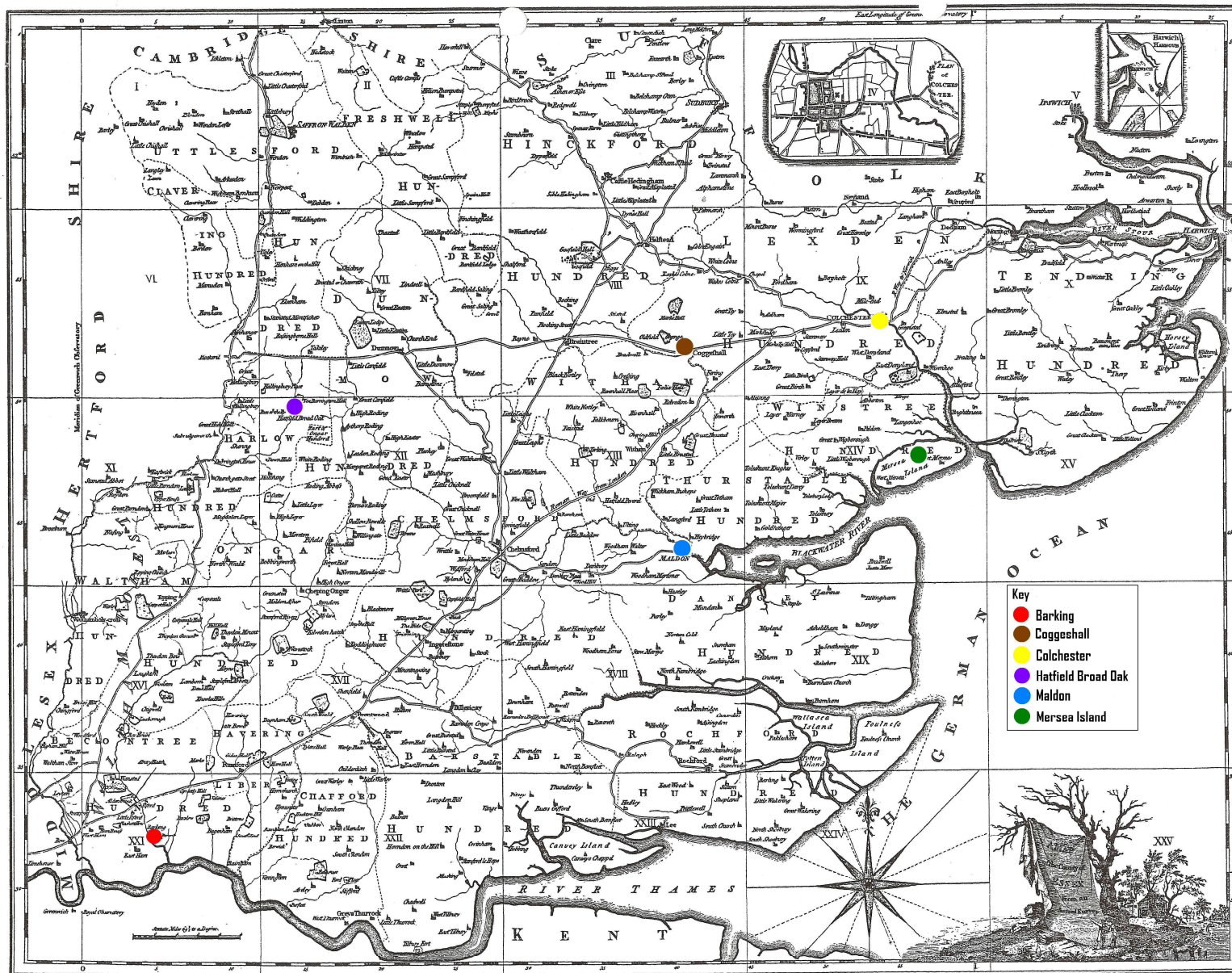


Figure 1: A 1777 map of Essex.²³ The six locations of interest have been highlighted. A key has been added for clarity

²³ John Chapman & Peter Andre, *A Map of the County of Essex 1777* (Chelmsford, 1960) 3.

boasted a castle which was used as the county gaol. The land surrounding Colchester was a variety of arable, pasture and heath land, some of which still maintained common rights to grazing. These common rights were essential to the subsistence of many of the town's cloth workers, as well as the un-enfranchised poor.²⁴ In 1525, the town had a population of c.5,300, which had doubled by the seventeenth century to around 11,000.²⁵ It was an incorporated town whose oligarchy struggled for power against the local gentry. The main trades in Colchester were agricultural exports to London and the cloth trade. This is reflected in Defoe's assessment of the area,

All the towns round carry on the same trade, namely, Kelvedon, Witham, Coggeshall, Braintree, Bocking, &c. and the whole county, large as it is, may be said to be employed, and in part maintained, by the spinning of wool for the bay trade of Colchester, and its adjacent towns.²⁶

Several historians have focused on Colchester, mapping its economic, political and religious composition. To better understand the sources analysed in this thesis, the work of these historians must be considered.

R. H. Britnell has examined late-medieval Colchester, and provides valuable insight into the development of the town's character. He identifies an increase in the importance of the New Hythe which lay to the east of the town centre. The development of wharves and warehouses helped to make the New Hythe a focal point for fishermen and sea-farers. However, Britnell highlights restrictions to the growth of sea borne trade caused by the shallower waters near to the town. These developments are of particular interest to this thesis, as many of the disputes examined concern the attempts of the Colchester Corporation to exert their authority over shipping in the Colne. Britnell also examines the inland economy of Colchester, observing that in 1311 Colchester had eight water mills, which served the needs of the fluctuating population. Britnell also identifies the townsmen's acquisition and exploitation of property outside Colchester, suggesting that

²⁴ J. Walter, Understanding Popular Violence in the English Revolution: The Colchester Plunderers (Cambridge, 1999) 78.

²⁵ R. H. Britnell, Growth and Decline in Colchester 1300-1525 (Cambridge, 1986), 262, Walter, Understanding Popular Violence, 72.

²⁶ Defoe, A Tour, 12.

These developments reveal a frankly commercial attitude to land by men whose interests and culture were primarily urban. The relaxing of manorial organisation had been an important prelude to this commercialisation, since customary lands could not otherwise have become so readily assimilated to other types of land as income-earning assets.²⁷

Through analysis of property transactions, Britnell observes the development of a rigid, capitalist form of industry in the town and a widening of the differentiation of rank in the hierarchies of the Corporation.

Religion was also important in shaping the development of Colchester. L. M. Higgs has written about the spiritual development of the town and its effect on the governing Corporation. Higgs observes that during the dissolution, the town's governors were co-operative with the crown. As a result, they offered no resistance to the closure of St Augustine's in 1536, but remained moderate in their adoption of reformist views.²⁸ Higgs suggests that the dissolution empowered local gentry families, who purchased the Abbey lands close to the town. This infringed on the power of the Corporation, and laid the foundations for future conflicts. Higgs traces the development of the Corporation's protestant identity which she argues was strengthened by the crown's return to Catholicism during Mary's reign. She argues that

Forged in the fires of religious changes and refined by the common goal of promoting Protestantism in Colchester, the cohesion of the aldermanic group was made stronger by alliances of blood and marriage.²⁹

However, religious culture in Colchester was far from singular. Higgs examines the influence of the influx of Dutch immigrants to the town in the 1570s, observing the establishment of 'stranger congregations'. She analyses the growing religious divisions in the town, demonstrated by the ale houses, where Protestants drank at the Kings Head and Catholics at the White Hart. Higgs identifies 1575 as a watershed year for the Corporation, who, to solve

²⁷ Britnell, *Growth and Decline in Colchester*, 261.

²⁸ For further discussion of Reformation Colchester see J. C. Ward, 'The Reformation in Colchester 1528-1558', *Essex Archaeology and History*, 15 (1983) 84-95, M. Byford, 'The Birth of a Protestant Town: The Process of Reformation in Tudor Colchester 1530-80', in P. Collinson & J. Craig (eds.), *The Reformation in English Towns 1500-1640* (Basingstoke, 1998) 23-47.

²⁹ L. M. Higgs, *Godliness and Governance in Tudor Colchester* (Michigan, 1998), 185, 198.

the years of assault and litigation between its members, appointed a new set of Aldermen with an overtly puritan attitude. Higgs' work sets the scene for the religious and political divisions in the town, which boiled over into the Exchequer court disputes throughout this period.

J. Walter has advanced the historical understanding of Colchester through his reconstruction of the 1642 Stour Valley riots. Walter has identified Colchester's significance, suggesting that "as the leading town in the region with a population of some ten thousand or so inhabitants, an important market and the centre of the cloth industry, Colchester was at the heart of a series of networks".³⁰ Walter traces these networks through north east Essex and neighbouring Suffolk, identifying them as the forces driving the Stour valley rioters on a calculated tour of protest and destruction. He uses a range of sources to get to the heart of the social, political and religious divisions of Colchester, in order to identify the origins of the disturbances. Walter's observations on the litigation between members of the Corporation, and John Lucas, are considered in this study, which will examine the Canwick Mill cases. While drawing on Walter's analysis, this study will delve deeper into the specific disputes, focusing on the significant role that custom played in the town in regulating the relationships between the competing local elites and involving the common opinion of the town in their controversies.

The work of these historians provides a solid foundation to work from in the examination of early-modern Colchester. As we have seen, Colchester's significance as the economic heart of the county, its political and religious divisions and its social composition, make the town an ideal focus for this study. An examination of custom in this area will reveal previously unexplored aspects of the early-modern mind-set. This includes the way that economic and occupational networks functioned to strengthen the construction, remembrance and dissemination of custom, as well as the way custom was employed by those vying for power and those seeking to protect the commonwealth.

The second place of interest is the town of Maldon. Maldon lies in the south east of the county, approximately forty miles north east of London and seventeen miles south west of Colchester. Maldon sits on marshy ground between the River Chelmer and the River Blackwater. While Maldon was a focal point for inland trade, supplying the surrounding locality with coals, fish and other produce, its coastal trade to London, and its proximity to the North Sea, was the main source of its economy. Maldon supplied the growing capital city with

³⁰ Walter, Understanding Popular Violence, 65.

coal from the north east, and grain and dairy produce from Essex. Maldon was an incorporated borough and an administrative centre for the port authorities. The presence of the Corporation shaped the character of the borough. Their attempts to assert authority over the surrounding area created conflict, evidence of which can be seen in the Exchequer court records. In 1554 and 1555, Maldon was granted a new charter, and the Corporation marked the occasion by writing a custumal recording the customs of the borough. This document will be examined in greater detail in Chapter One.

Early-modern Maldon has been considered in depth by several historians whose work must act as a foundation for the findings of this study. W.J. Petchy has written a detailed history of Maldon in the sixteenth and seventeenth century, which utilises a wide range of records to build up a detailed picture of the town. Petchy focuses particularly on the hierarchy of the Corporation, the economy, immigration and religion of the inhabitants of the town. Petchy observes that Maldon's overall wealth declined through this period, from being the third richest town in the county in 1525, to being the fourteenth richest in 1671. Maldon's population only increased by 100 people, from 900 in 1520, to 1000 people in 1672. In contrast other towns in Essex doubled in size during this period. However, the deliberate population control exercised by the Corporation ensured a relatively low level of poverty in the town, with only 32% exempt from the hearth tax in 1671.³¹ While Petchy provides a detailed account of the town in this period, this study examines the role of custom in forming the attitudes and actions of the Corporation, and inhabitants of Maldon. The extraordinary richness of the Maldon White Book custumal written in 1554/5 provides a frozen moment of the Corporation's conceptualisation of the town, revealing its strengths and deepest anxieties. The custumal and its creation is dealt with in greater detail in Chapter One.

B. Cook has examined the coastal trade of Maldon in the early-modern period in greater detail. She has examined the coastal port books in order to trace the import and export patterns of goods in the region and to document the community of mariners and seafarers in the town. Cook identifies that the shipping of coal, grain and dairy produce to London were the driving forces behind the economy of Maldon. However, she observes that the nature of this economy had altered by the end of the seventeenth century. She argues that

³¹ W. J. Petchey *A Prospect of Maldon, 1500-1689* (Chelmsford, 1991), 19, 23.

In the early years there were twice as many local men as visiting masters and they conducted seven times the trade; by the final period visitors outnumbered locals by five to one and they had secured about forty-three per cent of passages.³²

These changes, Cook argues, were due to the smaller vessel size of Maldon boats, the physical restrictions of the narrow, shallow haven, and the strength of local trades to resist aggressive, large scale marketing. Alongside these changes, exports of grain increased while exports of dairy produce from the marshland ewes declined. Cook also examined the composition of, and connections between, maritime families. She identified that master mariners achieved the same level of wealth and respectability as yeoman, and often served in minor borough offices. Cook also suggests that maritime families often maintained close connections with agricultural and merchant families through marriage. This served to enforce beneficial business arrangements through kinship links.³³ Cook observes that while mariners integrated into the structures of inland life of the manor, parish and village, they were often integral to the dissemination of new religious ideas which they were exposed to during their time abroad. Many of the cases examined in this thesis relate to the competing jurisdictions that governed the estuaries surrounding Maldon. This study focuses on the ways that customary law influenced the regulation of activities on the water, and underpinned the complex relationship between the Corporation and the maritime community.

Popular attitudes to the law and the exercise of authority in the early-modern period have been examined by J. Walter in his assessment of the 1629 Maldon grain riots. Walter argues that grain riots were rarely uncalculated reactions to hunger or poverty, and that there were clearly understood parameters of behaviour played out by both rioters and the authorities. Walter utilises legal records to access the mental world of the poor, and the responses of those holding power in Maldon. Walter emphasises the importance of context in understanding early-modern disorder and the ease with which the subtle complexities of social relations can be wrongly characterised. Walter also reveals the effects the export of grain had on the surrounding population of Essex. Further, he highlights that the networks formed by the cloth industry brought weavers from surrounding areas to the shores of the Blackwater to demand

³² B. Cook, The Coastal Trade of Maldon c.1565-1702 (Unpublished Doctoral Thesis, University of Essex, 2006) 332.

³³ *Ibid.*, 393, 333.

grain. Walter's analysis is important to this study in its detection that "an awareness of the sanctions of the criminal law was burned into the collective memory".³⁴ Furthermore, this study follows Walter's method in his attention to local context and the close reading of legal sources in order to delve further into the consciousness of the early-modern person.

The third location which this study will focus on is the town of Coggeshall, which lies ten miles west of Colchester and approximately fifty miles north east of London. Coggeshall was made up of two parishes, Great Coggeshall to the north of the River Blackwater, which encompassed 2,632 acres, and Little Coggeshall to the south, containing 1,107 acres. There were several mills on the river which were regulated by a complex system of floodgates and diversion streams controlled by the water bailiff.³⁵ Early-modern Coggeshall has been described as consisting of "good quality arable land with pastures and meadows. In the west, vestiges of very ancient woodland survive, and these were extensive until the seventeenth century".³⁶ Coggeshall has been discussed in passing by several historians. Coggeshall was identified by Emmison as an important centre of cloth production, while Hunt has examined some of the disruption caused by separatist religion in Coggeshall. He observes that in the 1590s "the ministers dared not prosecute disruptive parishioners for fear of making themselves even more unpopular".³⁷

An exhaustive study of Coggeshall is provided by C. Johnson, who has attempted to assess the relevance of the proto-industrial debate to early-modern communities. Johnson confirms Coggeshall as "a town mainly involved in the spinning, combing and carding of wool and in the weaving of cloth", noting that by 1600 it was already famous for its 'whites'.³⁸ Johnson identifies a complex structure of local offices, guilds and fraternities which governed Coggeshall along with its constables, who were chosen at Whitsun by the manorial court. Johnson traces the fortunes of the cloth working community throughout the period. He identifies that rising grain prices and harvest failures in the 1620s caused contraction in the European cloth market, and a prolonged industrial crisis for the workers of Coggeshall lasting until the late 1630s.

Johnson charts the changes which altered the face of Coggeshall in this period. He observes a 430 per cent population rise between 1524 and 1671, and an increasing

³⁴ Walter, 'Grain Riots', 83.

³⁵ C. Johnson, *A Proto-Industrial Community Study: Coggeshall in Essex c.1500-1750* (Unpublished Doctoral Thesis, Essex University, 1989), xxxii-17.

³⁶ *Ibid*, xxxiv.

³⁷ Emmison, *Elizabethan Life, Home Work & Land*, 75, Hunt, *The Puritan Moment*, 147, see also 102-103, 247.

³⁸ Johnson, *A Proto-Industrial Community Study*, 9-10, 24.

diversification in market agriculture for local consumption through the seventeenth century. Significantly, Johnson observes that

the early sixteenth century situation with its broadly based industrial structure featuring many independent artisans as well as wealthy merchants and poor labourers gave way to increasing polarisation.³⁹

Johnson argues that more labour intensive types of cloth and the importation of wool from outside the county increased the importance of clothiers. The increasing cost of specialist materials caused weavers to rely on clothiers to take the brunt of the outlay costs to supply materials, skills and access to specialist markets.⁴⁰ This destruction of weavers' independence increasingly disadvantaged urban cloth workers, leaving Coggeshall with a society of wealthier clothiers and merchants, contrasted against a much larger, and much poorer strata of the population. Johnson's work provides an important context to this thesis' examination of custom in Coggeshall, by highlighting the tensions and changes which shaped the economic identities of those deposing to the Exchequer court.

The remaining three places of interest have received much less attention from historians, but have the potential to offer important insight into the function of custom, memory and identity in early-modern Essex.

Barking is nine miles east of London, it is seven miles long and four miles wide. Barking was bounded on the north side by forest and on the south by marsh land of the river Thames. It lies on the road from London to Colchester. As a result, Barking was an important town for the transport and trading of goods for the London market.⁴¹ Defoe described Barking as "a large market-town but chiefly inhabited by fishermen, whose smacks ride in the Thames at the mouth of their river, from whence their fish is sent up to London to the market at Billingsgate".⁴² Cases concerning Barking are understandably numerous, considering the extent of the lands encompassed by the parish and manor. H. Lockwood has observed that "prior to 1830 the old parish of Barking still had an area of 12,307 acres (approximately

³⁹ Ibid, 43.

⁴⁰ Ibid, 271, 27-37.

⁴¹ W. R. Powell (ed), 'The Ancient Parish of Barking, Introduction', *A History of the County of Essex*, Vol. 5 (1966), 184-90. URL: <http://www.British-History.ac.uk/report.aspx?compid=42722>. Accessed 19/07/2010.

⁴² Defoe, *A Tour*, 8. For the sixteenth century see Emmison, *Elizabethan Life, Home Work & Land*, 63.

nineteen and a half square miles)”.⁴³ The Dissolution of the Monasteries transferred tithes into private hands, seriously disturbing the customary systems of the area. The ongoing confusion over the tithes and customs of abbey lands is dealt with more fully in Chapter Two.

Hatfield Broad Oak is situated approximately seven miles north east of the town of Harlow and was one of the largest parishes in Essex encompassing over 8000 acres. The town of Hatfield, in the centre of the parish, is bounded on the north side by Hatfield Forest which did not become fully enclosed until 1857. Hatfield lay on three important roads which led to Chelmsford, Harlow and Cambridge. In the 1525 lay subsidy return, Hatfield was the fourteenth richest town in Essex. By 1670 Hatfield ranked as twenty-eighth richest, reflecting rapid decline of the economy and population. In the Victoria County History, Broad *et al.* observe that “it is likely that the decline had three main causes: the growth of other towns in the district, the dissolution of the priory and the growth of the Barrington estate”.⁴⁴ The steady exclusion of small tenant farmers by the encroaching power of the Barrington family reflects the polarisation of society occurring in this period, making the rich richer and depriving the poor of access to land. This made subsistence more precarious and swelled the population of urban cloth working towns such as Colchester. This contradicts Hunt’s observations, which played down the aggressive role of gentry families in the exclusion of small holding tenants from the land in Essex. Cases from Hatfield are used in this thesis to explore the complex interplay between the rich, and the communities they lived in. As Hatfield was at the heart of the economic and social changes which altered the face of early-modern society, the declining economy and the increasing polarisation of society are reflected in these cases.

Mersea Island is a land mass approximately eight miles to the south east of Colchester. Mersea Island is separated from the mainland by the Strood Channel and the Pye Fleet Channel. Twice a day the tide covers the ‘Strood’, the only road by which Mersea can be reached. The island has two main settlements at East and West Mersea, which were supported by a combination of mixed agriculture, oyster farming and fishing. Mersea Island has been studied for its Anglo-Saxon archaeology, but its early-modern history has been sidelined due to its lack of records and its peripheral position in relation to Colchester.⁴⁵ However, the combination of Exchequer depositions, and a detailed custumal, means that Mersea Island has

⁴³ H. H. Lockwood, *Tithe & Other Records of Essex and Barking* (Chelmsford, 2006) 28.

⁴⁴ B. A. Board, N. Briggs, J. L. Fisher, V.A.Harding, J. Hasler, N. Knight, M. Parsons, ‘Hatfield Broad Oak’, *A History of the County of Essex*, Vol. 8 (1983), 158-186. URL: <http://www.British-History.ac.uk/report.aspx?compid=63851>. Accessed 19/07/2010.

⁴⁵ P. Crummy, J. Hillam and Carl Crossan ‘Mersea Island: the Anglo-Saxon Causeway’, *Essex Archaeology and History*, 14 (1982) 77-86.

the potential to give the historian insight into a rural community heavily reliant on its natural environment. Mersea serves as a useful comparison with other settlements, as its disputes about custom highlight the uniqueness of experience of individual localities. No comprehensive social history has currently been written on Mersea Island for this period, thus, this thesis will contribute new knowledge to the social history of Essex.

This thesis will examine previously neglected sources from the Exchequer and Duchy of Lancaster courts alongside customals from the localities considered above. It is clear that while much of Essex has been subject to the scrutiny of close local studies which provide valuable contexts for the historian, several distinct and important localities have been almost completely ignored. While Essex has been well examined by social historians, the role of custom in constructing memory and identity has not been explored for this county, using these sources.

Themes

The title of this thesis proposes three topics for analysis. All three concepts - customary law, social memory, and collective identity - require some explanation.

Customary Law

‘Customary law’ is the simplest of the three themes to place conceptually. Custom itself should be considered as a scale, ranging from the annual rituals of Rogationtide perambulations, Hock-tide gaming, Plough Monday processions and Wassailing to the complex legal structures which enforced tithing, land tenures and inheritance. The cases examined by this thesis generally concern legal obligations and rights to resources, although annual rituals and practices are often referred to by deponents to underline their legal knowledge. The entire scale of custom was subject to the same conditions which justified custom as being legally valid. These conditions were that it was reasonable, that it had continued uninterrupted ‘time out of mind of man’ and that it did not contradict common right.⁴⁶ Furthermore, custom always applied to a locality, be it manor, parish or borough. Custom could apply unique sets of rules in neighbouring parishes, meaning that its

⁴⁶ C. Calthorpe, *Lord and Copy-Holder* (London, 1635) 20.

enforcement and regulation needed to be performed at a local level. C. Calthorpe, writing in 1635, observed that,

the true measure thereof according to Master Littletons Rate, is where a custome, or usage, or other things have beene used, so long as mans memory cannot remember the contrary. That is, when such matter is pleaded, that no man then in life, hath not heard anything, nor know any prooffe to the contrary ... and by this it appeareth that customes, and perscriptions, resteth onely in the memory of man.⁴⁷

Because custom was recorded largely in the memory of local people, their past experiences became key to explaining the world around them. Their memories not only recalled the past, but proved their right to access resources, their liability to certain charges and their inclusion within a community. Calthorpe goes further, explaining that “Custome is where by continuance of time a right is obtayned concerning divers persons in common”.⁴⁸ Custom not only located the rights of the individual within a community, but bound them to the community through a network of remembrance and rights. This thesis uses customary law as a tool to access the construction of social memory, which created collective identity in the early-modern period.

Several historians have addressed the importance of custom in the early-modern period. E. P. Thompson has written the most influential work on custom in the eighteenth century. Many of his findings can also be applied to the sixteenth and seventeenth centuries. Thompson describes custom, arguing that “at the interface between law and agrarian practice we find custom. Custom itself *is* the interface, since it may be considered both as praxis and as law”.⁴⁹ Thompson identifies that the nature of custom was changing in this period. He argues that land holders attempted to obtain greater return from their land and thus experienced a gradual hardening of attitudes towards custom through the eighteenth century. Thompson observes the attempts of the landowning classes to redefine custom as property, which could be owned absolutely, rather than use rights which could be claimed by the poor.⁵⁰ Thompson linked the practice of custom to Pierre Bourdieu’s concept of ‘habitus’, describing it as “a

⁴⁷ Ibid, 18.

⁴⁸ Ibid, 17.

⁴⁹ E. P. Thompson, *Customs in Common* (London, 1991) 97.

⁵⁰ Ibid, 135.

lived environment comprised of practices, usages and disclosed possibilities and sanctions both of law and neighbourhood”.⁵¹ Thompson’s recognition of custom as embedded in both law and the local community lays the ground work for this thesis which will draw together early-modern perceptions of law and locality through the study of custom.

B. Bushaway has argued for the continued importance of popular custom in rural society in the eighteenth and nineteenth centuries. Bushaway examines custom as both law and as the calendar of rituals which were used to defend customary rights. He argues that custom “remained, at least for the greater part of the Hanoverian and Victorian period, an essential context for the community, informing the lives and experiences of both the labouring poor and the rural elite alike”.⁵² Despite the continued presence of customary rights and rituals in rural communities, Bushaway observes that they increasingly came under attack from the propertied classes, who preferred the clarity of statute to the claims of the rural poor. He examines the way that custom provided both a framework for moral regulation of the community, and the means by which individual and collective protest could be carried out by the rural poor against the encroachments of landlords.⁵³ However, Bushaway observes that the criminalisation of gleaning, fuel rights and shaming rituals undermined the legitimisation of custom. This dismantling of the structures of custom, which aided reciprocity within communities, distanced custom even further from elite understandings of the law.⁵⁴ This thesis will focus on customary law in greater detail than the festivals and rituals of the year, due to the nature and content of the sources used. This study will draw on Bushaway’s ideas while seeking to further examine the nature of custom in the earlier period.

The role of custom in sixteenth century agrarian change has been examined by R. H. Tawney. Tawney emphasised the importance of the different forms of land holding, and observes that in England in 1535, customary tenants made up 61 per cent of all landholders.⁵⁵ Tawney contends that the rise of leasehold over copyhold tenures throughout the sixteenth century was the driving force behind agrarian change. He argues that

It means ultimately a change in the whole attitude towards landholding, in the doctrine of the place which it should occupy in the State, and in the standards

⁵¹ Ibid, 102.

⁵² B. Bushaway, By Rite Custom, Ceremony and Community in England 1700-1880 (London, 1982) 1.

⁵³ Ibid, 11-12.

⁵⁴ Ibid, 7-26.

⁵⁵ R. H. Tawney, The Agrarian Problem in the Sixteenth Century (London, 1912) 41.

by which the prosperity of agriculture is measured, drawing a line between modern English conceptions and those of the sixteenth century as distinct.⁵⁶

Tawney links together the vicious cycle of families dispossessed of their customary tenure and excluded from access to common land with the migration of the rural poor to over-populated urban centres. This, combined with the growth of the cloth industry, increased the preferment for large scale pastoral farming to supply the wool industry, creating the need to push out the small holding farmers. While Tawney acknowledges the continuity of economic life between 1485 and 1642 and the explosion of enclosure in the eighteenth century, he maintains that “both in immediate consequences and in ultimate effects, the heavy blows dealt in that age at the traditional organisation of agriculture were an episode of the first importance in economic and social development”.⁵⁷ Tawney’s identification of custom at the heart of economic and social life in the changing world of the sixteenth century is central to the findings of this study.

In contrast, H. R. French and R. W. Hoyle have sought to re-examine the agrarian changes of the sixteenth and seventeenth centuries through their study of the village of Earls Colne. While acknowledging the change from subsistence to market agriculture, and the disappearance of small landholdings, French and Hoyle argue that “the development of large farms was not determined by tenure”.⁵⁸ They argue that falling grain prices forced small tenants from their land and that other landholders had no choice but to take part in large-scale specialised industries such as sheep farming. French and Hoyle suggest that

landlords were at the mercy of the same impersonal economic forces as their tenants. Agrarian class structure was therefore not the primary motor of economic change but was coloured by the operation of markets which in turn were determined by demand and, ultimately, population levels.⁵⁹

Despite this, French and Hoyle examine the role of custom in forming the relationship between lord and tenant throughout the period. They highlight the struggle to establish rights to take timber, the intervention of the lords in copyhold disputes and the lord’s attempts at

⁵⁶ Ibid, 2.

⁵⁷ Ibid, 402.

⁵⁸ H. R. French & R. W. Hoyle, The Character of English Rural Society Earls Colne: 1550-1750 (Manchester, 2007) 11.

⁵⁹ Ibid, 31.

imposing moral reform on the village through the struggling manorial court. French and Hoyle observe the manorial court's development into a factional instrument which alienated tenants and faltered throughout the seventeenth century. They conclude that the relationship between resident lord and tenant could be fraught with controversies and that "one reason for their inability to stamp their authority on the village was the tenurial autonomy and relative prosperity that their tenants retained by virtue of their copyholds".⁶⁰ This seems to contradict their earlier assertion that 'market forces' were the only determining factor in the distribution of power in rural communities. This thesis considers custom as being central to the formation of social relationships and the distribution of power. Thus, 'market forces' may be understood as connected to the actions and understanding of early-modern people, rather than being devoid of cause or responsibility.

Such an approach can be seen in the work of A. Wood, who has argued for a return to Tawney's view of custom, as innately political. Wood calls for a reassessment of the role of customary law in shaping plebeian political culture. He argues that

in the course of customary disputes, the 'ruled' of early-modern England developed a language of rights, distinct forms of organization, and a sense of their own and of their communities histories, all of which proved enabling forces in plebeian political culture.⁶¹

Wood demonstrates that custom provided an arena in which plebeians could challenge the status quo through the medium of the law. Therefore, custom aided the construction of class consciousness, and enabled plebeians to construct and articulate their understandings of property and order. However, custom did not always protect the vulnerable, as it could be used by the powerful in attempts to further exclude marginal elements of society. However, Wood observes that because of the requirements of the central courts, testifying about custom "allowed plebeians to define themselves in space and in time: as the inhabitants of a 'country' or town, as the inheritors of traditions, rights and duties supposedly passed down from distant

⁶⁰ Ibid, 294.

⁶¹ A. Wood, 'The Place of Custom in Plebeian Political Culture: England, 1550-1800', in *Social History*, 22, 1 (1997) 46.

ancestors”.⁶² This thesis draws heavily on Wood’s identification of custom as a political instrument and as central to the construction of collective identity.

So far we have established that the term custom could refer to multiple points on a sliding scale which encompassed annual celebrations, access to resources and the enforcement of complex laws in the locality. These rules were recorded and preserved in the memories of local people, whose experiences with custom linked them to the wider community. This involved them in a collective understanding of their locality and their place within it. We have seen that customary rights, although under attack from the rich, remained an important part of life through to the nineteenth century and customary rituals were still used to defend the rights of the poor. Historians have disagreed about the importance of customary tenures in the agrarian changes of the sixteenth and seventeenth centuries, and yet the importance of custom in social relations could not be denied, even by its critics. It has been argued that the practice of custom was innately political and allowed plebeians a space in which they could articulate and defend their rights against the encroachments of the rich. The importance of custom lies in its allowance of ordinary people to articulate their views of their identity in space, time, community, and the wider world. These articulations about custom often relied on the recollections of early-modern people. Therefore, the construction and expression of memory must be examined to shed further light on this subject.

Social Memory

In the early-modern period custom was legitimated by past usage. Therefore, to preserve customary rights, early-modern communities were required to remember how custom had functioned in the past. The memories used to prove custom were often reliant on collective or social memories. Chapter Two examines the way early-modern people constructed and preserved memories about custom. In order to fully understand what is meant by collective memory, the growing sociological and historical literature on memory must first be considered.

During the first half of the twentieth century, M. Halbwachs, a sociologist deeply influenced by the collectivist philosophy of the Durkheimian school, put forward the argument that human memory could only function in a collective context.⁶³ Halbwachs argued that our

⁶²Ibid, 52.

⁶³ L. A. Coser (ed.), ‘Introduction: Maurice Halbwachs 1877-1945’ in M. Halbwachs, On Collective Memory (Chicago, 1992) 5.

understanding of the past is sustained by collective sources and that our understanding of the present influences the way we recollect the past. Halbwachs emphasised the existence of multiple group memories, arguing that “Each locally defined group has its own memory and its own representation of time. Cities, provinces, or peoples unite, and the common time grows and extends further into the past”.⁶⁴ Importantly for the study of customary law, Halbwachs argued that memories could be founded in physical space, which helped preservation and recollection. He termed this “legal space- a permanent space (at least within certain time limits) allowing the collective memory at any moment to recover the remembrance of legal rights at issue there”.⁶⁵ Overall, Halbwachs argued that collective identity was an important precursor to the formation and preservation of memory. These ideas have been criticised for their dismissal of the role of the individual in constructing memory. However, these criticisms were largely due to literal interpretations of his work implying that memory existed independently of the individual.⁶⁶ Halbwachs’ ideas have remained influential in the study of memory and have been reformulated by more recent studies in a more effective way.

P. Connerton has examined social memory by exploring the role of recollection in commemorative ceremonies and in bodily practice. Connerton follows on from Halbwachs in emphasising the significance of social and collective memory in forming personal identity. He claims that “our experience of the present very largely depends upon our knowledge of the past”.⁶⁷ Connerton argues that narratives of the past, embedded in social settings, create the groups from which individuals derive their identity. He examines the confirmation and transfer of these group identities through the rituals and performances of commemorative ceremonies. Connerton distinguishes three forms of memory: personal memory, cognitive memory and habit memory. The third, he argues, unconsciously draws on past experiences to regulate the physical enactment of tasks. He connects habit memory with the physical expression of our identities, and thus calls for closer attention to be paid to bodily practice. Connerton’s identification of the importance of physicality and ritual in the transfer of memories is useful to this study, which addresses the ways that early-modern people connected with each other and their physical environment, through the construction and transfer of memory.

⁶⁴ M. Halbwachs, *The Collective Memory* (Paris, 1950) 104.

⁶⁵ *Ibid.*, 142.

⁶⁶ For a review of the criticisms of Halbwachs’ theory of collective memory see B. A. Misztal, *Theories of Social Remembering* (Berkshire, 2003), 54.

⁶⁷ P. Connerton, *How Societies Remember* (Cambridge, 1989) 2.

J. Fentress and C. Wickham have reassessed the nature of memory and its importance to historical study. In contrast to Halbwachs, Fentress and Wickham argue that memories are fundamentally created by the individual, and that memory is built around the experiences of the individual. However, they do acknowledge the importance of outside influences in the construction and understanding of memory. They argue that

a study in the way we remember- the way we present ourselves in our memories the way we define our personal and collective identities through our memories, the way we order and structure our ideas in our memories, and the way we transmit those memories to others – is a study of the way we are.⁶⁸

To understand how memory functions is to understand not only the individual, but also the pressures, social conditioning and expectations that person is subject to. This makes the study of memory vital to understanding people in the past. Fentress and Wickham observe that memories are like a chain, connecting the past to the present and our bodies and minds to the natural and social world. Consequently, as memories of the past are reinforced in the present by recollection and repetition, our memories are constantly being reassessed and rewritten by the conditions of the present. Fentress and Wickham observe that in order to be social, memory must be communicated to other individuals. They argue that although memories must originate with the individual, it is in these moments of transmission and articulation that memory is of most use to historians.⁶⁹ In this thesis the depositions studied are, in themselves, examples of transfer of memory. Deponents laid out their recollections for the scribe to record. These recollections often included information collected from other people who had imparted their memories of custom to the deponents. Consequently we are presented with a complex web of memories, made up of information transfers and social experiences.

Historians of early-modern England have also identified the importance of memory in understanding the past. K. Thomas addressed early-modern perceptions of the past in his 1983 Creighton lecture. Thomas considered that in the early-modern period “the case for recalling the past was a practical one. History was a great repository of experience from which useful lessons could be drawn”.⁷⁰ Thomas argued that the past was often used to justify the social

⁶⁸ J. Fentress & C. Wickham, Social Memory New Perspectives on the Past (Oxford, 1992) 7.

⁶⁹ *Ibid.*, 201.

⁷⁰ K. Thomas, The Perception of the Past in Early-modern England (London, 1983) 1.

order, legitimating the power of the nobility and the subjection of the poor. However, he observes that the powerful could not entirely suppress popular understandings of the past. Thomas maintained that historical myths, which underpinned popular notions of the past and written histories,

called on the past to ratify the present ... For in their selection of subject-matter they implicitly conveyed to their readers a sense of what was important, not just about the past but also about the present.⁷¹

Thus, endeavours to understand early-modern memory are key to understanding the early-modern present. This supports the assertions of Fentress and Wickham, and Connerton, that our recollection of the past is shaped by our current preoccupations. Thomas argues that popular conceptions of the past could be distinguished from elite readings. However, he found that they were not derived exclusively from oral traditions. Thomas argues that elite and popular readings of the past bled into one another, creating a multitude of understandings of the past influenced by political, religious and social factors. Thomas argues that

there was thus no singular perception of the medieval past in early-modern England and no unchallenged custodian of popular memory. Rival myths, developed in the course of political and religious struggle, and shaped by inherited literary convention, competed for popular allegiance.⁷²

A. Fox has considered the recollection of early-modern custom. Through examining a variety of sources including depositions from Exchequer court cases, Fox lays the ground work for the more specific investigations undertaken in this thesis. Fox argues that economic changes in the sixteenth and seventeenth centuries put pressure on customary resources, causing an explosion in litigation. This intensification in legal action meant that the memories justifying custom were called upon more frequently. Fox further underlines that memory connected the past and the present, identifying that “the experience of elders provided a vital link between the past and the present: they were the repositories of local precedent and the

⁷¹ Ibid, 3.

⁷² Ibid, 23.

custodians of communal memory”.⁷³ Fox indicates that custom, in the words and practice of early-modern people, helped to formulate a sense of identity in the locality in which custom operated. By studying the dissemination of literate culture into early-modern society, Fox claims

That so many manors and boroughs, liberties and franchises had seen their customs documented by the end of the seventeenth century is evidence of a significant transition from memory to written record within local society. The codification of what amounted to ritual ways of living and ancient systems of remembering put an end to one of the last purely oral dimensions of economic life in England.⁷⁴

This thesis examines the relationship between oral and literate culture. While Fox argues that purely oral culture was defunct by the seventeenth century, this study proposes that, despite the infiltration of literate culture, oral forms of communication were still vital in underpinning the operation of customary law.

D. Woolf has examined the historical culture of early-modern England, paying particular attention to the fate of oral historical traditions. Woolf identifies that “Old was better than new; that the older something was the better; and that the authority or legitimacy of a belief, practice or institution, or even of an individual was a function of its longevity and antiquity”.⁷⁵ In addition, Woolf observes a contemporary disdain for novelty and a real belief in the decay and decline of society as time passed. Woolf traces the changes that affected how understanding of the past was altered. New technologies, access to calendars, clocks and an increasing level of documentation, gave people a longer and more linear sense of time. Furthermore, Woolf highlights that the reformation created a definite breach between the medieval period and the early-modern world. For the first time people were aware of a material difference from the appearance, religion, landscape and way of life of the generation before them. Woolf argues that broad cultural change swept English society, and that

⁷³ A. Fox, *Oral and Literate Culture in England 1500-1700* (Oxford, 2000) 261.

⁷⁴ *Ibid.*, 412.

⁷⁵ D. Woolf, *The Social Circulation of the Past: English Historical Culture 1500-1730* (Oxford, 2003), 44.

the media for commemorating the past were hierarchically arranged by the end of the seventeenth century, such that oral tradition and popular memory lost the status of authority that they had as sources of *history*, even while retaining them for local matters of custom – though here, too, in increasing conflict with the statute – making powers of the centralized state.⁷⁶

Woolf also supports the view that memory is the vital link between present and past, and that the two cannot exist in isolation. He argues that “how historical reality is construed very much depends not only on the form or genre in which it is represented, but also on the social realities that define the world of the individual reader or listener in the present”.⁷⁷ Thus, when we examine the memories of those deposing in the Exchequer court, we experience not only their past, but their present.

Some consensus can be seen in the work of sociologists and historians, and form an important basis for this thesis. First, the past and present are linked together by the process of memory. Second, our identities are derived from and shaped by our pasts. Thus, by examining memories we can learn about identity, how it was constructed, where it was located, and what effects it had. Third, early-modern people valued the past as a source of knowledge which could be used to legitimate claims to customary rights. However, these values changed throughout the early-modern period. These changes did not just affect historical culture but influenced the everyday lives of ordinary people. This thesis explores the role of social memory in supporting the operation of custom, and as a source of knowledge and experience which informed the identities of early-modern people.

Collective Identity

This thesis argues that from their understandings of the world, and of the past, our subjects derived identity. Furthermore, this identity was often formed in common or shared with others, making them collective identities. These are difficult concepts which require some justification before proceeding to the sources. The approach of this thesis can be better explained in reference to the conceptual framework advanced by the ‘history of mentalities’ which has proved a controversial, but enduring, part of social history over the past ninety years. Its origins lie with the creation of the *Annales* journal in the 1920’s, whose contributors

⁷⁶ Ibid, 13.

⁷⁷ Ibid, 325.

rejected politically centred history and sought out a long term and global perspective, which they titled, 'total history'.⁷⁸ The famous early works by Mark Bloch and Lucian Febvre, while breaking new ground, were heavily criticised from the late 1970s to the mid 1980s in what now appears to be a watershed moment for the concept of 'mentalities'. It seems that historians emerging from the 'new wave' of important social history sought to scrutinize the early deployment of 'mentalities', in the hope of destroying it completely or resurrecting it as a valuable tool.⁷⁹ It is not the intention of this thesis to become bogged down in the numerous contributions made to this debate, as their specifics have been comprehensively rehearsed elsewhere.⁸⁰ However, a positive definition of what is meant by 'mentalities', and an explanation of its usefulness as well as its pitfalls are necessary to ensure the clarity of the following analysis.

Amongst the critics and supporters of 'mentalities', there is at least a general consensus on the aims of the history of mentalities, if not on the methods it employs to achieve its aims. P. Burke's tripartite definition serves to describe the approach of the historian of mentalities,

In the first place, a stress on collective attitudes rather than individual ones. Secondly, an emphasis on unspoken or unconscious assumptions, on perception, on the workings of 'practical reason', or 'everyday thought' as well as on conscious thoughts or elaborated theories. And finally, a concern with the structure of beliefs as well as their content, with categories, with metaphors and symbols, with how people think as well as what they think.⁸¹

Somehow this description is still not enough to clarify the intentions of the historian of mentalities. It is at once too general and too specific, perhaps highlighting the vagueness

⁷⁸ P. H. Hutton, 'The History of Mentalities: The New Map of Cultural History', *History and Theory*, 20, 3 (1981) 240.

⁷⁹ Including, P. Burke, 'Reflections on the Historical Revolution in France: The Annales School and British Social History', *Review*, I, 3/4 (1978) 157-162, A. Burguiere, 'The Fate of the History of Mentalities in the Annales', *Comparative Studies in Society and History*, 24, 3 (1982) 424-437, M. Vovelle, 'Ideologies and Mentalities', in R. Samuel & G. Stedman Jones, *Culture, Ideology and Politics* (London, 1982) 2-12, M. A. Gismondi, "'The Gift of Theory": A Critique of the *Histoire des Mentalities*', *Social History*, 10, 2 (1985) 211-230 J. Le Goff, 'Mentalities: a history of ambiguities', in J. Le Goff & P. Nora (eds.), *Constructing the Past: Essays in Historical Methodology* (Cambridge, 1974) 166-180.

⁸⁰ Burke, 'Reflections on the Historical Revolution in France', 157-162.

⁸¹ P. Burke, 'Strengths and Weaknesses of the History of Mentalities', *History of European Ideas*, 7, 5 (1986) 439.

celebrated by Le Goff, which so frustrated Gismondi.⁸² ‘Mentalities’ has been labelled as the cultural history of the common man, the history of the mind and “the examination of the common man’s outlook and perception of events rather than the analysis of the events themselves”.⁸³ So, we can conclude that ‘the history of mentalities’ is shorthand for the study of the mental world of the common man, with particular emphasis on the collectives in which this world was shared and understood. This thesis is a study of early-modern mentalities, and will examine the structures of thought which formed the outlook and understanding of early-modern people.

The history of mentalities has evolved throughout the twentieth century. It is important to consider the problems associated with mentalities, in order to avoid the repetition of conceptual and methodological mistakes. Burke identified several of the key problems with previous works on mentalities. First, he highlights the reliance on the discredited work of Levy-Bruhl, which divided mentalities into the ‘civilized’ and the ‘primitive’, the inaccuracy of which undermined the work of Bloch and Febvre. Second, Burke voiced the widely held concern that the uncritical inclusion of the work of psychologists, anthropologists and other disciplines, compromised the historian’s ability to critically appraise their theories. Third, Burke argues that mentalities and the ‘total history’ perspective had a tendency to sideline any of the variables presented by the diversity of society. This meant that interpretation was limited to generalisations, and could not pick up on important differentiations. Burke concludes that “If we want to follow the example of Febvre and Bloch, we must not imitate them, but remake history by drawing on the neighbouring disciplines of our day”.⁸⁴ Far from dismissing mentalities as dangerously flawed, Burke recommended its usefulness to

occupy the conceptual space between the history of ideas, defined more narrowly, and social history, in order to avoid having to choose between an intellectual history with the society left out and a social history with the thought left out.⁸⁵

Recently, the study of mentalities has been reformulated by social historians examining the early-modern period. M. Gaskell has made a strong case for the usefulness of mentalities in

⁸² Le Goff, ‘Mentalities: a history of ambiguities’, 176, Gismondi, “‘The Gift of Theory’”, 212.

⁸³ Hutton, ‘The History of Mentalities’, 230, 238.

⁸⁴ Burke, ‘Reflections on the Historical Revolution in France’, 156.

⁸⁵ Burke, ‘Strengths and Weaknesses of the History of Mentalities’, 440.

understanding the early-modern period. He examines witchcraft, conning and murder in order to glean, through the reactions of contemporaries, information about how “ordinary working people – perceived themselves, their social environment and their universe, and conversely, how these perceptions both reflected and shaped popular beliefs and behaviour over time”.⁸⁶ Gaskill argues that current historical literature lacks a history of social meanings, and calls for a history written from ‘*within*’. Gaskill suggests that mentalities could act as a bridge between social and intellectual history.

Gaskill identifies some of the problems still associated with the study of mentalities, and suggests methods of managing the pitfalls. He identifies the difficulties of moving past the anecdotal, so crucial in examining individual mentalities, in order to draw general conclusions. He warns against the risk of homogenising early-modern experience and treating mentalities as prisons, which restrict and can not be escaped. As a solution, Gaskill suggests an approach of ‘alterity and transition’, in which historians should expect and seek out the distinct and changing. Gaskill recommends a move away from the conceptual haziness of earlier works, arguing that “mentalities are not vague abstracts but dynamic products which were integral to the shaping of historical events and patterns of social, economic and political development”.⁸⁷ This thesis follows Gaskill’s approach to mentalities. It will bear in mind the difficulties presented by an approach focused on interdisciplinarity, the perception and articulation of ideas of ordinary people, and the meaning and importance of the symbols of a distant culture. The mentalities of early-modern people are treated as real and important structures, which influenced the formation of collective identities, attitudes and beliefs.

Summary

The analysis of this thesis is argued across four chapters. Chapter One examines how oral and literate culture shaped the formation and practice of custom, addressing the complexities and contradictions of early-modern literacy. It examines how deponents used documents, the reliability of the written word, and whether being written down altered the purpose and nature of custom. The chapter also explores the way deponents used oral culture. It examines the legitimisation of the spoken word as evidence in legal disputes, networks of legitimate speech, and the role and power of speech in upholding custom and protecting the

⁸⁶ M. Gaskill, *Crime and Mentalities in Early-modern England* (Cambridge, 2000) 3.

⁸⁷ *Ibid.*, 10.

rights of the poor. Subsequently, the way that orality and literacy overlapped and fed into one another is analysed, pointing towards a reconciled understanding of two intertwined aspects of early-modern society which affected the way people thought, understood and acted.

Chapter Two continues to examine the early-modern mind set, investigating the construction and recollection of memories by early-modern people. The chapter focuses on the social and collective nature of memories required to legitimate custom. The way memories were created and sustained provides a wealth of information about early-modern society and the social networks forged between members of early-modern communities. The chapter examines the use of traumatic or unusual events as mental sign posts, which enforced the memory of customary rules. Three mental spaces are proposed, in which deponents formed their memories and communicated custom and the importance of the past, conferring status and meaning.

Chapter Three examines the way that deponents understood the landscapes in which they lived and worked. The landscape was more than just empty space. This chapter explores the way people constructed and used the landscape. An interdisciplinary approach is taken, utilising ideas from archaeology, anthropology and geography to fully investigate the significance of physical space and its effect on identity. The chapter examines how deponents thought about the resources provided by their environments, and how multiple understandings of the landscape were constructed so that customary systems could operate. This chapter also considers how the regulation of the landscape and the construction of boundaries relied on structures of collective memory.

Chapter Four looks at how customary disputes created a space in which social relationships could be negotiated. The chapter identifies the dialogue created by customary disputes, which drew the wider community into private disputes and reiterated social norms. The chapter examines the changing role of the local elite and their involvement in customary disputes. It also examines custom's role in reiterating social morality.

Finally, conclusions are drawn from the previous four chapters to shed new light on the role of collective memory in constructing social identity in early-modern Essex.

Chapter 1: Orality and Literacy in Customary Law

Introduction

The county of Essex was a place of diversity in the early-modern period. The landscape consisted of arable, dense forest, marsh, coastal and estuarine environment, with the communities dependent on equally varied industries. As Hunt has observed “To the seventeenth century eye Essex was a county of contrasts- almost a microcosm of England as a whole”⁸⁸. The customs of the people of Essex were as diverse as the landscape. As has already been discussed, in the sixteenth and seventeenth century, custom encompassed the celebratory rituals of the year, tithes and charges on goods and a system of local laws and government. Customs existed largely in the memory, understanding, and application of local people. A. Wood has argued that “Custom therefore ordered the rhythm of work and leisure, the nature of exploitation, and the structure of communities in both rural and urban areas”, making it a versatile tool with which the historian may examine early-modern life.⁸⁹ Custom existed in collective memory and needed to be transferred from person to person. As a result, it became intertwined with people’s lives, actions, memories and relationships with the people around them. Custom was sewn in to the fabric of experience, and thus supplies the historian

⁸⁸ Hunt, *The Puritan Moment*, 13.

⁸⁹ Wood, ‘The Place of Custom in Plebeian Political Culture’ 48.

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with access to those recesses of the mind occupied with routine matters. These habits of the mind were too subtle to be expressed generally. Without the necessary extraction of customary information during depositions they may have remained hidden.

For custom to be deemed legitimate in law in the early-modern period it had to conform to several qualifying factors. These are clearly set out by contemporary legal tracts. Customary rules had to be reasonable, must have existed and been exercised continuously outside of living memory, and must have operated within a limited jurisdiction⁹⁰. Due to the nature of custom, these conditions could be difficult to prove. Oral testimony could provide first-hand experience of a customary rule. When this knowledge was passed down from generation to generation, a person's knowledge of a custom could extend back through time, proving the custom was valid. As Fox points out, while oral testimony could provide better evidence of consistent usage, customary law was increasingly being written down⁹¹. This created a complex legal situation, where both oral and literate modes of proof became legitimate ways of validating customary law.

In this chapter, I examine depositions from a sample of the 112 customary disputes concerning our six places of interest, which were presented to the Exchequer court and the Duchy of Lancaster between 1558-1700. Evidence from a sample of fourteen custumal documents from Essex is also explored. Although our six locations vary in location, economy and urbanisation, they all provide some insight into the ways in which customary law was preserved and practiced in early-modern Essex. This thesis uses depositions about custom as a key to access the ways in which early-modern people thought and felt about their surroundings, the people they had contact with, and how they ordered and prescribed the experience of their lives. As outlined in the introduction, this thesis addresses the mentalities of the people of early-modern Essex. The ways in which oral and literate cultures shaped customary law and practice, and how this in turn affected the identity of those participating in custom, are explored in this chapter.

⁹⁰ Calthorpe, *Lord and Copyholder*, 3.

⁹¹ A. Fox, 'Custom Memory and the Authority of Writing' in P. Griffiths, A. Fox & S. Hindle, *The Experience of Authority in Early-modern England* (Basingstoke, 1996) 96.

Literacy

The history of literacy and education is of significant interest to historians of the early-modern period. For at least fifty years, social historians have recognised the importance of dispelling myths and countering assumptions about the reality of literacy in the early-modern period. As M. Clanchy's work on the medieval period demonstrates, the written word was not a new invention at the beginning of the early-modern period. In fact, Clanchy demonstrates that a great deal of the transition from oral culture to reliance on writing had already occurred by the start of the sixteenth century. Records had become well established in royal, legal and monastic circles, and, Clanchy argued "early reading, for purposes of prayer, was everyone's ideal by 1500".⁹² Ideals, of course, did not always reflect reality.

D. Cressy's examination of signatures and marks is the most exhaustive study of early-modern English literacy. There are well rehearsed methodological problems of relying on signatures alone to denote individual capability, in what was a complex range of skills. Keith Thomas points out that as reading was learnt before writing "Dr Cressy's figures for illiteracy in 1640 ... are not just an underestimate of those who could read, but a spectacular underestimate".⁹³ Thomas also highlights that reading had several stages of competency. Novices began with the Black Letter of the horn book which was used to teach the alphabet and basic religious texts. After that came the less familiar Roman type, and "even if he could manage both forms of type, it did not mean that he could decipher a written document".⁹⁴ While these are valid points, Cressy's acknowledgement of the limitations of the data as indicators of a certain level of literacy should be sufficient to keep the historian from misapplying their findings.⁹⁵

Part of Cressy's work centres around data from sixteen Essex parishes. He establishes levels of literacy in Essex using signatures on the Protestation Oath returns of the 1640s. Unfortunately, Protestation Oath returns have not survived for any of our six places of interest. However, Cressy's findings may be used to shed light on the general situation in the county. Cressy examines the reasons for,

⁹² M. T. Clanchy, *From Memory to Written Record: England 1066-1307* (1999, Oxford) 13.

⁹³ K. Thomas, 'The Meaning of Literacy in Early-modern England', in G. Baumann, *The Written Word: Literacy in Transition* (Oxford, 1986) 103.

⁹⁴ *Ibid*, 100.

⁹⁵ D. Cressy, *Literacy and the Social Order: Reading and Writing in Tudor and Stuart England* (Cambridge, 1980).

Illiteracy figures in Essex, ranging from 36% at Wanstead to 85% at Little OakleySeveral parishes, notably Barnston, Boxted, Kelveden Hatch and Wormingford, scored close to the county average of 63%, but for others the figures were significantly better or worse.⁹⁶

The explanation Cressy gives for these patterns of illiteracy relate to divisions of agriculture. Mixed farming and inland regions had higher literacy rates than the coastal and marsh land areas. Cressy denotes that proximity to large urban centres improved literacy rates, whereas religious affiliation and educational opportunities proved too problematic to trace. Attempts to correlate wealth with literacy showed an inconsistent relationship.⁹⁷ As Cressy concludes,

No single phenomenon, experience or set of conditions will adequately explain this distribution, so we must posit a mixture of influences, a complex matrix of cultural, ideological, economic and perhaps even accidental elements which fashioned the literacy of each community at a particular time.⁹⁸

In his work on literacy and popular culture, J. Barry suggests that the numerical focus of Cressy's work detracts from the subtlety and complexity of analysis required when addressing the nature of early-modern literacy. Barry argues that "Both the desire to measure illiteracy and the method of doing so through inability to sign reflect the conditions and assumptions of an urban industrial and predominantly literate society".⁹⁹ Instead, Barry examines the spread of literacy and reading through its relationship with popular culture, focusing on methods of education, book production and availability. Importantly, Barry explores the way that national events were tied up with literacy and how those events shifted attitudes towards the written word. He argues that the destruction of visual culture during the Reformation, and the new emphasis on "the word as central to Christianity", was key in the

⁹⁶Ibid, 78.

⁹⁷Ibid, 77-101.

⁹⁸Ibid, 96.

⁹⁹J. Barry, 'Literacy and Literature in Popular Culture: Reading and Writing in Historical Perspective', in T. Harris (ed.), Popular Culture in England, c. 1500-1850 (Basingstoke, 1995) 92.

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proliferation of literacy amongst the masses.¹⁰⁰ Barry also examines how the turbulent events of the Civil War shifted attitudes to printing, arguing that “While some reactionaries saw the revolution as proof of the dangers of any education for the people, others thought it proved the need for fuller education”.¹⁰¹

The widest ranging study of literacy is R.A. Houston’s work on early-modern Europe. Houston combines the study of ‘direct’ statistical data, and ‘indirect’ qualitative evidence, to assess the state of literacy between 1500 and 1800. Houston’s conclusions point towards a slow and erratic increase in those participating in literate culture. He observes that,

What usually happened was that literacy improved among the upper reaches of the social hierarchy and among men first, followed sometime later by women and the lower orders. ‘Ceilings’ or ‘plateaus’ were reached by different groups at different times but it might take decades to move off them again.¹⁰²

While tracing the fluctuations of literacy levels is useful in understanding the early-modern mind-set, perhaps of more interest is Houston’s observation of the interaction between oral and literate culture. He argues that “There was no firm dividing line between oral and literate culture. The two were face-to-face all over early-modern Europe”.¹⁰³ Such interaction is visible amongst the Exchequer court cases from Essex. The way in which evidence was produced to the court, by deponents in oral and literate forms, raises questions about whether the weight placed upon oral and written evidence was equal. Furthermore, the complex and layered information given by deponents begs the question of how and why they slip effortlessly from discussing written documents to reporting memories of words overheard.

K. Wrightson takes a different approach to examining literacy in the early-modern period. While Houston observes “a yawning chasm of illiteracy”, Wrightson initially focuses on the achievements and progress of literate culture.¹⁰⁴ Although Wrightson acknowledges limitations in access to literacy, he argues that “the period between the accession of Elizabeth and the outbreak of the civil wars had witnessed something of a revolution in the provision of

¹⁰⁰ *Ibid.*, 78.

¹⁰¹ *Ibid.*, 89.

¹⁰² R. A. Houston, *Literacy in Early-modern Europe: Culture and Education 1500-1800* (London, 1988) 153.

¹⁰³ *Ibid.*, 219.

¹⁰⁴ *Ibid.*, 133.

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educational facilities”.¹⁰⁵ Wrightson goes on to highlight that these improvements only really served the higher end of the social stratum. In their local study of the village of Terling in Essex, Wrightson and Levine attempted to gauge literacy levels by examining signatures made by parishioners on a variety of documents. As no lists of signatures for oaths survive from Terling, Wrightson and Levine use other evidence, including wills, presentments to quarter sessions, deeds, bonds and depositions. They find a steady decline in male illiteracy from 53% in the period 1580-1609, to 29% during 1670-1699. They observe a levelling off of the decline at the end of the seventeenth century. For women in Terling, Wrightson and Levine find a much higher percentage of illiteracy throughout the period, with 85% illiterate in the period 1580-1609, and 71% from 1670-1699.¹⁰⁶ From this data, Wrightson and Levine observe the uneven spread of literacy in the seventeenth century, suggesting that social bias meant that the advances made by village elites occurred nearly a century before that of their poorer neighbours. Wrightson and Levine link changes in literacy to the growing desire of people to be part of literate culture for legal and administrative purposes, but more importantly, to involve themselves in religious culture by reading the Bible.¹⁰⁷

From the pain-staking work of these scholars, we have been given a window into the way in which early-modern people were educated. The way reading and writing were taught as separate skills show that ‘literacy’ requires definition in early-modern terms, rather than as an imposition of modern assumptions. It is also evident that while literacy can be traced, the trail is patchy and localised, and inferring conclusions from numerical data is frustratingly inconclusive. Although figures from localised studies may paint a picture easier to analyse, it is vital to remember that national events had a great impact on the way in which life changed in this period. Overall, it seems that the consensus between historians is that while change was slow and erratic “In 1580 illiteracy was a characteristic of the vast majority of the common people of England. By 1680 it was a special characteristic of the poor”.¹⁰⁸ Keeping this context in mind, this chapter establishes how written and oral forms of evidence were used in Exchequer court depositions. The chapter examines how the deponents rationalised, prioritised and legitimated their answers (relying on both oral and written evidence). The answers to these questions inform our view of early-modern mentalities, providing information about the structure of thought processes and assumptions of early-modern people, which were at once

¹⁰⁵ K. Wrightson, *English Society 1580-1680* (Oxford, 2003) 196.

¹⁰⁶ Wrightson & Levine, *Poverty and Piety*, 144-149.

¹⁰⁷ *Ibid*, 153.

¹⁰⁸ Wrightson, *English Society 1580-1680*, 228.

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both too complex and too obvious to contemporaries to warrant an overt explanation for the outsider.

When answering the interrogatories set by the courts, some deponents used knowledge they had gained exclusively from interacting with a document. In a number of cases deponents used their knowledge of written sources in order to prove or disprove an alleged customary right. For example, in 1589, Thomas Wyberd of Colchester, when deposing about a disputed boundary, testified that he was ignorant of which manor the disputed lands lay in. He deposed that “whether yt did belonge to the sayde manner or to the Abbot and monkes of St Johns in colchester he knewethe not certenlye but referethe him selfe to the evidences and wrytinge that concern the same”¹⁰⁹. In this instance the deponent claimed no personal knowledge, and consequently directed the court to written evidence.

There were those who seemed to have a simple relationship with the written word: they saw documents, read them, and their testimony was delivered to the court where it was again transferred into written form. For example, in 1618, John Cubytt deposed in a dispute over cattle grazing rights, recalling that “the said lease [concerning the disputed land] was made unto one Rolfe Pettis sone in lawe to the c[o]mpl[ainant] to the onliee use of the comp[lainant] whoe did take and recyve the proffits thereof”.¹¹⁰ Even so, this process is complex. Although the evidence begins in the written lease, it was then presented orally by John Cubytt, then reinterpreted by the scribe and transferred back to written form. This makes any documentary evidence understood and produced by witnesses an act of speech.

In 1611, Thomas Cheese was asked to depose concerning his knowledge of customary charges in Maldon, which applied to selling freehold property. Despite having known Maldon for some thirty-eight years, Cheese explained that he,

referrs himself to the records and the nature of the s[ai]d custome as he hath seene it used [and] knowne it paid is as followeth. vidz. Every purchaser of freehold lands [and] tenements lying w[i]thin the s[ai]d manor of much maldon ought to paye tenne pence in every marke xvd in ev[er]y pound.¹¹¹

¹⁰⁹ T.N.A., E134/31Eliz/Hil3.

¹¹⁰ T.N.A., E134/16Jas1/Mich39.

¹¹¹ T.N.A., E134/9Jas1/Mich38.

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Thomas Cheese chose to provide the court with evidence from the borough records, instead of utilising his personal knowledge of how the custom was practiced. Cheese's answer is less surprising when we consider his profession of scrivener, as he was more likely to have access to documentary evidence, and therefore hold it in high esteem.

Other deponents had access to official documents such as court rolls and parish records. For example, Richard Pouley searched Layer Marney parish registers to establish the birthday of Deborah Johnson.¹¹² The case concerned disputed copyhold lands and outstanding debts left after Johnson's death. Her age and residence were key factors in settling the dispute. In contrast to Pouley's evidence, the other deponents in the case provided their personal memories of Deborah to verify their information. For example, Abraham Ball recalled making a saddle for her, John Bream recalled how he drew Deborah for twenty pounds, and John Raynham, a former servant of Deborah's, reported that after inheriting real estate from Peter Johnson she "lived in a higher degree than before".¹¹³

A case from 1618 in Hatfield underlines the importance of documents. Richard Perry, a husbandman, witnessed Lionell Farrington confiscating everything of value from Broad Oak Manor, due to the debts of the Wiseman family. While doing their best to remove, damage and destroy everything of value in the house (most of the goods having been hidden the night before), Perry witnessed,

the deedes evidence and writinges as well concerninge the mannor of Broddocke as concerninge other the landes tenementes and hereditante of the said S[i]r William Wiseman and of John Wiseman or one of them were and were wont to be kept [and] remayninge in the said house called Broddocke in an upper chamber called the chamber of the evidence and that the doores staples and hinges were broken open and defaced by the said farrington or his comandent.¹¹⁴

The doors had been locked for good reason. Documents were considered as being more important than other books, maps and globes. Valued at a minimum of one hundred pounds,

¹¹² T.N.A., E134/3&4Jas2/Hil30.

¹¹³ *Ibid.*

¹¹⁴ T.N.A., E134/15Jas1/Mich24.

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the documents had been “carried away by the said farrington in tronkes [and] chestes w[hi]ch the sad Farrington found there in the howse”.¹¹⁵

Wood has argued that “writing was a source of power in early-modern England”, and that in disputes over custom, the elite increasingly used “an organised body of written evidence which could be produced to undermine the ‘common report’”.¹¹⁶ There is evidence from early-modern Essex to support this. The authors of the 1554 Maldon custumal sought to gain power by excluding the populace from knowledge of customary law. In a similar vein to P. Griffiths’ findings from the borough authorities in London, the Maldon custumal itself, as well as the activities of the Corporation, were to be exclusively the knowledge of its members.¹¹⁷ The White Book observed that “It is of common custome of this bourrow that the common counsel of this bourow in all things should be kept close”.¹¹⁸ W. J. Petchy has observed that “the text of the charters and of the customs of Maldon were kept closely guarded” and were referred to as “the secrets of the borough”.¹¹⁹ If we needed any clarification of the power of customary documents, the attempts of the Maldon authorities to keep secret the contents of the White Book provides it. The White Book justified this need for secrecy “so that no man....should make complaint to any lord or forren gentleman but to stande to the judgement of the bailiefes without any such complaint”¹²⁰. Fundamentally, the Corporation was trying to prevent the undermining of its authority, by preventing the inhabitants appealing to powers outside the borough. When the Maldon Corporation wrote the White Book and kept it locked away in a chest, they were not only dividing the people from customary law, but denying them something infinitely more valuable, in the form of a “written repository of political authority and memory” that linked them with the place in which they lived.¹²¹

In his extensive work on early-modern towns, R. Tittler has observed that from the 1540s there was,

¹¹⁵ *Ibid.*

¹¹⁶ A. Wood, ‘Custom and the Social Organisation of Writing in Early Modern England’, *Transactions of the Royal Historical Society*, 9, 6 (1999) 262-3.

¹¹⁷ P. Griffiths, ‘Secrecy and Authority in Late Sixteenth and Seventeenth Century London’, *The Historical Journal*, 40, 4 (1997).

¹¹⁸ E.R.O., D/B 3/1/3, 3.

¹¹⁹ Petchey, *A Prospect of Maldon*, 164.

¹²⁰ E.R.O. D/B 3/1/3, 3.

¹²¹ Griffiths, ‘Secrecy and Authority’, 925.

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a narrowing vision amongst the ruling elite, a hardening of lines and widening of distance between them and the rest, and numerous transgressions against local tradition in order to accomplish and sustain those developments.¹²²

Tittler also finds that the narrowing elite sought to perpetuate and extend their power by the exclusion of others. In Barking in 1590, there was concern about who should view the manorial documents. William Meayles, a surveyor, was accused of the serious offence of removing the court rolls of the Manor. It was alleged that “this d[e]f[enden]t hath abused the courte rowles of the said mannor by carryinge them to london to Innes Alehouses and other places to be viewed and provised by strangers to the hurte of the queens tenants”.¹²³ It is clear that the damage done was not in the act of ‘stealing’ the documents, but of allowing others to see them. This indicates that access to written custom was a closely guarded privilege which had material benefits for the tenants of the manor.

The Freemen or Corporation of Maldon were a privileged group of inhabitants. Freemen were “always a minority among all the male inhabitants”.¹²⁴ In order to join the Freedom, a fee was payable, and residence within the town was essential. A man could be born free if his father was a paid-up member of the Freedom, and only members of the Freedom were entitled to hold office. It is clear from the custumal that the White Book was geared towards protecting and advancing the rights of the freemen. Evidence of this can be seen in the White Book’s allowance of price fixing. For example, when a price could not be agreed between merchant and bailiff, it was stated that “it shall be lawfull to every freman to whom the same vittler or vitlers shall resort or come to offer weares to them to be sould for to buy it, biddinge or if even not above th[a]t price w[h]ich the bailiefs did bid before but under what you may”.¹²⁵

Members of the Corporation were also provided with exclusive protection from attack. The officials, presumably because of their elected positions, came into conflict with the local inhabitants on a regular basis. The restriction on verbal attack was very clear. The White Book reported that “it shall not be lawfull to any man in violens to call any baliefe alderman or any other man within this number of xvij headburgess.... Thiefe, horesone, false, forsworne,

¹²² R. Tittler, *The Reformation and the Towns in England Politics and Political Culture, c. 1540-1640* (Oxford, 1998), 145.

¹²³ T.N.A., E112/14/69.

¹²⁴ Petchey, *A Prospect of Maldon*, 24.

¹²⁵ E.R.O. D/B 3/1/3, 4 & 2.

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cokecold, knave, backbiter or barde”.¹²⁶ This guard against insult emphasises the idea that the White Book was a tool of validation for the Corporation’s civic status. It was clearly an attempt to prevent the inhabitants of Maldon from undermining the Corporation’s officials through common insult and rumour, which in a small urban community could severely damage the authority of a public figure such as a bailiff or alderman. Later in the White Book, more extreme attacks upon officials were condemned: “yt is declared that it shall not be lawfull for any person within this towne to make assalt against the Bailiefes or justices of the peace of the said Bourrough or lift up any weapon”.¹²⁷ This demonstrates the Corporation’s awareness of how enforcing their own agenda in Maldon could result in a violent struggle for domination of the local area.

On a more individual scale there is evidence that documents were required to enforce the customary rents of royal manors in Essex. Elizabeth Prentice, a widow of West Mersea was having trouble enforcing customary rents in the Manor of Bower in 1558. Prentice reported that she could not persuade John Field to pay the twice yearly rent and “hathe not any rentalles courte roulles or other evidences in possesyon whereby she mai make suche evidente proof as is requisite in that behalf”.¹²⁸ Due to this lack of documents, John Field pronounced “verie stoutlie and arrogantelie that he will spende the value of the sad lands and tenements before he will paie the same”.¹²⁹ It could be argued that John Field would not have been satisfied with any proof provided by Elizabeth Prentice. Field may have been pursuing a personal vendetta which motivated him to ignore traditional customary proof, such as the reporting of residents of continuous usage time out of mind.

There appear to have been several ways in which a document could be identified as legitimate proof of custom. For example, a direct identification occurred in 1631, when Edmund Dawber, a gentleman from Wivenhoe, deposed that a map shown to him was a “true plott of [the] river”, indicating that the map was accurate and reliable.¹³⁰ Similarly, in 1634 it was recorded that John Smyth of Colchester “saieth that the rentalles nowe shewed forth to this deponant upon his explanation are true rentals as he beleveth of the mannor of shawes”.¹³¹ However, Edward Nowell deposed that “the aquittance nowe shewed forthe ys the very true

¹²⁶ *Ibid.*, 3.

¹²⁷ Fox, *Custom, Memory and the Authority of Writing*, 110.

¹²⁷ Petchey, *A Prospect of Maldon*, 7.

¹²⁸ T.N.A., E112/14/5.

¹²⁹ *Ibid.*

¹³⁰ T.N.A., E134/6Chas1/Mich17.

¹³¹ T.N.A., E134/9Chas1/East18.

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deede of the saide margarette Britten”.¹³² Nowell described the deede as ‘true’, but meant this in a different sense to Dawbers’ ‘true’ map. In Nowell’s deposition the issue is not whether the deed was accurate in content, but whether it was authentic in terms of how it was created. This distinction may seem slight, but is essential in understanding how early-modern people defined the legitimacy of the written word as proof of custom.

In addition to direct identification, a secondary form of identification of documents can be seen. John Eldred of Colchester deposed in 1630, that “he verely beleveth that the bond here shewen forth unto him was sealed and delivered by the s[ai]d robert corbet”.¹³³ Eldred’s idea of the validity or truth of the document lies not in its contents but in where he saw it and with whom. In another example from Coggeshall in 1634, Thomas Shortland deposed that “the said mr Aylett did then and there write a note wherein were contayned the names of all or the most parte of the then coppiehold tennants ... which note in writing he beleeveth to be the same which he now produceth”.¹³⁴ The document was identified because the deponent witnessed Mr Aylett writing it, rather than because of any exterior sign or interior content on the document itself. Both of these deponents used personal experiential knowledge of a document in order to prove its trustworthiness. Therefore, the proof of the document’s reliability lay in its origins rather than its content.

There are isolated examples of professionals being asked to identify a document. In 1597, Josias Funck was bound to ensure that Jonas Browning of Maldon appeared in court. After re-allocating the bond to his brother, Browning defaulted and debt collectors came to recover money. Funck, however, had a receipt to prove that Browning’s brother was now responsible;

the s[ai]d Thomas Hedgeman [who sought to collect the debt] did presently carry the said writings to a scrivener in fleete streete ... and asked the said scriveners opynion whether the said writings were sufficient in lawe to recover the said twentie pounds against the s[ai]d william Browninge.¹³⁵

The scrivener confirmed that the writings were valid. The dispute escalated when Thomas Hedgeman refused to return the receipt, leaving Funck liable to pay Browning’s debt. This

¹³² T.N.A., DL4/24/17.

¹³³ T.N.A., E134/4&5Chas1/Hil10.

¹³⁴ T.N.A., E134/7&8Chas1/Hil5.

¹³⁵ T.N.A., E112/80/138.

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example seems to be an exceptional case, as the majority of documents were identified by deponents who had direct knowledge of the creation, or the contents of, a document.

Another way that documents could be proved trustworthy was by the identification of a person's handwriting. As K. Thomas has observed, this required high levels of literacy. Furthermore, close knowledge of a person would be necessary to distinguish their handwriting from that of others. On a basic level, some deponents declared that they were familiar with a person's writing. For example, in 1688, William Jacklne deposed that he knew the writing of John Phillips and Susana Grymwoode.¹³⁶ Alternatively, people identified their own writing in order to prove the authenticity of a document: William Gardiner stated in 1641, that "the p[re]sentm[en]t now shewed unto him ys the same w[hi]ch the jury then p[re]sented he beinge one of them and that his name subscribed to the said pre]sentm[en]t is his owne hand writinge".¹³⁷ In some cases, the interrogatories required every deponent to identify a document by handwriting.¹³⁸ Arguably, this could indicate that the circles within which deponents moved were in a literate network, connected by knowledge of each other's written documents.

In 1687, John Casse the vicar of Heybridge near Maldon, attempted to sue John Hayward for non payment of milk, wool and lamb tithes. John Lasby, who had, in the past been the vicar of Heybridge, deposed his knowledge of the tithes. Lasby also identified the handwriting of John Casse (the complainant) on a receipt.¹³⁹ The identification of Casse's handwriting demonstrated that Casse had received payment from Lasby, instead of the tithes. Importantly, none of the other deponents (mostly agricultural workers) deposed to identify Casse's handwriting. John Lasby was not employed professionally to identify the receipt, but it seems that, as a literate man of the community, he was required to identify the handwriting of a man he was familiar with. This supports the idea that the literate men and women of a community played an informal role in regulating and authenticating each other's transactions, especially when cases came to court. Therefore, these literate peers held the key to validating written documents (though not always to each others advantage).

Another example of early-modern communities being regulated by a literate minority can be seen in Maldon in the 1540's. The creation of the Maldon custumal in 1554 was a consequence of the grant of a charter to the town by Mary I and Philip II. During Edward VI's reign, Mary's residence in East Anglia had been fraught with tension and danger. Her zealous

¹³⁶ T.N.A., E134/3&4Jas2/Hil30 & E134/3&4Jas2/Hil32.

¹³⁷ T.N.A., DL4/98/26.

¹³⁸ For example, T.N.A., DL4/98/26.

¹³⁹ T.N.A., E134/2Jas2/Mich11.

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Catholicism and refusal to submit to religious changes had placed her in jeopardy. When escaping to the continent seemed the only viable option, Mary trusted the Maldon Freemen to arrange the docking of ships. Ultimately, Mary stayed in East Anglia. When her brother died and Mary's struggle for the throne began, Maldon declared support for Henry VIII's eldest daughter and their loyalty was not forgotten.¹⁴⁰ The grant of a charter and the incorporation of the borough followed.

At the start of the custumal, the freemen state their reasons for writing down the customs;

it was thought good [and] meete and covenient that p[ar]te of the said ould customes should be made somewhat more plain [and] profitt for feare of any ambiguitie or dout that hereafter should or might arise fo[r] lacke of sufficient matter.¹⁴¹

The phrase used in the introduction of the custumal, 'for lacke of sufficient matter', implies that without a record of customary rules, disputes could not be settled satisfactorily, whereas an official, fixed, record of all the rules of the borough could not be disputed. As already discussed, Tittler has argued that the iconoclasm of the reformation meant that urban identities required considerable reconstruction during the early-modern period:

In order to sustain a viable urban identity, and thus to legitimise civic authority, such destruction required an extensive reconstruction of cultural forms. These included the refashioning of a useful collective memory.¹⁴²

This is evident in the actions of the office-holding elite in Maldon. The Maldon White Book could be seen as an attempt by the town's leading men to renew the collective memory of Maldon's customs. The custumal, once written, became an object of civic regalia, validating customary rules and preventing disputes. In the case of Maldon, the production of the custumal can be seen on one hand as a move by the Corporation to underline their civic authority and to unify the town through a common understanding of custom. On the other

¹⁴⁰ Petchey, *A Prospect of Maldon*, 151.

¹⁴¹ E.R.O. D/B 3/1/3.

¹⁴² R. Tittler, 'Reformation, Civic Culture and Collective Memory in English Provincial Towns' *Urban History*, 24, 3 (1997), 283.

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hand, it could be argued that the Corporation sought to control custom by ensuring that only literate members of the community could gain access to the official version. It is significant that the literate members of communities took an increasing responsibility in regulating custom when records were involved. As Wrightson has concluded, this could mean that literacy created a division inside the community of knowledge. He suggests that “Where new ideas, new alternatives of thought and new models of behaviour came into conflict with local custom, they could promote a degree of cultural differentiation within local communities of an altogether novel type”.¹⁴³

This concentration of power in literate hands left the illiterate vulnerable to exploitation. Fox argues that “in times of dispute considerable efforts might be made by both landlords and tenants to manipulate the written word: court rolls mysteriously disappeared, customals were tampered with and parish chests were robbed”.¹⁴⁴ There is evidence of this in the documents from Essex. For example, in 1632, in Coggeshall deponents were asked whether,

by giving of some reward of moneyes to alter or change the old court rolles and court bookes of the said mannor or mannors and to write new court rolles and court bookes onely altering the fynes in them from a fyne uncertaine to a fyne certaine ... and the fynes double the said rents upon the margent of the new court rolles or court books.¹⁴⁵

In reply, a whole stream of wrongs concerning the written documents of the manor was provided. The most relevant came from John Sander, a sixty year-old clothier, who,

did heare his grandfather being a coppieholder of the said mannor say that they ... did send unto the said Sir Thomas Myldmay then being also steward tenn yards of Lemster cloth which was reported to be worth 40s a yard to the end that the said steward should make their ffyns for their Admissions certaine.¹⁴⁶

It appears that although customs were supposed to be fixed and continuous, they were in fact still very much up for negotiation.

¹⁴³ Wrightson, *English Society 1580-1680*, 207.

¹⁴⁴ Fox, *Oral and Literate Culture*, 288.

¹⁴⁵ T.N.A., E134/7&8Chas1/Hil5.

¹⁴⁶ *Ibid.*

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William Howson, a Gentleman from Chelmsford, remembered the gift of cloth, claiming that it was sent “desiring him to remember the said former suite”.¹⁴⁷ This indicates that the gift was not given to ensure the outcome of the case, but merely to remind the man in charge to make a decision. However, this remains an unconvincing argument. Nonetheless, Michael Hills remembered that,

there was a speech in the towne of Coggeshall that there was a rate to be made amongste the customary tennants of the said mannor of great Coggeshall to levy a some of money therby to give to some principall men for the confirm[ation] the certaine custom touching the ffines.¹⁴⁸

The collection of the ‘bribe’ was announced publicly and collected by official means, that of a tax amongst customary tenants. As a result, this ‘bribe’ could easily have been seen by the tenants as an investment by those members of the community affected by customary charges. Ensuring that these customary charges were fixed benefited a large part of the community, and the money to effect this change came from a legitimate tax. Suddenly, the gift of Lemster cloth to the steward in charge of the manorial rolls seems less like the secret corruption of an elite few, and more like a community using their resources to affect change.

In customary law change was necessary in order to maintain the relevance of the rules. In the Maldon White Book, the borough’s customs were written down,

By the virtue of such letters patent[es] as lately by Philippe and Marye Kinge and Quene of England to the said bailief[es] ... and their successors may dissolve discharge abrogate [and] take away or altar all such customes and ordinances as hath bene used to be frequented within the said burrough ... and establish such other laudable and necessarie customes ordinances and wayes to be frequented and within the said bourrowe.¹⁴⁹

Despite the ideal that custom should have been unchanged and in continuous usage through living memory, the officials writing the White Book inserted a clause which entitled

¹⁴⁷ Ibid.

¹⁴⁸ Ibid.

¹⁴⁹ E.R.O., D/B 3/1/3.

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them to alter custom whenever they needed. If customary rules had only existed in the memories of local people, changes to those rules could be absorbed and accepted by the custodians of custom over long periods of time, sustaining the image of the continuity and timelessness of custom. However, once custom was written down, making changes required official approval and justification, drawing attention to the fiction of custom as existing continually time out of mind of man.

Therefore, documentation gave custom greater stability and continuity, as well as providing proof of its history and origins. D. Woolf has examined oral and literate culture through the attitudes of antiquarians, legal theorists and members of the Royal Society in the early-modern period. From the writings of these scholars Woolf has established that “Documents were certainly preferable to oral tradition because they represented a kind of ultimate authority, testable and often externally verifiable”.¹⁵⁰ Although these factors seem to confirm the customary ideal, documents also exposed these fictions of custom as unworkable. Custom needed to change, alter, grow and adapt with the times. While documents conformed to the ideals of customary notions, they exposed the fact that they were, through necessity, negotiable. Ultimately this undermined the authority of custom.

There is further evidence of the manipulation of documents in customary disputes. An attempt to fix customary charges in Coggeshall occurred after an incident recalled by several deponents. John Sander reported that Hughe Whiting burnt “divers court rolles of the said manor”.¹⁵¹ George Arnold the elder, a weaver, reported that “he hath heard it reported many yeares agoe that one Whitinge who was Bayliffe ... did burne some writings but this deponent thinketh it not to be true”.¹⁵² This reported incineration of court documentation seems to have sparked an attempt to alter the customary fines. John Sander, who reported the despatch of the Lemster cloth, deposed that “they sent to the said Sir Thomas Mildmay..in regard the old rolles and bookes thereof were burnt”.¹⁵³ Interestingly, the customary tenants do not merely take advantage of the opportunity created by the destruction of the documentation to reset whether the charges were fixed in their own minds, but also sought ways to establish the change as legitimate.

Another man who gave evidence in the Coggeshall case was Mitchaell Hills of Ferring, aged seventy-two. He explained that “he remembereth that when as this deponent was a boy a

¹⁵⁰ Woolf, *The Social Circulation of the Past*, 375.

¹⁵¹ T.N.A., E134/7&8Chas1/Hil5.

¹⁵² *Ibid.*

¹⁵³ *Ibid.*

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report was that the old court rolles of the said mannor of coggeshall were made away by one Cockerell”.¹⁵⁴ Strangely, he was the only deponent to recall the court rolls being stolen rather than burnt. There are several other cases where documents were important enough to be stolen. Five separate cases among the Exchequer bills and answers between 1558 and 1625 claimed that vital papers had been stolen. For example, in 1611, when Joseph Stainer used letters patent to gain possession of old chantry lands he was accused of theft. Lawrence Mitchell of London claimed that “Stainer having by casuall meanes gotten the s[ai]d l[e]t[t]e[r]s patente into his handes hath wrongfullie entered into the premisses”.¹⁵⁵

William Christmas of Colchester accused his step brother Samuell Blannfflower of a similar theft of documentation. Christmas’s mother had remarried, and on her death Christmas claimed that his inheritance was usurped by Blannfflower.

the said Samuell Blanfflower Entered and upon and possessed himself not only of all and singular the afore mentioned freeholde and copyholde tenements lands goods chattles and p[re]mysses of the said Ann but also of in and unto all and ev[er]y the deeds writings evidences wills inventories conveyances and assurances in any wise concerning the same ... and the better to effect such his p[re]tended wicked and fraudulent intent and purpose unjustly indirectly and wrongfully procured.¹⁵⁶

In Barking in 1603, Richarde Westwoode and Phillipe Anstowe were accused of using manor court rolls to oust Edmund Mortimur from his land. It was alleged that Westwoode and Anstowe “by some sinicster and indirect meanes [had] gotten and procured into their hands and custodie ... the coppies of the court rolls of the said mannor [of Barking] of right belonging to your said orator”.¹⁵⁷ Mortimur went on to argue that, because he did not possess the documents, he could not sue under the common law. In her work on the culture of fact, B. J. Shapiro argues that under the common law “there was a strong belief that written records were superior to witness testimony because they were not subject to the fallibility of human memory”.¹⁵⁸ While the common law courts required written evidence, the memories and

¹⁵⁴ Ibid.

¹⁵⁵ T.N.A., E112/80/172.

¹⁵⁶ T.N.A., E112/81/287.

¹⁵⁷ T.N.A., E112/80/120.

¹⁵⁸ B. J. Shapiro, *A Culture of Fact: England 1550-1720* (London, 2000) 12.

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experiences of deponents remained important forms of evidence in the Exchequer court. This diversity in the types of evidence accepted by the Exchequer may have acted as a safe guard against the monopolisation of power by the literate minority.

In 1610 in Hatfield, a dispute arose over a tithe boundary in the manor Mayden Hall between Edmund Allen and Samuel Aulmer. The disputed boundary separated Hatfield Peverel parish from Ulting parish, leaving the inhabitants divided on where their tithes should be paid. John Cracnell, a fifty year-old yeoman, alleged that a survey that showed the boundary had been damaged by Edmund Allen. It was claimed that Cracnell “did lende unto the compl[anent] at his request a booke of the survey of the mannor of mayden hall ... w[hi]ch booke or the greatest p[ar]te thereof remyneth tattered [and] torne in this deponents custodie”.¹⁵⁹ These examples show that documentation was already playing a major part in proving customary rules. Once created, documents could advance a claim at law, and were, therefore, of great value. This meant that when documents were damaged, destroyed or stolen, legal disputes became more complex. Accusations of theft and destruction of records could easily have been made up in attempts to damage an opponent’s case. Without the correct documentation, property could be lost to rivals, inheritance could be misappropriated, and cases could be prevented from being heard at the common law. Although the truth (or otherwise) of these accusations remains unclear, the integral place of the written word in customary disputes must be acknowledged.

Custom, and documents which legitimised custom, played an important role in protecting rights in early-modern Essex. In the 1590s, Margaret Sharles of Barking came to the Exchequer to protect her right to inherit property left by her husband. Womens’ inheritance rights were dictated by custom in the early-modern period.¹⁶⁰ J.H. Bettey has argued that “The custom of most manors allowed a widow to retain some right over her husband’s copyhold tenement”, and that “This provision of ‘free bench’ for widows was potentially an irritating and expensive nuisance for manorial lords, and might keep a valuable tenement out of their hands for many years”.¹⁶¹ However, Margaret Sharles felt that because “Wessell Weblyn Henry Major and Joane his wife havinge gotten into their handes and possession ... div[er]se courte rolls of your highness said Mannor and div[er]s boundaryes terrytoies and other

¹⁵⁹ T.N.A., E134/7Jas1/Mich8.

¹⁶⁰ For discussions on women’s inheritance rights see A. L. Erickson, *Women and Property in Early-modern England* (London, 1993), 61-78, and T. Stretton, *Women Waging Law in Elizabethan England* (Cambridge, 1998) 155-175.

¹⁶¹ J. H. Bettey, ‘Manorial Custom and Widows Estate’, *Archives*, 20 (1992) 209.

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evidences and especially one release”, she was unable to prove her entitlement to a portion of her deceased husbands property.¹⁶² This suggests that while manorial custom was designed to protect the rights of widows, Margaret Charles’ claim relied on her being able to access the manor court rolls. In this case, it appears that reliance on written documents interfered with a widow exercising her customary rights.

Another example of the requirement of documents to protect inheritance can be seen in the case of John Westray “an enfant”, and his father of the same name who was suing on his son’s behalf to regain control of a property in Barking.¹⁶³ John Westray provided a long and detailed history of the property’s tenants and owners, stretching back to a survey done for Edward VI, to show how John Plowman had fraudulently occupied the property. John Westray demonstrated extensive knowledge of the area and property. However, even with this customary knowledge and understanding of the area, he was still unable to obtain the property as he could not gain access to the relevant court rolls.¹⁶⁴

Wood has argued that,

customary rights were disliked because they appeared in the minds of society’s rulers to create a threatening sense of independence on the part of the lower classes; in the second place, such rights very often stood in the way of the economic interests of the wealthy and powerful.¹⁶⁵

This argument correlates exactly with a case in West Mersea during 1544. The Parson, who was the recipient of tithes from the Parish, attempted to abuse the tithes for his own gain and was defeated by a group of inhabitants. As a result, the inhabitants chose to write down the customs to prevent any future dispute. In the initial explanation of why the custumal was rewritten in 1544, it was explained that the Parson had declared that “he would tithe cheeses and milke within the compass of the strood in both parishes”.¹⁶⁶ This local conflict focused around the parson’s attempt to tithe domestic produce and the resulting resistance of the local residents to maintain their customary tithing levels. The inhabitants sought to legitimise and formalise their victory in the custumal. Here we see the fundamental contrast between the

¹⁶² T.N.A., E112/14/157.

¹⁶³ T.N.A. E112/14/170.

¹⁶⁴ Ibid.

¹⁶⁵ Wood, ‘The Place of Custom in Plebeian Political Culture’, 56.

¹⁶⁶ E.R.O., D/DEt M53, 1.

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West Mersea and the Maldon custumal. Whereas the elite of Maldon employed the White Book in order to legitimate their exclusive control of custom and the town, the inhabitants of West Mersea sought to record the defeat of an elite attempt to control and exploit customary tithes.

The authors of the West Mersea custumal sought to protect their community in 1544. The customs largely prescribed the entitlement of the Parson to take tithes upon certain produce. However, only specific quantities of goods were liable to be tithed. Throughout the custumal, details were given of various tithes which the parson was entitled to take. Generally, these tithes only applied when numbers were above ten animals or measures of resources, such as hay stacks or bundles of wool. For example, it was recorded that “the vikar is to have the tith of Geese being breed in the parish of every ten or seven he hath one of them at Lammas day”, or “for the tith of sheep that is feed within the parish from before candlemass untill the month of sheare time the vikar is to have the tenth part or pound of wooll”.¹⁶⁷ These examples suggest that when land and animals were prospering, the vicar was allowed to take a share. However, the customs leave room for those without profit or abundance to avoid tithes which would otherwise endanger their economic survival. This demonstrates that custom, when written down, was not always appropriated by the literate elite in order to attack plebeian interests.

The West Mersea custumal also protected the grass growing along the verges of fields as a resource. Animals could be grazed, or hay for the winter could be gleaned from these small strips of grass, meaning the difference between feeding livestock or working animals, or doing without them. The custumal stated that “neither parson or vikor is to have nor at any time hath had ... any tith of the grass of cornfields greens being in breadth but the teames length plow and all”.¹⁶⁸ This custom demonstrates that farming methods that were “of central importance to the subsistence economy of ‘the poor’” were protected.¹⁶⁹ S. Hindle, in his work on the poor law, explains that a large section of the early-modern population trod a fine line between ‘making shift’ and dependency on formal parish relief. Hindle examines the way in which the poverty-stricken members of communities utilised “a wide variety of resources - from casual labour to common rights, from cultivation of cottage gardens to the rearing of

¹⁶⁷ Ibid, 3.

¹⁶⁸ Ibid, 2.

¹⁶⁹ Thompson, Customs in Common , 149.

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livestock, from kin support to neighbourly credit, from petty theft to covert embezzlement”.¹⁷⁰ Hindle underlines the important role of custom in maintaining the precarious balance between subsistence and dependency on official poor relief.

Strong evidence can be found in the 1544 custumal from West Mersea to indicate the intentions of the authors to protect those in the community who were struggling to survive on their own agricultural resources:

neither the parson or vikar is to have or at anytime hath had no tithes of green pease cods gathered for meat nor of garden pease or beans nor any other commodity growing within any gardens what soever being but sufficient for the dietts of those parishioners and their families whose labour and industries in the increasing of other tithes and duties hath always been a sufficient allewe and satisfaction by custom.¹⁷¹

Here, a genuine concern was expressed for those subsisting upon garden produce, as well as presenting a defensive respect for those who worked hard but profited little. Again, this demonstrates an important point about the way in which this custumal sought to protect the rights of the poorest inhabitants. Furthermore, it demonstrates that custom, when written down, was not only appropriated for the self-interest of the authorities but for communal benefit and protection. In contrast, instances of customs underlying common use rights which aid subsistence are not as frequent in the Maldon White Book. One example states that “it is declared that the towne have used to fell down wood growinge within the limits of the borowe”.¹⁷² Unlike West Mersea, there is no expression of the importance of this right to the residents of Maldon. Maldon’s formally structured borough hierarchy and urban environment may explain the differences between the custumals. The priorities of the Maldon custumal were clearly those of a ruling class; prioritising order and obedience, and legitimising power. On the other hand, the West Mersea custumal is focused on subsistence farming and curbing parochial power, indicating much more rural and plebeian concerns.

Another example of this defence of subsistence appears in the exemption of small-scale industry from tithes in the West Mersea custumal. For example, when clarifying the

¹⁷⁰ S. Hindle, *On the Parish? The Micro-Politics of Poor Relief in Rural England c.1550-1750* (Oxford, 2004) 92.

¹⁷¹ E.R.O., D/DEt M53, 4.

¹⁷² E.R.O., D/B 3/1/3, 3.

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wool tithes it was recorded that “the vikar is not to have nor at any time hath had no tithes of locks of wooll remaining after the winding nor of the underlockings of any sheep”.¹⁷³ This custom demonstrates that the scraps left from shearing could be gleaned by parishioners “in consideration of washing shearing and winding and also diligent tending of the whole flock which have always been a sufficient allewe for those time without mind”¹⁷⁴. Here the un-tithed gleanings left over from commercial shearing are a reward to the parishioners whose hard work maintained the flock, ultimately benefiting the whole parish. This suggests that the relationship between the rich and poor of the community was one of unity and mutual reliance, rather than one of division and exploitation. Hindle shows that both the indigent of communities, and their betters, had vested interests in preserving customary rights. He argues that fuel gathering, gleanings and common grazing all prevented “the inflation of welfare costs which would inevitably result if these rights were abrogated or undermined”.¹⁷⁵

Although the Maldon custom was outwardly concerned only with the profit of the Freemen, it can be argued that from the point of view of the Corporation, the custom ensured that Maldon’s population were being sheltered from poverty in an economically unstable time. As Petchey has suggested “There was an element of deliberate population control at Maldon which was arrived at preventing any influx of unemployed people from other areas”.¹⁷⁶ Foreigners were restricted as to their residence, commanded to keep different trading hours, required a special licence to trade in order to avoid fines and were forbidden from keeping shops.

Strangers to the town were deeply mistrusted by the authorities, with the custom stating that “every aliant dwellinge within the towne ought to sware before the Bailiefes for the time being”. This ensured that the Corporation’s authority was not undermined, as well as providing grounds for swift removal if the oath was broken. Foreigners were also banned from carrying weapons, which is suggestive of tensions towards outsiders within the town.¹⁷⁷ It is possible that the xenophobia of the Corporation’s officials drove them to enter this custom, motivated by their suspicion of those from abroad, rather than any real threat of blood-shed in the town. However, in times of dearth such as the 1629 riots, when local resources were being exported leaving the county to starve, tensions between inhabitants and interlopers became

¹⁷³ E.R.O., D/DEt M53, 4.

¹⁷⁴ Ibid, 4.

¹⁷⁵ Hindle, *On the Parish?*, 28.

¹⁷⁶ Petchey, *A Prospect of Maldon*, 21.

¹⁷⁷ E.R.O., D/B 3/1/3, 6, 11, 3, 12, 3 & 3.

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open dissent.¹⁷⁸ The efforts of the Corporation to use custom in order to exclude outsiders advanced what they saw as Maldon's best interests. The population of Maldon rose by only a hundred people between 1520 and 1672, in a period where most other urban centres doubled in size¹⁷⁹. This could be seen as a sign of stagnation, or alternately, as proof of the borough authorities' success in the prevention of overcrowding, unemployment and poverty. In periods of crisis, such as the 1629 grain riots, the "Corporation agreed to contribute to the cost of the grain's purchase out of their own pockets", demonstrating just as much real concern for the stability of the town and the welfare of its inhabitants as the West Mersea custumal.¹⁸⁰

In a similar vein, it may be naive to assume that the West Mersea custumal was written merely out of concern for the poor of the community. This custumal may have been written in order to undermine a disliked authority figure, whose right to claim tithe inhibited the profits made by those in West Mersea. The custumal paints its opponent, the parson, as greedy and uncharitable, further justifying their appropriation and interpretation of custom. It could be argued that the authors of the West Mersea custumal were just as guilty of appropriating custom to suit their own agenda as the Maldon Corporation. However, unlike the Maldon Freemen, the inhabitants of West Mersea were far more eloquent and convincing in their justification. First, they referred to how "Dwellers in these parrishes and there abouts of the age of Threescore years and above ... hath sett down their own testimonies knowledges and reportings of their fore fathers"¹⁸¹. This demonstrated the reliability of their sources, as well as fulfilling the condition that custom must be "without mind of man"¹⁸². The Maldon White Book hardly disguises the fact that the reported customs were "newly made and agreed upon by the saide Bayliefes Aldermen and headburgesses"¹⁸³.

Furthermore, the White Book goes on to say that the customs were written down "for the good rule and governance of this Borrough".¹⁸⁴ In Maldon the primary use of custom was to govern the inhabitants of the town, rather than to protect custom. In contrast, the people of West Mersea made a much more satisfying defence of their custumal, justifying its creation as a method of reining in the Parson who intended to "violate and distroye all customs".¹⁸⁵ Fundamentally, it seems that the authors of the West Mersea custumal successfully employed

¹⁷⁸ Walter, 'Grain Riots', 49.

¹⁷⁹ Petchey, *A Prospect of Maldon*, 23.

¹⁸⁰ Walter, 'Grain Riots', 59.

¹⁸¹ E.R.O., D/DEt M53, 1.

¹⁸² Ibid.

¹⁸³ E.R.O., D/B 3/1/3, 1.

¹⁸⁴ Ibid.

¹⁸⁵ E.R.O., D/DEt M53,1.

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the language of custom, engaging with its claims to be immutable and continuous in usage, and built their customs up to become a 'bill of rights', rather than a list of charges the vicar was entitled to. The Maldon Freemen, however, seem to have been less successful, missing an opportunity to further legitimise their claims to power and admitting, too easily, their appropriation of custom.

It is clear that the written word was often an integral part in the functioning of custom. Documents were used as proof of a custom's legitimacy, were essential to prove cases at law, and were understood to hold great legal power. Documents such as the Maldon White Book were used to create and maintain power for a privileged minority of the town's residents, through the exclusion of the many and ensuring the continued privilege of the few. Custom's reliance on documents, combined with limited access to documents, legitimated the power of the few but prevented people like Margaret Charles and John Westway from exercising their rights to property. In the context of increasing social polarisation, with a narrowing elite seeking to dominate local politics, it is not surprising that access to documents became a problem in customary cases. In contrast, some documents served to protect customary rights against attack. It is clear that later in the period, literate members of communities regulated each other's behaviour by identifying documents. Moreover, the West Mersea customal shows that customary documents were used to serve both the interests of the elite and those of the poor, when their interests coincided. The need for economic stability meant that the needs of the literate elite and the poorer of communities were advanced by the customals. Had the interests of the poor contravened elite interests, the documents, ultimately subject to the whims of the literate, may have been very different.

Orality

In a joint introduction to their collection of essays about oral culture, Fox and Woolf point out that "it is easy to overlook the fundamental importance of speech, the oldest form of intelligent communication, and of its reception-end counterpart, hearing".¹⁸⁶ This is especially true of a document-centred history. While the Exchequer court depositions provide a rare opportunity to access the words of ordinary people, the necessary transliteration of their words

¹⁸⁶ A. Fox & D. Woolf (eds.), *The Spoken Word, Oral Culture in Britain, 1500-1850* (Manchester, 2002) 1.

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alters the immediacy of their meaning. The impact and importance of speech context is key. The most exhaustive study of early-modern speech is Fox's monograph. In addition to examining the relationship of oral culture to the printed and written word, Fox considers the changing nature of the speech during the period. He highlights the emergence of 'the King's English', as a London-centred dialect of the elite. He also observes the shortening of vowel sounds and the addition of 30,000 new words to the language.¹⁸⁷ While Fox underlines the interaction of oral and literate cultures he argues that,

In the small communities in which most people lived, what was important was the seasonal cycle of work, the operation of local custom, the lore and tradition of the neighbourhood, and the gossip about its inhabitants. These were the things most immediate, most relevant to their experience, most salient in the construction of their mental world, and none of them were written down.¹⁸⁸

Fox's work does not dispute the presence and importance of literate culture. Woolf takes a different approach in his monograph on the social circulation of the past. Rather than examining plebeian cultures, Woolf utilises antiquarian tracts and the works of natural philosophers and legal theorists to trace a chronological pattern in elite attitudes towards oral traditions. Woolf's evidence points towards the "neglect of oral sources from the middle of the seventeenth century", followed by a renewed interest in oral traditions in the nineteenth century, albeit with considerable scepticism.¹⁸⁹ Woolf explores the elites' fluctuating interest in oral traditions, and finds the increasing availability of printed material and the growing mistrust of the poor to be important factors. By the seventeenth century, he suggests that "the association of oral traditions with socially marginal groups – ballad singers and strolling players, for instance – and with the "gossip" of old women did nothing to endear them to the educated".¹⁹⁰ This marginalisation of oral culture partially explains the appearance of an increasing number of custumal documents around this time. However, the spoken word was still the most common form of evidence given at customary disputes. In his article on the social organisation of writing, Wood draws on depositions given by witnesses in customary

¹⁸⁷ Fox, *Oral and Literate Culture*, 54-55.

¹⁸⁸ *Ibid*, 19.

¹⁸⁹ Woolf, *The Social Circulation of the Past*, 390.

¹⁹⁰ D. Woolf, 'The "Common Voice": History, Folklore and Oral Tradition in Early-modern England', *Past and Present*, 120 (1988) 47.

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disputes. Wood argues that the separation of oral and literate cultures in the study of custom is an arbitrary divide, as “for many generations, writing and speech acted together to define remembrance and custom, and to strengthen local identities”.¹⁹¹ While Wood confirms that the increasing pressures of the period, such as population increase and scarcity of resources, fed the growing social and cultural polarisation of communities, he maintains that the increasing recourse of the elite to written records did not mean that oral culture was weakened or overwhelmed.

Bushaway’s findings verify the survival of a functioning oral culture in the later early-modern period, from 1700-1900. In his article concerning customary society, Bushaway argues that the character of oral culture in this period was one of strength and continuity. He argues that “Orality was the means by which customary consciousness was transmitted, adapted and reinforced throughout most of the eighteenth and nineteenth centuries in rural England”.¹⁹² The repetition of customs within a context of popular culture and community required vocal affirmation that strengthened oral culture against “attack by the propertied who regarded customary ways of life in the countryside and their cultural expression as an obstacle to improvement and to progress through economic liberalism”.¹⁹³

There is evidence of how this communal, spoken information was used to establish, legitimate and preserve custom in the Exchequer court depositions from Essex. The spoken word, when used as evidence, needed to be reliable. Richarde Becke from Barking, gave evidence in 1605 that he “hath credibly hearde the saide wood called heigh hall woodd to be and tyme out of mynde hath bine comonly taken and known to be p[ar]cell of the mannor or fearm called heighhall”.¹⁹⁴ The importance of the phrase ‘commonly known’ is central here. The phrases ‘credibly heard’ and ‘credible report’ were also often used to prompt witnesses to assess the accuracy of their information. By adding these phrases, deponents could place their knowledge in the realm of valid custom, establishing it as a piece of information widely known by the community. Wood has argued that “Just as accepted communal opinion could be used to damn somebody’s sexual or moral reputation at the consistory court, so it could be also presented as a common assumption of rights”.¹⁹⁵

¹⁹¹ Wood, ‘Custom and the Social Organisation of Writing’, 286.

¹⁹² B. Bushaway, ‘Things Said or Sung a Thousand Times: Customary Society and Oral Culture in Rural England, 1700-1900’, in Fox & Woolf (ed.s), *The Spoken Word*, 268.

¹⁹³ *Ibid*, 256.

¹⁹⁴ T.N.A., E134/2Jas1/Mich8.

¹⁹⁵ Wood, ‘Custom and the Social Organisation of Writing’, 260.

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When and how words were spoken had legal significance. In the court of the Duchy of Lancaster in 1582, John Clark sued William Clark over the inheritance of Perrye Felde near Coggeshall. John Clark claimed that his sister, Margaret Bretton, had not been paid her share of four marks, as stipulated in their father's will. The legitimacy of the claim rested on whether John Clark Senior added the condition of paying Margaret prior to the presentation of the surrender of his land to the Homage. The interrogatories directed the deponents to state "whether did he [John Clark senior] utter those woordes before or after the surrender made".¹⁹⁶ John Enewe, a fuller from Coggeshall, deposed that "John Clerke dide charge the c[o]mpl[ainent] to paye fower m[ar]kes to his sister within two yeares and did utter the same both before the surrender [and] after".¹⁹⁷ Here, the validity of a contract rested on when an act of speech had taken place. This indicates that, to the early-modern world, the spoken word was a recognised legal tool and could be used to establish legal obligation. It appears that the memory of an act of speech functioned as proof of those obligations.

Further evidence demonstrates how the spoken word was a legitimate type of evidence at law, substantiated by the ways that authorities used the spoken word to enforce their civic rights. John Joriseman, a sailor from Colchester, deposed that he after hearing the town's charter read aloud, the boundaries of the town were fixed in his memory "after the charter was red the said doctor Cesar went ... to see Estenasse ... which by ancient men then present was affirmed to bee the boundes [and] libertyes".¹⁹⁸ Here, official boundaries were set in the minds of everyone present, literate or illiterate, by the speech of Doctor Cesar.¹⁹⁹ The power of the charter to create and maintain the boundary lay not in its written form, but in the manner in which it was read, and that "by ancient men then present was affirmed to bee the boundes [and] liberties".²⁰⁰ In this setting, the ritualistic reading of the charter and the subsequent confirmation of the boundary by the ancient men legitimated the boundary, securing it in common memory.

Oral testimony could work in a similar way to documents to ensure that custom remained constant, by preventing the literate elite from changing custom in order to exploit the less powerful. The inhabitants of Coggeshall in 1690 used oral information to prevent the enforcement of new tithes. James Lawrence of Great Coggeshall, an eighty year-old webster,

¹⁹⁶ T.N.A., DL4/24/17.

¹⁹⁷ Ibid.

¹⁹⁸ T.N.A., E134/5Chas1/Mich8.

¹⁹⁹ T.N.A., E134/5&6Chas1/Hil3 James Furley, Robert Lamberte, Stephen Dunton, Edmund Colle and William Browne, all heard the charter read.

²⁰⁰ T.N.A., E134/5Chas1/Mich8.

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testified that “his father who was neare eighty yeeres of age told him that the said farme and lands called monksdown were always tithe free”.²⁰¹ Thomas Ellis confirmed that Monksdown was “always reputed to be tithe free”.²⁰² Similar evidence was presented in Barking in 1675 to maintain tithe exemptions. Thomas Cooper of Barking, a baker aged forty-six, deposed that “he hath heard his father say that he never paid any tyths for the same lands”.²⁰³ In these cases, oral transfer and common understanding of a local landscape came together to prevent the imposition of new tithes.

Receiving information orally from family members was a common way in which customs were passed from generation to generation. This not only provided a method of disseminating customary information, but provided means of legitimating custom when it was questioned. For example, in 1630, James Furley, a merchant of St Leonard’s parish in Colchester, testified to hearing the Colchester charter read aloud, and added that he knew the boundary of Colchester “as he hath heard by his ancestors long tyme before have extended from the Northbridge of the sayd towne of colchester unto a place called the west nasse”.²⁰⁴ In 1631, Benjamine Chase of Wivenhoe, a mariner, deposed that “about sixtye yeares since there was a certaine wharfe or landing place called the olde docke and hath heard his father about fytye yeares since say that there was a crane standing neere the s[ai]d old docke for the loading and unloading of wares”.²⁰⁵

Oral testimony served to make sure custom was relevant and functioning. In an ongoing case in Colchester in 1630, the borough authorities attempted to prevent sailors unloading their goods at Wivenhoe, a small estuary community about four miles closer to the sea than Colchester. The Corporation persisted in forcing boats to land goods only at Colchester’s New Hythe, despite the fact that at Colchester, the River Colne was far too shallow on a normal tide to sustain most vessels. The majority of deponents testified on this folly of the Corporation, underlining their arguments against this policy with information about the reality of bringing goods up the river to Colchester. It was argued that “Fishermen cannot at all tymes passe upp the river with there fish from Wevenhoe to Colchester or to the new hithe afforesaid without hassord of taynting [and] looseing the same”.²⁰⁶ The testimony of merchants, fishermen and sailors demonstrated that the custom of landing goods only at Colchester had become

²⁰¹ T.N.A., E134/2W&M/East16.

²⁰² Ibid.

²⁰³ T.N.A., E134/14&15Chas2/Hil7.

²⁰⁴ T.N.A., E134/5&6Chas1/Hil3.

²⁰⁵ T.N.A., E134/6Chas1/Mich17.

²⁰⁶ T.N.A., E134/5Chas1/Mich8.

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physically impossible by the 1630's. The river bed had become so badly silted that boats carrying fish to Colchester were forced to wait for exceptionally high spring tides in order to get any further up the Colne than Wivenhoe. In this case, there was a direct conflict between the customs in Colchester's charter and the reality of everyday life. One of the Free Burgesses of the town, John Isles, insisted that "such their landinge shippinge and loadinge at wyvenhoe aforesaid is contrary to former right usage and custome and preduiciall and to the de fraudinge of the said Bailiffes and commonality".²⁰⁷ This supports the notion that social polarisation was occurring. The members of the Borough were so far removed from everyday life in the place they governed that they would take legal action to force sailors to sail up a dry river bed, or to watch their cargo rot waiting for a suitable tide. This 'tunnel-vision' of the Colchester Corporation was exacerbated by their reliance on a written charter. The Corporation's need to legitimate their own increasingly oligarchic power led them to rely on a document which was such an integral part of civic ritual that it would not be overruled, even in the face of environmental reality.

Several deponents supported the testimony of the sailors against the Corporation with information on how goods were transported from Wivenhoe to Colchester. William Comainne, a sixty year-old fishmonger described how,

Many poore people doe gett [and] ern there liveinge [and] maintenance by bying of fishe at Wivenhoe of such fishermen as doe bye [and] take fishe at sea or in the sayd river [and] bringe the same thither [and] by carringe the same by land to Colchester afterwards [and] by selling it there [and] they have used soe to doe all the tyme of this depon[en]ts remembrance.²⁰⁸

Oral testimony based on everyday practice served to protect the rights of the labouring sailors and fishermen of Colchester. In addition, it sought to maintain the marginal industries of the indigent poor. Many deponents in this case pointed out that without the work of transporting fish from Wivenhoe to Colchester, many poor people who survived on the edge of the Corporation's boundaries would slide into poverty, becoming a burden on the rest of the town. There are similarities here with the West Mersea customal, although it seems that the

²⁰⁷ Ibid.

²⁰⁸ Ibid.

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Corporation's need for a legitimating civic charter had overridden their interest in the subsistence of the poor.

Another Colchester dispute in 1633 concerned the erection of new mills to serve the town's growing population. There were conflicting ideas about whether the building of new mills conflicted with the customary rights associated with the 'ancient' mills. Arthur Conder of Colchester insisted that the new windmills were "prejudiciall to the customes and proffites of the said mill", arguing that there was not enough business for the existing mills.²⁰⁹ However, the majority of deponents agreed that "If the windmills were not it wold bee a greate hindrance to the poore people inhabiting within the town of Colchester".²¹⁰ Several deponents testified that the owners of the ancient mills fixed prices and insisted on only grinding bulk orders, to the detriment of the poor. Marie Purvey reported hearing Richard Steele, a miller, threaten "the poore folk that they were best come [and] grind with him nowe for else if the windmills were once putt downe he would punishe them and make them paie five pence or sixe pence a bushell for grinding".²¹¹ Oral testimony, while normally used to support custom, could be used to defeat custom in defence of the welfare of the poor. Therefore, deponents used their knowledge of what had been spoken in the town in order to overturn the exclusivity of the 'ancient' mill, to protect and benefit the poor majority. As "the [new] windmills stande as now they doe for the publike good", they were supported by oral testimony against those who attempted to close them down to preserve their own profit.²¹²

Oral testimony also revealed the untoward intentions of those involved in customary litigation. For example, in 1598, Henry Bemen, a husbandman from Kelvedon, a town adjacent to Coggeshall, overheard a conversation while on perambulation in Bradwell:

mr Samford at such times as he was abbott of coggeshall had a sute in lawe about those tythes in which suite he did recover the tythes of those lands from Bradwell an therefore said if he should now challenge them hymselfe as p[ar]son of Bradwell he might have his owne hand brought against hymself [and] therefore he would not bring that matter in question.²¹³

²⁰⁹ T.N.A., E134/8Chas1/Mich18.

²¹⁰ Ibid.

²¹¹ Ibid.

²¹² Ibid.

²¹³ T.N.A., DL4/40/3.

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This conversation was clearly not meant to be overheard. When the boundary dispute between Bradwell and Coggeshall came to the Exchequer, Henry Bemen reported Samford's words, demonstrating that Samford had sued, not to preserve customary right, but to profit from the tithes. This indicated that Samford did not regard customary tithes as immutable or an ancient right, but a financial asset to be claimed through cynical litigation. Had the conversation not been overheard, the issue may never have come to light.

It has been demonstrated that oral culture was the nexus through which custom was generally passed, preserved and legitimated. The spoken word was used in defence of custom, but also in defence of plebeian interests. There are similarities in the ways that oral and written evidence were used to protect the rights of the poor. However, it seems that the narrowing of the literate elite increasingly meant that documents concerning custom were appropriated for elite interests. The spoken word was more accessible to the poor than the growing body of written records, and was transferred between families, neighbours and everyday contact within a community. Despite this, oral evidence was still subject to elite control in matters of ritualised civic ceremonies, such as the charter readings at Colchester. It is clear from these cases that when custom was not written down, oral culture allowed custom to change and adapt to the needs of the environment and of the people, even if this change contradicted custom's legitimating fiction of immutability. Furthermore, it is increasingly clear that written and oral culture were not used in distinct and separate ways. To further understand the intermeshing of oral and literate culture, it is important to consider the instances when both types of evidence seep into each other, creating the rich and diverse world of the early-modern mentality.

A large body of evidence demonstrates the ways that oral and literate culture intertwined in early-modern Essex. In Barking in 1598, deponents were specifically asked if they had seen any "ancient coppeyes or court roulles to p[ro]ve that", a house in Manbridge Street was a copyhold tenement of the manor of Barking. Peter Debet, a husbandman "hath hard and als[o] sene copies of court rowles of the said mannor of barking which doth show the said tenement and curteledge to be copyhold".²¹⁴ The combination of hearing and seeing a document seems to recur throughout the records. This is perhaps an expression of illiteracy, meaning that a document could be seen as an object while not being read and understood. If Peter Debet could not read, he may still have expressed that he saw and recognised a document, as well as

²¹⁴ T.N.A., E134/40Eliz/East29.

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understanding the contents when it was read to him. Debet's understanding of the copy of court roll was achieved through the speech of another person, thus layering the interaction of speech and literacy. It is also important to consider the significance of Peter 'seeing' the document. This indicates that his understanding came not only from the words of another person, but from his interaction with the physical appearance of the court roll. This may not have aided his understanding of the document in terms of the words on the page, but instead defined the terms of his personal, experiential connection with the document.

Connerton has argued that "the visual code is the third dimension [of memory] concrete images are much better retained than abstract items because such items undergo a double encoding in terms of visual coding as well as verbal expression".²¹⁵ Deponents in early-modern customary disputes used their visual connection with documents to underline the strength and validity of their memory. A good example of this appears in 1598, when Thomas Daniel deposed in a case concerning the will of John Stone. Daniel reported that "he hath seene copies thereof which were red unto him and that there was five shillings a yere quitt rent".²¹⁶ Daniel's statement indicated that he had not read the documents, but rather, had heard them spoken by another person. This reveals the complexity of his relationship with the written word. Daniel was aware of the significance of the document, but could only obtain information from it through the words of an interpreter. Therefore, oral and literate cultures were not separate in early-modern Essex. Rather, they were meshed together by experience and understanding.

Many depositions concerned a person's presence at the writing of a will. In 1674, Dorothy Emans was present at John Stone's will making in Colchester, and was able to testify that a certain clause was added after the will was written.²¹⁷ Similarly, William Clarke and John Cowell claimed to be present at the production of Robert Woode's will.²¹⁸ In these cases, matters were not resolved by examining the will, but rather by use of the testimony of those present when it was written. This implies that a will did not merely exist in written form, but that the semi-private ritual of witnessing a will writing turned the creation of a document into an event to be recorded, not only on paper but in the memories of those who attended. This informal ritual legitimised the words that were being written.

²¹⁵ Connerton, *How Societies Remember*, 27.

²¹⁶ T.N.A., E134/40Eliz/East29.

²¹⁷ T.N.A., E134/6W&M/Mich20.

²¹⁸ T.N.A., DL4/8/12/8.

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In 1566, Margaret Warner testified that “she knoweth certainly that the said Robert Wade her late husband deceased in his lyfe tyme about a yere before his decease declared his laste will and testement in writing”.²¹⁹ The wording of this deposition is revealing, as Robert Wade ‘declared’ his will in writing. This suggests that orality and literacy overlapped, not just in terms of how a document was used and interpreted, but also in how it was created. This will was *spoken* into writing. J. L. Austin has examined the nature of speech, and argues that “it seems clear that to utter the sentence (in, of course, the appropriate circumstances) is not to *describe* my doing ... it is to do it”.²²⁰ Austin proposes that speech, in the appropriate context constitutes a ‘*performative sentence*’, where words become an action. In the case of Robert Wade, the ‘performative utterance’ of his last will and testament gave legal weight to his wishes and forged the beginning of a network of information. This network, in which the witnesses of his words reported the creation of his will to the rest of the community, served to publicise the legitimacy of the will, and could be drawn on in future to settle any disputes.

Furthermore, Thomas Clarke, deposing in the same case, claimed that “he hath hearde by credible reporte that the said Robert Wade did declare his last will and testament in writing”.²²¹ As some were present to hear Wade record his will, Thomas Clarke heard that the will had been written. Here, we see another of the complex layers that constructed the early-modern experience. Wade ‘declared’ his will into writing in front of witnesses. These witnesses presumably reported to others that a will had been written. In turn, those people who heard the report divulged the information to a court, to be written down in order to solve any dispute. This suggests that oral interactions, punctuated by written records, created a chain of information used by early-modern communities.

Another example of the overhearing and seeing of a written document occurred in 1611, in a case concerning customary charges imposed by the Corporation of Maldon. Bartholomew Freeman remembered that during a previous dispute about landing charges in Maldon, the Bailiffs had once used a book to resolve the conflict. According to Freeman’s memory, one William Tweedy had refused to pay the charges demanded by the Bailiff. Tweedy’s attorney, James Morris, was present during the dispute. Freeman recalled that the dispute was resolved “uppon the sight of an ancient booke then shewed beffore the s[ai]d mr morris by the Bayliffes

²¹⁹ Ibid.

²²⁰ J. L. Austin, *How To Do Things With Words* (Oxford, 1975), 6.

²²¹ Ibid.

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of the s[ai]d town”.²²² Freeman recalled that the appearance of the book drove the parties to make an agreement. Although Bartholomew Freeman did not know the contents of the book, he knew that the book would contain the answer to the current dispute.

Further evidence of the layering of oral and literate culture can be seen in a 1630 dispute between Colchester and East Donyland, a manor which lay at the mouth of the River Colne. Colchester’s New Hythe provided the Aldermen and Burgesses with an income from charging merchants and seamen for loading and unloading goods. At Donyland, charges from the landing wharfs went to the lord of the manor, who refused to give his profits to the borough of Colchester. A long legal dispute ensued, resulting in several hearings. In the 1630 depositions, George Brook deposed that “he findeth by the ancient manuscrits evidences and rolles of his manner of East Doniland that wares and marchandizes have been landed loaded and unloaded att the sayd wharfes in East Doniland and that divers persons have beene anciently punished in the courts of the said mannor for depryving the lord of the said mannor of his customs”.²²³ Donyland’s records provided indirect proof of their separate customary system and independence from Colchester.

This style of second-hand proof was vital to maintaining customary systems. It provided documentary proof of custom, without the restriction of fixing customs in written form, which would remove the custom from the oral sphere, making their alteration problematic. Under this system, any resident of Donyland could inform the court of their independence from Colchester, fulfilling the requirement of custom to be kept nowhere but in the memory of the people. Written records could legitimise custom by providing evidence of how long the custom had been exercised. This maintained the focus on the practice and experience of custom, and down played the significance of the written records. Therefore, literate methods of recording disputes could permit custom to remain in the oral realm, without dominating or altering the nature of custom.

Second hand evidence based on speech was also presented as evidence to the courts. This evidence involved the reporting of information which had been passed on to the deponent by a third party, separating the deponent from the original source of spoken information. For instance, Marie, the wife of Thomas Purvey of Colchester, testified in 1633 that Richard Steele had threatened the poor of Colchester with refusing to grind their corn. However, Purvey added that “she speaketh nothing of her owne knowledge but only by the relacion of

²²² T.N.A., E134/9Jas1/Mich38.

²²³ T.N.A., E134/6Chas1/Mich17.

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one Peter Fithering a miller”.²²⁴ Here we have an example of indirect testimony, but, instead of relating to a document, the facts recorded were the spoken words of Richard Steele. Marie’s ‘but’ indicates that the second-hand nature of her information may have cast doubt on its accuracy. Similarly, in 1611, Thomas Moodye of Haseleigh, near Maldon, a thirty-five year-old clerk, deposed his knowledge of a piece of land between White Friars gate and the Starr Inn at Maldon. The history of the land’s ownership was in dispute. Moodye deposed that “he hard yt at an assizes gyven in evydence uppon oath that the same [piece of land] was p[ar]cell of the chantry but of his owne knowldge he can saye nothinge”.²²⁵ Despite having heard evidence given under oath, Moodye underlined the fact that the information had not come from him. Therefore, there is a direct contrast between this secondary oral evidence, fringed with doubt, and depositions which concerned written documents which had been heard, but not read.

Deponents who referred to written documents which they had not read were happier to be associated with the evidence that they had provided. In 1633, George Cockerell, a clothier of Coggeshall, deposed that he “hath harde some one whoe had sarched the court rolles of the said manner saye that hee there found that the copyhold tennants of the said mannor had paid for the said Fynes some more, some less”.²²⁶ Here, overhearing someone who had searched the court rolls was considered more acceptable evidence than second-hand information heard from word of mouth, despite the fact that the majority of testimony in customary disputes was based on oral reportage and personal memory. This can be explained because secondary oral reporting of information fell outside the official realm of the legitimate customary transaction of information, and was, therefore, considered invalid and untrustworthy. Invalid forms of speech, such as gossip, slander, and subversive forms of speech were considered damaging to the natural order of society.²²⁷

However, a large section of oral evidence deposed to the Exchequer court was provided without reserve or doubt by deponents. The reporting of customary rules and information heard from ‘old men’, officials and family fell inside the realm of legitimate customary transition, the acknowledged process of preserving customary law. Austin has argued that speech should be understood as ‘speech acts’ rather than merely noise. Austin labels the reporting of another person’s speech as a ‘rhetic act’ indicating that rather than just relaying

²²⁴ T.N.A., E134/8Chas1/Mich18.

²²⁵ T.N.A., E134/8Jas1/Mich13.

²²⁶ T.N.A., E134/7&8Chas1/Hil5.

²²⁷ For further discussion of subversive speech see Woolf, “The “Common Voice””, 26-52.

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information, the naming of the source and the repetition of their words does something. Overheard speech was used as form of legitimate evidence. The transfer of knowledge by the spoken word should not be dismissed as informal gossip, or the unreliable reports of the illiterate poor. Instead, historians should view speech as a social gel that held communities together. In relaying information provided by others, and performing a 'rhetic act', early-modern people were forging connections of information between members of a community. These connections underpinned the coherence of the social order. This cohesion was achieved by providing a common stream of information, based on the observation of everyday activities. Access to this information stream helped to regulate custom when a dispute arose. Early-modern people saw spoken customary information as a tool used to relay everyday experiences, which could be retained as memories for resolving future disputes.

An example of this can be seen in the deposition of John Gifforde of Much Bentley near Colchester. In 1595, Gifforde explained that he "hath likewise hearde his father saye about thirtie yeres past that two parts divided one of thre partes of the tithes yerely belonging to the mannor of Bachan in stoke Naylande".²²⁸ Although this information was imparted thirty years earlier, John Gifforde was confident of its accuracy. Information passed on from generation to generation was vital in resolving disputes about customary law. Information about tithes, rents, boundaries and laws could be recorded in the memory, and preserved by anyone witnessing or practicing customary activities. This collective observation of customary rights minimised the chance that any individual would be able to violate customary practices, providing a resource of knowledge which could stretch for several lifetimes, in order that accurate information could be produced should a disagreement arise.

Other examples of the transfer of knowledge within the family focus attention on the age and experience of their sources of knowledge. In Colchester in 1692, William Barron of St Michael Mile End parish in Colchester deposed that "he hath heard his father say who was an ancient inha[bi][tant of the said p[ar]ish that the tithe arising out of the said field used to be paid to one Mr Talcott"²²⁹. Being an inhabitant or neighbour was an important qualifying term throughout the early-modern period. K. Wrightson has shown that "'Neighbour' in this context was a comprehensive category of moral obligation".²³⁰ Wrightson also observes that although there was a shift in the definition of the term 'neighbour' by the seventeenth century

²²⁸ T.N.A., E134/37Eliz/Trin5.

²²⁹ T.N.A., E134/32&33Chas2/Hil9.

²³⁰ K. Wrightson, 'The Decline of Neighbourliness' Revisited', in N.L. Jones & D. Woolf (ed.s), Local Identities in Late Medieval and Early-modern England, (Basingstoke, 2007) 23.

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“the notion of neighbourhood implied a community not only of place but of knowledge”.²³¹ Barron’s deposition was legitimated by his reference to his Father’s role as an ‘ancient inha[bi]tant’. This term distinguished Barron’s father as part of ‘a community of knowledge’. This not only meant that he had access to customary knowledge, but that he took part in practicing and transferring that knowledge to others, in turn widening the community. Involvement in this process created “a specific sense of belonging; it [being accounted a neighbour] conferred an identity through membership of a localized grouping”.²³² Therefore, second-hand knowledge bestowed by an inhabitant or neighbour was considered reliable.

In 1633 in Coggeshall, George Richmond the elder, a sixty-four year-old, deposed that,

william richmond his owne father and Thomas Ansell his father in law being ancient men and coppiholders of the said manor whoe died about xxxti yeares agoe did report to this deponent that the custome of the said mannor was that the copiehold tennets of the said mannor have paid ... two yeares lordes rent for affyne.²³³

Customary knowledge existed in a system of memories held and transferred by trusted members of a ‘community of knowledge’. In turn, this developed a sense of identity which revolved around sharing and transferring knowledge about the ‘neighbourhood’.

A. Shepard has examined how honesty and worth were attributed to the words of deponents in the church courts during the early-modern period. Shepard points out that,

Honesty ... while related to truth telling-and used as its gauge ... involved far broader claims to trustworthiness in terms of the diligent pursuit of vocation or office; substance, self-sufficiency and the ability to pay one’s debts promptly and in full; avoiding strife with ones family and neighbours; and remaining within the bounds of behavioural codes emphasising sobriety, chastity and plain dealing.²³⁴

²³¹ Ibid, p.24

²³² Ibid, 23.

²³³ T.N.A., E134/7&8Chas1/Hil5.

²³⁴ A. Shepard, ‘Honesty, Worth and Gender in Early-modern England, 1560-1640’, in H. French & J. Barry, Identity and Agency in England, 1500-1800 (Basingstoke, 2004) 101.

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The sources Shepard examines show that deponents were considered more likely to be trustworthy if they were male, of high social standing, economically independent and if they were not known to have engaged in immoral behaviour. However, the interrogatories produced by the Exchequer court sought to establish a different kind of information to ascertain their reliability. Instead of asking a deponent to assess their own 'worth', interrogatories formulaically asked whether a deponent knew the plaintiffs and defendants, for how long they had done so, whether they knew the focus of the dispute (usually land, house, river or mill) and for how long they had known it. In Barking in 1675, William Walker of Eastham was asked whether, and for how long, he had known the marshland. He answered that,

he this depon[en]t hath ben marshe keeper here for the space of 5 and 30 yeares last past and hath heard his father who was an ancient marshe man before him and lived to the age of 70 yeares and upwards say that there were noe tythes paide for the same lands.²³⁵

The title of 'ancient marshe man' seems to hold special significance. The way in which Walker legitimised the truthfulness of his testimony was not by emphasising his financial status or his exemplary living but by highlighting his, and his father's, connection with the disputed land. Walker's experience of, and familiarity with the marshland existed in his memory of his own life on the marsh, and the memory of his father. The knowledge that Walker deposed was validated and enforced by its existence in oral culture, passed through speech and practice from father to son. If Walker's information had been learnt only from a written document, perhaps its value, and its 'honesty' (in the sense which Shepard has established), would have been diminished.

Moses Love, a weaver of Coggeshall, proved to be an exception when he deposed that Joane Love, his mother "told this depon[en]t that she had also paid to the Lord two yeares lords rent and no more".²³⁶ There are few examples of deponents citing their mothers as sources of customary knowledge, arguably because women were less involved in the goings on of property tenure and commercial production. T. Stretton points out that in the legal sphere, professionals and deponents alike "regarded women's testimony as being somehow

²³⁵ T.N.A., E134/14&15Chas2/Hil7.

²³⁶ T.N.A., E134/7&8Chas1/Hil5.

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inferior to men's".²³⁷ In a similar vein to Shepard's findings, deponents in the Exchequer and Duchy of Lancaster courts were much more likely to be men. From the sample of 112 cases and a total number of 891 deponents, 838 were men and only fifty-three were women.

Generally, women only testified when their association to a man (as wife, daughter, sister or servant) provided them with specialist information, or when their knowledge of a female sphere (such as milk production) was required.²³⁸ Although it may seem likely that female deponents should refer to other women when reporting customary knowledge handed down to them, in the cases examined it appears that female deponents were just as likely to refer to their fathers, brothers, husbands and masters as their female kin and employers. From the small sample of female deponents who cited others as sources of their knowledge, nine of them cited men and only two cited other women. From the male deponents, eighty-six cited other men as their sources, and only eight cited women. There are difficulties in assessing the nature and origin of customary information numerically. For example, several deponents referred to both of their parents as the sources of their information, but only repeated the words of their fathers. Other deponents were less specific about the origins of their knowledge, citing the 'common voice', their own experience or knowledge and written sources to explain their familiarity with customary rules.

Another source of information about customary law came from those who held official positions in local government. For example, in 1631, Robert Lamberte of Saint Leonard's parish in Colchester explained that he "hath often heard the chamberlynes for the said towne of colchester say that there is a Fee farme rent payd to the kings maj[esty] and his p[re]deccors yearely for the liberties and priviledges of the sayd town".²³⁹ The matter of the person's official position was relevant to their testimonies, perhaps giving it greater weight in the eyes of the law. It also indicates that those holding office were thought to have access to important information, or were involved in the enforcement and regulation of customary rents.

In their article about the role of music in pre-industrial textile production, E. Robertson, M. Pickering and M. Korczynski, observe that "Music ... informed, and was informed by, everyday experiences, not set apart from them in a distinctly aloof aesthetic realm".²⁴⁰ The transmission of information about custom was influenced by everyday experience in a similar

²³⁷ Stretton, *Women Waging Law*, 176.

²³⁸ A. Shepard, *Meanings of Manhood in Early-modern England* (Oxford, 2003) 222.

²³⁹ T.N.A. E134/5&6Chas1/Hil3.

²⁴⁰ E. Robertson, M. Pickering, & M. Korczynski, "'And Spinning so with voices meet, like nightingales they sung full sweet' Unravelling representations of singing in pre-industrial textile production', *Cultural and Social History*, 5, 1 (2008), 12.

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way. For example, John Isles, a fifty-six year-old merchant from Colchester, whose report about landing goods at Wivenhoe have already been documented, testified in 1630 that “he hath heard the charter of the towne read by the deputy towne clerk at ... Black house ... and it appears by ch[ar]ter which he hath heard and read that the p[ri]c[er]ts of the said towne extends soe farr”.²⁴¹ John Isles’ knowledge of Colchester’s boundaries came both from a written document and indirectly through the speech of others. Another example of the witnessing of the reading of the town’s charter is found in the deposition of John Joriseman, a Colchester sailor, who reported that,

aboute 44 yeares since hee kneweth that docter Julius Cesar then judge of the admiraltie as this d[e]p[on]t then heard cam to colchester [and] beeing there he went by watter from the new hithe in colchester to the blake house in Colne Watter where he landed [and] then heard the charter of the towne of colchester red by w[hi]ch charter it appeareth that the liberytes [and] p[ri]c[er]ts of the towne of colchester did extend from Northbridge by fleets and crieekes into colne water out to the sea [and] further saythe that after the charter was red the said doctor Cesar went ... to see Estenasse ... which by ancient men then present was affirmed to bee the boundes [and] libertyes.²⁴²

This reading of the charter was a formal event, arranged and executed by town officials. The deponents’ report of hearing the charter read, rather than reading it themselves, remained a formalized part of Colchester’s administration and government. This calls into question the informality of their testimony, which was derived from listening to spoken information.

The involvement of the town elite in this ritual declaration of the town’s boundaries was typical of early-modern urban custom. Tittler’s work on civic culture in Borough towns argues that anxiety about social change, the destructive force of the reformation and the already weak identities of urban centres broke down “traditional collective memory ... upon which civic authority in the provincial town had come largely to depend”. Tittler focuses on the increased use of civic regalia, portraiture and histories by the urban office holding elite. He argues that “They responded in part by constructing or reconstructing a viable, and useable,

²⁴¹ T.N.A. E134/5Chas1/Mich8.

²⁴² Ibid.

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collective memory which embraced and informed their fellow townsmen and women”.²⁴³ In a similar way, the ritual of the charter reading at Colchester was a way for the town office holders to strengthen collective memories of the borough’s boundaries, while legitimating their authority over the town. The office holding elite of Colchester, by informing their fellow residents of the boundaries of the town in this ritual manner, were contributing to the ‘community of knowledge’, and in this case combining oral and literate culture through civic ritual. This, in turn, helped witnesses of the charter reading to construct a sense of collective identity, based on a shared understanding of their environment, even if that understanding was constructed by the town authorities.

Conclusion

This chapter has established that, although often used for the same purposes, written documents and oral testimony were considered in different terms in early-modern Essex. Written documents were often cited by deponents, either to fill gaps in their knowledge or to legitimise the contents of their depositions about custom. Documents were used as evidence by deponents who had not read, or could not read them. Wills required a combination of written and oral evidence to be proved valid. Their creation demonstrates the ways that spoken and written spheres fed into, and supported one another. It has also been shown that when the spoken word was used as evidence by a third party, the evidence was not considered reliable unless the source of information fulfilled the qualifying factors of customary transactions. These requirements demanded that the informant should be a relative (normally a father), an inhabitant or ‘neighbour’, or someone with a special connection to the custom, such as an office holder. It has been shown that illiteracy encouraged deponents to focus on visual and experiential aspects of their knowledge. Seeing and overhearing were vital links in the chain of information. This ‘community of knowledge’ made use of written documents when access and ability allowed, but primarily, the sharing of information orally ensured that although not everyone held the same information, the experience of a common custom could be preserved.

The importance of documentation in customary disputes created a wealth of problems in early-modern Essex. One of the biggest problems was that of reliability. In oral testimony, the age, status, character and residence of the witness counted towards the reliability of the

²⁴³ Tittler, ‘Reformation, Civic Culture and Collective Memory’, 286-287.

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words they reported. However, written documents had no such system of identification, creating anxiety about their validity. A great deal of time in customary disputes was spent identifying the origins and history of documents, in order to prove authenticity and prevent forgery. This serves as an important contrast to modern attitude towards the written word. The current belief in the credibility of the written word comes, in part, from our faith in the underlying bureaucratic structure which creates and validates written documents for us. However, it also comes from our mistrust in the spoken word. This tells us several things about the early-modern attitude to documents. First, it demonstrates that the bureaucracies which existed in the early-modern period were still weak and unfamiliar. Second, it shows us that greater faith and responsibility was invested in the spoken word.

In early-modern Essex, the spoken word continued to be held in great esteem. The words of certain members of society were trusted, and spoken agreements held legal weight. The written word was treated with suspicion, but was also experienced differently. Documents were not just read, they were looked at and listened to. People made real connections to the sources of their information, whether a ceremonial charter or their grandfather. There also existed a collective social memory which worked not just to maintain custom, but to advance and protect the well being of the whole community. Oral and literate evidence were intimately intertwined in early-modern Essex, and those that engaged with custom would never have conceived of attempting to separate them. Fox and Woolf have argued that, considering a single early-modern oral culture is too simple a concept, and that the historian should instead consider “a complex configuration of overlapping ‘speech communities’”.²⁴⁴ In combination with Wrightson’s notion of a ‘community of knowledge’, we may be a step closer to understanding the early-modern mentality.²⁴⁵ Rather than examining oral and literate culture, it is vital that we consider them both as part of a mental structure which combined them in ‘communities of speech and knowledge’. Wood argues that “it was memory which carried authority within custom, rather than the means by which it was communicated”.²⁴⁶ Therefore, to truly understand custom and the mental structures which underpinned it, we must examine not just how custom was transmitted, but where it existed, in the memory.

²⁴⁴ Fox & Woolf, *The Spoken Word*, 15-16.

²⁴⁵ Wrightson, ‘The Decline of Neighbourliness’, 23.

²⁴⁶ Wood, ‘Custom and the Social Organisation of Writing’, 266.

Chapter 2: Memory

Introduction

The way early-modern people remembered can tell the historian a great deal about the world they inhabited. In their work on social memory, Fentress and Wickham argue that “It is the world we live in that sets the tasks for our memories, determines the ways in which we must perform these tasks, and even gives us the categories in which we think about them”.²⁴⁷ Therefore, examining how people in the past constructed and used memory is a way to access the mental processes of early-modern people, and the way their society influenced those processes. Social or collective memory is especially significant to the historian as “we can usually regard social memory as an expression of collective experience. Social memory identifies a group, giving it a sense of its past and defining its aspirations for the future”.²⁴⁸ This approach has already been utilised by historians. For example, in his work on Kett’s rebellion of 1549, Wood has examined the importance of speech and remembrance of the people of Norwich, to demonstrate the way social relations were constructed, managed and negotiated. Wood argues that “For a subordinated group to assert itself as a collective political agent in the present, it is argued, that group must have a sense of its own past. How the past is encoded and recalled, therefore, provides a source of social solidarity and a cornerstone of collective identity”.²⁴⁹ Therefore, Analysing memory allows the historian to examine the

²⁴⁷ Fentress & Wickham, Social Memory (Oxford, 1988) 25.

²⁴⁸ Ibid.

²⁴⁹ A. Wood, The 1549 Rebellions and the Making of Early-modern England (Cambridge, 2007) 214.

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mentalities of early-modern people. This chapter examines the influences which proscribed how memories were constructed and used, informing social and collective identity.

Integral to the construction of early-modern memory was the way people understood the passing of time. How people thought about the past, and the way that time was measured, changed over the course of the early-modern period. R. Hutton's work *The Rise and Fall of Merry England* provides a complete overview of the early-modern calendar before the Reformation. The calendrical year was full of occasions for solemnity or frivolity, most often linked to the religious significance of saints and the story of Christ's life and death (although they were often enjoyed in a secular manner, with ale, dancing, and increasingly, unsanctioned disorder). These occasions were, in themselves, occasions for remembrance of the life of Christ, of the meaning and significance of events in the Bible, and of the lives of saints. They divided the year and acted as marks of the passing of time for early-modern people. Consequently, these events impacted on how people located their memories. Hutton's interpretation of the meaning and frequency of these occasions helps to illustrate the impact of the Reformation, the trauma of which shaped memory and concepts of time throughout the next two hundred years.²⁵⁰

Woolf has concurred with this idea, suggesting that "English men and women in 1500 were only dimly conscious, if at all, of the fact that the people, scenes, buildings and material culture of previous centuries would have looked different from those to which they were accustomed".²⁵¹ Unlike Hutton, Woolf looks more directly at early-modern attitudes to the past and the construction of memory, through the rise and fall of interest in genealogy, antiquarianism and oral culture. Woolf traces the influences that created a sense of the past as separate and distant from the present. The reasons for the change in how the past was perceived were multifaceted. Woolf identifies the dissolution of the monasteries and the Reformation as key in creating a mental division between past and present, together with the assault of literacy on oral culture and the increasing need to acknowledge the positive nature of new technologies. Woolf notes a shift "in the context of memory, in the focus of such beliefs away from the local and parochial, or the mythical and legendary, towards the national and putatively historical, or at least an attempt to integrate popular traditions within the

²⁵⁰ R. Hutton, *The Rise and Fall of Merry England; The Ritual Year 1400-1700* (Oxford, 1994).

²⁵¹ Woolf, *The Social Circulation of the Past*, 220.

chronology of national history”.²⁵² It is important to be mindful of these wider trends when examining individual and collective memories.

Cressy has observed a similar increase in concern for national, secular and political events in his work on the calendar year. Cressy examined the use of bonfires and bell ringing in the early-modern period to reconstruct some aspects of the experience of time and the recollection of the past. Cressy looked at the evolving religious year, from the holy days discarded at the Reformation, through the puritan objections to all celebration during the 1630s and 40s, to the renewal of many such occasions during the Restoration. The terms which divided the legal year and the customary events which marked the passage of time are also examined. Cressy observed the emergence of celebratory occasions linked to national political events, starting with the defeat of the Spanish Armada and the accession day of Elizabeth I, and continuing in the celebration of England’s deliverance from the Gunpowder Plot. Cressy’s work paints a vivid picture of popular participation in these commemorative occasions, rich in evidence from diaries, personal accounts and official records about the purpose, meaning and experience of celebration and commemoration all over the country.²⁵³

Historians have also observed how the conceptualisation of the past influenced notions of identity. R. Tittler has examined the construction of collective identities through analysing early-modern civic portraiture. He argues that in the sixteenth century the destruction of the medieval church, emerging capitalism and the increasing dislocation of society disrupted conventional notions of identity. He has suggested that

Conventions of belief, status and loyalty, of authority and obedience, of making a living and behaving responsibly, all came up for grabs. The consequent search for refashioned identities and redefined roles, whether on the part of the crown or the cobbler, the individual or the institution, emerged as one of the underling cultural and social dynamics of the age.²⁵⁴

The subsequent redefinition of identity was manifested in the foundation and strengthening of local civic institutions such as schools, universities and chartered borough towns. In turn, these

²⁵² Ibid, 314.

²⁵³ D. Cressy, *Bonfires and Bells, National Memory and the Protestant Calendar in Elizabethan and Stuart England* (London, 1989).

²⁵⁴ R. Tittler, *The Face of the City: Civic Portraiture and Civic Identity in Early-modern England* (Manchester, 2002) 96.

institutions sought to legitimise their authority by constructing a series of artefacts and rituals, of which civic portraits were a part. Tittler argued that “Civic portraits served to invoke memories to fit a civic agenda: to remember the past in order to negotiate the challenges of the present and future”.²⁵⁵ The construction of a legitimating collective memory was an important aspect of early-modern civic life, influencing how authority was projected and received.

K. Thomas has also argued that the past acted as a legitimising force, suggesting that “The most common reason for invoking the past was to legitimate the prevailing distribution of power”.²⁵⁶ Thomas acknowledges the ruptures caused by the Reformation and argues that the idealisation of the medieval past was driven by social anxieties. These anxieties encompassed perceived increases in consumerism, litigation, and drunkenness, and a decline in hospitality, honesty, and charity. However, Thomas also observed the continuities between the periods. He suggests that “The cultural and institutional continuity between Tudor England and the medieval past was, of course, too great to permit such a caricature to go unchallenged. The universities retained the scholastic syllabus, just as the lawyers looked to the judgements of their medieval predecessors.”²⁵⁷ Thomas also focused on the multiplicity of notions of the medieval past, and their uses as either legitimating or nostalgic. “There was thus no single perception of the medieval past in early-modern England and no unchallenged custodian of popular memory. Rival myths, developed in the course of political and religious struggle, and shaped by inherited literary convention, competed for popular allegiance”.²⁵⁸

There are several problems that the historian must address when using memory and concepts of time to extrapolate historical fact. One of the greatest problems is that of evidence. The historians mentioned above all use a variety of evidence, such as the financial records of parishes, borough towns and other institutions, alongside diaries, histories, and other elite commentaries. While their works are valuable and insightful, they largely provide the perspective of those creating the records: the literate social elite, and the administrators and leading men of communities. What is missing from these studies is a full insight into the experience of time and memory amongst the majority of the early-modern people. It is arguable that such an insight is impossible to reconstruct, and that the only option is to look at time and the construction of memory from officials and elite view points. Possible ways to remedy this is a problematic issue. This study attempts to gain a different perspective by using

²⁵⁵ Ibid, 138.

²⁵⁶ Thomas, The Perception of the Past, 2.

²⁵⁷ Thomas, The Perception of the Past, 11.

²⁵⁸ Ibid, 23.

the depositions of people testifying to the central Exchequer and Duchy of Lancaster courts, in cases concerning customary law. However, this evidence holds a wealth of problems in itself.

The first hurdle, as discussed in Chapter One, is that to prove the legitimacy of a customary law, evidence of a custom's existence in the past was required. Immediately, we are looking at evidence with a heightened sense of time, and focused necessarily on the past. Second, due to the limited information provided by deponents, their real financial and social status is hard to establish. As discussed in the introduction, the majority of deponents fell into the category of crafts or tradesmen. These peoples' level of wealth or status is impossible to assess without extensive demographic reconstruction. Occupations such as butcher, sailor or tanner, give no clues as to the extent or success of these people's trades. This, combined with the overwhelmingly male majority of the deponents, means that our picture will not be entirely balanced or complete. These limitations must be borne in mind when reaching conclusions. Third, as discussed in Chapter One, the depositions examined were given in unusual circumstances, altering the way in which people selected and presented their memories. Finally, there were significant, but unknown quantities of editing, interpretation, formalisation and mistakes made by scribes. The intention of this study is not to argue that this evidence holds more weight, accuracy, or importance than that of previous studies. Instead, through the examination of the depositions, keeping their faults and limitations in mind, this thesis aims to present a new perspective. This is achieved by examining the division of time and the construction of memory in early-modern England from a more vernacular perspective, a history from within.²⁵⁹

In this chapter I argue that early-modern people constructed a store of memories about their 'country', which was shared in order to regulate customary law, moral behaviour and to construct a collective identity. As Wood has observed

Common localities and primary interaction had a special resonance for the early-modern period. Contemporaries were well aware of how accents and dialects defined 'countries' and neighbourhoods and hence how speech patterns represented the conjunction between social identity and local belonging.²⁶⁰

²⁵⁹ As suggested by Gaskill, *Crime and Mentalities*, 4.

²⁶⁰ Wood, *The 1549 Rebellions*, 135.

To achieve this I examine the way in which deponents in the Exchequer and Duchy of Lancaster courts constructed, organised and deployed memory. Memory was utilised in several ways. Important events within a community were used to mark out periods of time which were used, not just to recall the consequences, but also as a way of measuring time in common. The ways in which memory was constructed by the deponents from their relatives, their places of employment and their homes is examined. I also consider the word 'ancient', in terms of its meaning and consequence to early-modern people. Forgetting must also be considered as an aspect of memory. I consider how women were involved in this social memory and whether it was exclusively a male preserve.

Memory

First, I wish to address what it was that early-modern people remembered when deposing to the Exchequer court. Fentress and Wickham have argued that

we can separate memories only mentally ... a condition of knowing anything at all through our memory is that memory remains connected. Remembering often entails travelling back along a chain of memories; if the chain were to be shattered, and all the links held separately, we should no longer be able to remember at all.²⁶¹

This is certainly the case with the early-modern recollection of customary law. When questioned, each deponent presented their knowledge of a custom within a detailed context to prove the legitimacy of their knowledge and to prove that the custom had existed 'time out of mind of man'. These memories were anchored in people's minds, by being related to interesting and unusual stories about their community. For example, in Maldon in 1625, deponents were questioned about whether sailors were allowed to land goods at Heybridge, rather than Maldon. The dispute between the Corporation of Maldon and Francis Steele was not just about landing charges. Bridge repairs, maintenance of the haven, road building and rents were all used as evidence to establish whether the Maldon Corporation could exercise authority over the Manor of Heybridge and its resources. Several deponents presented their

²⁶¹ Fentress & Wickham, *Social Memory*, 6.

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memories of an unusual occurrence in the estuary to prove that the estuary was outside of the jurisdiction of the Maldon Corporation. Christopher Steele, a yeoman, deposed that

The kiddles set standinge that side of the water adjoining to heybridge hall grounds doe belonge to the mannor of Heybridge Hall and that about three years past there was certayne porposes which were taken up by mr freshwaters appointment in the said kiddles and by him enjoyed.²⁶²

The story was used by two other deponents: Humfrey Palmey, a cordwainer, and John Freshwater, a gentleman. The story varies in each deponents' testimony. Freshwater and Palmey both recall the porpoises being caught a year before Steele's estimate. However, the point of the story is the same. The Residents of Heybridge remembered their customary right over the riverbed through their experience of life in Heybridge. Seeing the porpoises caught in the kiddles must have been a novelty for all who observed their capture, and for all those who heard about the banquet at which they were enjoyed. The porpoises were more than a mere spectacle. The event helped the men of the community to think about, and to remember collectively, the customs which governed their environment. By recalling the event in common they underlined and legitimised the jurisdiction of Heybridge Hall Manor over the estuary and the estuary bed.

Other depositions in the same case refer to unusual events with much more serious consequences. Robert Pemiicocke recalled that, sixty years ago "a breeche was made by the violence of the sea through a creak in the grounds of the deane and chapter of Pawles on heybridge side which was a great hinderance and stoppage upon the anncient channell and waters floweninge up by the heethe to heybridge". Pemiicocke also remembered that "there was one whose name was called John Cooke drowned at the amending of the said breach and that mr Josuah of Maldon was the principall overseer of the same worke".²⁶³ Pemiicocke establishes, through a narrative of memory, that a Maldon man was in charge of repairing sea damage on the Heybridge side of the river. The event of John Cooke's death acted as a context, proving Pemiicocke's knowledge of the customs of the river banks. It also acted as a mental signpost, helping Pemiicocke and the other men working on the river bank to forge a

²⁶² T.N.A., E134/22Jas1/East7. Kiddles were an arrangement of stakes and nets used to catch fish in as the tide recedes. Oxford English Dictionary Online (<http://dictionary.oed.com/cgi/entry/50126517?>) Accessed 15/04/08.

²⁶³ T.N.A., E134/22Jas1/East7.

chain linking the vivid memories of a tragic accident with the legitimate jurisdiction over the river.

These events served as markers in the collective memories of both communities. Consequently, the reality of the incidents became of secondary importance in the minds of those recalling them. Henry Tyll, a tailor, also recalled that “at the tyme of the worke donne there was a man drowned and that theis said workes were made to cleare the channell for the better passinge of maldon boates from heybridge which made by maldon heethe to carry to london”. John Spareman, a fisherman of Maldon, remembers the breach “by the violence of the sea”, but does not mention the drowned man.²⁶⁴ These accounts differ significantly. Robert recalls the event as being 60 years ago, and John 50 years. Robert recalls the drowned man’s name, while John Spareman does not mention the death. Fentress and Wickham have argued that,

images can be transmitted socially only if they are conventionalised and simplified: conventionalised, because the image has to be meaningful for an entire group; simplified because in order to be generally meaningful and capable of transmission the complexity of the image must be reduced as far as possible.²⁶⁵

Therefore, fixing on a commonly known occurrence could produce a signpost for collective recollection of rights, but the accuracy of where the incident was placed in time, and the details of what occurred, was compromised. Wood has suggested that,

In reality, it hardly matters that such historical knowledge can *sometimes* be flawed, or romanticized. What is significant about these ideas is that they can enable people to contextualize their political experiences, to read the present through the shifting prism of the past, to seek to learn the lessons of history in order to shape the world anew.²⁶⁶

²⁶⁴ Ibid.

²⁶⁵ Fentress & Wickham, *Social Memory*, 48.

²⁶⁶ Wood, ‘The Place of Custom in Plebeian Political Culture’ 59.

Arguably, this meant that memories of custom became less an accurate expression of personal experience, and more a justification of a collective interest.

Tittler has argued that one of the strongest and most traumatic influences on English cultural life in the early-modern period was

the extraordinary and substantial destruction of a thousand years of popular belief, institutional foundation, and visual culture fostered by and for the medieval churchwith them, albeit gradually and incompletely, went many of the attitudes, assumptions, behavioural norms and conventions, civic values and collective memories which had been part and parcel of the old faith²⁶⁷

Therefore, it is unsurprising that the dissolution of the monasteries and the wider Reformation were often used as reference points in time by the Exchequer court deponents. There are several reasons for this. The most obvious is that the dissolution dispossessed some of the largest landowners in the country, and its effects reverberated through towns and parishes all over Essex. The displacement of monastic resources into private hands divided lands, tithes, and customary entitlements, which had previously seemingly existed ‘time out of mind of man’.

The trauma of this dislocation can be seen in the records examined. In Barking in 1573 a conflict arose over the office of the Riding Bailiff, and his authority to allocate wood to local inhabitants. The office of riding Bailiff had existed prior to the dissolution. Thomas Leasome, an 80 year-old labourer, deposed that “he knewe one Moosse above [th]irrtie yeares past ridinge baylif to the abbesse of Barking and after him one Raphe trasce in the said Abbey time and longe time sence and after him one costens”.²⁶⁸ Here, time was demarcated by what was the ‘abbey time’, and what was not. The dissolution of the abbey had consequences outside the lives of the nuns who lived within abbey walls. Whole systems of land management were thrown into disorder, the office of the Riding Bailiff being just one example. Leasome continued to testify that,

immediatley after the dissolucion of the Abbey of Barking he herde the said Raphe Traisie then ridinge bailiff say unto one John Harrison and Thomas

²⁶⁷ Tittler, *The Face of the City*, 97.

²⁶⁸ T.N.A., E134/14&15Eliz/Mich4.

Clasock then woodwards ... nowe ther are no more officers but we three lefte and therefore let one of us hould with another. but what he ment by those wordes this deponent knoweth not.²⁶⁹

The bailiff and his officers are remembered by Leasome as having acknowledged their compromised position. The suggestion that they stick together implies that their position and authority was threatened by the removal of the Abbess. Although Leasome claimed not to know the meaning of the conversation, it was recalled thirty-two years later, indicating that the seriousness of the situation was deeply impressed on his mind.

In the same case, John Morrell, a sixty-seven year-old husbandman, also referred to the Abbess when recalling his knowledge of the customary wood. He testified that the “riding bailif was wont yerly to have allowed unto him for fee wood four loads of wood by the woodwardes of the late abbess of barking with a yerely fee of xxvs viijd”.²⁷⁰ He recalled that “Raphe Trasie was riding baylif of the manor of Barking at the time of the dissolucion of the abbie ther”.²⁷¹ He also recalled that “one fanders beinge riding bayliff for the time since the dissolucion of the abbie of Barking felled certaine woods in a lane near Bushewell and when it was felled my lady Norwiche ther livinge sent this deponent and other of hir s[er]vants with two said carts and brought it home unto porters my ladies owne howese”.²⁷² John Morrell’s deposition concerning the riding bailiffs organised time in relation to the dissolution. Thomas has argued that “The dramatic rupture with the medieval past occasioned by the Reformation created a sense of separateness and of an unbridgeable divide”.²⁷³ The effect of the dissolution of the monasteries in Essex was profound, not only in re-structuring customary practice, but also in influencing how people divided time.

The collective nature of this understanding of time as being divided by the events of the dissolution is articulated in several of the cases. In Colchester in 1594, Francis Baker, a twenty-four year-old clothier, could not remember the dissolution himself, but assured the court that

²⁶⁹ Ibid.

²⁷⁰ Ibid.

²⁷¹ T.N.A., E134/14&15Eliz/Mich4.

²⁷² Ibid.

²⁷³ Thomas, *The Perception of the Past*, 9.

he hath crediblie hearde that the occupiers of the said vij closes of lande pasture and meadowes since the dissolution of the Abbie of colchester have answered and paide to the late kinge henrie the viij kinge edwerde vj Quene Marie and to o[ur] soveraigne ladie the quenes mageste ... [and that he]hath hearde that the rente of xxxs hath bene paide to the late abbot of Colchester and his p[re]decessors before the dissolution of the ... same abbie.²⁷⁴

Francis Baker drew on the collective memory of his ‘country’ to inform his deposition. This collective memory allowed Baker to provide information about customary rents collected before his birth. Baker’s testimony also shows that the collective memories he had access to in Colchester provided a sense of time divided by the dissolution. Baker legitimated his knowledge with the phrase ‘credibly heard’, informing the reader that this knowledge was obtained through legitimate customary channels (i.e. the reporting of old men and family members, as discussed in the Chapter One).

Further evidence is provided by a case in 1597 in Barking between John Seves, and Richard Wignall. The dispute concerned whether the farm of Westbury was liable for tithing. The issue rested on establishing whether Westbury had been part of the Abbey of Barking before the dissolution. In this case, five deponents deposed that they knew the abbey before the ‘suppression’ and were able to recall the name of the Abbess (Dorothy).²⁷⁵ In this case the deponents all reported from their own memories, based on their personal experiences. In Coggeshall, in 1690, when trying to establish whether land known as Monkes Down had really belonged to the Abbey, five deponents all reported that “monksdownes have always bin reputed abbey lands”.²⁷⁶ This demonstrates the working of collective memory. Nearly a hundred years after the Westbury case, a similar dispute in Coggeshall prompted deponents to draw on a collective memory established long before they were born. First, it is worth noting that the fragmentation and confusion caused by the dissolution was still an issue debated at law nearly 150 years afterwards. Second, deponents in Coggeshall in 1690 presented a similar understanding of the past of their community to those in Barking in 1573 and in Colchester in

²⁷⁴ T.N.A., E134/36Eliz/Hil12.

²⁷⁵ T.N.A., E134/39Eliz/East25. The deponents were William Huttlock a sixty-eight year-old husbandman, Thomas Waington an eighty year-old labourer, John Robinson an eighty year-old yeoman, John Parke a seventy year-old yeoman, John Burr a seventy year-old gentleman.

²⁷⁶ T.N.A., E134/1&2W&M/Hil8. The deponents were, Thomas Norfolk a seventy year-old gardener, Thomas Cowell an eighty-six year-old weaver, Edward Taylor a seventy-five year-old weaver, Ralphe Royce a seventy year-old weaver and George Niccolls a seventy-one year-old.

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1594. Therefore, although the dissolution caused major disruption to land holding and the customary regulation of resources, problems were addressed in a consistent manner over the following one hundred years at three locations in Essex, by applying personal knowledge and then collective memory to retain the information gained by a previous generation.

Later in the early-modern period, traumatic events were still referred to in customary disputes. In 1692 in Colchester, Edmund Hickingill sued Philip Stoners and George Rushdraft for avoiding payments to All Saints parish. The defendants claimed that Sheepshead field and the Castle Bailey had, by custom, been exempt from tithes. The easiest way of distinguishing whether the lands were within All Saints parish was to ask those who participated in the official perambulation. The ‘beating of the bounds’ was undertaken by parishioners to maintain the memory of where the boundary lay. Samuella Jenner, a seventy year-old weaver, of Colchester, deposed his knowledge of the parish boundaries. Jenner recalled how long he had participated in the perambulations of All Saints parish boundaries, to prove the legitimacy of the custom ‘time out of mind of man’. Jenner dates his involvement in the perambulation by reference to a significant local event, deposing that “ever since a year of the sicknesse in the towne he has p[er]ambulated the bounds of the p[ar]ish and then they went through the shapersherd feild and took it into the bounds”.²⁷⁷

Jenner gives no numeric date, but assumes that others will recall the year of sickness in Colchester. This is evidence of Jenner prompting a collective memory specific to Colchester. I. G. Doolittle has observed that Colchester suffered extreme losses from the plague in 1631 and 1644, but suffered for an entire year in 1665-6. “An entry in the All Saints Parish Register states that 4,526 people died from the plague between 8th September 1665 and 21st December 1666”.²⁷⁸ Jenner’s reference to the year of plague in Colchester served to locate his long involvement with the parish perambulations in time, but also identified him as a man privy to the framework of collective memory which existed in the town. In his travel writings, Daniel Defoe noted the scale of losses in the town. He noted “They bury’d upwards of 5259 people in the plague year, 1665”.²⁷⁹ In these cases, deponents located their experiences in time by recalling events which disturbed the pattern of normal life in their communities. Unusual or traumatic events were used to anchor information about custom, and etch that information into the consciousness of deponents, with the shock of mortality.

²⁷⁷ T.N.A., E134/4W&M/Mich5.

²⁷⁸ I. G. Doolittle, ‘The Plague in Colchester 1579-1666’, *Essex Archaeology and History*, 14 (1972), 138.

²⁷⁹ D. Defoe, *A Tour*, 12.

In Colchester in 1693, a dispute prompted several deponents to refer to the siege of Colchester. The case sought to establish whether the Castle Bailey lay in the jurisdiction of the Colchester Corporation or the manor of Donyland. An eighty year-old weaver, John Shelly, remembered that Colchester Castle was the county jail during the Siege of Colchester, and he recalled that he lived in the Castle and acted as keeper of the jail during the siege.²⁸⁰ In 1648, Colchester endured an 11 week siege. The Parliamentarians finally took the town and executed Sir Charles Lucas and Sir George Lisle, the Royalist leaders, outside the Castle. Although the conflict ended, the town had been devastated. In her article on the siege, B. Donagan summarises the impact on the town:

God's arrows of sword, famine, pestilence and fire were all present, starvation threatened, and after eleven weeks there was not a cat or a dog left inside the walls and very few horses; grain was scarce and polluted, and the inhabitants ate starch and candles. Water pipes were cut, and the remaining water supply was muddy or fouled by dead horses. Both sides fought with fire, razing houses that seemed to offer advantage to the enemy.²⁸¹

Memories of this traumatic time were used by the people of Colchester to locate, in time, their experience of custom. Edward Eastlander, a sixty-eight year-old currier, recalled the siege of Colchester. Eastlander remembered that he lived in the Castle before the siege, forty-five years before he gave his deposition. John Rich, a seventy-five year-old weaver, deposed that he knew the castle had been a jail, but had not lived in the castle in 1648 when the siege happened.²⁸² These deponents used the siege of Colchester as a collective reference point in time, which they knew their peers would have recalled.

In the early eighteenth century, Defoe wrote about his visit to Colchester, and reported that "It still mourns in the ruins of a civil war: during which, or rather after the heat of the war was over, it suffer'd a severe siege ... the battered walls, the breaches in the turrets, and the ruin'd churches still remain".²⁸³ Over seventy years had passed, and the physical scars left by the siege were still obvious, even to outsiders. It is clear, therefore, that traumatic events were

²⁸⁰ T.N.A., E134/4&5W&M/Hil10.

²⁸¹ B. Donagan, 'Myth, Memory and Martyrdom: Colchester 1648', *Essex Archaeology and History*, 34 (2004) 173.

²⁸² T.N.A., E134/4&5W&M/Hil10.

²⁸³ Defoe, *A Tour*, 11-12.

an important tool in both the recollection of customary law and subsequently the way inhabitants identified themselves within their locality or ‘country’. Donagan observes the popular traditions which rose from the horror of the siege from contemporary commentaries. They led her to conclude that “The summer and autumn of 1648 were a time of uncertainty and anxiety. There was widespread sense that society was on the edge of chaos ... The literature of Colchester both reflected and contributed to this febrile atmosphere, and continued to shape memory for centuries”.²⁸⁴

Deponents also remembered legal conflicts in their communities. Custom was often spoken about in terms of its continual practice time out of mind of man. The common agreement of the community that a custom had always been practiced was key to a custom’s legitimacy in the eyes of the law. Therefore, an important part of a communities’ memory included the occasions when custom was interrupted or disputed. For example, in 1611 in Maldon, the Corporation sued Robert Sprignell for refusing to pay the land cheap tax on properties he had purchased. This refusal to pay taxes can be seen as a deliberate attempt to undermine the authority of the Corporation, providing an opportunity to challenge the Corporation’s fulfilment of their customary responsibilities within the town. In the interrogatories, deponents were asked whether they thought the tax was necessary. Several deponents answered that the land cheap tax was needed as the haven and wharfs were in a state of decay and only small ships could land at Maldon, inhibiting trade in the town. The maintenance of the haven and wharfs were the responsibility of the Corporation. Thomas Cheese, a Scrivener, deposed that “he remember[eth] one vessell called an hoy to arryve at the s[ai]d heeth wh[i]ch was thought to be of 100 tonnes”.²⁸⁵ Cheese pointed out that such a ship would become stuck in the silt if it had attempted to dock at Maldon in 1611. Cheese’s recollection was meant to be a criticism of the Corporation, implying that their duties to maintain the town had been neglected. W.J. Petchy has observed that Maldon in the late sixteenth and early seventeenth centuries had been “struck down by successive epidemics, suffering a declining trade, crippled by social divisions and broken corporate authority, there was also the spectre of ‘the decay of the haven’”.²⁸⁶ Cheese’s memory served to record a sense of the town’s identity as an economic power fallen on hard times and in need of contribution to regain its former standing.

²⁸⁴ Donagan, ‘Myth, Memory and Martyrdom’, 176.

²⁸⁵ T.N.A., E134/9Jas1/Mich38.

²⁸⁶ Petchy, A Prospect of Maldon 1500-1689, 14.

In 1625, a case between the Corporation of Maldon and Francis Steele came to the Exchequer court. The dispute was a continuation of the hostilities between the Maldon Corporation and the merchants and sailors. Heybridge was disputed land, on the border of the Corporation's jurisdiction. Sailors, eager to avoid rising landing charges preferred to land their goods at Heybridge. This infuriated the Corporation, who required funds in order to maintain roads, bridges and their own wharfs. Jepha Kinge, a sixty year- old yeoman, recalled that the money troubles of the Corporation had been exacerbated by the threat of war in 1588. He reported that in Elizabeth's reign "the town of maldon did contribute with the towne of colchester for the setting forth of a shippe for her maj[esties] service" further stretching their resources. Kinge revealed that "he hath heard the Corporation of maldon were forced to morgage their towne lands for a repairing of the said bridge called fullbridge".²⁸⁷ The 1620s proved to be a time of economic hardship for towns in Essex, with the collapse of the European cloth market and the rises in the price of grain. Kinge linked his memories of the economic pressures of 1588 with the current struggle of the Corporation to keep up repairs in the town in the face of economic crisis, and a population determined to avoid customary landing charges. Kinge drew on his past experience of the Corporation's economic responsibilities in order to understand the present need for customary landing charges.

These tensions continued throughout the early-modern period, and members of the Corporation used their memories to assert the continuity of its authority. This gave the opportunity for the Corporation's opponents to recall instances when the Corporation broke with custom or allowed its circumvention through neglect. During the 1625 case, only one deponent specifically reported previous legal action disturbing the continuity of custom in the town. William Hewes, a sixty-four year-old sailor, recalled that fifty years previously, his master "the s[ai]d mr wiseman was in suite with the towne of maldon for duties they demanded for wood there laden {at Heybridge} but he heard his m[ast]er saye he never paide any".²⁸⁸ In 1631 the cases continued with the Corporation suing Richard Raven for avoiding wharf charges and unloading his goods at Heybridge. The memory of legal disputes was just as strong as the memory of whom the customs rightfully belonged to. John Freshwater, a gentleman of Heybridge, recalled that "the towne of maldon did sue this d[e]p[on]ents father for wharffage or for customes or for customes for the same and after lett their accion fall as he

²⁸⁷ T.N.A., E134/22Jas1/East7.

²⁸⁸ Ibid.

remembereth”.²⁸⁹ D. Woolf has suggested that “memory was often exploited in legal disputes less to establish a positive fact such as a precise date at which an event occurred than as a kind of negative resource”.²⁹⁰ So, citing the many cases where the customary charges were ignored, disputed or brought to trial at law, allowed the residents of Heybridge, such as John Freshwater, to prove that the Maldon Corporations rights had expired through neglect and that a new custom had emerged allowing the landing of goods at Heybridge. Thus, the recollection of previous legal actions was an important part of trying customary cases.

Deponents often referred to the reigns of monarchs when dating their memories. However, rather than using them to precisely date their memories, these dates were used to give general context to specifically local information. For example, in 1558, John Oake alias Sparke of Barking sued Anne Hultoste over a tenement in Barking which she was about to inherit from her deceased husband. The plaintiff, as part of his argument, traced the properties’ history back to its transfer into royal possession “by the statute of the dissolution of monasteries came unto the late king of famous memory Kinge henry the eight”.²⁹¹ The possession of the land by the King was timed by the introduction of legal statute. However, the qualifying term used was not the memory of the specific monarch, but of the dissolution of the monasteries. In this case, Henry VIII provided a stepping stone, an additional link to the past event which establishes the time frame constructed in the bill. Maurice Halbwach observed that “In reality, the continuous development of the collective memory is marked not, as is history, by clearly etched demarcations but only by irregular and uncertain boundaries”.²⁹²

Another example occurred in 1686, when the rector of East Mersea sued John Brever for unpaid tithes. Thomas Nicholson, a forty-four year-old wool comber, deposed that “soon after the time of the late king charles the seconds restouracion this deponnt was tythgatherer to one Mr Edwards that was then rector”.²⁹³ Here, Thomas Nicholson recalls his knowledge and experience of tithing by linking it to the restoration of James II, an event of national interest. This description set the wider context for the very localised event of tithe collection. It is possible that rather than the restoration itself, Nicholson may have been recalling the effect the restoration had on his local community. Religious changes restricting puritan activity and

²⁸⁹ T.N.A., E134/6&7Chas1/Hil9. Other deponents who observed the contravening of the custom included William Sydney, a seventy year-old Yeoman, Adam Johnson, a forty year-old Sailor, John Eastwood a fifty year-old gardener,

²⁹⁰ Woolf, *The Social Circulation of the Past*, 276.

²⁹¹ T.N.A., E112/14/15.

²⁹² Halbwachs, *The Collective Memory*, 82.

²⁹³ T.N.A., E134/1Jas2/Mich16.

displacing many clergy may have been remembered more vividly than the arrival of the king himself.

In both cases it can be argued that the way in which these memories were linked to monarchical rule was not a matter of precise timing, nor was it to do with national politics. The dissolution of the monasteries, although enacted nationally in statute, was unevenly implemented, causing the transfer of land to vary across the country. Although Charles II's footfall on English land supposedly restored him to the throne, the exact timing of this may have been unknown to the residents of Mersea Island. Furthermore, he was not crowned until nearly a year later in 1661. The controversial religious changes which Charles approved sent shockwaves through the localities in a similar, fragmentary way to the dissolution. This enforced a sense of these memories as being primarily local and vernacular. Although these memories refer to specific events which are significant enough to have their dates recorded in the history books, deponents utilised the occurrence of the event in their 'country' to date their memories. This indicates that events of national importance were used as markers in time, but were understood and articulated through a local vernacular which tapped into social memory.

In conclusion, monarchs' reigns were used to demarcate time. Memories of kings and queens were used to create a context for local knowledge. In some cases, specific politically charged events were used as markers of time. In other cases the reign, or 'time of', were cited as a vague indicator of time. In any case, monarchs were only cited in order to underline or legitimate knowledge of local occurrences, local disputes, hierarchies, inheritances and events. Knowledge of the past was valued in relation to customary law, and proof of the 'ancient' origins of testimonies was desirable. Therefore, the lofty movements of the monarchy were referred to, but only in order to contextualize and 'historicize' the goings on of the locality or the 'country'. In Maldon, Barking, Coggeshall, Colchester and Heybridge, inhabitants used recollections of unusual or traumatic events to remember customary rules and to prove the legitimacy of their cases in customary law (by proving their use in the past). These memories were often of extraordinary events which affected the community at large. Floods and devastating sicknesses threatened lives, causing the customs attached to those places to be remembered with a strength that fear and loss can imprint on the memory. The single most cited event among the cases was the dissolution of the monasteries. Although it came at different moments for each town, the effect was similar. The trouble caused was not merely an issue of fragmented land. That land had rights attached to it which affected the subsistence of the people of each town, parish, manor and abbey. Each place had officers to

regulate tithes and wood resources, whose positions were also thrown into uncertainty. Land changing hands was not a simple process. Generations of experiences, knowledge and custom were fragmented alongside the Abbey lands. Authority was undermined, rights were disjointed and unregulated, and the fall-out echoed through the records for at least three generations. As a result, the quantity of references to the dissolution, and the division of memories into ‘before’ and ‘after’ the suppression is hardly surprising.

Construction of Memory

In Connerton’s analysis of collective memory, he observes that “groups provide individuals with frameworks within which their memories are localised and memories are localised by a kind of mapping. We situate what we recollect within mental spaces provided by the group”.²⁹⁴ As has been shown, in the early-modern period, memory was used to validate and propagate customary rules. Evidence of a network of collective frameworks which aided the recollection of custom has also been seen. Where these networks were forged is key to understanding early-modern mentalities of identity and belonging. Hindle has examined the importance of the parish community in forming notions of identity. Hindle argues that throughout the early-modern period the sense of community within the parish became stronger, consolidating the divide between the ‘chief inhabitants’ and the transient poor, who were increasingly excluded from the community. Hindle argues that custom was also subject to this increasing exclusivity with the result that customary knowledge was monopolised and re-created by the parish elite.

The parish was *the* locale in which community was constructed and reproduced, perhaps even consecrated ... The parish was *the* arena in which structure, ritual and agency combined to create and maintain (and perhaps even to challenge) a highly localised sense of belonging.²⁹⁵

While it is clear that the parish was a highly significant and central part of the mental framework of early-modern people, the evidence from Essex, in regards to custom, presents a

²⁹⁴ Connerton, *How Societies Remember*, 37.

²⁹⁵ S. Hindle, ‘A Sense of Place? Becoming and Belonging in the Rural Parish, 1550-1650’, in A. Shepard & P. Withington, *Communities in Early-modern England* (Manchester, 2000) 96.

much more complex situation. The Exchequer court cases which often (but not exclusively) investigated parish disputes over tithes, boundaries, and resources, reveal that other factors figured strongly in the mental landscape of the deponents.

N. Whyte's incisive work on custom and the Norfolk landscape has pinpointed the deep complexities of the early-modern construction of custom. Whyte argues that "Life histories were intricately entwined, indeed inseparable from, the knowledge of physical boundaries and underlying organisational structures".²⁹⁶ Furthering Hindle's case for the centrality of the parish in early-modern constructions of custom, Whyte examines how early-modern people used their everyday environment to create a structure of mental landmarks, infusing it "with layers of spiritual, social and cultural meaning".²⁹⁷ While acknowledging the continued presence and significance of the parish in the mental world of early-modern people, this thesis delves further, to establish the more specific mental spaces in which custom was remembered, transferred and legitimised.

When deposing to the Exchequer court, deponents commonly cited one of three spaces in which their memories were constructed and localised. These mental spaces were the realms in which customary information was readily available from legitimate sources, and were spaces where custom had been repeatedly practiced and shared with others. Therefore, these spaces became part of the identity of those involved in practicing, remembering and communicating custom. The first mental space is that of the work place, encompassing the relationships between workers, masters and servants and the physical enactment of tasks. The depositions of John Morrel of Barking, William Hewes of Maldon, and John Shelly of Colchester have already been examined, who all referred to their work in order to construct a narrative of memory around their customary knowledge.

In Coggeshall in 1689, during a case between Henry Abbott and Thomas Cudmore who were disputing the right to take tithes from a property called Monksdowne, William Raner, a tenant farmer, reported that

this deponant lived with one mr book the owner thereof as a servant sixty years ago and hath divers yeares since reap and mowed upon the said farme and lands

²⁹⁶ N. Whyte, 'Landscape, Memory and Custom: Parish Identities c.1550-1700', *Social History*, 32, 2 (2007) 174.

²⁹⁷ N. Whyte, *Inhabiting the Landscape: Place, Custom and Memory, 1500-1800* (Oxford, 2009) 20.

called monk downes in harvest time and never heard any demanded for the same [tithes].²⁹⁸

Raner emphasised his participation in reaping and mowing the land. His knowledge came from his position in employment and his continual physical exertion over the land, which in turn disproved Thomas Cudmore's claims to take tithes. Raner's continual involvement with the land dislodged any claim Cudmore could have made of his tithes having been continually enforced. Whyte has found that in Exchequer depositions taken in Norfolk "It was through the practical knowledge of the landscape, through the memory of the past and the ongoing physical experience of living and working in a particular place that people defined their social and economic identities".²⁹⁹ While Raner's testimony clearly concerned parish business, his knowledge of the custom came, partly through his life within the parish, but primarily through his employment and experience of the land he worked. Similarly, John Shelly, who was keeper of Colchester's prison during the siege in 1648, learnt which parish Donyland fell into because "one john Hitchin dying in the goale who left a wife and child both the wife and child were sent to the parish of East Donyland and there provided for by the parish".³⁰⁰ It is arguable that while the parish features heavily in customary disputes, to regard the parish as the only way in which people learned about their environments, and about themselves, is to obscure the complex reality.

People gained knowledge of their surroundings and the rules governing them by going about their daily business, and through familiarity with the common practices which were exercised every day. The continual nature of employment (be it yearly or daily tasks) meant that everyday actions became practices or customs which became rules and norms, through the continual repetition and observation of the people that worked in customary environments. In 1697, Matthew Rosie, a thirty year-old husbandman, deposed in a case of disputed tithes between Joseph Wilkins, a rector, and Thomas Browne of Great Coggeshall. Rosie deposed that "about four yeares agoe he this d[e]p[onen]t was employed by the plaintiff browne to cutt and rowse up fyfty two staff of tazle".³⁰¹ Matthew's knowledge of the Rector's rights over tithes came from his physical enactment of those rights in cutting the wood.

²⁹⁸ T.N.A., E134/1&2W&M/Hil8.

²⁹⁹ Whyte, *Inhabiting the Landscape*, 7.

³⁰⁰ T.N.A., E134/4&5W&M/Hil10.

³⁰¹ *Ibid.*

In 1611, John Peacock, a sailor, deposed his knowledge of the estuary and hythe at Maldon. Peacock pointed out that the Corporation were entitled to tax the inhabitants of Maldon, as long as they upheld their duties of maintaining the town. Peacock called into question whether the Corporation had adhered to their customary obligations, arguing that

for his p[ar]te with divers other poore men, within the s[ai]d borroughe have paid to divers rates made towards repaying of the s[ai]d haven which haven not withstanding is at this p[re]sent so much decayed as hee hath within his memory knowne a shipp of a hundred tonne to arryne at the s[ai]d haven and now a shipp of thirtee tunne is as much as cn fleete in the s[ai]d haven.³⁰²

There are two points to be made regarding this testimony. First, John localised his memory of Maldon's past greatness by referring the size of ship which was able to dock at the Hythe. This demonstrated his professional understanding of the Hythe area, while his long term residence provided the knowledge he needed to weigh up Maldon's success as a town and the Corporation's effectiveness in distributing customary charges in order to repair the town. Second, John's understanding of customary rules was one of responsibility as well as right. He agreed that the Corporation had the right to implement customary charges, but that by not fulfilling their responsibilities customary rights could be rendered illegitimate.

Women also used knowledge of their work to contextualize their memories of custom. Katherine Audley, was sued over her refusal to pay tithes on her late husband's property. William Wells, parson of the rectory of East Mersea, requiring four pounds a year to pay to the king, sued the widow for non-payment of tithes on 100 acres of land and 100 acres of salt marsh. In answer to Wells' accusations, Katherine Audley testified that,

Neither shee during all the time which she hath held or main[tai]ned the s[ai]d premises or any parte thereof ... did at anie Tyme or tymes by or with the consent privitie or appoyntient of this d[e]f[endan]t paie or cause to be paid anie tyth.³⁰³

³⁰² T.N.A., E134/9Jas1/Mich38.

³⁰³ T.N.A., E112/14/147.

Audley took up the defence of her exemption from tithes by referring to her experience as the manager of her late husband's estate. She disproved the custom by demonstrating that it had not been practiced continuously. Audley defended her exemption from tithes in the same way as male deponents, by citing the actions of her predecessor. In this case, Audley cited her late husband's actions, explaining that "before her tyme duringe all the tyme of her intrmarriage with Thomas Audley Esq. her husbände deceased neither hee nor anie other clayminge by from or under him (to this d[e]f[enden]ts knowledge did ever paye anie tyth)".³⁰⁴ Audley had built up a working understanding of the customs which applied to her husband's land during his life time, and through her own responsibilities since his death, which enabled her to effectively defend those rights in court and to maintain customary practice for future generations. While women made up a small minority of deponents, their testimonies were similar to their male counterparts in their reference to their memories and experiences of custom.

It was not just elite women who testified. In 1696, the seventy year-old widow Mary Cardy was a servant of John Stonne and could, therefore, testify about his financial situation before he died. She stated that "she did know John Stonne in the int[errogatory] and did hear him say on his death bed ... that he would be buryed like a poor man".³⁰⁵ Mary's knowledge had been constructed in the same way as male deponents. At her place of work, Mary picked up on information provided by speech in the household. She took notice of the information significant to custom (in this case that governing inheritance), and recorded it in her memory. In 1694, Ann Battles, a thirty year-old spinster who lived in Colchester, used an object to help her recall the death of James Norfolke. She testified that "James Norfolke dyed sometime in the yeare 1680 which she the better rememberth by the date of a burying ring which she had at his funerall".³⁰⁶ Connerton argues that memory forms in three separate ways: within the semantic code; the visual code; and the verbal code. Thus "the visual code is the third dimension; concrete images are much better retained than abstract items because such concrete items undergo a double encoding in terms of visual coding as well as verbal expression".³⁰⁷ Battle's recollection of James Norfolke's death was doubly enforced by her association of the

³⁰⁴ Ibid.

³⁰⁵ T.N.A., E134/6W&M/Mich20.

³⁰⁶ T.N.A., E134/4&5W&M/Hil10.

³⁰⁷ Connerton, How Societies Remember, 27.

event of his death and funeral with the ring she was given (which may have been engraved with his name and year of death).³⁰⁸

An important example of female testimony, and another example of customary interaction between the sexes occurred in 1687 in Maldon. A bitter dispute had arisen between the Vicar of Heybridge and John Haywood, a farmer. The argument was about tithe payments and had escalated from tension to outright hostility. Although the majority of deponents were men, five women were called to testify and deposed in greater detail than their male counterparts. Elizabeth Gallant, a thirty year-old widow from Heybridge, reported in very specific detail her involvement in milking the defendant's cows and carrying the tithe milk to the complainants house. She recalled the years and months in which tithe milk was either accepted or refused by the complainant. The third tithe in May 1682, which Gallant delivered

was offered att the c[o]mpl[ainen]ts house to one of his family who refused to take itt and that thereupon the same was carryed and flunge in the church porch by the d[e]fendant himselfe who was then p[re]sent.³⁰⁹

Elizabeth Gallant was an exceptional witness, as her presence at the outburst of the defendant over-rid the fact that she was female. It could also be argued that her specialist knowledge of milking, which was considered part of the female sphere, made her presence necessary in the court. However, Gallant also testified regarding the validity of the vicar's right to tithe. She stated "hee is lawfully and rightly instituted thereunto and of right ought to have and receive the small and minute tithes as former vicars have done".³¹⁰ This demonstrates that the legitimisation of custom was not only done by men. This is supported by the findings of Shepard, who observed that in Norfolk in 1633, in a dispute about cheese tithing, over half of the deponents called were women. Shepard argues that

This case is exceptional, and primarily attributable to women's responsibility for dairying in early-modern England, but it does suggest that women could be

³⁰⁸ For further discussion of funeral regalia see, C. Gittings, Death, Burial and the Individual in Early-modern England (Routledge, 1988).

³⁰⁹ T.N.A., E1342Jas2/Mich11.

³¹⁰ Ibid.

instrumental both in the determination of customary duties and rights through their own practices and in preserving their memory.³¹¹

Elizabeth Gallant was not the only female involved in the Heybridge tithing. Anne a yeoman's wife, also deposed. She reported that “this d[e]p[onant] did milk the d[e]f[endant]s coves and sometimes did carry the tithe milk to the compl[aint] and saith that the time that she carried milk the d[e]f[endant]s coves were carefully milked”.³¹² Despite this careful milking, Anne became involved in a confrontation with the Vicar

last summer when this d[e]p[onent] carried some m[i]lk to the compl[aint] he complained ag[ains]t the goodness of the milk but yett took it [and] told this d[e]p[onant] that he would make her sware to it and that he would send her to the devill.³¹³

On other occasions the milk was delivered by a man and received by a woman. Hester, the wife of Edward Denev from Heybridge, worked in the vicar's house. She reported that the milk “suffered in quantity she asked the d[e]f[endant] if it were all that his coves did give and he replied that was all hee could gett from his coves”.³¹⁴ Anne Haywood claimed that milk was not always welcome at the vicar's house, testifying that “sometimes they could make noe body heare though this d[e]p[onant] believes that some p[er]son or other was within”.³¹⁵ This dispute was not exclusively between just men or between just women. While the quality of the milking was criticised, a slur on the women, it was also implied that milk was deliberately kept back, a slur on the farmer. The vicar was accused of using strong language and insulting the women bringing the milk, and his servants were accused of deliberately not answering the door when the tithe milk was delivered.

This case shows that women were not only witnesses to customary transactions, but were actively involved in them. Not only did women carry out customary tasks in gender specific jobs, but they held opinions on whether those customs were valid or not. This demonstrates that women had access to a collective memory of customary rights in the early-

³¹¹ Shepard, *Meanings of Manhood in Early-modern England*, 223.

³¹² *Ibid.*

³¹³ *Ibid.*

³¹⁴ *Ibid.*

³¹⁵ T.N.A., E134/2Jas2/Mich11.

modern period. Women and men interacted when carrying out custom, and both sexes, on both sides of the dispute, were accused of malpractice when tensions ran high. The group of women and men in this case were all aware of the authority of the tithing custom over the farmer, and of the responsibilities of the vicar to receive tithes. This is clear because of the resentment generated when the system broke down. This collective understanding came from practice, tradition and involvement in a family and a community which participated in customary activities.

The second mental space which was often cited by deponents was their 'neighbourhood' or 'country'.³¹⁶ A. Mitson has examined kinship networks in Nottinghamshire in the early period, and found that patterns of migration, marriage and money lending indicated that

individuals or groups shared a sense of belonging to a circle wider than their immediate family and wider even than their local community ... a social encompassing a wider area than that of the parish: an entity comprising a group of parishes which together formed what might be termed a loose but identifiable 'neighbourhood area'.³¹⁷

This 'country' served as a flexible space in which information was gathered and fixed in the memory. Deponents traced their residence in a place (sometimes from birth) in order to demonstrate how their customary knowledge had been gained. Through close knowledge of a place and through long residence, deponents knew the people, landscape, history and consequently the customs of their own country. A deponent's country could encompass a town, parish, manor or several of each. In some areas, the issue of residence conjured up different levels of feeling, connection and memory.

In Maldon and Colchester the issue of residence was particularly significant. How long someone resided in Maldon or Colchester denoted not only their familiarity with the practices and customs of the borough, but also whether they were eligible for membership of the freedom of the borough, allowing them privileged access to the meetings, writings and

³¹⁶ 'Country' used in the early-modern sense "of the particular district to which a person belongs" *Oxford English Dictionary Online* (<http://dictionary.oed.com/>) Accessed 14/08/09.

³¹⁷ A. Mitson, 'The Significance of Kinship Networks in the Seventeenth Century: South-West Nottinghamshire', in C. Phythian Adams, *Societies, Cultures and Kinship 1580-1850* (Leicester, 1993) 24.

activities of the Corporation.³¹⁸ In 1611 the Corporation were suing Robert Sprignell for avoiding ‘land cheap’, a tax on properties bought within the borough. Mathew Abraham, a fifty-four year-old linen draper who was also a free burgess, deposed that “he being borne in the sayd towne of Maldon, for all the tyme of his memory hee hath knowne that there is such a custome for landchepe”.³¹⁹ Abraham went further, saying that “hee doth verily thinke and beleeeve that yf the Corporation bee deprived of the said custome of landchepe ... it would bee very prudiciall to the s[ai]d Corporation and they would bee the more unable to maintaine theare haven and bridges”.³²⁰ The same formalised answer was given by six other deponents in the same case, indicating that the Maldon resident’s construction of custom relied heavily on the input and experience of the Corporation.

In another example in 1631, the Corporation was disputing with Thomas Plume about wharf charges. Nicholas Mane, a cordwayner, deposed that he was

born within the towne [and] Corporation of maldon hath known maldon very well this ffiftie yeres, the Corporation hath exercised divers p[ri]viledges and Juristiction ther and that in the memorie of this deponante yt hath ben alwaies accounted that no man maye erect anie wharffe or crane uppon anie banke of anie the streams waters and creekes belonginge to the said burrow.³²¹

In formulaic depositions, three other witnesses gave the length of their residence and confirmed that the Corporation was in the right.

In Colchester in 1630, the Colchester Corporation were suing John Heard and Giles Wignor for landing goods at Wivenhoe and avoiding landing charges at Colchester. This case demonstrates the similar difficulties Maldon and Colchester had in enforcing their authority over waterways in the area. Furthermore, it reveals a conflict amongst the long term residents of Colchester, who interpreted the use of their ‘country’ in different ways. John Isles, a free burgess and merchant, testified that

he hath knowen the towne of Colchester all the tyme of his remembrance for that he was borne and hath alwayes dwelt in the same land ... their landinge

³¹⁸ E.R.O., D/B 3/1/3.

³¹⁹ T.N.A., E134/9Jas1/Mich38.

³²⁰ Ibid.

³²¹ T.N.A., E134/6&7Chas1/Hil10.

shippige and loadinge at wyvenhoe af[or]s[ai]d is contrary to former right usage and custome and prejudiciall and to the defraudinge of the said Bailiffes and commonality.³²²

In contrast, William Comaine, a fishmonger who had known Colchester and Wivenhoe for over fifty years deposed that

hee never knew any customes fees or dutyes payde to the towne of Colchester ... the weekely fishe market in Colchester is better served and paid with sea fish brought from the sayd towne of Wevenhoe thither by land.³²³

Interestingly, William Comaine was not a resident of Colchester or a member of the Corporation, but a resident of Great Waldingfeild, fifteen miles north of Colchester. However, Comaine had worked in Colchester for the majority of his life and had strong opinions on its customs. This suggests that he considered Colchester as part of his 'country'. This indicates that 'outsiders' to the town and Corporation were excluded from the Corporation's version of customary rules. John Smallege, a mariner of Brightlingsea (nine miles from Colchester) shared Comaine's view after sixty years of working on the Colne. This indicates that there was a conflict between the chief inhabitants, belonging to the Corporation, and those who spent their lives working on the river.³²⁴

There are more examples of deponents citing their experience of life in their 'country'. In Barking in 1615, the crown was suing Sir Edmond Wild over disputed ownership of a piece of land called Crowches, near Ilford. Rowlande Sweaner, a sixty-nine year-old labourer, deposed his knowledge of the history of the property, stating that

he hath knowne the same [land] ever since his first memory being borne in ilford ... in the terme of one John Weaver who dwelt therein in Queene Maryes time ... John Sweaner did dwell in queene maryes tyme in the cottage mentioned in the interrogatory wherein now dwelleth Richard Hopkin.³²⁵

³²² T.N.A., E134/5Chas1/Mich8.

³²³ Ibid.

³²⁴ T.N.A., E134/5Chas1/Mich8.

³²⁵ T.N.A., E134/12Jas1/Hil18.

Chapter Two: Memory

In Hatfield in 1610, Raphe Courtman deposed in a case in order to establish the boundaries of the Manor of Magden Hall. The seventy-two year-old had lived in Hatfield Peverel parish for thirty-two years and observed that,

the other houwses mentioned in the said interratories are within the parishe of Hatfield peveral for the dwellers and inhabitants w[i]thin the said houses and their household used to resort to the church of Hatfield peveral as unto their p[ar]ishe church and have all the said tyme of this deponents dwellinge in hatfeild received the sacraments marryed and buried in the said church.³²⁶

This knowledge expressed by these deponents was distinct to the area, and was obtained through belonging to and observing a community.

In 1687, the rector of East Mersea was suing John Brever for non-payment of tithes. Mary Handler, the wife of a yeoman, lived in Great Wigborough but had known the disputed grounds of ‘Northlands’. This knowledge was derived not from her immediate family, but from her experience of the community. Handler stated that

shee hath knowne the said farme called Northland for about 36 yeares and saith that shee knows Richard Brock was tennant to the said farme and lands and hath heard the said Brock say that he alwayes used to pay to the rector of the parish of East Mersea for the time being fourty shillings.³²⁷

The system of reporting and overhearing custom (as discussed in Chapter One) was not exclusively used by men. The informal methods of transferring and understanding custom allowed women to access customary information about their ‘country’, enabling them to testify effectively to the court. Ann Barly, the wife of John, a sixty year-old yeoman who lived in East Mersea, had known ‘Northlands’ for some forty years, and deposed that “she hath heard often reported and doth believe it to be true that there hath alwayes been a mody or rate of fourty shillings”.³²⁸ Neither woman indicated that their knowledge of custom came from witnessing an exceptional incident, or that their exposure to customary information came from

³²⁶ T.N.A., E134/7Jas1/Mich8.

³²⁷ T.N.A., E134/1Jas2/Mich16.

³²⁸ Ibid.

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their relationships with men. Ann Barly and Mary Handler deposed their knowledge of customary tithes gained from experience of the ‘communities of speech and knowledge’ of their ‘country’, on and around Mersea Island.

The third mental space in which custom was constructed was provided by the family. The influence of observing the activities of parents, grandparents, siblings, husbands and wives helped to reinforce memories of tithes, boundaries and experience into the minds of the deponents. A. Mitson observed in her study of the ‘neighbourhood area’ that “the presence of such highly-localized and continuing families was the delimiting factor in the perpetuation of quite precisely defined neighbourhood areas”.³²⁹ So, while the ‘country’ provided one structure in which custom was shared and remembered, the family remained an important part of that structure. The role of relatives as sources of information about customary law has already been examined in Chapter One. Family members provided memories and information about custom but also provided a practical example of how custom had been practiced throughout their lives. This meant that deponents could construct custom as continuous and unchanging.

Whyte has argued that in early-modern Norfolk “meaning was not inherent to a monument or landscape but was derived from the contexts of everyday life”.³³⁰ This was the same for custom. Understanding of custom needed to be transferred from person to person, and the context of the family was key in creating memories of custom and reinforcing its meaning and significance. For example, in 1625 the Maldon Corporation were attempting to assert their authority over the nearby wharfs of Heybridge. Jepha Kinge, a sixty year-old yeoman, deposed concerning his knowledge of wharf charges. He had learnt these by watching his father. He reported that “when he dwelt with his father william kinge at heybridge his father did usually paye a penny for every loade of wood passinge from heybridge by maldon heithe to the water bailiffe”.³³¹

Seventy-two years later in Coggeshall, John Boulwood, a cordwayner, deposed his knowledge of the tithing customs of Great Coggeshall. Boulwood had watched his father’s payment of tithes on one of the disputed fields, and he reported that “this deponants father held the same for about twenty yeares but did not pay soe much to the c[o]mpl[ainents]

³²⁹ Mitson, ‘The Significance of Kinship Networks’, 25.

³³⁰ Whyte, *Inhabiting the Landscape*, 9.

³³¹ T.N.A., E134/22Jas1/East7. For more examples of deponents citing memories connected to their fathers see, Thomas Wyberd in Colchester T.N.A., E134/31Eliz/Hil3 and Ralphe Royce in Barking T.N.A., E134/1&2W&M/Hil8.

predecessor”.³³² The same could be said of the deposition of Ann Tane, who deposed in the same dispute. She recalled that “her father held the said teasle ground by the space of 30 yeares or thereabouts ... constantly paid five shillings a yeere for the tyth thereof”.³³³ Whyte has observed that in Norfolk “In their concern to protect their rights individuals were engaged in the constant surveillance of their neighbours’ activities, as they were in other social and economic networks formed in the alehouse, church and home”.³³⁴ Deponents did not passively record the information provided by their families. Information about custom was obtained through observation of practice, and after these memories were made they continued to be relevant. Even after Boulwood’s father gave up the land, Boulwood continued to observe the tithes, continuously reassessing the validity of the custom and how it was executed. Therefore, the link of the land to a deponent’s family created not just experiential memories but began a process of continual observation, reinterpreting custom in the context of the past.

Women also cited their ancestors as sources of customary knowledge. Wood has observed that “male deponents to equity courts recalled the words and actions of their male ancestors in order to legitimate a custom, so women deponents more often referred to their mothers’, grandmothers’ and godmothers’ times”.³³⁵ The evidence from Essex suggests that women also learnt custom from their fathers. In Hatfield Peverel in 1609, Edmund Allen and Samuel Alumer were disputing the boundaries and tithes of the manor of Mayden Hall. Sibill Tendinge, a seventy year-old widow remembered that sixty years previously,

her father named Richard Pastoe was ffermor of the house w[i]thin the mote ...
all the saide landes were then accounted to lye w[i]thin the p[ar]ishe of Hatfield
(except the house and all the ground w[i]thin the mote³³⁶).

Sibill Tendinge’s knowledge of the land was constructed through the memory of her childhood, and specifically, her father’s property. To recall with such surety the customary boundaries of land held by her father sixty years previously demonstrates the awareness, even in young girls, of the official structures which regulated customs. Therefore, daughters and wives constructed their own memories of activities which their fathers were involved in.

³³² T.N.A., E134/9Wm3/Mich20.

³³³ Ibid.

³³⁴ Whyte, *Inhabiting the Landscape*, 167.

³³⁵ Wood, ‘The Place of Custom in Plebeian Political Culture’, 56.

³³⁶ T.N.A., E134/7Jas1/Mich8.

These women knew the customs which applied to specific pieces of land for the same reason that men did. Custom was established and proved by practice, and maintained by knowledge and memory. These female deponents constructed their memories from their childhoods by being involved with the everyday workings of their families, communities, homes and places of work. Rather than being isolated or excluded from participation in custom, they were immersed in it. Custom was everywhere: it was there when women joined perambulations or paid tithes, it was present in their work and in their own homes. Wood examined women's collective defence of customary rights in the Yorkshire valley of Nidderdale in the seventeenth century. In 1607, forty women referred to as the 'wives of Kirkbyshire' were involved in attacking coal miners whose employer had committed aggressive encroachments, violating the customary rights of local inhabitants. Wood observes how the women legitimated their violent actions by referring to the 'wives of thorp', who had destroyed enclosures in 1549. Wood argues that "In the riots of 1607, the plebeian women of Kirkbyshire conducted themselves in opposition to the public norms of patriarchy, displaying a consistent capacity for conscious collective agency".³³⁷ Thus, while it is true that the formalisation which the central courts brought to the interactions of customary rules made males more likely to be called as deponents, women still participated in the defence and preservation of custom. It is clear that women saw, learnt and experienced custom. From this experience was built a structure of memory which flowed freely in communities.

In this section memory has been shown to have been constructed in complex and overlapping mental spaces. Men and women built their memories of customary law on their experiences of everyday life. Work featured heavily in this construction. Places of employment often served as backdrops for the learning of customary rents, tithes, boundaries and jurisdictions. Furthermore, the physical enactment of custom and its repetition in the work place helped to create and perpetuate its memory. The 'neighbourhood area' or 'country' is key to understanding how early-modern people experienced and identified where they belonged, and where they came from. Recalling customs which belonged to places in their 'country' enabled deponents to express their familiarity and association with a place. The family, in turn, aided the demarcation of someone's 'country'. Family was the source of many deponents' customary knowledge. The family was also often the starting point for a mental network, linking information about custom into a network of the wider community. Therefore,

³³⁷ A. Wood, 'Subordination, Solidarity and the Limits of Popular Agency in a Yorkshire Valley c.1596-1615', *Past & Present*, 193 (2006) 64

these three mental structures fed into, and propagated, knowledge of custom. Each space was not independent of one another. Rather, they acted in concert to produce a constantly redefined system of information, memory and belonging.

Importance of the Past

Historians have observed the importance of the past as a concept in early-modern England. D. Woolf has observed that it was assumed that “Old was better than new; that the older something was the better; and that the authority, institution, or even of an individual was a function of its longevity and antiquity”.³³⁸ In the Exchequer and Duchy of Lancaster depositions from Essex, of 891 deponents, 626 declared their ages. The distribution of deponent’s ages from the cases examined in this thesis is shown in Table 1. As Table 1 demonstrates, the majority of male deponents were in their forties and fifties, with a relatively high proportion in their seventies. Even the older deponents felt the need to support their evidence with the words of other old men. For example, John Jefferson of East Mersea, a seventy year-old yeoman, deposed that “this deponent hath heard by other ancient inhabitants of the said parishe that there was a modin or rate onely paid to the rector”.³³⁹ As has been seen, women and younger men were asked to depose, but often under exceptional circumstances when their life experiences, or connections via male relatives, provided them with specialist information relevant to the case.

A. Shepard has observed that early-modern society did not always look on old age as an indicator of reliability. She argues that “old age was portrayed in terms of total deterioration, returning men to childhood”, and that “Discussions of generational difference served to define patriarchal manhood, and firmly claimed it for the middle aged householder”.³⁴⁰ This is supported by the age distribution of the deponents from our sample with a decline in numbers of octogenarians. It seems that the usual expectation that customs had to have been continuously practiced ‘time out of mind of man’ meant that oral recollections of events which occurred within one (middle aged) lifetime were insufficient to prove legitimacy. For a deponent to be able to recall sixty years back to his own childhood was desirable, but to be able to recall information from a grandfather who may have

³³⁸ Woolf, *The Social Circulation of the Past*, 44.

³³⁹ T.N.A., E134/1Jas2/Mich16.

³⁴⁰ Shepard, *Meanings of Manhood*, 40.

remembered sixty years previous to your own birth was much more suited to proving continuous practice. In Maldon in 1612, John Nashe, a fifty-six year-old gentleman, reported that “it hath bene gen[er]ally reputed within the s[ai]d borrowe [and] hath heard it reported by ancient men now dead, that the s[ai]d corporacion have enjoyed the benefite of the s[ai]d custome of Landcheape”.³⁴¹ John Nashe utilised the longer testimony of the old men which superseded his own, more recent knowledge of the Corporation’s right to land-cheap, despite his own status as a middle-aged gentleman.

Age	Male	Female
0-20	11	2
21-30	63	8
31-40	36	7
41-50	192	4
51-60	168	4
61-70	23	3
71-80	87	2
81-90	16	0

Table 1: Age distribution of deponents in cases from the six locations of interest examined from Exchequer and Duchy of Lancaster depositions in Essex (1550-1700)

This conflicting requirement for length of memory overruled the privileging of the patriarchal ideal of the middle-aged householder. Shepard argues that “through such collective activity, individual men could temporarily claim authority and prowess which was ordinarily denied to them”.³⁴² ‘Ancient’ men of a community collectively commanded vital information about the past of customs. ‘Ancient’ men were responsible for legitimating custom by reporting to the younger generations the history of practices and rights, to the exclusion of anyone else. By taking precedence over young men, and all women, in regulating and

³⁴¹ T.N.A., E134/9Jas1/Mich38.

³⁴² Shepard, *Meanings of Manhood*, 100.

preserving customary law, ancient men gained a power over their communities which would out-live them. These ‘ancient men’ were sometimes named, but were more often identified by their collective general title, labelling them and setting them apart as a group. In her extensive work on social memory, B. Misztal has argued that “Collective memory is not *just* historical knowledge, because it is experience, mediated by representation of the past, that enacts and gives substance to a group’s identity”.³⁴³ This group, while excluding others from the task of propagating customary knowledge, was by necessity integrated into the mental structure of the whole community which relied on the words of ‘ancient’ men in order to continue their understanding and re-evaluation of custom. Collective memory of custom required dissemination to others to prevent custom from dying out, making these ‘ancient’ men visible in the sources, through their own testimony and in the testimony of others.

Another example of the how ‘ancient’ men were valued for their knowledge of the past can be found in the forgery case discussed in Chapter One. In 1596, Richard Naffield, a forty-six year-old yeoman, alleged that in order to create fraudulent customary documents, Steven Beckingham drew on the knowledge of ‘ancient’ men. Beckingham had invited,

the olde men aboutes to dyne with hym and when they were come he wold question with them of the names of the landes there aboutes and how they had distened and come from one to an other and by what rents and services the same were holden and within short tyme after the said steven Beckingham wolde clayme rentes services and harriotes wheras none before were paid and shew forthe rentalls touching the same semmynge to be of suhe antiquie as if the same had byn made two or three hundred yeeeres before.³⁴⁴

In order to create documents (falsely) proving his customary rights, Beckingham turned to the collective memory and experience of the old men. Beckingham singled out the men he knew would have the knowledge he required. Their identification as ‘the olde men aboutes’ shows that the men were thought of collectively in terms of their age and their guardianship of customary knowledge. This case demonstrates that while the group itself was exclusive in its membership, their knowledge was kept in order to be disseminated into the community through speech.

³⁴³ Misztal, *Theories of Social Remembering*, 15.

³⁴⁴ T.N.A., E134/37&38Eliz/Mich42.

When considering the use of regalia to legitimate authority in early-modern incorporated towns, R. Tittler has observed that “the attribute of antiquity, or ‘auncienty’ conferred precedence, legitimacy and virtue, towns valued regalia which dated, or could be made to date, a long way back”.³⁴⁵ The authority of the ancient was not just confined to the characteristics of deponents in the Exchequer court. The Maldon and Colchester Corporations frequently underlined the authority of their borough by boasting about the ‘ancient’ authority of their towns. In every case examined concerning either Corporation, the bill or interrogatory began with the same claim to ‘antiquity’, that “the same towne said tyme out of mynde and memory of man hath bene an anncient borough town”.³⁴⁶ P. Withington has argued that for Corporations “the past was crucial to justifying, acting upon, and changing the present: the very legitimacy of the charters, orders, and rituals upon which civic governance rested was derived in large part from their ‘customary’ and ancient status”.³⁴⁷ The importance of the past to the identity and legitimacy of Corporations was not lost on outsiders. In 1625, John Strange, a ‘stranger’ to the Maldon Corporation, from Hertford, deposed that he “hath heard that the InCorporation is one of the moste ancient Corporation towns in England”.³⁴⁸ The authority of the Corporation was clearly linked with its ‘ancient’ credentials.

The land was also considered in terms of how ‘ancient’ it was. In Colchester in 1594, Peter Baker was suing John Ball and Thomas Noverde over a piece of land which may once have belonged to the Abbey of Colchester. A water mill had once stood on the land, but had been subdivided, thereby confusing the ownership, tithes and boundaries of the property. Francis Baker, the son of the plaintiff, deposed that “the saide close or pasture appeare to be a close verie anncient and built in olde time as it nowe is ... and of anncient timme servered from others ... he judgeth it to have bene a close as it is nowe some five hundred yeres”.³⁴⁹ The twenty four year-old interpreted the land as being divided in ‘ancient’ time by looking at how it was used. Whyte has found that “in order to substantiate oral memories contemporaries employed the visible traces of land use history as a means of proving their rights and ancestral inheritance, however distorted, or disconnected this link with the past had become”.³⁵⁰ More examples of this can be found in Essex. Robert Swayne of Heigham, a fifty year-old yeoman,

³⁴⁵ Tittler, ‘Reformation, Civic Culture and Collective Memory’, 287.

³⁴⁶ T.N.A., E112/14/179.

³⁴⁷ P. Withington, ‘Agency, Custom and the English Corporate System’, in French & Barry, *Identity and Agency*, 201.

³⁴⁸ T.N.A., E134/22Jas1/East7.

³⁴⁹ T.N.A., E134/36Eliz/Hil12.

³⁵⁰ Whyte, *Inhabiting the Landscape*, 145.

deposed in a similar vein that “the saide p[ar]cell of meadowe doth seeme to be a close verie annient and sev[er]ed of old time as it nowe is and seemeth so to be because the great river is on one side and the old river on the other”.³⁵¹ Here, there was a common understanding of land use which meant that the deponents could attribute the term ‘ancient’ to the close. The deponents looked to the physicality of the land to determine whether it could be termed ‘ancient’.

To Francis Baker it seemed that the definition of ancient was approximately five-hundred years. However, the concept was not defined in such narrow terms during the early-modern period. In 1612, Eliza Garrington, a forty-seven year-old gentleman, thought that his twenty-eight years of knowing the town of Maldon required further substantiation through the knowledge of ‘ancient’ men. He reported that “he hath heard annient men saye that there was a custome called landchepe within the borroughe of maldon and for the space of xxviiijtie yeeres hath knowne a custome called Landcheape”.³⁵² John Peacock, a seventy-four year-old sailor, did not specify how old ‘ancient’ information was in the same case, suggesting that “he hath heard it reputed of annient tyme for that he was somtymes seavannt unto one Robert Boddard a saylor who purchased a house within the sayd Corporation [and] paid landcheape for the same”.³⁵³ Woolf has suggested that “Those who appealed to antiquity in this sense did not normally ponder the origins of a practice or custom: it mattered less *how* old something was, than that it was old” ... ‘Ancient’ or ‘old’ were often no more than coded signifiers for value and legitimacy”.³⁵⁴ So, when John Thuegood, a seventy-four year-old miller, testified that “th[i]s d[e]p[onen]t hath been an ancient tennant to the d[e]f[endan]t himselve and his father for about thirty and nine yeares”, he was referring not to the thirty-nine years as a ‘ancient’, but to his and his father’s legitimacy as holders of a tenancy.³⁵⁵ Essex deponents, whether young or old, were involved in deciphering which customs, towns, boundaries and sources of customary information should have been considered ‘ancient’. Making these decisions meant that deponents were constantly involved in assessing their surroundings, their knowledge and their identity as links in the chain of ‘ancient repute’.

Woolf has also observed that “closely related to the belief that novelties and innovations violated the traditional order of things was the idea that the world and everything

³⁵¹ T.N.A., E134/36Eliz/Hil12.

³⁵² T.N.A., E134/9Jas1/Mich38.

³⁵³ Ibid.

³⁵⁴ Woolf, *The Social Circulation of the Past*, 44-45, 48.

³⁵⁵ T.N.A., E134/36Chas2/East1. The date of this case is unclear, the class mark would indicate 1696 but Charles II was succeeded in 1685.

in it was in an advanced state of decay”.³⁵⁶ There is some evidence for this in the records from Essex. We have already heard the 1611 testimony of John Peacock, the seventy-four year-old sailor from Maldon, who lamented that,

the s[ai]d haven which haven not withstanding is at this p[re]sent so much decayed as hee hath within his memory knowne a shipp of a hundred tonne to arryve at the s[ai]d haven and now a shipp of thirtee tunne is as much as can fleete in the s[ai]d haven.³⁵⁷

William Francis, a thirty-two year-old linen draper, confirmed this recalling that “there have [been] greater shippes of late yeares come upp there [to the hythe] then now can in respecte that the said haven is decayed [and] landed upp”.³⁵⁸ Colchester had similar difficulties with the silting up of their Hythe, meaning that larger vessels required an exceptional spring tide to make it from Wivenhoe to the town without running aground.³⁵⁹

However, other cases present a much more complex picture. The idealisation of the past and the spectre of ‘decline’ were only presented when specific economic interests were at risk. That the Maldon and Colchester Corporations grappled over landing charges was about the authority and income of the Corporations, and their conflict with local merchants and fishermen. In 1633 in Colchester John Lucas and William Gilson were at odds over the construction of new mills in the town. The conflict between the rights of the ‘ancient’ mills and the necessity for the new mills to provide accessible milling for Colchester’s poor demonstrated how custom was appropriated to protect purely economic interests. The millers Nicholas Brewster, John Jackson and Robert Appleton claimed that “all the water mills in the towne of Colchester doe usually standstill twoe days in a weeke for want of worke” and that the new windmills were “prejudiciall to the customes and proffites of the said [ancient] mills”.³⁶⁰ However, their opponents revealed the bitterness of the dispute, accusing the millers of price fixing, threatening behaviour and complete disinterest in grinding small amounts of flour for poorer households. Whyte has argued that

³⁵⁶ Woolf, *The Social Circulation of the Past*, 55.

³⁵⁷ T.N.A., E134/9Jas1/Mich38.

³⁵⁸ *Ibid.*

³⁵⁹ T.N.A., E134/5Chas1/Mich8, E134/6Chas1/Mich17.

³⁶⁰ T.N.A., E134/8Chas1/Mich18.

In the early-modern period, there were times during the life-cycle of rural societies when the past took on powerful meaning, during such episodes conceptions of ‘ancient time’ became central to the mediation of access rights to local resources and customary practices.³⁶¹

The ‘ancient’ millers couched their argument in the language of custom, citing family members who had been millers before them, old writings and the detriment to their business and profits. However, the majority of deponents referred to the reality of change in the town. Jefferie Colman observed that “there are nowe three tymes more people within the towne of Colchester than there were about thirtie yeres sithence”.³⁶² Perhaps the instability of the 1630s accounts for some of the bitterness in this dispute, but the actions of the ‘ancient’ millers could not be mistaken for the attachment to, and maintenance of, better times. Perhaps instead, fear of change in a ‘world turned upside down’ could.

The act of forgetting is an important aspect of memory. Many commentators have observed how unreliable and subjective memory was when relied on in a legal context. Fox has argued that “If written records could be forged and corrupted, however, their propensity to deceive was small when compared to that of verbal information”, and that “Many protagonists ... clearly engaged in invention and special pleading in order to make their cases”.³⁶³ There is evidence of forgetting in the records examined from Essex. In 1610 in Ulting, John Cracknell, a fifty year-old yeoman, gave evidence concerning the boundaries of his parish. He indicated that “he hath gone the p[er]ambulation of the p[ar]ishe of Ulting when he was a boye about theage of vi or vij yeaes but it is so longe agoe as he hath forgotten the p[ar]ticulars”.³⁶⁴ A year later in 1611, Edward More, a free burgess of the Maldon Corporation, as well as a shoemaker, testified on the validity of land cheap as a customary tax. He reported that when he had bought his own property, he paid “for landcheape uppon the s[ai]d purchase xxxs and some odd money but the certainly he doth not remember”.³⁶⁵ These failures to remember do not seem malicious, but may have been viewed with greater displeasure by those relying on the memories for a legal ruling about custom.

³⁶¹ Whyte, *Inhabiting the Landscape*, 126.

³⁶² *Ibid.*

³⁶³ Fox, ‘Custom, Memory and the Authority of Writing’, 96.

³⁶⁴ T.N.A., E134/7Jas1/Mich8.

³⁶⁵ T.N.A., E134/9Jas1/Mich38.

A more suspect deposition occurred in a case in 1584. The widow, Elizabeth Prentice, was suing John Field for non-payment of tithes. One deponent reported that

aboute three yeares past the said John Field did desyre this deponent and one William Ffrankes now deceased to goe with him to the now compl[ainent] to see certen rent payed unto her ... but what some was payed he doth not nowe remember.³⁶⁶

The key issue in this case was whether the full amount had been paid or not. As the only surviving witness to the transaction (possibly brought along purposely to act as a witness), to forget the amount paid was less than helpful, and could indicate an ulterior motive.

In some cases, the length of a memory is the problem with, rather than the solution to a dispute. In 1629 in Colchester, John Durrell had never heard Wivenhoe called the Westnasse, but he attributed this to the fact that he had not been fishing for over forty years.³⁶⁷ John Durrell had been disconnected from customary practice which evolved through time. Durrell's knowledge of the area would have been relevant forty years earlier, but could not be used to engage with current understanding. Fentress and Wickham have observed that "If memory is validated in and through actual practice, it must follow unfortunately, that memory is never absolutely certain".³⁶⁸ This supports the argument made earlier in the chapter that the collective memory of custom was not a static mental structure, but rather was subject to constant alteration.

Conclusion

To understand early-modern memory this chapter has attempted to analyse various aspects of the mentalities of deponents testifying in customary disputes. As P. Hutton has written "by describing these forms which shape the expression of ideas, the historian of mentalities maps the mental universe which furnishes a culture with its essential characteristics".³⁶⁹ Through the depositions it is possible to examine how deponents delineated time. Deponents rarely mentioned exact dates in their testimonies. Instead, they contextualised

³⁶⁶ T.N.A., E134/26&27Eliz/Mich28.

³⁶⁷ T.N.A., E134/5&6Chas1/Hil3.

³⁶⁸ Fentress & Wickham, *Social Memory*, 24.

³⁶⁹ Hutton, 'The History of Mentalities', 238.

their knowledge of custom with stories of unusual events which disturbed the patterns of everyday life. Events with traumatic, wide reaching consequences were recalled in relation to the effects they had on the local area. The Reformation and the Dissolution of the Monasteries provides an effective example of this, with deponents having demarcated time through their memories of these events. Examples of deponents citing the monarchy and legal conflicts further the idea that early-modern peoples' sense of time was articulated through a local vernacular.

To better understand the role of memory in customary law, the mental spaces in which deponents constructed their memories are analysed in this thesis. By circumventing (but not dismissing) the traditional parish-centred model, the three mental spaces which seemed most vocal among the deponents were examined. Employment provided the right combination of knowledgeable company, familiarity with the environment and repetition of practice which was so vital for building memories of custom. The 'neighbourhood area' or 'country' also provided a useful definition for the spaces in which people inhabited. To knowledge of, and sense of belonging to, an area was not merely defined by legal or ecclesiastical jurisdiction. The family was also deeply significant in the way people formulated knowledge of custom, also revealing some of the complexities of gendering custom. It is clear that memories of custom were social memories. Whether in terms of the origins of memories, or their transfer from one person to another, custom helped to form group identities. This is because the mental spaces in which memories of custom were constructed overlapped and lay intertwined with each other and with other mental structures such as the borough, parish or manor.

Alongside these issues, the involvement of women was considered. The rare occurrences of females providing depositions highlight the gendered nature of custom. In the majority of cases, male relatives fought cases on women's behalf. Despite this, women did appear as deponents, and it seems that custom was one legal field into which women were able to permeate. Custom was based on practice and memory. Women held employment and were part of families and communities. This participation in communal life meant that women were called as witnesses to testify their memories of custom. Occasionally, custom concerned a product or task which women were predominantly responsible for, such as milk tithes or household inventories. In these and other cases women were able to depose their opinions on custom without apology.

The various meanings associated with the term 'ancient' have also been considered. The term 'ancient' often appeared in the records with little qualification of what deponents

actually meant by it. ‘Ancient’ was not a fixed term. ‘Ancient’ could be applied to a person, an institution, boundaries, or even to ‘repute’. Ancientness did not denote a set number of years, but bestowed authority and legitimacy to whatever it was attached. Therefore, ancientness was a collective term, creating an identity for those men and women whose long knowledge of customs drew them together. The dual meaning of ‘ancient’ as both old and legitimate supported the collective identity of ‘ancient’ men and Corporations. However, the notion of decline seemed to only have been used in the fierce defence of economic interests in the face of change. While deponents sometimes admitted lapses of memory, events that were never mentioned were possibly more significant. Considering the significant local destruction caused by the 1642 Stour Valley riots which began in Colchester, it is interesting that not a single deponent refers to the event. J. Walter has identified the extreme tensions within town which spilled over in to customary litigation. He observes that “the borough’s records maintain a crushing silence about the whole affair that yet speaks volumes about attitudes among its rulers to the attack on Sir John Lucas”.³⁷⁰ More work must be done in order that the complex mental structures which maintained custom and their influence on collective identity can be understood. The next chapter looks closely at the relationship between the physical landscape and memory, extending some of the ideas set down here.

³⁷⁰ Walter, *Understanding Popular Violence*, 154.

Chapter 3: Construction, Perception and Regulation of Space

Introduction

The way that early-modern people saw the world around them is key to understanding early-modern mentalities. In her work on landscape, custom and memory in Norfolk, Whyte has argued that

It was through the practical knowledge of the landscape, through the memory of the past and the ongoing physical experience of living and working in a particular place, that people defined their social and economic identities.³⁷¹

This chapter aims to paint a picture of how early-modern people experienced the physical environment in which they lived. This is not merely a matter of considering how towns and rural areas were laid out, or what they looked like to the naked eye. Instead, what this chapter considers is how people saw their environment, what they thought about when considering the physical landscape, and how they constructed their own identities around these perceptions. Such an intimate understanding of the early-modern psyche is not easily attained. Depositions from the Duchy of Lancaster and Exchequer courts provide a certain amount of personal

³⁷¹ Whyte, *Inhabiting the Landscape*, 7.

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testimony concerning the physical environment. This evidence is considered alongside customals, which provide a frozen moment of customary regulation explicitly concerning the regulation of space, and the movement of people and objects within space.

The Exchequer court dealt with matters affecting crown lands. As a result, disputes often involved conflicts over readings of the landscape, in terms of ownership, access, and rights connected to the physical environment. Customary law was key to the way that deponents expressed themselves to the court officials, when speaking about the landscape. Cases often required the legitimatisation of customs, prompting deponents to think about their landscape in terms of past usage and tradition. This meant that depositions became testimonies about the experiences which connected deponents to the landscape, to the past, and to their communities. This reveals the ways that early-modern people conceptualised themselves within their surroundings.

Several problems with the evidence must be considered. First, the production of the documents for use in legal disputes meant that many of the depositions are formulaic and legalistic in content. Issues of law were often presented as paramount in the landscape, which may not have been the case had the deponents been speaking for some other purpose. Second, the cases, by necessity, focus on conflict in the landscape. In addition, the majority of cases concerned those with power. Thus, the view we get through the depositions are biased to that of the elite. Despite these limitations, the depositions and customals from Essex provide valuable insight into the 'workings' of the landscape in the early-modern period. An examination of the embedded mental structures and thought processes from legalistic and often formulaic documents is a complex task, requiring the arbitrary division of subjects and the interpretation of silences. However, the ways that landscapes were regulated by custom meant that highly individual visions of the workings and demarcation of space appear alongside, and even within, the repetitive, formulaic and legalistic descriptions of space.

Before addressing the content of the depositions, the terms 'landscape' and 'space' must be defined in clear terms. The last fifty years has seen increasing interest in the study of space from scholars in many fields. Increasingly, the case has been argued for an interpretation of space as more than as an empty backdrop to historical events, or as merely a product of changing methods of farming and industrialisation. To fully grasp this concept we must turn to archaeologists, anthropologists, geographers and historians in order to create a solid foundation of interpretation to build from. H. Lefebvre's *Production of Space* set down some of the key points which underpin the study of space in this thesis. First, Lefebvre argued that

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space can no longer be seen as merely an empty area, nor can it be examined in isolation through mathematical and scientific parameters. He argued that “physical space has no ‘reality’ without the energy that is deployed within it”.³⁷² This led Lefebvre to the study of physical, mental and social space as constructed by those who use it, in order to decipher whether landscapes can be ‘read’ by those who ‘act’ in them. Lefebvre goes further, to demand that the study of space be unified into a coherent study of ‘spatial practice’, rather than being marked by endless division. He argued that “Spatial practice consists in a projection onto a (spatial) field of all aspects, elements and moments of social practice”.³⁷³ This is easier said than done. The task of peeling back and identifying the layers of meaning constructed around different spaces is one thing. However, to appreciate the complexities of these strands, while at the same time considering them as a whole, risks homogenising the extraordinary way people discerned and coped with their surroundings.

Lefebvre argued that “a spatial code is not simply a means of reading or interpreting space. Rather it is a means of living in that space, of understanding it, and of producing it”.³⁷⁴ Lefebvre focused on the production of the spatial code through practice by individuals, or politically dominating groups or forces. While the interplay of dominant forces and the role of the individual must be kept in mind, this study utilises Lefebvre’s concepts of examining ‘action’ in space to decipher ‘spatial practice’, but focuses on the collective production and dissemination of spatial codes.

P.J. Stewart and A. Strathern’s collection of articles on landscape, memory and history demonstrate the key role anthropology has played in the advancement of the study of landscape. In their introduction they lament the anthropological norm of presenting the ‘setting’ of an ethnographic study without consideration of how that setting was constructed by the people who lived there. Stewart and Strathern continue to emphasise the importance of the relationship between the physical landscape and the identity of those who inhabit and perceive it. They argue that

The sense of place and embeddedness within local, mythical, and ritual landscapes is important. These senses of place serve as pegs on which people

³⁷² H. Lefebvre, *The Production of Space* (Paris, 1974) 13.

³⁷³ Lefebvre, *The Production of Space*, 8.

³⁷⁴ *Ibid*, 48.

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hang memories, construct meanings from events, and establish ritual and religious arenas of action.³⁷⁵

The articles present conflict over the reading of landscape, and demonstrate how personal experience of landscape imbues space with identity, memory and meaning for the individual. Strathern and Stewart conclude that

If there is one thing the study of landscape can do, then, it is to make clear that landscapes are culture inscribed in fields, woods, crops, animal stock, buildings and roads, and in the sensory impressions and memories these evoke for those who live in them.³⁷⁶

These are important concepts for this study. Because of the way custom operated, the ‘pegging’ of memory onto the landscape is particularly relevant.

In their work *The Iconography of Landscape*, Cosgrove and Daniels present various approaches to deciphering landscape. The essays within the monograph use art, literature and symbolism as ways to access complex interpretations of different landscapes. Cosgrove and Daniels approach the reading of landscape as a process of deciphering layers of meaning by examining the iconography and iconology of specific landscapes. They have argued that through the process of examination, another layer of meaning is created and imposed, creating a continual process of transition of meaning.

From such a post-modern perspective landscape seems less like a palimpsest whose ‘real’ or ‘authentic’ meanings can somehow be recovered with the correct techniques, theories or ideologies, than a flickering text displayed on the word processor screen whose meaning can be created, extended, altered, elaborated and finally obliterated by the merest touch of the button.³⁷⁷

³⁷⁵ P.J. Stewart & A. Strathern, *Landscape, Memory, and History Anthropological Perspectives* (London, 2003) 3.

³⁷⁶ Stewart & Strathern, *Landscape, Memory, and History*, 236.

³⁷⁷ D. Cosgrove and S. Daniels (eds), *The Iconography of Landscape Essays on the Symbolic Representation, Design and Use of Past Environments* (Cambridge, 1988) 8.

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As has been demonstrated, customary law operated in ways which allowed the constant reinterpretation of the law through the construction of collective memory. This had serious implications for the meaning of spaces in which custom operated, and thus shaped the way early-modern people thought about space.

C. Holtorf and H. Williams' essay on memory and landscape provides an insight into the archaeological perspective on the problems associated with the interpretation of space. They provide a useful definition of what is meant by the term 'landscape', suggesting that "by landscape we refer to the inhabited or perceived environments human communities in the past and present incorporating both natural and artificial elements".³⁷⁸ By adopting this position, this study is able to consider 'landscape' as both a physical space and a construction of the mentalities of those who inhabited it. Holtorf and Williams emphasise that all landscapes are historically constructed by those who inhabit or perceive them. They concur with Cosgrove and Daniels' reading, that the interpretation of landscape "is not necessarily about accurately recalling past events as truthfully as possible: it is rather about making meaningful statements about the past in the given cultural context of a present".³⁷⁹ Holtorf and Williams also emphasise the importance of the memories of people in the past as a means of accessing the meanings and significance of their landscapes.

S.E. Alcock's work on the archaeologies of memory in ancient Greece strengthens the argument for landscape to be read socially as well as physically. She argues that "Landscape, a capacious and currently much utilized concept, contains a multitude of meanings, all of which revolve around human experience, perception and modification of the world".³⁸⁰ Alcock calls for artefacts to be contextualised within their material framework, in order to understand both space and memory. She focuses on the role of social memory as both a strong motivational force and as a source of conflict. The use of memory in interpreting landscapes reveals that its nature is changeable, flexible and impermanent. Although her work focuses on a time period distant to this study and many of the spaces Alcock examines are self-consciously constructed sites of commemoration, her observations of the multiplicity and impermanence of readings of landscapes should be kept in mind when considering early-modern constructions of space.

M. Johnson's work has been influential in shaping the archaeological approach to analyzing early-modern space. In his work *An Archaeology of Capitalism* Johnson traces the

³⁷⁸ C. Holtorf & H. Williams, 'Landscapes and Memories', in D. Hicks & M.C. Beaudry, *The Cambridge Companion to Historical Archaeology* (Cambridge, 2006) 235.

³⁷⁹ *Ibid*, 238.

³⁸⁰ S.E. Alcock, *Archaeologies of the Greek Past Landscape, Monuments and Memories* (Cambridge, 2002) 30.

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emerging 'Georgian Order' through changes in landscape and the material culture of the sixteenth and seventeenth centuries. Johnson focuses on the way enclosure altered people's perception of, and relationship with, the land. Notably, he has argued that "enclosure opened the way to a commodification of the landscape through an erosion of the embeddedness of that landscape in the social and cultural values of the traditional community".³⁸¹ Johnson has also observed how patriarchal structures found new ways of exerting authority through artifacts such as written documents, maps and surveys. Johnson links anxiety about popular disorder to "a new system of spatial and social discipline."³⁸² He identifies 'closure' in the landscape, but also within the construction and style of buildings across the social spectrum. Changes were made to houses which created private, segregated spaces. This, in turn, detached the activities of work and home and marginalized female activity. Johnson's linking of early-modern 'mentalities' and the physical surroundings which people constructed and lived in is key to this study. The changing physical surroundings in the early-modern period structured the way people thought, felt and acted.

D. Rollison has approached the study of landscape in the early-modern period through issues of mobility and identity. Rollison has observed that

Landscapes, like traditions, are invented, constructed and reconstructed...Space is not neutral in its shaping effects on the way the populations inhabiting it grow up, and behave in adulthood; nor is the way we are taught to think about space neutral.³⁸³

Rollison concentrates on interpreting space through the movement of people as migrants. He calls for the study of action (including speech acts), rather than merely the study of words. Rollison identifies networks constructed between economic spaces. He has argued that "To grasp these [changes] requires a decentred approach which emphasizes not settlement, but movement; not centres but changing relationships in space"³⁸⁴. In this chapter an effort is made to look away from regulated space and turn towards the actions, thoughts and processes which created, maintained and proscribed space.

³⁸¹ M. Johnson, *An Archaeology of Capitalism* (Oxford, 1996) 206.

³⁸² *Ibid*, 117.

³⁸³ D. Rollison, 'Exploding England: the dialectics of mobility and settlement in early-modern England', *Social History*, 24, 1 (1999) 3.

³⁸⁴ *Ibid*, 16.

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In her work on gender and space, A. Flather argues that Johnson over-emphasized the 'closure' of the household by the seventeenth century, observing that men and women continued to utilize all rooms, that the home was not described as private, and that the 'back' spaces of the house remained partially open to servants and tradesmen. She observes that "In these circumstances, strict segregation of working and living space according to gender or status was impractical and unworkable."³⁸⁵ Flather examined depositions from church court records in Essex between 1580 and 1720. Her work looks at the use of domestic space, work space and the parish church in everyday life, and analyses gendered spatial patterns, revealing the contradictions between patriarchal ideology and complex reality. Flather observes that spatial patterns were intersected, not just by gender, but also by age, social and marital status. This complicates the application of any binary public/private model. Flather identifies the contradictions within patriarchal discourses which left room for female agency, in the guise of the obligations of neighbourliness and communal responsibility, as opposed to the duty to stay at home and be quiet. Duties of hospitality within the home and the defence of church seating gave women further opportunities for agency. Flather makes the important point that in the early-modern period "Space was not static but fluid and highly dynamic. Its meaning was constantly shifting".³⁸⁶ These concepts of space as fluid and changing between public and private are kept in mind when examining indoor and outdoor spaces, and the enforcement of regulations between the two.

Flather's findings are supported by F. Williamson's work on social relations in early-modern Norwich. Williamson examines the diocesan and mayoral court records in order to explore the relationship between authority and the construction of space. Williamson observes that "space informed behavior, but also that space drew its character from the people that inhabited it in a continuous two-way process".³⁸⁷ Williamson finds that the meanings attached to space in early-modern Norwich were flexible and altered depending on how the space was used and by whom. Consequently, Williamson identifies that notions of the public/private division of space were artificially constructed. Williamson argues for a 'communocentric' approach to understanding how space was understood in the city. She argues that elite groups envisioned and attempted to enforce a fixed understanding of the city as representing and legitimating civic power. In contrast, popular understandings allowed space multiple

³⁸⁵ A. Flather, *Gender and Space in Early-modern England* (Woodbridge, 2007) 43.

³⁸⁶ *Ibid*, 177.

³⁸⁷ F. Williamson, *Aspects of Social Relations in the Seventeenth Century Diocese of Norwich: Space, Identity and Agency*, (Unpublished Doctoral Thesis, UEA, 2008) 41.

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meanings, based on use rather than built structures. Williamson observes the contestation which occurred between the civic authorities and those that lived and worked in the city, identifying sites of contest and negotiation of public authority, such as doorways and alehouses. Like Flather, Williamson observes the permeability of early-modern housing and the pervading social morality which endorsed peering through cracks in walls and censored doors locked against their neighbors.³⁸⁸

Within this interdisciplinary body of literature there are common themes. First, it is commonly argued that space cannot be considered as an empty backdrop, and to ignore the fullness of space in terms of meaning or function is to ignore an important aspect of experience. Second, it is argued that notions of space are complex and constantly changing. Although collective memory is important, it is clear that individuals with competing views and interests can create threads of meaning and identity which exist alongside each other. Third, it is argued that the interpretation and analysis of space adds another layer of meaning to perception. This links into the structures of early-modern customary law, which required constant re-interpretation, distribution and repetition of knowledge and actions to ensure its future. This chapter examines the way in which early-modern people thought about space. The different ways in which deponents represented their views of the landscape and the spaces which they acted in and inhabited are explored. From this evidence, I illustrate the duality of landscape features as both functional and symbolic. Further, I explore how custom regulated constantly changing landscapes. This is approached in three sections. First, I examine how deponents perceived and described the boundaries of their communities. The second section will examine how deponents saw their environment in terms of resources, the acquisition and movement of which formed their conceptualisation of space. Third, the jurisdictions which divided space will be examined in terms of their influence on the perspective of early-modern people.

Boundaries

This section examines how early-modern people explained the boundaries of their communities when deposing to the Exchequer and Duchy of Lancaster courts. As discussed in the previous section, the landscape of early-modern England was more than an empty

³⁸⁸ Ibid, 97.

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backdrop. Therefore, when asked to describe the limits of certain spaces, deponents presented more than a simply physical description.

Some deponents drew on their memories of the physical appearance of the landscape in order to explain its boundaries. In 1609 in Coggeshall, the Crown and Thomas Warden were suing William and Thomas Fuller over the ownership of two pieces of land. The division of the two fields had caused confusion as to who rightfully owned the land. Robert Litherand, a seventy-year old clothier, reported his lengthy knowledge of the land which stretched back sixty years,

Hee remembereth one Thomas Clarke of annient tyme above fourtie yeares past did hold and occupie the same, ffirst as tenant unto Thomas Peacocke ... the same is now severed and made into two fields w[i]th a hedge and ditche but anniently was one field.³⁸⁹

Litherand described the land in terms of its physical division, but also gave a long description of those who had owned or used the land. Litherand's knowledge stretched beyond his life time, drawing on the common report of his community to inform his deposition on events which affected the ownership of the land. He reported that

Imediately after the dissolution of the Abbey of Coggeshall one Sir Clement Smith was reported to hold a court for and at the sayd mannor and that one Robert Peacocke grandfather to this dep[onen]t surrendered the same landes to thuse of Joane his wife.³⁹⁰

When questioned about the land Litherand described the changes in its physical appearance but provided a past narrative of the landscape based on its physical appearance, its association with his family and the jurisdictions which governed it. This indicates that for Litherand an understanding of his identity in terms of the past of his family and community was embedded in his view of the landscape.

While features in the landscape could provide evidence of a boundary, the removal of those features could create confusion. In 1595 in Tolleshunt, near Maldon, Robert, Earl of

³⁸⁹ T.N.A., DL4/51/61.

³⁹⁰ Ibid.

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Sussex was suing Thomas Beckingham over Cockshott grove and meadow. Thomas Beckingham was accused, not only of forging documents to exert his rights over the land, but also of falsifying boundary markers and altering the landscape to obscure the true division of the land. The interrogatories specifically asked whether

Of late tyme the said Thomas Beckingham and his farmer ... have also caused to be cutt downe by the grounde and distroyed the hedges ffences ... markes or bounderies and inclosures which alwaes from tyme to tyme have plainelie devided and manifested the bounderies of the said landes in question [or whether] ... the said persons or some of them whoe (as you verely thinke the more to obscure the truthe) caused of late tyme greate dytches to be cast and tres to be sett crosse and a thwarte the said lands gate and accustomed waies to stopp up the olde passages of the said groundes.³⁹¹

Beckingham's attempt to alter the boundaries and access rights to Cockshott grove and meadow highlights the importance of the collective memory of the inhabitants of Toleshunt. Despite his destruction of the physical features which defined Cockshott grove and meadow, Beckingham's fraud was exposed by the testimony of local people. Hughe Bridges of Burnham, testified that

he hath hard [from] the sonne of his frindes which somtymes were occupiers of the same landes ... that there hath bene annient lanes and waies from the said landes to the said farme of Barrtoltes which now are ditched and stopped up by the defendant.³⁹²

This case demonstrates that early-modern people did not only understand the landscape in terms of its current physical condition, but used collective memories to construct a mental history of the boundaries and jurisdictions which applied to that land.

Changing agricultural use also played a part in the alteration of the landscape. In Colchester in 1692, William Eyre was suing Phillip Stowest over tithes due from Castle grove fields. William Baron, a fifty year-old yeoman, deposed that,

³⁹¹ T.N.A., E134/37&38Eliz/Mich42.

³⁹² Ibid.

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Hee hath heard his father say who was an ancient inha[bi]tant of the said p[ar]ish that the tithe arising out of the said field used to bee paid to one Mr Talcott who was minister of the said parish before Mr Thomas Eyre ... and that this deponents said father told him that it was form[er]ly a wood or grove ... within these five yeares last past very good cropps of corne [have been] growing in the said field.³⁹³

Although the landscape had radically changed, with the grove used for growing corn instead of wood, Baron could still draw on his father's memories and his own experience to decipher the boundaries of where tithes were due. These cases demonstrate that peoples' understandings of the landscape were informed by the memories passed on from friends, family and communities. Consequently, early-modern deponents testifying about the landscape were also providing depositions about themselves.

Many early-modern people learnt about the boundaries of their communities through their involvement in perambulation rituals. These involved the gathering of members of a community who then walked the boundaries of their parish, manor or borough.³⁹⁴ The purpose of perambulations was to teach children about the complex physical and legal environment they lived in. For example, in 1597 in Coggeshall, a dispute arose over West field meadows. It had become unclear whether the land belonged to the parish of Coggeshall or the parish of Bradwell. Several deponents recalled their knowledge of the boundaries. William Amys, a sixty-year-old clothier, reported that

about seven or eight [and] fortie yeers past or thereabouts he beinge then a boye dyd goe aboute the p[ar]ishe of Bradwell in the p[er]ambulation w[hi]ch the par[ish]ioners of Bradwell [went] into the land now in quuestion and did fetch in the same land by a certain hedge.³⁹⁵

³⁹³ T.N.A., E134/32&33Chas2/Hil9.

³⁹⁴ For a full description of perambulation see M. Beresford, History on the Ground: Six Studies in Maps and Landscapes (London, 1957) 20-48, Hutton, The Rise and Fall of Merry England, 34-36, Cressy, Bonfires and Bells, 23-24.

³⁹⁵ T.N.A., DL4/40/3

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Women also went on the perambulation. Agnes Myles, the seventy-one year-old wife of John Myles, testified her memory of the perambulation which proved that the fields lay in Bradwell parish,

the cause that moveth her soe to do is for that she hath known them to be fetch[ed]in by the p[ari]shion[er]s of Bradwell in the tyme of the p[er]ambulation about threscore yeares past when as she this depon[an]t was a child [and] went p[er]ambulating with others.³⁹⁶

By joining the perambulation as a child, alongside the boys of the parish, Agnes Myles was given equal access to information about legal issues which affected her physical environment. By learning the limits of the parish, Myles was being prepared for life in a closed community, where conditions of land ownership, customary rights to resources, inheritance and poor relief were decided by inclusion or exclusion from the parish. Bushaway supports this, and has argued that “the perambulation of the parish represented a public affirmation of the physical and social boundaries of the community”.³⁹⁷ In this case, Myles’ experience of perambulation taught her the legal, social and physical boundaries of her community.

In order to strengthen the memories formed by the young participants on perambulations, children were given treats, beaten, thrown into ditches or nettles, or told stories at key places along the route. The effectiveness of these rituals at constructing and strengthening collective memories is clear from the depositions. William Bell, a sixty-eight year-old miller claimed that West Field meadow belonged to Coggeshall parish. His recollection of his childhood gave vital information in the resolution of the boundary dispute. Bell deposed that

He knoweth [and] doth well remember that the Inhabytauntes of coggeshall in their p[er]ambulation dyd fetch in bothe those p[ar]cells of land ... when they had done they cam to the house of this deponants father who dwelt at the west mill in coggeshall [and] ther they had a drinking as the custom then was [and] he so mucche the better remembereth the certaintie thereof for that the inhabt[ant]s whose name as he now remembreth was called paternoster [and]

³⁹⁶ T.N.A., DL4/40/3.

³⁹⁷ Bushaway, *By Rite*, 82.

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wolde lykewise have whipped him this deponant yf he had not runne awaie from them.³⁹⁸

Although Bell was bought up at the West Mill, a key point in the perambulation of Coggeshall, his memory of the mill's importance within the customary landscape was reinforced by the fear of a potential beating. In her work on custom and the landscape in Norfolk, Whyte has observed that in the process of perambulation "landscape and memory combined, and boundary features became intimately associated with peoples' own life histories".³⁹⁹ Thus, William Bell's understanding of the parish boundary was inseparable from his memory of avoiding being beaten as a child.

Perambulation underwent a number of changes throughout the sixteenth century. In particular, its origins as a ritualistic blessing of agricultural land became problematic after the Reformation. R. Hutton has observed that

To committed followers of the reformed faith the blessing of material objects, even crops, was a perversion of religion, while the use of crosses as parochial boundary marks, at which the Rogation processions halted to sing and pray, could make the perambulations seem almost as much rituals of idolatry as the carrying of saints images.⁴⁰⁰

However, M. Beresford has argued that perambulation survived prohibition after the Reformation because of its necessary social purpose of educating the young about the extremely complex legal (and physical) environment in which they lived. He suggests that rather than entirely surrendering their religious connotations, perambulations underwent a partial transformation, retaining the leadership of the clergy, gospel readings and social conviviality in the place of religious images, singing and a literal cleansing of the fields.⁴⁰¹

Gospel readings were used by many deponents as mnemonic sign posts to reinforce the location of a boundary. In the West Field case, Robert Enewes, an eighty-seven year-old weaver, recounted his experience of the Coggeshall perambulation, reporting that "he doth

³⁹⁸ T.N.A., DL4/40/3.

³⁹⁹ Whyte, *Inhabiting the Landscape*, 68.

⁴⁰⁰ R. Hutton, *The Stations of the Sun* (Oxford, 1996), 280. For a detailed examination of the ritual from its early Christian origins through to the modern day see chapter 26.

⁴⁰¹ Beresford, *History on the Ground*, 30

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also well remember that there was want to be a gospell rede allwaies att a certaine spring or well in the said west field".⁴⁰² Whyte has argued that the late medieval landscape contained many focal points for religious devotion. These included stone crosses, shrines and existing natural and archaeological features such as barrows, wells and springs.⁴⁰³ She argues that the religious connotations of points in the landscape "sustained, moulded and intensified religious experience".⁴⁰⁴ She suggests that with the Reformation came a 'stripping of the landscape', which focused religious significance on the church building, secularising the meaning of the landscape. However, Whyte argues that "the relics of the pre-Reformation landscape continued to structure and to give historical context to local social and economic geographies".⁴⁰⁵ Despite the secularisation of perambulation rituals after the Reformation, springs remained significant as historical boundary points. Furthermore, deponents still imbued springs with religious meaning, as the site of gospel readings.

Gospel readings were also cited by those who had been on perambulation in 1609 in the parish of Hatfield Peverel. A dispute had arisen between Edmund Allen and Samuel Aulmer over a piece of land called Ricams. The land lay either in the parish of Ulting, or the parish of Hatfield Peverel. Thomas Cavell, a sixty year-old husbandman, described his experience of perambulating the boundary

He hath gone the p[er]ambulation of Ulting div[er]se tymes after this mann[er] vizt: from Burnford bridge in the lane up to Grayes myll and from there to Bramsgate and so from Ricams to a three waie leite that leadeth downe to chandlers bridge and there they said a gospell, and from thence to an other threeway leete where they said an other gospell.⁴⁰⁶

Cavell's reference to a three way 'leite' (a split in the road) is significant. Whyte has highlighted the significance of cross-roads in the early-modern mentality, observing that they were often the sites of gallows, suicide burials or stone crosses used as boundary markers. Furthermore, she observes that "Road junctions were invested with a range of metaphysical associations: they were deemed to be places of magical properties and sometimes malevolent

⁴⁰² T.N.A., DL4/40/3.

⁴⁰³ Whyte, *Inhabiting the Landscape*, 41.

⁴⁰⁴ *Ibid*, 44.

⁴⁰⁵ *Ibid*, 55-56.

⁴⁰⁶ T.N.A., E134/7Jas1/Mich8. John Pryor, a seventy year-old husbandman and Richard huskyn, a forty-two year-old husbandman also remembered the saying of a gospel to mark the way of the perambulation.

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activities”.⁴⁰⁷ The meeting of paths remained a focal point for the perambulation ritual post-reformation, being rendered mnemonically significant by the reading aloud of a gospel. Dividing paths, or cross ways, acted as a mark, not just for the claiming of land, but also as a mark of what was excluded from the parish.

Primarily, the purpose of early-modern perambulation was to inform members of a community of the boundaries and jurisdictions which affected their customary rights and membership of a community. Perambulations helped people to build up a picture of the landscape which was founded in the past. This linked the past appearance and function of the land to the present rights and responsibilities of the community. Through memorialisation deponents connected the landscape with their own life histories. Perambulation consolidated this connection, imbuing the landscape with religious meaning. Thus, for early-modern people, the landscape contained a series of sign posts about the past. These signs pointed to personal and collective experiences which informed the present reality of the community in physical, legal and social terms.

Resources

Early-modern people often saw the landscape in terms of its resources, and the role that those resources played in their everyday lives. At all levels of society, early-modern people were physically and economically involved in the workings of the physical environment. R. H. Tawney has observed that

The men of the sixteenth century have not mastered the secret by which modern societies feed and clothe (with partial success) dense millions who have never seen wheat or wool ... they see that a small harvest means poverty and a good harvest prosperity.⁴⁰⁸

The condition of the landscape around early-modern people dictated the supply of food, water, shelter and transport. Yields of crops, the production of meat through farming, hunting or fishing, wood for fuel and building materials, water to drive mills and the condition of rivers and roads - every resource or facility for everyday life was driven, or provided, by the

⁴⁰⁷ Whyte, *Inhabiting the Landscape*, 36.

⁴⁰⁸ Tawney, *The Agrarian Problem in the Sixteenth Century*, 20.

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landscape which surrounded them. Therefore, in economic terms, early-modern Essex was a very local world. The cultivation, management and distribution of resources were matters of life and death, and customary law was an integral part of distributing and regulating these resources.

In 1630 in Colchester, the water bailiff of the Corporation was suing John Hearn and Giles Wignor for unloading goods from their boats at Wivenhoe, a small town about six miles east of Colchester, near the mouth of the River Colne. William Comaine, a sixty year-old fishmonger, reported that Colchester's claims were false and that the lord of the manor of Wivenhoe had jurisdiction over the river. Comaine justified this in terms of "his owne knowledge haveing beene a fishmonger for the space of 50 years".⁴⁰⁹ He argued that the licence to dredge for oysters was given out by Sir Roger Townshend Baronet, lord of Wivenhoe manor. Thus, he argued, the jurisdiction of the water and landing space must be have belonged to the Manor of Wivenhoe and not to the Colchester Corporation. Comaine recalled matters of legal jurisdiction through his understanding of the river's resources, in this case, oysters. Thus, resources were integral in forming early-modern understandings of the landscape.

In 1625, the Corporation of Maldon continued their assault on the rights of the manor of Heybridge, this time suing Francis Steele for his and his father's role in erecting unlicensed wharfs at Heybridge. This case demonstrates the importance of rivers in early-modern Essex, both as a provider of fish and as a method for transporting goods. Christopher Steele, a sixty-five year-old yeoman, pointed out the importance of the river for the transportation of coals to communities surrounding Maldon:

It is a great ease to the cuntrey on that side of heibridge to fetch their coales at heybridge rather than to goe to Maldon for the same in respect of the shortness of the waye it is sixe pence cheaper in a chalder for the cuntrey to fetch them at heybridge.⁴¹⁰

The estuary was a key factor in Maldon's economic survival. Its industries relied heavily on the transport provided by the river, and the Corporation taxed these industries to maintain the streets, roads and markets. Therefore, the Corporation attempted to claim a monopoly on

⁴⁰⁹ T.N.A., E134/5Chas1/Mich8.

⁴¹⁰ T.N.A., E134/9Jas1/Mich38.

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shipping rights, arguing that coals landed at Heybridge represented revenue stolen from the town. In 1614, William Francis, a linen draper and alderman, illustrated why the landing taxes were so vital. He deposed that there had been a breach in one of the wooden bridges in the town, and that to pay for the repairs the Corporation were “forced to sell some parte of their inheritance to satisfy and pay such debts as were oweing by the said Corporation”.⁴¹¹ To the people of Maldon, the estuary was not solely a backdrop to the town, it was its most powerful resource, driving its economy and maintaining the independence of the borough. The estuary was the foundation of the Corporation’s power, as well as the environment in which hundreds of people made ends meet.

When Christopher Steele explained his understanding of the jurisdictions that governed the estuary, he presented his knowledge in terms of the resources which were transported on the river and the resources within it. Steele argued that although Maldon may have had jurisdiction over the shipping of goods along the river, when the tides altered the landscape the rules changed. He reported that “at a lowe water ebbe the dry ground doth belonge to heibridge and also the fishinge and fowling in the waters abutting upon the said lands of heighbridge hall”. Steele contextualised his belief in Heybridge’s authority saying that

the kiddles set standinge that side of the water adjoinge to heybridge hall grounds doe belonge to the mannor of heibridge hall and that about three years past there was certayne porposes which were taken up by mr freshwaters appointment in the said kiddles and by him enjoyed.⁴¹²

Steele’s understanding of the landscape lay in his memories of how resources from the river were distributed. Alcock has argued for the existence of multiple memory communities, which meant that “a plurality of concurrent, possibly conflicting, and potentially competing memories [were] available to peoples at any given time”.⁴¹³ In this case, there was conflict of opinion about who had power over the river, accompanied by differing memorialisations of how resources were distributed. These two threads of memory existed alongside each other, as did the passing boats and fishing nets on the river, demonstrating the duality and flexibility of both custom and the physical landscape.

⁴¹¹ Ibid.

⁴¹² Ibid.

⁴¹³ Alcock, *Archaeologies of the Greek Past*, 16.

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The inhabitants of Maldon and Heybridge saw a great deal more than mud and water when they looked at the estuary. They saw the trade routes which brought fuel, food and goods to the area; they saw the source of profit and power of the Corporation; and they saw a dual environment of high and low water, when different jurisdictions operated and different resources were utilised. The vast economic power that the river provided created conflict between rival towns. This is hardly surprising considering the complex range of resources that could be gained from the estuary. Rather than comprising simply an empty space to be governed in monolithic simplicity, the landscape was full of resources, people, animals, earth and water which gave rise to the construction of complex collective memories about the distribution and regulation of resources.

In 1633 and 1634, John Lucas, a gentleman who lived on the outskirts of Colchester who would be the first victim of the Stour valley riots in 1642, was suing a number of men, including Henry Barrington.⁴¹⁴ J. Walter has identified John Lucas as one of the protagonists in a wider conflict between the local gentry and the rulers of the town. Furthermore, Henry Barrington was “a leading member of the Corporation, an ardent supporter of Parliament, and one of those to feature prominently in the account of the 1642 attack”.⁴¹⁵ The dispute was about the new mills that had been erected in Colchester, and represented a bitter disagreement over whether the new mills were contravening the old mills’ customary rights and putting them out of business. The matter escalated with accusations of price fixing, intimidation and sabotage. John Nichols, a thirty year-old husbandman, deposed that the mill belonging to John Lucas had been deliberately penning up the water which turned Canwicke Mill, allowing nearby fields to flood, rather than allowing rivals mill to operate. Nichols argued that

He beleveth that if Edwicke the miller of the complaintents mill standinge above Canwicke mill and Stele the miller of Canwicke mill were not at varriance amongst themselves there might be sufficient water for Canwicke mill.⁴¹⁶

Walter has identified the escalating conflict in Colchester in the early seventeenth century. With substantial population growth, enclosure and economic instability putting increasing

⁴¹⁴ The other defendants were William Gilson, Samuel Attoway, Robert Talcott, Philemore Awfeld, Robert Buchall, Robert Haues, Thomas King, and Lawrence Gibon.

⁴¹⁵ Walter, *Understanding Popular Violence*, 95.

⁴¹⁶ T.N.A., E134/8&9Chas1/Hil21. John Richers a twenty-three year-old husbandman agreed.

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pressure on the town, disputes over resources illustrate the tensions which spilled over into violence. The shared resource of water, to drive the mills, became another means to continue the fight for political dominance in the town. The landscape here was not only seen as a vital resource for the profits of the millers, but also for the subsistence of the poor. Walter observes that “it is easy to neglect the importance of access to water in early-modern England and its cost, especially to the poorer sort”.⁴¹⁷ The inefficiency of the water mills was cited as good reason to support the new mills, to improve grinding services for the poor who had been forced to take their grain out of the town.⁴¹⁸ Here, the physicality of the landscape was involved in the battle for dominance between the Corporation and their rivals for power.

Disputes over resources were not always over food or fuel. In 1613 a dispute arose in Coggeshall over the Butts Common, where inhabitants of the town were allowed, if not required, to practice their archery. George Cockrell, William Clerk, John Hart and William Ewning sued Joane Ryvers for preventing local inhabitants from shooting on Butts Common. Butts Common was understood to be a space which belonged to the community and was “usuallye repayred unto by the inhabitants of the sayd towne for the exercysinge of their selves in the lawdable [practice] of Archerye”.⁴¹⁹ The land was important to the community, partly for practical reasons as a facility for the development of an effective defence system for the realm, but also as an important landscape feature for the community. It was defended by deponents using the language of custom. Edmond Tyler, a seventy-five year-old clothier, used the language of custom to defend the common use of Butts Pasture, invoking consistent usage time out of mind of man

The same inhabitants and other archers did usually and comenly shoote at the same buttes from tyme to tyme, w[i]thout the contradiction deniell or interupcion of anie p[er]son whatsoever ... untill the d[efenden]t Johan Rivers or her assinges disannulled the same.⁴²⁰

Rivers was vilified as having interrupted the practice of ancient custom. Thomas Cooper, an eighty-six year-old-yeoman, also couched his evidence in an emotive narrative designed to emphasise the long usage of Butts Pasture,

⁴¹⁷ Walter, *Understanding Popular Violence*, 96.

⁴¹⁸ T.N.A., E134/8Chas1/Mich18.

⁴¹⁹ T.N.A., DL4/60/15.

⁴²⁰ *Ibid.*

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When he was the age of iiij years or there aboutes he was brought to Coggeshall aforesayd and hath ever since byn brought upp and continued in the same towne, and for soe longe tyme as this dep[onent] can remember there were a payre of buttes standinge and beinge in the same close, common for the inhabitants to repayre unto and to shoote at.⁴²¹

The community had built up a sense of identity around Butts Common, important in reflecting the social hierarchy of the village. While all inhabitants were allowed to use the Butts, the bailiffs and constable were compelled to practice shooting by the steward and the homage, and there were penalties for “neglecting their duty in that behalf”.⁴²² Thus, not only was the space regulated, but it carried a sense of duty, hierarchy and responsibility. The emphasis on the duty of the community officials and the way the Butts was tied into the manor hierarchy drew Butts Pasture from being merely a physical resource to being representative of community order, discipline and defence of the English realm. Consequently, the attack on the open access to the pasture was presented as an attack on the ordered, dutiful community, lending tones of morality to the defence of the open access to Butts common.

There are similarities here to the language used in the West Mersea Custumal. The parishioners wrote the custumal in order to deflect the attempts of the vicar of East Mersea to tithes the small scale production which would compromise the poors’ ability to ‘make shift’. For example

Neither the parson or vickar is to have or at anytime hath had no tithes of green peasecods gathered for meat nor of garden pease or beans nor any other commodity growing within any gardens whatsoever being but sufficient for the dietts of those parishioners and their families whose labour and industries in the increasing of other tithes and duties hath always been a sufficient allewe and satisfaction by custom.⁴²³

⁴²¹ Ibid.

⁴²² Ibid.

⁴²³ E.R.O., D/DEt M53.

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Here, the private gardens of parishioners were protected from tithes on the understanding that other contributions they made to the community were sufficient. L. Brace has argued that “both the nature of tithes and the method of collection relied on a subsistence economy within which people saw themselves as producing for the local community, including the local minister”.⁴²⁴ When the West Mersea parishioners looked at their gardens they saw tithed produce which contributed to the maintenance of their spiritual well being, and un-tithed produce which maintained families, so that they could contribute to the community in other ways. Wood resources were also thought about in terms of community,

Neither parson nor vickar hath had nor is to have any tithe of wood ffurze bushes nor broom in consideration the grounds so cleansed reneweth much greater comoditie and proffitt and that the tenthe part of woods ffurze and bushes and broom hath been used and expended allways about the tenth part of the parsons and vickars commodities and for the necessary expence of all the parishioners and their families.⁴²⁵

The West Mersea custumal thought about wood in terms of subsistence, but also as the maintenance of the wood through clearing. Parishioners collecting furze and broom were connected to the further profit of the wood supply. While those gathering the furze and broom were physically enacting their customary rights in the landscape, their actions, and the space in which those actions were performed became representative of the role the landscape played in supporting and uniting the community of West Mersea. The resources that were excused from ‘small tithes’ played a role in maintaining the community’s survival and profit, and arguably created a sense of identity and belonging amongst the parishioners.

Brace’s work on the relationship between tithes and the changing notions of property in the seventeenth century has made some important points. Brace traces the increasing movement among religious separatists to resist tithes, and the emerging rhetoric of improvement which drew on a re-definition of the notion of property. She observes that

For the improvers, commons were wasted and desolate. They generated unemployment, idleness and vagrancy and crime ... the improvers’ discourse

⁴²⁴ L. Brace, *The Idea of Property in Seventeenth-Century England* (Manchester, 1998) 15.

⁴²⁵ E.R.O., D/DEt M53.

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set up commons as a kind of state of nature to be transcended by ingenuity and industry”.⁴²⁶ However rights to property never became absolute rights.⁴²⁷

Brace argues that “Past articulations about the earth as a common treasury, the importance of the commons and the sinfulness of covetousness did not simply fade from view to be superseded by fully fledged capitalist property relations”.⁴²⁸ Thus, the conflict between the improvers and the defenders of tithes and customs helped to shape how people identified the spaces around them, in terms of access to resources for themselves and their communities but also in terms of who was excluded from those spaces and resources.

Early-modern people also thought about their environment in terms of how resources were moved into and out of their communities. This was especially the case in urban areas. In 1630 in Colchester, the water bailiff of the Corporation was suing John Hearn and Giles Wignor for unloading goods at Wivenhoe. As already suggested, many of the deponents defined the town’s jurisdiction not by the physical features in the landscape but by what happened in the landscape on a daily basis. John Haye a forty-five year-old sailor from Colchester described how he paid individual wharf owners at Wivenhoe

Hee comming w[i]th his fishe boate to Wevenhoe keeye sometymes laden w[i]th makerell oysters [and] sprats the owner of the wharfe sente his servante to this dep[onent] to aske some fishe for lyinge at his wharfe where upoon he gave sometymes a makarell some tymes oysters [and] sometymes sprats ... [and] sometymes this d[e]ponent denyed to give any.⁴²⁹

This statement proved that any rules forcing the landing of goods at Colchester had been repeatedly broken by Haye. It also demonstrated that a much more informal, flexible, system of payment was in operation at Wivenhoe, with the payment given dependent on the specifics of the situation. In this way, the extent of Colchester’s power over the river was limited, not by an invisible boundary, but by the practice and repetition of shipping resources into the town, via Wivenhoe.

⁴²⁶ Brace, *The Idea of Property*, 76.

⁴²⁷ For further analysis of the development of ‘property’ in regards to the law see J. Dine, *Companies, International Trade and Human Rights* (Cambridge, 2005), 250-292.

⁴²⁸ Brace, *The Idea of Property*, 13.

⁴²⁹ T.N.A., E134/5Chas1/Mich8.

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The routes which carried goods into and out of the towns in Essex, by land and by water, played an important role in constructing ideas about the landscape, community and identity.⁴³⁰ In the above case, one of the main problems seems to have been that the Corporation and those who used the river for the movement of resources had differing perceptions and understandings of the landscape. Deponents from the Corporation cited the charter and perambulations of the Borough to establish the extent of the Town's power over the river, which were, in their own way, very physical expressions of their understanding of the landscape. This will be examined in detail later in this chapter. On the other hand, merchants, sailors, fishmongers and other river users cited their experiences of the estuary and the surrounding lands in terms of supplying the town and the surrounding area with resources. For example, the fishmonger William Comaine deposed that the Corporation could not have had exclusive rights to the landing of resources at Colchester as

Fishermen cannot at all tymes passe upp the river with there fish from wevenhoe to colchester or to the new hithe afforesaid without hassord of taynting [and] looseing the same ... the weekely fishe market in colchester is better serviced and paid with sea fish brought from the sayd towne of wevenhoe thither by land.⁴³¹

John Smalege, a seventy-two year-old mariner, provided more technical detail about the size of ships able to travel up the Colne to Colchester. He confirmed that a laden ship would need,

A firme winde [and] a springe tide and not otherwise and sayeth that without such helpe of winde and tyde soe built and laden such shippe or vessell cannot come inn by the said river noe nearer than the town of wevenhoe ... the sayd wharfe or landing place called the new hithe at a low water is sometymes drye but at a springe tyde hee thinketh that the water may bee 5 or 6 feete deep at neepe tyde sometymes 4 or 5 foot deepe and sayth that at a lowe water at wevenhoe the depthe thereof is 4 foote [and] at neapt tyde 12 foot.⁴³²

⁴³⁰ For a comprehensive account of shipping in early-modern Essex see Cook, The Coastal Trade of Maldon.

⁴³¹ Ibid.

⁴³² Ibid.

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Smalege and Comaine had experienced the workings of the estuary landscape for a long time. Their understanding of that environment was deeply influenced by the physicality of the landscape. This physicality; of tides, winds, mud and water was, in their minds, inextricably linked to the movement of resources through that landscape. Their jobs were to enable the movement of resources through the dangerous and complex environment of the estuary. The repetition and practice of bringing resources to Colchester up the river had given them a real, practical understanding of the physical landscape. Through custom and memory, the practice of moving goods through the landscape became part of how the landscape was perceived over time.

The mariners' understanding of the river contrasted starkly to the claims made by the Colchester Corporation. In 1631 the dispute continued, this time including William Mall as a defendant alongside Heard and Wignor. Benjamine Chase, a seventy year-old mariner, gave a comprehensive attack on Colchester's claim to have exclusive landing rights over the Estuary. Chase detailed that

A vessell of xxxti tunnes burden being laden and built with a flatt bottome so as shee draweth not above sixe foote water may goe upp the said river to the new hithe at a spring tide and att ordinary tydes none but small boates cann passe upp att a dead low water none att all and that shipps which draweth xij or xiiij foate water being laden cannot passe noe further than wevenhoe or east Donyland ... noe vessell cann sayle from wivenhoe to colchester w[i]thout change of windes and that such vessells as cann passe the wind being fayre cann goe upp in halfe an houre ... the river att the place called the new hithe att a low water is almost drie and att an ordinary tyde about iij foote deepe and att a springe tyde about vj foote and that the said river att Wivenhoe att a low water is two foote deepe and att a spring tyde xiiij or xv foote deepe and att a neape tyde x or xi foote.⁴³³

William Langby, a seventy-eight year-old mariner from Wivenhoe, confirmed this, deposing that goods could not be landed at Colchester because "at low water there is so little water in

⁴³³ T.N.A., E134/6Chas1/Mich17.

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the river att the new hithe that a man may passe over the said river in a payre of high shoes without being wetshode”.⁴³⁴ The deponents who testified against Colchester’s exclusive power over shipping in the river made the Corporation look ridiculous. The silting up of rivers was a pressing issue for the Essex estuaries, and reveals the existence of a dual understanding of the estuary environment.⁴³⁵ The Corporation’s disconnection from working life on the river compromised their understanding of what size vessel was physically able to travel to the town. This highlights that the mariners’ understanding of the landscape was a primarily practical one, formed through life long and repeated experiences of shipping resources. This practical understanding enabled the mariners to comprehend that the environment of the river was a changing one.

F. Williamson draws similar conclusions, arguing that the civic governors of Norwich sought to label and control space in order to reinforce their authority. She argues that “there is plenty of evidence that the struggle to enforce an unchanging view of the landscape was unrealistic and constantly challenged by the social and geographical mobility of the cities inhabitants who transgressed the boundaries of official containment”.⁴³⁶ In a similar vein, the Colchester Corporation sought to impose an official, fixed understanding of the river’s landscape, to ensure that landing charges were collected and that they had ultimate control over what occurred on the river. However, the reality of the river and the complexity and physical limitations of the tides contradicted their authority, undermining their economic and authoritative claims over the landscape.

Deponents also reported on the importance of the movement of resources to the subsistence economy. William Comaine justified his support for landing goods at Wivenhoe because of the importance of trade at Wivenhoe to the local economy:

Many poore people doe gett [and]erne there liveinge [and] maintenance by bying of fishe at wivenhoe of such fishermen as doe bye [and] take fishe at sea or in the sayd river [and]binge the same thither [and] by carringe the same by land to Colchester afterwards [and] by selling it there [and] they have used soe to doe all the tym of this deonents remembrance ... many rippers [and] peddlers carrieth fishe on horse backe into remote [and] fare distante places of the

⁴³⁴ Ibid.

⁴³⁵ See Hunt, *The Puritan Moment*, 12.

⁴³⁶ Williamson, *Aspects of Social Relations*, 42.

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countrey to service divers markets [and] that many poore people of the towne of wevenhoe [and] colchester [and] other townes adjoyneinge doe for the most parte earne there livieing by carring of fish there being readey attendinge at the towne of wevenhoe for such fishe as is broughte from the sea ... this hath beene the use all the tyme of this deponents remembrance.⁴³⁷

William Shaufe and John Smallege gave similar answers, adding that the enforcement of landing goods only at Colchester would be devastating to the subsistence of poor families and damaging to Colchester's fish market. The amount of conflict over the movement of resources through space was a result of what Brace has identified as "a system of commercial, capital led agriculture which excluded the poor and separated the agricultural labour force from the ownership of land".⁴³⁸ The increasing preference of the town's elite for private profit from 'improvement' of customary systems and trade with the capital may have been a factor in their neglect of the realities of local landscapes and the attached subsistence economies. On the other hand, the defenders of custom may have been exploiting the rhetoric of custom to protect their own interests while claiming defence of the poor of the town.

It is clear that the river's importance did not end at its banks. When the water was too shallow to navigate, goods were brought ashore and were taken to Colchester and surrounding rural areas. This was a vital link in the chain of supply, allowing resources to be transported effectively and ensuring that the poor had employment. The activities of peddlers extended the functioning network of the estuary. When asked about the jurisdiction of Colchester, witnesses did not see a map neatly divided and regulated. What they saw were resources that sustained life, being transported through a non-linear environment which required judgement, experience and labour to navigate. Deponents described a complex network of movement and action which was memorialised in the landscape around them through the repetition of daily life. In turn this created custom as law. The important link here was memory. Actions were repeated, memorialised and passed on as custom, custom governed and defined space, and, in turn, the physicality of the estuary defined the actions of early-modern people.

The Maldon White Book demonstrates how the movement of resources through space was important on dry land as well through water. The Corporation strictly proscribed the movement of goods for sale, in an attempt to control trade, prevent the avoidance of charges

⁴³⁷ T.N.A., E134/5Chas1/Mich8.

⁴³⁸ Brace, *The Idea of Property*, 66.

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and preserve the privileges of the freemen. For example, any freemen who received goods at the waterside were not permitted to sell those goods straight on:

Any herings sault fishe or cooles or any other marchandise or vicyuals which shall cometo the water side to be sould shall not there at the same water side sell his side [ar]te to no freemane forriner or foren straunger but to have his said p[ar]te home to his house before it be sold.⁴³⁹

Unlike the peddlers at Wivenhoe, resources arriving at or leaving Maldon by river were moved around the town by porters whose charges were set by the Corporation

Every porter beinge appointed and sworne therunto within this towne shall have for carriage of every skore of all manner of graines as followeth that is to saie from the chamb[er] in the crowes keye yard to the key their viid nd from greens chamb[er] at his key yard to his key vijd and from the chambers next crowes key xd and from greens howse to the key xvjd and from the house called cobbs on the hills to the key xiid and from his house to the stone xd and from John Bridges house to the keye now in the tenure of the widdow of neere xvijjd and fro[m] John Pikes house m[aster] poulters house and the cork to the key xxd and from John Thomas peachies house and Richard Bretts house to th key iis.⁴⁴⁰

From the White Book we can see that the waterside was an important space in the town. Activities which involved the estuary were of fundamental economic importance. Therefore, access to the river needed to be regulated to ensure the smooth movement of resources through the town. However, these regulations could be seen as an attempt by the Corporation to exert their authority to the limits of their jurisdiction, by providing a fixed vision of the movement of resources through the streets to the private doors and yards where their authority ceased. In terms of the physical landscape, the movement of resources through the town created networks of activity which stretched from the front doors of specific buildings and yards in Maldon to

⁴³⁹ E.R.O., D/B 3/1/3.

⁴⁴⁰ Ibid.

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the waterside, down the river and out into the wider world. Thus, the Corporation of Maldon sought to control this network and bring order to the landscape of the town.

Space was also seen in terms of the movement of waste and dirt. In the same way that access to resources was tied to the landscape, the disposal of and influence of waste on the surrounding environment was a serious concern for early-modern inhabitants of urban areas. The Maldon White Book provides numerous examples of how the town's waste was thought about and controlled. For example, one regulation stated that "no manns servant or children within this towne dwellinge shall cast any dust or very other filth cominge out of their houses into the high streate of this burrow".⁴⁴¹ The White Book also regulated commercial waste, ordering

that the butchers doe not anoy the streat[es] or other places w[i]th the goare, bloudd, skalpes, hornes, or other filthie or noysome thinges of ther beastes that they shall kill.⁴⁴²

In these sources, the streets themselves are personified. This indicates that the well being and peace of the community was seen as the same thing as the 'happiness' of the physical environment. The town's people *were* the streets, and suffered or prospered dependent on the condition and productivity of their physical environment.

The Corporation's regulations on waste appear a second time in the White Book, this time substituting 'no manns servant or children' with

Noe women servauntes nor children within this towne dwellinge shall not from hensforth cast any goore or any other filthie geere within the space of Xtie foote of the king[es] highwaye att the comon dunghill att the towne end [and] at the heth.⁴⁴³

In addition to butchers, women, children and servants were associated with filth and waste by the Maldon Corporation. These regulations indicate that the Corporation was preoccupied with

⁴⁴¹ E.R.O., D/B 3/1/3.

⁴⁴² Ibid.

⁴⁴³ E.R.O., D/B 3/1/3.

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regulating the movement of resources through the town. Rollison has argued, when comparing twentieth century New Yorkers and twelfth-century Cirencestrians, that,

In both cases popular culture saw living space in terms of movements, and official culture saw it as permanent institutions ... The elders' conception of the town as a kind of conjuncture, through which traffic constantly flowed, represented a *structural* condition; it implied a condition without which the town could not have continued to exist.⁴⁴⁴

In a similar vein, the elite of the Corporation envisioned the landscape of the town as a series of fixed structures which regulated the flow of resources through it. This allowed them to exert control over the complex urban environment.

This section has considered how early-modern perceptions of space were influenced by the resources available from, and transported through, the landscape. These resources ranged from those provided by the rivers and estuaries, to the communal space at Butts Pasture, or the communal wood resources which aided subsistence on Mersea Island. It is observed that deponents formed their understandings of the landscape through their experience and practical involvement of extracting or shipping resources. It has been shown that the landscape could support multiple understandings of space as the tides altered the uses of the land. However, when elites attempted to impose a fixed understanding of space, they found that their ambitions came into conflict with those who experienced the landscape on a daily basis. It has been established that communal spaces could be read as symbolic of communal interests in terms of upholding the village hierarchy in Coggeshall, and holding the Parson to account in West Mersea. The depositions have demonstrated that the early-modern landscape was a complex non-linear environment consisting of multiple layers of meaning and symbolism, anchored in practice, experience and memory.

⁴⁴⁴ Rollison, 'Exploding England', 9.

Regulation of the Landscape

Another way in which people deciphered the early-modern landscape was through the many jurisdictions which governed England in the sixteenth and seventeenth centuries. Whyte has argued that

Physical space was defined by multiple layers of access rights and customs often attached to different jurisdictions- the manor, parish and township- which interlocked in various and complex ways.⁴⁴⁵

Every inch of land was encompassed into the legalistic mentalities of early-modern people. Beresford has argued that

It has become much less important to know where one parish ends and another begins. There was a time when a whole range of duties and payments hinged very much on which side of the boundary one lived.⁴⁴⁶

The formal structures which divided lands into groups were numerous, including the parish, manor, town, borough, county, hundred and city, each charged with its own responsibilities, rights and bureaucracy. Each of these jurisdictions was, to a certain extent, self-regulatory and was given increasing powers to deal with the poor, the unruly, and outsiders. These structures were imposed to regulate coherent community hierarchies, to distribute and protect resources and to keep the peace on behalf of the centralised monarchy.

Today, the invisible boundaries that regulate our neighbourhoods are entrenched in bureaucratic systems which are controlled by the government centrally. The identification of our surroundings now rests on postcodes, electoral divisions and county lines which are marked on signs and maps. In early-modern England the landscape was governed by a complex overlapping set of competing jurisdictions. These invisible lines were regulated by those acting in the landscape, linking their everyday practices to the landscape through custom and memory.

⁴⁴⁵ Whyte, *Inhabiting the Landscape*, 7.

⁴⁴⁶ Beresford, *History on the Ground*, 28.

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Different jurisdictions were not always clearly separated and often overlapped, causing confusion, if not conflict. The custumal of West Mersea cites such confusion as their reason for writing down their customs: “divers of our lands lieth the said strood and mixed within the usuage and bounds of other parishes there unto adjoyning”.⁴⁴⁷ In West Mersea, the authors of the custumal used written records and the testimony of ancient parishioners to establish their tithing duties and make their boundaries clearer, settling on “within the compass of the strood” as a qualifying factor.⁴⁴⁸

In Maldon, deponents were often called upon to explain the boundaries of the town, due to the number of conflicts which involved neighbouring Heybridge. In 1631, John Smith, a fifty year-old sailor, deposed that the boundary of the town was the Heybridge floodgates where “the salte water often overfloweth the fludgates”.⁴⁴⁹ In the same case, John Peacocke a fisherman who placed his age between forty and fifty years, recalled “that about 5 or 6 and thirty yeares since this deponent went to the setting upp of a Beaken at Reabanke as a bounderie of the lymmitts of the sayd Corporation of malden”.⁴⁵⁰ Deponents used the landscape to demarcate where the boundaries of jurisdictions lay. They also used their experiences and memories of those landmarks to validate their knowledge.

In other places, landmarks were not clear indicators of the different jurisdictions. For example, in Coggeshall in 1597, Henry Marnier and Thomas Dixie were suing Lewes Bircemly over the right to tithing West Field meadows. It had become unclear whether the land belonged to the parish of Coggeshall or the parish of Bradwell. Mr Samford, the Abbot of Coggeshall had taken legal action and obtained the lands for Coggeshall parish. After the reformation he had become the vicar of Bradwell. Henry Bemen, a seventy year-old husbandman went on perambulation with Bradwell parish and overheard Mr Samford say

That the s[ai]d mr Samford at such times as he was abbott of Coggeshall had a suite in law about these tythes in which sute he did recover the tythes of those lands from Bradwell and therefore said if he should now challenge them

⁴⁴⁷ E.R.O. D/DEt M53.

⁴⁴⁸ Ibid.

⁴⁴⁹ T.N.A., E134/6&7Chas1/Hi19.

⁴⁵⁰ Ibid.

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hymselfe as p[ar]son of Bradwell he might have his owne hand brought against hymself [and] therefore he would not bring that matter into question.⁴⁵¹

The perception of West Field meadows presented here was complex. The community of Bradwell parish saw West Field meadows as their own, while Coggeshall parish confirmed that the land anciently belonged to their parish.⁴⁵² Witnesses to the Vicar's information about his legal battles forced Bemen and others on the Bradwell perambulation to reinterpret the lands in terms of the past. Whyte has argued that in constructing the landscape

People encountered the material environment as a complex fusion of pasts: pasts that required interpretation and re-assimilation within the changing social and economic conditions of the present.⁴⁵³

The legal wrangling between the parishes had created two conflicting interpretations of West Field meadows, both couched in terms of custom and the past. In the end, the truth of the matter was revealed through the memory of a moment of re-interpretation of the past while on perambulation. In this way, jurisdictions shaped and altered people's perceptions of their physical surroundings and their notions of identity and belonging.

Other jurisdictions took a more pro-active role in self definition of a jurisdiction, especially in urban environments. The Maldon Corporation sought to establish its own identity as a Borough town through the writing of the White Book. This can be read as a self-conscious attempt to assert greater control over the town and legitimise the actions of the authorities. Although the White Book can be seen as a dry set of regulations aimed at furthering the aims of the elite of the town, it is useful in other ways. It provides a window into the perceptions and anxieties of the Corporation and demonstrates how they shaped the perceptions of the people of Maldon. The Corporation sought to define certain spaces in the town in order better to regulate trade, hygiene and social order. The best example of this is their regulation of the market spaces within the town. The sixteenth custom in the White Book provides a view of how the Corporation envisaged Maldon as a town:

⁴⁵¹ T.N.A., DL4/40/3. The same information but not the same incident remembered by John Clarke an eighty-four year-old Clothier.

⁴⁵² Ibid. Henry Hales The elder, a seventy-two year-old tailor and William Bell, a sixty-eight year-old miller testified pre-reformation information about West Field Meadows belonging to Coggeshall.

⁴⁵³ Whyte, *Inhabiting the Landscape*, 9.

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It shall not be lawfull for any freeman within this Bourrough for to sell victuals as he hath doone within the markt there within five miles of the same bourrow uppon payne of vis viiid for the first time, and the second time to lose his libertie.⁴⁵⁴

The creation of an economic exclusion zone around the town for freemen was an attempt to create a monopoly on trade and, thus, quash competition from other nearby jurisdictions such as the manor of Heybridge Hall. However, it also demonstrates the Corporation's perception of Maldon as an isolated economic unit requiring protection from those removing profit from the town, or those looking to trade outside the Corporation's power. P. Withington has observed that "cultural provinces enjoyed a shared past and present ... because they delimited spaces of recurring interaction, movement, and commerce".⁴⁵⁵ Through the White Book, the Corporation attempted to delineate legitimate commercial spaces, changing the meaning of the landscape for Freemen, and for those affected by their trade and movements.

The market places in Maldon were strictly regulated by the Corporation. For example, fish were brought to the market and sold by twelve o'clock each market day. Butchers were also subject to many complex regulations controlling their movements between their shops and the markets, quality of goods, location of stalls, and the days and times at which they were permitted to sell. The Corporation also separated the sale of small scale produce from the rest of the market:

All manner of p[er]son and p[er]sons w[hi]ch shall hereafter have recourse to this bourrow for the sale of any smale vittels (that is to saie) conies, chikins, capons, pigeons, hennes, wilefoule, pigges, gese, butter, egges, cheese, fruit, otemeale, peascodes, onions, garlike or any other kide of smale victuals in any other place or places of the saide bourrough on the markt daie but only in the new markt place now provided for the sale of the same and not els.⁴⁵⁶

⁴⁵⁴ E.R.O., D/B 3/1/3.

⁴⁵⁵ P. Withington, *The Politics of Commonwealth Citizens and Freemen in Early-modern England* (Cambridge, 2005) 21.

⁴⁵⁶ E.R.O., D/B 3/1/3.

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These regulations demonstrate the importance of commercial functions in early-modern Maldon. The market places were regulated to increase the profit of the Corporation and to secure Maldon's status as the largest economic power in the area. The Corporation sought to impose and legitimate their power through the delineation and control of commercial spaces. In his work on the early-modern market place, D. Postles has argued that

It was a place of negotiation-not only commercial, but social ... it was a place representing civic honour. To perpetrate an abuse in its space was to abuse the dignity of the town; to improve market facilities enhanced the dignity of the town.⁴⁵⁷

Therefore, the success of the market place was symbolic of the success of the Corporation.

The regulation of shops in Maldon shows a different aspect of the conceptualisation of Maldon as a town. The regulations concerning the Sabbath show two things. First, it suggests that the Corporation felt a spiritual duty to help get people into church and away from work,

No butcher shomaker or ther occupier doe sell or deliver forthe any flesh shoes other weare on the sundaie after viij of the clock in the morning uppon paine of forfeyting att every time iiis iiijd ... and none of them uppon the sundaie doe work on their trade or open their windows of their saide shoppes but onely there doores untill the saide houre but not after under the same payment.⁴⁵⁸

Second, it indicates the importance of doors and windows as thresholds between the street and the household. The Corporation's regulation imbued the doors of shops with meaning. Doors open before eight o'clock in the morning on a Sunday were symbolic of legitimate trade, but after eight o'clock, they were a demonstration of immorality and against the good order of the town. In her work on early-modern Norwich, Williamson has found that "The repeated occurrence of the doorway as a site to contest authority and to assert individual agency suggests that it held a symbolic place as a boundary point at which civic authority was lessened".⁴⁵⁹ Civic authorities sought greater control over spaces where they felt their

⁴⁵⁷ D. Postles, 'The Market Place as Space in Early-modern England', *Social History*, 29, 1 (2004), 41.

⁴⁵⁸ E.R.O., D/B 3/1/3.

⁴⁵⁹ Williamson, *Aspects of Social Relations*, 83.

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authority was weakened. Thus, the symbolism of open doors and windows and the times at which they were opened or closed was significant. People saw the thresholds of their houses as access points into the public world of the streets. Their doors were symbolic of their participation in trade, and on the sabbath, they signified morality and inclusion in the community.

The Corporation of Maldon were anxious to regulate the windows and doors of shops and private dwellings. Aliens in the town were physically marked out from inhabitants, with the White Book declaring that

No forriner inhabited within this bourrow of what science occupation or handcraft so ever he be of kepinge any open shoppe within this bourrough shall not from hensforth keepe any such open shoppe or shoppes but shall have a latices of one yard deepe before his said shoppe windowes uppon paine of imprisoment or ffyne as it shalbe thought meet by the discretion of the bailief.⁴⁶⁰

The proscribed punishment demonstrates the anxiety the Corporation felt about strangers keeping shops in their town. The fact that strangers were physically closed off from the trading public must have affected perceptions of them, reinforcing a sense of them as separate and other. M. McIntosh has argued that “Although immigration was essential for the demographic and economic survival of the market centres, local leaders were selective in their responses to newcomers”.⁴⁶¹ McIntosh observes that market centres used their courts to punish behaviour which conflicted with local norms and that the process of self definition constructed a sense of identity through the exclusion of outsiders.⁴⁶²

Through the regulations set out in the White Book, Maldon had created a visible system of recognition which indicated inclusion and belonging through its regulations. Inhabitants could observe whether doors and windows were latticed, whether they were open at correct times and not used for the disposal of waste. Outsiders could be monitored by observation of the physical differences in their shops and dwellings. These signs of good order indicated inclusion or exclusion from the community. However, the meaning of these symbols

⁴⁶⁰ Ibid.

⁴⁶¹ M. K. McIntosh, ‘Locals, Outsiders and Identity in English Market Towns, 1290-1620’, in N.L. Jones & D. Woolf, *Local Identities in Late Medieval and Early-modern England* (Basingstoke, 2007) 71.

⁴⁶² Ibid, 87.

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was changeable, and needed to be read in a specific context. This context could be interpreted by those familiar with the town. As Williamson has argued “An individual’s identity was to an extent ‘read off’ the location in which they lived and their actions and behaviour was of direct concern to other members of the same parish”.⁴⁶³ In Maldon, an individual’s identity could be ‘read off’ the landscape by other inhabitants of the town. By examining the physical symbols of belonging, passers by could assess whether a household was part of, or excluded from, the ‘community’ of the town. Space was regulated strictly in Maldon, with a strong sense of authority, legitimacy and belonging. Through the symbols already discussed, the Corporation’s concept of who belonged in the community became embedded in the landscape, in a shared system of symbolic meaning which proscribed the collectively understood identities of inhabitants of the town.

There were a few regulations which reached inside the household in Maldon, resting on the door as a qualifying factor. For example, the White Book states that

No man shall take any inmate into his house without licens of the bailiefes
uppon paine to be fined at their discretion and no inmate is to be taken where a
householder taketh and receiveth some other to dwell in the same house with
him and so there be two or iiiie families in one house [and] dwellinge under one
roofe [and] thoughe goinge out and in be at sev[er]all doores to and frome the
strete.⁴⁶⁴

The harbouring of strangers, the itinerant, and the jobless, were major anxieties for the Corporation. Inhabitants of the town must have observed which doors, and how many doors were used by those suspect dwellers to establish the legitimacy of their residence in the town. Thus, while the regulations attempted to control the goings on within the household, the real sign of illegitimacy rests at the threshold, the last area of power for the Corporation.

The Corporation made every effort to legitimise the authority of their moot hall. The activities that took place here were key in establishing the authority of the Corporation amongst the freemen. Griffiths has argued that “Significance was attached to the physical site of record keeping and meeting; that access to official words and their written expression was

⁴⁶³ Williamson, *Aspects of Social Relations*, 75.

⁴⁶⁴ E.R.O., D/B 3/1/3.

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closely monitored”.⁴⁶⁵ This was the case in Maldon. For example, attendance at meetings was compulsory, the writings of the borough were closely guarded, and dress was also controlled:

The headburgesses shall provide them and every of them a gowne or a cloke and to weare them when they shall sitt at the court in the hall for the honestie of the towne.⁴⁶⁶

Furthermore, when more than six officials were gathered in the moot hall they were only permitted to talk about public matters and not private disputes. This demonstrates that the Corporation were concerned about being seen as, or becoming, merely a self-serving oligarchy. When someone put forward an issue,

He that first propoundeth the same asue, shalbe quietly suffered to declare his saide cause and his opinion therein before any other shall speake or replie with or against the saide cause and after the propounder of the cause hath fullie spoken therein that then the Bailiefe or Bailief[es] next shall shew ther opinion and soforth everyone which shalbe disposed to talk therein in ther degree.⁴⁶⁷

Austin has argued that by ritualizing the circumstances in which words are spoken, greater importance can be conferred on to them, and in the correct circumstances, transform a sentence into a ‘speech act’.⁴⁶⁸ In the moot hall at Maldon, speech was strictly regulated. This conferred greater importance on words spoken in the hall.

The regulation of the landscape had a real influence on how early-modern people used space. If people saw the landscape in terms of access to, and the movement of, resources, different jurisdictions could shape perceptions of the landscape by regulating access to and uses of different spaces. Custom operated in all of these jurisdictions and was a useful tool in self-governance. Customary activities helped early-modern people understand which jurisdictions they lived and worked in. Custom informed inhabitants which jurisdictions held power over different aspects of their lives and how that power was established and maintained.

⁴⁶⁵ Griffiths, ‘Secrecy and Authority’, 927.

⁴⁶⁶ E.R.O., D/B 3/1/3.

⁴⁶⁷ Ibid.

⁴⁶⁸ Austin, How To Do Things With Words, 20.

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In 1625, Brampton Gurdon sued Thomas Graye about the division of Colman's pasture in Coggeshall. John Winthrop, a thirty-six year-old from Suffolk, deposed his knowledge of the lands in question, stating that

He hath viewed all the land in question betwene the said plaintiff and defendant and further he p[ro]duced a plott of all the said lands nowe in sute w[hi]ch he saith was formerly taken as he hath bene informed by one John Agas ... having some skill in the art of Geometrie he hath measured the sev[er]all p[ar]cell in the said plott described.⁴⁶⁹

J. C. Scott has argued that "by controlling the public stage, the dominant can create an appearance that approximates what, ideally, they would want subordinates to see".⁴⁷⁰ It is arguable that maps and surveys, like written customs, provided a vision of the landscape as the elite wanted the land to be perceived. Surveys, with measured distances, clear boundaries and the rights and responsibilities of tenants set out in an unambiguous document, provided a fixed version of reality which was too simplistic to encapsulate the complex, flexible reality. These simplistic representations served to undermine customary access rights and allowed elites to challenge traditional, plebeian understandings of the physical landscape. N. Blomley has argued that

Surveyors, husbandry experts and map-makers, while partly engaged in a representational endeavour, played a crucial role in property's transition from tenure to a territory. Once imagined as a bounded space, questions of spatial access acquired a new significance.⁴⁷¹

However, in his deposition Winthrop continued in describing the landscape, and attempting to reconcile the changes which had altered the disputed land; "that the sev[er]al divisions in the said plott menconed doe appeare to once to have bene ancent some of them being distinguished by many olde oakes and some other by high bankes".⁴⁷² Here, Winthrop, despite

⁴⁶⁹ T.N.A., DL4/75/14.

⁴⁷⁰ J. C. Scott, *Domination and the Arts of Resistance, Hidden Transcripts* (Yale, 1990) 50.

⁴⁷¹ N. Blomley, 'Making Private Property: Enclosure, Common Right and the Work of Hedges', *Rural History*, 18, 1 (2007) 5.

⁴⁷² T.N.A., DL4/75/14.

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the existence of his survey, felt it necessary to expand on the land's claims to 'ancientness'. The creation of maps, surveys and customals in this period demonstrates the ways that the elite sought to control the landscape through the categorization and simplification of custom. However, the complex network of access rights and customary rules meant that maps still needed explanation. Thus, the landscape continued to be understood in terms of past practice and memory.

The regulation of space and its division between jurisdictions had real implications for the inhabitants of early-modern towns. In Colchester in 1692, Hope Gifford and his wife were suing Edmund Hickingill concerning the ownership of the Castle Bailey Fields. The case sought to establish whether the fields lay in the jurisdiction of Colchester or of Donyland manor. Several of the deponents used the same reasoning for claiming the land was not within Colchester's jurisdiction. Christopher Martin reported that,

This deponent hath formerly seen severill persons run into the Castle Bayley to avoid being arrested (being persued by the serjent) and the serjants do not arrest them in the Castle Bayley (it being reckoned to be out of the jurizdiction of the town of Colchester)⁴⁷³

The boundary between Colchester and Donyland was recognised by the inhabitants of Colchester to such an extent that it prevented the arrest of criminals who sought escape into the field. Johnson has argued that boundaries "can appear to be impenetrable but are in fact pierced, or alternatively can be designed to be invisible to the gaze, but actually form a formidable obstacle".⁴⁷⁴ To outsiders, the boundary was invisible; but to the inhabitants of Colchester the boundary formed a conceptual wall which the Corporation could not cross.

The jurisdictions of early-modern Essex were often complex, overlapping and invisible. Although the landscape sometimes indicated the position of a boundary, early-modern people needed to form an understanding of these jurisdictions to ensure their customary rights were maintained. In this section it has been demonstrated that jurisdictions required constant redefinition to maintain their authority over a changing landscape. The Maldon Corporation sought to define the urban space of the town through heavy regulation of commercial and official space. It has been argued that the perception of different jurisdictions

⁴⁷³ T.N.A., E134/4&5W&M/Hil10.

⁴⁷⁴ Johnson, *An Archaeology of Capitalism*, 71.

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had real impacts on the lives of early-modern people, physically restricting their movements as well as shaping their concepts of identity. The appearance of a door with a lattice, or one opened at the incorrect time, could indicate an interloper into the community or the threat of immoral behaviour. Furthermore, the flight of a thief into a field across a seemingly invisible boundary could physically prevent their arrest. In this sense, the early-modern perception of space held both symbolic and functional consequences.

Conclusion

This chapter examines how early-modern deponents described the boundaries of their communities. It is clear that deponents built up a picture of the landscape which was founded in the past. This meant that the past influenced, and was connected, to their present concerns, as the past delineated their customary rights and responsibilities. Perambulation rituals delineated the social, legal and physical boundaries of the parish. Furthermore, it is observed that deponents connected their understanding of the landscape with their life histories and to some extent, their religious identities. The landscape has been shown to be made up of a series of mnemonic sign posts from which individuals could draw meaning and identity.

It was suggested that early-modern people also understood the landscape in terms of its resources, and the ways that those resources were accessed or moved through the landscape. The repetition of working life in the rivers and estuaries created an understanding which was primarily physical. The landscape could come to represent the communities which inhabited it. Therefore, transgressions of the physical boundaries could represent a transgression against social order. It is suggested that multiple interpretations of the landscape existed alongside each other, complicating attempts to dominate the landscape. In conclusion, elite authorities often attempted to enforce a fixed view of spaces to better control them. However, the complex reality of work and life continued to limit the success of those attempts during the early-modern period.

This chapter also examines how early-modern people conceptualised the different jurisdictions which governed the land, and whether they were influenced by the way those jurisdictions demarcated space. It is argued that although jurisdictions were often overlapping and invisible, that they had real impacts on the actions of early-modern people. In Maldon, the markets, thresholds and the waterside were spaces singled out for intense regulation, creating a

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symbolism of inclusion and exclusion for the town's inhabitants. Furthermore, early-modern people needed to maintain an understanding of the jurisdictions which governed their surroundings to maintain access to their customary rights and resources.

In her work on notions of property Brace used the image of a spider's web to illustrate her ideas on the seventeenth century mind-set. She suggested that

This is where my image of the web comes in, to try and capture the sense in which people are held together and kept apart by structures which remain invisible most of the time ... asking what they saw when they tried to look over their shoulders at the forces operating behind their backs, at the threads of the web and at how they envisaged their own domains.⁴⁷⁵

The ideas discussed in this chapter can be envisaged in a similar way. The landscape was not just a physical structure. Instead, space was one aspect of the mentality which held together all the threads of early-modern perception. The early-modern landscape was a repository of memory and traditions which underwrote customary law. This repository was accessed by deponents through a series of symbols and rituals, which in turn shaped the way they interpreted space. As Brace found, it is difficult to separate each thread of the web, which linked together and influenced the remembered and imagined structures making up the early-modern mentality. Although the landscape's appearance was subject to alteration, its meaning and function was kept stable through the historical narratives provided by customary knowledge. In these narratives, the pasts of the landscape were intertwined with the pasts of individuals and their communities, creating a sense of continuity in the face of change. As a result, the landscape was constantly re-interpreted by early-modern people, in order that it could be understood as underpinning custom; a continuous and unchanging structure.

⁴⁷⁵ Brace, The idea of Property, 4.

Chapter 4: Social Relations

Introduction

Conflict over custom was part of a dialogue between early-modern people about how best to maintain social order in a world of changing cultural, economic and religious expectations. Customary law was central to the way early-modern communities functioned. The performance and preservation of local custom permeated and shaped people's lives including the way they interacted with each other. Custom required early-modern people to involve themselves in their locality in terms of land ownership, tithes and charges, access to resources, inheritance and behavioural conformity. Thus the 'common voice' of the locality, which underwrote custom, established cultural norms about property, entitlement and morality. In turn this created a collective understanding of the behavioural norms required to maintain social order. However, like custom, behavioral norms and social expectations were flexible and changed over time, making it necessary for communities to re-examine and reiterate their understanding of social norms. This chapter aims to establish how the complexities of early-modern social relations were contested through the construction and operation of custom.

The most important belief which underpinned early-modern society was patriarchy. This ideological system proscribed that society was made up of a series of commonwealths, each ruled by a male whose authority was absolute. Each of these commonwealths fitted into a larger system, headed by the monarch, and descending through a linear series to the poorest

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household in the parish.⁴⁷⁶ However, patriarchy was a flawed ideology despite its justification through references to classical, biblical and medical thought. Since the 1960s, and particularly in the last twenty years, historians have taken a critical approach to the patriarchal ideals espoused by commentators and advice books. In particular, historians have sought out evidence of how patriarchy functioned in reality.

Shepard's work has been particularly ground breaking for the historical consideration of gender in the early-modern period. Shepard examines depositions from the Cambridge University courts in order to demonstrate that patriarchal ideals were contradictory, confusing and often irrelevant to ordinary men. Shepard argues that "Access to patriarchal privilege was varied for men as well as women (albeit on profoundly different grounds), and the competing forms of manhood asserted by early-modern men could and did undermine patriarchal ideals".⁴⁷⁷ The idea that patriarchy could exclude men from claims to authority because of class, wealth or marital status is important to this study. Shepard makes it evident that gender identities were the product of social interaction rather than adherence to a monolithic patriarchal ideal.

An increasing number of historians have focused on how, and if, patriarchal ideals were applied in early-modern society. B. Capp has examined the ways that women were able to circumvent patriarchal restrictions through their key role in the household economy, their reliance on an autonomous social network of other women, and through 'accommodation' and 'negotiation' with men:

Ordinary women in early-modern England were not helpless, passive victims of male authority, despite the barrage of patriarchal teaching fired at them throughout the period. Far from being confined to a narrowly domestic sphere, as many commentators wished, they enjoyed a lively public life in the street at the market and at church.⁴⁷⁸

Capp's findings are supported by other social historians. For example, while examining the Church court records of the diocese of London, L. Gowing, has identified that women

⁴⁷⁶ B. Capp, 'Separate Domains? Women and Authority in Early-modern England', in Griffiths, Fox & Hindle, *The Experience of Authority*, 118-119.

⁴⁷⁷ Shepard, *Meanings of Manhood*, 1.

⁴⁷⁸ Capp, 'Separate Domains?', 139.

exercised agency through the use of defamation and the regulation of sexual honesty in their communities.⁴⁷⁹

While investigating gender and space, Flather has found that the practicalities of everyday life were more important than patriarchal expectations. Flather argues that patterns of work and sociability meant that space could not be divided according to the patriarchal ideal:

Space was not static but fluid and highly dynamic. Its meaning was constantly shifting. Short-term, gendered use of space could alter according to the time of day or the season of the year, through to specific occasions such as childbirth.⁴⁸⁰

Flather demonstrates that women's involvement in the household economy, the religious community and employment complicated the implementation of patriarchal ideals. In her analysis of social relations in early-modern Norwich, Williamson supports these findings. Williamson argues that "women's regular participation in the economic life of the city may have diluted strict ideological assumptions about gender".⁴⁸¹ Williamson finds that early-modern people's identities and thus the way they interacted with each other should not be understood "in terms of domination versus subordination, but as a continual process of negotiation working within a hegemonic system, functioning not only from above, but from below."⁴⁸²

A reassessment of the role of patriarchy in forming social relationships in early-modern England has allowed historians to analyse previously overlooked aspects of society. For example, in their work on hierarchy and subordination, M. J. Braddick and J. Walter reevaluate the operation of authority in early-modern society. They argue that

the monarchy's lack of a professional army or police force and its dependence on voluntary office-holding meant that the image of authority was central to the

⁴⁷⁹ L. Gowing, *Domestic Dangers* (Oxford, 1998) 109.

⁴⁸⁰ Flather, *Gender and Space*, 38.

⁴⁸¹ F. Willimson, 'Aspects of Social Relations in the Seventeenth Century Diocese of Norwich: Space, Identity and Agency' (Unpublished Doctoral Thesis, UEA, 2008) 92.

⁴⁸² *Ibid*, 173.

maintenance of power. The credibility of that image rested less on repression than on the ability to negotiate consent to representations of political power.⁴⁸³

This led historians to identify the negotiation of consent to authority in everyday life as part of the complex make up of social relations. That the exercise of power was negotiated through everyday contact meant that social relations, the contact between individuals in a community, was hugely important in the way that society functioned. This is supported by Griffith, Fox and Hindle's collection of articles. In their introduction they emphasise the reciprocal nature of power relations:

The majority of people were not merely the passive recipients of social and political control but possessed some degree of agency in constructing the terms of their inferiority. Thus, whatever the ideals and intentions of governors, their strictures were liable to be appropriated and reinterpreted in the acts of reception. The resulting (but constantly shifting) pattern of social and political relationships was invariably the outcome of an ongoing set of negotiations.⁴⁸⁴

This chapter seeks to identify the way customary disputes were used as a platform for these negotiations and how those negotiations altered through the sixteenth and seventeenth centuries

There is consensus among social historians that the construction and experience of authority in early-modern England was not due to an uncontested tyranny of patriarchy. It is clear that social relations were made up of a complex combination of coercion, negotiation and accommodation which grew from a need for consent between ruler and ruled. K. Wrightson has further developed this reinterpretation of social relations examining them in terms of relationships of obligation and mutual reliance rather than of conflict, suggesting that

Relationships of mutuality and obligation varied considerably in their nature and ostensible function, their social articulation, their geographical extensiveness, degree of institutional definition, durability and emotional

⁴⁸³ M. J. Braddick & J. Walter, *Negotiating Power in Early-modern Society: Order, Hierarchy and Subordination in Britain and Ireland* (Cambridge, 2001) 13.

⁴⁸⁴ Griffiths, Fox & Hindle, *The Experience of Authority*, 5.

content. The essential point is that they were ubiquitous. To contemporary moralists they were the very sinews of the common wealth.⁴⁸⁵

The simultaneous need for relationships of reciprocity and authority between early-modern people created a series of unclear hierarchical relationships which undermined the claims of the dominant legitimately to hold undisputed power over others. In this chapter it will be argued that customary disputes allowed those in subordinate positions to appropriate and reinterpret the ideals of the social order in order to protect their own interests and those of their communities. To do this they called on widely understood ideals of mutual dependence and respect which held the commonwealth together. This chapter will proceed in three sections. The first section will identify how people involved in customary disputes created a dialogue about how best to protect the social order and how the wider community could be drawn into this dialogue creating a space for legitimate discussion about patriarchal norms. The second section will examine how local elites engaged with and used this dialogue to advance their own interest. This section will also examine the changing role of the local elite through the sixteenth and seventeenth centuries and how these changes affected the discussion of legitimate authority. The third section will examine how the dialogue established during customary disputes drew on contemporary morality to criticise those who engaged in profiteering and damaged the commonweal.

Dialogue

This section identifies how disputes about custom were used by early-modern people to initiate a dialogue about social order. In these cases, disagreements about custom enabled people in traditionally subordinate positions to criticise those exerting authority over them. I will demonstrate how deponents used disagreements about customary rights as a platform to communicate their expectations of patriarchal authority and to express where they felt their requirements had not been met. Furthermore, the customary nature of these disputes allowed deponents to transport conflict between individuals into the wider community. This provided

⁴⁸⁵ K. Wrightson, 'Mutualities and Obligations: Changing social relationships in Early-modern England', *Proceedings of the British Academy*, 139 (2006) 167.

an opportunity for a legitimate public discussion of patriarchal norms, social expectation, and how best to preserve the social order.

Such discussions were enabled by the establishment of dialogue between individuals and the wider community. In 1566, in Coggeshall, a dispute arose within the Wade family. When the head of the family, Robert Wade, died, his daughter, Rose Cowper, disputed the legitimacy of his will. Rose Cowper felt aggrieved that her daughter, Elizabeth, had not been left a fair portion of her grandfather's estate, and so set to suing her brothers, Christopher and Edward, on behalf of her daughter. The case was initially argued by the plaintiff on the grounds that correct procedure had not been followed in regards to the customs of Coggeshall manor when Robert Wade made his surrender. John Browneson, a local tailor, although not present at the will making, knew about the confrontation that followed the creation of the will and reported that

He [Robert Wade] had bene earnestly moved by his daughter the mother of the pl[ain]tif that he wolde alter his will and geve a p[ar]cell of the p[re]mysse ... unto the now pl[ain]tif to whom the said Roberte answered that he would not geve a sote from his t[w]o sonnes for said he Elizabeth hathe a childe p[ar]te alreadye.⁴⁸⁶

While initially, Cowper's disagreement with her father appears to be private, in fact it was a calculated and public performance. In Chapter One, it was demonstrated that the writing of wills were of interest to the community and were reported to other inhabitants through customary networks of information. This is supported in this case, where the depositions of members of the Homage, and other outsiders to the family, confirmed the contents of the will and the circumstances in which it was made.⁴⁸⁷ It could be argued that Cowper chose this moment to negotiate with her father because of its legal and public importance, ensuring that the whole community would be aware of her grievances and of her father's chosen course of action. This dispute enabled a subordinate female to question the legitimacy of her father's behaviour as patriarchal head of the household and to appeal to the community for better terms of her and her daughter's subordination.

⁴⁸⁶ T.N.A., DL4/8/12/8Eliz.

⁴⁸⁷ Ibid. Deponents who reported the contents and circumstances of Wade's will were Hughe Whitiage, William Cavell, William Clarke, Robert Allyson, Thomas Clarke.

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Dialogues that were established often focused on issues beyond the scale of the initial dispute. In West Mersea, in 1574, John Prentice died leaving his widow Elizabeth Prentice in charge of his estates. One of her responsibilities was to collect rent from John Fields, a tenant in the Manor of Bower. John Fields denied that he owed any customary rents. However, Elizabeth Prentice claimed that

The saide John Feildes beinge a verie froward and evill disposed p[er]sone thereby to disinherite her ma[jes]tie of the said sev[er]all rentes for two whole years ... he hathe utterlie denied to paie the saide rentes affirminge that there is noe such rente due by him.⁴⁸⁸

Prentice continued to underline her efforts to extract the rent from Fields:

Althoughe your Lordeshippes oratrix hathe divers and sundrie tymes gentelie required the saide feild gentelie to paie the saide rentt ... he hither to denyed and yet dothe givinge it oute and answeringe verie stoutelie and arrogantelie that he will spende the value of the said lands and tenements before he will paie the same.⁴⁸⁹

John Fields' adopted a similar line of argument, describing Prentice as "frowardly purposed and thinkinge by her wrangling and troublesome meanes to gett [the rents] of this d[efendan]t".⁴⁹⁰ In this case it is tempting to see Fields as a threatened patriarch trying to avoid the 'frowardly' attempts of Prentice to command him. However, the conflict was presented in binary terms, not of gender or class, but of disruptive personal ambition versus the preservation of 'quiet'. Both Prentice's and Fields' arguments skirt the issue of a yeoman's widow extracting rent from a house-holding man, and the complexities this presented in terms of the accepted natural order of early-modern society. Both Flather and Williamson have recently argued that the complex reality of early-modern social relations diffused some of the rigidity of ideals about gender. They argue for more research to be centred on individual agency. This case demonstrates that disputes between men and women did not only centre on

⁴⁸⁸ T.N.A., E112/14/5.

⁴⁸⁹ Ibid.

⁴⁹⁰ Ibid.

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gender. Prentice and Fields, did not focus on the gender of their opponent, instead both arguments were strongly focused on the personal failures, ambition and greed of their adversary and their own role in preserving the harmony of the social order.

The deponents' emphasis on 'quiet' was intended to focus attention on whose actions best preserved the social order. Quiet had a two-fold meaning in the early-modern period. The first has been observed by Wrightson who argues that "the most commonly employed vernacular term for satisfactory conjugal relations was that of "quietness".⁴⁹¹ Secondly, Wood has found that speech, noise and silence

Formed and articulated everyday power relations ... Assertive speech was understood as the province of the educated, rational gentleman; women, servants, the young and the poor were expected to remain silent.⁴⁹²

Expectations as to who should act 'quietly' and who made unruly noise underwrote early-modern notions of the patriarchal hierarchy. Both Prentice and Fields emphasised their opponent's unruly declarations and aligned themselves with the 'quietness' which served to preserve social harmony. At a first glance, this case appeared to be about unpaid rents. However, Prentice and Fields used their dispute to create a public dialogue about who had the right to speak with authority, and who was disturbing the peace. While to some extent this case was about the status and authority of two individuals, it was also a discussion as to how to preserve social harmony and quiet for the benefit of the wider community.

While some deponents skirted the issue of the patriarchal hierarchy, others created dialogues which sought to reinforce its ideals. In 1605, in the Exchequer court bills and answers, which preceded full legal action, William Wells, the parson of East Mersey, petitioned for help extracting rent from Katherine Audley. Wells claimed that Audley, a woman of substantial property, was withholding tithes and that without her contribution he could not make ends meet. Wells claimed that from the 100 acres of land and 100 acres of salt marsh which Audley held after the death of her husband Thomas, she had "unjustly secretly and unconscionably withdrawne and with held from your said orator all and singular the said

⁴⁹¹ K. Wrightson, 'The Politics of the Parish in Early-modern England', in Griffiths, Fox & Hindle (eds.), The Experience of Authority, 16.

⁴⁹² Wood, The 1549 Rebellions, 119-122.

tithes”.⁴⁹³ Wells claimed he was owed for “corne, lambs wooll calfe and whatsoever other tithes in kind (tyth cheese onely excepted)”.⁴⁹⁴ Audley replied that

neither shee duringe all the time which she hath held or mantained the said premisses or any parte thereof ... did at anie tyme or tymes by or with the consent privilie or by appoyntment of this defendand paie or cause to be paid anie tyth ... before her tyme duringe all the tyme of her intermarriage with Thomas Audley Esq her husbände deceased neither hee nor anie other clayminge by from or under him (to this defendants knowledge) did ever paye anie tyth.⁴⁹⁵

Audley claimed that Wells’ debts were “by reason of his owne unthriftiness”.⁴⁹⁶ In this case, Wells’ relative poverty allowed Audley to criticise his claim to manhood and authority in patriarchal terms. Shepard has argued that

A man who diverted resources from the household economy was labelled as dishonest, negligent and unseemly. Such neglect was dangerous, not only for the man’s wife and family but also for other men whose credit might also be jeopardised by such unthriftiness ... such worthlessness deprived men of claims to esteem and account, and could bring about their exclusion from credit networks.⁴⁹⁷

Audley’s criticism of Wells’ economic position demonstrated that she understood and felt entitled to comment on Wells’ claims to manhood. Arguably, this indicates Audley’s involvement in wider networks of credit and information. Wells’ role as parson made Audley’s jibe about his economic capabilities, and consequently his morality, all the more damaging. This undermined his moral worth and suitability for his role as spiritual leader of the community. Here, the Exchequer bills and answers were used to complain of unpaid tithes. However, Audley also employed them as a means of reinforcing the patriarchal ideal, which

⁴⁹³ T.N.A., E112/80/147.

⁴⁹⁴ Ibid.

⁴⁹⁵ Ibid.

⁴⁹⁶ Ibid.

⁴⁹⁷ Shepard, *Meanings of Manhood*, 192.

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demanded economic independence from men in positions of authority. Despite her gender, Audley used this legal dispute as a platform to challenge and discuss the nature of Wells' right to demand tithes as well as his moral authority over the community.

Examples of customary disputes bringing private conflict into the wider community can be found in the depositions examined. In 1618, in Hatfield Broad Oak, Sir William and Lady Jane Wiseman were suing Harbottle Grimstone and Lionell Farrington for their efforts at collecting a debt for the King. It seems that Farrington and his men had attempted to collect the debt in goods from the family home, but before they had arrived, Lady Wiseman had managed to hide or dispatch any moveable goods from the house. The way in which Lady Wiseman dealt with the prospect of debt collectors is of interest in itself. Abbadiah Barker from Wimbish, a community seventeen miles from Hatfield Broad Oak, described how

The said Lady did carry awaye much of the said goods she conveyed to this deponents house three leather chayers ... the said Lady did cause much of the said goods to be conveyed awaye [and] hidden some in ponds some in ash heapes some in nettles some under plancks and bords.⁴⁹⁸

Aside from preventing the loss of her household goods, Wiseman's actions had two functions. The first was to defy Farrington's authority over her household goods. Flather has found that "Married women controlled access to their houses by outsiders. They intervened to repel or to expel public officials from their homes, especially if they posed a threat to the integrity and economic interests of the family".⁴⁹⁹ Lady Wiseman may have purposefully drawn upon the patriarchal expectation that women were bound to protect and advance the interests of the household to justify her actions. By burying her best goods in ashes and bricking up rooms in order to hide valuables and documents, Wiseman was presenting an argument about her responsibilities under the patriarchal system. By adopting this ideal Wiseman emphasised the illegitimacy of Farrington's attempt to invade her household. Secondly, by involving the community at Wimbish, Wiseman ensured that her situation would not remain a debate over competing individual interests, but would be discussed publicly in terms of its consequences for the social order of the wider community.

⁴⁹⁸ T.N.A., E134/15Jas1/Trin11.

⁴⁹⁹ Flather, *Gender and Space*, 44.

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Lady Wiseman's opposition to Farrington's authority in this matter is radically contrasted by her implicit trust in those she sent her goods to. Thomas Norris reported that

Symon Tendell by the appointmant of the Lady Wysman did carry out of [and] from the said house called Broadoake certeyn goods bound upp which this deponent taketh were two fether bedds and a matris and left some goods in a grove within the park.⁵⁰⁰

It seems that the inhabitants of Wimbish did quite well out of Lady Wiseman's predicament. In Chapter One, it was demonstrated that unusual events served to anchor a communities collective memories about custom. By sending her goods to Wimbish, Wiseman ensured that the community's attention would be focused on events at Hatfield Broad Oak. Customary networks of speech and information served to record, discuss and judge the legitimacy of Farrington's actions.

Farrington's response to Wisemen's concealment of her household goods was extreme. The reports varied as to how devastating his visit was for the house and family. Some witnesses claimed that the attack lasted 3 days, others claimed it was 8. Some insisted he had 10 men with him, while others reported 20. The damage done to the house was reported to be between £500 and £1000. The consensus of deponents was that the damage was considerable and unwarranted. For example, Richard Perry, from nearby Thaxsted, described how

there were Ew[er]s benches condute or conduit pipes of leade cestezues for water waynscott glasse yron barres brewinge vesselles and horsemille fixed or annexed unto the freehold of the foresaid house called Broddocke ... and were annexed att such tyme as the said Lionell Farington about twoe yeares since and more cam thether and defaced a great p[ar]te of them ... the said Farrington [and] others by his command or sufferance did breake open the dores gate [and] windowes of the said house [and] did much spoyle [and] damage thereabouts [and] greatlye defaced the brickwork by pullinge out of yron barres staples and other yron worke out of the wyndowes.⁵⁰¹

⁵⁰⁰ T.N.A., E134/15Jas1/Trin11.

⁵⁰¹ T.N.A., E134/15Jas1/Mich24.

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While Lady Wiseman was determined to thwart Farrington in his collection of the original debt, Farrington decided that in the absence of movable goods, anything which could be removed by force would do. It could be argued that this exercise was one of saving face. Braddick and Walter have argued that “to exercise office, gentlemen had successfully to lay claim to a particular social role defined in terms of wider expectations and symbols of legitimate power”.⁵⁰² To be undermined by a woman and her servants would have damaged Farrington’s claims to patriarchal authority. In response to this, Farrington exerted his authority physically by defacing the grand house at Hatfield Broad Oak, a symbol of the Wiseman’s status and authority.

It is clear that Wiseman and Farrington were involved in negotiating the role of patriarchal authority in the private household. However, this case provided them, and the wider community, with a platform for discussion about the social order. Several of the witnesses reported that Farrington’s men did not appear to be respectable, but were “p[er]sonnes of lewde conv[er]sation and fitt instrum[e]ntes to comitt and attempt outrages and badd actions ... the moste p[ar]te of them beinge of noe credit but of lewde and ill disposicons”.⁵⁰³ This was a serious accusation. The ‘lewdness’ of Farrington’s men was further evidence that Farrington’s authority over the Wiseman’s was not legitimate, as it did not fulfil patriarchal expectations. In the minds of witnesses, one action in particular condemned Farrington’s claims to legitimate authority. William Richardson, a husbandman from Wimbish, was disgusted by Farrington and his men when they

did take and carry awaye the bedding and furniture in the chamber where the ladye wiseman did usuallie lye in the house called Broddocke and hard some of the company that belonged or were attendant upon the s[ai]d Farrington say they would not let her have a dishe or a spoon or any other necessaries to help her.⁵⁰⁴

⁵⁰² Braddick & Walter, *Negotiating Power*, 27. Also see J. Walter & K. Wrightson, ‘Dearth and the Social Order in Early-modern England’, *Past and Present*, 71 (1976), 23.

⁵⁰³ T.N.A., E134/15Jas1/Mich24. For further discussion of the meanings of early-modern credit see A. Shepard, ‘Poverty, Labour and the Language of Social Description in Early-modern England’, *Past and Present*, 201 (2008), 51-95, C. Muldrew, ‘Class and Credit: Social Identity, Wealth and th Life Course in Early-modern England’, in French & Barry, *Identity and Agency*, 147-177.

⁵⁰⁴ *Ibid.* Other deponents included Richard Perry, Edward Webb and John Jerns.

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The majority of deponents in this case focused on the removal of Wiseman's bed as a particularly important wrong. According to patriarchal norms, men in authority were required to treat their subordinates 'fairly'. Therefore, Farrington's efforts to leave Wiseman without the means to live counteracted his claims to legitimate authority.

This dramatic struggle between an indebted noble woman and an office-holding man was the context for a larger discussion about social order and patriarchal norms. The community at Wimbish, and the witnesses at Hatfield Broad Oak, used this dispute to criticise Farrington and to reiterate their expectations of a legitimate figure of authority. Deponents used this incident as an opportunity to set out their expectations of how a man with legitimate authority should behave; that is to say in choosing respectable men to follow him, in refraining from unnecessary violence and in treating a noble woman with dignity and kindness. By exposing these wrongs the community not only justified its aid to Lady Wiseman but attempted to reinforce traditional notions of authority, patriarchy and reciprocity.

In these cases we have seen that private conflicts provided a legitimate arena for individuals and their communities to contest the actions of the powerful, while simultaneously demanding the maintenance of patriarchal norms. These norms included the fair distribution of goods to subordinates, the economic competence of men of moral worth and conformity to the ideals of 'quietness', self restraint and mercy. In these cases, the ideals set out by these discussions were not always enforced. Elizabeth Cooper was not granted her inheritance, the Wisemans continued to sue Farrington repeatedly through the seventeenth century, and the inhabitants of Wimbish had their new furniture confiscated. Even so, it is significant that legal disputes about custom used networks of speech and knowledge in their localities to draw communities into a dialogue about how their world should be ordered.

The Local Elite

In the previous section we saw how early-modern individuals and communities used disputes over custom to voice their concerns about issues of social order and legitimate authority. In this section I intend to examine how local elites engaged with the dialogue created by customary disputes. I will also examine how changing ideas about legitimate authority affected the use of customary disputes as a platform for the discussion of social norms. Historians have argued that in the sixteenth and seventeenth centuries

One outcome of the complex of demographic, economic social and cultural changes was that the village notables ... lost their sense of solidarity with their poorer neighbours; instead, their values and attitudes became much more closely identified with those of the gentry and, ultimately, the nation's rulers.⁵⁰⁵

This consolidation of interests amongst local elites had consequences for the way custom operated. I will examine examples from the depositions when the presence of a consolidated group of local elites changed the way that communities used custom to discuss the maintenance of social order.

While local elites involved themselves in customary disputes, it is unclear whether they intended to create a dialogue about obligations to the local community. In 1558, Clement Smyth, the son of Sir Clement Smyth (an eminent administrator and religious conservative under Henry VIII and Edward VI), threatened to sue William Cock and John Parvett, who had taken wood from Fryerwood Common. Smyth claimed that the men

by p[re]tended tittle unto the same have felled and cutt down dyvres woodes on the common ... and comitted dyv[er]se and sundry spoyles wilfull wastes and disturbances.⁵⁰⁶

Cock and Parvett argued that Fryerwood belonged to Robert Rich, their employer, who was a wealthy and powerful advocate of godly ministers in Essex. He owned seventy manors in Essex alone and commanded 18 livings in the county. Cock and Parvett argued that

The said Lord Rich his ancestors and all others whose estate he the said lord rich hath ... used quietly and peaceably to fell cutt downe carry awaie and to enjoye all and singular the wood.⁵⁰⁷

⁵⁰⁵ J. A. Sharpe, *Crime in Early-modern England 1550-1750* (London, 1999) 105.

⁵⁰⁶ T.N.A., E112/14/16, J. D. Alsop, 'Smyth, Sir Clement (d.1552)', *Oxford Dictionary of National Biography*, Online Edition (Oxford, 2004) (<http://www.oxforddnb.com/view/article/40614>) accessed 14/04/2010.

⁵⁰⁷ T.N.A., E112/14/16, Brett Usher, 'Rich, Robert, First Earl of Warwick (1559-1619)', *Oxford Dictionary of National Biography* (Oxford, 2004) (<http://www.oxforddnb.com/view/article/61021>) Online Edition, accessed 14/04/2010.

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This case can be read in two ways. Looking at the credentials of the landholders involved, it could be argued that Smith was using a dispute about customary access to wood resources to attack his rival in the locality. By engaging in a dispute about custom, Smith and Rich were struggling for power over a valuable local resource.⁵⁰⁸ By challenging Rich's ownership of Fryerwood, Smith ensured that the dispute was no longer just about individual rivalry, but became about the role of the local elite in controlling access to precious fuel and building resources. Alternately, it could be argued that Cock and Parvett, by taking wood from Fryerwood Common in Lord Rich's name, sought to initiate a legal dispute between the rival landholders. In doing so, Cock and Parvett created a legal dialogue in which they could express (and perhaps enforce) their rights to access the resources on Fryerwood Common. Either way, the presence of powerful landholders with competing interests did not prevent the dispute becoming a dialogue about the rights of inhabitants to access common land.

In some cases where local elites attempted to use custom to advance their private disputes, the on-looking community created a dialogue which challenged their fractious behaviour. In Colchester in 1634, John Lucas sued Henry Barrington over damage done to Canwicke mill. Lucas and Barrington were key figures in the politics of the town. Lucas, whose royalist sympathies made him the subject of open riot in 1642, was notorious for his attempts to limit the power of the Corporation, of which Barrington was an important member. On top of this, Lucas and Barrington both owned mills which sat alongside the same water source. Their neighbouring commercial interests did not sit well together, and the millers of Barrington's and Lucas's mills became embroiled in a bitter conflict which affected the entire economy of Colchester. Richard Steele, the miller at Canwicke mill, reported that Barrington's servants had cut the banks of his mill dam in the west corner, causing it to flood.⁵⁰⁹ Walter has examined at length the tensions within the town which preceded the 1642 riots. The Royalist allegiances and aggressive encroachment on the Corporation's power made Lucas many enemies in the town. Barrington, as a member of the Corporation, was accused of instigating the riot, or at least acting slowly to stop it. Walter examines this case in particular

The defendant in the case, who claimed that the rebuilding of the mill had flooded his lands, was none other than Henry Barrington, a leading member of

⁵⁰⁸ A. Wood has identified the intensity of disputes over fuel in Essex at this time and the moral tone employed in debates over fuel rights. A. Wood, 'Place, Custom and Fuel Rights in Early-modern England' (Lecture given at the Centre for East Anglian Studies, 19/11/09).

⁵⁰⁹ T.N.A., E134/8&9Chas1/Hil21.

the Corporation, an ardent supporter of Parliament and one of those to feature prominently in the account of the 1642 attack.⁵¹⁰

John Richers and John Nichols, husbandmen of Colchester, both detected the litigious nature of the case and deposed that “if Edwick the miller of the complainents mill standing above canwicke mill and steele the miller of canwicke mill were not at varriance amongst themselves there might be sufficient water for canwicke mill”.⁵¹¹ This case was not only a dispute about damage to Canwicke mill. Lucas and Barrington used their ownership of rival mills to antagonise each other. However, those observing the dispute took the opportunity to begin a dialogue about how the rivalry between the millers disturbed the effective functioning of the mills, leaving the townsfolk without flour.⁵¹² Here, local husbandmen were able to identify, and criticise, the behaviour of the powerful local elite which contravened patriarchal norms and disturbed the social order.

Later in the early-modern period, the consolidation of a network of local elites made the discussion of customary disputes more problematic. In Colchester in 1689 Edmund Hickeringill was suing Peter and Ann Clark, and John and Dorothy Meriton, for refusing to pay tithes. Witnesses reported that Clark and Hickeringill had taken part in a process of informal mediation in order to stop the ensuing legal action. Hickeringill had invited several yeoman from nearby towns to witness his negotiations with Clark. As an example, Thomas Chaplin, a yeoman from Halstead, a town around ten miles away from Colchester, was present at Hickeringill’s house when Peter Clark came to pay the tithe. Chaplin remembered that “The plaintiff did then intreat the said Peter to make an end of the suite between them and p[re]vent further charge to himselfe [and] the pl[ain]tif prostered to abate [and] bear ten shillinges of the charge himself”.⁵¹³ Another yeoman, Robert Sadler from Colchester, also witnessed a confrontation at Hickeringill’s house. Sadler reported that “the said plaintiff did in this deponents hearing aske the defendant peter why he would not give him the said plaintiff notice when he the said peter pulled up his roots [and] turnips the said defendant replied that he would not”.⁵¹⁴ Hickeringill drew on respected local yeoman to witness his efforts at reasoning

⁵¹⁰ Walter, *Understanding Popular Violence*, 95.

⁵¹¹ T.N.A., E134/8&9Chas1/Hil21.

⁵¹² T.N.A., E134/8Chas1/Mich18. The previous year Lucas had sued the Corporation for allowing new wind mills to be erected in Colchester taking business away from the water mills. The towns folk had pointed out that the water mills were often unable to work because of the lack of water leaving them without flour.

⁵¹³ T.N.A., E134/1W&M/Mich15.

⁵¹⁴ *Ibid.*

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with Clark. By inviting this select audience to his house, Hickeringill made sure that his efforts to preserve social harmony were remembered. These meetings demonstrated that Hickeringill was fulfilling his duty as a patriarch, by showing reason, generosity and forgiveness in the face of Clark's refusal.

What is significant in this case is that Hickeringill invited select members of his social network to witness his negotiations with Clark, effectively excluding the rest of the community. By limiting access to this dispute about custom, Hickeringill prevented the dispute becoming a wider discussion about the social order, which may have touched on his conduct as an authority figure and patriarch. In this case, by excluding the community from the negotiations, the 'common voice' of the neighbourhood was denied its traditional function.

Hickeringill's chosen audience and generous mediation with Clark sits in marked contrast to the actions of Ann Clark, Peter's widowed mother, and the actions of another defendant in the case, Dorothy Meriton. The tithe collector for the parish, Nicholas Sharpe, reported that when he "went to demand the tyth the defendant Anne gave him bade language and called him knave [and] rogue [and] told him that he had nothinge to doe there".⁵¹⁵ George Bunting, a weaver in his early twenties, witnessed Nicholas Sharpe

Ask the said defendant [Dorothy] Meriton about a year agoe comeing from the field ... when he should have the tith due to the plaintiff she the said defendant replied that he should not have the tyth when *he* but when *she* pleased.⁵¹⁶

Here it could be argued that the local male elite had withdrawn to mediate the case amongst themselves, in effect altering the parameters of who was involved in the discussion and re-establishment of social norms. The narrowing of the group that were involved in the settlement of disputes about custom meant that the rest of the community was left without the means to discuss, and dispute, the social order of their locality. This meant that anyone outside the group of local elite could no longer legitimately negotiate better terms of their subordination through the re-iteration of patriarchal norms. The women involved in tilling the land and setting out tithes, still attempted publicly to dispute Sharpe's authority over their produce. However, their very public statements about who could legitimately lay claim to their

⁵¹⁵ Ibid.

⁵¹⁶ Ibid.

produce were no longer part of ‘the common voice’ of the locality, transforming their words from legitimate discussion to bad language.

Another case where the mediating presence of the local elite was apparent occurred in 1687, when John Casse, the vicar of Heybridge, was suing John Heywood for non payment of tithes. One of the arbitrators was William Palmer, the vicar of nearby Langford, who had been witness to the on-going dispute

being sev[er]all times in the said yeares and moneths att the complainents howse hee did there see the defendant bringe and deliver to the complainent sev[er]all quantityes of milke which the defendant did deliver as tith ... and hath heard sev[er]all times that the defendant did deliver the milke att the church porch and sometimes flunge it downe there when noe body was there to recieve itt and once this deponent did see milke lye in the church porch himself butt how it came there this deponent knowes not.⁵¹⁷

Stephen Brewer the vicar of Stow Mary’s, approximately eight miles from Heybridge, also acted as a mediator between Casse and Heywood. Brewer reported that

He this deponent by the request of this defendant about Christmas last went to the complainent and desired that the buissness in difference might be resolved and told the complainent that he this deponent did think it was the complainents best way to reffer it and desist p[ro]ceedings.⁵¹⁸

It is significant that these men (as in the previous case) were drawn from towns further away than the immediate locality. The presence and involvement of these men in the disputes signifies that the network of responsibility and sociability of this male elite stretched over the ‘country’, rather than just the ‘neighbourhood’. This indicates that the yeomen, clergy and minor gentlemen of the wider ‘country’ were invited to mediate disputes between local clergy and their parishioners, because of their status, rather than their membership of the parish community. The importance of a mediator’s status as one of the ‘local elite’, indicates that the traditional emphasis on knowledge of a community and its customs had become less important

⁵¹⁷ T.N.A., E134/2Jas2/Mich11.

⁵¹⁸ Ibid.

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by this time. Consequently, claims of class held more authority than claims of experience. In these cases, the removal of negotiations about tithes from the view of the community, and the inclusion of a select audience of yeoman and clergy as mediators, suggests a move away from the involvement of the ‘common voice’ of the wider community. This restricted opportunities for the negotiation of legitimate forms of authority for those excluded from the local elite.

In addition, there was another side to this dispute, which remained embedded in the wider community of Heybridge. When witnesses to the dispute were called to testify, they did not testify exclusively on the official mediation between Casse and Heywood. Instead, witnesses focused on confrontations between Casse and Heywood in the fields and in the streets. For example, Jacob Hayward, who worked alongside Heywood in an agricultural capacity, witnessed the past few years of disputes and arguments from Heywood’s perspective. At the lamb tithe, Hayward reported that he

Tooke out two lambes [and] sev[er]ed them from the rest but afterwards the complainent seeming to be angry would not take them away but left them there soe that after the complainent was gone the said two lambs went amongst the rest.⁵¹⁹

Thomas Denny, a possible relation one of Casse’s servants, remembered the same lamb tithing very differently,

Upon the first day of May also hee this deponent being in Company with the complainent and defendant when there was 20 lambs to be tithed two there of was taken out of the flocke and desired as tith for the complainent butt when the complainent went to drive them away hee the defendant refused and kept them for his owne use and with all the defendant said he could spend 100Li to the complainents five.⁵²⁰

The reports from the fields at the time of the lamb tithing came from Hayward, an employee of Heywood, and from Denny, whose close relation worked in Casse’s house. It seems that Heybridge’s common opinion had been fractured by bonds of kinship and employment. K.

⁵¹⁹ Ibid.

⁵²⁰ Ibid.

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Wrightson has observed the problematic nature of dispute settlement in the early-modern locality, arguing that “The very complexity of relationships within small communities made it exceedingly difficult to judge behaviour of an individual without bringing into play a host of personal considerations”.⁵²¹ Arguably then, the presence of mediators of good standing from outside Heybridge would have been essential in order to cut through the loyalties of employment and kinship. However, the arguments which occurred in the fields continued as a form of negotiation between the two men. This suggests that customary disputes still provided a space for the community to negotiate patriarchal authority through dialogue about social order.

There is evidence that John Heywood still attempted to involve the community in the dispute. The climax of the dispute came when Heywood, having had another tithes rejected by Casse, subverted the ritual action of delivering milk tithes to the vicar. William Berry reported that

this deponent being Sexton of the parish aforesaid and living neare the defendants house hee this deponent was going to ring the Bell and followed immediatly after the defendant who was then going with his tith milke to the church who as soone as he came att the churchs porch there hee poured itt all downe without giving the complainent righte to receive itt.⁵²²

It is possible that Heywood’s timing was deliberate, ensuring an office-holding audience for his statement. The symbolism of throwing tithes milk into the church porch was a powerful gesture, which drew the attention of the whole community to the dispute, and to wider problems of authority and social order. The parish church was an important landmark in early-modern communities, and was simultaneously representative of Casse’s centrality to, and authority over, the community. The inanimate, empty, church was a fitting receptacle for Heywood’s tithes which had been ignored, insulted and rejected by Casse several times. Heywood’s gesture highlighted the waste of the tithes milk, challenging Casse’s rejection of the community’s resources. Furthermore, Williamson has argued that “The repeated occurrence of the doorway as a site to contest authority and to assert individual agency suggests that it held a

⁵²¹ K. Wrightson, ‘Two Concepts of Order: Justices, Constables and Jurymen in Seventeenth-Century England’, in J. Brewer & J. Styles, *An Ungovernable People: The English and Their Law in the Seventeenth and Eighteenth Centuries* (London, 1980), 25.

⁵²² T.N.A., E134/2Jas2/Mich11.

symbolic place as a boundary point at which civic authority was lessened".⁵²³ The visual strength of Heywood's gesture indicates that it was not just an action of frustration. Heywood used symbols of authority, waste and community which could be recognised by an early-modern audience, to begin a dialogue about the legitimacy of Casse's behaviour. This public, violent and symbolic act, indicates that while Casse chose to involve a local social elite in mediating this dispute, he could not prevent Heywood appealing publicly for the traditional involvement of the 'common voice' in establishing the rights and wrongs of the case.

In these cases we have seen that the involvement of the rich and powerful in customary disputes did not alter their potential for developing into discussions about the social order and the needs of the wider community. However, the cases from late in the seventeenth century indicate that the presence of a 'local elite' worked to change the way customary disputes were dealt with. In these cases we can identify a network of 'local elites' comprised of yeoman, clergy and minor gentleman which stretched beyond the boundaries of the parish, and over the 'country'. These men acted as witnesses and mediators to their fellow elites in customary disputes. The transfer of negotiations about customary disputes into the houses of these men indicates an exclusion of the wider community from discussions about patriarchal norms and the social order. However, this did not prevent the rest of the community from expressing their opinions about legitimate authority in relation to custom. Instead, these opinions remained outside, in the fields and streets, and were presented increasingly in terms of bad language, violent gesture and affront to authority.

Social Morality

So far it has been established that early-modern people used customary disputes to create a dialogue in order to discuss social order and legitimate authority. In this section we will examine how this dialogue did not just concern individual problems, but instead drew on a variety of contemporary moral concerns. This telescoped the importance of localised disputes into the realm of national concern, collective interest and morality. B. Waddell has examined early-modern popular preaching, and has identified how preachers connected

⁵²³ Williamson, *Aspects of Social Relations*, 83.

the microcosmic struggles of consumers, tenants and debtors to the macrocosmic world of divinity and politics. This evocative language of moral danger conferred an importance on the petty conflicts fought out in the fields or at the market stalls that is difficult to appreciate in modern societies where- at least in theory- economic, political and religious issues are firmly compartmentalized.⁵²⁴

In this section I wish to show that deponents in the cases from the Duchy of Lancaster and Exchequer Courts drew on accepted terms of moral behaviour to berate land owners and office holders who sought to exploit customary resources for their own profit.

These disputes were largely the result of the huge economic and social pressures of the sixteenth and seventeenth centuries. Land hunger and population growth meant that systems of tithing, and access to customary resources, became more problematic. In the harsh economic climate, land owners and office holders sought to protect their own commercial interests before those of the community, especially the poor. These pressures created challenges for a wide range of people, who were dependant on each others' good will for access to vital resources, services, and protection from violence or exploitation. This ideological shift was identified by Hindle, who argued that it created a "fundamental intellectual distinction between two competing concepts of social morality: *commonwealth* and *commodity*".⁵²⁵ The idea that commodity (obtaining optimum profit from assets at the expense of the subsistence of the rest of the community) could be reconciled with Christian morality became more popular through the sixteenth and seventeenth century. This contradicted accepted social norms which prioritised communal interests over private profit, creating conflicts over customary resources, which were often seen as wasted assets by landholders.⁵²⁶

Customary disputes often allowed the poor to contest encroachments on their rights by the rich and powerful. In 1589, William Waldgrave used the Exchequer bills and answers to accuse a labourer of concealing lands from the Queen. James Benyson had been granted a piece of waste land by the Court Baron of Barking at 4d a year, and had built a house worth £16. However, Sir Edward Stanley discovered that the land should have been handed to the

⁵²⁴ B. Waddell, 'Economic Immorality and Social Reformation in English Popular Preaching, 1585-1625', *Cultural and Social History*, 5, 2 (2008) 167.

⁵²⁵ S. Hindle, *The State and Social Change in Early-modern England* (Basingstoke, 2002) 55.

⁵²⁶ For further discussion of the theological debate about husbandry, covetousness and waste see Brace, *The Idea of Property*.

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crown during the dissolution of Barking Abbey. Stanley sought to claim the waste land for himself as part of the controversial quest for concealed royal lands. This process allowed the Crown to licence individuals to review the land surveys created during the Dissolution of the Monasteries, and to purchase any property they discovered. The process of recovering concealed properties was driven by a land hungry market and often involved bribery, threats and cynical litigation.⁵²⁷ Benyson reported that after threatening to pursue legal action, Waldgrave

did threaten that your said orators cottage ... should be beaten downe to the ground if he would not hold the same by cople of corte rolle ... by reason whereof your orator [was] greatly terrified.⁵²⁸

Benyson's case was accompanied by a complaint from Richard Chambers who asked for the case to be tried in the Exchequer court to protect the interests of the poor defendants. He argued that "your poore supplicants are not able to indure being verie poore men and aged and having bestowed their whole substance in the building and purchasing of the said poore teniment".⁵²⁹ The image of Waldgrave threatening to flatten the houses of poor men was emotive and reflected contemporary criticisms of the process of recovering concealed lands. C. J. Kitching has argued that

the nation at large, the law courts and finally parliament were thoroughly sickened by the encouragement given to informers and profiteers, the volume of tedious business produced, and the repeated failure of the crown to stand by its best resolutions and control the situation.⁵³⁰

Concealed lands were often associated with pious interests; as bequests to religious institutions, as income for the clergy or as homes of the marginal poor. The forceful removal of these assets for individual profit was decried as immoral and against the commonwealth.⁵³¹ The presence of Benyson's reply in the bills and answers is important. Firstly, it demonstrates

⁵²⁷ C. J. Kitching, 'The Quest for Concealed Lands in the Reign of Elizabeth I', *Transactions of the Royal Historical Society*, 5th series, 24 (1974) 63-78.

⁵²⁸ T.N.A., E112/14/142.

⁵²⁹ Ibid.

⁵³⁰ Kitching, 'The Quest for Concealed lands', 78.

⁵³¹ Ibid, 73.

that the poor had some ability to defend themselves at law against the Crown. Secondly, it suggests that Benyson and Chambers did not just use their answers to discuss whether the land was concealed, but that they sought to create a dialogue about whether confiscating the land was justifiable in moral terms. By highlighting Waldgrave's use of intimidation, and the poverty and age of the defendants, Benyson and Chambers began to question the legitimacy of the process of confiscating concealed lands. Thus, a labourer from Barking was able to articulate nationally held concerns about two competing forms of social morality, one of which privileged private profit over the maintenance of the vulnerable poor.

The dialogue established by these disputes also sought to protect multiple access rights against changing notions of property ownership. In 1607, John Cooke sought to protect his access rights to pasture twenty sheep on Myddle Marsh near East Mersea. The difficult terrain of the area meant that in order to get to Myddle Marsh, Cooke had to drive his sheep over North Hill which was owned by George Flyngante. Flyngante resented the intrusion of Cooke and his sheep over his land, and prevented Cooke from passing. Cook argued that

his predecessors and other the tennants and occupiers of the said common of pasture tyme out of mynd have quyetye had and enjoyed without any denyall interrupsion or dysturbance ... he well knoweth that there ys not any other dryst way or passage to come unto the marshe ... there ys lykelye to bee much prejudiced and sustayne great losse therbye.⁵³²

Cooke appealed to the court through the language of customary right. By emphasising past practice, Cooke underlined the logic and necessity of his access rights over North Hill. Cooke was not only defending his physical right to drive his sheep to pasture, but also the structure of customary rights that underpinned it. E.P. Thompson has identified how customary usages were challenged by a shift in the legal understanding of property:

What was happening, from the time of Coke to that of Blackstone was a hardening and concretion of the notion of property in land, and a re-ification of usages into properties which could be rented, sold or willed.⁵³³

⁵³² T.N.A., E112/80/153.

⁵³³ Thompson, Customs in Common, 135.

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This meant that ancient customs and usages needed to be owned rather than practiced. The preferment of absolute property rights threatened to exclude ordinary people from exercising their customary rights. An increasing emphasis in legal thought, on the rights of individuals against multiple access rights, hardened the attitudes of landowners to the reality of customs which underpinned agrarian practice, such as that of Cooke's access to Middle Marsh. In this case, Cooke argued against his exclusion from North Hill, and also the wider exclusion of the community of tenants that used the pasture in common. This reveals that customary access rights, and the social responsibility which enforced them, were conceptualised in differing ways by Flyngate and Cooke. The dispute enabled both parties to articulate their understanding of their social responsibilities to each other.

Another example of deponents using custom to defend their access to common land can be found in the Duchy of Lancaster court. In 1613, the community of Great Coggeshall was suing Joane Ryvers over her enclosure of Butts Pasture, a piece of land used by the community for the compulsory practice of archery. As discussed in Chapter Three, Butts Pasture was an important practical resource which held a key role in the expression of the local hierarchy, as practice there was compulsory for the Steward, Bailiff and Homage. The ancient inhabitants of Great Coggeshall rallied to defend their customary right to use the land. Edmond Tyler reported the community's continuously practiced right to use Butts Pasture as follows:

The same inhabitants and other archers did usually and commonly shoote at the same buttes from tyme to tyme, w[i]thout the contradiction denniell or interupcion of anie p[er]son whatsoever and that the same close was a common gaming place for all disporte and recreations.⁵³⁴

Here, the inhabitants of Great Coggeshall adopted the collective language of custom to defend Butts Pasture. By describing their rights in collective terms, deponents were not only arguing to preserve their collective rights to use Butts Pasture, but also drawing on contemporary concerns that commonwealth or community should be prioritised over commodity. In times of high economic pressure the availability of an accessible space for plebeian recreation became

⁵³⁴ T.N.A., DL4/60/15.

of less importance than ‘improvement’ of profits. During the sixteenth and seventeenth centuries

population pressure created a greater demand both for existing agricultural holdings and for such new holdings as could be taken from the wastes and forests, which tilted the balance of power between landlords and tenants in favour of the former.⁵³⁵

This pushed landlords to engage in enclosure, rack renting, ‘improvement’ leases and the withdrawal of access to customary resources. These practices were criticised by early-modern popular preachers, who characterised profiteers in terms of monstrosity, heresy and criminality.⁵³⁶ B. Waddell has argued that historians have underestimated the influence of popular preachers on early-modern ideas of morality, and that their sermons should be seen as “a text with tangible social authority on issues of moral discipline and community regulation”.⁵³⁷ This case demonstrates that communities were able and willing to oppose enclosures at law, and that they could frame their argument in terms of community versus the morally dubious profiteering of landholders.

This case also reflects the growing perception amongst elites, which linked plebeian social spaces with disorder. Preventing ‘dispute’ turning to rebellion may have been another motivation for Ryvers to restrict access to Butts Pasture.⁵³⁸ Wood has argued that “In the actual practice of both lords and law courts it is possible to discern a gradual hardening of attitudes to those local customary laws which were felt to give undue licence to the ruled.”⁵³⁹ Ironically, the retraction of customary rights by landholders served to undermine existing structures of local authority. Firstly, landowners were seen to be breaking with their patriarchal duty to protect those lower down the social scale, effectively releasing common people from their obligations to obey them. Secondly, removing the space which local office holders used as an expression of the social hierarchy alienated Ryvers, and increased the likelihood of open opposition to her authority. Thus, anxiety about civil unrest was exacerbated. Therefore, the inhabitants of Great Cogglesall presented their defence in

⁵³⁵ Wrightson & Levine, *Poverty and Piety*, 5.

⁵³⁶ Waddell, ‘Economic Immorality’, 165-177.

⁵³⁷ *Ibid*, 166.

⁵³⁸ For further discussion of the link between social space and disorder see Scott, *Domination and the Arts of Resistance*, 108-136, Wood, *The 1549 Rebellions*, 249.

⁵³⁹ Wood, ‘The Place of Custom in Plebeian Political Culture’, 51.

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collective language, drawing on concerns of immoral disregard of the communities' interests and the preservation of the social order.

The battle between individual and communal interest was not always clear cut. In 1625, the Corporation of Maldon took drastic action preceding a legal challenge against Francis Steele over his avoidance of landing charges. The water bailiff had become so frustrated at Steele's rejection of the Corporation's rules that he indulged in sabotage in order to prevent Steele landing his goods at Heybridge. Christopher Steele informed the court that

the bailiffe of Maldon aboute five yeares paste or thereaboutes caused certayne piles or stakes to be sett acrose the channell a little above Maldon heithe towards Heyebridge by meanes whereof the said defendent Francis Steele was hindered ... to passe upp with boats to heybridge aforesaide with sea coales unless the said Francis would paye unto the said inCorporation 12 pence uppon every chalder of coales ... The bailife of the said towne of Maldon afterwarde by order from the high courte of Admyraltie were enjoyned to pull up the said piles and stakes sett crosse the said channell which they accordingly did.⁵⁴⁰

In this case there were two competing claims to represent the best interests of the community, which came to a head when the Corporation physically blocked the river with stakes. The Maldon Corporation believed that they were allowed to charge all sailors for bringing their goods up the river. In the depositions, members of the Corporation not only emphasised the legality of their taxes, but also the role the taxes played in maintaining the town. Deponents emphasised their contributions to the building of ships for the Queen, and the maintenance of roads, bridges and streets which had been jeopardised by the avoidance of charges.⁵⁴¹ In order to exert these charges, the Corporation needed to conceptualise and assert their absolute and exclusive right to control the estuary.

However, the Corporation's attempt to assert an absolute property right over the estuary conflicted with customary practice which allowed multiple sets of usage rights to exist in the same physical space simultaneously. Sailors on the estuary had long claimed that custom permitted them to land goods at Heybridge, without paying Maldon's taxes. Again, the

⁵⁴⁰ T.N.A., E134/22Jas1/East7.

⁵⁴¹ Ibid. Jepha Kinge, Robert Pemicoke and William Francis deposed the importance of the charges for maintaining local community interests.

sailors did not just focus on the legality of their actions but how it benefited their community. Deponents emphasised the expense and time saved fetching coal from Heybridge rather than having to go to Maldon, and emphasised the encroachment of the Corporation onto the Lord of the manor of Heybridge.⁵⁴² Both communities drew on contemporary ideas about morality, and the defence of the commonwealth, to justify their actions. In particular, is that the urban Corporation achieved this by re-conceptualising the estuary as private property, excluding the claims of outsiders to have customary access through the river. The inhabitants of Heybridge, however, continued to argue for the communal benefit of multiple access rights on the river, curbing the exclusive power of the Corporation. J. Brewer and S. Staves have argued that

It cannot be the case, as many now suppose, that in this period older, multiple use-rights to property were simply supplanted by a rise of absolute property rights ... older ideas that owners held property subject to moral liens by their fellow citizens in need of subsistence persisted throughout the period.⁵⁴³

Definitions of absolute and multiple-use property rights conflicted in this case. Despite this, both sides still drew on the moral issue of promoting commonwealth over commodity. This reveals that moralising about communal interests was not solely the preserve of plebeian dialogue. Communal interests could be espoused by the powerful, and absolute property rights could serve the interests of some communities. Both conceptualisations of property were used in a dialogue about communal interest.

The dichotomy between commonwealth and commodity was not solely realised at the community scale. In 1625, Lawrence Samson was attempting to sue John Wyberd, his brother in law, for retracting an oral agreement. Wyberd had agreed to allow Samson and his wife to remain living in the family home in Takely after their father John Wyberd died. Samson's wife had been born at Takely, and was so distressed at the thought of moving that Wyberd allowed them to stay "out of his brotherly affection towards his said sister your orators wyffe".⁵⁴⁴ Samson claimed that he had improved the house and lands, increasing its value, but that once these improvements had been made Wyberd had withdrawn his promise, and evicted them.

⁵⁴² Ibid. John Freshwater, Christopher Steele, Sir Thomas Wiseman, Thomas Spareman deposed that Maldon was encroaching on the power of the Lord of Heybridge Hall.

⁵⁴³ J. Brewer & S. Staves (eds.), *Early-modern Conceptions of Property* (London, 1995) 17.

⁵⁴⁴ T.N.A., E112/80/209.

John Wyberd fyndinge that your said orator hathe att [and] w[i]th his greate coste ... made the same verye habitable for any gentleman of any reasonable qualitie and degree ... and knowinge that your said orator hath not any wrytinge sealed to testyfy and prove the promyse grant and demyse aforesaid or any suche dyrect prooffe as by the strickt course of the common lawe ys required ... nowe seckinge by all the meenes he may to defeate yo[ur] said orator of the said demyse terme [and] interest so by word graunted”.⁵⁴⁵

It is interesting that Samson felt he had claim to legal redress in light of the informality with which the agreement was arranged. Samson emphasised that he took the word of his brother in law so seriously because of their familial relationship. Samson was not only attempting to secure his tenancy of the house at Takley, but by focusing on the broken promises of a family member, he was appealing to traditional notions of reciprocity, and criticising his brother's actions, not just in legal, but in moral terms. This is supported by Wrightson, who has argued that “expressions of reproof, grounded in recognised expectations, were an acceptable means by which members of families (and in particular those in subordinate roles) could assert claims to proper respect and consideration”.⁵⁴⁶ By choosing to break his word in order to profit from Samson’s work, Wybird had disregarded his duty to look after his family before making a profit.

The battle between commodity and community as moral and social values was fought out in the Exchequer court on a large scale. In 1633 in Colchester, John Lucas, a powerful local gentleman, was suing a number of men for erecting new mills in the town, undermining the business of his own mill.⁵⁴⁷ The case concerned Canwicke Mill, which Lucas argued had ancient rights to the milling of the town’s grain. Lucas’ attempt to put down the new mills was met with resounding outrage from the deponents in the case, who collectively asserted the importance of new mills for the commonwealth of the town. The interrogatories specifically asked deponents whether

the poorer sorte of people ... weare before the erectinge of the said windmilles much oppressed by the possessors of the water mills ... by inforcing the saide

⁵⁴⁵ Ibid.

⁵⁴⁶ For further discussion see Wrightson, ‘Mutualities and Obligations’, 72.

⁵⁴⁷ The defendants were William Gilson, Sammell Attoway, Robert Tarloolt, Philemore Awfeld, Robert Buchall, Robert Hoag, Thomas King, Lawrence Gibson and Henry Barrington.

poor people many tymes to pay 5d or 6d for a bushell of hard corne or otherwise by makeinge the saide poor people to stay a longe tyme for their griste or els to goe a myle or twoe further to other milles in the country to have their corne ground or otherwise to buy their bread at the bakers to their great losse.⁵⁴⁸

Milling was a vital link in the chain of supply of bread to the people of Colchester. If the mills were not operating the subsistence of the poor was at real risk. This is supported by the testimony of inhabitants of Colchester who argued that removing the new mills would be damaging to the poor, and the public good.⁵⁴⁹ Rather than examining the legitimacy of the old mills' customary rights, the case focused on whether the old water mills had served the town's needs adequately. It appears that when it came to the chain of supply of bread for the town, even custom was irrelevant when faced with the communal need for basic food-stuff.

To demonstrate the ineffectiveness of the old mills, deponents referred to a rumour concerning not just the operation of the mills but of the morality of the millers. William Bond, a baker, reported that

about two yeeres sithence in the tyme of dearth of corne one Whitman a miller att one of the new built windmills did tell this deponent that John Gibson and James Gibson and most of the millers about the towne did assemble themselves together att the George in Colchester and did there bind themselves eche to the other by bond not to grind anie corne or graine but that they should take 14en pounds weight of corne.⁵⁵⁰

The idea that the town's millers had colluded in order to make a profit at a time of extreme economic crisis was one which lay at the heart of early-modern anxiety about dearth. K. Wrightson and J. Walter have examined social relations at times of dearth. They argue that early-modern people, by blaming the middlemen who handled grain, helped to reinforce a form of patriarchy which prioritised communal interests and preserve social order,

⁵⁴⁸ T.N.A., E134/8Chas1/Mich18.

⁵⁴⁹ Including John Cowens, William Dannell and William Bond.

⁵⁵⁰ T.N.A., E134/8Chas1/Mich18.

In their focussing of guilt upon such marginal elements as the morally ambivalent middlemen, in their reaffirmation of the values enjoined by neighbourhood and religion, they emphasized those values and relationships which facilitated the orderly survival of society in terms of its ideology, notions of social responsibility and leadership by a social and administrative elite.⁵⁵¹

Revisiting the water miller's attempts to gain individual profit at a time of extreme harvest failure, directed the dialogue of the case towards their prioritising of commodity over community. By collectively demonstrating that the water millers' service to the locality had been compromised by their greed, the deponents set the millers in opposition to the community. This is further evidenced by deponents who described the aggressive behaviour of the millers. William Freeman, a baker, was threatened by one of the millers for grinding grain at one of the new mills. Freeman deposed that,

Richard Steele former of Cannwicke Mill did tell this deponent that when the windmills were put downe or suppressed hee would make this deponent glad to seeke to him to gett him to grind his graine.⁵⁵²

Steele's attempts to intimidate his enemies' customers became commonly known. Marie Purvey, reported that

Shee hath heard that Richard Steele in the interratories named did saie to the poore folk that they were best come [and] grind with him nowe for els if the windmills were once putte downe he would punishe them and make them paie five pence or sixe pence a bushell for grindinge.⁵⁵³

By deploying the 'common voice' of the town in criticism of the water millers, deponents strengthened the bonds of community amongst those opposed to the dominance of the millers. However, the consolidation of communal identity in this case redefined the boundaries of Colchester's community by excluding those who sought profit at the expense of subsistence.

⁵⁵¹ Walter & Wrightson, 'Dearth and the Social Order', 41.

⁵⁵² T.N.A., E134/8Chas1/Mich18.

⁵⁵³ Ibid.

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In this case the community of Colchester spoke out collectively against the immoral behaviour of the water millers. They drew on accepted moral standards and used them to exclude those who damaged the commonwealth of the town. This case reveals that disputes which manifested in angry words and threats, in the ale houses and at the mills, provide historians with insight into the wider changes in society which prompted a re-negotiation of the meaning and worth of morality, social responsibility and the community

This section has examined the way early-modern deponents drew on accepted notions of morality in the dialogue established by customary disputes. Driven by economic and social changes land holders often resorted to the exploitation of customary resources, which disadvantaged the poor. By linking their disputes with the battle between commodity and commonwealth, deponents heightened the importance of their conflicts. By portraying the behaviour of their adversaries as damaging to communal interests and the social order, deponents strengthened their claims. However the definition of community was not static and the boundaries of inclusion could be redrawn to serve the interests of deponents. This meant that landholders, figures of authority or ordinary people could be alienated by 'common opinion' if their behaviour endangered the interests of the community.

Conclusion

In this chapter it has been suggested that cases concerning customary law provided an opportunity for deponents to create a dialogue about social order. In section one it was shown that this dialogue could be used by people in subordinate roles to challenge the behaviour of their superiors and to articulate expectations of those holding legitimate authority. Rose Cowper highlighted the responsibility of the householder to provide fairly for their subordinates, Elizabeth Prentice criticised the disquiet caused by Fields' legal action and Audley called into question the capability of Wells to hold power over their community. It was demonstrated that the wider community could be drawn in to this dialogue to provide a collective assessment of the rights and wrongs of disputes. In Hatfield, the villagers of Wimbish set out the specific actions which disqualified Farrington from exercising legitimate authority and Cowper used her father's will to bring in common opinion in Coggeshall. Subordinates used this opportunity of dialogue with the rest of the community to reinforce the obligations of the powerful on which the condition of their authority rested. These obligations

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varied from economic provision, self restraint, a reproduction of the actions which signified authority and above all promoting the established social order. In these cases deponents used the dialogue to negotiate their own interests and those of their communities which were referred to in order to legitimate the actions which brought them to court.

The second section focused on how local elites engaged with the dialogues established by customary disputes. It was observed that rich and powerful figures in Essex used disputes about custom in order to advance personal rivalries. This was exacerbated by the political and religious fractures of the sixteenth and seventeenth centuries. However, the enmities between conservative and godly, or royalist and parliamentarian, did not prevent tenants and neighbours from involving themselves in these customary disputes in order to further specific local concerns. The resulting dialogue created by the cases concerned the resolution of competing claims to resources but also addressed the problems caused by the fractious behaviour of local elites. Deponents used their experience as inhabitants to bring the dialogue back from the political and personal rivalries of landlords to the issues of scarce resources and provision of vital services. Furthermore deponents used their depositions to highlight unresolved wider social and economic problems which affected their communities.

Later in the seventeenth century there is evidence that the consolidation of identity amongst local elites prompted them to draw on each other for support and mediation in the occurrence of conflicts with their fellow parishioners. The cases suggest that this network of yeoman and clergymen stretched over the 'country' privileging social status over knowledge of the neighbourhood. The withdrawal of negotiations over custom in to the restricted circle of local elites served to alter the role of the 'common voice' in the resulting dialogue. Those not permitted to negotiate amongst the yeomen and clergymen did not relinquish their contributions to the dialogue, but were increasingly presented as speaking rudely and out of turn.

In section three it has been shown that the poor were able to articulate nationally held concerns, such as the immorality of confiscating 'concealed lands' as symbolic of wider social and moral decay. The 'poor supplicants' used the Exchequer bills and answers to create a dialogue questioning the legitimacy of removing the homes of the honest poor in order to make a profit. Supplicants also used the bills and answers to show that altering customary rules to harmonize with the demands of private property holders ran against agrarian practice and could damage communities reliant on multiple access rights. Deponents in Coggeshall presented the enclosure of their sporting grounds as contradictory both to custom and to the

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social order. Local inhabitants portrayed the plaintiff as immorally concerned with profit and an opponent to the legitimate local hierarchy. However, the Maldon Corporation's arguments demonstrated that a conceptualisation of absolute ownership could be used to defend communal interests, even though this vision of communal interest was firmly centred on the authority of the Corporation.

In the Maldon versus Heybridge cases both sides claimed that they championed communal interests, despite their differing conceptualisation of the landscape and of property rights on the river. These disputes demonstrate the complex and multifaceted way that early-modern dialogues about custom drew on contemporary moral concerns. It has also been shown that the employment of morality to enforce perceived obligations could take place within a variety of contexts and in varying social relationships; from family members to rival communities, or between the poor and the powerful inhabitants of a divided town. This signifies the continued presence and importance of social relationships in structuring everyday life in a real legal sense. Thus disputes about custom gave a voice to the continuing claim that community was more valuable than commodity in structuring early-modern economic and social Structures.

Several conclusions can be reached from this evidence. Firstly it is clear that there were changes in the early-modern period which altered the way that custom worked and altering the way it served to form and enforce social relationships. The polarisation of the local elite and the exclusion of the 'common voice' of communities altered the boundaries of who could legitimately discuss the social order. The economic, religious and political changes of the sixteenth and seventeenth served to fracture the obligations between landholder and tenant, and ruler and ruled. However, what is also visible is the way that custom remained central to highlighting these fractures and attempting to re-instate a traditional vision of social order. Many of the rich and respectable withdrew customary rights, sought profit over community and imagined a world made of private property which excluded the ordinary inhabitants. Despite this the 'common voice' continued to speak in the fields and the streets, in the ale house and in the mills, challenging behaviour which disregarded obligations to subordinates and to the commonwealth. K. Wrightson has argued that

This was still a society based on complex and ubiquitous webs of mutuality and obligation, some of which were strengthened and extended. The change that took place in the course of the sixteenth and seventeenth centuries was not so

much in the whole tenor of the culture as in the boundaries, articulation, and meaning of such relationships.⁵⁵⁴

Wrightson points out that historians mistakenly attempt to trace patterns of modernity in these shifts seeking for the origins of an individual centred society. The cases from the Exchequer and Duchy of Lancaster courts point away from the theory of a rise in individualism and a decline of communal interests. Instead the evidence demonstrates an ongoing process of negotiation between early-modern people. This struggle, on every level of society, existed between people who needed each others consent in order to rule, to take wood, to sail up river, to farm land and mill grain. In short these relationships were built on mutual need, an aspect of society which was not lost with the passing of the sixteenth and seventeenth centuries but which continues, in altered forms, to this day.

⁵⁵⁴ Wrightson, 'Mutualities and Obligations', 194.

Conclusions

Introduction

This thesis has used customary law to examine social identity and collective memory in early-modern Essex, providing a clearer view of the mentalities of early-modern people. The six places selected; Colchester, Maldon, Coggeshall, Barking, Hatfield Broad Oak and Mersea Island, provided a balanced range of sources throughout the time period. In addition, their diverse landscapes and economies provided opportunity for comparison.

The introduction to this thesis outlined areas that had previously been neglected by historians. This thesis has focused on those neglected sources, locations and themes in order to contribute to the field of the social history of Essex. First, while Maldon, Colchester and Coggeshall had been previously examined by social historians, their varied economic structures, rich political history and religious divisions made them ideal foci for this thesis. Previous examinations of these towns by historians laid the ground work for this thesis. Through the examination of custom in these areas, this thesis revealed previously unexplored aspects of the early-modern mentality. A study of customary law and its role in constructing collective memory and social identity in these areas had not previously been attempted. Meanwhile, Hatfield Broad Oak, Barking and Mersea Island had been largely ignored by historians, partly due to their location peripheral to other urban centres, or due to their lack of records. As a result the analyses presented in this thesis offer original insight into the function of custom, memory and identity in early-modern Essex

In addition, this study examined the Exchequer bills and answers for Essex, a previously sidelined set of records which in combination with depositions have provided a fresh perspective on customary law and its connection to social relations. Furthermore, this study has answered the long unanswered call of Emmison to pay closer attention to the rich and useful contents of the Essex customaries. These provide a clear and in-depth perspective of early-modern life. The aims of this thesis were to shed new light on early-modern mentalities by using untapped sources, different locations and the strong potential of custom to provide access into the early-modern mind.

Key Research Findings

Chapter One examined how deponents used oral and written evidence when testifying to the Exchequer court. It sought to establish how deponents rationalized, prioritized and legitimised their references to oral evidence and written documents, in order to discover the assumptions which underpinned early-modern thought processes.

It is clear from the depositions examined that written documents were considered powerful and valuable. They were used by deponents as evidence and to legitimate their own knowledge. Witnesses proved the validity of documents by identifying their accuracy, the 'authenticity' of their creation, the familiarity of the hand writing and the contexts in which documents were seen. In exceptional circumstances, documents were validated through reference to the opinion of a professional scrivener. Deponents legitimated the documents they referred to by citing their experiential connection with them. Furthermore, literate men and women formed a regulatory network which served to identify each others literate activity, and therefore, the validity of documents.

Examination of the Maldon White Book has shown that customals could serve as civic regalia. By presenting a fixed version of custom, the Corporation was able to reinforce civic identity by legitimating the privileges of the Corporation and strengthening their control over the town. However, it is clear that such fixed versions of custom exposed the immutability of custom as an unworkable fiction. Furthermore, while it is clear that by this period, documents were important to legal processes, an over-reliance on documents disadvantaged the illiterate. This group's exclusion from access to court rolls and customals left them without the means to claim their customary rights at law. It is clear from the West Mersea customal that written

documents were appropriated by the local elite to the disadvantage of the poor. However, in addition to supporting the local elite, the customals sought to protect the subsistence rights of the poor. On closer examination, both the Maldon and West Mersea customals were shown to be the constructions of a literate, local, elite, seeking to exert power over their localities. Each customal was reflective of the respective urban and rural concerns of the locality in which it was produced. Both the West Mersea and Maldon customals sought to protect their communities from poverty, with the greatest difference between the two being stylistic. While West Mersea effectively deployed the language of custom as continuous and existent in the memories of 'ancient men', the Maldon customal failed in this respect.

Spoken evidence remained an important part of the depositions. Although transliterated by scribes, the depositions were spoken. Chapter One demonstrated that spoken evidence was legitimated through reference to the communal memory of the community, through the use of phrases such as 'credibly heard'. In the right context, such as will writings or charter readings, words could become 'speech acts', meaning that the words had legal significance. Furthermore, these speech acts could be reported to the wider community, feeding into a network of information. Spoken evidence about customary rules was legitimated in its origins. Deponents considered evidence legitimate if it had been disseminated by family members, neighbours or officials. Second hand oral evidence needed to come from a legitimate source of customary knowledge, otherwise deponents sought to distance themselves from its reliability. Like documents, the validity of oral testimony lay in deponents' experiential connections to customs through practice.

It has been shown that spoken evidence, in contrast to written documents, maintained the relevance of custom. Collective memory was able to absorb the alterations caused by environmental changes. Furthermore, the subsistence rights of the poor were often defended through oral testimony, which otherwise went unrecorded by written documents. The conflict between the charter and oral testimony at Colchester points to social polarisation and the detachment of the local elite from environmental and economic reality. Oral testimony could be used to support the needs of the poor (even against custom), or to uncover corruptions which went unnoticed by written documents. It has been demonstrated that oral and literate evidence was combined by witnesses. The fact that knowledge about custom rested on experience and understanding meshed oral and literate culture together. Literacy was not the only way of connecting with a document, as documents were often understood through seeing and hearing, as well as reading meaning.

Chapter Two examined the influences that proscribed how memories were constructed and used by early-modern deponents, and how those influences informed social identity. It was suggested that early-modern people constructed a store of memories about their 'country', which was shared amongst the community in order to regulate customary law and moral behaviour, and to construct a collective identity.

Witnesses used examples of unusual or traumatic events to anchor their memories of customary law in space and time. These experiences, which generally affected whole communities, helped to forge and maintain collective memories of custom. These events ranged from the discovery of porpoises in the fishing nets to severe instances of plague which killed thousands of people. Events of national importance, and the reigns of monarchs, were also used to demarcate time, but were understood and articulated through a local vernacular. The dissolution of the monasteries has been shown to be a particularly important event cited in depositions from early-modern Essex, still being recalled through communities' collective memory 150 years after the event. The upset of land tenure, tithes and offices caused by the dissolution created a clear division of time in the minds of early-modern people, between before and after the 'abbey time'. The recollection of legal disputes caused by such disturbance of the social harmony in their localities was important, because any interruption or disagreement about customary practice could invalidate customary laws. As deponents' memories were so often anchored in collective memory and articulated in terms of the importance to their localities, it has been demonstrated that memories of custom became less an accurate expression of personal experience and more a justification of a collective interest.

The three mental spaces in which memories of custom were created, transferred and legitimised were explored in Chapter Two. It is clear that these spaces: work, 'country' and family, can not adequately be explained through sole reference to the jurisdiction of the parish. First, the repetition and sociability of employment meant that deponents could form narratives of memory about custom which they held in common. The daily experiences of agricultural and maritime workers provided a physical connection and familiarity with the customs that ruled their environment. This made work an ideal place to learn, practice and discourse about custom. Second, the 'country' encompassed the areas in which a deponent lived, worked and socialised. The 'country' could stretch beyond the manor and parish, meaning that deponents knew the customs of a variety of places of which they were familiar. Deponents built up memories of their 'country' by observing births, deaths, marriages and everyday happenings. Belonging to a place had a special significance in Corporation towns, such as Colchester and

Maldon, where being an 'inhabitant' came with a specific set of privileges and responsibilities. Third, family members provided deponents with not only memories and information about custom, but also practical examples of how custom had been practiced throughout their lives. Depositions revealed that deponents did not passively record the information provided by their families. Instead, information about custom was obtained through observation of practice, and, after these memories were created, they continued to be relevant. Therefore, the linking of a deponent's family to the land created not just experiential memories, but began a process of continual observation and reinterpretation of custom in the context of the past.

The evidence presented in this thesis suggests that women constructed their memories in these mental spaces in the same way as male deponents. It is important to note that each space was not independent of one another. Rather, they acted in concert to produce a constantly redefined system of information, memory and belonging. These mental spaces were the realms in which customary information was readily available from legitimate sources, and were spaces where custom had been repeatedly practiced and shared with others. Therefore, these spaces became part of the identity of those involved in practicing, remembering and communicating custom.

It is clear that the concept of 'ancientness' was integral to the legitimation of customary law in early-modern England. This was reflected in the ages of deponents. Middle-aged and older men were considered as being more reliable and as having longer, more comprehensive memories than younger men, or women. The importance of older men was accentuated by their involvement in preserving memories of custom. Their authority as sources of custom gave them a collective identity. While being an 'ancient man' was an important legitimising factor in customary knowledge, their purpose was to disseminate custom into the wider community. As a result, the 'ancient men' were not an exclusive, or secretive, group. The importance of their knowledge was, however, clear, to the extent that it was sometimes exploited by those wishing to commit fraud. Corporations used claims to 'antiquity' to legitimate their authority, and clearly felt that their credentials as a powerful local elite rested in their connections to the past. Ancient was not a definitive term, it did not denote a number of years, and could be applied to land, people or rights. 'Ancient' has been shown to refer to legitimacy rather than age. Deponents were required to continually assess their surroundings, where their knowledge came from, and their own identities, in order to decipher 'ancientness'. This constant observation and re-assessment acted to link deponents' understanding of custom to the legitimating conditions of 'ancient repute'. While the past, and

its ability to confer legitimacy, were valued in early-modern society, the new was not always seen in a negative way. In fact, the idealisation of the past and the spectre of 'decline' were only presented in depositions when specific economic interests were at risk. It was understood by early-modern communities that memory could be flawed or misleading, and that time and infirmity could lead to forgetting.

The evidence presented in this thesis suggests that memories of custom were social memories. Whether in terms of the origins of memories, or their transfer from one person to another, custom helped to form group identities through the mental spaces of work, 'country' and family. The dual meaning of 'ancient', as both old and legitimate supported the collective identity of 'ancient' men and Corporations, allowing for the dissemination and legitimation of custom.

Chapter Three painted a picture of how early-modern people experienced the physical environment. Customary disputes which prompted deponents to think about the landscape in terms of past usage were used to discover the mentalities that underpinned the early-modern conception of space. This was achieved using an interdisciplinary approach, by considering how people saw their environment, what they thought about when contemplating the physical landscape and how these perceptions aided the construction of their own identities. This evidence was used to argue that the landscape was both functional and symbolic in the early-modern mind.

Perambulation rituals were used to teach early-modern men, women and children the legal, social and physical boundaries of their communities. Memories formed on perambulation were reinforced by beatings, drinking and gospels at certain points along the way. The evidence presented in this thesis suggests that while the secularisation of perambulation rituals altered the way early-modern people viewed their environment, features such as streams and cross roads remained important as symbols that explained the history of the landscape. Therefore, perambulation rituals helped early-modern people to build up a picture of the landscape, which was founded in the past, linking the past appearance and function of the land to the present rights and responsibilities of the community.

From consideration of the ways that deponents described the boundaries of their communities, it is clear that, while physical features of the landscape were described, they were not presented in isolation. Deponents drew on the collective memories of their community to provide detailed histories of a lands usage and ownership, to decipher its precise location and the jurisdictions that governed it. Understandings of the landscape were informed

by friends, family and personal experience. As a result, they became not merely a description of physical features but a personal history, informing the deponent and the reader about identity as well as the land. It is argued that, embedded in deponents' understanding of the landscape, were memories of their own life histories, personal experiences and family associations. The early-modern understanding of the landscape did not consist solely of simple boundary markers, which could be altered by long term change or deliberate attempts at deception. In fact, the boundaries which divided the landscape were underpinned by the collective memories of communities which served to uncover the 'truth' about the landscape.

The depositions examined suggest that early-modern people often saw the landscape in terms of its resources, and the role that those resources played in their everyday lives. Early-modern Essex was a highly localised society, with an economy dependent on the productivity of the local landscape. Thus, early-modern people were physically and economically involved in the workings of the physical environment.

Deponents often explained the jurisdictions governing the landscape in terms of how they controlled access to resources. Furthermore, navigable parts of the landscape dictated the success or failure of trade with other places, the profits of which drove the economy and supported the infrastructures of early-modern communities. The landscape provided powerful resources which underpinned the basic needs of early-modern communities, for example the water mills of Colchester. However, the unreliability of the water sources, and their potential as a weapon in neighbourhood disputes, endangered the needs of the common wealth, initiating the building of windmills to serve the needs of the poor. It is argued that early-modern people viewed common resources not only as a way of supporting the poor but also as symbols of the unity and moral integrity of their communities, generating a sense of belonging, identity and morality.

Multiple interpretations of the landscape could exist alongside each other, especially when the landscape, and the resources it provided, were physically altered over time. Perceptions of the routes which carried goods into and out of the towns in Essex, by land and by water, played an important role in constructing ideas about the landscape, community and identity. For example, the local elite of Colchester conceptualised the river differently from others who worked on, and around, the river. While the Corporation presented a fixed idea of the river environment, the understanding of sailors and merchants was deeply influenced by the physicality of the landscape.

Conclusions

It is clear that the importance of rivers did not end at their banks. Peddlers and tradesmen extended the functioning network of the estuaries into the landscape. As a result, deponents used resources to describe a complex network of movement and action, which was memorialised in the landscape around them through the repetition of daily life. In turn, this created custom as law. The important link in this cycle was memory. Actions were repeated, memorialised and passed on as custom. Custom governed and defined space, and, in turn, the physicality of the estuary defined the actions of early-modern people.

In early-modern Essex, people saw the landscape in terms of the jurisdictions which governed it, with all land being encompassed by the early-modern legalistic mentality. These jurisdictions regulated community hierarchies, to distribute and protect resources and to keep the peace on behalf of the centralised monarchy. Jurisdictions were not always clearly separated and often overlapped, causing confusion, if not conflict. Deponents used the physical landscape to demarcate the boundaries of jurisdiction, using their experiences and memories of those landmarks to validate their knowledge. Competing claims to jurisdictions over land were solved by the re-evaluation of the land was in terms of past usage. Deponents constantly renewed their understandings of boundaries and jurisdictions by using personal and collective experiences to inform their view of space. In this way, jurisdictions shaped and altered people's perceptions of their physical surroundings and their notions of identity and belonging.

In both Maldon and Colchester, the Corporations sought to define certain spaces in order to regulate trade, hygiene and social order. By delineating and controlling rivers and market places, the Corporations' sought to impose and legitimate their power. Throughout the White Book, the Maldon Corporation attempted to delineate legitimate commercial spaces, changing the meaning of the landscape for Freemen, and for those affected by their trade and movements. People saw the thresholds of their houses as access points into the public world of the streets. Their doors were symbolic of their participation in trade and on the Sabbath they signified morality and inclusion in the community. That strangers were physically closed off from the trading public affected perceptions of them, reinforcing a sense of them as separate and other. The creation of maps, surveys and customals in the early-modern period demonstrates the ways that the elite sought to control the landscape through the categorisation and simplification of custom. However, it has been demonstrated that the complex network of access rights and customary rules meant that maps still needed explanation. Thus, the landscape continued to be understood in terms of past practice and memory.

The boundaries between jurisdictions were often invisible to outsiders. However, to the inhabitants of the communities enclosed, boundaries formed a conceptual wall which had real impact on the resources and responsibilities of early-modern people. Jurisdictions required boundaries to be constantly redefined in order to maintain their authority over a changing landscape.

From the analysis completed in Chapter Three, it is evident that early-modern perceptions of space held both symbolic and functional consequences. Environments were understood in the context of the past. This past was linked to the present through customary control of the resources and rights divided by the boundaries of jurisdictions. Therefore, the early-modern landscape cannot be viewed as simply a physical structure. Instead, space was one aspect of the mentality which held together the threads of early-modern perception. The early-modern landscape was a repository of the memories and traditions that underwrote customary law, accessed by deponents through a series of symbols and rituals. Crucially, this was a cyclical process. The customs, symbols and rituals that became embedded in the landscape, in turn shaped the way early-modern people interpreted space.

Chapter Four examined how early-modern conflict over custom created a dialogue through which early-modern people articulated and negotiated their moral, social and legal expectations. Like custom, these expectations were not fixed. Therefore, they needed to be constantly re-examined and renegotiated. It is suggested that the nature of early-modern society was not governed simply by a monolithic, patriarchal ideal. Instead, complex social roles were negotiated. Thus, social relations, the contact between individuals in a community, were hugely important to the way that society functioned.

Chapter Four identified the ways that customary disputes were used as a platform for these negotiations, and how those negotiations altered through the sixteenth and seventeenth centuries. Customary disputes are shown to have allowed those in subordinate positions to appropriate and reinterpret the ideals of the social order in order to protect their own interests, and the interests of their communities.

It is clear that disagreements about customary rights were often used by deponents as a platform to communicate their expectations of patriarchal authority, and to express when they felt their requirements had not been met. Furthermore, the customary nature of these disputes allowed deponents to transport conflict between individuals into the wider community. This provided an opportunity for a legitimate public discussion of patriarchal norms, social expectation, and how best to preserve the social order. Importantly, this allowed disputes

between men and women to focus on the social order and quiet, rather than on ideals of gender. The cases examined demonstrate that women used customary disputes as a means of reinforcing patriarchal ideals, demanding the economic independence of men in positions of authority. As custom affected the whole community, and deponents were called to testify their collective memories, disputes did not remain a debate over competing individual interests, but were discussed publicly, in terms of the consequences for the wider community. Significantly, legal disputes about custom used networks of speech and knowledge in their localities to draw communities into a dialogue about how their world should be ordered.

The ways that local elites engaged with the dialogue created by customary disputes was also explored in Chapter Four. The involvement of the rich and powerful in customary disputes did not alter the potential for discussions about the social order and the needs of the wider community to develop. However, during the seventeenth century, the increasing polarisation of the local elite altered the way that communities used custom to discuss the maintenance of social order. While at the beginning of the period local husbandmen were able to identify, and criticise, the behaviour of the powerful local elite who contravened patriarchal norms and disturbed the social order, later in the period the consolidation of the local elite limited access to disputes about custom. The local elite increasingly attempted to prevent disputes over custom becoming a wider discussion about the social order. By attempting to exclude the community from the negotiations, the ‘common voice’ of the neighbourhood was denied its traditional function. Thus, in some communities in Essex, by 1700 the local male elite had withdrawn to mediate disputes between neighbours amongst themselves. In effect, this altered the parameters of the discussion and the re-establishment of social norms. The narrowing of the group that were involved in the settlement of disputes about custom meant that the rest of the community was left without the means to discuss, and dispute, the social order of their locality.

It is clear from the cases examined that women and men of lower social standing still attempted to voice their understandings of custom and social order in the fields and streets of their communities, though their input was censored as unruly and illegitimate by their social betters. Despite this, their words and actions, which sought to negotiate a better position in the social order (from the angry words of women in the streets to tithe milk flung into the church porch), were still cited by deponents as evidence in customary disputes. However, the removal of negotiations about tithes from the view of the community, and the inclusion of a select audience of yeoman and clergy as mediators, suggests that there was a move away from the

involvement of the ‘common voice’ of the wider community. This restricted opportunities for the negotiation of legitimate forms of authority for those excluded from the local elite.

This thesis has shown that the dialogue prompted by customary disputes drew on a variety of contemporary moral concerns. This telescoped the importance of localised disputes into the realm of national concern, collective interest and morality. Deponents from the Duchy of Lancaster and Exchequer Courts drew on accepted terms of moral behaviour to berate land owners and office holders who sought to exploit customary resources for their own profit. It has been demonstrated that the severe economic pressure of the sixteenth and seventeenth centuries put strain on traditional relationships of reciprocity. These relationships were integral to the functioning of early-modern society, with people reliant on the goodwill of their neighbours for access to resources and protection from violence, fear and exploitation. These findings demonstrate that the dichotomy between commodity and commonwealth affected people at all levels of early-modern society, and that custom was integral to regulating the balance between profit and responsibility.

It is clear that the increasing preferment of absolute property rights threatened to exclude ordinary people from exercising their customary rights. An increasing emphasis on the rights of individuals over multiple access rights hardened the attitudes of landowners to the reality of customs that underpinned agrarian practice. This resulted in the development of a dual understanding of rights, articulated and negotiated through customary disputes. Early-modern communities were able and willing to oppose enclosures at law, and framed their argument in terms of community versus the morally dubious profiteering of landholders. In some cases, communities disagreed on how best to support the subsistence of the poor. In such cases, both sides drew on contemporary ideas about morality and the defence of the commonwealth in different ways to justify their actions. Of particular interest, the urban Corporation of Maldon re-conceptualised the estuary as private property, excluding the claims of outsiders to have customary access to the river. In contrast, the inhabitants of Heybridge continued to argue for the communal benefit of multiple access rights on the river.

Customary disputes allowed social morality to be discussed on both large and small scales. In addition to shaming the greed of the rich, communities used customary disputes to redraw the social boundaries of their communities, excluding parties who put profit ahead of commonwealth. This demonstrates that while notions of custom as private property were on the increase, the protection of the whole community remained an important part of Christian morality. Disputes which manifested in angry words and threats in the ale houses, in the fields

and at the mills, provide historians with insight into the wider changes in society that prompted a re-negotiation of the meaning and worth of morality, social responsibility and the community

From the analyses presented in this thesis, it is evident that custom was of vital importance in forming social relations and perceptions of space and culture in early-modern Essex. As a result, custom gave rise to a rich culture of collective memories which bound communities together. The early-modern world was built from peoples' perceptions of past usage. It legitimated and explained the world around them, both in terms of function and meaning. Custom bound society together into functioning networks of speech and knowledge, which informed people where they were, who they were, and whether their actions were right or wrong.

There were some significant changes during this period. Increasing literacy, education and social polarisation altered the material landscape of early-modern Essex. Events of national importance shook the worlds of normal people, creating real mental divides between them and their pre-dissolution predecessors. Some people felt that the best way to act was to seek profit instead of reciprocity, but were restricted by the resounding common adherence to, and dependence on, the consent of other people. As a result, the ideal of common wealth, of protecting the poor and indigent before profit was key to the formation of early-modern mentalities. The attempts of the local elite to alter the face of customary negotiation partially succeeded, stigmatising traditionally acceptable testimony as noise and disquiet. However, the necessity and practice of custom was as undeniable as the passing of the seasons and the movement of the tides. The early-modern mentality was an extraordinary one. Perceptions of the world were full of vivid symbolism and associations constructed through experience. Their landscapes were full of information about their own history and that of their community. The physical features told them about economics, resources, family and their communities.

The written word was understood as part of that environment, even by people who could not read. As a result, documents were just as much part of oral culture as the people that read them aloud. Oral culture, although increasingly despised by the rich, was integral to everyday life and the knowledge of the law. Therefore, the cultures of the spoken and written word were inseparable, and both served to underpin legalistic mentalities. The early-modern world was full of meaning, deciphered by structures of thought which prioritised memory, experience and community, forming the function and appearance of their world. Memory tied

each part of early-modern mentalities together into a free flowing resource that informed early-modern people of who they were.

Opportunities for Future Work

The analysis presented in this thesis has developed an understanding of the way that custom functioned in early-modern Essex. As a result of this work's conclusions, a number of areas for future study have been identified. First, the neglect of West Mersea as an important part of the Essex coastline presents the opportunity for an in-depth study of the locality. Through parish, manor and ecclesiastical records, and depositions from central courts, a vivid picture could be created of this community. Its separation from the mainland by the Strood made Mersea Island a highly individual settlement, embedded in its physical environment. As a result, a detailed study of Mersea could reveal a great deal about the mentalities of early-modern maritime and agricultural workers. Second, greater detail must be paid to the bills and answers of the Exchequer court. Their abundance, when studied as a whole body, will help to reveal important information about the legalistic tendencies of those seeking address. Third, I propose a study of water as an economic and psychological resource in early-modern Essex. By targeting sources which focus on the vital role played by rivers and estuaries, a picture could be developed of the functional and conceptual importance of water in Essex, which drove part of the developing economy of London. A study of the multiplicity of the function of water in the early-modern period, for drinking, brewing, milling, fulling, shipping, fishing and fowling, could drag the Essex waters out of the footnotes of social history, revealing a previously unexplored angle on the nature and role of water in society.

Final Comment

In conclusion this thesis has analysed bills and answers and depositions from the Duchy of Lancaster and Exchequer courts and customals from our six places of interest in Essex from the mid sixteenth century until 1700. The previously unexplored documents enabled an original study of customary law which provided a fresh perspective on the role of collective memory in structuring early-modern mentalities and forming social identity. This

thesis uncovered new information about the early-modern world and about the actions and thought processes of the people who inhabited it.

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